



# CHINA LEGAL BRIEFING\* 134

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## **Circular of the Ministry of Commerce and China Securities Regulatory Commission Regarding the Relevant Issues on the Administration of Foreign Investment as Involved in the Share Trading Reform of Listed Companies**

关于上市公司股权分置改革涉及外资管理有关问题的通知

**Issued By** Ministry of Commerce, China Securities Regulatory Commission  
**Subject** Foreign Investment  
**Promulgated on** October 26<sup>th</sup> 2005  
**Effective from** October 26<sup>th</sup> 2005  
**Source** [www.mofcom.gov.cn](http://www.mofcom.gov.cn)

In order to carry into effect the requirements of the Guiding Opinions of China Securities Regulatory Commission on the Share Trading Reform of Listed Companies (No. 80 [2005] of the CSRC), promote the share trading in an active and stable manner, Ministry of Commerce and China Securities Regulatory Commission issued the Circular of the Ministry of Commerce and China Securities Regulatory Commission regarding the Relevant Issues on the Administration of Foreign Investment as Involved in the Share Trading Reform of Listed Companies (hereinafter referred to as “the Circular”) on October 26, 2005.

According to the Circular, the procedures for alteration of stock right as involved in the share trading of an A-share listed company that holds the approval certificate of foreign-funded enterprises (hereinafter referred to as a foreign-funded listed company) shall be as follows:

1. The board of directors of a foreign-funded listed company shall, within two workdays after the circular on holding the relevant shareholders’ meeting is issued, directly report its plan of share trading to the Ministry of Commerce for archival filing.
2. After a plan of share trading is adopted by resolution at the shareholders’ meeting, the board of directors of a foreign-funded listed company shall, within one workday, report the documents through the administrative department of commerce at the provincial level.
3. The administrative department of commerce at the provincial level shall transfer the application documents to the Ministry of Commerce within two workdays as of acceptance.
4. The Ministry of Commerce shall solicit the opinions of the CSRC within two workdays as of receiving the documents as reported. The CSRC shall make a confirmation of no demurral in written form to the Ministry of Commerce within two workdays.

5. The Ministry of Commerce shall, within five workdays, make a reply on the alteration of stock right of a foreign-funded listed company according to law.

As to the enterprise nature of and enterprise treatment for a foreign-funded listed company upon a share trading reform, the Circular is of the following opinion:

1. After a share trading reform plan of a foreign-funded listed company is implemented, within the term wherein the holders of the original foreign capital institutional shares promise not to sell any share (hereinafter referred to as the time limit for not selling shares), a listed company shall continue holding the approval certificate of foreign-funded enterprises and enjoying the preferential treatment as given to foreign-funded enterprises. Any change of proportion of foreign capital shares as incurred from the share trading shall not, as is the general principle, have any impact on the relevant existing policies of the relevant listed company.
2. Upon the expiration of the time limit for not selling shares, where the holders of the original foreign capital institutional shares sell no shares, the listed company shall continue holding the approval certificate of foreign-funded enterprises and enjoying the preferential treatment as given to foreign-funded enterprises.
3. Upon the expiration of the time limit for not selling shares, where any shareholder of the original foreign capital corporation shares sells any share thereof:
  - a) Where the proportion of foreign capital shares of a listed company is no less than 25% after any holder of the original foreign capital shares sells his shares, the listed company shall continue holding the approval certificate of foreign-funded enterprises and enjoying the preferential treatment as given to foreign-funded enterprises.
  - b) Where the proportion of foreign capital shares of a listed company is 10% up to 25%, as is incurred from any sale of the original foreign capital shares by any holder, the listed company may continue holding the approval certificate of foreign-funded enterprises. For the preferential treatment as given to foreign-funded enterprises that the company has enjoyed, the relevant formalities shall be handled according to the relevant provisions of such departments of taxation, customs and foreign exchange administration.
  - c) Where the proportion of foreign capital shares of a listed company is less than 10%, as is incurred from any sale of the original foreign capital shares by any holder, the listed company shall, within three workdays, go to the relevant departments such as the Ministry of Commerce and the administrative department for industry and commerce to handle the relevant alteration formalities and shall not

hold the approval certificate of foreign-funded enterprises any more.

In addition, where a listed company that has gone through a share trading reform needs to attract any strategic investment from abroad for the implementation of its development strategy, upon the approval of the relevant departments such as the Ministry of Commerce, an overseas strategic investor may make purchase of and promise to hold a certain proportion (as is a general principle, the definition of the International Monetary Fund on foreign direct investment shall be referred to; in the case of any clear provision thereon, it shall prevail) of A-share of a listed company. As to the procedures for examination and approval of the purchase of shares of a listed company by an overseas investor as well as the management of share accounts, the measures for the administration thereof shall be separately formulated by the Ministry of Commerce and the CSRC.

Furthermore, a A-share listed company with H-share or B-share that holds the approval certificate of foreign-funded enterprises may continue holding the approval certificate of foreign-funded enterprises after a share trading reform is carried out. For a foreign-funded listed company that hasn't gone through a share trading reform for the time being, any alteration of stock right thereof shall be handled according to the relevant provisions in force.

## **Measures for the Administration of Alcohol Circulation**

酒类流通管理办法

Issued By	<b>Ministry of Commerce</b>
Subject	<b>Others Provisions</b>
Promulgated on	<b>November 7<sup>th</sup> 2005</b>
Effective from	<b>January 1<sup>st</sup> 2005</b>
Source	<a href="http://www.mofcom.gov.cn">www.mofcom.gov.cn</a>

With a view to regulate the order of alcohol circulation, promote the orderly development of the alcohol market, safeguard the interests of the state and protect the legitimate rights and interests of alcohol producers, operators and consumers, Measures for the Administration of Alcohol Circulation(hereinafter referred to as “the Measures”) was formulated by Ministry of Commerce on November 7<sup>th</sup> 2005.

According to the Measures, the term “alcohol” as mentioned refers to the alcoholic drink with more than 0.5 % (cubic fraction) of alcoholic degree (ethanol content), including fermented alcohol, distilled alcohol, compound alcohol, edible alcohol and any other drink with alcoholic component, except the medicinal liquor or any alcohol in the category of

health food whose production has been approved by the relevant administrative department of the state. The term “alcohol circulation” as mentioned in the present Measures includes such business operations as the wholesale, retail and storage and transport of alcohol.

A system of archival filing of operators as well as a traceability system shall be established for alcohol circulation. An entity or individual that engages in the wholesale or retail of alcohol (herein after referred to in general as “alcohol operator”) shall, within 60 days as of collecting a business license, handle the archival filing and registration in the administrative department of commerce at the same level as the administrative department for industry and commerce where the registration is handled according to the principle of territorial administration.

An alcohol operator (supplier) shall, when undertaking any wholesale of alcoholic goods, fill in the Attached Documents of Alcohol Circulation (hereinafter referred to as the Attached Documents) and record the information on the circulation of alcoholic goods in detail. The Attached Documents shall follow the whole course of alcohol circulation, be bundled with the goods and comply with the information on goods so as to realize the traceability of the circulation information throughout the course from the day when alcoholic goods leave the factory to the point of sales terminal.

In addition, an alcohol operator shall mark and sell the bulk alcohol in a fixed place. Any mobile sale of bulk alcohol is prohibited. An alcohol operator shall not sell any alcoholic goods to any minor and shall indicate this in an eye-catching position in its business place.

## **Measures for the Administration of Business Training on Sales Promoters**

直销员业务培训管理办法

Issued By	<b>Ministry of Commerce</b>
Subject	<b>Others Provisions</b>
Promulgated on	<b>November 1<sup>st</sup> 2005</b>
Effective from	<b>December 1<sup>st</sup> 2005</b>
Source	<a href="http://www.mofcom.gov.cn">www.mofcom.gov.cn</a>

In order to regulate the holding of business training on sales promoters (hereinafter referred to as the direct selling training) and the examination activities within the territory of the PRC, Ministry of Commerce issued the Measures for the Administration of Business Training on Sales Promoters (hereinafter referred to as “the Measures”) in accordance with

the provisions of paragraph three of Article 21 of the Regulation on Direct Selling Administration.

According to the Measures, the direct selling training shall refer to the various training activities conducted by direct selling companies to the sales promoters to be recruited by them and the sales promoters of their own companies on the relevant laws and regulations of the state and the basic direct selling knowledge. The examination on sales promoters shall refer to the examination conducted by a direct selling company to the sales promoters to be recruited by it.

A direct selling company shall, before the 15th day of each month, put on archives the name list of the personnel who have obtained the Certificate of Direct Selling Trainers in its company in the previous month at the Ministry of Commerce through the competent department of commerce at the level of the province where the company is located. No personnel who are not put on archives may carry out training on sales promoters. The direct selling trainers may only make training upon the appointment of their own companies.

A sales promoter shall wear the Certificate of Sales Promoters when selling products to any consumer and a direct selling trainer shall wear the Certificate of Direct Selling Trainers when carrying out direct selling training activities. No direct selling company may charge any fee for carrying out direct selling training and examination. No other entity or individual may organize direct selling training and examination in any name.

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