



CHINA LEGAL UPDATE

Table of Contents

- **Taxation - Unified enterprise income tax rate set at 25%**
- **Banking - China fully opens banking industry**
- **Finance - Anti-Money Laundering Law establishes a basic legal framework**
- **Insurance - New restriction on reinsurance**
- **Securities - New qualification procedures for senior officers of securities companies**

Taxation

It is reported that the draft of Enterprise Income Tax Law unifies the enterprise income tax rate as 25%.

Key point: Unified enterprise income tax rate set at 25%

➤ **First Hearing for the Draft Unified Tax Law by the Standing Committee of the National People's Congress**

The draft unified tax law was brought to the 25th session of the 10th Standing Committee of the National People's Congress on December 24, 2006 for its first hearing. The draft unified enterprise income tax rate will be set at 25%, but a preferential rate as low as 20% could be available to some qualified small-sized enterprises with low gross profit margins.

According to Mr. Jin Renqing, Minister of Finance, the unification of the dual tax systems can be attributed to the following factors: (i) the reform reflects China's obligation to create a fair and competition environment for all enterprises; (ii) various local and unauthorized tax incentives had distorted the operation of some enterprises and resulted in tax evasion by some enterprises; and, (iii) current dual tax laws for domestic enterprises and foreign invested enterprises have been in effect for over ten years. There are changes in economic and social circumstances, which should be reflected in the law.

Banking

As China's WTO Commitments, Chinese government issued new regulation to fully open banking industry including Renminbi business.



Key point: China fully opens banking industry

➤ **Administrative Regulations regarding Foreign Invested Banks**

外资银行管理条例

Issuing Authority: State Council

Date of Issuance: November 11, 2006

Effective Date: December 11, 2006

On the fifth anniversary of China's adoption by the World Trade Organization, the PRC State Council published the PRC Administrative Regulations regarding Foreign Invested Banks (hereinafter referred to as "Administrative Regulations") to fully open its banking industry in line with its commitments. The Administrative Regulations supersede the Administrative Regulations on Foreign-invested Financial Institutions promulgated in 2001.

"Foreign Invested Banks" in Administrative Regulations include wholly foreign-owned banks ("WFOE Banks"), Sino-foreign joint venture banks ("JV Banks"), branches of foreign banks ("Branches") and representative offices of foreign banks ("Rep. Offices"). The first three categories are defined as "Operational Foreign Invested Banks" that are permitted to engage in foreign currency and Renminbi business. Rep. Offices are prohibited from engaging in banking business activities. However, in order to conduct Renminbi business, an Operational Foreign Invested Bank should have more than 3 years operation experience in China and have been profitable for 2 consecutive years.

Commencing December 11, 2006, upon approval, WFOE Banks and JV Banks are permitted to conduct both foreign currency and Renminbi businesses, including taking deposits, granting short, medium or long term loans, handling acceptance and discount of negotiable instruments, buying and selling government bonds and financial bonds, non-stock negotiable securities denominated in foreign currencies, L/C services and guarantees, handling domestic and overseas settlements, buying and selling foreign currencies, selling insurance on a commission basis, inter-bank funding, bank-card business, safe deposit box services, credit investigations and consultation services.

Branches of Foreign Invested Banks are not permitted to operate bank card services, or take fixed-term deposits from PRC nationals, unless the amount of any single transaction exceeds Renminbi 1 million. Upon approval by the China Banking Regulatory Commission, a foreign bank may convert its PRC Branch into a WFOE Bank.

Administrative Regulations require that the minimum registered capital of a WFOE Bank or a JV Bank must be Renminbi 1 billion, which must be in the form of paid-in capital. Branches of WFOE Banks or JV Banks must be allocated operating capital of no less than Renminbi 100 million, which must not exceed 60% of the total capital of the head office of the bank in



China. The Branch of a foreign bank must be allocated operating capital of no less than Renminbi 200 million.

Finance

China Congress passed the first anti-money laundering law.

Key point: Anti-Money Laundering Law establishes a basic legal framework

➤ **Anti-Money Laundering Law of the People's Republic of China**

中华人民共和国反洗钱法

Issuing Authority: Standing Committee of National People's Congress

Date of Issuance: October 31, 2006

Effective Date: January 1, 2007

The Anti-Money Laundering Law of the People's Republic of China (the "Anti-Money Laundering Law") was adopted by the 24th session of the Standing Committee of the 10th National People's Congress on October 31, 2006 and will take effect on January 1, 2007. The Anti-Money Laundering Law together with the Criminal Law establishes a basic legal framework to prevent and investigate money laundering activities and crimes in China.

The Anti-Money Laundering Law defines the responsibilities of the anti-money laundering administrative organ and related departments and organs, clarifies the duties and liabilities of financial institutions. It also provides the procedure for conducting anti-money laundering investigations.

The People's Bank of China ("PBOC") is the anti-money laundering administrative organ of the State Council. In addition, the Anti-Money Laundering Law provides the responsibilities of other related departments and organs of the State Council. For example, the Anti-Money Laundering Law lay down that the financial regulatory organ of the State Council shall require financial institutions to establish and improve their internal control system, and establish a client identity verification system and a client information and transaction records keeping system.

The duties of financial institutions whose duties are subject to anti-money laundering are as follows, (1) government-sponsored banks, commercial banks, credit unions and postal savings unions; (2) securities companies and futures brokerage companies; (3) insurance companies; and (4) investment trusts. In addition, because limiting anti-money laundering regulations to the government and financial institutions does not effectively address illegal activities, the Anti-Money Laundering Law also empowers the PBOC to include other



financial institutions to be subject to anti-money laundering duties.

The Anti-Money Laundering Law lay down the following specific anti-money laundering duties of financial institutions: (1) establishing an internal control system on anti-money laundering and forming special anti-money laundering organs or assigning existing organs to take such responsibilities; (2) establishing a client identity verification system; (3) establishing a client identity and transaction information records keeping system; (4) implementing large and suspicious payment transaction reporting system; and (5) conducting anti-money laundering training and education.

Insurance

CIRC's new regulation demands FIIC to report all facultative reinsurance arrangements.

Key point: New restriction on reinsurance

➤ **Notice Concerning Strengthening Information Disclosure of Reinsurance Transactions between Foreign-invested Insurance Companies and Affiliates**

关于加强外资保险公司与关联企业从事再保险交易信息披露工作的通知

Issuing Authority: China Insurance Regulatory Commission

Date of Issuance: November 17, 2006

Effective Date: January 1, 2007

This Notice applies to Foreign-Invested Insurance Companies (“FIIC”), including Sino-foreign insurance joint ventures, wholly foreign-owned insurance companies and branches of foreign insurers in China.

Under the Notice, a FIIC must report to the China Insurance Regulatory Commission (“CIRC”) all facultative reinsurance arrangements it enters into with its affiliates within 30 days after the end of each quarter. A FIIC must also report to CIRC all treaty reinsurance arrangements it enters into with its affiliates within 3 months after such arrangements become effective.

Securities

New Measures set forth qualification procedures for senior management personnel of securities companies.

Key point: New qualification procedures for senior officers of securities companies



➤ **Measures on Supervision of Qualifications for Directors, Supervisors and Senior Management Personnel of Securities Companies**

证券公司董事、监事和高级管理人员任职资格监管办法

Issuing Authority: China Securities Regulatory Commission

Date of Issuance: November 30, 2006

Effective Date: December 1, 2006

The Measures set forth specific qualifications and application procedures for directors, supervisors and senior management personnel of securities companies. “Senior Management Personnel” are defined as the general manager, deputy general manager, financial officers, compliance officers, secretary of board of directors, and officers in charge of onshore subsidiaries of a securities company. Candidates for such positions must obtain the qualifications provided for in the Measures and complete examination and verification by the China Securities Regulatory Commission (the “CSRC”) prior to taking up their posts. If there is a change in the duties of any senior management personnel after he or she has been approved by the CSRC, the securities company must report such changes to the CSRC within 5 days.

The Measures also provide that foreign citizens employed as senior management personnel cannot exceed 30% of all such personnel of a domestic securities company; or 50% of a foreign-invested securities company.

SHANGHAI OFFICE 10/F, Long Feng Tower, 1566 Yan'an West Road Shanghai 200052, China Tel: (8621) 5258 2666 Fax: (8621) 5258 7968 E-mail: master@jzfz.cn Website: www.jzfz.cn	SINGAPORE OFFICE 9 Temasek Boulevard, #36-01A Suntec City Tower Two Singapore 038989 Tel: (0065) 6337 5029 Fax: (0065) 6337 1965 E-mail: master@jzfz.cn Website: www.jzfz.cn
---	--

This is intended to keep our clients and friends apprised of industry, regulatory and legislative changes that may have an impact on the way business is conducted and operated in China. This publication is for general information only, and is not a substitute for legal consultation. For further information please contact us at J&F PRC LAWYERS.