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P.R.C. Market Turbulence Impacts Going-Private Plans for China-Based Companies Listed in the United States

The current volatility in P.R.C. equity markets may dampen the recent enthusiasm for migrating U.S.-listed, China-based companies to PRC listings.

The first half of 2015 saw an increase in the number of offers to take private China-based companies listed on U.S. markets ("**Take Privates**"), with the *Wall Street Journal* recently reporting 19 Take Private announcements in 2015. This trend was driven – at least in part – by a desire of management and/or substantial shareholders ("**Controllers**") to unlock higher multiples for these firms by tapping into the bull market for A-shares.

Although the recent declines in the A-share market may reduce the enthusiasm for initiating Take Privates, there are other compelling reasons to undertake these transactions.

Potential Impact of Recent Volatility in China's A-Share Market on Take Privates

- Given last week's announcement halting new PRC listings, and particularly if A-share valuations continue to languish in the near term, **Controllers may delay or abandon Take Privates** where the key rationale is value-driven migration to a relisting on the Shanghai or Shenzhen exchange
- Delaying planned Take Privates may lead to **higher than expected transaction costs**, and, given continued resilience of U.S. markets, **higher relative acquisition costs**
- If the timeline for a proposed Take Private is extended, Controllers may wish to **renegotiate financing terms with financing sources**

Other Reasons to Consider a Take Private

- The cost of compliance with U.S. securities laws obligations, including the Sarbanes-Oxley Act

- Shareholder liability concerns from a continued U.S. listing
- Management demands of communicating with a U.S. investor and analyst base
- Elimination of public company status gives management greater freedom to pursue long-term goals

Basic Mechanics of a Take Private

- Take Privates are typically initiated by an issuer's Controllers, and often are undertaken in conjunction with a private equity or hedge fund partner (a "**Consortium**")
- The Consortium typically negotiates the terms and form (whether merger or tender offer) of the Take Private with an independent committee of the target board
- If agreement is reached, the Consortium files appropriate disclosure documents with the U.S. Securities and Exchange Commission (the "**SEC**") and a shareholder vote or tender process is undertaken
- Assuming successful consummation of a merger or tender offer, the Consortium delists the company from the U.S. exchange on which it is listed and suspends its SEC reporting obligations
- From announcement through completion, Take Privates may require as little as 2-3 months (though this period is usually longer, especially where regulatory issues arise)

Some of the Key Legal Issues Involved in Take Privates

- Since many buyers initiating Take Privates are Controllers, special consideration needs to be given to the potential conflict of interest between these roles and appropriate measures taken to protect minority shareholder interests (e.g., independent committees of the board, majority-of-minority voting/tender conditions and fairness opinions)
- Since Controllers initiating Take Privates are commonly considered "affiliates" of the target, these transactions are typically subject to the enhanced disclosure and procedural requirements of Rule 13e-3 of the U.S. Securities Exchange Act of 1934
- Targets incorporated offshore – e.g., Cayman or British Virgin Islands – may be "foreign private issuers" which would exempt them from SEC proxy rules and allow qualification for exemptions from certain tender offer rules

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- The same antitrust and other regulatory approvals apply to Take Privates as apply to other acquisitions, but substantive antitrust concerns are less likely to arise if continuity of control is maintained
- Shareholder litigation in connection with Take Privates is increasingly common and should be planned for

If you would like to discuss any of these issues in detail, please contact a member of the Linklaters U.S. team or one of your usual Linklaters China contacts.

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