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ARTICLE

CROSS-BORDER MERGER AND ACQUISITION OF CHINESE DOMESTIC LISTED COMPANIES

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Abstract China's reform of state-owned enterprises (SOEs) and share trading plays an essential role in cross-border mergers and acquisitions (M&A). Considering most of the public listed companies enjoying abundant domestic resources as an outcome of SOEs reform, as well as the new capital and innovative managerial conceptions that foreign M&A brings in, the SOEs and share-trading reforms are undoubtedly mutually beneficial. As the reforms deepen, rules are established that state-owned shares cannot be traded, given potential loss of state-owned assets, which creates a great plight for foreign M&A through directly purchasing tradable shares within China's A share market. Therefore, share-trading reform progressed so as to convert non-tradable shares to tradable ones, which indeed provides many opportunities for foreign M&A. This article adopts case study and related empirical analysis methods. After systematic research on the cases of foreign M&A of listed companies in China that were transacted between 1995 and November 2012, and analyzing each respectively under the framework of the existing sixteen models in China, those models can be further classified into three categories concerning the unique share structure as well as the legal environment in China.

Keywords SOE, mergers and acquisitions (M&A), stock market, MBO

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INTRODUCTION

This article adopts case study and related empirical analysis methods. After systematic research on the cases of foreign mergers and acquisitions (M&A) of listed companies in China that were transacted between 1995 and November 2012, and analyzing each respectively under the framework of the existing sixteen models in China, those models can be further classified into three categories concerning the unique share structure as well as the legal environment in China. This article proposes that more M&A activities will adopt mixed or innovative models comprised of indirect and direct M&A, and more importantly, takeover bid (TOB) will become the leading method to conduct foreign M&A.

I. BACKGROUND: STRUCTURAL REFORM OF THE M&A MARKET

Since the late 20th century, China has been experiencing great innovation in its market economic system, targeting reforms in the legal system as well as economic entities, especially the state-owned enterprises (SOEs) reform and the share-trading reform, thus resulting in the unique development of foreign M&A.

Though the overwhelming problem of state-owned shares has not been resolved, and the proportion of tradable shares is comparatively much lower than that of non-tradable ones, along with the deepening of the reform, the policy opens more paths for tradable shares' transfer, and the legal environment of foreign M&A has become more integrated after the enactment of series regulations on antitrust review[1]. Thus, the whole incentive mechanism illustrates that the Chinese market has made full preparations for foreign M&A.

A. Chinese SOEs Reform

From the 1980s, SOEs reform has been essential to the reform of the entire Chinese economic system and represented a historical landmark in the development thereof. From the perspective of Chinese listed companies, ever since the establishment of the socialist market economy system back in 1992 and the Company Law of the PRC in 1993, the goal of realizing multiple property rights and optimizing the management construction of public listed companies, and settling the overwhelming problem of state-owned shares through the introduction of a joint-stock system, encourages the formation of the modern enterprise system.

[1] After the implementation of the Anti-Monopoly Law of the People's Republic of China, the anti-monopoly enforcement agency has reviewed 622 cases and unconditionally approved 487 cases, available at http://www.antimonopolylaw.org/article/default.asp?id=4015 (last visited Jan. 16, 2013).

Since most listed companies are the outcome of SOEs reform, foreign M&A of public listed companies are very much connected to this reform, colored with strong Chinese characteristics. The reforms are mutually beneficial and such attachment is manifested through the following aspects:

Under the conditions of economic globalization, challenges from foreign competitors stimulate SOEs to cooperate with foreign corporations so as to overcome the plight of being pressured, with foreign M&A probably a feasible approach. Meanwhile, new capital and managerial innovation that foreign M&A bring in would accelerate SOEs' modernization, optimize the corporate governance structure, and strengthen international competitiveness.

Secondly, compared with other companies, the overall strength of SOEs is relatively powerful; they have accumulated an abundance of resources in areas such as market network, supply chain networks, franchise rights, and brand resources.[2] Thus, foreign enterprises can take full advantage of M&A as an effective steppingstone into the Chinese market. At the same time, China has great potential to be exploited in attracting further influx of foreign capital as policies of foreign M&A are adopted. Foreign investors will find more and better chances for taking over China's SOEs, and a breakthrough in the expanding scale of their acquisitions is promising.[3]

B. Categories of Chinese Public Listed Companies' Shares

Due to the unique developmental background of Chinese public listed companies, withheld shares can be subdivided into four categories according to the subject of investment[4]: (1) state-owned shares; (2) legal person shares; (3) public shares; and (4) foreign investment shares. State-owned shares can further be divided into state shares and state-owned legal person shares.

State-owned shares are held by the state and its various ministries, bureaus and regional governments; also referred to as *Guoyougu*. Specifically, within its two categories, "state shares" refer to shares legally invested in a company with state funds by officially approved departments or organizations that can represent the state for

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[2] CHEN Jiagui & WANG Qin, 跨国公司并购与大型国有企业改革 (*Transitional Corporations' M&A and Large Sized SOEs Reform*), 4 中国工业经济 (China Industry Economy) 30, 34 (2003).

[3] People's Daily Online, *Chances and Challenges of M&A of SOEs for Foreign Capital*, Aug. 17, 2004, available at http://english.people.com.cn/200408/17/eng20040817_153442.html (last visited Jan. 16, 2013).

[4] After the issuance of the 1992 Joint Measures, which refers to the presently effective Measures of Pilot Enterprises Implementing the Shareholding System, issued by the Ministry of Finance (MOF), the National Development and Reform Commission (NDRC), the State Commission for Restructuring the Economic Systems (SCRES), the People's Bank of China (PBC), effective as of May 15, 1992, the 1992 First SCRES Opinions, which refers to the presently effective Opinions on Standards for the Companies Limited by Shares, effective as of May 15, 1992, the 1992 Second SCRES Opinions, which refers to the presently effective Opinions on Standards for Limited Liability Companies, effective as of May 15, 1992 and the following-up 12 official documents, the classification of shares within the security market was settled.

investment purposes. "State-owned legal person shares" are shares invested in other companies by enterprises that are owned by the people as a whole, and granted operational autonomy.[5]

"Legal person shares" refer to the shares created through the investment of assets into a company by the enterprise legal person, or through the investment of assets that are allowed for business operation by the state, into a company by the public institution or social group having the "legal person" qualification.[6]

"Public shares" are issued to the public and are freely tradable on the secondary open market, *i.e.* Shanghai and Shenzhen stock exchanges in China. Public shares are freely tradable between the Chinese citizens on the domestic stock exchanges, and this category refers to shares of the staff and workers of the company or of individuals in the market.[7]

"Foreign investment shares" serve the function of attracting foreign capital, which refer to shares issued by the stock company targeting investors from Hong Kong, Macao, and Taiwan.

C. The Share-Trading Reform

Share-trading refers to the distinction between the shares of public listed companies in the A share market which are classified as non-tradable and tradable shares according to whether they can be listed for trading in the stock exchange.[8] While share-trading reform refers to such institutional arrangements putting forward to converting non-tradable shares to transferable ones, the process can eliminate the systematic difference from the aspect of share transfer in the A share market through a mechanism for balancing and negotiating the interests between holders of non-tradable and tradable shares.[9]

1. Formation of Dual-Class Share Structure.[10] — Along with the implementation of a

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[5] Art. 3 of the 1992 Joint Regulations, which refers to the presently expired Interim Regulations for the Administration of State-Owned Assets in Shareholding Experiments, issued by SCRES, State-owned Assets Supervision and Administration Commission (SASAC), effective as of Jul. 27, 1992.

[6] Art. 24 of the 1992 First SCRES Opinions.

[7] Art. 33 of the 1991 Shenzhen Measures, which refers to the Provisional Measures of Shenzhen Municipality for Administration of the Issue and Trading of Shares, effective as of Jun. 15, 1991.

[8] Art. 2 of the 2005 Joint Opinions, which refers to the presently effective Guiding Opinions of the China Securities Regulatory Commission (CSRC), State-owned Assets Supervision and Administration Commission (SASAC), Ministry of Finance (MOF), the PBC, and the Ministry of Commerce (MOFCOM) on Share-Trading Reform of Listed Companies, effective as of Aug. 23, 2005.

[9] Art. 2 of the 2005 CSRC Measures, which refers to the Measures for the Administration of the Share-Trading Reform of Listed Companies, effective as of Sep. 4, 2005.

[10] A dual-class share structure means that a firm has issued two different types of shares. These shares usually differ with respect to the number of votes attached to each share but may also differ with respect to the dividend rights. The difference in votes means that the shares are divided into superior voting shares (or A shares) and restricted voting shares (or B shares). See Ken L. Bechmann & Johannes Raaballe, *A Regulation of Bids for Dual Class Shares. Implication: Two Shares — One Price*, 15(1) European Journal of Law and Economics 17, 17–46 (2003).

joint-stock system, three problems arise: (1) privatization; (2) loss of state-owned assets; and (3) ways to ensure the dominant position of state ownership. Then, investors set state shares and state-owned legal person shares as non-tradable shares and consider those shares issued at premium in an incremental way, which generates the "Dual-Class Share Structure."

2. The Necessity of Share-Trading Reform. — Up until the end of 2004, before share-trading reform started, the market value of total capital stock amounted to 714,900,000,000 shares, including 454,300,000,000 (63.55%) non-tradable shares, of which the proportion of state-owned shares was 74%. Also, state-owned shares alone accounted for 47% of the total capital stock.[11] Share-trading, which once played an important role in upholding state ownership, financing, and establishing a modern corporate system, has brought harm to companies' development in certain periods. The negative effects of the majority of non-tradable shares are conspicuous:

(1) The effects of non-tradable shares make it impossible to redistribute assets or to adjust the industrial structure.[12] Among public listed companies in China, it co-exists with binary agencies and operating mechanism, combining planned economy and market economy. The operating mechanism of listed companies is not standardized, and one important reason for that is that state-owned shares occupy a substantial proportion in the companies' shareholding structure. Meanwhile, the non-tradable state-owned shares make such an unreasonable shareholding structure even more rigid.

(2) The share prices cannot help optimize the allocation of resources.[13] Among listed companies, since non-tradable state-owned shares further reduce the proportion of liquid capital among the total share values, and the volatility of stock prices makes it impossible to become the ideal signal of optimizing allocation of resources, China has not been equipped with the two conditions for optimizing allocation of resources, *i.e.* factors of production's liquidity and division and factors of production's price that can reflect the real economic growth.

(3) The fact might detrimentally affect the healthy development of the share market. For investors, state shares are considered as a significant policy risk that affects their investment decisions. The circulation of state shares will undoubtedly increase the number of tradable shares, and such an impact is more intense than newly listed shares in the common sense.

Essentially, the harm caused by state shares' and state-owned legal person shares' being characterized as the non-tradable has created great problems for improving the

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[11] GAO Minghua, 中国上市公司并购财务效应研究 (*Research on Financial Effect of M&A of China's Listed Companies*), Xiamen University Press (Xiamen), at 196 (2008).

[12] YANG Dong, 中国の M&A 法制——制度運用の実証分析 (*Legal System of Chinese M&A —Operation of Legal System and Logistics Case Study*), Chuokeizai-Sha, Inc. (Tokyo), at 87 (2007).

[13] YAO Changhui, 国家股流通与我国股票市场的规范化 (*The Circulation of State Shares and the Standardization of China's Stock Market*), 2 证券市场导报 (Securities Market Herald) 48, 49 (1997).

management mode of public listed companies, as well as in establishing a healthy agency relationship between owners and managers, thus pushing the pace of share-trading reform. Likewise, the overwhelming problems of the non-tradable characteristics of state-owned shares and the state-owned shares violation of the regulations set by the Company Law, *i.e.* shares of the same class enjoy the same rights, to some extent hinder SOEs' share-trading reform.

3. The Contribution of Share-Trading Reform. — With the approval of the State Council, the China Securities Regulatory Commission (CSRC) released the 2005 CSRC Notice,[14] announcing the launch of the share-trading reform.

Since the core of share-trading reform of listed companies lies in the conversion (not transformation) of former non-tradable shares to tradable ones, the actual reform involves two stages, including the acquisition of circulating right and the twice deductions of state-owned shares, and the endeavor of setting pilots for reform. Share trading is the product of the transition of the economic system, and such reform achieved great accomplishments in various fields, such as improving the market structure, optimizing the allocation of resources, and promoting the reform of the enterprise system, etc. In detail, share-trading reform helps promote corporate governance reform and makes M&A more dynamic in the following aspects:

(1) Through paying dividends in stock to tradable shareholders from non-tradable shareholders, share-trading reform leads to the trend of decentralization within the shareholding structure of the market, and creates conditions for the development of the M&A market;

(2) Improves the efficiency of enterprise reorganization. After the formation of asset valuation standard, the cost of reorganization has been completely commercialized and the procedures become more transparent, thus making current M&A reorganization very beneficial for the integrity of listed companies' resources and improving the efficiency of the whole market;

(3) The industrial integration and philosophy of performance improvement would thoroughly be implemented through the expansion of M&A in listed companies;

(4) Share-trading reform promotes the formation of the market of control of state-owned shares, which favors the improvement of the management level of state-owned listed companies;

(5) The development of the M&A market avails domestic investment banking of M&A; and

[14] The 2005 CSRC Notice refers to the presently expired Notice of the CSRC on Piloting the Share-Trading Reform of Listed Companies, effective as of Apr. 29, 2005, later replaced by the 2005 CSRC Measures.

(6) Share-trading reform helps the enactment and revision of regulations on M&A.[15]

II. EVOLUTION OF FOREIGN M&A REGULATIONS

Due to the particular development of the Chinese economic system, corresponding regulations come with strong Chinese characteristics. Along with the legal system reform, regulations on foreign M&A are quite close to fairly accurate integrity.

A. Stages of Foreign M&A Legal System Development

Chronologically, foreign M&A regulations have progressed through five stages:

1. Prohibition (1995–1999). — On August 11, 1995, Japan Suzuki Motors Ltd. and Itochu Commercial Corporation purchased 25% of the total issued shares of listed Beijing Wagon Co., Ltd. (Beilü), which made Suzuki the largest shareholder. Since then, a remarkable kickoff in foreign M&A emerged in China. However, considering the potential loss of state-owned assets, the 1995 State Council Ban[16] was issued. Under the Notice, any transfer of state shares or state-owned legal person shares was forbidden unless corresponding administrative regulations were promulgated. Thereafter, foreign M&A of public listed companies was banned until the following interim period, as introduced below.

2. Interim Period (1999–2002). — During this period, as the 2000 Joint Interim Provisions[17] and the 2002 Category[18] were issued, the control of foreign M&A began to loosen. Though these regulations did not directly apply to foreign M&A of public listed companies, they indirectly promoted cross-border M&A.

However, since the State Council 1995 Ban was still in force, the majority of cases relating to state shares' transfer were achieved by approval on a case-by-case basis.

3. Removal of the Ban (2002–2003). — In late 2002, several pieces of foreign M&A procedural legislation were developed.

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[15] MIU Mancong & ZHANG Qingfang eds. 当代中国金融问题研究 2006–2007 (*Research on Financial Problem in Contemporary China 2006–2007*), Central South University Press (Changsha), at 174 (2008).

[16] The 1995 State Council Ban refers to the presently effective Temporarily Halting the Transfer to the Foreign Investors of State Shares and Legal Person Shares in Listed Companies, issued by the General Office of the State Council (GOSC) transmitting the request for instructions of the then State Council Securities Commission, effective as of Sep. 23, 1995.

[17] The 2000 Joint Interim Provisions refers to the presently effective Interim Provisions on the Domestic Investment of Foreign-Funded Enterprises, issued jointly by the Ministry of Foreign Trade and Economic Cooperation (MFTEC), the CSRC, the State Administration for Industry and Commerce (SAIC) and the MOF, effective as of Sep. 1, 2000.

[18] The 2002 Category refers to the first version of Category of Industries Guiding Foreign Investments issued jointly by the MFTEC, the CSRC, the SAIC and the MOF, effective as of Mar. 11, 2002 and the presently effective version is Catalogue of Industries for Guiding Foreign Investment (2011 Revision), issued by the MOFCOM, State Development and Reform Commission (SDRC), effective as of Jan. 30, 2012.

The 2002 CSRC Regulations[19] indicated that there was no special restriction on foreign investors in an offer purchase. The 2002 CSRC Measures[20] specified and clarified the disclosure obligations of shareholder equity changes of public listed companies according to the 2005 Company Law, the 2005 Securities Law, and the 1993 State Council Interim Provisions.[21]

The 2002 CSRC Notice[22] officially declared the abolishment of the State Council 1995 Ban so that foreign investors could purchase non-tradable shares of China's listed companies. Meanwhile, the 2002 Joint Interim Measures[23] also gave permission to foreign investors to purchase A shares through Qualified Foreign Institutional Investor (QFII).[24]

The 2003 First Joint Interim Provisions[25] made it possible for foreign investors to accomplish the acquisition of public listed companies by transforming the former state-owned enterprises to foreign-invested enterprises through reorganization.

4. All-Round Opening-Up (2003–2008). — As one of the most noticeable regulations, the 2003 Second Joint Interim Provisions[26] illustrated how to supervise foreign M&A

[19] The 2002 CSRC Regulations refers to the presently expired Regulations on the Takeover of Listed Companies, effective as of Dec. 1, 2002, later replaced by the Measures for the Administration of the Takeover of Listed Companies (2006 CSRC Measures), effective as of Sep. 1, 2006.

[20] The 2002 CSRC Measures refers to the presently expired Measures for the Administration of Disclosure of Shareholder Equity Changes of Listed Companies, effective as of Dec. 1, 2002, later replaced by the 2006 CSRC Measures.

[21] The 1993 State Council Interim Provisions refers to the presently effective Interim Provisions on the Management of the Issuing and Trading of Stocks, effective as of Apr. 22, 1993.

[22] The 2002 CSRC Notice refers to the presently expired Notice of China Securities Regulatory Commission, the Ministry of Finance and the State Economic and Trade Commission on the Relevant Issues concerning the Transfer of State-Owned Shares and Corporate Shares of Listed Companies to Foreign Investors, issued by the CSRC, effective as of Nov. 1, 2002, later replaced by the 2010 CSRC Announcement, which refers to the presently effective Announcement No. 36 [2010] of China Securities Regulatory Commission — Decision on Abolishing Some Administrative Rules on Securities and Futures (the 10th Batch), effective as of Dec. 16, 2010.

[23] The 2002 Joint Interim Measures refers to the presently expired Interim Measures on the Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors, issued by the CSRC and the PBC, effective as of Dec. 1, 2002, later replaced by the 2006 Second Joint Measures, which refers to the presently effective Measures for the Administration of Securities Investment within the Borders of China by Qualified Foreign Institutional Investors, issued by the CSRC, the PBC and the State Administration of Foreign Exchange (SAFE), effective as of Sep. 1, 2006.

[24] According to Art. 2 of the 2006 Second Joint Measures, the QFII refers to the foreign fund management institutions, insurance companies, securities companies, and other assets management institutions that invest in China's securities market after being approved by the CSRC and granted an investment quota by the SAFE.

[25] The 2003 First Joint Interim Provisions refers to the presently effective Interim Provisions on Restructuring State-Owned Enterprises with Foreign Investment, issued by the SAIC, the SAFE, effective as of Jan. 2, 2003.

[26] The 2003 Second Joint Interim Provisions refers to the Interim Provisions for Foreign Investors to Merge Domestic Enterprises issued by MFTEC which includes former Ministry of Foreign Economy and Transaction, the State Administration of Taxation (SAT), the SAIC, the SAFE, effective as of Apr. 12, 2003, later replaced by the 2006 Joint Interim Provisions.

according to relevant rules and procedures and emphasized that merging a domestic enterprise would lead to the establishment of a foreign-funded enterprise. According to Article 2, application of the 2003 Interim Provisions was limited to two situations: share right mergers and asset mergers.

The 2003 SAT Notice[27] clarified whether it was necessary to pay taxes for foreign investors after merging the share rights of domestic enterprises.

According to the 2003 State Council Interim Measures,[28] as the sponsor, the state-owned assets supervision and administration institution has the right to decide the transfer of state-owned shares. Such rules are designed to prevent the loss of state-owned assets. Also, the state-owned assets supervision and administration institution particularly established relevant regulations to supervise and administer transactions of property-rights of state-owned assets.

Likewise, the 2003 SASAC Opinions[29] sets a principle for deciding the transfer price of state-owned shares, as well as some regulatory policies on management buyout (MBO)[30].

The 2004 Joint Interim Measures[31] later made further regulations regarding the transfer procedure of state-owned assets, the licensing procedure and duties of the state-owned assets supervision and administrative institution.

After the 2006 Joint Measures[32] was issued, more foreign investors were permitted to enter into the domestic listed company M&A market, as long as they met relevant requirements in making strategic investments,[33] which greatly inspired foreign investors' enthusiasm.

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[27] The 2003 SAT Notice refers to the Notice of the State Taxation Administration on the Relevant Taxation Issues for Foreign Investors to Merge the Share Rights of Domestic Enterprises, effective as of Jan. 1, 2003 and has been annulled by the 2011 Announcement No. 2 of the SAT on Jan. 4, 2011.

[28] The 2003 State Council Interim Measures refers to the presently effective Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises, issued by the State Council, effective as of May 27, 2003.

[29] The 2003 SASAC Opinions refers to the currently effective Opinions of the SASAC about Further Regulating the Restructuring of State-Owned Enterprises (No. 96 [2003] of the GOSC), effective as of Nov. 30, 2003.

[30] See Part III, section 1 below.

[31] The 2004 Joint Interim Measures refers to the presently effective Interim Measures for the Management of the Transfer of the State-Owned Property Right of Enterprises, issued by the CSRC and the MOF, effective as of Feb. 1, 2004.

[32] The 2006 First Joint Measures refers to the presently effective Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, issued by the MOFCOM, the CSRC, the SAT, the SAIC, the SAFE, effective as of Jan. 31, 2006.

[33] Strategic investment is an investment decision that has a long-term implication for an organization and helps to set its future course of action. See Richard Butle, Leslie Davies, Richard Pike et al, *Strategic Investment Decisions: Theory, Practice, and Process*, Cengage Learning EMEA (London), at 1 (1993).

There are two significant changes in the 2006 CSRC Measures[34]: (1) If an investor adopts the means of tender offer to purchase the shares of a listed company, it can not only send out a general tender offer but also a partial tender offer; (2) setting up a series of rules for financial consultants, including delivering objective and fair professional opinions during an M&A, and performing the duty of continuous supervision and guidance after an M&A is completed.

On August 8, the 2006 Joint Interim Provisions[35] was also issued and exerts great influence on foreign M&A. Since then, the function of financial accountants is further emphasized, and it is the first time legislation was involved addressing the issue of M&A's impact on national economic security.

5. Integrity of Legal Regulations on Foreign M&A (2008–Present). — Foreign M&A may lead to adverse consequences, such as the loss of a large number of domestic brands, erosion of the competitiveness of branded products, and industrial monopoly, thereby requiring antitrust review of foreign M&A:

The Anti-Monopoly Law (AML)[36] was enacted for the purpose of preventing and curbing monopolistic conduct, protecting fair market competition, enhancing economic efficiency, and maintaining consumer and public interests.[37] Its issuance is of great significance in promoting the healthy development of the socialist market economy. Additionally, for clarifying and specializing the standards and procedures for the declaration of concentration of business operators, a series of legislations were formulated, including the 2008 State Council Provisions,[38] the 2009 First MOFCOM Opinions, [39] the 2009 Second MOFCOM Opinions, [40] the 2010 MOFCOM

[34] The 2006 CSRC Measures refers to Measures for the Administration of the Takeover of Listed Companies (2006 Revision) issued by the CSRC, effective as of Sep. 1, 2006, later amended in accordance with the Decision of the China Securities Regulatory Commission on Amending Art. 62 and Art. 63 of the Measures for the Administration of the Takeover of Listed Companies, effective as of Mar. 15, 2012 and Nov. 23, 2014.

[35] The 2006 Joint Interim Provisions refers to the presently effective Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors (2006 Revision), issued by the CSRC, the MOFCOM, the SAIC, the SAFE, the SAT, the SASAC, effective as of Sep. 8, 2006, later revised by the MOFCOM 2009 Decision, which refers to Decision of the Ministry of Commerce on Amending the Provisions on the Merger or Acquisition of Domestic Enterprises by Foreign Investors, effective as of Jun. 22, 2009.

[36] The Anti-Monopoly Law refers to Anti-Monopoly Law of the People's Republic of China, effective as of Aug. 1, 2008.

[37] See id. Art. 1.

[38] The 2008 State Council Provisions refers to the presently effective Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators, effective as of Aug. 3, 2008.

[39] The 2009 First MOFCOM Opinions refers to the Guiding Opinions of the Anti-Monopoly Bureau of the MOFCOM on the Declaration of the Concentration of Business Operators, effective as of on Jan. 5, 2009.

[40] The 2009 Second MOFCOM Opinions refers to Guiding Opinions of the Anti-Monopoly Bureau of the MOFCOM on the Declaration Documents and Materials of the Concentration of Business Operators, effective as of Jan. 5, 2009.

Measures,[41] and the 2011 MOFCOM Interim Provisions.[42] The 2011 MOFCOM Interim Provisions were specially promulgated to regulate the assessment of the competitive impact of anti-monopoly examination of the business operators' concentration.

The 2009 MOFCOM Provisions[43] deleted the fifth Chapter "Antitrust Review" of the 2006 Joint Interim Provisions and added that, "The foreign investor shall make a declaration with the MOFCOM and shall not carry out the deal without declaration" in the Supplementary Provisions.

The 2011 GOSC Notice[44] established the national security review system for M&A transactions by foreign investors in China.

On August 25, 2011, after a trial implementation period of about six months of an interim regulation on the security review system, the national security review system was established and specified under the 2011 MOFCOM Announcement No. 53.[45] The regulation may have a broad impact on prospective M&A transactions by foreign investors in China.

The 2012 Catalogue[46] was then issued for the purpose of making foreign investment play a more positive role in facilitating scientific and technological innovations, industrial upgrading, coordinated regional development, and other relative aspects.

B. Key Regulations

1. The 1995 State Council Ban. — Suzuki and Itochu's purchase of legal person shares from the "Beilü" began the practice of selling legal person shares of domestic public listed companies to foreign investors. Due to the transfer of state shares and legal person shares to foreign investors, as well as the consequent change of equity structure and the volatility of stock prices, the "Temporarily Halting the Transfer to the Foreign Investors of State Shares and Legal Person Shares in Public Listed Companies" was promulgated by the General Office of the State Council, transmitting the request for instructions of the

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[41] The 2010 MOFCOM Measures refers to the Measure for the Undertaking Concentration Declaration, effective as of Jan. 1, 2010.

[42] The 2011 MOFCOM Interim Provisions refers to the presently effective Interim Provisions on Assessing the Impact of Concentration of Business Operators on Competition, effective as of Sep. 5, 2011.

[43] The 2009 MOFCOM Provisions refers to the MOFCOM on Promulgation of the Provisions on M&A of a Domestic Enterprise by Foreign Investors, effective as of Jun. 22, 2009.

[44] The 2011 GOSC Notice refers to Notice of the GOSC on the Establishment of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, issued by the GOSC, effective as of Mar. 3, 2011.

[45] The 2011 MOFCOM Announcement No. 53 refers to Announcement No. 53 [2011] of the MOFCOM — Provisions of the Ministry of Commerce on the Implementation of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, issued by the MOFCOM, effective as of Sep. 1, 2011.

[46] The 2012 Catalogue refers to the presently effective Catalogue of Industries for Guiding Foreign Investment, issued by the MOFCOM and the NDRC, effective as of Jan. 30, 2012.

1995 State Council Ban on September 23, 1995. According to the 1995 State Council Ban, any transfer of state-owned shares and legal person shares issued by China's companies or organizations with any listed stock to foreign investors was strictly forbidden before further regulations in connection to this were promulgated. Since then, for up to six years, foreign capital could not set foot in the Chinese A share market.[47] The 1995 State Council Ban showed the conservative position of the Chinese government, opining that the disadvantages of opening the stock market to overseas investors, especially in the areas of state and legal person shares, conspicuously overweighed its benefits.

2. The 2006 Joint Measures. — The 2006 Joint Measures was released for the purposes of regulating foreign strategic investments in A share listed companies after share-trading reform, maintaining the order of securities market, introducing advanced overseas management experiences, technologies and capital, and improving the corporate governance of the listed companies, as well as protecting the rights and interests of the listed companies and their shareholders.

Different from the QFII, the 2006 Joint Measures clarifies that foreign investors may obtain the A shares of public listed companies that have completed share-trading reform and newly public listed companies after share-trading reform through a scale of medium and long-term strategic merger investments.[48] Foreign investors can obtain the A shares of a listed company by stock transfer under an agreement or private issuance of new shares by such a listed company.[49] Moreover, the investment may be injected in phases, the proportion of foreign-controlled shares after completing its initial investment shall be no lower than 10% of the companies' outstanding stocks, and the shares obtained thereof shall not be transferred within three years.[50]

The Measures solve the issue of how to convert the original, non-tradable shares held by foreign investors before share trading reform to tradable ones, and its settlement on the right of non-tradable shares effectively helps avoid market conflict, stabilizes the A share market, and improves corporate governance. This represents an important milestone to solidity, to establish a legal system for foreign takeovers of public listed companies.

3. The 2006 Joint Interim Provisions. — On July 31, 2006, the MOFCOM, the SASAC, the SAT, the SAIC, the CSRC, and the SAFE jointly issued the Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors (2006 Revision).

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[47] QIU Yonghong, 股权分置改革法律十五论 (*Fifteen Comments on Law regarding Split-Share Structure Reform*), Aug. 8, 2005, available at http://vip.chinalawinfo.com/newlaw2002/slc/SLC.asp?gid=335574882&tiao=0&km=art&subkm=0&db=art (last visited Jan. 16, 2013).

[48] See Art. 2 of the 2006 First Joint Measures, QFII can invest in the stock of all listed companies (with the exception of B shares) and other financial instruments.

[49] See Art. 5 of the 2006 First Joint Measures, QFII investment in China securities market can trade in the secondary market at any time with strong liquidity.

[50] See id., a single QFII on individual listed company share ratio is no more than 10% of the total number of shares of listed companies.

Its active effect can be clarified in the following aspects:

(1) It creates more specific provisions on conditions that foreign M&A need to meet, such as increased requirements associated with the concept of M&A and antitrust review.

(2) It focuses on details of regulating the models of foreign M&A, especially those technical means such as regarding shares as consideration for acquisition and foreign exchange stocks through Special Purpose Vehicle, which applies to most merger transactions.

4. The 2008 State Council Provisions. — The Provisions set several mandatory standards of the concentration of business operators, including foreign investors. If the foreign investors concerned cannot declare in advance, the concentration is not allowed. However, there is an exception that if the facts and evidence collected according to the prescribed procedures show that this concentration of foreign investors has or may have the effect of eliminating or restricting competition, the competent department of commerce of the State Council may investigate it according to law. This is suspected to be a typical restriction against freedom of contract.

As the legislation about concentration of undertakings belongs to a typical regulatory system beforehand, the standard for declaration of concentration of business operators plays the role of checking whether foreign M&A is harmful to China's market economy in general. Given that there are different factors worldwide to value the standards for M&A, business volume as a factor is adopted in the PRC in that it can save the cost of censorship and is helpful to effectively supervise the phenomena of concentration of undertakings.

5. The 2010 Measures. — For the purpose of regulating declaration of undertaking concentration and acceptance of declaration by the antimonopoly law enforcement authority, in accordance with the AML and the 2010 Measures.

The Measures set standards and procedures for the declaration of concentration of business operators by stating the transacting parties' and the MOFCOM's relevant duties,[51] circumstances of undertaking concentration, calculation methods of turnover, and those documents required for the declaration. Also, the Measures set rules that make the M&A void, as the corresponding consequence, if a declarer deliberately omits material information or makes a false disclosure. If the two prior issued guidelines[52] are inconsistent with the 2010 Measures, the 2010 Measures shall prevail.

In summary, this part reviews the details of relevant regulations on foreign M&A, which reveals the process of the PRC's foreign M&A legal system reform over the past 20 years. With the development of the economy and improvement of the legal system,

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[51] For example, the MOFCOM and a declarer shall assume the obligation of keeping confidential business secrets known to them from consultation before declaration during declaration examination and other information that shall be kept secret. See Art. 12 of the 2010 Measures.

[52] See the 2009 First MOFCOM Opinions and the 2009 Second MOFCOM Opinions.

various models of foreign M&A in China have emerged and developed accordingly.

Ⅲ. ANALYSIS OF THREE CATEGORIES OF FOREIGN M&A AND RELEVANT CASES

In general, there are two major ways for foreign investors to merge and acquire a non-listed enterprise in China. Foreign investors may directly purchase a domestic enterprise and convert it into a wholly owned subsidiary in China, or the foreign party may set up a joint venture and purchase the shares of its Chinese partners or the newly issued shares of the joint venture. Acquisition of listed companies in China, however, is much more complicated, compared with the acquisition of non-listed companies. The following case analysis includes three categories, which can be further broken down into sixteen models.

A. Category One: Direct M&A

For M&A in this category, foreign investors become the shareholders or even the controlling shareholders by purchasing non-tradable shares of a listed company by agreement, or purchasing tradable stocks in the secondary securities market. This category can be translated into the following four models.

1. Model One: Purchasing Tradable Shares. — Foreign investors can accomplish M&A by directly purchasing tradable A shares[53] through QFII due to certain numbers of "three-non"[54] and "five-non"[55] conceptual shares existing in China's securities market. Moreover, foreign investors can achieve successful M&A of targeted listed companies through purchasing B[56] shares or H shares,[57] if they acquire shares account for a comparatively large proportion of the total shares.

As the basic method during the prophase of M&A, purchasing tradable shares is applied in the following fifteen models. However, since this model belongs to intra-market transaction, it is unlikely for foreign investors to gain control of the target

[53] A shares issued by the Chinese companies are listed and traded in the Shanghai or Shenzhen Stock Exchange; most of those shares are sold to and held by Chinese (citizen) investors. See HUANG Xiao, *Modernizing the Chinese Capital Market: Old Problems and New Legal Responses*, 21(1) International Company and Commercial Law Review, 26–39 (2010).

[54] "Three-non" is a kind of concept stock without state-owned shares, legal person shares and foreign investment shares in capital stock structure. Generally speaking, listed shares which conform to the "three-non" conditions are all tradable shares.

[55] "Five-non" is a kind of concept stock without state-owned shares, legal person shares, foreign investment shares, individual employee stock and transferred allotted shares in capital stock structure. In the view that all shares are public shares, all of them can be tradable.

[56] B share is Renminbi-denominated, but is settled in a foreign currency, typically in USD in the Shanghai Stock Exchange and HKD in the Shenzhen Stock Exchange. See SHEN Wei, *Uncertainties in Implementing a Multiple-Class Share Structure under the PRC Corporate Law and Possible Mitigation Strategies*, 31(9) Company Lawyer, 280–290 (2010).

[57] H shares are listed on Hong Kong, New York, or Singapore stock exchanges and the trading of them is denominated in HKD, USD, and SGD respectively. See id.

company only by utilizing this way to achieve M&A.

Case Analysis 1: The Acquisition of Yao Pi Glasses Ltd. by Pilkington Glasses Co. Ltd.

A case in point is the acquisition of Yao Pi Glasses Ltd. (Yao Pi, the acquiree) by Pilkington Glasses Co., Ltd. (Pilkington, the acquirer) in 1999. In December 1999, the Joint Development Co., Ltd. (Hong Kong), a promoter, transferred 8.35% of Yao Pi equity to Pilkington. Upon completion of the transaction, Pilkington became the majority shareholder of Yao Pi. From the second half of 2000, Pilkington successively purchased B shares and, by end 2000, it became the first majority shareholder with 17.2% of the equity. This model requires mandatory information disclosure, foreign exchange control, and a mandatory general offer.

2. Model Two: Tender Offer. — Tender offer is different from the previous agreement purchase as highlighted in Model One in that a tender offer better manifests the principle of open and fair competition and the nature of industrial M&A. Although the current practice favors agreement purchase over offer purchase, examination of present M&A practices among Chinese listed companies indicates that offer purchase should have been more favorable than an agreement purchase.

Case Analysis 2-1: Everwide Industrial's Acquisition of Zhongfu Industrial

On May 21, 2003, the Gongyi Municipal Bureau of Land and Resources — the majority shareholder of Henan Yulian Resources Group Co., Ltd. (Yulian Group), which is the largest shareholder of Zhongfu Industrial Co., Ltd. (the acquiree), signed a Letter of Intent on the Share Transfer and the Proxy Management Agreement with Everwide Industrial Ltd. (the acquirer), indicating its intention to transfer all its 148.66 million state shares of Yulian Group, which accounted for 78.8% of the total capital stock of the Group.

Following that, Everwide Industrial Ltd. indirectly became the largest shareholder of the listed company — Zhongfu Industrial Co., Ltd., holding 44.18% of its shares. According to Article 81 of the 2005 Chinese Securities Law, this action will trigger the obligations of an offer purchase. Therefore, whether this can become the first case of foreign offer purchase has attracted much attention.[58]

Case Analysis 2-2: Rotary Vortex 's Acquisition of Henan Shineway Group

On April 26, 2006, Hong Kong Rotary Vortex Ltd. (Rotary Vortex, the acquirer, Goldman Sachs held 51% of interests and CDH Investments held the remaining 49%) won the bid to take over 100% interests of Henan Shineway Group Ltd. (Shuanghui Group, the acquiree), the biggest shareholder of Henan Shuanghui Investment & Development Co., Ltd. (Shuanghui Development), from Luohe Bureau of Land and

[58] According to certain rules, so far only when the listed company faces financial difficulties and only if the practical controller of the company remains the same after share transferring can it get the immunity of the obligations in overall tender offer.

Resources, at a cost of RMB2.0 billion. Until 2007, Rotary Vortex held 60.72% of the total shares of Shuanghui Development, 35.72% of total shares through Shuanghui Group, and 25% of total shares transferred from Luohe Haiyu Investments Ltd., which triggered an Multilateral Trade Organization (MTO). Thus, according to the 2006 CSRC Measures, Rotary Vortex completed its MTO on June 12, 2007.

Case Analysis 2-3: The Acquisition of Supor by SEB

Following the Supor case, a series of legislations on anti-monopoly were promulgated, including the MOFCOM 2009 Decision[59] against the 2006 Joint Interim Provisions.

On April 12, 2007, the MOFCOM tentatively approved French SEB International Co., Ltd.'s (SEB, the acquirer) increase of its stake in the listed company Zhejiang Supor Co., Ltd. (Supor, the acquiree) from 51.31% to 71.31% for about RMB3.46 billion ($528 million). On August 27, 2007, the CSRC passed SEB's plan on private insurance. Later on December 20, 2007, SEB finished its acquisition of Supor through the "Transfer Agreement" (25,320,100 shares), "Private Insurance" (40 million shares), and "Partial Tender Offer" (over 48,605,459 shares, less than 66,452,084 shares), thus making SEB the largest shareholder of Supor by holding an accumulated 52.74% of total issued shares (22.74% through tender offer, 30% through prior transfer agreement and private issuance). According to SEB lead counsel Antoine de la Gatinais, "The key issue was winning approval for an exemption from an MTO."

However, this acquisition aroused a heated debate in connection with its violation of Article 51 of the 2006 Joint Interim Provisions.[60] Therefore, an antitrust review was held by MOFCOM focusing on the 2008 State Council Provisions. However, considering Supor did not fall into the category of Article 51 of the 2006 Joint Interim Provisions, the MOFCOM finally approved the acquisition, but demanded the A shares acquired by SEB should be prohibited from being traded for three years

After this case, a series of regulations on anti-monopoly were issued,[61] and the 2006 Joint Interim Provisions was also revised by the MOFCOM 2009 Decision, which promotes antimonopoly legislation process.

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[59] The MOFCOM 2009 Decision states: Chapter V "Anti-Monopoly Review" shall be deleted. A new article shall be inserted in the "Supplementary Provisions" as Art. 51 "In accordance with the Anti-monopoly Law, if the merger or acquisition of a domestic enterprise by a foreign investor reaches the declaration standards in the Provisions of the State Council on the Standards for the Declaration of Business Concentration, a declaration shall be made to MOFCOM in advance and no transaction shall be conducted without declaration."

[60] The article states that if the takeover of a domestic company by a foreign investor is under: (1) The current-year business volume of any party to the takeover in the Chinese market exceeds RMB1.5 billion; (2) the foreign investor has accumulatively taken over more than 10 enterprises in the domestic relevant industries; (3) the market share of any party to the takeover has reached 20% in China; and (4) the takeover leads to the fact that the market share of the party to the takeover has reached 25% in China, an antitrust review should be held.

[61] See Part II.

Case Analysis 2-4: Coca-Cola's Acquisition of Huiyuan

On March 18, 2009, the MOFCOM vetoed the proposed takeover of China Huiyuan Juice Group Ltd. (Huiyuan, the acquiree) by the Coca-Cola Company (Coca-Cola, the acquirer), the first time that the MOFCOM has enjoined a transaction according to the AML.

Under the AML, Coca-Cola should declare in advance of the concentration reaching the threshold standards as prescribed by the State Council.[62] The MOFCOM identified the adverse impacts of the proposed acquisition after Coca-Cola submitted notification materials, and disapproved thereof.[63] Later, when the MOFCOM asked Coca-Cola to set restrictive conditions that could be applied to the transaction to remedy the perceived anti-competitive concerns, such remedies still could not satisfy the MOFCOM's requirements. As a result, under Article 28 of the AML, the MOFCOM rejected Coca-Cola defense that the positive effect of the transaction would outweigh its negative impact, or that the transaction would be in line with the public interest.[64] For these reasons, the MOFCOM finally blocked the transaction.

This case exemplifies foreign investors dealing with M&A under the AML. Though the AML does not create setbacks for foreign M&A, foreign investors should carefully consider the possibilities of proposed transactions from the perspective of technical competition and deploy relevant arrangements in advance.

Case 2-5: Diageo Acquisition of Shuijingfang

On June 28, 2011, the MOFCOM approved Diageo Highlands Holding B.V.'s (Diageo, the acquirer) transfer application of Sichuan Swellfun Co., Ltd.'s (Shuijingfang, the acquiree) equity and anti-monopoly review application, making it one of the first foreign takeovers within the food and beverage sector. Back in June 2011, through holding of 53% of Sichuan Chengdu Quanxing Group (Quanxing), Diageo had already taken indirect control of 39.7% of total shares in Quanxing's subsidiary, Shuijingfang. This deal triggered an MTO for its tradable shares according to the 2006 CSRC Measures,[65] and Diageo was expected to close the deal 30 days after the launch of MTO

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[62] See fn. 36 Art. 21.

[63] The possible consideration includes: (1) whether Coca-Cola would be able to leverage its dominant position in the carbonated soft-drink market to the fruit-juice drink market, eliminating and restricting competition from current juice manufacturers and in turn damaging the lawful interests of juice consumers; (2) whether Coca-Cola's market power in the juice market would be markedly enhanced by controlling two famous juice brands, "Meizhiyuan"and "Huiyuan," and whether the transaction would significantly raise entry barriers for potential competitors in the fruit-juice drink market; and (3) whether the transaction would reduce the space available to domestic small and medium-sized juice manufacturers and negatively impact the ability of domestic enterprises to compete and innovate independently in the fruit-juice drink market. And also whether the transaction would have adverse impacts on the competitive landscape in China's fruit-juice drink market and the sustainable and healthy development of the domestic juice industry.

[64] See fn. 36 Art. 28.

[65] See fn. 34 Art. 47.

(from March 26, 2012 to April 24, 2012). Finally, Diageo completed the takeover by cash payment[66] conforming to the relevant regulations[67] on minimum pricing, and directly held 0.00065% of total shares of Shuijingfang after successful transfer registration.[68]

Summarizing Model Two, the revised Securities Law in 2005 cancelled regulations on mandatory general offer, but formulated that the investor could purchase partial shares in proportion.[69] This change made tender offer, which is not for delisting, more feasible and steerable. TOB realizes a breakthrough of the mandatory general offer, not only raising the efficiency of the security market, but reducing the cost of foreign M&A, which further promotes foreign M&A. Therefore, observing from the aforementioned TOB cases, it becomes clear that TOB has been or will be the main model of foreign M&A.

3. Model Three: Purchasing Non-Tradable Shares through Agreements. — In China, the primary means for foreign investors to become the controlling or majority shareholders of a public listed domestic company in China is to purchase relatively low-priced state shares or state-owned legal-person shares through agreements. This is determined by two factors.

For one, through the share-trading reform, although in theory, non-tradable shares in A share market are converted into transferable ones, under the guide of the CSRC, in practice, majority shareholders promised not to transfer their shares in a certain period of time, *i.e.* their rights are restricted, in order to protect the A share market from the impact of a large number of share transfers. As a result, the share-trading reform only clarifies that shares can be tradable, but it does not mean all or most of the original non-tradable shares can be freely traded. In terms of the size and the degree of the increase of tradable shares brought by the share-trading reform, as well as the domination of state-owned shares within the whole shares, the amount of tradable shares still accounts for a very small portion in Chinese listed companies, whereas the state-owned shares dominate the majority, and such a structure usually remains unchanged over a period of time. Given that the potential relaxation on the differentiation of "big non-tradable shares" (shareholding ratio over 5%) and "small non-tradable shares" (shareholding ratio less than 5%), limitations should also be established by relevant legislation on non-tradable shares' circulation.[70] Thus, so far, the era of free transfer of shares has not arrived.

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[66] Id. Art. 36.

[67] Id. Art. 35.

[68] See Announcement regarding Settlement of the Shares of Sichuan Shuijingfang Company Ltd. Tendered to Diageo Highlands Holding B. V.

[69] See Art. 88 of 2005 Securities Law of the People's Republic of China.

[70] See Art. 27 of the 2005 CSRC Measures; Arts. 8 and 10 of the 2007 Joint Measures, which refers to Interim Measures for the Administration of State-Owned Shareholders' Transfer of Their Shares of Listed Companies, issued by the CSRC and the SASAC, effective as of Jul. 1, 2007, and Art. 9 of the 2007 SASAC Notice, which refers to Notice of the SASAC on Issuing the Interim Provisions on the Administration of the Acceptance of Listed Companies' Shares by State-Owned Entities, issued by the SASAC, effective as of Jun. 28, 2007.

In addition, the public stock market of China is not completely open to foreign investment. Foreign investors have to establish PRC domestic corporations before investment in China. Furthermore, the price of the non-tradable shares is usually lower than that of tradable shares, because of the former's lack of liquidity. But, due to liquidity premium,[71] the price of non-tradable shares is sometimes higher than that of tradable ones.

For the above reasons, the enactment of the 2002 CSRC Notice is deemed as the landmark for foreign M&A. In 1995, this model achieves the first case of foreign M&A in China — the acquisition of Beilü by Isuzu and Itochu. This model has become increasingly popular since the 2002 CSRC Notice was issued.

There is one caveat to watch for: M&A through agreement should abide by the rules regulating the approval and assessment procedures for the transfer of state-owned assets as well as other applicable industry regulations. Pricing of state-owned shares in the agreement has become the focus of negotiations between Chinese and foreign parties. According to current regulations and practice, the price of the state-owned shares should not be lower than the net asset value. However, in light of certain international evaluating standards, and in the eyes of foreign investors, many state-owned assets are probably worth less than book value, or even have negative value. This will constitute the main obstacle in the purchasing of non-tradable shares by foreign investors.

Case Analysis 3-1: CRLIT's Acquisition of CR Jinhua

On February 17, 2003, China Resources Jinhua Co., Ltd. (CR Jinhua, the acquiree) issued a suggestive announcement on the transfer of state-owned legal person shares: 51% of total shares of CR Jinhua held by China Resources were transferred to China Resources Light Industries and Textile Investment & Development Co., Ltd. (CRLIT, the acquirer). The acquisition of CR Jinhua is the first case of "shell acquisition" by foreign investors. CRLIT's intention to acquire CR Jinhua could be traced back to September 2001. However, due to policy restrictions,[72] CRLIT was forced to conduct the M&A through China Resources, which was incorporated in China's mainland. The share transfer took place after the issuance of the 2002 CSRC Notice.

Case Analysis 3-2: Asia Bottles (HK) Company's Acquisition of Zhuhai Zhongfu

On March 22, 2007, the former largest shareholder of Zhuhai Zhongfu (the acquiree), Zhuhai Zhongfu Industrial Group Co., Ltd. signed a share transfer agreement with Asia Bottles (HK) Company Co., Ltd. (Asia Bottles, the acquirer), in which Zhuhai Zhongfu Industrial Group Co., Ltd. agreed to transfer its 29% of total shares of Zhuhai Zhongfu —

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[71] Liquidity premium means a premium that investors will demand when any given security can not be easily converted into cash, and converted at the fair market value. When the liquidity premium is high, then the asset is said to be illiquid, which will cause prices to fall, and interest rates to rise, available at http://www.investopedia.com/terms/l/liquiditypremium.asp#axzz2HllveGPE (last visited Jan. 20, 2013).

[72] See fn. 16.

about 199,605,724 shares (A shares) to Asia Bottles. After the share transfer, Asia Bottles became the largest shareholder of Zhuhai Zhongfu.

4. Model Four: MBO Intervention. — MBO is a form of acquisition where any director, supervisor, senior manager, employee of a listed company, or any legal person or any other organization under the control or entrustment of the listed company intends to take over the listed company or to obtain the controlling right to the listed company.[73] In short, the acquiring group led by the company's own management and executives is obviously different from a regular M&A practiced by another company or outside investors. After an MBO, as owners of the target company, the management will gain more benefits. Because of a lack of specified governing legislation, MBO is a feasible way to achieve SOEs' privatization. As such, problems such as risk and potential loss of state-owned assets need to be solved too. Foreign investors can buy and control the targeted listed company by financing the management and corporate governance thereof.

For M&A achieved by MBO, foreign investors pay more attention to their return of investment than to the right of controlling the target company. For domestic target companies, MBO conducted by foreign investors is a friendly M&A approach balancing the investment return and governance of the target company. On one hand, considering the unfamiliarity of the domestic investment environment, foreign investors can possibly transfer their control of the target company through agreement with management. In this way, management is much more likely to give full play to investors' initiatives. On the other hand, if foreign investors keep control of such a company, they may introduce scientific management methods into the domestic company, which is also beneficial to the target company's development. The following MBO between Shuanghui and Goldman Sachs, CDH serves as a perfect example of the first situation.

Case Analysis 4: The MBO of Shuanghui

The reflection of MBO in Shuanghui's case began from Goldman's reduction of its holdings in Shuanghui Development from 31% to 7.72% between October 2007 and November 5, 2009. Meanwhile, CDH Investments was paving the way for MBO of Shuanghui Development via a series of equity transfer activities. In other words, the top management of Shuanghui Development seemed to gradually control both Shuanghui Development and Shineway Group with reliance on both Goldman Sachs and CDH Investments.

As early as July 2007, the manager class (led by WAN Long, chairman of Shineway Group) of Shineway Group set up Rise Grand Co., Ltd., a UK Virgin Islands-registered company, which later established Heroic Zone Investments Ltd. in the Virgin Islands. On December 30, 2009, Shuanghui Development announced that, via Rise Grand, about 300 employees in Shineway Group and its affiliates had indirect control of 31.82% of total shares in Shuanghui International Holdings Ltd. This combined with the fact that Rotary

[73] See fn. 34 Art. 51.

Vortex's holding of 51.45% of total shares of Shuanghui Development directly and indirectly, and Shuanghui International's gain of 100% stake of Rotary Vortex, Rise Grand (or Heroic or the 300 employees) finally owned 16.37% of total shares of Shuanghui Development, making it the second largest shareholder only after CDH.

On November 29, 2010, Shuanghui Development issued 18 notices about its reorganization plans. According to the plans, though Rise Grand held fewer shares than CDH and its four affiliates, Rise Grand had actual control over Shuanghui Development. According to the transfer agreement, Heroic had two votes per share while CDH had only one, which indicated that, as the biggest shareholder, CDH had transferred its control over the company to the management of Shuanghui.

5. Model Five: Procuring Non-Tradable Shares through Auction. — Foreign investors can also bid on shares of insolvent majority shareholders of targeted listed companies based on court rulings. It is worth noting that foreign investors need to meet certain qualifications to tap into the Chinese auction market.[74]

Case Analysis 5: Gia Tong Tires' (China) Acquisition of Hualin Tires

On July 13, 2003, Gia Tong Tires (China) Investment Ltd. [Gia Tong Tire (China), the acquirer], wholly owned by Singaporean investors, acquired through auction the state-owned shares of Hualin Tires Ltd. (Hualin Tires, the acquiree), the largest state-owned shares, which accounted for 44% of the total shares of Hualin Tires, at the cost of RMB97,893,360, making it the controlling shareholder. This auction set up a precedent for successful procurement of Chinese state-owned shares by foreign investors.

6. Model Six: International Invitation for Bid. — One example of this model happened in October 2002; Shenzhen municipal government invited international bidders to bid for 25% to 70% of the shares of the following five big sectors of the city: energy, water service, gas, public transportation, and food. Through this model, strategic investment partners and business operators can be found worldwide, and a portion of state-owned shares can be sold in order. For foreign investors, the "Shenzhen Model" provides a solution for identifying target companies among China's over 1,000 listed companies. This model also reduces the cost of M&A. Overseas institutional investors were attracted to the possibility of being major recipients of transferred state-owned shares. This model can benefit both the restructure of state-owned enterprises and the strategic adjustment of the national economic structure.

B. Category Two: Indirect M&A

There are four models under this category of indirect M&A.

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[74] According to Art. 33 of the Auction Law of the People's Republic of China the bidders should meet the following two qualifications: (1) Foreign investors must be authorized to procure the shares of public listed companies, especially state-owned enterprises; and (2) foreign investors can only take part in the auction of the shares in the hope of purchasing the shares of listed companies and be in compliance with the rules on guiding foreign investment directions and the 2012 Catalogue.

1. Model Seven: Implementing M&A through Domestic Subsidiaries in China. — In order to avoid legal and policy restrictions on the admittance of foreign capital, some foreign business set up a subsidiary company in China, which can then enter into China's domestic securities market as a domestic legal person to procure the state-owned shares of the listed companies or purchase legal person shares on the secondary market.

Foreign M&A following this model should also comply with restrictive conditions for reinvestment as stipulated in the 1995 MFTEC Interim Provisions[75] (including its relevant supplementary regulations) and the 2000 Joint Interim Provisions.

Case Analysis 7: Greencool Group's Subsidiary's Acquisition of Kelon

In 2001, Greencool Group (a multinational company, the acquirer) acquired Kelon Electronic Co., Ltd. in this way. Greencool Enterprise Development Co., Ltd. (in Shunde, Guangdong), the subsidiary of Greencool Group, purchased approximately 20.6% of total shares of Kelon Electronic Co., Ltd. (Kelon, the acquiree) from Rongsheng Group Co., Ltd. (the former shareholder of Kelon) at the total price of RMB348 million. As to this model, foreign investment enterprises should be identified as foreign investors according to the origin of the capital, and then regulate the foreign M&A with standard and applicable rules. For instance, the legality of the reinvestment of the subsidiary of Greencool Group was challenged because the sum of the reinvestment accounts for over 50% of the acquirer's total assets.

2. Model Eight: Indirect M&A through Establishing a Joint Venture with the Target Company. — In practice, foreign investors usually procure the core business and assets of the target company by setting up a joint venture with the target company. In such cases, the controlling stock of the joint venture is in the hands of foreign investors, allowing it to achieve M&A indirectly. Purchasing assets can realize *de facto* control without going through the procedure of examination and approval in share acquisition. However, this approach forbids the foreign investor from obtaining the precious shell resources of the target-listed company. In addition, the independence of the listed company is in doubt when others obtain its core assets. In order to regulate foreign M&A, it is necessary to impose strict information disclosure requirements on listed companies as to selling their core assets, and apply specific examination and approval procedures for the foreign investors involved.

Case Analysis 8: Michelin's Acquisition of Shanghai Tyre & Rubbers

A case in point is that of the largest scale tire manufacturer, the Michelin Group (Michelin, the acquirer) when it procured the core business and assets of Shanghai Tyre & Rubber Co., Ltd. (Shanghai Tyre & Rubber, the acquiree) by setting up a joint venture (Shanghai Michelin Huili Tyre Co., Ltd.) with it and securing controlling stock of the

[75] The 1995 MFTEC Interim Provisions refers to the presently expired Provisional Regulations on the Setting up of Investment-Oriented Companies by Foreign Investors, issued by the MFTEC, effective as of Apr. 4, 1995.

joint venture in March, 2001. The Michelin Group holds 70% of total shares while Shanghai Tyre & Rubber holds the other 30%. Shanghai Michelin Huili Tyre Co., Ltd. purchased the core business and assets of Shanghai Tyre & Rubbers at the price of $320 million.

3. Model Nine: M&A with Foreign Controlling Shareholders of the Target Companies. — This kind of M&A usually takes place between two foreign parties, possibly beyond the jurisdiction of China, and even not subject to the restrictive regulations of the Chinese laws and regulations. Therefore, this approach is practically popular among foreign investors. However, Article 21 of the 2003 Joint Interim Provisions,[76] adopted the principle of "extraterritorial application" and began to regulate extraterritorial M&A relating to China. If foreign purchasers in China reach certain levels domestically for factors such as assets, turnover, and market shares, they should submit a proposed M&A transaction to the MOFCOM and the SAIC, two government organs that examine the proposed actions that may lead to an over-concentration of the domestic market, obstacles to fair competition in the domestic market, or impairment of the interests of consumers in China, etc. and decide whether to approve the case or not.

Case Analysis 9: Korean Samsung Corning's Acquisition of Shenzhen SEG Zhongkang

The indirect M&A of Shenzhen SEG Zhongkang Co., Ltd. (SEG Zhongkang, the acquiree) by Korean Samsung Corning Co., Ltd. (Corning, the acquirer) in 1998 is a good example of this model. Due to policy restrictions on legal person shares circulation, Corning could only take indirect control of 21.37% of interests in SEG Zhongkang through making a wholly owned acquisition in its second largest shareholder, Shum Yip Tamy Ltd.

4. Model Ten: M&A of the Domestic Controlling Shareholders of the Target Companies. — Compared with other M&A models, this approach only requires the compliance of applicable PRC laws and regulations. According to the 2003 Joint Interim Provision and other rules, M&A achieved by this approach needs to be approved by the SASAC and other government departments. In theory, it does not require a CSRC examination and approval involves direct share acquisition of the listed companies. However, as such M&A results in direct control of the listed companies, the securities regulatory divisions should require the listed companies to disclose information about the foreign investors and the specific process of the related trade in a timely and informative manner. The SASAC and other authorized departments should also fully consider all possible impacts caused by indirect share control when examining such cases.

Case Analysis 10: Acquisition of Shanghai Bell by Alcatel

In 2001, Alcatel (the acquirer), whose general headquarters are located in France,

[76] The 2003 Joint Interim Provisions refers to the Interim Provisions for Foreign Investors to Merge Domestic Enterprises, issued by the MFTEC, the SAT, the SAIC, the SAFE, effective as of Apr. 12, 2003.

obtained absolute control over Shanghai Bell (the acquiree), and thereby indirectly became the majority shareholder of the listed company Shanghai Belling, the subsidiary company of Shanghai Bell. Alcatel gained its control over Shanghai Bell through holding 50% plus 1% of its total shares. As a result, Alcatel indirectly held 25.64% of the total shares of Shanghai Belling.[77]

5. Model Eleven: M&A through Intermediaries. — M&A through intermediaries refers to the scenario where a domestic investment organization purchases a target company first and then transfers it to foreign investors with the permission of governing authorities. This model can avoid the intricate procedures of direct M&A, and is time-efficient as well. No domestic listed company has adopted this model so far, but some limited liability corporations have tried it.

Case Analysis 11: Shanghai Huaqi's and Assets Press Industry's Acquisition of Nv'er Hong

In November 2001, Shanghai Huaqi Investment Co., Ltd. (Shanghai Huaqi, the acquirer) and Assets Press Industry Co., Ltd. (Assets Press Industry, the acquirer) purchased Nv'er Hong Brewage Co., Ltd. (Nv'er Hong, the acquiree) at the cost of RMB41.5 million. Later, Assets Press Industry planned to transfer 25% of the Nv'er Hong's shares it held to a Taiwan enterprise. In this case, there was a risk that the brewage techniques of Shaoxing wine might be leaked abroad, which was a matter of state secret. Therefore, in July 2002, Shaoxing Nature Group purchased 100% of Nv'er Hong's shares. Then in August 2002, China Shaoxing Yellow Rice Wine Group Co., Ltd., Shaoxing city's state-owned enterprise, bought 55% of Nv'er Hong's shares, becoming the controlling shareholders of Nv'er Hong. Although the foreign acquisition failed, it shows that M&A via intermediaries is a feasible model for foreign M&A.

6. Model Twelve: Call for Proxy or Proxy Fight. — The proxy fight or proxy battle occurs when stockholders of listed companies oppose certain corporate governance, usually focusing on directorial and managerial positions. Corporate activists may attempt to persuade shareholders to use their proxy votes[78] to appoint new management for various reasons. Shareholders of a public corporation may appoint a proxy to attend shareholders' meetings and vote on their behalf.

There is no special restriction upon foreign investors on proxy fights under Article 107 of the 2005 Company Law. Foreign investors can firstly acquire certain portion of shares, and call for a proxy as shareholders. After succeeding in winning proxies, they can reorganize the board of directors, carry out operational strategies, and establish a foundation for future acquisitions. This model is of particular practical value in industries where the ratio of foreign investment is restricted under China's WTO protocols.

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[77] MEI Jun, 中国证券市场典型案例 (*Typical Case of China's Securities Market*), Renmin University of China Press (Beijing), at 167–204 (2002).

[78] Proxy votes refer to votes by one individual or institution as the authorized representative of another.

Case analysis 12-1: The Jindi Construction Dispute

Many cases of proxy fights occur in China's stock market. The election of the board of directors of Jindi Construction in 1998 is one such case. In 1998, the second largest shareholder of Jindi Construction, holding 20.7% of total shares, gained all the seats of the board of directors through proxy fight, whereas the largest shareholder, Shanghai Xinlü, with 26.48% of total shares, had no elected representatives in the board, thereby losing control over Jindi Construction. Although similar cases have occurred many times, regulations of such cases are still limited in China. This model provides opportunities to foreign investors to control Chinese listed companies.

Case analysis 12-2: The Gome Dispute

A typical example is the proxy fight between HUANG Guangyu (the founder and director of Gome) and CHEN Xiao (the Chairman and CEO of Gome after HUANG was criminally prosecuted) for control of Gome. CHEN invited Bain Capital, LLC, a US private equity investor, to invest in Gome conditioned on gaining the right to appoint two executive directors. As such, CHEN was acting for the benefits of foreign investors (Bain Capital, LLC). At Gome's special general meeting held on September 28, 2010, HUANG and CHEN respectively tried to persuade the rest of Gome's shareholders to authorize their voting rights through signing a written proxy commission. Ultimately, five proposals by HUANG failed, except withdrawing the general authorization of the issuance and transfer of Gome's shares. In this case, the critical point was ouster of the other side through proxy fight. Thus, voting proxy can be deployed as an effective method for foreign M&A.

7. Model Thirteen: Variable Interest Entity (VIE). — A VIE refers to a structure whereby an entity established in China that is wholly or partially foreign owned (the controlling company) has *de facto* control over an operating company (the operating company) which holds the necessary license(s) to operate in an Foreign Direct Investment (FDI)[79] restricted sector. As such sectors are subject to investment restrictions in China, foreign investors are not able to directly invest in the operating company. Therefore, foreign investors adopt various contractual arrangements with the controlling company and the operating company in order to obtain *de facto* control over the operation and management of the operating company.

The operation mode of VIE is very similar to a proxy fight, but more effective and powerful. However, the cost of VIE is very high concerning the risks it bears, for though the payment of VIE closely equals to consideration of the acquisition, it is still at the risk of losing total control at any moment. VIE structure has always been a gray area in the

[79] FDI is direct investment into production or business in a country by a company in another country, either by buying a company in the target country or by expanding operations of an existing business in that country. Foreign direct investment is in contrast to portfolio investment, which is a passive investment in the securities of another country such as stocks and bonds.

Chinese legal system and it possesses inherent defects and potential legal and regulatory risks.

Case Analysis 13: Overseas Structure of Alibaba.com

It is common for overseas listed Chinese companies using VIE to control companies whose lines of business exclude foreign ownership according to domestic regulations. Take Alibaba.com as an example, it utilized VIE via Alibaba Hangzhou to run its B2B[80] business in compliance with the Chinese laws. Jack Ma and Simon Xie own Alibaba Hangzhou, founders of Alibaba.com, and both of them are Chinese citizens. A series of contracts between Alibaba Hangzhou and Alibaba.com give Alibaba.com control of Alibaba Hangzhou.[81]

C. M&A by Equity Financing

This category includes three models.

1. Model Fourteen: Issuance of Convertible Bonds. — A listed company may issue convertible bonds to specific foreign investors. Such bonds can be converted into shares of the target company in a few installments within a certain number of years, eventually converting the foreign investors into shareholders of the targeted listed company.

This model enables domestic enterprises to obtain necessary capital and management resources. Since the bonds are issued toward specific investors, it is not necessary to hire a broker or other intermediary agencies. This significantly reduces costs and improves efficiency. Moreover, the bonds are converted in installments over several years. During this period, they are bonds in name but shares in essence. It is guaranteed that those bonds can be converted into shares at the agreed price. The listed company will not suffer from abrupt equity discrepancies, if the bonds are completely converted into shares, the investment of the corporation may have already begun to take effect, and the profit increase may exceed the expansion pace of the capital stock, thereby avoiding dilution of profits. As a result, this model can avoid dilution of the operation achievement caused by the rapid expansion of the capital stock and can protect the benefits of minority shareholders.

The 2005 Company Law only sets some principles about convertible shares, and the 2006 CSRC Interim Measures,[82] the 2001 CSRC Provisions,[83] and other rules stipulated

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[80] Business-To-Business is a transaction that occurs between two companies, as opposed to a transaction involving a consumer. The term may also describe a company that provides goods or services for another company.

[81] See *Alibaba and the disappearing VIE*, available at http://www.chinaaccountingblog.com/weblog/alibaba-and-the-disappearin.html (last visited Jan. 20, 2013).

[82] The 2006 CSRC Interim Measures refers to the Interim Measures for the Administration of Convertible Corporate Bonds, issued by the CSRC, effective as of May 8, 2006.

[83] The 2001 CSRC Provisions refers to the presently expired Provisions on the Issuance of Convertible Bonds of Listed Companies, issued by the CSRC, effective as of Apr. 26, 2001, later replaced by Administrative Measures for the Issuance of Securities by Listed Companies, effective as of May 8, 2006.

by the CSRC only apply to the domestic listed companies which apply for issuing convertible bonds subscribed with RMB at home. Therefore, there is a vacuum in rules regulating the direct issuance of convertible bonds to foreign investors. Since this kind of practice already exists, it is imperative to promulgate relevant rules and supervisory work. As issuing convertible bonds to foreign investors is related to foreign M&A, the authors recommends strengthening supervision upon disclosure and practicing strict examination on the approval of bond issuance.

Case Analysis 14: Anheuser-Busch InBev's Acquisition of Tsingtao Brewery

In 2002, Tsingtao Brewery Co., Ltd. (Tsingtao Brewery, the acquiree) issued, three times over, $182.0 million worth of convertible bonds to the world's biggest brewage company, setting a precedent for this model. According to the agreement, the bonds would be obligatorily converted into tradable shares in three installments within seven years. The percentage of shares that Anheuser-Busch InBev (the acquirer) held in Tsingtao Brewery would increase from 4.5% to 9.9%, then further to 20%, and finally to 27%. All of the increased shares were H shares traded at Hong Kong Exchanges.

2. Model Fifteen: Private Offering of Additional B Shares. — There are several advantages for foreign investors to procure B shares through a new, directive issuance. First, the price is lower than that of the tradable instruments at the secondary level securities market. Second, it helps the foreign investors avoid the rigid and intricate requirements of information disclosure when purchasing stocks at the secondary level securities market as well as the restrictive procedures of examination and approval and assessment of purchasing through agreement. If the percentage of such B shares is comparatively high, it is likely that foreign investors can become the controlling shareholders. Therefore, this is a feasible way to achieve foreign M&A.

As for the supervision level, it is necessary to strengthen the requirements of information disclosure in the private offering of additional B shares. Specifically, the listed companies should announce the issuance of additional shares and disclose to which foreign investors the shares are issued.

Although, after the share-trading reform A shares and H shares can also be traded, the former types of shares only targeted strategic investors according to the 2006 First Joint Measures.

Case analysis 15-1: Holderbank's Acquisition of Huaxin

In March 1999, Huaxin Cement Co., Ltd. transferred 77 million B shares to Holchin B.V. Ltd., which is 100% held by Holderbank Ltd. (renamed as Holcim Ltd. in 2011 after reorganization), at the price of RMB2.16 per share. As a result, Holderbank Ltd. owned up to 23.45% of the Huaxin Cement Co., Ltd., as the second largest shareholder, and to some extent, Holderbank realized its M&A target.

Case analysis 15-2: The M&A of FAG over Shanggong

In 2003, Shanggong Co., Ltd. (Shanggong, the acquiree, renamed as SGSB Group

Co., Ltd. after merger in 2004), transferred B shares at a total price of $12.0 million to FAG Kugelfischer Georg Schaefer AG Ltd. and its affiliates (FAG, the acquirer). In this case, instead of paying cash, FAG paid for B shares via assets equal to the value of 52.2% of the total shares of Durkopp Adler Ltd. (DA). Thus, Shanggong achieved its purpose of controlling DA and using DA's technologies to construct special sewing machine projects. After the B shares issuance, Shanggong successfully built up a strategic corporation with FAG.

3. Model Sixteen: Debt-to-Equity Swap. — Foreign investors can directly purchase the non-performing assets from asset management companies, and then acquire shares of the listed companies through debt-to-equity swap.

Non-performing debts of the listed companies held by four state-owned asset management companies[84] will eventually be disposed through debt-to-equity swaps.

In approved industries, foreign investors can acquire the shares of the listed companies by purchasing or executing creditor's rights and participating in the reorganization of the listed companies led by the creditors. Article 3 of the 2003 First Joint Interim Provisions prescribes that creditor's rights of state-owned enterprises can be transferred to foreign investors.

Case Analysis 16-1: Goldman's Acquisition of the Industrial and Commercial Bank of China's Non-Performing Assets

In June 2003, Goldman (the acquirer) and the Industrial and Commercial Bank of China (the acquiree) signed a memorandum of understanding on the non-performing assets owned by the Industrial and Commercial Bank of China. The two parties reached an agreement to set up a joint venture to resolve non-performing assets in the value of RMB10.0 billion held by the Industrial and Commercial Bank of China.

Case Analysis 16-2：Citi Group's Acquisition of Bank of China's Non-Performing Assets

Citi Group (the acquirer) acquired non-performing assets with a face value of $1.8 billion from Bank of China (the acquiree) on November 12, 2003. Most of these non-performing loans were guaranteed by real estate of Hong Kong including the loans issued by Bank of China to nearly 450 corporations of China's mainland and Hong Kong.

IV. INNOVATION IN CONDUCTING FOREIGN M&A

Over the years, the aforementioned models have transformed from rigid payment methods and an inflexible withdrawal system into flexible ones through continuous

[84] Four asset management companies were created by the MOF for each of the big four banks in 1999. They are Orient AMC for the Bank of China, Great Wall AMC for the Agricultural Bank of China, Cinda AMC for the China Construction Bank, and Huarong AMC for the Industrial and Commercial Bank of China. See Duncan Alford, *The Influence of Hong Kong Banking Law on Banking Reform in the People's Republic of China*, 3 East Asia Law Review, 35 (2008).

attempts at and practice of new models. As the Chinese capital market gradually opens to the world, financial reform advances and the legal system is gradually built up, and the timing and preparation for fueling innovating for foreign M&A becomes ripe.

The share swap model is full of potential. In the future, foreign investors may transact M&A of Chinese domestic listed companies through share swap, especially for large-scale industrial deals. In addition to favorable tax policies, this model also achieves the M&A without the payment of a large amount of cash.

However, foreign investors face two considerations in adopting the share swap model. Firstly, because of the compulsory requirement on registered capital, the only way for listed companies to obtain new shares is to issue new shares. However, at present, the rather rigid requirements on issuing new shares will constrain the practice of massive share swap. Secondly, certain restrictions on overseas investment would apply if the majority shareholders of the listed company were SOEs.

CONCLUSION

Foreign M&A activities are essential in attracting foreign investment and fine-tuning relevant regulations in China's market economy reform. As this article argues, China's reform efforts in the past two decades not only buttressed three categories with seventeen specific models, but also a few mixtures of several models are applied, if not manipulated, in practice. This article proposes that more M&A activities will adopt mixed or innovative models comprised of indirect and direct M&A, and more importantly, TOB will become the leading method to conduct foreign M&A.

This article also documents five stages of development for M&A related regulations and policies orientation. It is suspected that regulators in China were also faced with a dilemma of balancing national economic interests and promoting arms-length foreign investments. From the State Council Ban to an approval-based system, efforts were made in adjusting the direction of fighting conservative thoughts and immature legal constructs. Given the 2008 financial crisis and downturn brought thereby, the Chinese stock market has been in an embarrassing situation of incorporating itself within the international capital market as well as "self-developing" as a new arena competing for investments. The sixteen models clearly pictured the path that investors and legislators fought over in the past two decades.

Nevertheless, the downturn[85] of the Chinese stock market promises convincing opportunities for foreign M&A. However, China's legal system construct still needs to be concrete so as to keep up with the efficiency and flexibility of the stock market, especially in encouraging circulation of tradable shares. Also, risks as to potential loss of state-owned assets arise, such as the likely conspiracy in Shuanghui's MBO through

[85] According to Shanghai (securities) composite index, the lowest point has reached 1970 points before Dec. 10, 2012.

selling state-owned assets at low prices, and should get more attention. Under the blueprint of urbanization efforts in China, as some local governments are urged to attract investment, the burden shifts to legislation on a national level to figure out more practical, efficient but innovative structures and mechanisms to prevent regulatory and compliance risks during the process of foreign M&A.