

On the Legal Problems in the Merger and Acquisition of Chinese Enterprises

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Abstract: Merger and acquisition is an important means of deepening the reform of enterprises, which has been attached great importance by the Chinese government. Mergers and acquisitions can optimize the structure of enterprises and enhance their international competitiveness. Therefore, the Chinese government has always maintained a positive attitude towards mergers and acquisitions. Nowadays, with the increase of mergers and acquisitions in real life, the legal problems in the mergers and acquisitions of enterprises in our country also emerge. Construct and improve the legal system of enterprise merger and acquisition in China, so as to make the legal system of enterprise merger and acquisition more standardized and perfect.

1. Introduction

Merger and acquisition is a huge and complex project. Merger and acquisition is also called merger, consolidation, acquisition and takeover. Generally speaking, the concept of merger is divided into broad sense and narrow sense. In a narrow sense, merger only refers to the merger of two or more enterprises in accordance with legal procedures. [1] Enterprise mergers and acquisitions refer to enterprise mergers and acquisitions. Essentially, M&A refers to a kind of market behaviour in which one enterprise incorporates another enterprise in operation into its group under the market economy system to expand its market share, enter other industries or sell the M&A enterprise separately for economic benefit. According to Encyclopaedia Britannica, the term is understood as “referring to two or more companies”. [2] Mergers can be divided into absorption mergers and creation mergers. Absorbing and merging, merging two or more companies, one of which absorbs other companies and becomes a segregated company. Enterprise acquisition refers to the control or management power of another company acquired by an enterprise by buying stocks or shares, while the other company still exists and does not disappear.[3]

2. The present situation and existing problems of mergers and acquisitions of Chinese enterprises

M&A in China began in 1984. With the development of market economy step by step, M&A is a kind of market behaviour. Its development stage can be roughly divided into: pilot stage (1990-1993), stable stage (1994-1997), leap stage (1998-1999), new stage (starting from the promulgation of the 1999 Securities Law). China has formulated a series of laws and regulations to restrict the merger and acquisition of enterprises, but failed to meet the growing cultural needs of merger and acquisition in China. The main problems are as follows:

2.1 The property rights of enterprises are not clear

In the management of mergers and acquisitions of state-owned enterprises in China, the government is the actual decision-maker. Although the market of mergers and acquisitions is developing continuously, the loss is expanding. Secondly, unclear property rights will lead to institutional obstacles, which will inevitably affect the intentions of mergers and acquisitions.

2.2 The securities market is not standardized

In order to expand the scale of enterprises, the motive of mergers and acquisitions of listed companies comes from attractive financing rights and huge profit margins in the secondary market.

However, the market M&A behaviour of Listed Companies in China is very bad. The main phenomena are the false reorganization of enterprises and the unreasonable ownership structure.

2.3 Imperfect social security system

It is mainly manifested in the low level of social security, non-standard system, poor legal binding force, narrow coverage and so on.

2.4 Imperfect asset appraisal system

It is mainly manifested in the unscientific and incomplete formulation of the system. Government intervention, etc.

3. The current situation and existing problems of chinese enterprise merger and acquisition law

In the current legal system of our country, there are mainly laws concerning mergers and acquisitions: Securities Law of the People's Republic of China, Company Law of the People's Republic of China, Interim Measures on Enterprise Mergers, Interim Measures on the Sale of Property Rights of Small State-owned Enterprises, Measures for the Assessment and Management of State-owned Assets, Measures for the Acquisition and Management of Listed Companies, and Office for the Assessment and Management of State-owned Assets Rules for the Implementation of the Law, Interim Regulations on the Administration of Stock Issuance and Transaction, Rules for the Implementation of Information Disclosure of Public Issuance Stock Companies (Trial Implementation), Regulations on the Supervision and Administration of State-owned Enterprises Property, Measures for the Management of Information Disclosure of Changes in Shareholder Ownership of Listed Companies, and other laws and regulations concerning the registration of land, and mergers and acquisitions of enterprises. The above-mentioned laws and regulations provide certain norms and principles for enterprise merger and acquisition activities, but they are far from the actual needs of China's growing enterprise merger and acquisition activities. There are mainly the following legal issues:

3.1 Property rights

China's economic market is free. Enterprise forms mainly include state ownership, collective ownership, mixed ownership, individual ownership and other forms. At present, there are disputes about property ownership in many enterprises. To clarify the ownership of property, we must search for relevant historical data according to law. In order to clarify the ownership of property rights fundamentally, it is necessary to contact with government departments and high-level enterprises and provide information for the development of mergers and acquisitions.

In the General Principles of Civil Law, the provisions of ownership, usufruct and security interest are of great significance in dealing with related issues in M&A. Therefore, if we want the M&A to proceed orderly, we should deal with the relationship between ownership, usufruct and security right.

3.2 Debt issues

In the merger and acquisition of enterprises, the issue of property rights and creditor's rights is of vital importance. Any enterprise is a creditor and debtor in its operation, so it is necessary to distinguish which is creditor's right and which is debt.

Before merging an enterprise, how many debts of the other party need to be repaid and how many creditors' rights have not been fulfilled? Only by confirming that the enterprise meets the conditions of merger and acquisition, can it enter the merger and acquisition process. In our country, many enterprises put them to the "guillotine" because of the confusion of financial management. Therefore, before merging an enterprise, we should conduct in-depth analysis of the financial situation of the enterprise to be merged in accordance with relevant laws and regulations, and clearly grasp the background of the other side in order to carry out the next step of merger and acquisition. In the process of merger and acquisition, it is not only necessary to analyze the creditor's rights and debts of

the merged enterprises. It is also necessary to analyze the debt and creditor's rights of M&A enterprises. This is because mergers and acquisitions are the process of reorganizing the assets of the two companies to form a new economic entity. The assets of both enterprises should be made clear.

3.3 Asset valuation

In addition to clarifying the property rights and claims of enterprises, it is necessary to assess the value of assets of enterprises.

Nowadays, asset evaluation is the most important link in the process of enterprise merger and acquisition, and many problems will inevitably be encountered in the process of executing this link. The main manifestations are as follows: 1. Imperfect evaluation laws and regulations; 2. Material distortion of merged enterprises affects the development of evaluation work; 3. Government intervention leads to the deviation of evaluation value from reality; 4. The quality of personnel in evaluation institutions is not high; 5. The ability of risk resistance of evaluation institutions is poor; 6. improper selection of evaluation methods; 7. The evaluation market is not standardized. To solve these problems, the following countermeasures should be taken: 1. The state should improve the system of laws and regulations in time to maintain the validity of laws and regulations. In order to promote the development of merger and acquisition enterprises, assets can be assessed according to law. Assessment institutions can conduct their own evaluation in a standardized and authentic way, thus promoting the development of merger and acquisition enterprises. 2. Strengthen the supervision of the evaluation institutions. Supervise and evaluate the behaviour of the organization, and examine the authenticity of the materials submitted by the enterprise and the evaluation organization. 3. The government should relax the control of the enterprise appropriately, give the enterprise more free space, and determine the M&A intention according to its own value orientation. 4. To improve the comprehensive quality, moral level and professional ability of institutional personnel, we should pay attention to the training and continuing education of institutional personnel, so that they can always maintain full professional ability to face various merger and acquisition cases; 5. In view of the risk problems encountered in the work process of evaluation institutions, we should find out in time and take timely measures to avoid risks. This requires a professional team to clearly divide the risks encountered in the assessment process at all times. 6. At present, cost method is the main method used in M&A assets. With the acceleration of the marketization process, the evaluation of M&A is mainly based on the income method. The results of different evaluation methods will have different effects. 7. At the same time, it is necessary to standardize the management of institutional evaluation market and formulate reasonable principles of market access for evaluation institutions.

4. Employees rights and interests

The current laws of our country do not make special and systematic provisions on the treatment of labor relations and the protection of employees rights and interests in enterprise mergers and acquisitions, and most of them are general provisions.[4] Mergers and acquisitions must involve employees; wages, insurance, unemployment, housing and other rights and interests. If it cannot be solved reasonably, it will not only not guarantee the smooth progress of M&A activities, but also bring tremendous pressure to society and affect social stability. In some areas of mergers and acquisitions, there is often nothing to be seen. China's Labor Law also protects the employment of employees, and stipulates layoffs and contract deadlines in labor contracts. Mergers and acquisitions of enterprises involve multi-stakeholder relationships, and ultimately infringe upon the employees of enterprises. If you want to protect the rights and interests of employees and not get hurt in the process of mergers and acquisitions, you need to make full use of the law only to restrain enterprises from arbitrary tailoring of employees, protect their employment rights, and do not arbitrarily tailor their wages and benefits, so as to make the employees settle down well. It should be practical, easy to operate and implement. Avoid superficial articles. When making plans, we should improve the interests of workers and improve their rights and interests. In order to establish a perfect social security system, the government should play its own role, solve the problem of employee placement in mergers and acquisitions, and protect the employee's employment rights. We must put an end to

the immature plan. To maintain social stability and solve the problems of workers, enterprises must know that China is a socialist country, a socialist country based on the alliance of workers and peasants, and workers, peasants and intellectuals are the basis of the people's democratic dictatorship. When considering the plan of merger and acquisition, the government must take the protection of the rights and interests of employees as an important criterion to measure whether the plan of merger and acquisition can be passed or not, and strictly use the law to regulate the placement of employees in enterprises, otherwise, it will not be passed.

5. Responsibility of business leaders

The soul leader of an enterprise must take responsibility for this matter. Whether you have a good platform for all kinds of talents needed for the development of enterprises, a good operation mechanism and cooperation mechanism, a good allocation of high-quality resources, an efficient service system, and a space for young people with ideals, morals and abilities are all tests for you as an enterprise. Whether the soul leader has done his job well is a sign. The soul leaders and founders of enterprises, after solving the basic survival problems of enterprises, that is, after solving the basic accumulation of enterprises, must then think clearly about the future development strategy. They should devote themselves to five or ten years; development planning, or even longer-term enterprise development planning, so as to form a long-term development vision of enterprises. Life, vision, core values and so on must also be gradually clear up, only in this way, you are doing a good job in the enterprise, can inspire people, motivate people, cohesive people, do great things, for the country and society to make outstanding contributions to the enterprise.

Major events such as mergers and acquisitions involving the interests of the state, enterprises and employees shall be brought to the managers of enterprises in accordance with the law. Especially in the process of fulfilling their duties, the legitimacy of their actions has been comprehensively examined. In the financial field, auditing should be carried out by government auditing departments, tax departments by tax authorities, and supervision departments in terms of personal integrity.

As an independent supervisory activity, auditing should not only have external auditing, but also internal auditing. The auditing assessment of enterprise leaders should be carried out by legal organs in accordance with legal provisions and procedures. In auditing or reviewing, we should adhere to the principle of seeking truth from facts under all circumstances. We should not judge the right or wrong of things by the presumption of the supervisor. We should review every leader according to the auditing procedure and method. We should not use the framework to find problems. We should discuss the matter on the basis of facts and not fear the authority of anyone. If there is a problem, it can be investigated as a problem. If there is no problem, it is treated as a procedure and recorded in the file. No one may impose penalties on the legal representative of an enterprise without legal procedures or legal procedures. At the same time, any leader made a mistake, no matter who should not escape punishment, to truly achieve equality before the law.

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