

ZHONG LUN LEGAL UPDATES

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MOFCOM Implements Security Review System in M&A of Domestic Enterprises by Foreign Investors

On August 25, 2011, the Ministry of Commerce (MOFCOM) promulgated the Provisions of the Ministry of Commerce on the Implementation of Security Review System in Mergers and Acquisitions of Domestic Enterprises by Foreign Investors. The provisions become effective on September 1, 2011.

The provisions reaffirm that mergers and acquisitions (M&As) of domestic enterprises by foreign investors must be subject to the security review, and no foreign investor may substantively avoid the M&A security review by means including, but not limited to, nominative shares, trust, variable interest entities, or overseas transactions.

The provisions emphasize that where a foreign investor merges or acquires a domestic enterprise, it should judge whether the M&A transaction falls within the M&A security review scope in terms of the substance of the transaction and actual impact resulted from the transaction.

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[Beijing Issues Guidelines on Early-warning Procedures for Enterprises' Overseas IP Rights](#)

Beijing Intellectual Property Office released a notice distribute the Guidelines on Early-warning Procedures for Enterprises' Overseas Intellectual Property Rights on June 27, 2011.

The guidelines are aimed to facilitate the implementation of the State's intellectual property right (IPR) protection strategy and Beijing IPR protection strategy, instruct enterprises to effectively carry out work related to patent early warning, institute a scientific patent early warning mechanism that accommodate enterprises' overseas business strategies, and help enterprises improve their early warning capacity abroad.

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[SAT Announces Taxation Issues on Transfer of Land Use Rights and Attached Fixed Assets](#)

On August 17, 2011, the State Administration of Taxation (SAT) released the Announcement on Taxation Issues in Circumstances Where Taxpayers Transfer Land Use Rights or Simultaneously Sell Real Property and Fixed Assets Attached to the Property or Land.

The announcement clearly stipulates that effective September 1, 2011, where a taxpayer transfers land use rights or simultaneously sells real property and fixed assets attached to such property or land, if the fixed assets are subject to value-added tax (VAT), the VAT payable should be calculated according to provisions of Article 2 of the Notice of the Ministry of Finance and the State Taxation Administration on the Application of Low Value-added Tax Rate and Simplified Method to Certain Goods; if the fixed assets are real property, the business tax payable should be calculated according to the tax rate for the taxable item of "sale of real property" as stipulated in the Interim Regulations of the People's Republic of China on Business Tax.

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[Newly Revised Memorandum on ChiNext Business Information Disclosure No. 30: Venture Capital Released](#)

ChiNext listed enterprises lately received the newly revised Memorandum on ChiNext Business Information Disclosure No. 30: Venture Capital issued by regulatory authorities.

The memorandum not only includes "securities investments" into the scope of "venture capital", but also includes "real estate investments, mineral rights investments, and trust investments" into the scope of information disclosure regulation.

Article 2 of the memorandum clearly states that listed companies are encouraged to focus on the development of their main line of business, while are not encouraged in venture capital.

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M&A Review to Support Development of Prioritized Enterprises: CSRC

The Department of Listed Company Supervision under the China Securities Regulatory Commission (CSRC) and the China Appraisal Society (CAS) held a communication conference recently in Beijing, to discuss about collaborative administration of business valuation in mergers and acquisitions (M&As) and reorganizations of listed companies, according to Xinhuanet.com on August 29, 2011.

Deputy director of the Department of Listed Company Supervision Zhao Lixin delivered a speech at the conference, saying that CSRC will further clarify regulatory duties and responsibilities, and implement certain measures in the review of M&A and reorganization projects to support the development of prioritized enterprises while restricting the development of enterprises that do not have competitive strength.

Zhao Lixin also put forward proposals on strengthening cooperation between CSRC and CAS, thus implementing effective collaborative administration, including (1) to promote researches on further cooperation; (2) to joint efforts in addressing important issues that impede the development of listed companies' M&As and acquisitions; (3) to step up efforts in researches on the application of market pricing method, liquidity discount, and discount rate; and (4) to joint efforts to carry out in-depth researches to improve the M&A and reorganization review system.

Zhao also urged to establish industry information platforms, as well as systems for evaluating such platforms, so as to explore and find out effective ways to better serve the development of the capital market.

Furthermore, Zhao Lixin proposed to establish a routine cooperation mechanism including regular information exchange and personnel training, and reporting of special circumstances.

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CIRC Strengthens Cooperation Between Insurers and Banks on Policy Loans

The China Insurance Regulatory Commission (CIRC) recently released the Notice on Issues Related to Strengthening Administration of Cooperation Between Insurance Companies and Commercial Banks on Policy Loans, Financial News reported on August 29, 2011.

The notice says that when conducting policy loan business, certain commercial banks include the purchase of certain insurance products as a preliminary condition for loan grants in order to charge handling fees. Customers need to first purchase certain insurance products, and then use such policies as collateral; or customers need to spend certain portion of loans granted to purchase certain insurance products. Such practice violates the principle of voluntary participation stipulated in the Insurance Law of the People's Republic of China. This leads customers to purchase unsolicited insurance products, which they will probably surrender upon maturity.

The notice requires insurance companies to ensure that commercial banks respect customers' free will in purchasing insurance products from banks.

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