

October, 2002

## Measures for Administration of the Acquisition of Listed Companies ("Measures")

The Measures for Administration of the Acquisition of Listed Companies" (the "Measures") were promulgated by the China Securities Regulatory Commission ("CSRC") on September 28, 2002 and will become effective on December 1, 2002. The Measures elaborate upon Chapter IV ("Acquisition of Listed Companies") in the 1999 PRC Securities Law and provide a full template for the acquisition of control over listed Chinese companies. In addition, the Measures provide hints that state shares and state-owned legal person shares in listed companies may become increasingly liquid, and that some relaxation in the prohibition on foreign investors (or foreign invested enterprises) purchasing "A" shares may be forthcoming.

We have attached our English translation of the Measures and a preliminary analysis for your information.

Please note that the attached translation and summary are intended solely for general informational purposes and should not be construed as, or used as a substitute for, legal advice with respect to specific transactions, since such advice requires an evaluation of precise factual circumstances. Please note that Paul, Weiss maintains a registered foreign law firm representative office in Beijing, and is not authorized to practice PRC law. If you need additional assistance or information concerning any issue raised by the attached, or on any related issues, please contact the following Paul, Weiss attorneys:

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Measures for Administration of the Acquisition of Listed Companies ("Measures")

- Preliminary Analysis –

The Measures were promulgated by the China Securities Regulatory Commission ("CSRC") on September 28, 2002 and will come into effect on December 1, 2002.

- The Measures represent a much-needed elaboration of the takeover provisions found at Chapter IV ("Acquisition of Listed Companies") of the 1999 PRC Securities Law ("Securities Law"), and seek to set forth certain procedural, filing, notification, disclosure and approval requirements related to the acquisition of shares of PRC companies that have listed shares. In addition, the Measures set out some of the concrete circumstances where a waiver of application of such provisions may be given by the CSRC.

Key aspects of the Measures include:

- Confirmation that the central CSRC in Beijing continues to have strong authority over any activity that might implicate the acquisition of "control" of publicly-listed PRC companies. Such authority comes at the expense of the Shanghai and Shenzhen Stock Exchanges, as well as the local offices of the CSRC. This tight control is perhaps best expressed by the power of the central CSRC to approve proposed offers for the shares of publicly-listed companies, and in some cases to cause the proposed purchaser to change price or other offer terms.
- Even though there is ample provision in the Measures for timely reports to the CSRC and the stock exchanges, and a whole host of required public disclosure and announcements (*i.e.*, intention to acquire, report on acquisition, directors and independent directors' views, professional opinions (both fairness opinions and legal opinions), etc.), the Measures express a very clear business regulation philosophy, rather than the pure disclosure model favored in other jurisdictions.
- Control of public companies may be acquired by private agreement, "public offer" (akin to a mandatory offer directed at all non-participating shareholders, with a 30-60 day offer period), private agreement that triggers a public offer, or competitive bidding triggered by a public offer.
- The key threshold indicating "control" is ownership of 30% of *all* the issued share capital of a PRC company.
- Most importantly, this 30% threshold includes *all* share capital, and not just shares that are listed and traded on Chinese or foreign stock exchanges. This is a change from Article 81 of the Securities Law, which limited the applicability of the mandatory offer provisions to purchasers whose ownership exceeded the 30% threshold through their acquisition of "securities trading on a stock exchange". Thus, for example, if a Chinese or foreign shareholder held 28% of a company's illiquid legal person shares or unlisted foreign capital shares and then sought (itself or through another entity deemed to be part of its control group) to purchase listed shares of the same company equal to 2% of the company's share capital, the

procedures and substantive review described under the Measures would be triggered, as would the requirement of a mandatory offer to all other shareholders of the company – including shareholders of unlisted and listed shares.

- The Measures provide for minimum permissible prices that may be offered in the public offer context, for both listed and unlisted shares. For listed shares, the minimum permissible price is calculated according to recent trading history; for unlisted shares, the minimum permissible price is either the highest price paid by the same purchaser within the prior six (6) months for the same kind of unlisted shares, or the most recent audited “book value” per share of the company to be acquired. The CSRC may waive these constraints upon application, but it may also require adjustments where the proposed price is “obviously unfair”.
- The CSRC is fully empowered under the Measures to grant waivers of mandatory offer requirements. Some of these potential waivers arise in easily understood contexts: *i.e.*, technical impossibilities (especially as regards foreign investors holding certain kinds of Chinese shares – see the immediately following bullet), ownership adjustments arising from decrease of capital (buy-backs), underwriters’ possession of shares, acquisitions arising from the implementation of court decisions, inheritance, workouts and restructurings of failing companies, etc. In addition, there is also tacit acceptance of broadly defined control groups in China, such that transfers amongst the same controlling persons will not trigger a public offer. Nor will mandatory offers apparently be triggered by acquisitions of control pursuant to government-mandated transfers and/or allocations of state-owned assets – a characteristic of China’s state-owned property rights and corporate structure system.
- The Measures leave to another day the vexing problems of: (i) transfers of illiquid state-owned and legal person shares to non-state (or even foreign) actors, and (ii) the ability of foreign investors to buy listed shares they are not now permitted to purchase. For instance, under the Measures, a Chinese or foreign purchaser that goes over the 30% threshold might be obligated to make an offer for shares of a company held by the state or a legal person – not readily transferable to any person (and actually forbidden in the case of a foreign purchaser pursuant to a 1995 State Council ban). Or a foreign purchaser that goes over the 30% threshold might be obligated to make an offer for “A” shares of a PRC company, which technically may not be purchased, held or traded by foreign persons. The Measures finesse these problems by referring to special required approvals or allowing for applications to the CSRC for a waiver in these specific cases. The important implication of the Measures is that they do not completely dismiss these possibilities, and thus may be taken as an indication that allowances for certain of the mandated, but now technically impossible, transactions may be forthcoming.
- Various actors in public company acquisition transactions – controlling shareholders, “actual controlling persons”, directors, supervisors and senior officers -- are held to a newly-described duty of care: “*chengxin yiwu*” or what we have translated as “fiduciary duty”. While it seems certain that this is not meant to import wholesale “fiduciary duty” and standards of care developed under better elaborated jurisprudence in Hong Kong, the United Kingdom or the United States, this does represent the first time such a duty has been explicitly identified in a

Chinese statute, with a description as to whom precisely the duty is owed -- the company and the other shareholders. (The only previous attempt to import fiduciary duty into PRC law on corporations was in the letter from the now-defunct Commission on Restructuring of the Economic System (“CRES”) to the Hong Kong Stock Exchange of June 1993 in connection with proposed Hong Kong or “H” share listings of PRC companies. In that letter, CRES assured Hong Kong regulators that a form of words in Article 62 of the now superseded “Opinion on Standards on Companies Limited by Shares” (subsequently absent in the PRC Company Law, but reinstated for overseas issuers in the CSRC’s “Overseas Listing Rules”) had “... the same meaning as ‘*chengxin zeren* [fiduciary duty]’ of Hong Kong law.”)

- Notwithstanding the articulation of new duties, there is no explicit right granted to individual shareholders to bring a cause of action against breaching purchasers, officers, directors and supervisors, the company, etc. This is consistent with the Securities Law, notwithstanding the immense pressure in China from private shareholders to bring private actions against illegal behavior. By the same token, the Measures do not forbid private suits, and we may thus expect pleadings by aggrieved minority shareholders and other actors in the near future.
- Boards of directors and independent directors are under a duty to opine on the appropriateness of an offer, and mandated to retain the services of investment banks and law firms to provide the equivalent of “fairness opinions” and legal opinions respectively. The Measures do not, however, specify what consequences would follow from the issuance of a false, misleading or otherwise dishonest opinion.
- Provision is made in the Measures for the acquisition of publicly-listed shares with other securities, thus explicitly permitting share swap transactions in public deals.
- The Measures import the United Kingdom/Hong Kong corporate law prohibition against financial assistance (wherein the target may not render financial assistance to the acquirer), which is also a feature of the Mandatory Articles of Association for Overseas Listing Companies.

The Measures were previewed by release of the “Measures for Administration of the Acquisition of Listed Companies (Draft for Public Comment)” (“Draft Measures”) on July 27, 2002. There are rather wholesale changes between the Draft Measures issued for public comment and the final form of the Measures, which are a good indication of aspects of concern to both the CSRC and market participants. Key differences or additions include:

- Payment in stock for an acquisition has been added, in addition to cash purchase arrangements.
- The “fiduciary duty” (*chengxin yiwu*) imposed upon acquirers, and the similar requirement that performance of their offer be in some way guaranteed or *bona fide*, is new.

- Directors and independent directors are asked to consider acquisition offers more promptly, and the role of independent directors in offering (and publishing) separate opinions with respect thereto is strengthened. In fact, provision is made for management buy-outs, and the necessary role of independent directors (to the exclusion of presumably “inside” directors) in confirming such transactions.
- Offerors are permitted to withdraw an offer (unless there is an allegation of fraudulent conduct). However, they may not re-start an offer until twelve (12) months have passed. (Offerees are always permitted to withdraw their initial acceptance of an acquisition offer, and gain the release of any shares they have deposited with intermediaries in anticipation of transfer.)
- Controlling shareholders or controlling persons who have significant loan or guaranty relationships with the target company are now forced to settle all such relationships prior to transferring control to a third party purchaser or put in place a plan to settle the same.
- New restrictions have been imposed upon the actions of a company under offer during the pendency of the offer.
- The CSRC has created for itself the power to approve or disapprove the implementation of a court decision that leads to acquisition of a public company.
- There is greater specificity as to what must be included in various reports issued to the CSRC by potential acquirers or offerors.
- Specific allusion to professionals (financial advisors and lawyers) being “qualified to practice in the securities field” has been removed.
- All participants in an acquisition are now permitted to first correct identified violations of the Measures “on their own initiative”, prior to being ordered to do so by the CSRC or relevant stock exchange, or being subject to legal process.

**Order No. 10**  
**of**  
**China Securities Regulatory Commission**

The Measures for Administration of the Acquisition of Listed Companies are hereby promulgated and shall be implemented as of December 1, 2002.

Zhou Xiaochuan  
Chairman  
September 28, 2002

**Measures for Administration of the Acquisition of Listed Companies**

Chapter 1 General Principles

Article 1 These Measures are formulated in accordance with the Company Law, the Securities Law, and other laws and relevant administrative regulations to standardize acquisition activities with respect to listed companies, promote the optimal allocation of resources of the securities markets, protect investors' lawful rights and interests, and maintain the normal order of the securities markets.

Article 2 The acquisition of listed companies as described in these Measures refers to those acts which lead to the purchaser obtaining, or which may lead to it obtaining, through share transfer activities on a stock exchange or by lawful means other than the share transfer activities on a stock exchange, actual control of a listed company by the holding of a certain percentage of such company's shares.

Article 3 A purchaser may obtain actual control of a listed company by means of: acquisition by agreement, acquisition by public offer<sup>1</sup> or acquisition of a listed company through centralized competitive price trading on the stock exchange.

To acquire a listed company, the purchaser shall abide by the acquisition rules provided for in these Measures and promptly perform reporting and announcement obligations according to the stipulations of these Measures.

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<sup>1</sup> We do not use the terms "takeover offer" or "tender offer" in this translation, in the latter case because a traditional tender offer (the purchaser invites shareholders to tender an offer to sell shares, which the purchaser can accept or not) does not seem to be implicated. Instead, the purchaser makes a mandatory offer to existing shareholders, which we call a "public offer".

Article 4 Activities with respect to the acquisition of listed companies shall comply with the principles of openness, equality and fairness. The parties involved should act in good faith, and maintain securities market order on their own initiative.

Article 5 The information reported or announced by the parties involved in listed company acquisition activities must be true, accurate and complete, and shall not contain false or misleading statements or major omissions.

No person may use the acquisition of a listed company to disseminate false information, disrupt market order or conduct other fraudulent activities.

Article 6 Listed companies may be acquired using cash, legally transferable securities and other payment methods stipulated by laws and administrative regulations.

Article 7 A purchaser may not use the acquisition of a listed company to harm the lawful rights and interests of the company to be acquired and its shareholders.

A purchaser without the capacity to actually perform is prohibited from making the acquisition of a listed company, and a company being acquired may not provide any kind of financial assistance to a purchaser.

Article 8 The controlling shareholders and other actual controlling persons of a listed company shall have a fiduciary duty<sup>2</sup> to the controlled listed company and the other shareholders of such company.

The purchaser shall have a fiduciary duty<sup>3</sup> with respect to the listed company being acquired by it and such company's shareholders, and shall provide a full and effective performance guaranty with respect to the specific matters it undertakes to perform.

Article 9 Directors, supervisors and senior officers of a listed company shall have a fiduciary duty<sup>4</sup> to the listed company they hold positions in and such company's shareholders.

If during the acquisition period there is a change of directors of the company to be acquired, or any directors resign, the company shall explain the reasons and make a public announcement thereon.

Article 10 The China Securities Regulatory Commission (the "CSRC") shall undertake the supervision and administration of the activities related to the acquisition of listed companies in accordance with the law.

<sup>2</sup> The Chinese term is: "chengxin yiwu" (誠信義務)

<sup>3</sup> The Chinese term is also: "chengxin yiwu" (誠信義務)

<sup>4</sup> The Chinese term is: "chengxin yiwu" (誠信義務)

The stock exchanges and the securities registration and clearance institutions shall perform daily supervision and administration of the activities related to the acquisition of listed companies as delegated by the CSRC and in accordance with their own operating rules.

Article 11 The CSRC may establish special committees composed of professionals to give opinions on whether or not a specific transactional matter constitutes the acquisition of a listed company, how the parties shall perform their relevant obligations, whether or not a specific transactional matter will affect the continued listing status of the company to be acquired, and other relevant substantive or procedural issues.

## Chapter 2 Rules for Acquisition by Agreement

Article 12 When the acquisition of a listed company is made by agreement, on the day after the acquisition agreement is concluded the purchaser shall submit a report on the acquisition of the listed company to the CSRC, and at the same time submit a copy thereof to the local office of the CSRC in the place where the listed company is domiciled, copy the stock exchange, notify the company to be acquired, and make a declaratory announcement summarizing the report on the listed company acquisition.

If within fifteen (15) days after the receipt of the report on the acquisition of a listed company the CSRC raises no objection, the purchaser may publicly announce such report, and perform the acquisition agreement.

Article 13 With respect to the acquisition of a listed company by agreement, when the purchaser comes to hold or control 30% of the already issued shares of a listed company, and it continues to increase its shareholding of such company or increase its control over such company, it shall by means of acquisition public offer make an offer to all shareholders of the company to buy all of the shares they hold. If the acquisition conforms to the circumstances provided for in Chapter 4 of these Measures, the purchaser may apply to the CSRC for a waiver; if the waiver is obtained, the acquisition may be made by agreement.

Article 14 With respect to the acquisition of a listed company by agreement, when the purchaser holds or controls more than 30% of the already issued shares of a listed company, it shall by means of acquisition public offer make an offer to all shareholders of the company to buy all of the shares they hold. If the acquisition conforms to the circumstances provided for in Chapter 4 of these Measures, the purchaser may apply to the CSRC for a waiver; if the waiver is obtained, the acquisition may be made by agreement.

Article 15 After the company to be acquired receives notice from the purchaser, its board of directors shall promptly express opinions on the impact such acquisition may produce on the company, and the independent directors shall independently express their opinions thereon at the same time as they participate in forming the opinions of the board of directors. If the board of directors of the company to be acquired deems it necessary, a professional institution such as an independent financial advisor may be retained on behalf of the company to provide an

advisory opinion. The opinions of the board of directors and the independent directors of the company to be acquired, and the opinion of the professional institution, shall be publicly announced together.

With respect to the acquisition of a listed company by its management or staff and employees, the independent directors of the company to be acquired shall express opinions on the impact such acquisition may produce on the company. The independent directors shall require the company to retain a professional institution such as an independent financial advisor to provide an advisory opinion, which shall be publicly announced together with the opinions of the independent directors. The expenses of the financial consultant shall be borne by the company to be acquired.

Article 16 With respect to any transfer which relates to shares held by a state authorized organization, or where the share transfer is subject to administrative examination and approval, the relevant parties to the acquisition by agreement shall perform the acquisition agreement only after obtaining the approval of the relevant department in charge.

Article 17 The relevant parties to an acquisition by agreement shall apply for the handling of procedures for share transfer and transfer registration in accordance with the operating rules and requirements of the stock exchange and the securities registration and clearance institution.

If there is a failure to perform the required reporting and announcement obligations as required or the failure to make required application, the stock exchange and the securities registration and clearance institution shall not handle the procedures for share transfer and transfer registration.

Article 18 With respect to the acquisition of a listed company by agreement, the relevant parties shall entrust the securities registration and clearance institution to temporarily place the shares sought to be transferred in safekeeping, and deposit the cash to be used for consideration in a bank account designated by the securities registration and clearance institution.

Article 19 If the listed and traded shares of a listed company are transferred by means of acquisition by agreement, resulting in a situation where the transferee obtains or may obtain actual control over the company, it shall be handled in accordance with the following procedures:

(a) After announcing the report on the acquisition of a listed company, the relevant parties shall entrust a securities company to apply for handling of the procedures for share transfer and transfer registration. The securities company accepting the entrustment shall apply to the stock exchange and the securities registration and clearance institution for suspension of trading and temporary safekeeping of that portion of the shares to be acquired. If the shares are suspended for trading and placed temporarily in safekeeping, a public announcement shall be made;

The stock exchange may, in accordance with requirements for administration of the securities market, make a decision to suspend trading of the listed and traded shares of the company to be acquired;

(b) The transferee shall, on the next day after the application for share transfer is made, make an announcement of transfer agreement matters and the name of the securities company accepting the entrustment, and notify the same to such listed company;

(c) The stock exchange shall, within three (3) business days after the receipt of the application for share transfer, complete the review thereof and make a decision on whether the applied-for share transfer is confirmed or not;

(d) If the stock exchange confirms the applied-for share transfer, the securities company accepting the entrustment shall, on behalf of the two parties to the transfer, apply to the securities registration and clearance institution for the handling of procedures for registration of share transfer, and the transferee shall make an announcement within two (2) business days after the completion of the procedures for transfer registration;

If the stock exchange does not confirm the applied-for share transfer, the securities company accepting the entrustment shall, on the same day of the receipt of notice from the stock exchange, notify the two parties to the transfer and the company to be acquired of the decision on non-confirmation, and, on behalf of the two parties to the transfer, apply to the securities registration and clearance institution to release the portion of the shares under temporary safekeeping. The transferor shall make an announcement within two (2) business days after learning of the decision to deny confirmation; and

(e) After completion of the procedures for registration of share transfer, the entrusted securities company shall, on behalf of the transferee, apply to the securities registration and clearance institution for release of the portion of the shares under temporary safekeeping. The transferee shall make public announcement within two (2) business days after the application for release of shares under safekeeping is made; and such portion of shares shall resume trading on the stock exchange.

Article 20 When the controlling shareholders and other actual controlling persons of a listed company transfer their actual control of a listed company, if they have not discharged their liabilities to the company, have not released any security guaranty that the company had provided for their liabilities, or there exist other circumstances that harm the interests of the company, then the board of directors of the company to be acquired shall retain an audit firm to make a special audit of the relevant matters and issue an audit report with respect thereto, and request such controlling shareholders and other actual controlling persons to propose a realistic and feasible solution. The board of directors and the independent directors of the company to be acquired shall separately express opinions on whether or not the solution is realistic and feasible. The company to be acquired shall make a public announcement of the audit report, the proposed solution and the opinions of the board of directors and the independent directors together.

If the controlling shareholders and other actual controlling persons mentioned in the foregoing paragraph refuse to propose any solution, the board of directors and the independent directors shall take full and effective legal measures to safeguard the interests of the company.

Article 21 If, with the approval of the CSRC and the stock exchange, the shareholders of a listed company transfer the shares of the listed company they hold through public solicitation, then they shall entrust a securities company to handle the same on their behalf. For specific procedures and requirements, the relevant operating rules of the stock exchange shall be followed.

Article 22 If a purchaser holds or controls the shares of a listed company through operation of law such as by administrative allocation and transfer of state-owned equity interests, court decision, inheritance or donation, thus obtaining or possibly obtaining actual control over a listed company, the provisions of this Chapter shall be applied.

### Chapter 3 Rules for Acquisition by Public Offer

Article 23 When a purchaser holds or controls at least 30% of the already issued shares of a listed company, it shall, on the day after the occurrence of such fact, submit a report on the acquisition of a listed company to the CSRC, and at the same time submit a copy thereof to the local office of the CSRC in the place where the listed company is domiciled, send a copy to the stock exchange, notify the company to be acquired, and make a public announcement. If there is a failure to perform reporting and public announcement obligations, the purchaser may not continue to increase its shareholding in such company or increase its control of such company.

If the above-described purchaser continues to increase its shareholding of such company or increase its control of such company, it shall by means of a public offer make an acquisition offer to all shareholders of the company to buy all of the shares they hold. If the acquisition conforms to the provisions of Chapter 4 of these Measures, the purchaser may apply to the CSRC for a waiver.

If, before the above-described purchaser comes to hold or control 30% of the already issued shares of a listed company with respect to which it has reported or announced a report on acquisition of a listed company, it need only report and announce with respect to the portion of the current report which is different from the previous report.

Article 24 If a purchaser holding or controlling less than 30% of the already issued shares of a listed company increases its shareholding of such listed company through acquisition by public offer, the proportion of shares proposed to be acquired shall not be lower than 5%, and the proposed proportion of shares it will hold or control after completion of the acquisition shall not exceed 30%. If it is intended that such level shall be exceeded, it shall make an offer to all shareholders of the company to buy all of the shares they hold. If the acquisition conforms with the provisions of Chapter 4 of these Measures, the purchaser may apply to the CSRC for a waiver.

Article 25 When the acquisition of a listed company is made by public offer, the purchaser shall submit a report on the acquisition of a listed company to the CSRC, and at the same time submit a copy to the local office of the CSRC in the place where the listed company is domiciled, send a copy to the stock exchange,

notify to the company to be acquired, and make a declaratory announcement summarizing the report on the listed company acquisition.

The stock exchange may, in accordance with requirements for the administration of the securities market, make a decision to suspend trading of the listed and traded shares of the company to be acquired.

Article 26 The report on acquisition of the listed company shall contain the following items:

- (a) the name and address of the purchaser;
- (b) the purchaser's resolution on acquisition;
- (c) the name of the listed company to be acquired;
- (d) the purpose of the acquisition;
- (e) the specific name of the shares to be acquired and the proposed amount of shares to be acquired;
- (f) the time period for the acquisition, and the acquisition price;
- (g) the amount of funds needed for the acquisition, and the guaranty of funds;
- (h) the proportion of the number of shares of the company held by the purchaser at the time when the report on acquisition by public offer is submitted to the total number of already issued shares of such listed company;
- (i) follow-up plans for the acquisition post-closing period; and
- (j) other matters required to be set forth by the CSRC.

Article 27 The purchaser shall explain in the report on public offer acquisition whether it has the intention to de-list the company to be acquired; if it intends to de-list, it shall make a specific statement in a prominent location in the public offer acquisition report.

The purchaser shall explain in the public offer acquisition report whether upon the completion of the acquisition the change in shareholdings will affect the continued listing status of the company; if it will be affected, the purchaser shall provide a detailed proposal on the maintenance of continuing listing status of the company.

Article 28 The purchaser shall retain lawyers to examine the truth, accuracy and completeness of the public offer acquisition report contents and issue a legal opinion.

The purchaser shall retain a professional institution such as a financial advisor to evaluate the capacity of the purchaser to actually perform the offer. The professional opinion of such financial advisor should be publicly announced.

Article 29 If after it submits the public offer acquisition report to the CSRC the purchaser applies to cancel its acquisition plan before it issues the public offer, it may not acquire the same listed company again within twelve (12) months after the date of submission of the written application to cancel the acquisition plan.

Article 30 If CSRC does not raise any objection to the public offer acquisition report within fifteen (15) days after the date of receipt of such report, the purchaser may publicly announce its public offer acquisition documents. If an objection is raised, the purchaser shall revise or supplement with respect to the relevant issues. The time for revising or supplementing by the purchaser shall not be counted in the above-mentioned period.

Article 31 The board of directors of the company to be acquired shall on behalf of the company retain a professional institution such as an independent financial advisor to analyze the financial condition of the company to be acquired and issue a professional opinion on matters such as whether the terms of the acquisition public offer are fair and reasonable and the possible effects of the acquisition on the company, and make a public announcement of the same.

If management or staff and employees undertake the acquisition of a listed company, the independent directors of the company to be acquired shall retain a professional institution such as an independent financial advisor to analyze the financial condition of the company to be acquired and issue a professional opinion on matters such as whether the terms of the acquisition public offer are fair and reasonable and the possible effects of the acquisition on the company and make a public announcement of the same. The expenses for the financial advisor shall be borne by the company to be acquired.

Article 32 Within ten (10) days after the purchaser distributes the public offer, the board of directors of the company to be acquired shall submit to the CSRC a report of the board of directors of the company to be acquired together with the professional opinion issued by the independent financial advisor, submit a copy thereof to the local office of the CSRC located in the place where the listed company is domiciled, send a copy to the stock exchange and make a public announcement of the same.

The report of the board of directors of the company to be acquired shall include an opinion for the shareholders regarding whether or not to accept the public offer; the independent directors of the company to be acquired shall give a separate opinion and both shall be publicly announced.

If the purchaser makes major changes to the terms of the public offer, the board of directors of the company to be acquired shall submit a supplementary report regarding the changes to the terms of the public offer, the independent directors shall publish a supplementary opinion, and both shall be publicly announced.

Article 33 The decisions made and measures adopted by the directors, supervisors and senior management of the company to be acquired regarding an acquisition shall not injure the lawful rights and interests of the listed company and its shareholders.

After the purchaser has made its declaratory announcement, and except for the performance of already-executed contracts or resolutions already passed by the shareholders' meeting, the board of the directors of the company to be acquired shall not propose the following actions:

- (a) issuance of shares;
- (b) issuance of convertible bonds;
- (c) repurchase of shares of the listed company;
- (d) revision of the articles of association of the company;
- (e) execution of contracts which may have a significant impact on the assets, liabilities, interests and operating results of the company; except those pertaining to the normal business operations of the company;
- (f) disposition or purchase of significant assets or changes in the primary business of the company; except for companies that face serious financial difficulties which adjust their business or restructure their assets.

Article 34 The purchaser shall determine the acquisition price in a public offer in accordance with the following principles:

- (a) in the case of listed and traded shares, the public offer acquisition price for shares of the same kind shall not be less than the higher of the following prices:
  - (i) the highest price paid by the purchaser for the same kind of listed and traded shares of the company within six (6) months before the date of publication of the declaratory announcement;
  - (ii) 90% of the arithmetic mean of the daily weighted average price of the same kind of listed and traded shares of the company to be acquired for the thirty (30) business days before the date of publication of the declaratory announcement;
- (b) the public offer acquisition price for unlisted shares shall not be less than the higher of the following prices:
  - (i) the highest price paid by the purchaser for the same kind of unlisted shares within six (6) months before the date of the declaratory announcement;
  - (ii) the per share net book value of the company to be acquired, as audited in the most recent period.

If, under special circumstances, it is necessary to change the implementation of the price determination principles described above, the purchaser shall seek the prior approval of the CSRC. If the acquisition price proposed by the purchaser is obviously unfair, the CSRC may require adjustments.

Article 35 If the purchaser makes payment in cash, it shall upon publication of the declaratory announcement deposit not less than 20% of the total acquisition price as a performance guarantee in a bank account designated by the securities registration and clearance institution, and handle procedures for freezing the amount.

If the purchaser makes payment in legally transferable securities, it shall upon publication of the declaratory announcement deposit for safekeeping all of the securities to be paid with the securities registration and clearance institution; except those beyond the scope of depositable securities in accordance with the operating rules of the securities registration and clearance institution.

If the purchaser cancels the acquisition plan and this does not arise from an investigation of any illegal actions, it may apply for the release of the performance guarantee or the deposited securities.

Article 36 The period of the acquisition public offer shall not be less than thirty (30) days and shall not be more than sixty (60) days; but this shall not apply in the case of competitive public offers.

During the effective period of the acquisition public offer, the purchaser shall not be permitted to withdraw its acquisition public offer.

Article 37 If the purchaser changes the terms of the acquisition public offer within the effective period of the acquisition public offer, it must first submit a written report to the CSRC, submit a copy thereof to the local office of the CSRC in the place where the listed company is domiciled, send a copy to the stock exchange and notify the company to be acquired, and make a public announcement.

Article 38 Within fifteen (15) days before the expiration of the acquisition public offer, the purchaser shall not change the terms of the acquisition public offer; except in the case of a competitive public offer.

If a competitive public offer occurs, and the initial offeror changes the terms of the acquisition public offer and there are less than fifteen (15) days before the expiration of the acquisition public offer, the period shall be extended so that the effective period after the extension shall not be less than fifteen (15) days, but may not remain effective beyond the date on which the most recent competitive public offer expires.

Article 39 If there is any material change in the basic facts disclosed in the acquisition public offer report, the purchaser shall submit a written report to the CSRC within two (2) business days after the occurrence of such change, and submit a copy thereof to the local office of the CSRC located in the place where the listed company is domiciled, send a copy to the stock exchange and notify the company to be acquired, and make a public announcement.

Article 40 The purchaser shall authorize a securities company to apply to the securities registration and clearance institution for temporary safekeeping of the shares with respect to which there has been a preliminary acceptance.

During the effective term of the acquisition public offer, the shares with respect to which there has been a preliminary acceptance and under temporary safekeeping by the securities registration and clearance institution shall not be transferred in any manner.

Article 41 Shareholders who preliminarily accept have the right to withdraw their initial preliminary acceptance before the expiration of the offer period. The securities registration and clearance institution shall release such shares under temporary safekeeping pursuant to application by those shareholders who preliminarily accepted the offer.

During the effective period of the acquisition public offer, the purchaser shall make public announcement on the website of the stock exchange of the number of the shares preliminarily accepted and the number of the shares preliminarily accepted but withdrawn.

Article 42 Upon the expiration of the acquisition public offer, the purchaser shall, in accordance with the terms of the acquisition public offer, purchase all shares with respect to which the acquisition public offer was preliminarily accepted by the shareholders of the company to be acquired; when the number of shares with preliminary acceptance exceeds the number that the purchaser plans to acquire, the purchaser shall purchase on a pro rata basis the shares with respect to which preliminary acceptance was made.

Within three (3) business days after the expiration of the acquisition public offer, the entrusted securities company shall apply to the securities registration and clearance institution for settlement of the transfer of the shares and the transfer registration procedure and release from temporary safekeeping the shares that are in excess of the proportion<sup>5</sup> planned to be acquired.

Article 43 Within three (3) business days after the expiration of the acquisition public offer, the purchaser shall submit a written report on the situation regarding the acquisition to the CSRC, submit a copy to the local office of the CSRC located in the place where the listed company is domiciled, send a copy to the stock exchange and notify the company to be acquired, and make a public announcement of the same.

Article 44 After the purchaser has made the declaratory public announcement and before the expiration of the acquisition public offer, the purchaser may not trade shares of the company to be acquired outside of the acquisition public offer or exceeding the terms of the public offer.

Article 45 When a competitive public offer emerges, the board of directors of the company to be acquired shall treat all acquisition offerors fairly.<sup>6</sup>

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<sup>5</sup> This may be a typo graphical error in the Measures. This term should be "number" as in the first paragraph.

<sup>6</sup> The Chinese term is "gongping" (公平)

Article 46 Any purchaser which intends to issue a competitive public offer shall submit a report on the acquisition public offer to the CSRC no later than five (5) days before the expiration of the initial public offer, submit a copy thereof to the local office of the CSRC located in the place where the listed company is domiciled, send a copy to the stock exchange, notify the company to be acquired, and make a declaratory announcement summarizing of the acquisition public offer; if the CSRC does not raise any objection within fifteen (15) days after receiving the report on acquisition public offer, the purchaser may publish its acquisition public offer documents.

Article 47 If a purchaser intends to give the shareholders of a listed company a continuing and open offer to acquire the shares of the such listed company held by them, so that upon completion of such acquisition it holds or controls 5% or more of the already issued shares of the company to be acquired, this will be deemed to constitute the action of an acquisition public offer, and the acquisition public offer provisions described in these Measures shall apply.

#### Chapter 4 Waivers of Obligations under a Public Offer Acquisition

Article 48 A purchaser may apply to the CSRC for the following waivers if in conformity with Articles 49 and Article 51 of these Measures:

- (a) waivers of acquisition public offer procedures on the increase of shareholdings;
- (b) waivers of issuance of an acquisition public offer to all shareholders of the company to be acquired;
- (c) waivers of an acquisition public offer for all shares of the company to be acquired.

Article 49 In any of the following situations, a purchaser may submit a waiver application to the CSRC:

- (a) In the transfer of shares of a listed company between different parties controlled by the same actual controlling person, the actual controlling person of the listed company remains unchanged after the completion of the transfer of the shares, and the transferee undertakes that it will perform the obligations of a promoter;
- (b) To save a listed company facing serious financial difficulties, the purchaser carries out the acquisition and proposes a realistic and feasible restructuring plan;
- (c) A listed company issues new shares pursuant to a resolution of the shareholders' meeting such that the purchaser comes to hold or control more than 30% of the shares of such company;
- (d) An application for the handling of share transfer procedures based upon a court decision such that the purchaser holds or controls more than 30% of the already issued shares of a listed company;

(e) Other situations, where the CSRC deems it necessary, in order to meet the needs of development and change in the securities markets and protection of the lawful rights and interests of investors.

Article 50 When a purchaser makes a waiver application to the CSRC, if the application documents submitted satisfy the stipulated requirements, and all disclosure obligations have been performed in accordance with stipulations, then the CSRC shall issue a decision accepting the same. If stipulated requirements are not satisfied or the disclosure obligations have not been performed in accordance with stipulations, then the CSRC shall not accept the application.

Within three (3) months after CSRC acceptance of a waiver application, it shall make a decision as to whether or not the waiver application by the purchaser with respect to the specific matters should be granted. Upon the waiver being granted, the purchaser may continue to increase its share ownership or control.

Article 51 In any of the following situations, relevant parties may submit waiver application materials to the CSRC:

(a) A shareholder that lawfully holds or controls 50% or more of the shares of a listed company will hold or control not more than 75% of the already issued shares of such company after continuing to increase its share ownership or control;

(b) Where as a result of a share capital decrease by a listed company, it will hold or control more than 30% of the already issued shares of a listed company;

(c) A securities company, through its regular securities underwriting business, comes to hold more than 30% of the outstanding shares of a listed company but without any action or intention to actually control such company, and provides within a reasonable period a remedying plan for the transfer of the overage to unrelated parties;

(d) A bank, through its regular banking business, holds more than 30% of the already issued shares of a listed company without any action or intention to actually control such company, and provides within reasonable period a remedying plan for the transfer of the overage to unrelated parties;

(e) The relevant party has acquired more than 30% ownership or control of the already issued shares of a listed company by way of the administrative allocation and transfer of state-owned assets;

(f) The relevant party has acquired more than 30% ownership or control of the already issued shares of a listed company by way of lawful inheritance;

(g) Other situations, where the CSRC deems it necessary, in order to meet the needs of development and change in the securities markets and protection of the lawful rights and interests of investors.

If, within five (5) business days from the date it receives application documents conforming to stipulations, the CSRC has not raised any objection, the relevant parties may apply to the stock exchange and the securities registration and clearance institution for the undertaking of procedures for share transfer and change of registration.

Article 52 The acquisition public offer issued by the purchaser shall apply to all shareholders of the company to be acquired. However, if there exist special circumstances related to qualifications of principals, share types restrictions, or laws, administrative regulations or rules, then a purchaser may apply to the CSRC for a waiver.

Article 53 When applying for a waiver, the purchaser shall retain a law firm to provide a professional opinion on the specific matters respecting which the waiver is being applied for. When applying for a waiver in accordance with Article 49 (b) and (c) of these Measures, the purchaser shall retain professionals such as a financial advisor to provide a professional opinion.

#### Chapter 5 Supervisory Measures and Legal Liability

Article 54 If a purchaser comes to hold or control more than 30% of the already issued shares of the company to be acquired in violation of the provisions of these Measures, it shall correct the situation on its own initiative; if it is not able to correct the situation, the stock exchange shall handle it in accordance with its operating rules; if the purchaser refuses to correct the situation, the CSRC shall order it to correct the situation. Before remedying the situation, the purchaser may not appoint directors, supervisors or senior management personnel of the company to be acquired. During the period of remediation, the CSRC shall not accept any documents issued by any professional institution for such purchaser.

Article 55 If the purchaser fails to perform reporting or announcement obligations in accordance with the stipulations of these Measures, it shall correct the situation on its own initiative; if it is not able to correct the situation, the stock exchange shall handle it in accordance with its operating rules; if the purchaser refuses to correct the situation, the CSRC shall order it to correct the situation and stop acquisition activities. Before remedying the situation, the purchaser may not appoint directors, supervisors or senior management personnel of the company to be acquired. During the period of remediation, the CSRC shall not accept the documents issued by any professional institution for such purchaser. If the behavior constitutes breach of the securities laws, legal responsibility shall be pursued in accordance with the law.

Article 56 If there are false or misleading statements or major omissions in the reports, announcements or other documents of the purchaser, the purchaser shall correct the situation on its own initiative; if it is not able to correct the situation, the stock exchange shall handle it in accordance with its operating rules; if the purchaser refuses to correct the situation, the CSRC shall order it to correct the situation and stop acquisition activities. Before remedying the situation, the purchaser may not appoint directors, supervisors or senior management personnel or the company to be acquired. During the period of remediation, the CSRC shall not accept

the documents issued by any professional institution for such purchaser. If the behavior constitutes breach of the securities laws, legal responsibility shall be pursued in accordance with the law.

Article 57 If at the time controlling shareholders or other actual controlling persons of a listed company transfer their actual control over a listed company they have not discharged their liabilities to the company, have not released any guaranty security that the company has provided for their liabilities, or have not remedied other circumstances that harm the interests of the company, they shall correct the situation on their own initiative; if they are not able to correct the situation, the board of directors and independent directors of the company to be acquired shall take full and effective legal measures to cause them to correct the situation, and the matter shall be handled by the stock exchange in accordance with its operating rules; if there is a refusal to correct the situation, the CSRC shall order them to correct the situation and stop acquisition activities. If the behaviour constitutes breach of the securities laws, legal responsibility shall be pursued in accordance with the law.

If the board of directors and independent directors of the company to be acquired are not able to take the measures mentioned in the foregoing paragraph, the stock exchange shall handle the case in accordance with its operating rules; if they refuse to take such measures, the CSRC shall order them to correct the situation. If the behaviour constitutes breach of the securities laws, legal responsibility shall be pursued in accordance with the law.

Article 58 With respect to the professional institutions or professionals which provide asset evaluation reports, audit reports, legal opinions or financial advisory opinions on the acquisition of listed companies, if the documents they have provided contain false or misleading statements or major omissions, they shall correct the situation on their own initiative; if they are not able to correct the situation, the stock exchange shall handle it in accordance with its operating rules; if they refuse to correct the situation, the CSRC shall order them to correct the situation. During the period of remediation, the CSRC shall not accept documents issued by them. If the behavior constitutes breach of the securities laws, legal responsibility shall be pursued in accordance with the law.

Article 59 Legal responsibility shall be pursued in accordance with the law with respect to any person coming into possession of information on the acquisition of a listed company before the relevant information on acquisition is lawfully made public, and who discloses such acquisition information, purchases or sells the securities of the listed company or suggests that other persons purchase or sell the securities of such listed company, or uses the acquisition of the listed company to disseminate false information or conduct fraudulent.

## Chapter 6 Supplementary Provisions

Article 60 The number of already issued shares held or controlled by shareholders, controlling persons and or those acting in concert who undertake the acquisition of a listed company shall be calculated in the aggregate.

Article 61 Where any of the following situations apply to a purchaser they shall constitute actual control of a listed company:

- (a) It is the largest shareholder listed on the listed company's shareholders' registry; except where there is evidence to the contrary;
- (b) The number of votes it has or the votes it controls of a listed company exceeds the number of shares held by the shareholder listed as holding the most shares on the shareholders' registry;
- (c) It holds or controls 30% or more of the shares or voting rights of a listed company; except where there is evidence to the contrary;
- (d) It can select half or more of the board of the directors of a listed company by exercise of its voting rights;
- (e) Other situations stipulated by the CSRC.

Article 62 For the purpose of these Measures, the following terms shall have the meaning assigned to them below:

- (a) The term "acquisition public offer" shall mean a purchaser's openly-issued expression of an intention to shareholders of a company to be acquired to the effect that such purchaser wishes to buy the shares in the company to be acquired held by such shareholders pursuant to the terms of the public offer.
- (b) The term "preliminary acceptance" shall mean an offeree's preliminary declaration of an intention to agree to accept an offer, and does not constitute a commitment until the expiration of the offer period.
- (c) The terms "shareholders", "share controlling persons " and "acting in concert" shall have the same meanings as "shareholders", "share controlling persons " and "acting in concert" in the "Measures for the Administration of Information Disclosure on Change of Shareholdings in Listed Companies".

Article 63 The contents and form of the report on acquisition of a listed company, the acquisition public offer report, the report by board of directors of the company to be acquired, and the application documents for waiver of acquisition public offer shall be separately stipulated by the CSRC.

Article 64 These Measures shall become effective as of December 1, 2002.