Inheritance of Corporate Stock of Public Listed Companies in China (V)

Description

In the past, we have written four different posts about how foreigners can inherit corporate shares or equity interests in a China company. But none of those post addresses the particular issues related to inheritance of corporate stock of a public company or corporation.

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If you wish to look back at those past posts, here they are:

Inheritance of Corporate Shares in a China company (I)

Inheritance of Corporate Shares in a China Company (II)

Inheritance of Corporate Shares in a China Company (III)

Inheritance of Corporate Shares of a China Company (IV)

When it comes to stocks of public listed companies, we are entering the heavily regulated capital market arena. There are of course intricate implications on inheritance by foreigners of such stocks of China public listed companies. On April 30, 2020, China Securities Depository and Clearing Corporation Limited (hereinafter as "**CSDC**") issued the *Detailed Implementation Rules for the Non-trade Transfer of Securities (Applicable to Inheritance, Donation, and Other Circumstances, 2020 Revision)* (hereinafter as "**Detailed Implementation Rules**"), which stipulates the procedures of how to inherit listed securities. These rules apply to inheritance by foreigners of such listed securities as well.

I. Foreigners Investing in China Stock Markets

Inheritance by foreigners of stocks in China means the vesting of title of stocks in foreign heirs or

beneficiaries or trustees. But what is the current landscape of foreigners owning stocks of China listed companies?

First of all, not every foreigner is entitled to open a security account and trade China stocks. China capital market is in no way an open market to foreign investors. So, who are eligible to open security account and trade China stock?

(1) if a foreigner has obtained China “green card”, the permanent residence status, then they can open account and trade stocks;

(2) if a foreigner is a shareholder of a joint venture company limited by share and this foreign-invested company gets listed on China stock exchanges, then the foreigner shareholders can open account and hold and trade the stock of his own company;

(3) foreigners who work in China for a China listed company can open security account to hold the stock of his employer company when they participate in Employee Stock Option Plan; and

(4) in 2018, China decides to further open its capital market to foreigners who legally work within China and to foreigners who work for a China listed company outside China but participate in the company’s Stock Option Incentive Plan.

Those are the limited circumstances where foreigners are allowed to hold stocks in China listed companies.

Now we should add a new item to that list set out above: inheritance by foreigners of listed stocks in China. Regarding a more detailed summary of the Detailed Implementation Rules, please click the link here: DETAILED RULES FOR FOREIGNERS TO INHERIT THE SECURITIES OF LISTED COMPANIES IN CHINA.

Basically, upon presenting all required documents, foreign heirs or beneficiaries will be able to open a securities account to hold the stocks left by their family members. However, such account can only be used to keep and sell the inherited stock and cannot be used for trading other stocks on the exchanges.

II. Implications for Cross-border Estate Planning

It is very common that Chinese rich families have their kids go abroad for learning and living. We have served a good number of clients of this kind, one of which did involve the stock of a listed company in China.

First of all, the newly revised rules mean that foreign heirs or beneficiaries are able to inherit and hold stocks in China listed companies, which are often a substantial amount of family assets. Naturally, it gives the option to foreign inheritors to either continue holding the stocks or cash in on the stocks.

Secondly, in some cases where the volume of the estate stocks is so significant, as a result of inheritance, the foreign inheritors may well exert meaningful influence over the management of the company, for example electing a board member on the board of directors of the company.

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While it is a positive development in favor of foreign inheritors, if not well planned, inheritance of such stocks may entail unexpected tax consequence.

Lastly, in the world of estate inheritance, to avoid future troubles and unhappy fallouts among family members entitled thereto, it is always advisable to do estate planning in advance, for example, (1) pre-IPO planning to hold corporate shares by legal entity instead to give ampler room and less trouble in getting the inheritance done; or (2) even further, set up offshore trusts to hold China stock through layers of intermediary holding companies outside China, which is a typical feature of common law estate planning.

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