Privatisation of Companies listed on HK Stock Exchange

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There is an increasing trend of companies listed on the Stock Exchange of Hong Kong Limited going private recently. One common phenomenon is that the listed company's market capitalization is much lower than its net asset value or business potential, and the trading volume in the company's shares is low. Thus, the company finds it difficult to raise funds by utilising its listing status. As financial institutions are ready to extend privatisation loans, controlling shareholders will find it commercially sensible to take their listed companies private.

This article discusses the privatisation process of a Hong Kong listed company incorporated outside mainland China. The rules for privatizing an H-share company are quite different, and the author may cover that in a subsequent article.

A privatisation is proposed by an offeror (the controlling shareholder of a listed company in most cases) to acquire the shares held by the other shareholders and cancel the company's listing status on the stock exchange. Privatisation is usually affected by either:

1. a voluntary general offer; or
2. a scheme of arrangement. The consideration of a privatisation offer may be cash or securities, with or without a cash option.

Both privatisation methods are subject to the Hong Kong Code on Takeovers and Mergers, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, and the laws of jurisdiction in which the listed company is incorporated.

Voluntary general offer

A controlling shareholder may make a general offer to all other shareholders to buy out their shares in the listed company. For listed companies incorporated in Hong Kong, once the controlling shareholder and its concert parties have obtained acceptances that in aggregate represent 90% in value of the shares for which the offer is made, the controlling shareholder may opt to compulsorily acquire the remaining shares held by the other shareholders who have not accepted the offer. The listed company will then be delisted. For listed companies incorporated overseas, the privatisation offer shall be conducted under the laws of the relevant jurisdiction.

Scheme of arrangement

A privatisation may also be achieved by way of a scheme of arrangement, which is a statutory corporate restructuring procedure. The controlling shareholder, as offeror, will request the listed company to put forward the scheme of arrangement to the other shareholders (scheme shareholders).

The Takeovers Code requires the scheme to be approved by at least 75% of the voting rights attached to the disinterested shares (i.e., shares other than those held by the controlling shareholder and its concert parties), which are cast in person or by proxy at a shareholders' meeting, and the number of votes cast against the resolution is not more than 10% of the voting rights attached to all disinterested shares, whether or not the holders have cast votes at the meeting.

In certain jurisdictions, such as Cayman Islands and Bermuda, the scheme is also required to be approved by a majority in number of the scheme shareholders present and voting in person, or by proxy, i.e., the so-called "headcount test". The controlling shareholder, as the offeror, is not entitled to vote on the scheme resolution. After the scheme is approved by the scheme shareholders, it is still subject to sanction by the court.

The stock exchange will approve the listed company's application for withdrawal of listing once the scheme is approved by the shareholders and the court.

A comparison

Based on the public information on the website of Hong Kong Exchanges and Clearing Limited (HKEX) – of which the Stock Exchange of Hong Kong Limited is a wholly owned subsidiary – from January 2019 to September 2020, a total number of 33 privatisation offers has been announced by companies listed on the exchange (excluding those made by H-share companies), among which all the 11 privatisations announced in 2019 were completed, and the shares were delisted.

For the 22 offers announced during the nine months ended 30 September 2020, one offer closed without being privatised, seven were successfully completed, one is pending listing withdrawal, and 13 are ongoing. Out of the 33 privatisation offers, only three were made through voluntary general offers, while the remaining 30 were made by way of schemes of arrangement.

Both privatisation methods share one common feature – the chance of success rests with the other shareholders even if the controlling shareholder, as offeror, already holds a large amount of shares in the listed company.

Privatisation by a voluntary general offer requires the other shareholders to take the steps to accept the offers to the extent of at least 90% of the shares subject to the offer, which is a very high threshold. Some shareholders may find the offer price unattractive, while others simply do not pay attention to the offer. That is one reason why this privatisation method is less appealing.

A scheme of arrangement requires super majority votes by scheme shareholders, but does not impose the minimum number of votes cast at the shareholders' meeting. So even if a small number of votes cast at the meeting fulfils the super majority requirement the scheme may proceed, because the court is unlikely to object if the scheme passes through the shareholders' approval.

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