



PRC Retail Newsflash
13 October 2006

Newsflash: New Measures to Guide Retailers in China

On 15 October 2006, the *Administrative Measures Regarding the Promotional Activities of Retailers (Measures)* will take effect. The Measures were jointly promulgated on 12 September 2006 by the Ministry of Commerce, the National Development and Reform Commission, the Ministry of Public Security, the State Administration of Taxation and the State Administration of Industry and Commerce.

Overview

Although existing consumer protection-related laws and regulations (e.g., the *PRC Consumer Protection Law*, the *PRC Price Law* and the *PRC Anti-Unfair Competition Law*) set out various principles for the regulation of retail promotional campaigns, they lack implementing rules and do not address various issues arising in the context of promotional campaigns held by retailers in China. Accordingly, the Measures are intended to guide the implementation of current law, as well as to provide for certain additional consumer protections.

The Measures impose obligations and restrictions on retailers engaging in promotional activities, and stipulate administrative penalties for non-compliance. We have summarized the key provisions of the Measures below.

Payment

- *Invoices*: Upon request, and at no additional charge, retailers must provide customers with a formal invoice for purchases of promotional merchandise. Retailers may no longer avoid this obligation on the grounds that the merchandise in question is 'on sale'.
- *Payment of taxes*: Retailers are required to pay all taxes levied on their promotional merchandise, including free prizes or gifts given to customers during promotional campaigns.

Quality

- *Quality guarantees*: The Measures require that retailers guarantee the quality of promotional merchandise (including prizes and gifts), as well as after-sales services.
- *Return/exchange of goods*: The Measures prohibit retailers from refusing a consumer's request to return or exchange goods solely on the grounds that the merchandise was on sale.

Procedures

- *Promotional info and modification:* Retail stores must disclose certain details of their promotional activities to customers (e.g., the reason(s) for holding a promotion, the terms of promotional sales, the scope and quantity of merchandise covered by the promotion, the length of the promotional period and any relevant restrictions). Except in cases of *force majeure*, retailers may not modify such details during the promotional period. The Measures further prohibit retailers from fabricating reasons for launching a promotional campaign, such as claiming a liquidation or transfer of a business which does not exist.
- *Internal administration system:* The Measures require retailers to implement an internal price administration filing system which accurately and completely records the prices of merchandise before and during a promotional campaign. These records must be kept properly, and may be subject to inspection by the authorities from time to time.
- *Reporting obligations:* Retail stores with a business area of more than 3,000m² must report any "store opening", "holiday" or "anniversary" promotions to the local branch of the Ministry of Commerce within 15 days of the expiry of the relevant promotional period.

Penalties

- Unless relevant PRC laws and regulations specify otherwise, penalties for non-compliance with the Measures will be determined by the relevant authority(ies) depending on the severity of each case. The maximum penalty for violating the Measures is a fine of RMB30,000.

Commentary

- Prior to the promulgation of the Measures, the legislative framework governing retail promotional activities contained numerous ambiguities. In practice, retailers often take advantage of such legal ambiguities to the detriment of their customers' legal rights. Compared to existing consumer protection laws and regulations, the Measures provide a clearer set of legal guidelines for the resolution of disputes arising from retail promotional activities. The Measures seek to (i) strengthen the regulation of promotional activities and (ii) protect consumers' legal rights by clarifying ambiguities in other laws.
- Notwithstanding the improvements promised by the Measures, several issues have yet to be addressed. For example: if particular merchandise is only on sale during limited hours, the Measures require retailers to ensure the availability of that merchandise; but the criteria relating to such "availability" are unclear. It is also unclear how promotional prizes and gifts are valued and treated for tax purposes. Issues such as these are expected to be interpreted by the relevant authorities after the Measures are formally implemented.

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We trust that you find the above newsflash useful. If you have any queries, please contact:

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