Regional updates

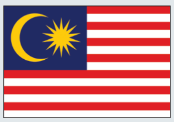
Each month, *ALB* draws on its panel of country editors to bring readers up to date with regulatory developments across the region

CHINA
Paul Weiss

PHILIPPINES
SyCip Salazar Hernandez & Gatmaitan

INDIA
Link Legal

MALAYSIA
Tay & Partners



SINGAPORE
Loo & Partners

For more information about ALB regional updates and how to participate, contact Joseph Lee (+852 2815 5988)

CHINA

Paul | Weiss

CSRC Restricts Share Placings in Follow-on Offerings

In May 2006, the Chinese Securities Regulatory Commission ("CSRC") promulgated the Measures for the Administration of Securities Offerings by Listed Companies (the "Offering Measures"), which established a legal framework for listed companies issuing additional common shares through rights offerings (i.e., to existing shareholders pro rata to their holdings) or placings (i.e., without first offering them to existing shareholders) and convertible bonds. Among these types of offerings, placings allow the issuer to attract selected strategic or financial investors, but the interests of the issuer may conflict with those of existing shareholders, who risk being diluted against their will. The Offering Measures prescribe conditions for placings, including corporate and CSRC approval requirements, a price floor and a lock-up for placees (12 months, extended to 36 months if the placee is the controlling shareholder or one of its affiliates).

On September 17, 2007, CSRC issued implementing rules to the Offering Measures (the "Implementing Rules"), which added further, and more restrictive conditions. The Implementing Rules require that, with certain exceptions, the placees and the subscription price must be determined by a competitive process.

As an exception to this rule, the issuer may determine the placee(s) and the subscription price by agreement, if the placee is a controlling shareholder or one of its affiliates, acquires control through the placing or is a domestic or foreign strategic investor. All these placees are locked up for three years, whereas the Offering Measures did not impose this restriction on strategic investors. Thus, a foreign investor who wishes to participate in an offering must either satisfy the qualification requirements under the Administrative Measures on Strategic Investment in Listed Companies by Foreign Investors issued in December 2005 by CSRC and other authorities and hold its shares for three years, or successfully bid for offered shares and remain locked up for one year.

Also, the Implementing Rules require generally that placings must be beneficial to the listed company by reducing connected transactions, avoiding competition, increasing independence and enhancing its financial position. As these criteria are vague, they allow CSRC discretion in approving or rejecting proposed placings.

It remains to be seen whether CSRC will use the Implementing Rules to protect public shareholders against a dilution of their stakes which cannot be justified by a benefit for the issuer, or to control the acquisition of substantial interests by certain investors.

Written by:
Hans-Gunther Herrmann, counsel

Paul, Weiss Rifkind, Wharton & Garrison
Unit 3601, Fortune Plaza Office, Office Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District
Beijing
Jeanette K. Chan, partner
Email: jchan@paulweiss.com
Ph: (8621) 5828-6300 or (852) 2536-9933