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China Regulatory Updates

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Foreign Investment

MOFCOM Follows NDRC to Delegate FIE Approval Authority

Guided by a notice issued by the PRC State Council to further simplify FIE approval procedures (*please refer to May 2010 issue of Han Yi China Regulatory Updates for more details*), the PRC Ministry of Commerce ("MOFCOM"), following the step of National Development and Reform Commission ("NDRC"), has recently released a circular (the "MOFCOM Circular") to delegate certain approval authority with respect to foreign investment enterprises ("FIE") to local MOFCOM offices. Thus, the approval authorities of the local offices of MOFCOM and NDRC at the same level with respect to foreign investment projects are substantially the same.

According to the MOFCOM Circular, unless otherwise provided by applicable laws and regulations, the investment threshold for approval authority of local MOFCOM offices is increased from USD100 million to USD300 million in the case of foreign investment projects that fall into "encouraged" and "permitted" categories while that for approval authority of local MOFCOM offices with respect to "restricted" foreign investment projects remains unchanged (i.e., USD50 million). It is notable that MOFCOM Circular restates that the approval authority for foreign investment in certain industries has already been vested in local MOFCOM offices regardless of investment volumes thereof (e.g., FIEs fall into the "encouraged" categories not requiring overall balancing by the state, or FIEs in service industry (unless otherwise explicitly provided by laws and regulations)). Further note that except for approvals from competent MOFCOM and/or NDRC offices, foreign investment in some specially regulated sections (such as banking, financing, insurance and telecommunication industries) may also be subject to examination and supervision of the government authorities having jurisdiction over such sections (e.g., CBRC, CSRC, CIRC, MIIT or etc.).

The MOFCOM Circular reconfirmed the calculation of investment threshold with respect to different types of foreign investment projects, which refers to, for example: (i) the amount of the registered capital in terms of foreign-invested joint stock companies, foreign-invested investment companies, foreign-invested venture capital enterprises and venture capital management enterprises, (ii) the appraised net asset value of the companies transforming to foreign-invested joint stock companies, and (iii) the purchase price and/or investment amount in case of the acquisition of domestic enterprises by foreign investors.

Chongqing Liangjiang New Area Established with Multiple Preferential Policies to Attract Investment

Chongqing Liangjiang New Area ("Liangjiang New Area") was officially announced to be established on June 18. It is reported the Liangjiang New Area is the third sub-provincial-level economic development zone approved by the State Council after Shanghai Pudong New Area and Tianjin Binhai New Area. Liangjiang New Area has integrated the preferential policies for China's western development, pilot zone of comprehensive urban and rural development, inland bonded port zone, as well as other favorable policies applicable to Shanghai Pudong and Tianjin Binhai New Area. Therefore, enterprises located in Liangjiang New Area are likely to enjoy the most favorable policies among all new areas which mainly include, among others:

(a) Preferential Tax Policies for Encouraged and High-Tech Enterprises. (i) By 2020, both domestic and foreign-invested enterprises under the encouraged categories are entitled to enjoy a reduced enterprise income tax ("EIT") rate of 15%; (ii) an enterprise can enjoy an actual EIT rate of no more than 10% if more than 60% of its annual output derives from sales of high-tech products and technique-related proceeds; and (iii) within 3 years after high-tech enterprises or enterprises of emerging industries start to make profits, the risk compensation fund (equal to 3%-5% of the profits of that year) withdrawn by such enterprises in accordance with applicable laws and regulations may be deducted from taxable incomes.

(b) Financial Support for Advanced Manufacturing and Modern Services Industries. Fiscal revenues, tax revenues and administrative fees in Liangjiang New Area generated from 2011 through 2015 will be all used to promote the enterprises of advanced manufacturing and modern services industries by means of, among others, capital investments, fixed subsidies, interest subsidies towards corporate bonds and loans.

(c) Flexible Land and House-Rental Policies. Liangjiang New Area will provide support to projects in line with state industrial policy by means of, among others, facilitating project examination and land use, and will work out preferential policies towards land use and house renting for industries with key support from the state and for enterprises engaging in technology innovation and development.

It is noteworthy that since Liangjiang New Area is newly established and the official documents on detailed preferential policies are not available in public yet, the potential attractiveness to foreign investment remains uncertain and is subject to further observations.

Approval Authority over Forex Businesses for Certain Capital Account Activities Further Decentralized

State Administration of Foreign Exchange ("SAFE") has recently released a circular (the "SAFE Circular") to further delegate forex approval authority for capital account projects, which became effective as of July 1.

According to the SAFE Circular: (i) approval authorities for three capital account businesses are delegated from SAFE central office to its local branches (e.g., assessment of short term external debt balance index for enterprises without foreign investment); (ii) forex approval authorities with respect to four kinds of transactions are delegated from branches to central sub-branches or sub-branches (e.g., opening, alteration or termination of escrow or settlement accounts by foreign investors for forex funds in an equity transaction); (iii) two kinds of capital account transactions could be completed directly with the designated forex banks (e.g., purchase and remittance of forex for the distribution of profits to foreign investors of non-banking financial institutions with foreign participations (excluding insurance companies)). The SAFE Circular also simplified the application documents required for relevant approvals.

The delegation of approval authority and simplification of approval procedures may help to increase the approval efficiency and further facilitate the cross-broader trade and investment transactions.

Finance

Payment Services of Non-Financial Institutions Regulated by PBOC

On June 21, 2010, the People's Bank of China ("PBOC") promulgated the *Administrative Measures for Payment Services by Non-financial Institutions* (the "PBOC Measures"), with a view to regulate for the first time the payment business of non-financial institutions, including among others, online payment, issuance and acceptance of prepaid card and bank card acceptance. The PBOC Measures will come into effect on September 1, 2010.

Pursuant to the PBOC Measures, a non-financial institution shall engage in payment business only after obtaining the Payment Business License from PBOC with satisfaction of certain conditions, which require, noticeably: (i) the applicant to have a minimum registered capital (paid-in capital) of RMB100 million or RMB30 million for businesses of national or provincial scale, respectively; (ii) the shareholders of the applicant to be limited companies and/or joint stock companies; and (iii) the major capital contributors of an applicant (including the actual controller or the entity holds more than 10% of the equity interests in the applicant) to have provided information processing support services for financial institutions or e-business activities and have made profits therefrom for more than two (2) consecutive years. Any non-financial institution engaging in payment business before the implementation of the PBOC Measures shall apply for the Payment Business

License within 1 year after the PBOC Measures come into force.

It is noteworthy that although the PBOC Measures do not prohibit foreign investment in a non-financial payment service company, it specifically provides that the business scope, the qualifications and contribution ratio applicable to foreign invested payment companies and their foreign investors will separately be promulgated by PBOC, which in fact restricts foreign investment in the payment companies at the time being. On the other hand, however, the aforesaid provision in the PBOC Measures leaves room for further legislation on foreign invested non-financial payment service institutions, and indicates, to some extent, the tendency of PRC government to loosen control on foreign capital's entry into third party payment market.

Insurance

Branches of Insurance Companies Subject to Strengthened Regulation

The China Insurance Regulatory Commission ("CIRC") has recently issued the *Interim Measures for Regulation and Supervision over Branches of Insurance Companies on a Category-by-Category Basis* (the "CIRC Measures") and the *Circular on Several Issues of Regulation on Branches of Insurance Companies* (the "CIRC Circular"), to strengthen supervision on branches of insurance companies. The CIRC Measures and the CIRC Circular came into effect on May 25 and June 10 respectively.

Subsequent to supervision over insurance companies and insurance intermediary institutions on a category-by-category basis last year, the CIRC Measures provided that CIRC shall further regulate and supervise branches of insurance companies (including branch companies, central sub-branch companies, sub-branch companies, sales centers and sales service centers) by different classifications. The local CIRC offices shall adopt different measures for the administration of insurance branches according to the four categories A, B, C &D they fall into, which are classified based on their operational risk indicators, compliance risk indicators, internal control risk indicators and other information obtained during routine supervision. For instance, institutions assessed as category D will be temporarily prohibited to establish new branches or carry out the business violating relevant regulations.

The CIRC Circular spells out the following issues with respect to regulation and supervision of branches of insurance companies: (i) regulation and supervision on sales service centers and in-charge persons thereof; (ii) approval authority for the establishment of provincial branches of domestic insurance companies (i.e., CIRC); (iii) approval procedures for restructuring of branches (among which, the CIRC Circular clarified that the restructuring from a foreign-invested insurance company branch into a branch company, central sub-branch, sub-branch or sales center shall be subject to CIRC's approval and the restructuring into a sales service center shall be subject to the local CIRC offices' approval); and (iv) definition of material administrative penalty in *Regulations on Administration of Insurance Companies*.

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