



**PRC Telecoms, Media & Technology Law Newsflash**  
**20 October 2010**

**NEW POLICY REGARDING ONLINE SALES  
BY FOREIGN-INVESTED ENTERPRISES**

**Introduction**

On 26 August 2010, the Ministry of Commerce (**MOFCOM**) issued the *Notice on Issues Relating to the Administration of the Examination and Approval of Foreign Capital Investment in Online Sales and Vending Machine Sales (Notice)*. As its name suggests, the Notice addresses the qualifications and approvals required for foreign-invested enterprises (**FIEs**) conducting these two specific types of business. This newsflash focuses on the online sales component of the Notice.

**Background**

The online sales sector combines traditional sales, e-commerce and Internet information services, each of which is regulated by various governmental authorities. The key regulations applicable to FIEs in this sector are:

- *Measures for the Administration of Foreign Investment in the Commercial Sector (FICE Measures*, issued by the MOFCOM on 16 April 2004);
- *Regulations for the Administration of Foreign-Invested Telecommunications Enterprises (FITE Regulations*, issued by the State Council on 11 December 2001, and amended on 10 September 2008); and
- *Provisional Measures for the Administration of Online Commodity Transactions and Related Service (Online Commodity Transaction Measures*, issued by State Administration for Industry and Commerce on 31 May 2010).

**Key Provisions of the Notice**

1. Approval for Online Sales

The Notice views online sales as an extension of a company's offline sales activities. As such, all lawfully approved foreign-invested manufacturing enterprises (**FIMEs**) and foreign-invested commercial enterprises (**FICEs**, i.e., FIEs that conduct trading activities such as retail and wholesale business for goods

imported from outside of China or purchased locally) may carry out direct online sales business in China without MOFCOM approval.

An FIE that only wishes to engage in online sales - without conducting any sales offline - must obtain approval from the provincial-level MOFCOM in the location where it was established.

## 2. Sales Conducted Through an Online Trading Platform

FIEs that provide an online platform for other parties to trade goods over (*e.g.*, Taobao.com) must obtain a value-added telecoms service permit from the Ministry of Industry and Information Technology (MIIT).

By contrast, FIEs that have established an online platform solely for their own sales activities (*e.g.*, Decathlon.com.cn) are only required to file it with the local branch of the MIIT.

## 3. Display of Business License/Sales Permit

All FIEs operating online must display a copy of their business license in a conspicuous place on the homepage of their website, or on the webpage where the FIE conducts its main business activities.

FIEs selling petroleum products, crude oil, books, medicine, newspapers and periodicals online are also required to display a copy of each relevant industry-specific sales permit or a website link to the same.

## 4. Establishment of Internal System

FIEs that engage in online sales must establish a product replacement and return system for their customers, maintain sales records, and ensure that all personal data and business secrets disclosed to them by their customers are kept strictly confidential.

## Commentary

The Notice illustrates that the government is taking steps to decrease the barriers for foreign participation in the online sales sector. Before it was issued, all FIEs that wished to engage in online sales (regardless of whether they had offline sales activities) were required to obtain MOFCOM approval. Certain local branches of the MIIT also required FIEs selling goods over their own online platforms to obtain a formal license for the same, rather than merely completing filing procedures.

Since the Notice was only implemented recently, it remains unclear how the MOFCOM will interpret and enforce it. For instance, local MOFCOM branches could subject FIEs to stricter requirements than the Notice actually sets forth. More importantly, the MIIT has not yet announced its opinion of the new approval and filing requirements under the Notice.

While regulatory developments in this sector need to be watched closely, the Notice should be regarded as a positive development for foreign investors. Except for those operating online trading platforms for third parties, FIEs engaging in online sales business should expect fewer administrative hurdles and the faster granting of approvals going forward.

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Uploaded on 20.10.2010

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