

---

CHAMBERS GLOBAL PRACTICE GUIDES

---

# Corporate M&A 2026

---

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

**China: Law and Practice**

Shuting Qi

Han Kun Law Offices



# CHINA

---

## Law and Practice

### Contributed by:

Shuting Qi

Han Kun Law Offices

## Contents

### 1. Trends p.4

- 1.1 M&A Market p.4
- 1.2 Key Trends p.4
- 1.3 Key Industries p.4

### 2. Overview of Regulatory Field p.4

- 2.1 Acquiring a Company p.4
- 2.2 Primary Regulators p.5
- 2.3 Restrictions on Foreign Investments p.5
- 2.4 Antitrust Regulations p.5
- 2.5 Labour Law Regulations p.6
- 2.6 National Security Review p.6

### 3. Recent Legal Developments p.7

- 3.1 Significant Court Decisions or Legal Developments p.7
- 3.2 Significant Changes to Takeover Law p.7

### 4. Stakebuilding p.8

- 4.1 Principal Stakebuilding Strategies p.8
- 4.2 Material Shareholding Disclosure Threshold p.8
- 4.3 Hurdles to Stakebuilding p.9
- 4.4 Dealings in Derivatives p.9
- 4.5 Filing/Reporting Obligations p.9
- 4.6 Transparency p.9

### 5. Negotiation Phase p.9

- 5.1 Requirement to Disclose a Deal p.9
- 5.2 Market Practice on Timing p.10
- 5.3 Scope of Due Diligence p.10
- 5.4 Standstills or Exclusivity p.10
- 5.5 Definitive Agreements p.10

### 6. Structuring p.10

- 6.1 Length of Process for Acquisition/Sale p.10
- 6.2 Mandatory Offer Threshold p.11
- 6.3 Consideration p.11
- 6.4 Common Conditions for a Takeover Offer p.11
- 6.5 Minimum Acceptance Conditions p.11
- 6.6 Requirement to Obtain Financing p.12
- 6.7 Types of Deal Security Measures p.12
- 6.8 Additional Governance Rights p.12
- 6.9 Voting by Proxy p.12
- 6.10 Squeeze-Out Mechanisms p.12
- 6.11 Irrevocable Commitments p.13

### 7. Disclosure p.13

- 7.1 Making a Bid Public p.13
- 7.2 Type of Disclosure Required p.13
- 7.3 Producing Financial Statements p.13
- 7.4 Transaction Documents p.14

### 8. Duties of Directors p.14

- 8.1 Principal Directors' Duties p.14
- 8.2 Special or Ad Hoc Committees p.14
- 8.3 Business Judgement Rule p.14
- 8.4 Independent Outside Advice p.15
- 8.5 Conflicts of Interest p.15

### 9. Defensive Measures p.15

- 9.1 Hostile Tender Offers p.15
- 9.2 Directors' Use of Defensive Measures p.15
- 9.3 Common Defensive Measures p.16
- 9.4 Directors' Duties p.16
- 9.5 Directors' Ability to "Just Say No" p.16

### 10. Litigation p.16

- 10.1 Frequency of Litigation p.16
- 10.2 Stage of Deal p.16
- 10.3 "Broken-Deal" Disputes p.17

### 11. Activism p.17

- 11.1 Shareholder Activism p.17
- 11.2 Aims of Activists p.17
- 11.3 Interference With Completion p.17

Han Kun Law Offices is a leading full-service Chinese law firm specialising in complex domestic and cross-border transactions, banking and finance, compliance, intellectual property and dispute resolution. The firm's main practice areas include mergers and acquisitions, private equity, international and domestic capital markets, investment funds, asset management, compliance, banking and finance, aviation finance, foreign direct investment, antitrust/competition, data protection, private client/wealth manage-

ment, intellectual property, bankruptcy and restructuring, and dispute resolution. Han Kun has 900+ professionals located in Beijing, Shanghai, Shenzhen, Hong Kong, Hangzhou, Wuhan, Haikou, Singapore, New York, Silicon Valley and London. Over 90% of the firm's professionals possess bilingual proficiency and overseas credentials. The firm concentrates on high-technology and high-growth sectors, including AI and robotics, energy, life sciences and advanced manufacturing.

## Author



**Shuting Qi** is a senior member of transactional practice group at Han Kun Law Offices. Before joining Han Kun, Shuting Qi was a partner at Kirkland & Ellis. With more than 18 years of legal work, Shuting has

extensive experience in representing private equity and strategic clients in a wide array of business transactions, including mergers and acquisitions, buyouts, growth equity investments, divestitures, joint ventures, foreign direct investment and general corporate matters. Shuting has also represented Chinese companies in their outbound investments and other financing transactions outside China. Her practice area extends across diverse industries, including healthcare, advanced manufacturing, renewable energy, finance, retail, consumer goods, real estate and logistics.

---

## Han Kun Law Offices

9/F, Office Tower C1, Oriental Plaza1 East Chang An Ave.  
Dongcheng District  
Beijing 100738, PRC

Tel: +86 10 8525 5500  
Fax: +86 10 8525 5511/5522  
Email: [beijing@hankunlaw.com](mailto:beijing@hankunlaw.com)  
Web: [www.hankunlaw.com](http://www.hankunlaw.com)

**HANKUN**

汉坤律师事务所

Han Kun Law Offices

## 1. Trends

### 1.1 M&A Market

According to PwC's *China M&A 2025 Review and Outlook*, China's mergers and acquisitions market recorded a significant rebound in 2025. Total disclosed deal value exceeded USD400 billion, representing a 47% year-on-year increase. Deal volume surpassed 12,000 transactions, up nearly 20% compared with the previous year. The drivers of the boom – including ongoing restructuring and consolidation, as well as strong liquidity – all remain intact, and PwC expects this activity to accelerate in 2026.

### 1.2 Key Trends

#### SOEs Lead Mega-Deals

In 2025, state-owned enterprises (SOEs) were the dominant force in China's M&A market, leading many major M&A deals. From January to November 2025, there were 265 M&A deals involving SOEs, representing a 14.22% increase compared with the same period in the previous year. Notably, three mergers exceeding CNY100 billion occurred, including the landmark integration of securities firms under the CIC group. The year also saw deals like China Shenhua's CNY133.598 billion internal asset acquisition, which was the first to apply the newly introduced simplified review procedure for listed-company asset restructuring. This demonstrates that SOEs are using new policy measures to carry out complex M&A transactions more efficiently.

#### Innovation in Deal Structuring

China's M&A structures became more flexible and market-oriented over the past 12 months. Many M&A transactions used targeted convertible bonds, acquisition loans and investment funds as sources of funding. Parties also turned to more flexible valuation terms, such as performance-linked adjustments and customised earn-out arrangements, in order to balance risks and rewards.

Alongside this, market and regulatory changes also led to a series of landmark "first ever" transactions, including the first cross-border share swap under the revised Measures for the Administration of the Strategic Investment of Foreign Investors in Listed Companies. This deal benefited from the newly relaxed

restrictions, which now allow Chinese enterprises to acquire overseas unlisted assets via share swaps, rather than relying mainly on cash payments.

### 1.3 Key Industries

#### High-Tech

In 2025, the high-tech sector led China M&A activity. With semiconductor consolidation entering a phase focused on supply chain reinforcement and value synergy, leaders started to pursue strategic integrations.

Artificial intelligence and robotics also saw significant deals.

#### Pharmaceuticals and Healthcare

Healthcare M&A reached 64 deals totalling CNY110.38 billion in 2025. Deals centred on acquiring innovative drug pipelines, particularly ADC and dual-antibody platforms, and building integrated value chains.

#### Financial Services Industry

2025 marked a watershed year for investment bank consolidation, characterised by policy-driven integration aimed at building world-class investment banks.

## 2. Overview of Regulatory Field

### 2.1 Acquiring a Company

The primary techniques for acquiring a company in China can be divided by transaction subject into equity acquisition and asset acquisition.

- Equity acquisition refers to the purchase of shares or equity in a company. Upon closing, the acquirer becomes a registered shareholder of the target company. In cross-border transactions, the acquisition must also comply with applicable foreign investment filing requirements.
- Asset acquisition refers to the purchase of operating assets of the target instead of equity, which helps acquirers isolate potential liabilities of the target and requires separate asset title transfer and creditor notification procedures.

## 2.2 Primary Regulators

China's M&A regulatory landscape involves multiple authorities, each responsible for a distinct aspect of the transaction:

- The State Administration for Market Regulation (SAMR) conducts anti-monopoly reviews of concentrations of undertakings in M&A activities. It investigates both concentrations that meet notification thresholds and those that, despite falling below thresholds, are likely to eliminate or restrict market competition, and penalises those that have been illegally implemented.
- The SAMR also supervises the implementation of restrictive conditions attached to approved concentrations, and handles business registration and modification filings for foreign-invested enterprises.
- The Ministry of Commerce of the People's Republic of China (MOFCOM) supervises foreign investment-related M&A compliance. It monitors foreign investment data, statutory initial reporting, change and annual information reporting by foreign-invested enterprises, and verifies compliance with foreign investment laws and national security review.
- The National Development and Reform Commission (NDRC) reviews transactions with implications for national economic planning, strategic sectors, or foreign investment subject to national security review.
- The State Administration of Foreign Exchange (SAFE) oversees cross-border capital flows and foreign exchange activities related to M&A. This includes administering the registration process for cross-border direct investment and securities-related transactions, in accordance with applicable foreign exchange regulations.

In addition, the China Securities Regulatory Commission (CSRC) and stock exchanges in Shanghai and Shenzhen are the primary regulators for M&A involving listed companies, responsible for reviewing major asset restructurings, approving share issuances, supervising disclosure obligations and protecting minority shareholders.

Local government authorities may additionally play a facilitative or approving role in transactions involving local state-owned enterprises.

## 2.3 Restrictions on Foreign Investments

Foreign investment in China is currently subject to market access restrictions primarily governed by two parallel negative list regimes:

- The Special Administrative Measures (Negative List) for the Access of Foreign Investment (2024 Edition) set out targeted restrictions on market access for foreign investment entering specific sectors. It currently contains 29 restricted or prohibited items across 11 industries, addressing outright prohibitions as well as restrictions including shareholding caps and operational conditions. Notably, the 2024 Edition has eliminated the last remaining foreign investment restrictions in the manufacturing sector. This pivotal reform unlocks broader investment opportunities for foreign capital.
- A unified Market Access Negative List (2025 Edition) applies equally to domestic and foreign investors, outlining six fully prohibited sectors and 100 approval-required activities to maintain a transparent and fair market access threshold for all market entities.

## 2.4 Antitrust Regulations

Business combinations in China are governed by the PRC Anti-Monopoly Law, the Provisions on the Review of Concentrations of Undertakings and supporting merger control rules, with pre-closing notification and review administered by the SAMR.

Pursuant to the Provisions of the State Council on Notification Thresholds for Concentrations Between Undertakings, transactions meeting statutory turnover thresholds require mandatory prior declaration to the SAMR. Specifically, the declaration obligation is triggered when a concentration meets either of the following thresholds:

- the total global turnover of all the undertakings participating in the concentration in the last accounting year exceeded CNY12 billion, and at least two of these undertakings each had a turnover of more than CNY800 million within China in the last accounting year; or
- the total turnover within China of all the undertakings participating in the concentration in the last

accounting year exceeded CNY4 billion, and at least two of these undertakings each had a turnover of more than CNY800 million within China in the last accounting year.

After valid notification, the SAMR conducts substantive review to assess whether a transaction is likely to eliminate or substantially restrict competition. Transactions deemed to pose material anti-competitive risks may be blocked entirely, or approved subject to divestiture or other remedial conditions.

Implementing a targeted deal without approval constitutes a violation and will trigger fines of up to 10% of the preceding year's turnover and enforcement penalties.

## 2.5 Labour Law Regulations

Properly managing employee arrangements during an M&A transaction is a key factor in ensuring the successful completion of the deal and the sustainable development of the business thereafter. In China, employee arrangements are primarily governed by the PRC Labour Contract Law, mainly reflected in the following aspects.

### Continuity of Employment

In equity acquisitions, if the acquirer retains the employees of the target company, it assumes all associated employment-related rights and obligations. In asset acquisitions, prior service periods with the previous employer are recognised and carried forward unless severance has already been paid by the previous employer. This mandatory continuity rule prevents the acquirer from unilaterally reducing established entitlements or resetting seniority.

### Contract Modification

Any modification to employment terms, including job position, work location, employing entity and work scope, must be based on mutual written agreement between the employer and employees. Unilateral forced adjustment without consent is invalid, and employees have the right to refuse unreasonable changes. Acquirers must conduct full communication and negotiation with employees in advance for such workforce allocation arrangements and formalise the

modification in writing to avoid labour disputes arising from non-compliance.

### Termination Requirements

In the context of M&A, lawful unilateral termination by an employer may primarily be grounded on the following statutory bases. The most frequently invoked provisions are Article 40 (3) (objective material change rendering contract performance impossible) and Article 41 (economic redundancy involving 20 or more employees) of the PRC Labour Contract Law. However, economic redundancies under Article 41 require advance notification to the employer's labour union, consultation with employees, and a 30-day filing with the local labour administrative authority. Procedural non-compliance renders terminations void, and rushed redundancies often trigger labour disputes, which can halt deal closing or disrupt post-acquisition operations.

### Compensation

Statutory severance is generally calculated at one month's average wage (subject to a cap) per year of service. However, parties may negotiate a compensation package that differs from the statutory calculation.

## 2.6 National Security Review

China maintains a mandatory national security review framework for foreign acquisitions in certain areas under the Measures for the Security Review of Foreign Investment, which is administered by the NDRC as the lead authority of an inter-ministerial review office. Unlike merger control, national security review is triggered by the nature of the target's business and related security risks, with no statutory turnover thresholds. This risk-based trigger requires early-stage due diligence to assess review exposure and avoid deal delays.

The following investments in China will trigger such national security review:

- investments in military industry, military supporting industries and other fields relating to national defence security, and investments in areas adjacent to military facilities and military industry facilities; or

- investments, through which foreign investors obtain actual control over the target company, in important agricultural products, important energy and resources, important 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 relate to national security.

For any foreign investment that falls within the scope of national security review, if the parties concerned fail to make a filing as required by law, the authority will order them to make a national security filing within a time limit. Remedies could be imposed to address any national security concerns; however, transactions will be prohibited if the national security concerns cannot be addressed by any of the remedies. Non-filing or non-compliance carries severe risks including forced divestment, deal unwinding and reputational damage, making pre-closing national security review assessment and voluntary filing a critical risk-mitigation step for foreign investors.

## 3. Recent Legal Developments

### 3.1 Significant Court Decisions or Legal Developments

#### CSRC Restructuring Rule Revision

On 16 May 2025, the CSRC issued Order No. 230 revising the Measures for the Administration of the Material Asset Restructuring of Listed Companies (the “2025 Restructuring Measures”). Key amendments include introducing an instalment payment mechanism for share consideration that extends the registration validity period to 48 months, creating a simplified review pathway for straightforward transactions, adjusting the lock-up requirements for mergers, and introducing incentives to encourage private funds to participate in listed-company acquisitions.

As officially stated by the CSRC, these reforms are intended to deepen market-oriented corporate restructuring and streamline the regulatory regime for listed-company M&A. By enhancing payment flexibility, shortening review timelines and encouraging long-

term capital participation, the revised measures have substantially improved deal certainty and efficiency, providing strong institutional support for industrial consolidation and transformation.

#### CSRC M&A Reform Guidelines

On 24 September 2024, the CSRC issued the Opinions on Deepening the Reform of the Merger and Acquisition Market of Listed Companies (the “M&A Six Guidelines”), which serve as a top-level policy framework for the next phase of listed-company M&A reform. The M&A Six Guidelines centre on advancing market-oriented restructuring, streamlining approval procedures, optimising lock-up requirements for share-based consideration, improving the flexibility of transaction payment mechanisms and encouraging private equity funds to increase their participation in listed-company acquisitions.

The M&A Six Guidelines aim to enhance overall vitality in the M&A market, improve deal efficiency and certainty, and strengthen the capital market’s role in supporting industrial integration and upgrading. By simplifying regulatory processes, enhancing payment flexibility and aligning incentives with long-term value creation, the package effectively supports listed companies in advancing industrial consolidation and facilitates the development of new productive forces.

In 2025, following the full implementation of the M&A Six Guidelines and relevant supporting rules, the M&A market saw a marked uptick in activity. The number of newly disclosed restructuring transactions in 2025 reached over 600 deals, representing 1.4 times the level of the year before, while material restructuring transactions totalled approximately 90 deals, 3.3 times that of the previous year. The aggregate value of completed material restructuring transactions exceeded CNY200 billion, equivalent to 11.6 times the figure from the year before. This trend underscores the effectiveness of the regulatory reforms in channelling market resources towards growth and the real economy.

### 3.2 Significant Changes to Takeover Law

In the past 12 months, China’s takeover law regime has undergone notable refinements through both legislative amendments and regulatory guidance.

## Amendments to the Takeover Measures

On 27 March 2025, the Measures for the Administration of the Takeover of Listed Companies (the “Takeover Measures”) were amended by the CSRC. While the amendments primarily involved technical adjustments to maintain consistency with the new PRC Company Law and other securities regulations, such as deleting references to supervisors and replacing “shareholders’ general meeting” with “shareholders’ meeting”, they reaffirmed the CSRC’s commitment to streamlining the takeover framework.

On 16 May 2025, the CSRC amended the Measures for the Administration of the Material Asset Restructuring of Listed Companies, with the aim of simplifying the review procedures, enhancing transaction efficiency and increasing deal flexibility.

## Clarification of Disclosure Rules

On 10 January 2025, the CSRC issued Opinion No. 19 on the Application of Securities and Futures Laws – Opinion on the Application of Articles 13 and 14 of the Measures for the Administration of the Acquisition of Listed Companies (“Opinion No. 19 on the Application of Securities and Futures Laws”). This opinion clarifies the 5% and 1% disclosure thresholds by adopting a tick mark standard, meaning disclosure is triggered only when an investor’s shareholding reaches an exact multiple of 5% or 1%. It also confirms that passive changes due to share capital reductions do not trigger disclosure obligations.

## 4. Stakebuilding

### 4.1 Principal Stakebuilding Strategies

Though strictly constrained by mandatory disclosure and insider trading rules, stakebuilding prior to a formal takeover offer is a customary practice in Chinese public M&A. The principal strategies are as follows:

- *Incremental open market purchases:* Bidders carry out incremental open market purchases through stock exchange trading, gradually acquiring shares to manage price fluctuations and defer reaching the mandatory disclosure threshold to avoid premature market signalling.

- *Off-market block trades:* Acquirers conduct off-market block trades by negotiating bulk share transfers directly with institutional investors or major existing shareholders, allowing for quick stake accumulation without disturbing regular exchange trading.
- *Pre-offer controlling shareholder agreements:* Bidders sign pre-offer agreements with the target’s controlling shareholders to secure a targeted stake transfer, which lays a solid foundation for a subsequent voluntary or mandatory tender offer and requires careful pacing to avoid triggering early disclosure.

### 4.2 Material Shareholding Disclosure Threshold

China’s shareholding disclosure and filing regime is set out in Articles 13 and 14 of the Takeover Measures and Opinion No. 19 on the Application of Securities and Futures Laws, covering both exchange trading and off-exchange agreement transfers with uniform regulatory thresholds.

- For stock exchange-based trading, investors and persons acting in concert must prepare and submit an equity change report to the CSRC and relevant stock exchange, notify the listed company, and publish an announcement within three days once their stake reaches 5% of the issued shares; no further share trading is permitted during this three-day period unless exempted by the CSRC. After hitting 5%, every 5% incremental or decremental change triggers the same reporting and trading suspension rules. Any illegal excess share purchases will result in voting rights being suspended for 36 months for the over-proportional stake. In addition, every 1% change requires notification to the listed company and public disclosure on the next trading day.
- For agreement transfers, investors must complete the reporting, notification and announcement requirements within three days from the day when their stake reaches or exceeds 5% and are barred from further share trading before finishing these procedures.

## 4.3 Hurdles to Stakebuilding

In China, statutory thresholds are mandatory and cannot be waived or modified to make them less stringent by contractual agreement or corporate bylaws, forcing bidders to strictly pace stakebuilding to avoid premature disclosure and regulatory penalties.

Aside from disclosure hurdles, additional hurdles include the negative lists and national security review, industry-specific approvals such as those in the financial or telecoms sector, SAMR merger control filings where turnover thresholds are met, and the requirement for approval from the State-owned Assets Supervision and Administration Commission of the State Council (SASAC) for transfers involving state-owned listed companies.

## 4.4 Dealings in Derivatives

Dealings in derivatives are permitted in China, provided they comply with the regulatory framework established under the PRC Securities Law, the PRC Futures and Derivatives Law, and relevant exchange rules.

While no dedicated derivatives regulation is currently in force, the CSRC published draft Derivatives Trading Supervision and Administration Measures for comments in January 2026, which, if enacted as proposed, would complement the rules on derivatives dealing and internal control and compliance requirements for derivatives business operators.

## 4.5 Filing/Reporting Obligations

In China, investors holding equity-linked derivatives must comply with disclosure and filing obligations under both securities laws and competition laws.

### Securities Disclosure Obligations

Under Article 85 of the Takeover Measures, investors must aggregate their derivative positions with their direct shareholdings when calculating disclosure thresholds. Specifically, the calculation shall take the higher of (i) shares held, or (ii) shares held plus shares underlying convertible securities.

### Merger Control Filing Obligations

Under Article 5 of the Provisions on the Review of Concentrations of Undertakings, when assessing whether a transaction constitutes a concentration

subject to notification, the SAMR considers factors including voting rights entrustment, concerted action and other contractual relationships. If derivative positions, together with other holdings, confer material influence and turnover thresholds are met, a pre-closing notification to the SAMR is mandatory.

## 4.6 Transparency

Upon crossing the 5% threshold, investors must disclose their holding purpose and whether they intend to increase or decrease their holdings in the next 12 months in an equity change report.

Specifically, investors that come to hold 5% or more but less than 20% of a listed company's issued shares must disclose their core holding purpose and whether they intend to further increase their stake in the next 12 months in a simplified equity change report. For those that come to hold 20% to 30% of issued shares, a detailed report is mandatory, which additionally requires full disclosure of 12-month follow-up plans for the target's assets, business, governance structure and articles of association, alongside clearer statements of control intent.

## 5. Negotiation Phase

### 5.1 Requirement to Disclose a Deal

For listed companies in China, mandatory disclosure is triggered when a potential transaction constitutes price-sensitive material information. An initial approach or preliminary contact does not by itself require disclosure.

Pursuant to Article 25 of the Measures for the Administration of Information Disclosure of Listed Companies, disclosure of material information is also required at the earliest of:

- when the board adopts a resolution in relation to the transaction;
- when the parties sign a letter of intent or definitive agreement; or
- when directors or senior management become aware of the material event.

However, notwithstanding the aforementioned, in case a deal is unable to stay confidential, where material non-public information has been leaked or market rumours or abnormal dealings have emerged, the listed company must promptly disclose the relevant information.

Accordingly, non-binding letters of intent may trigger disclosure upon signing unless such information is itself insignificant to affect the share price. Once definitive transaction agreements are executed, immediate public disclosure is mandatory. However, mandatory disclosure obligations may arise during the interim period of the transaction.

## 5.2 Market Practice on Timing

In practice, disclosure timing by listed company boards sometimes diverges from the strict legal threshold in the direction of earlier disclosure. Some companies prefer to issue preliminary disclosure announcements acknowledging that material discussions are underway before legally required, to manage market expectations and prevent disorderly trading.

Conversely, for transactions involving highly sensitive negotiations, companies occasionally seek stock exchange approval to suspend trading and delay public announcement until definitive agreements are finalised.

## 5.3 Scope of Due Diligence

In China's negotiated business combinations, a multi-dimensional due diligence is standard. Its scope varies based on transaction complexity and whether the target is a listed company, a private enterprise or a state-owned entity, and mainly covers the following aspects:

- *Legal due diligence*: Review of corporate status, equity structure and encumbrances, core asset ownership, material contracts, regulatory permits and pending litigation/penalties.
- *Financial due diligence*: Analysis of historical financial statements, accounting standard alignment, profit quality validation, asset-liability penetration check and related transaction/transfer pricing compliance.

- *Tax due diligence*: Review of tax compliance status, preferential policy eligibility, tax planning risks, and unresolved tax disputes or inspections.
- *Operational and regulatory due diligence*: Focusing on key licences, permits and regulatory approvals required to conduct the target's business, as well as supply chain resilience, data compliance, business continuity and key personnel risks.
- *Human resources due diligence*: Review of labour contract legality, company incentive systems and corporate cultural fit assessment.

## 5.4 Standstills or Exclusivity

Standstill provisions are frequently used in M&A transactions involving listed companies in China. These provisions are routinely included in confidentiality agreements that last for a predetermined period of time. They prohibit buyers from purchasing shares in the secondary market during negotiations.

Exclusivity is a common and critical protection for buyers in China's M&A practice. It restricts sellers from negotiating with competing bidders for a defined period while buyers conduct due diligence or negotiation. This mechanism also prevents a seller from using the buyer's offer to attract higher bids from third parties.

## 5.5 Definitive Agreements

It is both permissible and well-established market practice in China to document tender offer terms and conditions in a definitive agreement in the form of a tender offer report. An acquirer that intends to purchase shares of a listed company by means of a tender offer must publicly announce the tender offer terms and conditions, which are fully set out in the tender offer report.

## 6. Structuring

### 6.1 Length of Process for Acquisition/Sale

The timeline for acquiring or selling a business in China varies significantly based on transaction structure, the industry in which the business operates, applicable regulatory requirements, and the type of business (SOE vs non-SOE). Key determinants include the following:

- Due diligence (financial, legal, operational) will take one to three months depending on scope.
- If triggered, antitrust review and national security review will extend the timeline by months depending on complexity.
- SOE transactions require additional SASAC approvals that can extend overall timelines.
- For listed-company transactions, the timeline for CSRC major asset restructuring review is variable, but has been materially shortened for transactions qualifying for the simplified review procedure introduced under the 2025 Restructuring Measures.

For private company M&A, the process typically ranges from a few months to over a year. Transactions involving SOEs often take longer due to the mandatory public listing and auction process and additional approval requirements.

For listed-company acquisitions:

- Negotiated acquisitions with straightforward structures may complete within three to six months.
- Tender offers require a statutory offer period of no less than 30 days and no more than 60 days under the Takeover Measures, with the overall process typically taking six to 12 months.
- The timeline for complex transactions requiring antitrust review or CSRC approval may extend to 12 to 18 months.

## 6.2 Mandatory Offer Threshold

Subject to a few statutory exemptions, an acquirer whose voting rights reach 30% and that continues to increase its shareholding must make a general or partial offer. If it is acquiring more than 30% by agreement, a general offer is required for the portion exceeding 30%.

In practice, sophisticated acquirers commonly structure deals to stay just below 30% to avoid triggering mandatory offer obligations altogether, then use voluntary partial offers to consolidate control.

## 6.3 Consideration

In China's M&A market, cash remains the predominant form of consideration due to its reliability and simplicity, particularly in private company M&A. However,

share-based consideration is increasingly common in listed-company acquisitions, especially for large-scale strategic mergers where listed companies use their own stock as acquisition currency.

To bridge valuation gaps in uncertain environments, practitioners commonly employ the following:

- *Valuation adjustment and escrow service*: Completion accounts mechanism and locked-box mechanism to adjust the purchase price; a bank's escrow service is often used in such context.
- *Earn-outs*: Structuring contingent consideration based on post-closing performance milestones to align incentives and mitigate overpayment risk.

These tools, combined with robust due diligence methodologies, help parties navigate valuation uncertainty and reach consensus.

## 6.4 Common Conditions for a Takeover Offer

For M&A in China, common tender offer conditions include:

- internal corporate approval, eg, shareholder approval;
- regulatory approvals; and
- absence of material adverse change.

In a public M&A, the CSRC strictly restricts the use of offer conditions. Under the Takeover Measures, once an offer is announced, the bidder may only impose objective and verifiable conditions, while subjective conditions are prohibited. Core offer terms such as price, quantity and period are fixed and may only be varied in limited circumstances and with CSRC approval, ensuring certainty for shareholders throughout the offer period.

## 6.5 Minimum Acceptance Conditions

Setting a minimum acceptance condition protects a bidder from acquiring a non-controlling stake while preserving flexibility in deal structuring. To ensure absolute control over a target, a minimum acceptance condition of 50% may be set, particularly for a target with dispersed ownership.

## 6.6 Requirement to Obtain Financing

A business combination cannot be conditional on the bidder obtaining financing for public tender offers. Before announcing the offer, the acquirer of a listed company must secure its funding source and provide solid evidence of its payment capacity.

For private M&A, parties may agree on financing conditions in their definitive agreements, but often with a debt commitment letter from a bank.

## 6.7 Types of Deal Security Measures

For deal security measures, bidders commonly seek the following terms in China:

- *Break-up fees*: These compensate the bidder if the seller terminates the deal.
- *Match rights*: These allow the bidder to match competing offers within a specified period.
- *Non-solicitation provisions/no-shop provisions*: These restrict the seller from actively seeking alternative bidders after signing a letter of intent.

Recent regulatory changes have indirectly impacted interim periods. The revision of the Measures for the Administration of Merger and Acquisition Loans Granted by Commercial Banks enhance financing flexibility with longer tenors and higher ratios, enabling extended payment schedules. The CSRC's amendments to the 2025 Restructuring Measures shorten the approval time but extend share consideration validity to 48 months for listed-company deals where applicable.

## 6.8 Additional Governance Rights

If a bidder does not seek full ownership, it may negotiate for additional governance rights beyond its shareholding. Common rights include:

- rights to appoint directors;
- veto rights over fundamental corporate actions (eg, capital increase and decrease, amendment to the articles of association, acquisitions, asset disposals); and
- information and inspection rights exceeding statutory requirements.

## 6.9 Voting by Proxy

Shareholders in China may vote by proxy. Under Article 118 of the PRC Company Law, a shareholder unable to attend a shareholders' meeting in person may issue a written proxy form authorising a representative to vote on their behalf. The proxy form must specify the scope of authorisation and be presented to the company before the meeting.

For listed companies, proxy voting is standard practice. Proxies may be other shareholders or external persons, and authorisation can be general or specific regarding voting instructions. Electronic proxies are valid if they meet legal evidentiary requirements under the PRC Electronic Signature Law.

## 6.10 Squeeze-Out Mechanisms

### Squeeze-Out Mechanism

In China, no statutory mechanism allows the squeeze-out of the minority shareholders after a successful tender offer.

Once the tender offer window closes but the transaction remains unclosed, if the distribution of shares of the target does not meet the listing conditions, then the remaining shareholders have the right to sell their shares to the acquirer within a reasonable period as set forth in the tender offer.

### Short-Form Mergers

Short-form mergers are not often seen in the China market.

Article 219 of the PRC Company Law permits a short-form merger whereby a company that owns 90% of the shares of a subsidiary may merge with the subsidiary without shareholder approval, buying out minorities at a fair price, provided that the subsidiary shall notify the minority shareholders and a board resolution shall be adopted.

Where the consideration paid for a merger does not exceed 10% of the company's net assets, a board resolution shall be adopted but a shareholders' resolution is not required, unless otherwise provided in the articles of association.

## 6.11 Irrevocable Commitments

Obtaining irrevocable commitments from principal shareholders is common in China. These undertakings are legally binding contractual obligations typically secured during pre-bid negotiations before the formal offer announcement. Such commitments generally require shareholders to tender their shares into the offer or vote in favour of related resolutions at shareholders' meetings. Market practice shows that these irrevocable commitments contain limited or no fiduciary outs.

## 7. Disclosure

### 7.1 Making a Bid Public

In the case of an acquisition of a listed company by offer, the bidder shall prepare a report on the acquisition by offer, notify the target company, and make an indicative announcement summarising the report on the acquisition by offer simultaneously. Where the acquisition requires approval of the relevant authorities pursuant to the law, the bidder shall include a special note in the summary of the report specifying that the offer is conditional upon obtaining such approval.

The formal tender offer report often includes details such as information on the bidder, purposes of the acquisition, name of the target, intended quantity and price, funding sources, etc.

### 7.2 Type of Disclosure Required

In China, when an acquirer subscribes for newly issued shares as consideration in a business combination, the disclosure is governed by the CSRC's Standards for the Contents and Formats of Information Disclosure by Companies Offering Securities to the Public No. 15. The acquirer must prepare a simplified or detailed equity change report. The report must be disclosed within three days of either:

- if subscribers are identified, the board resolution approving the issuance; or
- if not, the announcement of issuance results.

Required disclosures include:

- type, number and percentage of shares subscribed;
- issuance price, pricing basis, payment terms and conditions;
- approval status (eg, shareholder approval, CSRC registration);
- lock-up arrangements and commitments;
- material transactions with the listed company in the past year; and
- future arrangements with the company.

Furthermore, if the acquirer subscribes for new shares with non-cash assets, additional disclosure of audited financial statements of those assets for the last two years or a valid valuation report issued by a qualified appraiser is required.

### 7.3 Producing Financial Statements

In China M&A, when the acquirer is a juristic person or other organisation seeking to obtain control of a listed company, it must produce financial statements under the CSRC Standards for the Contents and Formats of Information Disclosure by Companies Offering Securities to the Public No. 16. Specific requirements include the following:

- Financial statements for the most recent three years must be provided, with the most recent fiscal year audited by a CSRC-qualified firm. The audit opinion, accounting policies, and notes on key items must be disclosed.
- If material changes occur after the latest audited report, a more recent interim financial report must be provided.
- If the acquirer has been established for less than one year or was specifically set up for the acquisition, the financial information of its actual controller or holding company must be disclosed.
- If the acquirer is a domestic listed company, it may be exempted from providing three-year statements by referencing its published annual reports.
- Foreign acquirers must provide financial reports prepared in accordance with CAS or IFRS.
- For acquirers with complex structures that are unable to provide the information above, financial advisers must verify the acquirer's specific cir-

cumstances and explain why standard disclosure is impractical, confirming the acquirer's financial capacity and compliance intent.

## 7.4 Transaction Documents

In China M&A for listed companies, certain transaction documents must be fully and publicly disclosed. These include: the acquisition report or tender offer report; the board's report on the transaction; the independent financial adviser's opinion; valuation reports prepared by qualified asset valuers; and, where shares are issued, the prospectus.

Detailed underlying transaction agreements such as share purchase agreements are not required to be fully publicly filed. Instead, only their essential terms must be summarised in the primary disclosure reports such as the equity change report, tender offer report or acquisition report. However, relevant internal documents as such are listed as reference documents and must be made available for inspection at the company's premises, the stock exchange or other designated locations, as specified in the relevant disclosure rule.

## 8. Duties of Directors

### 8.1 Principal Directors' Duties

Under the PRC, directors owe statutory duties of loyalty and due care to the company in a business combination, with their primary obligation focused on safeguarding the company's and the shareholders' interests. Amid evolving corporate governance trends, directors are also encouraged to consider broader stakeholders including employees, creditors and public interests as guided by the revised law.

For listed-company combinations, directors must ensure full and timely disclosure of material information related to the transaction, act fairly towards all potential offerors and adopt measures that safeguard corporate and shareholder interests, which reflects the evolving trend of imposing director duties that extend to protecting the interests of broader stakeholders under a specific M&A scenario.

### 8.2 Special or Ad Hoc Committees

The formation of special or ad hoc committees in M&A transactions is neither statutorily mandated nor commonly practised in China. Under the PRC Company Law, conflicted directors must recuse themselves from voting on connected transactions, and their votes are excluded from quorum calculations. Independent directors must issue opinions on material related-party transactions and may engage external advisers, but formal committee empowerment is rare.

### 8.3 Business Judgement Rule

China has not codified a business judgement rule in the same manner as established in the United States. However, a functionally analogous standard has evolved through judicial practice, pursuant to which courts accord meaningful deference to board decisions in takeover situations, provided the board has fulfilled certain substantive and procedural requirements.

Article 180 of the revised PRC Company Law requires directors to apply the level of care expected of a reasonably competent manager acting in the company's best interests. In contested decisions, courts examine whether directors undertook genuine inquiry into the relevant circumstances, acted in good faith, were free of conflicts, and exercised commercially reasonable judgement. Where these conditions are met, courts have consistently declined to substitute their own assessment of commercial merit for that of the board. In contested decisions, courts examine whether directors undertook genuine inquiry, acted in good faith, were free of conflicts, and exercised commercially reasonable judgement. Where these conditions are met, courts consistently decline to substitute their assessment of commercial merit for that of the board.

This judicial approach is exemplified in the *Shanghai Taiqi* case, under which a director's actions taken during a shareholder conflict led to significant financial loss of the company. The Shanghai Intermediate People's Court refused to hold this director liable for breach of director's duty, finding that he was acting not on self-interest but on sufficient business consideration, and with the purpose of preserving company assets. The court emphasised that it would not second-guess business decisions made in good faith and

on an informed basis, even if they resulted in short-term financial loss.

## 8.4 Independent Outside Advice

Directors overseeing business combinations in China routinely retain three categories of independent adviser:

- Independent financial advisers provide valuations, funding assessments and fairness opinions; for listed companies, such engagement is a regulatory requirement under the Takeover Measures, and the adviser's opinion must be disclosed alongside the board's recommendation.
- Legal advisers are retained to address transaction structuring, regulatory compliance across antitrust, securities and foreign investment regimes, and the drafting of transaction documents.
- Auditors and accountants conduct financial and operational due diligence to identify contingent liabilities and assess accounting quality.

The combination of these three advisory streams supports the board's compliance with its duty of diligence and produces the professional opinions and documents required for regulatory disclosure and review.

## 8.5 Conflicts of Interest

Conflicts of interest of directors, managers, shareholders and advisers have been the subject of significant judicial and regulatory scrutiny in China, particularly in the context of listed-company M&A.

### Regulatory Scrutiny

The CSRC actively scrutinises conflicts in M&A transactions. In one case in 2025, the CSRC imposed a maximum CNY5 million fine on an executive director of a listed company for insider trading during a major asset restructuring of a subsidiary of the listed company, after the purchase of nearly CNY100 million of its shares during the sensitive period. During IPO review, the Shenzhen Stock Exchange also probes historical conflicts, such as a director receiving dual advisory fees from both the investor and the company for introducing financing.

### Judicial Review

Courts also examine conflicts in M&A-related disputes. In a recent merger transaction between two listed companies, an individual who is a public shareholder of one of the two companies alleged procedural violations including the failure to audit a connected transaction and sued to avoid the transaction, highlighting how courts are being asked to review M&A processes for fairness.

This intense oversight serves multiple purposes including protecting minority shareholders from self-dealing by controlling shareholders or management, ensuring market integrity and fair information disclosure, and upholding procedural compliance as mandated by securities laws, thereby maintaining orderly capital markets.

## 9. Defensive Measures

### 9.1 Hostile Tender Offers

Legally, China does not forbid hostile tenders. However, they remain extremely rare in practice. The primary obstacles are:

- the highly concentrated ownership structures of Chinese listed companies, which make control changes almost impossible without controlling shareholders' consent;
- the mandatory general offer rule triggered at the 30% threshold, which imposes prohibitive costs on unsolicited bidders; and
- the regulatory review process, which often deprives bidders of the element of surprise and may cause significant delay and uncertainty during such hostile tender offers.

### 9.2 Directors' Use of Defensive Measures

Pursuant to the Takeover Measures, target boards are subject to fiduciary duties of loyalty and care. Upon receiving a tender offer, the board must treat all acquirers fairly and must not abuse its powers to set improper obstacles to the acquisition. Therefore, the use of defensive measures must be justified as being in the best interests of the company and its shareholders. In addition, a new issuance of securities requires approval by the general shareholders' meeting and

the CSRC. Consequently, traditional defensive tactics such as poison pills can be impractical.

### 9.3 Common Defensive Measures

In China M&A practice, common defensive measures include:

- preventive measures incorporated into constitutional corporate documents in advance, including:
  - (a) staggered board provisions limiting annual director re-elections;
  - (b) supermajority voting requirements for major transactions; and
  - (c) Golden Parachute arrangements providing management compensation upon change of control; and
- reactive measures that may be deployed after the awareness of a potential hostile offer, including:
  - (a) litigation to challenge acquirer disclosure compliance;
  - (b) inviting a White Knight to make a competing offer; and
  - (c) with shareholders' approval, conducting share buybacks or defensive asset acquisitions.

While these measures are legally available, most face strict regulatory oversight. For example, in 2025, the Supreme People's Court and the CSRC jointly issued the Guidelines on Strict and Impartial Law Enforcement and Judicial Services to Ensure High-Quality Development of the Capital Market, specifying that anti-takeover provisions in the articles of association shall be invalid if they violate laws and regulations.

### 9.4 Directors' Duties

Pursuant to the Takeover Measures, when enacting defensive measures, directors owe fiduciary duties of loyalty and care. They must treat all acquirers fairly and must not abuse their powers to set improper obstacles to the acquisition. The board's decisions shall be conducive to maintaining the interests of the company and all shareholders.

Facing a tender offer, directors must commission an independent financial adviser to evaluate such offer and disclose that opinion to shareholders. After a tender offer is announced, directors may not, without shareholders' approval, take actions that would mate-

rially impact on the company's assets, business or rights such as issuing shares or selling major assets. Resignation during the offer period is also prohibited. This framework prioritises shareholder choice over managerial entrenchment. In practice, this means directors facing unsolicited bids must focus on procedural compliance and shareholder communication rather than unilateral obstruction.

### 9.5 Directors' Ability to "Just Say No"

In China, directors cannot simply "just say no" to a business combination. Under the Takeover Measures, target boards must treat all acquirers fairly and cannot abuse their powers to set improper obstacles to prevent the combination. Under such circumstances, directors' primary weapons are persuasion and procedural compliance, not obstruction. This is to say that, while directors may express opposition to an offer and recommend that shareholders should reject it, they cannot take unilateral action to block a transaction without shareholder approval.

## 10. Litigation

### 10.1 Frequency of Litigation

Litigation is common in connection with M&A deals in China, particularly in disputes involving unfulfilled performance commitments, financial fraud, breach of representations, or deal break-up and termination.

### 10.2 Stage of Deal

M&A-related litigation is commonly brought at three key stages:

- *Pre-signing stage*: Disputes over breach of confidentiality, improper due diligence, or violation of good faith negotiation obligations arise at this stage. However, such claims are less common due to the non-binding nature of preliminary agreements.
- *Pre-closing stage*: It is common to see disputes over material adverse changes, breach of interim operating covenants, or failure to obtain regulatory approvals at this stage. Interim period compliance is a frequent source of tension.
- *Post-closing stage*: While litigation can occur throughout a deal, post-closing disputes account

for the majority of cases. These typically involve issues over breach of representations and warranties, earn-out calculations or post-closing indemnification claims. Financial misrepresentations and valuation adjustment mechanism enforcement specifically dominate this category.

### 10.3 “Broken-Deal” Disputes

#### MAC Clauses Require Specific, Causally-Linked Impact

Courts and tribunals have consistently rejected blanket assertions that COVID-19 automatically constitutes a material adverse change (MAC). To successfully invoke an MAC clause under similar situations, the claiming party must demonstrate a specific, quantifiable and material impact directly caused by the event.

#### Rigid Valuation Formulas Create Hard Obligations

In one case, a buyer agreed to acquire a 38% stake in a biotech target based on a valuation formula: the higher of CNY900 million or 25×2020 audited net profit. Due to COVID-19, the target’s 2020 profit surged, making the 38% stake worth CNY10.5 billion – exceeding the buyer’s market capitalisation. The buyer’s attempt to invoke a “change of circumstances” provision did not automatically override the clear contractual formula, demonstrating that precise valuation mechanisms prevail over the impact of extraordinary events.

The core lesson under unforeseen events such as COVID-19 is that clear, specific contractual drafting is the primary defence when it comes to broken-deal disputes. Sophisticated parties now include pandemic-specific MAC carve-outs, clear valuation mechanisms and precise interim covenants in their transaction documents.

## 11. Activism

### 11.1 Shareholder Activism

Though not often seen, shareholder activism is a growing force in China. Publicly reported activist campaigns surged ninefold from 2008 to 2023, with over two-thirds occurring after 2018.

Recent regulatory reforms have specifically empowered shareholder activism. The newly revised Code of Corporate Governance for Listed Companies expands minority rights by allowing investors holding 1% shares of the company to make proposals and by mandating cumulative voting for director elections.

In China, the focus of activists is on post-acquisition governance, and disclosure to improve financial performance.

### 11.2 Aims of Activists

Though its importance is rising with regulatory changes, shareholder activism remains defensive in orientation. Most activism focuses on governance and payout demands rather than structural M&A or spin-offs. True activist-impelled divestitures and spin-offs are less common than in Western markets because most Chinese listed companies have controlling shareholders. Legal mechanisms like minority veto rights are used more for blocking conflicted transactions than forcing spin-offs.

### 11.3 Interference With Completion

Though very rare, activists do seek to interfere with completion of announced transactions in China, primarily through voting against deals at shareholder meetings. For example, in June 2024, a public company in Shanghai proposed a CNY5.3 billion cash acquisition of a subsidiary of its parent company. Public shareholders holding over 50% of voting rights in respect of this matter voted it down, defeating the transaction entirely.

---

## CHAMBERS GLOBAL PRACTICE GUIDES

---

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email [Rob.Thomson@chambers.com](mailto:Rob.Thomson@chambers.com)