



# China Corporate Bulletin

Welcome to White & Case’s monthly China Corporate Bulletin. This bulletin covers recent corporate regulatory developments and news in the PRC and Hong Kong, ensuring you stay up to date on the latest market issues.

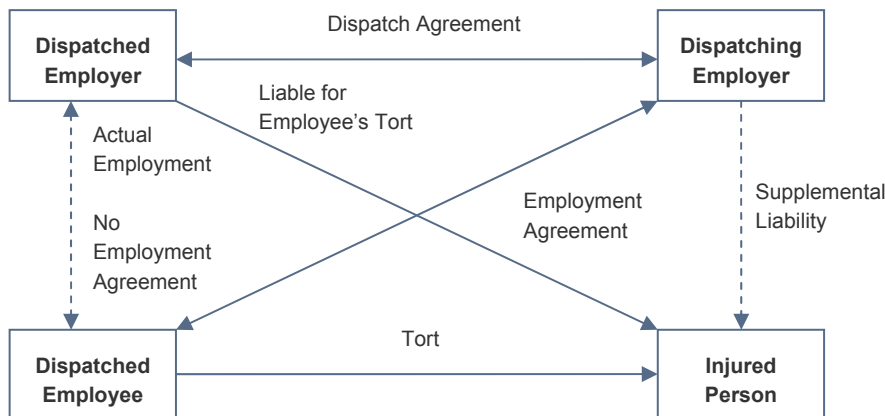
## Company Related Issues of Draft Tort Law

The Legal Affairs Committee of National People’s Congress (“NPC”) issued the Draft Tort Law and sought public comments from November 6, 2009 to December 5, 2009. Although the Draft Tort Law is the first Chinese statute on tort, tort related provisions currently exist in many laws and regulations, such as the General Principle of Civil Law, Product Quality Law, Food Safety Law, Environmental Protection Law etc.

The Draft Tort Law is a combination of existing tort law fragments and a few new rules that cover almost every kind of tort. However, its provisions are currently somewhat vague. Below are two issues in the Draft Tort Law that may be relevant to a foreign-invested companies’ operations.

### ■ Tort of Dispatched Employee

A “dispatched employee” is a person who enters into an employment contract with a labor agency (the “dispatching employer”), but works under the direction and supervision of a company that accepts the dispatch (the “dispatched employer”). (Employees hired through labor services companies such as FESCO are “dispatched employees.”) Article 34 of the Draft Tort Law provides that during the dispatch term, if the dispatched employee causes economic loss or physical harm to other people during the performance of his/her duties, the dispatched employer shall bear the liability. If the dispatching employer is at fault, it shall bear supplementary liability. The draft fails to define “fault” in this instance.



White & Case LLP is a leading global law firm with lawyers in 36 offices in 25 countries. Whether in established or emerging markets, the hallmark of White & Case is our complete dedication to the business priorities and legal needs of our clients.

If you have questions or comments regarding this bulletin, please contact:

Seung Chong  
Partner  
+ 852 2822 8422  
schong@whitecase.com

John Leary  
Partner  
+ 86 21 6132 5910  
jleary@whitecase.com

Jeremy Leifer  
Partner  
+ 852 2822 8753  
jleifer@whitecase.com

Vivian Tsoi  
Partner  
+ 86 10 5912 9620  
vtsoi@whitecase.com

## ■ Punitive Damages for Product Defects

Article 47 of the Draft Tort Law provides that if a manufacturer or a seller clearly knows that the products have a defect and it still manufactures or sells the defective products, a person who dies or is injured by the defective products can claim punitive damages. This article does not provide a cap on the amount of the punitive damages, whereas such limitation exists in the previous provisions in Food Safety Law and the Law on Protection of Consumer Rights and Interests.

More detailed provisions and implementation rules are required to effectively implement the Draft Tort Law. The Draft Tort Law may be reviewed and revised a few times by the Legal Affairs Committee of the NPC, and final approval by the Standing Committee of the NPC is required before the Tort Law can take effect.

Please see the full text of the Draft Tort Law through the following link: [http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2009-11/06/content\\_1525914.htm](http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2009-11/06/content_1525914.htm)

Please note that the above link is in Chinese.

## Implementation of Phase 2 of New Post-vetting Regime

On 30 October, 2009, the Hong Kong Stock Exchange (“SEHK”) announced that it would amend the Listing Rules to cease the pre-vetting of listed issuer’s announcements for major transactions and connected transactions. The amendments will take effect from January 1, 2010. Phase 1 of the new post-vetting regime, which removed from the Listing Rules pre-vetting requirements for other categories of announcements, including share/discloseable transactions and issues of securities, commenced on 1 January 2009.

### Background

The impetus for the shift to a post-vetting regime for all announcements has several sources, but the SEHK expressed particular concerns in its original Consultation Paper published in January 2008, that set out its proposals for post-vetting as follows:

- Misallocation of responsibility for corporate disclosures: The SEHK stated that it was a listed issuer’s responsibility to take all reasonable care to ensure that information disclosed in its announcements was complete and not false, misleading or deceptive, and that it complied with the requirements of the Listing Rules. Extensive pre-vetting by the SEHK raised a concern about over-reliance by a listed issuer on the commenting process to deal with sub-standard initial drafts and other compliance issues.

- Delay in dissemination of information by a listed issuer to the market: The SEHK stated that announcements were often prepared under a tight schedule and needed to be issued on a timely basis. Delay in information dissemination increased the frequency and duration of suspensions of trading. The reliance on the pre-vetting process as a means of dealing with disclosure and other compliance issues inevitably delayed information dissemination.

This expressed the position under the Listing Rules that the responsibility for disclosure of information and compliance with the Rules rests firmly with the listed issuer and its directors.

Against this background, the SEHK has said previously that the objective of the proposed changes is to further shift its regulatory focus from pre-vetting towards post-vetting, monitoring and enforcement, and that in respect of announcements, it has adopted a progressive phased approach to reduction of pre-vetting activities for different types of listed issuers’ announcements. The SEHK’s intention is to completely cease pre-vetting of all announcements of listed issuers but to maintain the pre-vetting of material shareholder circulars of listed issuers.

### Phase 2

Phase 2 of the post-vetting regime will see issuer’s announcements for major transactions and connected transactions (including continuing connected transactions) being removed from the pre-vetting regime by amending rule 13.52 of the Main Board Listing Rules and rule 17.53 of the GEM Listing Rules. As from 1 January, 2010, announcements falling within these categories of transactions will no longer be required to be submitted to the SEHK for review before issue.

### Survey of Post-vetting Regime under Phase 1

The SEHK has commented that following the implementation of Phase 1 of the post-vetting regime, a “majority of the post-vetted announcements (96 percent) required no follow up or no further action given the issuers’ responses to the [SEHK’s] initial enquiry. Most issuers were able to comply with the Listing Rules when they announced their transactions under the new regime.” This is a very positive outcome which suggests a high level of continued compliance after the implementation of Phase 2.

### Proposed Implementation of Phase 3

Following the implementation of Phase 2, the SEHK anticipates that it will take a further 12 months for the final phase of the regime, Phase 3, to be implemented. Phase 3 would move all remaining categories of announcements into the post-vetting regime.

# Corporate at White & Case

As advisers to multinational corporations, private equity and venture capital firms and governments, White & Case is at the forefront of structuring and executing domestic and cross-border transactions. We have built a reputation for completing groundbreaking transactions with precision and speed and have worked on high-profile multibillion-dollar deals across the globe.

Our market leading corporate practices have had the pleasure of receiving industry accolades including:

- Tier One Global Corporate/M&A Practice—*Chambers Global*, 2008
- One of the Top Ten Law Firms for Global M&A 2007—*Thomson Financial/Bloomberg*
- Business Services sector M&A law firm of the year 2007—*Financial Times* and *Mergermarket M&A Awards*
- One of the Top Ten Capital Markets Practices 2007—*Bloomberg*

## Our Firm

White & Case is a leading global law firm with lawyers in 36 offices across 25 countries. We advise on virtually every area of law that affects cross-border business and our knowledge, like our clients' interests, transcends geographic boundaries. Our lawyers are an integral, often long-established part of the business community, giving clients access to local, English and US law capabilities plus a unique appreciation of the political, economic and geographic environments in which they operate. At the same time, working between offices and cross-jurisdiction is second nature and we have the experience, infrastructure and processes in place to make it happen effortlessly.

We work with some of the world's most well-established and most respected companies—including two thirds of the *Global Fortune 100* and half of the *Fortune 500*—as well as start-up visionaries, governments and state-owned entities. Some of our independent accolades include:

- Top International Law Firm 2008—*Chambers Global 2008*
- Latin America Corporate Finance Deal of the Year 2008—*Latin Lawyer*
- Asia Restructuring Deal of the Year 2009—*International Finance Law Review*
- Best Leveraged Financing 2008—*FinanceAsia*
- India M&A Deal of the Year 2008—*India Business Law Journal*
- Named a Top Global Arbitration Firm 2008—*Global Arbitration Review*
- Ranked Among Top Global M&A and Private Equity Legal Advisors 2008—*mergermarket, Bloomberg and Thomson Reuters*
- Top Global Bankruptcy Law Firm 2008—*The Deal*

ABU DHABI ALMATY ANKARA BEIJING BERLIN BRATISLAVA BRUSSELS BUCHAREST BUDAPEST DOHA DÜSSELDORF FRANKFURT  
GENEVA HAMBURG HELSINKI HONG KONG ISTANBUL JOHANNESBURG LONDON LOS ANGELES MEXICO CITY MIAMI MOSCOW MUNICH  
NEW YORK PALO ALTO PARIS PRAGUE RIYADH SÃO PAULO SHANGHAI SINGAPORE STOCKHOLM TOKYO WARSAW WASHINGTON, DC

This bulletin is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons.

This bulletin should not be acted upon in any specific situation without appropriate legal advice and it may include links to websites other than the White & Case website.

White & Case has no responsibility for any websites other than its own and does not endorse the information, content, presentation or accuracy, or make any warranty, express or implied, regarding any other website.

This bulletin is protected by copyright. Material appearing herein may be reproduced or translated with appropriate credit.

[www.whitecase.com](http://www.whitecase.com)

In this bulletin, White & Case means the international legal practice comprising White & Case LLP, a New York State registered limited liability partnership, White & Case LLP, a limited liability partnership incorporated under English law and all other affiliated partnerships, corporations and undertakings.

© 2009 White & Case LLP