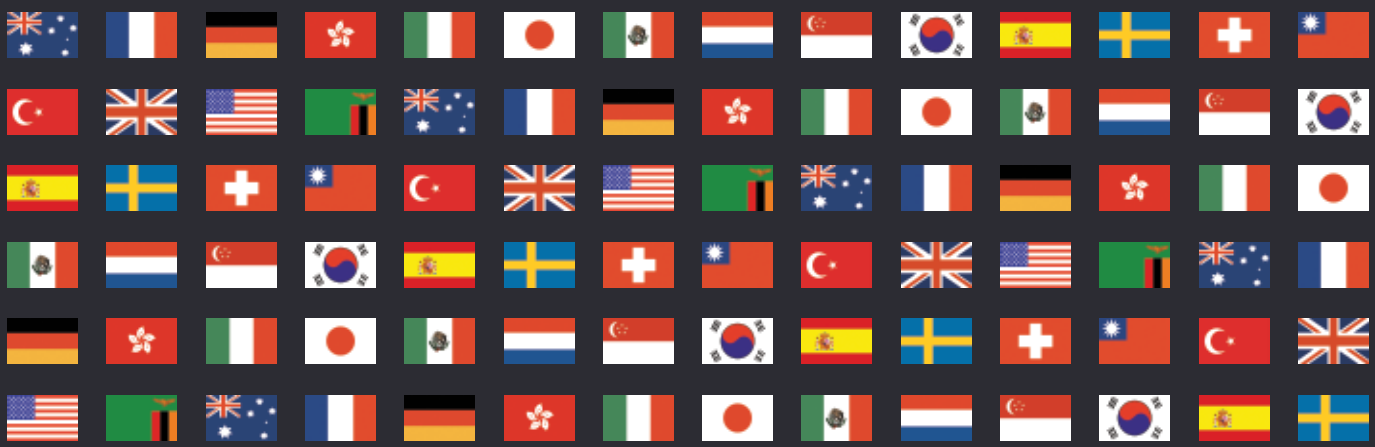
M&A Litigation 2021

Contributing editors
William M Regan, Jon M Talotta and Ryan M Philp



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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *M&A Litigation*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Mexico, Singapore and Sweden.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, William M Regan, Jon M Talotta and Ryan M Philp of Hogan Lovells US LLP, for their continued assistance with this volume.

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China

Yang Chen , Lin Mujuan, Li Lan and He Dongmin

Jincheng Tongda & Neal

TYPES OF SHAREHOLDERS' CLAIMS

Main claims

1 | Identify the main claims shareholders in your jurisdiction may assert against corporations, officers and directors in connection with M&A transactions.

According to PRC laws and legal practice, the main claims that shareholders raise against corporations in connection with M&A transactions include the following.

Inspection claims

to request for inspecting and copying meeting minutes of the shareholders meeting, resolutions of the board of directors in relation to the M&A transaction, and inspecting the company's accounting book etc.

Resolution-related claims

To request that the court declare that the shareholder or board resolution has not been established.

To request that the court declare that the shareholder or board resolution is invalid.

To request that the court revoke the shareholder or board resolution.

Claims for invalidation of contracts of the M&A transaction

The shareholder may request the court to declare the transaction documents are invalid because the parties to such transaction documents collude with each other and impairs the shareholder's rights and interests.

Repurchase claims

The shareholder who casts an opposing vote to the shareholder resolution in relation to the M&A transaction, including merger, division and transfer of main assets, such dissenting shareholder may request the court order the company to acquire his or her equity interests based on a reasonable price.

According to PRC laws and legal practice, the main claims that shareholders could raise against the corporations' directors and officers in connection with M&A transactions include the following.

Direct damage claim

In the event that a director or senior officer violates the laws and administrative regulations or the Articles of Association of the Company in M&A transactions and harms the shareholders' own interests, the shareholders may file a lawsuit and ask for compensation from the directors and officers.

Derivative damage claim

In the event that a director or officer violates the laws and administrative regulations or the Articles of Association of the Company in M&A transactions and harms the company's interests, the shareholders might file the lawsuits against such directors and officers on behalf of the company if the company fails to take action.

Requirements for successful claims

2 | For each of the most common claims, what must shareholders in your jurisdiction show to bring a successful suit?

For each of the most common claims, the shareholder, in order to bring a successful suit, shall prove that he or she is a shareholder of the company at the time of filing the lawsuit. Besides, specific requirements for each claim are as follows.

Inspection claims

Before the suit, the shareholder shall submit a written request for inspection to the company. If the company reject the request, then the shareholder can bring a suit for inspection claims.

Claims for invalidation of contracts of the M&A transaction

The shareholder must prove that counterparties to M&A transactions collude with each other which impairs the shareholder's rights and interests.

Claims for invalidation of resolution

The shareholder must prove that the concerned resolution violates the mandatory provisions of any law or administrative regulation.

Claims to revoke resolution

The procedures for calling the meeting or the voting form of the concerned resolution violates any law, administrative regulation or the bylaw or the resolution itself violates the bylaw.

The shareholder must file the lawsuit within 60 days from the day when the resolution is made.

Repurchase claims

The shareholder voted against the M&A transaction in the general shareholders' meeting.

For shareholders of the limited liability company, the shareholder and the company fail to reach an agreement on the purchase of share within 60 days after the resolution is adopted at the shareholders' meeting.

For shareholders of the limited liability company, the shareholder must file the lawsuit within 90 days from the day when the resolution is adopted at the shareholders' meeting.

Direct damage claims

The shareholder must prove that any director or senior officer damages his interests by violating any law, administrative regulation, or the articles of association.

Derivative damage claims

The shareholder or shareholders shall prove that they meet the prerequisites in a derivative litigation.

The shareholder or shareholders shall prove that directors or senior officers cause damages to the company.

Publicly traded or privately held corporations

3 Do the types of claims that shareholders can bring differ depending on whether the corporations involved in the M&A transaction are publicly traded or privately held?

Yes. A listed company shall disclose information and ensure that the information disclosed is true, accurate, and complete. There shall be no false information, misleading statements, or major omissions. If false statements are made in an M&A transaction and cause losses to shareholders, shareholders may request compensation, while there are no such kind of regulations for non-listed companies.

Form of transaction

4 Do the types of claims that shareholders can bring differ depending on the form of the transaction?

Yes.

There are mainly three forms of M&A transaction, namely, the asset sale (excluding in the form of share purchase), share purchase and the merger of companies. For a listed company, the takeover can be achieved through tender offer or agreed acquisition.

In most circumstances, the forms of the transaction do not affect the claims the shareholder may bring to the courts. However, there are several exceptions, for instance, a repurchase claim is unlikely to be raised under a tender offer M&A transaction because the form of M&A transaction does not need the approval of shareholders meeting, which will be a prerequisite for bringing a repurchase claim.

Negotiated or hostile transaction

5 Do the types of claims differ depending on whether the transaction involves a negotiated transaction versus a hostile or unsolicited offer?

No. Whether a transaction is reached through amicable negotiation or constitutes a hostile takeover has no influence on the type of claims the shareholders can raise under PRC law.

Party suffering loss

6 Do the types of claims differ depending on whether the loss is suffered by the corporation or by the shareholder?

Yes. Some types of claims are brought only by shareholders, such as inspection claim, repurchase claim raised by the dissenting shareholders, claim to exercise preemptive right, derivative damages claim etc.

COLLECTIVE AND DERIVATION LITIGATION

Class or collective actions

7 Where a loss is suffered directly by individual shareholders in connection with M&A transactions, may they pursue claims on behalf of other similarly situated shareholders?

Yes.

Representative action exists in China. Depends on the number of shareholders involved, it can be divided into two types of representative action.

The number of shareholders who suffered losses is certain then all the shareholders who suffered loss can recommend a representative.

If the exact number of shareholders who suffered loss is uncertain when the action is instituted, the court may publish a notice to describe the case and claims and notify shareholders to register within a certain period.

The shareholders who have registered may recommend a representative or representatives; and if no representative is recommended, the court may determine a representative or representatives in consultation with shareholders who have registered.

If the company has securities offerings and trading in China, an investor protection institution may, as authorised by 50 or more shareholders, participate in litigation as representatives and register with the court for the shareholders whose identity has been confirmed by the securities depository and clearing institution, unless the investor expressly expresses his or her unwillingness to participate in the litigation.

Derivative litigation

8 Where a loss is suffered by the corporation in connection with an M&A transaction, can shareholders bring derivative litigation on behalf or in the name of the corporation?

Yes.

If the company suffers losses due to director, senior officer or supervisor's violation of laws or administrative regulations or the Articles of Association of the company during an M&A transaction, its shareholders could bring derivative litigation on behalf of the company.

Only a shareholder who holds a minimum of 1 per cent shares for at least 180 consecutive days or shareholders who jointly hold a minimum of 1 per cent shares for at least 180 consecutive days are qualified to bring such derivative suits.

To bring the derivative suit, the following pre-conditions need to be satisfied:

- If it was directors or senior officers who caused harm to the company, the shareholder or shareholders may request in writing the board of supervisors or the sole supervisor to file a lawsuit against the directors or senior officers.
- If it was the supervisors who caused harm to the company, the shareholder or shareholders may request in writing the board of directors or the executive director to file a lawsuit against the supervisors.
- If the aforesaid board of supervisors or sole supervisor or the board of directors or executive director refuse to act, or fail to act within 30 days upon receipt of the written request by the shareholder or shareholders, or if the situation is so urgent that if a lawsuit is not filed, the company would suffer irrecoverable losses.

In the derivative suits, the company shall be listed as the third party.

INTERIM RELIEF AND EARLY DISMISSAL

Injunctive or other interim relief

9 What are the bases for a court to award injunctive or other interim relief to prevent the closing of an M&A transaction? May courts in your jurisdiction enjoin M&A transactions or modify deal terms?

The courts may order a preservation (including property and behavior preservation) during the litigation procedure upon the plaintiff's request or at its own discretion, or before the procedure upon the interested party's request, when there is a potential risk of difficulties in enforcing the future judgement or causing irreparable losses to the requesting party.

The courts are very cautious when issuing the preservation order, especially with orders of pre-litigation preservation and behavior preservation.

However, it is more common to see the asset preservation order being issued by the courts during the litigation procedure. During an M&A transaction, the courts may order an asset preservation to freeze the shares being traded or freeze the bank accounts with money to be paid etc, resulting in the suspension of the transaction.

It is worth emphasising that if the plaintiff wrongfully applies for such preservation measure and causes losses to the defendant, the plaintiff shall make compensation to the defendant.

It is generally accepted that the courts may only rule on the claims the party asks for. In this regard, upon the party's request, the courts can enjoin the M&A transactions by nullifying the transaction or confirm whether the amendment of deal terms is in compliance with law. In other words, the courts do not have the discretion to make such judgment in the absence of the party's pleading.

Early dismissal of shareholder complaint

10 | May defendants seek early dismissal of a shareholder complaint prior to disclosure or discovery?

Yes. PRC is not a common law country and thus the common law type of disclosure or discovery procedure does not exist in PRC. However, the defendant of an M&A litigation may apply to a court for early dismissal (before the court hearing any issues on merits) based on the grounds including but not limited to:

- the plaintiff fails to prove that it is a qualified shareholder as defined by law or the company's articles of association;
- the plaintiff fails to meet the precondition of raising a derivative litigation;
- the plaintiff fails to bring the case before the court within the time limit as required by law to raise such claims; and
- the court lacks the jurisdiction to the claims alleged by the plaintiff, for instance:
  - there is an arbitration arrangement for the concerned claims;
  - the issue shall be addressed by the administrative authority;
  - the parties of a case involving foreign elements have previously reached a consent to exclusively bring the concerned claims to a foreign court;
  - a case involving foreign elements satisfies all the conditions for 'non-convenient jurisdiction' as defined by PRC laws.

ADVISERS AND COUNTERPARTIES

Claims against third-party advisers

11 | Can shareholders bring claims against third-party advisers that assist in M&A transactions?

Yes. If third-party advisers cause damages to the company in M&A transactions, shareholders can initiate a lawsuit against the third-party advisers for the company's interests through derivative litigation.

Besides, if the company is listed, shareholders suffering loss because of third-party advisers' false statement may bring claims against the third-party advisers.

Claims against counterparties

12 | Can shareholders in one of the parties bring claims against the counterparties to M&A transactions?

Yes. If the legitimate interest of a company is impaired and any loss is caused to the company, whether due to the counterparty or a third party, the shareholder can initiate a lawsuit against such party in derivative litigation.

If the counterparties to M&A transactions collude with each other and this impairs the shareholder's rights and interests, the shareholder can bring a claim to invalidate the M&A contracts.

LIMITATIONS ON CLAIMS

Limitations of liability in corporation's constitution documents

13 | What impact do the corporation's constituting documents have on the extent board members or executives can be held liable in connection with M&A transactions?

The articles of association of the company allow that matters deemed necessary to the shareholders' meeting are included, provided that such matters do not violate mandatory laws and administrative regulations.

The articles of association are binding on the company, shareholders, directors and supervisors and senior officers (such as manager, vice manager, CFO and as defined in the articles of association).

If directors, supervisors and senior officers violate the articles of association and cause damages to the company, or to the shareholders, they shall be held liable to the company or the shareholders.

If the board resolution violates the articles of association and causes damages to the company, then the directors who consented to this resolution will be held liable toward the company.

Statutory or regulatory limitations on claims

14 | Are there any statutory or regulatory provisions in your jurisdiction that limit shareholders' ability to bring claims against directors and officers in connection with M&A transactions?

The shareholders may bring derivative suits on behalf of the company against directors and senior officers if they violate laws, administrative regulations and articles of associations and cause damages to the company.

However, only a shareholder who holds a minimum of 1 per cent shares for at least 180 consecutive days or shareholders who collectively hold a minimum of 1 per cent shares for at least 180 consecutive days are qualified to bring derivative suits when the following conditions are satisfied:

- if it was directors or senior officers who caused harm to the company, the shareholder or shareholders may request in writing that the board of supervisors or the sole supervisor file a lawsuit against the directors or senior officers;
- if it was the supervisors who caused harm to the company, the shareholder or shareholders may request in writing that the board of directors or the executive director file a lawsuit against the supervisors; and
- If the aforesaid board of supervisors or sole supervisor, the board of directors or executive director refuse to act, or fail to act within 30 days upon receipt of the written request by the shareholder or shareholders, or if the situation is too urgent that if a lawsuit is not filed, the company would suffer irrecoverable losses.

Common law limitations on claims

15 | Are there common law rules that impair shareholders' ability to bring claims against board members or executives in connection with M&A transactions?

China is a civil law jurisdiction and does not apply common law rules. However, there is a tendency, especially since 31 July 2020, that some important court cases (such as cases issued by the Supreme People's Court, cases decided to be guiding cases by the Supreme People's Court) are more likely (sometimes are required) to be followed by other Chinese courts.

In judicial practice, it is not rare for the Chinese courts to apply the business judgement rule when they decide whether the directors or senior management violate their fiduciary duty, in other words, if

the court decides that the directors or senior management's behavior or decision complies with the business judgement rule, they could be relieved from liabilities arising from violating of their fiduciary duties.

STANDARD OF LIABILITY

General standard

16 What is the standard for determining whether a board member or executive may be held liable to shareholders in connection with an M&A transaction?

To hold the directors or senior officers liable, the following must be proved.

The existence of a violation

The directors or senior officers violate the provisions of laws, administrative regulations, the articles of association of the company, the duty of diligence or the duty of loyalty.

In the judicial practice, the duty of diligence is usually explained by the courts as directors and senior officers shall act for the best interests of the company, with the attention of a good faith manager and with the reasonable care of an ordinary prudent person when performing their duties.

In the judicial practice, the duty of loyalty is usually explained by the courts as directors and senior officers shall faithfully perform their duties, safeguard the interests of the company in case of any conflict between their own interests and those of the company, and shall not take advantage of their positions as directors and senior officers to seek gains for themselves or others at the expense of the company.

The existence of causation

The violation by the directors or senior officers causes damages to the shareholders.

The quantified damages

The amount of damages suffered by the shareholders.

Type of transaction

17 Does the standard vary depending on the type of transaction at issue?

No. The standard remains unvaried. However, as PRC courts tend to apply the standard on a case-by-case basis considering all circumstances involved, different types of transaction involving different fact patterns may to some extent affect PRC courts' application of the standard.

Type of consideration

18 Does the standard vary depending on the type of consideration being paid to the seller's shareholders?

No. There are no specific legal provisions providing that different standards will be applied depending on the type of consideration being paid to the seller's shareholders in M&A transactions.

Potential conflicts of interest

19 Does the standard vary if one or more directors or officers have potential conflicts of interest in connection with an M&A transaction?

No. The requirements of proving violation, causation, damages remain the same.

However, where one or more directors or senior officers have potential conflicts of interest in connection with an M&A transaction, it might be easier to prove the existence of violation of laws, because the PRC law particularly provides that directors and senior management shall not use their affiliated relationship (relationship with an enterprise directly or indirectly controlled by them or any other relationship that may lead to a transfer of the interests of the company) to harm the interests of the company.

In addition, directors or senior officers will not be relieved from liabilities if they only argue that the transaction has complied with the procedure such as disclosure procedure required by the laws, administrative regulations or articles of association of the company.

Controlling shareholders

20 Does the standard vary if a controlling shareholder is a party to the transaction or is receiving consideration in connection with the transaction that is not shared rateably with all shareholders?

No. The standard remains the same with these conditions.

However, under some circumstances, it might be easier to prove the existence of controlling shareholder's violation because PRC laws and administrative rules have special provisions regarding controlling shareholders, for example, the PRC laws requires the controlling shareholder shall not use its affiliated relationship (relationship with an enterprise directly or indirectly controlled by him or her or any other relationship that may lead to a transfer of the interests of the company) to harm the interests of the company. In addition, the controlling shareholder will not be relieved from liabilities if he or she only argues that the transaction has complied with the procedure, such as disclosure procedure required by the laws, administrative regulations or articles of association of the company.

INDEMNITIES

Legal restrictions on indemnities

21 Does your jurisdiction impose legal restrictions on a company's ability to indemnify, or advance the legal fees of, its officers and directors named as defendants?

No, there is no specific rule to impose legal restrictions on a company's ability to indemnify, or advance the legal fees of, its officers and directors named as defendants.

M&A CLAUSES AND TERMS

Challenges to particular terms

22 Can shareholders challenge particular clauses or terms in M&A transaction documents?

Where a shareholder is not a party to the transaction documents, he or she might be qualified to challenge the particular clauses or terms on behalf of the company when the company's interest was harmed by this clause.

Where a shareholder is a party to the transaction documents, he or she is allowed to bring a lawsuit to challenge a particular clause in its own name.

Clauses are challengeable when they violate article 52 of the PRC laws (such as violating the mandatory laws and regulations).

In addition, if the compensation amount provided in the termination clause exceeds 30 per cent of the direct losses, then the opposing party may request the court to lower the amount.

PRE-LITIGATION TOOLS AND PROCEDURE IN M&A LITIGATION

Shareholder vote

23 What impact does a shareholder vote have on M&A litigation in your jurisdiction?

In China's MA litigation, the influence of the shareholders' voting rights is relatively small. Even if the board of shareholders decide not to claim against the person damaging the interest of the company, the dissenting shareholders who solely or jointly hold more than 1 per cent of the company's shares for more than 180 consecutive days may bring claim through derivative suits on behalf of the company when certain preconditions are satisfied.

Insurance

24 What role does directors' and officers' insurance play in shareholder litigation arising from M&A transactions?

According to the Code of Corporate Governance for Listed Companies issued by the China Securities Regulatory Commission, a listed company may purchase liability insurance for directors after approval by the general meeting, and this insurance shall not cover the liabilities arising in connection with directors' violation of laws, regulations or the articles of association. While it is not uncommon for listed companies to obtain directors' and officers' insurance, it remains relatively rare for private-owned companies to do so.

Burden of proof

25 Who has the burden of proof in an M&A litigation – the shareholders or the board members and officers? Does the burden ever shift?

It depends on who makes the allegations. A party making the allegations typically is responsible for providing evidence in support of his or her allegations. Such a burden does not shift; however, in cases where documentary evidence is controlled by the other party and not available to the party making the allegations, the party making the allegations may request the court to order the party in control of such evidence to produce the evidence. If the court makes such an order and the party in control of such evidence fails to comply with the order, the court may draw adverse inference against the party in control of such evidence, finding the relevant factual allegation to be true.

Pre-litigation tools

26 Are there pre-litigation tools that enable shareholders to investigate potential claims against board members or executives?

Yes, shareholders can inspect a series of corporate records under Chinese Company Law, including financial records, shareholder meeting records, board resolutions, etc. While shareholders of a limited liability company have the right to inspect corporate accounting books, shareholders of a joint stock limited company are not entitled to do so. Furthermore, in the event of an emergency where it is likely that corporate books and records may be destroyed, lost or become difficult to obtain later on, shareholders may, prior to instituting a lawsuit, apply to the court to preserve the books and records.

Forum

27 Are there jurisdictional or other rules limiting where shareholders can bring M&A litigation?

Different jurisdictional rules apply to claims for different cause of actions.

A claim brought under Chinese Company Law can only be filed in the court at the domicile of the company, namely, the place where the company has its principal office, regardless of whether the court litigation forum selection clause contained in the corporate by-laws provides otherwise, which will be held invalid for a claim brought under Chinese Company Law.

A tort claim, for example, controlling shareholders, directors or senior executives causing detriment to the company's essential interests, may be filed either in the court of domicile of defendant or in the court of the place where the tort occurs or results, depending on where the plaintiff would like to file his or her claim.

A breach of contract claim shall be brought in venues selected by the court litigation forum selection clause agreed by the parties, to the extent that this forum selection clause is held valid by the court. Parties in the forum selection clause may only agree for their disputes to be revolved in forums from the following venues: (1) the place of domicile of the defendant; (2) the place where the contract is performed or signed; (3) the place of domicile of the plaintiff; (4) the place where the subject matter is located; and (5) any other place actually connected to the dispute to have jurisdiction over the dispute . Selecting forums in venues other than the ones listed above would be invalid. In the absence of any valid forum selection clause, the case shall be heard by the court at the place of domicile of the defendant or at the place where the contract is performed. Parties are also allowed to agree for M&A disputes to be decided by arbitration, to the extent that such arbitration agreement is held valid under the Chinese Arbitration Law.

Expedited proceedings and discovery

28 Does your jurisdiction permit expedited proceedings and discovery in M&A litigation? What are the most common discovery issues that arise?

No, expedited proceeding applies only to cases with simple facts and undisputed issues, which naturally rules out M&A litigations. Likewise, there is no discovery proceeding in litigations conducted in accordance with the Chinese Civil Procedure Law. However, where relevant documentary evidence is under exclusive control of one party, the other party may apply to the court for ordering the production of such documentary evidence.

DAMAGES AND SETTLEMENTS

Damages

29 How are damages calculated in M&A litigation in your jurisdiction?

If the M&A litigation is a breach of contract claim, the amount of compensation to be paid shall be equivalent to the loss caused by the breach of contract, including any benefit receivable after the contract is performed, provided that it shall not exceed the loss that may be caused by the breach of contract which the breaching party has foreseen or ought to have foreseen at the time of conclusion of the contract.

If the M&A litigation is claiming that the M&A contract is null and void or has been revoked or has been determined as having no binding force, the actor who acquired property as a result of such act shall return the same; if it is impossible or unnecessary to return such property, compensation shall be paid at an estimated price. The party at fault shall compensate the other party for the loss it suffers as a result of the act; if both parties are at fault, they shall bear the corresponding responsibilities respectively.

If the M&A litigation is about infringement upon another person's property, the property loss shall be calculated according to the market price for the property when the loss is incurred or by other reasonable means.

Settlements

30 What are the special issues in your jurisdiction with respect to settling shareholder M&A litigation?

Prior to or during the litigation proceeding, parties may settle their disputes by negotiation or mediation. If the disputes are settled by mediation conducted in the court proceeding and the court renders a mediation award, the mediation award would be final and binding, and can be enforced by courts.

THIRD PARTIES

Third parties preventing transactions

31 Can third parties bring litigation to break up or stop agreed M&A transactions prior to closing?

Yes, third parties may do so if the agreed M&A transactions are in violation of mandatory provisions of laws and administrative regulations, against public interest, or for illegal purposes etc.

Third parties supporting transactions

32 Can third parties in your jurisdiction use litigation to force or pressure corporations to enter into M&A transactions?

No, but third parties may use litigation as a leverage to negotiate with others in relation to an M&A transaction.

UNSOLICITED OR UNWANTED PROPOSALS

Directors' duties

33 What are the duties and responsibilities of directors in your jurisdiction when the corporation receives an unsolicited or unwanted proposal to enter into an M&A transaction?

The directors shall comply with laws, administrative regulations, and the articles of association and shall owe duties of fiduciary and due diligence to the corporation when the corporation receives an unsolicited or unwanted proposal to enter into an M&A transaction. In the case of taking over a list company, the directors of a target company bear the duties of loyalty and diligence to the company and shall treat all acquirers who take over of the company fairly. The decision made and measures adopted by the board of directors of the target company in respect of a takeover shall be beneficial to the safeguarding of the interests of the company and its shareholders; the board of directors shall not abuse its official powers to create inappropriate obstacles for a takeover, shall not use company resources to provide any form of financial assistance to the acquirer, and shall not undermine the legitimate rights and interests of the company and its shareholders.

COUNTERPARTIES' CLAIMS

Common types of claim

34 Shareholders aside, what are the most common types of claims asserted by and against counterparties to an M&A transaction?

The most common types of claims asserted are breach of contract and the enforcement of valuation adjustment mechanism provisions.

Differences from litigation brought by shareholders

35 How does litigation between the parties to an M&A transaction differ from litigation brought by shareholders?

Litigation between the parties to an M&A transaction is usually a breach of contract claim to which Chinese Contract Law will apply while litigation brought by shareholders usually alleges breach of fiduciary duties by officers and directors to which Chinese Company Law and Chinese Security Law would apply.

UPDATES AND TRENDS

Recent developments

36 What are the most current trends and developments in M&A litigation in your jurisdiction?

In December 2019, the Supreme People's Court issued guiding opinions: Circular of the Supreme People's Court on Issuing the Summaries of the National Conference for the Work of Courts in the Trial of Civil and Commercial Cases, which, among others, clarified important issues on validity and performance of the valuation adjustment mechanism in M&A transactional documents and on share transfer.

CORONAVIRUS

Coronavirus

37 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Supreme People's Court has issued the following guiding opinions:

- Circular of the Supreme People's Court on Issuing the Guiding Opinions (I) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law.
- Circular of the Supreme People's Court on Issuing the Guiding Opinions (II) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law.
- Circular of the Supreme People's Court on Issuing the Guiding Opinions (III) on Several Issues concerning the Proper Trial of Civil Cases Related to the COVID-19 Epidemic According to the Law.

Clients are advised to carefully review and strictly act in accordance with the applicable force majeure provisions in the relevant agreement in order to better rely on covid-19 as a force majeure event to discharge their contractual obligations.

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