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Global Employer Services

Global Rewards Update:
People's Republic of China (PRC) – New circulars encouraging equity offerings in China

December 2014

Background

Recently, the China Securities Regulatory Commission ("CSRC") issued Circular [2014] 33, offering guidance for Chinese listed companies implementing Employee Share Purchase Plans ("ESPP").

In addition, the China State Administration of Foreign Exchange ("SAFE") issued Circular [2014] 37 announcing that equity incentive plans for non-listed Special Purpose Vehicle companies ("SPV", referring to an overseas enterprise directly established or indirectly controlled by Chinese domestic residents for overseas investment or financing purposes) can now be SAFE registered.

Both the above newly issued circulars signal an increased interest in equity offerings as a recognised remuneration tool in the Chinese market.

ESPP guidance

ESPPs have long served as an effective global incentive vehicle. However, they are still new to Chinese listed companies due to a lack of relevant guidance in the past.

In Circular 33, the CSRC has set out the general principles and requirements for Chinese listed companies to implement ESPPs in China, particularly on the following:

- All ESPPs should comply with any relevant legal requirements and employees must be able to participate on a voluntary basis. The participants must bear the same risks as other investors.
- Funds and stocks should be offered from certain legitimate sources.
- There should be a post-acquisition holding period of at least 12 months (or 36 months if the plan is implemented through a non-public offering).
- The total number of shares held under all valid ESPPs of a listed company should not exceed 10% of the total share capital of the company, and no participant should receive a total number of shares in excess of 1% of the total share capital of the company.
- Generally, Chinese listed companies do not need to apply for the CSRC's approval to implement an ESPP unless the ESPP is implemented through a non-public offering. The CSRC will supervise all ESPPs and may impose penalties in the event of any violation of the relevant laws and regulations.

Pre-IPO plans SAFE registration

Historically, it has been unclear whether an equity plan set up prior to a company's initial public offering ("IPO") could be SAFE registered, even if the company became listed at a later stage.

To facilitate the cross-border capital transactions involved in domestic residents' investment and financing activities via SPVs, Circular 37 has now given the green light for the SAFE registration of pre-IPO equity plans of non-listed SPVs. However, it is still unclear whether such registration is applicable for other pre-IPO companies.

While post-IPO SAFE registrations may still be acceptable for pre-IPO plans, we have seen, in recent cases, a generally more rigorous approach being taken by local SAFE officers when handling such post-IPO registrations for both SPVs and other companies.

Deloitte view

The issuance of the Circulars 33 and 37 demonstrates the increased focus on equity incentive plans in China.

Equity incentives are now a more familiar element of employee remuneration offered by Chinese companies and are becoming increasingly supported by Chinese authorities. This is a trend multi-national companies operating in China should be aware of, in order to be able to offer a competitive remuneration package in China.

In addition, from a regulatory perspective, with more equity vehicles introduced in China, companies that are considering offering equity awards in China should be aware of the evolving regulatory changes and monitor the changes in local practice.

People to contact

For assistance with these issues, or any other issue related to the operation of your global equity plans, please contact your usual Deloitte adviser or email us at **globalequity@deloitte.com**, and an adviser will contact you.

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