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## Legal

### Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies (2024 Revision)

Issued by: Ministry of Commerce of the People's Republic of China, China Securities Regulatory Commission, State-owned Assets Supervision and Administration Commission of the State Council, State Taxation Administration, State Administration for Market Regulation, State Administration of Foreign Exchange

Issue No.: Ministry of Commerce of the People's Republic of China, China Securities Regulatory Commission, State-owned Assets Supervision and Administration Commission of the State Council, State Taxation Administration, State Administration for Market Regulation, State Administration of Foreign Exchange Decree No. 3 of 2024

Release Date: November 1, 2024

Effective Date: December 2, 2024

Links: <http://www.csrc.gov.cn/csrc/c100028/c7516180/content.shtml>

The amended Measures have lowered the threshold for foreign investors to make strategic investments in listed companies in the following five main aspects:

- Foreign individuals are allowed to make strategic investments in listed companies;
- Reduce asset requirements for non-controlling foreign investors. If the foreign investor does not become the controlling shareholder of the listed company after implementing the strategic investment, the requirement on the total amount of its owned asset is reduced from no less than USD 100 million to no less than USD 50 million, and the requirement on the total amount of its managed assets is reduced from no less than USD 500 million to no less than USD 300 million;
- Add tender offer as a strategic investment method. The strategic investment methods stipulated in the original Measures only include private placement and agreement transfer. The amendment allows foreign investors to make strategic investments through tender offers;
- If strategic investment is carried out by means of private placement or tender offer, foreign investors are allowed to pay by shares in overseas non-listed companies; If the transfer is carried out by agreement, the payment is limited to shares of an overseas listed company;
- Lower the minimum acquisition requirement and shorten the lock-up period. For a transfer by agreement or tender offer, the minimum acquisition by foreign investors has been reduced from 10% to 5% of the target company's shares. The lock-up period for foreign investors have been adjusted from 3 years to 12 months.

## Guide for Filing of Beneficial Owner Information (First Edition)

Issued by: The Anti-Money Laundering Bureau of People's Bank of China  
The Registration Bureau of State Administration for Market Regulation

Release Date: October 28, 2024

Effective Date: November 1, 2024

Links: <http://www.pbc.gov.cn/fanxiqianju/135153/135173/5489085/index.html>  
<http://www.pbc.gov.cn/tiaofasi/144941/144957/5342579/index.html>

According to the Administrative Measures for Beneficial Owner Information (referred to as the "BOI Measures"), companies, partnerships, and branches of foreign company must carry out record-filing of beneficial owner information through the online registration system for market entry from November 1, 2024. In order to implement the BOI Measures effectively, this Guide provides comprehensive instructions for the BOI filing, and addresses potential queries that may arise during the filing process through Q&A and examples. The following points deserve your close attention:

### 1. What is the beneficial owner?

- Beneficial owner refers to the natural person who ultimately owns or actually controls the entity, or enjoys the ultimate benefits of the entity.
- The difference between the beneficial owner and the "actual controller" as defined in the Company Law is twofold: first, the concept of the beneficial owner is broader than that of the actual controller, including ownership, control, and benefit, whereas the actual controller only implies control. Second, the beneficial owner must be ultimately traced to a natural person, whereas the actual controller can be either a legal person or a natural person.

### 2. Identification of the beneficial owner

- 1) Standard 1: A natural person who ultimately owns, either directly or indirectly, more than 25% of the equity, shares or partnership interest of the entity;
- 2) Standard 2: A natural person who does not satisfy Standard 1 but ultimately enjoys more than 25% of the earnings rights or the voting rights of the entity;
- 3) Standard 3: A natural person who does not satisfy Standard 1 but alone or jointly exercises actual control over the entity;
- 4) In the absence of the above three scenarios, the person in charge of day-to-day operation and management shall be regarded as the beneficial owner, and at least one person at the highest management level accountable for day-to-day operation and management must be registered (e.g., legal representative, chairman, director, manager, etc.).
- 5) Identification standard for special situations:
  - In addition to the above three identification standards, a branch of foreign company should also identify at least one senior manager at the highest management level as a beneficial owner (e.g., the person in charge of the branch, etc.);
  - For companies with state participation, it is not required to identify the beneficial owners of the portion of the capital that is state-owned.

### 3. Notes for identifying the beneficial owner

- All three identifications standards should be assessed one by one, in case where there are multiple

beneficial owners, all identified individuals must be registered;

- If a natural person has already satisfied Standard 1, he or she should be directly registered as the beneficial owner. Standard 2 and 3 shall only be considered when Standard 1 does not apply;
  - If a natural person meets both Standard 2 and 3 simultaneously, he or she should be registered according to both standards.
- 4. The relationship between the BOI Measures and the relevant documents on beneficial owner previously issued by the People's Bank of China**
- The BOI Measures require the entities to voluntarily file their beneficial owners, whereas the relevant documents issued by the People's Bank of China apply to the situation where financial institutions conduct customer due diligence;
  - After the entity has filed the information of beneficial owners, financial institutions still need to perform the identification work of beneficial owners.

## **China (Shanghai) Pilot Free Trade Zone Lin-Gang Special Area Issues Several Policies on Supporting the Development of Equity Investment Cluster (Trial)**

Issued by: China (Shanghai) Pilot Free Trade Zone Lin-Gang Special Area Administration Committee  
Issue No.: Lin-Gang Special Area Administration Committee [2024] No.121  
Release Date: October 14, 2024  
Effective Date: From October 14, 2024 to December 31, 2026  
Links: <https://www.lingang.gov.cn/html/website/lg/index/government/file/1846615852866162690.html>

The policies aim to support the development of equity investment cluster in the Lin-Gang New Area with the focus on the investment rewards for equity investment institutions and their management companies.

1. Equity investment institutions that meet the conditions and complete registration will be eligible for a reward of up to RMB 30 million, based on their actual fundraising scale.
2. For eligible equity investment institutions, investment rewards will be granted to their management companies based on the amount invested in non-listed enterprises, with a maximum reward of RMB 20 million.
3. Recognized equity investment institutions that invest in seed and early stage sci-tech enterprises for over a year are eligible to a reward equivalent to up to 10 percent of the actual investment amount, capped at a maximum annual reward of RMB 10 million.
4. Comprehensive reward will be granted to institutions based on factors such as management scale, operational revenues (including investment returns), job creation, the fostering of a sci-tech financial ecosystem, industry influence, etc.
5. A reward of up to RMB 40 million will be granted to successful establishment of pilot Qualified Foreign Limited Partners (QFLP).

## **State Administration of Foreign Exchange Expands 3 Pilot Programs for Facilitating Cross-Border Investment and Financing**

Issued by: State Administration of Foreign Exchange  
Effective Date: October 31, 2024  
Links: <https://www.safe.gov.cn/safe/2024/1031/25284.html>

This facilitation policy expands the scope of pilot programs, exempting foreign-invested enterprises from FDI registrations for re-investment in China and enabling banks to directly register foreign loans, to additional regions including Tianjin, Anhui, Shandong, Hubei and Sichuan Provinces. The expanded pilot regions are as follows:

- Shanghai, Beijing, Tianjin, Chongqing, Jiangsu, Zhejiang, Guangdong, Hainan, Sichuan, Fujian, Anhui, Shandong, Hubei, Hebei Xiong'an;
- Shaanxi (Only for exemption foreign-invested enterprises from FDI registrations for re-investment in China, while foreign loan shall still be registered with State Administration of Foreign Exchange).

## **Tax**

### **Announcement on the Promotion of Fully Digitalized Electronic Invoices in Railway Passenger Transport**

Issued by: State Taxation Administration, Ministry of Finance and China State Railway Group Co., Ltd.  
Issue No.: Announcement No.8 (2024) of the State Taxation Administration, Ministry of Finance and China State Railway Group Co., Ltd.  
Release Date: September 29, 2024  
Effective Date: November 1, 2024  
Links: <https://shanghai.chinatax.gov.cn/zzyb/zcwj/202410/t473697.html>

- Starting from November 1, 2024, fully digitalized electronic invoices have been promoted in railway passenger transport in China. Passengers will no longer need to print paper tickets or reimbursement vouchers, making travel and reimbursement process more convenient;
- After completing their journey or after processing ticket refunds or changes, passengers can obtain railway transport electronic invoices through the railway platform of 12306 (including the website and mobile APP). These invoices can also be viewed and downloaded from the personal ticket folder of the Individual Income Tax APP;
- Enterprises and institutions can utilize railway passenger transport electronic invoices for paperless reimbursement, accounting, and archiving, etc.

## Accounting

### Notice on Issues Concerning Financial Treatment of Enterprises after the Implementation of the New Company Law and the Foreign Investment Law (Draft for Comments)

Issued by: The Office of the Ministry of Finance  
Issue No.: Caibanzi (2024) No.19  
Release Date: October 29, 2024  
Links: [https://zcgls.mof.gov.cn/zhengcefabu/202411/t20241101\\_3946784.htm](https://zcgls.mof.gov.cn/zhengcefabu/202411/t20241101_3946784.htm)

The Draft is designed to facilitate the seamless integration of enterprise financial systems with the legal frameworks regarding methods of capital contribution, profit distribution and other relevant aspects, as outlined in the newly revised PRC Company Law and the Foreign Investment Law. The key points of the Draft are as follows:

#### **1. Regarding using capital reserve fund to offset losses**

- The scope of capital reserve funds that can be used to offset losses is limited to those formed by shareholder contributions, with a definite amount, collectively owned by all shareholders, and not for any specific use.
- To prevent enterprises from adjusting profits by using capital reserve funds to offset losses mid-year, it is clarified that the use of capital reserve funds to offset losses should be based on the company's annual financial accounting report. This process should be conducted at the conclusion of each fiscal year, following the completion of annual operations.
- The procedure for using capital reserve funds to offset losses has been clarified, that is the board of directors shall formulate a plan, which must then be submitted to the shareholders' meeting for review and approval.

#### **2. Regarding contributions of non-monetary assets**

- It is explicitly required that when accepting contributions from shareholders in the form of non-monetary assets such as equity or right of credit, an asset valuation must be conducted.
- If there is a potential defect in the realization of the equity or right of credit that a shareholder intends to contribute, the company should obtain professional legal advice.

#### **3. Regarding the treatment of balances in the reserve fund, enterprise development fund, and employee reward and welfare fund**

- For foreign-invested enterprises, if the originally accrued reserve fund and enterprise development fund have a surplus, they shall be converted into statutory surplus reserve funds; if there is a deficit, it shall sequentially offset the capital reserve fund and retained earnings from previous years. If there remains a deficit after such offsets, it shall be transferred to retained earnings.
- For foreign-invested enterprises, the surplus of the originally accrued employee reward and welfare fund should continue to be treated as liabilities.

## Recent Hot Topics

- Recently, China officially launched the pilot program for the expansion of foreign investment in value-added telecommunications services in Beijing, Shanghai, Hainan, and Shenzhen. What new opportunities will this pilot program bring to foreign investors?
- The Administrative Measures for Beneficial Owner Information came into effect on November 1, 2024. What types of entities are required to file the beneficial owner information, and how should these entities complete the filing process?
- Following the official promotion of fully digitalized train tickets on November 1, 2024, how should employees claim reimbursements, and how should finance departments handle the accounting?

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