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Issues on Stock Incentive Plan of PRC Listed Companies

By Grant Chen and Patrick Chen

With the development of the capital market in China, more and more PRC listed companies have approved their stock incentive plans to incentivize their management and key employees.

The following three measures dictate the present rules regulating the stock incentive plans of listed companies in China.

On 31 December 2005, the China Securities Regulatory Commission (**CSRC**) promulgated Measures for the Administration of Stock Incentive Plans of Listed Companies (Trial Implementation) (**CSRC Measures**); on 27 January 2006, the State-Owned Assets Supervision and Administration Commission (**SASAC**) and the Ministry of Finance (**MOF**) promulgated Measures for Implementing Stock Incentive Plans of Offshore State-Holding Listed Companies (Trial Implementation) (**SASAC Domestic Measures**); on 30 September 2006, the SASAC and the MOF promulgated Measures for Implementing Stock Incentive Plans of Domestic State-Holding Listed Companies (Trial Implementation) (**SASAC Offshore Measures**).

Three Manners of Stock Incentive Plan

➢ Stock Option Plan

Under a stock option plan, the listed company shall grant the qualified option grantees the right to purchase a certain number of shares of the listed company in a certain period in the future at the price and conditions as provided in the stock option plan duly approved. Many listed companies, such as GUANGDONG MIDEA ELECTRIC APPLIANCES CO., LTD (000527 SZ) and SHORE OIL ENGINEERING CO., LTD (600583 SH), disclose their stock option plans.

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- Restricted Stock Plan

  Under a restricted stock plan, the listed company shall grant a certain number of restricted stocks to the qualified stock grantee pursuant to the restricted stock plan. Usually, the restricted stock shall be locked for a certain period, and in the case of a state-holding listed company, for at least two years after this period the stock grantee may sell the restricted stock in a certain period as provided in the restricted stock plan duly approved. HUNAN VALIN STEEL TUBE & WIRE CO., LTD (000932 SZ) is a listed company adopting the restricted stock plan to incentivize its domestic senior officers.

- Phantom Stock Option Plan

  Under a phantom stock option plan, the listed company shall grant certain qualified option grantees the right to enjoy the value-added right of the fictitious stock in a certain period pursuant to the phantom stock option plan. The option grantee will not hold the stock or its voting right after exercising the option, but will enjoy the added value of the fictitious stock. HUNAN VALIN STEEL TUBE & WIRE CO., LTD (000932 SZ) is a listed company adopting the restricted stock plan to incentivize its overseas senior officers.

Who will be the Grantee?

According to CSRC Measures, grantees may include directors, supervisors, senior executives and core technicians (business) of a listed company, and other employees as provided in the stock plan, but exclude independent directors. Supervisors shall not be the grantee in a state-holding listed company as provided in the SASAC Domestic Measures and in the SASAC Offshore Measures.

Source of the Incentive Stock

Except for the phantom stock option plan, the listed company shall prepare the incentive stocks under a stock option plan or a restricted stock plan. The listed companies may issue additional shares to the grantees, or repurchase the shares from the capital market to transfer to the grantees, or may adopt other manners permitted by laws or regulations, for example, by transferring a number of stocks from existing shareholders to the grantee. However, according to the SASAC Domestic Measures, the stock shall not be transferred from a single state-owned shareholder.

Ceiling Amount of Incentive Stock

The ceiling amount of all the incentive stocks shall not exceed 10% of the total stocks of a listed company, and a single grantee shall not obtain more than 1% of the total stocks of a listed company unless approved by the shareholders' meeting with more than 2/3 affirmative votes in the meeting.

Issues in a Stock Option Plan

- Exercise Price

The listed companies shall fix the exercise price or determine a method to fix the exercise price when granting stock options to grantees. The exercise price shall be no less than the higher of (a) the closing sales price of stock of the listed company one trading day before the disclosure of the brief of the stock incentive plan (draft); and (b) the average closing sales prices of the listed company during the 30 trading days before the disclosure of the brief of the stock incentive plan (draft).

- Grant Date and Exercise Date

Usually, the date when the stock option is exercised (**Exercise Date**) shall be at least one year after the date when the stock option is granted to the grantee (**Grant Date**), and the grantee shall exercise the stock option within ten years after the Grant Date. In the case of a state-holding listed company, according to the SASAC Domestic Measures, the Exercise Date shall be at least two years after the Grant Date and the grantee shall exercise the stock option, in principal equally, within at least three years after the Exercise Date.

Contact Details

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