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# China News Alert Issue 277

## Capital Markets

### SSE issues circular to regulate implementation of Measures on Administration of Listed Companies' Acquisition

Recently, Shanghai Stock Exchange (SSE) issues circular to regulate implementation of Measures on Administration of Listed Companies' Acquisition.

The circular prescribes that:

1. The purchase and sale of listed companies' stocks by investors and their concerted actors through the SSE's auction trading system or block trading system falls into the "securities trading through stock exchanges" prescribed in the "Measures on Administration of Listed Companies' Acquisition".
2. If the increase or decrease of a listed company's stocks by investors and their concerted actors through the aforesaid ways reaches the proportion prescribed in Article 13 of the "Measures on Administration of Listed Companies' Acquisition", they shall perform the reporting and announcement duties according to the Measures and shall not purchase or sell the stocks of the company within the prescribed time limit.
3. If the change of equities held by investors and their concerted actors has not reached the prescribed proportion but caused their equities below 5% of the listed company's issued stocks, the listed company shall disclose a special notice within 3 trading days since the occurrence.
* The content of a special notice shall include but not limited to: the shareholder's name; the nature and amount of the stocks as well as its proportion in the listed company's issued shares; the amount, proportion, date and method of this shareholding change.
1. The shareholders of stocks with sales limit shall, when entrusting the listed company's directorate with submission of the application for sales limit termination to the SSE, simultaneously submit the commitment documents specifying its learning and strict conformity of the "Securities Law", the "Measures on Administration of Listed Companies' Acquisition" and the SSE's relevant business rules.
2. For investors in breach of this Notice or the SSE's relevant rules, the SSE will take corresponding supervisory measures or impose disciplinary punishment according to the "SSE Stock Listing Rules", the "SSE Trading Rules" and the "SSE Guidance for Real-time Supervision on Abnormal Securities Trading".

[Source: Shanghai Securities News](http://english.sse.com.cn/aboutsse/news/c/c_20120906_28562.shtml) ([see archive](Notice_of_Issues_Concerning_Implementation_of_Measures_on_Administration_of_Listed_Companies_Acquisition_and_Other_Rules.pdf))

### CSRC confirms Wang arrest for stock fraud

The China Securities Regulatory Commission (CSRC) has confirmed that Wang Jianzhong, legal representative, Beijing Shoufang Investment Consulting, has been detained for suspected stock manipulation.

"The CSRC began to investigate the case in May 2008 and arrested Wang Jianzhong in late November. The CSRC has already frozen his accounts and the locked up money is estimated at over 100 million yuan," a CSRC official told recently.

Wang is the first person arrested for this kind of crime in the country. "The case was handed over to the police and it is still under investigation. The relevant investigation reports and the bill of indictment hasn't been finalized yet," said an unnamed source.

On Dec 15, Wang was fined 125 million yuan by the CSRC, the same amount he was supposed to have earned through his alleged price-rigging activities between January 2007 and May 2008. The 125 million he made has also been confiscated. In effect, Wang has been fined a total of 250 million yuan, the largest fine levied by the CSRC against an individual. The company has subsequently closed down its operations.

Beijing Shoufang Investment Consulting was founded in 2001 and Wang Jianzhong was the company's chairman, executive director and the largest shareholder. From Jan 1, 2007 to May 29, 2008, the company released a set of advisory reports on some influential websites, with suggestions to buy 38 selected stocks and warrants.

According to the CSRC, Wang made use of nine identity cards to open 10 bank accounts and 17 capital accounts. As the actual controller of the accounts, Wang sold the suggested stocks after the advisory reports were released. In this way, Wang conducted 55 such transactions and netted an amount of 125 million yuan.

"Wang's deeds clearly indicate manipulation of stocks. According to the law, he can be sentenced to a fixed-term imprisonment below five years and his companies can be fined at the same time," said Ma Guangyuan, a securities market lawyer.

According to the CSRC, in 2008, more than 70 cases were disposed of and punishments handed out.

[Source: China Daily](http://www.chinadaily.com.cn/china/2009-01/23/content_7424953.htm) ([see archive](CSRC_confirms_Wang_arrest_for_stock_fraud.pdf))

## Corporate & Commercial

### China announces new measures to boost service outsourcing

The Chinese government announced recently it will give tax breaks and subsidies to encourage the growth of service outsourcing nationwide.

The details to boost the development of service outsourcing were outlined in a document drafted by the Ministry of Commerce (MOC) and approved by the State Council, China's Cabinet.

Service outsourcing allows companies to transfer service operations to professional providers so that they can focus on their core business. A service outsourcing company helps its clients manage business operations, such as information technology, training, logistics and advertising.

The document said that 20 cities, including Beijing, Shanghai, Xi'an, Suzhou and Hangzhou, have been designated for pilot service outsourcing programs. Beginning Jan. 1, these companies are eligible for tax breaks, financial support, subsidies and intellectual property rights protection.

Technology-advanced service outsourcing companies are allowed to adopt flexible working hours for workers if they get approval from local human resources departments, said the document.

Technology development companies on the national level that are based in central and western China are expected to enjoy favorable tax policies when they apply for loans to launch service outsourcing projects.

The government also encourages telecom providers to help pave the way for enterprises to take the advantage of the outsourcing pilot to more easily communicate with the outsourcing service provider.

China also plans to establish and improve an outsourcing supervision mechanism, introduce new insurance products and establish a network of trained outsourcing personnel.

The government will offer service outsourcing companies a subsidy of up to 4,500 yuan (662 U.S. dollars) a year for every college graduate employed on a contract of at least one year.

The document cited Suzhou Industrial Park as an example, saying service companies there would enjoy an enterprise income tax rate of 15 percent, compared with 25 percent elsewhere in the country, until 2013.

Chinese Vice Premier Wang Qishan hosted a meeting in Nanjing, capital of Jiangsu Province, to discuss experiment of service outsourcing.

At the meeting, MOC Vice Minister Ma Xiuhong estimated that international service outsourcing volume would top 600 billion U.S. dollars by 2010.

"More foreign companies outsource parts of their business to overseas companies to reduce operation costs, which provide Chinese enterprises with lots of opportunities," Ma said.

According to the MOC, the country hopes to train 1.2 million service outsourcing professionals by 2013. During the same period, 1 million college graduates are expected to find new jobs in this sector.

However, world consultant firm Mckinsey & Comapany said in a report that China's outsourcing business growth still lags behind its neighbor, India.

Its statistics show India's service outsourcing volume was 42.2billion U.S. dollars in 2008, nine times China's. More than 2 million Indian people worked in the outsourcing sector, four times more than China's figures.

The McKinsey & Comapany report also forecasted that despite various difficulties, China still has great potential to develop outsourcing businesses. The country is expected to become the most important service outsourcing destination worldwide in the future.

Up to 2008, 3,300 Chinese companies provided service outsourcing business to overseas companies, with a contract volume of 4.69 billion U.S. dollars, official statistics show.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-02/02/content_10752148.htm) ([see archive](China_announces_new_measures_to_boost_service_outsourcing.pdf))

### China revises regulation on technology import procedures

The Ministry of Commerce (MOC) recently announced the revision to the Administration of Technology Prohibited or Restricted from Import Procedures (ATPRIP).

According to the new regulation, investigate privileges for import applications will be transferred from MOC to the provincial and municipal commercial administration departments.

All technological imports that are restricted from import as listed in the Technology Prohibited and Restricted from Import by China Catalogue, should undergo the import licensing procedure.

The investigation will include whether the import is in accord with China's foreign trade policies, and whether it is beneficial to China's economic and technological cooperation with other countries.

Whether the import is in accord with China's commitment to the other countries and whether it hurts the development of relative domestic industries will also be examined.

The new measure is due to take effect 30 days after it is made public.

MOC began to seek public opinion on the revised regulation in June 2008. The old regulation, which became effective in 2001 will be nullified.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-02/03/content_10758555.htm) ([see archive](China_revises_regulation_on_techonology_import_procedures.pdf))

### MOFCOM further delegated record-filing and registration authority for foreign-trading operators

China's Ministry of Commerce (MOFCOM) is expected to delegate the record-filing and registration authority for foreign-trading operators to all qualified competent commercial authorities at municipal level.

The MOFCOM released on January 23, 2009 the Circular on Issues Concerning Further Delegating the Record-filing and Registration Authority for Foreign-trading Operators (Circular), and iterated the relevant procedures for delegating the record-filing and registration authority.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5325) ([see archive](MOFCOM_Further_Delegated_Record-filing_and_Registration_Authority_for_Foreign-trading_Operators.pdf))

### China to begin sunset review of anti-dumping duties on imported phenol

China's Ministry of Commerce said it will start a sunset review of its five-year anti-dumping duties on phenol imports from Japan, the Republic of Korea, the United States and Taiwan.

The reviewwill evaluate the effectiveness and continued need for duties on imports of phenol, also known as carbolic acid, which is chiefly used as a disinfectant or an antiseptic and in organic synthesis.

The ministry would continue to impose anti-dumping duties on the imports until the review ended on Feb. 1, 2010, said the ministry in a statement posted on its website. A "sunset review" is obligatory under the World Trade Organization Anti-dumping Agreement and generally implemented by WTO members.

If the review confirms the cancellation of anti-dumping measures will result in further dumping and damages, trade institutions may decide to renew the anti-dumping measures for another five years.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-01/31/content_10740984.htm) ([see archive](China_to_begin_sunset_review_of_anti-dumping_duties_on_imported_phenol.pdf))

## Taxation

### China Releases Final Transfer Pricing Rules

It has been reported that China's State Administration of Taxation (SAT) has signed into law new rules updating the country's transfer pricing regime, expected to become effective immediately.

The final version of the Implementation Measures for Special Tax Adjustments, put in place by the circular Guoshuifa (2009) No. 2, aims to update the tax treatment of matters including transfer pricing, advance pricing arrangements, contemporaneous documentation, cost sharing agreements, controlled foreign corporations, thin capitalisation, and anti-avoidance in general.

Commenting on the new rules following their signature into law, accounting firm, KPMG observed that:

"The Regulations come at a challenging time for many multinational corporations. In addition to having to adjust to the sudden decrease in demand caused by the current economic crisis, they face an increased risk of a transfer pricing audit."

The firm went on to suggest that:

"Given impending transfer pricing deadlines, there is not much time to prepare all the necessary 2008 filing forms as well as the documentation reports for 2008 and subsequent years. Therefore, companies should consider issues for 2008 and 2009 at the same time, planning ahead to better manage all risks."

And further revealed that:

"With the promulgation of the Regulations, existing transfer pricing rules, such as Circular [1998] No. 59, Circular [2004] No.143, and Circular [2004] No.118, are now annulled."

Fellow Big Four firm Ernst and Young added a similar warning with regard to the possible compliance issues raised by the new rules, stating that:

"With the issuance of the Final Measures, China's transfer pricing disclosure and documentation requirements are firmly in place. For the 2008 year, the tax filing disclosure will be due in May 2009, and the contemporaneous documentation due in December. We strongly encourage you to develop an action plan for immediate implementation towards timely compliance."

Among other changes contained in the Final Measures, the threshold for exemption from the contemporaneous documentation requirement has been changed to RMB200m (USD29.2m) with regard to related party purchase or sale transactions, and RMB40m for transactions such as those involving services, financing transaction interest, and intangibles.

In addition, the criteria for Advance Pricing Agreement (APA) applications have been relaxed, most significantly in terms of the years of operating history required prior to application.

The updated legislation also removed the need for the State Administration of Taxation's prior approval for cost-sharing agreements with regard to related-party labour services.

[Source: tax-news](http://www.tax-news.com/asp/story/China_Releases_Final_Transfer_Pricing_Rules_xxxx34541.html) ([see archive](China_Releases_Final_Transfer_Pricing_Rules.pdf))

### New Rules for Individual Income Tax on Income Derived from Stocks

The Ministry of Finance and the State Administration of Taxation issued a circular on January 7, 2009 to clarify the rules for individual income tax on income derived from stock appreciation rights and restrained income from stocks.

Income derived from stock appreciation rights and restrained income from stocks, which are obtained by individuals from listed companies (including domestic and overseas listing companies), shall be subject to individual income tax by reference to the relevant provisions in the Circular of the Ministry of Finance and the State Administration of Taxation on Issues Concerning the Collection of Individual Income Tax on Income from Individual Stock Options (Cai Shui [2005] No. 35) and the Supplementary Circular of the State Administration of Taxation on Issues Concerning the Payment of Individual Income Tax on Income from Individual Stock Options (Guo Shui Han [2006] No. 902).

The term “stock appreciation rights” as used in this Circular means the right granted by a listed company to its employees to benefit from the increase of the stock price of a prescribed amount over a specified period and under specified conditions. The term “restrained income from stocks" means a certain amount of stocks granted by a listed company to its employees in accordance with the conditions specified in the stock incentive plan.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5289) ([see archive](New_Rules_for_Individual_Income_Tax_on_Income_Derived_from_Stocks.pdf))

### SAT regulates source withholding of income tax of non-resident enterprises

The State Administration of Taxation promulgated the Tentative Measures for the Administration of Source Withholding of Income Tax of Non-resident Enterprises (Guo Shui Fa [2009] No.3) in order to regulate the administration of source withholding of income tax levied on non-resident enterprises.

Non-resident enterprises refer to enterprises which are established in accordance with foreign countries (regions) law and have no actual administrative institutions within China, but have income derived from China and don't establish institutions within China, and enterprises whose income does not have actual connection with its institutions or places established in China.

The Measures also stipulate that stock interest, dividend bonus and other right-related investment revenue, rent, income from loyalties, income from property transfer and other income to be levied enterprise income tax shall be subject to the source withholding.

The Measures also regulate the detailed collection and regulation procedure on source withholding of non-resident enterprises.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5304) ([see archive](SAT_Regulates_Source_Withholding_of_Income_Tax_of_Non-resident_Enterprises.pdf))

## Other

### SAIC released the Administrative Measures for the Registration of Capital Contribution with Equities

The State Administration for Industry and Commerce (SAIC) recently released the Administrative Measures for the Registration of Capital Contribution with Equities (the Measures), which is scheduled to take effect on 1 March 2009.

Capital contribution with equities refers to an investor making capital contribution to the limited liability company or joint stock limited company established within PRC with the equities of other limited liability company or joint stock limited company incorporated with PRC held by the investor.

According to the Measures, the equities involved are required to be transferable with a complete and clear ownership. Equities fall within following categories are not allowed to be contributed: (i) the registered capital of the company has not been fully paid-in; (ii) pledged equities; (iii) equities frozen according to law; (iv) where the articles of association prohibits the transfer of shares; (v) in case any laws, administrative regulations or decisions of the State Council require approval upon the transfer of equities, approvals have not been obtained.

The Measures also set details regarding proportion of capital contribution: the total amount of non-cash contribution shall not surpass 70% of the registered capital of the invested company, indicating that the highest proportion of capital contribution with equities is 70%. The equities should be evaluated by dully established evaluation institutions and also be actually paid in within one year after the establishment of the invested company.

According to an official from SAIC, the new method of capital contribution may help corporate financing and promote investment. Many local governments have already begun the trail program in recent years.

[Source: Xinhua](http://news.xinhuanet.com/newscenter/2009-02/02/content_10750717.htm) ([see archive](SAIC_released_the_Administrative_Measures_for_the_Registration_of_Capital_Contribution_with_Equities.pdf))

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