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Wealth outflow of indirect listing overseas and government supervision

Abstract The process of indirect listing overseas of enterprises can easily result in wealth outflow, which has imposed a negative impact on the development of security market, the order of money market and the increase of tax revenue in China. Therefore, the government should exercise necessary regulation on the wealth outflow during indirect listing overseas, and treat state-owned enterprises and private-owned enterprises differently. The fundamental solution to this issue should start from improving domestic financing conditions, improving regulatory system, realizing equal treatment for enterprises and strengthening the legal protection of private property.

Keywords indirect listing overseas, wealth outflow, supervision

Indirect listing overseas is also called overseas back door listing, which refers to
a domestic enterprise making public offering and getting listed overseas through a company which has established or controlled overseas on the basis of equity interests owned or controlled by the enterprise domestically. Its basic operation is as follows: A domestic enterprise establishes or controls a shell company overseas, then injects the assets of the domestic enterprise into the shell company or enables the shell company to control it by other means, and eventually the shell company makes public offering and gets listed overseas. Since the later part of the 1990’s, the number of domestic enterprises getting listed overseas has been on increase. While substantial overseas financing has been obtained, wealth outflow in the process is getting more and more attention. Through positive analysis, this paper tries to deliberate systematically on such main issues as whether there is wealth outflow in the operation of indirect listing overseas and in what ways it runs, and whether wealth outflow should be regulated and how to regulate it.

1 Case introduction: Indirect listing overseas of New Oriental

New Oriental Education and Training Center (hereinafter referred to as “New Oriental”) established in 1993 is currently the biggest private education institution in China. By May 31, 2006 New Oriental owned 25 schools, 111 learning centers and 13 bookstores, as well as approximately 1,700 teachers in 24 cities. Meanwhile, about 2 million users have registered in its online virtual community. On September 7, 2006 US Eastern Standard Time New Oriental Education and Technology Group was successfully listed on New York Stock Exchange at opening price of USD 22, 46.7% higher than the offering price; and the assets of Chairman Yu Minhong who owned 31.18% of the company’s shares exceeded RMB1.8 billion.

Pursuant to the prospectus of New Oriental, New Oriental registered an offshore holding company New Oriental Education & Technology Group Inc. in British Virgin Islands in August 2004. In order to comply with the listing rules of

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3 The Regulations on Merger and Acquisition of Domestic Enterprises by Foreign Investors jointly, promulgated by six Ministries and Commissions including the Ministry of Commerce, China Securities Regulatory Commission (CSRC) and the State Administration of Foreign Exchange, took effect on September 8, 2006. New Oriental hurried to be listed one day before the Regulations became effective, demonstrating an obvious intention to evade the Regulations. In New Oriental’s prospectus, the lawyer’s opinions also revealed the possibility of the manipulation being penalized by CSRC. Now it is 16 months since New Oriental was listed, and CSRC has not made any response to it.