

Feature

特寫

Mapping a Course for Management Buyouts in China

Many socio-economic and political hurdles must be overcome before the central Government can benefit from the use of management buyouts to help privatise its vast state-owned economy. Simon SM Ho, Dean and Professor and Annie Li, a PhD student of the Hong Kong Baptist University shared their view.

Ever since the UK economist Mike Wright discovered the phenomenon of management buyouts (MBOs) in the 1980s, the practice has become the most prevalent means of privatisation in Europe and the US. Scholars advocating MBOs believe the process can minimise the information asymmetry and agency cost, and further enhance a company's operational efficiency by combining management and shareholders.

Propelled by China's central Government, the privatisation of the Mainland's state-owned enterprises (SOEs) has focused on two main approaches. One is the reform of financial institutions, involving the incorporation, restructuring and listing of the big four state-owned banks (Bank of China, Industrial and Commercial Bank of China, Agricultural Bank of China, and Construction Bank of China). The second approach is MBOs.

However, under the guiding notion of "crossing the river by feeling the stones", nearly every economic reform in Mainland China to date – including MBOs – has seemed to follow the same process: the Government or scholars find a new way for economic development and implement it without first putting in place the relevant guidelines or codes.

Only after some market players have made gains for themselves by exploiting the loopholes do the regulators intervene, calling the reform to an abrupt halt before hurriedly introducing regulatory policy. In the absence of the required infrastructure and supporting research, that new policy is infested with impracticalities and further loopholes, bearing little relevance to real business situations and thus retarding economic development.

A Lack of Consensus

The mainstream view of an MBO is that it is an effective way to diversify the shareholding of an SOE during its privatisation to solve the owner's vacancy problem. The problem stems from the fact that although the state ultimately owns the SOE, by law the state can only appoint its officials as the agents to run it.

Based on implementing the practice in Europe and the US, an MBO is regarded as providing an effective incentive mechanism, akin to stock options, to enhance management efficiency.

Yet in terms of the practical outcome concerning such buyouts of SOEs in China, there are two conflicting viewpoints. Supporters of the process – such as Professor Zhang Weiying, a well-known economist at Peking University – say it is a kind of compensation for the founding members of the management team for their historical contributions, bringing to some extent social justice to them. In the long run, the proponents say that MBOs will optimise the company's ownership structure and put in place a much better incentive mechanism for management, in turn enhancing corporate governance.

On the other hand, some academics argue that without checks and balances, the MBO is a non-transparent process in which the senior executives, as the insiders of the company, will take advantage at every opportunity to benefit themselves by various means. That could include under-reporting operating profits, manipulating asset appraisals or conducting illegal financing. Such social injustices would lead to a large drain of state-owned assets.

These economists and some other interested parties stress that to privatise SOEs in Mainland

China through an MBO, many ingrained social, economic and institutional problems need to be overcome. For example, without a suitable social and institutional environment, adequate corporate governance and the high ethical standards of the senior executives, it will be difficult to realise the positive effects of an MBO.

Conflicts

While the original aim of using MBOs in Mainland China was to advance the overall reform of the SOEs, with a macro mission to speed up ownership diversification for further economic development, too often the acquisition has been initiated for self interest.

From a practical perspective, the executives who control the process have a dual identity. They are both the owner proxy of the state-owned assets in the enterprise as well as being the management team. No clear boundaries exist. Managers have often exploited self-interests through manipulating the asset-pricing and payment clauses.

As the macro goals have conflicted with the micro outcome, the transactions have strayed from the core values of the MBO process.

Because of the inherent conflict between political interests of the state and the economic interests of the corporations, the needed infrastructure for MBOs in Mainland China is far from adequate. Even fundamental institutions such as asset-pricing and credit-rating bodies are not in place.

Plus, the Government regulators have so far adopted a conservative and indecisive attitude.

For example, in June 2002, the Ministry of Finance and the China Securities Regulatory Commission jointly promulgated a guideline that halted MBOs of listed companies. Then, in late 2004, the newly formed State Assets Supervision and Administration Council (SASAC) enacted a series of regulations governing the ownership transfer of SOE assets, stipulating stricter asset appraisals and ownership transfer procedures. The rules therefore made it more difficult to implement MBOs.

Given the ambiguity of the policies and regulations, SOEs have adopted a wait-and-see attitude.

The Way Forward

It appears that China's regulators should put in place a comprehensive, well-balanced and well-coordinated system to promote the advantages and limit the shortcomings of MBOs, if they are to be used to help achieve further economic development in the Mainland.

For example, the National People's Congress or its standing committee should enact the law concerning the administration and management of state-owned assets. It should specify what types of companies can use MBOs, as well as the procedures to conduct such transactions. However, the draft is still in the motion stage and it will take a long time before it enters into the formal legislation stage.

In the meantime, as a temporary measure, the State Council should issue administrative regulations to rectify the situation of non-enforceability of the current legal provision concerning the administration of state-owned assets.

The executive powers of the different Government agencies should also be clearly defined to reduce conflicts. And to manage and effect ownership transfer of state-owned assets, it is vital that market-oriented measures such as price competition and information disclosure are introduced.

Meanwhile, the SASAC has taken some steps in the right direction, for example with new rules to allow state-owned assets to be listed on the Shanghai and Shenzhen stock exchanges, provided all transactions are conducted by tender offers and the related information of the target company is publicly available. And in April 2005, SASAC promulgated special rules on MBOs for small and medium-sized enterprises.

In the long run, however, only once there is more market-orientated development, for example, in areas such as mergers and acquisitions, the professional manager market and the intermediary institution market, will the issues relating to MBOs of SOEs be resolved. Until then, blindly implementing such buyouts would lead to a multitude of problems.

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規劃國企的管理層收購的前路

中央政府必須克服眾多社會、經濟和政治障礙之後，方可利用管理層收購，促使其規模巨大的國有經濟實現私有化，並從中獲益。香港浸會大學工商學院院長何順文教授及其博士生李元莎分享了他們的看法。

自從英國經濟學家 Mike Wright 在 80 年代發現管理層收購 (MBO) 這個現象之後，這種做法已經成為歐美實行私有化的最普遍手段。鼓吹管理層收購的學者認為，該方式可以大大減少訊息不勻稱以及代理成本，並將管理人員與股東合二為一，進而提升公司的運營效率。

在中央政府的推動之下，內地國有企業 (SOEs) 的私有化主要採取兩種方式：一種方式是改革金融機構，包括對四大國有銀行 (中國銀行、中國工商銀行、中國農業銀行、中國建設銀行) 實行公司化、重組與上市。第二種方式便是管理層收購。

然而到目前為止，在「摸著石頭過河」的觀念指導下，幾乎每項在內地推行的經濟改革 (包括管理層收購)，都似乎經歷相同的過程，即政府或學者找到經濟發展的新途徑便火速上馬，並沒有制定相關的指引或守則配合實施。

只有當某些市場參與者利用漏洞為自己謀取收益之後，規管機構才插手干預，驟然叫停改革措施，然後匆忙推出規管政策。由於缺少必要的基礎架構及研究支援，新政策難免有不切實際之處與新的漏洞，未能配合經管實況，因而阻礙了經濟發展。

缺乏共識

關於管理層收購的主流觀點認為：以私有化解決所有人缺位問題的過程中，管理層收購是實現股權多元化的有效途徑。出現該問題是源於國家雖然是國有企業的最終所有人，但依照法律，國家只能委派官員以代理人身份經營企業。

由於歐美施行這種做法，人們認為，管理層收購能夠提供類似股票期權那樣的有效激勵機制，從而提升管理效率。

但是，就國有企業實施此類收購的實際結果而言，存在兩種矛盾的觀點。這種方式的支持者，譬如北京大學著名經濟學家張維迎教授稱，這是對管理團隊創始成員所作的貢獻的一種報償，在某種程度上為他們實現了社會公義。支持者稱，長遠而言，管理層收購會優化公司的所有權結

構，並建立起一套比原有機制更能鼓勵管理層的做法，由此提升企業管治。

而另一方面，某些學者則指出，在缺乏制衡的情況下，管理層收購是個非透明的過程。在過程中，身為公司內部人士的高層主管會利用一切機會，通過各種手段為自身謀利。這些手段可能包括：少報營業利潤，操縱資產評估，或開展非法融資。此類社會不公正情形會導致國有資產的大量流失。

這些經濟學家及其他有關人士強調：要透過管理層收購在中國內地實現國有企業的私有化，必須克服眾多盤根錯節的社會、經濟與體制問題。比如說，沒有合適的社會與體制環境、恰當的企業管治以及高層主管嚴格的操守準則，管理層收購要實現積極效果會比較困難。

衝突

雖然內地利用管理層收購的初衷是推動國有企業整體改革，並肩負加快所有權多元化以促進經濟進一步發展的宏觀使命，但在許多情況下，發起收購行為往往是為了追求私利。

從實務角度來看，控制收購過程的高層主管擁有雙重身份。他們既是企業國有資產所有人的代理人，又是管理團隊成員。這裏並不存在明確的界線。經理人往往透過操縱資產定價與支付條款，取得自身利益。

由於宏觀目標與微觀結果存在衝突，交易便背離了管理層收購過程的核心價值。

由於國家的政治利益與企業的經濟利益之間存在固有矛盾，中國內地管理層收購所必需的基礎架構遠未完善。甚至連資產定價與信用評級單位那樣事關根本的機構都尚未設置妥當。

況且到目前為止，內地監管機構始終採取謹慎、猶豫的態度。

例如在 2002 年 6 月，財政部會同中國證券監督管理委員會聯合發佈一份指引文件，暫停上市公司的管理層收購行為。隨後，在 2004 年尾，當

時新成立的國有資產監督管理委員會（國資委）制定了一系列法規，規管國有企業資產所有權的轉讓行爲，制定了更爲嚴格的資產評估與所有權轉讓程式。因此，這些規定加大了管理層收購的實施難度。

鑒於政策與法規的模糊，國有企業採取了觀望態度。

前景

看來，如果要利用管理層收購來推動實現內地經濟的進一步發展，中國的監管機構似乎應當確立一個健全、平衡和協調的體制，以發揚管理層收購的益處，制約其缺陷。

比如說，全國人民代表大會或其常務委員會應當制定國有資產管理與經營的相關法律，明確什麼類型的企業可以採取管理層收購行爲，並訂明實施此類交易的程式。然而，這項草案仍處於建議階段，要進入正式立法階段，還需要較長時間。

Discussion Platform

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在此期間，國務院應當頒佈行政法規，將其作爲臨時措施，以糾正當前國有資產管理的法律條文未能執行的狀況。

另一方面，當局應當明確界定不同政府機關的行政職權，以減少衝突。而且，要管理並實現國有資產所有權的轉讓，關鍵的一點是須引進市場化舉措，例如價格競爭與資訊披露。

國資委已經沿著正確方向採取若干步驟，例如出臺新的規定，允許國有資產在上海及深圳證券交易所上市，條件是所有交易必須透過投標出價完成，而且必須公開目標公司的相關資料。此外在2005年4月，國資委頒佈了針對中小企業管理層收購的特別規定。

然而從長遠來看，只有在諸如合併與收購、專業經理人市場、仲介機構市場等領域出現傾向市場運作的動向，與國有企業管理層收購有關的問題才能得以解決。在此之前，盲目實施此類收購則難免引起各種問題。

討論平臺

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