

# CHINA LEGAL BRIEFING\* 190

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- 1 Regulations of the People's Republic of China on Foreign Exchange Administration (2008 Revision)**
- 2 Administrative Measures for Foreign-invested Mineral Exploration Enterprises**
- 3 Decisions Concerning Revising Article 63 of Measures for Administration of Mergers and Acquisitions of Listed Companies (Draft for Comments)**

## **Regulations of the People's Republic of China on Foreign Exchange Administration (2008 Revision)**

中华人民共和国外汇管理条例 (2008年修订)

Issued By	<b>State Council</b>
Subject	<b>Foreign Exchange</b>
Promulgated on	<b>August 5<sup>th</sup> 2008</b>
Effective from	<b>August 5<sup>th</sup> 2008</b>
Source	<b><a href="http://www.chinalaw.gov.cn">http://www.chinalaw.gov.cn</a></b>

The Government of the PR China removed most previously existing restrictions on foreign exchange by implementing the revised Regulations of the People's Republic of China on Foreign Exchange Administration ("Regulations"), which took effect on the day of its promulgation (August 5th, 2008).

As a response to the rapid growth of the China's domestic financial market and the severe changes in the world economy, the Regulations mean a significant change to the management of foreign exchange. The goal of the Regulation is to better control the huge foreign reserves of the Chinese Government and to increase the inflow of cross-border capital into China.

Following is a list of the major changes stipulated by the revised Regulations:

1. The compulsory requirement that the foreign exchange income of domestic institutions and individuals must be remitted back to China has been removed. Therefore, such institutions or individuals may keep their foreign exchange income abroad or remit them to China. However, the preconditions and terms shall still be determined by the State Administration of Foreign Exchange ("SAFE"). (Article 9)
2. In the past, the foreign exchange income of domestic institutions under current account had to be exchanged into RMB. Under the new Regulations, they are allowed to keep their foreign exchange income in foreign currencies. (Article 13)
3. Concerning the direct investment of foreign institutions or individuals in China, they shall apply to SAFE for registration of their investment, after they obtained an approval for their FDI by the competent authority. Any issuance or trade of securities and derivatives within territory of China by foreign institutions or individuals shall be subject to the relevant provisions of market entry, and go through the necessary registration procedures of SAFE. (Article 16)
4. If domestic institutions or individuals wish to do direct investment overseas or to pursue any issuance, trading of offshore securities and derivatives, they shall be registered with SAFE. In case any pre-emptive approval or filing with the competent authority is needed in accordance with Chinese laws and regulations,

such approval or filing shall be obtained or made before the aforesaid registration in SAFE. (Article 17)

5. Subject to SAFE approval, the foreign exchange income under capital account may be kept or converted into RMB. On the other hand, no SAFE approval is needed while purchasing or remitting foreign exchange abroad, unless it is otherwise stipulated. (Article 21, 22)
6. Foreign-invested enterprises terminated in accordance with law shall be liquidated according to relevant State regulations. The RMB left to the foreign investors after payment of taxes can be used for buying foreign exchange from any financial institution, which operates a foreign exchange sale or settlement business. Such foreign exchange may be remitted abroad. (Article 22)
7. Domestic banks may directly provide commercial loans for overseas borrowers. Other domestic institutions are required to get the relevant approval from SAFE so as to grant such loans. (Article 20)
8. The usage of the foreign exchange under capital account and RMB after settlement shall comply with the approval of competent authority and SAFE. SAFE is entitled to inspect and control its usage and any change of the account. (Article 23)
9. The supervision of hot-money inflow is strengthened by granting SAFE more powers to crackdown on illegal foreign exchange inflows, illegal exchange settlement. Penalties of up to 30 percent of the capital may be faced by improper transfer of foreign exchange.

## **Administrative Measures for Foreign-invested Mineral Exploration Enterprises**

外商投资矿产勘查企业管理办法

Issued By	<b>Ministry of Commerce; Ministry of Land and Resource</b>
Subject	<b>Mineral Exploration</b>
Promulgated on	<b>July 18<sup>th</sup> 2008</b>
Effective from	<b>August 20<sup>th</sup> 2008</b>
Source	<a href="http://www.mlr.gov.cn">http://www.mlr.gov.cn</a>

The Administrative Measures for Foreign-invested Mineral Exploration Enterprises (the “Measures”) are scheduled to take effect on August 20th, 2008.

The State encourages foreign investors with mineral prospecting experience or financing capacities to invest in mineral exploration activities, encourages foreign investors to invest in mineral exploration enterprises and conduct mineral exploration activities by means of high-tech methods, and also encourages the foreign investors to contribute more efforts in

sustainable development of mining industry. With these purpose, the commerce authorities and land & resources authorities are entitled to supervise and manage the business activities of foreign-invested mineral exploration enterprises.

The Measures specifies the rules concerning application qualifications for establishing foreign-invested mineral exploration enterprises (hereinafter FIMEE), as well as the application procedure, licenses for mineral exploration, transfer of exploration rights, preconditions and business scope of the mineral exploration by foreign investors etc.

### **Establishment of Foreign-invested Mineral Exploration Enterprises (“FIMEE”) (Article 7, 8, 9, 10)**

1. Submission of related documents listed in Article 8 of the Measures to the commerce authority at the provincial level.
2. The decision of the commerce authority has to be made within 45 working days after seeking opinions of the land & resource authority. If the investment is approved, the approval certificate shall be issued. In case that its business scope belongs to the Restricted Foreign Investment Industries in accordance with Catalogue of Industries for Guiding Foreign Investment, it shall be subject to an approval of the Ministry of Commerce. The commerce authority shall make the first review and report to Ministry of Commerce within one month.
3. The Ministry of Commerce shall make the decision within 45 working days after soliciting comments of Ministry of Land & Resource. Upon agreement, the approval certificate shall be issued.
4. If the Chinese investor contributes the exploration right as investment or cooperative condition, the opinions of military administration authority shall be required.
5. The registration in the administration department for industry & commerce shall be filed within one month after obtaining the approval certificate.

### **Exploration License (Article 11)**

1. Application for exploration license at the land & resource authority upon the approval certificate and the business license.
2. An FIMEE may apply the exploration license beyond its registered area according to the situation of its exploration project.
3. If an FIMEE obtains an exploration license out of its registered area, it shall register its branch in the local administrative authority of industry & commerce in accordance with the situation of its exploration project.

## **Increase of Total Investment and Registered capital (Article 12)**

1. Submission of related legal documents.
2. Clarifying use of the increased capital, source of the capital, operation situation, use of the exploration license, payment of the related expenses etc.
3. Approval authority shall make decision within 45 working days after receiving all application files.
4. In case of any change of the exploration design after capital increase, the revised exploration design shall be registered at the original registration authority.

## **Equity Distribution Proportion (Article 13)**

Equity distribution proportion shall be agreed by the parties to Sino-foreign joint cooperative ventures. In case of over 2 exploration projects, the proportion may be stipulated by the parties respectively.

## **Make Explorations in Permitted Regions (Article 15, 17)**

Upon obtaining the geological reconnaissance qualification certificate, the FIMEEs may be allowed to make explorations in the permitted regions.

## **Annual Report to the Approval Authority (Article 16)**

Prior to March each year, FIMEEs shall report the following issues to the approval authority:

5. Situation of exploration operation (at the meantime, filing with the approval authority of the exploration license)
6. Payment of taxes
7. Environment protection
8. Use of land
9. Joint annual inspection situation of foreign-invested enterprises

## **Listing Overseas (Article 18)**

Foreign investors to go listing on overseas market with their mineral exploration achievement in China should submit file to Ministry of Commerce and Ministry of Land & Resource.

## **Transfer of Exploration Right (Article 19,20,21,22)**

1. Upon transfer of exploration right, FIMEEs shall conduct relevant approval procedures at the land & resource authority and file with the commerce department.
2. If FIMEEs find the minable mineral resources, and the major mine type of which comply with the Catalogue of Industries for Guiding Foreign Investment, the

mining license shall be applied, and the alternation of its business scope shall be approved by the original approval authority. Further more, the alternation registration shall be conducted in the administrative department of industry & commerce.

3. Otherwise the foreign investor may establish a foreign-invested mining enterprise and go through the procedures of transfer of exploration right. Or the aforesaid foreign-invested mining enterprise applies the mining license directly.
4. The exploration right may be transferred, if the major mineral type is forbidden to be quarried by foreign investors. In case that the associated mineral belongs to the forbidden minable types by foreign investors, foreign investors may make exploration and mining together with the major mineral subject to the approval of Ministry of Land & Resource and Ministry of Commerce.

### **Decisions Concerning Revising Article 63 of Measures for Administration of Mergers and Acquisitions of Listed Companies (Draft for Comments)**

关于修改《上市公司收购管理办法》第六十三条的决定》（征求意见稿）

Issued By           **China Securities Regulatory Commission**  
Subject             **Securities**  
Promulgated on    **August 17<sup>th</sup> 2008**  
Source             <http://www.csrc.gov.cn>

China Securities Regulatory Commission (CSRC) released the draft of the Decisions Concerning Revising Article 63 of Measures for Administration of Mergers and Acquisitions of Listed Companies (“Decisions”), soliciting public comments. The major change lies in the immunity procedures stipulated in paragraph 2 of Article 63 in Measures for Administration of Mergers and Acquisitions of Listed Companies (“Measures”). Controlling shareholders who seek to increase less than 2% of their holding shares may only have to file the report to CSRC afterwards.

#### **Major Changes:**

5. The application for immunity procedures subject to section 2 of the paragraph 1, Article 63, “If the shares held by a shareholder of a listed company reach or exceed 30% of the issued shares of the company, one year after the aforesaid fact has occurred, the shareholder shall not increase its shares exceeding 2% of the issued shares of the company during each 12 months” has been changed from advance application to application after the event. The public announcement shall be made within 3 days after the share increase as well.

6. CSRC has 5 more working days, namely 10 working days to deal with immunity items through simple procedures in comparison with the old Measures (5 days).

The Decisions have standardized the share increase behavior not leading to the change of the control right over a listed company, and have improved the flexibilities of controlling shareholders to increase their shares. Relevant implementing rules to the Measures will come out after the promulgation of the revised Measures.

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