

CHINA LEGAL BRIEFING* 230

APRIL 25 – MAY 03, 2013



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- 1 Guiding Opinions on Accelerating the Promotion of Merger and Reorganization of Enterprises in Key Industries
关于加快推进重点行业企业兼并重组的指导意见
- 2 Notice of the State Administration of Foreign Exchange on the Issues Related to the Administration of Foreign Exchange of Foreign-Invested Partnerships
国家外汇管理局关于外商投资合伙企业外汇管理有关问题的通知
- 3 Provisions of the Supreme People's Court on Certain Issues Related to the Application of Laws to Unsettled Cases after the Implementation of the Amended Civil Procedure Law
最高人民法院关于修改后的民事诉讼法施行时未结案件适用法律若干问题的规定

Guiding Opinions on Accelerating the Promotion of Merger and Reorganization of Enterprises in Key Industries

关于加快推进重点行业企业兼并重组的指导意见

Issued by】 Ministry of Industry and Information Technology; National Development and Reform Commission; Ministry of Finance; Ministry of Human Resources and Social Security; Ministry of Land and Resources; Ministry of Commerce; The People's Bank of China; National Development and Reform Commission; State Administration of Taxation; State Administration for Industry and Commerce; China Banking Regulatory Commission; China Securities Regulatory Commission

【Subject】 M&A

【Promulgated on】 January 22, 2013

【Effective from】 January, 22

【Source】 http://www.gov.cn/zwggk/2013-01/22/content_2317600.htm

On Jan 22 2013, the Ministry of Industry and Information Technology, jointly with other 11 ministries, released the Guiding Opinions on Accelerating the Promotion of Merger and Reorganization of Enterprises in Key Industries (Gong Xin Bu Lian Chan Ye [2013] No. 16, hereinafter "Opinions"). Companies across nine of China's key industrial sectors, including automobile, steel, cement, shipbuilding, electrolytic aluminum, rare earth, electronic information, pharmaceuticals and agriculture, are being encouraged to increase their merger activities in an effort to become more competitive overseas, and more efficient.

With the aim to improve the efficiency of resource allocation, adjust and optimize industrial structures, and improve the global competitiveness of key enterprises, the Opinions set forth the following requirements on accelerating merger and reorganization of enterprises in such key industries:

- (1) encourage large-scale key enterprises to carry out cross-regional and trans-ownership merger and reorganization;
- (2) encourage enterprises to extend industrial chain through merger and reorganization, and establish strategic alliances; and
- (3) encourage enterprises to "go outbound", to participate in global resource integration and operation, and enhance their international operation capability and strengthen their international competitiveness.

The Opinions also set targets for how consolidated the relevant industries should become on the Chinese market.

Main Points:

- (1) For the automobile industry, the industrial concentration degree of the top ten automobile enterprises shall reach 90% by 2015, and there shall be 3 to 5 large automobile enterprise groups with core competitiveness;
- (2) For the steel industry, the industrial concentration degree of the top ten steel enterprise groups shall reach 60% by 2015, and there shall be 3 to 5 enterprise groups with core competitiveness and strong international influence, and 6 to 7 enterprise groups with strong regional market competitiveness.
- (3) For the cement industry, the industrial concentration degree of the top ten cement enterprise shall reach 35% by 2015, and there shall be 3 to 4 construction material enterprise groups with over 100 million ton clinker brick production capacity, completed industrial chain across the field of mine, aggregate, merchandise concrete, cement-based material, and with core competitiveness and strong international influence.
- (4) For the shipbuilding and the electrolytic aluminum industry, the industrial concentration degree of the top ten enterprises are required to reach 70% and 90% respectively. And in pharmaceuticals sector, the Opinions call for total sales revenue of the top 100 enterprises to account for 50 percent of the industry's total amount.

No specific concentration degrees are targeted for the rare earth and the electronic information industry. The Opinions rather focus on creating more leading enterprises in these sectors with core competitiveness in exploring global markets.

Notice of the State Administration of Foreign Exchange on the Issues Related to the Administration of Foreign Exchange of Foreign-Invested Partnerships

国家外汇管理局关于外商投资合伙企业外汇管理有关问题的通知

【Issued by】 State Administration of Foreign Exchange

【Subject】 Foreign Exchange

【Promulgated on】 November 19, 2012

【Effective Date】 December 17, 2012

【Source】 http://www.gov.cn/zwqk/2012-11/22/content_2273058.htm

Recently, the State Administration of Foreign Exchange (SAFE) issued the Notice of the State Administration of Foreign Exchange on the Issues Related to the Administration of Foreign Exchange of Foreign-Invested Partnerships (Huifa [2012] No. 58) ("Circular"), which took effect on December 17, 2012.

Since the promulgation of the Measures for the Administration of the Establishment of Partnerships in China by Foreign Enterprises and Individuals in November 2009 and the Administrative Regulations for the Registration of Foreign-Invested Partnership Enterprises in Jan 2010, foreign-invested partnerships (FIPE) have become a new investment alternative for foreign investors to enter into China market in addition to WFOE and JVs. Until the issuance of this Circular, however, there had been no specific regulation addressing the foreign exchange issues in connection with FIPE. As a result, some investors faced difficulties in setting up FIPEs due to the unclear foreign exchange problems.

To this end, this Circular is aimed to standardize and simplify foreign exchange related administrative approvals of FIPE, and to downscale pre-approvals for routine operations of FIPE.

Highlights:

1. Application Scope: foreign partnerships legally established in China by two or more foreign enterprises or individuals (hereinafter referred to as "Foreign Partners"), as well as the partnerships legally established in China by Foreign Partners in association with Chinese natural persons, legal persons or other organizations.
2. Foreign exchange Registration: FIPE shall apply to register with the local SAFE within 30 days upon issuance of its business license. The Circular expressly states that the branches of an FIPE are not required to undergo additional foreign exchange registration.

In case of any change to any of the key information that an FIPE has registered with the Administration of Industry and Commerce (AIC), the FIPE must, within 30 days upon the change of registration at the AIC, file the change(s) with the local SAFE office.

3. Account Opening: To accept foreign partners' capital contribution in foreign exchange, FIPE shall open a foreign exchange account at the designated bank with reference to the rules governing capital account of FIE.
4. Capital Contribution Confirmation: FIPE shall complete the capital contribution confirmation registration with the local SAFE after the payment of capital contributions by foreign partners. Only after completion of the confirmation registration can the FIPE convert the funds contributed by the foreign partners into RMB, or transfer those funds to other accounts in China.
5. Payment of Share Transfer: If the domestic partner of an FIPE intends to remit the transfer price for the purchase of the property shares held by foreign partners, the domestic partner shall first go through SAFE registration, purchase foreign exchange and make the payment to the bank where the domestic partner is located. If the foreign partner purchases property shares from a domestic partner, the FIPE shall apply for the registration alteration with SAFE. The transferring domestic partner shall open a special account for converting assets into cash.

Provisions of the Supreme People's Court on Certain Issues Related to the Application of Laws to Unsettled Cases after the Implementation of the Amended Civil Procedure Law

最高人民法院关于修改后的民事诉讼法施行时未结案件适用法律若干问题的规定

【Issued by】	Supreme People's Court
【Subject】	Civil Procedure Law
【Promulgated on】	December 28, 2012
【Effective Date】	January 1, 2013
【Source】	http://www.chinacourt.org/article/detail/2012/12/id/808416.shtml

In August 2012, China enacted amendments to its Civil Procedure Law ("CPL"). The 2012 Amendments greatly improved the CPL by strengthening the rights of litigants and widening the scope of party autonomy. Later in December 28th, 2012, the Supreme People's Court ("SPC") further released the *Provisions of the Supreme People's Court on Certain Issues Related to the Application of Laws to Unsettled Cases after the Implementation of the Amended Civil Procedure Law* ("Provisions"), which took effect as of Jan 1st, 2013, aimed to provide a clear guidance for the local court in application of the new amended CPL in the daily judicial practice, especially for those unsettled disputes as of Jan 1st, 2013.

Pursuant to the principle of the "old substantive law prevails over the new one and the new procedural law prevails over the old one" that is generally accepted in the continental law system and common law system, the new amended CPL shall be applicable to those cases pending as at Jan 1st, 2013, unless otherwise provided by the Provisions.

The main contents of the Provisions are:

1. Regarding the effectiveness of the procedural issues of unsettled cases that are completed before Jan 1st, 2013: these completed procedural issues still remain valid.
2. Regarding the application of new and old handling rules that impair the civil actions:

In general, the old CPL shall apply, unless under the following two conditions:

(1) The parties concerned in malicious collusion with each other attempt to infringe upon the legitimate rights and interests of others through litigation, mediation and other ways; and

(2) The parties subject to enforcement in malicious collusion with each other attempt to evade obligations specified in the legal documents through litigation, arbitration or conciliation and such circumstance still exists after Jan 1st, 2013.

3. Regarding the application of new and old preservation measures applied before the acceptance of the cases: The old CPL shall be applicable to the case where the concerned parties applied to people's courts for pre-litigation preservation before Jan 1st, 2013; however, if no civil ruling on preservation was made by the court as at Jan 1st, 2013, the deadline for cancelling pre-litigation preservation measures shall be determined in accordance with the amended CPL.
4. Regarding the application of the new and old provisions on the time limits for application for re-trial: If concerned parties apply for re-trial of civil verdicts, rulings or mediations that have come into effect before Jan 1st, 2013, the time limit for application for re-trial shall be determined in accordance with Article 184 of the original CPL, but if such time limit does not expire as at June 30, 2013, then June 30, 2013 should be the deadline. However, Article 184 of old CPL shall still be applicable under the following three circumstances:

(1) The concerned parties have new evidence that is sufficient to reverse original verdicts or rulings;

(2) The main evidence based on which original verdicts or rulings ascertain the facts of cases were forged; and

(3) If after the elapse of two years after the judgment or ruling came into effect, the legal document, on the basis of which this judgment or ruling was made, had been cancelled or changed, and if judicial personnel have been found to have acts of embezzling money or taking bribes, practicing favoritism or committing irregularities, or bending laws in making judgments.

5. Regarding the application of new and old rules for the cases of application for not enforcement of arbitrational awards: the old CPL shall be applicable to pending cases that have been accepted before Jan 1st, 2013 but have not been trialed yet.

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