

China Finance Bulletin

September 2011

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White & Case is a leading global law firm with lawyers in 38 offices across 26 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.

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

Circular on Ratifying Balance Quotas for Granting Security or Guarantee by Domestic Banks in Favour of Offshore Entities

On August 16, 2011, the State Administration of Foreign Exchange of the People's Republic of China ("**SAFE**") issued the Circular on Relevant Issues Concerning the Ratification of the Quotas Balance for Granting Foreign Security by Domestic Banks in 2011 (《国家外汇管理局关于核定境内银行2011年度融资性对外担保余额指标有关问题的通知》) (the "**Circular**").

The Circular adjusts and reduces the quota scale (i.e. total secured amount) set in 2001 for granting security or guarantee by domestic banks in favour of offshore entities ("**Foreign Security**") to the amount of US\$76.376 billion. The basis for determining the quota for each individual Chinese-funded bank, or locally incorporated foreign-fund bank, shall be its Tier 1 capital in both domestic and foreign currencies at the end of last year. The basis for determining the quota for each individual foreign bank shall be its working capital in both domestic and foreign currencies or net foreign currency assets at the end of the last year. In the event that the total outstanding secured amount of the Foreign Security provided by a bank exceeds its 2011 quota, the bank shall reduce its Foreign Security to the quota within three months upon SAFE's determination of the quota, prior to which no Foreign Security can be provided by such bank.

The Circular also provides for several key rules regarding the Foreign Security:

- Firstly, Foreign Security granted to secure the issuance of any offshore bond shall be subject to a case-by-case approval of SAFE.
- Secondly, Foreign Security granted to secure offshore RMB debt shall be subject to the same quota management as those securing offshore debt in foreign currencies.

- Lastly, the Circular has reinforced the prohibition by earlier SAFE regulations that loan proceeds (the “**Proceeds**”) which are secured by the Foreign Security must not be repatriated back to China directly or indirectly by means of investment via equity/debt or other means. The following repatriation activities have been identified in the Circular as “prohibited” and are described as follows:
 1. Proceeds are used for refinancing a loan where those proceeds are repatriated back to China;
 2. Proceeds are directly or indirectly used for purchasing the equity of any offshore company, whose major assets are located in China; and
 3. Other repatriation as considered by SAFE to be wrongful repatriation.

For the full text of the Circular, please refer to the following Chinese language link:

http://www.safe.gov.cn/model_safe/laws/law_detail.jsp?id=4&ID=8040200000000000,51

SAFE Tightens Further the Conversion of Equity Capital in Foreign Exchange to Renminbi of Foreign-invested Enterprises

On July 18 2011, the State Administration of Foreign Exchange (“**SAFE**”) issued the Supplementary Circular on Issues in connection with Improving Administration of Capital Payment and Settlement of Foreign-Invested Enterprises (关于完善外商投资企业 外汇资本金支付结汇管理有关业务操作问题的补充通知) (the “**Circular**”). The Circular came into effect on August 1, 2011.

This Circular supplements the SAFE Circular on issues in connection with Improving Administration of Capital Payment and Settlement of Foreign-Invested Enterprises (关于完善外商投资企业外汇资本金支付结汇管理有关业务操作问题的通知) dated August 29, 2008 which is a key SAFE rule regarding the conversion of foreign currency, which is the registered capital of foreign-invested enterprises (“**FIEs**”) into Renminbi. The Circular strengthens further the restrictions on converting registered capital contributed in foreign currency into Renminbi by, among other requirements; (i) requiring additional application documents for the conversion; (ii) imposing stringent authentication examinations of instruments and post-conversion management (e.g. the reporting to SAFE of revocation of underlying transactions by the settlement bank); (iii) restricting conversion for the purpose of petty cash; and (iv) blacklisting those FIEs which violate SAFE rules and imposing higher standards of examination of such FIEs for their future conversion of registered capital.

For the full text of the Circular, please refer to the Chinese version of the Circular

http://events.whitecase.com/china_newsletter/Supplementary_Circular_on_Issues_092011.pdf

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- 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.

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- Top International Arbitration Firm—*Chambers Global* 2011
- Top Tier in Global Project Finance—*Chambers Global* 2011; *Infrastructure Journal* 2010
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