



## CHINA LEGAL BRIEFING 90

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### 1. *National*

#### *Regulation on Origins of Imports and Exports*

中华人民共和国进出口货物原产地条例

【**Issued By**】 State Council

【**Subject**】 International Trade

【**Promulgated on**】 September 3<sup>rd</sup> 2004

【**Effective From**】 October 1<sup>st</sup> 2004

【**Repeal**】 Rules on Origins of Exports 1992

(中华人民共和国出口货物原产地规则)

Provisional Rules on Origins of Imports 1986

(中华人民共和国海关关于进口货物原产地的暂行规定)

【**Source**】 [www.china.org.cn](http://www.china.org.cn)

This regulation applies to the determination of origins of imports and exports when non-preferential trade measures, such as Most Favored Nation treatment, anti-dumping, counter-veiling, safeguard measures, administration of origin marks, national-specific limitation, tariff quota, and such activities as governmental procurement and trade statistics apply. Where preferential trade measures are concerned, this regulation shall not apply. The determina-

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tion of origins under the latter scenario will be dealt with by rules to be enacted in accordance with international agreements to which China is a party.

Where more than two countries are involved in the production of those goods in question, the country in which substantial changes eventually take place is regarded being the country of origin. The basic criterion to determine "substantial changes" is the customs classification. "Substantial changes" are deemed to have taken place where raw materials from another country are processed in one country, which results in goods whose customs classification is different from the raw materials.

Nevertheless, once it has been shown that processing or handling of goods is conducted with a view to evade P.R.C laws and regulations on anti-dumping, counter-veiling and safeguard measures, customs authorities will not take such processing and handling into account when determining the origin.

### *Circular on Issues Regarding Transfer of State Assets in Enterprises*

关于企业国有产权转让有关问题的通知

**【Issued By】** State Asset Supervision and Administration Commission (SASAC)

**【Subject】** State Assets

**【Promulgated on】** August 25<sup>th</sup> 2004

**【Effective From】** August 25<sup>th</sup> 2004

**【Source】** [www.sasac.gov.cn](http://www.sasac.gov.cn)

The purpose of the Circular is to respond to some uncertainties arising out of implementing Provisional Rules on Administration of Transfer of State Assets in Enterprises (企业国有产权转让管理暂行办法, CLB No. 56).

To correct misreading of Article 2 of the Provisional Rules,<sup>1</sup> which seems to imply that separate rules will be applied to transfer of state shares in public companies, the Circular devotes a section for issues regarding changes to the nature of state shares resulting from a transfer of state assets in enterprises. It provides that changes to the nature of state shares in public companies shall be conducted in accordance with the procedure laid down by the Provisional Rules promulgated early this year. Under this procedure, information on transfer of state assets shall be publicized at asset exchanges selected by the SASAC with a view to draw attention to potential transferees as far as possible. After the transferee has been selected and a transfer agreement has been provisionally signed, the transferor shall refer the matters regarding changes to the nature of the state shares in public companies to the SASAC for approval. After the transfer of state assets and the changes to the nature of the state shares have been approved, the transferor shall go through the accreditation procedure at

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<sup>1</sup> Transfer of state assets in financial enterprises and transfer of state shares of public companies shall be conducted in accordance with relevant rules.

asset exchanges and provide the approval documentation and proof full payment in cash by the transferees. When the accreditation has been completed, the parties to the transfer shall record the changes to the state shares at registration and clearing institutions and provide approval documentation and accreditation certificates, and proof full payment in cash by the transferees.

***Provisions on Matters Regarding Acknowledgement of Establishing Enterprises in Hong Kong and Macao by Mainland Enterprises***

关于内地企业赴香港、澳门特别行政区投资开办企业核准事项的规定

**【Issued By】** Ministry of Commerce

State Council Office on Hong Kong and Macao Affairs

**【Subject】** Overseas Investment

**【Promulgated on】** August 31<sup>st</sup> 2004

**【Effective From】** August 31<sup>st</sup> 2004

**【Source】** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

Two categories of enterprises are required to submit applications for acknowledgement from the Ministry of Commerce and its provincial offices if they wish to establish enterprises in Hong Kong and Macao: (1) enterprises established in the Mainland; (2) enterprises established overseas by enterprises from the Mainland.

All of the following forms of starting enterprises by mainland enterprises referred to above are subject to acknowledgement: new establishment, acquisition, merger, equity investment, capital injection, and equity swap.

The division of powers between the Ministry of Commerce and provincial bureaus of commerce in this matter is based upon the applicant who is subject to the acknowledgment. Applications from local enterprises are reviewed and acknowledged by provincial bureaus of commerce except for applications to establish enterprises with a view to conduct indirect overseas public listing or investment business. The Ministry of Commerce deals with applications from central enterprises.

The following documents need to be provided when applying for acknowledgement:

- Applications stating the name, registered capital, investment amount, scope of business, business period, organization, equity structure of the applicants;
- Articles of association of the enterprises to be established and relevant agreements;
- Business licenses issued in the Mainland and proof of qualifications as requested by law;

- Certificates from authorities on foreign exchange verifying sources of the foreign exchange where investment are to be made in foreign exchange;
- Other documentation as requested by laws, administration regulations and the State Council.

***Circular on Certain Issues Regarding the Administration of Qualification of Foreign Invested Construction Enterprises***

关于做好外商投资建筑业企业资质管理工作有关问题的通知

**【Issued By】** Ministry of Construction

Ministry of Commerce

**【Subject】** Foreign Investment

**【Promulgated on】** September 6<sup>th</sup> 2004

**【Effective From】** September 6<sup>th</sup> 2004

**【Source】** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

To encourage large international construction contractors to establish foreign invested construction enterprises in China, the following special arrangements may be adopted if the newly-established foreign invested construction companies are not able to meet the requirements on performance and personnel: (1) construction contracts finished outside China by foreign investors may be deemed as the performance of the newly-established construction enterprises in China; (2) foreign invested construction enterprises may engage overseas service providers as their technical and economic management staff; (3) foreign invested construction enterprises may employ overseas service providers as their project managers.

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