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China Strengthens Supervision of State-Owned Asset Restructuring

In June 2009, the Chinese government promulgated a series of regulations strengthening supervision of asset restructuring regarding state-owned shareholders in listed companies. The regulations are: *Notice on Regulating the Issues Concerning the Asset Restructuring between State-owned Shareholders and Listed Companies* (the "Notice"); *Interim Measures for the Administration of State-owned Shareholders' Transfer of Their Shares of Listed Companies* (the "Transfer Rules"); *the Interim Provisions on the Administration of the Acceptance of Listed Companies' Shares by State-owned Entities* (the "Acceptance Rules"); and *Interim Provisions on the Administration of the Marks of Listed Companies' State-owned Sharehold*ers (the "Marks Rules").

Background

After the recent nontradeable shares reform, previously untradeable state-owned shares have become tradeable under certain conditions. Since previous regulations were based on the assumption that state-owned shares in listed companies were not tradable, new regulations are needed for the pricing basis of state-owned shares. The goals of the new regulations are: to regulate transfer of large amounts of shares by state-owned shareholders; to extinguish supervision of the state-controlled shareholders and state-owned shareholders; to make transactions public and transparent; and to allow the market pricing mechanism to function.

Main Points

Under the Transfer Rules, before a restructuring plan is implemented, pre-approval from a state-owned asset supervision and administration organ is required before the state-owned shareholders may transfer their shares of listed companies. It does not apply if the shareholder is a security company or fund management company specializing in securities, as provided in the previous *Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises*.

Pursuant to the Transfer Rules, a state-owned shareholder who plans to transfer its shares by agreement and not to hold the controlling right of listed companies must hire a domestically registered professional institution as financial consultant. This provision coincides with the financial consultant requirements of equity merger of domestic companies by foreign investors and share transfer by controlling shareholders in listed companies.

According to the Transfer Rules, since the state-owned shares are tradeable, prices shall be based on the transaction prices of the listed companies' shares in the securities market. The price set in a transfer agreement can be no less than 90% of the average of daily weighted average prices for the previous 30 trading days assuming there are no special circumstances. Also, listed companies are required to disclose information about such transfers to the general public with exception.

Moreover, in order to minimize the influence on the market by a state-owned share transfer, the Transfer Rules provide that a transfer by the state-controlled shareholder will not modify the listed company's controlling right.

Conclusion

The Transfer Rules and Acceptance Rules together regulate the sales of shares by state-owned shareholders in listed companies. The Marks Rules will mark and thus supervise the securities accounts of state-owned shareholders. By establishing detailed pre-approval processes, the regulations should strengthen the supervision of state-owned assets, and eliminate the effects of market fluctuations on the rights and interests of investors.

Authored By

Jingyuan Sun
(212) 634-3094
jsun@sheppardmullin.com