

New Rules Strengthen Supervision of Asset Restructuring

By Christophe Han and Leo Wang

On 24 June 2009, the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) promulgated the *Notice on Regulating the Issues Concerning the Asset Restructuring between State-owned Shareholders and Listed Companies* (New Rules). This regulates actual and potential state-owned shareholders (SOS) injecting assets into/purchasing/replacing assets of/listed companies, as well as changes to shares they hold in the companies.

Under the full circulation of A-shares, the value of the shares held by SOS is reflected directly by the capital market. This makes the interests of SOS consistent with the interests of public shareholders. Any fluctuation in the value of the shares held by SOS has become one of the criteria to evaluate SOS's operational performance.

SOS expect to inject quality assets into listed companies and increasingly enhance their profitability to elevate performance and market value. Under these circumstances, SOS participation in the asset restructuring of companies has become increasingly common in recent years. But in the course of this participation, some companies have failed to pass examination by the state-owned assets regulatory body. Uncertainty surrounding the approval process has not helped, and this often caused sharp market fluctuations and, on occasions, insider trading. So it has therefore been very urgent to set out a specific approval process for such participation.

Approval guidelines

After issuing the *Guiding Opinion on Promoting Adjustment of State-owned Capital and Restructuring of State-owned Companies* and the *Opinions on Regulating the Activities of State-owned Shareholders of Listed Companies*, the New Rules were issued to specifically regulate the procedural issues on approval process and provide necessary guidelines for asset restructuring.

如果您需要本出版物的中文本，请与下列人员联系：

韩东红: (86 21) 3135 8709
Publication@llinkslaw.com

If you would like other Llinks publications, please contact:

Lily Han: (86 21) 3135 8709
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

New Rules Strengthen Supervision of Asset Restructuring

The New Rules set pre-approval by the regulatory body before a listed company's board of directors approves the restructuring plan. According to the New Rules, after the SOS complete their internal decision-making process, they are required to notify the listed company in writing pursuant to relevant provisions. The listed company shall disclose the same and apply for suspension on trading of its shares. Meanwhile, the SOS shall submit a feasibility report to the regulatory body at provincial level or above for pre-approval. The regulatory body shall make a decision within 10 days and inform the SOS in a timely manner after which the SOS shall notify the listed company in writing for disclosure.

During the suspension period prescribed by CSRC and the stock exchange, if the restructuring plan fails to be approved by the regulatory body the listed company's shares shall be traded again immediately and the SOS shall not restart the asset restructuring within three months. Since the suspension period prescribed by a stock exchange shall not exceed 30 days normally, the SOS and the regulatory body are required to complete the pre-approval process within a limited period of time.

A listed company's board of directors shall not deliberate on the restructuring plan prior to the regulatory body granting its pre-approval. If this is obtained, the SOS shall report the plan to the regulatory body at provincial level or above for approval at least 20 days prior to the shareholders meeting. The regulatory body shall issue an official reply five days prior to the shareholders meeting.

According to the CSRC's *Rules on Shareholders Meetings of Listed Companies*, if such official reply cannot be obtained from the regulatory body five days prior to the scheduled shareholders meeting, the listed company is required to issue a notice to postpone the meeting. It is also specified in the New Rules that the SOS should submit the restructuring plan to its shareholder(s) for approval after the pre-approval is granted by the regulatory body if the plan is required to be resolved by its shareholder(s).

The establishment of the pre-approval process strengthens supervision of asset restructuring between SOS and listed companies and avoids a situation where the restructuring plan is announced in the absence of pre-approval by the regulatory body. Since quality assets will be injected into listed companies on most occasions in asset restructuring, the regulatory body should conduct substantial examination before the meetings of a listed company's board of directors with the aim of strengthening the supervision of state-owned assets.

The pre-approval process should also eliminate market fluctuations, effects on the rights and interests of investors, and other legal risks associated with uncertainty of the approval process. This will better protect the interests of public investors and keep the stability and health of the capital market.

The New Rules also require that SOS actively work with listed companies to perform their disclosure obligations. Where necessary, they should urge listed companies to apply for suspension on trading of the shares with the stock exchange. If the prices of the securities or other derivatives of listed companies change abnormally and it causes material effect on the asset restructuring, SOS should adjust the asset restructuring plan.

New Rules Strengthen Supervision of Asset Restructuring

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Llinks contact.

Shanghai	Beijing
Christophe Han Tel: (86 21) 3135 8778 Christophe.Han@llinkslaw.com	Wayne Chen Tel: (86 10) 6655 5050 - 1022 Way.Chen@llinkslaw.com
Grant Chen Tel: (86 21) 3135 8699 Grant.Chen@llinkslaw.com	
Calista Huang Tel: (86 21) 3135 8788 Calista.Huang@llinkslaw.com	
James Weng Tel: (86 21) 3135 8660 James.Weng@llinkslaw.com	

This article was first published in *China Law & Practice*, September 2009, Volume 23, No.7.