



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

China calls halt to lending to steel producers

In response to an outcry for curbing the reckless expansion of output by some Chinese steel mills, the Ministry of Industry and Information Technology issued a notice on April 24, 2009, the *Urgent Notice on Curbing the Exceedingly Rapid Growth of Output in the Steel Industry* (the "**Notice**"), which aims to rein in overcapacity of the steel industry.

The Notice, which is addressed to local governments, steel industry and trading bodies and steel enterprises, urges local governments to ask banks to reduce or stop lending to steel mills operating with outdated facilities or steel mills that are blindly expanding production in the absence of real market demand. The Notice also urges steel producers to limit output at a time when supply is outstripping demand.

Even though the Notice is arguably at most an indirect call on banks to tighten lending to steel enterprises, the sentiment of the government is clear. The Notice is a forceful warning to the banks that they should be conscious of the risks in lending to steel mills at a time when there is rampant over-production.

Please refer to the full text of the Notice at: <http://www.miit.gov.cn/n11293472/n11293832/n11294057/n11302390/12356120.html>. Please note this link is to a Chinese language website.

Real Estate

Industrial land prices lowered to boost investment

In a move to further implement the central government's policy of boosting domestic demand and promoting economic development, the Ministry of Land and Resources (**MLR**) has issued a circular which allows the transfer prices for qualified industrial land to be discounted by up to 30%.

Under the 2006 *Circular on the Issuance and Implementation of the National Standards for the Minimum Transfer Prices of Industrial Land*, the Chinese government has set forth national standards for setting minimum prices for the transfer of industrial land (the "**Statutory Minimum Prices**"). The circular issued by the MLR on May 11, the *Circular on Adjusting the Implementation of the National Standards for Minimum Transfer Prices of Industrial Land* (the "**Circular**"), allows local governments to offer discounts up to 30% on the Statutory Minimum Prices to the following types of industrial land:

1. industrial projects that make intensive use of land and which fall within an industry the development of which is given priority within the particular province or district; and

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2. industrial projects that mainly involve the processing of agricultural, forestry, animal husbandry and fishery products.

The Circular also sets out separate discount requirements for industrial projects located in central and western China. Projects in these areas which (i) utilize state-owned unused land that is not designated for urban land use under the government's master land development plan and (ii) will be developed by the transferee can enjoy a discount of not less than 15% of the Statutory Minimum Price. For projects located in central or western China which utilize state-owned unused land that is within the area designated by the government's master land development plan for urban land use, the Statutory Minimum Prices can be discounted by not more than 50%. "State-owned unused land" refers to salt-affected land, swamps, sand land and barren land which are not included as farmland reserve resources.

These discounts permitted under the Circular are seen as likely to stimulate investments in new projects, particularly ones in central and western China. However, the impact of the Circular on existing projects is expected to be minimal.

Please refer to the full text of the Circular at: http://www.gov.cn/zwqk/2009-05/13/content_1313283.htm. Please note this link is to a Chinese language website.

SAFE Rules

SAFE issues draft regulations to tighten control over non-resident foreign exchange accounts

The State Administration of Foreign Exchange (**SAFE**) issued draft regulations on May 5, 2009 aiming to assert greater control over the flow of speculative "hot money" in and out of China. The draft *Notice in relation to the Administration of Onshore Foreign Exchange Accounts of Foreign Enterprises* (the "**Draft Notice**"), which was open for public comments until 19 May 2009, proposes to unify the regulation of the establishment and operation of onshore foreign exchange accounts by companies which are incorporated and registered abroad, including companies that are incorporated in Hong Kong, Macau and Taiwan ("**Foreign Enterprises**").

The Draft Notice requires onshore banks to clearly label foreign exchange accounts opened by Foreign Enterprises as Non-Resident Account ("**NRA**") and to distinguish between Foreign Enterprises which are banking institutions from those which are not, so that domestic parties who have dealings with these foreign exchange accounts will be able to tell by the labeling of these accounts that they are dealing with an NRA.

Under the Draft Notice, NRAs are subject to a number of controls on funds flow such as (i) an NRA may not be used for cash deposits or withdrawals unless the relevant regulatory approval has been obtained, (ii) foreign exchanges deposited in an NRA cannot be converted into RMB without the requisite regulatory approval and (iii) transfers of funds between an NRA and a domestic account (whether such accounts are held by corporations or individuals) are to be treated as cross-border transactions and as such, the transfers will be subject to the relevant foreign exchange regulations. The restrictive measures proposed by the Draft Notice are intended to control financial risks by preventing unlawful inflow and outflow of capital through NRAs.

In addition to these restrictive measures, another notable change proposed by the Draft Notice is that all onshore banks (including both local Chinese banks and foreign-invested banks) may open an NRA for foreign enterprises. Previously, due to historical reasons, Foreign Enterprises can only open a foreign exchange account with a foreign-invested bank.

Please refer to http://www.gov.cn/gzdt/2009-05/05/content_1305105.htm for the full text of the Draft Notice. Please note this link is to a Chinese language website.

SAFE delegates foreign exchange examination and approval authority

Starting from June 1, 2009, local branches of SAFE will take over central SAFE's responsibility for the examination and approval process of 10 foreign exchange categories.

According to the *Notice on Adjusting the Examination and Approval Authority for Certain Foreign Exchange Matters in relation to Capital Accounts* (the "**Notice**") issued by SAFE on May 13, 2009, the examination and approval formalities and procedures for 10 foreign exchange categories will be simplified and streamlined in an attempt to facilitate trade and investment activities as well as to encourage foreign direct investment. The Notice will come into force on June 1, 2009.

A few examples of the foreign exchange categories which will now be handled by local branches of SAFE include the following:

1. A foreign-invested enterprise which wishes to open a capital account in a different district other than its locality may apply for the approval of the relevant local SAFE at the locality of such enterprise.

2. Enterprises and non-banking financial institutions which provide foreign guarantees (except for the issuance of bonds) to support offshore enterprises may apply for approval of the relevant local SAFE at the locality of such guarantee provider.
3. Onshore entities which provide foreign guarantees to support the issuance of bonds (including commercial notes) by offshore entities may apply for the approval of the relevant local SAFE at the locality of such guarantee provider.
4. A qualified foreign institutional investor intending to set up an open-ended fund in China with a monthly net subscription or redemption amount exceeding US\$50 million may apply for the approval of the relevant local SAFE at the locality of the custodian.

For more information please visit: http://www.safe.gov.cn/model_safe/laws/law_detail.jsp?ID=804010000000000000,31&id=4. Please note this link is to a Chinese language website.

SAFE issues draft revised regulations to encourage outbound direct investments

On May 18, 2009, SAFE issued draft revisions to outbound direct investment regulations that are aimed at encouraging outbound direct investments. The draft *Regulations regarding Foreign Exchange Administration of Overseas Direct Investment by Domestic Entities* (the “**Draft Regulations**”) effectively confirm and consolidate existing rules into what is hoped to be a simpler framework. The Draft Regulations are open for public comments until June 19, 2009. Among the proposed revisions, the following points are of particular significance:

1. Chinese companies may now choose from more sources of foreign exchange funds to make their outbound direct investments. These sources include self-owned foreign exchange, foreign exchange loan obtained onshore, foreign exchange purchased with RMB, payment in kind, offshore profits or other sources of foreign exchange assets as approved by SAFE.
2. Profits generated from outbound direct investments can be retained offshore for further outbound direct investments.

3. Chinese companies may now register the source of their foreign exchange funding after making the relevant outbound direct investments, instead of having to go through the pre-investment vetting procedure as currently required, provided that the relevant Chinese company has already received the necessary regulatory approval to make the outbound direct investments.
4. Chinese companies can provide commercial loans and foreign guarantees to the overseas entities in which they have directly invested, provided that the requirements of the relevant foreign exchange regulations are met.
5. The remittance of capital for outbound direct investments will now have to be registered with SAFE instead of having to be approved.
6. Chinese companies are now allowed to remit a specified proportion of the total investment amount as the upfront investment amount upon obtaining the relevant SAFE approval during the preparation stage of their outbound direct investment projects.
7. The Draft Notice clarifies the administrative principles applicable in deciding whether profits and different kinds of capital gains obtained from outbound direct investments (such as capital reduction, share transfers or liquidation of capital) should be retained overseas or remitted into China.
8. The Draft Notice also for the first time mentions that Chinese companies can directly invest overseas by using RMB as the settlement currency. However, Chinese companies which elect to do so must follow the relevant rules.

For more information please visit: http://www.safe.gov.cn/model_safe/news/new_detail.jsp?ID=900000000000000000,725&id=3&type=2. Please note this link is to a Chinese language website.

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