



China Regulatory Updates

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Intellectual Property

Implementing Rules for the New *PRC Patent Law* Released

The State Council has recently issued the amended *Implementing Rules for PRC Patent Law* (the "Patent Rules"). The Patent Rules took effect on February 1, 2010. As the supporting rules for the new *PRC Patent Law* that came into effect in 2009, the Patent Rules have made comprehensive amendments to the original version. The highlights of the Patent Rules are as follows:

- (a) Rules on incentive payment for occupational invention/design are improved. According to the Patent Rules, (i) a patent right holding company and the relevant inventor/designer of occupational invention/design may enter into an agreement with respect to the detailed arrangement for the incentive payment for such occupational invention/design, or, the patent right holding company may otherwise make internal policy re the same; and (ii) if there is no such agreement or policy as mentioned above, the relevant standards as provided by applicable regulations should be applied. Therefore, it is advisable for enterprises that have occupational invention/design patents from time to time to promulgate internal policies with respect to occupational invention/design to better protect their interests.
- (b) As the new *PRC Patent Law* has eliminated the requirement that transfer of a patent from a PRC person/entity to a foreign person/ entity is subject to the prior approval by the competent ministry of the State Council, the Patent Rules have also deleted the related provisions accordingly. Transfer of patent application right or patent right abroad will be generally handled in accordance with rules applicable to technology exports.
- (c) The Patent Rules have specified implementing rules for revised provisions in the new *PRC Patent Law*, including among others: (i) specifying the procedures of the confidentiality examination as required by the new *PRC Patent Law* for offshore patent application with respect to domestically created inventions; (ii) defining certain terms with respect to the revised compulsory license rules; and (iii) spelling out relevant terms with respect to genetic resources patents.
- (d) Various measures have been adopted to encourage independent innovation and patent application, including without limitation rationalizing the application and examination procedures for patent right and eliminating some unreasonable charging items.

New Energy

Development of Offshore Wind Energy Project Regulated

To regulate the offshore wind energy industry ("*OWE*"), PRC National Energy Administration and PRC State Oceanic Administration have jointly released the *Interim Measures on the Administration of the Development and Construction of Offshore Wind Energy Projects* (the "*OWE Measures*"). The *OWE Measures* cover various issues with respect to the development of *OWE* projects, from the drafting of *OWE* development planning, granting of *OWE* program exploration rights to construction completion and running of *OWE* projects. The National Energy

Administration and the State Oceanic Administration are responsible to supervise the nation-wide *OWE* development. According to the *OWE Measures*, the project developer should be determined through the bidding process on a prior basis. Bidding conditions include on-grid power tariff, project development plan, technical capacity and operation performance. It is notable that the *OWE Measures* specifically require that the *OWE* project developer should be a domestic-funded enterprise or a Sino-foreign joint venture with the Chinese party holding over 50% equity interest.

Insurance

CIRC Revises Rules on Insurance Business Operation

The China Insurance Regulatory Commission (“CIRC”) has lately issued the amended *Measures on Administration of Insurance Terms and Premium Rates of Property Insurance Companies* the “Insurance Measures” which will take effect on April 1, 2010. The Insurance Measures are modified to support the new *PRC Insurance Law* which was amended in 2009. The main amendments include:

- (a) The Insurance Measures perfect the approval and filing rules on insurance terms and premium rates in terms of scope of approval, filing procedure, required documents, and etc. The Insurance Measures also require insurance institutions to strictly comply with the approved or filed insurance terms and premium rates and specify the relevant penalties for the violation of such requirement. The Insurance Measures further specify that only the provincial level branch of an insurance company may alter the approved premium rates in certain circumstances prescribed therein.
- (b) The Insurance Measures strengthen the administration of the insurance company’s legal responsible person and the actuarial responsible person. The major measures

include: (i) insurance companies are required to establish internal control and accountability rules, which rules should be submitted to CIRC for filing; (ii) qualifications for the legal responsible person are more stringent; and (iii) administrative penalties for the violation of relevant rules by the legal responsible person and the actuarial responsible person are specified.

- (c) The Insurance Measures tighten up the supervision over insurance products and require that regional products should be directly filed with CIRC by the head office of an insurance company.
- (d) The Insurance Measures incorporate new provisions with respect to the management of coinsurance products. For coinsurance products, insurers can adopt the leading underwriter’s insurance terms and premium rates approved by or filed with CIRC.

The Insurance Measures are applicable to all property insurance products and have retrospective effect on insurance products that have been developed prior to its effectiveness.

SOE Administration

Approval Authority over Certain Transfers of State-Owned Assets Delegated to Companies

Recently, PRC State-Owned Assets Supervision and Administration Commission (“SASAC”) has released a notice to delegate to the relevant enterprises the approval authority over the transfer of state-owned assets through agreement by state-owned enterprises directly under SASAC’s control (the “Central SOEs”) for internal restructuring purpose.

According to the above-mentioned notice, a Central SOE has the power to approve the transfer of state-owned assets through agreement among its subsidiaries in which such Central SOE holds over 50% equity interest, provided that transfer of

state-owned shares of listed companies through agreement is still subject to SASAC’s prior approval. Moreover, asset transfer between a Central SOE and a local SOE is only subject to SASAC’s approval and local SASAC office’s approval is no longer needed.

It is further specified that in the internal asset restructuring of a Central SOE, if the transferor and transferee are such Central SOE and/or its domestic wholly owned affiliates, the minimum transfer price can also be determined according to the net asset value as set forth in the relevant audit report. Prior to this notice, all minimum prices for

asset transfers through agreement should be solely based on the relevant asset appraisal report.

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

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