

# CHINA LEGAL REPORT\*

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## **Legal Report about the Supervision and Management for Non-listed Public Company**

The China Securities Regulatory Commission (“CSRC”) promulgated the Supervision and Management for Non-listed Published Company (“Measures”) on Sep.28, 2012, which is significant for the securities market.

### **I Introduction (Definition, Comparison, Overview)**

The Measures is promulgated to provide details for the issuing and transferring shares of the non-listed public company.

#### 1.1 Definition of “Non-listed Public Company” (“Company”):

- 1) It shall be a joint stock limited company;
- 2) Its shares are not listed in the related stock exchange;
- 3) Its shares are issued or transferred to targeted investors, so that there are more than 200 shareholders, or there is a public transferring of its shares;
- 4) The shares of the Company shall be registered and deposited in the China Securities Depository and Clearing Corporation Limited; and
- 5) The share offering and transferring of the Company shall be done through the National Equities Exchange and Quotations (new third board). (prescribed in the [2013] NO.20 Announcement of CSRC )

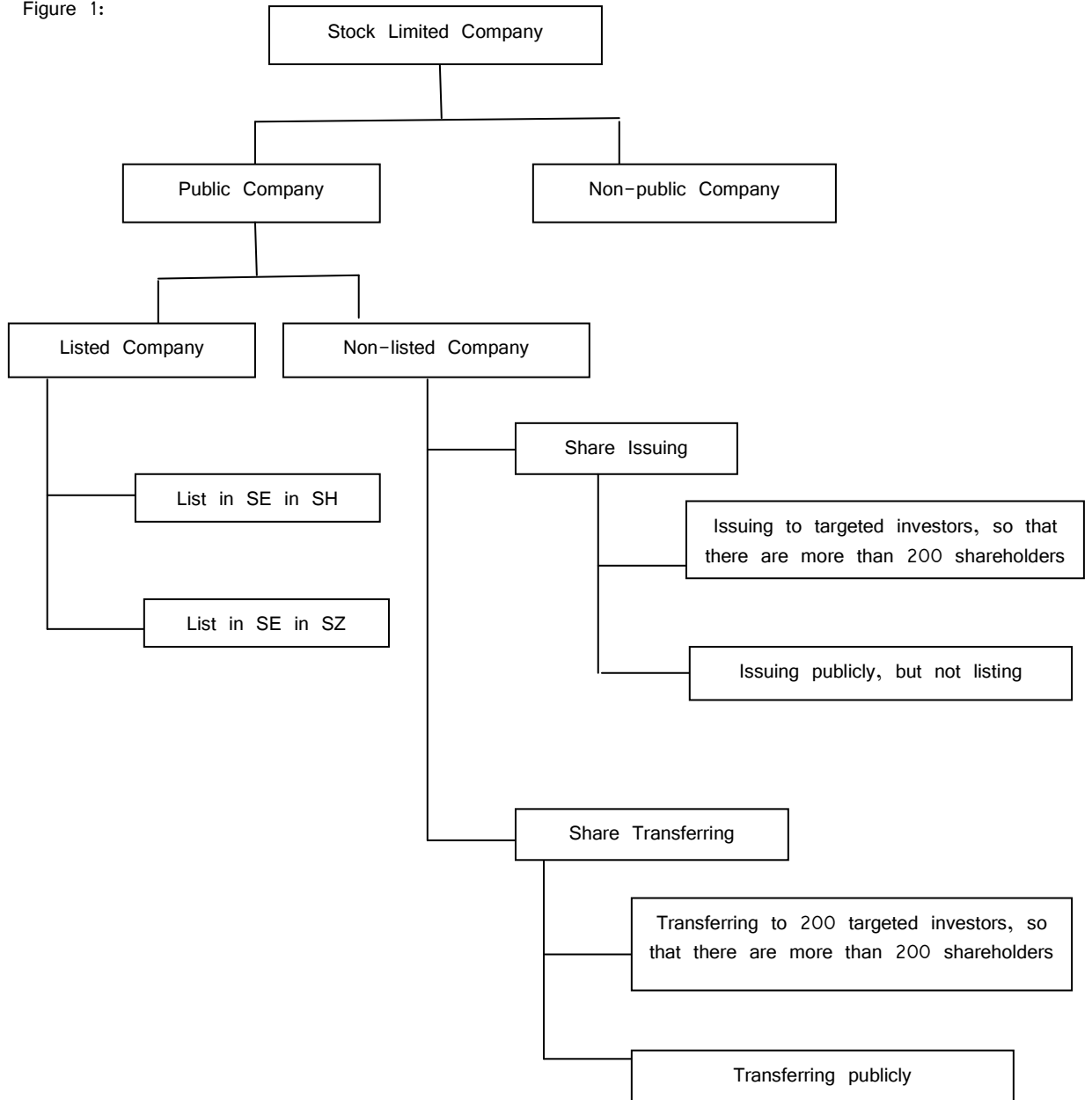
#### 1.2 Comparison of Company, with a listed Company:

- 1) The Listed Company is also a joint stock limited company, which shall satisfy the conditions prescribed by the CSRC, such as the financial statement, the registered capital and etc. But there are no similar financial requirements for the Company.
- 2) The issuing shares of the listed company shall comply with the regulation of CSRC approval and sponsor system. But there is no such system for the Company.
- 3) About the public offering, there are some related provisions in the Securities Law:
  - a. In Article 10, public offering is defined as: a) issuing securities to non-targeted investors; or b) issuing securities to more than 200 targeted investors; or c) other actions as may be so prescribed by laws or administrative regulations.
  - b. In Article 39, shares, corporate bonds and other securities publicly issued pursuant to law shall be listed for trading on lawfully established stock exchanges, or transferred at other securities trading sites approved by the State Council.

1.3 Overview of different forms of Stock Limited Company:

After the Measures being promulgated, the basic frame of the stock issuing and transferring of different kinds of joint stock limited companies shall be as outlined in figure 1:

Figure 1:



## II Corporate Governance

The corporate governance prescribed in the Measures is almost the same as for listed companies. With regards to corporate governance of Company, the following is remarkable:

- 1) About the acquisition of the Company, the acquiring party or its actual controller shall have complete corporate governance instruments and fine credit records. The acquiring party shall not obtain financial assistance from the acquired Company by any means, or damage the benefits of the Company or the shareholders hereof.
- 2) **The shares of the Company obtained by the acquiring party shall not be transferred within 12 months after the acquisition.**

## III Information Disclosure

### 3.1 Contents

- 1) The contents of the disclosure shall include: (a) the basic information of the company, the condition of the shareholders, share capital and the corporate governance; (b) the main business, products or service of the Company, and the industry the Company belongs; (c) the financial report and the audit report; (d) other information.
- 2) The files disclosed by the Company shall include the statements of the public transferring, transferring to targeted investors and issuing to targeted investors, and the report of the issuing condition, regular report and interim report.
- 3) For the Company which involves public transferring and issuing to targeted investors, the semi-annual report and the annual report shall be required. While for the Company which involves transferring to targeted investors, only annual report shall be fine.

### 3.2 Ways of Disclosure

- 1) The information shall be disclosed on the platform required by the CSRC.
- 2) For the Company involves transferring to targeted investors, which leads to more than 200 shareholders, the way to disclose may be specified in the AoA.

## Comparison with Listed Company

The standard of information disclosure is less strict.

## **IV Share Transfers**

If transferring to targeted investors, which leads to more than 200 shareholders, the Company shall apply to the CSRC during the following 3 months. And the transfers shall be non-public and negotiated. If the amount of the investors falls below 200 during 3 months, the application may be not requisite.

If involving public transferring, the decision shall be approved by more than 2/3 of the shareholders who possess the voting rights in the general shareholders' meeting. And the CSRC approval is requisite; the statement of the public transferring shall be disclosed before transferring.

## **Comparing to the Listed Company**

The CSRC approval is not requisite for the shares transferring of the listed company. The shares hereof shall be transferred on the related stock exchanges freely.

## **V Issuing the Targeted Investors**

### 5.1 Two types of issuing

The issuing hereof refers to two kinds:

- 1) Issuing to targeted investors, so that the Company shall have more than 200 shareholders, or
- 2) The Company with more than 200 shareholders issuing to targeted investors.

### 5.2 Scope of targeted investors

The targeted investors shall include natural person and entity, such as

- 1) The shareholders of the Company;
- 2) The directors, supervisors, senior managers and core staffs;
- 3) The natural person, legal person or other entity which comply with the standards in the related regulations about the appropriateness of the investors.
- 4) The amount of the 2) and 3) shall not be more than 35.

### 5.3 Approvals of issuing

The issuing shall be:

- 1) approved by the general shareholders meeting; and
- 2) approved by the CSRC.

#### 5.4 Approval Exemption

The CSRC approval shall be exempted, when

- 1) issuing to targeted investors, the shareholders hereafter are not more than 200;  
or
- 2) **the shares issuing by the Company within 12 months are less than the 12% of the net asset of the Company.**

But the records-keeping afterwards shall be complied with to the CSRC.

### VI Supervision

The supervision of the Company is similar with the listed company.

### VII Significance

The shares of the Company could be transferred more freely than before, which could be transferred to more investors and also could be transferred in public. But there are still some requirements, such as CSRC approval and 2/3 shareholders' approval.

### New Third Board

The Measures are fit the trend of the expansion of the new third board.

- 1) The amount of the shareholders of the Company shall be more than 200, not less than 200 anymore.
- 2) The natural person investor, complying with the related standards prescribed by the CSRC, shall be available to become shareholders of the Company.
- 3) After the promulgation of the Measures, the projects of new third boards are increasing quickly.

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