

China Corporate Bulletin

September 2011

In This Issue....

- MOFCOM Released the Provisions on National Security Review of Foreign M&A of Domestic Enterprises



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Welcome to White & Case's monthly China Corporate Bulletin. This bulletin covers recent corporate regulatory developments and news in the PRC and Hong Kong, ensuring you stay up to date on the latest market issues.

MOFCOM Released the Provisions on National Security Review of Foreign M&A of Domestic Enterprises

China's Ministry of Commerce (**MOFCOM**) released the *Provisions on the National Security Review of Foreign Mergers and Acquisitions (M&A) of Domestic Enterprises* (the "**Provisions**") on August 26, 2011. They become effective on September 1, 2011.

The Provisions are another step in establishing China's "national security review" regime. Several industries are specifically targeted for review in M&A transactions, including agriculture, basic infrastructure, energy and natural resources, equipment manufacturing, technology and transportation services. Unfortunately, the Provisions remain vague in describing other industries where M&A transactions may be subject to review (e.g. "other enterprises related to national security"), and they fail to provide a detailed list of sectors that fall within those industries.

Prior to the publication of the Provisions, the State Council issued the *Notice of the General Office of the State Council on Launching Security Review System for M&A of Domestic Enterprises by Foreign Investors* on February 3, 2011. (Please refer to [White & Case China Corporate Bulletin \(March 2011\)](#) for further details regarding this notice.) MOFCOM issued the *Temporary Provisions on Relating Matters of the Security Review of Foreign M&A of Domestic Enterprises* (the "**Temporary Provisions**") on March 4, 2011, which were valid from March 5, 2011 to August 31, 2011. (Please refer to [White & Case China Corporate Bulletin \(April 2011\)](#) for further details regarding the Temporary Provisions.)

Compared to the Temporary Provisions, the now finalized Provisions keep procedural provisions established under the Temporary Provisions and add the following key points:

- When reviewing the acquisition of a domestic enterprise by a foreign enterprise (a "**Transaction**"), MOFCOM will determine whether the Transaction should be subject to national security review by considering both "the substance and actual influence" of the Transaction. Foreign investors may not avoid the national security review through methods such as a nominee structure, trust arrangements, multilayer investments, exercising control through contractual arrangements (e.g. the "variable interest entities" model) or offshore transactions. It should be noted that the Provisions fail to provide detailed definitions or examples of any such methods.

- The Provisions clarify that a request for consultation with MOFCOM prior to filing is not a prerequisite for filing an application, and furthermore, such consultation does not have a legal binding effect and shall not be treated as the basis for submitting a formal application.
- MOFCOM and other authorities involved in the security review process are now expressly required to keep state secrets, trade secrets, and other related secrets confidential.

For more information on the Provisions, please visit the following Chinese language link:

<http://www.mofcom.gov.cn/aarticle/b/c/201108/20110807713530.html?169040982=2722795570>

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White & Case News

Virginia Tam joined White & Case as a partner in our Hong Kong office on Monday, July 4th. Virginia is a corporate finance practitioner, and was previously a partner with an international law firm in Hong Kong. Dual-qualified in Hong Kong and New York, Virginia is experienced in China and Hong Kong-based cross-border corporate and securities transactions, as well as in international corporate finance matters with US securities law and/or Hong Kong listing rules elements. These matters include pre-IPO private equity investments, initial public offerings, PIPE transactions, and follow-on public offerings for Chinese businesses in the US and Hong Kong.

Our Corporate Practice

As advisers to multinational corporations, private equity and venture capital firms and governments, White & Case is at the forefront of structuring and executing domestic and cross-border transactions. We have built a reputation for completing groundbreaking transactions with precision and speed and have worked on high-profile multibillion-dollar deals across the globe.

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 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 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; *Global Arbitration Review* 2009
- 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
- Top 5 Energy M&A Firm—*SNL Financial* 2011
- Top 5 M&A Firm in Latin America—*Latin Business Chronicle* 2010
- Top Tier in Global Project Finance—*Chambers Global* 2011; *Infrastructure Journal* 2010