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CHINA LEGAL BRIEFING 55

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1. *National*

Law on Banking Regulation and Supervision

On 27 December 2003, the Law on Banking Regulation and Supervision (“*银行业监督管理法*”), which will come into force as of 1 February 2004 (Full English version available at the website of China Banking Regulatory Commission www.cbrc.gov.cn). According to the Law, the banking regulatory authority under the State Council shall be responsible for the regulation and supervision of the banking institutions in China, which include commercial banks, urban credit cooperatives and rural credit cooperatives, and policy banks. The Law equally applies to asset management companies, trust and investment companies, finance companies, financial leasing companies and other financial institutions established in China, as far as the provisions pertaining to the regulation and supervision of banking institutions are concerned.

The adoption of the Law signifies a transition from merely emphasizing rule-compliance to underlining both rule-compliance and risk control. The Law incorporates Core Principles for Effective Banking Supervision of Basel Committee by providing that “prudential rules and regulations applied to banking institutions may be stipulated in laws or administrative regulations, or formulated by the banking regulatory authority under the State Council”, which

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encompass risk management, internal controls, capital adequacy, asset quality, loan loss provisioning, risk concentrations, connected transactions and liquidity management. (www.cbrc.gov.cn)

CSRC Regulation on Sponsorship

On 28 December 2003, the China Securities Regulatory Commission promulgated Provisional Rules on Sponsorship for Public Offering of Shares (“*证券发行上市保荐制度暂行办法*”), which will take effect as of 1 February 2004. This regulation applies to initial public offering, public offering of new shares and convertible bonds. It deals with such issues as admission to the list of sponsoring institutions and sponsoring representatives, responsibilities of sponsoring institutions, working rules of sponsoring institutions, coordination in conducting sponsorship, and liabilities.

According to the regulation, institutions and individuals may conduct sponsorship once they are enrolled by CSRC respectively as sponsoring institutions and sponsoring representatives. The prospective issuer shall be sponsored by qualified sponsoring institutions, which shall assign a specific sponsoring representative for each applicant.

The mandate term of the sponsoring institutions and representatives thereof includes a “due diligence sponsoring period”, which concludes by the end of public offering, and a “continuing advisory period”, which covers a set period from completion of public offering.

Before recommending the applicant issuer to the CSRC, the sponsoring institutions and responsible representatives thereof shall (1) provide advice and guidance to the applicant issuer and conduct investigations by due diligence; (2) ensure or have adequate reason to believe there are no false statements, misrepresentation or material omission in the documents submitted to the CSRC; (3) make commitment in documents of sponsorship in respect of the issuer’s disclosure quality, independence and continuing operation capacity; (4) keep update of information of the issuer in relation to legitimate operation, observance of undertakings and disclosure, inform the issuer of the potential risks and provide advice in correcting irregularities.

Misconducts of sponsoring institutions and representatives thereof may be subject to a certain period of declination of applications sponsored by them, depending on the graveness of the case, and even disqualification. (www.csrc.gov.cn)

Agreement on Double Taxation between the Mainland and Macao

On December 31st 2003, the State Administration of Taxation announced that the Agreement between the Mainland and the Macao Special Administrative Region on the Prevention of Double Taxation and Tax Evasion

had been concluded between the parties on 27 December 2003 and had come into force as of 30 December 2003 by exchange of notes. The Agreement will apply to income obtained since 1 January 2004 and onward. (www.law-lib.com)

SAT Reply to VAT Issue of in Kind Contribution in the Event of Debt for Equity Swap

On 29 December 2003, State Administration of Taxation published its Reply to Certain Questions of Waiver of VAT on in Kind Contribution in the Event of Debt and Equity Swap (“关于债转股企业实物投资免征增值税政策有关问题的批复”). According to the Reply, whereas the enterprise making in kind contribution by way of debt and equity swap enjoys VAT exemption for that transaction, it shall not make out VAT invoice for the said transaction. (www.law-lib.com)

Tax Reform in 2004 and Onward

It is reported that a new round of tax reform will be carried out in 2004 and onward, focusing on enterprise income tax, individual income tax, VAT, and real estate tax. The differential tax treatment between domestic invested enterprises and foreign invested enterprise will be replaced by a uniform enterprise income tax rate of 25%. Further, VAT will be turned from production-oriented to consumption oriented. (www.chinalawinfo.com)

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