

exporters

HK\$ 30

Hong Kong Exports Benefit from EU Enlargement

歐盟東擴有利香港開拓新出口市場

The 2nd Quarter Exporters' Bulletin 2004



THE HONG KONG EXPORTERS' ASSOCIATION
香港出口商會

Business Opportunity in China's Wholesale and Retail Distribution Sectors for Foreign Investors

外商在中國批發零售領域投資商機

Alfred K.K.Chan
China Tax & Investment Consultants Ltd
陳國基
中國稅務及投資顧問有限公司

Pursuant to the commitment China made to WTO members, the Chinese government promulgated on 16 April 2004 "THE ADMINISTRATIVE MEASURES OF THE COMMERCIAL SECTORS FOR FOREIGN INVESTMENTS" (the Administrative Measures). The Administrative Measures axe the requirement for qualification of the foreign investors, the amount of minimum registered capital for the foreign invested commercial enterprises(FICEs), and the restriction on geographic locations, quantity, and percentage of foreign ownership. Within this year, foreign investors will have access to Chinese domestic market in the field of wholesale and retail distribution in all dimensions.

"The Administrative Measures" Relax Investment Constraints

The Administrative Measures shall take effect on 1 June 2004. "The Experimental Measures for Foreign Invested Commercial Enterprises" (the Experimental Measures) promulgated in June 1999 shall cease to have effect on the same date. The business activities to be engaged by FICEs are:

- Commission agent:** acting as distributors for merchandise goods, brokers or auctioneers, or the sale of goods by the wholesale distributor as consignee on a fee basis under consignment contracts, and the provision of related subordinated services;
- Wholesaling:** the sales of goods to retailers, industrial users, institutions, or the sale of goods of other wholesalers, and the provision of related subordinated services;
- Retailing:** the sale of consumer goods to individual or groups at fixed locations, or via television, telephone, post, internet, vending machines, and the provision of related subordinated services;
- Franchising:** the granting of trademarks, business names, business models for purpose of rewards or royalties by way of licensing agreements.

National Treatment for FICEs

According to the Experimental Measures promulgated in 1999, the amount of minimum registered capital for FICEs is RMB 80 million for wholesale business and RMB 50 million for retail business. In accordance with CEPA, qualified Hong Kong companies have a lower requirement. The amount of the minimum registered capital is RMB 50 million for wholesale business and RMB 10 million for retail business respectively. However, the capacity of the companies is restricted to those who have acquired the certification of Hong Kong service suppliers, in accordance with annex 5 of CEPA. According to Article 7 in the Administrative Measures, the amount of minimum registered capital for FICEs shall be RMB 0.5 million for wholesale business and RMB 0.3 million for retail business in accordance with the PRC Companies Law. The new Administrative Measures have given foreign investors national treatment in respect of the amount of minimum registered capital, except for the business activities as set out below:

- FICEs engaged in the wholesale distribution of books, newspapers, and magazines shall have a minimum registered capital of RMB 30 million FICEs engaged in the retail distribution of the same shall have a minimum registered capital RMB 5 million;
- Hong Kong service suppliers engaged in the retail distribution of vehicles shall have a minimum registered capital of RMB10 million; those in the Central and Western regions should have a minimum registered capital of RMB 6 million.

Restrictions on Geographical Locations, Quantity, and Foreign Share Ownership to be Lifted

In respect of geographic locations, Article 22 of the Administrative Measures provides that after 11 December 2004, restrictions on FICEs engaged in retail distribution will be lifted, allowing business activities to extend beyond provincial capitals, the capitals of autonomous regions, the municipalities directly administered by the State Council, the municipalities with independent development plans, and the special economic zones. Hong Kong service suppliers engaged in the retail distribution sectors will be given market access to all prefecture-level cities, and all the county-level cities within the Guangdong province after 1 January 2004. The Administrative Measures provide that with effect from 1 June 2004, all geographic restrictions shall be lifted for FICEs engaged in wholesale distribution. The Administrative Measures also remove all existing restrictions imposed on the number of commercial enterprises the foreign investor may set up and the number of branches an FICE may set up throughout the country.

根據對世貿成員作出的承諾，中國政府在2004年4月16日頒布了“外商投資商業領域管理辦法”(下稱“管理辦法”)。“管理辦法”取消了原來對投資者資格的要求、合營或獨資企業的資本額要求、地域、數量、外資股份比例等各方面的限制，於今年內全方位向外國投資者開放國內商品貿易批發和零售市場。

“管理辦法”放寬對外商在內地投資限制

新頒布的“管理辦法”在2004年6月1日起生效。1999年6月頒布的“外商投資商業企業試點辦法”在同日廢止。按新規定外商投資商業企業可從事以下經營活動:

- 佣金代理:**貨物的銷售代理商、經紀人或拍賣人或其他批發商通過收取費用在合同基礎上對他人貨物進行的銷售及相關附屬服務;
- 批發:**對零售商和工業、商業、機構等用戶或其他批發商的貨物銷售及相關附屬服務;
- 零售:**在固定地點或通過電視、電話、郵購、互聯網路、自動售貨機，對於供個人或團體消費使用的貨物銷售及相關附屬服務;
- 特許經營:**為獲取報酬或特許經營費通過簽訂合同授予他人使用其商標、商號、經營模式等。

對外商投資商業企業給予國民待遇

根據1999年“試點辦法”的規定，外商投資商業企業最低註冊資本分別是8,000萬人民幣(批發)及5,000萬人民幣(零售)。根據“CEPA”規定，取得“香港服務提供者”資格的香港公司及外商中合資格的香港投資者的最低註冊資本分別是5,000萬人民幣(批發)及1,000萬人民幣(零售)。根據“管理辦法”第7條，外商投資商業企業最低註冊資本將根據《公司法》的規定，設定為50萬人民幣(批發)及30萬人民幣(零售)。但是，經營下列商品除外:

- 從事圖書、報紙、期刊批發的外商投資企業註冊資本為3,000萬人民幣，從事零售的為500萬人民幣;
- 取得香港服務提供者資格的外商投資企業從事汽車零售業務的，其最低註冊資本為1,000萬人民幣，中西部地區的最低註冊資本為600萬人民幣。

取消所有地域、數量及股份限制

“管理辦法”第22條規定，2004年12月11日之後，取消從事零售的外商投資商業企業設立店鋪的地域限制。從事零售的香港服務提供者在2004年1月1日之後，經營地域範圍可擴大到地級市，在廣東省可擴大到縣級市。對從事批發的外商投資商業企業，“管理辦法”規定從2004年6月1日起，取消所有地域限制。“管理辦法”取消了現時從事零售業務的外商投資者設立的商業企業及分支機構的數量限制。從2004年1月1日起，允許香港服務提供者設立獨資商業企業。自2004年12月11日起，允許所有外商投資者設立獨資商業企業，外商投資商業企業控股比例將會被取消，但是取消外資控股比例的規定不適用下列商品：圖書、報紙、雜誌、汽車(2006年12月11日起取消對汽車的限制)、藥品、農藥、農膜、化肥、成

Hong Kong service suppliers are permitted to set up wholly foreign owned commercial enterprises with effect from 1 January 2004. All foreign investors are permitted to set up wholly foreign owned commercial enterprises after 11 December 2004. However, the lifting of restrictions on foreign ownership shall not apply to those enterprises engaged in the distribution of books, newspapers, magazines, vehicles whose restriction will be lifted on 11 December 2006, pharmaceutical products, pesticides, mulch films, fertilizers, processed oil, foodstuffs, vegetable oil, sugar, and cotton. A single foreign investor with more than 30 shops and engaged in the distribution of the above-mentioned goods is restricted to an ownership not exceeding 49% in the FICE. Existing FICEs are permitted to engage in wholesaling and retailing business if they amend their scope of business by submitting the application to do so, in accordance with the provisions of capital contributions as per requirement from the State Administration of Foreign Exchange.

Scope of Business for FICEs in the Wholesale and Retail Distribution Sectors Provided by the Administrative Measures

Retail Distribution

- Merchandise goods retailing
- Imports of merchandise goods on the list of own trading items
- Sourcing domestic goods for export
- Other related subordinated services

Wholesale Distribution


- Merchandise goods wholesaling
- Commission agent (except for auctioneering)
- Import and export of merchandise goods
- Other related subordinated services

The Experimental Measures promulgated in 1999 prohibit FICEs engaged in wholesale distribution from buying imported goods not on the list of own trading items. That is inconsistent with the WTO rules. The Experimental Measures also prohibit the FICEs engaged in wholesale distribution from acting as agents for the buying and selling of goods. The Administrative Measures lift the requirement for local contents regarding the procurement of goods, and allow foreign investors to carry on business as commission agents.

Timetable on Market Access to Specified Goods

In respect of time restrictions imposed on market access to certain specified goods that are related to the state economic planning and the welfares of the people, the Administrative Measures adhere to the commitment China has made to WTO members. FICEs engaged in the wholesale distribution shall not deal in pharmaceutical products, pesticides, and mulch films before 11 December 2004, and shall not deal in chemical fertilizers, possessed oil and cruel oil before 11 February 2006. FICEs engaged in the retail distribution shall not deal in pharmaceutical products, pesticides, mulch films, and processed oil before 11 December 2004, and shall not deal in fertilizers before 11 December 2006. FICEs engaged in wholesale distribution shall not deal in salt and tobacco. Those engaged in retail distribution shall not deal in tobacco.

Additional Requirements for Distribution of Specified Goods

FICEs engaged in the distribution of books, newspapers, and magazines should acquire an operating license for printed materials and meet the requirement for the minimum registered capital. Those engaged in the retail distribution of processed oil at gasoline stations and drug shall acquire the operating license for processed oil and the operating license for pharmaceutical products in accordance with the requirements of the administrative rules as promulgated by the State. Commencing from 1 June 2004, foreign investors are permitted to set up wholesale or retail operations in the form of Sino-foreign equity or cooperative joint venture enterprises. Commencing from 11th December 2004, they have the option to turn those joint ventures into wholly foreign owned enterprises by buying out the shares of the Chinese party. Those Hong Kong investors who have been granted the certificate of Hong Kong service suppliers can set up wholly foreign owned enterprises starting from 1st June 2004. In addition, foreign investors may accelerate the speed to establish the PRC market presence by acquiring the interest in existing wholesale or retail business the PRC market. As for direct selling in China, the enactment of the PRC direct selling law is under way and will be ready later this year according to a report in China Daily. 

品油、糧食、植物油、食糖和棉花。同一外國投資者在華開設店鋪數目超過30家以上，並且經營上述商品業務的，其控股比例不可以超過49%。

原來的外商投資企業經申請變更相應的經營範圍之後，可以從事批發或者零售業務。出资方式依照國家外匯管理部門規定。

“管理辦法”允許外商投資商業企業的業務

- | 零售業務 | 批發業務 |
|------------|--------------|
| • 商品零售 | • 商品批發 |
| • 自營商品進口 | • 傭金代理（拍賣除外） |
| • 採購國內產品出口 | • 商品進出口 |
| • 其他相關配套業務 | • 其他相關配套業務 |

1999年“試點辦法”不允許從事批發業務外商投資企業從國外進口非自營商品，有違世貿的貿易規則，“試點辦法”亦不允許經營批發業務外商投資商業企業從事商品買賣的佣金代理業務。新頒布的“管理辦法”在採購商品方面撤銷了以上限制，取消當地含量的要求及允許外商從事佣金代理業務。

對經營特定商品的市場准入時間表

在市場准入時間方面，“管理辦法”規定從事批發的外商投資商業企業於2004年12月11日前不得經營藥品、農藥和農膜；2006年2月11日前不得經營化肥、成品油和原油。從事零售的外商投資商業企業，2004年12月11日前不得經營藥品、農藥、農膜和成品油；2006年12月11日前不得經營化肥。從事批發的外商投資商業企業不得經營鹽、煙草，而從事零售的外商投資商業企業人則不得經營煙草。

外商投資經營特定商品行業，如圖書、報紙、期刊的，應符合《外商投資圖書、報紙、期刊分銷企業管理辦法》，需要取得《出版物經營許可證》，及符合最低的註冊資本額要求；如經營加油站或從事成品油零售及經營藥品的，應符合國家有關銷售的管理規範，包括依法取得《成品油經營許可證》及《藥品經營許可證》。

在2004年6月1日開始，申請設立合資或合作經營的企業，在2004年12月11日之後，可將合資或合作經營企業轉為外商獨資企業。取得“香港服務提供者”資格的香港公司，可以在2004年6月1日開始，申請設立外商獨資企業。此外，外商亦可通過收購境內從事批發或零售的企業，加快進入中國市場。至於經營直銷業務方面，根據中國日報報導，中國政府正在制定直銷法，估計會在年底前完成。