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1. General Plan and Administrative Measures Released for Shanghai Free Trade Zone

On 18 September, 2013, the State Council released *the General Plan for the China (Shanghai) Pilot Free Trade Zone ("the Plan")*, which became effective as of the date of release. The Plan lists the major reform tasks and liberalizing measures for the China (Shanghai) Pilot Free Trade Zone (the "Shanghai FTZ"). The three main tasks outlined in the Plan are as follows:

I. Further opening up of investment sectors

The Shanghai FTZ will adopt a "negative list" approach towards foreign investment management, i.e. foreign investment in all sectors should be allowed unless listed as restricted under the "negative list". The Plan will offer easier investment access to both foreign and domestic capital in six service sectors, i.e. finance, shipping, trade and commerce, professional, cultural and public services.

II. Deepening the opening-up of the financial services sector

To accelerate the reform of the financial system, it is stipulated in the Plan that the Shanghai FTZ will, among other measures, pilot RMB convertibility under the capital account, interest rate liberalization, and cross-border RMB transactions.

III. Strengthening the legal system

Various administrative examination and approval items under three laws covering wholly foreign-owned enterprises, Chinese-foreign equity joint ventures and Chinese-foreign cooperative joint ventures have been suspended starting from October 1, 2013.

To better implement the Plan, the relevant authorities have launched supporting policies with regard to the banking industry, the insurance industry, the capital market, the culture industry, the shipping industry, etc. The State Administration of Industry and Commerce released several policies to relax the restrictions on the registration procedures and requests for companies.

In addition and in line with the Plan of the Shanghai FTZ, the Shanghai Municipal People's Government has promulgated several administrative measures on September 29, 2013, effective as of October 1, 2013, to provide further guidance on the national rules and to regulate the daily operations of the Shanghai FTZ.

IV. Liberalization of certain tax rules

The Plan states that the income tax the value-added assets arising from asset restructuring may be paid in installments within a five-year period by the enterprises or individual shareholders registered in the Shanghai FTZ. Where enterprises within the Shanghai FTZ award highly-skilled employees or employees in short supply by means of shares or capital contributions, the relevant individual income tax may also be paid by installments. An earlier rumor that the capital gains tax may be reduced to a flat-rate of 15% in the Shanghai FTZ is not confirmed by the newly enacted administrative measures.

2. New Double Taxation Agreement between Switzerland and China

Switzerland and China have signed a new double taxation agreement (“DTA”) in the area of taxes on income and assets on September 25, 2013. It replaces the agreement in force since 1991 and contains provisions on the exchange of information in accordance with the currently applicable international standard. The new DTA will, along with the free trade agreement signed earlier this year, contribute to the further positive development of bilateral economic relations between Switzerland and China, and enhance Switzerland’s position to become a hub for Chinese companies doing business in Europe.

I. Withholding Tax

1. Dividends

Switzerland and China have agreed to reduce the maximum rate of withholding tax on dividends from 10% to 5% if the company receiving the dividends holds directly at least 25% of the capital of the company paying the dividends. As previously, in all other cases, both countries may levy withholding tax of no more than 10% on gross dividend amounts.

2. Royalties

The withholding tax rate for royalties has been reduced from 10% to 9%.

3. Interest

The maximum applicable withholding tax rate on interest payments remains at 10% of the gross amount.

II. Permanent Establishment

The thresholds for permanent establishments have been adjusted from previously six months to twelve months for building and construction sites, assembly or installation projects and supervisory activities in connection therewith, as well as from previously six months in a twelve-month period to 183 days in a twelve-month period for the provision of services.

III. Other provisions

Two further revisions of the DTA are particularly relevant for Swiss companies: China will not be entitled to levy any business tax or any value added tax on international transport services provided by Swiss shipping companies and airlines. Capital gains deriving from the alienation of shares of a company are taxed in the country where the company of which the shares are being sold is resident, provided that the recipient of the gains at any time during the twelve-month period preceding such alienation had a participation, directly or indirectly, of at least 25% in the capital of such company.

IV. Exchange of information

The DTA contains an OECD administrative assistance clause, based on the internationally applicable standards regarding the exchange of information in tax matters. It will cover information exchange requests referring to tax years beginning on or after January 1 of the year subsequent to the entry into force of the DTA.

Before the provisions of the new DTA can enter into force, the agreement has to be ratified by the two countries and will be subject to an optional referendum in Switzerland.

3. Judicial Interpretation on the Enterprise Bankruptcy Law issued by the Supreme Court

The Supreme Court of the People's Republic of China (the "Supreme Court") released *the Provision of Supreme People's Court on Several Issues regarding the Application of Enterprise Bankruptcy Law of the People's Republic of China II* (the "Interpretation II") on September 5, 2013, effective as of September 16, 2013, which clarifies the scope of the debtor's property under the *Enterprise Bankruptcy Law of the People's Republic of China* (the "Bankruptcy Law"):

I. Definition of the debtor's assets is clarified

The debtor's property shall include all his financial assets and physical goods as well as further rights which are transferrable and can be evaluated in monetary terms, such as property rights, creditor's rights, equity, intellectual property, usufructuary rights, etc.

II. Revocation right

1. Revocation right of the bankruptcy administrator (the "administrator")

The administrator may request the competent People's Court to revoke a debtor's legal acts to dispose of his assets in accordance with Art. 31 and 32 of the Bankruptcy Law and request the counterpart to return the assets to the debtor unless:

- a) the debtor's advance payment of an unmatured debt, effected within 1 year to six months prior to the acceptance of the application for bankruptcy, falls due before such application is accepted by the People's Court;
- b) the payment was made to fulfil a debt that was guaranteed in full by the debtor's assets;
- c) the payment was made based on a lawsuit, an arbitration claim or a public enforcement measure;
- d) the payment does not lead to a reduction of the debtor's assets, such as payments for water and electricity bills, remuneration, damages for personal injury etc.

2. Revocation right of the creditor

Where the administrator does not revoke certain acts by the debtor, such as a transfer of assets to a third party free of charge, a trade of assets at an obviously unreasonable price or a waiver of another creditor's claim, a creditor may revoke such acts in accordance with Art. 31 of the Bankruptcy Law upon the acceptance of the bankruptcy application.

III. Retrieval right

The owner of certain assets may exercise may retrieve his assets from the administrator in accordance with Art. 38 of the Bankruptcy Law or a decision made by the People's Courts or an arbitration tribunal. Such retrieval right shall be raised prior to the submission of either the conversion plan of the bankruptcy assets, the reconciliation agreement or the reorganization plan, respectively.

Under the Bankruptcy Law, a seller may retrieve goods that have not yet reached the buyer at the time he goes bankrupt. Interpretation II clarifies that if the seller does not exercise his retrieval right before the goods reach the administrator, the right will be forfeited. It further regulates the owner's retrieval right in case of a sales contract with the debtor containing a reservation of ownership clause.

Finally, the Interpretation II stipulates that an owner is deprived of his retrieval right if the creditors decide on a reorganization plan concerning the debtor's assets unless the administrator wrongfully transfers the assets to a third party or causes a devaluation, among other circumstances.

IV. Right to offset claims

The administrator may not actively offset debts with claims the debtor has against a creditor without a notice by the creditor unless such offsetting benefits the debtor's assets. The offset becomes immediately effective on the day the administrator receives the creditor's notice of offset.

The People's Court will not support the following reasons for an objection raised by the administrator against a notice of offset:

- 1) The debt owed by the creditor to the debtor was undue when the application of bankruptcy was accepted and vice versa;
- 2) the mutual debts are of a different category and quality.

Furthermore, where the debtor pays off a debt to any creditor by offsetting within six months before the application for bankruptcy is accepted, the administrator may order such an offset to be null and void if the creditor was aware that the debtor was in the process of applying for bankruptcy.

Finally, an offset may not be claimed by a shareholder if the debt arises from a violation of his obligation to contribute capital or his abuse of shareholder's rights.

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