

China Regulatory Updates

February 2009

Table of Contents

1. PRC Patent Law Revised.....	1
2. Rules on Labor & Personnel Arbitration Handling Released ...	1
3. CBRC Adjusts the Credit Regulatory Policies	2
4. Collection of Partners' Income Tax Further Regulated.....	3
5. Insurance Companies To Be Regulated on A Category-by-Category Basis.....	3
6. Foreign-Related Real Estate Tax Rate Lowered	4
7. Rules on Registration of Capital Contribution with Equity Interest Promulgated.....	5

Shanghai Office
Suite 4103, II Grand Gateway
3 Hongqiao Road
Shanghai 200030, China
Tel: (86-21) 6448-5600
Fax: (86-21) 6448-5611

Beijing Office
Suite 311, Tower E1
Oriental Plaza
Beijing 100738, China
Tel: (86-10) 8518-5580
Fax: (86-10) 8515-3818

1. PRC Patent Law Revised

Recently, the Standing Committee of the PRC National People's Congress has adopted the *Decision on the Amendments to the Patent Law of the People's Republic of China*, which has effectively revised the *Patent Law of the People's Republic of China* (the "Patent Law"), in the spirit of promoting independent innovation and strengthening the protection for, as well as preventing the abuse of, patent rights. The revised Patent Law will become effective on October 1, 2009.

Notable changes in the revised Patent Law mainly include:

- (a) More strict novelty requirement for patent granting. As provided under the currently effective Patent Law, inventions or utility models under the application for patent rights should not be known by the public in China prior to the application date. According to the revised *Patent Law*, however, such inventions or utility models should not be publicly known either in China or abroad.
- (b) More flexibility for cross-border patent application. As provided under the currently effective Patent Law, patent applicants can not apply to other countries/regions for patent rights for their inventions created in China unless they have applied for PRC patents first. The revised *Patent Law* has abolished such restrictive provision, provided that such inventions should be subject to the confidentiality examination by the PRC State Intellectual Property Office.
- (c) More circumstances qualified for compulsory license. The revised Patent Law would allow an expanded scope of application of compulsory license, such as circumstances where anti-monopoly or public health concerns would require the application of compulsory license.
- (d) Higher compensation standards for patent infringements.

2. Rules on Labor & Personnel Arbitration Handling Released

On January 1, 2009, the Ministry of Human Resources and Social Security circulated the *Rules on Labor and Personnel Arbitration Handling* (the "Rules") which came into effect on the same day. The *Rules on Case Handling by Labor Dispute Arbitration Committees* and the *Rules on Personnel Dispute Case Handling* promulgated respectively in 1993 and 1999 went out of effect at the same time.

The Rules have for the first time unified provisions applicable to the handling of labor disputes arbitration and personnel disputes arbitration, and further specified procedural details in connection with dispute resolution, including, among others, application for arbitration related to collective labor disputes and acceptance of such application by the labor dispute arbitration committees, application for a withdrawal, collection and submission of evidences, interruption of the limitation of action, and alteration of the employer's status. The Rules have further shortened the time limits for the acceptance of arbitration application, the formation of arbitration tribunals and the rendering of an award. Moreover, the Rules have expressly required relevant arbitration committees to provide the parties to the arbitration with access to materials filed and kept by such arbitration committees.

3. CBRC Adjusts the Credit Regulatory Policies

On January 10, 2009, the China Banking Regulatory Commission circulated the *Circular on the Adjustment of Certain Credit Regulatory Policies to Promote the Stable Development of Economy* (the "Credit Circular").

According to the Credit Circular, qualified commercial banks are encouraged to extend merger & acquisition loans and conduct loan reorganizations. Qualified small and medium-size banks are allowed to lower the deposit/loan ratio to the proper extent below the threshold previously required.

The Credit Circular has also attempted to facilitate the utilization of the financing function of trust companies through lowering the thresholds for trust companies to engage in collective trust loans and loosening the restrictions for trust companies to conduct private equity investment (with self-owned assets only) and real estate trust: (i) as for trust companies that meet certain regulatory requirements, the mandatory proportionate limit for collective trust loans extended by such trust companies with the funds entrusted to them is raised from 30% to 50%; (ii) trust companies that meet certain regulatory requirements and have sufficient monetary assets are encouraged to independently engage in private equity investment with their self-owned assets (capped at 20% of their net assets); (iii) as for real estate trusts, trust companies that meet certain regulatory requirements and have stable operation and high-level risk management in place will be subject to more flexible requirement as to the qualification and the registered capital ratio of the relevant developers; and (iv) trust companies are encouraged to carry out investment banking business in connection with mergers, acquisitions and reorganizations.

4. Collection of Partners' Income Tax Further Regulated

Recently, the PRC Ministry of Finance (the "MOF") and the PRC State Administration of Taxation (the "SAT") have jointly promulgated the *Circular on Issues Related to Income Tax Payable by Partners to Partnership Enterprises* (the "Tax Circular"), which became effective on January 1, 2009.

The Tax Circular has clarified relevant issues related to the collection of income taxes payable by partners to partnership enterprises and addressed, for the first time, income taxes payable by partners in the form of legal person and other organizations. According to the Tax Circular, individual partners to a partnership enterprise should pay individual income tax and legal person partners thereto should pay enterprise income tax. The Tax Circular has also further specified the recognition principles with respect to taxable income amount and provided that when calculating the enterprise income tax payable by legal person partners, the losses of the partnership enterprise should not be used to offset the profits of such legal person partners.

5. Insurance Companies To Be Regulated on A Category-by-Category Basis

The China Insurance Regulatory Commission (the "CIRC") has recently promulgated the *Circular on Matters Relevant to the Implementation of Supervision on a Category-by-Category Basis over Insurance Companies* and the *Interim Measures on Supervision over Insurance Intermediaries on a Category-by-Category Basis* to initiate the regulation of different types of insurance companies and insurance intermediaries on a category-by-category basis. Such supervision on a category-by-category basis, however, will not replace special supervisions by CIRC over certain aspects such as repayment ability and fund utilization.

Insurance companies and insurance intermediaries are separately classified into different grades or types according to their risk monitoring indicators. Insurance companies are divided into four grades, while insurance intermediaries are divided into three types, each of which is subject to different supervision measures by CIRC.

For insurance companies, CIRC will, at the beginning of each year, conduct an overall assessment to and classification of all insurance companies based on their respective audited data of the previous year to determine the specific supervision measures applied to each company. The annual assessment results and applicable supervision measures may be adjusted according to, among others, the results of the relevant quarterly assessment. For insurance intermediaries, the local CIRC offices will, in principle, conduct an annual assessment to and classification of all insurance intermediaries governed by them and submit to CIRC reports on the supervision over such insurance intermediaries on a category-by-category basis during the previous year. In the first half of 2009, CIRC will conduct the first assessment and classification with respect to insurance companies based on their audited data of 2008.

6. Foreign-Related Real Estate Tax Rate Lowered

According to the decree newly issued by the State Council, starting from January 1, 2009, the payment of real estate tax by foreign-invested enterprises, foreign enterprises and organizations, as well as foreign individuals (collectively, the “Foreign Parties”) should be governed by the *Interim Regulations on Real Estate Tax* (the “Regulations”, which was originally only applicable to domestic entities and individuals). The Regulations have effectively rendered the rate of real estate tax levied on Foreign Parties slightly lower than before.

Pursuant to the Regulations and relevant circular promulgated by SAT, the self-use properties are taxed at the rate of 1.2% based on the residual value after a one-off deduction of 10%-30% (specified by the relevant provincial government) of the original value of such properties. The leased properties are taxed at the rate of 12% based on the rental income of the lessor, provided that houses leased out by individuals or leased to individuals for residential purposes by enterprises and other corporations, institutions or organizations at the prevailing market price are taxed at the rate of 4%.

The Foreign Parties should pay real estate tax for properties built up or purchased on or after January 1, 2009 in accordance with the following schedule: (i) for self-built houses, the Foreign Parties should pay real estate tax in the following month after the completion of such houses; (ii) for houses built by construction enterprises entrusted by the Foreign Parties, real estate tax should be paid in the following month after the effectuation of the acceptance procedures; (iii) for newly-built commodity houses purchased by the Foreign Parties, in the following month after the delivery of such houses; and (iv) for second-hand houses purchased by the Foreign Parties, in the following month after the effectuation of ownership transfer and change registration procedures.

Furthermore, the Foreign Parties are also entitled to the tax reduction treatments provided in the Regulations or otherwise promulgated by MOF and SAT.

7. Rules on Registration of Capital Contribution with Equity Interest Promulgated

On February 1, 2009, the State Administration of Industry and Commerce released the *Measures on the Administration of Registration of Capital Contribution with Equity Interest* (the “Measures”) in an effort to broaden the investment channels and relieve the credit crunch encountered by companies. The Measures are substantially the same as the draft that was released in December 2008 for public comments (*please refer to the January 2009 issue of Han Yi China Regulatory Updates for more details*). The Measures will take effect on March 1, 2009.

For further information, please write us at inquiry@hanyilaw.com.

These updates are intended for information purpose only and are not a legal advice or a substitute for legal consultation for any particular case or circumstance. ©Han Yi Law Offices All rights reserved.