

An Analysis of the Legal Regime of Delisting in China

ANALYSE SUR LE REGIME LEGAL DE LA RADIATION EN CHINE

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Abstract: The legal regime of delisting is one of organic constituents of securities legal framework. This article, based on the reviews of delisting development in China, has briefly analyzed the content of delisting legal system: the delisting standard and the delisting procedure, and put forward several suggestions in consummating the delisting legal regime.

Key words: delisting, delisting standard, delisting procedure

Résumé: Le régime légal de la radiation est un constituant organique du cadre légal des valeurs. Cet article, basé sur la rétrospection du développement de la radiation de Chine, analyse brièvement le contenu du système légal de la radiation : le standard et la procédure, et propose ensuite des suggestions pour perfectionner ce système.

Mots-Clés: radiation, standard de la radiation, procédure de la radiation

1. THE HISTORICAL EVOLUTION OF THE DELISTING LEGAL REGIME IN CHINA

The legal regime of delisting in China is established gradually along with the development and consummation of stock market. It goes through several stages:

1.1 The preliminary establishment of the delisting legal regime

"Corporation Law", which came into effect on July 1, 1994, is the preliminary establishment of the delisting legal regime in our country, in which 157th, 158th had stipulated the delisting standard, the delisting procedure as well as the authorized decision organization ---- State Council Securities Control Section, initially constructing the foundational frame of delisting legal regime. "Securities Law" is the first securities law passed On December 29, 1998. The 49th and 57th about delisting rule is mainly the repetition of the related stipulation to "Corporation Law".

1.2 The consummation of the delisting legal regime

In order to guarantee the investor to make the rational investment judgment, the securities supervising and managing department implements ST (special treatment) and PT (particular transfer). ST and PT in fact is one kind of early warning system in stock market. It carries on a warning in advance before delisting, reminding the general investors, gives opportunities to the listed company to improve the management achievement and also gives the investor a permission period releasing the social impact because of the immediate halting of trading.

1.3 The start of the delisting legal regime

On February 22, 2001, the Chinese Securities Supervisory Committee had issued "Implementation Means about Loss Company to Suspend and Terminate Trading on The Market". The delisting because of the continual loss for 3 years had been ruled in detail and operationally. On April 23, 2001, the "PT" narcissus stock, four-year continual loss, became the first delisting company, which symbolized the start of delisting system in China. Then "Implementation Means (Revision)", "Implementation Means (Revision) Additional regulations" had been issued. These two regulations solved some questions which cropped up the delisting implementation and brought advantage for application of the delisting legal regime in reality.

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*Received 15 August 2006 ; accepted 11 December 2006

1.4 The further consummation of the delisting legal regime

Experiment Means about Securities Company Charge for the Stock Transfer Service " issued by Chinese Securities business Association on June 12, 2001 mainly solved stock-related questions for the companies traded in the STAQ (Securities Trade Auto Quotation) and NET(National Electronic Trade) system, directing the securities company's stock transfer service activity. On August 29, 2002, Chinese Securities business Association issued " Notice about Improvement for Stock Transfer ", which would draw the delisting company in the scope of the stock transfer experiment, starting the following measure for delisting, guaranteeing the "road" for the delisting company.

1.5 The establishment of the delisting legal regime

On October 27, 2005 the 18th session of Standing Committee of the 10th National People's Congress revised " Corporation Law " and "Securities law", abolishing the 157th, 158th items about the stock suspension and termination in original " Corporation Law " instead of new "Securities Law" 55th, 56th items which has explicitly authorized the stock exchange with the decision-making power for stock suspension and termination .This revision of " Corporation Law " and "Securities Law" must be a milestone for the development of securities legal regime, bringing our stock market into the period of steady development.

2. THE BASIC LEGAL MATTER OF THE DELISTING LEGAL REGIME

2.1 The delisting standard

Delisting, the basic basis to identify the delisting company, includes quantity standard and the non-quantity standard respectively. Quantity standard is mainly about the total property, the net assets, the stock value, the business income, the management capacity and the population, the quantity, the value, the lowest quoted price of the public owned stock, etc. Non-quantity standard sets the request from the corporate governance, the information exposure and so on. The 55th, 56th from the new "Securities Law" revised in 2005 has laid out the conditions of listing suspension and termination, which has included quantity standard and the non-quantity standard.

2.2 The decision-making power of delisting

At present, every "Securities Law" in the world unified the decision-making power to the company delisting. In

our country the new securities law explicitly stipulates that the stock exchange had the right to decide the stock suspension and termination. The decision-making power had been transferred from Securities Supervisory Association to the stock exchange, which has avoided the excessively intervention to the market taken out by the government supervising and managing organization and is advantageous in the market development.

2.3 The delisting procedure

The procedures of delisting has been concentrated in the revision "Regulation about Loss Company to Suspend and Terminate Trading on The Market " and "Shanghai, Shenzhen Listed Company Manual", explicitly stipulates the delisting procedure of three-year continuous loss-making companies. According to these two regulations, the delisting procedure because of three-year continuous loss should be divided into three stages:

2.3.1 Suspension: when the company has experienced continuous money-losing in the recent three years, the stock exchange makes the decision to suspend trading; The Company must continue to fulfill the duty to disclose the information after suspending. The suspension could last 6 months, and its result has two kinds of possibilities: Restores or termination.

2.3.2 Restores: The company could apply to the stock exchange for restoring the market in the legal limited time when the company discloses the first semi-annual reported and the semi-annual financial report demonstrates the company already gained; After accepting the application, the stock exchange makes decision whether to approve to restore or not .The company approved can restore trading on the market and must be specially treated in first year.

2.3.3 Termination: If the company did not disclose the first semi-annual report which should be issued after suspending in legal time , or the company did disclose that report but did not apply to restore, or the application was not accepted ,or the company did not conform to the restoring condition according to the verification which was made after accepting the application by the stock exchange, the stock exchange should make terminating decision; If shareholders' meeting makes resolution to terminate trading after suspending, the stock exchange should make decision about termination after receiving the notice. If the company disclosed the first annual report after restoring but lost ,the stock exchange should make the decision after the annual report exposure.

3. THE BASIC CONDITIONS OF DELISTING IN CHINA

A survey to the stock markets in other countries shows

that a mature stock market should be supposed to be multi-level. One stock market in our country has established the integrated stock market system including the stock exchange market, the growth enterprise board market, the stock transfer service system until now. At the end of 2005, the number of listing company in the Shanghai and Shenzhen stock markets has already reached 1380, 50 listing in the growth enterprise board market and 42 trading in the stock transfer service market. However, the 2005 annual report disclosed by Shanghai and Shenzhen stock exchange demonstrated that 249 companies had suffered the loss, which surpassed the number 114 of 2004 and 147 of 2003 respectively. The important total index such as the average income, the average net assets profit ratio and so on all dropped. ST Corporation and *ST Corporation have been more than 120 in these delisting companies, in which the majority has reorganized and relisted through borrowing "the shell". There were only 12 delisting companies entering the third board market.

In June, 2001, "Experiment Means about Securities Company Charge for the Stock Transfer Service" issued by Chinese Securities business Association assigned six securities companies, ShenYinWanGuo securities Company, GuoTaiJunAn securities company, etc, to charge for the stock transfer service for the company trading in original STAQ and NET system. On July 16, 2001 the mature and ChangBaiShan share transferred in this system, which symbolized the start of the third board market. The third board market is located originally for stock transfer of the company in STAQ and NET system and the companies delisting from Shanghai and Shenzhen stock exchange. The stock transfer trades by the current centralized competition price system and the stock transfer price rises and falls in the range of 5%. Then companies originally trading in STAQ and NET system such as ZhongXing Industrial Co, the QingYuanJianBei Co, the GuangDongGuangJian Co, etc, transferred in the third board market one by one. On November 10th, 2001, the PT narcissus AB stock delisting from the main board market entered the third board market, becoming the first listing company delisted from the main board market in the third board market and the precedent of B stock transfer service.

4. THE PROBLEM EXISTED IN DELISTING LEGAL SYSTEM

During these several years development of our stock market, delisting legal system was developing and consummating unceasingly, and the related regulation perfecting constantly. But the delisting system was still confronted with sorts of difficult problems and resistance. Several problems exist in the present legal frame and system as following:

4.1 The non-precise and deficient delisting standard

In respect of the quantity standard in delisting standard the listing termination condition including stock and capital total account, stockholder's rights distribution and so on in the new revised "Securities Law" is not ruled accurately and in details. Regarding the non-quantity standard, its binding force is less and the legal authority is weak in the actual situation.

4.2 The insufficient delisting procedure

The delisting procedure ruled in "Implementation Means about Loss Company to Suspend and Terminate Trading on The Market (Revision)" and Shanghai and the Shenzhen stock market "Listed Company Manual" is merely aimed at the lost listing company and does not involve the delisting procedure caused by other reason in securities law. The time, only six months, is too short for the lost company to reorganize. In ordinary circumstances, it is quite difficult for the company to turn losses into profit in six months. On the other hand, the company is in the passive condition throughout the entire process for the reason that the company is not provided with resorting procedure to refuse the delisting decision.

4.3 Lack of voluntary delisting institution.

The delisting system in developed capitalist countries all contains voluntary delisting and compulsive delisting. However, there is only compulsive delisting system in our country. Although Shanghai and Shenzhen stock exchange listed company manual has ruled voluntary delisting, that is, stock exchange must make the decision to terminate listing if the shareholders' meeting makes resolution to terminate after the stock suspending, the listing company is not willing to withdraw from the stock market on its initiative in reality, which make voluntary delisting unable to come true.

4.4 Stock market system not to be perfect, and no "exportation" to delist

An important reason why the China's stock market is unable to realize the true delisting would be lack of perfect multi-level stock market system. At present in our stock market system the main board is primary and the development of the growth enterprise board market (the second board market) and the stock transfer market (the third board market) fell behind. The stock delisting from the main board market would be unable to find the outlet. Although according to "Experiment Means about Securities Company Charge for the Stock Transfer Service" the delisting company's stock could be transferred by securities companies who were assigned

to provide stock transfer service, the distribution of these securities companies' business site net is not uniform. The company's shareholders cannot carry on the transaction anytime and anywhere, which brings inconvenience to the transaction.

5. THE SUGGESTION TO THE DELISTING CONSUMMATION

In view of above questions existed in our country delisting system, the following aspects should be put into effect to rebuild the delisting system :

5.1 The scientific, reasonable, practical and feasible delisting standard should be formulated according to the actual condition of our stock market and listing company.

We should learn from the mature market procedure,comprehensively evaluate company's property, the stock value, business income, profit ,public owned stocks and so on, and ensure the company whether it has the continually business capacity. The suggestion is that on the foundation of present delisting system, the reason for company unable to pay back the debt, losing the continual business capacity because of property handling and freezing, violating the listing agreement should be taken into delisting standard system.

5.2 The city procedure should be further refined..

First, the implementation of passive delisting for other reasons should be formulated as well as consummating the delisting procedure of loss-making. Next, the company should be given not only half year permission period but also inspection time in order to rehabilitate

after suspension. Moreover it is necessary for company to strengthen the right to object the delisting decision such as hearing system. The perfect securities civil damage compensation should be established to protect the benefit of listed company and investors.

5.3 Establish the voluntary delisting system.

In the countries which have a well-developed stock market, listed company had the possibility to choose delist initiatively when the company need to seek benefit or consider to be hard to finance from stock market. Establishing the voluntary delisting system is the manifestation of company's will and protection of the benefit of the company, the investors and the market. At the same time, the perfection to shareholders' benefit and the formulation to the related regulations, such as disclosure system while voluntarily delist, the shareholder's voting right system, the shareholder lawsuit right, ect,help the delisting company's shareholders to have ability to protect their rights and interests.

5.4 The multi-level stock market system should be set up in order to provide the carrier to delisting successfully.

The multi-level stock market system is composed of the main board market, the second board market and the OTC market (over the counter market). The delisting exportation could be designed according to different delisting methods. The multi-level stock market system provide delisting company for essential channel and achieve the resources optimized disposition in the capital market overall scope. Moreover, stocks which were not applied for listing of delisted could be transferred in OTC market,ruled in the new revised securities law .This provide the legal basis for the development of the second board and OTC market in China and symbolized the mature growth of stock market .

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