

## Finance

# China Bulletin

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Welcome to the November issue of White & Case's China Finance Bulletin. This bulletin is a regular update on the PRC finance sector ensuring you stay up to date with the latest legal, regulatory and practice developments.

## **China Further Expands the Use of RMB through Cross-border Foreign Direct Investment**

On October 14, 2011, the Ministry of Commerce ("**MOFCOM**") issued the *Circular on Issues Relating to Cross-border Direct Investment in RMB* ("**MOFCOM Rules**"), and on the following day, the People's Bank of China ("**PBOC**") issued the *Measures on Administration of the RMB Settlement in Connection with Foreign Direct Investment* ("**PBOC Rules**"). Taken together, these new rules represent another significant move by the Chinese government to expand the use of RMB and help promote the internationalization of RMB.

The MOFCOM Rules set out the regulatory requirements for investments in the PRC to be made with offshore-sourced RMB. The PBOC Rules aim to facilitate foreign direct investment ("**FDI**") in RMB by providing specific implementation measures for the onshore settlement banks to handle RMB settlement services in connection with FDI. The PBOC Rules remove the case-by-case PBOC approval procedure for RMB settlement services for FDI applicable at trial stage as set out in PBOC's *Circular on Clarifying Certain Issues Relating to Cross-Border RMB Services*, which was issued on June 3, 2011.

While encouraging the use of offshore RMB, both the PBOC Rules and the MOFCOM Rules still seek to maintain tight control over the purposes of such use. For example, the PBOC Rules require various types of special RMB accounts, such as Account for Pre-establishment Expenditure of Foreign Investment Enterprise ("**FIE**"), Account for Re-investment, Account for Capital, Account for Merger or Acquisition and Account for General Purpose, to be opened and managed in a particular way, depending on the purpose of the RMB in the FDI. The use of RMB in each type of special RMB account shall be restricted to its special purpose and not used as a current account. The PBOC Rules also require that a FIE should register with the local branch of the PBOC within 10 business days after being issued a business license. The PBOC will also closely monitor the use of the RMB by reviewing the required documents provided by the account holder when receiving or remitting RMB.

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The PBOC Rules provide that all RMB proceeds should be used for legitimate purposes but they stay silent on the specific requirements. The MOFCOM Rules prohibit the offshore RMB to be invested for securities, derivatives and entrustment loans, in addition to general requirements for compliance with the PRC law relating to FDI. The only exception to the prohibition on investment is strategic investment in a listed company by way of private placement. Compared to the early version of the MOFCOM Rules published for public consultation in August, the MOFCOM Rules removed the restriction on using offshore RMB for repaying onshore and offshore loans. This makes it possible to use offshore RMB obtained by way of issuing RMB-denominated equities or bonds to refinance existing loans of the onshore receiving entity.

Moreover, the MOFCOM Rules create multiple exceptions that will require MOFCOM's approvals both at the provincial level and at the central level, which include transactions that (i) involve more than RMB 300 million as capital contribution; (ii) involve a financing guarantee, a finance lease, micro-finance loans or auction houses; (iii) involve investment in foreign-invested holding companies, venture capital or equity investment enterprises; or (iv) involve investment in cement, iron and steel, electrolytic aluminum, shipbuilding or other policy-sensitive sectors. The approval of central MOFCOM must be applied for after the provincial MOFCOM has reviewed the application. Central MOFCOM shall decide whether to approve or not within 5 business days. However, there is no timeline specified for approval at the provincial level.

Furthermore, FDIs in the real estate industry and listed domestic companies continue to be governed by separate existing regulations.

Like many PRC regulations, these new rules have some ambiguities. For example, the PBOC Rules stipulate that the "total volume" of the entire RMB loan and the foreign currency loan borrowed by an FIE from its overseas shareholder, group affiliate and overseas financial institutions shall be aggregated together on a consolidated basis, and the FIE may open an Account for General Purpose to deposit its borrowed RMB. However, although the term "total volume" was frequently used by the State Administration of Foreign Exchange ("SAFE") in its circulars, this term is not defined in the PBOC rules and its relationship with "total investment minus registered capital" is uncertain. Moreover, SAFE's role is not mentioned in the MOFCOM Rules or the PBOC Rules. How those three government authorities (PBOC, MOFCOM and SAFE) will work together in practice under this new regime remains to be seen.

For the full text of the MOFCOM Rules, please refer to the following Chinese language link:  
<http://wzs.mofcom.gov.cn/article/n/201110/20111007779546.html?2609324118=2722795570>

For the full text of the PBOC Rules, please refer to the following Chinese language link:  
[http://www.pbc.gov.cn/publish/huobizhengceersi/3131/2011/20111014085818532376755/20111014085818532376755\\_.html](http://www.pbc.gov.cn/publish/huobizhengceersi/3131/2011/20111014085818532376755/20111014085818532376755_.html)

## Firm News

### White & Case Advises on the Financing of a Third Chinese Company Take-Private This Year

White & Case has represented China Development Bank Hong Kong Branch (CDB) in a US\$400 million financing for the take-private transaction of NASDAQ-listed Harbin Electric, Inc. The financing enabled Tech Full Electric Company Limited, an entity controlled by Harbin Electric founder and Chairman, Mr. Tianfu Yang, other management investors and Abax, to acquire the publicly-held shares of Harbin Electric.

This is the third financing of a Chinese company take-private that the Firm has advised on in recent months, with the previous transactions being Standard Chartered Bank's financing of the Chemspec take-private (NYSE) which closed in September, and CDB's financing of the China Security & Surveillance Technology take-private (NYSE and NASDAQ Dubai) which closed in October.

Harbin Electric, Inc is a developer and manufacturer of a wide variety of electric motors in the PRC. The transaction was completed on November 2, 2011.

Commenting on the deal, White & Case partner John Shum said: "There is a clear trend in management buyouts of US-listed Chinese companies at present and we are pleased to be involved on the financing side in a significant number that have closed to date. This China and US cross-border work plays very much to White & Case's strengths given the Firm's platform in both countries and demonstrates our established relationships with financial institutions that are interested in this sector."

The deal was led by John Shum (Hong Kong) and Xiaoming Li (Beijing). They were assisted by David Johansen (New York) and lawyers, Frank Shu and Melody Ching (Hong Kong), Jianbin Wang and Tianren Liu (Beijing) and Elodie Gal (New York). Walkers acted as offshore counsel to CDB.

## 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-a-kind deals, responding quickly when decisiveness matters and delivering the success that further establishes our leading credentials:

- Tier One in China Banking & Finance (Foreign Firms)—*Asia Pacific Legal 500 2011*
- Tier One in China Banking & Finance (Foreign Firms)—*Chambers Asia 2009*

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 38 offices across 26 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 longestablished 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 that happen effortlessly. We work with some of the world's most respected and well-established 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:

- White & Case can handle any issue with experienced lawyers and a great global network—great depth and high quality around the world—*Chambers Global 2010*
- Top 10 US Firm—*American Lawyer 2010*
- Top International Arbitration Firm—*Chambers Global 2011*
- Top Tier in Global Project Finance—*Chambers Global 2011; Infrastructure Journal 2010*
- Leading Innovative US Firm in M&A, Restructuring, Litigation, Financial Services and Pro Bono and Leading Innovative UK Firm in Financial Services—*Financial Times 2010*

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