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# China Securities Regulatory Commission Intends to Launch the "Employee Stock Ownership Plans of Listed Companies"

**By Calista Huang and Zhengyi Zhang**

The China Securities Regulatory Commission ("CSRC") announced the "Interim Measures for the Administration of Employee Stock Ownership Plans of Listed Companies (Draft for Comments)" ("Interim Measures") on 4 August 2012, and hereby solicited public opinions. Comparatively, the Employee Stock Ownership Plans of Listed Companies is a universally-accepted mechanism in overseas mature capital market. The Interim Measures betters domestic legal structure concerning employee stock ownership of listed companies, and its announcement means the emerging commencement of employee stock ownership plans of listed companies in our country. This article briefly introduces some attention-deserved content of the Interim Measures including main content, management mode, implementation procedures, information disclosure and etc. regarding the employee stock ownership plan of listed companies.

## What is "Employee Stock Ownership Plan"? (hereinafter referred to as "ESOP")

An ESOP refers to institutional arrangements in which listed companies, at the will of employees, entrust assets management institutions to manage a part of cash remunerations including salaries and bonuses payable to employees, purchase their own shares through the secondary market and hold shares for the long term, and distribute equities to employees by agreement. The "Interim Measures" mainly regulates the following aspects of an ESOP:

- An ESOP of a listed company shall target employees, including management personnel. Funds used for the implementation of an ESOP shall come from cash remunerations including salaries and bonuses payable to employees, and the amount of funds shall not exceed 30 percent of the total amount of cash remunerations in recent 12 months. Furthermore, the total amount of funds that employees use to participate in an ESOP shall not exceed one third of financial assets of their families.

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- Shares under an ESOP is purchased from the secondary market. The total number of shares held in accordance with all valid ESOPs of a listed company shall not exceed 10 percent of its total share capital. The total number of shares corresponding to equity acquired by each employee shall not exceed 1 percent of the total share capital of the company. Meanwhile, the total number of shares specified previously shall be calculated separately, with the exclusion of shares acquired by employees prior to corporate IPO, shares purchased through the secondary market and shares acquired through equity incentive.

- An ESOP has long-term and continuous validity, and may, by agreement, be implemented at fixed interval period of year, quarter or month during the period of existence, or be implemented irregularly. Furthermore, the Interim Measures sets a lock-up period for all the shares participating in the plan, i.e., when implementing an ESOP, the holding period of purchased shares therefor shall be no less than 36 months, calculated from the announcement of completion of share purchase by the listed company.

## Management of ESOP

An ESOP shall adopt the approach of appointing independent third party for management. The parties may choose trust companies, insurance assets management companies, securities companies, fund management companies, etc. as an asset management institution for management. In order to prevent any form of benefits transfer and insider trade, the Interim Measures set forth rigorous provisions on the independence of assets management institutions. Assets management institutions may not manage ESOPs of its own institution or a listed company controlled by the institution, and neither may it manage ESOPs of its controlling shareholders, actual controllers and companies under the common control therewith. Meanwhile, the Interim Measures requires that when companies implement an ESOP or assets management institutions manage an ESOP, they must avoid the sensitivity period of corporate's share price, comprehensively strengthen insider information management, and prevent anyone from using an ESOP for insider trading.

Furthermore, in order to ensure the property safety of an ESOP, the Interim Measures defined the property of an ESOP as entrusted property independent of the fixed assets and other property of assets management institutions. Where assets management institutions conduct liquidation for reasons including being dissolved, cancelled or declared bankrupt legally, entrusted property shall not be their liquidation assets.

## Procedures for Implementation of ESOP and Requirements of Information Disclosure

According to the Interim Measures, the implementation of an ESOP shall conform to the following procedures and exercise corresponding information disclosure obligations:

- The board of directors of a listed company shall propose draft of an ESOP and submit it to the general meeting of shareholders for voting. The listed company shall, within two trading days after the board of directors approves the draft of employee stock ownership plan, announce the resolution of the board of directors, an abstract of the draft of the ESOP, the opinions of independent directors and assets management agreement signed with assets management institution.

- The listed company shall retain a law firm to issue written legal opinions on the ESOP, and announce the written legal opinion prior to the convention of the general meeting of shareholders on deliberating the ESOP. The listed company shall, within two trading days after general meeting of shareholders approves the employee stock ownership plan, shall go through the formalities for information disclosure with stock exchanges.

- An assets management institution shall, within three months after the general meeting shareholders has approved the ESOP upon deliberation, complete share purchase in accordance with the arrangement of the ESOP; where the plan is implemented in the way of continuous purchase by agreement, AN assets management institution shall complete share purchase within three months from the date when the board of directors makes announcements on share purchase. Within the aforementioned period, specific time, quantity, price and way of share purchase shall be implemented by the assets management institution by agreement. Meanwhile, the listed company shall disclose the implementation of the ESOP within the reporting period in periodic reports.

In sum, as the first set of rules expressly regulating ESOPs of listed companies in our country, the announcement and implementation of the Interim Measures will help direct the employee salaries into long-term shareholding funds, combine the future profit derived from employee salaries and future value derived from securities of listed companies together, build up the system in which employees can share companies` development achievements and participate in companies` operation management, thus bettering the management capacity of listed companies, improving the operation efficiency of listed companies and finally realizing the optimal allotment of capital market resources.

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