

PRC-listed Companies Face New Cash Dividend Requirements

By Grant Chen and Zhengyi Zhang

Distribution of cash dividends is one of the most important methods for listed companies to provide the shareholders with rational investment returns. However, due to imperfect governance mechanisms, some listed companies do not have a sustainable and stable system for cash dividends. Some of them have distributed to their shareholders little or no cash dividends. As such, the China Securities Regulatory Commission (CSRC) recently released its *Decision on Revising Several Provisions for Cash Dividends by Listed Companies (Decision)*, aiming to urge listed companies to distribute cash dividends. The Decisions, following a draft released in August for public comments, took effect as of 9 October 2008.

The Decision, applicable to all listed companies as well as companies that are going public, includes provisions that involve several CSRC rules and regulations concerning cash dividends by listed companies, such as the *Administrative Measures for Listed Companies' Issuance of Securities*, the *Guidelines on Listed Companies' Articles of Association*, and the provisions on the content and format of listed companies' disclosures in quarterly, semi-annual and annual reports. The main points of the Decision are as follows.

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
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Firstly, the listed companies applying for refinancing should increase their cash dividend payment. Under the new Decision, the listed companies, if applying for refinancing, must accumulatively pay dividends in cash over the past three years equal to an amount not less than 30% of the average annual distributable profits realised over the past three years. In contrast, the draft released in August 2008 allows listed companies to pay dividends in either cash or stock, while under the Decision, they have no such choice, and dividends can only be distributed in cash.

Secondly, in order to encourage listed companies to establish long-term dividend payment policies, the Decision requires listed companies to prescribe their distribution policy in their articles of association and ensure the continuity and stability of such policy. Compared with the

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draft released in August, the Decision removed the content that requires listed companies to stipulate the requirements, proportions, and amounts of cash dividends in the articles of association.

Thirdly, the Decision requires listed companies to set up a transparent cash dividends policy. A listed company is required to disclose the implementation of its distribution policy within the reporting period in its quarterly, semi-annual and annual reports. In its semi-annual report, a listed company must explain whether its board of directors has formulated the preliminary plan for cash dividends. In its annual report, it must also explicitly disclose in a chart the amount and the ratio of the cash dividends to the net profits in the last three years in order for the investors to find out the previous data of dividend distribution. If a listed company has made profits in the current reporting period but fails to present a preliminary plan for cash dividends, it must disclose the reasons for such failure and explain the purposes of the retained funds that are not distributed in its annual reports.

Fourthly, by adding a provision to the *Several Provisions on Strengthening the Protection of the Rights and Interests of Public Shareholders*, the Decision encourages listed companies to distribute cash dividends at half-year end. Previously, under the *Notice on Some Issues about Regulating the Conduct of Listed Companies (Notice)*, a listed company could not distribute cash dividends at half-year end until its semi-annual financial report had been audited. Since such provision increased costs for a listed company to distribute dividends, most listed companies were reluctant to distribute dividends at half-year end.

In addition, the CSRC also reduces the restriction on cash dividends in the *Supplementary Provisions on the Share Buyback by Listed Companies by Means of Centralised Bidding (Supplementary Provisions)* which came into effect on the same day as the Decision. Under the Supplementary Provisions, the CSRC allows a cash dividend payment during the period of share buyback by listed companies through centralised bidding; such action was banned in the draft Supplementary Provisions released in late September 2008 for public comments. This restriction is removed from the final Supplementary Provisions by the CSRC.

The release of the Decision clearly shows CSRC's encouragement of cash dividends. The CSRC has requested its local offices, Shanghai Stock Exchange, Shenzhen Stock Exchange, and China Securities Depository & Clearing Corporation to do a good job on the supervision and services of the implementation of the Decision. On one hand, from a long-term perspective, implementation of the Decision can help offer stable investment returns to investors and is no doubt favourable to the stability and perfection of the capital market. On the other hand, PRC-listed companies will face stricter requirements and have less choice on paying dividends, especially when refinancing.

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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	

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