



HAN KUN LAW OFFICES

Legal Commentary



CHINA PRACTICE • GLOBAL VISION

March 6, 2016

Capital Market Law

Breakthrough – First Company with a VIE-Structured Controlling Shareholder Listed on NEEQ

Domestic Capital Markets Team

Introduction

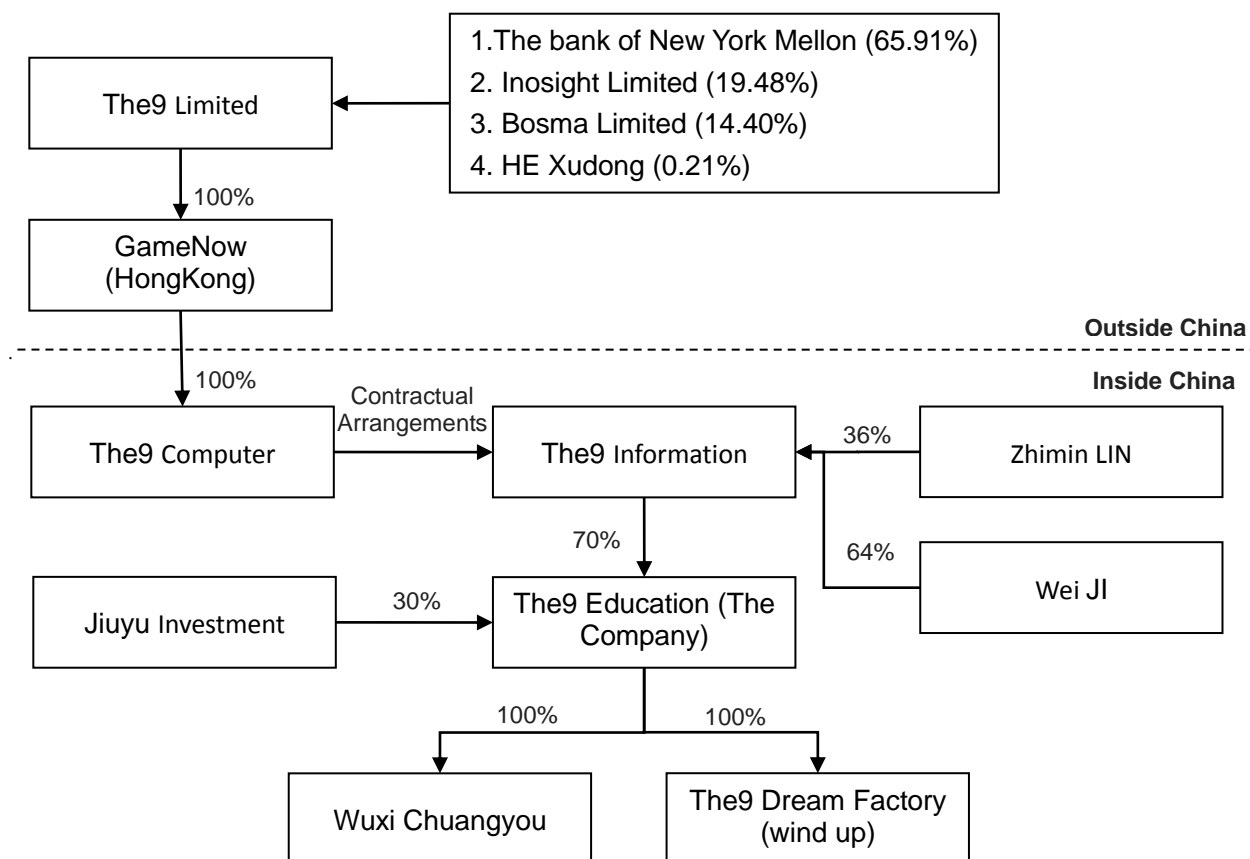
According to public information, Shanghai The9 Education Technology Co., Ltd. (“**The9 Education**” or the “**Company**”) was recently approved to be listed on the National Equities Exchange and Quotations (“**NEEQ**”). The Company and its subsidiaries mainly engage in “the creation of game application-oriented techniques, the provision of technical services, non-academic/non-certificate software application development and technical skills training, consulting and other related professional services in the mobile internet field.” In this case, the Company disclosed that its controlling shareholder was subject to the provisions of VIE agreements, which resulted in the Company being the first to list on the NEEQ while having disclosed that its controlling shareholder was an entity subject to a VIE structure. Before this, Beijing LEFTBRAIN Network Technology Co., Ltd. had also disclosed that 58 Co., Ltd. (the “**58 Limited**”), which became its controlling shareholder after a share issuance, was subject to VIE control structure.

General Information

According to The9 Education’s Public Transfer Statement disclosure for the NEEQ listing, the Company’s controlling shareholder, Shanghai The9 Information Technology Co., Ltd. (“**The9 Information**”), is subject to VIE arrangements, under which The9 Information acts as a domestic operating company. The actual controller of The9 Information is The9 Limited, which is listed on the NASDAQ exchange. Thus, The9 Education became the first company to successfully list on NEEQ after clearly disclosing that its controlling shareholder was subject to VIE control.

The9 Information's Disclosure of its VIE Structure

According to the Company's disclosures in its Public Transfer Statement and Legal Opinion for this listing, the Company's equity structure and the VIE structure controlling The9 Information at the time of listing are as below:



Analysis

When answering whether The9 Information, which is subject to VIE structure control, had a clearly defined equity structure and satisfied legal and regulatory conditions for NEEQ listing, the main content of the intermediary agency's response included:

1. The shareholders of the Company had not executed any controlling agreements with respect to the shareholders' rights with any third party.
2. Each shareholder of the Company (including follow-on shareholders) exercises shareholder rights according to its respective shareholding ratio in deciding on major matters of the Company. The exercise of shareholder rights within the Company is not subject to the restrictions of the VIE structure.
3. The Company's equity structure is clearly defined. The Company has never entered into any specific arrangements with any third party for the transfer of the business revenues of the Company and has always kept its business revenues within the Company. The

shareholders of the Company (including follow-on shareholders) are entitled to receive the profits of the Company in proportion to their respective shareholding ratio.

4. Given that the Company is not the only holding subsidiary of The9 Information, the revenue and profit of the Company will not significantly impact The9 Information.
5. Neither the controlling agreements for the creation of the VIE structure nor the subsequent agreements for altering the structure refer to the Company as the main party. The Company is not bound by the provisions of the relevant VIE agreements.
6. The creation of the VIE structure as well as the financing activities of the offshore entities have been carried out in accordance with the relevant laws and regulations. Although the foreign exchange registration for the return investments of natural persons was slightly flawed, this did not constitute a substantive legal obstacle for the listing.
7. The business conducted by the Company and its subsidiaries does not belong to the education industry, which is restricted to prohibited from foreign investment according to the *Catalogue for the Guidance of Foreign Investment Industries (Revised in 2015)*.

The9 Education set a precedent by successfully listing on NEEQ while clearly disclosing that one of its shareholders, in this case the controlling shareholder, was an operating company controlled under contractual arrangements. Although this case is of little guiding significance to companies whose main business belongs to industries that are restricted or prohibited from foreign investment, it still causes us to consider whether more foreign-controlled red-chip companies in non-restricted industries will be approved for NEEQ listing in the future.

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