



China Regulatory Updates

March 2012

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- › Standardization
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Our Values

- › Professionalism
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保监会下放外资保险公司开设分公司以下分支机构的审批权限

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CSRC Amends Administrative Measures on Takeover of Listed Companies to Simplify Share Increase Procedures by Major Shareholders

证监会修改上市公司管理办法鼓励大股东增持

On 14 February 2012, CSRC issued *the Decision on Amending Articles 62 and 63 of the Administrative Measures on the Takeover of Listed Companies* (the "Amendments") to simplify procedures applicable to share increase of listed companies by their major shareholders. The Amendments will come into effect on March 15, 2012.

Pursuant to relevant provisions of the *PRC Securities Law* and the *Administrative Measures on the Takeover of Listed Companies* (the "Takeover Measures"), if a shareholder or an investor having 30% or more shareholding in a listed company intends to further increase its stake in such company, such shareholder or investor is compulsorily required to make a general tender offer or partial tender offer, unless it obtains a waiver from CSRC under certain circumstances in accordance with Articles 62 and 63 of the Takeover Measures. We have summarized below some major revisions to the Articles 62 and 63 in the Amendments for your easy reference:

- (a) **Administrative Procedures Simplified; Lockup Period Shortened.** Under the following four circumstances, even if a tender offer obligation is triggered under applicable PRC laws, the qualified investors/shareholders may directly proceed with relevant share purchase procedures without the need to obtain a waiver of tender offer from CSRC: (i) a listed company intends to issue new shares to its controlling shareholder and such new share issuance and the waiver of a tender offer have been duly approved by the general meeting of the company's shareholders; (ii) a shareholder continues to increase its shares of a listed company by no more than 2% within each 12 months from a year after such shareholder starting to hold 30% or more shares of such company; (iii) a shareholder having 50% or more shareholding in a listed company intends to further increase its stake (*with no percentage cap but shall in no event disqualify the company from the listing requirements*); and (iv) a shareholder's ownership in a listed company reaches or exceeds 30% due to a share inheritance.

In the meantime, in the case of situation (ii) described above, the lockup period applicable to the increased shares (*which should be less than 2% on an annual basis*) is now shortened from 12 months to 6 months.

- (b) **Disclosure Requirements Intensified.** According to the Amendments, if an investor holding 50% or more shares of a listed company intends to further increase its stake in such company through the call auction mechanism, once

2012年2月14日,中国证券监督管理委员会发布了《关于修改〈上市公司收购管理办法〉第六十二条及第六十三条的决定》(以下简称《决定》),使大股东增持上市公司股份的相关程序得以简化。《决定》将自2012年3月15日起施行。

根据《证券法》和《上市公司收购管理办法》(“《收购办法》”)的相关规定,相关股东或投资人在持有上市公司的股份达到30%后,若要继续增持的,应当向上市公司股东发出全面或部分要约。但在一些特殊情形下,相关股东或投资人可以向证监会申请豁免履行要约收购的义务。《收购办法》第六十二条和第六十三条对豁免要约收购的适用情况及程序进行了规定。此次证监会对这两个条文主要进行了如下修改:

- (a) **简化行政许可,缩短锁定期。**在以下四种情形下,即使触发了要约收购条件,投资人无需再向证监会提出豁免要约收购的申请,可直接申请办理股份转让或过户登记手续: (i) 向控股股东发行新股且上市公司股东大会同意控股股东免于发出收购要约的; (ii) 持股达到或超过30%的股东在上述事实发生后一年每12个月进行不超过2%的自由增持; (iii) 持股达到或超过50%的股东的自由增持(无增持比例限制但不得影响该公司的上市地位); 以及 (iv) 因继承导致持股比例达到或超过30%的。

同时,持股30%以上的股东每年不超过2%自由增持的股份的锁定期由12个月缩短至6个月。

- (b) **加强信息披露要求。**《决定》要求持股50%以上的股东通过集中竞价方式每增持1%,须于次日披露(按照此前的规

the increased shares reach 1% of the outstanding shares of the company, it shall disclose such share increase through the listed company the next day, and once the increased shares reach 2%, it shall suspend increasing its shareholding on such transaction date and the day thereafter. Under the previous rules, the disclosure obligation is only applicable when the change of the controlling shareholders' shareholding in a listed company reaches 5%.

定，每增持达到总股本 5% 时方需披露；每增持 2%，当天及次日（披露当天）应暂停增持。

FOREIGN INVESTMENT / 外商投资

PRC Customs Office Issued Interim Policies to Implement New Foreign Investment Industry Catalogue

海关总署就新产业指导目录出台过渡性措施

The PRC General Administration of Customs has recently promulgated transactional rules (the "Customs Rules") with respect to the tariff and value-added taxes on the imported equipments for "encouraged" foreign investment projects in the effort to facilitate the implementation of the newly revised *Catalogue for Guidance of Foreign Investment Industries (Amended 2011)* (the "New Catalogue").

According to currently applicable PRC laws and regulations, for an encouraged foreign investment project, any self-used imported equipments with a value not exceeding the total investment amount of such project, as well as the supporting technologies, auxiliary devices and components related thereto will be exempted from relevant PRC tariff duties (*but are still subject to applicable value-added tax*), except as otherwise provided by applicable PRC laws and regulations.

As the scope of the encouraged foreign investment projects have been revised by the New Catalogue, according to the Customs Rules, for the foreign investment projects which have been removed from the encouraged catalogue in the New Catalogue, if such projects have been duly filed with competent Customs offices prior to January 30, 2012, such projects could also enjoy the above-mentioned tariff-free policy with respect to their self-used imported equipments. For the projects which are newly added into the encouraged category in the New Catalogue, they may go through or make up the relevant filing procedures with competent Customs offices and start to enjoy the tariff-free treatment with respect to their self-used equipments to be imported after the filing processes, *provided however* the tariffs already paid up would not be returned or refunded.

海关总署近期发布了《关于执行〈外商投资产业指导目录（2011年修订）〉有关事宜》（“《公告》”），就《外商投资产业指导目录（2011年修订）》（“新目录”）下鼓励类外商投资项目进口相关设备所涉及的关税和增值税问题出台了相关过渡性政策。

根据现行相关法律法规，对于鼓励类外商投资项目，在投资总额内进口的自用设备以及随上述设备进口的技术和配套件、备件，除根据相关法律法规不予免税的情况之外，免征关税，照章征收进口环节增值税。

由于《新目录》对外商投资鼓励类项目进行了调整，根据《公告》，对在《新目录》下不再属于鼓励类的外商投资项目，在《新目录》生效日（即 2012 年 1 月 30 日）之前经向海关办理相关备案手续后，可继续按照规定办理免征进口关税手续。对于新列入鼓励类范围的外商投资在建项目，可按有关规定申请补办相关手续后享受进口关税优惠政策（但已经完成征税的，所征税款不予退还）。

INSURANCE / 保险

CIRC Delegated Approval Authorities on Establishment and Administration of

Sub-Branches by Foreign Invested Insurance Companies

保监会下放外资保险公司开设分公司以下分支机构的审批权限

China Insurance Regulatory Commission (“CIRC”) has recently issued a circular to delegate its approval authorities over certain matters with respect to foreign invested insurance companies (the “Circular”) to its local counterparts. Pursuant to the Circular, from the date of its promulgation, the approval authorities over such matters as the change of business premises of the branches of foreign invested insurance companies, the preparation and setup of sub-branches by foreign invested insurance companies as well as qualification verification of the senior management team of such sub-branches, have been delegated from the central CIRC office to its local counterparts.

The aforesaid measures are expected to enhance the efficiency of setting up sub-branches by foreign invested insurance companies, and have also reflected the government’s continuing efforts to open up the insurance industry to foreign investors and to simplify and streamline the relevant approval procedures.

近期中国保险监督管理委员会发布了《关于调整外资保险公司部分行政许可项目有关事项的通知》(以下简称“《通知》”), 下放外资保险公司部分行政许可项目。自《通知》发布之日起, 外资保险公司分支机构变更营业场所审批, 外资保险公司分公司以下分支机构(不含分公司)筹建、开业核准及其高级管理人员的任职资格核准等行政许可项目均由保监会下放至各相关地方保监局办理。

保监会的上述举措应有利于提高外资保险公司开设分公司以下分支机构的效率, 也体现了中国逐步向外资开放保险业的总体趋势。

For further information, please write us at inquiry@hanyilaw.com.