



# China Regulatory Updates

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- ▶ Standardization
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## ■ CROSS-BORDER INVESTMENT / 跨境投资

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### CIETAC Disqualified Its Shanghai and Shenzhen Chapters

CIETAC 中止沪深分会资格

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**CROSS-BORDER INVESTMENT / 跨境投资****NDRC Sets to Amend Administrative Measures for Foreign Invested Projects and Outbound Investment Projects****发改委拟修订外商投资项目和境外投资项目的核准暂行管理办法**

The National Development and Reform Commission (“NDRC”) issued the draft *Measures for Administration of Approval of Foreign Invested Projects* and the draft *Measures for Administration of Approval of Outbound Investment Projects* (collectively, the “Drafts”) for public comments on August 16, 2012. Since the Drafts are generally in line with notices issued by the State Council and NDRC in the past in connection with delegation of approval authorities and simplification of approval procedures, the practice in these fields is not expected to change significantly.

In summary, foreign invested projects involving a total investment amount not exceeding USD300 million for encouraged or permitted projects (or USD50 million for restricted projects) are subject to local NDRC office’s approval. Projects in the encouraged or permitted industry with a total investment amount of USD500 million or more and projects in the restricted industry with a total investment amount of USD100 million or more will no longer be subject to the State Council’s review and approval. Instead, they can be reviewed and approved by NDRC directly. In addition, the Drafts emphasized that foreign investments with RMB funds should also abide by the aforesaid requirements.

For outbound investment projects, they will be re-categorized as *resource development projects* and *non-resource development projects*. Resource development projects with Chinese party’s investment of USD300 million or more or non-resource development projects with Chinese party’s investment of USD100 million or more should be subject to NDRC’s review and approval. Outbound investments in sensitive countries or regions or involving sensitive industries, regardless of their investment amount, should all be subject to approval by NDRC or the State Council.

发改委于 2012 年 8 月 16 日发布了《外商投资项目核准管理办法》的征求意见稿和《境外投资项目核准管理办法》的征求意见稿（合称“《意见稿》”），拟对此前该两类投资项目的核准暂行管理办法进行修订。此前国务院和发改委在下发的一系列通知中已就下放审批权限、简化核准流程等事项作出了规定，此次修订与该等通知的内容基本吻合，并对其进行了整合与完善，因此实践操作应不会因此次修订而发生大的变化。

就各类外商投资项目而言，由地方发改委核准的鼓励类、允许类项目总投资额的上限已提高至 3 亿美元，但限制类项目总投资额的上限仍为 5,000 万美元。原先总投资额 5 亿美元以上的鼓励类、允许类项目和总投资额 1 亿美元以上的限制类项目需报送国务院核准的要求则被取消，该等项目由国家发改委审批即可。此外，《意见稿》还明确要求外商以人民币在中国境内投资的项目亦须遵守前述核准规定。

对于各类境外投资项目，在项目分类上，原来的“资源开发类和大额用汇类”项目将变更为“资源开发类和非资源开发类”项目。核准权限上，中方投资额达到 3 亿美元的资源开发类项目和投资额达到 1 亿美元的非资源开发类项目需报国家发改委核准，而前往敏感国家和地区或涉及敏感行业的境外投资项目则不分限额，均由国家发改委或国务院核准。

**CSRC Will Allow Foreign Investors to Take up to 49% in Securities Firms****外资参股证券公司的比例上限拟被提升至 49%**

To further open up the securities market and implement the understanding reached at the 4<sup>th</sup> round of the US-China Strategic and Economic Dialogue, the China Securities Regulatory Commission (“CSRC”) issued some draft provisions on August 24, 2012 to amend the *Rules on the Establishment of Foreign-Invested Securities Companies* (the “Establishment Rules”) and the *Trial Provisions on the Establishment of Subsidiaries by Securities Companies* (the “Subsidiary Provisions”). Some of the highlights under these draft rules

为进一步扩大证券市场开放，落实第四次中美战略与经济对话的成果，2012 年 8 月 24 日，证监会发布了《对外资参股证券公司设立规则》（“《设立规则》”）以及《证券公司设立子公司试行规定》（“《子公司规定》”）进行修订的征求意见稿。以下是此次主要修订的几点小结：

include:

- The major amendment proposed to the Establishment Rules is that the shareholding cap for foreign investment in Chinese securities firms will be raised from 1/3 to 49%. Nevertheless, it remains unchanged that foreign investors are not allowed to become the controlling shareholders of any securities firm and the maximum equity percentage that any single foreign investor and all foreign investors can collectively hold in a listed domestic securities firm is still 20% and 25%, respectively. Investment by Hong Kong, Macao or Taiwan investors in mainland PRC securities firms should by reference follow the aforementioned rules, unless otherwise required by the applicable bilateral arrangements (e.g., CEPA, ECFA and etc.).
- With respect to the Subsidiary Provisions, the consecutive operating life which qualifies a subsidiary of a securities firm to apply for business scope expansion is to be reduced from 5 years to 2 years.
- 对《设立规则》的修订主要体现在，将外资参股证券公司的持股比例上限从目前的 1/3 上调至 49%，但不得由外资控股的要求不变，并且单个外商和所有外商持有上市内资证券公司股份的比例上限仍分别为 20% 和 25%。此外，除相关双边协议（包括 CEPA、ECFA 等）另有规定外，港澳台投资者参股证券公司的，将比照适用上述规则。
- 对《子公司规定》的修订主要体现在，将可以申请扩大业务范围的证券公司子公司持续经营年限的要求从 5 年降低为 2 年。

## SECURITIES / 证券

### CSRC Encourages Listed Companies to Introduce ESOPs

#### 证监会拟出台上市公司员工持股计划管理暂行办法

Following the issuance of the *Trial Measures for Administration of Equity Incentives of Listed Companies* back in 2006 (the "Incentive Measures"), CSRC published the draft *Interim Measures for Administration of Employee Stock Ownership Plan of Listed Companies* (the "Draft") on August 4, 2012 to solicit public opinions, in an effort to further improve listed companies' corporate governance by encouraging massive employees' participations as stockholders. The Draft is also acknowledged as one of CSRC's bailout attempts for the dimming Chinese securities market.

According to the Draft, when requirements on the source of fund, source of stocks, the lock-up period, the aggregate funds to be invested and shares to be held by the employees are satisfied, the employee stock ownership plan ("ESOP") will generally be available to all employees. Procedurally, the listed companies introducing ESOPs are only required to make a timely information disclosure, which seems to be a rather simplified step.

It is noteworthy that listed companies intending to adopt equity incentive plans for their directors, supervisors, senior management personnel or other employees should comply with the specific CSRC rules in that regard (e.g., the Incentive Measures mentioned above), which are quite different from the ESOP rules proposed by the Draft in terms of implementation requirements, procedures, and etc.

证监会于 2012 年 8 月 4 日发布了《上市公司员工持股计划管理暂行办法（征求意见稿）》（“《意见稿》”），这是证监会继 2006 年推出《上市公司股权激励管理办法（试行）》（“《激励办法》”）后，又一项旨在提高员工在公司经营中的参与度、改善公司治理水平的措施，在目前证券市场整体低迷的背景下也带有强烈的救市色彩。

根据《意见稿》，在满足资金来源、股票来源、锁定期、参与资金上限和持股数额上限等规定条件的前提下，上市公司的所有员工基本上都可以参与持股计划。在程序上，《意见稿》只要求实施员工持股计划的上市公司及时进行信息披露，可谓相当简化。

需注意的是，上市公司如果以股权激励的方式鼓励董事、监事、高级管理人员及其他员工持股，应按证监会关于上市公司股权激励的有关规定（比如前面提到的《激励办法》等）进行，其实施要求和程序等与此次《意见稿》所规范的员工持股计划有所不同。

**DISPUTE RESOLUTION / 争议解决****CIETAC Disqualified Its Shanghai and Shenzhen Chapters****CIETAC 中止沪深分会资格**

On August 1, 2012, China International Economic and Trade Arbitration Commission (“CIETAC”) announced to suspend its authorization to its Shanghai and Shenzhen chapters to accept and administer arbitration cases. In response, the two local chapters promptly published a statement to declare that they are not bound by CIETAC’s announcement and will continue to accept and handle arbitration applications.

According to CIETAC, it has revoked Shanghai and Shenzhen chapters’ qualification because they refused to adopt the newly amended CIETAC Arbitration Rules (the “2012 Rules”), which has violated the Constitution of CIETAC and the 2012 Rules itself. The two local chapters have argued that the 2012 Rules will jeopardize their independence and interests by introducing a centralized case opening and assignment system which is unfair and unacceptable to them.

This chaotic situation is a reflection of CIETAC’s poor internal coordination and governance. If it cannot be resolved timely and properly, market participants may get seriously confused and suffer inconvenience when evaluating PRC arbitration venues or applying for enforcement of any CIETAC arbitration award.

中国国际经济贸易仲裁委员会 (“CIETAC”) 于 2012 年 8 月 1 日发布公告，中止对 CIETAC 上海分会、华南分会接受仲裁申请并管理仲裁案件的授权。该两个分会随后则发布联合声明，表示 CIETAC 的公告对其无拘束力，其将继续受理仲裁申请和管理仲裁案件。

CIETAC 此次就中止上海分会、华南分会仲裁资格给出的理由是，该两个分会拒不执行其 2012 年修订的《CIETAC 仲裁规则》（“新规则”），其行为违背了《CIETAC 章程》和该等新规则。从上海分会、华南分会发布的声明来看，其拒不执行新规则的原因主要是，新规则将原本由分会独立接受仲裁申请和管理仲裁案件的程序调整为由 CIETAC 统一受理再授权分会管理的模式，严重影响了该两个分会的独立性和收益。

上述纷争尽管是 CIETAC 内部管理和沟通的问题，但如果不能及时、妥善解决，将会给市场参与者在选择争议解决方式以及申请仲裁裁决执行时带来困扰和不便。

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