

Methods of Overall Listing and Related Legal Issues

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Along with the reform of the shareholder structure of listed companies, China's capital market has entered into an era of full circulation, in which all shares in the listed company that completed the reform are tradable shares. The reform encourages more enterprises to maximize shareholder profit with an overall listing, which resolves problems with connected transactions and intra-trade competition, and infuses listed companies with new growth momentum.

An overall listing refers to the practice of a company absorbing other companies within the same group, or its assets, with the goal of achieving an overall listing for the entire group. Generally speaking, an overall listing can be achieved through the following methods:

Method I: Share Exchange, Absorption, and IPO of the Parent Company

Where the parent company and the subsidiary belong to the same group, the parent company uses its entire IPO shares as absorption consideration in exchange for all the shares that are not exercised cash options of the subsidiary (a listed company), excluding shares already owned by the parent company. After the share exchange absorption, the subsidiary cancels its legal entity registration, and the subsidiary's stock (with the exception of stock held by the parent company) is converted into shares for this offering. Upon the successful IPO of the parent company, the entire group achieves overall listing.

Method II: Share Exchange, Absorption, Back-door Listing and Dissolution of the Parent Company

The listed subsidiary absorbs the parent company by share exchange. All shareholders of the parent company convert their capital contribution into shares of the subsidiary. The parent company's assets, liabilities, and rights are all taken over by the subsidiary and its legal entity is deregistered. Once the subsidiary completes the absorption of the parent company, the entire group completes the overall listing.

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Method III: Reverse Buyout of the Parent Company's Assets

The listed subsidiary uses a public offering and / or the directional increase of parent company's shares in the listed subsidiary to issue new shares to raise funds for the buyout of the parent company's primary business assets, and achieves overall listing of the group.

The overall listing of group enterprises faces multifaceted legal challenges due to the following issues:

➤ Major Asset Restructuring

The overall listing process may involve the issue of major asset restructuring. Listed companies should follow the CSRC's *Notice on Several Issues Concerning Major Purchases, Sales and Exchanges of Assets by Listed Companies* when implementing major asset restructuring, and provide relevant documents including the *Major Purchases, Sales and Exchanges of Assets Report* to the CSRC for examination and approval.

➤ Alteration of Share Rights and Controlling Power

The overall listing process will definitely involve changes in share rights of the listed company with possible alteration of controlling power. Listed companies should present relevant reports and disclose information according to the *Measures for the Administration of the Takeover of Listed Companies*. Prior to the change of controlling power taking effect, the controller of the company should make reparations to the damages incurred by the listed company caused by the controller, repay all of its debt to the listed company, and absolve all the guarantees made by the listed company to the controller.

➤ Tender Offer

In the overall listing process, if the acquiring party procures over 30% of the total share equity of the listed company or the acquiring party who holds over 30% of the total shares of the listed company further increases its shareholding ratio in the company, then the listed company and the acquirer should follow the *Measures for the Administration of the Takeover of Listed Companies* in their implementation of tender offer and relevant procedures or apply for exemption from tender offer.

➤ Pricing

The share exchange, absorption, and asset buyout all involve pricing of the relevant assets and stock in the overall listing process. Generally, the pricing of the exchanged shares is determined by the corresponding market price. If it is a listed company, then the stock price prior to the announcement of the plan shall be used as the base price. If it involves an unlisted company, then the P/E ratio and P/B ratio of similar companies in the same trade may be taken into consideration. The pricing of the asset to be acquired is generally determined by the appraised net asset value.

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➤ Cash Options

During the overall listing process, when the parent company and subsidiary implements merger by absorption, one party of the absorption usually will provide cash options to outstanding share holders through a third party to buyout outstanding shares. These cash options are similar to the appraisal right of dissenters implemented by Company Law, by protecting the interest of minor shareholders when the company is involved in major mergers. However, cash options do not involve the company's buyback of its shares, involving instead a third party for the buyout. This avoids capital pressure from the surviving company's buyback, and also prevents the surviving company from canceling shares and registered capital.

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