

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

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A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

The Evolution of Share Trading in China

Elizabeth Cheng

China Trade Report Editor

Far Eastern Economic Review

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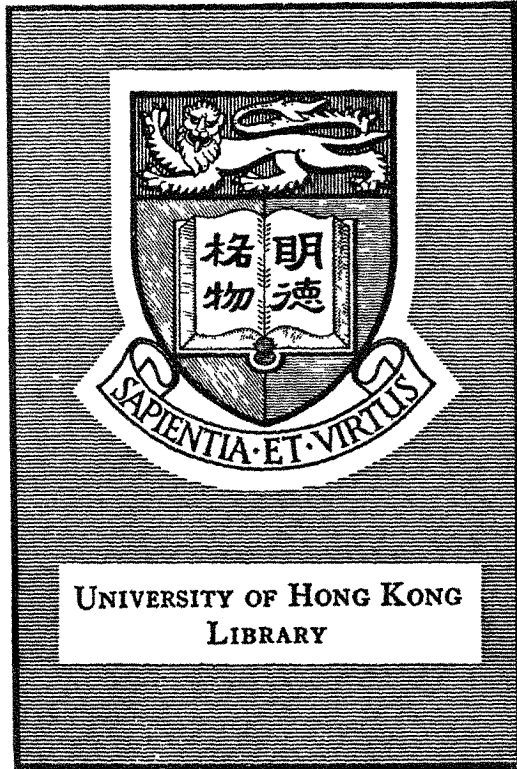


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Symposium on Legal Aspects of the Securities Markets in China

2 June 1992
Furama Kempinski Hotel
Hong Kong

Programme

- 9:00-9:20 Registration
- 9:20-9:30 Welcome and Introduction
- Mr. Edward J. Epstein, Senior Lecturer in Law and Convenor, Chinese Law Research Group, Faculty of Law, University of Hong Kong
- 9:30-10:30 **Evolution of National Policies and Legislation on Securities**
- Ms. Elizabeth Cheng, China Trade Report Editor, *Far Eastern Economic Review*
Prof. James Feinerman, Georgetown University Law Center
Mr. Gao Peiji, PRC Attorney, C&C Law Offices
- Chair:* Mr. Edward J. Epstein, Convenor, Chinese Law Research Group
- 10:30-10:45 Morning Break
- 10:45-12:30 **Administrative Supervision of the Securities Markets**
- Ms. Zhang Ning, Deputy Director of Financial Administration, PBoC Shanghai
Mr. Gao Xiqing, General Counsel, Stock Exchange Executive Council, Beijing
Mr. Gao Peiji, PRC Attorney, C&C Law Office, Beijing
- Chair:* Prof. James Feinerman, Georgetown University Law Center
- 12:30-14:00 Lunch
- 14:00-15:45 **'B Shares', secondary markets and a new form of foreign capital investment**
- Mr. Yu Guogang, Vice-President, Shenzhen Stock Exchange
Mr. Stuart Valentine, Clifford Chance
Mr. Andrew Tong, Director, Institutional Services, Standard Chartered Equitor Group
- Chair:* Mr. Gao Xiqing, General Counsel, SEEC, Beijing
- 15:45-16:00 Afternoon Break
- 16:00-16:30 **Securities Markets in China: Implications for Capital Accumulation and Investment**
- Prof. Pitman Potter, Faculty of Law, University of British Columbia
- 16:30-17:00 **Round-up: the Future Legislative Agenda**
- All speakers
- Chair:* Mr. Edward J. Epstein, Convenor, Chinese Law Research Group
- 17:00 Close

The Evolution of Share Trading in China

by

Elizabeth Cheng
China Trade Report Editor
Far Eastern Economic Review

The current enthusiasm for Chinese stocks should not be allowed to mask the fact that stockmarkets in China are still regarded as an experiment by the socialist government. The Chinese government is ideologically biased against speculation, yet it sees that it must tolerate it to a certain extent in order to wean its enterprises off state subsidies and tap private savings.

The conversion of state enterprises into shareholding companies started in 1982 despite a lack of unanimous support from the central government. Kerb trading in the shares of some of these companies followed and began to make its presence felt in many cities, including Shenyang, Xiamen, Chongqing, Shanghai and Shenzhen.

But it wasn't until December 1990 that the first formal stock exchange was allowed to open in Shanghai. This was followed six months later by the formal opening of the second stock exchange in Shenzhen. The central government does not appear keen on having more stock exchanges until the existing ones have had a chance to perfect their market mechanisms and bring management and regulations up to international standards.

It is questionable whether the present rules offer small investors much protection. A case in point is the issue of Champaign Industrial, a diversified trading and garment making firm. Champaign is one of the first companies to be listed on the Shenzhen Stock Exchange. The central bank, the supervisory body for securities in China, says it has been investigating the company for financial malpractices since March 1990. Two of the company's executives were recently detained for questioning and the company's books taken away for further investigation. Yet, trading in the company's shares has not been suspended. In some people's view, this underscores the stock exchange's lack of experience.

Significantly, there is still no national securities legislation or company law. There are local laws, however. Shenzhen seems to be more advanced than the rest of China in fashioning laws governing corporate behaviour. The latest and probably most comprehensive addition to its body of company laws was promulgated in March. Shanghai is expected to follow soon with its own company legislation.

The regulations governing the operation of the Shenzhen and Shanghai securities exchanges are local and not entirely similar. For example, the Shenzhen regulations, promulgated on 15 May, 1991, only deal with company shares while the Shanghai rules govern a much broader range of securities, including bonds. There are also minor differences in specific procedures and listing requirements.

Both Shenzhen and Shanghai policy makers believe that in addition to providing domestic enterprises with an efficient channel for raising long-term development funds, stockmarkets will play a key role in attracting foreign investments.

But while local officials are keen to have many more B shares in the market, central government officials have indicated their reluctance to rush into expanding the B share market until they understand the game better.

For one thing, the legal framework, the trading mechanism and information disclosure still lag far behind Western countries. And although the few B share companies already in the market have had their books adjusted to international standards by foreign firms, the question is whether they will be able to maintain those standards. There is also the question of whether there are enough qualified personnel in China to audit the books to required standards.

There are notable differences between the Shanghai and Shenzhen exchanges. The Shanghai exchange trades in a broad range of securities, including treasury bills, bonds and equities. The Shenzhen market specialises in equities.

The initial steps in welcoming back foreigners also revealed some important differences of approach between the two exchanges. Shanghai is the state's premier venue for stockmarket reforms, and was the first to unveil B-share regulations in November last year. But it was Shenzhen, the go-getting special economic zone next to Hongkong, that beat it to the punch with the first issue.

The SEZ's first issue, China Southern Glass sold 16 million B shares to institutional investors in the US, Europe and Asia, raising US\$11 million. The B shares represented a 14.8% stake in the company. The joint-venture company's major shareholder is the mainland controlled, Hongkong-based China Merchants group. The glassmaker, which exports 50% of its output, recently bought a controlling stake in the Los Angeles-based Standard Glass Corp. as part of an effort to expand its retail presence in the US.

While Shenzhen was first, Shanghai's inaugural B share issue may ultimately be more significant. It is much bigger and involves a state-owned company, TV picture tube maker Shanghai Vacuum Electron Device. The company raised US\$80 million through the sale of 1 million shares, representing 33% of the company's total share issue.

More fundamental differences separate the two exchange, however. Many of Shenzhen's listings are joint ventures with Hongkong-based companies, giving them a degree of international exposure. Shanghai's board, on the other hand, is dominated by state enterprises, and the exchange is more closely monitored by the central government than is its Shenzhen counterpart.

The B-share experiment is tied to the wider reform of China's inefficient state enterprises. It is hoped that the investment process will expose managers to international accounting methods and business standards, in addition to drawing in much-needed funds.

Chinese accounting, for example, makes no provision for bad debts, depreciation or foreign exchange risks. Neither does it consolidate the accounts of a company and its subsidiaries. But all these can be quite easily solved by adjusting the books.

The nature of the two markets is also different. The estimated turnover for Shanghai last year was US\$1.52 billion compared with Shenzhen's US\$600 million but most of Shanghai's business was in bonds. In fact, market capitalisation for Shanghai was only US\$700 million compared with Shenzhen's US\$1.1 billion.

In April this year six new stocks were listed in Shanghai, boosting the number of A-share stocks to 14. A shares are restricted to Chinese citizens while B shares are meant for foreign passport holders only. So far, Shanghai Vacuum Electron is the only company in Shanghai to issue B shares.

More than 12 new issues are expected to come to the market in the coming months. They include chemical manufacturer Chlor Alkali, China Textile Machinery, Shanghai Rubber and Tyre and Wingsung Stationery Co.

There are many more B shares available in Shenzhen. Of the 15 companies listed so far, six have issued both A and B shares. Most of the B share companies such as China Bicycles, Konka Electronics and Huafa are in export and manufacturing, only one specialises in property development. Yet the total funds raised from Shenzhen's B share placements, at US\$76 million, is still less than Shanghai's single B share placing.

Shenzhen appears far more ready to bend the rules than Shanghai. In many ways the latter adheres more closely to central government dictats that a stockmarket should feed the needs of a socialist system, *i.e.* help state enterprises improve business. Shenzhen, on the other hand, gives the impression that as long as capital is generated, it matters little who benefits from it.

The Shenzhen market is generally seen as being more mature than Shanghai because it experienced its first crash last year. PE ratios were pushed to as high as 80 in the kerb market in November 1990 before it began to plummet in the following months to as low as 15 at one stage. Now they are back to a more realistic 40.

But for the present, its biggest problem, which is also Shanghai's, is liquidity. The supply of new stocks is not growing fast enough to meet the overwhelming demand from both local and foreign investors. This has led to incredibly bloated prices and high price earnings ratio in both markets. The market's average PE for B shares is judged to be in the 30-40 range, which is much higher than Hongkong and most of the other Asian markets.

So far, the B share market in Shenzhen is more active than its Shanghai counterpart but this may change as more B shares come to the Shanghai market. In general, Shenzhen's B shares have risen more than 93% since the first B share issue began trading on February 28. Shanghai Vacuum Electron's B shares on the other hand have risen to around US\$80 in mid-May, up only 11% since it began trading on February 21.

There is also a huge gap in prices between A shares and B shares. Shanghai Vacuum's A shares are almost 70% higher than its B shares. The gap is narrower in Shenzhen, perhaps showing that the market is a bit more mature. There, A shares enjoy a premium of 15-30%.

In the foreseeable future, the exchanges are to open membership of foreign brokers, on a selective basis. The Shenzhen exchange is preparing the ground rules for expanding membership to foreign securities companies as well as to Chinese companies based in other parts of China. Shanghai already allows financial institutions from other provinces to join its exchange.

At present, only four of the Shenzhen's exchange's 16 brokerage members are allowed to trade in both A and B shares. The others may only trade in A shares. So far, only Sun Hung Kai Securities, Bank of East Asia and Chin Tung Securities in Hongkong are allowed to channel orders to the exchange. In Shanghai, Sun Hung Kai and Swiss Bank Corp. are the only foreign companies allowed to deal in shares.

In conclusion, China still has a long way to go before its stockmarkets reach international standards. But the central authorities are moving, perhaps not fast enough to satisfy investor demand, to open up more and more of its financial markets. There will have to be some attempt to come up with a national legal framework, and the sooner the better, to support the Government's goal of developing a unified stock exchange.

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*Legal and Economic Reform of China's Financial Markets:
The Law and Policy Behind The New Securities Exchanges*

James V. Feinerman

Associate Professor, Georgetown University Law Center

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LEGAL AND ECONOMIC REFORM OF CHINA'S FINANCIAL MARKETS:
THE LAW AND POLICY BEHIND THE NEW SECURITIES EXCHANGES

James V. Feinerman
Associate Professor
Georgetown University Law Center

More than a decade of rural and urban economic reform and the emergence of some elements of a market economy in China have rendered the PRC banking and financial system of an earlier era obsolete. The success of the rural agricultural reforms of the early 1980s generated wealth among the Chinese peasantry which simultaneously gave rise to pressures for reform of the financial markets. New banking institutions, re-opened securities markets and new financial instruments all have been responses to these recent challenges.¹ As the Chinese government has moved to change its centrally planned economy into a more mixed economy where market mechanisms operate together with more strictly limited central planning and guidance, financial system reforms have moved to the top of the central government's reform agenda.²

This paper focuses on the domestic legal and economic underpinnings of China's emerging securities markets. In addition

¹. See, e.g., G. Yu, "China's Financial Market," China Trade News, June 1, 1987, pp. 7-8.

². Article, "Financial Reforms Need to Be Major," China Daily, Dec. 11, 1990, p. 4 (citing an article by Tang Mingfeng, Research Fellow in the State Council Development Research Centre, in Economic Information).

to addressing the issues directly related to securities exchanges and the instruments which are traded on them, the paper surveys what might be termed "infrastructural" problems of law and economics: How can the creation of markets be fostered by legal regulation? Is it possible to create evidence of ownership interests in corporations not yet defined under, or subject to, any company law? How essential are independent accounting and legal professions, or specialized regulatory bodies, to the establishment and smooth functioning of securities markets? The success of existing markets and the prospects for the introduction of additional stock exchanges and securities trading on a nationwide basis throughout China will hinge on the answers to such questions. In brief space allotted here, it will only be possible to begin the inquiry.

Economic Reform and the Chinese Enterprise. From the late 1970s, the Chinese economy changed in its basic orientation; it became more market-oriented, more outward-looking and, as a result, far more dynamic.³ Except for a few legal innovations, including the law permitting the establishment of Sino-foreign joint ventures and a new economic contract law, law reform proceeded much more slowly. Beginning in 1983, the process of creating enterprise law began in earnest with the publication of the "Provisional Regulations for State-Owned Enterprises," which permitted those enterprises which had already fulfilled their obligations under the state plan to satisfy additional demand by increasing their

³. See D. Perkins, China: Asia's Next Economic Giant? (1986).

production.⁴

Over the next several years, this power was increased in a number of ways. Regulations "to further expand" state-owned enterprises' decision-making power followed in 1984, and official policy further liberalized the atmosphere in which enterprises operated after the Third Session of the Twelfth Communist Party Central Committee issued its "Decision on Economic Reform" on October 20, 1984.⁵ Urban enterprises were enjoined to match the successful performance of the agricultural countryside, where productivity and income had soared under Deng Xiaoping's new economic policies.⁶ No longer would enterprise employees all "eat from the big pot"; rather, they were to enlarge the pots or, better still, go out and make new pots. Prices would be allowed to float, influenced by market forces. Supply and demand would finally come to hold sway in socialist China.

New regulations followed to invigorate state enterprises, particularly the small and medium-sized enterprises that were the backbone of China's industrial system. Enterprises which met

⁴. An English translation of these regulations, which were promulgated April 1, 1983, appears in Commercial Laws and Business Regulations of the People's Republic of China, vol. II, p. 33 (Hong Kong: Tai Dao Publishing Limited 1984).

⁵. "Decision of the Chinese Communist Party Central Committee on Reform of the Economic Structure," adopted by the Third Plenum of the Twelfth Chinese Communist Party Central Committee, Oct. 20, 1984, translated in FBIS Daily Report: China, Oct. 22, 1984, pp. K1-K19.

⁶. D. Zweig, K. Hartford, J. Feinerman and J. Deng, "The Role of Law in Economic Development: Lessons of the Recent Agrarian Reform in the PRC," 23 Stanford International Law Journal 319 (1987).

their primary state quotas were now allowed to produce goods other than those in their regular product line, and direct contracting between enterprises and suppliers of raw materials was newly encouraged. Obstacles, nonetheless, remained. Enterprise managers felt insecure about their new powers, and state organs were not at all encouraging of independence. Along with the prospects for profits and success came the threat of losses and economic failure; inaction and caution were preferable to the unknown new world of socialist competition. Communist Party interference in enterprise management was also not uncommon.⁷

For all these reasons, three new pieces of legislation were promulgated during the latter half of the last decade: together, they were meant to spell out more clearly the legal rights of enterprises, the freedom of factory directors to manage state-owned enterprises and the necessity for Party "grassroots organizations" to limit their involvement in the day-to-day operation of state enterprises.⁸ A bankruptcy law, passed in 1986, became effective three months after the final promulgation of the state enterprise law; its fearsome provisions have thus far proven less ominous than predicted, because they have so seldom been invoked.⁹ It remains

⁷. See, e.g., Elizabeth Perry and Christine Wong, eds., The Political Economy of Reform in Post-Mao China (Cambridge, MA: Harvard University Press 1985).

⁸. J. Feinerman, "The Evolving Chinese Enterprise," 15 Syracuse Journal of International Law and Commerce 203-214 (1988).

⁹. M. Minor and K. Stevens-Minor, "China's Emerging Bankruptcy Law," Vol. 22, No. 4, International Lawyer 1217, 1218 (1988).

to be seen whether the widespread threat of bankruptcy can act as a form of financial discipline for Chinese enterprise managers.

Change in China's Financial System. From 1950 to 1978, Chinese banks operated under the direction of the Ministry of Finance and performed largely a channeling function. That is, they distributed the central government's revenues - taxes and profits of state-run enterprises - to end-user enterprises and other organs.¹⁰ All banks and other financial institutions which had been privately owned or owned by foreigners before 1949 were effectively closed. Under the new PRC regime, central economic planners, pursuant to the leadership's direction and following Marxist orthodoxy, determined the growth rates for different sectors of the economy and allocated their funds accordingly. Little attempt was made to judge the feasibility of projects or to assess the credit risk of targeted enterprises. Interest rates were determined by the Ministry of Finance and were uniform throughout China; supply and demand, risk and return on various amounts for various borrowers were not considered. Banking services were extremely limited; facilities, including local branches of the People's Bank of China, were primitive and few. Almost all transactions were carried out in cash - even though the largest banknote during this period was of ten-yuan denomination!¹¹

¹⁰. Dick Wilson, "How Banks Work in China," The Banker, January 1980, p. 19.

¹¹. During this period, the exchange rate between the U.S. dollar and the PRC renminbi or yuan has fluctuated from 1:1.4 to 1:5.7.

Since 1979, new economic forces and China's opening to the outside world have required a radical transformation of Chinese banking practices. Most importantly, as of 1983, the People's Bank of China finally became a true central bank, leaving to other actors in the banking sector the making of industrial and commercial loans and the taking of deposits.¹² Specialized banks have been re-established or newly opened. The problems of inefficiency and misallocation of resources have begun to be addressed, but much of current Chinese banking practice still fails to respond to the needs of a dynamic market economy (particularly where private and household enterprises are concerned).¹³

The increasing importance of the guidance plan and unplanned sectors of the Chinese economy have essentially forced Chinese banking to reform itself. State-owned banks lending money for purposes outside the mandatory state plan must assess credit risks and link risk and return in making their decisions about lending. Moreover, new and awesome responsibilities await bankers who make mistakes in their lending decisions. In addition, other sources of capital besides the banks are now in evidence, ranging from enterprises' own retained earnings to small-scale private credit

¹². State Council, "Decision That the People's Bank of China Executes the Exclusive Function as the Central Bank," Sept. 17, 1983, translated in Vol. 4, Commercial Laws and Business Regulations of the People's Republic of China (Hong Kong: Tai Dao Publishing Limited 1987).

¹³. Cf. E. Cheng, "Problems Dog Attempts to Modernise," Focus: Banking, Far Eastern Economic Review, Sept. 28, 1989, pp. 50-51.

unions established by the newly enriched peasants.

A completely unexpected development of the past few years has been the ability of enterprises to raise their own funds by issuing securities, which they call "bonds" or "stocks". Before 1979, such funding without resort to the state bank would have been unthinkable.¹⁴ Disintermediation, at least as far as the People's Bank and its progeny are concerned, has been the development of the decade in Chinese finance. Until very recently, various commentators in Chinese economic circles engaged in a considerable controversy about the advisability of these developments, not only for reasons of residual ideological purism.¹⁵ Opponents of the new financing reforms argued that until price reform has succeeded and "excess demand" for capital has dried up in China, banks should control the financial markets. To do otherwise, they contended, would only exacerbate the demand for capital and further exacerbate the rate of inflation. Also, without a finely-tuned regulatory system, speculation in new financial instruments would be encouraged and innocent investors might be victimized.¹⁶

The financial reformers, on the other hand, tout financial markets of the widest and most open sort as the most efficient

¹⁴. Note, "Shareholding Possibilities," Beijing Review, May 12, 1986, p. 22.

¹⁵. See, e.g., He, "Shareholding in Not the Orientation for State Enterprise Reform," Guangming Ribao, Oct. 17, 1987, p. 3; translated in FBIS Daily Report: China, Oct. 29, 1987, p. 38.

¹⁶. H. Zheng, "Securities Regulation in China: Development and Conflicts," East Asian Executive Reports, May 1987, p. 7.

mechanism for credit allocation. Agreeing that distorted prices should be corrected, they nonetheless press ahead with the argument that further distorting the price structure by skewing the financial markets is no remedy. State-owned enterprises not only need the autonomy to decide what and how much to produce at what price, they also must be able to decide the best mix of financing, whether by retaining their profits or by raising funds from a number of competing sources.¹⁷ The financial system now in place in the PRC has borrowed elements from both camps, but it is still too early to say which will be the dominant force in determining the eventual course of enterprise finance in the future. Many basic questions remain to be answered.

Legal Reforms and Financial Markets. Thus far, the economic reforms have been carried out by two means: an overall restructuring of the domestic economy and the financial system across China and the implementation of pilot schemes in certain key industrial cities. Each has required some legislative activity. A few examples will be considered and their prospects for future development assessed.

Since China began during the late 1970s to introduce market forces into its economy, the relationship between central planning and market regulation has remained problematic. Yet these difficulties have even deeper roots. Enterprise autonomy has been impeded by excessive rigidity on the part of state managers since

¹⁷. See Dong, "More on the Forms of Socialist Ownership in China," Jingji Yanjiu [Economic Research], No. 4, Apr. 20, 1985, p. 3; translated in FBIS Daily Report: China, June 13, 1985, p. K6.

the early days of the PRC;¹⁸ to a very great extent, recent reforms have only granted factory managers greater discretionary flexibility but have not ameliorated the problem much.¹⁹ Most ominously, important central government documents concerning the economy, such as the Eighth Five-Year Plan (1991-1995), have failed to establish the proportions for the planned sector and the market-regulated sector of China's economy, reflecting a cautious attitude toward the development of a market economy.²⁰ Thus, enterprise managers are unclear as to the extent of their authority, particularly with respect to such relatively new and untried policies as securities financing.

Nonetheless, Chinese enterprise managers may have no choice but to turn to the new financial markets in order to raise funds. The restructuring of the Chinese economy has had the effect, with respect to banking, of giving priority to reform of the capital allocation process; centrally planned banking has become more market-oriented. Most importantly, state-owned enterprises as a result of reforms now must meet certain requirements of the

¹⁸. See, e.g., Zhang Shihong, "Give Enterprises Appropriate Powers of Autonomy," Renmin Ribao [People's Daily], Nov. 6, 1956, translated in C. Howe & K. Walker, eds., The Foundations of the Chinese Planned Economy: A Documentary Survey, 1953-65, 153-157 (1989) (citing Liu Shaoqi's report in the mid-1950s to the National People's Congress on over-management by higher-level state cadres of factories in Shanghai).

¹⁹. These issues are discussed at somewhat greater length in Feinerman, supra note 8.

²⁰. Ding Shi, "The Development of China's Market System," China Economic News, No. 33, Sept. 2, 1991, at 6-7.

specialized banks to receive any funds at all, must pay variable rates of interest and must submit to bank scrutiny of their operations.²¹ Allocation of state funds still occurs, to allow enterprises to meet mandatory plan quotas, but guidance plan and unplanned production will almost always require resort to bank lending. More revolutionary is the development of inter-bank markets and money markets in China, open to participation by a limited number of banks and non-bank financial institutions authorized by the People's Bank of China. These have the promise of greatly increasing the efficiency of the national banking system.²²

The emergence of a handful of "commercial" (i.e., non-state) banks in the PRC and non-bank financial institutions is a striking indication of the new complexion of Chinese enterprise finance. Urban credit cooperatives are reported to have taken in several billion yuan of deposits and to have lent or re-deposited over half of those deposits. They act as "local" banks and provide a wide range of services unavailable to small enterprises from the state banks. Most importantly, the competition has forced the state banks to relax interest-rate controls on bank borrowing. An experiment in Wenzhou, in Fujian province, begun in 1987, even permitted state banks to lend to non-bank financial institutions at "floating

²¹. State Council, "Bank Management Regulations for Chinese Banks and Financial Institutions," promulgated Jan. 7, 1986; translated in BBC Summary of World Broadcasts, FE/8165/C1/1, Jan. 24, 1986.

²². Article, "Financial Market Works in Shanghai," China Daily, March 3, 1990.

rates" of interest, subject to percentage ceilings. Macroeconomic control, including adjustment of the discount rate, remains in the hands of the People's Bank of China.²³

The legal regulatory structure of Chinese finance has proven barely able to keep pace with these developments thus far. There is, for example, no legally-defined relationship between the People's Bank of China (PBoC) and the Ministry of Finance; at the lower levels, the relationship between the central bank and local banks, as well as that between local banks and local governments, remains uncertain. Power to make basic banking decisions about lending,

project finance, interest terms and other matters is not yet independently determined. Further complicating the regulatory picture is the basic conflict of interest between the PBoC's regulatory roles as central banker and overseer of China's banking system and as controller of the emerging stock markets. Whatever funds the PBoC makes available for investment in the stock markets will likely flow from the low-interest bank deposits elsewhere under its control.

The Law and Economics of Securities Financing. In the securities area, the debate rages over basic questions such as whether a socialist country can permit stock ownership of basic production units without altering its socialist nature. Unless this problem is ultimately solved, it is difficult to see how the

²³. P. Grub and B. Sudweeks, "Securities Markets and the People's Republic of China," JETRO China Newsletter, No. 74, pp. 11-16 (1988).

sale and ownership of securities can be extended very far into the Chinese economy. Indeed, to an outside observer familiar with the corporate law of an industrialized country, one of the most surprising features of China's legal system at present is the lack of a company law clearly detailing enterprise ownership and its ramifications for those who finance the enterprise. Doubtless, the inability of the leadership to reach of consensus about such a sensitive issue may explain this lacuna.

Notwithstanding the arguments of diehard proponents of state ownership, a number of academics and government reformers have proposed a limited turnover of a minority interest in various enterprises to non-government investors as a means of disciplining the management of those enterprises.²⁴ Whether such control is compatible with minority ownership remains to be seen, but one view holds that some accountability is better than the total lack of accountability under the current system. Furthermore, stock ownership provides additional sources of enterprise capital outside the control of the banks and a form of incentive for enterprise workers (who have, under China's socialist economy, been notoriously underproductive and wasteful). Finally, there is considerable support for the premise that private (or at least, non-government) equity ownership of some enterprise shares would facilitate rational allocation of resources. At the very least,

²⁴. See, e.g., C. Gu, "Economy 'Requires Shareholder System'," China Daily, July 26, 1990, p. 1 (quoting Zheng Hongqing, head of the General Programing Bureau of the State Commission for Restructuring the Economy).

indications of investor interest revealed by stock purchase preferences would be some guide to baffled government monitors of enterprise performance as to public perceptions of "successful" enterprises.²⁵

Concern about the negative effects of stock ownership by a minority of the Chinese citizenry has led the Chinese government, by a circular published in March, 1987, to limit the ability of state enterprises to issue stock to the public. In actual practice, only a small handful of collectively-owned enterprises have thus far been able to receive official approval to offer their shares to the public, subject to strict supervision and control. In contrast, interim regulations published the previous day allowed state-owned enterprises to issue bonds. Such issuance is subject to the control of the People's Bank of China, in the absence of any other securities regulatory agency, but such regulatory approval seems to be pro forma. Perhaps so long as a tiny portion of all enterprise financing is raised from non-bank sources (recently estimated to be only 3% of total funds), the People's Bank is not inclined to be unfriendly towards its financing rival. On the other hand, having to pass muster before the main alternative source of enterprise funds may make many enterprises hesitant to contemplate non-bank financing.

Despite the formal and informal restrictions, non-bank capital markets have grown amazingly rapidly in the past few years. Well

²⁵. Xu Jing'an, "The Stock-Share System: A New Avenue for China's Economic Reform," Vol. 11, No.3, Journal of Comparative Economics, September 1987, pp. 509-514.

over 5,000 enterprises have issued shares. In cities selected for financial reform experiments, such as Wuhan, hundreds of millions of yuan worth of bonds and stock have been issued. Securities exchanges, tiny and inactive by world standards, have been established in a few major cities. Trading remains slight, but investor interest has driven up share prices; in addition, higher interest rates than those offered by state bank deposits has drawn many investors to buy bonds. Thus far, investors have not been discouraged by the minimal information available in government-sanctioned "prospectuses" or by the lamentably inadequate state of Chinese accounting practices and corporate regulation. Market forces, at least in one small sector of the economy, are allowed to operate quite freely.

By some accounts, as many as 10,000 Chinese companies may have been given permission since 1984 to reorganize as joint stock companies, issuing stock worth 7.5 billion yuan.²⁶ Given the rather larger total number of Chinese enterprises (and their capitalization), this figure seems just a pittance, but it does represent an important first step in the development of alternative forms of ownership. Only a handful of these companies were ultimately approved to trade on the official Shanghai Securities Exchange (SSE) when it opened in late 1990; yet their shares were traded widely in quasi-legal curb markets for several years before

²⁶. Schroeder, "Rebuilding China's Securities Markets," The China Business Review, May-June 1991, at 20-21.

the opening of the SSE.²⁷ In fact, only eight stock issues were officially approved at the outset, making turnover slow and keeping share prices high; new listings have been slowly added.²⁸ The listed shares remain largely within the government's control; aside from majority government ownership, a large portion of the remaining shares are held by company employees.²⁹ All of these features retard the growth of a secondary market for the shares listed on the SSE, even though they have encouraged a sharp rise in values from initial-offering prices which would attract new investors into the market.

The establishment of a national stock market centered in Shanghai has raised hopes that some of the deficiencies of earlier regional markets would be remedied. Indeed, the announcement of China's "first" stock market in Shanghai confused some foreign observers who noted earlier reports of stock markets in Shenyang, Tianjin, Wuhan, Guangzhou, Shanghai, Beijing, Shenzhen, Harbin and Chongqing. It appears that these earlier markets were regional in nature, listing only local companies, and that they dealt almost exclusively in bonds, not stock.³⁰ Most importantly, these exchanges were not linked in any manner which standardized

²⁷. E. Cheng, "Share of the Action," Far Eastern Economic Review, Jan. 31, 1991, at 34.

²⁸. Id.

²⁹. Id. (Asserting that 75% of shares are controlled by the government and "a substantial portion" of the remaining shares held by employees).

³⁰. Schroeder, supra note 26, at 20.

securities trading and allowed the communication of price information. Notably, one of the immediate results of the decision to establish a national securities market was the inauguration of an automated quotations system, the Securities Trading Automated Quotations System (STAQS), headquartered in Beijing, to connect the major securities trading operations in China's largest cities.³¹ Without the full implementation of such a system, China's capital market not only remained inefficient but also presented unwarranted opportunities for arbitrage that discouraged additional investment from the less sophisticated public.

Other papers will discuss the specifics of Shanghai's and Shenzhen's regulations for their respective stock markets, but it is of course worth noting here that they are the specific legislation enabling shares to be issued and trade on the stock markets in those two cities.³² Yet they fail to liberalize the securities market, or indeed the process of securitization and issuance of securities, sufficiently enough to promote meaningful economic change. Unless stock is freed from constraints on dividend rates and transfer of ownership, it will never be more than a curiosity in China's economy overall.

³¹. Wang, "Automated System to Help Securities Trading," China Daily, Dec. 6, 1990, at 2. (Initially, the system only covered Beijing, Shanghai, Guangzhou, Shenyang, Wuhan and Haikou).

³². See, e.g., Shanghai shi zhengquan jiaoyi guanli banfa [Regulations of Shanghai Municipality on the Management of Securities Trading], promulgated by the Shanghai People's Government on Nov. 27, 1990.

Nevertheless, there are signs that popular enthusiasm, fueled by publicity about the first exchanges to open in Shanghai and Shenzhen, may lead to an expansion of the stock market experiment. Coupled with the recent call by paramount leader Deng Xiaoping for bolder market reforms, the stock markets offer a significant opportunity for the channeling of private savings into the rapidly expanding sectors of the Chinese economy. The pool of money potentially available for such investment has been estimated to be as high as \$200 billion;³³ needless to say, the People's Bank of China, where most individuals currently park their savings, is unlikely to authorize the shift of more than a small part of these amounts.

Other accounts of China's stock market experiments suggest that such caution on the part of the central bank, though self-serving, may be well advised. For instance, the experience of one of the companies listed on the Shenzhen exchange, a joint venture with American, Australian and Malaysian investors called Champaign Industrial Company, presents a picture of a poorly regulated listing process that may even lend itself to corruption.³⁴ After its share price soared following an initial offering (from about \$2 per share to over \$40), the Chinese venture partner sold out at a large profit. This led to official government interest in the company, including alleged insistence upon a 22 percent stake in

³³. Sun, "Stock Market Fever Is Taking Hold in China," Washington Post, May 2, 1992, at C1, C6.

³⁴. WuDunn, "A Scandal on China's Exchange," New York Times, May 2, 1992, at 35, 37.

the company at an insider price one-third the going market price. Refusal, on the part of the company, to accede to government demands has reportedly led to difficulties for this company, including the detention of its deputy general manager and deputy chief accountant.³⁵ Champaign has filed a lawsuit against the People's Bank of China, charging that - as stock market regulator - it overstepped its powers and illegally detained Champaign's employees. Until questions raised by this case can be sorted out, investor wariness of the new markets seems advisable.

Comparative Reflections. Earlier this year, the New York Stock Exchange (NYSE) ran a three-page advertisement in the New York Times and other major newspapers to celebrate its 200th anniversary.³⁶ The advertisement stated that the NYSE was "Not Just a Place, It's a Way of Doing Business." It also asked, "What's Different About This Market? Why Is It Known as the Most Fair and Open Market in the World?" An examination of some of the answers proves instructive in analyzing some of the difficulties China's domestic securities markets must face and overcome:

1. In our market, you set prices, dealers don't.

Brokers represent their clients on the NYSE, acting solely on their clients' behalf, working to achieve the best possible price for the client. In China, at least up to the present, share prices are heavily controlled by stock market regulators, rather than the market

³⁵. Id.

³⁶. See New York Times, Mar. 17, 1992, at D13-D15.

activities of investors.³⁷ Despite reports that some controls have eased, particularly in Shenzhen, it seems unlikely that Chinese regulators will allow prices to fall precipitously and thus threaten investor confidence.

2. The NYSE offers you one-stop shopping for the best price. On the NYSE, sellers and buyers don't have to shop around for the best price. Hundreds of millions of shares change hands. On China's markets, there is very limited trading, resulting in little liquidity for the investments of shareowners. This may suit the interests of long-term holders, but a well-functioning market should serve a broader range of investment objectives.

3. At the NYSE, information you need is always out in the open. The market is run in a fair and open way, with all the necessary information constantly available to all traders. Chinese markets, on the other hand, provide grossly inadequate information to investors about the companies they list. Partly this is due to the absence of basic corporate or securities laws; however, such legal failures do not completely explain the lack of important information. Accounting practices in China fall far short of international standards and fail to provide even minimal detail about companies' fiscal health. Public information about stocks, even such

³⁷. Sun, supra note , at C6.

rudiments as closing prices, is not widely available. In this climate, rumor and misinformation are rife, spurring speculation and manipulation.

4. At the NYSE, everyone has the same opportunities. The smallest and largest investors each have an equal opportunity to get the best possible price. Clearly, in China's emerging system, there is a great potential for insider abuse. Along with the lack of basic information, the retention of majority ownership by the government and provision of shares to enterprise employees suggest that "outsider" purchasers pay more for their shares (on the basis of less knowledge) than do other shareholders.

5. The NYSE is the most liquid stock market in the world. Liquidity means the ability to buy when you want to buy and to sell when you want to sell. Advanced electronic systems deliver orders and report back the transactions within seconds. Such speed and immediacy in transactions on a nationwide, not to mention worldwide, basis is at best a fond hope in the PRC today.

Conclusion. Recent developments in bank and securities financing have only begun to establish a framework for a complete system of enterprise finance regulation which may eventually emerge in the People's Republic of China. Many questions remain to be answered, including the capacity of state-owned enterprises to issue whatever financial instruments they choose and the practical

effects of limitations on financing, such a liquidity-limiting provisions on the transfer of securities. In the longer term, both enterprises and investors may raise questions about the obvious conflict of interest presented in allowing the People's Bank of China, which controls bank financing and thus lending to Chinese enterprises, also to regulate the securities financing which is the only other avenue for most enterprises to gain access to the capital market. Perhaps there will eventually appear, as in the United States and other countries with active financial markets, independent agencies or self-regulatory bodies with a special mandate for regulation and no particular interest in the financing process other than upholding standards of honesty and fair-dealing. At this juncture, only time will tell whether the long-term benefits of financial markets will insure that this discussion will serve as merely an opening chapter to the study of a growing body of Chinese financial market regulation.

Yet China, no more than Czechoslovakia and the other emerging socialist countries, do not only require financial resources. They need laws that permit individuals to start up or to acquire businesses from the state without any cloudy ownership issues. They need a financial system that will permit individuals to earn a market rate on their savings, and they need a political environment that fosters confidence in property rights to make investment productive and to keep local savings in their own countries. These are the ultimate goals of legal reform in this economic arena.

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

*Evolution of Policies and Legislation on
Securities with Special Reference to
Shenzhen & Shanghai*

Gao Peiji

PRC Attorney C & C Law Offices

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**Evolution of Policies and Legislation on
Securities with Special Reference to Shenzhen & Shanghai**

by Gao Peiji
PRC Attorney C & C Law Offices

It is a very difficult task to develop a securities market under a socialist system such as in the People's Republic of China (the PRC). The most difficult point is how to make use of certain capitalist methods and measures which have been proved to be effective under a system of private ownership in a system where the leading force in the economy is state ownership or by the whole ownership people (hereinafter referred to as "State-owned or State-ownership"). Whether or not a securities market can be developed on the basis of international practice while maintaining the features of socialism without prejudice to the system of State-ownership has given rise to a lengthy debate among the policy makers, regulatory authorities, academics and in business circles.

In order to understand the evolution of the legislation on securities in the PRC, I would like to draw your attention to the following major issues and concerns which have been the focus of the debate.

- I. The major issues and concerns in respect of the development of a securities market under the socialist system.
 - A. Whether restructuring State-owned enterprises into companies limited by shares (hereinafter referred to as a "share-holding system") would change the leading position of State-ownership in those companies. Some people are very concerned that, when the State-owned enterprises are being restructured into companies limited by shares, someone may take the chance to privatize those companies or take advantage of State-owned assets.¹ Furthermore, if the State-owned shares are traded publicly the State-owned interest may be diluted and the State may gradually lose control of those companies.
 - B. Whether investment would be overheated by the issuance of shares and, thus, cause inflation. Some people are very concerned that, if bonds and shares are not issued in a planned and controlled fashion, investment may overheat and, eventually, trigger another round of inflation.²
 - C. Whether the fact that dividends will be distributed according to the number of shares held by each shareholder would cause an unequal and unfair distribution of wealth. Some people are concerned that distribution of dividends on the basis of capital may not be in line with the socialist principle of "distribution according to one's work".³ The difference between interest and dividends has been proposed as a subject of study.⁴
 - D. Whether speculation in the trading of shares could be tolerated and whether such speculation activities would cause social problems. Some people are

very concerned that speculative trading in shares may cause a lot of problems; some people may get rich overnight and others may lose their shirts. All this may cause social disorder and be contrary to socialist principles.⁵

There is no precedent to follow in resolving the above issues which touch upon many sensitive and complicated areas such as social economic structures, financial systems, the asset structure of enterprises and the distribution of income. For the time being there are still no satisfactory solutions and mature experience in tackling the various problems which are envisaged. This is the reason why national legislation on securities has been so slow. The general policy of the central authorities in respect of the development of the securities market is to develop it actively, cautiously and steadily. Before national legislation came out, experiments in the public issue of shares has only been carried out in Guangdong, Fujian, Hainan, Shanghai and Shenzhen. Experiments in the operation of stock exchanges is only carried out in Shanghai and Shenzhen, at present. These experiments are to be regulated by local legislation for the time being.⁶

We will examine below how Shanghai and Shenzhen have developed their legislation in respect of the issuance and exchange of shares in such experiments, bearing in mind the issues and concerns described above.

II The process of legislation on securities in Shanghai and Shenzhen.

A. The general legislative authorities

1. National

- (a) Pursuant to the Constitution of the PRC, the National People's Congress (NPC) and its Standing committee exercises the legislative power of the State. Therefore, all laws which are applicable nationwide are enacted by the NPC or its Standing Committee. (For example, the proposed and long-awaited laws in relation to securities such as the Corporation Law, Securities Law and Banking Law should all be enacted by the NPC).
- (b) Pursuant to the Constitution of the PRC, the State Council (as the Central People's Government of the PRC) is empowered to adopt administrative measures, enact administrative rules and regulations and issue decisions and orders in accordance with the Constitution and laws. As a general rule, the laws are enacted by the NPC but the implementing regulations of such laws are generally promulgated by the State Council.
- (c) Pursuant to the Constitution of the PRC, the ministries and commissions are authorised to issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the laws and administrative rules and regulations,

decisions and orders issued by the State Council. At present, some of the ministries (or the agencies with ministerial status) have been playing a very active role in formulating regulations in relation to securities, which I will elaborate below.

2. Local

Pursuant to the constitution of the PRC, the people's congresses of provinces and municipalities directly under the control of the Central Government and their standing committees may adopt local regulations, which must not contravene the Constitution and laws and administrative rules and regulations.

In Shanghai, being a municipality directly under the control of the Central Government, the People's Congress has power to enact local regulations.

Shenzhen city being a special economic zone, does not yet have such legislative power.

B. The regulatory authorities for securities.

In view of the fact that the legislation on securities touches upon many complicated issues and involves the jurisdiction of a number of government departments, the State Council has decided that all local regulations in relation to securities (including Shanghai and Shenzhen) have to be jointly approved by the State Economic Reform commission, the Ministry of Finance, the People's Bank of China and the State Assets Management Administration (hereinafter they will be jointly referred to as the "Joint Regulatory Authorities").⁷ Each of them may take a leading role in the approval process depending upon the subject matter of a regulation.

C. The process by which legislation on securities is drafted and issued.

Generally, the drafting of a piece of legislation on a specific subject matter is done by the government department which has jurisdiction over the subject matter. The final draft will be submitted to the relevant legislative authority for examination and approval. For the purpose of easy explanation, let us consider the newly enacted **Shenzhen Provisional Regulations on Companies Limited by Shares** (the "Shenzhen Company Regulations"). The first draft of these regulations was prepared by the Shenzhen Economic Reform Office, but reviewed and commented on by the People's Bank of China, Shenzhen Branch and the Shenzhen Investment Management Company and other relevant agencies. Due to the evolution of policies through the experiences and lessons gathered in the experiments in the stock market, it took quite a long time to produce the final draft with substantial changes from the first draft. In accordance with the instruction of the Legislation Department of the State Council (the "Legislation Department"), the final draft prepared by Shenzhen was submitted to the State Economic Reform Commission, which took the leading responsibility among the Joint Regulatory Authorities for

summarising their comments, revising it accordingly and then submitting it to the Legislation Department for final review. With the authorization of the Legislation Department, the State Economic Reform Commission approved it. Upon obtaining such approval, the Shenzhen Government issued the Company Regulations as administrative regulations under its name.

III. A brief history of legislation on securities in the PRC.

A. National

The first group of companies limited by shares (most of them were not standardised) appeared in 1984 in Beijing, Shanghai, Guangzhou, Shenzhen and other cities when the central authorities decided to carry out experiments in a share-holding system. At that time, there was no national regulation to follow at all. Some of the shares issued by those so-called companies limited by shares were a mixture of stock and bond because some of them were redeemable and some others were entitled to both interest and dividend. In order to control the issuance of stocks and bonds by enterprises, the State Council enacted, in 1986, the Interim Banking Regulations of the PRC, which clearly provided that the People's Bank of China is the authority in charge of the administration of bonds and stocks issued by enterprises as well as of the financial market, including the securities market. In 1987, the State Council enacted the **Interim Regulation on the Control of Enterprise Bonds** and also issued a **Notice Concerning the Strengthening of Control of Stocks and Bonds** (the "Notice"). The Notice stressed that all shares to be issued to the public had to be approved by the relevant offices of the People's Bank of China.

In December 1990, the Administration Office of the State Council issued a notice concerning the experiments in the share-holding system and the issue of shares to the public. The notice provided that all such experiments, even though they had been approved by the relevant local governments, needed to be approved by the relevant central authorities. This further tightened the control on the issue of shares to the public.

In 1991, the Joint Regulatory Authorities and the State Taxation Bureau issued a joint document concerning the strengthening of protection of the rights and interests of State-owned assets in the experiment in the share-holding system. This document provided detailed policy guidelines for the protection of State-owned assets in such experiment. These guidelines have been reflected in the Shenzhen Company Regulations and the **Interim Measures for the Control of Issue and Exchange of Shares in the City of Shenzhen** (the "Shenzhen Stock Regulations"). Some of the highlights of the same will be discussed below.

B. Shenzhen and Shanghai

1. Shenzhen

(a) The period from October 1986 to June 1991

The Shenzhen Government issued, in October 1986, the **Provisional Regulations on Stocks and Bonds of Enterprises of Shenzhen** and other relevant regulations and started the experiment in the reform of a shareholding system and the operation of a securities market. However, those regulations were very preliminary and vague and were difficult to implement. As a result, a large portion of shares were issued without proper approval. By the end of 1989, 189 companies were registered with the local office of the State Administration of Industry and Commerce (SAIC) as companies limited by shares, but only 84 were recognized by the Shenzhen Government as such companies and permitted re-registration.⁸ Since the **Provisional Regulations on Stocks and Bonds of Enterprises of Shenzhen** did not set out requirements for companies to go public, there were no published effective local regulations in reality to regulate the public issue and trading of shares in the market. As a result, the Shenzhen Government had to issue from time to time new rules, principles, guidelines and administrative orders to tackle the problems which emerged in the securities market. In 1990, the Shenzhen Government and People's Bank of China, Shenzhen Branch worked out preliminary requirements for companies to issue shares to the public and for listing. From May to November, 1990, the prices of the five shares publicly traded in the market went up drastically due to the shortage of supply of shares. Black market dealings and speculation became very active, which further drove up share prices. In order to keep the market in good order, the Shenzhen Government and People's Bank of China, Shenzhen Branch issued an announcement in May 1990 to penalise black market dealings and control speculation by tightening the transfer procedures and levying a high tax on speculative dealings. In October 1990, the Shenzhen Government issued a directive order prohibiting all the officials of the communist party and government agencies and the employees of the securities administration offices and securities companies to trade in shares, (the officials were once encouraged to buy shares when the shares were not popular at all in 1987). In view of the decrease in the percentage of State-owned shares in some companies where shares were publicly traded, the Shenzhen Government issued in, October 1990, **Measures to Maintain the Controlling Position of State-owned Shares**. It stipulated that the State-owned shares must be over 50% of the shares in ordinary State-owned companies and each individual (natural person) may not hold more than 0.5% of the total shares of one single company.⁹ In order to control a drastic rising in the prices of shares, the Shenzhen Government issued an administrative order in May 1990 to impose a 10% ceiling on daily rise and fall of share prices and then changed it, in November, 1990, to 0.5% for the upwards and 5% for the downwards limit. Some experts believed that the imbalanced limits for price rise and fall were

one of the several reasons which caused the plunge in the market in December 1990.¹⁰

(b) The period from June 1991 to the present

In order to overhaul the securities market in Shenzhen, the Joint Regulatory Authorities in Beijing finally approved, in June 1991, the Shenzhen Stock Regulations and at the same time approved the establishment of the Shenzhen Stock Exchange (which officially opened for operation in July 1991 after six months of trial operation) and the Charter and Operation Regulations of the Stock Exchange. This was a milestone in the history of the Shenzhen securities market. Pursuant to the Shenzhen Stock Regulations another 12 companies were approved after that date to issue shares to the public, including A-shares and B-shares, and these shares have been listed in the Stock Exchange one after another, pushing the total listed shares to 14 by the middle of May, 1992.

For the purpose of further improving the basis of the stock market in the share-holding system, the Shenzhen Government issued, in March 1992, the above-mentioned Shenzhen Company Regulations, so that the restructuring of State-owned enterprises into companies limited by shares could be standardized in a regulated fashion and the interests of companies, shareholders and creditors could be safe guarded.

In April, 1992, the Shenzhen Government issued Interim Measures for the Supervision of the Listed Companies (the "Supervision Measures") to impose more stringent disclosure requirements on the listed companies.

In order to open up the securities market of Shenzhen to foreign investors, the People's Bank of China and the Shenzhen Government jointly issued, in December 1991, the Interim Measures for the Control of RMB Special Stock of Shenzhen (the "Interim Measures for B-shares") and the People's Bank of China, Shenzhen Branch issued the Implementing Rules for the Interim Measures for B-shares.

2. Shanghai

The securities market in Shanghai is distinct in many ways from that in Shenzhen.

The Shanghai securities market commenced its experiment in 1984 and has been highly regulated since then. The People's Bank of China, Shanghai branch issued in 1984 the **Interim Measures for the Control of Stocks**, in 1985, the **Instructions Concerning Enterprises' Application for the Issuance of Shares (or Bonds)** and other relevant regulations for the purpose of regulating the primary market. Although those rules were very pre-mature, it helped the development of the initial market. By the end of 1986, about 809 companies issued shares and 739 companies issues bonds raising funds in

a total amount of, about, RMB247 million.¹¹

In 1987, the Shanghai Government officially issued the **Interim Measures for the Control of Stocks of Shanghai** and the **Interim Measures for the Control of Enterprise Bonds of Shanghai** which further pushed the development of the securities market, particularly the market in bonds. By the end of 1987, the funds raised through stocks and bonds exceeded RMB2 billion. In the same year, the People's Bank of China, Shanghai Branch issued Interim Measures for the Administration of the Dealings of Securities Over the Counter and the trading counter increased to eight.¹²

From 1988 to 1990, the State Treasury Bonds issued in past years began to be traded in the market. During that period of time, four securities companies and one credit rating company were established. The number of securities trading institutions increased to 25 and trading counters increased to 50. The trading volume of securities greatly increased. By the end of 1990, 31 securities were publicly traded and the value of securities transacted that year reached RMB2.4 billion.

In November 1990, the Shanghai Government issued the Measures for the Control of Securities Exchange of Shanghai. On 19 December, 1990, the Shanghai Stock Exchange was officially opened for operation with the approval of the People's Bank of China, and published its Charter and Provisional Rules for the Operation of the Stock Exchange.

From December 1990 to September 1991, the trading volume of securities at the Shanghai Stock Exchange reached RMB5.94 billion, among which about 80% were bonds and 20% were stocks.¹³

In the past years, in order to maintain the order of the securities market, the People's Bank of China, Shanghai Branch, the SAIC and Security Bureau of Shanghai also issued regulations to prohibit the curbside black market. The Stock Exchange issued rules to restrict the daily rise and fall of share prices, initially 0.5% and subsequently 1%. Recently, the Stock Exchange further increased the daily trading price fluctuation to 5% for three shares and lifted the price fluctuation controls on two shares.¹⁴

In order to absorb foreign investment through the securities market, the People's Bank of China and the Shanghai Government also jointly issued the **Measures for the Control of RMB Special Stock of Shanghai** (the "Shanghai Measures for B-shares") and the People's Bank of China, Shanghai Branch issued the **Implementing Rules for the Shanghai Measures for B-shares**.

IV. The evolution of the legislation on securities.

I will illustrate below some of the highlights in respect of the evolution of the legislation on securities, from which you will see how the issues and concerns

described in Section I have been taken into consideration in the legislation.

A. Regulations on the share-holding system.

Although the Shenzhen Company Regulations and the Shenzhen Stock Regulations overlap each other with respect to the requirements for issuing shares to the public and for listing, the Shenzhen company Regulations for the first time set out rules for the incorporation and restructuring of the existing enterprises into companies limited by shares. These rules reflect the current general policies of the central government with regard to the standardization of the share-holding system, which it wants to test in the experiment carried out in Shenzhen.

1. The types of companies.

The Shenzhen Company Regulations provide that companies limited by shares may be categorised into two types in terms of the range and method of promoting, subscribing and transferring shares.

(a) Internal company (Close Company)

The shares of this type of company may only be subscribed by the promoters (initial investors) and be issued to their own employees or other legal persons (enterprises or institutions). They may be further divided into two types:

- (i) Subscription Type. The shares of this type of company may only be subscribed by the initial investors and shall not be issued to anybody else and their shares may only be transferred among legal persons (enterprise legal entities).
- (ii) Promotion Type. The shares of this type of company may be subscribed by the promoters, their own employees and other legal persons. The portion subscribed by the employees shall not exceed 30% of the total shares issued. The shares of each company may only be transferred among its own employees and legal persons. It is strictly prohibited from issuing and transferring shares to other individuals outside the company.

(b) Public companies. Public companies may issue shares to the public. They may be further divided into listed and unlisted companies:

- (i) Unlisted companies. Upon the approval of the People's Bank of China, their shares may be traded over the counter.
- (ii) Listed companies. Upon the approval of the People's Bank of China, their shares may be listed and traded at the Shenzhen Stock Exchange.

2. Restructuring State-owned enterprises into companies limited by shares.

(a) Restrictions on such restructuring.

High profit businesses or businesses with a State monopoly (such as duty-free shops, liquor and tobacco companies and gold and jewellery processing companies) are not allowed to be incorporated as, or restructured into, companies limited by shares.

(b) Restrictions on the ownership of shares in such restructuring.

In terms of ownership, the shares may be categorised as follows:

- (i) Shares owned by the State ("State Shares"). This refers to shares held directly by the relevant office of State Assets Management Administration or held by others entrusted thereby.
- (ii) Shares owned by legal persons ("Institution Shares"). This refers to shares purchased by legal persons inside the PRC with assets that they can freely dispose of.
- (iii) Shares owned by individuals ("Individual Shares"). This refers to shares held by the employees of a Close Company and shares of a public company held by individuals who purchased the shares with their legitimate assets.
- (iv) Shares owned by foreign investors ("Foreign Shares"). This refers to shares purchased by foreign legal persons and individuals (including those in Hong Kong, Macao and Taiwan) with foreign currency.

The Shenzhen Company Regulations provide that:

- (i) State Shares shall maintain controlling positions in companies crucial to the national economy (the "key Company" or "key companies");
- (ii) The percentage of State Shares in other companies shall not be restricted.

If a share holding company entrusted to hold the State Shares of a Key Company intends to transfer such shares, it is required to apply for the Shenzhen Government's approval through the City Office of the State Assets Management Administration.

In order to maintain the controlling position of the State Shares in a company and to prevent infringement of State interests, the Company

Regulations provide that a natural person may not hold more than 0.5% of the total share capital of a single company and that any enterprise legal entity shall not transfer to its employees any of the State Shares, warrants and options in its possession and shall not distribute to its employees any shares purchased with money from any the welfare fund, bonus fund or common interest fund.

The Company Regulations also provide that any companies registered as private enterprises may only be re-registered as companies with limited liabilities (a "Limited Company"). This implies that private companies are not allowed to issue shares.

The above rules are designed to prevent any possibility of privatizing any state-owned enterprise and to maintain the controlling position of the State Shares in the companies limited by shares.

The Shenzhen Company Regulations did not spell out what the Key Companies are and what percentage will constitute a controlling position. We expect that these may be specified in implementing rules made in the future. These Regulations have relaxed the control of the percentage of State Shares in ordinary companies (the previous guideline stipulated a 50% shareholding) and to some extent make it possible for shareholders of State Shares and Institution Shares to trade in the secondary market. This may help to keep the ups and downs of the market within a proper range even though the trading of State Shares is separated from the trading of Individual Shares.

The Company Regulations have slightly changed the rules of the Stock Regulations which allows the businesses in which the State has a monopoly to be restructured.

3. Regulations on Chinese-foreign companies limited by shares.

The Shenzhen Company Regulations have made it possible to incorporate, or restructure an existing Chinese-foreign joint venture company, or a State-owned enterprise or other enterprise into a Chinese-foreign company limited by shares. The Companies Regulations have imposed a minimum registered capital requirement of RMB30 million and a minimum percentage of foreign investment of 25%. This will certainly be very helpful in easing foreign investors concerns about the difficulties in assigning or transferring their interests in a Chinese-foreign joint venture because of the unanimous consent requirement for such assignment or transfer imposed by the Chinese-foreign Joint Venture Law and its implementing regulations. This will open up new channels for foreign investors to make investments in China, particularly for those investors who are interested in portfolio investment. The Company Regulations may also help Chinese-foreign joint ventures established outside Shenzhen to be restructured into Chinese-foreign companies limited by shares and to issue shares to the public and have their shares listed in the Stock

Exchange. This may prove to be a good way to raise funds for the further development of promising Chinese-foreign joint venture companies.

B. The requirements for a public issue and a listing at the Shenzhen Stock Exchange.

1. Issuance of shares to the public.

The Shenzhen Company Regulations provide that, to apply for the issuance of shares to the public, a company is required to meet the following conditions:

- (a) It conforms to the industrial policies set out by the State and the Shenzhen Government;
- (b) The total value of all the issued Shares of a newly incorporated company or the net assets of the original enterprise before restructuring shall not be lower than RMB 10,000,000;
- (c) In the year just before the restructuring the net book value of its tangible assets should account for, at least, 25% of the total value of the tangible assets;
- (d) The shares subscribed by the promoters must account for, at least, 35% of the total share capital;
- (e) The shares issued to the public must account for, at least, 25% of the total share capital;
- (f) The shares subscribed by its own employees shall not exceed 10% of the total shares to be issued to the public. In the case of converting a Close Company into a public company, if the shares subscribed by its own employees exceed the above limit, no shares shall be further issued to the employees;
- (g) The number of shareholders is not less than 800;
- (h) The financial records are available to the public;
- (i) The Chief Executive of the company meets political and business qualification requirements, is well disciplined and has no bad record in business management.

These requirements are, basically, identical to the requirements imposed in the Shenzhen Stock Regulations except that:

- (i) the RMB 5 million minimum subscription requirement in relation to the promoters has been removed;

- (ii) the requirement for the company's business to be in compliance with industrial policies have been expanded to both State and local envisaging the possible application of the Regulations to companies outside Shenzhen;
- (iii) the requirement under (f) is new. It is designed to control the shareholding of its own employees and, thus, to prevent the State Shares from losing control to its employees and to prevent excessive capital gains being made by its employees;
- (iv) the requirement under (h) is also new, but important in the sense of enhancing the visibility of the financial standing of companies;
- (v) the Company Regulations impose higher qualification requirements on the Chief Executives of companies.

2. Listing

The Shenzhen Company Regulations provide that a listed company should meet the following conditions:

- (a) The business of the company conforms to the industrial policies set out by the State and the Shenzhen Government;
- (b) The company has a record of profit making for at least, three consecutive years and provide financial documents of the last three years;
- (c) The net book value of its tangible assets should account for, at least, 38% of the total value of the tangible assets, but in the case of a public company in existence for more than one year, it should meet such a requirement one year preceding the application;
- (d) The profits of the company in the last two years should be higher than the average profits of other companies in the same business line;
- (e) The total net assets of the company prior to the listing should not be less than RMB 15 million;
- (f) The company should conform to the other conditions of a public company;
- (g) The company should meet other requirements made by the Stock Exchange.

The above conditions imposed by the Shenzhen Company Regulations are significantly different from those imposed by the Shenzhen Stock Regulations.

These changes have reflected the experiences gained over the past year and made the conditions more practical and objective. They have also given the Stock Exchange more power and authority in the process of approving a listing.

Shanghai has not issued its regulations on companies limited by shares yet. It is reported that it will issue such a regulation soon.

C. Restrictions on speculation, insider trading and the curbside black market.

Both the Shanghai Securities Regulations and Shenzhen Stock Regulations strictly prohibit the following activities in relation to share dealings:

- (a) Selling short;
- (b) Through a conspiracy between two (or more than two) individuals or organizations, the people or institutions concerned purchase, or sell, a class of securities simultaneously in order to create a false market for the securities and disturb the prices of the same;
- (c) To affect the conditions of the market, people or institutions trade with each other falsely without changing title in securities;
- (d) Involvement in the purchase and/or sales of securities by means of insider information;
- (e) Spreading false or misleading news to persuade others to buy and/or sell securities and thus influence the prices of the same;
- (f) For speculation purposes, continuously buying at a high price or selling at a low price a specific class of securities so as to influence the market prices of the same;
- (g) Without any permission, the issuing company buys back or sells out its own securities directly or indirectly at the Stock Exchange or over the counter;
- (h) A broker makes decisions on behalf of a customer on the class, quantity, price and buy-in or sell-out of shares or the broker accepts an instruction on a securities deal outside his (or her) business premises;
- (i) Curbside black market deals;
- (j) An illegal transfer of the title in the securities.

The Shanghai Securities Regulations provide that violation of any of the above provisions shall be subject to a fine between RMB 50,000 and 100,000 for a

minor offence or between RMB 100,000 and 200,000 in the case of a serious offence.

In conjunction with other relevant rules, these regulations have reduced illegitimate deals in the curbside black market, excessive speculation and insider dealings.

In order to prevent speculation and maintain good social order, the Shenzhen Stock Regulations prohibit State-owned enterprises from trading stocks with bank loans. The Shenzhen government has also been issuing warnings to the public through the press media that it is a risk to buy shares and has tried to persuade them not to trade shares with borrowed money. The point is that if the shares are traded with one's own money, a loss would only mean a reduction of personal assets, but if traded with borrowed money, the creditors will try to enforce the payment of debt and thus may cause social disorder. With sufficient warning, someone who still wants to take the risk should bear the risk on his own.¹⁵

D. Regulations on the administrative control of the securities market.

The Shenzhen Company Regulations and the Stock Regulations have reserved extensive rights to the government authorities to control the operation of the securities market.

1. Controls on the total value of shares which may be issued each year. This is impliedly provided in the regulations. This control is vested in the Central Government but exercised by the People's Bank of China. Upon application, the People's Bank of China grants to each particular market a general quota (in terms of money's worth) within which it specifies how many shares and bonds may be issued respectively in each year. Take Shenzhen for example. In 1992, the quota for issuing A-share is RMB300 million and for B-share is US\$ 100 million.

The quota granted to Shanghai for the issuance of A-shares in 1992 is about RMB400 million, and for B-shares is US\$100 million.

The quota system is designed to control the size of the primary market in a particular place and indirectly control its secondary market. From a central government point of view, it also controls the total value of the capital funds raised through a securities market and thus controls the investment scale so as to prevent overheating investment and possible inflation.¹⁶

2. Control of the incorporation, and restructure, of companies. Pursuant to the Shenzhen Company Regulations, regulatory authorities' approval is required for almost everything from: the incorporation of new companies limited by shares, restructuring State-owned enterprises into companies limited by shares, converting Subscription Type Companies into Promotion Type Companies or converting Close Companies into public companies. It is also required for the

total value of an issue of shares, the par value and the issue price of each share for a public offering as well as for a listing.

3. Control of market ups and downs. Although the Shenzhen Stock Exchange has lifted the limits for the daily rise and fall of the prices of all shares listed therein (except for Champaign), which was applauded by all investors, the Shenzhen Stock Regulations reserve the right of the regulatory authorities to impose limits on the daily rise and fall of share prices when they think necessary.

The above are only a few examples of the administrative control over the securities market. It is not always agreed whether these administrative controls are helpful or harmful for the sound development of a securities market. The general policy seems to be that the securities market should be operated in accordance with laws and regulations and should be standardized gradually according to international practice. However, at the initial stage of the development of the securities market, the Regulations should give the government authorities as much powers as possible to control the development of the market to exercise their powers in accordance with the Regulations and reduce as much as possible any random interventions.

E. Regulations on the protection of minority Shareholders

The existing regulations in Shanghai and Shenzhen contain a lot of provisions which give protection to shareholders in general, but very little protection to minority shareholders. It is understandable under the circumstances that the prevailing concern in the country is how to protect the State interest and prevent infringement and dilution of the state interest when the State-owned enterprises are restructured and State Shares are traded in the securities market. Therefore, the regulations have built in a lot of provisions to protect the majority shareholders' interests.

Although the Chinese-foreign joint venture laws and regulations have a full set of rules to protect foreign investors, the issuance of B-shares has created a lot of small shareholders which was not envisaged by those joint venture regulations. We may have to wait and see how the market practice and development will help to improve the legislation in this respect.

Notes

1. Jin Jiandong, Director of the Finance Administration Department of the People's Bank of China, "Actively and Cautiously Pushing the Development of Securities Market", *Financial Times*, 3 January, 1992.
2. id.
3. id.
4. Liu Hongru, Deputy director of the State Economic Reform Commission, "Establish Securities Market with Socialist Characteristics", *Financial Times*, 6 January, 1992.
5. Premier Li Peng, *People's Daily*, May 1991.
6. Report by *Securities Investment Weekly*, Volume No.4, 6 April, 1992.
7. id. See also the Notice of the Administration Office of the State Council Concerning the Experiment in the Share-holding System and Issue of Shares to the Public, issued in December, 1990.
8. *The Securities Market of China*, Chief editor Wang Guangqian, published by China Finance and Economy Publishing Company, 1991.
9. Wang Jian and Yu Guogang, *Shenzhen Stock Market*, published by Haitian Publishing Company, 1990.
10. An Analysis on the Fluctuation of the Share Prices in Shenzhen, *Shenzhen Finance*, Volume 4, 1991.
11. See note (8).
12. "The Current Situation of Shanghai Securities Market and Issues to be resolved", *Shenzhen Finance*, Volume 4, 1991.
13. Wei Wenyuan, General Manager of the Shanghai Stock Exchange, "Making Efforts to Operate Shanghai Stock Exchange Well", *China Finance*, Volume 1, 1992.
14. *China Daily*, "Shanghai Focus", April 19-25, 1992.
15. Xiu Jingan, "Actively Promoting the Share-holding System and Improving the Stock Market", *Shenzhen Finance*, Volume 4, 1991.
16. See Note (8).

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

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A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

***SECURITIES MARKETS IN CHINA: IMPLICATIONS FOR
CAPITAL ACCUMULATION AND INVESTMENT***

Pitman B. Potter

Associate Professor

Law Faculty, University of British Columbia

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**Securities Markets in China:
Implications for Capital Accumulation and Investment¹**

Pitman B. Potter*

The establishment of securities exchanges in Shanghai and Shenzhen represent a renewed effort to raise capital for the Chinese economy.² The exchanges offer an alternative to savings deposit accounts, individual business enterprises, consumer durable purchases, and cash hoarding as a target for domestic investment. Evidence suggests that the Shanghai and Shenzhen exchanges have already attracted significant amounts of domestic capital investment. For foreign investors, the newly approved "B Shares" offer an investment alternative to foreign invested enterprises (joint and wholly foreign owned ventures and the like). In examining the implications of the newly opened Chinese securities markets for domestic and foreign investment in China, the paper will address the investment record to date in the context of underlying policy issues.

I. Policy Issues Underlying the Current Securities Regime.³

The opening of China's securities markets and the expansion of their activities to include foreign participation has been the result of contentious debates over a variety of policy issues. Suspicions that reliance on debt financing for economic development would undermine China's autonomy has long hampered the use of bonds as vehicles for capital accumulation, while the insistence that property ownership in the Chinese economy should be monopolized by the state as a representative of the whole people has until recently prohibited stocks and shareholding in economic enterprises. In addition, the role of securities exchanges has been subject to uncertainties over the negotiability of securities, while the

* Pitman B. Potter is an Associate Professor at the University of British Columbia Law Faculty, where he is also Director of Chinese Legal Studies. He received his Ph.D. and J.D. degrees from the University of Washington. Prior to joining the Law Faculty of the University of British Columbia, he was a practising attorney with Graham & James, where he continues to serve as Special Counsel for China Projects. Professor Potter's book on contract law in the PRC has recently been published by the University of Washington Press. This presentation is not intended to affirm or deny the advisability of investing in any particular security or securities, and should not be so construed.

development of an institutional regulatory framework has been undermined by political and bureaucratic rivalries. These issues and the manner in which they have been addressed in the past represent an ideological and policy legacy underlying recent developments in the regulation of China's securities markets.

A. Debt Financing and Property Ownership

After longstanding reluctance to rely on debt financing, the post-Mao government began in 1981 to encourage public investment in government securities through the medium of treasury bonds, which were subject to yearly State Council regulations governing issues to state enterprises, collectives, and local governments, as well as businesses and individuals.⁴ State projects came to use bond sales for financing, both domestically and abroad.⁵ Between 1982 and mid-1987, China issued nearly \$3 billion in bonds, with the bulk of these in issues floated after 1986.⁶ By 1987, state enterprises were permitted to obtain financing through bond issues, subject to strict controls under the People's Bank of China ("PBOC") to make sure that fund raising for state construction plans was not interfered with by state enterprise bond offers.⁷ These measures popularized the use of government bonds as an alternate to simple bank savings accounts as methods of investment within China's restrictive finance system.⁸ Income from the sale of bonds supplemented state revenues and was directed toward state mandated projects.

Localities in China were quick to follow the central regime's lead, and promoted the issue and sale of local government bonds. Public projects in major municipalities came to seek financing through bond sales in China and abroad.⁹ Localities also encouraged enterprise bond sales, although the applicable interest rates made these less attractive for successful companies that could obtain cheaper bank financing.¹⁰ Thus, by the mid-1980s, debt financing had become an established component of economic policy at both the central and local levels, as the sale of bonds provided an importance source of capital for public projects and state enterprises. By the late 1980s enterprises, government units and even individual workers and private business operators (*gongshang hu*) were required to devote a portion of their income to subscriptions for state bonds.¹¹

Complementing the role of bonds in raising capital, stock issues also offered attractive alternatives for raising capital because of the absence of fixed interest payments and other costs.¹² However, the role of stocks and shareholding was hampered by ideological questions concerning public and private ownership of business enterprises in the Chinese

economy.¹³ Some argued that the emergence of private ownership of stock did not conflict with socialist ideology as long as the overall national economy was subject to state management.¹⁴ Others contended that the emergence of a shareholding system of investment in economic enterprises was fundamentally in conflict with the precepts of socialist ownership.¹⁵

A tentative consensus emerged in 1987 under the State Council "Notice on Strengthening Administration of Stocks and Bonds" (April, 1987),¹⁶ which distinguished between the issuance of stock by private enterprises and collectives and the issuance of bonds by government organs and state-owned enterprises. Under the Notice, state enterprises were permitted to raise financing through bond issues, but were not permitted to issue stock. The Notice permitted stock issuances by collective enterprises, but prohibited them from issuing bonds. This approach was deemed consistent with the requirements of socialism, since the government and state company bonds did not transfer ownership of property owned by the whole people, while private and collective enterprise stock reflected the ownership interests of shareholders but did not entail loan commitments that the enterprises might not be able to perform. Under the Notice, all issuings of securities required supervision and approval of PBOC, and in the case of bond issues abroad PBOC operated in conjunction with the State Administration for Exchange Control to ensure that investment funds obtained through such instruments were used for approved projects.¹⁷

Despite these restrictions, there were increased calls for greater flexibility in permitting state-owned enterprises to issue stock.¹⁸ In September 1988, the Third Plenum of the Thirteenth CPC Congress called for experimentation with ownership of shares by the public.¹⁹ This was a significantly stronger endorsement of the use of securities than that which was made at the first session of the Thirteenth CPC Congress a year earlier, where only passing reference was made to the need to establish shareholder-owned enterprises.²⁰ While the dilemma remained of reconciling private ownership of company shares with the ideology of socialist ownership of the means of production, attempts were made to resolve the issue through balancing of private and public ownership of enterprises.²¹ Other approaches focused on enterprises having their own independent capital as a prerequisite to issuing shares, a rather broad-reaching suggestion that would permit share issuance by any enterprise recognized as a juridical person.²²

However, uncertainties remained over private ownership of enterprises through the

shareholding system. In June 1990, the State Council and the State Commission for Restructuring the Economy issued a notice indicating that stock issues to enterprise employees should not be expanded (*bu zai kuoda*) and issues to the general public should not be taken any further (*bu zai puxin*), although further experimentation could proceed on stock swaps between enterprises.²³ The communique issued after the Seventh Plenum of the 13th CPC Central Committee in December 1990 made only oblique reference to the need to carry out structural reform of enterprises, investment and other matters.²⁴ Even as the Shanghai Securities Exchange was opening, Premier Li Peng speaking to a national economic policy conference expressed doubts about the application of the shareholding system to state enterprises.²⁵ Although the 1991 proposals of the CPC Central Committee concerning the 8th Five Year Plan indicated support for shareholding systems as an experimental exercise,²⁶ it was clear that shareholding in enterprise stocks remained an unsettled issue generally.

B. Negotiability and the Role of Securities Exchanges.

Although the early bond regulations specifically denied negotiability of these securities, subsequent regulations permitted negotiation of treasury bonds, either to serve as security for loans, or to be sold at a discount (*tiexian*) under regulations issued by the People's Bank of China (PBOC).²⁷ This meant a reduced level of state control over the holders of government obligation. Although initially these holders were limited to state banks, an important conceptual precedent had been set concerning negotiability of securities which represented a departure from past policies.²⁸ This new approach to negotiability was made possible in part through a transformation in ideology which held that the decline of exploiting classes and the emergence of a commodity economy permitted diversification of property ownership.²⁹ With the acceptance of such diversity came a reduced concern with limiting transfers of property, including negotiation of securities obligations and rights. This approach was consistent with the gradual acceptance of debt financing, but permitted greater flexibility in the circulation of debt and the securities instruments through which debt was expressed.³⁰

With the recognition of negotiability came efforts to expand markets for the issuance and trading of securities. Following efforts by the city of Xiamen in 1986,³¹ Guangdong issued provincial level regulations concerning transactions in both stocks and bonds,³² and Beijing and other localities followed suit.³³ The first securities exchange was opened in

Shenyang in August, 1986, which dealt in enterprise (but not government) bonds and offered potential sources of debt financing for the state-owned heavy industrial companies concentrated in the Northeast.³⁴ In Shanghai, Tianjin and other cities, very limited securities trading markets were opened, although participation was sluggish initially.³⁵ Popular interest soon grew, however, and in 1987-1988 there emerged what was termed "securities fever" (*zhengguan re*) as people began withdrawing their savings from low interest bank accounts and investing in securities.³⁶

Despite earlier concerns over the capacity of China's finance and economic systems to handle further development of securities markets,³⁷ reform minded economists began to argue more forcefully that securities markets were necessary for the development of China's economy.³⁸ These views were supported by those who called for expanding the role of shareholding in enterprises, such as economist Wan Dianwu who suggested that joint stock companies were useful vehicles for capital accumulation because they could attract private investment more readily than state banks and state bonds.³⁹ Another view, associated with Beijing University economist Li Yining, held that stock holding systems would increase the efficiency of enterprises, thus furthering the broader goal of enterprise reform.⁴⁰ Yet another approach, associated with the Academy of Social Sciences, suggested the use of different systems of shareholding to reflect varying types of shareholders (juridical persons or individuals, for example) and different types of ownership (for example, with or without management control) could help resolve the seemingly intractable problem of differentiating between purely private ownership of economic enterprises and ownership by the whole people.⁴¹ CASS scholars also raised the point that the development of Chinese securities markets would further rational allocation of resources and materials.⁴²

Despite ongoing doubts from more conservative elements of the leadership, calls for renewed work on establishing formal securities exchanges were made in early 1990 at a meeting the Chinese People's Political Consultative Congress.⁴³ In May, a conference organized by the Stock Exchange Executive Council in Beijing called for further development of China's securities markets, and projected the rapid introduction of a national computerized securities quotation system that would provide a nation-wide reporting on securities prices.⁴⁴ This suggested that the government was prepared to go ahead with the experimental development of securities exchanges at Shanghai and Shenzhen.⁴⁵

C. Institutional Framework for Controlling the Sources and Targeting of Securities Investments.

While the role of state financing has traditionally been subject to control by PBOC, the role of the specialized banks in assisting with securities issuances provided opportunities for these institutions to generate business free from PBOC intrusion.⁴⁶ While PBOC retained approval authority over the issuance of bonds by the banks themselves, whether through underwriting or otherwise⁴⁷, the emerging securities markets gave rise to a tension between PBOC's efforts to retain control over its subsidiary banks and the desire of the banks for autonomy to conduct securities-related business. Although nominally subject to PBOC control⁴⁸, the specialized banks began to use their authority to organize currency trading to establish and operate quasi-independent financial markets.⁴⁹

PBOC's response to these efforts appeared in the "Provisional Regulations on Administration of Enterprise Bonds" (March, 1987), which placed enterprise bond issues under the strict control of PBOC.⁵⁰ The regulations provided that bonds could be sold only by the issuing enterprise or by designated financial institutions (which would be subject to PBOC control). The regulation prohibited sales by non-financial institutions, thus permitting PBOC to retain control over bond financing.⁵¹ As indicated by the subsequent "Notice on Strengthening Administration of Stocks and Bonds" (April, 1987) which subjected securities issuances to still greater PBOC control, a key purpose of PBOC supervision was to ensure that investment was targeted at state construction projects.⁵²

However, this regulatory framework not wholly effective to maintain PBOC's control over the flow of investment toward bond-funded state projects. In part this was due to the availability of attractive alternatives, such as the stock issued by the newly revitalized Bank of Communications, which was free from the organizational control of PBOC.⁵³ Other enterprises were also offering stock investment opportunities, and by August, 1988 there were estimated to be over 6,000 enterprises, issuing stock valued at over 1.5 billion RMB.⁵⁴ The State Council "Notice on Strengthening Administration of Stocks and Bonds" had to be re-issued several months after its original pronouncement to recall attention to the need to ensure proper targeting of investment through control over securities issuances.⁵⁵ In addition to compulsory measures adopted by PBOC to ensure that public project bonds were fully subscribed by local governments,⁵⁶ attempts were also under way to make bond purchases more attractive, through the use of add-on incentives such as reduced prices on

commodities produced by the plants for which the bond income was to be used.⁵⁷ Investments were also sought in shorter-term company and bank bonds.⁵⁸

PBOC's concern with maintaining its control over investment targeting and ensuring that investments in stocks did not jeopardize the planned targeting of bond investments was evident in statements by PBOC officers that "bank credit would remain the main form of financing in China", and that while government bonds would take on greater significance, "stocks are unlikely to gain momentum in the near future".⁵⁹ Concerns that securities issues satisfied the imperatives of state planning were also expressed through regulations issued in March, 1990 restricting enterprises from issuing their own bonds without the approval and coordination of PBOC and the state planning authorities.⁶⁰ In May, regulations were issued concerning state treasury bonds and "special state bonds" (primarily for construction projects) that made clear that these securities should be the mainstay for government and enterprise investments.⁶¹

D. Foreign Participation

The question of foreign participation in China's securities markets has long been a matter of debate. While the State Commission for Restructuring the Economy, as well as former Shanghai Mayor Zhu Rongji and other officials, have indicated support for foreign investment in Chinese securities markets,⁶² others have been less supportive. The Shanghai securities market regulations did not expressly permit foreign participation, and officials at the Shanghai exchange indicated ambivalence on the question. Ultimately, however, PBOC and the Shanghai municipal government formally approved the issuance of so-called "Class B" foreign currency shares in order to resolve the foreign exchange problem.⁶³ In November, 1991, PBOC and the Shanghai Municipal Government issued regulations and implementing rules for the "Class B" shares.⁶⁴

In contrast to the hesitancy evident in Shanghai, foreign participation in the Shenzhen securities market received policy and regulatory support early on.⁶⁵ At its first meeting, the Shenzhen Securities Market Leading Small Group expressly approved foreign investment in the Shenzhen market.⁶⁶ The 1991 Shenzhen Stock Transaction Regulations define stock so as to permit include Sino-foreign joint stock company issues, thus in principle permitting these securities to be traded on the Shenzhen exchange.⁶⁷ The Shenzhen Stock Transaction Regulations also make specific reference to foreign purchasers of securities, although their participation in the exchange remains subject to approval by PBOC.⁶⁸ In December, 1991,

PBOC Shenzhen issued interim procedures⁶⁹ and implementing rules⁷⁰ for the Shenzhen Securities Market.

Thus, by the end of 1991, both Shanghai and Shenzhen had in place a regulatory framework permitting foreign investment in the local securities exchanges. While significant hesitancy was evident in the initial Shanghai regulations and practices, these gradually gave way to a more supportive position in keeping with the thrust of national policy. In Shenzhen, on the other hand, support for foreign participation was evident over a much longer period of time. Despite these differences, the Shanghai and Shenzhen "B Share" measures suggest that a consensus has been reached to permit limited foreign securities investments in China.

II. Achievements of the Securities Markets in Attracting Investment.

Although China's securities markets have not been in operation long enough to establish a solid track record, when compared with the available information on domestic investment in China, the performance figures for the Shanghai and Shenzhen exchanges are significant. In 1989, total domestic investment in China was 400 billion yuan, while budget subsidies to industry totalled 60 billion yuan.⁷¹ In 1990, the Chinese government invested 15.79 billion yuan on transformation of enterprises and new products and 12.124 billion yuan on repayment of domestic debt.⁷²

While the analysis is preliminary, a comparison of these figures with information on the level of investment in the Shanghai and Shenzhen securities exchanges suggests the potential of Chinese securities markets in replacing government investment in industrial subsidies and development. According to the President of the Shanghai Securities Exchange, transaction value on the Shanghai exchange in 1991 totalled approximately 8 billion yuan (US\$1.5 billion), of which 21% was in stock and 79% in bonds (65% in government bonds and 14% in bank and corporate bonds).⁷³ A more optimistic report indicated that in the year following its opening, the Shanghai exchange has seen sales of 887 million yuan (US\$167.36 million) in stock by its eight listed companies.⁷⁴ In Shenzhen, during 1990 before the exchange was officially open, the value of stocks sold was nearly 1.8 billion yuan (US\$ 339 million).⁷⁵ In 1992, the Shenzhen exchange is authorized to issue US\$300 million worth of domestic shares.

The transaction values for the Shanghai and Shenzhen exchanges represent significant levels of domestic investment when compared to government budgetary figures. The lower

of the two available Shanghai figures (8 billion yuan total transaction value) compares favourably to the amount spent by the government in 1989 on subsidies to industry (amounting to 13.3% of this expenditure level). The 1991 transaction value for Shanghai represents and investment commitment nearly half as large as the government expenditure in 1990 on enterprise transformation and nearly 2/3 of the government 1990 domestic interest payments. The Shenzhen investment amounts (RMB 1.8 billion in 1989 and 300 million in 1992) compare favourably with the government expenditures on investment and subsidies in the domestic Chinese economy, particularly in the areas of enterprise transformation (11.40% of the amount spent) and domestic interest (14.8% of the amount spent).

The parallels that can be drawn between the investment values at the Shanghai and Shenzhen exchanges and the government's expenditure levels on industrial subsidies and transformation as well as domestic debt are not exact. Nonetheless, they do suggest that domestic investment in the Chinese securities markets may possibly represent an alternative to government investment in some sectors. To the extent that economic enterprises can raise funds through the issuance of securities, this may reduce the extent to which government subsidies (either for operating deficits, or to fund technological transformation) are required. And in view of the pervasive role of the People's Bank of China in regulating and targeting domestic securities investments, PBOC may well be able to channel securities investments (particularly in the area of government bonds) in ways that reduce or substitute for other forms of government borrowing on the domestic economy. Thus, the Chinese securities markets may come to represent an increasingly important channel for domestic investment in the Chinese economy, substituting for state budgetary allocations.

The performance of the newly approved B Shares also suggests that Chinese securities markets may have a significant impact on China's foreign investment economy. The total of foreign investment in China between 1987 and 1990 ranged between approximately 4.4 and 6.6 billion annually, with the average investment contract being worth approximately 1.7 million in 1987; .89 million in 1988; .97 million in 1989; and .91 million in 1990.⁷⁶ Comparing favourably with these figures are the first "B Share" issues for the Shanghai and Shenzhen exchanges. The issuance of "B Shares" by the Shanghai Vacuum Electronic Device Company was valued at US\$187,000, roughly 19% of the average foreign investment contract value.⁷⁷ The Shenzhen "B Share" performance is more impressive, with the issuance by China Southern Glass of HK\$84.8 million on B Shares.⁷⁸ Although questions

of state interference remain,⁷⁹ Nonetheless, the opportunities for foreign investment in securities issued by Chinese enterprises and joint ventures offers a significant alternative to the conventional foreign direct investment mechanisms that have been available previously. This may also permit foreign investment to reach areas of China where foreign invested enterprises are not currently very active.⁸⁰

Thus, the performance of the Chinese securities markets raises significant possibilities for changing patterns of domestic and foreign investment in the Chinese economy. The record is still far from complete, and more time will be needed before a consistent track record can be established. Nonetheless, the record to date suggests the significant prospect for the Chinese securities markets to play a larger role in the structure and performance of investment in the Chinese economy.

Notes

1. Portions of this presentation are contained in the author's "Recent Developments in Securities Markets Regulation in China: Balancing State Regulation With Investor Confidence", forthcoming in The China Law Reporter.
2. The need for such investment has been recognized explicitly by the Chinese economists who support the new securities policies as vehicles for attracting private capital to construction and development projects and for state and private company financing. See e.g. the views of economist Wei Zhiguo of the Chinese Academy of Social Sciences in "Fahui zhengquan shichang de ziyuan peizhi gongneng" (Give full play to the role of securities markets in allocating resources), in Jinrong shibao (*Financial Times*), Jan. 1, 1991; and Li Yining, "Thoughts on development of the stock market", in Jingji ribao (*Economy Daily*), June 23, 1990, p.2, translated in FBIS Daily Report-China July 20, 1990. p.40.
3. Significant portions of this section are drawn from the author's "Recent Developments in Securities Markets Regulations in China: Balancing State Regulation With Investor Confidence", in The China Law Reporter, Fall, 1992.
4. Under the State Council's "Regulations on Treasury Bonds" (Guokuquan tiaoli) for 1981, the securities issued were not negotiable, had a five year maturity date, and paid interest at a 4% annual interest rate. See Liu Jinzhang, ed., Jinrong shouce. Lianoning: Liaoning People's Press, 1987, pp. 525-526. These terms varied in subsequent years. See "Zhonghua renmin gongheguo 1982 nian guokuquan tiaoli" (Regulations of the PRC on 1982 treasury bonds) (Jan. 8, 1982), in Renmin ribao (*People's Daily*), Feb. 2, 1982, in which the interest rate was set at 4% (for units) and 8% (for individuals), and "Zhonghua renmin gongheguo 1985 nian guokuquan tiaoli" (Regulations of the PRC on 1985 treasury bonds) (Nov. 27, 1984), in Renmin ribao (*People's Daily*), Dec. 19, 1984, where the interest rate was at 5% (for units) and 9% (for individuals). By the time of the economic crisis of 1988, the government had taken to requiring the purchase of state treasury bonds under quotas imposed on enterprise workers. See
5. See "China issues 5-year bonds", in China Daily Jan. 16, 1987, p.2; "People's Bank plans bond issue", in China Daily, May 2, 1987, p. 1; "Construction bank to issue bills, bonds", in China Daily Business Weekly, June 28, 1987, p.1; "BOC issues bonds on the London market", in China Daily, Sept. 11, 1987, p.2.
6. "Yen snag in bond issues abroad", in China Daily Business Weekly, Sept. 6, 1987.
7. See "Qiye zhaiquan guanli zanxing tiaoli" (Provisional Regulations on Administration of Enterprise Bonds) (Mar. 27, 1987), in Renmin ribao (*People's Daily*), Apr. 5, 1987, p. 3. An English translation appears in "State Council Promulgates Bond Regulations", FBIS Daily Report-China, Apr. 7, 1987, p.K29. For an insightful analysis of these regulations, see James V. Feinerman, "Backwards Into the

Future", Law and Contemporary Problems Vol. 52, No.3, pp. 170-184, at 176, et seq.

8. Other investment mechanisms were also under way, particularly through the use of investment houses (also referred to as "trust organizations"), which were authorized to invest deposits, and in certain circumstances to issue bonds. See e.g. "Interim regulations for managing financial and trust organizations issued" in China Economic News, Aug. 11, 1986, p. 8.
9. See "Bonds to be issued for Shanghai project" in China Daily, Nov. 17, 1986, p.2; "Bonds will finance Guangdong projects", in China Daily Dec. 9, 1986, p. 2; and "Xiamen to issue bonds for bridge", in China Daily, Dec. 10, 1986, p. 2. For further discussion of the Shanghai bond issuance, see "Shanghai zai ri faxing zhaiquan ji shou wai zi shiyong liang hao" (Shanghai issues bonds daily and its use of foreign capital is excellent), in Renmin ribao (People's Daily), Jan. 13, 1987, p. 2.
10. See e.g. "Qingdao shi giye zhaiquan guanli zanxing banfa" (Provisional Methods of Qingdao Municipality for Administration of Enterprise Bonds) (July 3, 1989), in Cao Jianguo, ed., Zhengquan yewu shouce (Securities Business Handbook), Qingdao: Haiyang University Press, 1990, p. 205.
11. See e.g. "Zhonghua renmin gongheguo yi jiu ba jiu nian tezhong guozhai tiaoli" (Regulations of the PRC on Special State Bonds for 1989), in Zhonghua renmin gongheguo xin fa gui huibian 1989 di er ji (Compilation of New Laws and Regulations of the PRC 1989 Vol. 2), Beijing: Xinhua Publishers, 1989, p. 43; "Zhonghua renim gongheguo yi jiu jiu ling nian guokuquan tiaoli" (Regulations of the PRC on State Treasury Bonds for 1990), in Jingji ribao (Economy Daily), June 9, 1990; and "Zhonghua renmin gongheguo yi jiu jiu ling nian tezhong guozhai tiaoli" (Regulations of the PRC on Special State Bonds for 1990), in Id.
12. See "First Beijing firm to issue shares", in China Daily Oct. 31, 1986, p. 2; "New firm marks 'Important step'", in China Daily, Jan. 16, 1987, p. 3. The specialized state banks include the Industrial Commercial Bank, Bank of China, Bank of Communications, Construction Bank, the Agricultural Bank and the Investment Bank of China. See generally Owen D. Nee, Jr., "Banking and Credit System", in William P. Streng and Allen D. Wilcox, ed., Doing Business in China, New York: Matthew Bender, 1990, p. 12-1.
13. For an extensive collection of articles offering a variety of opinions on the ideological and operations aspects of the issue of stock holding in China, see Wang Mengkui and Xing Junfang, eds., Guanyu gufen zhi wenti (Questions About the Stock System), Beijing: Economy Publishing House, 1987.
14. See e.g., Li Su, Gong Xiaoyuan, Du Feijin and Pan Yuexin, "Bufen guoying qiye xiang gufen zhidu qiye zhuanhua de falu tantao" (Legal Discussion of the Transformation of a Part of State Enterprises Into Stock Enterprises), in Zhongguo fazhi bao (Chinese Legal System Gazette), June 10, 1987, p. 3, in which the authors conclude that certain state enterprises and Sino-foreign joint ventures should be permitted to issue stock.

15. See e.g. Zheng Qing and Zhang Jie, "Gufenhua bu shi gaohuo quan min suo you zhi qiye de zhengque fangxiang" (Shareholding is not the correct direction for enlivening enterprises owned by the whole people", in Wang Mengkui and Xing Junfang, eds., Guanyu gufen zhi wenti (Questions About the Stock System), Beijing: Economy Publishing House, 1987, p. 97.

16. "Jiaqiang he wanshan gupiao zhaiquan guanli" (Strengthen and perfect administration of stocks and bonds), in Zhongguo fazhi bao (Chinese Legal System Gazette), Apr. 7, 1987, p. 1; and "Guowuyuan tongzhi ge di jiaqiang gupiao, zhaiquan guanli" (The State Council notifies localities to strengthen administration of stocks and bonds), in Jingji ribao (*Economy Daily*), Apr. 7, 1987, p. 1.

17. See "Guanyu Zhongguo jingnei jigou zai jing wai faxing zhaiquan de guanli guiding" (Regulations Concerning the Administration of Bond Issues Abroad by Chinese Domestic Institutions) (Sept. 28, 1987), in Jingji ribao (*Economy Daily*), May 5, 1988, p. 2. An English translation appears in China Economic News, May 28, 1988, p. 6.

18. See e.g., "Guoying qiye keyi shixing gufen zhi" (State enterprises can implement the share system), in Jingji cankao (Economic Reference), April 15, 1988, p. 1, in which economist and vice chair of the National People's Congress Economy and Finance Committee Dong Fureng contended that although certain conditions and problems needed to be resolved, state enterprises should be permitted to institute share holding.

19. See "Communique on the 3d Plenary Session of the 13th CPC Central Committee" (Sept. 30, 1988), Xinhua Domestic Service, Sept. 30, 1988, translated in FBIS daily Report-China, Sept. 30, 1988, pp. 18-19. Also see Zhang Shili, "Da zhong xing qiye shixing gufen zhi de ruogan falu wenti" (Certain legal questions in the implementation of the stock system by large and medium scale enterprises), in Jingji yu fa (Economy and Law) (Shenyang), 1989, No. 1, p. 13.

20. See Zhao Ziyang, "Advance Along the Road of Socialism With Chinese Characteristics: Report Delivered to the Thirteenth National Congress of the Communist Party of China, October 25, 1987", in Documents of the Thirteenth National Congress of the Communist Party of China (1987), Beijing: Foreign Languages Press, 1987 at p. 38.

21. See e.g., Yuan Jianguo and Gao Fan, "Wo guo gufen zhi lifa wenti" (Legislative issues in our share system), in Jingji yu fa (Economy and Law) (Shenyang), 1989, No. 4, p. 8.

22. See e.g., Guo Shouchun, "Qiye ziyou zijin de xing ji qi gufen hua tanxi" (Inquiry to the Character of Enterprises With Their Own Funds and Their Issuing of Shares), in Faxue (Jurisprudence), 1989, No. 5, p. 36. An enterprise may be granted status as a juridical person based largely on whether it possesses an independent budget. See General Principles of Civil Law of the PRC (tr. by Whitmore Gray and Henry R. Zheng), Article 37.

23. See statement from State Commission on Restructuring the Economy in a State Council Circular dated June 13, 1990, in Shenzhen Zhengquan Shichang Nianbao 1990 (Annual Report on Shenzhen Securities Market 1990), p. 221.

24. See "Full text of CPC plenum communique", Beijing Xinhua Domestic Service, Dec. 30, 1990, translated in FBIS Daily Report-China, Dec. 31, 1990, at p. 12.

25. See "Shareholding in focus", in China Daily Business Weekly, Jan. 6, 1991, p. 1.

26. See "CPC proposals to 7th Central Committee plenum", Beijing Xinhua Domestic Service, Jan 28, 1991, translated in FBIS Daily Report-China, Jan. 29, 1991, at p. 29.

27. Compare, "Zhonghua renmin gongheguo 1982 nian guokuquan tiaoli" (Regulations of the PRC on 1982 treasury bonds) (Jan. 8, 1982), Art. 9 with "Zhonghua renmin gongheguo 1985 nian guokuquan tiaoli" (Regulations of the PRC on 1985 treasury bonds), Article 9.

28. For discussion of the restrictions on negotiability of PRC government obligations in the early years of the PRC, see generally, G. Ecklund, Financing the Chinese Government Budget: Mainland China, 1950-1950, Chicago: Aldine Publishers, 1966.

29. See generally, Liu Guoguang, "Zhongguo jingji gaige lilun shi nian huigu" (Review of Ten Years of Theory on Chinese Economic Reform), in Wang Weicheng, Gai Shangquan, Liu Guoguang, eds., Jingji gaige xin sikao (New Reflections on Economic Reform), Beijing: Reform Publishers, 1988, pp. 6-8. Also see Liu Guoguang, ed., Zhongguo jingji tizhi gaige de moshi yanjiu (Study of Models for China's Economic Structural Reform), Beijing: Academy of Social Sciences Press, 1988, pp. 95, et seq.; Huang Da, Chen Gong, Hou Mengchan, Zhou Shengye and Han Yingjie, Shehui zhuyi caichan jinrong wenti (Issues of Socialist Finance and Banking), Beijing: People's University Press, 1981, pp. 246, et seq. and 263, et seq. For discussion of the beneficial aspects of capital accumulation in the context of economic reform, see generally, Zhang Tun and Luo Mi, "Lun liudong zichan jilei" (On the Accumulation of Circulating Assets), in Jiang Jiwu and Zhou Haowen, ed., Yinhang xindai quanli cankao ziliao (Reference materials on administration of bank credit), Beijing: Broadcast Publishers, 1985, p. 146.

30. For discussion of the non-exploitive characteristics of debt financing, see Zhang Haiquan and Zhou Congyu, "Qianxi diya fangkuan" (Elementary Analysis of Secured Loans), in Jiang Jiwu and Zhou Haowen, supra, p. 182.

31. See "Provisional rules of Xiamen Municipality concerning the management of shares and bonds" (Sept.

1, 1986), in *China Economic News*, Nov. 24, 1986, p. 5.

32. See "guangdong sheng gupiao zhaiquan guanli zanxing banfa" "Provisional Methods of Guangdong Province for the Administration of Stocks and Bonds" (Sept. 30, 1986), in Zhonghua renmin gongheguo sifabu falu zhengce yanjiu shi (Laws and Policy Research Office of the PRC Ministry of Justice), *Hengxiang jingji lianhe falu fa gui zhengce huibian* (Compilation of Laws and Statutes and Regulations on Horizontal Economic Linkages), Beijing: 1987, pp. 353-357. These regulations are translated as "Interim measures for the management of stocks and bonds in Guangdong Province" (n.d.), in *China Daily Business Weekly*, Nov. 19, 1986, p. 4. Also see "Guangdong publishes regulations on securities", in *China Daily* Oct. 11, 1986, p. 2.
33. See "Beijing shi qiye gupiao, zhaiquan guanli shixing banfa" (Preliminary methods of Beijing Municipality for administration of enterprise stocks and bonds) (Nov. 30, 1986), in Wang Mengjie and Xing Junfang, eds., *Guanyu gufen zhi wenti* (Questions Concerning the Stock System), Beijing: Economy Publishing House, 1987, p. 272, and "Beijing shi renmin yinhang hangzhang jiu qiye gupiao, zhaiquan guanli shixing banfa de you guan wenti da *Beijing ribao* jizhe wen" (The director of the Beijing Municipal People's Bank answers the questions of a reporter from *Economy Daily* on the preliminary measures of Beijing Municipality for administration of enterprise stocks and bonds), in Wang Mengjie and Xing Junfang, eds., *Guanyu gufen zhi wenti*, *supra*, p. 276. Also see "Shandong sheng qiye gupiao, zhaiquan guanli zanxing banfa" (Provisional methods of Shandong Province for the administration of stocks and bonds) (June 3, 1986), in Caizheng bu zhu Shandong Sheng Caizheng Ting Zhongyang Qiye Caizheng zhu chang yuan chu (Department for Central Enterprise Factory Financial Officers of the Shandong Finance Office of the Ministry of Finance), ed., *Caizheng zhu chang yuan qiye caiwu gongzhuo shouce* (Handbook for Enterprise Finance Work for Factory Finance Officers), Jinan: 1988, p. 1009; and "Fujian sheng gufen zhi qiye zanxing guiding" (Provisional Regulations of Fujian Province for Stock System Enterprises) (Nov. 12, 1988), in Qin Qi and Yang Jiadong, eds., *gufen zhishi shouce* (Handbook of Knowledge on Shares), Beijing: *Economy Daily Press*, 1990, p. 231.
34. See generally, Guo Zhenying, ed., *Zhengquan shichang ji qi jiaoyi suo* (Securities Markets and Exchanges), Beijing: Aeronautics Academy Press, 1987, p. 294.
35. See "Stock market puts life into economy", in *China Daily* Nov. 25, 1986, p. 4; "Few sellers in city's new shares mart", in *China Daily*, Apr. 4, 1987.
36. See e.g., Yuan Jianguo and Gao Fan, "Wo guo gufen zhi lifa wenti" (Legislative issues in our share system), in *Jinqi yu fa* (Economy and Law) (Shenyang), 1989, No.4, p. 8.
37. See e.g., Guo Shouchun, "Xi wo guo zhengquan shichang de chizhi ji duice" (Analyzing the Sluggishness and Resistance to Our Country's Securities Markets), in *Faxue* (Jurisprudence), 1989, No. 7, p. 35.
38. See e.g., Li Yining, "Thoughts on development of the stock market", in *Jingji ribao* (Economy Daily),

June 23, 1990, p. 2, translated in *FBIS Daily Report-China*, July 20, 1990, p. 40. Also see Tang Dianwei, "China's securities market revives", in *Zhongguo Xinwen She* (China News Society) English Service, Sept. 11, 1990, reprinted in *FBIS Daily Report-China*, Sept 14, 1990, p. 30. Also see interview with Academy of Social Sciences economist Liu Guoguang in Seth Faison, "Stock Ownership System Planned To Be Introduced", *South China Morning Post*, Oct. 2, 1990, p. 1, reprinted in *FBIS Daily Report-China*, Oct. 2, 1990, p. 39.

39. See Wan Dianwu, "Scientifically evaluate the double retrenchment policy and appropriately increase the weight of reform", in *Jingji cankao* (Economic Reference), Dec. 11, 1990, p. 4, translated in *FBIS Daily Report-China*, Jan. 2, 1991, p. 44. Professor wan referred to the limited returns available to investments in the state sector when he noted "given the financial difficulties of the state and the limited financial resources of the public sector, it is entirely feasible to tap the resources in the private sector and adopt correct policies to divert the people's idle capital into production and construction". *Id.* at p. 45.
40. See e.g., Li Yining, "A Task of Top Priority is to Deepen Enterprise Reform", in *Jingji cankao* (Economic Reference), Nov. 27, 1990, p. 4, translated in *FBIS Daily Report-China*, Dec. 26, 1990, p. 39.
41. See Liu guoguang, "A Study of the Reform of China's State-Owned Economy", in *Zhongguo jingji tizhi gaige* (Reform of China's Economic Structure), Nov. 23, 1990, p. 6, translated in *FBIS Daily Report-China*, Dec. 27, 1990, p. 44. Also see Fan Gang, "Appropriately Readjust the Ownership Structure", in *Jingji cankao* (Economic Reference), Dec. 4, 1990, p. 4, translated in *FBIS Daily Report-China*, Dec. 21, 1990, p. 26.
42. See "Fahui zhengquan shichang de ziyuan peizhi gongneng" (Give full play to the role of securities markets in allocating resources), in *Jinrong shibao* (*Financial Times*), Jan. 1, 1991, in which Chinese Academy of Social Sciences economist Wei Zhiguo held that the development of securities markets was necessary for increased rationality in the allocation of resources and also to permit a gradual transition away from direct state intervention in economic management.
43. See "Gold, securities markets proposed", Beijing *Xinhua* English Service, Mar. 23, 1990, in *FBIS Daily Report-China*, Mar. 28, 1990, p. 24, in which economic Luo Hanxian proposed opening securities markets as a way to mobilize private funds for investment in state priority projects. An indication of the debates concerning the development of securities exchanges can be gleaned from the contrast between these remarks and the pronouncements made at the Seventh NPC, at which little mention had been made of the role of securities markets in either Zou Jiahua's economic work report or Li Peng's report on the work of the government, delivered to the Third Session of the 7th National People's Congress in March, 1990. See e.g., "Zou Jiahua gives economic report", in *FBIS Daily Report-China*, Apr. 10, 1990, p. 13; Li Peng, "Continue to work for stable political economic and social development in China - report on the work of the government, in *Beijing Review*, Apr. 16-22, 1990, p. Documents-I.
44. This was termed "STAQS", an acronym for securities trading automated quotation system. See

- "Securities trade expects a leap", in *China Daily*, May 18, 1990.
45. See "Bright future seen for securities markets", in *China Daily Business Weekly*, Jul 2, 1990, reprinted in *FBIS Daily Report-China*, July 2, 1990, p. 42. Also see "Shanghai to open securities exchange center", Beijing *Xinhua* English Service, July 30, 1990, reprinted in *FBIS Daily Report-China*, July 31, 1990, p. 37 and "Location for Shanghai Securities Exchange chosen", in *China Daily*, July 31, 1990, reprinted in *FBIS Daily Report-China*, July 31, 1990, p. 38.
 46. See e.g. "Shanghai wu xing zheng xiong, jinrong shichang huoyue" (Shanghai's five banks contend and the financial market is lively), in *Renmin ribao hai wai ban* (People's Daily Overseas Edition), Mar. 1, 1987, p. 1. The tendency of PBOC to place its own bureaucratic interests or the interests of the central government ahead of those of subordinate or regional institutions has long been a problem for regulation of banking in China. For discussion of the tensions in bank finance policies in the context of enterprise reform, see P. Bowles and G. White, "Contradictions in China's Financial Reforms: The Relationship Between Banks and Enterprises", 13 *Cambridge Journal of Economics* 481 (1989).
 47. See e.g. "Bank offer Y4 billion bills to aid investment", in *China Daily Business Weekly*, Mar. 4, 1987, p. 1.
 48. See e.g., "Interim Regulations for Managing Financial and Trust Organizations Issued", in *China Economic News*, Aug. 11, 1986, p. 8.
 49. See "Money market begins business" in *China Daily*, Apr. 4, 1987, p. 2.
 50. "Qiyue zhaiquan guanli zanxing tiaoli" (Provisional regulations on administration of enterprise bonds) (Mar. 27, 1987), in *Renmin ribao* (People's Daily), Apr. 5, 1987, p. 3. An English translation appears in "State Council Promulgates Bond Regulations", *FBIS Daily Report-China*, Apr. 7, 1987, p. K29. Although this was a State Council enactment, it clearly bore the imprimature of PBOC.
 51. Provisional Regulations on Administration of Enterprise Bonds, *supra*, Article 23. Although the term, "non-financial institutions" (*feijinrong jiqou*) is not defined explicitly, Article 22 of the Provisional Regulations provides that with the approval of the People's Bank of China all "specialized banks and other financial institutions" may engage in the business of transferring enterprise securities, thus suggesting a working definition of *jinrong jiqou* as including the subsidiary banks in the PBOC structure (Agriculture Bank, Industrial and Commercial Bank, Bank of China, etc.) as well as other specifically designated finance organs. According to the *Economic Dictionary: Volume on Finance* (*jingji da cidian: Jinrong zhuan*) (Shanghai: Shanghai Dictionary Press, 1987) edited by Liu Hongru of the State Commission on Restructuring the Economic System, the term *jinrong jiqou* includes banks, trust and investment companies, the foreign exchange administration, insurance companies, and savings associations.

52. "Jiaqiang he wanshan gupiao zhaiquan guanli" (Strengthen and perfect administration of stocks and bonds), in Zhongguo fazhi bao (Chinese Legal System Gazette), Apr. 7, 1987, p. 1; and "Guowuyuan tongzhi ge di jiaqiang gupiao, zhaiquan guanli" (The State Council notifies localities to strengthen administration of stocks and bonds), in Jingji ribao (*Economy Daily*), Apr. 7, 1987, p. 1.
53. See e.g., "Bank branches out with stock issues", in China Daily, Aug. 31, 1987, p. 2.
54. See Shi Qingkai, "Wo guo gufen zhi de fazhan ji lifa yanjiu" (A study of the development and legislation of our share system), Shanghai Academy of Social Sciences Institute of Law Graduation Thesis, 1989, p. 1.
55. "Guowuyuan fa chu tongzhi jiaqiang gupiao he zhaiquan de guanli" (The State Council issues a notice on strengthening administration of stocks and bonds), in Zhongguo fazhi bao (Chinese Legal System Gazette), July 28, 1987, p. 2. Also see Shen Sibao, "Tan tan wo guo de qiye zhaiquan guanli" (Talking about our administration of enterprise bonds), in Zhongguo fazhi bao (Chinese Legal System Gazette), July 6, 1987, p. 3.
56. See "Provinces too slow to purchase bonds", in China Daily, Sept. 28, 1987.
57. See e.g., "Preferential terms for bond buyers", in China Daily, Oct. 3, 1987, p. 2; "Seven key steel plants sell bonds", in China Daily, Oct. 15, 1987.
58. See e.g. "Industrial Bank to issue new bonds", in China Daily, Dec. 28, 1987, p. 2.
59. "Speedy creation of securities market urged", Beijing Xinhua English Service, Aug. 8, 1990, reprinted in FBIS Daily Report-China, Aug. 10, 1990, p. 28.
60. See "New controls over enterprises' issuance of bonds", Beijing Xinhua Domestic Service, Mar. 2, 1990, translated in FBIS Daily Report-China, Mar. 15, 1990, p. 31. The regulations are set forth in "Guowuyuan guanyu jiaqiang qiye neibu zhaiquan guanli de tongzhi" (Notice of the State Council Concerning Strengthening Administration of Bonds Within Enterprises), in Zhonghua renmin gongheguo xin fa gui huibian 1989 di yi ji (New Laws and Regulations of the PRC 1989 Vol. 1), Beijing: Xinhua Press, 1989, p. 256.
61. See "Zhonghua renmin gongheguo yi jiu jiu ling nian guokuquan tiaoli" (1990 treasury bond regulations of the PRC) and "Zhonghua renmin gongheguo yi jiu jiu ling nian te zhong guo quan tiaoli" (1990

special state bond regulations of the PRC), in Jingji ribao (*Economy Daily*), June 9, 1990, p. 1.

62. See statement dated March 11, 1990 of the State Commission on Restructuring the Economic System (*ti gai wei*), in Shenzhen Zhengquan Shichang Nianbao 1990 (Annual Report on the Shenzhen Securities Market 1990), p. 220. See comments at the opening of the Shanghai exchange made by Shanghai Mayor Zhu Rongji and Zhou Zhengqing, deputy governor of the People's Bank of China supporting the role of securities markets as vehicles for foreign investment, in "Zhu Rongji at Shanghai Securities Exchange Opening", Beijing Xinhua English Service, Dec. 19, 1990, reprinted in FBIS Daily Report-China, Dec. 20, 1990, p.46. Also see "Securities bonfire ablaze", in China Daily Business Weekly, Dec. 2, 1990, p.2, in which Liu Hongru, Vice Chair of the State Commission for Restructuring the Economy indicated that the securities markets were "another important alternative for luring foreign capital".
63. See e.g., "Wai bi guli qiye zhuanxing" (Enterprise transformation through foreign currency dividends), in Wenhui bao (Literary Daily), Feb. 23, 1991. Also see "Wai bi gupiao B gu ke shangshi" (B Share foreign currency stocks can be issued), in Wenhui bao (Literary Daily), May 9, 1991.
64. See "Measures of Shanghai Municipality for Administration of Special Renminbi-Denominated Shares" ("Shanghai Administrative Measures"), issued by the People's Bank of China and the Shanghai Municipal People's Government, Nov. 22, 1991; and "Detailed Implementing Rules for the Measures of Shanghai Municipality for Administration of Special Renminbi-Denominated Shares" ("Shanghai Implementing Rules"), issued by the Shanghai Branch of the People's Bank of China, Nov. 25, 1991. Translations by Baker & Mckenzie.
65. See e.g., "Guangdong sheng jingji tequ shewai gongsi tiaoli" (Regulations for Foreign Companies in the Special Economic Zones of Guangdong Province), Sept. 28, 1986, Chapter Three, in Sun Yonghui, Zhang Shu, Wang Wei, Li Feng, eds., Gupiao, zhengquan zhishi shouce (Handbook of Knowledge on Stocks and Bonds), Nanjing: Nanjing University Press, 1991, p. 219, et seq. The role of stocks and bonds as transferable securities instruments had earlier been approved for the Guangzhou Economic and Technology Development Zone. See "Guangzhou jingji jichu kaifabu zanxing tiaoli" (Provisional Regulations for the Guangzhou Economic and Technology Development Zone), March 6, 1985, Article 3, in Zhongguo jingji tequ kaifabu falu fa qui xuanbian (Compilation of Laws and Statutes and Regulations in China's Special Economic zones and Development Zones), Beijing: 1987, p. 8.
66. See "Shenzhen shi zhengquan shichang lingdao xiaozu huiyi jiyao (xuan deng yi)" (Summary of minutes of meetings of the Leading Small Group of the Shenzhen Securities Market-selection one) (n.d.), in Shenzhen Zhengquan Shichang Nianbao 1990 (Annual Report on the Shenzhen Securities Market 1990), p. 211.
67. See Shenzhen Stock Transaction Regulations, Article 5.
68. See Shenzhen Stock Transaction Regulations, Article 29. although proposed revisions to these

regulations would have specified that the approval must come from PBOC head office, the final text does not specify whether the central or provincial branches of PBOC have the authority to approve foreign purchasers participating in the exchange. See handwritten notations suggesting revisions to the Shenzhen Exchange Articles on Zhongguo renmin yinhang, "Guanyu [Shenzhen shi gupiao faxing yu jiaoyi guanli zanxing banfa] he [Shenzhen zhengquan jiaoyi suo zhangcheng] de pifu" (Official Reply Concerning the Provisional Methods of Shenzhen Municipality for the Issue and Transferring of Shares and the Articles of Association for the Shenzhen Securities Exchange), Document Yin Fu [1991] No. 154, Apr. 11, 1991, addressed to PBOC Shenzhen Branch (copy on file with the author).

69. "Interim Procedures on Control of Shenzhen Special (B-Type) RMB Stocks" ("Shenzhen Interim Procedures"), in China Economic News, Jan. 27, 1992. p. 7.
70. "Rules for the Implementation of the Interim Procedures on Control of Shenzhen Special (B-Type) RMB Stocks" ("Shenzhen Implementing Rules"), in China Economic News, Feb. 3, 1992, p. 7.
71. See Lee Zinser, "The Performance of China's Economy", in Joint Economic Committee of US Congress, China's Economic Dilemmas in the 1990s: The Problems of Reforms, Modernization and Interdependence (Washington, D.C.: US Government Printing Office, 1991), Table 1, p. 104.
72. See Wang Bingqian, "Report on Implementation of State Budget for 1990 and Draft State Budget for 1991", Renmin ribao, Apr. 12, 1991, p. 3, translated in FBIS Daily Report-China, June 14, 1991, p. 63.
73. See "Stock Exchange President Interviewed", Tokyo: Kyodo English Service, Dec. 24, 1991, in FBIS Daily Report-China, Dec. 26, 1991, p. 39.
74. See "People's Bank Measures Boost Securities Markets", in China Daily Business Weekly, Nov. 17, 1991, p. 1.
75. Shenzhen zhengquan shichang nian bao 1990 (Annual Report for Shenzhen Securities Market 1990), p. 62.
76. See Erin McGuire Endean, "China's Foreign Commercial Relations", in Joint Economic Committee of US Congress, China's Economic Dilemmas in the 1990s: The Problems of Reforms, Modernization and Interdependence (Washington, D.C.: US Government Printing Office, 1991), Tables 3 and 4, pp. 760-761.
77. See "shanghai Firm Sell Shares to Foreign Investors", in China Daily Shanghai Focus, Dec. 1, 1991,

p. 2.

78. "Foreigners Scrambling for China-Listed Stocks", South China Morning Post ("Money" Section), Dec. 29, 1991, p. 3.

79. See, for example, discussion of the action by the Shenzhen Administration for Industry and Commerce closing down the Yuanye Enterprise Co., Ltd. joint venture, whose shares were listed on the Shenzhen exchange, in "Shenzhen Closes Down Listed Joint Venture", in Ming Pao (HK), Apr. 21, 1992, p. 8, translated in FBIS Daily Report-China, Apr. 24, 1992, p. 32.

80. It is worth noting that between 1983 and 1988, more than 65% of foreign invested enterprises in China were located in Guangdong and Fujian. See David L. Denny, "Provincial Economic Differences Diminished in the Decade of Reform", in Joint Economic Committee of US Congress, China's Economic Dilemmas in the 1990s: The Problems of Reforms, Modernization and Interdependence (Washington, D.C.: US Government Printing Office, 1991), Figure 5, p. 201.

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

Legal Problems With China's Securities Regulations

GAO XI-QING

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LEGAL PROBLEMS WITH CHINA'S
SECURITIES REGULATIONS

GAO XI-QING -- JUNE 2, 1992

I. POSITIVE ASPECTS

1). More puzzle pieces in place

Since early 1987, China has seen tremendous change in the regulatory framework concerning her infantile securities industry. In the short five-year period of time, this body of law, publically disseminated or otherwise, has grown from the one-page "State-Run Enterprise Bonds Regulation" and a few internal circulars to a whole set of central and local laws and regulations governing the entire process of securities issuance, trading, markets, institutions, clearing/settlement, professionals, etc. And the regulatory agencies also have grown, if not in strategy and skills, at least in their numbers, size, power and willingness to rule.

This change has, of course, its social, political, cultural and, above all, economic rationale behind it. But from the legal point of view, its implications are far beyond what the mere words of these statutes seem to suggest. To put it simply and bluntly, the world may be just witnessing a new corporate revolution in formation. The possible impact of this revolution may well be on par with its European counterparts during the 17th/18th century.

Like its predecessor in Europe, the modern-time Chinese corporate revolution started from the grassroots level, in spite of the omnipotent central planning system. Also like its predecessor, or, like any other revolution in the entire human history for that matter, this one started without very much of any rule to go by. Unlike its predecessor, however, the Chinese today are fortunate enough to have had the combined accumulated wisdom of their European fore-runners.

We do not have to start from scratch any more. Even when some bureaucrats, for whatever reason or interests, try hard to institute what they call the "Chinese-style" corporate/securities law system, it has become more and more obvious to everyone including themselves that this system can not and will not but to grow out of the macro-framework of the Western legal/economic system.

Why would a country with more than 3000 years of written history adopt a legal system so foreign to not only its general populace but also its leaders? The answer simply lies within the proclaimed national ruling theory which is, not quite

incidentally, also from Europe. Marxism dictates, to put it in a very simplistic way, that the super-structure including the legal system of a given society is determined by its economic base, and any change in the economically-driven productive force would sooner or later bring change in the sociojuridical system.

If we turn back now to the list of securities-related laws and regulations promulgated or actually prevailing in the past few years, and try not to confine ourselves by the typical legalistic mentality of a western lawyer with regard to the legislative propriety and the statutory forms of those entries on the list, then we can find a body of rules almost identical to its western counterparts.

Hence the pieces of Chinese securities law puzzle (an outline from here afterwards):

A. corporations

1. the part of the general civil code that deals with business associations;
2. the "norms" of joint stock companies and limited liability companies (the revised yellow paper that is due any moment);
3. the joint stock company regulations promulgated by the various local governments (Shanghai, Shenzhen, Xian, Shenyang, etc.);
4. the "B" share company regulations promulgated by the two cities blessed with the Centrally-approved stock exchanges;
5. the sino-foreign joint venture law, the wholly-foreign-owned enterprise law, the SAIC rules and the milliard of other rules and provisions that delineate in one way or the other some parts of the corporate law;
6. the bankruptcy law concerning state-owned enterprises.

B. securities

1. the securities regulations promulgated by Shenzhen, Shanghai and several other cities (and, alas, the imminent central regulations);
2. the whole set of central and local rules controlling securities trading markets, stock exchanges, brokers and dealers;
3. the central and local clearing/settlement rules concerning banks and securities firms;

4. the central rules controlling investment companies (and the imminent fund management company rules);
5. the local rules regarding collective investment programs (Zibo, Shenzhen, etc.);
6. the local rules regarding investment advisors;
7. the local rules regarding securities rating companies;
8. the two sets of stock exchange rules regarding listing, membership, fees, etc.

2) Reasons for the above-mentioned change

A. the central-level willingness, finally, to try and err

1. economic necessity
2. political pressure
3. international environment

B. the surging regionalism at work

1. harder economic reality
2. recent encouragement from the Old Man
3. band-wagon effect

II. PROBLEMS, PROBLEMS, PROBLEMS...

1) Central-level laws and regulations

- piece-meal
- lack of transparency
- lack of consistency
- arm-twisting reluctance
- excessive enthusiasm about details
- inadvertent overlook of the general structure
- departmental overlapping in drafting power

2) Local-level laws and regulations

-- lack of mandate (many cities other than Shenzhen and Shanghai) and legislative power

-- lack of uniformity

-- confusion in various tiers of rule-making body

3) Enforcement at both central and local levels

-- lack of man-power

-- lack of expertise

-- lack of resolve

-- lack of certainty/predictability

-- political interference

-- departmental/partizan interests

-- departmental overlapping in approving process

4) Regulatory agencies at both levels

-- central:

* State Council securities management conference

* securities market co-ordination group (src)

* stock market working conference (pboc)

* SRC

* PBOC

* MOF

* PLANNING COMMISSION

* PRODUCTION OFFICE

* SAM BUREAU

* SAIC

-- local:

* municipal securities market leading group

* imminent SECs

- * local branches of central agencies
- 5) Some obvious problems with existing laws and regulations
- corporate:
 - * share-holder rights:
 - * notices
 - * minority interests
 - * proxy fights
 - * boycott problem
 - * tax problems: capital gain, dividend, stock dividends
 - * board of directors
 - * "representative" of the legal person
 - * election
 - * notices
 - * supervisory board
 - * composition
 - * powers
 - * public company disclosure
 - * extent
 - * scope
 - * timing
 - * mode/means
 - * conflict of interests
 - * fiduciary duty of directors
 - * definition of insiders
 - securities:
 - * various versions

- * SH, SZ, SY, WH, HN, XA, etc.
- * PBOC, SRC, "ADB"
- * definitional problems
 - * securities
 - * issue/ issuer
 - * public offering/ private placement
 - * solicitation
 - * dealer/ broker
 - * insiders
- * conflict of interests
 - * the "Chinese wall" between:
 - * commercial banking and investment banking
 - * brokers and dealers
 - * trust and investment companies and securities firms
- * clearing/ settlement system
 - * unitary system in "A" shares v. multi-channel in "B" shares
 - * lack of functioning central system

III. VACUUM...

- 1) GAAP
 - uniformity
 - accounting standards
 - auditing rules
- 2) Professionalism
 - independence/ neutrality
 - ethics

3) State assets management

- holding company?
- roles of industrial/commercial ministries

4) Self-regulation

- mandate/ authority
- "teeth"
- norm, discipline, ethics, training, etc.
- arbitration/ conciliation

5) Dispute-settlement scheme

- the court system
- arbitration
 - * CCPIT (multilateral tribunals)
 - * Sino-Hong Kong joint group
 - * SEEC

6) Police function

- who to perform?

IV. PROSPECTS

1) Short term: imminent fall-out

- market crash
 - * SH, SZ and illicit exchanges
- IPO-rush
 - * blind buying
 - * predatory selling
 - * local-level accomplice
- Company failure
 - * mis-management

- * money laundering
- * corruption
- 2) Long term: hard work on "standardization"
 - establishment of SEC
 - complete set of laws and regulations
 - * clear division of labor at various levels
 - * whole set of interpretations and precedents
 - serious enforcement
 - * police
 - * courts
 - adoption of GAAP
 - accomplishment of truly functional self-regulatory scheme
 - merging of "A" and "B" shares
- 3) emergence of profit-driven professionals
 - short-term: the inferior drives out the superior
 - long-term interests + government regulations = good professionals

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

*SELECTED LEGISLATION RELATING TO "B-SHARES"
IN THE PEOPLE'S REPUBLIC OF CHINA*

CLIFFORD CHANCE

Solicitors

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SELECTED CHINESE B SHARE LEGISLATION

List of Relevant Chinese Securities Legislation

Shenzhen

Shenzhen Interim Measures for the Control of Special Renminbi Shares (5 December 1991)	4
Implementing Rules to the Shenzhen Interim Measures for the Control of Special Renminbi Shares (16 December 1991)	16
Shenzhen Securities Exchange Operating Rules for the Trading and Clearing of B Shares (29 January 1992)	26

Shanghai

Shanghai Measures for the Control of Special Renminbi Shares (22 November 1991)	50
Implementing Rules to the Shanghai Measures for the Control of Special Renminbi Shares (25 November 1991)	58
Shanghai Securities Exchange Supplementary Operating Rules for Market Trading in Special Renminbi Shares (18 February 1992)	74

List of Relevant Chinese Securities Legislation

Shenzhen

1. Shenzhen Interim Measures for the Control of the Issue and Trading of Shares (15 June 1991)
2. Shenzhen Interim Measures for the Control of Special Renminbi Shares (5 December 1991)
3. Implementing Rules to the Shenzhen Interim Measures for the Control of Special Renminbi Shares (5 December 1991)
4. Implementing Rules for the Central Custodian Scheme for Shares (28 December 1991)
5. Interim Rules for the Registration of Special Renminbi Shares (29 January 1992)
6. Shenzhen Securities Exchange Operating Rules for the Trading and Clearing of B Shares (31 January 1992)
7. Shenzhen Interim Provisions on Companies Limited by Shares (17 March 1992)
8. Shenzhen Interim Measures for the Supervision of Listed Companies (4 April 1992)

Other related legislation

1. Guangdong Interim Measures for the Control of Shares and Bonds (10 October 1986)
2. Shenzhen SEZ Interim Regulations on the Experimental Conversion of State Enterprises into Companies Limited by Shares (1 November 1986)
3. Guangdong SEZ Regulations on Foreign Related Companies (1 January 1987)
4. Articles of Association of the Shenzhen Securities Exchange (11 April 1991)
5. Interim Provisions for the Control of Securities Institutions (25 June 1991)
6. Shenzhen Interim Measures for the Control of Non-Public Share Receipts (26 February 1992)

Chinese texts of the above
legislation and selected English
translations are available from
Clifford Chance upon request

Shanghai

1. Shanghai Securities Exchange Operating Rules for Market Trading
(Adopted for trial implementation on 26 November 1990)
2. Shanghai Measures for the Control of the Trading of Securities
(1 December 1990)
3. Shanghai Measures for the Control of Special Renminbi Shares
(22 November 1991)
4. Implementing Rules to the Shanghai Measures for the Control of Special
Renminbi Shares (25 November 1991)
5. Shanghai Securities Exchange Supplementary Operating Rules for Market
Trading in Special Renminbi Shares (18 February 1992)
6. Shanghai Interim Provisions on Companies Limited by Shares [DRAFT ONLY]

Other related legislation

1. Articles of Association of the Shanghai Securities Exchange (1990)
2. Shanghai Securities Exchange Implementing Rules on Arbitration
(April 1991)
3. Interim Measures on the Control of Members of the Shanghai Securities
Exchange

Chinese texts of the above
legislation and selected English
translations are available from
Clifford Chance upon request

SHENZHEN INTERIM MEASURES FOR THE CONTROL OF SPECIAL RENMINBI SHARES

(Issued by the People's Bank of China and the Shenzhen Municipal
People's Government on 5 December 1991)

Chapter I General Provisions

Article 1 These Measures are specially formulated in order to open a new channel for absorbing foreign capital through the stock market, strengthen the control of the stock market and protect the interests of investors.

Article 2 The term "special renminbi shares" as used in these Measures (hereinafter referred to as "B shares") means order shares with a nominal value denominated in renminbi that are exclusively offered to overseas investors to buy and sell in foreign exchange. The rights and obligations in respect of B shares shall be the same as those in respect of ordinary renminbi shares.

The term "overseas investors" as used in these Measures includes:

- (1) foreign legal and natural persons;
- (2) legal and natural persons in the Hong Kong, Macau and Taiwan regions;
and
- (3) others approved by the authority-in-charge.

Article 3 Overseas investors must comply with the laws and regulations of the People's Republic of China and shall not harm the public interests of China; their lawful rights and interests shall be protected by the laws of the People's Republic of China.

Article 4 The People's Bank of China is the authority-in-charge of the B share market in Shenzhen, and has authorised the Shenzhen Special Economic Zone Branch of the People's Bank of China (hereinafter referred to as the "authority-in-charge") to be jointly responsible for the day-to-day control of B shares together with the Shenzhen Bureau of the State Administration of Exchange Control. The authority-in-charge shall exercise the following powers and responsibilities:

- (1) to formulate and amend provisions and related rules for the control of B shares, and to supervise their implementation.
- (2) to examine and approve the issue, listing, trading, registration, and transfer of registration of B shares, as well as the payment of dividends, and similar matters in respect thereof; to designate securities dealers of and recognised overseas agents for B shares, and to supervise their dealings in B shares.
- (3) to control the remittance into and out of China of foreign exchange in respect of the issue of and trading in B shares.
- (4) to examine materials related to the financial and business condition of issuers of B shares.

Article 5 The issue, underwriting, listing, trading, clearing, and registration of B shares shall be conducted in Shenzhen.

深圳市人民币特种股票管理暂行办法

(一九九一年十二月五日中国人民银行
深圳市人民政府公布)

第一章 总则

第一条 为了开辟利用股票市场引进外资的渠道，加强对股票市场的管理，保护投资人利益，特制定本办法。

第二条 本办法所称人民币特种股票（以下简称B种股票），是指以人民币标明股票面值，专供境外投资者以外汇买卖的记名式股票。B种股票享有与人民币普通股票同等的权利义务。

本办法所指境外投资者包括：

- (一) 外国的法人和自然人；
- (二) 香港、澳门和台湾地区的法人和自然人；
- (三) 主管机关批准的其它对象。

第三条 境外投资者必须遵守中华人民共和国的法律、法规，不得损害中国的社会公共利益；其合法权益受中华人民共和国法律保护。

第四条 中国人民银行是深圳市B种股票的市场的主管机关，并授权中国人民银行深圳经济特区分行（以下简称主管机关），会同国家外汇管理局深圳分局负责B种股票的日常管理。主管机关行使下列职责：

(一) 制定、修改有关B种股票的管理规定和有关细则，并监督实施。

(二) 审查批准B种股票发行、上市交易、登记过户以及分红、派息等事宜；指定B种股票的证券经营机构和认可境外代理机构，并对其经营B种股票业务进行监督。

(三) 管理B种股票发行、交易中的外汇出入境。

(四) 检查B种股票发行人的有关财务及业务资料。

第五条 B种股票的发行承销、上市交易、清算和登记均在深圳市进行。

Chapter II Issue of B Shares

Article 6 The issue of B shares is subject to examination and approval by the authority-in-charge.

Article 7 Apart from the conditions stipulated in Article 15 of the "Shenzhen Interim Measures for the Control of the Issue of and Trading in Shares", a company applying to issue B shares shall also satisfy the following conditions:

- (1) that it has written documents from relevant state departments approving its use of foreign capital or its conversion into a foreign-invested enterprise, and that its use of funds raised through the issue of B shares must comply with the provisions of state laws on the control of foreign investment;
- (2) that it has a stable source and relatively sufficient amount of foreign exchange income, and that its total annual foreign exchange income is sufficient to pay annual dividends on B shares; and
- (3) that the proportion of its shares designated as B shares (including promoters' shares) to the company's total shares must not exceed the maximum limit approved by the authority-in-charge;
- (4) that it must have been in operation for at least 3 years, save that companies operating in high technology and other special industries may, upon the special approval of the authority-in-charge, be exempted from this restriction.

Article 8 A company applying to issue B shares shall submit its application to the authority-in-charge together with the following documents:

- (1) an application report on the issue of B shares;
- (2) government documents approving it as a company limited by shares or evidence of registration of the company;
- (3) its articles of association approved by the government;
- (4) an asset valuation report issued by a valuer and an investment inspection report issued by an accounting firm. If such reports involve valuation and investment inspection of state-owned assets, the departments for the control of state-owned assets shall issue confirmation documents;
- (5) an investment inspection report on shares subscribed by the promoters;
- (6) the company's balance sheets and profit and loss accounts for the immediately preceding three years certified by an accounting firm, and other financial information required by the authority-in-charge;
- (7) a feasibility study on the issue of B shares;
- (8) documents that must be disclosed when making the offer for subscription;
- (9) a plan for the sources of annual foreign exchange income;
- (10) relevant resolutions of meetings of shareholders or promoters;
- (11) documents certified by an accounting firm showing the company's earnings forecast for the coming year; and
- (12) other documents required by the authority-in-charge.

第二章 B种股票的发行

第六条 B种股票发行必须经主管机关审查批准。

第七条 公司申请发行B种股票除应符合《深圳市股票发行与交易管理暂行办法》第十五条规定的条件外，还应具备下列条件：

（一）具备国家有关部门同意利用外资或转变为外商投资企业的书面文件。发行B种股票所筹资金的使用必须符合国家关于外商投资管理的法律规定；

（二）有稳定的、数额比较充足的外汇收入来源。其年度外汇收入来源总额应足够支付B种股票的年度股息红利；

（三）B种股票的股份（含发起人股份）占公司总股份的比例不得超过主管机关核定的上限；

（四）公司须有三年以上的经营业绩。但属高科技产业或其他特殊产业，经主管机关特许的，可不受此规定限制。

第八条 公司申请发行B种股票，应当向主管机关提出申请，并报送下列文件：

（一）发行B种股票的申请报告；

（二）政府批准为股份有限公司的文件或公司注册登记的证明；

（三）经政府批准的公司章程；

（四）资产评估机构出具的资产评估报告和会计师事务所出具的验资报告。上述报告如涉及国有资产评估和验资的，由国有资产管理部出具确认文件；

（五）发起人认购股份的验资报告；

（六）经会计师事务所签证的公司最近三年的资产负债表与损益表，以及主管机关要求的其他财务资料；

（七）发行B种股票的可行性报告；

（八）招股时应披露的文件；

（九）年度外汇收入来源计划；

（十）股东大会或发起人会议的相应决议；

（十一）经会计师事务所签证的未来一年公司盈利预测文件；

（十二）主管机关要求的其他文件。

Article 9 Issue of B shares must be delegated to authorised securities dealers.

The "authorised securities dealers" referred to in these Measures means securities dealers in Shenzhen that are approved by the authority-in-charge to handle the issue of and act as agents in the transfer of B shares.

Authorised securities dealers may organise overseas securities dealers that are recognised by the authority-in-charge to participate in underwriting B shares.

Article 10 Authorised securities dealers that handle the issue or underwriting of B shares must open a special account with a designated bank in China. All proceeds of the issue of B shares must be deposited in such special account.

Article 11 The authority-in-charge shall have the right to inspect such special accounts from time to time or on a regular basis, and the banks and authorised securities dealers shall cooperate.

Article 12 Overseas investors that subscribe for B shares must produce their personal identity cards, passports or evidence of legal person registration and must submit separate lawful mandates if they delegate other persons or entities to subscribe on their behalf.

Article 13 The authority-in-charge shall have the right to inspect the financial position of companies that issue B shares and their major business activities which affect the market conditions of B shares on a daily or irregular basis.

Chapter III Trading in B Shares

Article 14 B shares shall be transferred only between overseas investors.

Article 15 Overseas investors shall delegate the sale or purchase of B shares to authorised securities dealers and provide the documents stipulated Article 12 hereof.

An authorised securities dealer may conclude an agency agreement with an overseas securities dealer recognised by the authority-in-charge pursuant to which such overseas dealer shall handle on behalf of the authorised securities dealer matters related to the sale or purchase by investors of B shares outside China.

Article 16 B shares shall be listed for centralised trading at the Shenzhen Securities Exchange and overseas securities dealers acting as agents must trade in B shares through authorised securities dealers at the Shenzhen Securities Exchange. Trading outside the exchange is prohibited.

第九条 B种股票的发行必须委托特许证券经营机构办理。

本办法所称特许证券经营机构，系指深圳市内经主管机关批准可以办理B种股票发行和代理转让业务的证券经营机构。

特许证券经营机构可以组织经主管机关认可的境外证券经营机构参与B种股票的承销。

第十条 特许证券经营机构办理B种股票的发行和承销，须在境内指定银行设立专门帐户。B种股票发行所筹款项，必须存入该专门帐户。

第十一条 主管机关有权随时或定时对专门帐户进行检查。银行和特许证券经营机构应给予配合。

第十二条 境外投资者认购B种股票，须提供本人身份证，护照或法人登记注册证明文件；委托他人或机构认购的，须另附委托人的合法委托书。

第十三条 主管机关有权对发行B种股票公司的财务和影响B种股票行情的重大业务活动进行日常或不定期检查。

第三章 B种股票的交易

第十四条 B种股票的转让仅限于在境外投资者之间进行。

第十五条 境外投资者买卖B种股票应委托特许证券经营机构办理，并提供本办法第十二条规定的证件。

特许证券经营机构可与经主管机关认可的境外证券经营机构签订代理协议，由该境外证券经营机构代理特许证券经营机构在境外办理投资者买卖B种股票有关事宜。

第十六条 B种股票集中在深圳证券交易所挂牌交易，境外证券代理机构必须通过特许证券经营机构在深圳证券交易所办理B种股票的交易。禁止场外交易。

Article 17 When buying or selling B shares through authorised securities dealers, investors shall effect payment through special accounts.

Article 18 The Shenzhen Securities Registration Company Limited or its agents shall handle the procedures for the registration and transfer of registration of B shares.

Article 19 A copy of the register of shareholders of B shares shall be kept at the issuing company and the Shenzhen Securities Registration Company Limited.

Article 20 Any overseas investor holding B shares in a company limited by shares that accounts for five per cent. or more of the total shares in such company must file a report with the authority-in-charge for its record.

Article 21 The price of B shares for sale or purchase shall be quoted only in renminbi and paid in foreign currency. The formula for computing the reference price for each share in a foreign currency shall be as follows:

$$\begin{array}{l} \text{Price per share} \\ \text{in foreign currency} \end{array} = \frac{\text{Price per share in renminbi}}{\text{Closing price for each unit of the foreign currency at the Shenzhen Foreign Exchange Adjustment Centre on the business day immediately preceding the selling date}}$$

Article 22 Authorised securities dealers shall post at a prominent location on their business premises the computed reference price per share in foreign currency.

Article 23 All dividends and other lawful income derived from B shares shall be quoted in renminbi and paid in foreign currency. The formula for computing payment in a foreign currency shall be as follows:

$$\begin{array}{l} \text{Price per share} \\ \text{in foreign currency} \\ \text{for dividends} \end{array} = \frac{\text{Dividends per share in renminbi}}{\text{Average closing price for each unit of the foreign currency at the Shenzhen Foreign Exchange Adjustment Centre for the week immediately preceding the announcement of dividends}}$$

Article 24 Overseas investors shall pay tax in accordance with relevant tax provisions of the People's Republic of China. Dividends, trading and other lawful income derived from B shares may be remitted out of China after payment of taxes in accordance with the law.

第十七条 投资人通过特许证券经营机构买卖 B 种股票，其款项的划拨应通过专门帐户办理。

第十八条 B 种股票由深圳证券登记有限公司或其代理机构办理登记过户手续。

第十九条 B 种股票的股东名簿由发行公司、深圳证券登记有限公司保管。

第二十条 任何境外投资者持有一家股份有限公司 B 种股票股份额占该公司股份总额 5% 以上的，必须报主管机关备案。

第二十一条 B 种股票的买卖，一律以人民币计价，以外币进行支付。每股外币折算价的计算公式为：

$$\text{每股外币折算价} = \frac{\text{每股人民币价格}}{\text{买卖前一营业日深圳外汇调剂中心每一外币单位调剂收盘价}}$$

第二十二条 特许证券经营机构应在其营业场地明显位置将计算出的每股外币折算价予以公布。

第二十三条 B 种股票的分红、派息及其它合法收入一律以人民币计价，以外币进行支付。外币支付的计算公式为：

$$\text{每股外币支付} = \frac{\text{每股人民币分红派息额}}{\text{股息红利宣布前一周深圳外汇调剂中心每一外币单位调剂平均收盘价}}$$

第二十四条 境外投资者应依照中华人民共和国有关税收的规定纳税。B 种股票的股息、红利、交易收入和其他合法收入依法纳税后可汇出境外。

Article 25 Sums paid to holders of B shares as the result of a company terminating and being liquidated may, upon approval by the authority-in-charge, be remitted out of China.

Chapter IV Penalty Provisions

Article 26 Disputes and differences that arise within the People's Republic of China from the issue of and trading in B shares shall be handled within China in accordance with the laws and provisions of the People's Republic of China.

Article 27 If any person violates the provisions of Articles 6, 7 or 14 of these Measures, the following penalties shall apply:

- (1) such person may be ordered to cease the unlawful activity and to refund the funds raised through such activity;
- (2) any foreign exchange funds raised by such company through the issue of securities may be frozen;
- (3) financial institutions may be informed that they are to cease lending to such person;
- (4) a fine of up to five per cent. of the sum involved in the unlawful activity may be imposed.

Article 28 If any person violates the provisions of Articles 9 or 10, then the following penalties shall apply:

- (1) such person may be ordered to refund that part of the proceeds of an issue which is affected by such violation;
- (2) a fine may be imposed on the issuing company and the authorised securities dealer of up to five per cent. of the sum involved;
- (3) the issuing company's application to issue shares may be revoked;
- (4) the licence of such person to issue or underwrite shares may be suspended for up to three years.

Article 29 If any person violates the provisions of Articles 16, 17, 18, or 20, the following penalties shall apply:

- (1) a warning may be given;
- (2) such person may be ordered to go through the procedures again in accordance with these Measures;
- (3) a fine of up to five per cent. of the sum involved in the unlawful activity may be imposed;
- (4) suspension of listing and trading.

Article 30 If any person violates the provisions of Article 24 or 25, he shall be penalised in accordance with the relevant tax laws and exchange control provisions of the People's Republic of China.

Article 31 If anyone penalised disagrees with the penalty decision he may apply for a reconsideration to the superior authority of the authority making the penalty decision. During reconsideration, the penalty decision shall be implemented. If anyone disagrees with the reconsideration decision he may bring proceedings in the people's courts.

第二十五条 B种股票持有人因公司终止清算后分得的款项，经主管机关核准后可以汇出境外。

第四章 罚则

第二十六条 B种股票发行和交易活动在中华人民共和国境内发生的争议与纠纷，在境内按中华人民共和国的法律和规定处理。

第二十七条 对违反本办法第六条、第七条、第十四条规定的，给予以下处罚：

- (一) 责令其停止违法活动，退还所筹资金；
- (二) 冻结公司发行证券所筹外汇资金；
- (三) 通知金融机构停止其贷款；
- (四) 处以违法活动所涉及金额5%以下罚款。

第二十八条 对违反本办法第九条、第十条规定的，给予以下处罚：

- (一) 责令退还超范围发行的款项；
- (二) 对发行公司及特许证券经营机构处以所涉及金额5%以下罚款；
- (三) 取消发行公司发行申请；
- (四) 停止其三年以内的发行及承销资格。

第二十九条 对违反本办法第十六条、第十七条、第十八条、第二十条规定的，给予以下处罚：

- (一) 警告；
- (二) 责令其按本办法规定重新办理；
- (三) 处以违法活动所涉及金额5%以下罚款；
- (四) 暂停上市交易。

第三十条 对违反第二十四条、第二十五条规定的，按中华人民共和国有关税法 and 外汇管理规定处罚。

第三十一条 被处罚者对处罚决定不服的，可以向作出处罚机关的上级机关申请复议。复议期间，处罚决定应当执行。对复议决定不服的，可以向人民法院起诉。

Article 32 The penalties referred to above shall be implemented by the authority-in-charge jointly with other relevant departments if they involve such departments, except for those penalties that are stipulated to be implemented by the authority-in-charge.

Article 33 If anyone whose violation of the provisions of these Measures constitutes a crime he shall be investigated by the judicial authorities for criminal liability.

Chapter V Supplementary Provisions

Article 34 The authority-in-charge shall be responsible for interpreting these Measures. The authority-in-charge may formulate specific provisions in accordance with these Measures.

Article 35 These Measures shall be effective from the date of promulgation.

第三十二条 以上处罚除按规定由主管机关执行外，涉及其他有关部门的，由主管机关会同有关部门执行。

第三十三条 凡违反本办法规定构成犯罪的，由司法机关追究刑事责任。

第五章 附则

第三十四条 本办法由主管机关负责解释。主管机关可以根据本办法制定具体规定。

第三十五条 本办法自颁布之日起施行。

**IMPLEMENTING RULES TO THE
SHENZHEN INTERIM MEASURES FOR THE CONTROL OF
SPECIAL RENMINBI SHARES**

(Issued by the People's Bank of China
Shenzhen Special Economic Zone Branch
on 16 December 1991)

Chapter I General Provisions

Article 1 These Implementing Rules are specially formulated in accordance with the "Shenzhen Interim Measures for the Control of Special Renminbi Shares" in order to strengthen the control of B shares and protect the lawful rights and interests of investors.

Chapter II Securities Dealers

Article 2 Domestic securities dealers dealing in B shares must obtain the approval of the authority-in-charge. Anyone applying to deal in B shares must:

- (1) have not less than Rmb10,000,000 as his own securities dealing capital, which includes an amount of foreign exchange which is equal to not less than Rmb5,000,000;
- (2) have adequate professional personnel as appropriate to the needs of securities dealings involving foreign parties;
- (3) have the necessary technical, communications and settlement means or facilities for dealing in securities involving foreign parties;
- (4) other conditions required by the authority-in-charge.

Article 3 Except with the special approval of the authority-in-charge, an authorised securities dealer may not:

- (1) underwrite B shares by way of a straight purchase; or
- (2) deal in the purchase and sale of B shares on its own account.

Article 4 Before an overseas securities dealer can participate in underwriting B shares or act as agent for authorised securities dealers in accepting overseas purchase and sale orders for B shares, it must secure the approval of the authority-in-charge and must:

- (1) comply with Chinese laws and regulations concerning B shares and honour the relevant B share contracts in good faith;
- (2) be relatively well-established in the field of international securities and have relatively substantial financial strength;
- (3) be experienced in conducting international securities dealings;
- (4) be of good professional standing; and
- (5) satisfy any other conditions imposed by the authority-in-charge.

深圳市人民币特种股票 管理暂行办法实施细则

(中国人民银行深圳经济特区分行
一九九一年十二月十六日)

第一章 总则

第一条 为了加强对B种股票的管理,保护投资人合法权益,根据《深圳市人民币特种股票管理暂行办法》,特制定本实施细则。

第二章 证券商

第二条 境内证券经营机构经营B种股票业务,须经主管机关批准。申请经营B种股票业务需具备下列条件:

- (一)有不少于1000万元人民币的自有证券营运资金,其中包括不少于500万元人民币的等值外汇;
- (二)有足够的适应涉外证券业务需要的专业人材;
- (三)有从事涉外证券业务必须的技术手段、通讯设施和结算手段;
- (四)主管机关要求的其他条件。

第三条 非经主管机关特别批准,特许证券经营机构不得有下列行为:

- (一)以包销方式承销B种股票;
- (二)自营买卖B种股票。

第四条 境外证券经营机构须符合下列条件,并经主管机关批准,方可参与B种股票的承销和作为特许证券经营机构在境外接受委托买卖B种股票的代理机构:

- (一)遵守我国有关B种股票的法律、法规,信守有关B种股票的合同;
- (二)具有相当的国际证券业务规模和较雄厚的资金实力;
- (三)具有国际上开展证券业务的经验;
- (四)具有良好的职业信誉;
- (五)主管机关要求的其他条件。

Chapter III Issue of B Shares

Article 5 A company that issues B shares shall convert that part of its existing assets which is owned by a foreign party into B shares.

Article 6 In any issue of B shares, at least one authorised securities dealer shall participate in underwriting and act as the manager of an underwriting group. Overseas securities dealers that comply with the requirements of Article 4 hereof may participate in underwriting B shares and act as co-managers of the underwriting group.

The functions of the manager of an underwriting group include:

- (1) to consult with the listed company to organise the underwriting of shares and confirm the underwriting plan;
- (2) to organise the disclosure of documents related to the B share issue;
- (3) to liaise with and coordinate the listed company, the underwriting group, the authority-in-charge and other relevant parties;
- (4) to participate in the sale of B shares;
- (5) to perform other functions approved by the authority-in-charge.

Article 7 The issue price of B shares may not be lower than the issue price of renminbi shares in the same company. Throughout the underwriting period, an underwriter shall offer the shares for sale at the price which has been determined.

Article 8 An underwriting contract for B shares shall include the following terms:

- (1) names, registered addresses, legal representatives or directors of the parties to the contract;
- (2) the time and place of execution of the contract;
- (3) the subject matter of the contract;
- (4) the form of underwriting of the B shares;
- (5) the issue price of the B shares;
- (6) the rights and obligations of the parties;
- (7) payment of legal, accounting and other fees;
- (8) the time limit for and the place of performance of the contract;
- (9) compensation and other liabilities for breach of contract;
- (10) the methods of resolution of disputes arising under the contract;
- (11) the law applicable to the resolution of disputes arising under the contract;
- and
- (12) the languages in which the contract is written and their relative validities.

A contract for underwriting B shares must be submitted to the authority-in-charge for approval.

第三章 B种股票的发行

第五条 发行B种股票的公司原有资产折股时，属外资股份的，应折为B种股票。

第六条 B种股票的发行应有至少一家特许证券经营机构参与承销，并担任承销团经理人。符合本《细则》第四条规定的境外证券商可参与B种股票的承销，并可作为承销团的共同经理人。

承销团经理人的职责包括：

- (一) 与上市公司协商组织承销，确定承销计划；
- (二) 负责组织与B种股票发行有关的披露文件；
- (三) 负责与上市公司、承销团、主管机关等方面的联络与协调；
- (四) 参与B种股票的实际销售；
- (五) 主管机关批准的其他职责。

第七条 B种股票的发行价应不低于同一公司的人民币股票的发行价格。承销商在承销期内应按确定的同一价格发售。

第八条 B种股票的承销合同应包括下列条款：

- (一) 合同当事人名称、注册登记地、法定代表人或董事；
- (二) 合同签订的时间、地点；
- (三) 合同标的；
- (四) B种股票承销方式；
- (五) B种股票的发行价格；
- (六) 当事人权利和义务；
- (七) 律师、会计师等费用的支付；
- (八) 履行合同的期限、地点；
- (九) 违反合同的赔偿和其他责任；
- (十) 合同发生争议的解决方法；
- (十一) 合同发生争议时适用的法律；
- (十二) 合同使用的文字及效力。

B种股票的承销合同须报主管机关核准。

Article 9 The issuer may require the issuing of B shares only to those overseas legal persons having close business connections with it, save that such persons must be approved by the authority-in-charge and that the number of shares issued to them must not exceed fifteen per cent. of the total number of B shares in that issue.

Article 10 All proceeds of the issue of B shares overseas shall be deposited in the special accounts approved by the authority-in-charge at the time or times stipulated in the underwriting contract.

Article 11 Within fifteen days after the expiration of the underwriting period, the manager of the underwriting group shall submit an underwriting report to the authority-in-charge, detailing the process and results of underwriting, including the names of all shareholders of B shares, the number of shares held, and the number of shares subscribed by the underwriters themselves upon expiration of the underwriting period.

Chapter IV Trading in B shares

Article 12 B shares shall be listed for trading at the Shenzhen Securities Exchange and traded in accordance with its rules and regulations.

Article 13 Authorised securities dealers may select overseas securities dealers that comply with the requirements of Article 4 hereof to act as their agents, who shall be entrusted with the sale and purchase of B shares overseas and others matter related to the trading in B shares.

Article 14 The agency contract between the authorised securities dealer and its agent shall be submitted to the authority-in-charge for approval.

Article 15 Investors buying or selling B shares must open an account with an authorised securities dealer or its agent in advance having submitted their personal identity cards, passports or legal person registration documents. An investor's order to an agent of the sale or purchase of B shares may take one or several forms, in person, by telephone, cable, or letter.

Article 16 Upon approval by the Shenzhen Bureau of the State Administration of Exchange Control, an authorised securities dealer may establish a B share dealing account with a bank (including foreign invested banks) in Shenzhen.

When subscribing for or buying or selling B shares directly through authorised securities dealers, investors must effect deposit or payment of funds through such accounts.

第九条 发行人可要求将B种股票定向发行给与发行人经营业务有密切联系的境外法人，但发行对象必须经主管机关认可，且数量不得超过该次发行B种股票数量的15%。

第十条 B种股票在境外发售所得的股款，应按承销合同规定的时间汇入主管机关认可的帐户。

第十一条 承销团经理人应在承销期满后的十五天内向主管机关提交承销报告，承销报告须详细说明承销的过程和结果，包括全部持有B种股票股东的名单及持股数量，以及承销结束后由承销团各成员自行认购的数量。

第四章 B种股票的交易

第十二条 B种股票在深圳证券交易所上市交易，B种股票的交易须遵守该所的有关规章制度。

第十三条 特许证券经营机构可选择符合本细则第四条规定的境外证券商为其代理机构，由其代理机构在境外接受买卖B种股票的委托和办理与B种股票交易相关的事宜。

第十四条 特许证券经营机构与其代理机构之间签订的代理合同应报主管机关核准。

第十五条 投资人买卖B种股票，须事先凭身份证、护照或法人登记注册文件在特许证券经营机构或其代理机构处开户。投资人可按开户契约约定的当面委托、电话委托、电报委托、信函委托等一种或数种方式委托买卖B种股票。

第十六条 经国家外汇管理局深圳分局批准，特许证券经营机构可在深圳市内的银行（包括外资银行）开立B种股票交易帐户。

投资人直接通过特许证券经营机构认购和买卖B种股票，必须通过上述帐户办理资金的存入和支付。

If such account is an overseas account, no deposits or remittances may be made to such an account without the approval of the exchange control departments. Funds in such an account may be remitted out of China or used within China freely, and when used within China, shall be deemed as remittances from abroad.

B shares dealing accounts shall be subject to supervision and inspection by the Shenzhen Bureau of the State Administration of Exchange Control.

Article 17 An individual investor delegating the purchase of B shares directly to an authorised securities dealer must pay a guarantee deposit of not less than sixty per cent. of the market price of the shares purchased.

In the case of institutional investors buying B shares directly through authorised securities dealers, the dealers shall decide whether or not a guarantee deposit should be paid and if so how much.

In the case of investors buying B shares through overseas agents, the overseas agent shall decide whether or not a guarantee deposit should be paid and if so how much.

Article 18 Forward buying and short selling of B shares are prohibited.

Article 19 Directors, supervisors, managers and other senior management personnel of a listed company, or its promoters and major shareholders buying or selling B shares shall do so with reference to the provisions of the "Shenzhen Interim Measures for the Issuing of and Trading in Special Renminbi Shares" and other relevant provisions.

Chapter V Clearing and Registration and Transfer of B Shares

Article 20 The Shenzhen Securities Exchange may delegate banks that are approved by the authority-in-charge to handle on its behalf the clearing of B shares between or among authorised securities dealers, overseas agents and others.

Authorised securities dealers and their overseas agents shall open clearing accounts in banks approved by the authority-in-charge, into and out of which funds for clearing may be remitted freely.

Banks approved by the authority-in-charge shall take the notice of completion of transaction from the Shenzhen Securities Exchange as the basis for handling clearing.

Article 21 The Shenzhen Securities Registrars Company Limited may delegate the banks described in Article 20 to handle on its behalf the depositing and registration, transfer, and the payment dividends in respect of B shares.

Article 22 Contracts to act on behalf of any person in handling the clearing, central depository, registration and transfer must be approved by the authority-in-charge.

上述帐户为离岸帐户，非经外汇管理部门批准，不得接受境内存入或汇入的资金。该帐户的资金可自由汇出境外或在境内使用，在境内使用时，视同境外汇入资金。

B种股票交易帐户受国家外汇管理局深圳分局监督检查。

第十七条 个人投资者直接通过特许证券经营机构委托买入B种股票，须缴付不少于买入股票市价金额60%的保证金。

机构投资者直接通过特许证券经营机构买入B种股票，保证金的缴付与否与数量，由特许证券经营机构决定。

投资人通过境外代理机构买入B种股票，保证金缴付与否与数量，由境外代理机构决定。

第十八条 B种股票买卖禁止买空卖空行为。

第十九条 上市公司的董事、监事、经理人等高层管理人员以及上市公司的发起人和大股东买卖B种股票，应比照《深圳市股票发行与交易管理暂行办法》的规定和其他有关规定进行。

第五章 B种股票的清算与登记过户

第二十条 深圳证券交易所可委托经主管机关认可的银行代为办理特许证券经营机构和境外代理机构等相互之间有关B种股票的清算。

特许证券经营机构及其境外代理机构应在经主管机关认可的银行开立清算帐户，其清算资金可自由汇出和汇入。

经主管机关认可的银行办理清算应以深圳证券交易所发出的成交通知书为依据。

第二十一条 深圳证券登记有限公司可委托第二十条所述银行代为办理B种股票的托管、登记过户和分红派息。

第二十二条 代办清算合同、代办集中保管和登记过户合同须经主管机关核准。

Article 23 A registrar for B shares shall record the name, nationality, and position of each investor in relation to the shares held, and no persons other than the issuer, the judicial authorities, and those approved by the authority-in-charge may inquire about such information. After B shares are traded, authorised securities dealers and overseas agents when handling the clearing shall inform the registrar of any changes in the position of each client holding B shares, and through such registrar handle the procedures for registration and transfer.

Article 24 Authorised securities dealers or their overseas agents shall collect dividends on the shares on behalf of their clients.

Article 25 The currency for the foreign currency reference price, clearing, and payment of dividends and so on for B shares shall be United States dollars or Hong Kong dollars.

Article 26 Authorised securities dealers shall charge fees for transacting any dealings in B shares with reference to the rates charged for similar dealings in renminbi shares.

Fees charged by overseas underwriters or overseas agents for handling B shares transactions may be agreed by them with the issuer or investor with reference to rates charged in Hong Kong for similar transactions.

All fees charged for B shares transactions shall be paid in foreign exchange.

Chapter VI Penalty Provisions

Article 27 Authorised securities dealers who violate the relevant provisions hereof shall be dealt with with reference to the relevant provisions of the "Shenzhen Interim Measures for the Control of the Issue of and Trading in Shares."

Article 28 Overseas underwriters or overseas agents who violate the relevant provisions hereof shall be subject to the following penalties:

- (1) a warn may be given;
- (2) disqualification as underwriters or agents.

Chapter VII Supplementary Provisions

Article 29 These Implementing Rules shall be interpreted by the authority-in-charge.

Article 30 These Implementing Rules shall be effective from the date of promulgation.

第二十三条 B种股票的登记机构应记录每一投资人的名称、国籍及其持股情况，除发行人及司法机关外，非经主管机关同意，任何人不得查询上述情况。B种股票交易后，特许证券经营机构和境外代理机构应于办理清算时，将其每一客户持有B种股票的变更情况报告登记机构，并通过登记机构办理登记过户手续。

第二十四条 特许证券经营机构或其境外代理机构应代其客户收取股息红利。

第二十五条 B种股票的外币折算价、清算、分红派息等所用币种为美元或港币。

第二十六条 特许证券经营机构办理B种股票有关业务的收费标准应比照人民币股票相应业务的收费标准执行。

境外承销商或境外代理机构从事B种股票有关业务的收费，可参照香港相应业务的收费标准，由其与发行人或投资人自行商定。

B种股票有关业务的收费一律收取外汇。

第六章 罚则

第二十七条 特许证券经营机构违反本实施细则有关规定的，比照《深圳市股票发行与交易管理暂行办法》的有关规定处理。

第二十八条 境外承销商或境外代理机构违反本实施细则有关规定的，给予以下处罚：

- (一) 警告；
- (二) 取消其承销或代理资格。

第七章 附则

第二十九条 本实施细则由主管机关解释。

第三十条 本实施细则自颁布之日起施行。

SHENZHEN SECURITIES EXCHANGE OPERATING RULES FOR THE TRADING AND CLEARING OF B SHARES

(Issued by the Shenzhen Securities Exchange
on 31 January 1992)

Chapter I General Provisions

Article 1 These Rules (hereinafter referred to as the "B Share Operating Rules") are specially formulated in accordance with the "Shenzhen Interim Measures for the Control of the Issue and Trading of Shares" (hereinafter referred to as the "Interim Measures"), the "Shenzhen Measures for the Control of Special Renminbi Shares" (hereinafter referred to as the "Control Measures"), and the "Shenzhen Securities Exchange Operating Rules" (hereinafter referred to as the "Operating Rules") in order to strengthen control over the listing of special renminbi shares (hereinafter referred to as "B shares") and ensure their normal trading and clearing.

Article 2 Trading and clearing of all B shares listed on the Exchange must comply with these Rules.

Chapter II Applications for Listing

Article 3 Applications of companies for listing of B shares must be examined by the Exchange and reported to the Shenzhen Special Economic Zone Branch of the People's Bank of China (hereinafter referred to as the "authority-in-charge") for approval.

Article 4 Listing examinations shall be conducted in accordance with Articles 15, 37, 38, 39 and 40 of the Interim Measures and the Operating Rules.

Article 5 Apart from the documents which must be provided by an applicant in support of an application for listing of renminbi shares, the following documents must also be submitted to the Exchange with an application to list B shares:

- (1) the document from the authority-in-charge approving and consenting to the issue of B shares;
- (2) a report on the application to list B shares;
- (3) a B share prospectus and public notice of listing;
- (4) a B share underwriting agreement and its appendices;
- (5) a clearing agreement and its appendices executed between all relevant parties and a clearing bank authorised by the authority-in-charge;
- (6) past annual statements of foreign exchange income and expenditure of the B share issuer and a forecast of its foreign exchange income and expenditure for the coming year;
- (7) a report on details of the issue of B shares;
- (8) a plan for the use of foreign exchange funds raised through the issue of B shares and a report on details of the use of such funds; and
- (9) other necessary information.

深圳证券交易所 B 股交易、 清算业务规则

(一九九二年一月三十一日深圳证券交易所发布)

第一章 总则

第一条 为加强人民币特种股票(简称B股)上市的管理,确保其交易、清算正常进行,根据《深圳市股票发行与交易管理暂行办法》(简称《暂行办法》)、《深圳市人民币特种股票管理办法》(简称《管理办法》)、《深圳证券交易所业务规则》(简称《业务规则》)制定本规则(简称《B股业务规则》)。

第二条 凡B股在本所上市,其交易、清算均须遵守本规则。

第二章 上市申请

第三条 公司申请B股上市,须由本所审查后报中国人民银行深圳经济特区分行(简称主管机关)批准。

第四条 上市审查根据《暂行办法》第十五条、第三十七条、第三十八条、第三十九条和第四十条及《业务规则》进行。

第五条 B股申请上市,申请人除须递交人民币股票申请上市所必须提供的文件外,还须同时向本所递交以下文件:

- (一)主管机关批准同意发行B股的文件;
- (二)申请B股上市的报告;
- (三)B股招股说明书和上市公告书;
- (四)B股承销协议及其附件;
- (五)各有关方面同主管机关特许的清算银行签署的清算协议及附件;
- (六)B股发行人历年外汇收支报表和未来一年外汇收支预测;
- (七)B股发行情况报告;
- (八)B股发行所筹外汇资金使用计划同使用情况报告;
- (九)其它必要的资料。

Article 6 One copy of the information referred to in Article 5 must be submitted to the authority-in-charge and one copy to the Exchange.

Article 7 The Exchange shall render its opinion on the examination or other matters within fifteen business days of receiving the information.

Article 8 If the opinion of the Exchange on the examination is to allow listing, it shall submit together with the listing examination form and the information of the applicant to the authority-in-charge for examination and approval. Upon approval by the authority-in-charge, the applicant shall execute a listing contract at the Exchange, and after it has been notarised, the Exchange shall issue a notice of listing to the applicant.

Article 9 The notice of listing and the listing contract shall be in duplicate and submitted to the authority-in-charge for its record.

Article 10 Upon examination by the Exchange and confirmation by the authority-in-charge, the public notice of listing must be published at least three days before the B shares are listed for trading.

Chapter III Centralised Trading

Article 11 Official members of the Exchange may execute agency contracts with overseas securities dealers recognised by the Exchange only after such members have been approved by the authority-in-charge as authorised domestic securities dealers.

Authorised securities dealers approved by the authority-in-charge may send floor representatives to participate in the centralised trading in B shares at the Exchange.

Article 12 B shares may be transferred only among overseas investors.

Article 13 Authorised domestic securities dealers may accept orders directly from overseas investors to buy and sell B shares or orders accepted overseas by their agents to buy and sell B shares in accordance with relevant provisions of the Control Measures.

Article 14 Authorised securities dealers must prepare written orders in accordance with the instructions of their clients or their agents. Such orders shall be printed in accordance with the uniform format prescribed by the Exchange, the red form shall be for the buyer and the blue form for the seller.

A written order shall set forth the client's name, nationality, shareholder account number, the time of the order, the class and type of securities, the number of shares, price limit, the validity period, the signature and seal of the clerk handling the order, the client's signature and seal or code, the method by which the order was given (such as by telephone, cable, letter, or in person), and the following remarks:

- (1) if no validity period is given, an order shall be considered to be a day order;

第六条 第五条所提及的资料，须同时送主管机关、本所各一份。

第七条 本所在收到资料后的十五个工作日内提出审查意见或其他意见。

第八条 本所作出准予上市的审查意见，连同上市审查表及申请人资料一起送主管机关审批。主管机关批准后，申请人须到本所签订上市合同，经公证后，由本所向申请人发出上市通知书。

第九条 上市通知书和上市合同一式两份，送往主管机关备案存档。

第十条 上市公告书须由本所审查，经主管机关确认后，至少在B股上市交易前三天予以公布。

第三章 集中交易

第十一条 本所正式会员在被主管机关批准为特许境内证券经营机构后，方可与主管机关认可的境外证券经营机构签订代理合同。

主管机关批准的特许证券经营机构可派出市代表参加本所B股集中交易市场的买卖。

第十二条 B股的转让仅限于在境外投资者之间进行。

第十三条 特许境内证券经营机构须依《管理办法》有关规定，可直接接受境外投资人员买卖B股的委托或由其代理机构在境外接受买卖B股的委托。

第十四条 特许证券经营机构必须依据委托人或其代理人的委托指令填制委托书。委托书应按本所规定的统一格式印制，买方联为红色，卖方联为蓝色。

委托书应记载委托人姓名、国籍、股东帐号、委托时间、证券种类、股数、限价、有效期限、营业员签章、委托人签章或密码、委托方式（电话、电报、书信、当面委托），并应附注下列各款事项：

（一）未填明“有效期限”者视为当日有效；

- (2) the method by which the order is given should be specified;
- (3) if the order is given by letter or cable, the letter or cable should be attached.

Authorised securities dealers may only accept telephone orders to buy or sell B shares subject to the condition that they have telephone recording facilities and other necessary telecommunications facilities. After making an order for a purchase or sale transaction by telephone, the client or its agent shall also provide a signed document or written confirmation.

Article 15 When accepting orders, authorised securities dealers shall, in the sequence in which such orders are accepted, record on each written order the time of receiving such order and its serial number. The orders shall be processed in accordance with the matters recorded thereon and their serial numbers.

Article 16 Authorised domestic securities dealers may not accept any of the following kinds of orders:

- (1) discretionary orders to choose on behalf of a client the class or type of securities;
- (2) discretionary orders to decide on behalf of a client the quantity to buy or sell;
- (3) discretionary orders to decide on behalf of a client the price at which to buy or sell;
- (4) discretionary orders to decide on behalf of a client to buy or sell;
- (5) orders to pay by instalment on behalf of a client;
- (6) transactions guaranteeing gains to clients, sharing gains with them or compensating them for losses.

Article 17 Longs and shorts of B shares are strictly prohibited.

Article 18 Authorised securities dealers shall input client orders into the centralised market computer system of the Exchange promptly upon going through the procedure for accepting the orders for B shares. Transactions concluded may not be cancelled. Authorised securities dealers which buy or sell B shares on behalf of clients shall prepare a sale and purchase report on the transaction day, notify their clients on the business day following the transaction day, and go through the clearing and delivery procedure at the authorised clearing bank on T+3 in accordance with the trading information issued by the Exchange. Trading information issued by the Exchange and verified to be error free may not be revoked.

Article 19 Sale and purchase reports shall be printed in accordance with the uniform format prescribed by the Exchange, the purchase report shall be red and sales report shall be blue. Sale and purchase reports shall set forth the worker client's name, nationality, shareholder code, the date and time of conclusion of the transaction, the class and type of shares, the number of shares, the unit price, the price, the handling charge, the stamp tax, the exchange rate, the floor trading statement number, etc.

- (二) 委托方式应予标明；
- (三) 书面或电报委托者应附函电。

特许证券经营机构在具备录音电话等必备的通信设施的条件下，接受B股的电话委托买卖。委托人或其代理人以电话委托买卖成交后应补办签章或确认书。

第十五条 特许证券经营机构接受委托时，应在每一委托书上依序打上接收时间和序号。承办时，应依据委托书所载委托事项及其序号执行。

第十六条 特许境内证券经营机构不得受理下列任何一种买卖：

- (一) 替客户全权选择证券种类的委托买卖；
- (二) 替客户全权决定买卖数量的委托买卖；
- (三) 替客户全权决定买卖价格的委托买卖；
- (四) 替客户全权决定买入或卖出的委托买卖；
- (五) 替客户分期付款方式的委托买卖；
- (六) 对委托人作赢利保证、分享利益或亏损补偿保证的买卖。

第十七条 B股交易严禁买空卖空。

第十八条 特许证券经营机构办理受托买卖B股手续后，应尽快将客户委托指令输入本所集中市场电脑系统。买卖一经成交，则不可撤销。代客买卖B股的特许证券经营机构应于当日制作买卖报告书，于成交后的第一个营业日通知委托人，并依本所发出的成交资料于T+3在特许清算银行办理清算交割手续。本所发出的成交资料经核实无误后不可撤销。

第十九条 买卖报告书应按本所规定的统一格式印制。买入报告书为红色，卖出报告书为蓝色。买卖报告书应记载委托工人姓名、国籍、股东代码、成交日期、时间、股票种类、股数、单价、价金、手续费、印花税、汇率、场内成交单号码等事项。

Article 20 Upon concluding a transaction, an authorised securities dealer shall complete, sign and seal in quadruplicate a sale or purchase report for B shares, retain one copy, send one copy to its client, one copy to the authorised clearing bank, and one copy to the Exchange. If the B shares are bought or sold through an authorised overseas securities dealer's agent, the authorised domestic securities dealer shall specify on a written mandate the quantities, units and amounts of each concluded transaction, and attach a copy of it as the first appendix to the sale or purchase report to be sent to the Exchange and the authorised clearing bank.

Article 21 B shares which an authorised domestic securities dealer receives on behalf of clients shall be handled in accordance with the measures of the clearing bank authorised by the authority-in-charge concerning the safekeeping of securities.

Article 22 A client (agent) shall be in breach of contract if it does not make delivery of the consideration or of the securities, in which event the authorised securities dealer acting on behalf of such client may unilaterally rescind a contract of mandate for sale and purchase, offset the purchase or sale and dispose of the sums and securities received from its client on account of such a mandated sale and purchase relationship. The proceeds of such disposal and the sums payable to the client may be consolidated to set off the payment obligations of the client described above and the obligations to pay damages arising out of such mandated sale and purchase relationship or rescission of contract. The client shall be liable for making up any deficient amount and any surplus shall be refunded to it. An authorised securities dealer which has acted as described above shall file a written report with the Exchange immediately, with a copy to the authorised clearing bank and the client.

An authorised securities dealer shall have a lien on the sums and securities received from a client if such client is in breach of contract.

Article 23 Disputes relating to sale and purchase of B shares arising after the conclusion of a contract of mandate between an investor and an authorised domestic securities dealer shall be handled in accordance with the laws and regulations of the People's Republic of China and relevant provisions of the authority-in-charge.

Article 24 The market for centralised trading of B shares at the Exchange shall open from Monday to Friday in two daily sessions, a morning session from 9:00 a.m. to 11:00 a.m., and an afternoon session from 2:00 p.m. to 3:30 p.m.

Holidays for the market at the Exchange shall be the same as those prevailing for banks in Shenzhen.

When the Exchange considers it necessary, the centralised trading and closing hours may be changed upon reporting to the authority-in-charge.

Article 25 Centralised trading of B shares must follow the principles of priority of price, time and client trading order (hereinafter referred to as "the three priorities").

Article 26 The opening price of securities initially listed for trading by price bidding shall be determined on the basis of the quantities and price of B shares quoted for sale and purchase.

第二十条 B股买卖报告书，应于买卖成交后由特许证券经营机构填制一式四联并签章，一联留存、一联交委托人，一联送特许清算银行、一联送本所。属代理特许境外证券经营机构买卖B股的，特许境内证券经营机构应在书面委托书上注明每笔成交数量、单位和金额，并复印一份作为买卖报告书附件一并送本所和特许清算银行。

第二十一条 特许境内证券经营机构因受托买卖关系所收受的B股，应依主管机关特许清算银行关于有价证券保管作业办法办理。

第二十二条 委托人（代理人）不按时履行交割代价或交割证券者，即为违约。如遇违约，受托的特许证券经营机构得自行解除委托买卖契约，了结买卖，并处分所有因委托买卖关系所收委托人的款券。其处分所得代价与应付委托人的款项，得合并抵充委托人应偿付上述应履行的债务，及因委托买卖关系或解除契约所生损害赔偿的债务，如尚不足，得向委托人追偿，如有剩余，应予返还，特许证券经营机构依前款规定办理后应立即以书面形式向本所报告，并以副本通知特许清算银行和委托人。

特许证券经营机构因委托人违约，对所收委托人的款券有留置权。

第二十三条 投资人与特许境内证券经营机构因委托买卖B股订立受托契约后所发生的买卖争议，应依中华人民共和国的法律、法规和主管机关的有关规定处理。

第二十四条 本所B股集中交易市场开市时间为星期一至星期五，每日分上、下午两市，上午九时至十一时，下午二时至三点三十分。

本所市场节假日与深圳市银行业通行节假日相同。

本所认为必要时，集中交易时间与休市时间可申报主管机关变更。

第二十五条 B股集中交易必须遵循价格优先、时间优先，客户委托买卖优先（简称“三优先”）的原则。

第二十六条 初次上市证券竞价买卖时，按申报买卖B股的数量及价格决定其开盘价格。

When computing the opening price in the foregoing paragraph, the pre-listing selling price shall be taken as the base and, where there is no selling price or there has been a material change in the market price, it shall be proposed by the Exchange and the listed company taking into account the relevant information, and it shall be reported to the authority-in-charge for its consent.

Article 27 The quantity of B shares quoted for sale and purchase must be one round lot or multiples thereof, with 2000 shares per round lot, or simply referred to as a lot.

Article 28 The price of B shares quoted for sale and purchase shall be for one share, denominated in Renminbi and paid in foreign currency. The formula for computing the price for each share in a foreign currency shall be as follows:

$$\begin{array}{l} \text{Price per share} = \frac{\text{Price per share in renminbi}}{\text{Closing price for each unit of the foreign}} \\ \text{in foreign currency} \quad \text{currency at the Shenzhen Foreign Exchange} \\ \quad \quad \quad \quad \quad \quad \quad \text{Adjustment Centre on the business day} \\ \quad \quad \quad \quad \quad \quad \quad \text{immediately preceding the selling date.} \end{array}$$

Article 29 Each point in a quoted bid or offer price shall be five fen. The price to be quoted daily on a share after opening must take its latest quotation or traded price as the base and not exceed two contiguous points therefrom.

Article 30 Dealers shall have the obligation to keep all matters which their clients delegate to them in strict confidence and may not divulge such matters to third parties. Whenever the Exchange deems necessary, floor personnel may make enquiries from time to time. Replies to enquiries from the authority-in-charge, the judicial authorities and the supervision authorities shall be handled in accordance with the relevant provisions of the People's Bank of China and the Supreme People's Court on enquiries to financial institutions.

Article 31 When concurrently accepting orders from two or more clients to buy or sell the same quantity at the same price, an authorised securities dealer shall nevertheless conclude a transaction by quoting and bidding in accordance with the provisions of the Exchange. The Exchange shall have the right to impose necessary penalties, to the extent of terminating dealers' participation in centralised trading, on dealers who privately settle over-the-counter dealings by wholly or partly offsetting orders to buy or sell B shares, or who mutually execute strips, straps and straddles over the counter.

Article 32 A transaction for sale or purchase of B shares shall be ex-dividend or ex-rights if delivery is made after the record date on which no change to the register of shareholders is permitted (i.e. the date on which no transfer is permitted), which is the reference date on which a listed company pays dividends or other benefits.

Article 33 When the market is abnormal (such as at times of sharp advance or decline), in order to stabilise the market, the Exchange may take emergency measures and implement them upon approval by the authority-in-charge.

前款开盘价格以上市前的销售价格为计算基准，如无销售价格或市场价格有重大变动时，由本所与上市公司参酌的有关资料拟订，报主管机关认可。

第二十七条 申报买卖B股的数额，须为一个交易单位或其整数倍，每一个交易单位为2000股，简称为一手。

第二十八条 申报买卖B股的价格以一股为准，以人民币计价，以外币进行支付。每股外币折算价的计算公式为：

每股外币折算价 = 每股人民币价格 / 买卖前一营业日深圳外汇调剂中心每一外币单位调剂收盘价。

第二十九条 申报买卖价格的升降单位为五分。每日开盘后申报的价格，须以该股票最近一次申报价格或成交价格为基准，并以延续两个升降单位为限。

第三十条 证券商对于委托人的一切委托事项有严守机密的义务，不得对外涉露，但本所认为需要时场内工作人员可以随时查询。答复主管机关、司法机关及监察机关的查询，应依中国人民银行和最高人民法院向金融机构查询的有关规定办理。

第三十一条 特许证券经营机构同时接受两个以上委托人的数量、价格相同的买进与卖出委托时，仍应按本所规定申报竞价成交。若有证券商以全部或一部分B股的买入委托与卖出委托在场外私相抵算，或证券商相互间在场外达成对敲买卖，本所有权对其进行必要的处罚，直至终止其参加集中交易。

第三十二条 在上市公司分派股息及红利或其他利益之基准日而停止变更股东名簿记载日（即停止过户之日）以后办理B股买卖交割者，应为除息或除权交易。

第三十三条 在股市异常时期（如狂涨或暴跌），本所为稳定股市可制订应急措施，报主管机关核准后实施。

Article 34 Procedures for computerised automatic matching operations for B shares shall be as follows:

- (1) Bid and offer quotations for computer transactions shall be input via terminals and effective only on the current day;
- (2) Bid and offer quotations shall be input one half hour before the market is in session, such input time subject to change as the Exchange may deem necessary;
- (3) For each transaction, the input of bid and offer quotations shall include the following sequence: the dealer's code, the input serial number, the order serial number, the type of order, the securities code, unit price and quantity, the transaction type, and the input time, subject to change as the Exchange may deem appropriate. A dealer shall input serial numbers in the same order as the quotations are received. Each terminal shall be assigned separate serial numbers and skipping numbers is not permitted;
- (4) Upon transmitting the bid and offer quotations to the main computer at the Exchange, the authorised securities dealers in the transaction shall print out a bid and offer quotation return;
- (5) Bid and offer quotations may be limit quotations only;
- (6) Dealers shall process via terminals any enquiries on bid and offer quotations for which no transaction has been concluded;
- (7) Applications to cancel quotations shall be made via terminals. When applying to change a bid or offer quotation, the existing quotation must be cancelled first and a new quotation entered, unless reducing the quantity quoted.

Article 35 Disclosure of market information on B shares shall be by public disclosure and specialist disclosure. Public disclosure screens shall be placed at the Exchange and at authorised securities dealers and their overseas agents.

During a market session, public screens shall disclose the trading prices from time to time. When disclosing bid and offer quotations, the highest bid and lowest offer shall be quoted, taking the latest trading price in the current session as the base.

A specialist screen shall be displayed on the terminals of dealers, and bid and offer quotations may be disclosed from time to time within two points higher or lower than the latest trading price.

Article 36 Once received by the main computer at the Exchange, bid and offer quotations on B shares shall be matched to conclude transactions in the order in which the quotations are received and in accordance with the principle of the three priorities.

Article 37 Bidding shall be by collective bidding and continuous bidding. Opening prices shall be determined by collective bidding. Closing prices shall be determined by averaging the trading prices of the last three transactions immediately before close of session.

Article 38 Opening prices of B shares initially listed for trading or those ex-rights or ex-dividend shall be determined by collective bidding.

Article 39 If opening prices are determined by collective bidding, bid and offer quotations for which no transaction has been concluded shall remain valid for continuous bidding in the same time sequence in which they are input originally.

If collective bidding fails to determine a opening price, it shall be determined by continuous bidding.

第三十四条 B股电脑自动撮合作业程序如下：

- （一）电脑交易的买卖申报由终端机输入，限当日有效；
- （二）买卖申报的输入，自市场集会时间开始前半小时进行。前款输入买卖申报的时间，本所认为必要时可变更；
- （三）买卖申报应依序逐笔输入证券商代号、输入序号、委托书编号、委托种类、证券代号、单价、数量、买卖类别、输入时间。但本所可视需要而增减。输入序号，证券商应依接单顺序，按每部终端机分别编定，不得跳号；
- （四）买卖申报传输至本所电脑主机接受后，由参加买卖的特许证券经营机构的印表机打印买卖申报回报单；
- （五）买卖申报仅限价申报一种；
- （六）证券商查询其未成交的买卖申报，应经由终端机进行；
- （七）申请撤销买卖申报时，应经由终端机撤销。申请变更买卖申报时，除减少申报数量外，应先撤销原买卖申报，再重新申报。

第三十五条 B股行情揭示分为公开揭示与专业揭示。公开揭示屏幕置于本所集中交易市场和特许证券经营机构及其境外代理机构。

市场集会时间内，公开屏幕应将成交价格随时揭示，买卖申报价格的揭示以当时最近一次成交价格为基准报出最高叫买与最低叫卖价。

专业屏幕通过证券商的作业终端机显示，可随时揭示围绕最近一次成交价上下两个升降单位的买卖申报。

第三十六条 B股的买卖申报经本所电脑主机接受后，按买卖申报的顺序和“三优先”原则自动撮合成交。

第三十七条 买卖申报的竞价方式，分为集合竞价与连续竞价两种。开盘价采用集合竞价方式产生。收盘价按收市前最后三笔成交价的平均价决定。

第三十八条 集合竞价产生首次上市或除权除息后B股的开盘价。

第三十九条 依集合竞价方式产生开盘价格的，其未成交的买卖申报仍然有效，并依原输入时序连续竞价。

集合竞价未能产生开盘价时，应以连续竞价方式产生。

Article 40 In continuous bidding, prices shall be determined in accordance with the following principles within two successive points of the latest trading price in the current session or the current disclosed price:

- (1) the point matching the highest bid and the lowest offer;
- (2) if a bid (offer) is higher than an offer (bid), the point which is closest to the latest trading price in the current session or the current disclosed price shall be taken.

Article 41 Once a transaction is concluded, the participating dealers shall print out a trading return from their printers immediately.

A trading return shall set forth the following: the dealer's code, the order number, the order type, the securities code, the quantity traded, the trading price, the amount traded, whether bought or sold, and the time of conclusion.

Items may be added or deleted as appropriate from the foregoing list.

Article 42 Every day at the close of the morning or afternoon session, floor representatives from authorized dealers shall promptly verify with the Exchange the securities' names, quantities, prices, the other party's dealer's code, the total amounts, the net number of shares and net payments to be delivered in respect of transactions concluded in the current session, and may not leave the Exchange hall until all accounts have been verified, signed and confirmed.

Chapter IV Suspension, Resumption, and Delisting

Article 43 Suspension, resumption and delisting of listed B shares shall be done in accordance with the Interim Measures, with reference to the spirit of Articles 136-147 of Section 6 of Chapter III of the Operating Rules.

Article 44 If any of the following circumstances occurs to a listed company with issued B shares, the Exchange may advise the authority-in-charge to suspend trading of its shares and implement such advice upon approval of the authority-in-charge:

- (1) failure to submit to the Exchange company reports or submission of untrue company reports including statements of foreign exchange income and expenditure and reports on financial and operating performance;
- (2) other circumstances which the Exchange considers would warrant a suspension.

Article 45 If any of the following circumstances occurs in the other related areas of the securities market, the Exchange may advise the authority-in-charge to suspend trading of shares and implement such advice upon approval of the authority-in-charge:

- (1) occurrence of major changes in the international financial market affecting the Shenzhen financial and securities markets;
- (2) occurrence of major incidents in the transaction of B shares;

第四十条 连续竞价时，在当市最近一次成交价或当时揭示价延续两个升降单位内，其价格依下列原则决定：

- (一) 最高买进申报与最低卖出申报价格相同的价位；
- (二) 买(卖)方申报价格高(低)于卖(买)方申报价格时，采用较接近当市最近一次成交价或当时揭示价格的价位。

第四十一条 买卖一经成交，即经由参加买卖的证券商的印表机列印成交回报单。

成交回报单的内容应包括：证券商代号、委托书编号、委托种类、证券代号、成交数量、成交价格、成交金额、买卖别、成交时间。

前款项目本所可视需要而增减。

第四十二条 每天上午或下午收市时，各特许证券商出市代表应尽快将当市成交的证券名称、数量、价格、对方证券商代号、总金额及股票和价款收付净差额与本所核对，全部对帐无误并签字确认后，方可离开交易大厅。

第四章 停牌、复牌和终止上市

第四十三条 B股上市后停牌、复牌和终止上市，依据《暂行办法》，并参照《业务规则》第三章第六节第一百三十六条至第一百四十七条精神处理。

第四十四条 发行B股的上市公司有下列情况之一者，本所提出停牌意见报请主管部门核准后即可施行：

- (一) 不向本所或不真实地向本所递交公司包括外汇收支报表和财务及经营业绩报告的；
- (二) 本所断定必须停牌的其它事项。

第四十五条 证券市场上其它有关方面有以下情况之一者，本所提出停牌意见报请主管部门核准后即可施行：

- (一) 国际金融市场发生重大变化波及深圳金融市场、证券市场时；
- (二) B股交易环节发生重大事故时；

(3) liquidation, merger, reorganisation of a clearing bank authorised by the authority-in-charge and serious violation of Chinese laws and the interests of investors by such clearing bank;

(4) other circumstances which the Exchange considers would warrant a suspension.

Article 46 Payment of dividends by a listed company shall under normal circumstances be done in respect of A and B shares concurrently. If special circumstances temporarily require dividends to be paid non-concurrently respect of A and B shares, trading may be suspended in each case in accordance with existing procedures.

Article 47 After the events referred to in Articles 44, 45, 46 have been resolved or basically resolved, trading may be resumed upon the Exchange's approval of an application filed by the listed company or as the Exchange may consider appropriate under the specific circumstances.

Article 48 If any of the following circumstances occurs, the Exchange may advise the authority-in-charge to delist a company's shares and implement such advice upon approval of the authority-in-charge:

(1) the company with issued B shares having committed an act which seriously affects the normal operations of the Shenzhen securities market;

(2) the company with issued B shares engaging in speculative trading of its own shares using insider information, seriously harming the interests of shareholders and disrupting the securities market;

(3) the company with issued B shares being seriously affected by in a major international or inter-regional lawsuit;

(4) other events which the Exchange considers would warrant delisting.

Article 49 All announcements of suspension, resumption and delisting of listed companies shall be transmitted to the media through the Exchange.

Chapter V Disclosure and Publication of Market Information

Article 50 The Exchange shall make public disclosures of dealers' quotations and trading information in accordance with the principles of openness, fairness and justice.

Article 51 Bids and offers by authorised securities dealers shall be disclosed via the "Quoted Prices Disclosure Column" on terminals at the centralised trading market at the Exchange.

(三) 主管机关特许的清算银行发生清盘、合并、改组以及清算银行严重违反中国法律和侵犯投资者利益时;

(四) 本所断定必须停牌的其它事项。

第四十六条 上市公司派息分红时，A、B股一般情况下同步进行；如有特殊情况，A、B股派息、分红需暂时分作两步实施时，可按照已有的程序分别执行停牌制度。

第四十七条 第四十四条、第四十五条、第四十六条涉及的事项获得解决或基本解决后，本所可根据上市公司之申请或本所视具体情况准予复牌。

第四十八条 出现下列情况时，本所可提出终止上市意见报请主管机关核准后施行：

(一) 发行B股的公司行为严重影响深圳证券市场正常运作时；

(二) 发行B股公司利用内幕信息炒卖本公司股票，严重损害股民利益扰乱证券市场时；

(三) 发生跨国、跨地区的重大法律诉讼事件而严重涉及发行B股的公司时；

(四) 本所断定的其它必须终止上市的事项。

第四十九条 上市公司的停牌、复牌与终止上市，均申报本所通过传播媒介公告。

第五章 行情揭示与发布

第五十条 本所遵循公开、公平、公正原则，对证券商申报竞价、成交情况予以公开揭示。

第五十一条 在本所集中交易市场内，特许证券商买卖申报价格由电脑终端通过“申报价格揭示栏”揭示。

Article 52 Upon conclusion of a transaction at the centralised trading market at the Exchange, its closing price on the previous day, opening price on the current day, highest trading price, lowest trading price, latest trading price, total number of shares traded, the Shenzhen Stock Price Index, etc. shall be disclosed on information boards and via on-line computer display systems.

Article 53 Quoted prices and market information at the centralised market at the Exchange shall be transmitted via on-line computer display systems to all dealer counters in the entire city and via TELERATE global telecommunications network to places abroad.

Article 54 The centralised trading market at the Exchange shall maintain a daily journal of the B share transactions concluded during the day, including the securities' names, prices, quantities, the seller and buyer dealers' codes, etc. and publish them upon closing of a session at the centralised trading market.

Article 55 The Exchange shall adjust the methods of disclosing market information and its contents as appropriate.

Chapter VI Clearing and Delivery

Article 56 The Exchange shall, in accordance with the provisions of the implementing rules for the Control Measures, delegate banks that are approved by the authority-in-charge to clear and deliver B shares between authorised securities dealers and overseas agents.

Article 57 Upon approval of the Shenzhen Bureau of the State Administration of Exchange Control, authorised domestic securities dealers shall, in accordance with the Control Provisions, open B share trading accounts with banks in Shenzhen. Such accounts being offshore accounts, no domestic deposits or remittances may be made to them without the exchange control department's approval.

Investors who buy or sell B shares directly through an authorised domestic securities dealer must make deposits and deliveries through the accounts stipulated in the foregoing paragraph.

Article 58 When handling clearing upon concluding a transaction, authorised securities dealers and overseas agents shall report to the B share registrar any changes to the B shares held by each shareholder.

Article 59 B share trading information issued by the Exchange on each trading day shall be the only documentation on which a clearing bank should rely in conducting primary clearing and delivery.

Article 60 Clearing and delivery between authorised domestic and overseas dealers who act as agents in the purchase and sale of B shares and the clearing banks shall be conducted in accordance with the following procedures:

(1) Before 10:00 a.m. on T+1, the clearing bank shall obtain the B share trading information at the Exchange;

第五十二条 在本所集中交易市场内买卖成交后，随时通过行情揭示板和电脑联机显示系统揭示上日收盘价、当日开盘价、最高成交价、最低成交价、最近成交价、成交总股数、深圳股价指数等。

第五十三条 本所集中市场申报价格和成交情况通过电脑联机显示系统传到全市各证券商柜台，并通过TELERATE全球通讯网络传至境外。

第五十四条 本所集中交易市场每日成交的B股证券名称、价格、数量、买卖各方证券商代号等，由本所记载于买卖日报表，在收市后于集中交易市场公布。

第五十五条 本所可根据需要调整行情揭示的方法和内容。

第六章 清算与交割

第五十六条 本所依《管理办法》实施细则的规定、委托经主管机关认可的银行代为办理特许证券经营机构和境外代理机构等相互之间有关B股的清算交割业务。

第五十七条 经国家外汇管理局深圳分局批准，境内特许证券经营机构依《管理规定》在深圳市内的银行开立B股交易帐户。该帐户为离岸帐户，非经外汇管理部门批准，不得接受境内存入或汇入的资金。

投资人直接通过特许境内证券经营机构买卖B股，必须通过前款帐户办理资金的存入和交付。

第五十八条 B股交易后，特许证券经营机构和境外代理机构应于办理清算时，将其每一股东持有B股的变更情况报告B股登记机构。

第五十九条 本所每交易日的B股成交资料为清算银行进行一级清算与交割的唯一凭据。

第六十条 代理B股买卖的特许境内外证券商与清算银行应按下列程序进行清算交割：

- (一) T+1 上午10时前，清算银行到本所领取B股成交资料；

- (2) Before 12:00 noon on T+1, authorised dealers who have concluded transactions shall transmit delivery instructions to the clearing bank;
- (3) Before 3:00 p.m. on T+1, the clearing bank shall verify positions based on the documentation provided by the Exchange with that provided by the dealers;
- (4) If no mistakes have been detected, the clearing bank shall complete the clearing and delivery before 12:00 noon on T+3 based on the trading information provided by the Exchange;
- (5) Before 5:00 p.m. on T+3, the clearing bank shall notify the authorised dealers about the clearing and delivery;
- (6) If payments from clients have not reached the accounts at the clearing bank, the agent in the transaction shall advance such payments to complete the clearing and delivery.

Article 61 If upon verification on T+1, the clearing bank discovers that the trading documentation provided by the Exchange does not match up with that of each authorised dealer or that there has been short selling, the matter shall be dealt with as follows:

- (1) In the case of unmatched positions, the clearing bank shall notify the Exchange and the authorised dealers of the cause before 5:00 p.m. on T+1, the authorised dealers shall notify the clearing bank of the corrections before 3:00 p.m. on T+2, and the clearing bank shall complete the clearing and delivery on T+3;
- (2) In the case of short selling, the clearing bank shall notify the dealers before 5:00 p.m. on T+1, the dealers must cover their positions on T+2, and the clearing bank shall complete the delivery on T+3.

Article 62 Disputes between authorised dealers or between such dealers and the clearing bank arising out of verification of positions, clearing, and delivery which cannot be resolved through consultation by the relevant parties shall be submitted to the arbitration committee of the Exchange for arbitration in accordance with its arbitration rules. Such arbitration committee shall have exclusive jurisdiction and its arbitral awards shall be final and binding on the relevant parties.

Article 63 In order to ensure a smooth clearing and delivery process, authorised domestic dealers acting as agents for overseas securities agents must require the overseas agents to provide a credit line from a bank. Authorised domestic dealers shall exercise their discretion based on such credit lines in accepting the total amount of orders from the overseas agents.

A clearing bank shall be responsible for monitoring such credit line, that is, to ensure payment can be made from the credit line for clearing and delivery purposes on T+3. If such credit line is cancelled, the clearing bank shall be notified ten business days in advance, and it shall notify the relevant authorised dealers on the day of notice.

Article 64 If an authorised overseas dealer fails to make delivery on T+3, a drawdown shall be made on the credit line immediately.

(二) T+1 中午12时前, 凡买卖有成交的特许证券商应将交割指令传送到清算银行;

(三) T+1 下午3 时前, 清算银行根据本所及证券商提供的资料进行对盘;

(四) 如对盘无误, 清算银行根据本所提供的成交资料在T+3 上午12时前完成清算交割;

(五) T+3 下午5 时前, 清算银行将清算交割情况通知有关特许证券商;

(六) 如遇客户的款项未达清算银行帐号时, 则由代理买卖机构垫款完成清算交割。

第六十一条 清算银行在T+1 根据本所成交资料与各特许证券商对盘不符或发现卖空情况, 分别按如下办法处理:

(一) 对盘不符, 由清算银行于T+1 下午5 时前将其原因通知本所及有关特许证券商, 上述特许证券商应于T+2 下午3 时前将更正概况通知清算银行, 清算银行在T+3 完成清算交割;

(二) 如发生卖空情况, 清算银行应于T+1 下午5 时前通知该证券商, 该证券商须于T+2 进行补进, 并于T+3 完成交割。

第六十二条 因对盘、清算交割而发生的特许证券商之间或特许证券商与清算银行之间的经有关方协商而未能解决的争议和纠纷, 应提交本所仲裁委员会以其规则进行仲裁。该仲裁委员会的管辖权是排他性的, 其仲裁是终局性的, 对各有关方均具约束力。

第六十三条 为了保证清算交割的顺利进行, 凡境内特许证券商接受境外代理机构的委托, 必须要求境外代理机构提供银行给予的信贷额度。境内特许证券商根据该信贷额度酌情接受境外代理机构买卖的总额。

清算银行对该信贷额度负有督查的责任, 即保证该信贷额度能在T+3 付款清算交割, 该信贷额度撤消时, 须提前十个营业日通知清算银行, 并由清算银行即日通知有关特许证券商。

第六十四条 特许境外证券商于T+3 无法交割时, 该信贷额度即行动用。

Article 65 In the case of a long preventing clearing and delivery to be effected on T+3, clearing and delivery may be extended to T+4. If clearing and delivery are not completed by T+4, the clearing bank shall designate a broker to sell the purchased shares on T+5, the buyer's broker in default shall pay the difference to the seller's broker, and shall be fined at 0.05 per cent. per diem of the transaction amount, which shall be paid by the buyer's broker to the seller through its broker.

Article 66 In the case of a short preventing clearing and delivery to be effected on T+3, the positions must be covered by T+5. Failing which, the clearing bank shall designate a broker to cover the positions, the difference shall be paid by the seller's broker in default to the buyer's broker, and a fine of 0.05 per cent. per diem of the transaction amount shall be levied, which shall be paid by the seller's broker to the buyer through its broker.

Article 67 Authorised dealers of B shares having floor representatives at the Exchange must deposit a mutual guarantee fund with the Exchange in foreign exchange in the amount equivalent to Rmb500,000 and pay other fees to the Exchange before they conduct trading in B shares.

Mutual guarantee funds shall be managed in accordance with the Operating Rules of the Exchange.

Article 68 In the event clearing and delivery fail to be effected on T+3, a clearing bank shall to the extent possible provide short-term credit to ensure a smooth clearing and delivery process.

Article 69 If delivery cannot be completed on T+5, the clearing bank shall notify the Exchange and the domestic and overseas authorised dealers before 5:00 p.m. on the same day and dealt with the situation as follows:

(1) The authorised domestic dealer shall immediately suspend further orders to act as agent and file a report to the authority-in-charge and the Exchange for the record;

(2) If an authorised dealer fails to complete clearing and delivery, the Exchange shall immediately suspend further trading of B shares by such dealer and file a report to the authority-in-charge for its record;

(3) If a broker has been penalised and suspended from trading for more than three times, the matter shall be referred to and be dealt with by the authority-in-charge.

Article 70 In conducting primary clearing and delivery, a clearing bank must withhold the relevant taxes on behalf of the Shenzhen taxation authorities and transaction fees on behalf of the Exchange, and transfer such sums into the account of the Exchange with the clearing bank. Stamp tax shall be transferred to the Shenzhen taxation authorities on a monthly basis.

Article 71 Share depositary banks or securities depositary companies shall collect dividends on behalf of their clients.

第六十五条 发生买空于T+3 未能清算交割的，可延期到T+4 进行清算交割。若在T+4 还未完成清算交割的，由清算银行指定一家经纪商于T+5 将已买进的股票抛出，违约的买方经纪商须向卖方经纪商赔偿由此而发生的买卖差价，并处以罚款（按成交金额每日0.05% 计罚），由买方经纪商付给卖方经纪商转卖方。

第六十六条 发生卖空于T+3 未能清算交割的，必须在T+5 之前完成补进。如于T+5 还未补进的，由清算银行指定一家经纪商代为补进，其发生的买卖差价由违约的卖方经纪商补偿给买方经纪商，并处以罚款（按成交金额每日0.05% 计罚），由卖方经纪商付给买方经纪商转买方。

第六十七条 凡在本所有出市代表的 B 股特许证券商，必须在其从事 B 股交易前，向本所交存 50 万元人民币的等值外汇作为互保基金，并向本所交纳其他费用。

互保基金按本所《业务规则》进行管理。

第六十八条 凡在 T+3 时无法进行清算交割的，清算银行应尽可能提供短期信贷，以保证清算交割的顺利进行。

第六十九条 凡在 T+5 不完成交割的，清算银行须于该日下午 5 时前通知本所及境内外特许证券商，并按如下办法处理：

（一）境内特许证券商即行暂停接受该代理业务，并报主管机关和本所备查；

（二）特许证券商不完成清算交割的，本所即行暂停该证券商的 B 股交易业务，报主管机关备查；

（三）经纪商受处罚暂停交易三次以上的，报主管机关处理。

第七十条 清算银行在进行一级清算交割时必须代深圳税务机关扣收有关税款，同时代本所扣收交易经手费，并划拨本所开设于清算银行的帐户内。印花税由本所按月划转深圳税务机关。

第七十一条 股份托管银行或托管证券商应代其客户收取股息红利。

Article 72 The price of B shares for purposes of conversion into foreign currency, clearing, dividends etc. shall be denominated in Hong Kong dollars or United States dollars.

Chapter VII Fees

Article 73 Issuers whose B shares are to be listed on the Exchange shall pay listing fees to the Exchange.

Article 74 The type, level and method of payment of listing fees for B shares shall be in accordance with Chapter VI of the Operating Rules of the Exchange.

Article 75 In all cases, the standard rates for commission of 0.6 per cent. and stamp tax of 0.3 per cent. on the actual traded amount shall be payable by the buyer and the seller respectively to their authorised securities dealers delegated to buy and sell B shares. Commissions and stamp taxes shall be paid in Hong Kong dollars or United States dollars.

The rate to be charged by authorised overseas agents delegated to buy and sell B shares shall be agreed upon by the Exchange and such agents.

Article 76 Authorised securities dealers may not arbitrarily or in a disguised form raise or lower the rate of commission to be collected for acting as agents in the purchase and sale of B shares. No commission shall be charged for mandated purchases and sales of B shares which fail to conclude.

Article 77 If a client fails to pay commission for its mandated sale or purchase of B shares, the authorised securities dealer shall have the right to instruct the clearing bank to deduct such sum from the client's cash account.

Article 78 A transaction handling fee of 0.1 per cent. of the amount traded shall be payable by an authorised securities dealer to the Exchange in respect of the B shares bought or sold at the centralised trading market at the Exchange, which shall be paid via bank transfer through an authorised clearing bank. Late or outstanding payments shall be subject to a per diem penalty of 0.03 per cent. of the traded amount. In dealing with refusals of payment of the transaction handling fee, the Exchange shall have the right to suspend participation in centralised trading until such fee has been settled.

Chapter VIII Supplementary Provisions

Article 79 These Rules shall be interpreted by the Exchange.

Article 80 These Rules shall be effective upon approval of the authority-in-charge from the day of promulgation.

第七十二条 B股的外币折算价、清算、分红派息等所用币种为港币或美元。

第七章 费用

第七十三条 在本所上市的B股，其发行者须向本所交纳上市费。

第七十四条 B股上市费种类、标准及缴纳办法按本所《业务规则》第六章办理。

第七十五条 特许证券经营机构受托买卖B股的收费标准一律按实际成交金额向买卖双方各收取0.6%的佣金和0.3%的印花税。佣金和印花税均收取港元或美元。

特许境外代理机构从事B股委托买卖的收费标准，由本所与其商定。

第七十六条 特许证券经营机构不得任意或变相提高或降低收取B股代理买卖佣金的标准。受托买卖B股未成交时，不得收取佣金。

第七十七条 委托人不交纳B股代理买卖的佣金时，特许证券经营机构有权指令清算银行从委托人的现金帐户中扣收。

第七十八条 特许证券经营机构在本所集中交易市场买卖B股按成交金额的万分之十向本所交纳交易经手费，通过特许清算银行以转帐划拨方式完成。对逾期不交或欠交的，本所按成交金额每日0.03%的比例计收滞纳金，对拒不交纳交易经手费的，本所有权暂停其参加集中交易，直到交清为止。

第八章 附则

第七十九条 本规则由本所负责解释。

第八十条 本规则经主管机关批准后自公布之日起执行。

SHANGHAI MEASURES FOR THE CONTROL OF SPECIAL RENMINBI SHARES

**(Issued by the People's Bank of China
and the Shanghai Municipal People's Government
on 22 November 1991)**

Chapter I General Provisions

Article 1 These Measures are specially formulated in accordance with relevant state regulations in order to meet the needs for opening Shanghai to the world and efficiently introducing foreign capital, to protect the lawful interests of investors and to strengthen the control of special renminbi shares.

Article 2 The term "special renminbi shares" (hereinafter referred to as "B shares") as used in these Measures refers to order shares with a nominal value denominated in renminbi that are bought or sold in foreign exchange exclusively by those investors stipulated in Article 14 of these Measures.

Article 3 All issue, purchase and sale of and dealing in B shares within the administrative region of Shanghai must comply with the provisions of the Shanghai Measures for the Control of Trading in Securities and other relevant regulations and these Measures.

Article 4 The People's Bank of China is the authority-in-charge of B shares in Shanghai and has authorised the Shanghai Branch of the People's Bank of China and the Shanghai Bureau of the State Administration of Exchange Control to be responsible for the day-to-day control and supervision of B shares.

Article 5 Dividends on B shares and gains from the trading of B shares may be remitted abroad after payment of taxes in accordance with the law.

Article 6 The adjustment price for foreign exchange against renminbi used in the issue and trading of and payment of dividends on B shares and all matters in the issue, trading and other areas that relate to foreign exchange shall be handled in accordance with the Implementing Rules for the Shanghai Measures for the Control of Special Renminbi Shares.

Chapter II Control of Issue

Article 7 All issues of B shares in Shanghai must be approved by the People's Bank of China.

上海市人民币特种股票管理办法

(一九九一年十一月二十二日中国人民银行
上海市人民政府联合发布)

第一章 总则

第一条 为适应上海市对外开放及有效引进外资的需要，保护投资者的合法权益，加强对人民币特种股票的管理，根据国家有关法规，特制定本办法。

第二条 本办法所称人民币特种股票（以下简称B种股票），是指以人民币标明面值，专供本办法第十四条所规定的投资者用外汇进行买卖的记名式股票。

第三条 凡在上海市行政区域内发行、买卖及从事与B种股票相关的业务，都须遵守《上海市证券交易管理办法》和其他有关法规的规定及本办法的规定。

第四条 中国人民银行是上海市B种股票的主管机关，授权中国人民银行上海市分行和国家外汇管理局上海市分局，负责B种股票的日常管理和检查。

第五条 B种股票的股息、红利及交易收益可在依法纳税后汇出境外。

第六条 B种股票在发行、交易和分红时所用的外汇与人民币的调剂价格及在发行、交易等各环节所涉及的外汇事宜，按《上海市人民币特种股票实施细则》办理。

第二章 发行管理

第七条 凡在上海市发行B种股票，须经中国人民银行批准。

Article 8 Issuers of B shares must be companies limited by shares established with the approval of the relevant departments-in-charge.

Article 9 Apart from the conditions stipulated in the Shanghai Measures for the Control of Trading in Securities, an issuer of B shares must also satisfy the following conditions:

(1) that it has relevant written documents from the relevant state departments approving its use of foreign capital or its conversion into a foreign-invested enterprise, and that its use of funds raised must comply with the provisions of state policies on the control of foreign investment;

(2) that it has a stable source and relatively sufficient amount of foreign exchange income, and that its total annual foreign exchange income is sufficient to pay annual dividends on B shares; and

(3) that in the case of a state enterprise converted into a company limited by shares, the proportion of its shares designated as B shares to the company's total shares shall accord with the maximum limit approved by the authority-in-charge.

Article 10 When applying to issue B shares, the following documents shall be submitted in addition to the relevant documents stipulated in Articles 9, 10 and 11 of the Shanghai Measures for the Control of Trading in Securities:

(1) a feasibility study on the issue of B shares;

(2) an explanation of the uses to which funds will be put and a feasibility study on the use of funds;

(3) a plan for the sources of annual foreign exchange income;

(4) documents certified by an accounting firm showing the company's earning forecast for the coming year or years; and

(5) other documents and information required by the authority-in-charge.

Article 11 Applications to increase capital by issuing B shares must also comply with the provisions of Article 25 of the Shanghai Measures for the Control of Trading in Securities.

Article 12 Prospectuses submitted together with applications to issue B shares must be published in newspapers and journals and on dates stipulated by the People's Bank of China Shanghai Branch.

Article 13 Issues of B share may be public or private. Public issues must be delegated to securities dealers approved by the authority-in-charge to deal in B shares.

Article 14 B shares may be issued only to the following persons:

(1) legal and natural persons in Hong Kong, Macau and Taiwan;

(2) foreign legal and natural persons; and

(3) other legal or natural persons outside China approved by the authority-in-charge.

第八条 B种股票的发行者，必须是有关主管部门批准设立股份有限公司。

第九条 B种股票的发行者除应符合《上海市证券交易管理办法》规定的条件外，还应具备下列条件：

（一）具有国家有关部门同意利用外资或转变为外商投资企业的有关书面性文件。所筹资金的使用必须符合国家关于外商投资管理的政策规定。

（二）有稳定的，数额比较充足的外汇收入来源，其年度外汇收入来源总额应足够支付B种股票的年度股息红利额。

（三）原国营企业改组为股份有限公司，其B种股票的股份占公司总股份的比例应符合主管机关核定的上限。

第十条 申请发行B种股票，除应提供《上海市证券交易管理办法》第九条、第十条、第十一条规定的有关文件外，还应提交以下文件：

- （一）发行B种股票的可行性报告；
- （二）资金用途说明及资金运用的可行性报告；
- （三）年度外汇收入来源计划；
- （四）经会计师事务所签证的未来一年或几年的公司盈利预测文件；
- （五）主管机关要求的其他文件和资料。

第十一条 申请增资发行B种股票，还须遵守《上海市证券交易管理办法》第二十五条的规定。

第十二条 申请发行B种股票所提交的招股说明书必须在中国人民银行上海市分行指定的报刊及规定的日期予以公告。

第十三条 B种股票可公开发行或定向发行。公开发行必须委托经主管机关批准可经营B种股票业务的证券经营机构代理。

第十四条 B种股票的发行限于以下对象：

- （一）香港、澳门、台湾的法人和自然人；
- （二）外国法人和自然人；
- （三）主管机关批准的其他境外法人或自然人。

Article 15 When persons listed in the foregoing article subscribe for B shares, they shall delegate the work to securities dealers approved by the authority-in-charge to deal in B shares, and produce as evidence their identity documents and passports or their registration as legal persons.

Article 16 When the number of B shares in a company limited by shares bought by a single subscriber exceeds five per cent. of the total shares in the company, the matter must be reported to the People's Bank of China for approval.

Chapter III Control of Trading

Article 17 When listing B shares for the first time, an issuing company must secure the approval of the authority-in-charge and its application for listing shall be handled in accordance with the provisions of Articles 30, 32 and 34 of the Shanghai Measures for the Control of Trading in Securities.

Article 18 The place of trading of B shares shall be restricted to the Shanghai Securities Exchange.

Article 19 B shares may only be traded between the persons set out in Article 14.

Article 20 The trading of B shares must be delegated to securities dealers dealing in B shares. Both parties to a transaction must provide the documents stipulated in Article 15.

Chapter IV Control of Dealers

Article 21 Securities dealers in Shanghai dealing in B shares must be approved by the People's Bank of China.

Article 22 Securities dealers in Shanghai authorised to deal in B shares may only act as placement agents in the issue of B shares and as agents in the purchase and sale of B shares.

Underwriting of B shares by way of straight purchase must have the special authorisation of the People's Bank of China.

Chapter V Supplementary Provisions

Article 23 Controversies and disputes arising from the issue and trading of B shares and matters such as the insolvency and merger of enterprises that have issued B shares shall be handled in China in accordance with the laws and policies of the People's Republic of China.

第十五条 前条所述对象认购B种股票，应委托经主管机关批准可经营B种股票业务的证券经营机构办理，认购时应出具身份证、护照或法人登记注册的证明文件。

第十六条 单个认购对象买入一家股份有限公司的B种股票数量超过该公司总股份5%时，应报经中国人民银行核准。

第三章 交易管理

第十七条 B种股票上市若属于发行公司股票首次上市，须经主管机关批准，其上市申请按《上海市证券交易管理办法》第三十条、第三十二条、第三十四条的规定办理。

第十八条 B种股票的交易场所限于上海证券交易所。

第十九条 B种股票的交易限于在第十四条所述发行对象之间进行。

第二十条 B种股票交易须委托经营B种股票业务的证券经营机构代理，交易双方须提供第十五条所规定的证件。

第四章 机构管理

第二十一条 上海市的证券经营机构经营B种股票业务必须由中国人民银行批准。

第二十二条 允许经营B种股票业务的上海市证券经营机构只能经营B种股票发售的代销业务及B种股票交易的代理买卖业务。

经营B种股票的包销业务，须经中国人民银行特许。

第五章 附则

第二十三条 在B种股票发行与交易活动中发生的争论与纠纷以及发行B种股票的企业破产合并等，在境内按中华人民共和国的法律和政策规定处理。

Article 24 Any person who violates these Measures shall be penalized with reference to the Shanghai Measures for the Control of Trading in Securities.

Article 25 The power to interpret these Measures shall be vested in the People's Bank of China.

Article 26 These Measures shall be effective from the date of promulgation.

第二十四条 违反本办法者，比照《上海市证券交易管理办法》处罚。

第二十五条 本办法的解释权在中国人民银行。

第二十六条 本办法自公布之日起施行。

IMPLEMENTING RULES TO THE SHANGHAI MEASURES FOR THE CONTROL OF SPECIAL RENMINBI SHARES

(Issued by the People's Bank of China,
Shanghai Branch on 25 November 1991)

Chapter I General Provisions

Article 1 These Implementing Rules are formulated in accordance with the Shanghai Measures for the Control of the Trading in Securities and the Shanghai Measures for the Control of Special Renminbi Shares and relevant policies, laws and orders of the State and Shanghai Municipality in order to facilitate the issue, trading and control of special renminbi shares (hereinafter referred to as "B shares") and protect the lawful rights and interests of investors.

Chapter II Exchange Rate

Article 2 The exchange rate of renminbi for foreign exchange (restricted to United States dollar cash) relating to the issue and trading of, and the payment of dividends on, B shares (hereinafter referred to as the "exchange rate") shall be computed on the basis of the weighted average rate of United States dollar cash traded in the previous week published by the Shanghai Foreign Exchange Adjustment Centre.

The term "previous week" in the foregoing paragraph means the calendar week immediately preceding the week in which the first day of underwriting, the trading day of a transaction or the day of announcement of dividends falls.

Chapter III Special Counters

Article 3 Securities dealers in China that are approved by the authorities-in-charge to deal in B shares (hereinafter referred to as "securities dealers") must establish special B share counters (hereinafter referred to as "special counters"). The effective exchange rates must be displayed in a clear and obvious place at the special counters.

The responsible person of a special counter must have at least three years' experience in securities or foreign exchange dealings. The appointment of the responsible person of a special counter must be reported to the authorities-in-charge for examination and approval.

Article 4 The exchange of renminbi for foreign exchange relating to the issue and trading of, and the payment of dividends on, B shares shall be carried out at the special counters. The special counter must issue an exchange statement and shall not collect a handling charge.

Chapter IV Special Cash Exchange Accounts

Article 5 A company issuing B shares must open a "special cash exchange account for B shares" (hereinafter referred to as a "special cash exchange account") at a financial institution authorised by the authorities-in-charge to deal in foreign exchange.

上海市人民币特种股票管理办法实施细则

(一九九一年十一月二十五日中国人民银行上海市分行发布)

第一章 总则

第一条 为了做好人民币特种股票(以下简称B种股票)的发行、交易、管理工作、保护投资者的合法权益,根据《上海市证券交易管理办法》、《上海市人民币特种股票管理办法》以及国家和上海市有关政策法规,特制定本实施细则。

第二章 折算率

第二条 B种股票在发行、交易和股息、红利发放等所涉及的外汇(限于美元现汇)与人民币的折算价格(以下简称折算率),按上海外汇调剂中心公布的上一星期美元现汇交易的加权平均价计算。

前款“上一星期”是指承销首日、交易成交日、股息、红利发放宣布日的上一个日历星期。

第三章 业务专柜

第三条 经主管机关批准的境内可经营B种股票业务的证券经营机构(以下简称证券经营机构)须设立B种股票业务专柜(以下简称专柜)。专柜须在明显处显示有效的折算率。

专柜负责人应有三年以上从事证券业务或外汇业务的资历,专柜负责人的任命须报主管机关核准。

第四条 B种股票在发行、交易和股息、红利发放等所涉及的外汇与人民币的折算必须在专柜进行,专柜须出具折算单,折算不收取手续费。

第四章 现汇专户

第五条 B种股票发行公司须在主管机关批准的可经营外汇业务的金融机构开立“B种股票现汇专户”(以下简称现汇专户)。

A special cash exchange account shall be used only for depositing foreign exchange from B share issues. Transfer of foreign exchange from a special cash exchange account to an operating account must be reported to the authorities-in-charge for the record.

Chapter V Dividends

Article 6 . A company issuing B shares must submit to the authorities-in-charge, 20 days before the day of actual payment of dividends, documents such as the board of directors resolution on the payment of dividends, a register of shareholders of B shares and their respective shareholdings, the sources of foreign exchange for the payment of dividends and the methods of payment, etc. Payment may be made only after examination and approval.

Chapter VI Shareholders' Rights and Obligations

Article 7 The owners of B shares enjoy the same rights and bear the same obligations as the shareholders of renminbi shares.

Chapter VII Domestic Securities Dealers

Article 8 A domestic securities dealer dealing in B shares must have:

- (1) a licence to deal in foreign exchange relating to B shares;
- (2) proper telecommunications equipment and the required number of professional staff; and
- (3) an approval document from the authorities-in-charge to deal in B shares.

Article 9 Except with special approval, domestic securities dealers may not deal in the purchase and sale of B shares on their own account in any manner whatsoever.

Article 10 Domestic securities dealers must preserve B shares trading records for three years for audit and examination purposes.

Article 11 The following original records shall be proof of B share mandated purchase and sale transactions:

- (1) the account opening document of the B share investor;
- (2) the B share purchase and sale order signed by individual investors buying or selling B shares in China and the trading confirmation slip from the securities dealer;
- (3) the telex purchase and sale order from the authorised representative of institutional investors buying or selling B shares in China and the trading confirmation telex from the securities dealer;

现汇专户限用于B种股票发行所得外汇的存储，现汇专户中的外汇转入营运帐户须报主管机关备案。

第五章 股息、红利

第六条 B种股票发行公司须在股息、红利的实际发放日前20天，向主管机关提交董事会发放股息、红利的决议、B种股票股东名册和份额、发放股息、红利的外汇来源以及发放形式等文件，经核准后才可发放。

第六章 股东权利和义务

第七条 B种股票的所有者享有同人民币股票的股东同等的权利、承担同等的义务。

第七章 境内证券经营机构

第八条 境内证券经营机构经营B种股票业务须具备下列条件：

- (一) 经营B种股票外汇业务的许可证。
- (二) 完善的电信设备和一定数量的业务人员。
- (三) 主管机关出具的经营B种股票业务的批准文件。

第九条 除特别批准外，境内证券经营机构不得以任何方式自营买卖B种股票。

第十条 境内证券经营机构必须保存B种股票交易记录三年，以备核查。

第十一条 以下原始记录作为B种股票代理买卖业务的证明：

- (一) B种股票投资者的开户书。
- (二) 在境内买卖B种股票的个人投资者签字的B种股票委托买卖单据和证券经营机构成交确认单据。
- (三) 在境内买卖B种股票的机构投资者的授权代表的委托买卖电传和证券经营机构成交确认电传。

- (4) the telex purchase and sale order from overseas securities agents and the trading confirmation telex from the securities dealer; and
- (5) the B share trading list issued by the Shanghai Securities Exchange.

Chapter VIII Overseas Securities Agents

Article 12 Overseas financial institutions applying to qualify as agents shall be recommended by domestic securities dealers and reported to the authorities-in-charge for approval.

Article 13 An overseas securities agent must have paid-in capital of 100 million United States dollars or more, at least five years' experience dealing in securities locally, good business reputation, suitable office premises and sufficient staff specialising in securities.

Article 14 Overseas agents of B shares for domestic securities dealers must sign agency agreements with the domestic securities dealers. The agency agreement must set out the rights and obligations of both parties, the detailed mode of operation and liability for breach of contract, etc. The agency agreement must be reported to the authorities-in-charge for examination and approval.

Article 15 Overseas securities agents must comply with the regulations and provisions concerning B shares formulated by the Chinese authorities-in-charge.

Chapter IX Overseas Sub-underwriters

Article 16 Overseas financial institutions may apply to the authorities-in-charge to qualify as sub-underwriters of B shares. Only overseas financial institutions qualified as B share sub-underwriters in Shanghai may sub-underwrite B shares.

Chapter X Issue

Article 17 When applying to issue B shares, the issuer shall submit to the authorities-in-charge the relevant documents stipulated in Articles 9, 10 and 11 of the Shanghai Measures for the Control of Trading in Securities.

Article 18 Except with special approval, B share issuers shall possess the required foreign exchange earning capacity.

Article 19 When an issue of B shares is by way of an underwriting group, the lead underwriter in the group must be a domestic securities dealer.

(四) 境外证券代理商委托买卖电传和证券经营机构成交确认电传。

(五) 上海证券交易所出具的 B 种股票成交清单。

第八章 境外证券代理商

第十二条 境外金融机构申请代理商资格，由境内证券经营机构推荐，报主管机关批准。

第十三条 境外证券代理商的实收资本须在一千万美元以上，在当地从事证券买卖业务的历史在五年以上，具有良好的商业信誉，并具有合适的办公场地和足够的证券从业人员。

第十四条 作为境内证券经营机构在境外的 B 种股票代理商必须与境内证券经营机构签订代理协议书。代理协议书必须订明双方的权利和义务、详细的操作方法和违约责任等。代理协议书须报主管机关核准。

第十五条 境外证券代理商必须遵守中国主管机关制定的 B 种股票法规和条例。

第九章 境外分销商

第十六条 境外金融机构可向主管机关申请 B 种股票分销商的资格。只有取得上海市 B 种股票分销商资格的境外金融机构才能经营 B 种股票的分销业务。

第十章 发行

第十七条 申请发行 B 种股票时，发行者应向主管机关提交《上海市证券交易管理办法》第九条、第十条和第十一条规定的有关文件。

第十八条 除特别批准外，B 种股票发行者应具备一定的创汇能力。

第十九条 以承销团的形式发行 B 种股票时，承销团中的主承销机构须为境内证券经营机构。

Article 20 Before signing an sub-underwriting agreement with the overseas sub-underwriters, the lead underwriter shall submit to the authorities-in-charge the corporate letters of authorisation respectively for the representatives initialling and formally signing the agreement.

Article 21 The B share underwriting agreement between the B share issuer and the lead underwriter and the sub-underwriting agreement between the lead underwriter and the domestic and overseas sub-underwriters must be submitted to the authorities-in-charge for examination and approval.

Article 22 Domestic and overseas financial institutions in an underwriting group must, within five days of the end of the underwriting period approved by the authorities-in-charge, transfer all foreign exchange received from underwriting into the lead underwriter's foreign exchange account in China.

Any one who violates the provisions of the foregoing paragraph must pay to the lead underwriter interest at the overnight LIBOR plus 0.5 per cent. on the amount of late foreign exchange transfer for each day of delay.

Article 23 The lead underwriter must, within seven days of the end of the B share underwriting period, transfer all foreign exchange received from the B share issue into the special cash exchange account of the B share issuing company.

Any one who violates the provisions of the foregoing paragraph must pay to the B share issuing company interest at the overnight LIBOR plus 0.5 per cent. on the amount of late foreign exchange transfer for each day of delay.

Article 24 The lead underwriter must, within ten days of the end of the underwriting period, submit an underwriting report to the securities authorities-in-charge. The underwriting report must contain detailed explanation of the whole underwriting process and its final results, including a list of all B share shareholders and the amounts of their respective shareholdings.

Chapter XI Opening Accounts for Trading

Article 25 Investors buying or selling B shares must open a B share account at the Shanghai Securities Exchange.

Article 26 Securities dealers may also open B share accounts at the Shanghai Securities Exchange on behalf of individual domestic investors in B shares on the strength of their valid passports and identity documents, or on behalf of institutional investors on the strength of their board of directors resolutions and valid passports and identity documents of their authorised representatives.

Securities dealers may also open B share accounts at the Shanghai Securities Exchange on behalf of individual or institutional overseas investors on the strength of a mandate for opening accounts from an overseas securities agent.

Authorised representatives must be overseas residents.

第二十条 主承销与境外分销商签订分销协议前，主承销机构应向主管机关提交境外分销商草签代表的公司授权书和正式签约代表的公司授权书。

第二十一条 B种股票发行者与主承销机构签订的B种股票承销协议、主承销机构与境内境外分销商签订的分销协议都须报主管机关核准。

第二十二条 参加承销团的境内和境外金融机构须将其承销所得外汇，在经主管机关批准的承销期结束后五天内全部划入主承销机构在境内的外汇帐户。

违反前款规定者，每逾期一天，其迟划外汇金额按隔夜LIBOR+0.5%的利率向主承销机构付息。

第二十三条 主承销机构须于B种股票承销期结束后七天内，将发行B种股票所得外汇全部划入B种股票发行公司的现汇专户。

违反前款规定者，每逾期一天，其迟划外汇金额按隔夜LIBOR+0.5%的利率向B种股票发行公司付息。

第二十四条 主承销机构须于承销期结束后十天内向证券主管机关提供承销报告。承销报告须详细说明承销的全过程和最终结果，包括B种股票全部股东名单和份额。

第十一章 交易开户

第二十五条 买卖B种股票的投资者必须在上海证券交易所开立B种股票帐户。

第二十六条 证券经营机构也可凭境内B种股票个人投资者有效的护照和身份证，或机构投资者的董事会决议书和授权代表有效的护照和身份证代其在上海证券交易所开立B种股票帐户。

证券经营机构也可凭境外证券代理商的介绍开户委托书代境外个人和机构投资者在上海证券交易所开立B种股票帐户。

授权代表必须为境外居民。

Chapter XII Trading

Article 27 Purchase and sale of B shares must be delegated to securities dealers.

Article 28 Individual investors buying or selling B shares in China must produce their B share account passbook and valid documents of identity and complete a purchase and sale order.

Institutional investors buying or selling B shares in China may issue instructions on a purchase and sale order only through their authorised representatives.

Article 29 Investors who delegate the purchase and sale of B shares outside China must go through the relevant procedures through an overseas securities agent.

Article 30 B shares shall be traded scripless on the Shanghai Securities Exchange by computerised automatic transfer. Unlawful over-the-counter trading is prohibited.

Article 31 When investors delegate a B share purchase, the securities dealer shall decide whether a guarantee deposit should be paid and if so how much.

Article 32 When an investor has paid a guarantee deposit on his order to buy B shares and the transactions cannot be fully executed on the day the instructions on the order expire, the securities dealer must transfer a portion of the foreign exchange guarantee deposit corresponding to the unexecuted portion of the order into the investor's account with the settlement bank before 3:00 p.m. local time on the following day. Interest must be paid to the investor at overnight LIBOR plus 0.5 per cent. for each day of delay.

When an investor agrees in writing that the foreign exchange guarantee deposit should be retained in the securities dealer's foreign exchange account with the settlement bank, after the settlement bank pays interest on the foreign exchange guarantee deposit, the securities dealer must refund all such interest to the investor.

Article 33 Matters not covered in these Implementing Rules shall be handled in accordance with supplementary rules of the Shanghai Securities Exchange for trading operations relating to special renminbi shares.

Chapter XIII Clearing and Delivery

Article 34 B shares shall be cleared and delivered three business days after the trading day (T+3). The term "business day" means a working day on which the B share settlement banks in Shanghai, the Shanghai Securities Exchange and banks in New York are concurrently open for business.

第十二章 交易

第二十七条 买卖 B 种股票必须委托证券经营机构办理。

第二十八条 个人投资者在境内买卖 B 种股票时，须出具 B 种股票帐户本和本人的有效身份证件，并填写委托买卖单据。

机构投资者在境内买卖 B 种股票时，只有授权代表才能发出委托买卖指令。

第二十九条 投资者在境外委托买卖 B 种股票时，必须通过境外证券代理商办理有关手续。

第三十条 B 种股票采用无票交易的方式和电脑自动过户的方法，在上海证券交易所交易。禁止在场外进行非法交易。

第三十一条 投资者在委托买入 B 种股票时，保证金的交纳与否，以及保证金的额度，由证券经营机构决定。

第三十二条 投资者在委托证券经营机构买卖指令结束的当天，当委托买入无法全部成交时，如已交付了保证金，证券经营机构须于次日本地时间下午三点以前，把未成交部分的外汇保证金划入投资者在结算银行的帐户。每逾期一天，须按隔夜 LIBOR+0.5% 的利率付给投资者利息。

如投资者书面同意外汇保证金继续存放在证券经营机构在结算银行的外汇帐户中，结算银行支付外汇保证金的利息后，证券经营机构须把该种利息全部返还给投资者。

第三十三条 本实施细则对 B 种股票交易的未尽事项，按上海证券交易所人民币特种股票交易业务的补充规定办理。

第十三章 清算交割

第三十四条 B 种股票在成交日后的第三个营业日 (T+3) 清算交割。营业日指上海市 B 种股票业务结算银行、上海证券交易所和纽约的银行同时营业的工作日。

Article 35 Clearing and delivery between securities dealers and the Shanghai Securities Exchange shall be primary clearing, which shall be handled in accordance with the relevant provisions of the Shanghai Securities Exchange.

Article 36 Members dealing in B shares must pay a foreign exchange clearing guarantee deposit to the Shanghai Securities Exchange. Members must also deposit a required amount of foreign exchange with their settlement banks to serve as B share clearing contingency fund.

Article 37 Clearing and delivery between securities dealers and overseas agents and investors shall be secondary clearing. Secondary clearing shall be handled in accordance with the agreements between the securities dealers and overseas agents and investors.

Article 38 Securities dealers and overseas agents must deposit a required amount of foreign exchange with their settlement banks to serve as a settlement guarantee deposit.

Article 39 If, before 4.00 p.m. Beijing time three working days after the trading day, a member violates a clearing agreement, the Shanghai Securities Exchange may use such member's foreign exchange clearing guarantee deposit for clearing. If the clearing guarantee deposit is insufficient to pay the clearing amount, the Shanghai Securities Exchange may request to use such member's clearing contingency fund for clearing.

If an overseas agent or investor violates a settlement agreement, a securities dealer may request to use the other party's settlement guarantee deposit and shall take measures to investigate the overseas agent or investor to affix liability.

If a securities dealer delays its payment of foreign exchange, the authority-in-charge will order it to pay damages.

Chapter XIV Settlement Banks

Article 40 Settlement banks for B share transactions in Shanghai (hereinafter referred to as "settlement banks") must:

- (1) be a bank situated in Shanghai with a licence to deal in foreign exchange;
- (2) be relatively internationally well-known;
- (3) have extensive experience in international settlement of securities; and
- (4) have documents of approval from the authority-in-charge.

Article 41 The Shanghai Securities Exchange must conclude B share clearing agreements with the members dealing in B shares and their settlement banks.

第三十五条 证券经营机构与上海证券交易所的清算交割为一级清算，一级清算按上海证券交易所的有关规定办理。

第三十六条 经营B种股票的会员须向上海证券交易所交纳外汇清算保证金。会员还须把一定金额的外汇存入结算银行作为B种股票的清算风险基金。

第三十七条 证券经营机构与境外代理商、投资者的清算交割为二级清算。二级清算按证券经营机构和境外代理商、投资者之间的协议办理。

第三十八条 证券经营机构和境外代理商都须在结算银行存入一定金额的外汇作为结算保证金。

第三十九条 在成交日后第三个营业日北京时间下午四点以前，会员违反清算协议的，上海证券交易所可动用该会员的外汇清算保证金用于清算。动用外汇清算保证金仍不足以支付清算金额的，上海证券交易所可要求动用该会员的清算风险基金用于清算。

境外代理商、投资者违反结算协议的，证券经营机构可要求动用对方的结算保证金，并要采取措施，追究境外代理商或投资者的责任。

证券经营机构延期交付外汇，主管机关将责令其赔偿损失。

第十四章 结算银行

第四十条 作为上海市B种股票业务的结算银行（以下简称结算银行）必须具备下列条件：

- （一）有经营外汇业务许可证的在沪的银行。
- （二）有较高的国际知名度。
- （三）有证券业务国际结算的丰富经验。
- （四）主管机关的批准文件。

第四十一条 上海证券交易所与经营B种股票的会员和结算银行须签订B种股票清算协议书。

Securities dealers and overseas securities agents must conclude B share settlement agreements with their settlement banks.

Such clearing and settlement agreements must be reported to the authority-in-charge for examination and approval.

Article 42 A settlement bank must immediately report any violations of clearing or settlement agreements to the authority-in-charge.

Use of the clearing contingency funds and settlement guarantee deposits must have the prior approval of the authority-in-charge.

Chapter XV Relevant Fees

Article 43 All fees relating to such activities as the issue and trading of B shares shall be computed in renminbi and paid in United States dollars.

Article 44 Brokerage commissions shall be 0.6 per cent. of the actual traded amount in respect of a mandated purchase and sale, which rate may be appropriately reduced for major transactions of Rmb100,000 or over, but may not fall below 0.3 per cent.

Article 45 Fees for transfer of registration shall be 0.1 per cent. of the total nominal value of the transferred shares.

Article 46 Settlement fees shall be based the actual settled amount and handled in accordance with the relevant provisions of the settlement banks.

Chapter XVI Dispositary

Article 47 The dispositary for special renminbi shares shall be the Shanghai Securities Exchange.

If an investor pledges B shares to a foreign-invested bank, it may, after completing the relevant procedures at the Shanghai Securities Exchange, obtain a depositary receipt for the B shares. The pledged B shares will be temporarily frozen.

Chapter XVII Taxation

Article 48 Both the buyers and sellers of B shares must pay stamp tax in accordance with the relevant provisions of the government taxation department. Matters relating to the payment of stamp tax shall be handled at the Shanghai Securities Exchange.

The income tax on B share dividends shall be paid in accordance with the relevant provisions of the "Individual Income Tax Law of the People's Republic of China" and the "Income Tax Law of the People's Republic of China on Foreign-Invested Enterprises and Foreign Enterprises."

证券经营机构、境外证券代理商与结算银行须签订B种股票结算协议书。

上述清算协议书、结算协议书须报主管机关核准。

第四十二条 结算银行一发现有违反清算协议书和结算协议书的
现象，须立即报告主管机关。

动用清算风险基金和结算保证金，须事前经主管机关核准。

第十五章 有关费用

第四十三条 B种股票发行、买卖等涉及的所有费用一律以人民币
计值，以美元现汇支付。

第四十四条 经纪佣金，委托买卖按实际成交金额收取0.6%，十万
元人民币以上的大宗交易可适当降低，但不得低于0.3%。

第四十五条 过户费按过户股票面额总额收取0.1%。

第四十六条 结算费按实际结算额按结算银行的有关规定办理。

第十六章 保管场所

第四十七条 人民币特种股票的保管场所为上海证券交易所。

投资者如将B种股票抵押给外资银行，可到上海证券交易所办理有
关手续，取得B种股票库存证明。被抵押的B种股票将暂时被冻结。

第十七章 税收

第四十八条 B种股票买卖双方须按政府税务部门的有关规定交纳
印花税，交纳印花税事宜在上海证券交易所办理。

B种股票股息、红利的所得税，按《中华人民共和国个人所得税
法》和《中华人民共和国外商投资企业和外国企业所得税法》的有关规
定办理。

Chapter XVIII Governing Law and Arbitration

Chapter 49 Disputes and controversies arising from the issue, trading of and other activities related to B shares shall be resolved by the disputing parties by arbitration in accordance with the provisions of the laws and regulations the People's Republic of China.

The disputing parties must report the form of arbitration which they have selected to the authority-in-charge for examination and approval.

Chapter XIX Penalty Provisions

Article 50 Any one who violates these Implementing Rules will, depending on the specific circumstances, be liable to a warning, fine, suspension or total cancellation of his qualification to issue or underwrite B shares or to act as agent or dealer in B shares with reference to the "Shanghai Measures for the Control of Trading in Securities"

Article 51 Any one penalised who disagrees with the decision may, within 15 days of receiving notice of the penalty, apply for reconsideration to the next highest level of the authority that decided the penalty.

Article 52 If a violation of these Implementing Rules constitutes a crime the judicial authorities shall investigate and affix criminal liability.

Chapter XX Supplementary Provisions

Article 53 These Measures shall be interpreted by the People's Bank of China Shanghai Branch.

Article 54 These Measures shall be effective from the date of issue.

第十八章 准据法及仲裁

第四十九条 在 B 种股票的发行、交易等活动中产生的争议与纠纷，争议双方须按中华人民共和国的法律和法规的规定，通过仲裁解决。争议双方选择了仲裁方式后，须报主管机关核准。

第十九章 罚则

第五十条 违反本实施细则，主管机关将视具体情况，比照《上海市证券交易管理办法》给予违反者警告、罚款、暂停和全部取消其发行、承销、代理买卖、经营 B 种股票有关业务的资格。

第五十一条 被处罚者对决定不服的，可在收到被处罚通知书起的 15 天内，向作出处罚决定机关的上级机关申请复议。

第五十二条 违反本实施细则构成犯罪，由司法机关追究刑事责任。

第二十章 附则

第五十三条 本办法由中国人民银行上海市分行解释。

第五十四条 本办法自颁布之日起施行。

**SHANGHAI SECURITIES EXCHANGE SUPPLEMENTARY OPERATING RULES
FOR MARKET TRADING IN SPECIAL RENMINBI SHARES**

(Issued by the Shanghai Securities Exchange
on 18 February 1992)

Chapter I General Provisions

Article 1 These Rules are specially formulated in accordance with the "Shanghai Measures for the Control of Special Renminbi Shares," the "Implementing Rules to the Shanghai Measures for the Control of Special Renminbi Shares," and the Shanghai Securities Exchange Operating Rules for Market Trading."

Article 2 Subject to the provisions herein contained, trading in special renminbi shares ("B Shares") shall be handled in accordance with the "Shanghai Securities Exchange Operating Rules for Market Trading."

Article 3 The term "business day" means a working day on which the Exchange, the B share clearing banks in Shanghai and banks in New York banks are concurrently open for business.

Chapter II Registration and Opening Accounts

Article 4 Domestic clients may delegate securities dealers to carry out registration and to open B Share accounts. Overseas clients may delegate overseas securities dealers to carry out registration and open B share accounts.

Article 5 When carrying out registration and opening B share accounts, individual investors must produce their own valid passports and identity documents and institutional investors must produce as evidence their incorporation documents, board of directors resolutions, written authorisations to their appointed securities trading officers and the passports, identity documents, etc. of such officers.

Article 6 The appointed securities trading officers mentioned in the foregoing article must be overseas residents. If individual domestic investors delegate other persons to buy and sell B shares, such persons must also be overseas residents.

Chapter III Mandated Purchase and Sale

Article 7 Only securities dealers approved by the securities authority-in-charge to engage in B share brokerage may accept mandates to buy and sell B shares.

上海证券交易所交易市场业务 (人民币特种股票)补充规则 (一九九二年二月十八日上海证券交易所公布)

第一章 总则

第一条 根据《上海市人民币特种股票管理办法》、《上海市人民币特种股票管理办法实施细则》和《上海证券交易所交易市场业务规则》制订本规则。

第二条 除本规则规定外,人民币特种股票(以下简称B种股票)交易业务按《上海证券交易所市场业务规则》的规定办理。

第三条 本规则所称营业日,为本所、上海市B种股票业务结算银行、纽约的银行同时营业的工作日。

第二章 名册登记和开户

第四条 境内的委托人办理名册登记和开立B种股票帐户,可委托证券商代为办理;境外的委托人办理名册登记和开立B种股票帐户,可通过境外证券代理商代为办理。

第五条 办理名册登记和开立B种股票帐户时,如属个人投资者,须提供有效的本人护照、身份证;如属机构投资者,须提供登记注册的证明文件、董事会决议书和授权证券交易执行人的书面授权书,以及授权证券执行人的护照、身份证等。

第六条 前条所称授权证券交易执行人,必须为境外居民。境内个人投资者如委托他人代理买卖B种股票,其代理人也必须为境外居民。

第三章 委托买卖

第七条 受理B种股票委托买卖业务的,必须是经证券主管机关批准可经营B种股票经纪业务的证券商。

Article 8 Institutional investors delegating the purchase and sale of B shares must do so through their appointed securities trading officers.

Article 9 Clients delegating the purchase and sale of B shares outside China must do so through overseas securities agents.

Article 10 Following trading, securities dealers must give notice of trading to their clients on the trading day and hand over the "trading transfer and delivery slips" to their clients after their clients have gone through the delivery procedures.

Chapter IV Trading

Article 11 Shares shall be traded by way of computerised quoting and bidding and each Rmb1,000 in nominal value shall be one lot.

Article 12 Securities dealers must give B share quotations at trading seats approved by the Exchange.

Chapter V Clearing and Delivery

Article 13 Clearing and delivery of B shares shall be carried out on the fourth business day after trading ("T+3").

Article 14 Securities dealers engaging in B share brokerage must pay a clearing and delivery reserve in an amount of 50,000 United States dollars.

Article 15 Securities dealers shall carry out clearing and delivery and transfers of payments for B shares in accordance with the requirements of their clearing banks.

Chapter VI Transfer of Registration

Article 16 Following trading, the Exchange shall handle centrally the procedures for the transfer of registration of B shares.

Article 17 Clients having delegated a purchase of B shares may not sell them until the transfer of registration procedures have been completed.

第八条 机构投资者委托买卖 B 种股票，必须由授权证券交易执行人办理。

第九条 委托人在境外委托买卖 B 种股票时，必须通过境外证券代理商办理。

第十条 委托买卖成交后，证券商须在成交日向委托人发出成交通知；在委托人履行交割手续后，将“成交过户交割凭单”交给委托人。

第四章 交易

第十一条 B 种股票交易按电脑申报竞价方式进行，并以每 1000 元面值为一个交易单位。

第十二条 证券商进行 B 种股票买卖申报，须在本所同意的一个交易席位进行。

第五章 清算交割

第十三条 B 种股票交易在成交后第四个营业日（即 T+3，下同）进行清算交割。

第十四条 经营 B 种股票经纪业务的证券商，须交纳 5 万美元的清算交割准备金。

第十五条 证券商办理 B 种股票清算交割及价款划拨，按清算银行的要求执行。

第六章 过户

第十六条 B 种股票买卖成交后，由本所统一办理过户手续。

第十七条 买入 B 种股票的委托人，在未完成过户手续前，不得将其卖出。

Chapter VII Fees

Article 18 Fees incurred in the listing, trading, clearing, transfer of registration, etc. of B shares shall be computed in renminbi and paid in United States dollars and their exchange rates shall be handled in accordance with the "Implementing Rules for the Shanghai Measures for the Control of Special Renminbi Shares."

Article 19 An initial fee of 0.1 per cent. of the nominal value of an issue shall be payable for the listing of B shares, the minimum amount shall be 1,500 United States dollars and the maximum shall not exceed 5,000 United States dollars. A monthly fee of 0.005 per cent. of the nominal value of an issue shall be payable for listing, the minimum amount shall be fifty United States dollars and the maximum shall not exceed 200 United States dollars.

Article 20 Clients opening B share accounts at the Exchange shall pay fees at the following rates:

- (1) Twenty United States dollars for individual investors;
- (2) 100 United States dollars for institutional investors.

Article 21 Following trading and upon delivery of B shares, clients shall pay to their securities dealers commissions at 0.6 percent of the traded amount or twenty United States dollars whichever is higher.

Article 22 Commission rates for major B share transactions shall be 0.5 per cent. of the traded amount for transactions between Rmb500,000 and Rmb5,000,000 inclusive and 0.4 per cent. of the traded amount for transactions over Rmb5,000,000.

Article 23 Following trading and upon delivery of B shares, clients shall pay a transfer of registration fee at 0.1 per cent. of the nominal value traded or one United States dollar whichever is higher.

Article 24 Following trading and upon delivery of B shares, clients shall pay stamp duty in accordance with the provisions of the tax authorities at 0.3 per cent. of the traded amount.

Article 25 B share investors who require "B share depositary receipts" in order to pledge B shares must pay to the Exchange a handling fee of 0.02 per cent. of the nominal value of the shares for which the receipts are issued or five United States dollars whichever is higher.

Article 26 Following trading of a mandated purchase and sale B shares, securities dealers must pay to the Exchange a handling fee of 0.03 per cent. of the traded amount or five United States dollars whichever is higher.

第七章 费用

第十八条 B种股票上市、交易、清算、过户等所发生的费用以人民币计价，用美元支付，其折算率按《上海市人民币特种股票管理办法实施细则》的规定办理。

第十九条 B种股票上市初费按发行面额的0.1%交纳，起点金额为1500美元，最高不超过5000美元。上市月费按发行面额的0.005%交纳，起点金额为50美元，最高不超过200美元。

第二十条 委托人在本所开立B种股票帐户，按下列标准交纳费用：

- (一) 个人投资者20美元；
- (二) 机构投资者100美元。

第二十一条 B种股票买卖成交后，委托人在办理交割时，按成交金额0.6%的比例向证券商交纳佣金，起点金额为20美元。

第二十二条 B种股票大宗交易佣金的交纳标准为：成交金额在50万元至500万元（含500万元），按0.5% 交纳；成交金额在500万元以上的，按0.4%交纳。

第二十三条 B种股票买卖成交后，委托人须在办理交割时，按成交金额0.1%的比例交纳过户费，起点为1美元。

第二十四条 B种股票买卖成交后，委托人须在办理交割时，依照税务机关的规定，按成交金额0.3%的比例交纳印花税。

第二十五条 B种股票投资者，如因抵押需要开付“B种股票库存证明”，须按库存证明所开列面额 0.02%的比例向本所交纳手续费，起点为5美元。

第二十六条 证券商受托买卖B种股票成交后，须向本所交纳成交金额0.03%的经手费，起点为5美元。

Chapter VIII Handling of Disputes

Article 27 Disputes and controversies arising in the trading of B shares shall be dealt with in accordance with Article 49 of the "Implementing Rules for the Shanghai Measures for the Control of Special Renminbi Shares."

Chapter IX Supplementary Provisions

Article 28 The Exchange shall make amendments and supplements to cover matters not covered in these Rules, except for matters to be implemented with reference to relevant provisions.

Article 29 These Rules and any amendments hereto shall become effective upon discussion and adoption by the Council of the Exchange and examination and approval by the authority-in-charge of securities.

Article 30 The power to interpret these Rules shall be vested in the Council of the Exchange.

第八章 纠纷处理

第二十七条 B种股票交易过程中的争议与纠纷，按《上海市人民币特种股票管理办法实施细则》第四十九条规定办理。

第九章 附则

第二十八条 本规则未尽事宜，除比照有关规定执行外，本所将修订补充。

第二十九条 本规则经本所理事会讨论通过，报证券主管机关核准后施行，修订时亦同。

第三十条 本规则解释权属本所理事会。

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

ADMINISTRATIVE SUPERVISION OF THE SECURITIES MARKETS

Zhang Ning

Deputy Director of Financial Administration

PBoc Shanghai

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上海**证**股份有限公司暂行规定

(一九九二年五月十八日上海市人民政府发布)

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第一章 总 则

第一条 为确立股份有限公司的法律地位，保障股份有限公司、股东和债权人的合法权益，维护社会主义经济秩序，促进经济发展，特制定本规定。

第二条 股份有限公司（以下简称“公司”），是指依据本规定而设立，全部资本分为等额股份，股东以其所认购股份对公司承担责任，公司以其全部资产对公司债务承担责任的企业法人。

第三条 公司的名称应当标明“股份有限”字样。

第四条 公司以其全部资本为注册资本。

第五条 公司以其主要办事机构所在地为住所。

第六条 公司不得成为其他经济组织的无限责任股东。

公司作为其他经济组织的有限责任股东时，持有其他经济组织的股份额，不得超过本公司注册资本的百分之五十。经国家批准的以投资为专项业务的公司，可不受此限。

第七条 公司的财产和生产、经营活动受法律保护，不受侵犯。

第八条 公司必须遵守国家的法律、法规，维护社会公共利益，接受政府部门的监督管理。

第九条 在本市范围内,各行业可依据本规定设立公司,但国家规定不得设立公司的行业除外。

第二章 设 立

第一节 设立方式

第十条 公司可以采取发起设立或者募集设立的方式设立。

发起设立,是指由发起人自行认购公司应发行的全部股份而设立公司。

募集设立,是指由发起人认购公司应发行股份的一部分,其余部分向社会公开招募而设立公司。

设立有外商投资的公司,一般应采取发起设立的方式。

以募集设立的方式设立公司的,发起人认购的股份,不得低于公司应发行股份的百分之三十。

第十一条 以发起设立的方式设立公司的,在公司设立一年后需要增资的,经批准可以向社会公开招募股份。

第十二条 以募集设立的方式设立公司的,公司职工可以认购股份,但所认购股份数额不得超过公司向社会公开招募股份总额的百分之二十。

第二节 发起人资格

第十三条 公司的发起人应当是法人,但另经许可的除外。

第十四条 设立公司应有三个以上发起人,其中至少应有一个为注册地在本市的企业法人。

经特别许可,公司的发起人可仅为一个注册地在本市的企业法人。

第十五条 企业法人作为唯一的发起人发起设立公司时,应投入其全部资产,并有连续三年盈利的经营业绩和良好的资信。

前款发起人为中外合资、合作经营企业的,合营各方应就公司设立后各自的权利、义务达成协议。

第三节 注册资本

第十六条 公司的注册资本为实收的股金总额。

股金总额为公司每一股份金额与股份总数的乘积。

第十七条 公司的注册资本的最低限额为人民币五百万元。但有外商投资的公司,其注册资本不得低于人民币三千万元。

第四节 设立程序

第十八条 发起人设立公司应先达成协议，共同推举一个注册地在本市的发起人申请设立公司；发起人为一人的，发起人即为申请人。

第十九条 申请设立公司的程序是：

(一) 发起人向其行政主管部门提交设立公司的申请书，并附送发起人协议、发起人的注册证件和资信证明、可行性研究报告等文件；

(二) 经行政主管部门同意后，发起人应将公司章程连同本款一项所列文件报送公司审批机构审批；现有资产作价入股的，还应提交资产评估报告和资产评估确认证书。

设立有外商投资的公司，发起人在向公司审批机构报送公司章程及有关文件以前，应征得主管外商投资的机关的同意。

第二十条 设立公司的申请书，应当载明下列内容：

- (一) 设立公司的原由；
- (二) 拟定的公司名称；
- (三) 设立公司的方案；
- (四) 公司的宗旨及经营范围；
- (五) 其他需要说明的事项。

第二十一条 发起人签订的设立公司的协议，应当载明下

列内容：

- （一）发起人的名称、住所，法定代表人的姓名、国籍、住所、职务；
- （二）公司的宗旨及经营范围；
- （三）股份总额、股份类别、每股金额、招募股份的对象及方式；
- （四）发起人认缴股份的数额、形式及期限；
- （五）设立公司的费用预算；
- （六）与设立公司有关的其他事宜；
- （七）签订协议的地址、日期，发起人的签名、盖章。

第二十二条 公司章程应当载明下列内容：

- （一）公司的名称、住所；
- （二）公司的宗旨、经营范围和经营方式；
- （三）公司的设立方式；
- （四）公司的注册资本、股份总额、股份类别和每股金额；
- （五）股东的权利、义务，股东大会或者股东代表大会（以下简称“股东大会”）的职权和议事规则；
- （六）董事会、监事会及经理的设置、职权和议事规则；
- （七）公司的法定代表人产生的程序和职权；
- （八）公司的财务、会计、审计制度的原则；
- （九）公司的税后利润分配（包括股息、红利分配）原则；

- (十) 违反章程的责任；
- (十一) 章程修改的程序；
- (十二) 公司的终止和清算办法及程序；
- (十三) 公司的公告办法；
- (十四) 发起人认为应当载明的其他事项；
- (十五) 订立章程的日期，发起人的签名、盖章。

公司章程不得与法律、法规和本规定相抵触。

第二十三条 可行性研究报告应当载明的内容，由公司审批机构规定。

第二十四条 发起人提交的各项文件，无论用几种文字书写，均以经审批生效的中文文本为准。

第二十五条 公司印制、发行股票须经证券主管机关批准。

第二十六条 设立公司的申请经公司审批机构批准后三十日内，发起人应向企业法人登记主管机关申请办理公司筹建登记。

设立有外商投资的公司，发起人应于批准设立公司后十日内，向主管外商投资的机关领取外商投资企业批准证书，并于领取批准证书后三十日内申请办理公司筹建登记。

第二十七条 公司的股份募足后，发起人应于四十日内召集创立大会，通知全体认股人出席。创立大会的议程是：

- (一) 听取、审查发起人关于公司筹建情况的报告；

- (二) 通过发起人拟订的公司章程；
- (三) 选举产生公司的首任董事会成员和监事会成员；
- (四) 决定与设立公司有关的其他事项。

前款各项议程，须由创立大会的决议通过。

创立大会作出决议，应有代表股份总数三分之二以上的认股人出席，并由出席大会的三分之二以上认股人表决权的同意方可通过。

第二十八条 董事会应于成立后三十日内向企业法人登记主管机关申请办理公司开业登记。

第二十九条 申请办理公司开业登记应当报送下列文件：

- (一) 登记申请书；
- (二) 公司审批机构批准设立的文件；
- (三) 公司章程；
- (四) 创立大会会议记录；
- (五) 验资证明；
- (六) 其他必要的文件。

采取募集设立的方式设立公司的，除报送前款各项所列文件外，还应提交证券主管机关同意向社会公开招募股份的文件。

经企业法人登记主管机关核准登记，并发给《企业法人营业执照》或《中华人民共和国企业法人营业执照》后，公司即告成立。

第五节 发起人责任

第三十条 公司的发起人应当承担下列责任：

（一）公司发行的股份未能认足或已认而未能缴足时，负认缴股金的连带责任；

（二）公司如未能成立，对认股人负返还股金及法定利息的连带责任；

（三）公司如未能成立，对因设立行为所产生的债务和费用负赔偿的连带责任；

（四）在公司设立过程中，由于发起人的过失而致使公司受到损害的，对公司负赔偿的连带责任。

第三章 股 份

第一节 认股方式

第三十一条 公司的全部资本应划分为等额股份。每一股份的金额由公司章程规定。

第三十二条 发起人在设立公司时可以以资金认股，也可以用建筑物、厂房、机器设备或其他物料、工业产权、专有技术、场地使用权等为公司所需要的资产作价认股。

以工业产权、专有技术作价所折股份，其金额不得超过公

司注册资本的百分之二十。

第三十三条 发起人在设立公司时以现有资产作价认股的，应对该项资产进行评估。

前款情形中属于以国有资产作价认股的，须按《国有资产评估管理办法》办理资产评估、验证、确认手续。

第三十四条 发起人认购的股份自公司成立之日起两年内不得转让。

第三十五条 公司在设立时或者成立后向社会公开招募股份的，以资金认股为限。

第二节 股份类别

第三十六条 公司的股份可分为普通股和优先股。

普通股的股东有权出席股东大会并行使表决权。公司对普通股分配红利。红利根据公司的盈利确定。

优先股的股东无表决权。公司对优先股支付股息。股息按公司章程规定的息率支付。

第三十七条 公司支付优先股的股息先于分配普通股的红利；公司因终止进行清算时，优先股先于普通股取得公司的剩余财产。

同类股份中每一股份的权利相等。

第三节 股 票

第三十八条 公司的股份以股票形式表示。

第三十九条 股票是公司签发的证明股东按其所持股份享有权利和承担义务的书面凭证。

第四十条 公司的股票应为记名股票。

第四十一条 股票应当载明下列事项：

- (一) 发行股票的公司名称；
- (二) 公司设立登记的文号及日期；
- (三) 股份类别和股票种类；
- (四) 公司的注册资本额、每股金额、股票面额；
- (五) 本次发行的股份数；
- (六) 股东姓名或名称；
- (七) 股票号码；
- (八) 发行日期；
- (九) 其他需要载明的事项。

公开发行的股票，还应加具证券主管机关批准招募股份的文号及日期。

股票由法定代表人签名，公司盖章后生效。

第四十二条 公司经批准可以发行人民币特种股票。

第四十三条 股票的发行价格不得低于股票的票面金额。

第四十四条 股票可以依照证券交易管理法规和公司章程的规定进行转让，但自公司开始清算之日起不得转让。

股票可以赠予、继承和抵押。

第四节 增 资

第四十五条 公司根据需要可以增加注册资本（以下简称“增资”）。

公司增资可以由公积金转增，或者由原股东认购股份，或者以应分配的股息、红利增发股份，也可以向社会公开招募股份。

公司增资须由董事会提出方案，经股东大会的决议通过，行政主管部门同意，报公司审批机构批准后，按本规定第二十五条规定办理增发股票手续。

第四十六条 公司申请增资，应当符合下列条件：

- （一）经营状况良好，有稳定的盈利记录；
- （二）预期收益可达同行业平均利润率之上；
- （三）投资项目符合国家和本市的产业政策。

第四十七条 公司增资时距上一次发行股票的时间不得少于一年。

第四十八条 公司增资时新股的票面总额不得超过原有注册资本的总额。

第四十九条 公司增资后应向企业法人登记主管机关申请办理注册资本变更登记手续。增资自变更登记之日起生效。

第五节 减 资

第五十条 公司因资本过剩或者经营状况不佳时，可以减少注册资本（以下简称“减资”）。

减资可以分别或者同时采用减少股份数额和减少每股金额的方法。

第五十一条 公司减资须按照下列程序进行：

- （一）召集股东大会作出决议，并相应修改公司章程；
- （二）编制财产目录；
- （三）将减资的决议和资产负债表及财产目录通知或者公告各债权人，自通知或者公告之日起九十日内债权人可提出异议；
- （四）对于在规定期限内提出异议的债权人，公司应于减资前清偿债务或者提供偿债担保，不得以减资对抗债权人；
- （五）减资申请经行政主管部门同意后，报送公司审批机构批准；
- （六）向证券主管机关办理减资手续；
- （七）向企业法人登记主管机关申请办理注册资本变更登记手续。减资自变更登记之日起生效。

第五十二条 公司减资后的股份总额，不得低于本规定第

十七条规定的注册资本的限额。

第五十三条 公司因减资需更换股票时，应于变更登记后通知或者通告股东在九十日内换领新股票。股东逾期不换领股票的，视为放弃股权，股票由公司拍卖后将其所得退还股东。

第五十四条 公司除减资的目的外，不得收购本公司已发行的股票。

第四章 股东和股东大会

第一节 股 东

第五十五条 公司股份的持有人为公司股东。股东按其持有股份的类别和份额享有权利、承担义务。

第五十六条 公司的股东可以是国家、法人和个人。

国家作为公司的股东，由国有资产管理部門或者其委托的部門和机构代为行使国有资产所有者的各项权利。

法人作为公司的股东，以其依法可支配和国家允许用于经营的资产投资入股为限。

外国公司、企业和其他经济组织、社会团体或者个人，也可以成为公司的股东。

第五十七条 在关系国计民生的重要行业中，国家作为公司的股东，所持的股份应当保持控股数额。

第五十八条 个人作为公司的股东，所持的股份不得超过公司股份总额的千分之五，但本规定第五十六条第四款所列情况除外。

第五十九条 股东主要有以下权利：

(一) 出席或者委托代理人出席股东大会会议并行使表决权；

(二) 依照本规定和证券交易法规以及公司章程的规定转让股份；

(三) 查阅公司章程、股东大会会议记录和财务、会计帐目，监督公司的生产、经营管理和财务管理，并提出建议或者质询；

(四) 按其股份领取股息、红利；

(五) 公司终止后取得公司的剩余财产；

(六) 公司章程规定的其他权利。

前款第一项的规定不适用于优先股的股东。

第六十条 股东主要有以下义务：

(一) 遵守公司章程；

(二) 依其所认股份缴纳股金；

(三) 依其所持股份承担公司的亏损及债务；

(四) 维护公司的合法利益；

(五) 履行公司章程规定的其他义务。

第二节 股东大会

第六十一条 股东大会是公司的最高权力机构，依照本规定和公司章程的规定行使其权力。

第六十二条 股东大会会议分为年会和临时会。年会每年召集一次，临时会于必要时召集。

股东年会应于每一会计年度终结后六个月内召集。

第六十三条 股东大会会议除本规定另有规定外，由董事会召集。

召集股东年会，应于二十日前通知或者通告股东；召集股东临时会，应于十日前通知或者通告股东。

通知或者通告应当载明召集事由。

第三节 普通决议和特别决议

第六十四条 股东大会的决议分为普通决议和特别决议。

股东大会作出普通决议，应有代表股份总数半数以上的股东出席，并由出席会议的半数以上股东表决权的同意方可通过。

股东大会作出特别决议，应有代表股份总数三分之二以上的股东出席，并由出席会议的三分之二以上股东表决权的同意方可通过。

第六十五条 股东大会作出决议时，每一股份有相同的表

决权。

第六十六条 下列事项应由普通决议通过：

- (一) 董事会、监事会的工作报告；
- (二) 董事会编制的公司年度预算、决算报告；
- (三) 董事会提出的股息、红利分配方案以及弥补亏损方案；
- (四) 董事会和监事会成员的任免；
- (五) 公司章程规定的其他可以由普通决议通过的事项。

第六十七条 下列事项应由特别决议通过：

- (一) 签订、变更或者终止关于出租、委托经营或与他人共同经营公司的部分财产的合同；
- (二) 转让公司的部分财产；
- (三) 兼并其他企业；
- (四) 公司增、减资本和发行公司债；
- (五) 公司合并、分立、终止和清算；
- (六) 对公司章程作重要修改；
- (七) 公司章程规定的其他需要由特别决议通过的事项。

第六十八条 股东大会会议应作成会议记录，决议通过的事项应作成会议纪要。会议记录、纪要应与出席会议的股东的签名簿一并保存。

第六十九条 本规定第六十三条至第六十五条的规定不适用于优先股的股东。

股东大会作出决议时，优先股的股份数不计入已发行股份总额。

第五章 董事会和经理

第一节 董 事

第七十条 董事会是股东大会的常设执行机构，对股东大会负责并报告工作。

董事会由董事组成，成员不得少于三人。

第七十一条 董事可以由股东和非股东的其他人士担任。

董事由股东大会选举产生，任期三年，可连选连任。

第七十二条 凡有下列情况之一的，不能担任公司董事：

(一) 无行为能力者或限制行为能力者；

(二) 对企业被依法撤销或者宣告破产负有主要责任的法定代表人和直接责任人员，自原有企业被注销登记之日起未满三年的；

(三) 刑满释放、假释或者缓刑考验期满以及解除劳教人员，自刑满释放、考验期满或者解除劳教之日起未满三年的；

(四) 其他由法律、法规规定不能担任或者不适宜担任企业领导职务者。

各级国家机关工作人员、现役军人和证券业从业人员，非

经派遣不得兼任董事。

第七十三条 董事的报酬由公司章程规定或者由股东大会决定。

国家及法人作为股东所委派的代表，因担任董事职务而获取的报酬，按委派部门或者单位的规定处理。

第七十四条 董事不得在公司之外从事与本公司有竞争或者损害本公司利益的活动。

第二节 董 事 会

第七十五条 董事会应依照法律、法规和公司章程以及股东大会的决议履行职责。

第七十六条 董事会行使下列职权：

- (一) 决定召开股东大会会议并向股东大会报告工作；
- (二) 执行股东大会决议；
- (三) 审定公司发展规划、年度生产经营计划；
- (四) 拟订公司的年度财务预算、决算报告；
- (五) 拟订股息、红利分配方案以及弥补亏损方案；
- (六) 拟订公司增、减资本和发行公司债的方案；
- (七) 拟订公司发行股票方案或者公司股票上市交易方案；
- (八) 拟订公司合并、分立、终止和清算的方案；
- (九) 任免经理、财务主管人员，并根据经理提名任免副经

理等高级管理人员，决定其报酬和支付方法；

(十) 公司章程规定的其他职权。

公司的重要业务活动，除本规定或者公司章程规定应由股东大会决定外，均应由董事会决定或者董事会授权决定。

第七十七条 董事会开会时，董事因故不能出席的，可以书面委托全权代表，代理出席董事会会议。

第七十八条 董事会的决议，应由董事会过半数董事的同意方可作出。但本规定第六十七条各项所规定的事项，应由董事会三分之二以上董事的同意，方可作为董事会向股东大会提出的议案。

第七十九条 董事会会议应作成记录，并由出席会议的董事和记录员签字。

董事应依照董事会会议记录承担决策责任。董事会的决议违反本规定第七十五条规定，致使公司遭受损害的，参与决议的董事应以个人财产对公司负赔偿责任。但经证明曾表示异议的董事，可免除责任。

第三节 董 事 长

第八十条 董事会设董事长一人，必要时可设副董事长一至二人。董事长、副董事长由全体董事出席的董事会会议选举产生和罢免。

凡国家或者法人作为股东而实际控制的公司，董事长由代表国家或者法人的部门或者机构提名，经董事会选举产生。

第八十一条 董事会会议由董事长召集，并应于十五日前通知各董事出席。通知应书面载明召集事由。

遇有紧急事项时，经三分之一以上董事提议，可召开临时董事会会议。

第八十二条 董事长为公司法定代表人。

第八十三条 董事长行使下列职权：

- (一) 主持股东大会和董事会会议；
- (二) 检查董事会决议的实施情况，并向董事会报告；
- (三) 在董事会闭会期间，对公司的重要业务活动给予指导；
- (四) 签署公司股票和其他重要文件；
- (五) 在发生战争、特大自然灾害等紧急情况时，对公司事务行使特别裁决权，但此项权力的行使必须符合公司的利益，并在事后向董事会和股东大会报告。

副董事长协助董事长工作。

第四节 经 理

第八十四条 公司实行董事会领导下的经理负责制。设经理一人，必要时可设副经理若干人。经理由董事会任免。

凡国家或者法人作为股东而实际控制的公司，经理由代表

国家或者法人的部门或者机构提名，经董事会任免。

经理一般不得由董事长兼任。

第八十五条 本规定第七十二条关于董事的任职资格的规定，适用于经理、副经理。

第八十六条 经理依照公司章程或者经董事会授权行使下列职权：

（一）组织实施股东大会和董事会的决议，并向董事会报告工作；

（二）全面负责公司的日常行政、业务、财务管理工作；

（三）拟定公司的发展规划、年度生产经营计划和税后利润分配方案；

（四）任免和调配公司管理人员；

（五）决定对公司职工的录用、奖惩和辞退；

（六）代表公司对外处理重要业务；

（七）董事会授予的其他职权。

副经理协助经理工作。

第八十七条 经理行使职权时，不得变更股东大会和董事会的决议或者超越授权范围。

第八十八条 经理不得在公司之外从事与本公司有竞争或者损害本公司利益的活动。

第六章 监事会

第八十九条 公司设立监事会，对董事会及其成员和经理等管理人员行使监察职责。

监事会向股东大会以及职工大会负责并报告工作。

第九十条 监事会由监事组成，成员不得少于三人。

监事会成员的三分之一应为公司职工担任，由职工大会选举产生和罢免；其余成员由股东大会选举产生和罢免。

第九十一条 监事任期三年，可以连选连任。

监事不得兼任董事、经理及公司其他职务。

第九十二条 监事会行使下列职权：

(一) 列席董事会会议，监察董事和经理有无违反法律、法规和公司章程及股东大会决议的行为；

(二) 随时了解、调查公司业务状况，要求董事会和经理报告公司的业务情况；

(三) 检查公司财务、资产状况，查阅帐簿和会计资料；

(四) 核查董事会为提交股东大会而制作的资产负债表、损益表、营业报告和利润分配方案等财务资料；

(五) 建议召集或者在必要时召集股东临时会；

(六) 当董事和经理的行为与公司的利益有抵触时，代表公司与董事和经理交涉，或者对董事和经理提起诉讼。

第九十三条 监事会的决议，应由监事会三分之二以上监事的同意方可作出。

第九十四条 监事会行使职权时可聘请律师、注册会计师、审计师等专业人员协助工作，所需费用由公司承担。

第九十五条 监事因不认真履行监察职责，致使公司遭受损害的，以个人财产对公司负赔偿责任。

第七章 财务与会计

第一节 财务、会计制度

第九十六条 公司应当依照法律、法规和国家其他有关规定制订公司的财务与会计制度。

第九十七条 公司应当依照国家有关规定向财政、税务、证券管理等部门报送财务、会计报表。

第九十八条 公司应当在召开股东年会的三十日前，将公司的年度资产负债表、损益表以及营业报告、股息和红利分配方案等，备置于公司的住所，供股东和债权人查阅。

向社会公开发行股票的公司，应按规定公布各项报表和文件。

本条第一、二款所列各项报表和文件，须经中国的注册会计师验证。

第九十九条 公司的年利润必须全部公布，不得非法另立帐户、基金。

第一百条 公司应当依照法律、法规及国家其他有关规定缴纳各种税、费、基金。

第一百零一条 公司实现利润缴纳所得税后的盈余，应按下列顺序分配：

- (一) 提取公积金；
- (二) 提取公益金；
- (三) 支付优先股股息；
- (四) 支付普通股红利。

股息、红利不得在成本中列支。

第二节 公积金、公益金

第一百零二条 公司提取的公积金分为法定公积金和任意公积金。

法定公积金包括：

(一) 盈余公积金，按盈余的百分之十提取，但当其已达注册资本总额时可不再提取；

(二) 资本公积金，由下列资产构成：

- 1、股票超过面额发行所得的溢价额；
- 2、接受赠与的所得；

3、其他应列入资本公积金的款项。

任意公积金可按公司章程的规定或者股东大会的决议从盈余中另外提取。

第一百零三条 法定公积金的用途限于下列情况：

(一) 弥补亏损。公司弥补亏损时，应先使用其盈余公积金，仍有不足时，方可以其资本公积金补充。

(二) 转增资本。公司可以经股东大会决议，将法定公积金转增资本，按股东原有股份比例发给新股。但法定公积金转增资本时，以该项公积金超过注册资本总额的百分之五十的部分为限。

(三) 国家规定的其他用途。

第一百零四条 公司在弥补亏损和提取公积金、公益金前，不得分配股息、红利。

公司违反前款规定时，公司的债权人有权要求赔偿因此所受的损害。

第一百零五条 公益金用于公司职工的集体福利。

第三节 股息、红利分配

第一百零六条 公司无盈余时，不得分配股息、红利。但盈余公积金已超过注册资本总额的百分之五十的，公司为维持其股票信誉，经股东大会决议，可以其超过部分，按不超过一

年期银行储蓄存款利息的金额支付股息、红利。

第一百零七条 股息、红利应按各股东持有股份的比例进行分配。

国家作为公司的股东，其股息、红利由国有资产管理部門组织收取，并解缴国库。

第一百零八条 公司可以支付现金或者增发股份的方式分配股息、红利。

以增发股份的方式分配股息、红利的，应按本规定第六十七条的规定经股东大会通过。

第一百零九条 公司应当依照税务机关的规定代扣、代缴个人股息、红利收入的应纳税金。

第八章 合并与分立

第一节 合并、分立原则

第一百一十条 公司的合并与分立不得损害债权人的利益。

第一百一十一条 公司的合并与分立，应依照本规定第七十六条的规定，由董事会拟订合并或者分立方案，并依照本规定第六十七条的规定，经股东大会作出决议后，始得进行。

第一百一十二条 公司的合并与分立涉及发行或者变更股

票的，应事先征得证券主管机关的同意。

第二节 合 并

第一百一十三条 公司合并可以采取吸收合并或者新设合并的方式。

吸收合并，是指公司接纳一个或者数个其他公司（企业）加入，加入方解散，接纳方存续。

新设合并，是指两个以上的公司（企业）合并设立一个新的公司，原有各公司（企业）解散。

第一百一十四条 公司决定合并的，应即通知或者公告各债权人，自通知或者公告之日起九十日内债权人可提出异议。

债权人在规定期限内对公司合并提出异议的，公司应当清偿债务或者提供偿债担保。

第一百一十五条 公司合并前，应由合并各方签订合并协议。合并协议应当包括下列主要内容：

- （一）合并各方的名称、住所；
- （二）合并后存续公司或者新设公司的名称、住所；
- （三）合并各方的资产状况；
- （四）合并各方的债权、债务处理办法；
- （五）存续公司或者新设公司股份的总额、类别和数量；
- （六）合并的具体日期；

(七) 合并各方认为需要载明的其他事项。

第一百一十六条 存续公司或者新设公司全部继承因合并而解散的公司（企业）的债权、债务。

因合并而解散的公司（企业）不得隐匿债权、债务。

第一百一十七条 合并各方应于合并协议签订后向其行政主管部门提出合并申请，经同意后报送公司审批机构审批。经批准后，应在三十日内持下列文件向企业法人登记主管机关申请办理变更登记、设立登记或者注销登记，并同时向税务机关申报办理变更登记、重新登记或者注销登记：

- (一) 合并申请书；
- (二) 公司审批机构的批准文件；
- (三) 股东大会同意合并的决议；
- (四) 合并协议；
- (五) 存续公司或者新设公司的章程；
- (六) 证券主管机关同意发行股票或者变更股票的文件；
- (七) 需要提交的其他文件。

公司在完成前款手续后应进行公告。

第一百一十八条 公司与外国公司合并，应依照国家有关规定办理。

第三节 分 立

第一百一十九条 公司分立可以采取派生分立或者新设分立的方式。

派生分立，是指公司以其部分资产另设一个新的公司（企业），原公司存续。

新设分立，是指公司将其全部资产分别归入两个以上的新设公司（企业），原公司解散。

第一百二十条 公司决定分立的，应即通知或者公告各债权人，自通知或者公告之日起九十日内债权人可提出异议。

债权人在规定期限内对公司分立提出异议的，公司应当清偿债务或者提供偿债担保。

第一百二十一条 公司分立前，应由分立各方签订分立协议。分立协议应当包括下列主要内容：

- （一）原公司的名称、住所；
- （二）分立后存续公司或者新设公司的名称、住所；
- （三）原公司的资产状况；
- （四）分立后债权、债务的处理办法；
- （五）存续公司或者新设公司股份的总额、类别和数量；
- （六）分立的具体日期；
- （七）分立各方认为需要载明的其他事项。

第一百二十二条 存续公司或者新设公司（企业）按照分立协议分担原公司的债权、债务，但对原公司的债权人负清偿债务的连带责任。

第一百二十三条 公司应于分立协议签订后向其行政主管部门提出申请，经同意后报送公司审批机构审批。经批准后，应在三十日内持下列文件向企业法人登记主管机关申请办理变更登记、设立登记或者注销登记，并同时向税务机关申报办理变更登记、重新登记或者注销登记：

- （一）分立申请书；
- （二）公司审批机构的批准文件；
- （三）股东大会同意分立的决议；
- （四）分立协议；
- （五）存续公司或者新设公司的章程；
- （六）证券主管机关同意发行股票或者变更股票的文件；
- （七）需要提交的其他文件。

公司在完成前款手续后应进行公告。

第九章 章程修改

第一节 修改原因

第一百二十四条 公司可根据需要修改其章程。

第一百二十五条 公司如作下列变动之一时，即构成对公司章程的修改：

- （一）更改公司名称；
- （二）更改、扩大或者缩小公司的经营范围；
- （三）增加或者减少公司发行的任何类别股份的总量；
- （四）更改公司全部或者部分股份类别，以及更改全部或者任何部分的优先权；
- （五）增设新的股份类别；
- （六）增设或者取消可转换证券；
- （七）改变股票面额；
- （八）其他公司章程条款的变更。

第二节 修改程序

第一百二十六条 修改公司章程，应按下述程序进行：

- （一）由董事会拟订修改公司章程的议案；
- （二）由股东大会通过修改公司章程的决议；
- （三）修改后的公司章程经行政主管部门同意后，报送公司审批机构审批；
- （四）将经批准的公司章程报送企业法人登记主管机关备案。

有外商投资的公司，在将修改后的公司章程报送公司审批

机构以前，应征得主管外商投资的机关的同意。

修改公司章程，如变更名称、住所、经营范围及注册资本等事项的，应向企业法人登记主管机关申请办理变更登记。

第一百二十七条 公司因减资而修改章程的，须在修改公司章程的决议中规定减资方法。

第一百二十八条 公司章程修改完毕后，公司应当通知或者通告股东。

修改公司章程，如变更名称、住所、经营范围及注册资本等事项的，应予以公告。

第十章 终止与清算

第一节 终止原因

第一百二十九条 公司如有以下情形之一的，应予终止并进行清算：

- (一) 公司章程规定的解散事由；
- (二) 公司据以设立的宗旨业已完成，或无法实现；
- (三) 股东大会决定解散公司；
- (四) 违反国家法律、法规，危害社会公共利益被依法撤销；
- (五) 宣告破产。

第二节 普通清算

第一百三十条 公司根据本规定第一百二十九条第一、二、三项的规定终止的，董事会应将公司终止事宜通知各股东，并召开股东大会，确定清算组织人选，通知债务人和已知的债权人，同时发布终止公告。

公司应于终止公告发布之后十五日内成立清算组织。

清算组织应当有债权人代表参加。

第一百三十一条 债权人应当在收到通知后三十日内，未收到通知的债权人应当自公告之日起九十日内，向清算组织申报债权。

债权人未在前款规定的期限内申报债权的，不列入清算之列。但债权人为公司明知而未通知者，不在此限。

第一百三十二条 清算组织履行以下职责：

- (一) 清理公司财产，编制资产负债表和财产目录；
- (二) 处理公司未了结的业务；
- (三) 追收公司债权；
- (四) 结缴纳税事宜；
- (五) 偿还公司债务，遣散公司从业人员；
- (六) 处分公司剩余财产；
- (七) 代表公司进行民事诉讼活动。

第一百三十三条 公司进行清算后,不得再从事经营活动。任何人未经清算组织批准,不得处分公司财产。

第一百三十四条 清算组织在发现公司财产不足以清偿债务时,应立即停止清算,并依法向人民法院申请宣告破产。

公司经人民法院裁定宣告进入破产还债程序后,清算组织应向人民法院移交清算事务。

第一百三十五条 公司财产优先拨付清算费用后,清算组织应按照下列顺序清偿:

(一) 所欠职工工资和社会保险费用;

(二) 所欠税款和法律、法规规定应予缴纳的税款附加、基金等;

(三) 其他债务。

第一百三十六条 公司清偿后,清算组织应当将剩余财产偿还、分配给股东。偿还、分配顺序是:

(一) 对优先股的股东按所持股票面额偿还股金;如不能足额偿还的,按股东所持股份的比例分配。

(二) 对普通股的股东按所持股份的比例分配。

第一百三十七条 清算结束后,清算组织应提出清算报告,并编制清算期间收支报表和各种财务帐册,经注册会计师验证,报公司审批机构批准后,向企业法人登记主管机关和税务机关办理注销登记,并公告公司终止。

第三节 破产清算

第一百三十八条 公司根据本规定第一百二十九条第五项的规定终止的，以及根据同条第一、二、三项的规定终止时出现本规定第一百三十四条规定的情形的，依照《中华人民共和国民事诉讼法》的有关规定处理。

第十一章 附 则

第一百三十九条 有外商投资的公司，凡外商投资的股份占公司股份总额百分之二十五以上的，可以享受中外合资经营企业的优惠待遇。

第一百四十条 本规定颁布前已经设立的公司，应自本规定实施之日起六个月内，根据本规定检查其公司章程及其他有关制度，并作必要的修订。

第一百四十一条 本市各有关主管部门，可以根据本规定制订实施办法或者实施细则，报市人民政府批准后实施。

第一百四十二条 本规定的具体应用问题由公司审批机构负责解释。

公司审批机构由市人民政府另行确定。

第一百四十三条 本规定自一九九二年六月一日起施行。

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m.

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

PRIVATISATION WITH CHINESE CHARACTERISTICS
B SHARES FOR FOREIGN INVESTORS

Stuart Valentine

Clifford Chance

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A SYMPOSIUM ON LEGAL ASPECTS OF THE SECURITIES MARKET IN CHINA

Privatisation with Chinese Characteristics

B Shares for Foreign Investors

Stuart Valentine
Clifford Chance
2 June 1992

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Privatisation with Chinese Characteristics

B Shares for Foreign Investors

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1. Introduction

No one can deny that China has come a long way since the decision was made at the end of 1978 to allow direct foreign participation in its economy (1). Today, talk of private enterprises, a real estate market and stock markets are not theoretical possibilities but the stuff of actual commercial transactions. When considering such matters, however, one must remember that first appearances can be deceptive (2) and that despite such developments, China is still a centrally planned economy with an inconvertible currency, and that it is led by a communist party which is committed to managed economic reform on the precondition of maintaining its uncompromising political control over the nation.

Nor should it be forgotten that the stock markets in China are of an experimental nature - indeed the very conversion of existing enterprises (be they state-owned, collectively-owned or foreign-invested) into companies limited by shares is also regarded as an experiment and strictly controlled (3). According to press reports (4), there were only 3,220 companies limited by shares in China in mid 1992. This compares with over 800,000 state-owned enterprises, over 3.3 million collective enterprises (5) and 37,000 foreign-invested enterprises (6). Experiments in converting enterprises into companies limited by shares began in the mid 1980s, and the vast majority of the shares in these companies are held by their own employees, other selected state enterprises and the state (7). Only a small number of shares have been issued to the public, and as of the date of writing, the shares of less than 30 companies

were listed for trading on the two officially sanctioned stock exchanges of Shanghai and Shenzhen.

Foreign investment in Chinese shares is even further limited to special shares designated as "B shares" (8). As of the date of writing, only one B share is available for foreign investors on the Shanghai Stock Exchange and six B shares on the Shenzhen Stock Exchange (9). Despite the current limited availability of B shares, their introduction represents the most significant development in the utilisation of foreign capital since the decisions to accept foreign direct investment and international commercial and subsidised loans. Through B shares, China will be able to tap the international flow of funds which seek only a financial involvement in national equity markets.

From the point of view of the Chinese state, privatisation offers a number of advantages, such as:

- a) increasing control over the economy by directing what are considered to be large amounts of domestic funds outside the official banking system (so-called "mattress money") into regulated stock markets;
- b) promoting efficiency by requiring independent audits and subjecting management to shareholder scrutiny;
- c) enabling the state to recover its initial investment in industry and re-direct its resources to other areas of the economy;
- d) spreading the burden of raising investment funds and bearing commercial risk from the state to shareholders;
- e) reducing the costs of financing (equity financing is generally cheaper than borrowing from domestic or foreign banks); and

- f) expanding the utilisation of foreign capital from traditional sources of foreign direct investment and commercial and subsidised lending to those funds which are only available for investing in international securities markets with a reasonable degree of liquidity.

Despite these advantages for the state and the tremendous demand by both domestic and foreign capital for shares in Chinese companies, it is unlikely that the strict controls on the development of the securities industry in China will be released to any significant degree in the near future. There are certain to be more A and B shares listed in Shanghai and Shenzhen during the course of 1992 to facilitate the development of a more orderly market (10). But the stock markets are still seen as experimental and there is a very real concern that too fast a place of development will contribute to an overheating of the economy such as that experienced in 1988 (11).

2. B shares and foreign investment

2.1 Existing vehicles for foreign investment

B shares offer foreign investors, whether they be individuals, industrial and commercial companies or fund managers, the opportunity to invest in China's rapidly growing economy without having to provide management expertise or technology or assume responsibility for raising debt finance which is required when investment is made in the form of foreign direct investment.

Before looking at the characteristics of Chinese companies which offer B shares, it may be useful to briefly review the existing vehicles for foreign investment in China (12). Basically, there are three forms of legal entities which may be established by foreign investors and a wide variety of contractual arrangements which may be concluded by foreign investors which do not involve the creation of a separate legal entities in China. All of these forms of investment are what is known as "foreign direct

investment" as they involve the direct participation of the foreign investor in the new legal entity or business arrangement which is established in China.

The three forms of legal entities which may be established are as follows:

- a) equity joint ventures (these are limited liability companies with a minimum of 25% investment by the foreign investor)
- b) cooperative joint ventures (these may be established either as a separate legal entity with limited liability or as a pure contractual arrangement)
- c) wholly foreign-owned enterprises (these are wholly-owned subsidiaries of foreign investors)

Each of these three forms of investment vehicles are subject to minimum levels of registered capital, but the registered capital is not divided into shares. Transfer of all or part of a foreign investor's interest requires the consent of the Chinese party (in respect of a and b) and approval by the Chinese foreign investment authorities.

In addition, there are a variety of contractual arrangements by which foreign investors may directly participate in China's economy but which do not involve the creation of a separate legal entity. Such arrangements may take a number of forms, the most common of which are:

- a) joint exploitation of oil and other natural resources (with product sharing arrangements)
- b) processing and assembly
- c) compensation trade

- d) operation of service centres (for mechanical and electronic equipment)
- e) management of hotels and industrial projects
- f) participation in construction projects as contractors or sub-contractors

Funding of foreign direct investment projects in China is typically undertaken by the foreign investor itself with the support of bank funding. Some use has been made of international equity markets, particularly in Hong Kong, to supplement the sources of funding. A number of funds have been established (13) with the aim of injecting equity capital into new or existing equity joint ventures, cooperative joint ventures or wholly foreign-owned enterprises in China with a view of participating in the profits of such entities. Special purpose vehicles have also been established outside China to raise finance for a particular project by placing shares with private investors. Some multi-lateral financial institutions, such as the International Finance Corporation, have also taken direct equity stakes in Chinese projects (14). However, it is only with the advent of B shares that broad participation in China's economy by foreign individuals corporate investors and international fund managers has been made possible. As a result, there has been a rush to establish so-called "B share funds" in 1992 to take advantage of the situation (15).

2.2 Foreign investment in companies limited by shares

- a) Legal framework

The first experiments in establishing companies limited by shares were conducted on the basis of policy decisions of the communist party and the government in 1984 (16). There was no published legal framework for the first collective enterprises and state enterprises converted into companies limited by shares which were

established in certain cities chosen to experiment with various economic reform measures.

In 1986, Guangdong adopted the first piece of legislation governing the issue of shares and bonds by Chinese entities (17), and Shanghai adopted similar legislation a year later (18). Experiments in converting state enterprises into companies limited by shares were conducted in Shenzhen pursuant to local administrative provisions (19), and Guangdong adopted legislation allowing for the establishment of limited liability shareholding companies with Chinese and foreign investment in the Special Economic Zones of Guangdong province (Shenzhen, Zhuhai and Shantou) in 1986 (20). However, a notice issued by the State Council in early 1987 (21) severely curtailed the raising of finance by issuing shares - with a few exceptions state enterprises were prohibited from doing so, and it was restricted to a small number of approved collective enterprises. These restrictions were reinforced by the economic austerity measures introduced in late 1988 and 1989 to reimpose central control over China's overheated economy (22).

In typical Chinese fashion, the share markets in Shanghai and Shenzhen developed apace in 1990 without the benefit of a comprehensive legislative framework spelling out the exact nature of companies limited by shares and the rights and obligations of shareholders. Rules were adopted however on the trading of securities and control of securities brokers (23). In December 1990 centralised stock exchanges were opened in Shenzhen (unofficially) (24) and Shanghai (officially) (25).

Although some shares had been issued to foreign corporations, there were no generally applicable guidelines as to how such shareholders could remit overseas the proceeds of share transfers and dividends

(which would be denominated in renminbi) (26). During 1991, this question was resolved by the acceptance of the concept of issuing a special class of shares exclusively for foreign investors - these came to be known as "B shares". On the eve of execution of underwriting agreements for B shares issued by one Shanghai company and 11 Shenzhen companies, the Shanghai and Shenzhen branches of the People's Bank of China (the authority-in-charge of the Chinese securities market) issued locally applicable regulations on the issue and trading of B shares (27).

Clear guidance as to the nature of companies limited by shares was finally provided in Shenzhen in March 1992 with the issue of local administrative provisions governing such companies (the "Shenzhen Company Provisions") (28). This is a quite substantial piece of legislation consisting of 188 articles and addressing such matters as the procedures for establishment of companies limited by shares, conversion of existing enterprises into companies limited by shares, foreign investment in companies limited by shares, types of shares and the rights and duties attaching to them, the functions of the various management organisations, merger and termination. As at the time of writing, no other comparable regulations exist on a national level or in any other locality (although Shanghai has a well advanced draft of comparable company law regulations (29)).

b) Characteristics

Despite the absence of national legislation, the local rules and regulations cited above provide a fairly coherent concept of a Chinese company limited by shares. The main characteristics of such a company are as follows:

i) Independent legal person status

A company limited by shares will be registered at the State Administration of Industry and Commerce as an independent legal person. Its primary constitutional documents will be its business licence and articles of association (which are sometimes supplemented by detailed implementing rules). If it was established by way of conversion of a state enterprise, collective enterprise, equity joint venture or other entity, it will assume all the assets and liabilities of its predecessor (30).

ii) Limited liability

A company's business licence will state that it is a "limited liability company". The concept of "limited liability" entails two elements. Firstly, the liability of a company towards its creditors is limited to the amount of its assets (31), and secondly that the liability of its shareholders is limited to the payment of the price for shares to which they have subscribed (32).

iii) Division of registered capital into shares

The registered capital of such a company is divided into shares. These may be of different classes. The Shenzhen Company Provisions allow for ordinary shares and preference shares (33). All shares are registered, there is no provision for bearer shares (34). Ordinary shares are divided into shares that may only be issued to and traded among Chinese citizens and entities (known as "A shares"), and shares that may only be issued to and traded among foreign (or Hong Kong, Macau and Taiwanese) citizens and entities (known as "B shares") (35). There are basically three different types of ordinary A shares:

- State shares

When a state enterprise is converted into a company limited by shares its assets must be revalued (36), and the net asset value is converted into a corresponding nominal value of shares (37). According to the Shenzhen Company Provisions, companies that have a "key bearing on national economic planning and people's livelihood" must have a majority of state shares, but there is no minimum ratio for state shares in other companies (38). There is no definition of what constitutes a company that has "a key bearing on national economic planning and people's livelihood". State shares are held by a specially designated state agency.

- Legal person shares

These shares may be subscribed to and traded among enterprises and other Chinese entities which qualify as "legal persons" (39). Such shares may be privately placed with selected entities or may be issued publicly.

- Natural person shares

These shares may be subscribed to and traded among Chinese citizens. Normally, a certain percentage of shares are reserved for a company's staff and workers. The Shenzhen Company Provisions limit the size of an individual's shareholding in a company to 0.5% of the total share capital (40).

iv) B shares

Officially known as "special renminbi shares", B shares are designated as ordinary shares with the same rights

and obligations as A shares (41). However, B shares may only be issued to and traded among foreign (or Hong Kong, Macau and Taiwanese) citizens and entities (see section 3.3 (a) below). Further, B shares can only be subscribed for and traded in foreign exchange, although their par value and quoted price are expressed in Renminbi. The subscription and trading prices are calculated in foreign exchange according to prices quoted on the foreign exchange adjustment centres of Shanghai or, as the case may be, Shenzhen (42). The time of determination of the particular rate differs between Shanghai and Shenzhen (43). Special procedures have been established whereby foreign investors must deal through recognised foreign securities brokers who in turn must deal through authorised Chinese securities brokers for trading in B shares (44).

Dividends are declared in Renminbi, and for the purposes of distribution to holders of B shares the Renminbi value is converted in the manner referred to above for remittance out of China (45).

A single foreign investor may not purchase more than 5% of the total shares in a Chinese company without obtaining the approval of the People's Bank of China (46). When the amount of B shares issued by a company exceeds 25% of the registered capital of the company, it is able to be treated for tax, accounting and other purposes as a Sino-foreign equity joint venture (47).

v) Management and decision-making

The structure of management and decision-making are set out in the articles of association of companies limited by shares (48). The shareholders' general meeting is the highest organ of authority (49). However, the right to attend shareholders' general meetings is generally restricted in articles of association to holders of a minimum number of shares. One company in Shenzhen, for

example, has adopted 20,000 shares as a minimum, whereas another in Shanghai has adopted 30,000 (50). The main decision-making organ of a Chinese company limited by shares is the board of directors whose members are elected and removed by the shareholders' general meeting. The chairman of the board of directors is expressed to be the "legal representative" of the company, who is able to bind the company in dealings with other parties. The precise scope of authority and responsibility of legal representatives is a matter not entirely clear yet in China. The Shenzhen Company Provisions (51) and all articles of association for listed companies seen by the author provide for the appointment of a supervisory committee by the shareholders' general meeting whose main function is to supervise the work of the board of directors. Day-to-day management is in the hands of a general manager. Although articles of association generally list the functions of the supervisory committee, board of directors and general manager, they are expressed in general terms and there is a degree of overlap. Such overlap has caused problems in a number of joint ventures, and Chinese law will have to develop a clearer demarcation of powers and responsibilities between these different positions.

c) Establishment

Until now, all companies limited by shares with B shares listed on the Shenzhen and Shanghai Stock Exchanges have been established by way of converting existing state enterprises or Sino-foreign equity joint ventures into companies limited by shares. It is also possible for a group of promoters to incorporate a new company limited by shares which does not take over the business of an existing enterprise (52). While policy considerations may discourage the conversion of private enterprises or wholly foreign-owned enterprises into companies limited

by shares at this stage, there is theoretically no reason why such companies should not be converted into companies limited by shares in the future. The same is true for Sino-foreign cooperative joint ventures and joint operations between the domestic companies ("lianying") provided that they satisfy the relevant requirements of local company law and, if listing is contemplated, the stock exchange (53).

When a company limited by shares is established, it may issue only A shares or both A shares and B shares. Other than companies which "have a key bearing on national economic planning and people's livelihood" (54), there is no prescribed minimum or maximum level of B shares that can be issued to foreign investors. However, where an equity joint venture is converted into a company limited by shares or where a company wishes to qualify for the tax and other benefits enjoyed by foreign-invested enterprises, the percentage of registered capital represented by B shares after the issue must be at least 25% (55).

Most foreign investors will only be interested in subscribing for a Chinese company's B shares if those shares are readily disposable. In other words, the issue of B shares by a company will almost always entail the listing of those shares on a stock exchange, unless they are issued for the purpose of a private placement in the nature of foreign direct investment.

In order to establish a company limited by shares, issue B shares and list a company's shares, many approvals are required. The main ones are as follows:

- i) department-in-charge

- this is the government authority directly responsible for supervising the operations of the existing enterprise
- ii) local government
- this approval is required for the conversion of an existing enterprise into a shareholding entity, and may require referral to the local Commission on Reform of the Economic Structure, Economic Commission, Share Coordination Working Group, and General Office)
- iii) local Commission on Foreign Economic Relations and Trade
- approval from this body (or the local Foreign Investment Commission) is required for utilising foreign funds by the issue of B shares
- iv) People's Bank of China
- the local branch of the People's Bank of China must firstly approve the issue of A shares and B shares, and secondly approve the plans for listing the shares
- v) stock exchange
- the Shenzhen or Shanghai Stock Exchange must give approval for the listing of shares

In addition, a variety of other approvals may be required in relation to taxation, accounting and so on. The company will need to be registered as a new company limited by shares at the State Administration of Industry and Commerce, and plans for obtaining foreign exchange by swapping Renminbi at foreign exchange

adjustment centres will need to be approved by the State Administration of Exchange Control.

One of the main criteria in approving the issue of B shares is that the company involved has a stable, long term source of foreign exchange income in order to meet payments of dividends in foreign exchange (56). Although it is possible to swap Renminbi for foreign exchange at local foreign exchange adjustment centres for certain purposes, including the payment of dividends, it is unlikely that approval would be given for the issue of B shares by a company which does not have significant recurrent foreign exchange earnings.

3. Tapping the international financial markets

3.1 Documentation and verification

(a) Generally

Perhaps the most difficult aspect of preparing a Chinese company for issuing B shares to overseas investors is obtaining and verifying information about the company's business. This has been a real learning experience for many merchant bankers! Companies are reluctant to disclose quite basic information about the structure of group operations or number of staff, let alone details of indebtedness, disputed government charges or threatened litigation or arbitration.

This reluctance stems partly from a general obsession with secrecy and distrust of foreigners that China cultivated during the 1950s, 1960s and 1970s, but which dates from well before 1949. Prior to the introduction of economic reforms in 1978 it was almost impossible to separate the state from industry and commerce, with the result that matters of commercial confidence became state secrets (57). Even today, much of the regulatory

regime governing foreign business in China is contained in internal ("neibu") documents that are not accessible to the very people they regulate!

Even though the officers of a company may accept the need to disclose information, other relevant authorities may not. As an illustration, the local public security bureau intervened in one case to stop a company that planned to issue B shares from revealing certain relevant financial information to the international accountants!

The difficulty in obtaining information is also partly attributable to outmoded methods of record keeping, a reluctance to disturb the status quo (however ambiguous its legal basis) by insisting on answers to difficult questions, and genuine concerns over commercial confidence.

While Chinese entities have been subjected to supervision and interference by state authorities for decades, they are not used to scrutiny by independent accountants, foreign bankers, shareholders or, heaven forbid, the public! Allowing Chinese companies limited by shares to issue B shares to foreign investors has necessarily introduced concepts of disclosure, verification and accountability to which Chinese enterprises and managers would not otherwise have been exposed.

(b) Financial statements

Because of the differences between Chinese and international accounting practices (58), international investors and underwriters require international accountants to review the books of Chinese companies that issue B shares. Some joint ventures preparing for listing have already had their accounts audited by

international accountants for several years. However, in the case of state enterprises, their accounts are prepared and audited internally, and supervised by superior government authorities. Even where an enterprise's accounts have been audited by an independent firm of Chinese accountants, the accounts will need to be restated by international accountants to accord with international accounting standards. In such circumstances, it is common for only the most recent financial year to be audited by the international accountants, but for them to review the previous years' accounts and restate them in accordance with international standards.

(c) Underwriting arrangements

The documentation of underwriting arrangements between foreign and Chinese underwriters and Chinese companies varies from case to case. The process of obtaining a mandate appears to be governed by no rules and is subject to frantic bargaining between the company and potential underwriters.

In some cases a letter of intent is signed first but, as a non-binding document, it is little more than a confidence building measure between the company and the underwriters. It may also serve to clarify some of the legal and commercial issues that must be addressed at a later stage.

In Shanghai, the lead underwriter must be a Chinese securities institution (59), but in fact a foreign securities institution will be responsible for instructing international accountants and lawyers, preparing the marketing document, and otherwise coordinating the international offer of B shares. Shenzhen takes a more practical approach, and there foreign underwriters commonly act as lead underwriters

in name as well as in fact. As a result of Shanghai's requirement that the lead underwriter must be Chinese, there will be two underwriting agreements in Shanghai:- the first will be an initial agreement between the Chinese lead underwriter and the company (which may only be one and a half pages long), and the second will be an underwriting agreement drafted by international lawyers between the company and the underwriters. It is usual practice for the Chinese lead underwriter to sign this agreement on its own behalf and its agent for the international underwriters (who will have determined and negotiated its terms and conditions). In Shenzhen, there is only need to have one underwriting agreement between the company and the underwriters.

Despite the overall supervision of the People's Bank of China over the underwriting process, the solutions found in respect of some of the most controversial issues negotiated in underwriting agreements differ from case to case, and in particular are quite different in Shanghai and Shenzhen. Such issues include:

- . parties
- . pricing and payment formulae
- . conditions precedent
- . force majeure
- . governing law
- . dispute settlement

(d) Marketing documents

While some Chinese B shares have been placed by underwriters in Hong Kong without the support of any marketing document (other than circulars prepared by brokers), an information memorandum or other marketing document is normally prepared by the international underwriters with assistance from the international accountants and lawyers. The general structure of the

information memorandum will not be unfamiliar to merchant bankers in Hong Kong and will commonly include the following types of information:

- . responsibility statement
- . summary
- . definitions
- . parties involved
- . conditions of the offer
- . description of share capital
- . indebtedness statement
- . particulars of the group
- . information on the industry
- . constitution of the company and Chinese company law
- . details of trading on the Shenzhen/Shanghai stock exchange
- . international accountants report
- . profit forecast
- . general information

(e) Other documents

There are a number of other documents that may need to be prepared, such as an agreement between the underwriters themselves as to the sharing of commission, payment of professional expenses and documentation costs. Because of the People's Bank of China requirement that all B shares must be registered through an approved foreign broker (which will usually be different to the foreign underwriters), an agreement will need to be reached with one or more of those brokers. In some cases this has been an informal arrangement, in others it has taken the form of a sub-underwriting agreement. Customer agreements will also need to be reviewed to confirm whether they are appropriate for Chinese B share issues.

(f) Verification

The difficulty of obtaining information from Chinese companies has been noted above. Verification can be even more difficult! This is where local Chinese lawyers can provide invaluable assistance. Chinese lawyers should be able to verify a whole range of issues, including title to land use rights, buildings and other assets, the status of approvals, registration of loans and guarantees, and the effect of internal directives not available for inspection by foreigners. Selection of the right lawyer is crucial as the standard of services offered by law offices in China can vary greatly. The issue of a satisfactory legal opinion by the underwriters' Chinese lawyers in respect of the B share offer is invariably a condition precedent to the underwriting agreement.

3.3 Marketing B shares

(a) Chinese restrictions regarding investors

According to both the Shanghai and Shenzhen legislation on B shares (61), B shares may only be subscribed by and traded among overseas investors. Overseas investors are defined as (i) foreign legal and natural persons, (ii) Hong Kong, Macau and Taiwanese legal and natural persons, and (iii) others approved by the authority-in-charge (i.e. People's Bank of China).

The first category of investors includes individuals with non-Chinese passports and companies corporated outside China. It would not include wholly foreign-owned enterprises established in China by foreign investors, but would include Chinese-invested companies established in Hong Kong.

The second category has been included for political and practical reasons - Hong Kong, Macau and Taiwan are considered as part of China and thus do not qualify for

the "foreign" qualification of the first category, however individuals and companies in Hong Kong and Taiwan are likely to be one of the major sources for investment in B shares. It is not clear whether a Chinese passport holder resident in Hong Kong would qualify in this category.

The third category reflects a very common catch-all provision in Chinese legislation, as it allows the authority-in-charge (the People's Bank of China) to give permission on a case by case basis or to particular categories of investors that do not fall within the first two categories. For example, if a Chinese underwriter was not able to sell all B shares assigned to it under an underwriting agreement, it would need permission of the People's Bank of China to purchase them in its own name (as it does not qualify under the first or second categories) (62).

(b) Selling restrictions in overseas jurisdictions

It is likely that the main demand for Chinese B shares will be in those jurisdictions from which the bulk of foreign direct investment in China has originated over the past decade. The main target jurisdictions for marketing B shares are therefore likely to be Hong Kong, the United States, Japan, the European Community, Taiwan, Singapore and other South East Asian nations with large Chinese communities. Each of these jurisdictions will have its own particular restrictions on marketing foreign securities.

Hong Kong has played a special role in foreign direct investment in China. Over 60% of such investment has originated from Hong Kong, and its share exceeds 80% in the case of Shenzhen and Guangdong (63). In respect of B shares, Hong Kong is likely to play an even more important role. Almost all merchant bankers, securities

brokers, accountants and lawyers involved in Chinese B shares have worked through their Hong Kong offices. International funds which will invest in B shares are likely to be channelled through Hong Kong given its lack of foreign exchange controls, the efficiency of its banking and business infra-structure and the support services which have already been established there in respect of B shares. Hong Kong also has the advantage of being a bilingual Chinese and English business community, located close to Shanghai and Shenzhen in the same time zone.

It is therefore extremely likely that international underwriters will seek to market B shares through Hong Kong, if not to Hong Kong institutions then through the Hong Kong offices of international institutions. This has indeed largely been the case to date. It may therefore be worthwhile to consider for a moment the marketing restrictions that exist in Hong Kong and which will apply to the marketing of B shares.

A document offering securities to the public in Hong Kong is treated as a "prospectus" that must comply with the requirements of the Hong Kong Companies Ordinance and be registered with the Registrar of Companies in Hong Kong (64). These requirements are very strict, and there are differing views as to whether it would indeed be possible to prepare a prospectus for a Chinese company which complied with those requirements. At this stage, it is still an open question.

The Company's Ordinance does, however, contain an important exception in respect of companies incorporated outside Hong Kong where the offer is limited to "professional investors" (i.e. persons whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent) (65). It should be noted that the definition of "professional investors" is

very narrow and would not cover high net-worth individuals or the typical commercial or industrial companies with funds to invest. Because the demand among "professional investors" in Hong Kong for B shares has far outstripped supply, underwriters have not been under any pressure to offer B shares more widely and have generally relied on marketing under this "professional investor" exception.

B shares will soon be marketed in Hong Kong by way of collective investment schemes such as unit trusts. A number of these funds have already been announced (67), and at least one has been authorised by Hong Kong's Securities and Futures Commission (68). These funds are likely to remain a major source of "professional investor" subscribers for B shares for some time to come and, through the funds, will allow individuals to participate in B shares.

A number of private funds have already been actively investing in Chinese joint ventures for several years (69), and some of these have expressed the intention of directing a portion of their available funds into B shares. One such fund, China Assets (Holdings) Ltd., which was established in 1992 with the purpose of investing in Chinese companies in order to prepare them for going public, has already been listed on the Hong Kong Stock Exchange (70).

Well before it became possible to invest in B shares, investors were able to buy a number of shares which were essentially China risk on the Hong Kong Stock Exchange. Although these companies are incorporated in Hong Kong (or a jurisdiction of convenience such as the British Virgin Islands) and have their management located in Hong Kong, all or a substantial portion of their assets and production facilities are located in China. Almost all of these are export orientated (71).

Officials of the Hong Kong Stock Exchange have publicly stated their view that the Exchange has an important strategic role to play in raising capital for securities markets within China (72). A China Study Group has been established to investigate the possibility of listing Chinese companies in Hong Kong. Now that China has clearly adopted the concept of B shares to facilitate foreign investment in Chinese companies, there is a strong possibility that the Hong Kong Stock Exchange will develop a regulatory regime to allow the listing of B shares in Hong Kong.

4. Investment risks

International underwriters of B shares are not particularly concerned with long-term risks of investing in B shares. So long as they can sell all the B shares which they have underwritten and have adequately protected themselves in the marketing documentation (by way of bold warnings as to the risks of investing in B shares), they need not concern themselves further about the longer term risks. Investors take a different view of course. They will be primarily concerned with the marketability of their investments but will also consider carefully the risks involved in subscribing to B shares.

The risks faced by investors in B shares could be considered of two types: "external" and "internal". "External" risks are the types of risks which exist in the political, economic, legal and regulatory environment in which the company operates. "Internal" risks are those which are directly associated with the company (including standards of management, accuracy of accounts and the rights of shareholders set out in the company's constitutional documents).

4.1 "External" risks

(a) Political and economic

Not only have political changes in China over the past 15 years been accompanied by direct economic consequences (73), but even the rumours of power struggles in Beijing have directly affected the Hong Kong share market and can be expected to affect Chinese share markets in the future. Despite the introduction of a number of market mechanisms into the Chinese economy, central planning and the state sector still dominate the economy, which gives the central government tremendous power to intervene in particular sectors of the economy and to accelerate or decelerate economic growth (74).

(b) Legal

As pointed out in Section 2.2 above, China's legal framework in respect of companies limited by shares and securities is still in the early stages of development. There are no national companies or securities laws, and all local legislation in Shenzhen and Shanghai concerning securities is very new and untested. While more legislation can be expected in this area in the near future, there is no guarantee that it will contain provisions protective of the position of minority B shareholders. Chinese law tends to implement the policy of the state and the communist party rather than provide legal recourse for individuals or minorities.

(c) Regulatory

The authority-in-charge of the Chinese securities markets, the People's Bank of China, is an unknown quantity when it comes to the regulation of securities. Many observers have been surprised by the very different attitude of the Shanghai and Shenzhen branches of the People's Bank of China. Traditionally, Chinese government organs such as the Peoples' Bank of China have not hesitated to intervene in commercial matters,

and if its recent actions in respect of the first joint venture whose A shares were listed in Shenzhen, Champaign Industrial Co., Ltd., is anything to go by, we can expect an activist regulatory authority in China (75).

(d) Market

Currently, it is difficult to describe the B share markets in Shanghai and Shenzhen as true "markets" because there are so few B shares available for trading (only one in Shanghai) and demand outstrips supply by such a huge margin and because intervention by the regulatory authorities has had such a major effect on prices. Prices of B shares on the Shenzhen Stock Exchange rose by over 40% in one week in early 1992 following the publication in the national press of encouraging comments by Deng Xiaoping on economic reform (76). In May 1992, the Shanghai share price index doubled in one day following the lifting of limits on the allowed daily price fluctuation of A shares, and later dropped 20% in two days after "collective investment schemes" were banned by the People's Bank of China (77). In such circumstances it is difficult to see a "market" in the true sense of the word developing for B shares in the next year or so.

(e) Taxation

Chinese income tax laws apply to specific types of enterprises. One law applies to foreign invested enterprises (78), another to private enterprises (79), another to state enterprises (80), and so on. No income tax law has been adopted in respect of companies limited by shares. Senior officials of the State Tax Bureau have stated publicly (81) that the income tax rates of companies limited by shares will remain the same as those imposed on their predecessor enterprises, unless

there is a change in status to or from that of a foreign invested enterprise (i.e. one in which 25% or more of the registered capital is comprised of foreign investment). Therefore, a company limited by shares established by way of conversion from a state enterprise will be subject to a 55% income tax rate if B shares comprise less than 25% of its registered capital, whereas if B shares comprise more than 25% of its registered capital it will be taxed at the standard national rate for foreign invested enterprises of 30% (which may be reduced to 24%, 15% or 10% depending upon its location and the nature of its operations).

Chinese income tax laws clearly provide for the taxation of dividends and other income such as capital gains earned by non-resident foreign companies and individuals within China (82). However, senior officials of the State Tax Bureau have stated that such income will not be subject to tax for the time being (83). Such statements should be treated with caution as they are not consistent with the text of Chinese tax legislation and B shares are still considered very much as an experiment and it is open to the Chinese tax authorities to change their policy on this matter at any time.

What is clear, however, is that stamp duty will be levied on each party to the transfer of shares at the rate of 0.3% of the transfer price (84).

(f) Foreign exchange

The Chinese currency, the Renminbi, is not freely convertible and investors in B shares will rely upon the ability of the companies in which they invest to generate foreign exchange in order to pay dividends. Although it has been suggested that companies which have issued B shares will be able to use the foreign exchange adjustment centres (the so-called "swap centres") in

Shenzhen and Shanghai to convert Renminbi into foreign exchange for dividend remittance purposes, this is clearly not the policy of the People's Bank of China, and if there was a shortage of foreign exchange on these swap centres in the future, there is no guarantee that it would be possible to convert Renminbi dividends into foreign exchange for remittance overseas.

(g) Insolvency

Despite the existence of various laws that address insolvency at the national and local levels (85), China's record in handling insolvency leaves much to be desired. Far from being an orderly winding-up of the affairs of the enterprise, foreign investors have been confronted with long delays and difficulties in persuading the Chinese authorities to require a liquidation and distribution of the assets of their investments in China. As a practical matter, investors in B shares should not expect to receive anything in the event of the insolvency of the company in which they invest.

4.2 "Internal" risks

(a) Management and decision-making

This is perhaps the biggest risk that faces any foreign investor buying Chinese B shares. Many investors do not appreciate that Chinese companies are not run like companies in the West. Chinese managers are used to running their companies in order to meet state plans rather than maximise profits. Indeed, until the mid-1990s, the general manager of a Chinese enterprise reported to the party committee, whose main function was to ensure that the policies and economic plans of the communist party and the state were carried out. It was only in 1986 when regulations were adopted on the role

of the general manager and workers congresses in state enterprises (86) that the main responsibility for running the commercial affairs of an enterprise was clearly placed in the hands of its general manager. This legacy is perhaps the main feature that distinguishes the management of a company limited by shares from an equity joint venture or cooperative joint venture in China (whose management is based essentially on Western models).

(b) Duties of directors and officers

As far as the author can ascertain, there are no well defined duties of directors and officers of companies in China that could be equated to fiduciary duties under common law (i.e. the requirement that directors and officers exercise their powers for the benefit of the company and not put themselves in a position where their duties to the company and their personal interests may conflict). It is for this reason that Hong Kong law, for example, prohibits loans by a company to its directors (87). Chinese law provides for criminal and administrative sanctions against those who commit "economic crimes" and act fraudulently (88), but it does not appear to have developed standards of conduct in situations which are not considered criminal for directors and other company officers.

(c) Disclosure

Requirements to disclose information about listed companies are designed to protect investors by allowing them to making informed investment decisions. As pointed out above (see 3.1 (a)) Chinese companies have displayed a degree of resistance to disclosing information when they first issue B shares, and have sometimes only released relevant information when international underwriters have made it clear that they

would not release funds raised from the B share offer until such disclosures are made. B shareholders will not have such leverage in extracting information from the company in the future, and it remains to be seen whether the Chinese regulatory authorities will conscientiously pursue disclosure requirements.

(d) Shareholders' participation

Directors and managers of Chinese companies have never had to answer to shareholders in the past. They have had to balance the interests of communist party committees, departments-in-charge and workers' congresses, but it is unlikely that any of these would have the degree of financial self-interest and disparity of views characteristic of shareholders. The Shenzhen Company Provisions (89) and all articles of association seen by the author provide that the general manager of a company is appointed and removed by the board of directors, and the directors are appointed and removed by shareholders' general meetings. The accountability of directors and the general manager to shareholders and the rights of shareholders should be spelt out in detail in companies' articles of association. Although the basic rights of shareholders are quite standard, actual provisions on such matters as the right to attend shareholders' meetings (which is commonly subject to a minimum shareholding) and to call interim meetings of the shareholders' general meetings, differ from case to case.

(e) Accounts

As noted above, standards of accounting in China differ from international accounting standards (90). While international accountants are always involved in reviewing and auditing a company's accounts on their initial public offering of B shares, it is not clear

whether or not they will be required by the People's Bank of China to audit all future years' accounts. Some underwriters have insisted that such a requirement be included in a company's articles of association, but this has not been the universal practice. Whether or not companies limited by shares that are listed in China will maintain their accounts in accordance with international accounting standards is a matter which can only be tested over time.

5. Conclusion

In conclusion, the introduction of B shares is perhaps the most significant development in China's utilisation of foreign capital since the decision was made in 1978 to accept foreign direct investment and loans from international lenders. In typical Chinese fashion, companies limited by shares have been established and B shares have been issued to foreign investors in the context of a rudimentary legal framework, which still has large gaps. Nevertheless, international demand for B shares appears capable of taking up all of those which are likely to be issued in the near future. While the "external" political, economic, legal and regulatory risks associated with B shares are substantial, perhaps the biggest risk is an "internal" one (and one which does not present the same degree of risk in the case of foreign direct investment in joint ventures), and that is one of management - it is not clear whether listed Chinese companies limited by shares will be able to throw off the legacy of state planning and communist party control in favour of the profit motive, which will be necessary if Chinese companies are to continue to attract foreign investors.

Stuart Valentine
Clifford Chance
June 1992

**Privatisation with Chinese Characteristics
B Shares for Foreign Investors**

**Stuart Valentine
Clifford Chance**

Footnotes

- (1) *"Communique of the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China, adopted on 22 December 1978 and published in English translation in Major Documents of the People's Republic of China, December 1978 - November 1989, Foreign Language Press, Beijing 1991.*
- (2) *Stephen FitzGerald & Co., "Genuine Friendship, Genuine Frankness: Some Frank Comments on our Friendly Economic Relations", In Business with China, J. Fincher & Pan Cheng-lieh, 1986.*
- (3) *Li Peng, Report on the Work of the Government to the National People's Congress, 20 March 1992, People's Daily, 5 April 1992, Beijing Review, Vol. 35, No. 15, April 13-19, 1992, supplement (p. ix).*
- (4) *Interview with an official from the State Commission on Restructuring the Economy, Shenzhen Special Zone Daily, 21 May 1992, China News Analysis no. 1461, 1 June 1992, at p.6.*
- (5) *Hung R. Zheng "Business Organization and Securities Laws of the People's Republic of China", The Business Lawyer, Vol. 43, February 1988, p. 558.*
- (6) *China Economic News, 27 April 1992 p.13.*
- (7) *According to the article cited in footnote (5), over 95% of shares fall into these categories.*
- (8) *See, eg. Article 43 of the Shenzhen Interim Provisions on Companies Limited by Shares, issued by the Shenzhen Municipal People's Government on 17 March 1992 (the "Shenzhen Company Provisions").*
- (9) *A table of listed shares and their closing prices is published daily in the Shenzhen Special Zone Daily (in respect of Shenzhen), and daily in the Wen Hui Bao (in respect of Shanghai). It has been reported that despite calls by a number of cities to be allowed to open stock exchanges, Shenzhen and Shanghai will be the only ones allowed to operate for the time being. Proposals to allow companies from other cities to issue shares and to list those shares on the Shenzhen and Shanghai exchanges are being actively considered. See "Mass rush on share holding warned", China Daily, 22 May 1992, and footnote (4).*
- (10) *The People's Bank of China announced its plans to allow a nominal value of US\$100 million worth of B shares to be issued in each of Shanghai and Shenzhen during 1992 (see, e.g. "Shanghai to raise listings sharply", South China Morning Post, 23 May 1992, "Ninth firm to issue shares in Shanghai", China Daily, 13 January 1992). Five new B shares will reportedly be issued in Shanghai in June and July 1992, and a number of other Shanghai companies are planning to issue B shares later in the year. Reports from Shenzhen indicate that up to 15 new B shares will be approved for issue during the latter half of 1992.*
- (11) *The 8th Five Year Plan (1990 - 1995) and the 1992 state plan (see Li Peng, infra (3) at p.v) call for annual economic growth of 6%, but the national average for the first quarter of 1992 was closer to 18% and much higher in many coastal areas ("China output rise prompts inflation fears", South China Morning Post 17 April 1992, "China's industrial production jumps by 18%", South China Morning Post, 20 May 1992).*

- (12) *For a fuller description of existing foreign investment vehicles, see "Loans to China," Clifford Chance/IFR, 1990, and J. Cohen and S. Valentine, "China Business - Progress and Prospects," Doing Business in China, Matthew Bender, 1990.*
- (13) *Examples of such funds are the China & Eastern Investment Company Ltd., JF China Investment Company, and the Orange Nassau Fund.*
- (14) *Such as Shenzhen China Bicycle Company Ltd., an equity joint venture located in Shenzhen, which issued A shares and B shares and was listed on the Shenzhen exchange in early 1992.*
- (15) *The following have announced plans to establish such "B share funds" - GT Management Asia Ltd., CEF Investment Management Ltd./Morgan Grenfell Investment, Chintung Limited, Barclay's/BZW Investment Management, Crosby Asset Management Ltd., China Assets Management Ltd. and Kwong Wah Investment Management Ltd.*
- (16) *Decision of the 3rd Plenary of the 12th Central Committee of the Communist Party of China, 20 October 1986, Foreign Languages Press, Beijing 1984.*
- (17) *Interim Measures of Guangdong Province on the Control of Shares and Bonds, issued on 10 October 1986.*
- (18) *Interim Measures of Shanghai for the Control of Shares, and Interim Measures of Shanghai for the Control of Enterprise Bonds, both issued on 23 May 1987.*
- (19) *Shenzhen Special Economic Zone Interim Regulations on the Experimental Conversion of State Enterprises into Companies Limited by Shares, effective from 1 November 1986.*
- (20) *Guangdong Special Economic Zone Foreign Related Company Regulations, adopted on 28 September 1986.*
- (21) *State Council Notice on Strengthening Control over Shares and Bonds, issued on 28 March 1987.*
- (22) *China Trade Report, October and November 1988.*
- (23) *Such as the Interim Measures to Control Securities Trading Departments issued by the People's Bank of China on 27 November 1990, the Shanghai Measures for the Control of the Trading of Securities issued on 27 November 1990, and the Trial Operating Rules for the Trading Market of the Shanghai Stock Exchange, issued on 26 November 1990.*
- (24) *"Shenzhen opens exchange early", South China Morning Post, 18 December 1990.*
- (25) *"Shanghai opens securities exchange", China Daily, 20 December 1990.*
- (26) *In at least one case (involving shares issued by Shenzhen's Vanke Enterprises Co., Ltd. in late 1988), the Shenzhen branch of the State Administration of Exchange Control issued a notice allowing for the Shenzhen swap centre to be used for converting Renminbi into foreign exchange (unpublished document dated 3 February 1989 with the author)*
- (27) *Shanghai:*
- Measures for the Control of Special Renminbi Shares, 22 November 1991 ("Shanghai B Share Measures").*
- Implementing Rules to the Measures for the Control of Special Renminbi Shares, 25 November 1991 ("Shanghai B Share Implementing Rules").*

Shenzhen:

Interim Measures for the Control of Special Renminbi Shares, 5 December 1991 ("Shenzhen B Share Measures").

Implementing Rules to the Interim Measures for the Control of Special Renminbi Shares, 5 December 1991 ("Shenzhen B Share Implementing Rules").

- (28) *Infra (8)*
- (29) *This draft has not been published, but it has been circulated around interested parties such as lawyers.*
- (30) *Article 35 Shenzhen Company Provisions, infra (8). This is usually confirmed in the relevant approval documents for conversion of the existing enterprise into a company limited by shares.*
- (31) *This concept is contained in Chapter 3 of the General Principles of Civil Law of the People's Republic of China concerning "legal persons", and in Article 3 of the Shenzhen Company Provisions, infra (8), and is invariably repeated in the articles of association of a company limited by shares.*
- (32) *See Article 3 of the Shenzhen Company Provisions, infra (8). It is invariably repeated in the articles of association of a company limited by shares.*
- (33) *Article 51, infra (8).*
- (34) *Article 52, infra (8).*
- (35) *Article 43, infra (8).*
- (36) *Measures to Control the Valuation of State-Owned Assets, issued by the State Council on 16 November 1991.*
- (37) *Article 35, Shenzhen Company Provisions, infra (8).*
- (38) *Article 37, infra (8).*
- (39) *The concept of "legal person" is set in Chapter 3 of the General Principles of Civil Law of the People's Republic of China.*
- (40) *Article 54, ibid (8).*
- (41) *Article 2 of the Shenzhen B Share Measures, infra (27), and Article 44 of the Shenzhen Company Provisions, infra (8). See also the articles of association of the company in question.*
- (42) *Article 2 of the Shanghai B Share Implementing Rules, infra (27) and Articles 21 and 23 of the Shenzhen B Share Measures, infra (27).*
- (43) *ibid.*
- (44) *See the legislation cited in (27) and subsequent related rules and regulations.*
- (45) *Article 23, Shenzhen B Share Measures, infra (27).*
- (46) *Article 16, Shanghai B Share Measures, infra (27), and Article 20, Shenzhen B Share Measures, infra (27).*
- (47) *Articles 45 & 46, Shenzhen Company Provisions, infra (8).*
- (48) *See also Chapter 9, Shenzhen Company Provisions, infra (8).*

- (49) *Article 98, Shenzhen Company Provisions, infra (8).*
- (50) *China Southern Glass Co., Ltd. and Shanghai Vacuum Electron Device Co., Ltd. respectively.*
- (51) *Chapter 10.*
- (52) *Articles 14, & 42, Shenzhen Company Provisions, infra (8).*
- (53) *For an excellent discussion of the legal nature of each type of business entity referred to in this paragraph see Henry R. Zheng, infra (5).*
- (54) *See text at 2.2(b)(iii) "State shares", and accompanying footnotes.*
- (55) *See text at 2.2(b)(iv), and footnote (47).*
- (56) *Article 9, Shanghai B Share Measures, Article 18 Shanghai B Share Implementing Rules, infra (27) and Article 7, Shenzhen B Share Measures, infra (27).*
- (57) *A new State Secrets Law effective from 1 May 1989 (which replaced interim regulations issued in 1951) defines the scope of "state secrets", although it is still very broad by Western standards.*
- (58) *In particular, bad debts are not written off, foreign exchange is converted at the official rate rather than the swap centre rate, depreciation extends over unrealistically long periods, disputed government fines can be listed as receivables, accounts are not consolidated and there is no prudence concept similar to that in international accounting. M. Li, "Accounting for B Shares", China Banking Finance, 14 May 1992.*
- (59) *Article 19, Shanghai B Share Implementing Rules, infra (27).*
- (60) *omitted.*
- (61) *Article 14, Shanghai B Share Measures, infra (27), and Article 2, Shenzhen B Share Measures, infra (27).*
- (62) *Article 9, Shanghai B Share Measures, infra (27).*
- (63) *"Beijing attracting more foreign money", South China Morning Post, 30 December 1987, and "HK investment in Guangdong on the increase", South China Morning Post, 10 September 1991.*
- (64) *Companies Ordinance, ss. 38 and 342.*
- (65) *Companies Ordinance, s. 343(2).*
- (66) *omitted.*
- (67) *See (15).*
- (68) *GT Management (Asia) GT Shenzhen and China Fund, "SFC approves retail promotion of China "B" share fund", South China Morning Post, 11 April 1992.*
- (69) *See (13).*
- (70) *"China Assets on Hong Kong Listing", Hong Kong Standard, 3 April 1992, "CVIC takes a different approach to new listing", South China Morning Post, 13 May 1992.*
- (71) *"China players out-perform market", South China Morning Post, 22 May 1992.*

- (72) Mark Hanson, "The New York of China", *The Securities Journal*, November 1991, p.4, and "Exchange looks for ways to list mainland firms", *South China Morning Post*, 12 March 1992.
- (73) Such as the re-emergence of Deng Xiaoping at the 3rd Plenary Session of the 11th Central Committee of the Communist Party of China, see *infra* (1), and the aftermath of the Tiananmen Square protests in June 1989.
- (74) As demonstrated by the economic austerity measures introduced in late 1988, see (22) *infra*.
- (75) See reports in the *South China Morning Post* on 24 April 1992, 6 May 1992 and 24 May 1992.
- (76) "Experiment in Shenzhen bourse begins to take off", *South China Morning Post*, 29 March 1992.
- (77) "Reform buoys securities trading", *China Daily Business Weekly*, 24-30 May 1992, "Crackdown blamed for Shanghai's fall", *South China Morning Post*, 28 May 1992.
- (78) *i.e.* equity joint ventures, cooperative joint ventures and wholly foreign-owned enterprises, which are taxed pursuant to the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law, effective from 1 July 1991.
- (79) *Interim Provisions on Income Tax for Private Enterprises*, effective from 1 January 1988.
- (80) *Interim Provisions on the Levy of Income Tax on State Enterprises*, 1 June 1983.
- (81) *eg.* Deputy Commissioner of the State Tax Bureau, Yang Chongchun, at a seminar in Hong Kong on 1 April 1992.
- (82) *infra* (78) Article 19, and *Individual Income Tax Law*, Article 2(4).
- (83) *infra* (81).
- (84) *Interim Regulations on Stamp Duty*, 1 October 1988, *Operating Rules of the Shenzhen Securities Exchange on the Trading and Clearing of B Shares*, 31 January 1992, Article 75.
- (85) *Civil Procedure Law*, 9 April 1991, *State-owned Industrial Enterprise Insolvency Law (Trial Implementation from 1 November 1988)*, *Shanghai Regulations on the Liquidation of Foreign Invested Enterprises*, 1 October 1991, *Shenzhen Regulations on the Insolvency of Foreign Related Companies*, 29 November 1986.
- (86) *Regulations on the Work of Factory Managers of State-owned Industrial Enterprises*, 15 September 1986, and *Regulations on the Representative Congress of Staff and Workers of State-owned Industrial Enterprises*, 15 September 1986.
- (87) *Companies Ordinance*, s. 157H.
- (88) *eg.* *Criminal Law of the People's Republic of China*, 1 January 1980, Chapter III "Crimes of Undermining the Socialist Economic Order".
- (89) *infra* (8), Articles 102 and 112.
- (90) See section 3.1(b) and footnote (58).

Tuesday 2 June 1992 □ 9:00 a.m. to 5:00 p.m

Jade Ballroom, Hotel Furama Kempinski, Hong Kong

股份 証券

A SYMPOSIUM

ON LEGAL ASPECTS

OF THE SECURITIES

MARKETS IN CHINA

*TRADING, CLEARING AND SETTLEMENT
OF CHINESE "B" SHARES*

Andrew Tong

Director, Institutional Services

Standard Chartered Equitor Group

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Trading, Clearing and Settlement of Chinese "B" Shares

Andrew Tong
*Director, Institutional Services
Standard Chartered Equitor Group*

The securities market in China is represented by two exchanges, Shanghai and Shenzhen. Shares are traded in two categories, viz, "A" and "B". Trading of "A" shares is limited to Chinese nationals over 18 years of age. However, Hong Kong, Taiwan and other overseas Chinese are not eligible to buy "A" shares. They are classified into the second category which is designed for foreign investors. In Shanghai, a more developed bond market also exists, while Shenzhen has a larger pool of "B" shares available for the investing community. The following table provides a snapshot of the "B" Share market as of 15th May, 1992.

As of today, there are six "B" share issues traded in Shenzhen, but it is anticipated to increase to 20 by the end of this year generating over US\$100 million of capital. In two years time, the market expects a total of 150 issues will be listed in both exchanges. The current market capitalization amounted to approximately US\$2 billion, which is exactly the same size that of the Indonesian market 3 years ago. Given a stable political environment and more radical enhancements to the regulatory framework, it is not surprising to see that the Chinese securities market will top the Indonesian market in a few years time.

Trading of "B" shares are divided into two sessions. The first session starts at 9:00 and finished at 11:00, whilst the second commences on 2:00 and the market ends at 3:30. Trading in the Shenzhen market is in board lot of 2,000 shares, whereas, the Shanghai market varies from 10 to 100 depending on the issue. Transactions are automatically matched by the exchange's central computer following the "three best" principles i.e. best price, best time and best sequence. Share prices are quoted in RMB and settled in Hong Kong Dollars for the Shenzhen market and US Dollars in Shanghai. In addition, "B" share order must be routed through brokers authorized by the People's Bank of China. In Shenzhen, there are 18,

5 local and 13 foreign. In the case of Shanghai, only 3 foreign brokers have been authorized to date. Investors must note the requirement that short-selling is strictly prohibited in both markets. Cross trading and transfer of beneficial ownership must be handled as a normal trade through the exchange.

The clearing system for "B" shares is specially designed to reduce settlement nightmares and provides maximum protection to foreign investors. First of all, the settlement structure follows most of the recommendations made by the Group of Thirty. Trades are settled on T+3 in a scripless book-entry fashion. In addition, transactions are pre-matched electronically prior to settlement date. Standard Chartered also facilitates borrowing and lending of securities to cover technical failures.

At this stage, clearance and settlement of Shenzhen "B" shares is handled by 3 international banks. Currently we clearing approximately 25% of the "B" share market capitalization. In fact, Standard Chartered as a Group was involved extensively in the development of the "B" share market by underwriting the largest number of issues through Standard Chartered Asia, placing and broking in the primary and secondary market through Chin Tung Securities, and offering clearing and settlement services through our Shenzhen Branch.

The following diagram shows the entities involved in the settlement of Shenzhen "B" shares.

The clearing bank acts as an intermediary between the investors and the stock exchange. It also plays the role of a transfer agent on behalf of the central registrar. Clearing members are restricted to authorized brokers and licensed banks in Hong Kong with a custody business of not less than US\$2.5 billion. Sub-accounts are maintained by investors below the clearing members for the purpose of registration.

An investor who wishes to deal in "B" share will have two alternatives in placing an order. He or she can go direct to the local broker in Shenzhen or phone up the foreign

broker in Hong Kong. In any event, the foreign broker must execute the order through an agent broker in Shenzhen since they are not members of the stock exchange and, therefore, not accessible to the computerized trading system.

All brokers must send their settlement instructions to the Clearing Bank prior to noon on T+1. The Stock Exchange will also provide the day's trading information to the Clearing Bank for the purpose of computer matching. It should be noted that the exchange's record is final and irrevocable. Therefore, if a dispute occurred between brokers, the transaction will still be settled on T+3 following the exchange's data. At around 5:00 p.m. on T+ 1, the Clearing Bank will inform the brokers of their settlement positions and advise the SSE of any deals that are unmatched.

The brokers must agree with the discrepancies among themselves in line with the stock exchange's record, and despatch amendment instructions to the Clearing Bank no later than T+2 3:00 p.m. After that, the Clearing Bank will re-match the trades and produce a Final Settlement Report for the brokers.

On T+3 around noon time, the Clearing Bank will settle cash and securities through a book-entry system. In addition, a magnetic tape containing shareholders information will be produced and delivered to the Central Registrar on T+4 11:00 a.m. for the purpose of updating the official record.

Many investors have asked me the question as to how shares are registered. As required by the regulation, shares must be registered into the name of the ultimate beneficiary. This means that using nominee companies as register shareholders is not allowed. In the case of a Trustee Company, there are two alternatives for registration; under the name of a fund of the trustee company itself. In the latter case, the trustee company must be conscious of the fact that total holding under it's name must not exceed 5 % of the issued capital of the company. Otherwise, prior approval must be obtained from the People's Bank of China, in the case of Shanghai, and exception report must be submitted to the regulating authorities for the Shenzhen market.

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