

Study on Securities Laws and Regulations in the Field of Mergers and Acquisitions of Multinational Enterprises in China

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Abstract. As Chinese reform and opening up continues to bear fruit, more and more multinational enterprises are merging and acquiring domestic enterprises to achieve their expansion purposes, which also promote international trade to a certain extent. Meanwhile, in the continuous practice of transnational M&A activities, the problem of state regulation of this activity has gradually emerged, particularly under the legal regime of securities law is more obvious. To facilitate the progress and development of foreign M&A, it is necessary to regulate transnational M&A activities reasonably and effectively in China. The first part of this paper describes the three remarkable stages in the past decades of its development, then analyzes the regulatory features of the current legal system of securities law in China from the horizontal and vertical perspectives, and the subject as well as object views. Moreover, it presents the shortcomings of the existing regulations. After elaborating the basic overview of the Chinese securities law system, the reasons for the inadequacy of the existing regime are analyzed including the objective regulatory requirements of the market, the urgent need to correct the dual-track legislation model, and the gap with other developed countries. Finally, constructive suggestions are made for the reform of the legal system. The essay adopts the legal norm analysis method, aiming at proposing feasible measures to improve the law system. At present, there are large loopholes and gaps in the fields of securities law for foreign investors' M&A, so the research topic of this paper is of practical urgency and certain practical significance.

Keywords: Securities Law; Multinational Enterprise; Merger and Acquisition.

1. Introduction

Transnational M&A in China has made significant progress since the beginning of the 21st century, and the number of cases of foreign investment has increased either. However, the gap between the regulatory tools in China and its huge trading markets still exists. This also leaves space for many scholars in this field to explore. So far, domestic and foreign scholars' research in this field can be broadly summarized as research on a specific legal issue or analysis of particular legal provisions to talk about regulation and application issues regarding the regulation of M&A for foreign investors in the realm of securities law. This is reflected in the consistency and exclusivity of the existing legal system on the objects of regulation, and the satisfaction of both parties during the overall approval process.

This paper first demonstrates the current basic situation of the legal regulatory system of Chinese securities law. Analyzing from three dimensions like the introduction of the legal system of securities law as well as some relevant legal provisions, the forms, and characteristics of regulation, the shortcomings of the existing regime. Followed by an analysis of the reasons and necessity of regulation concerning the disadvantages. Finally, based on the reasons derived from the analysis, it argues for possible future improvements to the regime, and the possible ways and measures are discussed. The current scholars have contributed a lot of knowledge in the field of M&A by multinational enterprises but mainly focus on the legal issues of the overall M&A behavior and regulation, or the hot topics such as anti-monopoly, less in the securities law. In the study of existing regulatory issues, scholars in the field of securities law put forward the view that there are still vacuums in the current regime and the regulation are not uniform [1-2]. The reasons for the regulation and analysis of the need for supervision [3]. In the way of regulatory optimization, they also raise the requirements of establishing a clear information disclosure system and strengthening the external supervision and management of the securities market [4-5]. The author uses the legal norm analysis

method and applies the logic from the current situation, causes to measures to make some personal suggestions on the future development of the securities law and regulation regime.

2. Status and deficiencies of the Chinese securities law regime

2.1 The legal framework for M&A of multinational enterprises in Chinese securities law

2.1.1 The path of development of legal regulation governing M&A of multinational enterprises

Based on historical reasons, in the 30 years between the founding of New China and the Chinese Economic Reform [6], there has been no introduction of foreign investment or M&A in China and very little mutual investment from overseas enterprises. Since the implementation of the Chinese Economic Reform proposed by Deng Xiaoping, China has opened its doors to trade as well as continuing to introduce multinational enterprises into markets. The most representative and unique way in which overseas capital has entered the Chinese market is through transnational mergers and acquisitions.

Looking back at the development of Chinese regulation of M&A, it can be broadly generalized into three sequential stages in chronological order: from the early stages of Chinese Economic Reform to 1998, from 1998 to 2001, and from 2001 to the present. The first phase took place from the early period of Chinese Economic Reform to 1998, when transnational investment activities were not the kind of M&A activities that are popular among multinational enterprises nowadays, most of them were deemed as Greenfield Investment [7]. At the same time, the laws during this period were also aimed at foreign investors conducting Greenfield Investment. For example, the State Council and the Ministry of Commerce individually issued *the Notice of Suspension of the Transfer of State and Legal Person Shares of Listed Companies to Foreign Investors*. Meanwhile, in 1997, the State Administration of Taxation promulgated *the Interim Provisions on Income Tax Treatment of Reorganization Businesses such as Mergers, Separations, Equity Reorganizations and Asset Transfers of Foreign-Invested Enterprises*. However, there is a gap in the Chinese legal system for M&A by multinational enterprises, those laws above apply to Greenfield Investment rather than transnational M&A. As a result of its weaknesses, the foreign investor has no way of conducting M&A in China, which ultimately causes two situations, either circumventing the surveillance through illegal means to achieve their corporative objectives or abandoning investment in China, both of which can cause more than good.

From the second stage, as the achievement of Chinese Economic Reform gradually became apparent, the focus of Chinese strategy in transnational investment tended to transform Greenfield Investment into cross-border M&A. On the one hand, the scope made by investors expanded rapidly. On the other hand, the permissible forms of M&A by multinational enterprises were innovated continuously. *The Interim Provisions on Asset Reorganization by State-owned Enterprises with Foreign Investment* issued in 1998, marked the first time that China had introduced formal institutions to guide foreign investors to participate in economic as well as trade development through M&A. In the same year, the *Securities Law of the People's Republic of China* set up a specialized chapter on the Acquisitions of Listed Companies. For the next two years, *the Interim Provisions on Domestic Investment by Foreign Invested Enterprises*, *the Provisions on Merger and Demerger of Foreign Invested Enterprises*, and *the Opinions on Issues Relating to Foreign Investment in Listed Companies* were issued to regulate and restrict foreign investment in domestic list corporations.

From 2003 to the present, the development of transnational M&A in China is on the path to get further. As regimes for cross-border M&A improved increasingly, the State Council introduced *the Catalogue for the Guidance of Foreign Investment Industries* and *the Provisions on the Direction of Guidance for Foreign investment* in 2002. Both provide the legal basis for investment in terms of access to the market. In terms of foreign acquisition of non-circulating shares of listed corporations, *the Circular on Issues Relating to the Transfer of Listed State-owned and Legal Person Shares* by

Foreign Investors provides corresponding guidance in this area. More critically, the procedural and structural aspects of transnational M&A have also been addressed to some extent. The Chinese government successively developed the *Interim Measures for the Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors* as well as the *Measures for the Management and Acquisition of Listed Companies*. All of those offer greater clarity on the channels correctly for M&A by multinational enterprises.

2.1.2 Specific regulations on M&A by multinational enterprises in Chinese securities law

The Securities Law of the People's Republic of China is the most significant piece of legislation relating to M&A by multinational enterprises. For instance, chapter 4 of which, Acquisitions of Listed Companies, takes the lead in regulating the behavior of acquisitions, dividing them into certain methods like tender offers and agreements. In addition to this, articles 86 and 87 of the Securities Law demonstrate and require the information disclosure system in the acquisition, articles 88 to 93 are the basic definition of procedures, duration as well as regulation of the offer for the acquisition of listed corporations. For articles 94 to 96, this is an exemplary step on how to govern the agreement acquisition, thereafter for multinational enterprises which have already accomplished M&A of listed corporations, the binding decrees can be detailed in articles 97 to 100 [8].

2.2 The specific shape and characteristics of the Chinese securities law regime

2.2.1 Agencies and departments that enforce regulations

The discussion of the issuers of regulation in the Chinese securities regime can be broadly analyzed from two perspectives including the issuers of transnational M&A regulatory bodies as well as the issuers of securities law institutions. In accord with the Ministry of Commerce, one of its functions of it is to formulate strategies and policies for the development of domestic and international economic cooperation. Drafting decrees on domestic and foreign trade, enacting departmental supervision, and proposing the connecting suggestion between the laws of the Chinese economy and trade are some other functions [9]. Along with these, it is clear from the interpretation of the statutes that *the Ministry of Commerce of the People's Republic of China* performs the task of supervision and approval in M&A businesses. Article 10 of *the Regulations on Mergers and Acquisition of Domestic Enterprises by Foreign Investors* describes that the approval authority is the Ministry of Commerce. The registration authority is the State Administration for Industry and Commerce. [10]. Nevertheless, in the realm of securities laws and regulations, the body that carries out the supervision, as well as management duties for foreign enterprises' M&A in China, is the Securities Regulatory Commission of the People's Republic of China (SFC). Article 7 of Chapter 1 of the Securities Law stipulates that the regulatory authority of the State Council is SFC [11]. It shall exercise centralized and unified supervision and management of the national securities market according to laws [12]. The securities regulatory institution of the State Council can set up agencies to carry out its supervisory duties in line with its need.

Based on the above clarification of the regulatory and supervisory bodies, the Chinese securities law regime is characterized by paralleling transnational M&A regulation and securities law regulation in the horizontal dimension, while in the vertical dimension, it is characterized by top-down supervision and management. Firstly, from a horizontal perspective, whenever dealing with transnational M&A by multinational enterprises around securities law, China has habitually and tendentially applied the law relating to securities and their derivatives transactions in conjunction with a special chapter on cross-border M&A. This feature is more time-sensitive in actual M&A activities. January 2005, the controlling shareholder of Valin Pipe Line (000932), Valin Group, transferred 37.175% of its 74.35% state-owned legal person shares in Valin Pipe Line to Mittal Steel, after the transfer, Mittal and Valin Group will be the joint largest shareholders. However, due to the new policy of the domestic steel industry, *the Steel Industry Development Policy*, it was demonstrably stipulated that foreigners could not hold domestic steel enterprises, resulting in the renegotiation between the two parties, with Mittal eventually agreeing to purchase 0.5% less equity, being the

second largest shareholder with a 1% in equity only [13]. This shows that it is not enough to rely solely on the laws and regulations of the securities law to govern M&A by multinational enterprises in China. Particularly, in the specific practice of regulation, decrees, and statute other than the securities law and practical factors with which cases took place should be considered.

From the vertical view, the characteristics of "top-down, downward-radiating" should be identified. "Top-down" is reflected in the fact that both the Ministry of Commerce regulating M&A by multinational enterprises and the Securities Regulatory Commission, which is responsible for supervising the market, has set up subagencies with the same functions at a lower level. For example, when dealing with accreditation and pass of cross-border M&A, besides the Ministry of Commerce, local provincial commerce departments have the same mandate as well. It improves the chain of transmission of notifications and reduces the pressure came from the government to a certain extent. "Downward radiation" is evident in the SFC. As the source of radiation for regulating securities market transactions, radiates downward to its management undertakings. The feature that is particularly advantageous in the functions exercised, like Shanghai Stock Exchange, the Shenzhen Stock Exchange as well as other securities and commodities exchanges being given accountability by the SFC. Providing securities trading premises and facilities and establishing the rules of operation, arrange for the listing of securities. All of them gather with the SFC to form a completely regulatory network.

2.2.2 Subject regulated by the securities law regime

The objects of the legal system of Chinese securities law, if analyzed from the opposite perspective, can also be understood as the corporate subjects of mergers and acquisitions by foreign companies in China. In terms of the nature of corporations acquired by investors, they can be systematically split into Chinese state-owned enterprises, Chinese private enterprises as well as foreign-invested enterprises established in China. Regardless of their nature of them, all overseas capital has accountability to be subject to the legal regime of Chinese securities laws strictly.

The first is the strict and restrictive nature of the regulation when the target of a foreign acquisition in China is state-owned enterprises. The transfer of state-owned property rights to foreign companies is often required extremely strict scrutiny and assessment because of the specialty of them and their ownership of state-owned assets. For example, *the Provisional Measures for the Administration of Transfer of State-owned Property Rights of Enterprises* states that in the M&A process both parties shall commission an institution to conduct an asset appraisal with reference to the standards set by the state. After the appraisal report has been approved or filed, it shall be used as a reference basis for determining the price of the transfer of the state-owned property of the enterprise. During the property rights transaction, when the price is less than 90% of the appraisal result, the transaction shall be suspended and shall only continue after obtaining the consent of the relevant property rights transfer approval body [14]. This clause laterally reflects Chinese strict gatekeeping on the pricing of state-owned assets transfers. On the one hand, a rigorous asset appraisal can prevent the loss of assets controlled in the process of conducting a foreign-owned M&A. On the other hand, it can also prevent investors from acquiring state-owned property rights at a price lower than the value of the state-owned assets themselves to a certain extent.

In the case of multinational enterprises acquiring private Chinese companies as well as foreign-invested enterprises established in China, the securities law regulates both certain procedural and reporting aspects. In the process of acquiring a Chinese private enterprise by a foreign company, the acquirer needs to comply with the *Regulation on the Acquisition of Domestic Enterprise by Foreign Investors*. Especially when the private company is a listed company, it also calls for complying with the relevant provisions of chapter 4 of *the Securities Law of the People's Republic of China*, which provides detailed control over the content of the acquisition report, the duration of the acquisition offers as well as the shareholding ratio of the acquirer. At the same time, for corporations that have established foreign-invested enterprises in China, as they have generally gone through rigorous investigation procedures, the risk of non-compliance to be borne by foreign investors in the actual M&A process is less. However, this does not mean that they do not have severe procedural control

over the M&A of foreign-invested enterprises, but rather from the standardized and strict management of foreign-owned enterprises as much as possible. The regulatory role of the securities law system can be seen distinctly.

2.3 Inadequacies of the existing system of securities laws and regulations

2.3.1 Unclear and inconsistent control of M&A by MNES in the securities law and regulatory system

It must be admitted that China has formed many legal documents and regulations on transnational M&A around securities laws, but a set of clear and complete supervision regime has not been formed yet in terms of the exercise, different regulation has been made for an enterprise of different nature and ownership. When a multinational company acquires equity in a domestic enterprise and the domestic shareholder is a limited liability company, there is a certain conflict between the provisions of the *Company Law of the People's Republic of China* and the regulations on M&A of domestic enterprises by foreign investors. A limited liability company has a degree of personhood to some extent; its business situation is closed as well as the number of shareholders is relatively stable [15]. According to article 72 of the Company Law, the shareholder of a limited liability company may transfer all or part of their shareholdings to each other. The transfer of shareholdings by them shall be agreed upon by most other stakeholders. If more than half of the other stakeholders do not agree to transfer, the rest of them who do not agree should purchase the transferred shareholdings [16]. In the meanwhile, the results of transnational equity M&A shall contribute to the establishment of foreign-invested enterprises, but China requires the joint venture parties or cooperative parties to reach an agreement, apart from wholly owned enterprises. From this point of view, these two conflicting requirements, undoubtedly bring a huge obstacle to transnational M&A.

2.3.2 Vacuums and blind spots in the regulation of the securities law regime

What does not match and adapt to Chinese development gradually is that there are still some gaps and deficiencies in the regulation of the Chinese securities law regime, which can be reflected in the following aspect like how MNEs acquire enterprises of different natures in the mainland. The Chinese law in M&A of domestic enterprises by foreign investors reveals that most Chinese M&A statute is still at a relative simply stage of legislation and few substantive regulations in dealing with the procedural aspects of it. For example, in the actual process of M&A, a multinational enterprise needs to conduct three steps. Firstly, the initial negotiation with the shareholder of the domestic enterprise to determine the basic intention of cooperation, and the agreement of intent is required, which is expected to be followed by a background investigation of domestic enterprises by an intermediary (usually a law firm). The second stage is the finalization of the M&A contract drafted by the lawyers, determining the final contract for the existing problems as well. Finally, submitting the corresponding qualifications and materials that need to be approved by government departments according to the *Notice on the Management of Foreign Investment* [17]. Whereas, among the laws related to cross-border M&A, such as the *Foreign Investment Law* and the *Securities Law of the People's Republic of China*, each has formed its own regulatory system. There is no special chapter on the procedural operation of M&A, while in the *Measures for the Management of Listed Companies*, the measures only demonstrate the situation when the party being acquired is a listed company, it does not elaborate on the M&A steps for small and micro enterprises as well as other non-listed entities.

2.3.3 The ambiguity between the types of foreign capital admittance and asset appraisal regulation

There are some loopholes in the restriction to MNEs' mergers and acquisitions in China as well as the requirement for asset evaluation of domestic enterprises in the process of M&A. Currently, the legislation system of existing securities is mainly incarnated in these restrictions: the types of M&A of domestic enterprises by multinational companies, the percentage which foreign investors are required to meet to enjoy the certain treatment, etc. Firstly, for the types of M&A allowed in China, the *Catalogue for the Guidance of Foreign Investment Industries* has described them in detail, but for

some types of industries that are temporarily restricted by the Chinese government, there are no specific claims on how to regulate them at length. For example, in chapter 1 of *the Catalogue for Foreign Investment Industries*: article 2 of *the Restricted Foreign Investment Industries* stipulated that "The exploration and mining of oil and natural gas (except coalbed methane, oil shale, oil sands, shale gas) " is currently restricted to foreign market access in the form joint ventures and cooperation [18]. However, no further explanation is given as to what form the cooperation should take. The same problem occurs in the provisions on asset appraisal of domestic enterprises. Chapter 2, article 14 of *the Regulation on Mergers and Acquisition of Domestic Enterprises by Foreign Investors* on the appraisal results of assets transferred or sold by the merging parties, only clearly states that the transfer of domestic capital cannot be disguised by depressing the appraisal results. However, there are no restrictions on other illegal means of asset transformation [19]. The above two situations will invariably create a strong outward exclusionary force and play a negative role in transnational M&A.

2.3.4 Too many inward-looking equity transactions in securities laws

The shareholding structure of listed companies has been profoundly influenced by the reform of the shareholding regime of state-owned enterprises because of history. In the early period of reform, to ensure that the public ownership status of listed companies is not shaken as well as the nature of it does not change, the Chinese government has made unequivocal regulations on the shareholding structure of joint-stock corporations. The outcome of that has led to the absolute or relative controlling position of government departments and state-owned enterprises in most listed companies nowadays.

By the Chinese securities market system, the shares of listed joint-stock companies are divided into state-owned shares, collective shares, social shares, and legal person shares. On December 31, 1999, there were 947 companies listed on the Shanghai stock exchanges (484 in Shanghai and 463 in Shenzhen), with a total share capital of 311,063 million shares. Among them, 225.901 billion non-circulating shares, such as state-owned shares and legal person shares, accounted for 68.24% of the total share capital of listed companies and 31.76% of circulating shares [20]. Meanwhile, today the non-circulating still occupies about 65% of the total amount of the whole market [21].

The smaller proportion of non-circulating shares leads to the fact that the foreign capital needs to be clear about the attribute of the target enterprise, the proportion of equity components, and whether there are strict restrictions on transactions when conducting M&A business of listed companies. This way invariably reduces the choice of multinational costs. Therefore, foreign parties for M&A may give up. Finally, the result will be a significant reduction in foreign capital inflow.

3. Analysis of the reasons and necessity of the regulation of the legal regime of securities law

3.1 Objective regulatory requirements for securities trading markets

3.1.1 Internationalization of securities markets makes regulation more difficult

As a pivotal part and component of the globalized economy, the stock market is always influencing global financial trends. With Chinese Economic Reform becoming more and more significant, the local securities market is flourishing, at the same time, being tested by the global capital. Therefore, there is a huge and urgent need for the domestic market to quickly find its own pace of development in a changing market and to continuously improve the strength, and the level of regulation as well.

Currently, the regulatory challenges facing the Chinese local securities market can be reflected in its scope, content, tools as well as other aspects. Under the context of the globalization of stock trading, the strong liquidity of capital provides convenience for transnational M&A, but there will inevitably be speculative and offensive malicious transactions. For instance, with the emergence of "Black Wednesday", the famous investment manager George Soros shorted many of the British pound and more than 1 billion dollars in profits [22]. This type of situation makes the country's regulators face complexation of information asymmetry, unable to grasp the flow and real-time flow of economic capital promptly. In addition, with the innovation of trading models, various ways of M&A are

developed by capitalists, and the birth of each new M&A model means that the government is required to update the supervision approaches. These challenges keep reminding them to formulate stronger laws to address risks.

3.1.2 Objective flaws in the stock exchange market

The theory behind securities regulation is that the incompleteness of stock markets and their failure leads to the need for external government regulation [23]. The original concept of classical economics [24] held that the market resource allocation problems that can be largely solved by the market and individuals, do not require too much government intervention. However, with the gradual development of the market, the problems of an overly free market economy manifested themselves: disorderly trading and frequent insider trading. This confirms the view of the Keynesian revolution: government is macroscopically necessary for the stock market [25]. Such a concept continues to have some reference significance that is "market is not omnipotent. It has some of its insurmountable defects and shortcomings". Therefore, what are the objective defects of the stock exchange market? Here are two points: imperfect competition and external diseconomies.

The first is imperfect competition. If applying Adam Smith's proposition of the "invisible hand" [26] to the stock exchange market, then the entire market is perfectly competitive, with everyone for himself, with freedom of access to market information, without government intervention in economic activity as well. Along with modern economics, the stock market should meet the following conditions nowadays such as the volume of transactions between buyers and sellers in the market cannot influence the price of a particular stock or fund, the price direction of securities, the symmetry of information between buyers and sellers and information matching, etc. Whereas an idealized model does not exist in the real securities market, the competition in it is often unequal and unfair, everyone who has certain capital and information is not the same in the market. Moreover, the actions of individuals or groups occupied greater capital and advanced information can often affect the overall price of the market in a short period. In the view of transnational M&A, a typical example of imperfect competition is the industry monopoly. In the light of the book called *Economics*, written by the American economist Samuelson, a monopoly is defined as a single seller who is the sole producer of his industry, while no other industry can produce a close substitute for his product [27]. Therefore, the problem of industry monopolies arising from cross-border M&A, to a certain extent, is a motivation for the regulation governed by the state in securities law.

The second is external diseconomies, which is a concept in economics that refers to situations where production or consumption causes losses to others that are not compensated by someone else [28]. For example, when a steel plant emits smoke and other pollution gases, it damages the lives and health of residents nearby, in the meanwhile, this damage is often irreversible as well as cannot be compensated, consequently, the pollution becomes an external cost. By analogy to the securities market, it mainly embodies the tendency of market players only to consider factors related to their interests when fluctuating and tend to ignore those costs and benefits which do not affect them. Notably, it is easier to produce more negative externalities, which will eventually lead to the entire market allocation of resources cannot be optimized. Therefore, these costs need to rely on the government and other regulatory agencies to correct. From the perspective of transnational M&A, if the production activities of one enterprise affect another enterprise (external diseconomies), the original externalities will be converted into internal ones, eliminating the external costs, and raising the resource allocation to a new level compared to the previous one [29]. According to the logic that the theory of external diseconomies can affect M&A operations, appropriate regulation of the phenomenon of external diseconomies can essentially lead to a good solution to the problem of transnational M&A in the field of securities law.

3.2 Securities laws and regulations problems urgently need to be corrected

Chinese securities law regime regulating M&A by multinational enterprises reveals that China has a "dual-track" approach to regulating foreign investment in legislation. What is the dual-track approach? In the realm of foreign investment legislation, it refers to the regulation of legal relations

in this field through a unified foreign investment code or multiple laws, as opposed to the single-track legislative, which governs legal relations in this field through general domestic laws. The dual-track legislation originated in 1979, based on the basic national conditions at the early stage of Chinese Economic Reform, it gradually formed a legislative model with "three capital enterprises laws" as the core as well as legislation of domestic law and foreign-related in parallel [30]. However, as Chinese economic influence is expanding and growing exponentially, the problems highlighted originally have created obstacles for multinational enterprises to transnational M&A in China. Therefore, under the current pressure of the global economic conditions, it is necessary to make appropriate amendments and improvements to the provisions which implement the dual-track regulations in Chinese securities law.

3.3 The gaps in the regime of securities laws and regulation compared with developed countries

Although China has made significant achievements in the composition of its securities law regime in recent years and gradually is catching up with other developed countries, it still needs to learn from the mature securities law system as a country with huge legal regulatory pressure. Take the United States as an example, as one of the most mature legal systems in the world, the relevant legal practice in the field of securities law is worth learning from other countries. Compared with the Chinese securities law system, the most important feature of it is that it does not have many regulations related to transnational M&A, or it does not distinguish foreign investors from domestic investors. In other words, it only provides supplementary regulations for specific foreign M&A restrictions, such as *the Foreign Investment Study Act*, *the International Investment Instigation Order*, etc. Such a regulatory system treats domestic and foreign investors equally while protecting the environment inside under these special regulations.

Furthermore, the U.S. has made good use of the power of the public on M&A issues, something that China lacks for the time being. In the famous case of CNOOC's merger with Unocal. Although CNOOC's bid of \$19.5 billion was much larger than that of the local Chevrolet company, the U.S. government used public and private opinions to propagate the rumor of the China threat theory, which ultimately made CNOOC return without any success [31]. Consequently, on the road to the development and completion of the securities law regime, China still needs to improve and exercise many parts in conjunction with local conditions, there is still a long way to go for it.

4. Optimization of securities law and regulatory system

4.1 Improving the regulatory provisions in the legal system of securities law

Although the Chinese securities law regime has provided a relatively complete legal basis for its foreign-invested M&A activities over the past two decades, there are still vacuums and blind spots in certain areas, therefore, some of the provisions should be refined timely. Firstly, anti-takeover clauses ought to be added to the Securities Law. The anti-takeover provisions are mainly aimed at regulating potential malicious and aggressive M&A of multinational enterprises as well as equity transactions between shareholders of both parties beyond the legal framework. For both phenomena, an independent anti-takeover review committee with certain enforcement powers was established to regulate them. This anti-takeover review committee is subordinate to the State Council, when monitoring the occurrence of spiteful takeovers, the committee can urge, supervise, and order the cessation of immediate takeover activities through sinking visits, and regular spot checks as well. For the issue of illegal equity transactions between shareholders, the committee can also join with the SEC to reasonably monitor the equity activities of the stockholders of the corporation's board of directors, when there are unusual changes in shareholder ownership, the anti-takeover review committee requires the board of directors to submit reports within a period time at liberty.

Secondly, there is a certain degree of ambiguity in the admission criteria for foreign investment and assets appraisal of transnational M&A. Then, it is necessary to continue to improve the legal

regulation clauses in these realms. In the section of *the Restricted List in the Catalogue for the Guidance of Foreign Investment Industries*. China should implement quantitative regulations on the 35 industrial fields of foreign investment access as elaborated in this chapter. Specifically, in the entry restrictions of rice, wheat, corn purchase, and wholesale, the Catalogue needs to impose strict restrictions on the ratio of domestic and foreign shareholding of corporations related to these industries as well as the nationality of a legal person. While some of them involve national security, and state secrets, the government ought to take more stringent regulatory measures, such as air transport, ship traffic, and the defense industry. Even some sensitive areas prohibit foreign investment access.

Asset appraisal in transnational M&A is also an urgent need to strengthen under the framework of the securities law regime. In terms of the selection of asset evaluation agencies, *the Regulation on Merger and Acquisition of Domestic Enterprises by Foreign Investors* only limits the asset appraisal agencies established by law in China, are there cases where foreign investors are dissatisfied with asset appraisal agencies and do not recognize the appraisal structure? Is there again the possibility of allowing the agency to conduct the appraisal? Consequently, the regulations are supposed to offer more flexibility in the choice of asset appraisal, categorize the agencies that can be chosen, and explicitly require that all agencies chosen by M&A parties themselves should be subject to scrutiny by the Chinese government. In addition, asset appraisal methods need to be expanded, as the term "internationally accepted valuation methods" is too vague, and the use of mutually appropriate measures is supposed to be encouraged. Finally, in terms of disguised capital transfer regulation, the motives, requirements, and consequences of non-compliance should be stipulated.

4.2 Deeping the reform of the legal regulation system of securities law

At present, the legal regulatory system of Chinese securities law takes Securities Law as the core, and other investment-related laws, and regulations such as the Company Law and the Law on Foreign Investment as the support. Since there are some unclear and inconsistent regulations, it is important to further reform the existing securities law regulatory system as well as to review itself. Specific reforms can be implemented in the following two aspects: reform of statute, and reform of brokerage firms.

The first is the reform of statutes. It is well known that China tends to have a "dual-track" legislative approach to foreign investment, then there is a large discrepancy between foreign-invested M&A and domestic M&A in the same market, leading to a tendency to discourage foreign presence overall. In response to this phenomenon, it is meaningful to borrow the ideas created by Americans in regulating transnational M&A. The characteristic of America lies in the same standards for all investors, there is no evident distinction between domestic and foreign investors. For instance, the 'single-track' legislative provisions. At the same time, it is necessary to consider the special characteristics of foreign M&A and develop complementary legal clauses.

The reform of brokerage firms is of great significance in the reform of the legal regime of securities law and regulation. Following article 121 of the Securities Law, the registered capital of securities institutions is divided into three classes: 50 million, 100 million, and 500 million RMB [32]. Thus, it seems that the Securities Law is rough management of the threshold of entry for securities firms, which is simply classified by three vastly different amounts, without any further detailed division of the space that may exist therein. To enrich the diversity of the brokerage market, the government should allow more small and medium-sized brokerage firms to lower their entry costs as well as encourage healthy competition in the market. An indispensable intermediary in cross-border M&A, high-quality brokerage services can facilitate the development of transnational M&A business.

4.3 Accelerate the reform of stock equity of listed companies

Accelerating the reform of stock equity of listed companies in the capital market is of great significance for MNE's mergers and acquisitions in China. For state-owned enterprises, along with the *Three-Year Action Plan for the Reform of State-owned Enterprises (2020-2022)* [33], China has

adopted the approach of "deepening mixed-ownership reform by layers and classifications" to promote mixed ownership at two levels. Central enterprises and local state-owned enterprises, optimize their property rights structure of them and provide an opportunity for foreign investors to merge and acquire in China. For other private listed companies, the proportion of various types of shares in the total stock capital should be reasonably defined, and the proportion of each component and restriction should be informed to foreign investors in written form. For legal provisions and explanations, to encourage them to merge and acquire various forms of equity in listed companies and promote the cash flow in the capital market.

Moreover, the reform of shareholding of each corporation in the securities market should be continued. To pursue the goal of equal rights and benefits for the same shares, China has proposed the concept of "share split" to deal with the problem that two-thirds of the non-marketable shares in the market hinder the liquidity of shares in the capital market. It is possible to try to reform the shareholding of listed companies in some cities or regions by converting a certain amount of non-marketable shares into marketable shares in the form of a cash-out or touting. Meanwhile, encourage these reformed corporations to engage in transnational businesses such as M&A as a priority to monitor the effect of the reform.

4.4 Sound M&A risk prevention system for multinational enterprises

In recent years, the number of disputes arising from overseas M&A by local enterprises has risen exponentially, as evidenced by the outcome of the CNOOC merger with Unocal case, the mature legal system for M&A in developed countries provides a firewall for them in their local capital markets. This defense force ranges from state and court-appointed laws and regulations to civil society and the masses using the power of public opinion to exert pressure. China should work on transnational M&A risk prevention, such as familiarizing itself with the M&A tactics and methods that foreign investors may adopt. Urging local companies to learn and understand the laws of foreign investors regarding corporate M&A, and actively dealing with cross-border M&A business risks. Standardizing as well as improving M&A made by multinational enterprises agreement. Using mature decrees and regulatory regimes to resolve transnational M&A disputes.

In the face of inevitable cross-border M&A conflict, the emergency mechanism in the risk prevention regime also needs to be effective, especially when facing a case related to extraterritorial jurisdiction in the Chinese securities law system. It is recommended to establish a domestic and international M&A coordinating body under the system, which should be used to negotiate transnational M&A in other countries, to mitigate the emergency risks arising from M&A by sending personnel to intervene, sign or reach agreements.

5. Conclusion

The legal regulatory regime of securities law has made a great contribution to the smooth M&A of foreign investors in China. Therefore, continuously improving the existing legal framework of securities law is a serious and urgent task for the government. By adding anti-takeover provisions to the regulatory regime and further providing more detailed control measures on asset appraisal and foreign investment access in M&A. The government can fundamentally remedy the vacuum in the system and make some of the clauses clearer and more legally enforceable. And keep accelerating the reform of the system, which can solve the current problem of unclear and inconsistent regulation of different subjects. At the same time, a risk prevention mechanism for transnational M&A should be established to remove obstacles to the implementation smoothly.

Chinese legal framework of securities law is waiting for a new round of revival and development, which is an undertaking with a high sense of mission. Due to the limited research level and discernment ability of the author, the reasons and related measures analyzed in this paper are still inadequate, improving the theoretical and enriching practical experience are needed for the author. The author

sincerely hopes that there will be more and more scholars to join this field and contribute more professional and excellent academic works.

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