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China Finance Bulletin

Welcome to this month's issue of White & Case's China Finance Bulletin. The bulletin offers you regular updates of the PRC finance sector ensuring you stay up to date with the latest legal, regulatory and practice developments.

Bank Regulation and Finance

CBRC may extend bank lock-up period to five years

As part of its continuing effort to assert greater control over foreign strategic investments in Chinese banks, Liu Mingkang, the chairman of China Bank Regulatory Commission (CBRC), said at a meeting held at the Chinese Academy of Social Sciences on March 31, 2009, that the lock-up period for foreign investors investing in domestic banking institutions will be extended from three years to five years. Although there is not yet any published regulation, such statement has alerted domestic banks, their existing foreign investors and prospective investors.

It is thought that CBRC's new policy, if implemented, likely will not affect the large state-owned banks which are already publicly listed and their foreign investors. However, it is uncertain how the proposed new policy would impact the going-public plans of Agricultural Bank of China (ABC), the last unlisted member of China's big four state-controlled banks. The other three state-controlled banks, Industrial and Commercial Bank of China (ICBC), Bank of China (BoC) and China Construction Bank (CCB), had all brought on board foreign strategic investors before they were listed publicly.

In addition, the proposed new policy would affect many of China's domestic, provincial-level commercial banks and their prospective investors. Only a few such local commercial banks such as Bank of Ningbo and Bank of Beijing are listed publicly. The overwhelming majority of these banks have plans to line up pre-IPO foreign strategic investments before they go ahead with their listing plans. The proposed five-year lock-up period, together with the other new restrictive measures put forward by the Ministry of Finance (MOF) and CBRC recently, would very likely dampen the enthusiasm of interested foreign investors to make pre-IPO investments in the PRC banks.

On a related note, the most recent restrictive measure that affects prospective foreign strategic investors' decision to invest in China's domestic banks is the *Administrative Measures on the Transfer of State-Owned Assets in Financial Enterprises* (the "Measures") released by the MOF in March 2009, which will come into effect on May 1, 2009. Under the Measures, when a state-owned enterprise sells its shares in a listed financial enterprise, if the shares sold are more than 5% of the total issued share capital of the relevant listed financial enterprise in the aggregate within a financial year, such transfer must first be approved by MOF (or its applicable local counterpart) before implementation. Please refer to our previous issue of the China Finance Bulletin for more information.

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

Karen Tang
Partner
+ 86 21 6132 5916
ktang@whitecase.com

Steve Payne
Partner
+ 86 10 5912 9602
spayne@whitecase.com

Guan Feng Chen
Partner
+ 852 2822 8738
gchen@whitecase.com

Real Estate

Fees may be charged for renewal of land lease

The draft amendments to the *PRC Land Administration Law* (the “**Draft Amendments**”) have been released in mid-March 2009 for review and comment by the various land bureaus. The Draft Amendments throw into question whether residential leaseholds, previously granted on a 70-year term, can be renewed automatically without payment of any additional fee or conditions attached.

Under the current PRC Land Administration Law, residential leaseholds are “automatically renewed at no cost” upon the expiration of the 70-year term. In contrast, the Draft Amendments provide that residential leaseholds will be “automatically renewed in accordance with the relevant requirements of the State”. Such change in wording begs the question whether under the new provisions, fees will be charged for the renewal of residential leaseholds. It is also unclear whether any other condition will be imposed as pre-requisites for renewal of residential leaseholds, but the proposed wording certainly provides the relevant governmental departments the flexibility to impose conditions if they so choose.

Please refer to an article reporting on the Draft Amendments at: <http://policy.mofcom.gov.cn/section/news!fetch.html?id=CXW0006459>. Please note this link is to a Chinese language website.

SAFE Rules

SAFE sets short-term foreign debt quotas for financial institutions in 2009

On March 17, 2009, the State Administration of Foreign Exchange (**SAFE**) promulgated the *Notice on the Determination of Short-term Foreign Debt Quotas for Financial Institutions in 2009* (the “**Notice**”) with the main objective of stimulating trade financing. The Notice sets forth the short-term foreign debt quotas (“**Quotas**”) for financial institutions for the year 2009 (from April 1, 2009 to March 31, 2010). “Short-term foreign debts” are foreign debts with maturities of less than one year. The Notice increases the current Quotas by 13%. This marks the first increase of such Quotas after two consecutive years of quota slashing in 2007 and 2008.

The Notice contains the following key provisions:

1. The aggregate amount of Quotas granted for 2009 is US\$32,876,000,000. Quotas of nationwide domestic banks, which are under the administration of central SAFE, are US\$9,855,000,000. Quotas of certain incorporated foreign banks and foreign bank branches, which are under the administration of central SAFE, are US\$14,573,000,000. Quotas for incorporated foreign banks and foreign bank branches, which are under the administration of local SAFE, are US\$8,448,000,000.

2. All short-term foreign debts of financial institutions shall be subject to the applicable Quotas save for certain specified exceptions, such as letters of credit that are accepted but not yet paid within 90 days.
3. The increased Quotas in 2009 must be used solely to finance the import and export trading business of domestic enterprises.
4. In the case of a financial institution which is applying to a local SAFE for the relevant Quota for the first time, the local SAFE should grant a Quota which is no more than two times of such institution’s foreign exchange working capital or two times of such institution’s capital.
5. Quotas for small-scale financial institutions will be administered by local SAFE accordingly.

For more information please visit: http://www.safe.gov.cn/model_safe/laws/law_detail.jsp?ID=804020000000000000,45&id=4. Please note this link is to a Chinese language website.

Market News

Lending by Chinese banks reaches new high; CBRC emphasises risk management measures

Lending by Chinese banks has seen record-setting growth in the first quarter of 2009. Since CBRC lifted the annual lending quotas of domestic banks last November, lending by Chinese banks has seen a continuous increase. The total amount of new loans from Chinese banks for the first quarter of 2009 reached a whopping RMB 4 trillion, just RMB 1 trillion short of the RMB 5 trillion full-year target set by Premier Wen Jiabao earlier this year.

Amidst such lending growth, CBRC has emphasized the importance of risk management measures. In the same meeting at the Chinese Academy of Social Sciences referred to in the first article of this Bulletin, CBRC chairman Liu Mingkang highlighted the current regulatory requirements for capital adequacy ratio and loan loss provision coverage ratio of major domestic banks. Major domestic banks are now required to maintain a capital adequacy ratio of not less than 12%. They are also required to raise their loan loss provision coverage ratio to 150% by the end of 2009.

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- Tier One for China Banking & Finance (Foreign Firms)—*Asia Pacific Legal 500*, 2009
- Tier One for Global Banking & Finance—*Chambers Global*, 2008
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