Regulations on the Export Control of Dual-use Nuclear Products and Related Technologies

To further strengthen the administration and control over the export of dual-use Nuclear products and related technology (the “items”), on Jan 16, 2007, the State Council promulgated a decision to revise the Regulations on the Export Control of Dual-use Nuclear Products and Related Technologies (中华人民共和国核两用品及相关技术出口管制条例, “Revised Regulations”).

I. Scope of Application

The scope of application has been further clarified under the Revised Regulations. The “export” has been defined in a broader sense and refers to the export of the equipments, materials, software and related technologies outlined in the Dual-Use Nuclear Items and Related Technologies Export Control List (中华人民共和国核两用品及相关技术出口管制清单, “Control List”), including intangible technology transfer, and transfers in the forms of granting, exhibiting, technological cooperation, and foreign aiding, service, or others.

A new “catch-all” article has been added in the Revised Regulations providing that, the items not on the Control List shall also be subject to the same export control if the exporters know or have reasons to know, or are informed by the Ministry of Commerce (MOFCOM) that there is a risk of proliferation of nuclear weapons or the items to be exported may be used for the purpose of terrorism. It is also clarified that the Revised Regulations shall apply to the export of the items from bonded warehouses, bonded areas, export processing zones, or other special areas, or bonded areas under the special supervision of the customs house. The transit, transshipment, or pass of the items shall also be governed by this Revised Regulations.

In the meantime, to improve the efficiency of the administration for certain exports where the risks of nuclear proliferation appear low, such as exports for the inspection and repair which will be transported back within the stipulated period; or re-exports after being imported for the inspection and repair, the exporter can be exempted from furnishing the required documents upon approval by MOFCOM.

1 MOFCOM, jointly with the State Atomic Energy Authority (SAEA) or other relevant authorities, shall make adjustment to the Control List based on the factual situation.
II. Regulatory Mechanism

According to the Revised Regulations, MOFCOM still acts as the principal authority for the export control of the items. All exporters of the items should be registered with MOFCOM. Without the proper registration, no entity or individual is permitted to engage in such exports. The exporter shall submit an application to MOFCOM and provide a written guarantee from the recipient government. MOFCOM shall examine the application jointly with SAEA or other relevant authorities. If foreign policy concerns are involved, MOFCOM shall seek opinions from the Ministry of Foreign Affairs. In the case that the export of such items shall have significant impact on the national security, public interests, or foreign policies, it shall be subjected to final approval by the State Council.

Upon approval, MOFCOM shall issue an export license. Only with the export license may the applicant clear Customs to export the items.

III. Supervision and Enforcement

The supervision and enforcement has been strengthened under the Revised Regulations. In particular, a new inquiry procedure have been established. Under this procedure, Customs may put forward a challenge on whether a license should be obtained for the items to be exported, and may require the exporter to apply to MOFCOM for such license or a certificate that the export falls out of the scope of export control.

There are detailed sanctions for the violation of the export control rules provided in the Revised Regulations. In addition, other provisions have also been added to require the exporters to establish an internal control system. Under such provisions, the exporters shall keep the related documents for at least five years for future possible inspection. MOFCOM may inspect and make a copy of such documents.

The Revised Regulations became effective on the date of promulgation.

Measures for Brand Evaluation and Protection (Trial)

In order to promote the implementation of brand strategy and regulate the activities of brand evaluation and protection in the commercial field, the Ministry of Commerce (MOFCOM) issued the Measures on the Evaluation and Protection of Brands in Commercial Sector (Trial) (《商务领域品牌评定与保护办法》(试行)), the “Measures”) on 8 January 2007, which took effect on the same day. The Measures mainly provide following issues:

1. Application Criteria

The applicants shall meet the following conditions:

i) the applicant shall be legally incorporated and validly existing within China, and also have good economic and social performances;

ii) the brand applied for shall be created within China, its ownership shall belong to the applicant; it shall have been used for three (3) years or more and also have been registered as a trademark or under legal protection with similar effect in the major domestic or overseas markets. The brand shall be first registered in China;

iii) the brand shall also have rather strong competitiveness, influence, and fairly high popularity, whose quality reaches the leading level of China or the advanced level of the world.

2. Application and Granting Procedures

According to the Measures, MOFCOM shall conduct the evaluations periodically and issue a notice stipulating the scope, procedures, and time limit of the current evaluation in advance. The applicant shall fill in the application documents truly and submit
authentic, effective, and integrated evidential materials and necessary channels for verification to competent department of commerce of the place where it is located or the relevant industrial organizations before the prescribed time limit.

The local competent department of commerce or industrial organizations shall examine and verify the authenticity, effectiveness, and integrity of the application materials and file the said materials together with its opinions to MOFCOM within the prescribed time limit.

MOFCOM shall establish several expert working groups to examine and evaluate the participating brands and entrust professional organs and public media to conduct social investigation on the participating brands.

Then, MOFCOM shall publicize the list of bands to be evaluated to the public, grant corresponding brand name and brand mark use right to an enterprise in light of the publication situation, and publicize the relevant situation to the public.

3. Brands Use and Protection

According to the Measures, a brand evaluated and recognized by MOFCOM could be transferred, pledged, evaluated and contributed as investment and should be filed with MOFCOM within 30 days.

The Measures provide that where the actual control power of the enterprise that owns a brand evaluated and recognized by MOFCOM is transferred because of merger and acquisition, the parties concerned shall report the situation to MOFCOM.

The Measures, in view of different situations, provide various ways to deal with infringements to the intellectual property rights of the brand enterprises or any violence of the provisions of the Measures.

Furthermore, the Measures also provide that MOFCOM shall establish a pre-warning system and an service platform for the overseas protection of intellectual property rights to strengthen the brands protection abroad.

(Jenny Ni, Roger Peng)

Detailed Rules for the Implementation of Administrative Measures on Individual Foreign Exchange

The State Administration of Foreign Exchange circulated on January 5, 2007 the Detailed Rules for the Implementation of Administrative Measures on Individual Foreign Exchange (个人外汇管理办法实施细则, the “Implementing Rules”), which took effect on February 1, 2007. The Implementing Rules work together with the earlier promulgated Administrative Measures on Individual Foreign Exchange (the Administrative Measures, People’s Bank of China, Order No. 3) to provide a complete administrative mechanism over the individual foreign exchange. The new Administrative Measures also came into play as of February 1, 2007.

Under the Implementing Rules, US$50,000 is specified as the annual quota to be applied over the individual settlement of foreign exchange by an individual within or outside the PRC territory, as well as individual purchase of foreign exchange by individuals that are within the territory of PRC. According to the new Administrative Measures, the individual within the PRC territory refers to those who hold a valid PRC identity card or two other particular substitute identity certificates. The new Administrative Measures provides an annual quota will be imposed on the above two individual foreign exchange related business. Earlier, individuals within the territory of China were allowed to buy a total amount of foreign exchange valuing US$20,000 and individual settlement of foreign exchange was measured against a single quota. In addition, such number is subject to future adjustment by State Administration of Foreign Exchange according to the international balance of payments.

The Implementing Rules, in conjunction with the new Administrative Measures, present a lenient attitude towards the trading related individual foreign exchange. The individual that is engaged in
foreign trade or domestic business is allowed to open a foreign exchange settlement account, which will be treated the same way as such for an organization or institute. There will be no annual upper limit for the foreign exchange settlement or purchase under such account.

With respect to the settlement of foreign exchange under an individual frequent non-operation account that goes beyond the annual maximum amount, the Implementing Rules requires certain documents to be submitted for authenticity and legality check by relevant banks. For example, for receiving a donation, a valid donation agreement is required; with respect to the family support, a legal document is required to verify the underlying lineal relative relationship or other relationship to qualify the person for the receipt of such support, etc.

The annual quota also applies to the settlement or purchasing of foreign exchange under the individual capital account. Regarding the transaction that goes beyond the annual limit, the approval from the relevant foreign exchange bureau is mandated for such settlement or purchasing. Notwithstanding the foregoing, the restriction on the capital account will be relaxed gradually in reference to the schedule of Renminbi’s being a freely convertible currency.

In addition, the individual foreign exchange account includes the following three types: the foreign exchange settlement account, the saving account, and the capital item account. The earlier classification of foreign currency account and foreign exchange account no longer exists under the new regulations. Nevertheless, in order to strengthen the supervision over the foreign currency transaction, the Implementing Rules prescribe a limit for the daily deposit or withdrawal of foreign exchange. If the deposit amount goes beyond US$5,000 or the withdrawal exceeding US$10,000 accumulatively for each day, an approval from the relevant foreign exchange authority or an extra certain type of certifying document will be needed for the consummation of the transaction.

(Sophie Song, Arthur Mok)

Measures of the Unit Consumption in Processing Trade

On January 4, 2007, to regulate the administration of unit consumption in processing trade and promote the sound development of processing trade, the General Administration of Customs (GAC) promulgated the Measures of the Customs of the People’s Republic of China for the Administration of the Unit Consumption in Processing Trade (中华人民共和国海关加工贸易单耗管理办法, the “Measures”). With the Measures that became effective on March 1, 2007, the former Measures of the Customs of the People’s Republic of China for Administering the Unit Consumption in Processing Trade (2002) (原中华人民共和国海关加工贸易单耗管理办法, 2002) promulgated by the Order No.96 of the GAC on March 11, 2002) was concurrently repealed.

Under the Measures, a processing trade enterprise (PTE) shall, in the filing procedure of processing trade, report the unit consumption to the customs for record. A maximum upper value shall be set for the standards for unit consumption and an additional minimum lower value shall be set for the standards for the unit consumption of the export taxable finished products. The standards for unit consumption (the “standards”) shall be formulated by the customs in conjunction with the departments concerned and publicized in the form of public announcement. The standards shall be applicable to the PTE beyond the areas under the special customs supervision or bonded supervision (“PTE beyond the areas”) but shall not apply to PTEs within such areas.

According to the Measures, a PTE beyond the areas shall make filing of or declare the unit consumption to the customs within the standards. In case the unit consumption declared by a PTE beyond the areas falls within the standards, the customs shall, on the basis of the declared unit consumption, verify and write-off the bonded materials; if the declared unit consumption is beyond the standards, the customs shall, on the basis of the maximum upper value or minimum lower value of the standards, verify and write-off the bonded materials. In case the standards are not publicized yet, a PTE shall declare the actual unit consumption to Customs, and Customs shall verify and write-off the bonded materials in accordance with the actual unit consumption of the PTE.

A PTE shall declare the following contents for its unit consumption: i) name, serial number, unit, specification, mode, and quality of the materials and finished products under the processing trade; ii) unit consumption for the finished products under the processing trade; and iii) in case a same kind of materials for processing trade is composed of both bonded ones and non-bonded ones, the proportion, name, unit, specification, mode, and quality of the non-bonded materials shall be
declared. The following circumstances may not be listed into the scope of technique consumption: i) any consumption of bonded materials, semi-finished or finished products owing to the sudden failure of power, water, or gas or any other artificial reason in the process of production; ii) any consumption of bonded materials, semi-finished or finished products owing to loss, damage, or for any other reason; iii) any consumption as the loss, damage, or lack in amount of bonded materials, semi-finished or finished products due to force majeure; iv) any consumption incurred from the increase of materials because the quality or specification of any import bonded material or finished product fails to comply with the requirements of the contract; v) any consumption of the non-bonded materials used as technical ingredients; and vi) any consumption of consumptive materials in the processing process.

The Measures also stipulate that a PTE may apply to Customs for conducting the formalities for changing or revoking the unit consumption, except it is under any of the following conditions: i) export declaration for the bonded finished product has already been finished; ii) deep processing for the bonded finished product has already been carried forward; iii) the bonded finished product has already been applied to be distributed in domestic market; iv) the unit consumption has already been verified by Customs; or v) the PTE has already been put on record by Customs for investigation.

(Fay Zhou, Roy Zou)

Supreme Court of the PRC Issues Judicial Interpretations on the Unfair Competition Law

On December 30, 2006, the Supreme People’s Court of the PRC issued the Interpreations on Several Issues Concerning the Application of Law in the Trial of Civil Cases of Unfair Competition (关于审理不正当竞争民事案件应用法律若干问题的解释, the “Interpretations”), which came into effect on February 1, 2007. The Interpretations clarify various important terms used in the Anti-Unfair Competition Law of the PRC (the “Law”). The main issues raised in the Interpretations are set forth as follows:

Determination of “Well-known Commodity,” “Trade Dress,” and “Confusion”

The Interpretations give guidance on the meaning of the terms “well-known commodity” and “trade dress” which are not defined in the Law. According to the Interpretations, the names, packaging, and trade dress which are not distinctive are not protected by the Law. The Interpretations clarify that the “confusion” shall refer to any misunderstanding as to the source of the commodity as well as any wrongful association with a well-known commodity. Use of same, or basically visually same, name, packaging, and trade dress as that of the well-known commodity will be deemed to be “confusion.”

Article 5(3) of the Law prohibits the use of the enterprise name of another party which may create confusion. The Interpretations clarify that the term “enterprise name” refers to enterprise names not only registered, but also used in China. The trade name which has acquired a certain reputation and is recognized by the relevant public shall also be deemed as an enterprise name under the Law.

Trade Secret

Trade secrets are protected by the Law. According to the Law, trade secrets must be (1) unknown to the public; (2) valuable to the owner; and (3) protected by confidential measures. The Interpretations broadly clarify the above elements. Under the Interpretations, the information that is not generally known to, or not easily obtainable by, the relevant personnel in the same area is deemed to be unknown to the public. Valuable information refers to the information which brings actual or potential commercial value or competitive advantages to the owner. “Confidential Measures” are the appropriate protection measures adopted by the owners in order to prevent information disclosure. The Interpretations further list the following instances for confidential measures:

- Limit the scope of knowledge of confidential information and only notify its contents to the concerned personnel who must know the said information;
- Adopt locking and other preventive measures for confidential information carriers;
Mark confidential signs on the confidential information carriers;

- Adopt passwords or codes for confidential information;
- Sign confidentiality agreement;
- Restrict visitors to, or put forward confidentiality requirements for, confidential information-involving machines, factory buildings, workshops, and other venues.

Reverse Engineering

According to the Interpretations, reverse engineering is a legal method to obtain trade secrets. Under the Interpretations, “reverse engineering” means the use of technical means to dismantle, measure, map, and analyze a product obtained from public channels to get the relevant technical information about the said product. The Interpretations, however, state that if a party obtains technical information through unfair methods and then claims such information is lawful on the ground of reverse engineering, the court will not support such claim.

Remedies

The Interpretations expressly state that the remedies for trade secret infringement include injunctions and damages.

The injunction is an order to prohibit the unauthorized use or disclosure of trade secrets. The period for the injunction lasts until the trade secret in question is known to the public.

In order to determine the damages caused by the infringement of the trade secrets, the court may refer to the methods for determining the damages caused by infringements of patent rights and trademark rights. The court may also take into account the following factors:

- The costs for research and development of the trade secret;
- The profits gained from the use of the trade secret; and
- The duration of the competitive advantages of the trade secret.

(Michael Zou, Jun Wei)

China’s Accession to WIPO Copyright Treaty and WIPO Performance and Phonograms Treaty

On December 29, 2006, the 25th Session of the Standing Committee of the Tenth National People’s Congress decided to accede to the WIPO Copyright Treaty & WIPO Performances and Phonograms Treaty, which were adopted at the diplomatic conference concerning copyrights and neighboring rights in Geneva, Switzerland on December 20, 1996.

China declared that the WIPO Copyright Treaty & WIPO Performances and Phonograms Treaty do not apply to Hong Kong or the Macao Special Administrative Region for the time being. In addition, China also declared that it is not bound by Article 15 (1) of the WIPO Performances and Phonograms Treaty, which states,

Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

(Rosemary Chen, Jun Wei)

Amendments of Provisional Regulations on Urban Land Use Tax of PRC
For the purpose of rationalizing the use of land in cities and towns, regulating the income differential on land, improving efficient use in use and strengthening land management, the State Council amended Provisional Regulations on Urban Land Use Tax (中华人民共和国城镇土地使用税暂行条例, the “New Regulations”). The New Regulations came into force on January 1, 2007.

Under the New Regulations the annual rates for Land Use Tax are tripled. The details rates are as follows:

i) between 1.5 yuan and 30 yuan in large cities;
ii) between 1.2 yuan and 24 yuan in medium cities;
iii) between 0.9 yuan and 18 yuan in small cities;
iv) between 0.6 yuan and 12 yuan in county towns, towns/bases operated under an organizational system, and industrial and mining districts.”

According to Article 2 of the New Regulations, the New Regulations apply to foreign invested enterprises, foreign enterprises, and foreign individuals.

The New Regulations also state that the implementing measures formulated by province-level governments need not be filed with the Ministry of Finance.

(Ella Ge, Steve Robinson)

New Rule to Collect Land Value-added Tax

On December 28, 2006, the State Administration of Taxation ("SAT") issued the Circular on the Relevant Issues Concerning the Settlement Management of Land Value-added Tax on Real Estate Development Enterprises (国家税务总局关于房地产开发企业土地增值税清算管理有关问题的通知, 国税发[2006]187 号, the “Circular 187”) for the purpose of further strengthening the settlement management of land value-added tax on real estate Development enterprises. Upon the implementation of Circular 187 as of February 1, 2007, the land value-added tax would be levied on the basis of the actual settlement, rather than be levied in advance on the basis of sales figures.

Circular 187 sets out the following key requirements:

1. Settlement of land value-added tax on a project-by-project basis
   i) The settlement of land value-added tax shall be made for each approved real estate development project;
   ii) As for a project developed by stages, the settlement shall be made for each stage of the project;
   iii) Where a development project includes both ordinary dwelling houses and non-ordinary dwelling houses, the added value shall be calculated separately.

2. Settlement conditions for land value-added tax
   i) Where it is under any of the following circumstances, the taxpayer shall settle its land value-added tax:
      a) A real estate project is completed and sold out;
      b) A real estate project that has not been completed but it is transferred as a whole;
      c) The land use right is transferred.
   ii) Under any of the following circumstances, the tax authority may require the taxpayer to settle its land value-added tax:
      a) As for a real estate project completed and accepted, the construction area already transferred makes up 85% or more of the salable
construction area of the whole project; or although this proportion is below 85%, the residuary salable construction area has been leased or used for self-purpose;

b) The sale is not completed upon the expiration of three years since the day when the sale (pre-sale) permit is obtained;

c) The taxpayer has applied for tax de-registration but has not gone through the formalities for the settlement of land value-added tax yet;

d) Other circumstances as prescribed by the provincial tax authorities.

A taxpayer that conforms to any of the above settlement conditions shall go through the settlement formalities at the tax authority within the time limit prescribed by the tax authority.

3. **Collection of land value-added tax by verification**

Where a real estate development enterprise is under any of the following circumstances, the tax authority may, by consulting the tax burdens of the local enterprises similar to it in terms of development scale and income level, collect land value-added tax against it by verification on the basis of the levying rate that is not lower than the advance levying rate:

i) It fails to set up accounting books in accordance with the provisions of laws and regulations;

ii) It destroys the accounting books without authorization or refuses to provide the data of tax payments;

iii) It has established accounting books, but the accounting items are confusing, or its information on costs, revenue vouchers, and expense vouchers are mutilated and incomplete and it is difficult to determine the transfer income or amount under the deductible items;

iv) It meets the settlement conditions of land value-added tax, but it fails to go through the settlement formalities within the prescribed time limit, or it is ordered by the tax authority to conduct settlement within a certain time limit but still fails to do so upon the expiration of the time limit; or

v) The taxable basis declared is obviously much lower, and without reasonable ground.

(Keith Bai, Steve Robinson)

**China Sets Standards for Minimum Price for Transfers of Industrial Land**

As part of a drive to further strengthen the control and administration of industrial land and promote intensive utilization of land, the Ministry of Land and Resources (MLR) issued the **Circular on Distributing and Implementing the Standards for Minimum Price for Transfers of Industrial Land** (国土资源部关于发布实施《全国工业用地出让最低价标准》的通知, 国土资发[2006]307 号, the “Circular 307”) on December 23, 2006, which came into force on January 1, 2007. This is a follow-up regulation to implement the Circular of the State Council on Relevant Issues Concerning Strengthening the Land Control (国务院关于加强土地调控有关问题的通知, 国发[2006]31 号, the “Rule No.31”).

According to the Circular 307, industrial land across China has been divided into 15 categories. Circular 307 sets out the standards for minimum price for the transfer of industrial land, ranging from RMB 60 per square meter to RMB 80 per square meter.

Circular 307 requires that the Minimum Standards shall be strictly implemented. No local administrative department of land and resources may reduce the Minimum Standards for the reasons as the difference in sources of land, degrees of land development, etc. The administrative department of land and resources at the provincial level may further increase the Minimum...
Standards or set down different Minimum Standards for different industries and different regions not lower than the Minimum Standards required by Circular 307.

Circular 307 provides that when relevant departments grant industrial land, they must use bid, auction, or quotation procedures. Circular 307 restates that the application for the land for industrial projects shall be within the scope of the land used for urban construction as decided in an overall planning of land utilization. However, the Circular 307 sets out two exceptions for the Minimum Standards:

- For those industrial projects using the land beyond the scope of the land used for urban construction as decided in an overall planning of land utilization and the initial land development is completed by the land user itself, the lowest price for the transfer of industrial land may be implemented as 60% of the relevant Minimum Standards; and

- For those industrial projects using the state-owned sandy land, bare land, and bare gravel land not listed as supporting arable land and the users who have the land use right (or rural land contracted management right) have not been determined, the lowest price for the transfer of industrial land may be implemented as 30% of the relevant Minimum Standards.

(Kevin Bai, Jun Wei)

New Rule on Administration of Proceeds From Grant of State-owned Land Use Right

On December 17, 2006, the General Office of the State Council issued the Circular of the General Office of the State Council on Regulating the Administration of Proceeds from Grant of the State-owned Land Use Right (国务院办公厅关于规范国有土地使用权出让收支管理的通知, 国办发 [2006]100 号, the “Circular 100”) in order to reinforce land administration, protect arable land, and promote intensive utilization of land.

Circular 100 clarifies the scope of the proceeds from the grant of the state-owned land use right (the “Grant Proceeds”). According to Circular 100, the Grant Proceeds refer to all proceeds received by the government from the grant of land use right. Under Circular 100, the Grant Proceeds shall include the rental incomes paid by the lessees of the land, the rental incomes paid by the lessees of the houses located on the allocated land, and the land compensation received from the user of the allocated land.

According to Circular 100, the departments of finance shall be responsible for the management of the Grant Proceeds and the departments of land and resources may be responsible for the collection of the Grant Proceeds.

Circular 100 provides that, as of January 1, 2007, the Grant Proceeds shall be incorporated into the management of the budget of local funds and the special accounts shall be opened for the management of the Grant Proceeds.

Under Circular 100, if land users fail to make the payment of the Grant Proceeds in full on time, they will be subjected to fines of one percent of the Grant Proceeds payable on a daily basis.

(Kevin Bai, Jun Wei)

Administrative Measures for Statistics of Insurance-related Foreign Currencies

To strengthen the statistical administration of foreign currency businesses of insurance institutions and improve the quality and comparability of the statistical information about foreign currency businesses, the China Insurance Regulatory Commission issued the Measures for the Administration of Currency Types and Conversion Rates for the Statistics of Insurance-related Foreign Currencies (保险外币统计币种及折算汇率管理办法, the “Measures”) on December 22, 2006. The Measures will become effective as of January 1, 2007.

1. Insurance Institutions
According to the Measures, the China Insurance Regulatory Commission (CIRC) and its local branches shall adopt a currency-type based statistical system for the foreign currency businesses of insurance institutions (each, an “Insurance Institution”), which includes insurance companies and insurance asset management companies.

2. Currency Types

The currencies, which CIRC uses in the statistics of foreign currency businesses of Insurance Institutions, include the U.S. dollar, Euro, Japanese yen, Hong Kong dollar, and pound sterling. An Insurance Institution shall submit to CIRC the following statistical information of foreign currencies:

i) The statistical information of businesses denominated in U.S. dollars, Euros, Japanese yen, Hong Kong dollars, and pounds sterling;

ii) The statistical information about all foreign currencies translated into U.S. dollars; and

iii) The statistical information about all foreign currencies translated into Ren Min Bi (RMB).

3. Foreign Currency Conversion Rates

When an Insurance Institution submits the statistical information about all businesses relating to the conversion of foreign currencies into U.S. dollars, it shall employ the U.S. dollar-based exchange rates for all kinds of currencies, which are announced by the State Administration of Foreign Exchange (SAFE) on a monthly basis.

When an Insurance Institution submits the statistical information for all businesses relating to the conversion of foreign currencies into RMB, it shall employ the medium rates of RMB against such foreign currencies, which are announced by the People’s Bank of China (PBOC) on the last day by the end of the reporting period.

The Measures also provide for methods to determine the conversion rate in the event that SAFE or PBOC fails to announce the U.S. dollar-based or the RMB conversion rate for certain foreign currencies.

(Norman Li, Arthur Mok)

Measures on Environmental Administrative Reconsideration and Responding to Environment Administrative Cases

For the purpose of preventing and rectifying illegal or inappropriate specific administrative acts and regulating the administrative reconsideration and litigation of the environmental protection administrative agencies, on December 19, 2006, the State Environmental Protection Administration of China (SEPA) passed the Measures on Environmental Administrative Reconsideration and Responding to Environment Administrative Cases (环境行政复议与行政应诉办法, the “Measures”), which took effect on February 1, 2007.

The Measures provide that the administrative reconsideration organ shall be the competent environmental protection administrative agency (the “Reconsideration Organ”). According to the Measures, individuals, legal entities, or other organizations may apply to the Reconsideration Organ for the administrative reconsideration where the specific administrative action or omission by the environmental protection administrative agency infringes their legitimate right. The Reconsideration Organ may dismiss the application where the time limitation prescribed has run and the applicant does not showed any reasonable cause; or the application is made in respect of the mediation decision to the monetary liabilities or disputes made by the environmental protection administrative agency; or the applicant has submitted the application to other Reconsideration Organs or has instituted the administrative litigation before a court.

According to the Measures, the administrative reconsideration shall be a documentary review and be completed within 60 days upon admission. Such 60-day period may be extended, but in any event, cannot exceed 90 days.
New Protocol to the 1994 China-Mauritius Double Tax Treaty


The 1994 China-Mauritius Double Tax Treaty offers a full tax exemption on capital gains derived by a Mauritius company from disposal of equity interests in a PRC company, provided that the assets of the PRC company do not principally consist of, directly or indirectly, immovable properties located in the PRC.

The new protocol imposes a further restriction, in addition to the existing restriction on immovable properties, that if a Mauritius company owns directly or indirectly 25 percent or more equity interests in the PRC company in the 12 months preceding the disposal of equity interests in the PRC company, the Mauritius company may be subject to taxes in the PRC on the capital gains derived by it from the disposal of equity interests in the PRC company.

The new protocol also amends the “Exchange of Information” provisions under the 1994 China-Mauritius Double Tax Treaty to expand the scope of the information exchange between the PRC and Mauritian tax authorities to the greatest possible extent in order to assist the two governments in enforcing the provisions of the 1994 China-Mauritius Double Tax Treaty or their respective domestic laws concerning taxes of every kind rather than income taxes only. As a result, the PRC and Mauritian governments will be assumed more obligation to obtain the requested information under the new protocol. It is anticipated that the broadened scope of information exchange will enable the PRC government to combat tax avoidance problems in a more effective manner.

The new protocol will come into force on the date after the ratification procedures have been completed by the two governments. The provisions of the new protocol will apply to capital gains obtained since the following dates:

i) in respect to China, the capital gains obtained in the taxable years beginning on or after January 1 in the calendar year following the year in which the new protocol becomes effective;

ii) in respect to Mauritius, the capital gains obtained in the income years beginning on or after July 1 in the calendar year following the effective date of the new protocol.

Mauritius has been a popular jurisdiction which many foreign investors use as a base for their investments in the PRC due to the capital gains exemption and the reduced dividend withholding tax provisions under the China-Mauritius Double Tax Treaty. However, once the new protocol becomes effective, any capital gains realized from the disposal of equity interests in the PRC company by a Mauritius company are likely to be taxable in the PRC.

(Tong Mao)