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The President's Message



Dear Colleagues,

The IPBA annual conference of 2007 was held in late April in Beijing, China. Seven hundred lawyers from 45 countries attended the annual conference and spent a meaningful and enjoyable time in

Beijing, where everyone could see the intensive efforts exerted by the people of Beijing in their preparation for the 2008 Summer Olympics.

As the President of IPBA and Chairman of the Host Committee of the 17th Annual Conference of IPBA, I would certainly like to express my sincere thanks to all those who have supported and worked for the Beijing Conference. It is impossible for the Conference to be successful without the strong support of the Ministry of Justice of PRC, the All China Lawyers Association and local bar associations of Beijing and Shanghai.

In the opening ceremony, Mr Luo Gan, member of the Political Bureau Standing Committee of the Central Committee of CPC addressed the ceremony with warm words, encouragement and acknowledged the positive role played by IPBA in promoting the development of the legal profession in the Asia-Pacific region. The other VIPs who attended the opening ceremony were Mr Zhou Yongkang, State Councillor, Mr Xiao Yang, Chief Justice of the Supreme People's Court, Mr Jia Chunwang, Chief Procurator of the Supreme Procuratorate, Madam Wu Aiying, Minister of Justice and Mr Wang Qishan, Mayor of Beijing.

The Conference, which had the theme of 'The Lawyers' Role in Promoting Harmonious Development of Asia and Pacific Region', invited a range of high-profile speakers from China and other countries including Mr Xi Xiaoming, Vice President of the Supreme People's Court, Mr Zhao Dacheng, Vice Minister of Justice, Mr Liu Shiyu, Vice President of the People's Bank of China, Mr Gui Minjie, Vice Chairman of China Securities Regulatory Commission, Mr Wang Dongming, Chairman of CITIC Securities Co Ltd and Dr Urs Buchmann, Managing Partner, Head, China Commercial Banking, Credit Suisse. The speeches delivered by them aroused great interest of the attendees and gave them better understanding of the court system and the handling of civil and commercial cases by courts, the history and development of China's legal profession, the build-up of China's legal system, the economic situation and finance and securities in China.

In the two-day Committee Session, delegates were very enthusiastic while involved and their comments were very positive in the session.

Once again, I sincerely thank the members of the Host Committee and other staff led by Madam Feng Xiumei for their arduous efforts, excellent execution and dedication to produce a memorable Annual Conference.

I strongly hope all of my colleagues and council members of IPBA will make joint efforts to promote the development of IPBA and strengthen our friendship. We can see and expect the bright future of a stronger and healthier IPBA.

Gao Zongze
President

The Secretary-General's Message



Dear IPBA Members,

I thank all of you for the honour of being your new Secretary-General. I hope to be a worthy successor to Mr Koichiro Nakamoto who had served with distinction as my predecessor.

During my term of office, I hope to see IPBA strengthened in terms of increased membership and greater revenues, but most of all, the enhancement of morale amongst its members, leaving no doubt to all that we belong to the premier business lawyers' organization in the Asia Pacific.

In May, on my first trip to Tokyo to meet with the Secretariat, I was invited to attend the IPBA Japan Jurisdiction's social function. I was pleased to see a great number of young members and potential members. Some of the youthful but experienced lawyers amongst them indicated that they are ready to assume leadership in IPBA in the future. The call for renewal of leadership goes out to all of you whatever your jurisdiction is. I would encourage each of you in your jurisdiction to make the effort to form IPBA chapters in your own country, and to begin programs for renewal

of membership amongst those lapsed members and to regenerate IPBA enthusiasm among young practitioners, and encourage the ones who are ready to assume leadership positions in IPBA to make the approach.

Our mid-year meeting this year will be in Kuala Lumpur and plans are well underway with Jurisdiction Council Member, Dato Abdul Raman Saad and IPBA members in Malaysia working very hard to give us an outstanding welcome. As the meeting comes immediately after the International Bar Association meeting in Singapore, which will be attended by some Council Members, the Kuala Lumpur meeting will, in the interest of saving time, be a short and business-like affair. But we assure you that serious matters will be discussed to move IPBA forward and to improve our relevance to our members, and for those who enjoy the socials as much as I do, I have been assured by our hosts that they will be incomparable in their hospitality.

I give you all my best wishes.

Arthur Loke
Secretary-General

The IPBA 17th Annual Meeting and Conference in Beijing





A Hypothetical Initial Public Offering and a Hypothetical Reverse Merger into a 'Public Shell'



This article explains the methods in which PRC-based companies can become publicly traded in the US using a hypothetical case study

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Introduction

Twenty-seven companies from the People's Republic of China currently trade on major stock exchanges in the United States, *ie*, New York Stock Exchange ('NYSE') and NASDAQ National Market System 'NMS'. In addition, listed on the same exchanges are 40 companies incorporated under Cayman Islands, Bermuda or British Virgin Islands law but which are holding companies whose principal operating subsidiaries are in the PRC. The number of holding companies whose core business is in the PRC and which trade in the over-the-counter bulletin board ('OTCBB') or in the 'pink sheets' in the US is in the hundreds.

There are two ways these PRC-based companies became publicly traded in the US. They were (1) an initial public offering ('IPO') and (2) a reverse merger with a publicly-traded 'shell' corporation. A 'shell' in this context is a company that is registered with the US Securities and Exchange Commission ('SEC') but has little or no active business. The Chinese companies listed on the major exchanges all made initial public offerings in the US.

The following discussion takes a hypothetical company called 'SinaTech, Ltd' and follows both of these methods. The discussion first outlines the pros and cons of going public. It then describes the IPO process, breaking it down into the various steps necessary to bring a company's equity (for a PRC company, generally through offering American Depositary Shares in an offshore holding company, such as a Cayman Islands corporation) to the US marketplace. It covers not only the traditional form of IPO, where the price and allocation of the shares of stock are largely determined by the underwriters, but also the more recent 'Dutch auction' method, where the price and allocation are in the hands of prospective investors who bid for the stock. It concludes with a description of the reverse merger technique, including a form of merger agreement.

Pros and Cons of Becoming a Public Company

Pros

Let us assume that our hypothetical Chinese company called 'SinaTech, Ltd,' which is involved in nanotechnology, is considering the possibility of becoming public in the US. What are the factors it should consider in deciding if and when to do so? Two obvious benefits of an IPO in the US are the generation of new funds for the enterprise and improved liquidity for existing shareholders. Other important benefits of going public include: (a) more

readily ascertainable market value of the company, (b) the ability to make acquisitions by paying with securities rather than cash, (c) increased access to financing through commercial lending, (d) ability to attract and retain top US managers and employees, (e) increased worldwide name and brand recognition, and (f) greater prestige among customers and suppliers.

The reverse merger into a so-called ‘shell’ corporation has some but not all of the foregoing benefits. In most cases, the stock of the resulting entity is not widely traded in comparison to NASDAQ or NYSE-listed stocks, hence the market price for the stock is likely to be highly volatile and subject to wide fluctuations in response to factors such as actual or anticipated fluctuations in operating results. Such stock is typically quoted on the OTC Bulletin Board or in the Pink Sheets, which results in a less liquid market available for existing and potential stockholders to trade shares.

In addition, shares of the resulting company in a reverse merger may fall under SEC regulations that govern so-called ‘penny stocks’. A penny stock is an equity security that has a market price less than \$5.00 per share or an exercise price of less than \$5.00 per share (subject to certain exemptions, such as a company that meets certain net worth criteria). Many shares resulting from reverse shell mergers trade under \$5.00 and hence are designated a ‘penny stock,’ making them subject to the SEC’s ‘Penny Stock Rule’. This rule imposes additional sales practice requirements on broker-dealers that sell such shares to persons other than established customers and ‘accredited investors’ (generally, individuals with a net worth in excess of \$1,000,000 or annual income exceeding \$200,000 or \$300,000 together with their spouses). For transactions covered by the rule, a broker-dealer must make a special suitability determination for the purchaser and have received the purchaser’s written consent to the transaction prior to sale. This can affect the ability of broker-dealers to sell the shares and may affect the ability of purchasers to sell any of the shares in the secondary market.

Cons

There are some disadvantages to going public in the US. One is compliance with the continuous reporting requirements imposed on public companies under the Securities Exchange Act of 1934 (the ‘Exchange Act’). While registering under the Exchange Act is relatively simple, the periodic and event-based reporting obligations under the Exchange Act require a significant amount of management and employee time as well as the expense of attorneys and accountants. In addition, Exchange Act obligations will sometimes require disclosure of information that the issuer, its directors, management and

controlling stockholders might otherwise want to keep to themselves. For example, sensitive financial and business information, executive compensation, transactions between the company and its directors, management and major stockholders, and various employee benefits must all be disclosed in—reports filed with the SEC and made available to the public upon request. Since the passage of the Sarbanes-Oxley Act in 2002, new requirements for certification of periodic SEC filings by the principal executive and financial officers have been enacted, and penalties for failure to file accurate reports have escalated.

Directors, officers and major stockholders of SinaTech, Ltd, will also have to file reports with the SEC disclosing most of their transactions in the company’s stock. Other potential negatives include adverse consequences of failure to meet earnings forecasts (missing a quarterly earnings target can reduce the company’s stock by 50 per cent or more) and greater vulnerability to a hostile takeover by another corporation.

How a Company Puts Together and IPO

In contrast with China and most countries in the world, securities laws in the US are based on disclosure, not merit, though the nation’s leading stock exchanges—the NYSE, NASDAQ, and the American Stock Exchange—all have their own rules and requirements governing listing and related matters. The SEC, the agency responsible for administering federal securities laws, has no profitability rule. It does not approve the prospectus, or registration statement, of a company—issuer in securities parlance—seeking to sell shares in an IPO or secondary public offering. Instead, the SEC clears a company’s registration statement—an important distinction.

Although the SEC does not impose profitability or revenue standards, not every Chinese company that would like to issue shares publicly in the US will be in a position to do so. Factors affecting the ability of a company to put together a successful IPO include (i) its past and current financial performance, particularly over the last five years, (ii) its realistic financial projections for the future, (iii) the ‘brand’ it has in its product or service line, (iv) the experience and depth of its management, (v) the kind of products it has in the market and their growth potential, and (vi) a sound business plan to present to investment bankers who would be prospective lead managers in an IPO. The company also needs attorneys and accountants experienced in dealing with the SEC. A determining factor in whether an IPO will succeed may be the receptivity of the investors to new stock issuances in a company’s particular business at the time that the IPO is undertaken.

The Regulatory Framework Governing Issuance of Securities

Outline of the US Federal Regulatory Scheme

The principal US federal law governing public issuance of new securities in the US is the Securities Act of 1933 (the 'Securities Act').¹ The Securities Act generally requires registration with the SEC of securities that are publicly offered. The purpose of registration is to require the company offering securities to the public to disclose material information about itself to potential investors. Trading in already-issued securities is controlled principally by the Exchange Act.² The Exchange Act generally requires registration with the SEC of those engaged in the securities business as broker-dealers and registration national securities exchanges. While both the Securities and Exchange Acts address securities fraud, the focus of the Securities Act is on securities issuance, while that of the Exchange Act is more on market participants and post-issuance market trading.

Interface between Federal and State Regulatory Schemes

A company doing an IPO generally will, upon sale of the securities being offered, be able to list them on the NYSE or American Stock Exchange or qualify them for inclusion in the NASDAQ NMS, in which event the several states' role in requiring qualification of the securities is preempted.³ Federal law also largely preempts state regulation of security issuances that exempt from Securities Act registration as being private offerings.⁴ Thus, the states have no substantive authority over private placements made in reliance on SEC Rule 506 in Regulation D; however, the states retain authority to regulate most other kinds of small offerings that are exempt from federal registration, particularly those exempt by reason of SEC Rules 504 and 505.⁵ The balance of this discussion will assume that the American Depositary Shares of SinaTech, Ltd will qualify for inclusion in the NASDAQ NMS, hence it would not have to comply with the many state 'blue sky' regulations that would otherwise apply.

The Basic IPO Process

Initial Steps: Selection of Lead Managing Underwriter

After SinaTech, Ltd has decided to make a public offering of equity by means of an offering of common stock in a Cayman Islands company that owns essentially all of SinaTech, Ltd, one of its first steps will be selection of the investment banker to act as the 'lead manager' of the underwriting. The lead manager, together with any other firm or firms selected as 'co-managers,' will pull together a group of investment bankers (the 'syndicate') to underwrite collectively SinaTech IPO. In

selecting its lead manager, SinaTech will typically rely on the investment banker's reputation in the financial community and on its knowledge and expertise in fields related to SinaTech's business, as demonstrated in large part by other IPOs or mergers and acquisitions it may have been involved with in the field of nanotechnology or cognate areas, or any research coverage it has done in the area.

While IPOs can be managed by just one lead manager, they are more commonly co-managed by several, with the lead (or book-running) manager being the most important. The lead manager customarily makes all the underwriting arrangements with the company, establishes the schedule for the transaction and takes on the primary responsibility for the so-called 'due diligence' process (discussed below). The lead manager is also primarily responsible for pricing and distribution of the stock, assembling the syndicate of underwriters and the selling group that assists in offering the shares to the public.

Marketing the IPO: A Traditional Underwriting or a 'Dutch Auction'?

The traditional form of underwriting arrangement is called a 'firm commitment' underwriting. This contrasts with the newer Dutch auction system that was used by Google in 2004 and Morningstar in 2005, discussed below under the sub-heading 'Dutch Auction Underwriting'. In a traditional firm commitment deal, the underwriters directly purchase the entire issue of securities from the company at a discount from the IPO price and then try to resell the same securities to the public at the IPO price. The difference between the discounted price per share which the underwriters pay for the securities and the price at which they resell is called the 'gross spread'. The sale price of the shares included on the IPO is negotiated between the company and the underwriters, just before the public sale begins.

For their services in the IPO process, the lead manager, co-managers and members of the syndicate receive compensation from the gross spread. The lead manager typically receives as its fee around 20 per cent of the gross spread for originating and managing the deal. (If there are co-managers, they will share in this fee on a negotiated basis). The amount received by the lead manager and other syndicate members is called the 'selling concession' and is typically 60 per cent of the gross spread. The balance of the gross spread, about 20 per cent, is distributed to the syndicate after reimbursing expenses of the underwriters such as their legal fees and expenses, road show costs and the like.

A new model for IPOs which surfaced in 1999 and was developed by WR Hambrecht & Co is the so-called 'Dutch auction' system, conducted almost entirely on the Internet. In 2004, the search engine

'Google' went public in one of the largest IPOs of this decade, using a slightly modified Dutch auction in which two old-line investment banking firms were the managing underwriters. It was by far the biggest IPO done so far using the auction system. The Dutch auction system allows institutions, professionals and individual investors to enter confidential bids on an auction screen on the Internet at a fixed price for a certain number of shares being publicly offered. The issuer can close the electronic auction at any time, and an investor can modify or withdraw any bid until the auction is closed.

Development of an IPO Plan

The IPO market in the US is heavily geared toward institutional investors. Individuals have traditionally had difficulty gaining access to the best new stock offerings. To generate demand at the institutional level, it will be useful for SinaTech to have a well considered Business Plan for its first meetings with prospective underwriters. The Business Plan should not only show how SinaTech, Ltd would be attractive to potential investors, but would also form the initial basis for due diligence, by including material facts about the company that a securities analyst would likely deem material to an investment decision.

It is important for SinaTech to identify its area of focus. In the case of our hypothetical SinaTech, its founders and management believe that they have developed production processes and techniques that are allowing cheaper development of extremely small semiconductors. Specifically, SinaTech has focussed for several years on innovative processes for making single wall carbon nanotube ('SWNT') circuits and materials. These SWNT cylinders, which are made of carbon atoms and have diameters ranging from one nanometer to 300 nanometers, are some of the strongest materials known. SWNTs are either conductors or semiconductors, depending on their structure and environment, and can conduct heat and electricity extremely well. SinaTech's management believes that the company's secret and patent applied for new process for producing SWNTs allows production of greater amounts of usable semi conducting nanotubes at lower costs.

The IPO Plan should always give an investment banker sufficient background on the industry and relevant technology to understand where the company fits in. For example, the SinaTech, Ltd Business Plan should discuss the background and evolution of carbon nanotubes, through the discovery in 1991 by Sumio Iijima in Japan of a fullerene that was cylindrical, rather than spherical, *ie*, the hollow carbon nanotube. The Plan should also show why the product or technology will make a significant impact in the area it has targeted. For example, beyond

manipulating nanotubes individually (a slow and tedious process), until relatively recently there has been no practical way to separate metallic from semiconducting nanotubes in production. In 2001, an IBM team broke partly through this problem by using an electric shockwave to destroy the metallic nanotubes and leave only the semiconducting nanotubes needed to build transistors. IBM also built the world's first array of transistors out of tiny carbon, cylinders about 10 atoms across, or 500 times smaller than existing silicon-based transistors. Management of SinaTech believes its new process is far more effective than even the IBM process, because it can produce more semiconducting than metallic SWNTs in the first place, thereby greatly reducing the need to destroy the metallic tubes. By dropping the cost of purified nanotubes suitable for semiconducting from the existing range of \$250,000 a pound to a fraction of that figure, SinaTech believes it can make a material impact on the marketplace by opening up the number of applications. Moreover, immediate market opportunity is available to SinaTech because of its large contract to supply carbon nanotubes to a major US chip designer and manufacturer.

Another critical consideration to the potential investing public is the size of applicable market. While the present size of the world SWNT market is small, with the product being primarily used in research at institutions like Tsinghua University in China and elsewhere, if SWNTs were to successfully displace silicon in the manufacture of electronic circuits, the size of the nanotube market worldwide would become enormous. A new, nonvolatile random access memory chip based on SWNTs could conceivably replace dynamic RAM, static RAM, flash memory and even hard disk storage in both existing and brand new applications, all of which constitutes a market over \$100 billion per year.

Financial Information

A critical element in the Plan is the past financial history and the financial projections. An investment banker wants to determine whether management has thought through the ways in which the enterprise will generate new revenues and increase earnings. The Business Plan should also specify the 'pro forma' capitalization of the company after the IPO, by class of stock or unit (*eg*, common and preferred), indicating the percentage of the company's capital stock (for a corporation) that will be represented by the offered securities as well as (a) the percentage beneficially held by each of the company's promoters, officers, directors or other controlling persons, and (b) the percentage of equity 'reserved' for issuance to future employees and consultants of the business. Of course, this



Photo: Amanda Rohde

requires an assumption as to the amount of securities to be sold in the IPO.

Management

Strength of management is important to institutional analysts in evaluating whether to invest in an IPO. The biographical information about SinaTech, Ltd's 'key players' should be prominently disclosed in the Plan. Moreover, the boards of directors of high-tech companies preparing to go public often consider having an experienced Chief Executive Officer ('CEO') to be in place if the IPO is successfully concluded. Having a solid, experienced CEO will help boost the per share IPO price. In addition to describing the relevant experience of the company's management team, the Business Plan and/or supplemental disclosure document should disclose all material compensation and financial arrangements between the company and each of its promoters, officers, directors and other controlling persons, including all outstanding securities, or

rights, warrants or options to purchase securities, of the company held by such persons.

Risk Factors

Both the IPO Plan, and ultimately the prospectus, should give a balanced description of the risk factors facing the company. For example, SinaTech's risk factors would include such things as the newness of its technology, and the length of time required to (a) perfect its new process, (b) obtain additional partners and end users (chip manufacturers) and (c) increase its commercial viability. They could also include questions peculiar to nanostructures: How will the company overcome the unreliability of individual devices? Can the company monitor effectively for production glitches?

Risks related to company management include whether the company is overly dependent on one or two key persons, the loss of either of whom would create a giant gap in the operation. Another issue is whether higher management includes so-called

‘seasoned’ managers who have experience in directing operations, as contrasted with those whose only experience is in the testing laboratory.

Other risk factors that should be touched upon in the Plan are known competition and other technologies that may breed newer competition. This includes actual and potential competition. The Plan should identify all potential competitors which are already well established in the manufacture of carbon nanotubes.

Pre-filing or ‘Quiet’ Period

Letter of Intent

Once SinaTech comes to a preliminary oral understanding with a potential lead manager or co-managers—whether in a traditional IPO or a Dutch auction—an initial step is for the lead manager to draft a ‘letter of intent’. This letter is generally not legally binding, except for a few provisions. In the letter, the lead or co-managers agree, on behalf of still-to-be-formed underwriting syndicate, to purchase the shares of SinaTech and distribute them to the public. An important aspect of the letter of intent from the perspective of the lead manager is to protect its incurred expenses if the IPO is withdrawn before the registration process is completed. Accordingly, the letter of intent typically contains a binding clause requiring the company to reimburse the lead underwriter for any out-of-pocket expenses incurred during the process.

The letter of intent will also specify the gross spread, also referred to as the ‘underwriting discount’. The gross spread in traditional underwritings has historically been seven per cent, although recent competitive factors can reduce this and the percentage can be higher in small cap deals. The spread in the Dutch auction is usually four per cent. The letter of intent will also typically include a commitment by the lead underwriter to enter into a firm underwriting commitment agreement with the issuer (here, SinaTech), an agreement by SinaTech to cooperate in all due diligence efforts and make available all relevant information to the underwriter and its counsel. It typically includes a commitment by the company to grant a 15 per cent over allotment option to the underwriters. This over allotment option allows the underwriting syndicate and selling group to sell more shares than those specified at the front of the prospectus and to be able to deliver those shares to the public by exercising the option, by granting the underwriting syndicate a period of anywhere from 15 to 45 days (usually 30 days) after the effective date to purchase additional shares from the issuer at the same price (with 10 per cent underwriting discount) as the price of the basic shares being sold. This allows the underwriters to cover oversubscriptions for the shares.

In most cases, no stock selling price will be included in the letter of intent. The letter of intent, which is mostly non-binding, stays in place until it is superseded by execution of the Underwriting Agreement. Such execution occurs at the time of pricing, when the underwriting syndicate becomes firmly committed to buy shares at a specific price from SinaTech. By then, the lead manager will have developed a sense of how successful the public offering will be and will have determined a price which will generate sufficient market appetite.

Drafting the Registration Statement and Prospectus; ‘Due Diligence’

To comply with the Securities Act, SinaTech, its counsel and the managing underwriters will work together to draft a registration statement for filing with the SEC. This effort starts with an ‘all hands’ meeting at which all who will be involved with the IPO attends. SinaTech would be represented at the first meeting by key officers, including its Chief Financial Officer, as well as inside and outside legal counsel. Also involved would be a corporate finance team from the lead manager (and any co-managers), outside legal counsel for the manager, and representatives of SinaTech’s independent auditors.

Drafting the registration statement (which includes the preliminary prospectus) will usually take about a month from the initial all-hands meeting, requiring many other meetings of the working group. The registration statement consists of two parts: the prospectus, which must be furnished to every purchaser of the securities, and ‘Part II’ which contains information that need not be furnished to the public but is made available for public inspection by the SEC.

The contents of the prospectus, governed by Section 5 of the Securities Act and supporting regulations adopted by the SEC, are intended to give the public adequate and reliable information regarding the securities being offered for sale. To this end, the securities laws require that the underwriter exercise ‘due diligence’ in investigating SinaTech’s business and operations and in verifying the information contained in the SEC filings and the prospectus provided to investors. The term ‘due diligence’ encompasses both an underwriter’s affirmative responsibilities to investigate the company and the defense that an underwriter may assert to avoid liability claims brought under the Securities Act.

The lead manager’s due diligence investigation really begins with its review of the company’s Business Plan, discussed above. However, it goes more deeply into the company’s business and operations. Due diligence will include an independent assessment of the company’s industry in general and discussions with the issuer’s

management concerning market and competitive information that management believes should appear in the registration statement. Proper due diligence does not end with the receipt of information from management, but requires that the underwriter independently seek to verify the information it has been given.

While the Securities Act requires securities in an IPO to be registered, it gives the SEC no substantive authority over the quality or merits of the securities. Instead, the Securities Act requires that an IPO issuer such as SinaTech disclose all material facts in the prospectus. To achieve this end, the Securities Act requires that SinaTech's registration statement be signed by all of its directors and principal officers, as well as the underwriters, accountants, appraisers and other experts who assisted in the preparation of the registration statement. Any purchaser of the securities who is damaged as a result of a misstatement or omission of a material fact in the registration statement may sue these signatories.⁶

Restricted Communications during The Pre-Filing or 'Quiet' Period

After SinaTech reaches its decision to make a public offering but has not yet filed its registration statement with the SEC, it is in what is called the 'Pre-Filing' or 'Quiet' Period. During this period, all offers to sell, or solicitations of offers to buy, the Company's securities are prohibited. What constitutes an offer to sell or a solicitation of an offer to buy is largely subjective, and the SEC and the courts have taken a broad view of what constitutes an offer. In general, anything that may be viewed as designed to arouse public interest in the Company or condition the market in anticipation of the securities offering may be deemed to constitute an offer.

The SEC has provided two safe harbors for communications to the public during the pre-filing period. The first of these gives a bright line exemption for all communications during the 30-day period immediately before a registration statement is filed that do not reference a registered securities offering, provided that SinaTech takes 'reasonable steps' within its control to prevent further distribution of the information. SinaTech should pay particular attention to the 'reasonable steps' to prevent further distribution requirement. For example, an interview given to a newspaper reporter more than 30 days before the filing of the registration statement could still be a violation if it was published inside the 30-day window. Because SinaTech cannot know the exact date on which the registration statement will actually be filed, it should use caution in giving media interviews that will be published later.

The second safe harbor allows ongoing communication of regularly-released factual

business information. This in effect codifies prior SEC interpretive positions regarding communications such as product advertising, discussions with vendors and employees, and the release of business or financial developments. To comply with the new safe harbor, SinaTech must have previously released the same type of information in the past, the timing, manner and form of the release of the information must be consistent with SinaTech's past practices and it may not be directed to investors or potential investors. This means SinaTech must have a track record of providing the same type of information to the marketplace in order to rely on those safe harbors. In addition, in order for the safe harbor to apply, the release of information may not be used in the marketing activities of registered offering. Once the communication is used in marketing activities (eg, a press release specifically distributed to potential investors as part of a concerted marketing effort), SinaTech would have violated the gun-jumping provisions of the Securities Act.

Postfiling (or 'Waiting') Period

The waiting period commences upon filing of the registration statement with the SEC and continues until the registration statement is declared effective by the SEC. During the waiting period, SinaTech may make oral offers, and written offers of its securities may be made by means of a preliminary prospectus meeting the requirements of the federal securities laws or a 'free writing prospectus' that complies with the conditions for use contained in new rules that became effective in December 2005.

In a Dutch auction offering, during the waiting period the underwriters and participating dealers solicit bids from prospective investors via the Internet, telephone and facsimile. Such bids are not solicited until the issuer has had the chance to 'vet' the SEC's first wave of comments and has filed an amended prospectus with a proposed price range in the prospectus. The bids specify (i) the number of shares of the issuer's stock the prospective investor proposes to purchase and (ii) the price that the investor is willing to pay. These bids may be above or below the proposed price range per share set forth on the cover page of the prospectus. There is typically a minimum bid size (eg, 100 shares in the Hambrecht OpenIPO).

Limitation on Communications in the Waiting Period

Limited Notices Concerning the Offering
SinaTech can issue a public notice or press release with limited information, such as limited factual information about the company, information about the terms of the securities and the offering, and other procedural information about how to participate in the offering. New SEC Rule 134 is designed to provide

a medium for issuers, underwriters, or participating broker-dealers to communicate procedural matters about an offering. In addition, certain price-related information about a security may be included in a press release or other public notice only if the prospectus in the registration statement also includes the required pricing information at the time the statement is made.

Free-writing Prospectuses

SinaTech may during the waiting period disseminate a 'free-writing prospectus.' This is a written (or electronic) offering document that does not satisfy the fulsome informational requirements for a preliminary prospectus. Free writing prospectuses are not subject to any content requirements or restrictions, other than anti-fraud considerations, but its context may not conflict with the disclosure in the preliminary prospectus. Accordingly, SinaTech may disseminate through various media written sales materials to target different investor audiences, to use term sheets to negotiate and structure a deal or to use the news media as a method of disseminating information to the marketplace.

There are certain conditions on the use of free-writing prospectuses in connection with an IPO. The free-writing prospectus must be accompanied by or preceded by a preliminary prospectus that includes a price range and all price related information, based on the midpoint of the range. This requirement can be satisfied by sending the free-writing prospectus electronically, in a communication that includes an active hyperlink to the eligible preliminary prospectus. In effect, the concurrent delivery requirement precludes dissemination of free-writing prospectuses by means of television, newspaper or radio, because it is impracticable to deliver a preliminary prospectus prior to or concurrent with the broadcast or publication. Use of the Internet facilitates concurrent delivery. Bona fide publications by legitimate news media that are not arranged by or on behalf of an issuer are excluded from the concurrent delivery requirement (see discussion below). In most cases, an issuer doing an IPO will not include a price range in its initial filing. Therefore, it is likely that SinaTech will not be able to use a free-writing prospectus until later in the offering period, once a preliminary prospectus with a price range has been filed and the marketing effort commences.

The free-writing prospectus must have a prescribed legend, and there are some restrictions on the use of disclaimers. SinaTech is required to file its free-writing prospectuses with the SEC on its electronic records systems, called EDGAR, and must also file any material non-public information that it provides to the underwriters in connection with such underwriters' free-writing prospectuses. While the underwriters generally are not required

to file their free-writing prospectuses, they will be required to file any free-writing prospectus that is broadly disseminated to the public.

Since a free-writing prospectus does not become part of the registration statement, it is not subject to strict liability under Section 11 of the Securities Act (unless the company opts to file it as a part of the registration statement). Nevertheless, companies are subject to a less stringent standard of liability for a free-writing prospectus under Section 12(a)(2) of the Securities Act and the other anti-fraud provisions of federal securities laws (including Rule 10b-5 under the Exchange Act). To the extent that the statements in a free writing prospectus are attributable to the individual executive officers, then they may also be subject to liability under those securities law provisions. Accordingly, free-writing information should be reviewed by counsel before it is released.

Live and Electronic Road Shows

Oral offers to sell the Company's securities may be made during the waiting period. The 'road show' has traditionally been a multicity tour by the lead manager and members of company management. For a week or two they travel to a new city each day and meet with institutional investors and other substantial persons in an effort to stimulate interest in the IPO. Typical stops on a road show are New York, San Francisco, Boston, Chicago, Houston and Los Angeles; sometimes foreign financial centers such as London may be included. If potential investors attending SinaTech's road show are impressed by the presentation made by the company's management team, some of them may be willing to purchase a significant amount of the shares being offered. In the road show meetings, statements regarding a company's future business prospects—discussed only minimally (if at all) in the preliminary prospectus—are openly discussed, which is legal as long as it is done orally. Increasingly, road shows are conducted using closed circuit TV or the Internet; these are 'electronic road shows'.

A road show that originates live and that is delivered to a live audience is considered an oral communication and will therefore not be subject to the free-writing prospectus rules. A live road show is not a free-writing prospectus, even if it is also transmitted electronically on a real-time basis (eg, by closed-circuit television to overflow audiences, live webcast or video conference). Slides or other visual aides provided or transmitted as part of a live road show would also be deemed oral communications, provided steps are taken to make sure such information is available only during the live presentation and that road show attendees may not take the slides away from the road show.⁷

Failure to take these measures may convert the presentation into an electronic road show, subject to the rules discussed below.

Although oral and certain written offers are permitted during the waiting period, the anti-fraud provisions of the securities laws also apply. Accordingly, the Company must avoid making statements during the road show, or at any other time, that contain any untrue statement of material fact or omit to state a material fact necessary in order to make the statement, in light of the circumstances under which it was made, not misleading. One of the best methods of avoiding such statements is to limit the content of such statements to information contained in the preliminary prospectus or in the free-writing prospectus. However, if the Company desires to expand upon the information in the preliminary or free-writing prospectuses, then we should be consulted to ensure that the information comports with the securities laws.

All electronic offering communications, other than live, real-time electronic communications, are considered free-writing prospectuses. Therefore, 'electronic road shows' will generally be subject to the free-writing prospectuses rules. However, the Company will not be required to file an electronic road show presentation as a free-writing prospectus if it make at least one 'bona fide' version of the road show readily available electronically to any potential investor. A 'bona fide' version is one that includes the same general areas of information regarding the Company, its management, and the securities being offered as other written or electronic road shows for the same offering. The bona fide version need not address all the same subjects or provide the same information as other versions of an electronic road show, and it need not provide an opportunity for questions and answers or other interaction. Therefore, the Company may disseminate two version of an electronic road show: one version to institutional investors (containing information tailored to market professionals, such as projections), and another version to retail investors (containing information tailored to retail investors). In any event, an electronic road show must be preceded or accompanied by a preliminary prospectus.

Corporate Advertising and Press Releases

Incorrect use of corporate publicity, press releases and advertising materials during the waiting period will no longer be an automatic violation of the Securities Act, but will be analyzed under the new free-writing prospectus rules. The Company should avoid the undisciplined use of such materials, however, particularly in light of the filing, preliminary prospectus delivery and antifraud requirements for free-writing prospectus outlined above.

The Preliminary Prospectus

As noted above, the principal device for making information available concerning the offering during the waiting period is the preliminary prospectus. It ordinarily may be delivered during the waiting period without violating Section 5(b) of the Act. In most firm underwriting IPOs, copies of the preliminary prospectus are distributed almost immediately after filing of the registration statement to broker-dealers as part of the process of putting together the underwriting syndicate. However, when the underwriters circulate the initial preliminary prospectus to prospective investors, they risk the possibility that material changes required by the SEC may trigger the necessity of recirculating an amended preliminary prospectus to all persons who were previously sent a preliminary prospectus. Accordingly, the syndicate will frequently wait until the first amended preliminary prospectus before circulating it publicly. This is particularly true with the Dutch auction process, since the amended prospectus will state the anticipated price range.

In an IPO in the US, since SinaTech will not have been subject to the reporting requirements of the Exchange Act at the time of filing its registration statement, any broker-dealer participating in the distribution must deliver a copy of the preliminary prospectus to every person to whom it expects to send a confirmation upon the registration statement becoming effective, at least 48 hours prior to the mailing of that confirmation.⁸

When SinaTech has satisfied the SEC staff on the contents of the prospectus and is ready to have the registration declared effective, it would customarily file a request for acceleration of the effective date. Such a request for acceleration should include information regarding the extent to which the preliminary prospectus has been distributed, which is a significant factor in the SEC's determination of whether or not to grant acceleration.⁹ Broker-dealers participating in a distribution must take reasonable steps to assure that any person desiring a preliminary and final prospectus receives a copy of same or they may be deemed to be engaged in fraudulent or manipulative practices.¹⁰

Amending the Preliminary Prospectus

After SinaTech files its registration statements with the preliminary prospectus with the SEC, the SEC staff examines it and engages in a series of communications with SinaTech's counsel regarding any changes that the staff deems necessary to make better or fuller disclosure. If the changes are deemed material, an amended registration with an amended prospectus must be prepared and filed. If any preliminary prospectus has been distributed to prospective investors, copies of the amended

prospectus must be recirculated to the same persons.

If the original preliminary prospectus included in the filing of the registration statement is not changed so materially by amendment that it is necessary to recirculate the amended preliminary prospectus, there is no significant problem. But when an amended preliminary prospectus must be recirculated, a delay in the start or the offering may result from mailing the preliminary prospectus so that it can reasonably be expected to reach those to whom confirmations are to be sent 48 hours prior to the mailing of the final prospectus.

The registration process, along with the road show and other marketing, can last several months. As a result, SinaTech's initial SEC filing would necessarily omit certain information, such as the exact IPO price and discount to the dealers, as well as names of all the syndicate members in the initial SEC filing. (As discussed under the sub-heading 'Pricing the Stock and Becoming Effective' below, once the SEC staff indicates that the registration statement is satisfactory, SinaTech and the lead underwriter would file with the SEC an acceleration request, asking the SEC to accelerate the effective date of the registration statement).¹¹

The preliminary prospectus is typically sent to sales people as well as institutional investors around the country. As the amended preliminary prospectus more closely reaches what the underwriters believe will be the final prospectus, the company and underwriter will promote the IPO through a 'road show', as discussed earlier.

Pricing the Stock and Becoming Effective

After the road show is concluded and the SEC staff indicates that its final round of comments on the registration statement and prospectus have been addressed, company management and the lead manager join in submitting a request to the SEC to accelerate the effective date of the registration statement. They then meet to determine the final offering price of the shares.

Traditional Underwriting

In determining the price in a traditional underwriting, the price is negotiated between the managing underwriter and the issuer, and close attention is paid to the order books of the underwriting syndicate and selling group (where institutions and other investors' indications are recorded). Once the final terms are negotiated, the underwriter and SinaTech will execute the Underwriting Agreement. The company will have the final prospectus printed and the underwriter will file a 'price amendment' with the SEC on the morning of the effective date selected by the company and lead manager. Distribution of the stock then begins, along with trading in the stock. The closing of the IPO customarily occurs three business

days later. SinaTech would deliver the ADRs being sold in the IPO, and the lead manager would deposit the net IPO proceeds into SinaTech's account. The lead manager also will determine after the effective date whether to have the Underwriting Group exercise the overallotment option. If the offering is successful, the option will generally be exercised.

The post-effective period begins when the SEC declares the registration statement effective, and continues for a period of 25 days from the date of the prospectus. During this period, the Company may consummate sales of its securities, may continue to distribute free-writing prospectuses, or may distribute supplemental sales literature that will not be considered a free-writing prospectus so long as the supplemental literature is accompanied or preceded by the final prospectus. Under the 2005 Reforms, settlement of the offering is no longer linked with the printing and physical delivery of final prospectuses. Instead, SinaTech can satisfy its prospectus delivery requirement by filing the final prospectus within two business days after the earlier of pricing the offering or first use of the prospectus. Putting the prospectus on the SEC's website is deemed to be delivery to all investors. Moreover, management of SinaTech may conduct an interview on a financial news network if the company complies with the special free-writing prospectus filing rules for legitimate, unaffiliated news media publications.

Dutch Auction Underwriting

Distribution of the stock in a traditional IPO is different from that in the Dutch auction model. The key difference between the Dutch auction and the traditional method of IPOs is that in the Dutch auction, the public offering price always determines the allocation of shares to potential investors. This puts an individual investor on an equal footing with Wall Street's biggest institutions. Thus, if the number of shares bid far exceeds the number of shares in the offering (akin to an 'oversubscription'), the WR Hambrecht & Co auction allocates to the successful bidders on a *pro rata* basis. If the issuer chooses to make the public offering price below the clearing price, there will necessarily be more shares bid for successfully than the issuer is purchasing, hence again all successful bidders will receive a *pro rata* allocation. If either (1) sufficient bids are not received; (2) the issuer does not consider the clearing price to be adequate; or (3) the underwriters and issuer are not able to reach agreement on the public offering price, then they will either postpone or cancel the offering. Alternatively, the underwriters and issuer may file with the SEC a post-effective amendment to the registration statement in order to conduct a new auction.

The auction closes and a public offering price is determined after the registration statement

becomes effective, at a time agreed to by the issuer and managing underwriter, generally after the close of trading on the NASDAQ National Market on the same day on which the registration statement is declared effective. Although the IPO price of the shares in the Dutch auction is technically determined by negotiation between the underwriters and the issuer after the auction closes, it is primarily based on the 'Clearing Price' resulting from the auction. The Clearing Price is the highest price at which all of the shares offered (including the shares that may be purchased by the underwriters to cover any over-allotments) may be sold to potential investors, based on the valid bids at the time the auction closes. The shares subject to the underwriters' over-allotment option are used to calculate the clearing price, whether or not the option is actually exercised.

Depending on negotiations between the underwriters and issuer, the public offering price will not be higher than the clearing price. The public offering price might be lower than the clearing price depending on various additional factors, such as general market conditions; the underwriters' assessment of the issuer's management; the issuer's operating results, capital structure and business potential; the demand and price of similar securities of comparable companies; and a desire to facilitate wider distribution of the offered stock.

The following hypothetical example illustrates in simplified form how the clearing price is determined through the auction process: SinaTech offers to sell 1,000 shares in its public offering through the auction process. The underwriters, on behalf of SinaTech, receive five bids to purchase, all of which are kept confidential until the auction closes. The first bid is \$10.00 per share for 200 shares; the second is \$9.00 per share for 300 shares; the third is \$8.00 per share for 600 shares; the fourth is \$7.00 per share for 400 shares; and the fifth bid is \$6.00 per share for 800 shares.

Assuming all the foregoing bids are confirmed and not withdrawn or modified before the auction closes, and assuming that no additional bids were received, the clearing price used to determine the public offering price is \$8.00 per share, which is the highest price at which all 1,000 shares offered may be sold to potential investors who have submitted valid bids.

If the public offering price determined by SinaTech and the underwriters were the same as the \$8.00 per share clearing price, the underwriters would confirm bids at or above \$8.00. Because 1,100 shares were bid for at or above the clearing price, each of the three potential investors who bid \$8.00 or more in the example would receive approximately 90 per cent of the shares for which bids were made, while the two potential investors whose bids were below \$8.00 per share would not receive any shares. If the public offering price were \$7.00 per share, the underwriters would accept bids that were made at or above \$7.00 per share. No bids made at a price of less than \$7.00 per share would be accepted. The four potential investors with the highest bids in the example would receive a *pro rata* portion of the 1,000 shares offered, based on the 1,500 shares they requested, or two-thirds of the shares for which bids were made. The potential investor with the lowest bid would not receive any shares. The underwriters may elect to round down bids that are reduced on a *pro rata* basis to round lots, so that a potential investor may be allocated less than two-thirds of the shares bid for. Thus, the potential investor who bid for 200 shares in the example might receive a *pro rata* allocation of 100 shares (one-half of the shares bid for), rather than receiving a *pro rata* allocation of 133 shares (two-thirds of the shares bid for).

Table 1 illustrates the example described above, before rounding down any bids to the nearest round lot, assuming (1) that the initial public offering price is set at \$8.00 per share (the same as the clearing price); (2) that all the cited bids are final bids and that they reflect any modifications that have been made to

Table 1: Dutch Auction IPO of SinaTech, Ltd

	Bid Information			Auction Results			
	Shares Requested	Cumulative Shares Requested	Bid Price	Shares Allocated	Approximate Allocated Requested	Clearing Price	Amount Raised
	200	200	\$10.00	180	90%	\$8.00	\$1,440
	300	500	\$9.00	270	90%	\$8.00	\$2,160
Clearing Price	600	1,100	\$8.00	550	90%	\$8.00	\$4,400
	400	1,500	\$7.00	0	0%	—	—
	800	2,300	\$6.00	0	0%	—	—
Total:					1,000		\$8,000

reflect any prior changes to the offering range; and (3) that they avoid issuance of fractional shares.

Closing of the offering and payment of proceeds do not spell the end of the IPO. The underwriters will engage in after-market stabilization and make a market in the stock. Stabilization essentially means that the underwriters will support the stock by buying shares if imbalances arise between sale and buy orders. Such price support can be done only at or below the offering price, and is limited to a relatively short period of time after the stock has started to trade.

Twenty-five calendar days after the effective date of SinaTech's IPO, the underwriters can comment on the valuation and provide earnings estimates on the company, and, if the shares have qualified for listing on NASDAQ, copies of the prospectus no longer need be distributed to purchasers in the aftermarket.

Going Public by Reverse Merger Into a 'Public Shell' Corporation

Summary of the Reverse Merger Technique

Instead of registering stock with the SEC to sell to the public, some companies go public by use of a 'public shell' corporation. The method commonly used is a 'reverse merger'. In a reverse merger, the private company merges with a public company that has no assets or liabilities, and hence is called a 'public shell,' because all that exists is its corporate structure. By merging into such an entity, a private company becomes publicly held. Thus while an IPO, the functions of going public and raising capital are combined, while in a reverse merger, the two functions are separated. A company can in effect become public without raising additional capital.

In the merger, the private company obtains the majority of the shell company stock (usually 90 per cent or more). The private company normally changes the name of the public corporation (often to its own name) and appoints and elects new management and board directors. Going public through a reverse merger allows a private company to go public at what is generally less cost, with less stock dilution than an IPO. This does not mean that a reverse merger is cheap; the legal expenses are often substantial.

The time to accomplish the reverse merger is considerably less than that for an IPO. IPOs generally require greater attention from top management. An IPO requires a relatively long and stable earnings history. Moreover, the process does not require an underwriter.

When a Chinese company goes public through a public shell corporation, the resulting ownership structure has the Chinese operating company owned by the US corporation, often through an intermediary corporation domiciled in

a jurisdiction outside the United States or China (*ie*, Cayman Islands, British Virgin Islands). Most Chinese companies electing to go public undertake a restructuring before they go public in the United States. This involves a share exchange between the stockholders of the Chinese company and a newly-formed offshore corporation typically domiciled in a tax haven, such as the Cayman Islands.

The result of this type of transaction is that the Chinese company becomes a wholly-owned subsidiary of the foreign corporation and the former stockholders of the Chinese company become the owners of all of the equity of the foreign corporation. Because the Chinese company is wholly owned by the foreign corporation, it typically qualifies as a wholly foreign-owned enterprise ('WFOE') under Chinese law. In going public in the United States, the foreign corporation can either offer its own shares or it can effect a share exchange or reverse merger with a public shell corporation in the US.

The result is that the foreign intermediary corporation becomes the wholly-owned subsidiary of the US corporation and the stockholders of the foreign intermediary corporation become the controlling stockholders of the US corporation. Because of this ownership structure, under prior law, any dividends paid by the Chinese company generally were subject to US tax regardless of whether the dividends were paid to the US corporation. However, in 2006 the US tax laws changed so that dividends paid by a Chinese corporation to a foreign intermediary corporation under the intermediary structure generally are no longer subject to immediate US tax. They remain free of US tax unless and until distributed to the US corporation.

The tax changes make it possible now for a WFOE owned by a US corporation to pay dividends to a foreign intermediary corporation without incurring immediate US tax. The earnings will not be subject to US tax unless and until they are distributed to the US corporation. The tax law changes can be important also to investors in a WFOE, because dividends paid to foreign shareholders generally are exempt from Chinese withholding tax. Neither are the dividends generally taxable in the tax haven jurisdiction of the foreign intermediary corporation.

Form of Agreement and Plan of Reorganization for Reverse Merger into 'Public Shell' Corporation

THIS AGREEMENT AND PLAN OF REORGANIZATION (the 'Agreement') is entered into this 21st of April, 2007, by and among Public Shell Corporation, a corporation organized under the laws of the State of Delaware ('PSC'); SinaTech Holdings Company ('STH'), a corporation organized under the laws of Hong Kong Special Administrative

Region, People's Republic of China ('SinaTech'); and two individuals and a company who are the stockholders of STH (the 'STH Stockholders,' a list of whom is attached hereto as Attachment 'A').

**WITNESSETH:
RECITALS**

WHEREAS, the respective Boards of Directors of PSC and STH have adopted resolutions pursuant to which PSC shall acquire and the STH Stockholders shall exchange for shares of the common capital stock of PSC 100% of the outstanding common stock of STH (the 'STH Shares'); and

WHEREAS, the sole consideration for the exchange of the STH Shares shall be the receipt by the STH Stockholders of shares of the common capital stock of PSC, \$0.001 par value per share, as more particularly set forth in Exhibit 'B' hereto. The shares of PSC's common stock shall be deemed 'restricted securities' as defined under Rule 144 of the Securities Act of 1933, as amended (the 'Act'); and

WHEREAS, the STH Stockholders shall acquire in exchange such 'restricted securities' of PSC in a reorganization within the meaning of Section 368(a)(1)(B) of the Internal Revenue Code of 1986, as amended, and/or any other 'tax free' exemptions thereunder that may be available for this exchange, if and only to the extent that the Internal Revenue Code applies to this Agreement and the transactions contemplated thereby;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, it is agreed:

**Section 1
Exchange of Stock**

1.1 Transfer and Number of Shares. The STH Stockholders agree to transfer to PSC at the closing (the 'Closing') the STH Shares, in exchange for newly issued and restricted shares of common stock of PSC as outlined in Exhibit 'C'. In connection with the acquisition of the STH Shares, PSC shall issue to the STH Stockholders an aggregate of Twelve Million Five Hundred Thousand (12,500,000) shares of PSC common stock, and such shares at the Closing shall equal ninety percent (90%) of the issued and outstanding shares of PSC, and shall be issued and/or transferred as set forth on Exhibit 'D' attached hereto. After the Closing, there will be 13,888,888 outstanding shares of common stock of the reorganized PSC.

1.2 Exchange of Certificates by STH Stockholders. The transfer of the STH Shares shall be effected by the delivery to PSC at the Closing of stock certificates duly endorsed in blank or

accompanied by stock powers executed in blank with all signatures witnessed or guaranteed to the satisfaction of PSC and with all necessary transfer taxes and other revenue stamps affixed and acquired at the STH Stockholders' expense.

1.3 Further Assurances. At the Closing and from time to time thereafter, the STH Stockholders shall execute such additional instruments and take such other action as PSC may request in order to exchange and transfer clear title and ownership in the STH Shares to PSC.

1.4 Closing. The Closing shall be deemed to have occurred on the Effective Date (as hereinafter defined). As used in this Agreement, the term Closing Date shall be defined to be the same as the Effective Date.

1.5 Effective Date. The transactions contemplated by this Agreement shall be deemed consummated at such time as the Company shall have filed with the US Securities and Exchange Commission ('SEC') a Current Report on Form 8-K which reports the change in control transaction effected by this Agreement and includes therein, all required audited financial information of SinaTech and its controlled subsidiary (the 'Current Report'). If the Current Report is not filed on or before June 1, 2007, the Company shall have the right, in its sole discretion, to either deem this Agreement terminated or provide SinaTech with an extension for filing the Current Report. The effective date (the 'Effective Date') of this Agreement shall thus be the date the Company files the Current Report with the SEC. In addition, for the Closing to be deemed to have occurred as of the Effective Date, all of the other conditions precedent to the obligations of each of the parties hereto as hereinafter set forth shall have been satisfied or shall have been waived.

1.6 Resignations of Present Executive Officers and Designation of New Directors and Executive Officers. On the Closing Date, the present directors and executive officers of PSC shall designate the directors and executive officers nominated by the STH Stockholders to serve in their place and stead, until the next respective annual meeting of the stockholders and the Board of Directors of the reorganized PSC, and until their respective successors shall be elected and qualified or until their respective prior resignations or terminations. The following shall be appointed directors and officers of PSC upon the closing of the transactions contemplated herein: _____, President and Chief Executive Officer and Director; _____, Chief Financial Officer; _____ and _____, directors. All current directors and executive officers of PSC shall resign, in seriatim, on the Closing Date.

Section 2 Closing

The Closing shall be effected by telephone and facsimile on the Closing Date unless another place or time is agreed upon in writing by the parties. The Closing may also be accomplished by wire, express mail or other courier service, conference telephone communications or as otherwise agreed by the respective parties or their duly authorized representatives.

Section 3 Representations and Warranties of PSC

Except as set forth in PSC's disclosure schedule, PSC represents and warrants to, and covenants with, the STH Stockholders and SinaTech as follows:

3.1 Corporate Status; Compliance with Securities Laws. PSC is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is licensed or qualified as a foreign corporation in all jurisdictions in which the nature of its business or the character or ownership of its properties makes such licensing or qualification necessary. PSC is a publicly-held company, trading on the OTCBB under the trade symbol 'PSCX,' and PSC is not in violation of any applicable federal or state securities laws, rules or regulations. Except as set forth above, there is at present no established trading market for PSC's securities.

3.2 Capitalization. The authorized capital stock of PSC at Closing will consist of 15,000,000 shares of preferred stock, of which none has been issued and outstanding; and 100,000,000 shares of common voting stock, of which 1,388,888 shares are issued and outstanding, all fully paid and non-assessable. There are no subscriptions, warrants, rights or calls or other commitments or agreements to which PSC is a party or by which it is bound, pursuant to which PSC is or may be required to issue or deliver securities of any class. Other than as set forth in PSC's disclosure schedule, there are no outstanding securities convertible or exchangeable, actually or contingently, into common stock or any other securities of PSC. After the Closing, there will be 13,888,888, outstanding shares of common stock, on a fully diluted basis, of PSC.

3.3 Financial Statements. The financial statements of PSC furnished to the STH Stockholders and SinaTech, consisting of audited financial statements for the years ended December 31, 2005 and 2006, and audited interim financial statements for the three months ending April 30, 2007, as filed with the SEC and incorporated herein by reference, are correct and fairly present the financial condition of PSC at such dates and for the periods involved; such statements

were prepared in accordance with generally accepted accounting principles consistently applied, and no material change has occurred in the matters disclosed therein. Such financial statements do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

3.4 Undisclosed Liabilities. PSC has no liabilities of any nature except to the extent reflected or reserved against in its balance sheets, whether accrued, absolute, contingent or otherwise, including, without limitation, tax liabilities and interest due or to become due.

3.5 Interim Changes. Since April 30, 2007, there have been no (i) changes in financial condition, assets, liabilities or business of PSC which, in the aggregate, have been materially adverse; (ii) damages, destruction or losses of or to property of PSC, payments of any dividend or other distribution in respect of any class of stock of PSC, or any direct or indirect redemption, purchase or other acquisition of any class of any such stock; or (iii) increases paid or agreed to in the compensation, retirement benefits or other commitments to its employees.

3.6 Title to Property. PSC has good and marketable title to all properties and assets, real and personal, reflected in its balance sheets, and the properties and assets of PSC are not subject to any mortgage, pledge, lien or encumbrance, with respect to which no default exists.

3.7 Litigation. There is no litigation or proceeding pending, or to the knowledge of PSC, threatened, against or relating to PSC, its properties or business. Further, no officer, director or person who may be deemed to be an 'affiliate' of PSC is party to any material legal proceeding which could have an adverse effect on PSC (financial or otherwise), and none is party to any action or proceeding wherein any has an interest adverse to PSC.

3.8 Books and Records. PSC has delivered to legal counsel for the STH Stockholders and SinaTech all of PSC's books, records, contracts and other corporate documents which are true and correct in all material respects.

3.9 Tax Returns. PSC has duly filed all tax returns required to be filed by it other than tax returns (individually and in the aggregate) where the failure to file would have no material adverse effect on the business or prospects of PSC. All such tax returns were, when filed, and to the knowledge of PSC are, accurate and complete in all material respects and were prepared in conformity with applicable laws and regulations. PSC has paid or will pay in full or has adequately reserved against all taxes otherwise assessed against it through the Closing Date. PSC is not a party to any pending action or proceeding by any governmental authority for the assessment

of any tax, and, to the knowledge of PSC, no claim for assessment or collection of any tax related to PSC has been asserted against PSC that has not been paid. There are no tax liens upon the assets of PSC. There is no valid basis, to PSC's knowledge, for any assessment, deficiency, notice, 30-day letter or similar intention to assess any tax to be issued to PSC by any governmental authority.

3.10 Confidentiality. PSC's current directors and officers and their representatives will keep confidential any information which they obtain from the STH Stockholders or from SinaTech concerning the properties, assets and business of SinaTech.

3.11 Corporate Authority. PSC has full corporate power and authority to enter into this Agreement and to carry out its obligations hereunder and will deliver to the STH Stockholders and SinaTech or their respective representatives at the Closing a certified copy of resolutions of its Board of Directors authorizing execution of this Agreement by PSC's officers and performance thereunder, and that the directors adopting and delivering such resolutions are the duly elected and incumbent directors of PSC.

3.12 Due Authorization. At closing, the execution of this Agreement and performance by PSC hereunder will have been duly authorized by all requisite corporate action on the part of PSC, and this Agreement will constitute a valid and binding obligation of PSC and performance hereunder will not violate any provision of the Articles of Incorporation or other documents, Bylaws, agreements, mortgages or other commitments of PSC, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application now or hereafter in effect relating to or affecting the enforcement of creditors' right generally and the application of general equitable principles in any action, legal or equitable.

3.13 Environmental Matters. PSC has no knowledge of any assertion by any governmental agency or other regulatory authority of any environmental lien, action or proceeding, or of any cause for any such lien, action or proceeding related to the business operations of PSC. There are no substances or conditions which may support a claim or cause of action against PSC or any of PSC's current or former officers, directors, agents or employees, whether by a governmental agency or body, private party or individual, under any Hazardous Materials Regulations. 'Hazardous Materials' means any oil or petrochemical products, PCB's, asbestos, urea formaldehyde, flammable explosives, radioactive materials, solid or hazardous wastes, chemicals, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition

of 'hazardous substances', 'hazardous wastes', 'hazardous materials' or 'toxic substances' under any applicable federal or state laws or regulations. 'Hazardous Materials Regulations' means any regulations governing the use, generation, handling, storage, treatment, disposal or release of hazardous materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and the Federal Water Pollution Control Act.

3.14 Access to Information Regarding SinaTech. PSC acknowledges that it has been delivered copies of documentation containing all material information respecting STH and its subsidiary, SinaTech, Ltd. ('SinaTech'), and STH's present and contemplated business operations, potential acquisitions, and management; that it has had a reasonable opportunity to review such documentation and discuss it, to the extent desired, with its legal counsel, directors and executive officers; that it has had, to the extent desired, the opportunity to ask questions of and receive responses from the directors and executive officers of SinaTech, and with the legal and accounting firms of SinaTech, with respect to such documentation; and that to the extent requested, all questions raised have been answered to PSC's complete satisfaction.

3.15 Assets and Liabilities of PSC at Closing. PSC shall have no assets and no liabilities on the Closing Date. PSC has good and marketable title to all of the assets and properties as reflected on its most recent balance sheet.

3.16 Rule 144. To the best of PSC's knowledge, the shares of PSC issued in exchange for the STH Shares to the STH Stockholders shall be eligible for resale pursuant to Rule 144, without registration under the Act, upon satisfaction by the STH Stockholders and PSC of the provisions of Rule 144 and the general rules and regulations under the Securities Exchange Act of 1934.

3.17 Contracts and Other Commitments. Except as set forth in PSC's public filings, PSC is not a party to any contracts or agreements.

3.18 Compliance with Laws and Regulations. PSC has complied and is presently complying, in all material respects, with all laws, rules, regulations, orders and requirements (federal, state and local and foreign) applicable to it in all jurisdictions where the business of PSC is conducted or to which PSC is subject.

3.19 No Omissions or Untrue Statements. To the best of PSC's knowledge no representation or warranty made by PSC in this Agreement, the PSC disclosure schedule or in any certificate of PSC officer required to be delivered pursuant to the terms of this Agreement, contains or will contain any untrue statement of a material fact, or omits

or will omit to state a material fact necessary to make the statements contained herein or therein not misleading as of the date hereof and as of the Closing Date.

Section 4

Representations, Warranties and Covenants of SinaTech and the STH Stockholders

Except as set forth in SinaTech and STH Stockholders disclosure schedule, SinaTech and the STH Stockholders represent and warrant to, and covenant with, PSC as follows:

4.1 Ownership of SinaTech. The STH Stockholders own the STH Shares free and clear of any liens or encumbrances of any type or nature whatsoever, and have full right, power and authority to convey the STH Shares that are owned by them without qualification.

4.2 Ownership of SinaTech. STH owns 90% of SinaTech, free and clear of any liens or encumbrances of any type or nature whatsoever, and has full right, power and authority to convey the SinaTech ownership that it owns without qualification.

4.3 Corporate Status of SinaTech. SinaTech is a corporation duly organized, validly existing and in good standing under the laws of Hong Kong, People's Republic of China, and is licensed or qualified as a foreign corporation in all jurisdictions or foreign countries and provinces in which the nature of SinaTech's business or the character or ownership of SinaTech's properties makes such licensing or qualification necessary.

4.4 Corporate Status of SinaTech. SinaTech is an Equity Joint Venture Enterprise duly organized, validly existing and in good standing under the laws of the People's Republic of China, and is licensed or qualified as a foreign corporation in all states of the United States or foreign countries and provinces in which the nature of its business or the character or ownership of its properties makes such licensing or qualification necessary.

4.5 Capitalization of SinaTech. The authorized capital stock of STH consists of 15,000,000 shares of common stock, \$1.00 par value per share, of which 100 shares are issued and outstanding, and which are fully paid and non-assessable. There are no outstanding options, warrants or calls pursuant to which any person has the right to purchase any authorized and unissued common or other securities of STH.

4.6 Capitalization of SinaTech. The paid-in capital of SinaTech is US\$1,000,000.00, all fully paid and non-assessable. There are no outstanding options, warrants or calls pursuant to which any person has the right to purchase any authorized and unissued common or other equities of SinaTech.

4.7 Financial Statements. The financial statements of SinaTech, which includes the financial statements of SinaTech, furnished to PSC, consisting of an audited compiled balance sheet and income statement for the year ended December 31, 2005 and 2006, and unaudited financial statements for the nine month period ended April 30, 2007, attached hereto as Exhibit 'D' and 'D 1', respectfully, and incorporated herein by reference, are correct and fairly present the combined financial condition of SinaTech and SinaTech as of these dates and for the periods involved; such statements were prepared in accordance with US generally accepted accounting principles consistently applied, and no material change has occurred in the matters disclosed therein. These financial statements do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

4.8 Undisclosed Liabilities of SinaTech. SinaTech has no material liabilities of any nature except to the extent reflected or reserved against in its balance sheet, whether accrued, absolute, contingent or otherwise, including, without limitation, tax liabilities and interest due or to become due.

4.9 Undisclosed Liabilities of SinaTech. SinaTech has no material liabilities of any nature except to the extent reflected or reserved against in its balance sheet, whether accrued, absolute, contingent or otherwise, including, without limitation, tax liabilities and interest due or to become due.

4.10 Interim Changes of SinaTech. Since April 30, 2007, there have been no (i) changes in the financial condition, assets, liabilities or business of SinaTech, which in the aggregate, have been materially adverse; (ii) damages, destruction or loss of or to the property of SinaTech, payment of any dividend or other distribution in respect of the capital stock of SinaTech, or any direct or indirect redemption, purchase or other acquisition of any such stock; or (iii) increases paid or agreed to in the compensation, retirement benefits or other commitments to their employees.

4.11 Interim Changes of SinaTech. Since September 30, 2004, there have been no (i) changes in the financial condition, assets, liabilities or business of SinaTech, which in the aggregate, have been materially adverse; (ii) damages, destruction or loss of or to the property of SinaTech, payment of any dividend or other distribution in respect of the capital stock of SinaTech, or any direct or indirect redemption, purchase or other acquisition of any such stock; or (iii) increases paid or agreed to in the compensation, retirement benefits or other commitments to their employees.

4.12 Title to Property of SinaTech. SinaTech has good and marketable title to all properties and assets, real and personal, proprietary or otherwise, reflected in the SinaTech balance sheet.

4.13 Title to Property of SinaTech. SinaTech has good and marketable title to all properties and assets, real and personal, proprietary or otherwise, reflected in its balance sheet.

4.14 Litigation of SinaTech. There is no litigation or proceeding pending, or to the knowledge of SinaTech, threatened, against or relating to SinaTech or its properties or business. Further, no officer, director or person who may be deemed to be an affiliate of SinaTech is party to any material legal proceeding which could have an adverse effect on SinaTech (financial or otherwise), and none is party to any action or proceeding wherein any has an interest adverse to SinaTech.

4.15 Litigation of SinaTech. There is no litigation or proceeding pending, or to the knowledge of SinaTech, threatened, against or relating to SinaTech or its properties or business. Further, no officer, director or person who may be deemed to be an affiliate of SinaTech is party to any material legal proceeding which could have an adverse effect on SinaTech (financial or otherwise), and none is party to any action or proceeding wherein any has an interest adverse to SinaTech.

4.16 Books and Records of SinaTech. The SinaTech has (i) given to PSC and its representatives full access to all of its offices, books, records, contracts and other corporate documents and properties so that PSC could inspect and audit them; and (ii) furnished such information concerning the properties and affairs of SinaTech as PSC has requested.

4.17 Books and Records of SinaTech. SinaTech has (i) given to PSC and its representatives full access to all of its offices, books, records, contracts and other corporate documents and properties so that PSC could inspect and audit them; and (ii) furnished such information concerning the properties and affairs of SinaTech as PSC requested.

4.18 Tax Returns of SinaTech. SinaTech has filed all income tax or other tax returns required to be filed in Hong Kong or has received currently effective extensions of the required filing dates.

4.19 Tax Returns of SinaTech. SinaTech has filed all income or other tax returns required to be filed in China or has received currently effective extensions of the required filing dates.

4.20 Investment Intent. The STH Stockholders are acquiring the securities to be exchanged and delivered to them under this Agreement for investment and not with a view to the sale or distribution thereof, and they have no commitment or present intention to sell or distribute the PSC securities to be received hereunder.

4.21 Corporate Authority of SinaTech. SinaTech and the STH Stockholders have full corporate power and authority to enter into this Agreement and to carry out their obligations hereunder and will deliver to PSC or its representative at the Closing certified copies of resolutions of SinaTech's Board of Directors authorizing execution of this Agreement by its officers and performance thereunder.

4.22 Due Authorization. Execution of this Agreement and performance by SinaTech and the STH Stockholders hereunder have been duly authorized by all requisite corporate action on the part of SinaTech and the STH Stockholders, and this Agreement constitutes a valid and binding obligation of SinaTech and the STH Stockholders and performance hereunder will not violate any provision of the Articles of Association or other Charter documents, Bylaws, agreements, mortgages or other commitments of SinaTech or the STH Stockholders, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally and the application of general equitable principles in any action, legal or equitable.

4.23 Environmental Matters. SinaTech and SinaTech have no knowledge of any assertion by any governmental agency or other regulatory authority of any environmental lien, action or proceeding, or of any cause for any such lien, action or proceeding related to the business operations of SinaTech or its predecessors. In addition, to the best knowledge of SinaTech and SinaTech, there are no substances or conditions which may support a claim or cause of action against SinaTech and SinaTech or any of its current or former officers, directors, agents, employees or predecessors, whether by a governmental agency or body, private party or individual, under the current Chinese laws.

4.24 Access to Information Regarding PSC. SinaTech and the STH Stockholders acknowledge that they have been delivered copies of what has been represented to be documentation containing all material information respecting PSC and its present and contemplated business operations, potential acquisitions, management and other factors, by delivery to them and/or by access to such information in the EDGAR Archives of the Securities and Exchange Commission at www.sec.gov; that they have had a reasonable opportunity to review such documentation and to discuss it, to the extent desired, with their legal counsel, directors and executive officers; that they have had, to the extent desired, the opportunity to ask questions of and receive responses from the directors and executive officers of PSC, and with the legal and accounting

firms of PSC, with respect to such documentation; and that to the extent requested, all questions raised have been answered to their complete satisfaction.

4.25 Residency of STH Stockholders. Each of the STH Stockholders is a non-resident of the United States.

Section 5

Conditions Precedent to Obligations of SinaTech and the STH Stockholders

All obligations of SinaTech and the STH Stockholders under this Agreement are subject, at their option, to the fulfillment, before or at the Closing, of each of the following conditions:

5.1 Representations and Warranties True at Closing. The representations and warranties of PSC contained in this Agreement shall be deemed to have been made again at and as of the Closing and shall then be true in all material respects and shall survive the Closing.

5.2 Due Performance. PSC shall have performed and complied with all of the terms and conditions required by this Agreement to be performed or complied with by it before the Closing.

5.3 Officers' Certificate. SinaTech shall have been furnished with a certificate signed by the President of PSC, in such capacity, attached hereto as Exhibit 'E' and incorporated herein by reference, dated as of the date hereof, and updated as necessary as of the Closing, certifying (i) that all representations and warranties of PSC contained herein are true and correct; and (ii) that since the date of the financial statements as described in Section 3.3, 3.4, 3.6 and 3.7 of this Agreement, there has been no material adverse change in the financial condition, business or properties of PSC, taken as a whole.

5.4 Assets and Liabilities of PSC. PSC shall have no assets and no liabilities at Closing, and all costs, expenses and fees incident to the Agreement shall have been paid.

5.5 Documents. All documents and instruments required hereunder to be delivered by PSC at the Closing shall be delivered in form and substance reasonably satisfactory to SinaTech and STH Stockholders and their counsel.

5.6 Litigation. No litigation seeking to enjoin the transactions contemplated by this Agreement or to obtain damages on account hereof shall be pending or threatened.

5.7 Material Adverse Change. Except for operations in the ordinary course of business, no material adverse change shall have occurred subsequent to September 30, 2004 in the financial position, results of operations, assets, or liabilities of PSC, nor shall any event or circumstance have occurred which would result in a material adverse change in the financial position, results of operations, assets, or liabilities of PSC.

5.8 Approval Board of Directors. The board of directors of PSC shall have approved this Agreement and the transactions contemplated hereby.

5.9 Satisfaction with Due Diligence. SinaTech shall have been satisfied with its due diligence review of PSC, its subsidiaries and their operations.

5.10 Resignations of Present Executive Officers and Designation of New Directors and Executive Officers. On the Closing Date, the present director and executive officers of PSC shall resign and the following individuals shall be appointed the director and executive officers of PSC: _____, President and Chief Executive Officer and Director; _____, Secretary; and _____, Chief Financial Officer; and _____ Directors.

5.11 Regulatory Compliance. PSC shall have received any and all regulatory approvals and consents required to complete the transactions contemplated hereby.

Section 6

Conditions Precedent to Obligations of PSC

In addition to the filing of the Current Report, all obligations of PSC under this Agreement are subject, at PSC's option, to the fulfillment, before or at the Closing, of each of the following conditions:

6.1 Representations and Warranties True at Closing. The representations and warranties of SinaTech, the STH Stockholders and SinaTech contained in this Agreement shall be deemed to have been made again at and as of the Closing and shall then be true in all material respects and shall survive the Closing.

6.2 Due Performance. SinaTech and the STH Stockholders shall have performed and complied with all of the terms and conditions required by this Agreement to be performed or complied with by them before the Closing.

6.3 Officers' Certificate. PSC shall have been furnished with a certificate signed by the President of SinaTech, in such capacity, in form reasonably acceptable to PSC, dated as of the date hereof, and updated as necessary as of the Closing, certifying (i) that all representations and warranties of SinaTech and the STH Stockholders contained herein are true and correct; and (ii) that since the date of the financial statements (Exhibit D & D 1), there has been no material adverse change in the financial condition, business or properties of SinaTech, taken as a whole.

Section 7

General Provisions

7.1 Further Assurances. At any time, and from time to time, after the Closing, the parties will

execute such additional instruments and take such action as may be reasonably requested by the other party to confirm or perfect title to any property transferred hereunder or otherwise to carry out the intent and purposes of this Agreement.

7.2 Waiver. Any failure on the part of any party hereto to comply with any its or their obligations, agreements or conditions hereunder may only be waived in writing by the party to whom such compliance is owed.

7.3 Brokers. Each party represents to the other parties hereunder that there are no brokers or finders are retained in connection with this Agreement, each party agrees to indemnify and hold harmless the other parties against any fee, loss or expense arising out of claims by brokers or finders employed or alleged to have been employed by he/she/it.

7.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been given if delivered in person or sent by prepaid first-class registered or certified mail, return receipt requested, as follows:

If to PSC's Management Prior to Closing:

c/o Wheeler P. Dealer
901 'H' Street, Suite 6000
Sacramento, California 94818

If to STH:

Helmut Dantine
2700 Larkspur Landing
Larkspur, California 94904

If to the STH Stockholders:

Helmut Dantine
2700 Larkspur Landing
Larkspur, California 94904

7.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels any other agreement, representation or communication, whether oral or written, between the parties hereto relating to the transactions contemplated herein or the subject matter hereof.

7.6 Headings. The section and subsection headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

7.7 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware. Any actions permitted hereunder shall be brought in the State of Delaware.

7.8 Assignment. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns.

7.9 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.10 Default. In the event of any default hereunder, the prevailing party in any action to enforce the terms and provisions hereof shall be entitled to recover reasonable attorney's fees and related costs.

7.11 Expenses. Each party shall each pay its own expenses incident to the negotiation, preparation, and carrying out of this Agreement, including legal and accounting and audit fees. PSC's expenses shall be paid prior to the Closing.

Section 8

Additional Covenants

8.1 Reverse Stock Split. The STH Stockholders acknowledge and agree that they will ensure that PSC effects a 1.14-for-one forward stock split (the 'Forward Split') of its common stock within 30 days of the Effective Date. This Section 8.1 shall survive the Closing.

8.2 Registration Rights. PSC hereby agrees to use its best efforts to cause the shares of PSC's common stock held by Larkspur Landing Investors, LLC ('LLI') (the 'Registrable Securities') to be registered under the Securities Act of 1933 (the 'Act') pursuant to a registration statement on a suitable form to be submitted to the SEC (the 'Registration Statement'). PSC shall file the Registration Statement by no later than December 15, 2007. Until such time as all the Registrable Shares have been sold into the market, or are available for resale pursuant to the provisions of Rule 144 under the Act, PSC agrees to keep the Registration Statement effective and to prepare and file with the SEC such amendments as may be necessary, and to comply with the provisions of the Act with respect to the sale or other disposition of all securities proposed to be registered in the Registration Statement or any prospectus (including any preliminary prospectus and any amended or supplemented prospectus) in conformity with the requirements of the Act, and to prepare and file such other documents as LLI may reasonably request in order to effect the offering and sale of the Registrable Securities to be offered or sold. Except as otherwise prohibited by applicable law, PSC will pay all fees and expenses, including, without limitation, printing and reproduction costs and fees and expenses of counsel for LLI, incurred in connection with the registration of the Registrable Securities; provided, that transfer taxes, if any, solely attributable to the sale of the Registrable Securities,

shall be borne by LLI. In addition, PSC agrees that it shall provide LLI copies of the preliminary prospectus and prospectus included in the Registration Statement and each amendment and supplement thereto; use its best efforts to register or qualify the Registrable Securities for resale under state law and to keep such registration or qualification in effect for so long as the Registration Statement remains in effect; and notify LLI at any time when a prospectus is required to be delivered by LLI under the Act, upon discovery by PSC that the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing, whereupon LLI shall suspend any offers or sales of the Registrable Securities until such time as such prospectus, as amended or supplemented from time to time, shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances then existing. LLI agrees to cooperate fully with PSC in connection with effecting the registration pursuant to this Section, including, but not limited to, furnishing such information as PSC may from time to time reasonably request and as shall be required by law or by the SEC in connection with such registration. This Section 8.2 shall survive the Closing, and the STH Stockholders acknowledge and agree to ensure the satisfaction of the obligations of this Section 8.2.

Notes:

¹ 15 US C §§77a *et seq.*

² 15 US C §§78a *et seq.*

³ The National Securities Markets Improvement Act of 1996 ('NSMIA') expressly preempted state laws in this respect. Securities Act §18(b)(4)(D), 15 US C 77r(b)(4)(D), added by NSMIA §102(a).

⁴ NSMIA preempted regulation over securities issue under exemptions promulgated pursuant to Section 4(2) of the Securities Act (the exemption for private offerings) Securities Act §18(a), 15 US C §77r(a) added by NSMIA §102(a).

⁵ Rules 504 and 505 both are based on the SEC's authority under Section 3(b) of the Securities Act to adopt conditional exemptions for offerings not exceeding \$5 million.

⁶ Under Section 11 of the Securities Act, purchasers of securities in an IPO can recover damages against certain persons who fail to establish 'due diligence.' Section 12 of the Act provides that a purchaser may recover damages against any person who offers or sells a security in violation of Section 5 (the registration requirements).

IN WITNESS WHEREOF, the parties have executed this Agreement and Plan of Reorganization effective the latest date hereof.

PUBLIC SHELL CORP.

By:
Title: President
Date: _____

SINATECH HOLDING COMPANY LTD.

By:
Title: Chairman
Date: _____

STOCKHOLDERS OF SINATECH

Date: _____

Date: _____

LARKSPUR LANDING INVESTORS, LLC
(solely for the covenants set forth in Section 8.2)

By:
Title: President
Date: _____

⁷ See Note to paragraph (d)(8) of Securities Act Rule 433 [17 CFR 230, 433].

⁸ Rule 15c2-8(b).

⁹ See Rules 460 and 418(a)(7) under the Securities Act. The SEC will accept acceleration requests submitted by fax, and oral acceleration requests under certain circumstances. Persons making oral requests should be prepared to provide orally the information described in Rule 418(a)(7) under the Securities Act.

¹⁰ Rule 15c2-8(c)-(e).

¹¹ This request for acceleration gives the SEC leverage over the company. The filing of any amendment, including the price amendment, starts the 20-day waiting period running again, hence the company must make a 'request for acceleration' asking the SEC to exercise its discretion and waive the 20-day period. A company cannot practicably wait 20 days due to potential changes in market conditions. To avoid denial of acceleration, the company is generally willing to cooperate with the SEC and to make changes to its registration statement which it might not be otherwise inclined to make.

Bringing Chinese Companies to the Worldwide Market—IPO and Listings in China and Other Selected Jurisdictions



This article sets out the IPO and listing requirements for stock markets around the world

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A company that goes public provides a platform to raise equity capital, expand investor base and open up opportunities to introduce strategic investors, increase the liquidity of shares belonging to them and retains talents and raises the company's profile and image in the eyes of the public and business partners.

In recent years, the most important trend in the global capital markets has been the ever-increasing number of China's state-owned and privately-held companies, especially the privately-held companies, to list overseas.

But bear in mind that the requirements for the different markets are varied differently. This article lists the main requirements as well as its comparisons below.

The listing requirements of **A-share** are as follows:

- 1 Applicant's qualifications:
 - a Operation in conformity with the government's strategic policy.
 - b No significant illegal acts or material misstatements in financial statements in the past three years.
- 2 Track record requirement:
 - a For Initial Public Offering ('IPO') and public floating, the Joint Stock Limited Company ('JSLC') shall be incorporated for no less than three years and register a consecutive profit track record in the past three years.
 - b In terms of the aforementioned profit track record, restructured from an SOE on an integral basis or other issuers exempted by the States Council of the PRC.
 - c As at the end of accounting year prior to public floating, net assets shall not be less than 30 per cent of total assets, and intangible assets (Land Use Right excluded) shall not be more than 20 per cent of net assets.
 - d Market capitalization of at least RMB50 million at the time of listing.
 - e Revenue of at least RMB300 million for the most recent three years.
 - f Positive cash flow of at least RMB50 million in aggregate for three preceding financial years.
 - g Aggregate investments (based on the audited final figures presented in the latest consolidated Financial Statements) shall not exceed 50 per cent of net assets.
 - h No significant changes in the issuer's business structure, management in the past three years; no replacement of *de facto* controllers.

- i Profits of RMB30 million for recent three years.
 - 3 Share capital:
Minimum RMB50 million of share capital after issuance.
 - 4 Minimum shareholdings requirements for the promoter and the public float:
 - a Minimum 25 per cent of share capital shall be held by the public.
 - b Minimum 10 per cent of share capital shall be held by the public if the total issued share capital exceeds RMB400 million.
 - c Minimum 1,000 natural person shareholders with shareholdings over RMB1,000 at par value respectively.
 - d Minimum share capital at par value of RMB10 million held by all natural person shareholders.
 - e Minimum 35 per cent of the issued share shall be held by the promoter. Unless otherwise approved by the government, a total of share capital of RMB30 million shall be held by the promoter.
 - 5 Funds raised:
 - a Clear objective to raise capital through IPO.
 - b Fund raised shall not exceed twice of the audited net assets of the issuer, less the accumulated undistributed profit attributable to shareholders separately as the last year end, prior to submission of application documents to the Public Offering Review Committee.
 - 6 Future prospects:
 - a The issuer shall include in the prospectus a plan to use fund raised issuing shares and a forecast on the returns and risks.
 - b Inclusion of a profit forecast of next year (reviewed by CPAs and an opinion is rendered) is optional. Directors of the Board shall assure the released profit target can be met under normal circumstances.
 - 7 Corporate governance:
 - a Independence of personnel, integrity of assets and independence of finance management. Regulatory compliance with the 'Company Law', 'Securities Law', 'Provisional Regulations concerning Offering and Trading of Shares' and 'Corporate Governance Standards of Listed Companies'.
 - b Appointment of independent non-executive directors required.
 - c Committees of strategy, audit, nomination and remuneration encouraged.
 - 8 Acceptable jurisdictions:
People's Republic of China.
 - 9 Restrictions on the issuer and the promoter:
 - a The issuer shall be a JSLC incorporated in conformity with the 'Company Law'.
 - b Minimum five promoters required, among which more than half have residence in the PRC. As an issuer restructures from an SOE, promoters can be less than five in case of public offering.
 - 10 Other considerations:
 - a Compliance with the assets appraisal regulations as stipulated by the 'Company Law' and 'Review Guidance on Assets Appraisal for a JSLC's IPO Application'.
 - b Inter-competition shall be avoided between a listed company and its controlling shareholder, any natural person or legal entity which directly and/or indirectly controls/impacts the listed company or those under control of the listed.
 - c Sales and purchases volume with its controlling shareholder and entities under its control should not exceed 30 per cent of its total sales and purchases, respectively.
 - d Assets necessary for manufacturing and operation. For the latest year and the latest period, revenues attributable to undertakings of contracts, commissioned business, lease and any other forms alike, and attributable to production relying on assets offered by its controlling shareholder (or *de facto* controller), its wholly owned subsidiaries or entities under its control should not exceed 30 per cent of its main business revenues.
 - e A one-year tutorial with aid from the leading underwriter.
- The listing requirements of **B-Share** are as follows:
- 1 Applicant's qualifications:
 - a Operation in conformity with the government's strategic policy.
 - b The use of funds raised shall be in conformity with government policy, in conformity with the regulations on fixed assets investment and utility of foreign investment.
 - c No significant illegal acts or material misstatements in financial statements.
 - d In principle, already a JSLC starting operation in compliance with regulations.
 - 2 Track record requirements:
 - a For IPO and public floating, the JSLC shall be incorporated for not less than three years and register a consecutive profit track record for the past three years.
 - b In terms of the aforementioned profit track record, a waiver will be granted to a successor JSLC restructured from an SOE

- on an integral basis, a successor JSLC derived from an LLC (Limited Liability Company) on an integral basis or other issuers exempted by the State Council of the PRC.
- c At the end of the preceding year, issuer's net assets shall not be less than 30 per cent of total assets; intangible assets (Land Use Right excluded) shall not be more than 20 per cent of net assets. Aggregate investments shall not exceed 50 per cent of net assets unless otherwise approved as a holding company by the State Council.
 - d Total net assets should not be less than RMB150 million.
- 3 Share capital:
 - a Minimum RMB50 million of share capital after issuance.
 - b Approval from the State Council is required if total par value exceeds US\$30 million.
 - 4 Minimum shareholdings requirements for the promoter and the public float:
 - a Minimum 25 per cent of share capital held by the public.
 - b Minimum 15 per cent of share capital shall be held by the public if the total issued share exceeds RMB400 million.
 - c Minimum 1,000 natural person shareholders with shareholdings over RMB1,000 at par value respectively.
 - d Minimum share capital at par value of RMB10 million held by all natural person shareholders.
 - e The input capital from the promoters should not be less than RMB150 million.
 - f Minimum 35 per cent of share capital subscribed by the promoters.
 - 5 Corporate governance:
 - a Independence of personnel, integrity of assets and independence of finance management. Regulatory compliance with the 'Company Law', 'Securities Law', 'Provisional Regulations concerning Offering and Trading of Shares' and 'Corporate Governance Standards of Listed Companies'.
 - b Appointment of independent non-executive independent and non-executive directors required.
 - c Committees of strategy, audit, nomination and remuneration encouraged.
 - 6 Acceptable jurisdictions: People's Republic of China.
 - 7 Other considerations:
 - a Compliance with the assets appraisal regulations as stipulated by the 'Company Law' and 'Review Guidance on Assets Appraisal for a JSLC's IPO Application'.
 - b Inter-competition shall be avoided between a listed company and its controlling shareholder, any natural person or legal entity which, directly and/or indirectly, control/impact the listed company or those under control of the listed.
 - c Sales and purchases volume with its controlling shareholder and entities under its control should not exceed 30 per cent of its total sales and purchases, respectively.
 - d Assets necessary for manufacturing and operation. For the latest year and the latest period, revenues attributable to undertakings of controlling shareholder (or *de facto* controller), its wholly owned subsidiaries or entities under its control should not exceed 30 per cent of its main business revenues.
 - e A one-year tutorial with aid from the leading underwriter.
- Currently, the main overseas markets where Chinese companies choose to list are New York, Hong Kong, London and Singapore.
- The requirements for these markets are set out below.

Hong Kong Main Board

- 1 Track record and market capitalization requirements:
 - a Trading records of not less than three financial years.
 - b Management continuity for at least three preceding years and ownership continuity and control for at least the most recent audited financial year.
 - c Three tests: —
 - i Profit test
 - Profits of HK\$20 million for the most recent year and aggregate of HK\$30 million for the first two years.
 - Market capitalization of at least HK\$200 million at the time of listing.
 - ii Market capitalization/revenue/cash flow test
 - Revenue of at least HK\$500 million for the most recent audited financial year.
 - Positive cash flow of at least HK\$100 million in aggregate for the three preceding financial years.
 - Market capitalization of at least HK\$2 billion at the time of listing.
 - iii Market capitalization/revenue test
 - Revenue of at least HK\$500 million for the most recent audited financial year.
 - Market capitalization of at least HK\$4 billion at the time of listing.

- Track record of less than three years may be accepted if:
 - (a) directors and management have sufficient and satisfactory experience of at least three years in the line of the listing business and industry; and
 - (b) management and ownership continuity and control for the most recent audited financial year.
 - d Exemptions may be granted for mineral companies and newly formed project companies, such as major infrastructure projects, which can have shorter trading records.
 - e A focused line of business is not specifically required, but its core business should meet the minimum financial requirement.
 - f Must have control over its business.
- 2 Minimum public float:
 - a Market capitalization of at least HK\$50 million held by the public at the time of listing.
 - b Minimum 25 per cent of the issuers total issued share capital at the time of listing.
 - c The exchange may, at its discretion accept a percentage of public float between 15 per cent and 25 per cent if the market capitalization of the issuer exceeds HK\$10 billion.
 - 3 Future prospects:
 - a No specific requirement but the applicant is required to include a general statement of the future plans and prospects.
 - b Inclusion of profit forecast is optional.
 - 4 Corporate governance:
 - a Three independent non-executive directors are required.
 - b Qualified accountant is required.
 - c Audit committee is required.
 - d Compliance officer not specifically required.
 - 5 Acceptable jurisdictions:
 - a Hong Kong, Bermuda, the Cayman Islands and the People's Republic of China.
 - b Other jurisdictions for secondary listing may be considered.
 - 6 Restrictions on initial shareholders:

A controlling shareholder at the time of listing must undertake:

 - Not to dispose of his interest in the issuer from the prospectus issue date until the first six months after listing.
 - Not to dispose of his interest in the issuer in the next six months, such that he would cease to be a controlling shareholder: at least 30 per cent interest in the issuer.
 - 7 Other considerations:
 - a Completing businesses of controlling shareholders or directors are allowed but full disclosure is required.
 - b May not list by way of placing only.
 - c New issue must be fully underwritten.

The listing issuer is not allowed to issue new securities in the first six months after listing.
- ### Hong Kong Growth Enterprise Market
- 1 Track record and market capitalization requirements:
 - a At least 24 months of active business pursuits.
 - b The period of active business pursuits can be reduced to at least 12 months if:
 - Turnover of not less than HK\$500 million in the last 12 months reported upon in the accountants' report.
 - Total assets of not less than HK\$500 million as shown in the balance sheet in respect of the last financial period reported upon in the accountant's report of the last financial period reported upon in the accountants' report.
 - Market capitalization of at least HK\$150 million held by the public.
 - c No profit requirement.
 - d Exemptions may be granted for mineral companies and newly formed project companies, such as major infrastructure projects, which can have shorter trading records.
 - e Must substantially be under the same management and ownership over the period of active business pursuits.
 - f Must actively pursue a focused line of business.
 - g Must control the composition of the board of directors and must have economic interest of not less than 50 per cent of the business.
 - 2 Minimum public float:
 - a Market capitalization of the higher of HK\$30 million and 25 per cent of the issuers' total issued share capital held by the public at the time of listing, if the market capitalization of the issuer does not exceed HK\$4 billion.
 - b Market capitalization of the higher of HK\$1 billion and 20 per cent of the issuers' total issued share capital held by the public at the time of listing, if the market capitalization of the issuer exceeds HK\$4 billion.
 - 3 Future prospects:
 - a Statement of business objectives for the period covering the remaining financial year during which listing occurs and the two full

- financial years thereafter.
- b Inclusion of profit forecast is optional.
- 4 Corporate governance:
- a Three independent non-executive directors are required.
- b Qualified accountant is required.
- c Audit committee is required.
- d Compliance officer is required.
- e Required to appoint a sponsor as an advisor for the period covering at least the remaining financial year during which the listing occurs and two full financial years thereafter.
- 5 Acceptable jurisdictions:
Hong Kong, Bermuda, the Cayman Islands and the People's Republic of China.
- 6 Restrictions on initial shareholders:
- a An initial management shareholder at the time of listing must undertake not to dispose of his interest in the issuer from the prospectus issue date to the first twelve months after the listing. This is reduced to six months if his interest is not more than one per cent.
- b A significant shareholder at the time of listing must undertake not to dispose of his interest in the issuer from the prospectus issue date to the first six months after the listing.
- 7 Other considerations:
- a Competing businesses of management shareholders, substantial shareholders or directors are allowed but full disclosure is required.

- b May list by way of placing only.
- c No underwriting requirement.
- d Listed issuer is not allowed to issue new securities in the first six months after listing except for the purpose of acquiring assets which will complement its focused line of business.

New York Stock Exchange

- 1 Minimum number of investors:
5,000 each holding 100 or more shares.
- 2 Minimum public share (total shares outstanding less any shares held by officers, directors, or beneficial owners of 10 per cent more):
US\$2.5 million world-wide.
- 3 Total market value of public shares:
US\$100 million world-wide.
- 4 Minimum bid price (to safeguard against certain market activity associated with low-priced securities):
N/A.
- 5 Market Maker (An electronic Communications Network is not considered a market maker for the purpose of these rules.):
N/A.
- 6 Operating history:
N/A.
- 7 Balance sheet:
N/A.
- 8 Pre-tax income:
US\$100 million cumulative pre-tax income for the last three fiscal years.



Photo: Adam Korzekwa

- 9 Corporate governance:
Non-US companies are required to comply with the requirements of the Sarbanes-Oxley Act of 2002.

NASDAQ National Market

- a Minimum number of investors:
- Standard 1 (Marketplace Rule 4420(a)) 400 each holding 100 or more shares.
 - Standard 1 (Marketplace Rule 4420(b)) 400 each holding 100 or more shares.
 - Standard 1 (Marketplace Rule 4420(c)) 400 each holding 100 or more shares.
- b Minimum public share (total shares outstanding less any shares held by officers, directors, or beneficial owners of 10 per cent more):
- Standard 1 (Marketplace Rule 4420(a)) 1.1 million.
 - Standard 1 (Marketplace Rule 4420(b)) 1.1 million.
 - Standard 1 (Marketplace Rule 4420(c)) 1.1 million.
- c Total market value of public shares:
- Standard 1 (Marketplace Rule 4420(a)) US\$8 million.
 - Standard 1 (Marketplace Rule 4420(b)) US\$18 million.
 - Standard 1 (Marketplace Rule 4420(c)) US\$20 million.
- d Minimum bid price (to safeguard against certain market activity associated with low-priced securities.):
- Standard 1 (Marketplace Rule 4420(a)) US\$5.
 - Standard 1 (Marketplace Rule 4420(b)) US\$5.
 - Standard 1 (Marketplace Rule 4420(c)) US\$5.
- e Market Maker (An electronic Communications Network is not considered a market maker for the purpose of these rules.):
- Standard 1 (Marketplace Rule 4420(a)) 3.
 - Standard 1 (Marketplace Rule 4420(b)) 3.
 - Standard 1 (Marketplace Rule 4420(c)) 3.
- f Operating history:
- Standard 1 (Marketplace Rule 4420(a)) N/A.
 - Standard 1 (Marketplace Rule 4420(b)) Two years.
 - Standard 1 (Marketplace Rule 4420(c)) N/A.
- g Balance sheet:
- Standard 1 (Marketplace Rule 4420(a)) US\$15 million in shareholders' equity.
 - Standard 1 (Marketplace Rule 4420(b))

- US\$30 million in shareholders' equity.
 - Standard 1 (Marketplace Rule 4420(c)) N/A.
- h Pre-tax income:
- Standard 1 (Marketplace Rule 4420(a)) US\$1 million.
 - Standard 1 (Marketplace Rule 4420(b)) N/A.
 - Standard 1 (Marketplace Rule 4420(c)) US\$75 million (or total revenue and total assets US\$75 million respectively).
- i Corporate governance:
Non-US companies are required to comply with the requirements of the Sarbanes-Oxley Act of 2002.

NASDAQ Small Capital Market

- a Minimum number of investors:
300 each holding 100 or more shares.
- b Minimum public share (total shares outstanding less any shares held by officers, directors, or beneficial owners of 10 per cent more):
1 million.
- c Total market value of public shares:
US\$5 million.
- d Minimum bid price (to safeguard against certain market activity associated with low-priced securities):
US\$4.
- e Market Maker (An electronic Communications Network is not considered a market maker for the purpose of these rules.):
3.
- f Operating history:
One year or, if less than one year, market capitalization of at least US\$50 million.
- g Balance sheet:
US\$5 million shareholders' equity or US\$50 million market value of listed securities, or US\$750,000 net income from continuing operation (in fiscal year or two of the last three fiscal years).
- h Pre-tax income:
See balance sheet criteria above.
- i Corporate governance:
Non-US companies are required to comply with the requirements of the Sarbanes-Oxley Act of 2002.

AMEX

- a Minimum number of investors:
800 or 400 if number of public shares is over 1 million.
- b Minimum public share (total shares outstanding less any shares held by officers, directors, or beneficial owners of 10 per cent more):
500,000.
- c Total market value of public shares:

- US\$3 million.
- d Minimum bid price (to safeguard against certain market activity associated with low-priced securities.):
US\$3.
- e Market Maker (An electronic Communications Network is not considered a market maker for the purpose of these rules.):
N/A.
- f Operating history:
N/A.
- g Balance sheet:
US\$4 million shareholders' equity.
- h Pre-tax income:
US\$750,000 pre-tax income in last fiscal year or two of the most recent three fiscal years.
- i Corporate governance:
Non-US companies are required to comply with the requirements of the Sarbanes-Oxley Act of 2002.

London Stock Exchange

- 1 Track record requirements:
 - a At least three years trading and revenue-earning recording, the UK Listing Authority ('UKLA') has the discretion to allow a shorter period in certain circumstances.
 - b Must report significant acquisition in the three years running up to the flotation.
 - c Most companies, including those with diversified businesses, can list in London if they meet the suitability requirements.
 - d The Company's directors and senior management must show they have collective experience and expertise to run the business.
- 2 Market capitalization and share in public hands:
 - a At least £700,000 for shares at the time of listing.
 - b At least 25 per cent of shares should be in public hands.
- 3 Future prospects:
 - a To show the company has enough working capital for its current needs and for at least the next 12 months.
 - b The company must be able to carry on its business independently and at arm's length from any shareholders with a controlling interest.
 - c A general description of the future plans and prospects must be given.
 - d If the company gives an optional profits forecast in the document or has already given one publicly, a report will be required by the Sponsor and the Accountant.

- 4 Corporate governance:
Although UK corporate governance rules do not apply to the non-UK companies, investors would expect similar standard, and an explanation for any difference. UK companies are expected to:
 - a Split the roles of Chairman and CEO.
 - b Appoint a minimum of three non-executive directors to the board.
 - c Have an independent audit committee and a remuneration committee.
 - d Provide evidence of high standard of financial control and accounting systems.
- 5 Acceptable jurisdictions and accounting standards:
 - a The Company must be properly incorporated.
 - b UK, US or IAS accounting standards are accepted.
- 6 Other considerations:
 - a Companies with a controlling (more than 30 per cent) shareholder have to demonstrate how the Company can conduct its business independently from such a shareholder at all times.
 - b Sponsors/Underwriters usually recommend that existing shareholders be barred from selling their shares for a period after listing the offering of their shares.
 - c The London Stock Exchange and Hong Kong Stock Exchange are co-operating to make it easier for companies to list in both Hong Kong and the UK.

Most overseas companies listing on the main market are already listed elsewhere and are admitted to listing in the UK under special rules for a 'secondary' listing as described above. These rules also apply to overseas companies seeking a primary listing in London but there are additional requirements in that case.

AIM

- 1 The Alternative Investment Market ('AIM') is a specially tailored market for young and growing companies from all over the world. There is no minimum trading record required and there is no minimum public shares requirement. The key to getting listed on AIM is to appoint a nominated adviser. The nominated adviser will assist your company through the application to help you make you meet regulatory requirements on an ongoing basis. In practice, the process is similar to (albeit more flexible) than a secondary listing on the main market.
- 2 The London Stock Exchange has introduced a new fast track admission process for

companies seeking a listing on AIM which are already listing on an overseas designated market.

Singapore Stock Exchange

- 1 Income and market capitalization:
 - Criteria 1
Cumulative consolidated pre-tax profit of at least S\$7.5 million for the last three years, with a pre-tax profit of at least \$1 million in each of those three years.
 - Criteria 2
Cumulative consolidated pre-tax profit of at least S\$10 million for the latest one or two years.
 - Criteria 3
At least S\$80 million at the time of the initial public offering, based on the issue price and post invitation issued share capital.
- 2 Shareholding spread:
 - a Market capitalization less than S\$300m: 25 per cent of enlarged share capital in public hand.
 - b Market capitalization less than S\$300m-S\$400m: 20 per cent of enlarged share capital in public hand.
 - c Market capitalization less than S\$400m-S\$1billion: 15 per cent of enlarged share capital in public hand.
 - d Market capitalization less than S\$1billion: 12 per cent of enlarged share capital in public hand.
- 3 No of shareholders:
At least 1,000 (2,000 for secondary listing).
- 4 Moratorium:
Promoters' entire shareholding at the point of listing for list six months after listing (Criteria 1 & 2).
- 5 Financial position and liquidity:
Healthy financial position with no shortfall in working capital. All debts owed by directors, substantial shareholders and companies controlled by directors and substantial shareholders must be settled.
- 6 Directors and management:
 - a At least two non-executive directors who are independent and free of any material business and financial connection with issuer.
 - b For foreign issuer, at least two independent directors and one of whom must be resident in Singapore.
 - c Audit Committee is required.

By means of comparing the above requirements

of listings, the track record requirements and market capitalization of A-share and B-share can be seen to be too stringent. However, when foreign auto manufacturers geared up to expand its capacity in China, China's local privately-held companies found that lack of capital was becoming an overwhelming obstacle for further development and this problem should be solved as soon as possible. The listing standard is too stringent for China's privately-held companies to meet, forcing many Chinese companies, especially the privately-held companies, to look at overseas stock markets, especially NASDAQ, AIM, Hong Kong Growth Enterprise Market and Singapore for the IPO.

There have been many state-owned companies which are able to meet the requirements of A-share easily and to look for an IPO or list overseas. Speculating on the condensation, in my opinion, the most important benefit is the IPO and listing overseas could raise the company's profile and image in the eyes of the public and business partners by going public.

During the process of IPO and listing, the company must plan and prepare to meet the requirements and the domestic laws and regulations of the IPO or listing places.

The company will have to deal with issues such as the inclusion and exclusion of assets and liabilities for the proposed listing group, human resources reorganization, establishment of management, finance, marketing and risk management systems, competition within the same industry, affiliated transactions, assets valuation, *etc.* Meanwhile, the process of going public overseas is also a process of improving the companies' quality in accordance with the standards of the place of going public, a process of guarding against risks in accordance with the International Financial Reporting Standards.

To the domestic public and business partners, a listed company really means more compliance with regulations, more transparency and more security. As a result, an ever-increasing number of state-owned and privately-held companies in China are looking forward to listing overseas.

Finally, the fact that China's economy has been able to maintain a quick growth rate during the past 10 years, could mean China's stock market might have a promising prosperity. China's stock market has gained confidence of the investors and the public all over the world.

All in all, to bring Chinese companies to the worldwide markets, IPO and listing, especially IPO and listing overseas, deserves our great attention and research.

Bringing Chinese Companies to the Market Abroad—IPOs and Listings in Canada



This paper discusses how Canada offers an attractive environment for IPO's of issuers whose businesses are focussed in China by laying down the IPO and listing process in Canada

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Introduction

Deciding to 'go public' through an initial public offering ('IPO') of equity securities and, generally, obtaining a stock exchange listing is often one of the key decisions facing a business. With the globalization of capital markets, an IPO and listing in a foreign jurisdiction, either alone or in conjunction with an IPO and listing in the company's domestic jurisdiction, may be desirable for a variety of reasons. This paper provides an overview of the IPO and listing process in Canada.

Canada offers an attractive environment for IPOs of issuers whose business is focussed on China. The Toronto Stock Exchange ('TSX') is Canada's senior stock exchange, while the TSX Venture Exchange ('TSX Venture') is geared towards more junior issuers. The TSX Exchanges rank second in the world in aggregate number of listed companies (3500+) and seventh in the world (third in North America after the NYSE and NASDAQ) by total listed company market capitalization (CAD 2 trillion+). Moreover, the TSX Exchanges are widely recognized as the leading mining exchanges in the world, with listings of over 60 per cent of the world's public mining companies. The concentration of mining

companies on the two exchanges provide a variety of benefits, including being in the same market as merger, acquisition and JV candidates, research coverage by a large community of experienced analysts, potential inclusion in specialized mining stock indices and access to capital pools accustomed to investing in international projects.

To date, some 31 companies whose business activities are based principally in China (including several in Hong Kong) have obtained listings on the TSX Exchanges. Of these, 14 are in the natural resources sector and 17 are in diversified industries, including financial services and biotechnology. The TSX Exchanges are actively seeking listings of more Chinese based issuers and maintain a business unit dedicated to assisting them in the listing process. A portion of the TSX website (www.tsx.com) is also published in Chinese.

The two-tier structures of the TSX Exchanges are designed to address the needs of public companies at different stages in their development. The TSX Venture provides access to capital for earlier stage companies or those requiring a smaller amount of financing. It also provides a cost-effective stepping stone for international companies looking to list on a quality North American market. Moreover, the TSX Venture has a mandate to mentor the management of newly public companies and there is a streamlined process for allowing 'graduation' to the TSX when senior market requirements are met.

Regulatory Environment

Securities regulation in Canada is a matter of provincial and territorial jurisdiction. Each of the jurisdictions has its own securities laws, policies and rules that are administered by a securities regulatory authority or regulator (each, a 'Securities Commission'). In addition, the Securities Commissions have adopted 'National Policies' and 'National Instruments' that are applicable in all Canadian jurisdictions (as opposed to 'Multilateral Instruments', which are applicable in more than one, but not all, of the Canadian jurisdictions). By and large, the process of offering securities to the public is uniform across Canada. Accordingly, while this paper will concentrate on the process in Ontario, it is fair to say that compliance with the Ontario rules will, with certain minor exceptions and subject to mandated French language translation requirements for offerings in Quebec, generally result in compliance with the rules in all provinces and territories. In Ontario, the regulator is the Ontario Securities Commission ('OSC').

IPO Process

Going public in Canada is a time-consuming and expensive process which generally requires the preparation of a prospectus containing all material information concerning the business. A prospectus typically includes audited historical financial information (usually two years of balance sheets and three years of income statements, statements of retained earnings and statements of changes in financial position, plus interim information). Management, the company's lawyers, the underwriters and their lawyers will review in detail the company's affairs in what is referred to as a due diligence process in order to ensure that the prospectus contains full, true and plain disclosure about the company and is not misleading in any respect. The prospectus is also reviewed and commented on by the OSC.

Once a company has completed an IPO, it becomes subject to continuous and timely disclosure requirements intended to ensure that the public capital market has access on an ongoing basis to all material information concerning the company. The last few years in particular have seen the introduction by the Canadian Securities Administrators (CSA) of additional reporting requirements which are, in part, responses to recent corporate governance and related reforms implemented in the United States in the wake of the Sarbanes-Oxley Act ('SOX').

Advantages of Becoming a Public Company

Potential advantages resulting from going public include:

- immediate access to equity capital (the equity infusion can be used for expansion or, for example, to reduce indebtedness), likely at more attractive multiples than would be available with private or venture capital financing, thus reducing dilution to existing shareholders and avoiding the interest costs of debt financing;
- liquidity for existing shareholders (subject to any escrow requirements imposed by the TSX or the OSC which are discussed below, restrictions imposed by underwriters and statutory restrictions on resale);
- improved opportunities for future financing (an IPO usually provides increased access to a broader range of financial markets and vehicles, including additional common equity, convertible debt, convertible preferred shares and rights offerings to existing shareholders and others, as well as making debt and preferred share markets easier to access by increasing familiarity with the company, improving debt/equity ratios and making it easier to attract financing on more attractive terms);
- increased ability to complete mergers and acquisitions both by using the issuer's publicly traded shares as 'acquisition currency' and by raising cash through the sale of additional equity, thus increasing flexibility;
- increased ability to attract and retain personnel and improved opportunities for management and employee compensation (eg through stock option and/or stock purchase plans);
- increased prestige and a higher profile generally, with resulting potential for improving corporate image and relationships with the community, customers and suppliers;
- facilitation of valuations, better enabling creditors, suppliers and others to place more accurate values on the company; and
- ability to conserve cash and declare stock dividends.

Additional Factors to Consider

A number of other factors should be considered in making the decision to go public, including:

- potential loss of control for the founder(s) of the company (including possibly becoming the target of an unwelcome takeover bid);
- sharing of success with new shareholders;
- loss of confidentiality due to initial prospectus and periodic financial reporting and other ongoing public disclosure requirements (with the legal obligation to disclose both good and bad news);
- initial and ongoing expenses, including higher legal and auditing fees, underwriting fees, TSX and OSC filing fees, translation costs if the

offering is to be made in Quebec, registrar and transfer agent fees, shareholder communication costs, printing costs, stock exchange listing expenses and expenses associated with annual meetings and compliance with continuous disclosure requirements;

- considerable management resources and time must be employed in the IPO process and subsequently to address such matters as board meetings (including audit committees and independent directors), shareholders' meetings, compliance with the requirements of securities laws and stock exchanges, discussions with analysts and reporters, more detailed or complex financial information requirements, accounting and control systems and disclosure and control procedures as well as certifications;
- potential loss of flexibility as a result of regulatory requirements, including in respect of related party or conflict-of-interest transactions;
- accountability and duties to public shareholders, which may require conducting of business in a more formal manner and impose greater short-term performance pressures;
- restrictions on the number of securities that may be issued;
- the impact on the market price of management's decisions and exposure to stock market fluctuations, with the risk of lower valuations of the company by creditors, suppliers and others detrimentally affecting the company;
- higher profile generally could lead to unwanted publicity and damage the corporate image and relationships with the investing community, customers and suppliers, including in such areas as regulatory relationships, the environment, lawsuits and similar disputes and contingent liabilities; and
- actual or alleged liability for misrepresentations in the prospectus or in other disclosure, including liability for failure to disclose material changes.

Where to Go Public—Canada v the US/UK

United States

The increased regulation of and complex disclosure and record-keeping requirements ushered in by the US SOX has had an impact on the IPO environment both in the US and in Canada, where similar reforms aimed at enhancing and improving market disclosure have been implemented, and clearly may factor in the decision as to when and where to go public. While the US has traditionally had more specialized pools of capital available and, perhaps, more specialized analysts, the strict disclosure obligations provided in SOX coupled with aggressive enforcement and general

litigiousness have had a considerable impact on the appetite for a US listing in recent years.

A further factor in determining where an IPO should be pursued is the nature of a company's business. While technology companies have often argued that it is difficult to raise equity capital in Canada, many mining companies with US properties are Canadian-based, perhaps because the Canadian capital markets are more supportive of the mining industry. That notwithstanding, if the principal market for a company's product or services is in the US, it may make sense to raise equity there.

Going public in the US is, in a broad sense, not dissimilar to going public in Canada. There are some important differences, however. For one thing, the US has a much more developed over-the-counter market, and some Canadian companies by-pass stock exchanges in favour of these systems, which tend to be somewhat less regulated. In addition to the more rigorous disclosure requirements of SOX, the US environment has historically been much more litigious, with the result that a company may be opening itself up to greater securities litigation risk in the US. In addition, due to its size and diversity, the US market may be able to complete transactions that could not be completed in Canada. The costs involved in a US public offering may well exceed the equivalent Canadian costs due to higher legal, audit, printing and similar fees. Additional financial statement reconciliation requirements to convert to United States Generally Accepted Accounting Principles ('US GAAP') may push them higher still.

The Multi-jurisdictional Disclosure System ('MJDS') provides a mechanism for established Canadian companies meeting specified size requirements and with specified reporting histories to access the US market on a streamlined basis. In a similar vein, the ability of Canadian companies doing offerings in Canada to do a parallel private placement to sophisticated investors in the US allows US investor demand to be tapped without the company becoming subject to either initial or extensive ongoing compliance requirements under US securities laws. Accordingly, a Canadian company looking at eventually establishing a US shareholder base may be able to accomplish this objective without going to the expense of completing an IPO in the US.

United Kingdom

The London Stock Exchange's Alternative Investment Market ('AIM') has become an increasing popular market for smaller, growing companies. Unlike most other markets, AIM does not stipulate minimum criteria in relation to company size, trading record, or number of

shares required to be held by the public. Although reforms may be underway, currently there are relatively few requirements in order to be admitted to AIM and, compared to exchanges in Canada and the US, AIM operates in a less stringent regulatory environment.

The IPO Vehicle

A detailed review of the tax and Chinese administrative rules impacting the structuring of vehicles used to implement an IPO of a Chinese business is beyond the scope of this paper. However, while a variety of approaches are seen in Canada, often for historical reasons, the typical structure involves a Canadian federal or provincially-incorporated corporation as the listed entity. This entity in turn will hold interests in Chinese wholly foreign owned enterprises ('WFOE's) or partially owned joint ventures ('JV's). For tax efficiency, these interests are often held through British Virgin Islands or Hong Kong intermediate holding companies.

How to Get There—Prospectus Offering or 'Reverse Take-over' Listing?

An issuer wishing to list its securities for trading upon the TSX must comply with the rules of the TSX, and demonstrate that it meets certain minimum listing requirements. While there are several different categories of listing, and while the minimum listing requirements for each vary to some extent, any listed company must meet certain financial and minimum public distribution requirements and must satisfy the TSX as to the quality of its management.

There are several methods of obtaining a listing on the TSX, the most common being by way of an initial offering of securities to a sufficient number of public shareholders so as to satisfy the minimum public distribution requirements of the TSX. This is usually completed by way of formal prospectus filed with the OSC and other Canadian Securities Commissions.

Alternatively, it is possible to obtain a listing by other means. While not technically an original listing, certain transactions (generally referred to as 'backdoor' listings or 'reverse take-overs') are treated in effect as if there were an original listing by the TSX. Under TSX rules, a backdoor listing occurs when an issuance of securities of a listed company would or could result, directly or indirectly, in the shareholders of a listed company owning less than 50 per cent of the shares or voting power of the resulting company, with an accompanying change of effective control of the listed company. The transaction giving rise to a backdoor listing may take one of a number of forms, including an issuance of shares for assets or an amalgamation. A backdoor listing by itself does not raise any new funds from public investors, but rather represents a method of in effect buying the existing public company's listing and public distribution shareholder base. Additional financing is often raised by completing a contemporaneous private placement or, on occasion, a subsequent public offering.

Where the TSX determines that a proposed transaction would constitute a backdoor listing, the approval procedure is similar to that of an original listing application and the resulting company must generally meet all of the original listing requirements of the TSX. In addition, by virtue of the TSX's rules respecting equity issuances by listed companies, a backdoor listing will almost always require shareholder approval. Special approval levels or voting requirements may be imposed by the TSX, and valuations or independent assessments may be required, particularly in the case of a non-arm's length transaction. Information circulars forwarded to the shareholders in connection with a meeting convened to approve a reverse take-over are required



to include prospectus-level disclosure. In addition, the information circular which is required to be forwarded to shareholders of the listed company in connection with the meeting at which their approval is to be obtained must be pre-cleared with the TSX. The TSX may also require that the securities to be issued pursuant to a backdoor listing be fully or partially escrowed in accordance with the TSX's Escrow Policy. In deciding whether an escrow is appropriate in such circumstances, the TSX will generally seek to apply the same principles set out in National Policy 46-201 – Escrow for Initial Public Offerings (which does not apply to issuers who listed on the TSX by completing a reverse take-over or who conducted their IPO outside Canada within the 12 months preceding the date of the TSX listing application). The escrow requirements under National Policy 46-201 are discussed below.

The rules of the TSX with respect to reverse take-overs are designed to prevent perceived abuses that would result from acquisition of effective control of a listed company which is in essence a shell, or where the new business activities to be carried on by the company following the transaction would dramatically change the character of the company. In circumstances where this is manifestly not the case, the TSX has in the past been flexible in imposing requirements on the listed company.

Since securities issued by an existing company in connection with a reverse take-over would generally be issued on a basis which is exempt from the prospectus requirements under applicable securities laws, there is limited or no involvement by the OSC in arm's length reverse take-overs. However, there may be certain resale restrictions on the resale of securities acquired in connection with a reverse take-over. Unlike the SEC in the US, the OSC does not as a matter of course review draft information circulars for shareholders' meetings. Non-arm's length transactions are subject to the restrictions imposed by OSC Rule 61-501 – Insider Bids, Issuer Bids, Business Combination and Related Party Transactions, which generally requires 'majority of the minority' shareholder approval, independent valuations, review by a special committee of independent directors and enhanced disclosure in connection with material transactions involving conflicts of interest, subject to certain exceptions. Further, the OSC may well treat a subsequent public offering by a company that has completed a reverse take-over as an IPO for escrow and other purposes.

Treasury versus Secondary Offering

If the company is to go public by way of an IPO,

consideration will need to be given to whether the IPO is to be an offering of new shares for cash to the public (a 'treasury' offering) or of a portion of the shares held by existing shareholders (a 'secondary' offering). The IPO may also be a combination of the two. Since new investors often prefer to inject into funds a new public issuer rather than provide liquidity to shareholders, secondary participation in the IPO is usually limited to some extent.

IPOs have traditionally offered common shares, but it is also possible to offer non-voting or reduced voting shares, subject to market acceptance. In addition, it is possible to issue units consisting of a common share and a warrant representing a right to buy additional shares at a predetermined price to the public in a treasury offering, thus providing the possibility of future additional financing as well as additional 'up-side' potential to initial investors.

Escrow Issues for Initial Public Offering

National Policy 46-201 – Escrow for Initial Public Offerings imposes uniform escrow terms which, if applicable, require management and key insiders of a newly listed public company to retain an equity interest for a prescribed period of time following an IPO. The policy considerations underlying these types of escrow requirements have historically been to bolster investor confidence by aligning the interests of management, key insiders and major shareholders with the issuer by requiring them to hold onto their interests for a prescribed period. These rules, where applicable, allow for staged releases from escrow of shares over periods ranging from 18 months to three years. Transfers within escrow are only permitted in limited circumstances.

Other Resale Restrictions

In addition to regulatory escrow requirements, companies contemplating an IPO should be aware that underwriters in an IPO generally place time-based (eg 180- to 365-day) contractual limitations on the ability of certain insiders to sell their securities of the issuer without underwriter consent. Companies may also be restricted by underwriters in further issuances for a limited period of time. Issuers should also note that under National Instrument 45-102 – Resale of Securities, pre-IPO stock may not be freely tradable until the expiry of any applicable restricted period (usually four months from the date of distribution), and that sales by a so-called 'control block' holder of securities (generally, holdings by a person of more than 20 per cent of the outstanding voting securities) trigger prospectus requirements unless made with public notice pursuant to a so-called 'dribble-out' exemption. Appropriate pre-IPO structuring may be done to avoid the limitations on resale in certain cases.

Stock Exchange Listing and Timing Requirements

As a practical matter, it is usually essential in an IPO to obtain a stock exchange listing for the securities in question, which means that the issuer will have to meet the minimum original listing requirements of the relevant stock exchange.

In determining eligibility, the TSX, for example, categorizes an issuer as being one of an industrial company (the general category), a mining issuer, or an oil and gas issuer. The industrial issuer category is itself subdivided into further categories including technology companies, research and development companies.

The TSX has established certain basic requirements for TSX listings such as a minimum public float, quality of management and sponsorship from a member firm of the TSX, as well as specific financial and other significant requirements depending on the applicable category of issuers. The minimum original listing requirements of the TSX are available on the TSX's website at www.tsx.com. Minimum listing requirements for TSX Venture listings are also based on financial performance, resources and stages of development. The TSX Venture listing requirements are specifically designed for emerging companies and recognize that they have different financial needs from more established businesses.

Depending on the circumstances (for example, in the case of mining companies, which are required to produce technical reports that comply with fairly stringent requirements imposed by the CSA), an initial public offering process generally takes in the range of three to six months absent any intervening factors.

Preparing To Go Public

The going public process can be complex and time-consuming with numerous issues needing to be addressed within tight time frames. By addressing the matters listed below in advance while the company is still private (rather than in the throes of the due diligence process prior to the IPO), considerable effort, expense and time can be saved in the long run.

Prepare a Business Plan

Development of a business plan can be a useful tool when approaching underwriters and to gauge investor interest in the company, as well as serving as a forerunner of a prospectus.

Prepare Audited Financial Statements

The prospectus will generally need to include three years of financial statements prepared in accordance with Canadian Generally Accepted

Accounting Principles and audited under Canadian Generally Accepted Auditing Standards. If at all possible, it is advisable to begin developing this historical audit record well in advance of an IPO. Auditors of public companies in Canada must also be firms in good standing with the Canadian Accounting Standards Board ('CPAB').

Develop Appropriate Reporting and Control Systems

The more informal management reporting systems typically used by private companies will not be suitable for a public company. Appropriate reporting and control systems and procedures to support the financial and other reporting requirements for a public company should be developed and put into place before the company has gone public. As a public company, the chief executive officer and chief financial officer will be required to sign certificates attesting to the company's reporting and control systems and procedures.

Selecting Advisers

Apart from selecting and developing a good working relationship with a qualified accounting firm (and an audit partner), it is essential to also retain a Canadian law firm that is experienced in the IPO process and able to work closely with the company's Chinese counsel. The accounting and law firms will also be able to assist in developing suitable accounting and control systems and addressing pre-IPO legal matters. Use of a financial public relations firm may also be advantageous in establishing a corporate image and assisting in preparing an investor marketing or 'roadshow' programme.

Selecting an Underwriter

The appropriateness and interest of prospective underwriters could be affected by the size of the offering and the national/international/regional scope of the offering, and it may be useful to develop a relationship with one or more investment dealers well before going public, including for consideration of alternative methods of financing. The following factors are also key: the underwriter's reputation in the Canadian market, its distribution capability, areas of expertise and willingness to provide research on the company following the IPO.

Modifications to Corporate Structure

Rather than taking the whole corporate group public, it may be desirable to take public only certain operating units in the group. This may depend in part on the historical financial performance and growth prospects of the various units, and the view taken by the financial markets of the different industries in which they operate.

For this purpose, it may be necessary to reorganize the corporate structure or transfer assets among entities in the corporate group, bearing in mind that the public company should be capable of being a viable entity on its own, without needing to rely extensively on private companies in the corporate group for its operation.

The corporate structure may also be simplified to create a single class of common shares (often a requirement of underwriters) and the constitutional documents of the company often need to be amended to ensure they are suitable for a public company.

Appointment of Independent Directors

Directors who are independent, namely persons who have no direct or indirect material relationship with the company, will need to be appointed to the board once the company has gone public. Directors' and officers' liability insurance will generally be necessary for this purpose.

It is generally regarded as good corporate governance to have a majority of directors on the board comprised of independent directors. Audit committees must, and, nominating and compensation committees are also recommended to be set up with specified terms of reference and be composed entirely of independent directors. It may also be desirable for a company to adopt a code of business conduct and ethics for its directors, officers and employees.

The company will also need to develop corporate governance policies and procedures which comply with the guidelines of the Securities Commissions.

Preparation of New Contracts

Certain types of contracts may need to be drafted, while other types of contracts may need to be revised, upon going public:

- A company that relies on technological expertise or innovation may require confidentiality and other agreements with certain employees;
- Consideration should be given to entering into employment agreements with particular employees regarding their compensation and related arrangements. Appropriate compensation levels will need to be established for shareholder managers that previously may have set salary and bonus levels primarily with a view to minimizing the overall tax burden rather than with a view to paying competitive remuneration;
- If there will be an ongoing business relationship between the new public company and its related companies, these entities should

enter into written contracts. By doing so before the company goes public, the company will have documented its relationship with related parties and thereafter be in a better position to avoid subjecting itself to the valuation and minority approval requirements for material related party transactions that may be applicable to it as a public company under OSC Rule 61-501; and

- Consideration might also be given to formalizing or revising certain supply, sales or lease agreements, loan agreements, and agreements with or among shareholders, local taxation authorities or other third parties, to ensure that they are appropriate and workable for a public company. For example, buy-sell arrangements between major shareholders may need to be revised or terminated in order to avoid the possibility of inadvertently triggering the requirement to make a take-over bid to all shareholders. Removal of change of control termination or approval rights may also be desirable, as well as insertion of confidentiality provisions or other mechanisms to address material contract disclosure requirements after the IPO.

Establishment of Share Incentive Plans

One of the advantages of going public is to facilitate a company establishing various types of share incentive plans for directors, officers, employees and consultants. These plans may include an option component, a purchase component and a bonus component. Administrative requirements regarding share incentive plans may be facilitated by setting up the plan before a company goes public.

Prospectus Offering

Since the prospectus process in Canada is broadly similar to corresponding offering exercises in other jurisdictions, it will not be reviewed in detail in this paper. Features specific to Canada include the requirement to translate the prospectus into the French language if the company is to offer its securities in Quebec. If the company is a mining company, its prospectus will have to comply with the technical report requirement in NI 43-101 – Standards of Disclosure for Mineral Projects. Use of financial forecasts and projections in offering documents are also subject to regulation under National Policy Statement No 48 – Future Oriented Financial Information.

Portions of this paper are drawn from Stikeman Elliott LLP's annual publication 'Going Public in Canada — Issues and Considerations Associated with an Initial Public Offering', copies of which may be obtained on request by going to www.stikeman.com and clicking on 'Publications'.

Protecting Legitimate Rights and Interests of Chinese Enterprises by Resorting to Multilateral Rules

This article discusses trade disputes and remedies with regard to China's domestic industries in Foreign Trade

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During recent years, against the backdrop of the downturn of the world market, China's export kept a two digit growth rate, indicating strong international competitiveness, which has attracted attention from the international community, meanwhile causing panic to some extent. Cries of 'China Threat' are often heard. China has stepped into the peak period of international trade frictions.

By the end of 2006, 31 countries and regions initiated 713 anti-dumping investigations against Chinese export products.¹ Statistics indicate that, between 1979 and the end of 2004, 34 countries and regions initiated 673 anti-dumping, countervailing, safeguard and special safeguard investigations, including more than 600 anti-dumping cases and 73 other cases, with more than 4,000 different types of products involved. The export value of China affected was about 19.1 billion US dollars.

While anti-dumping action will still be the main trade remedy measure against Chinese exports, new trade barriers and trade remedy measures, including safeguard, specific product safeguard, special safeguard on textile, countervailing measures, inspection and quarantine of animals and plants, Sections 301 and 337 and investigation of the US should also attract our attention. Reports say that, presently, technical barriers to trade have replaced antidumping action and become one of the main barriers to the export of China. Moreover, certain countries and regions are consistently challenging our policies and regulations on currencies and trade,

for example, the RMB exchange mechanism, China value added tax on integrated circuits, measures on the importation of parts constituting the features of an entire automobiles *etc.*

Certain countries also restrict imports from China through their domestic legislation. The International Trade Commission of the United States initiates 'section 337' investigation against imports which are allegedly infringing US patents (or other intellectual properties). The 'section 337' investigations under the Tariff Act of 1930 mainly involve infringement of patents, as well as other investigations such as infringement of trademarks and copyrights, and the abusive use of business secrets. Chinese enterprises are now faced with the 'section 337' crisis. In 2003, the US 'section 337' investigations against the exports from enterprises in China's mainland were more than those against any other country or region.

The US, CITA and EU also received the petitions for restricting the importation from China, which applied for the adoption of special safeguard measures against Chinese textiles, claiming that the importation of Chinese textile caused 'market disruption or threat of market disruption' to their domestic industry.

In 2004, relevant domestic industries of Canada requested CBSA to carry out countervailing and antidumping investigations on three types of products originating in, or exported from China, *ie* carbon steel and stainless steel fasteners, laminated flooring, out-door barbeques, and also requested to collect countervailing duty on these three types of products. The government of Canada accepted the petitions and initiated investigations, thus, China, for the first time, encountered countervailing investigations, and the copper pipe

fittings case followed in 2006. Reinvestigation was self initiated by CBSA only one month after the final determination from CITT.

On November 21, 2006, the DOC of the United States decided to initiate antidumping and countervailing investigation of Coated Free Sheet Paper originating in China. For the US, it was the first countervailing investigation against products originating from China since 1991. Moreover, in its notice, the DOC clearly pointed out that 'the initiation of this investigation will require the Department to review its long-standing policy of not applying the CVD law to non-market economies ('NME's).' On November 30, 2006, American Congressmen suggested to initiate countervailing investigation of the hardwood plywood originating in China. If this trend develops further, it would cause more countervailing investigations against products of large export value from China.

In order to deal with foreign trade remedy cases against our exports, in practice, a multi-channel network for the communication of trade remedy information has been established gradually, including the participation from the stationed abroad business institutions, subject enterprises, relevant chamber of commerce, and lawyers at home and abroad. The working mechanism in responding to foreign trade remedy measures has now been formed and has brought certain achievements.

These changes and developments in the field of trade remedies encourage and force us to do more researches on the current multilateral rules, to utilize more, to protect our domestic industries from the legal risks in foreign trade, and to improve the competition ability of our industries.

Trend in the Future Predicted

By the end of 2004, China came into an important transitional period after its accession to the WTO, and for most industries, the three year protection was over. Many experts analyzed and considered at that time that there would be a remarkable increase of trade disputes. The reality today has evidenced their analysis and judgment.

From the present situation, it could be predicted that trade disputes and frictions will frequently appear. In the long run, the accession to WTO would bring more benefits, for which, however, we have also paid the prices.

With respect to exports, we are faced with more trade disputes, with the subject amount increasing, fields enlarged, and countries using trade remedy measures increasing. The general reasons behind could be illustrated as followed. Such as that the global economy is weak to revitalize; the progress of multilateral trade negotiations is slow; the unilateralism prevails, causing the international trade protectionism to increase; the comparative

advantage of some of our products and the industrial structure are similar to those of other developing countries; products are of high substitution; the competition between the exported products and foreign products is inevitable, *etc.* The out-of-order competition of some of our enterprises is also one of the reasons.

With respect to imports, most of the protection and transitional measures after our accession to the WTO were over at the end of 2004. The threshold for importation was further lowered, thus making the desire of the domestic industries for trade remedies stronger. Meanwhile, the fast development of the domestic economy would result in the large demands of various imported merchandise. The increase of importation would inevitably bring about effects to the competition ability of the domestic industry. Should there be unfair competition from importation; the domestic industry would be materially injured. Therefore, it will be important to protect the legitimate rights and interests of Chinese industries and maintain the order of competition through the utilization of trade remedy measures.

At present, we could say that a set of legal framework respecting trade remedies has been established in China.

The increase of trade friction is one of the main features of the development of the world economy under the trend of economic globalization. WTO statistics indicates that trade frictions usually happen between countries with large trade amount. China, as the third biggest country in the field of trade, would inevitably be faced with trade frictions with other countries.

However, the trade friction is not fearful. As a matter of fact, no matter in 1979, when we encountered the first trade friction, European Economic Community-antidumping investigation of saccharin sodium originating in China, or today when it happens frequently, the whole economy of our country especially foreign trade has maintained fast development. That is what we have to face. It is a normal phenomenon in the development of world economy.

It has been over five years since China's accession to the WTO, and we are now much more broadly and deeply integrated into the development tide of the global economy. While the competition ability of our industry is developing fast, it is the duty of our Chinese lawyers to play an important role in protecting the domestic industry from and dealing with potential and existing legal risks in international trade through utilizing multilateral rules. In fact, lawyers usually play the main roles in the settlement of international trade disputes; however, the Chinese lawyers are far from playing the major roles in this regard. We have much to do and should do more in the very near future.

Photo: Christine Balderas



Protecting Legitimate Rights and Interests of Chinese Enterprises through Utilizing Multilateral Rules

Compared with those in the developed countries, Chinese lawyers are still freshmen in the field of international trade dispute settlement. However, their roles are becoming more obvious and important. Specifically, their functions in the settlement of international trade disputes are generally summarized as follows:

Participating in the Domestic Legislation, and Providing Advice and Suggestions

Chinese government, prior to and after China's accession to the WTO, abolished, amended and adopted quite a lot foreign trade laws and regulations in the efforts of bringing our laws and regulations in conformity with WTO rules. Lawyers in China, through the judicial authorities, Bar associations and the special committees under the Bar Associations, have provided many constructive opinions and suggestions. Many lawyers and firms have emerged in providing legal serviced in the sphere of trade remedy law and are now developing very fast. They have formed a professional team in this field and their achievements have been recognized by their clients, including the enterprise and the government. They have made great contributions in the drafting of Chinese Foreign Trade Laws, and a set of regulations

including anti-dumping, countervailing and the safeguard action, etc.

Actively Advocating the Rules and Spirits of WTO and Encouraging Lawyers to Actively Participate in the Prevention and Settlement of international Trade Disputes

In 1997, the Anti-Dumping and Anti-Subsidy Regulation of the People's Republic of China was promulgated, which is China's first trade remedy regulation. The first antidumping case was launched against the imported newsprint from US, Canada and South Korea, in which Chinese lawyers started to render comprehensive legal services to their Chinese and foreign clients. Before that, our lawyers merely played the supporting role in trade remedy cases filed against Chinese exported product by providing quite limited services therein. As the experience in practice increases, development has been made by Chinese lawyers both in the theoretical research and legal practices.

Chinese lawyers have been very active in advocating the WTO rules and spirits, writing papers, delivering speeches, and providing enterprises with suggestions and advices so as to protect their legitimate rights and interests and make more enterprises have a better understanding of WTO rules.

Lawyers dealing with trade remedy case

should be possessed with good command of laws, economics, accounting and foreign languages, as well as a good understanding of relevant policies. The All China Lawyers Association encourages lawyers aiming at trade remedy law practice to do more research and provide better services of high quality. With the necessary support from the Chinese governments and strong back up from lawyer's association, and also responding to the market demand, a professional team in providing legal services in the sphere of trade remedy law is now been formed. Thus, we believe that Chinese lawyers would make further developments and improvements in this filed which will in turn cause all circles to have a better understanding of the WTO rules and spirits, to encourage further researches on these rules, and would certainly be helpful for the prevention and settlement of international trade disputes.

Protect the Legitimate Rights and Interests of Chinese Enterprises Resorting to WTO Rules

As stated above, for export, we are faced with more trade disputes, and for imports, most of the protection and transitional measures after China's accession to the WTO were over at the end of 2004. The threshold for importation was further lowered, making the desire of the domestic industries resorting to trade remedies stronger. Thus, we lawyers will play an important role in protecting the legitimate rights and interests of the domestic enterprise by resorting to WTO rules.

Chinese lawyers have, by representing the domestic industries, initiated nearly 50 antidumping investigations against dumped imports, among which most investigations ended with the collection of final definitive antidumping duties, and some of them have already experienced the interim review and sunset review. In 2002, during the safeguard investigation of imports of certain steel products by the Chinese government, the case attracting worldwide attention, Chinese lawyers, both those representing the domestic industry and those representing the responding parties, played a role of great importance.

Meanwhile, in trade remedy cases initiated by foreign countries and regions against Chinese exports, Chinese lawyers are quite active in providing legal services to the responding enterprises and their roles are far different from the previous ones. Now we can see Chinese lawyers in each trade remedy case against Chinese exports and Chinese lawyers have grown up from insignificant supporting roles, such as doing the translation of the documents and assuming the role of messenger, into major roles. In some cases, Chinese lawyers provide services by themselves.

In view of the specialty of trade remedy cases, the formation and development of the team of Chinese lawyers have become indispensable for the protection of the rights and interests of domestic industries.

Actively participate in DSB Cases involving China and Provide Legal Services as Counsel for the Chinese Government

It is indisputable that all WTO members consider the establishment of the mechanism for WTO disputes settlement one major achievement. A large number of cases of various categories have been filed with WTO DSB and DSB has been playing an effective role in the settlement of those disputes.

As a WTO member, China has participated in many WTO disputes settlement cases, among which China was the co-complainant in the US—Steel Safeguards case in 2001 and won the case finally. China was the respondent in other three cases, *ie*, China — Value-added Tax on Integrated Circuits, China — Auto Parts, and latest case relating to IPR protection. The disputes on China — Value-added Tax on Integrated Circuits was settled through consultations with US before US requests for the establishment of a panel. The other two cases are in processes. For the abovementioned cases, Counsels for the Chinese Government all include Chinese lawyers.

In addition to the above mentioned cases, the Chinese Government has actively participated in WTO disputes cases as a third party, in which, the Chinese Government has been retaining Chinese lawyers as its counsels. Since China's entry into WTO, China has participated in more than 30 WTO cases as a third party.

Participation in these cases has gained Chinese lawyers experiences and laid the groundwork for Chinese lawyers to provide better legal service in the future. Participation in these cases is also an encouragement for Chinese lawyers.

Offer Advices for the Chinese Government in Multilateral Negotiations

In the Doha Round, China, as a responsible large country, actively pushes the progress of the Doha Round negotiation and plays an important role in the negotiations. For negotiation of some key issues, Chinese lawyers actively participate in the discussion and exchange of views organized by related government departments, and provides advices and comments to them. Related government departments have been inclined to pay increasing attention to the advices and suggestions of the domestic lawyers. Due to the constraint of time and practical experiences the areas in which Chinese lawyers are able to offer advices are still limited. However, we are confident that Chinese lawyers are able to

play a bigger role through our efforts and self-improvement.

Participate Actively in Legal Education of WTO Knowledge

As the development of China's foreign trade, the status of international trade law in legal education is more and more outstanding. WTO laws, as a branch of it, also attract more attentions with the development of the WTO. And some lawyers are active on the platforms in universities; some lawyers have opened particular curriculum and course. They actively participate in the WTO legal education, make every effort and try their best to train WTO professionals.

Conclusion

It has been more than five years since China's accession to WTO. Chinese lawyers are also

facing challenges as well as opportunities. WTO is a rules-based organization, the accession to which by China will certainly benefit Chinese lawyers. We believe that, with the supports from the government as well as understandings and encouragement from all circles, and through our constant efforts, we certainly will play a more important role on the stage of settlement of international trade disputes, and will make more contributions to the protection of the legitimate rights and interests of Chinese industries.

Note:

¹ 引自《与公平贸易局局长王受文网上交流》2006年10月8日 http://gzly.mofcom.gov.cn/website/face/www_face_history.jsp?p_page=2&sche_no=988

Latest Developments in PRC Antitrust Review Practice



This article discusses the legislation and bodies that govern Merger Control in the People's Republic of China

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Introduction

In multi-jurisdictional mergers, awareness of China's nascent antitrust review (merger control) regime is not as widespread as in other major markets (such as Europe and Japan). Often, planning for China's merger control compliance is something of an afterthought, even for sophisticated transaction parties with significant PRC operations. In light of the Chinese government's recent effort to strengthen cross border and offshore merger control enforcement, non-compliance with PRC merger-control rules may trigger adverse consequence for the merger parties, especially in respect of their PRC operations.

The notion of regulatory control over mergers involving foreign elements is not new in China. Back in 1999, the Regulations on Mergers and Divisions of Foreign Invested Enterprises (the 'FIE Merger Regulations') designated the Ministry of Foreign Trade and Economic Cooperation ('MOFTEC'), the predecessor of Ministry of Commerce ('MOFCOM'), as the agency responsible for merger control in respect of foreign invested enterprises. However, in the

context of global mergers and acquisitions, PRC pre-merger control consideration was not a factor as recent as four years ago.

The emergence of China's pre-merger control regime was signified on 12 April 2003, with the effectiveness of the Interim Measures Governing Acquisition of Domestic Enterprises by Foreign Investors (the 'Interim M&A Measures'), which were jointly promulgated by the MOFTEC, the State Administration of Taxation, the State Administration of Industry and Commerce ('SAIC') and the State Administration of Foreign Exchange. The Interim M&A Measures was subsequently replaced by Measures Governing Acquisition of Domestic Enterprises by Foreign Investors (the 'M&A Measures'), which were jointly promulgated by six government agencies and took effect on 8 September 2006. Chapter 5 of the M&A Measures contain specific merger-control provisions, which have a wide impact on inbound cross-border merger transactions, while at the same time regulate offshore and onshore mergers involving foreign elements.

On the legislative front, China's forthcoming Anti-monopoly Law (a draft of which has been circulated for comments) (the 'Draft Anti-monopoly Law'), if passed, will provide an overall antitrust regulatory framework for PRC merger control. The Draft Anti-monopoly Law contemplates the establishment of an Anti-monopoly Authority under the State Council to oversee antitrust enforcement activities. For the time being, PRC merger control regime is jointly enforced by the MOFCOM and SAIC (together the 'Merger Control Authorities'), with MOFCOM taking the lead in the review

of antitrust filings in connection with mergers involving foreign elements.

On 8 March 2007, the Anti-monopoly Investigative Office ('AMIO') under the MOFCOM issued the Guidance Notes on Merger-control Filing for Acquisition of Domestic Enterprises by Foreign Investors (the 'MOFCOM Guidance Notes'), which contain detailed instructions on pre-merger filings for parties to foreign-related mergers. The MOFCOM Guidance Notes cover matters such as the party responsible for filing, the timing for filing, and required filing materials. It introduced the mechanism of pre-filing consultations, whereby the filing party may request to engage in informal consultations with AMIO on key issues before submitting the filing documents. The M&A Guidance Notes also provide that the filing party may conduct the filing through its own personnel, or entrust a PRC licensed lawyer to carry out the filing.

Transactions Subject to the M&A Measures

Forms of Transaction Covered

The inbound cross-border mergers and acquisitions covered by the M&A Measures are referred to as 'acquisition of domestic company by foreign investor', which is defined as a transaction whereby a foreign investor:

- acquires shareholder's equity in, or subscribes to capital increase of, a non-foreign invested domestic enterprise (hereinafter 'domestic capital enterprise'), thereby converting the domestic capital enterprise into a foreign invested enterprise (hereinafter 'share acquisition'); or
- (i) establishes a foreign invested enterprise, and acquires (by way of negotiated agreement) and operates the assets of a domestic capital enterprise through such foreign invested enterprise, or, (ii) acquires (by way of negotiated agreement) the assets of a domestic capital enterprise, and operates such assets by contributing such assets as capital to establish a foreign invested enterprise (hereinafter 'assets acquisition').

The above definition effectively brings all types of inbound investment which involve assets or share acquisition within the purview of the M&A Measures. Control of the post-acquisition entity by the foreign investor is not a requisite element.

Extra-territorial Reach of the M&A Measures

The M&A Measures provide that acquisition of foreign invested enterprises in China by foreign acquirers, acquisition between foreign invested enterprises or between a foreign invested enterprise and a domestic capital enterprise, shall

all be in compliance with the relevant provisions of the M&A Measures. Therefore, all onshore transactions involving foreign elements are also covered by the merger-control rules.

Under the M&A Measures, an offshore merger will be subject to the M&A Measures if the merger parties have PRC operations which meet the prescribed filing thresholds. For purposes of this note, cross-border mergers, offshore mergers, and onshore mergers involving foreign invested enterprises shall collectively be referred to as foreign-related mergers.

Merger-Control Filing Thresholds

Inbound & Onshore Acquisitions

Under the M&A Measures, where acquisition of a domestic target (including domestic capital enterprise and foreign invested enterprise) by a foreign investor or foreign invested enterprise meets any of the following thresholds, the acquirer is required to submit a pre-merger filing to the Merger Control Authorities:

- Turnover — a party to the acquisition has annual sale of over RMB1.5 billion in the Chinese market for the current year.
- Market Share — a party to the acquisition has market share of at least 20 per cent in the Chinese market; or the acquisition will result in a party to the acquisition having at least 25 per cent of the Chinese market.
- Market Presence (Number of prior acquisitions) — the foreign investor has acquired cumulatively over 10 domestic capital enterprises in the relevant industry within one year.

In calculating the above thresholds, the contribution by affiliates shall also be counted.

The term 'affiliates' is not defined in the New M&A Measures. Under Article 217 of the amended PRC Company Law (effective as of 1 January 2006), affiliated relationship means a relationship between a controlling shareholder, *de facto* controlling person, director, supervisor or a senior manager and the enterprise directly or indirectly controlled thereby, and any other relationship which causes transfer of benefit from the company. In connection with merger-control review however, the MOFCOM Guidance Notes suggest that the primary scope of 'affiliates' are parties in control of (in which case including individuals), controlled by, or under common control with the acquisition parties, although the MOFCOM Guidance Notes also contain a catch-all phrase 'other enterprises or individuals having an affiliated relationship'.

In addition, even if an acquisition does not meet the thresholds prescribed above, upon petition by a

competing domestic capital enterprise, the relevant government department or industry association, if MOFCOM or SAIC is of the opinion that acquisition of a domestic capital enterprise by the foreign investor involves major market share, or there exists any other material factor which will seriously impact market competition, then MOFCOM or SAIC may also require the foreign investor to make a pre-merger filing.

Article 12 of the M&A Measures also provides that where a foreign investor acquires a domestic capital enterprise and gains *de facto* control thereof, if key industry is involved, there exist factors which impact on or may impact on national economic security, or the acquisition will result in transfer of *de facto* control of a domestic capital enterprise which owns a famous trademark or a Chinese historical trade name, the parties are required to make pre-merger filing with MOFCOM. Article 12 of the M&A Measures is motivated by PRC national economic security and cultural pride concerns rather than antitrust concerns; it also primarily focuses on cross-border transactions involving domestic capital enterprises.

Foreign-to-foreign Offshore Acquisitions

The M&A Measures provide that foreign-to-foreign offshore acquisition will potentially be subject to PRC merger-control review if one of the merger parties sells into the Chinese market, even without establishing a formal commercial presence in China. Article 53 of the M&A Measures provides that, where an offshore acquisition involves any of the following conditions, the

acquiring party shall make a pre-merger filing with the Merger Control Authorities:

- Asset Value — a party to the offshore acquisition having assets over RMB3 billion in China;
- Turnover — a party to the offshore acquisition having annual sale of over RMB1.5 billion in the Chinese market for the current year;
- Market Share — a party to the offshore acquisition and its affiliated enterprises having market share of at least 20 per cent in China; or a party to the offshore acquisition and its affiliated enterprises having market share of at least 25 per cent in China as a result of the offshore acquisition; or
- Market Presence (Number of post-acquisition FIEs) — the number of foreign invested enterprises in the relevant PRC industry whose shares are directly or indirectly held by a party to the offshore acquisition exceeding 15 as a result thereof.

Based on the Asset Value (RMB3 billion) test applicable to offshore merger, the large multinational companies with significant investment in China will likely meet the filing threshold, and should be prepared to make merger control filing in the PRC in connection with their offshore acquisitions. The Turnover and Market Share tests are the same for both cross border/onshore acquisitions and offshore acquisitions. For Market Presence test, in the case of cross-border/onshore acquisitions, the criteria



Photo: Yang Yu

is based on prior acquisitions (acquisition of over 10 domestic capital enterprises in related industries within one year); in the case of offshore acquisitions, the criteria is based on post-acquisition scale (shareholding in at least 15 foreign invested enterprises, regardless of size of shareholding).

Grounds for Exemption from Anti-Monopoly Review

There is a provision in the M&A Measures stipulating that if a transaction meets one of the following criteria, a party to the acquisition may apply to the Merger Control Authorities for review exemption:

- The acquisition may improve the fair competitive environment.
- The acquisition restructures loss making enterprises and ensures employment.
- The acquisition introduces advanced technology and management, and may enhance the enterprises' international competitiveness.
- The acquisition may improve the environment.

Whether or not a transaction meets one of these criteria involves an element of subjective judgment, which leaves the Merger Control Authorities with discretion as to whether to grant exemption.

Consequences of Non-Compliance

Under the M&A Measures, for acquisitions which may trigger national economic security concern, if the parties fail to make a filing, and the Merger Control Authorities determine that the acquisition has, or may have, material impact on national economic security, MOFCOM may convene the relevant authorities to jointly require the parties to terminate the transaction or adopt measures such as divestiture of relevant equity or assets or other effective measures, so as to eliminate the adverse impact of the acquisition on national economic security. Otherwise, the M&A Measures are silent on the consequences of failing to make required pre-merger filing with the Merger Control Authorities. A practical measure available to the Merger Control Authorities is to deny approval or registration of any PRC restructuring transactions involving Chinese subsidiaries of the merger parties. This could create significant disruption of the PRC integration plan envisioned by the merger parties.

The Draft Anti-monopoly Law, if passed, will empower the Anti-monopoly Authority to enjoin the merger before its consummation, or order an unwinding of the completed merger transaction if the parties failed to make the requisite pre-merger filing. A fine of between RMB1 million and RMB5 million may also be imposed.

Merger-Control Filing & Review Process

Who Should be the Filing Party

In principle, the filing party shall be the acquiring party, but may also be the acquired party in light of the specific circumstances of the case. For two or more parties all of whom are qualified to be the filing parties, they can make a joint filing or separate filings. A filing party may carry out the filing under its own name or entrust a Chinese law firm to make the filing through licensed Chinese lawyer(s) as filing agent(s).

When Should Filing be Made?

Merger-control filing shall be made before public announcement of the acquisition plan for a cross-border/onshore acquisition. For an offshore acquisition, merger-control filing shall be submitted either before public announcement of the acquisition plan, or contemporaneous with the pre-merger filing with the competent authority of the home country.

What Materials Should be Submitted?

A filing party shall submit the filing materials in writing, in duplicate copies, accompanied by an electronic version thereof (CD is the preferred media). The filing materials shall be in Chinese, and where the original materials are in a foreign language, a Chinese translation thereof shall be provided. The filing materials to be submitted shall include the following:

- 1 Filing application letter.
- 2 Proof of identity or proof of registration of the filing party.
- 3 Power of attorney and introductory letter.
- 4 Basic information concerning each party to the acquisition. The content shall preferably include, but shall not be limited to, the following: enterprise name; place of registration; business scope; enterprise organizational form (company, partnership or any other form); name, title and contact details of the liaison person; its sales turnover (worldwide and within China) for the most recent accounting year; its operating scale, its position in the industry, chronological information on its establishment and material events of change, *etc.*
- 5 A list containing affiliated enterprises and individuals for each party to the acquisition with a brief introduction thereof.
- 6 The approval certificates and business licenses for enterprises and other entities established by any of the parties in China.
- 7 Summary of the transaction.
- 8 Relevant market definition. Relevant market definition generally is comprised of product market definition and geographic market

definition. The rationale for the scope of relevant market definition or the rationale for no necessity to give definition shall be provided.

- 9 Sales turnover and market share of each party to the acquisition in the relevant market for the most recent two accounting years; and sources of data and the basis of calculation shall be stated and the relevant evidentiary materials shall be provided.
- 10 Names of the top five competitors in the relevant market.
- 11 Information on the supply structure and demand structure in the relevant market.
- 12 Competitiveness of the relevant market. It is recommended that the filing party provide such information on competitive aspects which include but are not be limited to the following:
 - i Market entry analysis;
 - ii The extent of any horizontal or vertical cooperation agreement among operators in the relevant market; and
 - iii Information on material instances of market entry or exit in the most recent three years in the relevant market.
- 13 Acquisition Agreement. If the agreement is in a foreign language, it shall be accompanied by a Chinese translation or a Chinese summary of the key provisions.
- 14 Audited financial statements of each party to the acquisition for the previous accounting year. If they are in a foreign language, they shall be accompanied by Chinese translations or Chinese summaries of main contents.
- 15 Information on application for review exemption. Where the filing party is of the view that the transaction meets any of the conditions for review exemption as prescribed in the M&A Measures and claims exemption, it shall provide the materials in support of review exemption concurrently.
- 16 Information on the industry association in the relevant market.
- 17 Information on filings of the acquisition in other jurisdictions.
- 18 Other information to be disclosed to the competent authority (if any), which is determined by the AMIO on a case by case basis.
- 19 A statement signed by the parties to the acquisition and/or the authorized agent regarding the truthfulness of the filed information and/or the accuracy of the sources of the filed information.

Where the filing party is unable to provide a particular item above, or is of the view that a particular item above is not needed in light of the specific circumstances of the case, the filing

party may make such request during the pre-filing consultations phase, or give reasons in the filing materials. Upon consent by the AMIO, such item may be partially provided or omitted.

How to Deal with Confidential Materials

If the filing party does not wish the information filed by it be made public or disclosed, it shall, at the time of filing such information, separately mark the document or information subject to confidentiality, and briefly explain the reasons for non-disclosure or non-publication. A non-confidential version of the filing materials requiring confidentiality treatment shall be provided at the same time.

How Long is the Review Period

The acquisition review period is 30-working days, commencing from the date of receipt of the complete filing materials. Upon the expiration of such 30-working day period, if the filing party is not served with any further notice of review, the acquisition review is deemed to have been passed. If the filing party is served with a notice of further review, the review period shall be extended to the 90th working day and the filing party shall provide further information or explanation to the competent authority as requested in the notice.

Once the pre-merger filing is made, if the Merger Control Authorities are of the opinion that the merger may:

- lead to excessive market concentration;
- impair fair competition; or
- harm consumer interests.

They shall jointly, or upon consultation with each other, individually convene the relevant departments, agencies, enterprises and other interested parties for a hearing within ninety (90) days of receipt of the submitted documents. After that, the Merger Control Authorities will make a determination on whether regulatory clearance for the transaction is to be granted or withheld.

Conclusion

China's emergence as the world's largest market for many products and as the world's biggest manufacturing base has attracted large investment from multinational companies. Its nascent antitrust review (merger control) regime is taking shape and will gain increasing importance in merger-control planning for acquisition activities of major global industry players. A thorough understanding of the PRC merger-control review process and proactive planning will give an edge to those players who want to accelerate their participation in China's economic boom through mergers and acquisitions.

Update of the Proposed Change to Korean Capital Market Regulatory Regime



This article discusses the proposed Bill by the Korean Government that aims to transform Korea's financial sector into an advanced economy in its own right

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Introduction

Since the financial crisis in late 1990's, the soundness of Korean financial institutions have greatly improved, and Korea's financial industry has made significant advances in size and market infrastructure. Now the Korean government finds it is time for the Korean economy to move on to the next level towards becoming the financial hub of Northeast Asia and sees the financial services industry as the future growth engine that will lead the transformation of the Korean economy. However, to achieve the government's national goal of becoming one of the world's financial center, sweeping structural reform and fundamental changes in the Korean capital markets and financial system is essential. This article discusses the current state of the Korean financial industry and the Korean government's recently proposed bill that is expected to revolutionize Korea's financial sector to bring it on par with those of the advanced economies.

Overview of Current Korean Financial Industry

Korea's financial industry has significant room for growth. Korean gross domestic product (GDP) in 2005 accounted for 1.62 per cent of the world's GDP, ranking Korea at No 13 in the world, but the Korean financial industry accounted for less

than 10 per cent of the Korean GDP. Reflecting the disproportionately small financial sector, Korea has produced only one financial institution that has made it into the Fortune 500 list. The money brokerage industry is not yet highly developed, which makes it difficult for companies to raise funds.

Although the bank-centered indirect financial market has considerably strengthened its competitive edge over the years through reorganization, expansion of business scope, and increase in size, the present state of the capital markets leaves much to be desired. Korean securities firms lag far behind foreign securities firms in size. One of the weaknesses of Korean securities firms is that they are too dependent on brokerage services and brokerage commission fees as their source of income, in contrast to foreign securities firms, which have diverse business models and generate income from a variety of sources such as investment banking, including investment product management, and financial advisory service. In recent years, asset management companies, securities firms and other businesses in the capital market have watched their profits stay stagnant or decrease. But for the Korean securities industry to grow and become internationally competitive, there are many barriers in the current legal and regulatory regime that must be removed.

The most salient limitation of the current regulatory framework relating to Korean financial industry, including its capital markets, is that there



are separate laws for each financial sector, and each law, with its narrow definition of 'securities', 'derivatives', and 'permitted activities', restricts the scope of business a financial institution can engage in. The multitude number of laws governing the financial industry also generates undue complications and is perceived to create regulatory inequality among sectors, without adequately protecting public investors. For the Korean capital market to develop and grow, the Korean Government realized the need for sweeping reform in the financial sectors, especially the capital markets.

The Proposed Capital Market Consolidation Act

On 29 December 2006, the Korean Government submitted to the National Assembly a bill aiming at reformulating the legal framework governing the Korean capital markets and financial investment services industry (the 'Bill'). Called the Capital Market Consolidation Act, the Bill revamps the existing regulatory system by first, consolidating all existing laws regulating the financial businesses (except the Banking Act, the Insurance Business Act and the Specialized Credit Financing Business Act) into a single statute; second, expanding the scope of vehicles used for collective investment schemes and introducing a broad and flexible definition of 'financial investment product'; and lastly, introducing more enhanced investor protection.

The proposed Capital Market Consolidation Act is expected to revolutionize Korea's capital

market sector and bring about a 'financial big bang' by removing the regulatory barriers within the capital market industry, allowing brokerages, futures traders and asset managers to enter each other's businesses, and enabling the creation of financial giants to compete with global investment banks such as Goldman Sachs or Merrill Lynch.

The Bill was initially expected to take effect in 2008 or the first half of 2009. It is currently undergoing deliberation by the competent standing committee of the National Assembly. There has been widespread consensus on the need and purpose of the Bill, but some provisions have been met with strong opposition. Below is a summary of the issues raised and recommendations made regarding the key features of the Bill during the deliberation session by the Finance and Economy Committee, a standing committee of the National Assembly.

Key Features of the Bill

Comprehensive Scope of Permitted Activities for Financial Investment Companies

Possibly the most hotly debated feature of the Bill is the provision permitting financial investment companies to engage in a wide array of activities, such as trading, brokerage, collective investment asset management, discretionary investment, investment advisory service, and investment trust business, which individual activities have, under the existing regime, been performed by each separate financial institutions (*eg*, securities companies, asset management companies, merchant banks, *etc*). There were concerns among

certain members of the committee, and strong opposition from the banks, that allowing financial investment companies to engage in cash transfer and settlement services would infringe on the core business of the banks, disrupt the stability of the settlement system, and be counter to the current government's policy of separating financial capital and industrial capital. Some also contended that permitting financial investment companies to engage in trading, brokerage, and collective investment asset management services would generate serious conflict of interest issues. Some committee members voiced concerns that with the enactment of the Bill, large foreign financial groups would come to dominate the Korean financial investment market and questioned whether the period of one and a half years from promulgation until effectiveness of the Bill is long enough to adequately prepare the Korean financial industry for the enormous changes the Bill would bring.

Enhanced Investor Protection

To provide greater protection for general investors, the Bill divides investors into 'professional investors' and 'non-professional investors', depending on their risk-taking and risk-hedging capabilities. The expert advisors to the Finance and Economy Committee, in their deliberation report on the Bill, suggested that, if financial investment companies are to be allowed to engage in trading and brokerage activities and, at the same time, provide collective investment asset management services, a provision should be added in the Bill that would place the burden of proof of damages resulting from any unfair trading practices on the financial investment service provider, instead of the harmed investor. The expert advisors also proposed that financial investment service providers be compelled to deliver a 'suitable letter' to their clients, setting out whether the relevant financial investment product is suitable for a client's investment and the rationale for such conclusion. They also proposed a mandatory 'cooling off' clause under which the customer would be entitled to terminate certain types of contracts with a financial investment company, such as long-term investment contracts, within a certain period from the execution date of those contracts.

Broad Definition of 'Financial Investment Product'

The committee's expert advisors suggested that the term 'financial investment product' or 'derivative product' be defined in the statute, rather than being left to be defined in the presidential decree, as was originally contemplated. The reason is that the definition of these terms would be critical in the

interpretation and application of the statute, and defining the terms in the statute would be more in furtherance of the Korean Government's purpose of having a comprehensive definition of 'financial investment product' that would allow the development of a variety of investment options to financial investment companies. They also recommended that the regulatory scope and scheme of the banking business and insurance business should be overhauled, in line with the broadening of the definition of the term 'financial investment product'.

Function-based Regulatory Approach

The Bill adopts a function-based regulatory approach, whereby the same rules will be applied to the same type of services and functions, irrespective of the category of the financial service provider. There were no special comments on this feature, other than a call for transparency in the governance structure of the Korean Financial Investment Association (which is to be established under the new law) and the Korea Exchange to secure their independence and impartiality.

Amendments to the Bill

In response to the opposition and concerns voiced from various stakeholders, mainly the banking industry, some members of the National Assembly submitted an amended Bill on 14 March 2007. The amended Bill contains the following revisions.

Curtailed Scope of Permitted Activities for Financial Investment Companies

The scope of permitted activities for financial investment companies has been reduced from that initially proposed. As a result, financial investment companies may not simultaneously engage in trading, brokerage, and investment trust businesses. It is reported that this amendment was mainly due to conflict of interests concerns.

Cash Transfer by Securities Firms

Contrary to the original version of the Bill that allowed financial investment companies and securities firms to provide cash transfer services for their customers, the amended Bill excludes cash transfer services from their business scope, presumably on the ground put forward by the banks, namely that cash transfer and settlement services are the 'foundation' of the financial system and should remain in the hands of the banks for the sake of stability of the financial system.

Disclosure of Sanctions

The original Bill provided that mandatory disclosure of cancellation of license or registration of financial investment companies be made in the

official gazette and on the website of the Financial Supervisory Commission of Korea. The amended Bill provides for more extensive disclosure obligations and has added business suspension, corrective order, warning, and caution in the list of sanctions requiring mandatory disclosure with respect to financial investment companies.

Prospect for the Bill

In its deliberation report in March 2007, expert advisors to the Finance and Economy Committee of the National Assembly suggested that further review and discussion of the Bill is necessary. Because of the debate among members of the National Assembly, academic circles, the securities industry, and the banking industry about whether to permit financial investment companies cash transfer and settlement services, this Bill lost its chance of being dealt with in the extraordinary session in April. Backed by the overall consensus in the Korean financial industry that liberalization and comprehensive reform of the current financial system is necessary, the Korean Government is determined to get this Bill passed in June. However, the prospects and timing for passage of the Bill are unclear. Even if the National Assembly passes the Bill, it is not certain that the Bill will be passed as originally submitted by the Government, or in its amended version. Also, it is possible that the period of one and a half years between the promulgation and effectiveness of the Bill will be extended to give domestic financial investment service providers additional time to prepare for competition with foreign financial investment firms.

The hottest issue and biggest obstacle to the enactment of the Bill is the sharp conflict of interest between the securities firms and the banks over cash transfer and settlement services. Securities firms argue that allowing cash transfer and settlement services to securities firms will be for the benefit of consumers, because, then, consumers who have accounts at securities firms will be able to pay utilities fees, credit card bills and other payments through their securities accounts, and as a result, enjoy lower financial transaction cost, as well as high quality customer services. Banks, however, strongly oppose to this liberalization, claiming that it will undermine the soundness of the payment system which is very crucial to the Korean economy. However, what the banks really fear is that once cash transfer and settlement services are granted to securities firms,

short-term funds in the amount of approximately 100 trillion Korean Won, which had been kept in bank accounts, will likely move to securities accounts, which provide eight times higher rate of return than ordinary bank accounts. If this happens, the banking industry will suffer a huge blow.

On 29 May 2007, the Bank of Korea, which had aligned itself to the banking industry and opposed to permitting cash transfer and settlement services to securities firms, agreed with the Financial Supervisory Commission of Korea (the financial regulatory body in Korea) on a revised Government Bill allowing financial investment companies to provide cash transfer and settlement services, in return for the Financial Supervisory Commission of Korea handing over some regulatory power over securities firms to the Bank of Korea. This agreement between the Bank of Korea and the Financial Supervisory Commission of Korea is a positive step forward in getting the Bill passed in June, but the Bill still has a long road ahead, as agreements must be reached between the securities firms and banks, as well as between the Korean Government which proposed the original Bill and the lawmakers who submitted the amended Bill.

Considering that from June until December of this year, legislators will be preoccupied with the presidential election, if this Bill is not passed during the extraordinary session in June, an examination of the Bill by the Legislative and Judiciary Committee of the National Assembly may not take place until after the presidential election in December 2007. Further, if the Bill is not passed in the extraordinary session in February of 2008, there is a possibility that the Bill will be abandoned with the ending of the term of the 17th National Assembly on 29 May 2008. In such case, the Korean Government will have to re-introduce the Bill with the opening of the 18th National Assembly.

However, despite the disagreements over some issues and resistance in some areas, hopes are high for the Capital Market Consolidation Act, which is expected to transform the Korean financial regulatory regime and foster the creation of world-class financial investment companies. The Korean capital market industry is gearing up for a big leap under the new legal framework provided in this Bill, and the Korean Government is positive that the Capital Market Consolidation Act, in whatever modified form, will eventually be passed, if not within this year, certainly by some time next year.



IPBA SCHOLARSHIPS

The Inter-Pacific Bar Association is pleased to announce the establishment of the IPBA Scholarship Programme to enable practicing lawyers to attend the IPBA's Eighteenth Annual Meeting and Conference, which will be held in Los Angeles from April 27 to April 30, 2008.

What is the Inter-Pacific Bar Association?

The Inter-Pacific Bar Association ('IPBA') is an international association of business and commercial lawyers with a focus on the Asia-Pacific region. Members are either Asia-Pacific residents or have a strong interest in this part of the world. The IPBA was founded in April 1991 at an organising conference held in Tokyo attended by more than 500 lawyers from throughout Asia and the Pacific. Since that time, it has grown to become the pre-eminent organization in respect of law and business within Asia with a membership of over 2,000 lawyers from 71 jurisdictions around the world. Lawyers in most law firms in the Asia-Pacific region and internationally that have a cross-border practice are members of the IPBA.

What is the Inter-Pacific Bar Association Annual Meeting and Conference?

The highlight of the year for the IPBA is its annual multi-topic four-day conference. The conference has become the 'must attend event' for international business and commercial lawyers. In addition to plenary sessions of interest to all lawyers, programs are presented by the IPBA's eighteen specialist committees. The IPBA annual meeting and conference provides an opportunity for lawyers to meet their international colleagues with Asian practices and to share latest developments in cross-border practice and professional development in Asia. Previous annual conferences have been held in Tokyo (twice), Sydney (twice), Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul, Bali and Beijing attracting as many as 700 lawyers plus accompanying persons. Next year the conference will be held in Los Angeles from April 27 – April 30, 2008.

What are the IPBA Scholarships?

The IPBA Scholarship Programme was originally in honour of the memory of M.S. Lin of Taipei, who was one of the founders and a past President of the IPBA. Today it operates to bring to the IPBA Annual Meeting and Conference lawyers who would not otherwise be able to attend and who would both contribute to, and benefit from, attending IPBA conference and to endorse the IPBA's interest in the development of law and practice in Asia.

Who is eligible to be an IPBA Scholar?

[1] Lawyers from Developing Countries

To be eligible, the applicants must:

- (a) be an indigenous lawyer in Vietnam, Laos, Cambodia, Myanmar, Mongolia or the Pacific Islands;
- (b) be fluent in both written and spoken English (given this is the conference language); and
- (c) currently be involved in a cross-border practice or wish to become engaged in a cross-border practice.

[2] Young Lawyers

To be eligible, the applicants must:

- (a) be under 35 years of age **and** have less than five years of practice;
- (b) be fluent in both written and spoken English (given this is the conference language);
- (c) have taken an active role in the legal profession in their countries;
- (d) currently be involved in a cross-border practice or desire to become engaged in a cross-border practice; and
- (e) have published an article in a reputable journal on some topic related to the work of one of our committees or provide some other objective evidence of committed involvement in the profession.

Preference will be given to those applicants who could not otherwise attend the conference, for example, because of personal or family financial circumstances and/or because they are working for a small firm which could not afford to send them to the conference. Applicants from multi-national firms will normally be considered only if they have a substantial part of their attendance expenses provided by their firm.

In order to spread the benefit of these Scholarships further, applicants should set out the amount you or your firm could pay towards the airfare and conference fee, taking into account your personal and family circumstances and your firm's situation.

Each IPBA Scholar will receive:

1. Return economy class transportation from the scholar's home city to Los Angeles.
2. Waiver of the Los Angeles Conference registration fee.
3. Accommodation in a conference hotel for four nights.
4. *Per diem* living expenses of \$20 per day.
5. Waiver of IPBA annual membership fees for 2008, 2009 and 2010.

How does one apply to be an IPBA Scholar?

To apply for an IPBA Scholarship, please obtain an application form and return it to Kaori Hashimoto at the IPBA Secretariat in Tokyo no later than **October 31, 2007**. Application form is available either through the IPBA website (www.ipba.org) or at the IPBA Secretariat.

Please send applications to the IPBA Secretariat at:

Roppongi Hills North Tower 7F
6-2-31 Roppongi, Minato-ku
Tokyo 106-0032, Japan

Telephone: +81-3-5786-6796
Facsimile: +81-3-5786-6778
E-mail: ipba@tga.co.jp

What happens once a candidate is selected?

The following procedures will apply after selection:

1. The Secretary-General will notify each successful applicant that he or she has been awarded an IPBA Scholarship. The notification will be provided at least two months prior to the opening of the conference. Unsuccessful candidates will also be notified.
2. Airfares and accommodation will be arranged by the Los Angeles Conference Host Committee and/or the IPBA Secretariat after consultation with the successful applicants.
3. A liaison person will introduce each Scholar to the IPBA and generally help the Scholar to obtain the most benefit from the Conference.



An Invitation to Join the Inter-Pacific Bar Association

The IPBA is an international association of business and commercial lawyers who reside or have an interest in the Asian and Pacific region. The IPBA has its roots in the region, having been established in April 1991 at an organizing conference in Tokyo that was attended by more than 500 lawyers from throughout Asia and the Pacific. It is now the pre-eminent organization in the region for business and commercial lawyers, with over 1,600 members from 70 jurisdictions.

The growth of the IPBA has been spurred by the tremendous growth of the Asian economies. As companies throughout the region become part of the global economy, they require additional assistance from lawyers in their home country and from lawyers throughout the region. One goal of the IPBA is to help lawyers stay abreast of developments that affect their clients. Another is to provide an opportunity for business and commercial lawyers throughout the region to network with other lawyers of similar interests and fields of practice.

Supported by major bar associations, law societies and other organizations throughout Asia and the Pacific, the IPBA plays a significant role in fostering ties among members of the legal profession with an interest in the region.

IPBA Activities

The breadth of the IPBA's activities is demonstrated by the number of specialist committees overleaf. All of these committees are active and have not only the chairs named, but a significant number of vice-chairs to assist in the planning and implementation of the various committee activities. The highlight of the year for the IPBA is its annual multi-topic four-day conference, usually held in the first week of May each year. Previous annual conference have been held in Tokyo (twice), Sydney (twice), Taipei, Singapore, San Francisco, Manila, Kuala Lumpur, Auckland, Bangkok, Vancouver, Hong Kong, New Delhi, Seoul and Bali, attracting as many as 700 lawyers plus accompanying guests.

The IPBA has organized regional conferences and seminars on subjects such as Practical Aspects of Intellectual Property Protection in Asia (in five cities in Europe and North America respectively) and Asian Infrastructure Development and Finance (in Singapore). The IPBA has also co-operated with other legal organizations in presenting conferences — for example on Trading in Securities on the Internet, held jointly with the Capital Market Forum.

The IPBA also publishes a membership directory and a quarterly *IPBA Journal*.

Membership

Membership in the Association is open to all qualified lawyers who are in good standing and who live in, or who are interested in, the Asia-Pacific region.

• Standard Membership	US\$195 / ¥23,000
• Three-Year Term Membership	US\$535 / ¥63,000
• Lawyers in developing countries with low income levels	US\$ 100 / ¥11,800
• Young Lawyers (under 30 years old)	US\$ 50 / ¥6,000

Annual dues will cover the period of one year starting from January 1 and ending on December 31. Those who join the Association before August 31 will be registered as a member for the current year. Those who join the Association after September 1 will be registered as a member for the rest of the current year and for the following year.

Qualified lawyers who attend the IPBA Annual Meeting and Conference and pay the non-member conference fee will be automatically registered as a member for the then current year ending on December 31.

Membership renewals will be accepted until July 31.

Selection of membership category is entirely up to each individual. If the membership category is not specified in the registration form, standard annual dues will be charged by the Secretariat.

Further, in order to encourage young lawyers to join the IPBA, a Young Lawyers Membership category (age under 30 years old) with special membership dues has been established.

IPBA has established a new Three-Year Term Membership category which will come into effect from the 2001 membership year.

There will be no refund of dues for cancellation of all membership categories during the effective term, nor will other persons be allowed to take over the membership for the remaining period.

Corporate Associate

Any corporation may become a Corporate Associate of the Association by submitting an application form accompanied by payment of the annual subscription of (¥50,000/US\$500) for the then current year.

The name of the Corporate Associate shall be listed in the membership directory.

A Corporate Associate may designate one employee ('Associate Member'), who may take part in any Annual Conference, committee or other programs with the same rights and privileges as a Member, except that the Associate Member has no voting rights at Annual or Special Meetings, and may not assume the position of Council Member or Chairperson of a Committee.

A Corporate Associate may have any number of its employees attend any activities of the Association at the member rates.

- Annual Dues for Corporate Associates US\$500 / ¥50,000

Payment of Dues

Payment of dues can be made either in US dollars or Japanese yen. However, the following restrictions shall apply to payments in each currency. Your co-operation is appreciated in meeting the following conditions.

1. A US dollar cheque should be payable at a US bank located in the US. US dollar cheques payable in Japan may be returned to sender depending on charges.
2. A Japanese yen check should be payable at a Japanese bank located in Japan.
3. Japanese yen dues shall apply to all credit card payment. Please note that the amount charged will not be an equivalent amount to the US dollar dues.
4. Please do not instruct your bank to deduct telegraphic transfer handling charges from the amount of dues. Please pay related bank charges in addition to the dues.

IPBA Secretariat

Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan
Tel: 81-3-5786-6796 Fax: 81-3-5786-6778 Email: ipba@tga.co.jp Website: www.ipba.org

See overleaf for membership
registration form



IPBA SECRETARIAT

Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan
Tel: 81-3-5786-6796 Fax: 81-3-5786-6778 Email: ipba@tga.co.jp Website: www.ipba.org

IPBA MEMBERSHIP REGISTRATION FORM

MEMBERSHIP CATEGORY AND ANNUAL DUES:

- Standard Membership.....US\$195 or ¥23,000
- Three-Year Term Membership.....US\$535 or ¥63,000
- Lawyers with low income levels in developing countries.....US\$100 or ¥11,800
- Young Lawyers (under 30 years old).....US\$ 50 or ¥ 6,000

Name: Last Name _____ First Name / Middle Name _____

Birthday: year _____ month _____ day _____ Sex: M / F

Firm Name: _____

Jurisdiction: _____

Correspondence Address: _____

Telephone: _____ Facsimile: _____

Email: _____

CHOICE OF COMMITTEES:

- | | |
|---|--|
| <input type="checkbox"/> Aerospace Law | <input type="checkbox"/> Insurance |
| <input type="checkbox"/> Banking, Finance and Securities | <input type="checkbox"/> Intellectual Property |
| <input type="checkbox"/> Corporate Counsel | <input type="checkbox"/> International Construction Projects |
| <input type="checkbox"/> Cross-Border Investment | <input type="checkbox"/> International Trade |
| <input type="checkbox"/> Dispute Resolution and Arbitration | <input type="checkbox"/> Legal Practice |
| <input type="checkbox"/> Employment and Immigration Law | <input type="checkbox"/> Maritime Law |
| <input type="checkbox"/> Energy and Natural Resources | <input type="checkbox"/> Tax Law |
| <input type="checkbox"/> Environmental Law | <input type="checkbox"/> Technology and Communications |
| <input type="checkbox"/> Insolvency | <input type="checkbox"/> Women Business Lawyers |

METHOD OF PAYMENT (please read each note carefully and choose one of the following methods):

- US\$ Check/Bank Draft/Money Order
– payable at US banks in the US only (others may be returned to sender)
 - Japanese yen ¥ Check/Bank Draft
– payable at Japanese banks in Japan only (others may be returned to sender)
 - Credit Card – **Please note that Japanese yen dues shall apply to payment by credit cards.**
 VISA Master Amex (Verification Code): _____
 Card Number: Expiration Date: _____
 - Bank Wire Transfer – Please make sure that remitting bank’s handling charges are paid by the remitter him/herself.
 to The Bank of Yokohama, Shinbashi Branch (Swift Code: HAMAJPJT)
 A/C No. 1018885 (ordinary account)
 Nihon Seimei Shinbashi Bldg 6F, 1-18-16 Shinbashi, Minato-ku, Tokyo 105-0004, Japan
- Signature: _____ Date: _____

PLEASE RETURN THIS FORM WITH REGISTRATION FEE OR PROOF OF PAYMENT TO:

Inter-Pacific Bar Association
Roppongi Hills North Tower 7F, 6-2-31 Roppongi, Minato-ku, Tokyo 106-0032, Japan
Tel: 81-3-5786-6796 Fax: 81-3-5786-6778 Email: ipba@tga.co.jp