瑞士文斐律师事务所
WENFEI ATTORNEYS-AT-LAW LTD.

China Legal Briefing* 253

January 2016

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1. Reform in AIC Registration System Simplifies Corporate Certificate Regime

The Corporate Certificate Regime in China is known for its complexity and redundancy. When establishing a company in China, investors have to run by multiple authorities to obtain the three principal corporate certificates: the Business License, the Organization Code Certificate and the Tax Registration Certificate. Getting these certificates sometimes means waiting periods of several months for each certificate. Furthermore, the Administration of Industry and Commerce ("AIC") may request the investors to first obtain additional, special licenses for his specific business scope before the Business License is issued. Hence, in extreme cases, the investors might have to wait for over a year to obtain the corporate certificates and start operations.

In an attempt to simplify this process, the State Council issued the *Opinions of the General Office of the State Council on Accelerating the Registration Reform of Consolidating Three Certificates* on 23 June 2015. This legislative act consolidates the aforesaid three certificates into one. Subsequently, on 7 August 2015, the State AIC, together with the State Commission Office of Public Sectors Reform, the National Development and Reform Commission, the State Administration of Taxation, the General Administration of Quality Supervision, Inspection and Quarantine and the Legislative Affairs Office of the State Council, jointly released a *Notice of the State Administration for Industry and Commerce and Other Five Departments on Implementing the Opinions of the General Office of the State Council on Accelerating the Registration Reform of Consolidating Three Certificates* (the "Notice") in which they set up the detailed rules implementing the reform.

The Notice regulates that from now on, the newly established companies will obtain one single, consolidated business license issued by the AIC with a 9-digits unified social credit code instead of the aforementioned three certificates which were originally issued. The three corporate certificates currently held by every existing company will subsequently be replaced by the new consolidated business license when the company applies for an alteration in the register. However, it has not yet been decided how companies are dealt with that do not apply for an alteration within the deadline, which runs until 31 December 2017 in most areas of the country (until 31 December 2020 in Beijing).

On 27 August 2015, the State AIC further revised the *Administrative Provisions on the Registration of Business Scope of Enterprises*. The main revisions include:

1. The range of words which can be used to describe the business scope of a company is expanded for some companies. In general, the business scope must be described using a particular set of words stipulated in the catalogue '*Classification of Industries in National Economy*' for each industry. Now, the investors may, in addition to registering the business scope using the catalogue '*Classification of Industries in National Economy*', register the business scope by referring to policy documents, trade practice or professional literature. This, however, only applies to industries which are not mentioned in the Classification catalogue.

2. In the majority of cases, investors will now be able to first obtain a business license *before* getting approvals from the authorities for their actual business activities (if such approval is required at all). This way, the actual process of establishing the company is shortened because the investor may, once he has the business license, start carrying out other administrative works for the company before taking up the actual business activity (e.g. applying for a financial registration certificate) while waiting for the other approvals.

3. A company will no longer be fined if it operates outside the business scope it states in its articles. However, according to existing administrative regulations, a company must still operate within the business scope, thus the tangible consequence of this revision is not entirely clear at this time.

2. Interest Rate in Private Lending Contracts of up to 24% Acceptable

As a general principle, there is a different set of rules in China when it comes to the lending of money privately or between legal entities. Private lending is defined as the lending of money between persons or between persons and entities while the lending of money between entities is only allowed if the respective entities qualify as financial institutions and thus fall under the respective laws and regulations.

The laws on private money lending are confusing which, in the past, caused legal uncertainty for debtors, lenders and judges alike. Because of this fact and

against the background P2P network loan platforms playing an increasingly important role in the private money lending market, the Supreme Court issued the *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in the Trial of Private Lending Cases (the "Provisions")* on 6 August 2015 in an effort to clarify the rules for private money lending.

A few key points of the Provisions include:

1. Private lending is defined as financing among natural persons, legal persons and other organizations that are not financial institutions. Lending between entities that are not financial institutions is considered private lending and is no longer outlawed.

2. Private lending contracts entered into by legal persons and other organizations for the purpose of production and business operations are invalid:

    a) if the lender obtains the amount from a financial institution fraudulently and relends it to the borrower usuriously and if the borrower is aware or should have been aware of this fact;
    b) if the loan is obtained from other companies or by fund-raising from the own employees and relent to the borrower for profit purposes and the borrower was aware or should have been aware of this fact;
    c) if the lender knows or should have known in advance that the borrower uses the loan for criminal activities;
    d) if the public order or public morals are violated; or
    e) if laws, administrative regulations and other mandatory provisions are violated.

If a private lending contract is invalid, the loan must be returned to the lender. The lender and borrower are respectively liable for the damages caused to each other depending on whoever caused the invalidity of the contract.

Although the Provisions do not provide a definition for the term '*purpose of production and business operation*', it is in context to be understood that a private lending loan must exclusively be used for daily operations of the entities and that borrowing and lending must not be the entity's actual business.

3. The following interest rates are allowed under the Provisions:

   a) Any rate up to and including 24%;
   b) If the annual interest rate exceeds 24% but is not higher than 36%, the loan will be treated as *naturalis obligatio*. This means that the courts would neither support a lender's request to collect interest payments from the borrower for the portion exceeding 24% nor would the courts support a borrower's request to reimburse the interests exceeding 24% already paid to the lender.
   c) If the annual interest rate exceeds 36%, the interests on the excessive part are null and void. Thus, if a borrower requested the lender to reimburse the paid interest on the part exceeding the annual interest rate of 36%, the courts would support the request.

4. With regard to lending through a P2P network loan platform, the P2P network loan platform provider only has to guarantee the repayment of the loan if such a guarantee is explicitly advertised on his platform.

3. People's Bank of China Authorizes the Zurich Branch of the China Construction Bank to Serve as the Clearing Bank for RMB business in Switzerland

Prior to 2009, using China's legal tender, the Renminbi (RMB), outside of China was prohibited, as was any cross-border flow of the currency. In 2009, this policy was changed. Not only could the RMB now be held outside of China and flow in and out of China for transactions and investment purposes, China also started to develop an offshore RMB market. Today, the RMB has become the settlement currency for 18% of China's total merchandise trade.

As the RMB is increasingly used in international trade, the People's Bank of China ("PBOC") has been making an effort to accelerate the internationalization of the RMB. Since the RMB clearing business was launched in Hong Kong in 2003, the PBOC has authorized more than 20 offshore RMB clearing banks in multiple countries and regions, including the United Kingdom, Germany, France, Luxembourg and Hungary. The offshore RMB clearing banks, as opposed to other banks who offer RMB clearing services, have a PBOC-granted foreign exchange quota to purchase RMB from the onshore market and to access to the currency even in the event of a shortage of liquidity in the offshore RMB market.

By exchanging RMB on the offshore and onshore markets, the RMB clearing banks help the PBOC monitoring the RMB offshore market, stabilize the exchange rate of RMB and, eventually, accelerate the RMB settlement in global trades.

On 30 November 2015, the PBOC issued the Announcement [2015] No. 38, according to which, PBOC decided to authorize the Zurich Branch of the China Construction Bank ("CCB") to serve as the clearing bank for RMB business in Switzerland. The Zurich Branch of CCB was established on 25 November 2015 and commenced trial operation on 27 November 2015.

Being designated an offshore RMB clearing bank, the Zurich Branch of CCB might soon engage in multiple RMB clearing services, such as RMB bonds services, RMB fiduciary account services and the interbank lending business, all of which will certainly facilitate international trades between China and Switzerland. However, put aside the official benefits of having an RMB clearing bank in Switzerland, it might be even more profound what is behind this designation: the PBOC has appointed the Zurich branch of CCB to play an unofficial ambassadorial role to promote the RMB in the Swiss market and how important trading partners China and Switzerland have become.

4. CSRC Suspends the Circuit Breaker Mechanism

On 7 January 2016, only four days after launching the so-called Circuit Breaker Mechanism, the China Securities Regulatory Commission ("CSRC") decided to suspend the use of the Circuit Breaker Mechanism.

The Circuit Breaker Mechanism is a protection mechanism that was introduced by the CSRC and designed to serve as a legal basis for the government to intervene in the stock market by suspending the trading for a period of time in response to considerable drops in value (cf. CLB 252 for more information on the mechanism).

Since the Circuit Breaker Mechanism was introduced on 4 January 2016, it had been triggered four times in only four days, suspending stock trading for a total of two entire trading days.

As a consequence, the CSRC decided to “suspend” the use of the Circuit Breaker Mechanism – though the Mechanism will likely never be back in action and thus is rather repealed than suspended. Justifying their back and forth policy, the CSRC explained that although the Circuit Breaker Mechanism was intended to cool down the stock market after drastic fluctuation so there was time for emergency measures, it didn’t achieve this goal in practice but, on the contrary, accelerated the market crash.

Issuing laws and repealing them within days speaks for itself when it comes to the fundamental principle of legal security but it also shines a bright light on the Chinese leadership, which reacts nervously in the face of the people realizing that the party on the stock markets will eventually be over and that the markets don’t mind laws – not even Chinese laws.

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