

# China Regulatory Updates

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## 1. PRC Insurance Law Amended

The newly amended *Insurance Law of the PRC* (the “New Insurance Law”) was adopted on February 28, 2009, which will take effect as of October 1, 2009.

Highlights of this round of amendment are as follows:

- (a) The investment channels of insurance funds will be expanded. Trading of non-governmental and non-financial bonds, stocks and securities investment fund units as well as investment in real estate will be added into the current investment scope of insurance companies (*please refer to the September 2008 Issue of Han Yi China Regulatory Updates for more details*).
- (b) The qualifications of shareholders and senior managers of insurance companies have been specified, among which the major shareholders should (i) possess sustainable profit-making ability and goodwill; (ii) have no record of serious violation of laws and regulations within the last 3 years; and (iii) have a net asset of no less than RMB200 million.
- (c) Major provisions with respect to the insurance contract have been amended, covering, among others, the disclosure obligation of the insurance applicant, the explanation obligation of the insurer, effectuation of the insurance contract, the incontestable clause in the insurance contract and specific settlement criteria of property insurance claims and personal insurance claims.

## 2. Income Tax on QFII Specified

The PRC State Administration of Taxation (“SAT”) has recently released a circular (“Circular”) on the enterprise income tax payable by QFIIs for dividend and interest income received from entities domiciled in the PRC. According to the Circular, a 10% withholding tax will be levied on all dividend and interest incomes when they are distributed to QFIIs by any PRC-registered entity, subject to more favorable tax treaty provisions which the QFIIs will need to apply specifically to the relevant SAT office however. The Circular has further emphasized the timely supervision by local SAT offices on QFIIs' investment activities and tax payments.

### 3. SAT Clarifies Tax Withholding Obligations for Non-Resident Enterprises

The SAT has recently promulgated the *Interim Measures for the Administration of Income Tax Withholding at Source on Non-Resident Enterprises* (the “Measures”) to prevent the increasing draining off of income tax payable by non-resident enterprises. The Measures became effective on January 1, 2009. Income tax withholding at source provided in the Measures means in the case of cross-boarder payment, PRC domestic payers are responsible to withhold the income tax payable by non-resident enterprises for their income received from China in connection with dividends, capital bonus, interests, rentals, royalties and property transfer.

The following two points from the Measures are noteworthy:

- (a) Domestic payers are required to file with competent tax authority with respect to the conclusion of, amendment or supplement to a contract by and between such payers and any non-resident enterprise.
- (b) as to an offshore transfer between two non-resident enterprises of the equity in a domestic company, the Measures provided that: (i) the selling non-resident enterprise should, by itself or through the agent delegated by it, declare and pay the income tax; (ii) the tax should be paid to the local SAT office where the domestic target company is duly registered; and (iii) the domestic target company should submit a copy of the underlying equity purchase agreement to the local SAT office when it applies for change of tax registration, and assist the local SAT office to collect tax payable by the non-resident enterprise.

The Measures also reaffirm that: (i) unless otherwise provided in applicable tax law, no tax and fee deduction is permitted from the income in connection with dividends, capital bonus, interests, rentals, royalties and property transfer; (ii) non-resident enterprises are subject to more favorable tax treaty provisions for which they will need to apply to the relevant SAT office specifically; and (iii) if the domestic payer should bear the income tax according to relevant contract, the income after tax should be converted into tax-inclusive income when calculating the taxable amount.

#### **4. MOFCOM Adds Two Compliance Requirements for FIEs**

The PRC Ministry of Commerce (“MOFCOM”) has recently promulgated the *Circular on Improving the Statistic Work of Land Use by Foreign Invested Enterprise*, and, together with the PRC Ministry of Environmental Protection, jointly issued the *Circular on Improving the Statistic Work of Energy Conservation and Environmental Protection by Foreign Invested Enterprise*. Pursuant to the two circulars, foreign invested enterprises (“FIEs”) will be required to submit approvals issued by the competent land administration authority and environmental impact evaluation documents from environment protection authority when processing setup applications or any change of an FIE. The MOFCOM offices should increase two compliance requirements in the administrative approval system based on the documents submitted by FIEs, which are named as “land economical and intensive utilization” and “environmental protection”.

The land economical and intensive utilization includes total investment amount of fixed assets, land area, building area, land used for administration and life service, building and structure area and green area. The environmental protection includes the approval authority and approval code in the environmental impact evaluation documents, capital invested in environmental protection by FIEs, annual discharge amount of sulfur dioxide, discharge amount and oxygen demand of chemical substances by FIEs.

It is noteworthy that the land economical and intensive utilization and environmental protection compliance requirements will mainly apply to real estate FIEs and manufacturing type of FIEs as a practical matter.

#### **5. Supervision on Securities Investment Trust Business Strengthened**

Recently, the China Banking Regulatory Commission (“CBRC”) circulated the *Operating Guidance for Securities Investment Trust Business of Trust Companies* (the “Guidance”), in order to strengthen and regulate the supervision on securities investment trust business conducted by trust companies.

The Guidance emphasizes that trust companies should conduct the securities investment with funds trusted by themselves. They may engage outside investment advisors, but such investment advisors may not directly carry out the investment decisions for the trust companies. The service fees paid by trust companies to such investment advisors should come from trust companies' management fees and performance fees. Rules and procedures in respect of the engagement of the investment advisor should be reported to the CBRC (or its local offices) by trust companies. Pursuant to the Guidance, the investment advisor to the securities investment trust plans should have a paid-in capital of no less than RMB10 million and should not be any affiliate of the trust company.

According to the Guidance, trust companies may only charge management fees and performance fees against their management and investment services. No performance fee is payable until the termination of relevant trust plan with actual profits.

The Guidance further provides that trust companies should not warrant in any form with respect to: (i) zero loss of the funds trusted; (ii) minimal return of the funds trusted; or (iii) expected return rate of the trust products.

## **6. Ten Major Industrial Sectors Get Government Stimulus**

On February 25, 2009, the executive meeting of the PRC State Council approved the stimulus plans for 10 major industrial sectors (the "Plans"). The 10 sectors include iron and steel, auto, textiles, equipment manufacturing, shipbuilding, electronics and information technology, light industry, petrochemicals, nonferrous metals and logistics.

The Plans will stimulate China's economy and promote industrial upgrade of the concerned industries mainly through 4 methods: (i) reducing the tax burdens of relevant companies; (ii) expanding financing channels and increasing credit quotas; (iii) encouraging independent innovation; and (iv) encouraging industrial structure adjustment and upgrade, M&As and restructurings by enterprises in such sectors.

The specific implementing rules to the Plans are reportedly under draft and will be circulated soon.

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