

China Releases Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies

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With China's ongoing commitment to reforming the regulatory regime for foreign investment, on June 18, 2020, the Ministry of Commerce of the People's Republic of China ("**MOFCOM**") released the *Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies (Revised Draft for Comment)* ("**Draft Measures**") to solicit public comment until July 19, 2020.

The Draft Measures were released to further encourage and promote foreign investments in China. Compared with the existing version – *Administrative Measures on Strategic Investment in Listed Companies by Foreign Investors ("2015 Version")*, which was published by MOFCOM on October 28, 2015, and came into effect the same day, the Draft Measures aligned provisions to the new regulatory regime under the Foreign Investment Law and added provisions to encourage qualified foreign investors to make strategic investments in Chinese listed companies.

The Draft Measures make 29 amendments, including clarifying the scope of the measures, lowering the investment threshold requirements and increasing investment channels allowed into the Shanghai A-share market listed stocks. The Draft Measures are part of the Chinese government's efforts to support active participation of foreign investment in China's financial markets. Below is a summary of the key changes:

1. **Clarifying the definition of "Strategic Investment."** Under the Draft Measures, "**Strategic Investment**" is defined as "foreign investors obtaining the A-shares of listed companies through transfer by agreement, private placement of new shares by listed companies, tender offer and any other methods as prescribed by any laws or regulations of the State and holding such A-shares within a certain period." Moreover, the Draft Measures also stipulate four circumstances which do not fall within the scope of "Strategic Investment", and thus are not governed by the Draft Measures:
 - (1) Investment in a listed company by a Qualified Foreign Institutional Investor (QFII) or a RMB QFII (RQFII);
 - (2) Investment by foreign investors in listed companies through Shanghai-Hong Kong Stock Connect, Shenzhen-Hong Kong Stock Connect, Shanghai-London Stock Connect and other stock market trading interconnection mechanisms;
 - (3) Where the foreign investors obtain Shanghai A-share listed stock by means of a foreign company limited by the shares' initial public offering;
 - (4) Where foreign individuals complying with the relevant regulations of the China Securities Regulatory Commission (CSRC) trade shares of listed companies in the secondary market or obtain shares of listed companies through an equity incentive plan.

2. Draft Measures provide more flexibilities in terms of the qualifications and investment methods for foreign investors:

- (1) Allowing foreign investors to make Strategic Investments through tender offers.
- (2) Allowing qualified foreign natural persons to make Strategic Investments;
- (3) Lowering the assets requirements for the non-controlling foreign investors. In the 2015 Version, a non-controlling foreign investor is required to have total assets of no less than US\$100 million, and their wholly-owned investors are required to have as assets under management of no less than US\$500 million. The Draft Measures reduced the thresholds to US\$50 million and US\$300 million, respectively.
- (4) Lessening the lock-up period of foreign investors from 3 years to 12 months.
- (5) Eliminating the 10% minimum shareholding requirement for foreign investors conducting Strategic Investment through directional issuance of new shares by listed companies.
- (6) Reducing the shareholding ratio requirement for foreign investors conducting Strategic Investment through contractual transfer from 10% to 5%.
- (7) Clarifying, for the first time, that where the Strategic Investment is conducted through a tender offer, the proportion of the listed company shares which the foreign investor plans to purchase shall not be less than 5% of the issued shares of the listed company.

Implications

The Draft Measures, if adopted as drafted, demonstrate that China has taken a further step towards opening up its capital markets to foreign investors and easing market entry restrictions for foreign investments. Overall, the Draft Measures will make it easier for foreign investors to participate in the Shanghai A-share market.

For more information, please see the following resources:

- China Updates page
- [China Releases Draft Data Security Law](#), September 8, 2020
- [China Releases Circular on Further Stabilizing Foreign Trade and Foreign Investment](#), August 24, 2020
- [China Releases Draft Measures for the Administration of Imported and Exported Food Safety](#), August 18, 2020
- [U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options](#), July 30, 2020
- [China Passes Controversial Hong Kong National Security Law](#), July 9, 2020
- [China's Relaxed Financial Sector May Aid Foreign Investors](#), June 18, 2020
- [Is There a Law in China Similar to the US Defense Production Act?](#), May 9, 2020
- [Coronavirus Brings Force Majeure Claims to LNG Contracts](#), March 4, 2020
- [The Rise of China](#), March 4, 2020
- [Coronavirus Fears Cast Cloud Over Dealmaking](#), February 27, 2020
- [Is Your China Chemical Plant in Danger of Being Shut Down](#), December 2019