

CHINA LEGAL BRIEFING* 215

NOVEMBER 15 – 19, 2010



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Notice of SAFE on Administration of Overseas Security Provided by Domestic Institutions

国家外汇管理局关于境内机构对外担保管理问题的通知

【Issued by】 The State Administration of Foreign Exchange (SAFE)

【Subject】 Overseas Guarantee

【Promulgated on】 July 30th, 2010

【Effective from】 July 30th, 2010

【Source】 <http://www.safe.gov.cn>

The State Administration of Foreign Exchange recently (SAFE) issued a Notice (Huifa [2010] No. 39, hereinafter "Notice") on July 30th, 2010 regarding the management approach of domestic institutions providing external security for overseas organizations, with the aim to ease the requirements for domestic institutions guaranteeing overseas activities and to support Chinese companies in pursuing overseas projects.

The term "provision of financial security to foreign entities" as defined in the Notice means provision of security to foreign entities, the master contract under which is natured as financing, including but not limited to provision of security for loans, offer of bonds and financial lease, etc and other forms of provision of security to foreign entities recognized by SAFE (Article 1).

The term "provision of non-financial security to foreign entities" as defined in the Notice means other forms of provision of security to foreign entities except for provision of financial security to foreign entities, including but not limited to security for quality, for responsibility of completion of project, for bidding invitation, for advancement payment, for deferred payment, for responsibility of performance under commodity sales contract and other forms of provision of security to foreign entities recognized by SAFE (Article 1).

Under the new Notice, domestic banks, which provide external security, shall be subject to outstanding balance administration. On the other hand, domestic non-bank financial institutions and enterprises shall be approved on a case by case basis by SAFE under most circumstances. The outstanding balance administration method will only be taken when certain conditions are met.

Banks shall raise the annual quota application to the local foreign exchange bureau before April 15 each year. In principle, the quota granted to each bank shall not exceed 50% of its paid-in capital or working capital, or the total value of the bank's net foreign exchange assets.

Furthermore, banks will face no restriction from SAFE on guaranteeing companies' overseas financing within the quota, allowing them to make their own decisions based on risk assessment. The guaranteed person is not restricted by the shares of the guaranteed person (or the beneficiary) from domestic institutions, or the relationship between the domestic institutions and the guaranteed person (or the beneficiary) in the proportion of net assets or profits. However, they shall still be in accordance with the relevant laws and regulations.

For domestic banks providing non-financial security, the guaranteed person or the beneficiary should at least be established within the territory of China, or established

outside the territory of China but with a domestic institution directly or indirectly holding shares.

If a party wishes to receive a security from a Chinese non-financial company, it has to have positive net assets and must have made a profit in at least one of the last three years, or one of the last five years for certain long-term projects such as resource exploration. And the net assets of a non-financial company providing external guarantee shall be no less than 15% of its total assets.

Within 15 days after signing the external security agreement, the non-bank financial institutions and non-financial companies shall file with the local bureau of SAFE for its case-by-case approval.

For domestic institutions providing financing guarantees for foreign investment enterprises, the guarantee fund shall not be transferred back into China through a third party directly or indirectly in the form of lending, equity investment or other forms.

Standards for the Examination of Trademarks Containing "China" or Using "National" as the First Word

含“中国”及首字为“国”字商标的审查审理标准

【Issued by】 State Administration for Industry and Commerce

【Subject】 Trademark

【Promulgated on】 July 28th, 2010

【Effective from】 July 28th, 2010

【Source】 <http://www.saic.gov.cn/>

On July 28th, 2010, the State Administration for Industry and Commerce (SAIC) published the “Standards for the Examination of Trademarks Containing ‘China (中国)’ or Using ‘National(国)’ as the First Word” (hereinafter “Standards”) to set forth the strict reviewing standards on trademarks containing words which are exactly the same as or similar to the country name of China, pursuant to the PRC Trademark Law.

Under the Standards, an application for trademarks containing “China (中国)” shall be rejected for preliminary examination, unless the applicant has met the following conditions:

1. The applicant is set up on approval of the State Council or its authorized entities and its company name has been registered with competent AIC;
2. The applied trademark shall be identical with the applicant's company name, or its abbreviated version, which has been approved by the State Council or its authorized entities.
3. The applied trademark shall have a close corresponding relationship with the applicant.
4. The scope of goods or service to bear on the applied trademark shall be consistent with the approved business scope of the applicant.

More stricter rules are imposed on trademarks with the character “national (国)” as the first word. Any application for trademarks using or containing “national + name of

specific goods under the trademark" shall be rejected on the ground of "constituting exaggeration and fraud", "lack of distinctive features" and "having adverse impact".

Applications for trademarks with the character "national" as the first word but not the combination of "national + name of specific goods under the trademark", however, shall be treated differently. The applications will be likely denied due to its harm to fair competitiveness, fraud or bad political influence.

Several Provisions of the Supreme People's Court on Restricting the High Consumption of Enforcement Debtors

最高人民法院关于限制被执行人高消费的若干规定

【Issued by】 Supreme People's Court

【Subject】 Foreign Exchange

【Promulgated on】 July 1st, 2010

【Effective from】 October 1st, 2010

【Source】 <http://www.court.gov.cn/>

For purposes of imposing restrictive measures against Enforcement Debtors' high consumption in civil enforcement, the Supreme People's Court released the Several Provisions of the Supreme People's Court on Restricting the High Consumption of Enforcement Debtors (hereinafter "Provisions") on July 1st, 2010. The Provisions specify the subject, object, principle, scope, trigger methods, implementation procedure and legal liabilities and other issues for limiting the high consumption in detail.

Pursuant to the Provisions, an enforcement debtor may be limited for high expenses in case he/she fails to fulfill the payment obligations determined in the effective legal documents within the time limit prescribed in the enforcement notice.

Types of prohibited high consumption activities are specified in the Article 3, including:

1. Choosing to fly via plane, a soft sleeper in a train, or second-class on a ship, for traveling;
2. Spending in multi-star-rated hotels, restaurants, night clubs, golf courses, etc.;
3. Purchasing real property, or newly-constructing or expanding houses, or decorating houses in a luxurious manner;
4. Renting high-class office buildings, hotels apartments, or other office premises;
5. Purchasing cars that are not necessary for business;
6. Going on tours or vacation;
7. Sending children to private schools with expensive tuition;
8. Spending a large sum in purchasing insurance wealth management products; and
9. Other luxury consumption acts that are not necessary in either his daily life or work.

In case of any unit facing enforcement for limited expenses, its legal representative, person-in-charge and persons directly responsible for debt performance thereof are not allowed to incur high costs, which shall be borne by the property of the unit, either.

The court may trigger the restrictive measures against the enforcement debtors upon its decision after reviewing the application of the enforcement applicant or upon its sole discretion if it is necessary. The court will then issue a high consumption restriction order towards the enforcement debtor, which shall outline the term of the restriction, the restricted items, and the legal consequences, etc.

Any enforcement debtor violating the restriction order shall be imposed upon severe penalty, including detainment, fines or criminal liabilities in case a crime is constituted.

The relevant government departments and organizations like banks, taxation authorities, etc. shall provide assistance in investigation or enforcement after receiving the enforcement assistance notice issued by the court. The failure to perform the assistance obligations by allowing enforcement debtor to continue the high

consumption shall be claimed for legal liabilities in accordance with Article 103 of PRC Civil Procedure Law.

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