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BAO RUI LEGAL

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Finance

China opens door for M&A loans

China now opens the door for bank loans meant to facilitate M&A activities. On 6 December 2008, the China Banking Regulatory Commission ("**CBRC**") promulgated the Guidelines on Risk Management of Mergers and Acquisitions Loans of Commercial Banks (in Chinese, 商业银行并购贷款风险管理指引, the "**Guidelines**"), which allow commercial banks to extend loans to the buyers or their subsidiaries in M&A transactions for the purpose of payment of the consideration of such M&A transactions.

This is promulgated pursuant to the opinions of the State Council of PRC on 29 June 2008 regarding measures for supporting reconstruction of the areas that have suffered from the Wen Chuan earthquake as well as the State Council's meeting on 3 December 2008, which aimed to stimulate the economy and to combat

against the international financial crisis. Before that, loans for investment in equity interests (i.e. payment of registered capital or consideration for acquisition of equity) are generally disallowed according to the General Rules on Loans (in Chinese, 贷款通则).

Since promulgation of the Guidelines, banks have been taking actions to promote M&A loan businesses. It is reported that some banks such as the Industry and Commerce Bank of China ("**ICBC**"), the Pudong Development Bank and the Hua Xia Bank have signed strategic cooperation agreements on M&A financing with the assets and equity exchanges in Shanghai and/or Beijing. Various M&A loan transactions have also been reported, such as loans extended by ICBC to Shanghai Bailian Group Co., Ltd for acquisition of Shanghai Industry United Group

Commerce Internet Development Co., Ltd, and the syndicate loans extended by a group of banks including the Bank of China to the Aluminum Cooperation of China for its strategic partnership with the Rio Tinto Group.

Mergers/Acquisitions/ Investments

Administrative Measures for the Transfer of State-owned Assets in Financial Enterprises

In order to further regulate and strengthen supervision of transfer of state-owned assets in financial enterprises, the Ministry of Commerce promulgated the *Administrative Measures for Transfer of State-owned Assets in Financial Enterprises* (in Chinese, 金融企业国有资产转让管理办法, the "**Measures**") on 17 March 2009, which come into effect on 1 May 2009.

The Measures provide that transfer of state-owned equity in non-listed financial enterprises shall generally be carried out through public auction or bidding in the assets and equity exchanges of provincial or higher level while transfer of state-owned shares in listed companies shall be carried out through the stock exchange systems. In the meantime,

the Measures still permit transfer by way of direct negotiations and agreements on special instances, such as internal restructuring within holding companies or group companies and cases where there are special requirements on the transferee under the relevant regulations.

In October 2008, the Enterprises' State-owned Assets Law was promulgated. It provides that administration and supervision of transfer of state-owned assets in financial enterprises are subject to different provisions (if any) of other laws and regulations. The Measures set out clearer provisions on transfer of state-owned assets in financial enterprises.

Foreign Funded Venture Capitals in China See Easier Access to Obtain Necessary Approvals

On 5 March 2009, the Ministry of Commerce of PRC ("**MOC**") promulgated the *Notice on Examination and Approval of Foreign-funded Venture Capital Enterprises and Foreign-funded Venture Capital Management Enterprises* (in Chinese, 商务部关于外商投资创业投资企业、创业投资管理企业审批事项的通知, the "**Notice**"), which has taken effect from the same day.

According to this Notice, for establishment or alteration of a foreign-funded venture capital enterprise or a foreign-funded venture capital management enterprise with registered capital of less than USD 100 million, the examination and approval governmental authority is now delegated from the MOC to the relevant bureau of commerce at provincial level.

China Releases New Rules on Overseas Investments

On 16 March 2009, the Ministry of Commerce of PRC ("**MOC**") promulgated the *Administrative Regulations on Overseas Investments* (in Chinese, 境外投资管理办法, the "**Regulations**"), which shall take effect on 1 May 2009.

Compared with the *Provisions on the Examination and Approval of Investment in Overseas Enterprises* (in Chinese, 关于境外投资开办企业核准事项的规定, the "**Provisions**") promulgated on 1 October 2004, the new Regulations feature changes including: -

- (a) MOC shall take over the approval from provincial authorities for material or special overseas investments to be made by local companies. Now all the following

overseas investments shall be approved by MOC:

- (i) investment in a country that has no diplomatic relation with the PRC;
- (ii) investment in certain countries or regions;
- (iii) investment which is equivalent to or more than USD one hundred million;
- (iv) investment which involves the interests of multiple countries (regions);
- (v) investment which involves establishment of special purpose vehicle.

- (b) For some overseas investments, the approval procedures are simplified and the approval may be granted within 3 working days from submission of the simple application form.

Industry

Chinese Steel Industry Adjustment and Revitalization Plan Released

On 20 March 2009, the State Council of the PRC promulgated the *PRC Steel Industry Adjustment and Revitalization Plan* (in Chinese, 钢铁产业调整和振兴规划, the "**Steel Plan**"), which will be a general action plan for the PRC steel industry in the next three years.

Based on the Steel Plan, the market

leaders in the China steel industry (such as Baosteel Group in Shanghai, Anshan Iron and Steel Group in Liaoning province, and Wuhan Iron and Steel Group in Hubei province) are encouraged to merge and acquire other market players.

In order to enhance the reserve capacity of natural resources and the competition capacity of the Chinese steel companies in international steel market, the Steel Plan adopts the strategy of encouraging Chinese steel companies to be actively involved in the development of offshore natural resources, the outbound economic and technical cooperation and offshore acquisitions, by using the Fund for Offshore Investment in Mineral Resources (in Chinese, 境外矿产资源权益投资专项资金), the Fund for Outbound Economic and Technical Cooperation (in Chinese, 对外经济技术合作专项资金) and the Venture Fund for the Prospecting of Offshore Mineral Resources (in Chinese, 国外矿产资源风险勘探专项资金).

The Chinese government will also strengthen the support to those qualified steel companies in their financing, including the public offering of stocks or bonds, middle-term or short-term financing products, application for bank loans, and private placements.

The detailed implementation plans will be formulated by the relevant governments at the provincial, municipal and district levels, and the relevant ministerial authorities.

Chinese Logistics Industry Adjustment and Revitalization Plan Released

On 1 March 2009, the State Council of the PRC announced the *PRC Logistics Industry Adjustment and Revitalization Plan* (in Chinese, 物流业调整和振兴规划, the “Logistics Plan”), which is one of the stimulus packages for ten industries of China, aiming to stimulate the domestic economy.

The Logistics Plan included nine major projects to boost the logistics sector of the PRC, which includes the multi-modal transportation facilities, logistics zone, urban delivery, wholesale commodities and rural logistics, related development of manufacturing and logistics industry, promotion of logistics standard and technology, public logistics information platform, logistics technology breakthrough and emergency logistics.

According to the Logistics Plan, the development of logistics for energy, mining, automobile, and medical

industries and agricultural products are especially encouraged. Furthermore, mergers and reorganizations of Chinese logistic companies are also encouraged, so as to groom modern logistics players for international competition.

The Logistics Plan will be implemented with an expectation to ensure a rapid growth of the domestic logistics sector and to create a favorable environment for domestic logistics companies to survive the global economic downturn.

China Lowers Threshold for Foreign Investment in Basic Telecommunication Business

On 10 September 2008, the State Council published the *Decision to Amend the Regulation for Administration of Foreign Investment in Telecommunication Enterprises* (in Chinese, 国务院关于修改《外商投资电信企业管理规定》的决定, the "**Decision**").

According to the Decision, the statutory minimum registered capital for the incorporation of a company with foreign investment in the basic telecommunication business is 50% lower than the previous requirements. Now the minimum standards are: RMB 100 million for establishing a foreign invested company engaging

in basic telecommunication business within one province, and RMB one billion for establishing a foreign invested company engaging in nationwide basic telecommunication business.

Chinese Government Opens Up Medical Service Industry in Guang Dong Province to HK and Macao Service Providers

The Ministry of Commerce and the Ministry of Health jointly promulgated the *Second Supplement to the Administration Measures of Sino-foreign Equity or Cooperative Joint Venture Medical Institutions* (in Chinese, 《中外合资、合作医疗机构管理暂行办法》的补充规定二, the "**Second Supplement**"), which is to further implement the government's undertakings under the Closer Economic Partnership Arrangement with Hong Kong and Macao and the relevant supplemental agreements thereto.

From 1 January 2009, the medical service providers from Hong Kong and Macao are allowed to set up clinics in Guang Dong province in the form of wholly foreign owned enterprise, without limitation over the investment amount of the clinics.

The medical services providers from Hong Kong and Macao are also

allowed to set up clinics in Guang Dong province in the form of Sino-foreign equity joint venture enterprises and Sino-foreign cooperative joint venture enterprises, without limitation over the investment amount of the clinics or the share proportion between the investors.

Trade

New Administrative Measures on Registration of Technology Import and Export Contracts

On 1 February 2009, the Ministry of Commerce promulgated the *Administrative Measures on Registration of Technology Import and Export Contracts* (in Chinese, 技术进出口合同登记管理办法, the "Measures").

The Measures now require the importers and exporters to register within the time limit of 60 days. The mode of foreign exchange conversion and financing are no longer the items to be registered. The Measures also have new provisions to specially address the registration of contract under which the payment is based on certain percentage of revenue.

Tax

China Emphasizes Collection Administration of Non-residents' Taxes

On 9 March 2009, the State Administration of Taxation ("SAT") issued *the Notice on Further Strengthening the Collection Administration of Taxes Non-residents' Taxes* (in Chinese, 关于进一步加强非居民税收管理工作的通知, the "Notice"), in which SAT urges the tax authorities of all levels to implement the series of recent rules regarding collection of taxes payable by non-residents promulgated by SAT since the PRC Enterprise Income Tax Law comes into effect.

Such recent rules mainly include: -

- (i) the *Administrative Measures on Final Settlement and Payment of Corporate Income Tax for Non-resident Enterprises* (in Chinese, 非居民企业所得税汇算清缴管理办法),
- (ii) the *Provisional Administrative Measures Governing Tax Collection on Contracted Projects and Provision of Services by Non-resident Enterprises* (in Chinese, 非居民承包工程作业和提供劳务税收管理暂行办法),
- (iii) the *Provisional Administrative Measures on Withholding Enterprise*

Income Tax for Non-resident Enterprises (in Chinese, 非居民企业所得税源泉扣缴管理暂行办法), and (iv) *the Circular on Submission of Tax Payment Certificate for Remittance out of China under Service Trade issued by SAFE and SAT* (in Chinese, 国家外汇管理局、国家税务总局关于服务贸易等项目对外支付提交税务证明有关问题的通知).

In the abovementioned rules, SAT reiterated or established some mechanisms to prevent tax evasion by non-resident taxpayers, such as the corporate income tax filing by the non-resident enterprises with permanent establishment in PRC, registration of contracts regarding projects and services outsourced to non-resident enterprises, filing by the Chinese target company of share transfer agreement between non-residents regarding transfer of shares in such target company, and requirement of tax payment certificate issued by tax authorities before making payment of more than USD 30,000 (exclusive) for service trade and other taxable activities.

New Measures for Treatment of Corporate Income Tax on Real Estate Development and Operation

On 6 March 2009, the State Administration of Taxation ("**SAT**") issued the circular on *the Measures for Treatment of Corporate Income Tax on Real Estate Development and Operation* (in Chinese, 房地产开发经营业务企业所得税处理办法, the "**Measures**"). The Measures apply to both domestic-funded companies and foreign invested companies, and are consistent with the new Corporate Income Tax Law effective from 1 January 2008.

Among other changes, the minimum rate of estimated gross profits, which is a decisive variable for calculating prepayment of corporate income tax for presale of non-completed real properties, have generally been lowered by 5% except for some special properties such as economic houses. This generally leads to reduction of prepaid amounts and would relieve the cash-flow burden of the enterprises to some extent.

Dispute Resolution

New Regulation on Service of Judicial Documents of Civil and Commercial Cases Concerning Hong Kong and Macao

Provisions of the Supreme People's Court on Issues Concerning Service of Judicial Documents of Civil and Commercial Cases Concerning Hong Kong and Macao (in Chinese, 最高人民法院关于涉港澳民商事案件司法文书送达问题若干规定, the "**Provisions**") released by the Supreme People's Court of PRC (the "**Supreme Court**") on 9 March 2009.

According to the Provisions, the

courts in mainland China may directly serve judicial documents on an addressee whose legal domicile is in Hong Kong or Macao, if (i) the addressee who is a natural person, or the legal representative or the chief of the addressee which is an enterprise or organization, is physically in mainland China, or (ii) the addressee has a representative office, or a branch or business agent (which are authorized for receipt of such service) in mainland China. The courts may also serve on the litigation attorney of the addressee, unless the addressee has explicitly stated in the power of attorney that the attorney is not authorized to receive service of judicial documents.

OUR FIRM

Bao Rui Legal is a full-serviced partnership law firm located in Shanghai, which is qualified to practise Chinese law. It is oriented to serve both domestic and overseas clients with high quality and efficient professional services to meet the diverse requirements of clients in various industries. Bao Rui Legal has a close alliance with numerous foreign law firms, investment companies and other related professional institutions.

Bao Rui Legal actively engages in providing legal services in investments and finance of domestic and overseas corporations, including legal services in merger and acquisition, capital market, real estate financing, venture capital and private equity finance, foreign investment, fund and trust. Bao Rui Legal represents clients in a variety of industries including banking and financial services, construction, real estate, strategic investment, insurance, healthcare and pharmaceutical, manufacturing, IT, telecommunication, media, aviation, shipping, energy, entertainment and lifestyle. Our clients are both foreign and domestic, from China, East-South Asia, America, Europe, etc.

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