瀚一律师事务所
HAN YI LAW OFFICES

China Regulatory Updates

November 2010

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- *Unique player in the PRC legal service market*
- *Simplicity, but always with a focus on key points and attention to details*

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- *Constant Self-Improvement Towards Perfection*

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INDUSTRIAL GUIDANCE

State Council Issues Rules to Promote Seven Emerging Industries

The State Council has recently issued the *Decision on Accelerating the Cultivation and Development of Emerging Strategic Industries* (the "Decision"), which clarifies the importance of the development of emerging strategic industries and defines the scope, development direction of and policy support for such emerging industries. In addition, the Decision sets a target for the emerging strategic industries that by 2015, such industries will account for approximately 8% of total GDP.

According to the Decision, the seven emerging industries include energy saving and environmental protection, new generation of information technology, biology, high-end equipment manufacturing, new energy, new material, and new energy vehicles.

The Decision calls for the improvement of the *Catalogue for Guidance of Foreign Investment Industries*, encourages foreign investments in emerging strategic industries and put in place various policy support: (i) to set aside special-purpose funds for the development of emerging strategic industries, and to seek to improve taxation support policies; (ii) to encourage financial institutions to strengthen credit support, and to actively promote IPR pledge financing, industrial chain financing and other financial product innovations; and (iii) to make great efforts to develop the bond market, and to actively explore and develop high-yield bonds with low credit rating, privately-placed convertible bonds and other financial products; and (iv) to make great efforts to develop venture capital and private equity funds, and to create conditions for insurance companies, social security funds, enterprise annuity administration agencies and other institutional investors to invest in emerging industry venture capital and private equity funds, to the extent that risks are under control, and to expand the scale of emerging industry venture capital investments of the government.

SECURITIES

Transfer Exemption for State-Owned VC Investments

Several departments under the State Council have recently jointly issued a circular (the "Circular"), pursuant to which a qualified PRC state-owned venture capital investment entity or PRC state-owned venture capital investment guidance fund (the "State-Owned VC Fund") may apply for exemption of transfer of the PRC state-owned shares held by it in a qualified non-listed small and medium enterprise (i.e., *an enterprise with employees not exceeding 500, annual turnover not exceeding RMB200 million, and total assets not exceeding RMB200 million*; the "SME") to the National Council for Social Security Fund (the "SSF") at IPO of such SME. Previously, where a SME with PRC state-owned shares proposes to effect an IPO on a domestic stock exchange, its PRC state-owned investors shall transfer a portion of the state-owned shares held by them equal to 10% of the all outstanding shares of the SME to SSF at the IPO.

According to the Circular, only the State-Owned VC Funds which are established and operated under the *Interim Measures on the Administration of Venture Capital Investment Enterprises* (generally with the words "venture capital" in its name) or the *Guidelines for the Proper Establishment and Operation of Venture Capital Investment Guidance Funds* may, prior to the IPO of its invested SME, apply to the Ministry of Finance for exemption of transfer of the state-owned shares held by them.

We understand that the issuance of the Circular is to encourage the State-Owned VC Funds to make investments in SMEs. However, as the State-Owned VC Funds currently tend to invest in larger scale projects rather than SMEs, the Circular may only have a limited impact on investment decisions by many State-Owned VC Funds.

CSRC Further Reforms the Issuing System for New Shares

In order to further reform the issuing system for new shares, the CSRC recently promulgated the *Guidance Opinions on Further Reforming the Issuing System for New Shares* and the *Decision on Amending the Measures on Regulating Issuance and Underwriting of Shares*.

This reform is aimed at enhancing the reasonableness of issuing prices of new shares and at repressing high issuing prices. Major measures taken by this reform are as follows: to improve the constraint mechanism for quotation, subscription and allotment; to enlarge the scope of book-building participants and add new institutional investors to participate in offline book-building; to enhance the transparency of pricing information and require lead underwriters to disclose detailed information regarding quotation prices made by institutional investors; and to improve the clawback and suspension mechanisms. Relevant measures have become effective as of November 1, 2010.

TAX

China Unifies Urban Maintenance and Construction Tax and Education Surtax System for Domestic and Foreign Enterprises and Individuals

The State Council has recently issued a circular (the “Circular”), to levy urban maintenance and construction tax and education surtax on foreign-invested enterprises (the “FIEs”) and foreign individuals from December 1, 2010. According to the Circular, all FIEs, foreign enterprises and foreign individuals subject to value added tax, consumption tax and business tax are obliged to pay urban maintenance and construction tax and education surtax. Prior to the issuance of the Circular, urban maintenance and construction tax and education surtax were only levied against domestic companies and PRC individuals while FIEs and foreign individuals were exempted from such taxes and fees. Issuance of this Circular is a further step of China’s efforts to unify its taxation system for both domestic PRC enterprises and FIEs.

GENERAL CORPORATE

SAIC Issues Measures for Supervision and Punishment of Illegal Contractual Acts

SAIC recently issued *the Measures for the Supervision and Punishment of Illegal Contractual Acts* (the “Measures”), which further refined and clarified relevant provisions of *the Contract Law of the PRC*, *the Law of PRC on the Protection of Consumer Rights and Interests* and relevant laws, and provided a legal basis and guidance for SAIC offices in supervising relevant illegal contractual acts.

The Measures enumerate three categories of illegal contractual acts. The first category is contract frauds, the second is the contractual acts which damage the interests of the state or public, and the third is illegal contractual acts in connection with standard clauses. With respect to the third category, the Measures specifically provide that a business operator shall not, through a standard contract clause, exclude a consumer’s right to interpret and file a lawsuit for disputes over standard contract clauses.

According to the Measures, for those illegal contractual acts on which relevant laws and regulations are silent, a punishment such as a warning and/or a fine, which is generally capped at RMB30,000, may be imposed by a competent SAIC office.

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