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# Insights

**Jason Kang, Chang Liu, Kairu Huang in Caijing: Chinese Companies Should Take Note of the Poison Pill**

May 18, 2022

Publication: ***Caijing***

The implementation of a poison pill by Twitter's board of directors in response to Elon Musk's acquisition may have increased the final offer accepted by the board by up to US $1 billion, demonstrating the effectiveness of this measure at empowering the board. As Kobre & Kim's Greater China-based lawyers Jason Kang and Chang Liu – together with analyst Kairu Huang – wrote in *Caijing*, Chinese companies can gain much from poison pills in corporate disputes.

Originating in the 1980s from American companies fighting leveraged buyouts, the poison pill aims to defeat takeovers by diluting the acquirer's proportion of shares. Given the infringement on the interests of the diluted shareholders, poison pills have been challenged in court, generally in Delaware given the concentration of company registrations in the state. Fortunately for company directors, Delaware courts have been accommodative to boards of directors but, as the authors detailed, there are still exceptions.

Chinese law, though gradually loosening, makes it difficult to deploy poison pills, meaning battles for control of Chinese companies often occur for those listed or controlled overseas. Other U.S. states and offshore jurisdictions such as the Cayman Islands and British Virgin Islands also view poison pills more cautiously. Chinese company directors therefore must pay attention to the differences in various jurisdictions in order to use the poison pill most effectively in a battle for company control.

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