

China Finance Bulletin

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

SAFE Delegates Approval Rights to Lower Branches In Effort to Streamline Approval Process for Capital Account Foreign Exchange Transactions

On June 29, 2010, the State Administration of Foreign Exchange ("SAFE") issued the *Notice Regarding Adjustment of Authority to Approve Certain Capital Account Foreign Exchange Transactions* (国家外汇管理局关于调整部分资本项目外汇业务审批权限的通知) (the "SAFE Notice 29"), which came into effect on July 1, 2010.

SAFE Notice 29 has delegated the approval authority for a number of foreign exchange transactions involving capital accounts (the "capital account Forex transactions") from the central SAFE to the provincial branches of SAFE (the "SAFE Branches") and has further delegated the approval authority for additional capital account Forex transactions from the SAFE Branches to their respective principal sub-branches (the "SAFE Sub-branches").

This delegation of approval authority aims to streamline the approval process and the time that is required to secure the necessary SAFE approvals for various capital account Forex transactions. For example, under SAFE Notice 29, foreign investors acquiring land use rights or a domestic company's equity in an equity exchange now may seek SAFE approval from the relevant SAFE Principal Sub-Branch instead of the relevant SAFE Branch for the funding of escrow, settlement or security deposit accounts. The approval of such account funding by the lower branch of SAFE is expected to result in a quicker turnaround time and as such, SAFE's delegation of approval authority may bring about greater certainty to the completion of foreign investors' acquisitions.

- Highlighted below are capital account Forex transactions which can be approved by the SAFE Branches instead of the central SAFE, following the passage of SAFE Notice 29:
 - > a domestic company's remittance of foreign exchange to its offshore subsidiary or affiliate where the amounts of remittance exceeds the maximum amount permitted under the SAFE regulations (pursuant to the Measure on the Administration of Domestic Enterprise's Outbound Remittance (关于境内企业境外放款外汇管理有关问题的通知) issued by SAFE on June 9, 2009, provided that the amount of such remittance (together with all prior remittances) does not exceed the lower of (i) 30 percent of the equity interest of that domestic company and (ii) the domestic company's approved investment amount in that subsidiary or affiliate);
 - > a capital account foreign exchange transaction which complies with SAFE's prevailing administration principles and regulations but is not currently governed by a specific SAFE regulation or procedure; and
 - > the annual verification of short-term foreign debt quotas of a domestic company in accordance with the verification principles set by the central SAFE for that year.
- Each SAFE Branch may delegate approval authority for the following capital account Forex transactions to its Sub-Branched, if it determines that such delegation of authority is warranted by the conditions in its governing jurisdiction:
 - > the opening, change or cancelation of a foreign currency bank account set up by a foreign investor for the purposes of placing security deposits to pay for the foreign investor's bid for land use rights in China and the transfers of funds in such account;
 - > the opening, change or cancelation of a foreign exchange escrow or settlement account that is set up by a foreign investor for the purposes of depositing the purchase price or security deposits in connection with that foreign investor's acquisition of an equity interest of a domestic enterprise through an equity exchange in China and the transfers of funds in such account;
 - > the outbound remittance and inbound receipt of foreign exchange by a domestic company from or to, as the case may be, the capital account of a domestic company; and
 - > the repatriation of foreign exchange by a Chinese individual and the foreign exchange settlement by such individual for the purpose of participating in an employee stock or stock option plan offered by a company that is listed outside of China.
- Every designated Chinese bank that is authorized to perform foreign exchange transactions now has the authority to approve the following categories of capital account Forex transactions and such approval authority used to be held by the SAFE Branches:
 - > the purchase of foreign currency for the remittance of profits by a Chinese non-bank financial institution (excluding insurance companies) to its offshore foreign shareholders; and
 - > the outbound remittance of foreign exchange by a domestic company to pay fees and expenses incurred in connection with a listing of that domestic company outside of China.

For more information on SAFE Notice 29, please visit the following Chinese language link:

http://www.safe.gov.cn/model_safe/laws/law_detail.jsp?ID=8040100000000000,33&id=4

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- 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

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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:

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- 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*