

# China Legal Briefing\* 262

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## **1. Several Provisions on Reduction of Shares of Shareholders or Directors of Listed Companies**

China securities regulatory commission issued Several Provisions on reduction of shares of Shareholders or Directors of Listed Companies on January, 2016 (hereinafter “the former provisions”), which greatly improved the transparency of reduction of shareholders of listed companies and play a positive role in stabilizing the secondary market and protecting small and medium investors. However, there are some imperfections in the former provisions, such as, it only impacted some restrictions in the way of centralized auction, but there is no restriction in the way of bulk transaction or agreement transfer to reduce shares.

The new provisions specifically focused on these outstanding issues and further improved the former provisions. There are four main points as follow:

### **a. Expand the Scope of Application**

According to the former provisions, the scope of application was major shareholders, directors, supervisors and senior manager of listed company. But the new one expand the scope, it clearly state that controlling shareholders, shareholders holding more than 5%, directors, supervisors and senior manager reduce their shares, or shareholders reduce their original shares or non-public shares should be applicable to the new provisions.

Besides, major shareholders reduce shares trading through the secondary market is not subject to this provisions, but now except the shares bought through centralized auction trading, other trading through the secondary market is applicable to the new provisions as well.

In addition, reducing shares via commutative debt-to-equity or stock equity swap is also applicable to the new provisions.

### **b. Enhance the Obligation of Information Disclosure**

On the basis of requirement to disclose information before the reduction, new provisions stipulate the disclosure requirement about the progress and the completion of the reduction. Major shareholders, directors, supervisors and senior manager should disclose the progress according to the regulations of stock exchange.

New provisions also state that Major shareholders, directors, supervisors and senior manager shall report to the stock exchange within two working days after the completion of reduction and make a public announcement. If the reduction is not completed or the reduction plan is not implemented in the

disclosure period, it shall report to the stock exchange within two working days after the expiration of the period and make a public announcement as well.

### **c. Refine the Restriction of Reduction**

New provisions impact corresponding ratio restrictions in various types of shares, namely centralized auction, agreement transfer and bulk transaction.

For centralized auction, there are 4 main points.

The total amount of shares reduced by major shareholders through centralized auction in 3 months should not exceed 1% of the total number of shares of the listed company.

Original shareholders and investor of private placement also have to comply with the above provision.

Within 12 months from the date of lifting, shareholders reduce their original shares or non-public shares should not exceed 50% of the amount held by themselves in this non-public offering.

The amount of shares of major shareholders and persons acting in concert should be consolidated. If they have several accounts, these accounts should be consolidated as well.

Trading shares by the way of agreement transfer and bulk transaction should comply with the provisions above and regulations of the exchange stock as well.

### **d. Increase Legal Liability of Illegal Reduction**

New provisions reinforce the regulatory function of the stock exchange, several articles clearly state that reduction of shares shall conform to the regulations of the stock exchange. Moreover, the liability increased from Administrative punishment into punish according to the law which may be more strict and serious.

In general, the new provisions imposed more restrictions on the reduction in the respect of the scope, the amount and information disclosure and made up for the insufficiencies of the former provisions. But its impact on the financial markets is not very clear.

## **2. China Adopts Amendments to Civil Law**

March 15th, National People's Congress passed *General Provisions of the Civil Law of the People's Republic of China*, which will be in effect on October 1st. There are several differences from the former version.

#### **a. “Green” Becomes One of the Basic Principles**

Article 9 provides that the parties to civil legal relations shall conduct civil activities contributing to the conservation of resources and protection of environment. This is a great innovation and has distinctive feature of 21st century.

#### **b. the Fetus Have Capacity for Civil Rights**

Article 16 stipulates that where the protection of the interests of a fetus is involved in, among others, a succession or acceptance of a gift, the fetus shall be presumed to have capacity for civil rights. However, in case of a stillborn, the fetus's capacity for civil rights has never existed.

In addition, article 185 provides that a person who infringes upon the name, likeness, reputation, or honor of a hero or a martyr, among others, causing damage to the public interest, shall assume civil liability.

The new civil law not only protect the right of civil subject from cradle to the grave, but also protect unborn fetus and the dead.

#### **c. Expand the Scope of the Person with Limited Capacity for Civil Conduct**

Article 19 provides that a minor attaining the age of eight is a person with limited capacity for civil conduct, who shall be represented by his or her statutory agent in performing juridical acts or whose performance of juridical acts shall be consented to or ratified by his or her statutory agent, but may alone perform juridical acts which purely benefit the minor or are commensurate with his or her age and intelligence.

The minor age of the person with limited capacity for civil conduct decreased from 10 to 8. Due to the development of economy, the cognitive level of children in China significantly increased, especially in the sense of independence. In order to respect their independent will and maintain the stability of transaction, It is necessary to appropriately reduce the minor age of the person who limits the capacity of civil conduct.

#### **d. Stipulate Special Legal Person**

Article 96 stipulates that the state organ legal persons, rural collective economic organization legal persons, urban and rural cooperative economic organization legal persons, and basic self-governing mass organization legal persons as provided for in this section are special legal persons.

The new civil law divides the legal person into three categories, profit-making legal person, non-profit legal person and special legal person. According to the new civil law, government, village committee and neighbourhood committee are special legal person, have independent legal status, take their own legal liabilities.

#### **e. Virtue Property Is Protected by the New Civil Law**

Article 127 presents that where any laws provide for the protection of data and network virtual property, such laws shall apply.

It is controversial that whether virtue property should be protected or not. The new civil law takes an open attitude, makes allowance for future legislation and provides legal basis for the data, network virtual property protection.

#### **f. The Limitation of Action Is Extended to 3 Years**

Article 188 states that an action instituted in a people's court for protection of civil rights is prescribed by three years, except as otherwise prescribed by any law.

The new civil law extends the general limitation from 2 years to 3 years, which is conducive to protect legal rights. In addition, Article 191 presents that the prescriptive period of a claim for damages of a minor who has suffered sexual assault shall be calculated from the day when the victim attains the age of eighteen which is conducive to teenager's right and healthy growth.

The promulgation of the General Principles of Civil Law officially opened the process of compiling the civil code. The new civil law improved the civil rights system, enhanced the protection mechanism of civil rights and improved the basic legal system of market economy. It is a significant milestone in the history of China's civil legislation.

### **3. Provisions on Issuing VAT Invoice**

In order to ensure the smooth implementation of the pilot scheme on levying VAT in place of business tax in a comprehensive manner, protect taxpayers' legitimate rights and interests, State Administration of Taxation introduced the corresponding provisions which took effect on July 1st, 2017. There are two main points.

#### **a. Taxpayer's Identification Number or the Unified Social Credit Code**

Where an enterprise as a purchaser asks for a general VAT invoice from a seller, it shall provide the seller with the taxpayer's identification number or the unified social credit code; and the seller shall, when issuing a general VAT to the purchaser, fill in the taxpayers' identification number or the unified social credit code of the purchaser in the column "taxpayer's identification number of the purchaser". Any incompliance invoice will not be taken as tax payment voucher.

#### **4. Information Must Be in Line With the Actual Transaction**

The seller shall truthfully issue an invoice based on the information of actual sale and shall not, as required by the purchaser, fill in any information not in line with the actual transaction. When issuing invoices, the seller shall connect with the backstage of the VAT invoice tax control system through the sale platform system. If it inputs relevant information for issuance of invoices, such data input in the sale platform system shall be consistent with the actual transaction. In case of inconsistency, the seller shall make modification or improvement in the sale platform system.

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