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Corporate M&A 2022

China: Law & Practice
and
China: Trends & Developments

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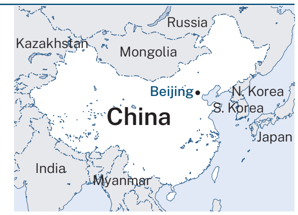
CHINA



Law and Practice

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1. TRENDS

1.1 M&A Market

In China, M&A deal activities increased in the first half of 2021, but significantly slowed down in the second half of 2021, primarily due to the disruption caused by the worsening of the COVID-19 pandemic in certain areas.

According to CV Source, the number of domestic M&A deals in 2021 increased by 4.01% from 2020, and the aggregate value of domestic M&A deals decreased by 12.59% from 2020 to 2021. The number of cross-border M&A deals in 2021 increased by 12.61% from 2020, and the aggregate value of cross-border M&A deals decreased by 28.50% from 2020 to 2021.

1.2 Key Trends

Government More Assertive in Regulating M&A Market

In 2021, the Chinese government adopted and executed a series of economic and regulatory policies that expand the government's role in directing economic activities in key industries such as education and the internet. Companies must be prepared to address potentially broader sets of issues and more aggressive regulators.

Anti-monopoly Enforcement Intensifies

Anti-monopoly scrutiny of M&A activities ramped up significantly in 2021, with a record number of investigations initiated by the government into ongoing as well as past M&A transactions, and a heightened focus on big tech and digital platforms. Longer review processes and deal timelines are expected.

National and Data Security Considerations Expand in Domestic and Cross-Border Deals

This trend manifested in 2020 and continues in 2021. A number of newly issued regulations and proposed amendments to existing laws are broader than the prior rules and feature mandatory filing requirements with increased penalties for failing to file.

M&A Activities Tilt towards Domestic "New Economy" Sectors

Draconian restrictions in the pandemic era continue to have a significant, unequal impact on economic activities. As a result, M&A deals naturally flow towards domestic industries that tend to fare better in the new environment.

Economic and Regulatory Uncertainties Cast Shadow on M&A Outlook

The continuing pandemic and government pursuit of "zero-Covid" through strict quarantine policies, as well as a more challenging regulatory environment, increase uncertainties about China's near-term economic outlook and are beginning to have a downward pressure on M&A deal volume.

Focus on Due Diligence More Visible

All of the above trends give rise to a higher risk profile for M&A deals. A heavier emphasis on quality business and financial, as well as legal, due diligence is becoming increasingly important and more visible in deal execution.

1.3 Key Industries

The leading sectors for M&A activity in 2021, by number of deals, were manufacturing, the hi-tech and information industry, healthcare, and financial and enterprise services. Industries such as transportation, construction, retail, hospitality, mining and real estate experienced high degrees of disruption and volatility throughout the pandemic.

2. OVERVIEW OF REGULATORY FIELD

2.1 Acquiring a Company

There are a number of transaction structures that can be used to acquire a company in China.

Acquisitions of Privately Held Companies

An acquisition of a privately held company is typically structured as a stock purchase, in which the buyer purchases all of the outstanding equity interest of the target company directly from its equity holders. Alternatively, the buyer may acquire a company through an asset purchase, in which the buyer picks and packages the specific assets and liabilities to be included within the scope of a transaction.

Asset purchases are less common in China in the context of corporate M&A, primarily because of tax or regulatory considerations. For example, the transfer of certain assets may be subject to higher taxes. Licences or permits for operating certain assets are often not transferrable with the underlying assets. As a result, it may be necessary to spin off and consolidate the target assets into a separate entity in order to structure an asset purchase as a stock transaction.

Acquisitions of Publicly Held Companies

An acquisition of a publicly held company in China is generally accomplished through a negotiated purchase of control shares, a tender offer, or a combination of the two.

In a negotiated purchase, the buyer acquires sufficient shares from certain selling shareholders of the target company pursuant to a negotiated purchase agreement, which allows the buyer to become a controlling shareholder, holding more than 50% of the outstanding shares of the target, exercising more than 30% of the shareholder voting power of the target or having the power to elect more than half of the target's board members.

In a tender offer transaction, the buyer makes an offer to purchase shares from the target company's public shareholders in the open market, subject to myriad disclosure and trading requirements. The consideration for a tender offer can be cash or equity securities of the buyer.

A buyer can also obtain control by subscribing for new shares privately placed by the target company. A mandatory tender offer will be triggered if the private placement results in the buyer holding an interest of more than 30% in the target.

Acquisitions of State-Owned Companies

The above discussion also applies to an acquisition of a state-owned company by a non-state buyer, but such transaction is subject to additional scrutiny by government authorities. Sale of any state-owned company must be approved by an agency of the State-Owned Assets Supervision and Administration Commission with jurisdiction over the target company. In addition, the valuation of the target, pricing mechanism and payment of consideration for such acquisition are also required to follow special regulations.

2.2 Primary Regulators

Primary Regulators

The primary regulators of M&A activities in China include the following.

- The State Administration for Market Regulation (SAMR), which is a market watchdog responsible for regulating overall market activities, including implementation of competition and anti-monopoly laws and policies.
- The Ministry of Commerce (MOFCOM), which is responsible for regulating domestic and cross-border trade and economic co-operation, including outbound investment by

Chinese companies and inbound investment by foreign investors.
- The National Development and Reform Commission (NDRC), which is responsible for formulating and implementing national or regional strategic economic planning and, together with MOFCOM, reviewing key investment projects.
- The China Securities Regulatory Commission (CSRC), which is responsible for regulating securities markets, including primary and secondary market securities offerings and trading activities involving publicly held companies.
- The State-owned Assets Supervision and Administration Commission (SASAC), which is responsible for supervising the management and operations of all state-owned enterprises in non-financial sectors.
- The State Administration of Foreign Exchange (SAFE), which is responsible for implementing currency control regulations that limit the convertibility of the country's official currency and foreign currencies in commercial activities.

Government Agencies Regulating Key Industries

M&A transactions in certain industries or concerning certain aspects of business operations may trigger regulatory review by government agencies overseeing such industries. For example, if a target company's operations require special permits for the internet industry, involve critical information infrastructure, or raise issues of data security, a blessing by the Ministry of Industry and Information Technology (MIIT) may be required.

2.3 Restrictions on Foreign Investments

Parts of China's economy are subject to foreign investment restrictions, generally limiting or prohibiting foreign participation in various industry sectors that are deemed sensitive or a matter of national security. The Special Administrative Measures for Access of Foreign Investment (Negative List) specifies the maximum foreign shareholding limits applicable to restricted industries. The Negative List is periodically updated by the NDRC in collaboration with MOFCOM, and the most recent update came into effective on 1 January 2022.

For activities and businesses that are subject to foreign investment restrictions, it is important to consider whether sophisticated transaction and corporate structuring is called for to comply with such restrictions.

2.4 Antitrust Regulations

In China, business combinations are subject to a number of laws and regulations governing monopoly activities in the economic arena. The laws and regulations mainly consist of:

- the Anti-monopoly Law (2008);
- the Provisions of the State Council on Filing Threshold for Business Concentration (as amended in 2018);
- the Measures on Business Concentration Filing (2010), issued by MOFCOM;
- the Guidelines on Business Concentration Filing (as amended in 2018), issued by the SAMR; and
- the Provisional Measures on Reviewing Business Concentration Filing (2020), issued by the SAMR.

The Anti-monopoly Law prohibits concentrations between business operators that have or may have the effect of eliminating or restricting market competition. A filing for SAMR review is required when an underlying transaction results in a "business concentration" and a filing threshold is met.

A "business concentration" is deemed to exist where business operators merge, or one party of the underlying transaction obtains control of the other party through equity or asset acquisitions or through other contractual arrangements. Such control may be exercised by majority voting rights, or by minority veto rights over key business matters.

The current filing threshold turns on the revenues of all parties participating in the business concentration, as summarised below.

- The aggregate worldwide revenues of all participating parties exceeded CNY10 billion in the previous fiscal year, and at least two of the participating parties each generated revenues in China in excess of CNY400 million in the previous fiscal year.
- The aggregate revenues in China of all participating parties exceeded CNY2 billion in the previous fiscal year, and at least two of the participating parties each generated revenues in China in excess of CNY400 million in the previous fiscal year.

In the review process, the SAMR may request the filing parties to propose remedial measures to address any concerns raised by the SAMR, and the terms and conditions of a transaction may need to be revised as a result. The transaction can only be consummated after the filing is cleared by the SAMR.

A business concentration filing may be made under either simple or normal procedures, depending on whether the underlying transaction is likely to raise monopoly concerns. A simple procedure can typically be completed within 30 days after filing, and a normal procedure may take up to 180 days.

In 2021, the Anti-monopoly Guidelines for the Platform Economy Sector was issued on February 7th, and a draft amendment to the Anti-monopoly Law was released for public comments on October 23rd, both signalling a "new era" of anti-monopoly enforcement in China. See the **China Trends and Developments** chapter in this guide for further discussion of these developments.

2.5 Labour Law Regulations

In China, labour and employment relationships are governed mainly by the following laws and regulations:

- the Labour Law (as amended in 2018);
- the Labour Contract Law (as amended in 2013) and its Implementing Regulations (2008);
- the Social Security Law (as amended in 2018); and
- the Law on Mediation and Arbitration of Labour Disputes (2008).

In addition, local policies and interpretation rules, as well as various court and arbitral tribunal decisions, also play a significant role in addressing labour and employment issues, and sometimes offer differing approaches to the same issues.

A few characteristics of China's labour and employment law regime that a buyer should primarily be concerned about are summarised below.

Labour Unions

Unionisation is not mandatory, but employees are encouraged to form a union or worker representative congress and enter into collective agreements with employers concerning general employment matters such as compensation, benefits, workplace safety and conditions. Union representatives are entitled to attend board meetings on human resources matters. An employer is required to consult with its employees or their representatives for any material changes to employment documentation, such as handbooks, manuals and other sets of rules.

Employment Contracts

An employer is required to enter into a written employment contract with each employee and include such mandatory provisions as term of employment, compensation, benefits and social insurance. Failure to sign or timely renew employment contracts may subject the employer to damage claims by the employees. However, it is common to see a local target company not having valid written contracts with their employees, which may expose a buyer to potential risks.

Termination and Lay-Offs

There is no concept of at-will employment in China. An employee may unilaterally terminate employment upon a 30-day notice. Employers may only terminate employees on limited grounds prescribed by law (eg, misconduct or incompetence are valid grounds, but redundancy is generally not). Economic lay-offs (letting go 20 or more employees or over 10% of a workforce) is permissible only in specific circumstances of economic difficulty prescribed by law.

Social Security

In China employers and employees are required to contribute funds to social security programmes for pensions, medical insurance, unemployment insurance, work compensation and housing according to government-determined percentages. Many privately held companies fail to pay, or underpay, their mandatory contributions to these social security programmes, which exposes the companies to government penalties and civil claims by employees.

Labour Dispute Resolution

A legal dispute related to labour and employment issues between an employer and employee must at first be heard by a labour arbitration commission, whose decision can be appealed to the courts.

2.6 National Security Review

The current national security review process was first established in China in 2006 by MOFCOM. In December 2020, the NDRC and MOFCOM jointly released the Measures on Foreign Investment Security Review, which took effect on 18 January 2021 and prohibit or limit any foreign investments that may be deemed to have a significant impact on China's national security.

The scope of national security review covers a broad range of industries, including military equipment manufacturing, material agricultural product manufacturing, material energy and resource production, and sectors related to material infrastructure, material transportation services, material cultural products and services, material information technology and internet services, material financial services and critical technology that may affect China's national security.

Given the broad and vague terminology, it is difficult to assess whether a proposed transaction is likely to trigger national security review. It may be advisable to conduct a "pre-consultation" with the NDRC to seek its non-binding preliminary view on the national security aspects of a potential M&A transaction.

3. RECENT LEGAL DEVELOPMENTS

3.1 Significant Court Decisions or Legal Developments

In the past couple of years, China has stepped up its anti-monopoly enforcement efforts. Its central government has repeatedly emphasised that its goal is to prevent the chaotic expansion of capital. Throughout 2021, more than 50 past transactions that failed to complete the requisite anti-monopoly filings were investigated and subjected to penalties, far exceeding the total number of cases in the previous four years.

China is also proposing a few important amendments to its Anti-monopoly Law that would place special focus on the technology, internet, finance and media sectors, and would significantly increase the penalties for unlawful conduct. China's anti-monopoly authorities are likely to continue regulating M&A activities in these sectors with a heightened focus.

3.2 Significant Changes to Takeover Law

The takeover of public companies is mainly governed by the Company Law (as amended in 2018), Securities Law (as amended in 2019), Measures for the Takeover of Listed Companies (as amended in 2020) ("Takeover Rules"), and a number of other rules and guidelines promulgated by the CSRC. There have been no significant changes to these laws and regulations in the past 12 months.

4. STAKEBUILDING

4.1 Principal Stakebuilding Strategies

As discussed in **2.1 Acquiring a Company**, in China, an acquisition of a publicly traded target company typically takes the form of a negotiated deal between controlling shareholders and a buyer, or a tender offer initiated by a buyer.

In the case of transfer by negotiated agreement, the minimum number of shares to be transferred is 5% of the total share capital of the target company, and the price must not be lower than 90% of the closing price of the shares on the trading day immediately prior to the date of the share purchase agreement.

In the case of a tender offer, it is customary for a bidder to build a stake in the target prior to launching an offer. In practice, a bidder often reaches an agreement with major shareholders of the target regarding their decisions to accept a tender and the shareholding structure following the tender offer. Such an agreement is usually entered into before, and disclosed to the market in, the announcement of the tender offer.

A bidder may also build up its stake by block trading on the secondary market through standardised transactions via the stock exchange's trading system. In block trading, the price must be between 90% to 110% of the closing price of the shares on the previous trading day.

Historically, most tender offers in China have been conducted on a friendly basis. A hostile tender offer is uncommon, with only a limited number of cases in recent years, all of which failed to be completed and ended with direct or indirect government intervention. This is in part due to the fact that shareholding in public companies is historically more concentrated, and in part due to the underdevelopment of China's corporate law in the context of public takeovers, which generates substantial transactional uncertainties.

4.2 Material Shareholding Disclosure Threshold

A bidder's material shareholding disclosure thresholds and filing obligations are as summarised below.

Once the equity interests held by a bidder reach 5% of the outstanding share capital, within three trading days, the bidder must:

- disclose a change-in-equity report;
- report to the CSRC and the stock exchange, and notify the target company; and
- refrain from trading shares in the target during the said three-trading-day period.

After the equity interests held by a bidder reach 5%, the following conditions apply.

- Whenever the equity interests held by the bidder increase or decrease by a cumulative 5%, the bidder must, within three trading days of such change:
  - (a) disclose a change-in-equity report;
  - (b) report to the CSRC and the stock exchange, and notify the target company; and
  - (c) refrain from trading shares in the target between the occurrence of the equity change until three trading days after disclosure of the change.
- Whenever the equity interests held by the bidder increase or decrease by a cumulative 1%, the bidder must notify the target and disclose such change on the next trading day.

The change-in-equity report disclosed by the bidder must be in either short form or long form, depending on the bidder's shareholding percentage.

- A short form report is called for if the equity interests held by the bidder exceed 5% but not 20%.
- A long form report must be disclosed if the equity interests held by the bidder exceed 20% but not 30%.
- Both short and long form reports must include information such as transaction structure, source of funds, post-takeover plans for the target, trading history in target shares and future plans for stake-building; the long form report must additionally include information such as the ownership structure of the bidder, related transactions with the target, target restructuring plans and any material transactions with the target.

4.3 Hurdles to Stakebuilding

Since the occurrence of a few attempted hostile takeovers a few years ago, many Chinese public companies have adopted various provisions in their corporate charters to hinder unwanted acquisitions, such as lower thresholds for disclosure, staggered boards or higher thresholds for nominating directors. See **9. Defensive Measures**.

Foreign buyers face additional regulatory hurdles in acquiring Chinese public companies. See **2.3 Restrictions on Foreign investments** and **2.6 National Security Review**. In addition, except for "qualified foreign institutional investors" approved by the CSRC, foreign buyers are prohibited from acquiring equity of listed companies on the secondary market, and must comply with the requirements under the Measures for Strategic Investment by Foreign Investors in Listed Companies, issued by MOFCOM (and amended in 2015).

In particular, strategic investment by a foreign investor in a public company requires approval by MOFCOM. The foreign investor must meet a minimum total asset requirement, and generally must acquire an at least 10% stake in the public company, which is also subject to a certain lock-up period.

4.4 Dealings in Derivatives

Dealings in derivatives are allowed in China, but only very limited types of derivatives are available for trading on the stock market and it is uncommon to use derivatives in M&A transactions.

4.5 Filing/Reporting Obligations

As derivatives are rarely used in public takeover transactions, there is uncertainty as to the filing/reporting obligations for derivatives under the Takeover Rules, which only explicitly apply to holdings in shares and convertible bonds. To the extent derivatives are convertible into actual shares of a company, the treatment of derivatives should arguably be similar to convertible bonds, which are reportable.

4.6 Transparency

Once a bidder's shareholding reaches 5% or more of the outstanding share capital of a listed target company, a change-in-equity report and other documents must be publicly disclosed and filed, in which the bidder must disclose the purpose of the acquisition, future stake-building plans and post-takeover plans for the target.

5. NEGOTIATION PHASE

5.1 Requirement to Disclose a Deal

According to the Securities Law and the Measures on Information Disclosure of Listed Companies (2021) ("Disclosure Rules"), issued by the CSRC, a public company is required to promptly disclose any material event that is non-public and would have a significant impact on the company's stock price. Takeover of a listed company would qualify as a "material event."

A target company must disclose a material event at the earliest occurrence of the following:

- a resolution regarding the material event is passed by the board of directors of the company;
- the parties involved enter into a letter of intent or definitive agreements with regard to the material event; or
- a board member or senior management member becomes aware of the occurrence of the material event.

A public company may be required to disclose a potential transaction prior to the time points described above for the purpose of correcting potentially false or misleading statements, or to address information leaks or market rumours.

As discussed in **2.1 Acquiring a Company**, most public takeovers in China are carried out between the acquirer and controlling shareholders of the target in a negotiated deal, to which the target company itself is often not a party. Therefore, the obligation to make requisite disclosure and filings mainly falls on the acquirer/bidder and the selling shareholders.

5.2 Market Practice on Timing

Market practice regarding disclosure is generally consistent with legal requirements, although a company may decide to disclose a potential transaction or certain aspects of it even if not legally required to do so, for other strategic reasons.

5.3 Scope of Due Diligence

In China, the practice of legal due diligence in a business combination transaction is very similar to that in other jurisdictions, and it varies depending on whether the target company is privately held or publicly listed, the level of co-operation provided by the target, and the nature of the target's business. The legal due diligence typically includes a comprehensive analysis of all important legal, business and operational matters of the target based on document reviews, management and third-party interviews or inquiries, background research, etc.

The focus of legal due diligence is generally to identify issues or risks that could negatively affect, inter alia:

- the valuation of the target company;
- the underlying rationale for the acquisition;
- the consummation of the transaction; or
- the prospect of the target's business operations.

The scope and process of due diligence have not been significantly impacted by the pandemic, other than the fact that on-site visits or in-person interviews are increasingly being replaced with remote access to facilities and virtual meetings.

5.4 Standstills or Exclusivity

It is common for a buyer to demand exclusivity in private M&A transactions in China. In a situation where there is only one potential buyer, the seller is likely to grant exclusivity to encourage the quick conclusion of the deal. If there are multiple potential buyers, however, the seller may be reluctant to grant exclusivity and instead intend to leverage competing bids.

In the case of tender offers, there are mandatory standstill provisions under the Takeover Rules that prohibit the bidder from trading any share of the target company between the announcement of the offer and the expiration of the offer period, other than pursuant to the provisions in the tender offer. Additional standstill provisions also apply to a potential bidder who meets certain disclosure thresholds by acquiring the target shares. See **4.2 Material Shareholding Disclosure Threshold**.

5.5 Definitive Agreements

In China, it is not the practice to document tender offer terms and conditions in a single, definitive agreement between a bidder and the target company. Instead, under the Takeover Rules, the following documents will memorialise the tender offer and are required to be filed by the bidder and made available to the target's shareholders for them to consider and accept:

- tender offer report, which sets forth the terms and conditions of the tender offer, such as total number of shares to be tendered, tender price, payment arrangements, conditions of the offer and offer period, etc;
- bidder's financial advisor's report;
- bidder's legal counsel's opinion;
- target's board of directors' report, which sets out the board's recommendation; and
- target's independent financial advisor's report, which analyses the fairness of the offer price and makes a recommendation to the shareholders.

6. STRUCTURING

6.1 Length of Process for Acquisition/Sale

The length of the process for acquiring a business in China can vary significantly depending on a number of factors, such as the amount of diligence required, the type of business being bought and the length of time needed to obtain required regulatory approvals. In general, it could take anywhere between three to ten months from the beginning of discussions to closing.

The impact of the COVID-19 pandemic also varies: the process typically experiences substantial delay in areas where regional lockdowns are carried out (as a result of which all local economic and government activities are brought to a halt).

6.2 Mandatory Offer Threshold

According to the Securities Law and Takeover Rules, unless an exemption applies, a mandatory tender offer will be triggered if an acquirer who in the process of acquiring the target company through any means other than a tender offer has become a holder of at least 30% of the outstanding shares of the target company then seeks to continue to acquire additional shares in such company.

For the purpose of determining whether a mandatory tender offer is triggered, the shareholding of a person in a public company will include both the shares registered under such person's own name and those shares whose voting such person controls.

6.3 Consideration

Cash is more commonly used as consideration in M&A transactions in China. In acquisitions of public companies by private companies, the consideration payable to target shareholders is predominantly cash-only. In an acquisition by a public company, shares of the acquirer are often used in combination with cash. In the case of a tender offer that aims to delist the target company, which is extremely rare in China, the bidder must make the offer in cash or offer the target shareholders a choice between cash and shares, a share-only offer being prohibited.

It is impracticable for a foreign bidder to use shares of a foreign company as consideration in a tender offer in China because of the legal restrictions on Chinese individuals and entities on owning equity interests in foreign companies.

Where parties disagree on the valuation of the target, or in industries with high valuation uncertainty, it is common to employ an earn-out structure or other valuation-adjustment mechanisms to adjust the total consideration ultimately paid if specified earnings are achieved or if predetermined business results fail to materialise.

6.4 Common Conditions for a Takeover Offer

Regulators generally do not restrict the use of conditions in takeover offers. It is common to have a number of conditions, including:

- the receipt of applicable regulatory approvals of the takeover (under the Takeover Rules, in the case of tender offers, such approvals must be obtained before a tender offer becomes open);
- the tender of a minimum number of shares in a tender offer;
- the target not having suffered a material adverse effect; and
- there being no law or governmental order prohibiting the consummation of the transaction.

6.5 Minimum Acceptance Conditions

The minimum acceptance conditions for tender offers usually correspond to the number of shares required to effectively control the target companies, and they may vary for different companies, depending upon a company's shareholding structure and threshold requirements under its organisational documents. According to the Company Law and the Takeover Rules, the following factors are indicative as to what the relevant control thresholds typically are:

- holding more than 50% of the outstanding share capital of a listed company;
- holding shares representing more than 30% of the voting rights of all outstanding shares of the listed company;
- holding shareholder voting rights to elect more than half of the members of the board of directors of a listed company; or
- otherwise holding sufficient shareholder voting rights to have a material effect on the resolutions of shareholder meetings.

6.6 Requirement to Obtain Financing

It is common to require the bidder to show committed financing to complete a business combination. According to the Takeover Rules, a bidder is required to engage a financial advisor to conduct due diligence into the bidder's capability to fund the acquisition and source of funding, and the due diligence results must be included in a financial advisor's report, which is part of the bidding documents disclosed to the public.

In addition, a bidder must provide one of the following measures as a security for financing the deal prior to announcing a tender offer:

- the bidder may provide a bank guarantee;
- the bidder's financial advisor may provide an undertaking that the financial advisor will be jointly liable with the bidder to finance the transaction;
- in the case of cash consideration, the bidder must deposit at least 20% of the total offer price into an account designated by China Securities Depository and Clearing Company (CSDC); and
- in the case of share consideration, the bidder must deposit all relevant securities at the CSDC, except for new shares to be issued.

6.7 Types of Deal Security Measures

For acquisitions of privately held companies, a buyer usually negotiates with significant shareholders of the target company with more deal certainty, thereby eliminating the need for deal security measures.

For acquisitions of publicly held companies, break-up fees are sometimes used and borne by the selling shareholders of a listed company. But the target company does not bear break-up fees because it is not a party to the takeover transaction. To the extent break-up fees are used, they are typically not high and only to recover out-of-pocket transaction expenses incurred.

To the authors' knowledge, other deal protection measures such as match rights, force-the-vote provisions or non-solicitation provisions are not used in China's public takeover transactions.

6.8 Additional Governance Rights

In China, if the target is a publicly held company, it would be difficult for a bidder to obtain additional governance rights beyond those rights directly attached to its shareholding. A bidder in such circumstances may consider negotiating and entering into contractual arrangements with other shareholders of the target company to collectively act on certain matters, thereby exerting greater influence.

In a privately held company, a buyer with less than a controlling shareholding may have more flexibility in seeking additional governance rights, such as:

- veto rights over certain important matters;
- information rights to receive periodic financial and operating reports or make reasonable requests for additional information; or
- drag-along rights to increase transferability and force other shareholders to participate in a sale.

6.9 Voting by Proxy

According to both China's Company Law and Securities Law, shareholders of public companies can vote by proxy – and they typically do so. Proxy solicitation is also permissible, and must follow statutory disclosure and procedural requirements.

6.10 Squeeze-Out Mechanisms

There are no squeeze-out mechanisms, short-form mergers or other similar mechanisms to remove minority shareholders under Chinese laws or in practice.

In China, it is extremely rare for a bidder to seek to delist a public company because the listing process is very complex and time-consuming, which makes the listing status of a company a valuable asset. A bidder, after obtaining control of the target company, typically chooses to continue to meet the public float requirements for public companies and retain the listing status of the target.

6.11 Irrevocable Commitments

In China, it is common for a buyer, and indeed preferred by it, to negotiate and obtain certain forms of irrevocable commitments from principal shareholders of the target public company as early as possible in the acquisition process, to increase deal certainty. Principal shareholders typically sign binding term sheets or issue commitment letters, and agree to co-operate with the acquisition and refrain from transferring their shares or negotiating with competing bidders for a certain period of time. Such undertakings usually do not provide an "out" for the principal shareholder if a better offer is made.

7. DISCLOSURE

7.1 Making a Bid Public

For shareholding thresholds triggering disclosure obligations on the part of a bidder, see **4.2 Material Shareholding Disclosure Threshold**. The timeline and process of a tender offer as prescribed by the Takeover Rules are summarised as follows.

Indicative Announcement of Offer

A bidder must first make an indicative announcement summarising the key terms in the tender offer report, such as bidder information, the purpose of the tender offer, the offer price, the number of shares to be tendered and the offer period.

Tender Offer Report

Within 60 days after the indicative announcement, a bidder must prepare and disclose a tender offer report with a detailed description of the offer and instruct its financial and legal advisors to prepare and disclose a financial advisor's report and a legal opinion, respectively, regarding the tender off.

Target Board Response

Within 20 days after the disclosure of the tender offer report, the board of directors of the target must disclose a target board report, accompanied by opinions issued by an independent financial advisor on the fairness and legality of the offer, and must state whether the board recommends that its shareholders accept the offer.

Offer Period

The offer must open for between 30 and 60 days, and can be extended only where there is a competing offer.

Closing and Reporting to Stock Exchange

If a closing occurs, the transfer of shares must be registered with CSDC within three trading days from the end of the offer period. The bidder must report the result of the tender offer to the stock exchange and disclose it publicly within 15 days from the end of the offer period.

7.2 Type of Disclosure Required

If shares will be issued by a bidder in a stock-for-stock business combination that results in the bidder having more than 200 shareholders, the bidder must prepare a prospectus meeting statutory requirements and issued to the selling shareholders of the target, although such transactions are not common in China.

7.3 Producing Financial Statements

In a stock-for-stock transaction, the bidder must prepare and submit its audited finance statements for the previous three years and a securities valuation report. Bidder financial statements must be prepared in accordance with Chinese generally accepted accounting principles (GAAP) or with International Financial Reporting Standards (IFRS).

7.4 Transaction Documents

Any transaction documents executed by the parties for public takeover transactions must be filed to the stock exchange and/or CSRC.

8. DUTIES OF DIRECTORS

8.1 Principal Directors' Duties

Under the Company Law, board directors of the target company owe a duty of loyalty and duty of diligence only to the company and its shareholders, and do not owe such duties to any other stakeholders.

Under the Takeover Rules, board directors of the target must take actions to safeguard the interests of the company and its shareholders, treat each acquirer fairly and must not unduly obstruct a takeover.

Board directors are also required to make investigations, analyse the terms of the offer, engage financial advisors to advise on the transaction and propose recommendations to shareholders.

In addition, from the indicative announcement of a tender offer until the completion of the tender offer, without approval by the shareholder meeting, the board of directors of the target must not take any action that would materially affect the assets, liabilities, interests or operating results of the target company.

8.2 Special or Ad Hoc Committees

It is not common for the board of directors of a target company to establish special or ad hoc committees to negotiate and evaluate potential business combinations. In certain situations where a majority of directors are conflicted and recused, a special committee of independent and disinterested directors may be formed to review the transaction, which is necessary to demonstrate that the directors have discharged their duties of loyalty and diligence.

8.3 Business Judgement Rule

Courts in China have not recognised a doctrine similar to the "business judgement rule" in takeover situations. In China, a target company's board of directors tends to play a limited role in M&A transactions, and instead shareholders are more actively involved and wield decision-making powers over important matters. As a result, directors are rarely challenged in litigation involving M&A deals.

8.4 Independent Outside Advice

In a tender offer, the board of directors of the target company is required to engage an independent financial advisor to produce a report analysing the bidder's eligibility to make the offer and its commercial strength, the potential impact of the takeover on the target's operations and development, and the fairness and reasonableness of the offer price.

In a public takeover not involving a tender offer, it is not common for the target's board to engage independent outside advisors, but the selling shareholders often seek third-party financial and legal advice with respect to the deal.

In the case of an acquisition of a listed company by its management members (such as directors or senior management), the listed company is required to engage a qualified asset valuation firm to issue an independent asset valuation report, and its independent directors must also engage a financial consultant to advise on the sale.

8.5 Conflicts of Interest

Conflicts of interest of directors, shareholders, senior officers and advisers have been the subject of judicial and regulatory scrutiny in China. In a related-party transaction where conflicts of interest exist, the parties involved are required to discharge certain statutory corporate governance obligations and guarantee the impartiality and fairness of the transaction.

A director or shareholder of a public company must recuse himself/herself/itself at the board or shareholder meeting, as the case may be, for approving the related-party transaction where a conflict-of-interest issue is raised. Chinese courts and securities market regulators routinely render decisions imposing damages or penalties on violations of conflict-of interest-rules.

9. DEFENSIVE MEASURES

9.1 Hostile Tender Offers

Hostile tender offers are not prohibited in China, but rarely occur in practice. The shareholding of a Chinese public company is typically more concentrated and tends to be controlled by a very limited number of significant shareholders. Takeover of a public company is unlikely to succeed without the consent of the target's controlling shareholders.

Moreover, Chinese regulators generally have a heavy hand in regulating the securities market. They view market activities with extreme caution and are more willing (compared to their counterparts in many other jurisdictions) to intervene and halt a transaction in order to prevent disruption or instability.

There have been very few cases of attempted hostile tender offers in recent years. It remains to be seen whether more market-oriented practices and legal/regulatory regimes more friendly to hostile takeovers will take root and develop in China.

9.2 Directors' Use of Defensive Measures

In China, corporate governance law and practice are centred more on shareholder meetings, giving company boards less power and discretion in taking measures against public takeover transactions. For example, any issuance of new shares by a public company, or any change to its existing share capital structure for that matter, must be approved by a lengthy process in a shareholder meeting. Also, share classification based on preferences is still prohibited. This rigidity of corporate law makes popular defensive measures such as "poison pills" impracticable in China.

With the advent of hostile takeovers in recent years, certain defensive measures have been developed by some public companies, particularly those that can be implemented without changing the share capital structure of the company. Given their short history and lack of relevant cases, the legal boundary and even ultimate effectiveness of such measures remain to be tested in Chinese courts.

9.3 Common Defensive Measures

Emerging defensive measures adopted by Chinese public companies include:

- qualification requirements harsher than the statutory requirements under the Company Law for shareholders to propose a shareholders' meeting to replace directors;
- staggered terms for directors and other restrictions on shareholders' ability to remove directors (but note that according to a judicial rule issued by China's Supreme People's Court in 2019, shareholders may be entitled to terminate a director without cause before their term expires, which casts doubt on the effectiveness of a staggered board arrangement);
- a mechanism similar to "golden parachutes" in company charters, by which company executives may receive a large amount of compensation when a change of control occurs;
- solicitation of "white knights" to outbid hostile bidders; and
- intentional increase of the anti-monopoly or regulatory risks for bidders, or initiation of litigation against bidders to delay acquisitions.

To the authors' knowledge, there has been no significant change with respect to various defensive measures as a result of the pandemic.

9.4 Directors' Duties

See **8. Duties of Directors**.

9.5 Directors' Ability to "Just Say No"

Under the Company Law and general corporate governance practice in China, a public company's shareholders have ultimate decision-making powers over business combination matters, and its directors cannot "just say no".

10. LITIGATION

10.1 Frequency of Litigation

Litigation is quite common in connection with M&A deals in China. Some of the commonly contested issues in such litigation are:

- whether valuation of the target is misled by false disclosures, misrepresentations or financial fraud;
- whether corporate governance requirements are adequately followed;
- whether statutory closing conditions are absent or insufficient;
- whether valuation adjustment mechanisms are properly implemented; and
- whether breaches of director fiduciary duties occur.

10.2 Stage of Deal

In some instances, litigation occurs during a public takeover transaction as a defensive measure to delay the process. But most litigation occurs after an M&A transaction is closed, when certain issues or additional facts surface, allowing a party to the transaction or public investors to raise claims such as breaches of the purchase agreement, financial fraud, false disclosures or breaches of fiduciary duties.

10.3 "Broken-Deal" Disputes

As a result of the COVID-19 pandemic, target companies and sellers should generally take measures to lessen the potential for transactions to be terminated by acquirers for reasons attributable to the pandemic, including by adding flexibility in certain contract terms, such as interim covenants or the definitions of "material adverse effect" or "force majeure", and proactively communicating with buyers in seeking mutually acceptable adjustments.

11. ACTIVISM

11.1 Shareholder Activism

Shareholder activism, in relation to M&A activities as well as other corporate governance matters, has not been a force in China at all. In 2020, the Supreme People's Court issued a set of procedural rules that facilitates securities class actions, aiming to arm investors of listed companies with tools to combat unfair and fraudulent corporate behaviour. However, given the political and economic development in recent years, it remains uncertain whether any activism, let alone shareholder activism, will become more prominent in the foreseeable future.

11.2 Aims of Activists

See **11.1 Shareholder Activism**.

11.3 Interference with Completion

See **11.1 Shareholder Activism**.

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Trends and Developments

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China M&A Market Overview

China experienced significant economic growth in the first half of 2021 despite the persistence of the COVID-19 pandemic throughout the world. The emergence of new virus variants in the second half of the year, however, resulted in a slowdown in both economic and M&A activities toward the year's end.

Domestic M&A market

In 2021, a total of 3,759 M&A deals were completed in the Chinese domestic market, an increase of 4.01% compared to last year. The total deal value was USD216.946 billion, a fall of 12.59% from last year.

Among domestic M&A deals, there were 33 "mega-deals", each with a value exceeding USD1 billion, and there were 405 deals each with a value exceeding USD100 million. The largest M&A deal was completed by Xinjiang Tianshan Cement Co., Ltd (a public company listed on the Shenzhen Stock Exchange), which acquired 99.93% of South Cement Company Limited for USD7.549 billion. Nuversegame, a game business unit under Bytedance, established its own private fund, the Nuverse Inspiration Fund, and completed the second largest M&A deal in 2021 by acquiring Shanghai Moonton Technology Co., Ltd for USD4 billion.

Cross-border M&A market

A total of 125 cross-border M&A deals were completed in 2021, an increase of 12.61% compared to last year. The total deal value was USD18.207 billion, a fall of 28.5% from last year. As the cross-border M&A market in 2021 was still under the continued influence of the pandemic, both the number of deals and their total amount had not recovered to pre-pandemic levels.

Among cross-border deals, the largest deal was completed by Hillhouse Capital Group, in acquiring the home appliance department of Royal Philips N.V. The deal value was USD5.197 billion. The second largest deal was completed by CITIC Capital and co-investors, in acquiring China Biologic Products Holding, Inc. for USD1.48 billion.

Key Industry Trends

In 2021, M&A deals were concentrated in manufacturing, information technology, medical health and finance. In particular, manufacturing attracted USD45.094 billion in investment and became the top industry for M&A activity. Geographically, the provinces of Guangdong, Shanghai and Zhejiang are the top three regions in terms of the number of completed M&A deals.

A mid-year policy change significantly affected the education industry. In July 2021, the General Office of the State Council issued the Opinions on Further Easing the Burden of Excessive Homework and Off-campus Tutoring for Students Undergoing Compulsory Education (the "Education Opinion"). According to the Education Opinion, new off-campus school curriculum-based tutoring institutions will not be approved. Also, all school curriculum-based tutoring institutions are banned from being listed on any stock market in China. The Education Opinion caused educational companies across the nation to divest their school curriculum-based businesses at deep discounts. Total investment volume in the education industry contracted significantly in 2021. The key investment focus in this industry is expected to shift from school curriculum-based business to other businesses, such as adult continuing education and test prep.

Developments in the Anti-monopoly Law

Anti-monopoly Law amendments

On 23 October 2021, the Draft Amendment to the Anti-Monopoly Law of the People's Republic of China (the "Draft Amendment") was published for public comments. It is anticipated that business concentration filings (aka merger control filings) will become an important obligation on the part of the acquirer in an M&A transaction that aims to obtain control of the target company.

Amendments to the penalties for anti-monopoly violations

The Draft Amendment increases the penalties for a business operator who carries out a business concentration transaction that is in violation of merger control filing requirements and that has or may have the effect of excluding or limiting competition. In such a scenario, the maximum fine is increased to up to 10% of such business operator's sales revenue from the previous year. It remains unclear how sales revenue will be calculated; eg, whether sales revenue refers to domestic sales only or entire global sales.

Under the current anti-monopoly law, if a business operator completes a business concentration transaction in violation of merger control requirements, but the merger does not have the effect of excluding or limiting competition, no penalty is imposed. The Draft Amendment, however, would impose a fine of up to CNY5 million.

The Draft Amendment also authorises anti-monopoly authorities to initiate an investigation into any business concentration transaction that, while not meeting the merger control filing threshold, has or may have the effect of excluding or limiting market competition. Given that the authorities generally enjoy broad discretion, business operators are strongly advised to conduct competition impact analyses as part of the standard M&A due diligence exercise, in order to reduce the risk of being investigated afterwards.

In egregious violations, the Draft Amendment allows anti-monopoly authorities to impose two to five times the penalty amounts mentioned above. This would expose M&A parties to substantial risks.

The Draft Amendment does not recognise any statute of limitation for past violations. It takes the view that past non-compliance with merger control filing requirements is deemed to be continuous, and the Draft Amendment may apply retroactively. This means that anti-monopoly authorities may investigate a past transaction that closed before the Draft Amendment became effective, and impose the new penalties on the parties.

In 2021, three new anti-monopoly regulations were issued and may have a significant impact on M&A activities in relevant industries.

The Anti-Monopoly Guide for the Platform Economy Sector ("Platform Economy Guide"), issued by the Anti-Monopoly Commission of the State Council on 7 February 2021

The Platform Economy Guide addresses issues particular to the technology and internet sectors. It provides that (i) a business concentration between business operators using variable interest entity ("VIE") structures falls within the review scope of the Anti-Monopoly Law; and (ii) anti-monopoly authorities are authorised to initiate investigations into any business concentration transactions in the "internet platform economy" sector even if the transactions do not meet the merger control filing threshold.

Therefore, under this regulation, companies in the internet sector, which typically adopt a VIE structure and had evaded merger control filing for years, are explicitly required to comply with anti-monopoly regulations with respect to M&A activities going forward.

Anti-monopoly authorities will also take a more proactive role in monitoring M&A transactions involving acquisitions of start-ups by tech giants and in assessing the impact on innovation and competition in the emerging technology industries. This is in line with the approaches proposed by the Draft Amendment described above.

The Anti-Monopoly Guide for the Active Pharmaceutical Ingredients Field (the "Pharmaceutical Ingredients Guide"), issued by the Anti-Monopoly Commission of the State Council on 15 November 2021

The Pharmaceutical Ingredients Guide emphasises the risks in this particular market posed by monopoly practices such as vertical monopoly agreements, customer restrictions and hub-and-spoke agreements. Since the active pharmaceutical ingredients market is different from others – on account of its smaller scale, fewer competitors and higher market barriers – the Pharmaceutical Ingredients Guide encourages business operators to make voluntary business concentration filings in advance and allow the authorities to have an opportunity to evaluate any impact on market competition even if the potential transaction does not meet the filing threshold.

In our view, business operators in the active pharmaceutical ingredients sector should pay special attention to anti-monopoly compliance risks, and review all past and ongoing transactions to assess whether it is necessary to make voluntary merger control filings.

The Circular on Overseas Anti-Monopoly Compliance Guidelines for Enterprises (the "Circular"), issued by the State Administration for Market Regulation on 15 November 2021

The Circular is a general guideline for Chinese enterprises that engage in overseas business operations or engage in business operations in China that may have the effect of excluding or limiting competition in overseas markets.

The Circular provides an overview of the anti-monopoly laws and regulations outside China, guidance about how to establish overseas anti-monopoly compliance systems, and tips about how to prevent anti-monopoly risks and how to respond to overseas investigations and litigation.

In relation to merger control filings, the Circular emphasises that it is possible to make multiple filings in different jurisdictions for one transaction. It is important for Chinese enterprises to have a comprehensive understanding of overseas anti-monopoly law requirements and their respective filing obligations in order to ensure compliance in multiple jurisdictions.

Anti-monopoly enforcement actions

On 10 July 2021, the State Administration for Market Regulation ("SAMR") published an anti-monopoly review decision that prohibited the merger between Huya Inc. and Douyu International Holdings for business concentration concerns. This is only the third decision in history made by the SAMR to forbid an M&A transaction. A few highlights of this case are set out below.

After analysing a number of factors such as market share, market control of the participating business operators, concentration status of the related markets, and the impact on downstream users and competitors, the SAMR decision concluded that the transaction must be prohibited due to its exclusive and limiting effect on competition and its negative impact on the Chinese game live streaming and online game service market. In addition, the decision rejected the remedial measures proposed by the participating business operators for their inadequacy in resolving the issues.

In this decision, the SAMR was more engaged and cautious in analysing the relevant market positions and the impact on the competition status of such markets. The decision reflects the SAMR's strong preference for exercising its review power before an M&A transaction is completed, rather than making decisions afterwards.

Given its huge economic scale and substantial influence on consumers, advertisers and service providers, the internet platform economy sector has become a key focus of China's anti-monopoly regulations and enforcement actions. Internet and tech giants in this space should be very careful in planning and executing M&A transactions, taking into consideration the changing regulatory environment and heightened anti-monopoly compliance risks.

As of 31 December 2021, there were more than 90 cases in which the SAMR had imposed penalties, for a total amount of more than CNY61.35 million, against business concentration violations. Most cases involved business operators in internet platform sectors with VIE structures.

In some cases, venture capital fund investors of the acquirors were found to have "joint control" of the target companies and, without requisite merger control filings, to have failed to comply with anti-monopoly law. In around 50 cases, the venture capital investor's equity ownership was 30% or less. In around ten cases, it was under 10%.

These enforcement cases indicate that ownership percentage in target companies is only one of many factors in determining whether one business operator has control of another business operator. Other factors include contractual voting arrangements, act-in-concert agreements, veto powers and other special corporate governance arrangements. Given the substantial discretion of anti-monopoly authorities in interpreting the law, parties to M&A transactions are strongly advised to carefully evaluate whether the element of control exists, particularly when the equity ownership share is close to or above 10% in an M&A transaction.

Developments in National Security Review of Foreign Investment

Legislative developments

The National Security Law of the People's Republic of China ("National Security Law"), effective on 1 July 2015, establishes the framework for national security review. Article 59 of the National Security Law stipulates the subject matter and scope of the national security review; ie, any foreign investment, specific items and key technology, network information technology products and services, construction projects and other significant matters and activities that have or may have an effect on China's national security.

Article 35 of the Foreign Investment Law of the People's Republic of China ("Foreign Investment Law"), effective on 15 March 2019, establishes a national security review system in the foreign investment area, rendering any foreign investment affecting or having the possibility of affecting national security subject to government scrutiny.

Under the framework established by the National Security Law and Foreign Investment Law, the Measures for the Security Review of Foreign Investment ("Foreign Investment Security Measures") became effective on 18 January 2021. The Foreign Investment Security Measures specify detailed requirements and procedures for conducting security review of foreign investment in specific industries.

Industries subject to mandatory security review

Foreign investment or acquisition in the following industries is subject to mandatory national security review.

Investment in a military industry, military-supporting industry, military facilities and areas adjacent to military facilities. For such investment, security review is triggered irrespective of the issue of "control".

Investment in any important agricultural product, important energy and resources, major equipment manufacturing, important infrastructure, important transportation services, important cultural products and services, important information technology and internet products and services, important financial services, key technologies, and other important fields that concern state security. For security review to be triggered, investors must obtain "actual control" of target companies in these important sectors.

Impact on M&A transactions with foreign investment

Since the Foreign Investment Security Measures became effective, numerous security review filings have been made. Some of them were filed at the request of national security agencies, and others were initiated by parties to M&A transactions in the military industry or other important industries identified by regulations.

Transfer of equity in a Chinese company between foreign investors is not automatically exempted from national security review. Parties must assess the industries involved and all aspects of the transaction to determine whether a security review filing is necessary.

The practice of national security review is still in its nascent stage. There has been no published decision or precedent available for references or guidance. Certain aspects of the law remain vague and unclear, such as the determination of "actual control", "important industry" and "effect on national security". In addition, security review authorities enjoy broad discretion in their review and deliberation. Substantial uncertainties still exist in this area and will only become clearer as the practice further develops.

Developments in Cybersecurity Review Regulations

The cybersecurity space witnessed a series of laws promulgated and enforcement actions taken in 2021, the most consequential of which include:

- the Data Security Law;
- the Personal Information Protection Law; and
- the Cybersecurity Law.

These three laws became the cornerstone legislation addressing cybersecurity issues in China. At the same time, detailed implementation rules were also released in 2021, all together having a great impact on M&A transactions in the internet industry. On 2 July 2021, the Cyberspace Administration of China ("CAC") announced a cybersecurity investigation against "Didi Chuxing", the largest ride-share app operator in China. Around the same period, the CAC also initiated cybersecurity review against three other big internet platform operators.

Legislative developments

The Data Security Law became effective on 1 September 2021 and requires that all data handlers, including operators of critical information infrastructure, and their data handling activities that affect or may affect national security, must undergo national security review.

The Regulation on Network Data Security Management (Draft for Comment) ("Draft Data Security Regulation"), published on 14 November 2021, provides that cybersecurity review by government authorities is required in any of the following circumstances:

- a merger, reorganisation or division by an internet platform operator that has collected a substantial amount of data resources concerning national security, economic development or public interest, if such merger, reorganisation or division will or may affect China's national security;
- an IPO in foreign capital markets by a data processor that processes personal information of more than one million individuals;
- a data processor's Hong Kong IPO that will or may affect China's national security; or
- other data processing activities that will or may have an impact on national security.

The State Council Measures on the Administration of Overseas Securities Offering and Listing by Domestic Companies (Draft for Comment) ("Draft Overseas Listing Measures"), published on 24 December 2021, state that domestic companies that seek to list securities in overseas markets must institute a sound system, and take necessary measures, to protect state secrets and safeguard national security and public interests. Article 8 of the Draft Overseas Listing Measures further states that domestic companies that seek to list securities in overseas markets must comply with national security laws and regulations with respect to foreign investment, cybersecurity and data security, and earnestly fulfil their obligations to protect national security, including completing a national security review, if necessary.

The Cybersecurity Review Measures was promulgated on 28 December 2021. It expands the scope of cybersecurity review and incorporates a number of measures proposed in the Draft Data Security Regulation. For example, it subjects all data processors who collect and generate data in mainland China and whose activities may affect national security to a cybersecurity review, thereby covering both cybersecurity and data processing activities. Article 7 of the Cybersecurity Review Measures states that a network operator that collects personal information of more than one million users must apply to the Cybersecurity Review Office (of the CAC) for a cybersecurity review when it seeks an overseas listing (other than on the Hong Kong Stock Exchange).

Impact of data and cybersecurity laws on M&A transactions

If the Draft Data Security Regulation is eventually adopted, major M&A, reorganisations or financing transactions of an internet platform operator that possess an important and large volume of data would likely be subject to data security or cybersecurity review, which could potentially delay the transaction process, increase transaction costs and result in sharing otherwise confidential corporate information with regulators. With greater access to corporate information, regulators would be in a better position to exert influence over an internet platform operator's operational or financing decision-making. This appears to serve the purpose of preventing future events similar to Didi's overseas IPO, which was deemed by the PRC government to have posed a risk to national security. Internet platform operators are strongly advised to pay close attention to the ongoing development of regulations in this space.

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