



CHINA LEGAL BRIEFING* 135

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Measures for the Administration of the Depositing and Paying and Using of the Deposit of Direct Selling Companies

直销企业保证金存缴、使用管理办法

Issued By Ministry of Commerce
Subject Others Provisions
Promulgated on November 1st 2005
Effective from December 1st 2005
Source www.mofcom.gov.cn

The Ministry of Commerce (“MOFCOM”) and the State Administration for Industry and Commerce (“SAIC”) issued the Measures for the Administration of the Depositing and Paying and Using of the Deposit of Direct Selling Companies (the “Measures”) in accordance with the provisions of Article 43(2) of the Regulation on Direct Selling.

The Measures require that, at the moment a company applies for the permission to engage in direct selling, such company submit proof that it has made a deposit in a special deposit account opened at a designated bank for this purpose. The amount to be deposited is RMB 20 million in cash. The agreement between the company intending to develop direct selling and the bank, where it opened the special deposit account, must also be submitted to the authorities.

The level of the deposit of a direct selling company must be kept at 15% of the sales income obtained from its direct selling products in the preceding month. The balance of the account must be, at least, RMB 20 million and should not exceed RMB 100 million. Within three months after it starts direct selling activities, the company make adjustments of the amount of the deposit on a monthly basis, in accordance with the aforementioned requirements. If it is necessary to increase the amount of the deposit, the direct selling company must, within five days after sending the certified documents of its monthly sales volume to the designated bank, transfer the money onto the account. If, by contrast, a reduction of the amount to be deposited is warranted, it shall be handled according to the agreement between the company and the designated bank.

The Measures provide that the MOFCOM and the SAIC are jointly responsible for the routine supervision over the direct selling deposit. A particular feature of the Measures is that the MOFCOM and the SAIC are to decide jointly to have access to the deposit in the following circumstances:

1. A direct selling company does not pay remunerations to the sales promoters, without giving justified reasons, or does not pay the money for returning the goods to the sales promoters or the consumers.
2. A direct selling company ceases its business operations, enters into bankruptcy procedures or engages into a merger, dissolution, transfer of its assets, etc., and is unable to pay remunerations to the sales promoters or is unable to pay the money for returning the goods to the sales promoters and consumers.
3. Or where a direct selling company causes damage to any consumer due to the quality of the product sold and, being obliged to give compensation according to law, the company refuses to compensate without justifiable reasons or is unable to make such compensation. In those circumstances, the aforementioned authorities are to obtain access to the company's deposit and make the necessary payments for the company. After payment by the authorities, the direct selling company must, within 30 days, increase the amount of the deposit to the prescribed level.

If a company is no longer engaged in direct selling activities, it may withdraw the deposit on the basis of a letter issued by the MOFCOM and the SAIC. In the event that a company fails to get approval for its application for direct selling, it must go through formalities for withdrawing the deposit on the basis of a letter issued by the MOFCOM.

Interim Measures of the People's Bank of China for the Administration of Automatic Pledge Financing Businesses

中国人民银行自动质押融资业务管理暂行办法

Issued By **People's Bank of China**
Subject **Others Provisions**
Promulgated on **November 3rd 2005**
Effective from **December 8th 2005**
Source www.pbc.gov.cn

With a view to regulating the automatic pledge financing businesses, strengthening the fluidity of the management of the banking system, enhancing the efficiency of the settlement system and reducing payment risks, the People's Bank of China has formulated the Interim Measures of the People's Bank of China for the Administration of Automatic Pledge Financing Businesses (the "Measures") on November 3rd 2005.

According to the Measures, a member bank can pledge its bonds and obtain financing from the People's Bank of China, through the automatic pledge financing system, for

offsetting positions, when its daytime position is not enough. The pledged bonds will be voluntarily discharged when the capital is returned. A qualified member bank must meet the following conditions:

1. Being a depositing financial institution with own legal personality;
2. Being a direct participant in the payment system of the People's Bank of China;
3. Being a Class A or B settlement member that has opened a bond account at the China Government Securities Depository Trust & Clearing Co Ltd.; and
4. Having no bad record in the inter-bank market for the preceding three years.

The automatic pledge financing system refers to an applied system for automatic pledge of bonds, financing, payment and discharge based on the China National Advanced Payment System, the Open Market Operations System of the People's Bank of China, the Central Bank Centralized Accounting Book System and the Book Entry System of the China Government Securities Depository Trust & Clearing Co Ltd. Bonds falling into the following categories can be used for pledge: Government bonds, central bank bonds and policy financial bonds as issued by the governments, central banks and policy banks, etc. and under the custody of the China Government Securities Depository Trust & Clearing Co Ltd., as well as other securities that are approved by the People's Bank of China.

The Measures provide that automatic pledge financing can only be used, if the capital in the settlement account of a financial institution is not enough for settlement. In order to carry out automatic pledge financing, a member bank must conclude a master agreement on automatic pledge financing with the People's Bank of China.

In addition, the automatic pledge financing is financed and must be returned item by item. The member bank must pay both the principal and interests in their entirety at the time the payment is due. If the capital is not enough at that time, the payment of the principal and interests shall be postponed, and the interests must be recalculated at the time the following payment is due.

Notice of the State Administration of Taxation on the Relevant Issues Concerning the Value-added Tax on Individual Physical Gold Transactions of Financial Institutions

国家税务总局关于金融机构开展个人实物黄金交易业务增值税有关问题的通知

Issued By **State Administration of Taxation**
Subject **Tax Refund**
Promulgated on **November 7th 2005**
Effective from **November 7th 2005**
Source www.chinatax.gov.cn

On November 7th 2005, the State Administration of Taxation issued the Notice of the State Administration of Taxation on the Relevant Issues concerning the Value-added Tax on Individual Physical Gold Transactions of Financial Institutions (the “Notice”).

The Notice establishes that the value-added tax (VAT) on physical gold transactions of financial institutions must be prepaid (that is, funds should be reserved) at the prescribed rate. The prepayment obligation is incumbent on the provincial and municipal branches, if the company structure is geographically organized, and on the direct branches, if it is not. At a later stage, the final settlement and the actual payment of the VAT must be made. The provincial branches and the direct branches are responsible for the settlements and payments.

If any branch, sub-branch, sub-office or savings house, etc. affiliated to a financial institution physically sells gold, such an entity is required to issue ordinary invoices, printed under the uniform supervision of the State Administration of Taxation, to the purchasers. They must not issue any special financial invoices made by the bank itself. The handling of ordinary invoices is to be handled by each branch or sub-branch itself.

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