



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.

New Guidance on Commercial Banks' Capital Adequacy

In early December 2009, the China Banking Regulatory Commission (**CBRC**) issued the Guidance on Monitoring and Inspection of the Capital Adequacy Ratio of Commercial Banks (the "**Inspection Guidance**") and the Guidance on Disclosing the Capital Adequacy Ratio of Commercial Banks (the "**Disclosure Guidance**" and together with the Inspection Guidance, the "**Guidance on Capital Adequacy**"). The Guidance on Capital Adequacy only applies to commercial banks that are subject to the new Basel II Accord. This includes both banks that are required to adopt the new Basel II Accord (primarily large commercial banks with substantial international business) and banks that voluntarily adopt the Basel II Accord. The Inspection Guidance took effect on January 1, 2010 and the Disclosure Guidance will take effect on January 1, 2011.

Inspection Guidance

The Inspection Guidance urges commercial banks to improve their risk management system by closely monitoring their capital base and risk exposure and ensuring that the risk exposure is covered by sufficient capital. To achieve this goal, banks are required to set up internal appraisal procedures for measuring their capital adequacy. CBRC will monitor and inspect the banks' application of their internal appraisal procedures and evaluate their capital planning and ability to satisfy the capital adequacy ratios. If CBRC determines that a bank does not have sufficient capital to cover its risk exposure based on CBRC's inspection findings, CBRC may either order the bank to restrict its loan growth and/or withhold its approval of the bank's new product lines, if applicable.

Disclosure Guidance

The Disclosure Guidance introduced a unique way of addressing concerns surrounding the capital adequacy of commercial banks. Under the Disclosure Guidance, banks are required to disclose to the public a range of information regarding their capital base and capital adequacy, regardless of whether such banks are listed public companies or not.

Summarized below are key provisions of the Disclosure Guidance:

- Commercial banks must disclose to the public the composition of their capital, their capital adequacy ratios, the methodology used to calculate such ratios, the internal risk control protocol and other related information. Should the banks decide not to make the full requisite disclosure on the ground that the information withheld from the public only relates to a specific project and must be kept confidential, the banks must provide the public with full explanation as to why the information is considered confidential and cannot be disclosed.
- Depending on the type of information, banks are required to disclose the information either quarterly, semiannually, annually or at such other time as necessary. For example, banks should disclose the amount of their core capital and the capital adequacy ratios on a quarterly basis while any change in paid-in capital must be disclosed in real time.

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:

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

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

John Shum
Partner
+ 852 2822 8748
jshum@whitecase.com

Please refer to the full text of Inspection Guidance via the following Chinese language link:

<http://www.cbrc.gov.cn/chinese/home/jsp/docView.jsp?docID=20100113C520DE55E4780E73FFFDCE7C71ACEC00>

Please refer to the full text of Disclosure Guidance via the following Chinese language link:

<http://www.cbrc.gov.cn/chinese/home/jsp/docView.jsp?docID=20091216826F7C3783BCBBAFF98666191E7FD00>

SAFE Circular Addresses Suspicious Foreign Exchange Transactions by Individuals

On November 25, 2009, the State Administration of Foreign Exchange (**SAFE**) issued the *Circular on Further Improving the Administration of Individual Foreign Exchange Transaction Business* (the “**Circular**”), which took immediate effect. The Circular specifically targets foreign exchange transactions by individuals that appear to be suspicious attempts at circumventing the country’s foreign exchange controls. One example of a suspicious transaction provided by SAFE under the Circular involves the following fact pattern - an overseas individual or an overseas institution wires foreign currency to more than five individuals in China on the same day or over a few consecutive days; and each of these individuals then apply for conversion of the foreign currency they received into renminbi.

As an enforcement measure, SAFE has placed the burden of detecting suspicious banking activities on banks and other financial institutions that are licensed to handle foreign exchange transactions. Under the Circular, if a bank detects any suspicious foreign exchange transaction, it must either (1) decline to process the transaction if it is obvious that the parties are trying to circumvent foreign exchange controls; or (2) ask for further evidence to prove that the transaction is in fact carried out for a legitimate purpose. Failure to fully comply with the Circular may subject the responsible banks or processing institutions to severe punishments imposed by SAFE, which include fines ranging from RMB 200,000 to 1,000,000 and/or the suspension of the license for conducting foreign exchange transactions.

Please see the full texts of the Amendments via the following Chinese language link:

http://www.safe.gov.cn/model_safe/laws/law_detail.jsp?ID=80304000000000000,21

State Council’s Message to the Real Estate Industry

On January 7, 2010, the State Council issued the *Circular on Promoting Steady and Healthy Development of the Real Estate Market* (the “**Circular**”), vowing to bring the ever-increasing real property prices under control. Instead of introducing new measures, the Circular merely reiterates many policies previously issued by the State Council.

Highlighted below are the key State Council policies reaffirmed by the Circular:

- Increasing the supply of ordinary residential properties: In order to achieve this objective, the authorities will need to accelerate the regulatory approval process for land grants, project evaluations and pre-sale and sale permissions.
- Tightening lending to minimize speculative purchases: The required minimum down payment for mortgage loans on second homes has increased to 40 percent and banks will need to strictly comply with this requirement in extending these loans.
- Strengthening the market supervision: The Circular requires the relevant authorities to strengthen the administration on (1) the flow of loan proceeds and cross-border investments in order to prevent non-real estate loans from being diverted into investments in the real estate market and (2) cross-border investments to prevent foreign hot money from being used to make speculative bets on Chinese real estate.


Although the Circular simply repeats existing policies, the fact that the State Council has sent out a strong and determined message in controlling the real estate market deserves serious attention. The Circular may be the last fair warning from the State Council, so it is quite possible that if the warning is ignored by market participants, serious enforcement measures will follow.

Please refer to the full Chinese text of the Circular at:

http://www.gov.cn/zwggk/2010-01/10/content_1507058.htm

China Adopts Amendments to the Renewable Energy Law

On December 26, 2009, less than three months after the draft amendments (the “**Draft**”) to the *Chinese Renewable Energy Law (2006)* (the “**Old Law**”) were submitted for public comments, the Standing Committee of the National People’s Congress approved the finalized amendments to the Old Law (the “**Amendments**”). The Amendments will become effective on April 1, 2010.



The Amendments have not introduced substantial changes to the Old Law. However, the Amendments do focus on the following key issues affecting the renewable energy industry, namely, the lack of infrastructure, limited grid connection and the guaranteed purchase of renewable power.

Highlighted below are our observations on a few key aspects of the Amendments.

Full Purchase of Renewable Energy

Under the Old Law, state-owned grid companies are required to purchase all renewable energy generated by renewable energy companies that have obtained the requisite administrative licenses (the “**Full Purchase Requirement**”). The Amendments have added an additional complexity to the Full Purchase Requirement by stating in Article 14 that in addition to obtaining the requisite administrative licenses, renewable energy companies must also show that their power generation projects comply with certain technical standards of the grid connection and only such qualified projects are allowed to benefit from the Full Purchase Requirement. In addition, a related change worth noting is that the Amendments abandoned the Draft’s proposal to impose an annual renewable power purchase quota on state-owned grid companies. Under Article 14 of the Amendments, State Council’s energy and finance department and the state electricity regulatory authority are responsible to jointly formulate specific regulations for the implementation of the Full Purchase Requirement.

Strengthening of the National Electricity Grid

Under the Old Law, grid companies are only obligated to purchase renewable energy from renewable energy projects that are covered by their existing grid. As a result, many renewable energy projects that are located away from an existing grid have remained idle and are not guaranteed to be connected to the grid. To address this lack of grid connection, the Amendments now require grid companies to “strengthen the construction of their grids, expand the distribution scope of renewable power, develop and implement technologies such as smart grid and power storage, and enhance their uptake capacity for renewable power.”

It is likely that implementing rules and regulations will be introduced by authorities to provide clearer guidance and methods by which the objectives stated in the Amendments can be achieved. Therefore, the full impact of the Amendments will have to be assessed after implementing rules and regulations are introduced.

Please see the full texts of the Amendments via the following Chinese language link:

http://www.npc.gov.cn/npc/xinwen/lfgz/zxfl/2009-12/26/content_1533263.htm

Finance at White & Case

White & Case's global banking and finance capability is one of the world's strongest. The Firm's historical focus on the representation of banking clients means we are ideally placed to understand and represent these interests. Our bank finance practice is known for structuring first-of-its kind deals, responding quickly when decisiveness matters and delivering the success that further establishes our leading credentials:

- Tier One for China Banking & Finance (Foreign Firms)—*Asia Pacific Legal 500*, 2010
- Tier One for China Banking & Finance (Foreign Firms)—*Chambers Asia*, 2009
- Tier One for Global Banking & Finance—*Chambers Global*, 2008
- Ranked Number One in Global Bank Finance 2007—*Mergermarket Tables*

Our noted areas of expertise include acquisition finance, bank advisory, credit transactions, derivatives, leasing and other asset-backed activity, and structured finance. In China and globally, our experienced team is intimately familiar with every aspect of deal structure, negotiation and documentation, and we aim to give precisely the right level and type of support at each stage of the deal—starting with strategic advice on alternative structures through negotiation and documentation, keeping your deal on track.

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:

- "A superb firm with an excellent practice and great global coverage, White & Case is respected by both peers and clients."—*Chambers Global 2009*
- Won Five Firm of the Year Awards 2009—*Asian-Counsel*
- Dealmaker of the Year 2009—*American Lawyer*
- Top Global Bankruptcy Law Firm 2009—*The Deal*
- Top Tier in Global Arbitration 2009—*Focus Europe*
- Global Elite in Antitrust/Competition 2009—*Global Competition Review*
- Corporate Finance Deal of the Year 2009—*Latin Lawyer*
- Ranked No. 1 in Bloomberg Americas and Global Capital Markets Legal Adviser League Tables Q1 2009—*Bloomberg*

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

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.

© 2010 White & Case LLP