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**GUIDELINE FOR COMMERCIAL BANKS TO CONTROL RISKS OF REAL ESTATE LOANS ISSUED**

**Key Points:**

- **Commercial banks required to enhance risk control efforts**
- **More restrictions on loans to developers and home buyers**

Amid increasing concern of a "real estate bubble," China's Banking Regulatory Commission ("CBRC") issued a *Guideline on Risk Control for Real Estate Loans by Commercial Banks* (the "Guideline") on September 2, 2004, which took effect immediately.

The Guideline requires commercial banks to conduct

an annual internal review of all departments and branch offices that have granted real estate loans, and to produce a report detailing such review. The Guideline does not specify whether such report needs to be filed with CBRC; however, it is implied that CBRC will have access to it. To facilitate access to information, CBRC also requires that commercial banks preserve details of each real estate loan in a format compatible with CBRC's statistics system.

The Guideline also establishes certain substantive requirements for real estate loans by commercial banks. For example, the Guideline prohibits a commercial bank from providing a loan to a real

estate developer before the developer has obtained the "four certificates" (i.e., the land use rights certificate, the land planning certificate, the construction project planning certificate, and the construction permit). In addition, the Guideline limits the maximum debt that commercial banks may lend to a developer to 65% of the total investment of the project (i.e., at least 35% of the investment must be provided by the developer).

For residential loans to individuals, the Guideline requires commercial banks to adopt and use CBRC's standard application form. The maximum loan amount permitted to each individual borrower is limited to 80% of the appraised value of the property. In addition, the monthly repayment amount must be limited to 50% of the monthly income of the borrower, and the total debt repayment (including all debts, such as car loans) by such individual borrower each month has to be no more than 55% of monthly income.

According to the Guideline, the CBRC will regularly monitor how commercial banks are exercising risk control with respect to real estate loans, and each year, the CBRC will select two or more banks for a comprehensive examination of their performance on this matter. – *Zhao Yong*

## STATE COUNCIL ISSUES REGULATION ON PLACE OF ORIGIN FOR IMPORT AND EXPORT GOODS

### **Key Points:**

- ***China consolidates and expands existing regulations on place of origin***
- ***New provisions on "advance determination"***

The State Council issued the PRC Regulation on Place of Origin for Import and Export Goods (the "Regulation") on September 3, 2004, which will take effect on January 1, 2005. Existing regulations on the same subject include the 1992 State Council regulation on place of origin for export goods and the 1986 General Customs Administration rules on place of origin for import goods, which will be replaced by the Regulation when it takes effect.

The Regulation provides more details and practical directions than the existing regulations, which were rather simplistic. The Regulation will be applicable when the place of origin for import or export goods needs to be determined, either for the purpose of trade measures (e.g., most favored nation status, anti-dumping, anti-subsidy, protective measures, quantity restriction for specific countries, tariff quota) or for determining issues related to labeling, government procurement, trade statistics, etc.

The technical parameters for determining the place of origin are defined in the Regulation. These specific parameters make the application of the Regulation in practice much clearer, compared with that of the existing regulations.

One notable new provision of the Regulation is that an importer or a related party thereof may apply to the PRC customs authorities for "advance determination" of the place of origin of a particular shipment of goods. Once PRC customs makes an advance determination (which is required to be made within 150 days), such determination will remain valid for three years, during which period the place of origin of the goods will be recognized in accordance with the advance determination if the goods are

imported under the pre-designated conditions. –  
*Zhao Yong*

## **NEW NOTICE ISSUED GRANTING LONGER GRACE PERIOD TO FOREIGN- INVESTED CONSTRUCTION ENTERPRISES TO APPLY FOR QUALIFICATIONS**

### **Key Points:**

- **Deadline for foreign-invested construction enterprises to obtain qualification is postponed**
- **Qualification requirements are eased for newly established foreign-invested construction enterprises**

The PRC Ministry of Construction (“MOC”) and the Ministry of Commerce (“MOFCOM”) jointly published a *Notice of Relevant Issues Concerning the Management of Foreign-Invested Construction Enterprises’ Qualifications* on September 6 (“Circular 159”).

Circular 159 postpones the previously established deadline for foreign-invested construction enterprises to obtain a Construction Enterprise Qualification Certificate until July 1, 2005. Previously the transitional period was set as from December 1, 2002 to October 1, 2003. During the transition period, Decree 113, *Regulations on Administration of Foreign-Invested Construction Enterprises*, and Decree 32, *Provisional Rules Regarding the Management of Qualifications of Foreign Enterprises Undertaking Construction in China*, will be implemented simultaneously (according to Decree 113, Decree 32 would become invalid from October 1, 2003). Further, during the transition period, qualification administrative authorities are required to

accept foreign-invested construction enterprise applications for qualifications. Upon the expiration of such transition period, foreign-invested construction enterprises will be required to follow the same time schedule as domestic construction companies in applying for construction enterprise qualifications.

According to Circular 159, before July 1, 2005, MOC will issue contracting certificates for each applicable project to those foreign enterprises that have obtained foreign-invested enterprise certificates of approval, but have not yet obtained construction enterprise qualifications, as a temporary measure. After July 1, 2005, MOC will prohibit foreign enterprises without Construction Enterprise Qualification Certificates from contracting activities.

In addition, to encourage big international construction companies to establish foreign-invested construction enterprises in China, Circular 159 eases some of the previous requirements for newly established foreign-invested construction enterprises. For example, Circular 159 allows foreign-invested construction enterprises to use their projects outside China to satisfy the MOC's experience requirements when seeking a Qualification Certificate. Moreover, foreign engineers and project managers will be approved based on equivalent foreign qualifications, including academic and work experience. Finally, the restrictions on the number of foreign service providers that a foreign-invested construction enterprise may retain, i.e., no more than one third of the required project managers as set forth in the qualification standard, have been removed.

– *Jennifer Liu*

## CHINA PUBLISHES NEW STATUTE GOVERNING PATENTS FOR DEFENSE-RELATED TECHNOLOGIES

### Key Points:

- *New law to protect patents for defense technologies*
- *Special agency for defense-related patents*

On September 17, 2004, a new *Law on Defense Patents* was published, as part of China's ongoing effort to further protect intellectual property rights. The new law became effective on November 1, replacing the existing *Regulations on Defense Patents*, which were enacted on July 30, 1990.

The new law covers all major patent issues related to defense-related products and technologies, including patent application, examination and approval, and administration and protection of patents.

The new law provides for the establishment of special agencies (known as "State Defense Patent Agencies") that are designated to assist with applications for defense-related patents (Article 3 of the new law).

The new law also revises the administration system for defense patents, and includes provisions regarding the license fees for defense patents and the intermediation and settlement of disputes arising in connection with defense patents, references to descriptions and abstracts of defense patents.

– Maureen Meng

## CSRC PROPOSES FIVE MEASURES TO PROTECT PUBLIC SHAREHOLDERS' RIGHTS

### Key Points:

- *Reform furtherance of domestic capital markets*
- *Five new policies to improve shareholders' rights*

In late September, China's Securities Regulatory Commission ("CSRC") issued a draft document, the *Measures for Reinforcing Protection of Rights and Interests of Public Shareholders* (the "Measures"), which presents five new proposals for public discussion giving minority shareholders of listed companies a greater voice in significant decisions.

CSRC said that the Measures are in furtherance of the *State Council Opinion on Reform Measures for Bolstering Steady Development of the Domestic Capital Markets*, which was adopted on January 31, 2004.

The new policies are intended to (i) improve the system for minority shareholders' voting on major issues; (ii) provide for independent directors giving better protection to the rights and interests of small investors; (iii) strengthen administration over relationships among investors to ensure the rights of small shareholders to company information; (iv) encourage and promote effective profit distribution methods by listed firms; and (v) reinforce the supervision by minority shareholders over the listed company and its senior management.

Among these five measures, the first method is regarded by many experts as the most powerful one for protecting the rights of minority shareholders.

According to the Measures, any issue that may have a major impact on the interest of public investors, such as an offering of new shares to the public, issuance of convertible bonds, issuance of rights to

original shareholders, restructuring of major assets, repayment of shareholders' debt with equity interests, or overseas listings of subsidiaries, requires the prior approval of over half the public shareholders who attend a shareholders' meeting.

In addition, the Measures provide other mechanisms to support the voting system by establishing a vote-through-Web system and a cumulative voting system. When a listed company elects an independent director, or a listed firm whose controlling shareholder holds more than 30% shares in the firm elects directors and/or supervisors, shareholders who hold tradable shares will be entitled to cumulate their votes to elect an independent director or supervisor.

CSRC also noted that after the period for public comment has closed, it will further improve the drafted Measures and quicken the publication of the final version for implementation, so that exploitive conduct by large shareholders can be restricted as soon as possible. – Maureen Meng

## **ADMINISTRATIVE MEASURES ANNOUNCED FOR ENERGY EFFICIENCY LABELING SYSTEM (CHINA MARKET INTELLIGENCE)**

### **Key Points:**

- **Mandatory certification and filing of China Energy Label**

On August 13, the State Development and Reform Commission ("SDRC") and the Administration for Quality Supervision, Inspection, and Quarantine ("AQSIQ") promulgated the *Administrative Measures on Energy Efficiency Labeling* (the "Measures"),

which will take effect on March 1, 2005.

According to the Measures, companies within the Product Catalogue that are subject to an "Energy Efficiency Labeling System," which will be established in the future, will be obligated to adhere to new energy efficiency standards, to affix labels that read "China Energy Label" in Chinese to products covered by the new catalogue and to describe the label in their product manuals. Such companies must also register such labels with the designated PRC authorities. Products without a label cannot be sold if a label is required by the Measures.

The Measures specify certification and filing procedures for the label. The manufacturer or importer of the product is required to test and determine the product efficiency level in accordance with the national standards, either on its own or by entrusting the testing to a state-approved testing agency. The product manufacturer or the importer must then affix labels in accordance with the samples, specifications and standards.

Within 30 days after applying any such label, the manufacturer or importer must file with the authorized agencies the form of the label, along with other specified documents including the business license of the manufacturer, the import contract and the testing report. All documentation must be submitted in Chinese, which shall prevail in case of inconsistency with any other language used in such documentation.

Local energy saving authorities and local quality supervision authorities will be responsible for prosecuting any violation of the Measures. Penalties range from an order of correction, to discontinuing

use of the label, to a fine of up to RMB 10,000. The local quality supervision authorities may also prosecute actions for counterfeiting or concealing a label, or for false advertising or misleading consumers in accordance with the Energy Conservation Law and the Product Quality Law.

The Measures are intended to guide consumers in their efforts to conserve energy and to enhance energy efficiency in order to deal with the increasing energy shortages in China. – *Julia Kong*

## SECURITIES INVESTMENT FUND MANAGEMENT COMPANIES ADMINISTRATIVE REGULATIONS INTRODUCED

### Key Points:

- **Establishment and amendment of procedures for domestic and foreign invested fund management companies**
- **Emphasis on corporate governance**

The China Securities Regulatory Commission (“CSRC”) promulgated the *Securities Investment Fund Management Companies Administrative Regulations* (the “Fund Management Regulations”) effective on October 1, 2004, which provide for the establishment, modification and dissolution of fund management companies and their branches. The Fund Management Regulations are applicable to both domestic and foreign invested fund management companies, and have replaced the *Foreign Invested Fund Management Company Establishment Rules*.

According to the Fund Management Regulations, the shareholders of fund management companies must comply with the Securities Investment Fund Law,

and the fund management companies must possess articles of association that comply with the Securities Investment Fund Law, the Company Law, and all applicable CSRC rules. The fund management companies must also have at least RMB 100 million (US\$12.08 million) of registered capital and at least 15 executive officers and fund professional staff who hold professional fund qualifications.

Major shareholders of a fund management company must hold at least 25% of the equity of the fund management company and must possess registered capital of RMB 300 million (US\$36.23 million) or more. The other shareholders of the fund management company must possess at least RMB 100 million (US\$12.08 million) in registered capital and net assets.

As of December 11, 2004, a foreign investor’s equity ownership in a fund management company established as a joint venture may be increased to 49% from 33%. The threshold capital requirement for foreign investors is paid-in capital of RMB 300 million (US\$36.23 million) or more.

Upon approval, the fund management companies must obtain a Fund Management Qualification Certificate.

Fund management companies must apply to CSRC to make significant amendments including changes in shareholders, in registered capital, in the proportion of shareholder’s equity, in the company’s name and address, and for any amendments to the company’s articles of association.

Upon approval from CSRC, a fund management company may establish branch offices to offer

different types of funds, fund sales, and other businesses authorized by the head office.

The Fund Management Regulations also emphasize corporate governance of fund management companies. Such companies are required to have at least three independent directors, and such directors must constitute at least one-third of the board.

– *Julia Kong*

## **DRAFT RULES ON MANAGEMENT OF USED AND WASTE HOME ELECTRIC APPLIANCES RECYCLING AND TREATMENT CIRCULATED FOR COMMENTS**

### **Key Points:**

- **Home electric appliance producers, distributors and after-sale service providers are responsible for home electric appliance recycling**
- **A centralized treatment system is adopted**

On September 17, the National Development and Reform Commission (“NDRC”) issued draft rules for public comment regarding the recycling and treatment of used and waste home electric appliances (the “Rules”).

The Rules require that the manufacturers of home electric appliances design their products in ways that make them recyclable. Home electric appliance producers are required to report to the designated local authorities their product output, as well as sale and export information, and home electric appliance importers must record their imports with the same local authorities. Distributors and after-sale service providers are obligated to accept used and waste home electric appliances and then send or sell such

items to qualified treatment enterprises. By their terms, the Rules prohibit consumers from discarding or dismantling home electric appliances. Instead, they are obligated to send or sell them to distributors, after-sales service providers or qualified treatment enterprises for recycling. The draft Rules adopt a centralized treatment system; only qualified treatment enterprises are permitted to dispose of used and waste home electric appliances. The state will implement a treatment enterprises qualification certification system.

Used home electric appliance dealers are not permitted to sell used home electric appliances without testing and labeling by a qualified treatment enterprise.

The draft Rules also provide that the government encourages and supports the establishment of recycling and treatment enterprises. The government will draft used and waste home electric appliances recycling and treatment technology policies and pollution prevention policies, as well as relevant standards and rules, and will enhance the supervision of used and waste home electric appliances recycling.

The draft Rules provide penalties for violations of the provisions above. – *Jennifer Liu*

## **MONEY MARKET FUND MANAGEMENT INTERIM REGULATIONS ANNOUNCED**

### **Key Points:**

- **New regulations governing the operation and management of money market funds**

The China Securities Regulatory Commission (“CSRC”) released *Money Market Fund Management*

*Interim Regulations* (the "Regulations") on August 16, 2004. The Money Market Regulations are the first rules that allow fund managers to include the monetary market as part of their investment scope.

According to the Regulations, a monetary market fund can invest only in short-term deposit certificates, bonds with a balance term of 397 days or less, bond repurchases with a term of one year or less, central bank bills, and other permitted monetary market tools that have high liquidity. Such a fund cannot invest in stocks, convertible bonds, low-rating corporate bonds, or long-term bonds with a balance term of over 397 days.

A money market fund investment portfolio must satisfy the following requirements:

1. The proportion of investment in the short-term corporate bonds issued by the same company may not exceed 10% of the net asset value of the fund;
2. Bank deposits in the same commercial bank with fund escrow qualification must not exceed 30% of the net asset value of the fund, and the deposits in a commercial bank without fund escrow qualification must not exceed 5% of the net asset value of the fund;
3. The balance of redeemed funds from bonds in the inter-bank bond market must not exceed 40% of the net asset value of the fund; and
4. Other restrictions specified by CSRC and People's Bank of China.

Unlike equity funds, a money market fund typically involves less risk and better liquidity. In practice, money market funds have been in existence since last year, when some domestic fund management companies established funds that targeted the monetary market. The Money Market Regulations have consolidated and legalized this practice.

– Julia Kong

## MINISTRY OF COMMERCE CREATES ANTI-MONOPOLY OFFICE

The Ministry of Commerce ("MOFCOM") recently established an Anti-Monopoly Office. According to Mr. Shang Ming, director of the Treaty and Law Department of MOFCOM and the new head of the Anti-Monopoly Office, the office will be responsible for assisting the legislation process for the long-contemplated Anti-Monopoly Law, as well as for international information exchanges. Reports also indicate that the office may become involved in investigations into monopolies. – Zhao Yong

## Other articles and publications

***Please let us know if you would like copies of any of the following:***

**Zhao Yong**, "Draft Anti-Monopoly Law Submitted to the State Council for Review," *SSD Antitrust & Trade Regulation Update*.

**Zhao Yong**, "Chinese SAIC Issues Report on Monopolistic Conducts of Multinational Corporations in China," *SSD Antitrust & Trade Regulation Update*.

**Zhao Yong**, "Regulation on Filing of Price Violations Complaints Revised," *SSD Antitrust & Trade Regulation Update*.

**James Zimmerman**, "China's Homegrown Standards Bring Headaches to US Firms," *Investor's Business Daily*.

**James Zimmerman and Diarmuid O'Brien**, "CIETAC Financial Dispute Arbitration Rules: Practice and Problems", *Asian Dispute Review (November 2004)*.

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