



Long-term Incentives and Golden Handcuffs in China

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With the increasing influence of the People's Republic of China ("PRC" or "Mainland China") in the world's economy, many multinational companies ("MNCs") are viewing Mainland China as a strategic place for developing and expanding their business. Within the PRC, many PRC-based companies are emerging as regional or even global players. For example, more than 130 Chinese companies are listed on US stock exchanges¹ and many others on other overseas exchanges. This globalization of Mainland China has brought more and more competition for top talent within the PRC – placing a premium on how companies encourage the performance and loyalty of their key

employees.

In many western countries, employers have found that employees respond positively to compensation structures that apply "golden handcuffs" through a combination of:

- Converting cash bonuses into long-term incentives that have a value tied to the employer's success; and
- Using forfeiture of an employee's long-term incentives to penalize the employee for the violation of loyalty protections, such as protecting employer trade secrets or not joining a competitor after leaving employment.

Golden handcuffs are essentially contractual protections for an employer

and may be attached to stock option grants, restricted stock awards, or cash-based awards under which payments are delayed until an employee's termination of employment. Regardless of the form, the general premise is "you remain, you gain; you leave, you lose." The challenge comes with implementation because the use of golden handcuffs in Mainland China takes careful planning, well-written contract provisions, and attention to certain legal requirements under PRC law.

1. Golden handcuff alternatives

The most common vehicle for golden handcuff protections comes from including them within written award agreements

that document the terms and conditions of stock options, restricted stock, or restricted stock units. The same contract principles that apply to stock awards also apply to cash bonus awards that an employer in the PRC agrees to pay in Renminbi (“RMB”), the official currency of the PRC. This is important because the PRC’s State Administration for Foreign Exchange (“SAFE”) has established a registration and approval process that listed multinational corporations (MNCs) must satisfy before making stock awards to PRC employees, as discussed in more detail below. It is common, as a result, for MNCs to work around SAFE’s rules by making awards that are payable to PRC employees solely in RMB. Because these awards typically have a value tied to the MNC’s common stock, but without any right of the employees to receive common stock, they are referred to as “phantom” or “RMB-settled” awards.

There is an alternative to phantom equity awards, namely, performance-based awards that involve either an immediate cash bonus payment or delay of the payment until some future date (such as the employee’s termination of employment). The delayed payment approach is popular among MNCs for use with executive employees, because the MNCs may impose golden handcuff protections on the delayed payment.² Performance plan awards tie the level of executives’ future compensation directly to how the company performs relative to key business goals and strategic priorities, rather than the performance of its stock. Such plans do not involve awards of foreign stock or options and therefore require no approval and registration with SAFE, as long as the compensation is paid out in RMB to the PRC executives.³ Such performance awards may be of particular interest to PRC executives, because while a strong correlation between an MNC’s Mainland China operations and its overseas stock performance may not be apparent, using PRC market parameters

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may be more direct than overseas stock incentives.

Regardless of whether an employer chooses to award RMB-based phantom equity awards or performance-based compensation, the award itself basically involves the use of a simple plan (setting forth rules of general application) and the granting of contract rights to specific PRC employees – through an award agreement entered into between the employer and the PRC employee. For employers who want to impose “golden handcuffs” on their employees, these award agreements merely need to include understandable provisions, such as employer protections that may require forfeiture of the employee’s rights under the award if the employee violates loyalty covenants such as an agreement:

- not to solicit the employer’s customers or employees; or
- not to join a competitor of the employer for some stipulated period after the employee leaves employment.

2. Other types of handcuffs

Although stock grants, phantom awards and deferred compensation provide direct incentives for solid employee performance, employers may customize other types of compensation to the specific needs or desires of the executives. These may include home or vehicle purchase loans that the employer forgives over time, as well as an employer’s payment of educational costs for the employee or the spouse or children of the employee. Special employer-provided life insurance is also a possible benefit for key employees. If the benefits

are paid out in RMB, then the foreign exchange control issue under SAFE does not exist. The design of these incentives nevertheless requires advance planning, such as for tax consequences, followed by thorough written documentation.

3. Legal considerations

The use of long-term incentives and golden handcuff protections for PRC employees raises several legal issues, whether the awards involve equity-based awards, phantom awards, or performance awards with deferred payment terms. A few of the main PRC considerations are as follows.

Employment law considerations

While providing lucrative benefits (which is the “gold” for the employees), an award with a “handcuff” is designed to ensure the employee stays loyal to the employer, which is realized through imposing non-compete and non-solicitation conditions on receiving the “gold.” The method for enforcing a loyalty protection can occur through canceling an award, forfeiting future payments that would have occurred, or requiring the repayment of amounts the employee had received (this is known as a claw-back).

The enforceability of such provisions depends on several factors under current PRC law. For awards that have not been earned or vested, forfeiture should not be problematic. However, the forfeiture or claw-back of vested awards could be viewed as liquidated damages – which are allowed only in limited circumstances; to wit, in the event of an employee’s breach of non-compete

obligations or training expenses agreement.⁴ PRC law requires payment of separate consideration in monthly installments to employees in return for non-compete obligations of the employees during the non-compete period in order for the non-compete provision to be enforceable,⁵ and restricts the type of employees who can be subject to non-competes to senior managers, senior technicians and other employees who have access to business secrets.⁶ In addition, although national laws do not prescribe the minimum amount of the consideration required, employment regulations of many local districts do require minimum amounts of such consideration be paid or provide guidelines on this issue. If the employer fails to meet its requirements for an enforceable non-compete agreement, the employee will no longer be bound by the non-compete obligations; neither will the employee be subject to any liquidated damages.

Depending on local regulations, a golden handcuff provision may, for instance, be designed along the following lines:

- Step 1** – Employee accumulates performance awards on a delayed payment basis while employed.
- Step 2** – After employee leaves employment, the employee collects five per cent of the total delayed payment amount for each month of honoring the non-competition and other loyalty covenants (the employee would collect 60 per cent of his or her delayed payment account over 12 months, assuming that is the length of the loyalty protection period).
- Step 3** – At the end of the loyalty protection period, the employee would collect the remaining 40

per cent of the delayed payment amounts. This would serve like a performance bonus for fully honoring all post-employment commitments.

Note that PRC employers should be very careful to study local employment laws before implementing golden handcuff provisions such as the one described here. That said, well-considered golden handcuff protections can work under PRC employment laws.⁷

Tax consequences and withholding

China has issued fairly specific rules regarding how PRC employees are taxed on the income they receive from stock/option awards as well as other bonus or delayed payment plans. As a general matter, taxation occurs when employees collect their benefits (for example, when they exercise stock options or when they receive RMB to settle phantom awards). In 2001, the Beijing Local Tax Bureau audited one of the world’s largest high-tech MNCs for non-compliance with tax withholding requirements for stock incentives awarded to its PRC employees. The employer was forced to pay significant back taxes.⁸ Employers should familiarize themselves with the tax rules associated with any incentives that they provide to employees, and should be sure to make necessary tax withholdings to avoid problems with the PRC tax administration.

PRC securities laws

PRC securities laws and regulations do not regulate either the permissibility for PRC citizens to hold foreign stocks or options, or whether granting foreign stocks or options to PRC employees falls under the purview of Mainland China’s

securities regulations. In practice, the China Securities Regulatory Commission (“CSRC”) has not challenged the granting by MNCs of stock options or other equity awards, and the CSRC’s pre-2003 review of overseas IPO (initial public offering) applications (including the employee stock option plans contained in such IPOs) by PRC companies has focused on whether the plans are in compliance with China’s foreign exchange control rules.⁹ Under current rules and practice, it is unlikely that a foreign stock/option plan for Chinese employees would raise a PRC securities law question, even if the award includes golden handcuff features.

MNCs and the currency control problem

Usually, a foreign stock/option plan requires outward remittance of foreign currency from Mainland China (for purposes of paying for the stock price or option exercise price) and inward remittance of foreign currency into the PRC (for providing the PRC employee with the cash benefit of their option exercise or resale of vested restricted stock). However, Mainland China imposes strict controls on foreign currency exchange, and the PRC safeguards make a traditional foreign stock/option plan difficult to implement for PRC employees.

In early 2007, the SAFE established clear rules by which MNCs could provide for the participation of PRC citizens in their equity-based compensation plans. SAFE’s guidance is titled *Implementing Rules for the Administrative Measures Governing Foreign Exchange of Individuals*, and was followed soon afterward, on March 28, 2007, with SAFE’s internal Circular 78¹⁰ – which specifies the process for obtaining SAFE’s approval of an MNC’s equity award plan.



Basically, Circular 78 requires that MNCs submit their equity-based compensation plans to SAFE for approval and registration prior to the making of awards to PRC employees. Circular 78 requires that MNCs open special foreign exchange bank accounts for the purpose of inward and outward remittances of foreign currency required for exercising stock options and purchasing stock, as well as receiving the funds for payment to PRC employees. All foreign currency needs for such purposes must come from onshore in RMB and be converted into foreign currency and remitted overseas through that special account subject to SAFE's approval. In addition, using foreign currency obtained or held offshore to exercise options or purchase stock is prohibited. All funds received overseas on behalf of PRC employees are prohibited from being retained overseas or used for other overseas investment and must be remitted back to the special onshore foreign exchange account for transferring to the employees' individual bank accounts.

Although deemed the official opening of a channel for implementing foreign equity-based compensation plans in China, Circular 78's approval and registration process is complicated and time-consuming. This is principally because Circular 78 requires that employers not only submit detailed proposals for the approval of equity-based compensation plans in advance for SAFE's review, but

also file quarterly reports with SAFE on the status of pending plan applications. To date, only Procter & Gamble and ABB have navigated the SAFE process and received full approval to implement their employee stock ownership plans in the PRC.¹¹ Going through Circular 78 procedures for equity-based compensation plans may, therefore, be impractical for many MNCs if only a few PRC employees are eligible.

Based on no-name basis consultations with the Beijing and Shanghai Offices of SAFE, we understand that the SAFE has informally indicated that these RMB-based workarounds are lawful because they avoid the need for any foreign exchange of funds. SAFE's rules do not, however, apply either to stock awards that are settled in shares of a PRC company's common stock, or to incentive awards that are settled in RMB rather than in common stock of the MNC.

Conclusion

With proper design, PRC employers and MNCs should be able to provide PRC employees with significant incentives that reflect business goals, either through having a value tied to the employer's equity, or through performance-based terms, and in each case through adding a golden handcuff feature. Employers should consider the variables of possible awards and golden handcuffs depending on the specific goals to be achieved, and should carefully consider the wide range of PRC laws prior to implementation. ■

1. See <http://www.acstock.com/StockList.aspx>.
2. According to a survey released on April 14, 2008 and conducted by the Wall Street Journal and Hay Group, performance-based pay plans overtook stock options for the first time as the most popular form of long-term incentive compensation for chief executive officers among the 200 largest US public companies. See Performance-Based Pay Plans Gain Favor Against Stock Options Among Top 200 Firms, *Pension & Benefits Daily*, Vol. 08, No. 75 (BNA, Inc., Apr. 18, 2008).
3. A currency conversion restriction still exists if the compensation is paid in foreign currency from overseas.
4. Employment Contracts Law of the People's Republic of China, promulgated on June 29, 2007, effective 1 January 2008, art. 25.
5. Id. art. 23.
6. Id. art. 24.
7. For more discussions on the requirements for the enforceability and key drafting strategy of non-compete provisions under PRC law, please see Non-Compete Agreements in the PRC: Clarity Amidst Uncertainty, by K. Lesli Ligorner, *China Business Review* (July/Aug. 2008) (pending publication).
8. In the PRC, the tax authorities may recover unpaid taxes and penalties from either the employee or the employer, as the tax withholding agent. Often, the tax authorities take the path of least resistance and collect any amounts owed from the employer.
9. See http://law.ccc-ceda.org.cn/files/info_3199.html. In April 2003, the requirement of prior review by the CSRC of privately-owned Chinese companies' overseas IPO projects was abolished.
10. The circular is entitled Operating Rules for Foreign Exchange Control of Onshore Individuals' Participation in Employee Stock Holding Plans and Stock Option Plans of Offshore Listed Companies, *Hui Zong Fa* [2007] No. 78. Circular 78 is employed by SAFE in administering approval of foreign stock/option plans; however, SAFE has not yet officially released Circular 78 to the public.
11. According to SAFE itself, it has approved the foreign stock/option plans of five PRC companies and two MNCs (i.e., P&G and ABB) and accepted the applications from two other MNCs under the new rules. See http://www.safe.gov.cn/model_safe/news/ts_detail.jsp?ID=2050000000000000,34.

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中國焦點

中國的長期激勵與金手銬計劃

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隨著中華人民共和國（「中國」或「中國內地」）在全球經濟的影響力日益增強，許多跨國公司視中國內地為發展和擴充業務的戰略據點。在中國國內，許多中國本土公司正斬露頭角，成為地區市場參與者甚至是環球市場參與者。比如，逾130家中國公司在美國證交所¹上市，亦有許多其他公司在其他海外證交所掛牌。中國內地的全球化加劇了國內的人才競爭—鼓勵各公司如何著重提高其骨幹僱員的表現和忠誠度。

在許多西方國家，僱主發現僱員對「金手銬」薪酬架構結合以下兩層含意持正面回應：

- 將現金花紅轉換成有價值的長期獎勵，並與僱主的業績相連；及
- 沒收僱員的長期獎勵，以懲罰僱員違反忠誠保護規定，比如保護僱主的商業秘密，或離職後不加入與前僱主有競爭關係的公司工作。

實際上，金手銬是僱主以合約形式制訂的保護規定，並可能會附上認股權、受限制股份獎勵或現金獎，而有關款項將會延至僱員終止僱傭時方予以發放。無論採取何種形式，一般的前提是：「留任獲得獎勵；離任則失去獎勵。」由於在中國內地使用金手銬激勵方案要有審慎規劃、完備的書面合約條文，以及留意中國法例下若干法律規定，因此執行金手銬激勵方案面對不少挑戰。

1. 金手銬替代方案

金手銬保護規定最常採用的方法是以書面獎勵協議形式，在其中納入有關認股權、受限制股份或受限制股份單位的條款及條件。相同的合約原則亦同時適用於股票獎勵和現金花紅獎勵，而在中國的僱主同意以中國官方貨幣—人民幣給予獎勵。這一點很重要，因為中華人民共和國國家外匯管理局（「國家外匯管理局」）已制訂

登記及審批程序，跨國上市公司向中國僱員授予股票獎勵前先要通過有關程序（下文將概述有關詳情）。因此，為遵行國家外匯管理局所訂規定，跨國公司須以人民幣形式向中國僱員付予獎勵的解決方案非常普遍。由於這些獎勵本身擁有的價值通常與跨國公司的普通股掛鉤，但僱員沒有任何權利領取普通股，因此這種獎勵稱為「虛擬」獎勵或「以人民幣結算」的獎勵。

虛擬股權獎勵設有替代方案，即是以績效為基礎的獎勵方案，當中涉及即時付給現金花紅或延至日後（比如員工終止僱傭的時候）才付給款項。由於跨國公司可能會就延後付款²加入金手銬保護規定，因此跨國公司普遍向管理人員採用延後付款方式。績效計劃獎勵將各級管理人員的日後薪酬水平直接與公司在主要業務目標和策略重點方面的表現（而非其股票表現）掛鉤。該等計劃不涉及外國股票或認股權的

獎勵，只要薪酬是以人民幣形式付給中國管理人員，則無須經由國家外匯管理局進行審批及登記。³該等績效獎勵可能特別吸引中國管理人員，因為跨國公司在中國內地的業務與其海外股票表現的相互關係並不明顯時，採用中國市場參數可能較海外股票獎勵來得更為直接。

不管僱主選擇以人民幣為基礎的虛擬股權獎勵，還是以績效為基礎的薪酬，獎勵本身一般會涉及採用簡單計劃（當中闡明普遍適用的規則），以及向特定的中國僱員賦予合約權利，後者涉及僱主與中國僱員之間訂立的獎勵協議。僱主想為其僱員戴上「金手銬」，該等獎勵協議只須包含易於明白的規定，比如僱主保護條文規定，倘若僱員違反忠誠契約，則僱主可收回僱員獲享獎勵的權利。忠誠協議可能包括以下任何一項協議：

- 不得拉攏前僱主的客戶或不得招攬前僱主的僱員；或

無論獎勵會否涉及以股權為基礎的獎勵、虛擬獎勵，還是按延後付款條款付給的績效獎勵，中國僱員所採用的長期獎勵及金手銬保護規定均引起若干法律問題。

- 離職後，僱員在某段規定期間不得加入與前僱主有競爭關係的公司工作。

2. 其他金手銬的類別

雖然股票獎勵、虛擬獎勵及延後支付薪酬均可直接激勵僱員有不俗的表現，但僱主仍然可為管理人員的特定需要或需求度身訂造其他薪酬類別。該等薪酬類別可能包括僱主為僱員提供置屋貸款或購車貸款後一段時間免除僱員償還債務，以及僱主為僱員或其配偶或其僱員子女繳付教育費用。僱主提供的特定人壽保險亦有可能使骨幹僱員受惠。倘若有關福利是以人民幣形式支付，則外匯管制問題在國家外匯管

理局之下並不存在。然而，該等獎勵的制訂需要預早規劃，比如稅收後果，以及伴隨而來的完備書面文檔。

3. 法律上的考慮因素

無論獎勵會否涉及以股權為基礎的獎勵、虛擬獎勵，還是按延後付款條款付給的績效獎勵，中國僱員所採用的長期獎勵及金手銬保護規定均引起若干法律問題，其中一些中國的主要考慮因素如下：

勞動法考慮

提供利潤豐厚的福利（即僱員可以拿下的「黃金」）時附上「手銬」的獎勵，旨在



透過制訂非競爭性和杜絕拉攏的條款領取「黃金」，以確保僱員一直效忠於僱主。忠誠度保護可以從取消獎勵、沒收日後可付給的款項，或者要求僱員償還已領取的款項（稱為奪回）等方法中得以執行。

該等條文的可執行性視乎現行中國法律的若干因素而定。就尚未獲得或給予的獎勵而言，沒收獎勵不應造成問題。但是，沒收或奪回已給予的獎勵可能會被視為算定損害賠償—只有在有限情況下方可允許作出該等賠償；即，倘若僱員違反非競爭責任或培訓費用協議的情形。⁴中國法律規定，按月付給僱員各項對價，以期僱員在非競爭期限內履行非競爭責任，使非競爭條文得以予以執行，⁵並且受非競爭限制的人員限於高級管理人員、高級技術人員和其他負有保密義務的人員。⁶另外，雖然國家法律並無規定所需對價的最低金額，但許多當地地區的勞動法例規定該等對價所須支付的最低金額，或者在這議題上提供指引。倘若僱主未能遵守可執行的非競爭協議內所訂的規定，則僱員將不再受非競爭責任限制，同時僱員亦將不再受任何算定損害賠償約束。

因應當地法規，比如金手銬規定，可按照下列步驟來制訂：

- 步驟1—** 僱員受僱時按延後付款基準累積績效獎勵。
- 步驟2—** 離職後，僱員因履行非競爭協議及其他忠誠契諾，每月領取延後付款總額的5%（僱員會在12個月內（假設這是忠誠保護規定期限）領取其延後付款款項的60%）。
- 步驟3—** 在忠誠保護規定期限結束時，僱員將可領取延後付款金額的餘下40%。該筆款項相當於離職後完全信守承諾的績效花紅。

請注意，在實施金手銬規定（比如上文所述規定）前，中國僱主應非常謹慎地研究當地的勞動法，也即是說，經審慎考慮後訂立的金手銬保障規定能夠按照中國勞動法運作。⁷

稅收後果及預扣所得稅

關於中國僱員如何就他們從股票／認股權獎勵，以及其他花紅或延後付款計劃領取收入中課稅，中國當局已頒布相當具體的規則。一般而言，僱員領取其福利（比如他們行使認股權或他們領取以人民幣結算的虛擬獎勵），就會產生稅項。2001年，北京市地方稅務局就其中一家全球最大的高科技跨國公司，因授予其中國僱員的股權獎勵未有履行有關預扣所得稅規定而對其進行審查。僱主被迫繳交大筆退繳稅。⁸僱主應熟知本身給予僱員任何獎勵相關的稅項規定，並應確保所需繳納的預扣所得稅，以免被中國稅務當局追究。

中國證券法

中國證券法律及法規並無明文規定容許中國公民持有外國股份或認股權，亦無明文規定向中國僱員授予外國股份或認股權是否納入中國內地證券法規的範圍內。其實，中國證券監督管理委員會（「中國證監會」）從未質疑跨國公司授出認股權或其他股權獎勵，而中國證監會2003年前對中國公司進行海外首次公開招股申請（包括該等首次公開招股所包含的僱員認股權計劃）的審查，著重於考慮該計劃是否符合中國的外匯管制規定。⁹根據現行法規和慣例，為中國僱員制訂外國股份／認股權計劃不大可能引起涉及中國證券法的問題，即使該等獎勵包括金手銬的特點。

跨國公司及貨幣管制問題

一般來說，外國股份／認股權計劃規定，從中國內地匯出外幣匯款用以支付股價或認股權的行使價，而因中國僱員行使認股權或轉售已授予的受限制股份所得的現金福利則以外幣匯款匯入中國。然而，中國內地就外幣兌換實施嚴格管制，而中國的有關保護措施使傳統的外國股份／認股權計劃難以在中國僱員身上施行。

2007年初，國家外匯管理局就跨國公司

為中國公民參與其以股權為基礎的薪酬計劃制定明確規則。國家外匯管理局的指引題為《個人外匯管理辦法實施細則》，不久之後，國家外匯管理局於2007年3月28日頒布內部通知第78號，¹⁰該份文件明確規定了跨國公司的股權獎勵計劃在取得國家外匯管理局批准方面的所須程序。

基本上，第78號通知規定，跨國公司向中國僱員給予獎勵前須將其以股權為基礎的薪酬計劃提交國家外匯管理局進行審批及登記。第78號通知規定，跨國公司需要開立一個專用的外匯銀行賬戶，用作因行使認股權及認購股份，以及收取資金向中國僱員付給款項所需進行的外幣匯入及匯出。所有用作該等用途的外幣須來自國內的人民幣，經由國家外匯管理局批准，兌換成外幣後透過專用的外匯賬戶匯到海外。此外，不得利用在境外獲得或持有的外幣行使認股權或認購股份。所有代表中國僱員在海外領取的款項均不得存放在國外或用作其他海外投資用途，而必須調回國內特殊外匯賬戶，從而轉至該僱員的個人銀行賬戶。

雖然這途徑視為官方用作在中國實行以外國股權為基礎的薪酬計劃，但第78號通知的審批及登記程序依然繁複費時。這主要是源於第78號通知規定，僱主不僅需要為以股權為基礎的薪酬計劃提前遞交詳細建議書供國家外匯管理局審閱，而且每季度均需要向國家外匯管理局報送有待審批的計劃申請的狀況。迄今，僅有寶潔（中國）有限公司及ABB（中國）有限公司通過國家外匯管理局的審批程序，並收到在中國實施其員工持股計劃的所有批文。¹¹因此，倘若僅有少數中國僱員符合資格，那麼就以股權為基礎的薪酬計劃而實行第78號通知所規定的程序，這對許多跨國公司而言也許是不切實際的。

根據國家外匯管理局北京及上海分局以不記名形式作出的諮詢，我們瞭解到，國家外匯管理局非正式地表示，這種以人民

幣為基礎的解決方案是合法的，理由是該等方案避免了對資金產生任何外匯需求。然而，國家外匯管理局的規定，既不適用於以中國公司普通股股份方式付給的股份獎勵，也不適用於以人民幣（而非以跨國公司的普通股）方式付給的獎勵。

結論

透過適當的安排，中國僱主及跨國公司應能向中國僱員提供反映業務目標的豐厚獎勵。有關獎勵可以是與僱主的股權掛鈎的價值，或者是以績效為基礎的條款，並且在各種情況下均加入金手銬的特點。僱主應就所須達至的特定目標，考慮可能給予的獎勵和金手銬中的各項變數，並應在具體實施前小心考慮廣泛的中國法律問題。H

- 1 參見<http://www.acstock.com/StockList.aspx>。
- 2 由《華爾街日報》及Hay Group進行並於2008年4月14日發佈的調查報告顯示，以績效為基礎的薪酬計劃首次超過認股期權計劃，成為美國200家大型公眾公司向高級管理人員付給長期獎勵薪酬的最常用方法。參見'Performance-Based

Pay Plans Gain Favor Against Stock Options Among Top 200 Firms'一文，載於*Pension & Benefits Daily*, Vol 08, No 75 (BNA, Inc, 2008年4月18日)。

- 3 如果薪酬以來自海外的外幣支付，則仍會受到貨幣兌換的限制。
- 4 《中華人民共和國勞動合同法》第25條。該法例於2007年6月29日頒佈，自2008年1月1日起生效。
- 5 同上，第23條。
- 6 同上，第24條。
- 7 如欲瞭解更多中國法律在非競爭條文的可執行性及主要草擬策略方面的規定的討論，參見K. Lesli Ligorner的'Non-Compete Agreements in the PRC: Clarity Amidst Uncertainty'一文，載於《中國經濟評論》（2008年7月/8月）（尚待出版）。
- 8 在中國，稅務當局可以向僱員或僱主（作為預扣所得稅的代理）追討尚未繳納的稅項及罰款。稅務當局一般會採取最事半功倍的方式追討僱主所欠的任何款項。
- 9 參見http://law.cec-ceda.org.cn/files/info_3199.html。2003年4月，中國證監會對中國私營公司進行海外首次公開招股項目的事先審查規定已廢除。
- 10 該通告題為《境內個人參與境外上市公司員工持股計劃和認股期權計劃等外 管理操作規程》（*匯綜發*[2007]78號）。國家外匯管理局利用第78號通知規範了外國股票／期權計劃的審批；然而，國家外匯管理局尚未正式向外頒佈第78號通知。
- 11 國家外匯管理局稱，當局共批出了五家中國公司及兩家跨國公司（即P&G及ABB）的外國股票／期權計劃，並在新規定下受理

其他兩家跨國公司提交的申請。參見http://www.safe.gov.cn/model_safe/news/ts_detail.jsp?ID=20500000000000000000,34。

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