

China Regulatory Updates

September 2009

Table of Contents

1. Granting of Land for Industrial Use Further Regulated	1
2. PRC Tax Authority Tightens up Supervision over Cross-Border Related Party Transactions	1
3. Experimental Consumer Finance Companies Permitted	2
4. A Series of Insurance Rules Coming Out Soon.....	3
5. Supporting Rules for the <i>PRC Food Safety Law</i> Issued	4
6. Eligible Financial Leasing Companies and Auto Financing Companies Permitted to Issue Financial Bonds	4
7. Draft Regulations on Price Monopoly Released for Public Comments.....	5

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1. Granting of Land for Industrial Use Further Regulated

On August 10, 2009, the PRC Ministry of Land and Resources and the PRC Ministry of Supervision jointly issued the *Circular on Further Implementing the Rules on the Granting of Land for Industrial Use* (the “Circular”). The Circular has further specified the application scopes of the two alternative methods to grant land for industrial use, i.e., through public trading process (*including public bidding, auction and quotation*) or by contractual arrangements, as follows:

- (a) Public trading process is mandatorily required where the land is provided by the government and transformed from agriculture-use land or collectively-owned land after duly approved; and
- (b) Granting by agreements is allowed where: (i) the land has been allocated or leased to the proposed grantee before the granting, provided that the granting is compliant with the land planning and duly approved; or (ii) the grantee is the landlord of an existing industrial project which needs to be relocated as a result of the implementation of old urban area renovation plan, provided that the granting should be compliant with the national industry policies and approved by the competent authorities; or (iii) the land is used for surface production or tailing heap for sectors such as mining, quarrying, sand quarrying and saltpan.

In addition, the Circular has also addressed certain practical issues such as aborted auctions in certain regions due to the current global economic recession and delays in the land grant premium payment and construction process.

2. PRC Tax Authority Tightens up Supervision over Cross-Border Related Party Transactions

The PRC State Administration of Taxation has recently issued a circular to strengthen the supervision and investigation over cross-border related party transactions, with an aim to prevent multinational companies from evading taxes by transferring losses to their affiliates in China.

According to such circular, multinational companies' Chinese affiliates with limited functions (*such as supplied material processing or imported material processing, distribution or contractual R&D*) should not assume risks arising from the financial crisis in terms of market and decision-making. Accordingly, these entities should maintain a reasonable level of profit pursuant to the principle of reasonable transfer pricing under which the functions and risks of such entities should commensurate with their profitability.

3. Experimental Consumer Finance Companies Permitted

On August 13, 2009, the China Banking Regulatory Commission ("**CBRC**") circulated the *Trial Measures for the Administration of Consumer Finance Companies* (the "**CFC Rules**") in an effort to strengthen the role of financial vehicles in stimulating the domestic consumption. The CFC Rules have taken effect upon issuance.

According to the CFC Rules, consumer finance companies ("**CFCs**") are non-banking financial institutions and only concentrate on providing consumer loans to PRC individuals (excluding loans for real estate and auto purchase). CFCs are not allowed to accept public deposits and their startup funds should mainly come from their registered capital. Along with the expansion of their business, CFCs will be gradually allowed to issue bonds or borrow from banks. The qualified principal investor of a CFC should: (i) be a domestic or foreign financial institution or other investor approved by CBRC; (ii) have experiences in the field of customer financing for more than five years; (iii) possess total assets of no less than RMB60 billion or an equivalent amount of freely convertible currencies at the end of the latest year; and (iv) meet other requirements with respect to financial conditions, goodwill, and etc. The CFC Rules have also specified the minimum registered capital amount, business scope, regulatory standards and the protection measures of borrowers with respect to CFCs.

It is reported that CBRC will initiate a CFC pilot program in Beijing, Tianjin, Shanghai and Chengdu. If the pilot program is proved successful, more CFCs can be seen in more cities. Given the high threshold for CFC establishment, only large financial institutions can probably get involved in the consumer financing business in China in the future.

4. A Series of Insurance Regulations Coming Out Soon

The China Insurance Regulatory Commission (“CIRC”) is reported to have completed drafting the amendments to *the Measures for the Administration of Insurance Companies* (the “Rules on Insurance Companies”) and two administrative measures on the investment in real property and private companies with insurance funds. CIRC are now making wide request for comments for the aforesaid drafts.

Compared with the original version that are currently effective, on the one hand, the revised Rules on Insurance Companies under draft are shorter and only have five chapters, with the sections on the investment in insurance companies, insurance fund application and insurance company’s solvency deleted. On the other hand, the revised rules have set higher solvency standards for insurance companies to set up a branch. Moreover, an insurance company with inadequate solvency level will be subject to close monitoring by CIRC.

The revised Rules on Insurance Company have further emphasized that a qualified principal investor of an insurance company should have (i) the ability to be sustainable profitable, (ii) no record of material violation of applicable regulations and rules in the latest three years, and (iii) a net asset of no less than RMB200 million. The change of the shareholders holding 5% or more equity interest in an insurance company is subject to the approval by CIRC or its local offices.

As an echo to the spirit of policy holder protection under the revised *PRC Insurance Law*, the revised Rules on Insurance Company under draft have also incorporated relevant provisions accordingly.

In addition, according to the latest news reports, CIRC is speeding up the drafting process of the administrative measures on investment in real property and private companies with insurance funds, the formal versions of which are expected to come out the soonest prior to October 1, 2009, or by the end of this October.

5. Supporting Rules for the RPC Food Safety Law Issued

Further to the *Implementing Regulations for the PRC Food Safety Law*, the PRC State Administration for Industry and Commerce has recently issued and effectuated two supporting rules of the *PRC Food Safety Law*, i.e., the *Measures for the Administration of Food Circulation Permits* and the *Measures for the Supervision and Administration of Food Safety in Circulation Links* (collectively, the “Food Safety Rules”).

The Food Safety Rules have addressed in details quite a lot of issues in connection with the administration of food safety throughout the distribution process of food products. The Food Circulation Permit (or currently effective Food Hygiene Permit) and the Business License are mandatorily required for the operation of food distribution and circulation. The Food Safety Rules have also set out detailed requirements, procedures and penalties in connection with the Food Circulation Permit as well as specific requirements and regulatory measures to be followed by food business operators.

6. Eligible Financial Leasing Company and Auto Financing Company Permitted to Issue Financial Bonds

The People’s Bank of China (“PBOC”) and CBRC have jointly issued a public notice (the “Notice”) recently, allowing qualified financial leasing companies and auto financing companies (collectively, the “Issuer”) to issue financial bonds.

According to the Notice, the Issuer should satisfy the following requirements, among others: (i) the amount of registered capital is no less than RMB500 million (for financial leasing companies) or RMB800 million (for auto financing companies); and (ii) the capital adequacy ratio should be no less than 8% after the issuance of the financial bonds. CBRC is responsible to examine the Issuer’s qualification for bond issuance, while PBOC is in charge of the supervision and administration of the issuance and exchange of financial bonds.

The Notice has for the first time provided sound legal basis for the financial leasing companies and auto financing companies to issue financial bonds, and will be helpful to expand their financing channels.

7. Regulations on Price Monopoly Released for Public Comments

On August 12, 2009, the PRC National Development and Reform Commission released the draft *Provisions on Anti-Price Monopoly* (the “Draft Provisions”) for public comments.

According to the Draft Provisions, price monopoly behaviors include price monopoly agreements and abuse of dominant market position. Furthermore, if any administrative authority or other organization that is duly authorized to manage public affairs abuses its powers to exclude or restrict competitions in terms of price, the Draft Provisions should also apply.

The Draft Provisions intend to regulate price monopoly behaviors conducted both at home and abroad and have provided detailed rules for implementing authorities to follow.

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