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ALB In-House Legal Summit 2008

**Recent Development of M&A
Rules and Practices**

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Latest Update of “Foreign Investment Industrial Guiding Catalogue” on October 31, 2007

- Industries more open to foreign investment
 - *modern service industries (logistics, international trade, forwarding, outsourced services)*
 - *financial sectors (futures, foreign exchange brokerage)*
 - *environment related industries (cleaner production, renewable energy, seawater utilization, waste recycling, urban utilities)*

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- Industries less open to foreign investment
 - *mature traditional manufacturing industries*
 - *mining and natural resources*
 - *energy-consuming & polluting industries*
 - *real estate (common residential property development, real estate trading brokerage)*
 - *purely export-oriented industries*
 - *industries involving national economic security (non-ferrous metal smelting, certain general machineries, shipbuilding, high-end electronic devices)*

- Recent macroeconomic control
 - *NDRC's new circular*
 - *Access tightened: steel, aluminium smelting, cement, shipbuilding*

MOFCOM's Decentralization of Approval Authority on Foreign-Invested Companies Limited by Shares

- Foreign-invested companies limited by shares
 - *Delegation of authority to provincial counterparts*
 - *Equity capital enlargement of existing companies*
 - *Newly incorporated companies*
 - *Exceptions:*
 - *Certain specially regulated sectors*
 - *Strategic investment in listed companies*
- No parallel decentralization by other relevant authorities

New Foreign Exchange Control Scheme

- Revised "Foreign Exchange Administration Regulation"
 - *Pre-investment foreign exchange registration*
 - *Heavier oversights on foreign exchange settlement (conversion into RMB): pre-approval and exclusive use*
- Supporting rule on foreign exchange settlement for FIE's equity capital

New Implementation Regulations of Labor Contract Law

- Scenarios to early terminate employment contracts
- Secondment of employees
- Economic compensation issues

Forthcoming Legal Development

- “Foreign Invested Partnership Administration Measures”
 - A sub-regulation of the “Partnership Law”*
 - Available forms: common partnership and limited partnership*
 - FIE market access restrictions: applicable by analogy*
 - Capital contribution*
 - Winding-up*
 - Income tax*
- Proposed “Tentative Provisions on Setting-up Foreign Invested Company Limited by Shares”

Foreign Investment in Distribution

- MOFCOM's approval authority decentralized to the provincial level

- Exceptions
 - *sales via television, telephone, mail, Internet, or automatic vending machines*
 - *distribution of audio/video products or sale of books, newspapers, or magazines*

Foreign Investment in Advertising Industry

- New regulation promulgated for foreign-invested advertising enterprises

- Eligibility criteria for investors
 - *Sino-foreign joint venture*
 - *Wholly foreign owned enterprise*

- Procedures for approval and registration

Foreign Investment in Telecommunications Industry

- Revised regulation for foreign-invested telecommunication enterprises
- Minimum registered capital requirement is reduced by 50%
- Ceiling on foreign shareholding remains

Real Property Market

- Falling property prices; severe economic pressure for many property companies
- Most legal and policy restrictions on foreign investments remain in place
- Some changes in the revised Foreign Investment Industrial Guiding Catalogue
- MOFCOM's delegation of special review power ("Bei An") to provincial authorities

Foreign Investment in Sino-Foreign Securities Companies

- CSRC new rules became effective on January 1, 2008
- Old rules (effective July 2002)
- JV can be either a limited liability company or a company limited by shares
- Relaxation of foreign investors' eligibility
- Investment in PRC listed securities companies

Changed Tax Regime under New Enterprise Income Tax Law

- Important for M&A: different tax burden and financial results!
- Cancellation of special tax holidays for FIEs
- New tax benefits for certain industries and technologies
- New and high tech enterprises: 15%, and new verification measures
- Increased dividend withholding tax burden
- Grandfathering of existing tax holidays and benefits

Concentration Control Filing under New Anti-Monopoly Law

- New regulatory authorities
- New legal regime
- New filing thresholds applicable to concentrations
- Important to handle properly

Acquisition of Public Companies in China – Observations

- Post A share reform era
- Volatile stock market
- Media relationship and public sentiment as to acquisitions by foreign investors
- Measures taken by regulators to stabilise or boost the market

New Rules and Policies

- Guiding opinions on sale of formerly non-tradable shares (CSRC, April 2008)
- Significant assets reorganisation measures (CSRC, April 2008)
- Revision of share repurchases on public trading market (CSRC, Oct 2008)
- Launch of GEM in Shenzhen (pending)

Amendments to Listing Rules of Two Stock Exchanges

- Shanghai and Shenzhen, effective October 1, 2008
- Public float rule clarified
- Lockup period reduced for pre-IPO strategic investment
- Information disclosure principles clarified
- 5%+ shareholders to report connected transactions to the stock exchange

Future M&As: Prospect and Strategies

- M&As will continue to provide important business development and expansion opportunities
- Most international M&A techniques are permitted
- Tax status assessment and planning is very important
- Concentration control filing under AML, if applicable, should be handled carefully
- Acquisitions of listed company: challenges and opportunities

Questions and Comments?

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