

Punching Reforms on China's Stock Markets

Sweeping stock market reforms have begun in China with the launch of pilot programmes to allow listed companies to sell their non-tradeable shares. Andrew Godwin, Carl Hinze and Simon Ha of Linklaters explain.

When taking a closer look at the changes the Chinese Government has brought in to help resuscitate the poor state of the local stock market, and, in particular, at the share capital structure of listed Chinese companies in the Mainland, a pattern emerges: most share capital of listed companies is not tradeable on the domestic stock exchanges.

There are two types of share capital in the Mainland: those shares that are listed and tradeable on the stock exchanges; and the so-called non-tradeable shares, which comprise about two-thirds of the US\$400 billion market value of the companies listed on the Shanghai and Shenzhen stock exchanges, yet can only be transferred between parties by way of agreement or special government approval.

As the Mainland share prices hover near six-year lows, the China Securities Regulatory Commission (CSRC) as the main stock market regulator has turned its focus to tackle the problem of non-tradeable shares. Having learned from unsuccessful past efforts to resolve the same issue, the regulator has proposed to phase out the non-tradeable shares of listed Chinese companies in an orderly manner by launching trial programmes involving a selected sample of companies.

These reforms will have a far reaching effect on listed companies as well as the shareholders, especially those holding tradeable shares.

Qualifications

By early August, two pilot programmes involving 46 companies had been announced. No companies may participate in the trial programmes without the CSRC's permission. It is reported that after the completion of the second pilot programme the regulator intends to make it compulsory for all listed Chinese companies to restructure their share capital

structure by converting all their non-tradeable shares into tradeable shares. To further underline this point, the CSRC has indicated it would only entertain new applications for capital raising from companies that have completed such a restructuring.

In addition, on 23 August 2005, the CSRC, the State Council, the Ministry of Finance, the People's Bank of China and the Ministry of Commerce jointly issued a guiding opinion in support of the reforms. It is indicated in the document that companies having completed their share capital restructuring would be given priority if they intend to undertake any capital raising activities. Further, the joint opinion stated there would no longer be different classes of A-shares for companies involved in an initial public offering.

The pilot companies are required to satisfy certain requirements under the CSRC scheme before converting their non-tradeable shares into tradeable shares. These include: holding an extraordinary shareholders' meeting to vote on the reform proposal; issuing at least three public notices of the extraordinary general meeting; and making provisions for shareholder participation (including voting via the internet).

In addition, at least two-thirds of the shareholders at the extraordinary shareholders' meeting and voting must vote in favour of the reform proposal and, as a further qualifying requirement, at least two-thirds of the shareholders of tradeable shares must vote in favour of the reform. This additional qualification was inserted to ensure the interests of the tradeable shareholders were not compromised in the transition phase of the reform.

To stop the share price free-falling – as a result of shareholders immediately offloading the converted shares – the CSRC also requires

China Focus 中國焦點

holders of non-tradeable shares to refrain from selling converted shares through either the stock exchange or a private transfer agreement for 12 months after conversion. In addition, in the two years after the lock-up period ends, a holder of non-tradeable shares that has more than 5% of the total issued share capital of the company cannot trade on the stock exchange more than 5% of the company's total share capital within 12 months, and not more than 10% of the company's total share capital within two years.

Some companies involved in the trial programmes have gone even further, imposing selling restrictions of up to two to three years, with one controlling shareholder undertaking not to transfer its converted shares in the initial five years.

Stabilising Share Prices

The CSRC also granted controlling shareholders the opportunity to stabilise the market price of the shares.

The controlling shareholder of a listed company may, within two months after the approval of the restructuring proposal, buy shares of the company on the market to offset any abnormal fluctuations of the share price without having to comply with the stringent general offer obligations set out under domestic law. However, the controlling shareholder is then prohibited from selling the newly acquired shares for six months.

Compensation Schemes

As a further incentive for holders of tradeable shares to approve the reforms, companies have devised various schemes to compensate them in exchange for the conversion of the non-tradeable shares (previously issued at a discount for their illiquidity) into tradeable shares.

However, one of the fundamental issues the pilot companies have encountered so far is the level of compensation holders of non-tradeable shares should give to the holders of tradeable shares. This problem will confront all the companies undertaking the reform and the method of compensation adopted will depend on the financial position of the company and its holders of non-tradeable shares.

The pilot companies have announced various compensation methods:

- **Cash payment:** holders of non-tradeable shares make cash compensation to the holders of tradeable shares.
- **Transfer of shares from the holders of non-tradeable shares to the holders**

of tradeable shares: this increases the percentage shareholding held by the holders of tradeable shares in the total share capital of the listed company. This appears to be the most popular and widely adopted method of compensation. Reports indicate that holders of tradeable shares will generally receive at least two to four shares for each 10 shares they hold in a particular listed company.

- **Recapitalisation of retained earnings:** the listed company will recapitalise its retained earnings and issue new share capital only to the holders of tradeable shares.
- **Paying dividends to the holders of tradeable shares:** another compensation method is to make dividends payments to all the shareholders where holders of non-tradeable shares waive their rights to such dividends.
- **Unilateral reduction of shares by the holders of non-tradeable shares:** by reducing the number of shares held by holders of non-tradeable shares overall, the total share capital of the listed company held by the holders of tradeable shares will increase proportionately. This method of compensation achieves a similar result as a transfer of shares from holders of non-tradeable shares to holders of tradeable shares.
- **Issuing warrants by the holders of non-tradeable shares:** the holders of non-tradeable shares will issue call and/or put warrants to the holders of tradeable shares.
- **Any combination of the above methods.**

A related issue is whether B-share (listed and traded on the Shanghai and Shenzhen stock exchanges) and H-share (listed and traded on overseas stock exchange markets, but mainly in Hong Kong) holders will also be compensated in a manner similar to A-share holders.

It has been reported that the CSRC and the Hong Kong Stock Exchange have reached a consensus that holders of H-shares will not participate in the reform so long as their economic interest are not affected. It is also rumoured that holders of B-shares will not be compensated to the same degree as holders of A-shares. As yet, however, the CSRC's position on this is not clear.

The joint opinion issued on 23 August indicated that the overall share capital restructuring is meant to resolve the differences between the tradeable and non-tradeable A-shares. With regard to the H-shares and B-shares, if any resolution is required, the shareholders shall resolve that among themselves.

Foreign Invested Legal Person Shares

It remains to be seen in what way foreign invested legal person shares – held by foreign investors in Chinese companies – will be affected by the reforms. So far, this issue is relevant to four listed companies in the pilot programmes.

One common feature from the proposals of each of these four companies is that the holders of the foreign invested legal person shares have been or are expected to be treated on the same basis as other shareholders with non-tradeable shares. The only potential difference that arises is that the reform proposal must now also be approved by the Ministry of Commerce.

Under current rules, foreign investors are prohibited from buying A-shares directly, except via a Qualified Foreign Institutional

Investor scheme. Presumably, if the Ministry of Commerce approves the conversion of the foreign shares to A-shares it will result in foreign investors holding A-shares as a direct product of the reforms. Yet this does not mean foreign investors can buy or trade A-shares.

Unfortunately, when the Ministry of Commerce recently approved the reform of Zijiang Enterprise, the regulators fell short of making any formal declaration as to how A-shares obtained by a foreign investor as a consequence of the reform would be treated; this remains a contentious point.

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中國證券市場之突破性改革

中國推出允許上市公司出售其非流通股份的試驗計劃，意味著中國已對證券市場啟動全面改革。年利達律師事務所的 **Andrew Godwin**、**Carl Hinze** 與 **Simon Ha** 提出了他們的看法。

仔 細觀察中國政府為協助地方證券市場擺脫困境而推行的變革，尤其是針對在中國大陸上市的中國企業的股本架構的變革，便會發現一共同特徵：多數上市公司的股本均不能在國內證券交易所流通。

中國大陸有兩類股本：在證券交易所掛牌且可流通的股份；與所謂非流通股份。此類非流通股份佔滬深兩地證券交易所上市的全部公司4,000億美元市值的三分之二，但只能通過協議或經政府特別批准才可在交易方之間轉讓。

鑒於內地股票價格近六年來在低位徘徊，作為主要股市監管機構的中國證券監督管理委員會（中國證監會）已經將其關注的焦點轉向解決非流通股份問題。過往解決這個問題的種種舉措並未奏效，在汲取教訓之後，監管當局建議通過啟動試驗計劃，用於部分特選公司，有秩序地逐步取消中國上市公司的非流通股份。

這些改革措施對上市公司及其股東，尤其是持有可流通股份的股東，將產生深遠的影響。

資格

截至八月下旬，已經宣佈了兩項涉及46家公司的試驗計劃。任何公司參與該兩項試驗計劃須徵得中

國證監會的許可。據報道，在第二項試驗計劃完成之後，監管當局擬通過將全部中國上市公司的全部非流通股份轉換為可流通股份，強制其重組其股本架構。為加強該舉措，中國證監會已表明，此後將只考慮完成該等重組的公司提交的集資申請。

此外，中國證監會、國務院、財政部、中國人民銀行與商務部於2005年8月23日聯合發表了支持此類改革的指導性意見。該文件表明，完成股本重組的公司若有意開展任何集資活動，將獲得優先考慮。此外，該聯合意見稱今後在首次公開發售股票時將不再為相關公司劃分A股類別。

參與試驗計劃的公司必須在滿足中國證監會方案項下的若干要求之後，才可以將其非流通股份轉換為可流通股份。要求包括：舉行特別股東大會，就改革提案進行投票表決；有關召開股東特別大會的公告至少需要發佈三次；並就股東參加會議的方式（包括通過互聯網投票）制訂規定。

此外，必須有三分之二參加特別股東大會並投票的股東投票贊成改革提案，除此之外，作為獲取資格的另一項要求，必須有至少三分之二持有可流通股份的股東投票贊成改革。該項額外條件之目的在於保證持有可流通股份的股東之權益在改制的轉變階段不受損失。

China Focus 中國焦點

為防止由於股東立即拋售轉換股票而引起的股票價格不斷滑落，中國證監會要求非流通股份持有人在轉換之後12個月內不要通過證券交易所或私自簽訂的轉讓協議出售轉換股份。此外，在股份禁售期結束之後兩年內，擁有公司已發行股本總額百分之五以上的非流通股份持有人，於12個月內在證券交易所交易的股份不能超過該公司已發行股本總額的百分之五，在兩年內交易不超過該公司已發行股本總額的百分之十。

部分參與該試驗計劃的公司更進一步規定長達二至三年的禁售限制，其中一名控股股東更承諾在最初五年內不轉讓其轉換股份。

穩定股票價格

中國證監會同時向控股股東提供了穩定股票市價的機會。

在重組提案獲准後兩個月內，上市公司的控股股東可以在市場上購買該公司的股票，以抵銷股票價格的任何反常波動，而不必遵守依照國內法律規定的嚴格的全面收購義務。但是控股股東也被禁止在六個月內出售最近收購的股份。

補償計劃

為進一步鼓勵可流通股份持有人贊同改革，各公司制訂了各種計劃，補償其在非流通股份向流通股份的轉換中所蒙受的損失（非流通股份在原先發行時因為其缺乏流通性而已折價發行）。

然而，參與試驗計劃的公司到目前為止遇到的根本問題之一，是非流通股份持有人應向可流通股份持有人作出補償的標準問題。這一問題將困擾所有承諾改革的公司，而其所採用的補償方式將取決於該公司及其非流通股份持有人的財務狀況。

參與試驗計劃的公司宣佈了各種補償方式：

- 現金支付：非流通股份持有人以現金補償可流通股份持有人。
- 非流通股份持有人向可流通股份持有人轉讓股份：該方式將增加可流通股份持有人在該上市公司股本總額中的持股比例。這似乎是最受歡迎且被廣泛採用的補償方式。各種報告顯示，可流通股份持有人每持有一家上市公司的十股股份，通常可獲得至少二至四股股份。
- 化留存盈利為資本：上市公司會將其留存盈利作為資本並僅向可流通股份持有人發行新股本。
- 向可流通股份持有人支付股息：另一種補償方式是向所有的股東支付股息，而非流通股份持有人放棄其分紅權利。

- 非流通股份持有人單方面減少所持份額：通過全面減少非流通股份持有人所持份額，上市公司的股本中由可流通股份持有人持有的股本總額將相應地增加。該補償方式可獲得與非流通股份持有人向可流通股份持有人轉讓股份的方式相似的結果。
- 由非流通股份持有人簽發認股權證：非流通股份持有人向可流通股份持有人簽發看漲認股權證與/或看跌認股權證。
- 任何上述方式的組合。

與之相關的問題是B股（在上海和深圳證券交易所上市交易）和H股（在海外證券交易所上市交易，主要在香港）持有人是否可以得到與A股持有人相似方式的補償。

據報道，中國證監會與香港證券交易所已經達成共識，即如果其經濟權益不受影響，H股持有人將不參與該項改革。另有傳聞，B股持有人將不會得到與A股持有人同樣程度的補償。不過，中國證監會對此的態度迄今未明。

8月23日發表的聯合意見表明，全面股本重組意在消除可流通A股與非流通A股之間的差異。至於H股和B股，如有必要，將由股東自行解決。

海外投資法人股

此項改革將對海外投資者在中國公司中持有的海外投資法人股產生何種影響尚有待觀察。迄今為止，該問題牽涉參與此類試驗計劃的四家上市公司。

該四家公司提案的一個共同特點是海外投資法人股的持股人已經或預期將得到與其他非流通股份持有人同樣的待遇。可能出現的唯一差異在於該改革提案目前亦需獲得商務部的批准。

依照現行規定，禁止海外投資者直接購買A股，除非經由已獲資格的外國機構投資者計劃購買。據推測，如商務部批准外資股轉換為A股，此次改革將直接導致海外投資者持有A股。不過這並不表示海外投資者可以購買或交易A股。

可惜，當商務部最近批准紫江企業的改革時，監管當局並未正式聲明將如何處置海外投資者由於此次改革而持有的A股；這仍舊是一個爭議的焦點。

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