

Overview of Governance of State-owned Listed Companies in China

Ladies and Gentlemen,

Corporate governance has become one of the hottest topics in global financial market in recent years. The incidents, such as Enron and MCI WorldCom MCI of the United States and Parmalat of Italy, have aroused stormy argument of the public. The United States finally promulgated the *Sarbanes-Oxley Act* in July 2002. In China, China Securities Regulatory Commission (hereinafter “CSRC”) also released the *Guidelines for Corporate Governance of Listed Companies* in January 2002. Since last year, the Skyworth event and the incident of China Aviation Oil have aroused a new round discussion on corporate governance. The reform of corporate governance has become CSRC’s key emphasis in work ever since 2001. Ever since then, CSRC has actively taken effective measures to improve the level of governance of Chinese listed companies.

The listed companies under the control of state-owned holding enterprises have occupied a large proportioning Chinese securities market. Statistics shows that the end of 2004 among all 1,377 Chinese listed companies controls 987 are controlled by holding companies, accounting for 71.7% of the total. Therefore, the governance level of Chinese state-owned listed companies has represented that of all Chinese listed companies to some extent. The state-owned listed company’s existing problems in corporate governance are provided with representativeness and universality in Chinese securities market. To promote the governance of listed companies, CSRC has to focus on these universal problems. In the following paragraphs, I would like to make an introduction of the major measures that CSRC takes to promote the governance of listed companies, and then discuss the major existing problems and challenges of the governance of Chinese state-owned listed companies and clarify the role of CSRC in promoting and perfecting the governance of Chinese state-owned listed companies.

1. Major Measures CSRC Takes To Promote Corporate Governance

(1) Establish Independent Director System

In 2001, CSRC released the *Guide Opinion on Establishing Independent Director System by Listed Companies*, requiring the managing board comprising independent directors so as to overcome the difficulty of internal personnel control of many listed companies. Each listed company is required to employ independent directors, whose total number accounts for one—third of the board of directors before June 2003. In the case of the independent directors concurrently holding a post of convener of auditing, wage and nomination committee (although the setting of these committees are not compulsory), the major affiliated transactions must obtain independent directors’ permission beforehand.

To maintain the genuine independency of independent directors, we rigorously define

“independency” as: the independent directors of a listed company must be independent from stockholders, senior administrators, as well as the main business relationship of the company. The candidates of independent directors must make a declaration of independency and reveal it to the public. Independent directors must have enough time to work for the company each year. Besides, an independent director cannot hold over 5 posts of director concurrently.

By the end of 2004, 4,681 independent directors are employed by 1,377 Chinese listed companies in total, equivalent to 3 independent directors for each listed company on an average. Practice shows independent directors are playing more and more important role now. They review and judge the listed company’s key affiliated transaction, which increases the transparency of corporate governance, the equitability of bargain price and the standardization of transaction procedure; they air opinions independently on not only the nomination, appointment and dismissal of directors, the employment and dismissal of senior administrators, the wage of directors and senior administrators, key capital intercourses and other important things, but also the matters that may affect the medium-sized and small stockholder’s rights and interests, for example, capital reorganization, stock equity transfer, key investments, etc; the independent directors of some companies even put forward the idea of employing professional auditing institution to carry out specialized auditing of the company’s affiliated transaction and investing in national debt. As Chinese independent director system has not established too long and experienced independent directors are badly in need, we have to wait a longer time to witness the obvious effect of independent directors’ significance on corporate governance; however, we are deeply convinced that the establishment of independent director system has already made Chinese people and companies take a big step in better understanding the idea of corporate governance.

(2) Perfect Laws and Regulations on Corporate Governance

In the beginning of 2002, the *Guidelines for Corporate Governance of Listed Companies* (hereinafter “the Guidelines”) was jointly released by CSRC and the State-owned Assets Supervision & Administration Commission of the State Council (abbr. SASAC, namely the former State Economic & Trade Committee). The former State Economic & Trade Committee is a ministerial unit in charge of the supervision and administration of the state-owned holding stockholders of listed companies. Thus, the joint release of the Guidelines indicates it not only applies to listed companies but also their holding stockholders. The Guidelines is prepared based on the principle of OECD corporate governance and takes into consideration the characteristic of Chinese market. The guidelines request all listed companies to strictly abide by it and regard protecting stockholder’s interests as the ultimate goal of corporate governance. It calls for equitable treatment of all stockholders, either big or small. The listed companies can adopt agency voting system and accumulated voting system so as to protect the interest of medium-sized and small stockholders; the listed companies must be fully independent from their parent companies; the affiliated transaction must be transparent and fair and obtain the

independent directors' permission. The Guidelines also advocates the positivism of stockholders and the active participation of institutional investors.

To check whether the listed companies abide by the Guidelines or not, CSRC and the former State Economic & Trade Committee made a joint inspection of all listed companies in the second half year of 2002. The form of self-check questionnaire is adopted in the first stage of inspection, which means all listed companies are required to carry out self-inspection of their corporate governance behavior. Based on self-check, the shortcomings are discovered, and the joint inspection team formed by CSRC and the former State Economic & Trade Committee will carry out on-the-spot investigation of the selected company. The purpose of on-the-spot investigation is to meet with these companies' senior administration and board of directors and put forward corrective measures. In the last stage of joint inspection, the joint inspection team will select and award some companies with exemplary corporate governance behavior. As an acknowledgement and appraisal, other companies can share the useful experience. Normally, most of listed companies can treat the inspection seriously. Some independent directors spend time participating in evaluation and reporting the defects to be improved in written form. Our institutions assigned to every corner of the country give a pressure on companies and urge them to correct their poor behavior. We believe that this inspection movement has given listed companies a deep impression on exemplary corporate governance behavior and helped them solve some existing problems. This year, we are planning to make on-the-spot inspection of the selected 100 listed companies.

(3) **Strengthen Information Disclosure**

Securities market is a virtual market backed by information. The investors can only know about the business operations of the listed company through the publicly disclosed information and thereby make investment decisions. We have always regarded information disclosure as an important measure of improved corporate governance. Presently, Chinese securities market has basically established the omni-bearing multi-level information disclosure system with the *Securities Law* as the main body and the related authority files as a supplement. This system uses international current standards as reference and basically meets advanced world level no matter from the norm in principle to the operating criterion, or from the content to the form and measure of information disclosure.

Ever since 1993, according to the actual situation of Chinese securities market, with reference to mature market experience, CSRC released series regulations on information disclosure: in June 1993, it released the *Detailed Rules for Implementation of Information Disclosure of Publicly Listed Companies*, putting forward specific requirement of information disclosure; afterwards, it released the *Guidelines for Content and Format of Information Disclosure of Publicly Listed Companies* and the *Regulations on Preparation of Information Disclosure of Publicly Listed Companies* successively, as well as the regulations on relevant prospectus, periodical report, provisional report and clarification report, etc.; in 1998, the stock exchange of Shanghai and

Shenzhen released the *Rules Governing the Listing of Securities*, further defining the stock exchange's forefront surveillance liability of information disclosure; series information disclosure regimes have been established, for example, performance early-warning, key information disclosure stock suspension, etc.. The listed companies are required to disclose their operating report online periodically, so that the investors can timely get correct corporate information.

Besides the audited annual report and interim report, since 2002, CSRC also requests all listed companies to publicize the quarterly report that is not audited and provide the periodical report with the signature of the board of directors and all directors, who bear responsibility for the accuracy and correctness of the report. In the beginning of 2004, CSRC revised the regulation on preparation of annual report. It recommends the table format and simplifies the preparation procedure of annual report for investor's convenience.

(4) **Protect Social Public Investor's Lawful Rights and Interests**

Social public investors are important participants of Chinese securities market. However, due to the separation of stock equity for historical reason, the stockholders of non-circulating shares and social public shares are discriminated, and the conflict of interest even arises in the matters of financing and dividend distribution and so on. The non-circulating stockholders are often controlling stockholders, who have priority in decision-making power; but the social public stockholders, as minority stockholders, only have weaker power to speak and their interest can hardly be protected in most circumstances, which affects the healthy development of Chinese capital market.

For this reason, in December 2004, CSRC released the *Regulations on Strengthening the Protection of Social Public Stockholder's Rights and Interests* (hereinafter "the Regulations"). It aims at practically protecting the rights and interests of social public stockholders and provides a blueprint from the following five aspects: trying out the voting system of key matters by social public stockholders, perfecting independent director system, strengthening investor relationship management, implementing active profit distribution method, strengthening the supervision of listed companies and senior administrators.

According to the Regulations, the matters that have important influence on social public stockholder's rights and interests, for example, re-financing and offset debts by stocks, can only be executed after half of the social public stockholders attending the conference vote through it, which entitles social public stockholders more power to speak; the online voting and soliciting mechanism of voting power are newly introduced to provide social public stockholders a chance to participate in it; it stresses the independency of independent directors and endows them with special authority in the fields of affiliated transaction, employment and dismissal of certified accountants office, independent auditing body and consulting agency. It requests the listed companies to establish independent director system and guarantee the independent director's

right to learn the truth. It also requests the independent directors to know about the corporate information initiatively and submit due diligence report to the annual stockholder's meeting. Besides, the independent directors cannot be dismissed without justifiable reason before the expiration of the term of office; the listed companies are not allowed to conduct re-financing if no cash profit distribution has been executed in recent three years; the senior administrators who have poor faith will be recorded into faith archives or will be prohibited to launch into the market.

Considering the facts that China occupies a large area and investors are widely spread and numerous social public stockholders can hardly take part in the stockholder's meeting to exert their voting power, the Regulations encourages the listed companies to provide stockholders with online voting platform outside the conference hall, and requests the listed companies to hold the stockholder's meeting to discuss the matters needing social public stockholder's votes and provide online voting platform. Up to now more than 40 companies have adopted the online voting mode and achieved good effect. Nevertheless, due to the medium-sized and small stockholder's common consciousness of "hitchhiking", the participant social public stockholders are not too many (they only account for 11% of the total social public stockholders). Thus, the investors need to be further educated and guided.

(5) Expand Institutional Investors Vigorously

In mature capital market, the institutional investors have played an important role in corporate governance. In the past a few years, CSRC has regarded the expansion of institutional investors as their key emphasis in work. Ever since 1998, the fund industry has achieved rapid development. Presently, there are 46 fund management companies managing 166 kinds of securities investment fund; the total fund amounts to RMB 367.6 billion. Nowadays, the securities market is open to insurance fund and social security fund and foreign institutional investors. In December 2002, CSRC and the People's Bank of China jointly released a policy, permitting qualified foreign institutional investors (abbr. QFII) within territory of China, including fund management companies, securities companies and commercial banks, to invest in Chinese A-stock market. The QFII regime has been applied successfully in Taiwan and other new market. The fact shows, before the completely free convertibility of currency, QFII achieves a success in attracting foreign capital. By the end of 2004, the People's Bank of China have approved 27 foreign institutional investors to act as QFII's trustee, and the accumulated approved foreign currency has exceeded USD 3 billion. Many institutions have applied for QFII qualification. In the meantime, Chinese institutions, such as social security fund management companies and insurance companies, are accelerating their steps to launch into the securities market.

The institutional investors are inclined to value investment and long-term possession and care much about the company's basic structure and corporate governance. The continual expansion of institutional investors will surely promote the perfection of the governance of listed

companies. A typical case is Merchant's Bank's intentional issuance of convertible bond. In October 2003, China Merchant's Bank held the stockholder's meeting to discuss the proposal of issuing less than RMB 10 billion, 5-year term convertible bond. It was strongly opposed by circulating stockholders represented by fund, who thought the scheme had endangered the circulating stockholder's interest. This proposal was finally rejected. Later on, due to market pressure, China Merchant's Bank had to modify its financing scheme.

(6) Flourish Merger and Acquisition Market

An active controlling power acquisition market will surely promote the governance of listed companies. In the past a few years, some non-governmental enterprises have purchased the shares of listed state-owned enterprises. The result of this is half-and-half. Under the proprietorship and management of non-governmental enterprises, some state-owned enterprises with poor performance have changed into the enterprises with high efficiency, but some enterprises obtain worse beneficial result in the end, some are even hollowed out by non-governmental enterprises. On the other hand, the listed companies are very active in capital reorganization. Statistics shows the controlling stockholders of one-third of the listed companies have altered after the initial public offering (IPO). To promote and supervise merging and acquisition activity, CSRC released the *Management Procedure of Acquisition of Listed Companies* on December 2002, confirming that the merger and acquisition activity should be conducted in an orderly transparent way. The experience of mature market shows, the market-oriented reorganization, merger and acquisition militates for the improvement of corporate governance and the quality control of listed companies, whereas the low-efficiency enterprises will be purchased by good-performance enterprises. We are now busy at revising the *Management Procedure of Acquisition of Listed Companies*, so as to meet the demand of market development.

In the past a few years, under CSRC's guidance and supervision, the merger and acquisition of listed companies have changed from financial reorganization to strategic reorganization, from assistance type reorganization to combined reorganization by joining the strengths, from forced reorganization to market-oriented reorganization. Some listed companies have developed to be bigger, more excellent and stronger through merger and acquisition, for example, TCL Group and Wuhan Iron & Steel (Group) Ltd. executes tailored additional stock issue and overall listing; Shanghai No.1 Department Store acquires Hualian Store and establishes Bailian Stock Ltd. Many other listed companies have also thoroughly remolded themselves through merger and acquisition and reorganization and stepped into the way of benign development, for example, SDIC Huajing Power Holding Ltd. established after the reorganization of Hubei Xinghua Co., Ltd.

(7) Promote Legality and Accounting Reform

Another important aspect of corporate governance is the reform of legality and accounting

system. In 2002, the Supreme People's Court released the *Notice on Related Issues of Civil Trespass Case Arising from Receiving False Statement of Securities Market* and made significant judicial reform to protect the stockholder's interest: in 2003, the Supreme People's Court released the *Regulations on Civil Compensation Case Due To False Statement of Securities Market*, publicizing the judicial proceedings when the stockholders accuses directors and senior administrators of securities investment loss due to listed companies' false information disclosure. In addition, the country is accelerating to revise the *Corporation Act* and the *Securities Act*, so as to perfect the fundamental legal system and optimize the external legal environment of corporate governance.

China is also gradually implementing the reform of accounting and auditing field. The Ministry of Finance in charge of the establishment of accounting standard made significant modification of the accounting standard in 2002 and made it get closer to International Accounting Standard (IAS). CSRC and the Ministry of Finance also strengthen the supervision of auditors and punish auditor's improper act. In 2002, CSRC abolished the qualification of ZhongTianQin Certified Accountants Firm, because it has been involved with the Silver Broad Summer event. The accountants office was finally dissolved, although it has been one of the biggest accountants offices in China at that time. In October 2003, the Ministry of Finance and CSRC jointly released the change-off policy of auditors, namely the chief accountant and the project responsible person cannot serve the same audited object for more than 5 years. This greatly enhances the independency of auditors.

(8) Strengthen the Force To Execute the Law

Considering the significance of law enforcement, CSRC has strengthened its force to execute the law since 2002. Except the 1st Regulatory Bureau, CSRC also establishes the 2nd Regulatory Bureau to handle market manoeuvre case. Besides, the Ministry of Public Security also establishes Securities Crime Investigation Bureau so as to spy into these cases.

To strengthen the supervision of listed companies, CSRC carries out significant reform of the supervision mechanism in 2004, executes the responsibility system of supervision of governed area, establishes the integrated supervision mechanism composed of CSRC and its branch offices and securities exchange office. CSRC provides united guidance and coordination; the local supervision bureau takes charge of the routine supervision and on-the-site inspection of listed companies; the stock exchange takes charge of the forefront supervision of the information disclosure of listed companies. This reform integrates supervisory resources and improves the efficiency and formidable force of supervision. Only in 2004, the securities supervision bureau in each province has implemented the on-the-spot supervision of 465 listed companies, put on record and checked 28 companies with key improper act; the stock exchange of Shanghai and Shenzhen has sent 36 letters of public denouncement already.

Apart from this, CSRC also releases the rules of retreating the market and requests the listed

companies who suffer from deficit in successive three years to retreat from securities market, which is also specified in the Corporation Act. Up to now 23 companies have retreated the securities market and launched into over the counter (OTC) system. It is predicted that some companies will retreat from securities market every year. This will further improve the quality of listed companies.

After four years' continuous efforts, the framework of Chinese corporate governance has basically established, the concept of corporate governance has been well received and recognized by the society, the governance structure of listed companies is greatly improved and the degree of transparency is further heightened, the level of standard operation is obviously improved, which contributes to the improvement of the quality of listed companies. Since 2002, under the background of favorable macro-economic environment and stable rapid economic growth, the performance of listed companies grows in pace with macro-economy. It realizes sustainable growth in successive three years, and the financial target rises continually. By June 2004, among 1,370 listed companies, 1,230 gains profit and 140 runs in deficit. The average EPS is 0.14 yuan, grown by 34.68%; the average net asset income ratio is 5.40%, grown by 1.35%; the after-tax total profit is RMB 98.465 billion, grown by 47.88%. The overall performance of listed companies is greatly improved and its growth speed is higher than that of GDP. By April 25th, 2005, 1,189 listed companies have revealed annual report 2004 to the public. The average EPS of these companies is 0.2793 yuan (0.2296 yuan in 2003); the average net asset income ratio is 10.23% (8.39% in 2003); the average net assets per share is 2.7312 yuan (2.7356 yuan in 2003), which makes a great progress than 2003.

2. Existing Problems of the Governance of State-owned Listed Companies

(1) Governance Structure of State-owned Listed Companies Has Congenital Defects

Under the administrative examining and approval and quota regime when the securities market was initially established, the state-owned listed companies are usually of small size and low quality. In addition, most of the state-owned enterprises adopt the way of conversion and stripping listing and make the listed companies have close relationship with holding stockholders. The listed companies and their parent companies are not truly separated in personnel, capital, finance, operation, etc.. Although they are independent legal person in name, they lack independency. The manifestations are: they rely heavily upon parent company and affiliated transaction exists; the phenomenon of "one dominating state-owned stock monopolizes" is very common, which results in the lack of restriction on big stockholders. In this way, the big stockholders can easily manipulate listed companies or invade medium-sized and small stockholder's interest by utilizing their priority position. On the other hand, as the "vacancy" of owners of state-owned listed companies is very common, it lacks effective restriction on senior administrators. Most of the directors are internal staff and holding stockholders. As it runs short of external directors and independent directors, it can hardly hold balance and result in internal control. Compared with western countries, although the reason for

internal control is different (the former mainly owes to excessively decentralized stock right), the problem cannot be ignored.

Owing to “one dominating state-owned stock monopolizes” and “controlling by internal personnel”, it forms the cotangential defect of corporate governance, i.e. “one dominating state-owned stock monopolizes under internal control”. This becomes a major problem that we have to solve so as to improve the governance of state-owned listed companies.

(2) Big Stockholder’s Occupation of Funds of Listed Companies Is Very Common

As mentioned above, most of the state-owned listed companies adopt the way of conversion and stripping to launch into securities market. The surviving enterprise can hardly make a living due to tremendous non-profitable capital, and inevitably become a heavy burden of listed companies in normal operations. This results in series problem, for example, big shareholders divert money to other purpose, and listed companies provide a guarantee in violation of laws and so on. Many big stockholders often divert the money of listed companies for personal interest through affiliated transaction, which not only severely affects the normal operation of the listed companies but also endangers the faith and credit of the market. Statistics shows that by the late-June 2004, the big stockholders of 350 listed companies have improper act for occupation of fund and about RMB50.7 billion fund is used for non-operating purpose. Among the listed companies who run in deficit in successive two years, the holding stockholders of 70% of them have improper act for occupation of fund; among 23 listed companies who have retreated from securities market, the most important reason for their failure is the holding stockholder’s illegal occupation of fund. To solve this problem, CSRC and SASAC jointly released the Notice on Standardizing Capital Intercourse Between Listed Companies and Associated Parties and the Issues of External Guarantee Provided by Listed Companies. It strengthens the force to investigate and prosecute and liquidate the holding stockholders or actual controllers who have improper act for occupation of fund and sets up the experimental units for offset debts by stocks, but the problem is not solved thoroughly.

(3) Independent Director System Is To Be Perfected

The independent director system has already established and gradually brought into play in China, but we must observe the existing problems that occur in past years’ practice. These problems affect the effectiveness of the system and must be improved and ameliorated. For example, the independency of independent directors is influenced by nomination, employment and wage, whereas these factors are still controlled by the big stockholders of listed companies, thus the independent directors don’t have real independency; nearly a half of the independent directors are professors and scholars who are engaged in education and have no experience in enterprise management; owing to limited time and energy, the independent directors don’t have the availability to know corporate information, thus their right to learn the truth can hardly be guaranteed and their function cannot bring into play.

In addition, in the United Kingdom and the United States, the unitary corporate governance mode is often applied, which means there are only board of directors, not board of supervisors, under the stockholder's meeting, and the independent directors are especially added to the board of directors so as to consolidate its supervision function. The civil law countries, such as Germany and Japan, often apply the dualistic corporate governance mode, which means there are board of directors and board of supervisors under the stockholder's meeting, who execute decision and supervision function separately. China adopts the dualistic mode, but it also introduces independent director system to strengthen the supervision of board of directors. However, as these two enjoy supervision right simultaneously, functional crisscross and repetition is inevitable in execution (in particular, the auditing committee and the board of supervisors that are mainly formed by independent directors have overlapped function in the supervision and check of corporate finance).

(4) The Stimulation and Restriction Mechanism of Senior Administrators Is To Be Established

Another important issue is, the consciousness of good faith of state-owned enterprise's senior administrators, including directors, supervisors, financial responsible persons, is very poor, which results in the invasion of the interest of listed companies and investors and especially medium-sized and small investors. Some senior administrators take orders from the appointed stockholders and lacks deserved independent power of judgment. Some members of the board of directors, including independent directors, don't do what they are supposed to do and don't attend the board meeting over a long period of time. Some of them even cry out grievances when they are punished. Due to the lack of necessary balancing mechanism and supervision and restriction mechanism, a few senior administrators act in foolhardy manner and even commit a crime.

The stimulation mechanism is an important component of corporate governance structure and militates for the stable long-term development of the company. Presently, the wage system of senior administrators of Chinese state-owned listed companies has not realized market-oriented. The low salary and the lack of stimulation mechanism are very common. The ineffective wage system can hardly attract and stimulate talented people and results in the short-term behavior of decision-makers and executors and causes slow-down and even the drain of excellent entrepreneurs. Therefore, we need to establish reasonable long-term stimulation system, so as to heighten wage level and improve unbalanced wage structure, solve agency problem to some extent and enables the senior administration to realize the goal of the maximum stockholder's equity.

(5) Role of CSRC in Promoting and Perfecting the Governance of State-owned Listed Companies

Judging from the angle of market, the so-called corporate governance is a system aiming at

managing and controlling the company and it ought to be within the range of corporate self-governance. In narrow sense, the corporate governance structure refers to the relationship between stockholders, directors and managers; in broad sense, it also covers the relationship between stockholders, directors, managers and all parties concerned (for example, staff, customers, suppliers, creditors, social public, etc.) and aims at solving the problems of benefit among different beneficiaries, decision-making, supervision, stimulation and allocation of risk. All these aspects mainly rely upon the balance of all parties and the self-perfection of the company. The supervision department cannot get involved in the company's decision-making process.

Clearly defining the above content does not imply that the supervision department should "let nature take its own course". The supervision department's primary task is to protect investors, and especially medium-sized and small investors. But the listed companies are public companies, and their governance structure directly concerns investor's interest. Therefore, continually perfecting the governance structure of listed companies is within the extent of responsibility of supervision department. The supervision department should act as an active supervisor. In the meantime, considering that China is converting from planned economic system to market economic system, the associated regulations and laws are still imperfect, and the company performance needs correct guidance, so the securities supervision commission's proper interference and release of necessary laws and regulations are feasible and resultful. CSRC has acted as the advocator and main propeller of corporate governance movement internationally. According to International Organization of Securities Commissions (abbr. IOSCO)'s report made in 2001, in most of the IOSCO's member countries, the securities supervision commission is the main propeller and supervisor of the act of public corporate governance.

For the state-owned listed companies, the governmental sector (state assets management committee at all levels), as the representative of state-owned equity ownership, executes owner's obligations and is an important component of corporate governance structure and a major participant of corporate governance. As securities supervision department, the securities supervision commission's main role is to establish relevant laws and regulations on governance of state-owned listed companies and actively promote the perfection of corporate governance structure. They act as an external propeller of corporate governance. Moreover, they actively cooperate with state assets supervision and management department in standardizing the state-owned holding stockholder's behavior and protecting the fundamental interest of listed companies and all investors.