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July 31, 2023

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Update

Shanghai Issues Several Provisions on the Development of Financial Leasing in Pudong New Area

On July 25, 2023, the Fourth Meeting of the Standing Committee of the Sixteenth Shanghai Municipal People's Congress passed the *Several Provisions of Shanghai Municipality on Promoting the Development of Financial Leasing in Pudong New Area* (the "Provisions"), which will come into force on October 1, 2023.

There are 19 articles in the Provisions, which clearly support the banking financial institutions in Pudong New Area according to the requirements of the national financial regulatory authorities for local financial institutions and increase their credit lines to financial leasing companies operating in advanced manufacturing, strategic emerging industries, green industries and other key domains.

The Legislative Affairs Committee of the Standing Committee of the Shanghai Municipal People's

Congress stated that the Provisions will promote the high-quality development of financial leasing in Pudong New Area, strengthen the ability of finance to serve the real economy, and is of great significance to promote the construction of the core area of the international financial center, better integrate into and serve new development pattern.

Shanghai Customs Releases New Measures to Optimize the Business Environment and Promote Foreign Trade

On July 21, 2023, Shanghai Customs released the *Several Measures to Optimize the Business Environment and Promote the Stable Scale and Optimum Structure of Foreign Trade* (the “Measures”), which includes 29 measures in six aspects.

The Measures cover the promotion of high-level institutional opening, the acceleration of the movement of imports and exports, the assistance of foreign trade companies to expand their markets, the support of high-quality development of key industries and new business forms, the deepening of the construction of Shanghai as an international trade and shipping center, and continuous improvement of trade facilitation.

Shanghai Plans to Build Pudong New Area into an International Legal Service Center

On July 26, 2023, the Shanghai Municipal Bureau of Justice and the People’s Government of Pudong New Area jointly released the *Implementation Plan of Supporting Pudong New Area to Build International Legal Service Center as the Leading Area of Socialist Modernization* (Draft) (the “Plan”) for public comment until August 25, 2023. The document laid out 16 tasks and measures in six aspects.

By 2025, the scale advantage of the legal service sector in Pudong New Area will become more prominent, more high-end talents will be attracted, and a modern legal service center will be roughly built. According to the Plan, the economic output of the legal service sector will account for more than 1 percent of the GDP in the area, there will be more than 30 large and medium-sized legal service institutions with more than 50 legal professionals in the area, and the number of well-known domestic and foreign legal service institutions that have established branches in Pudong will rank the top in the country. There also will be more than 10,000 legal service professionals in the area, and the number of talents included in the foreign-related talent pool of the Ministry of Justice will continue to rise.

The Draft Amendment (XII) to the Criminal Law Officially Published

On July 26, 2023, the *Amendment (XII) to the Criminal Law of the People’s Republic of China* (Draft) was released on the website of the National People’s Congress (“NPC”). The draft is open for public comment until August 24, 2023.

There are eight articles in the draft, seven of which amend the Criminal Law. It mainly refines the regulations on the crime of offering bribes and corruption by individuals from private enterprises. It adjusts the minimum sentencing standard and the levels of punishment for bribery to be consistent with the crime of accepting bribes, and clarifies six types of situations, including multiple instances of bribery, bribery to multiple individuals, bribery committed by state officials. It also strengthens the penalty for the crime of bribery committed by units. Originally, the maximum punishment was five years of fixed-term

imprisonment, but it will now be divided into two categories: the first category is “imprisonment of up to three years or detention”, while the second category is “imprisonment of more than three years but less than ten years, with a fine.” The current criminal law stipulates offenses by personnel of state-owned companies or enterprises, such as illegal operations of similar businesses, illegal profiting for relatives or friends, and abusing power for personal gain through underpriced stock transfers or selling state-owned assets. It extends the scope of these crimes to private business personnel.

MIIT Releases 2023 Version of the Guidance for the Building of a National Standard System for ICVs in the IoV Industry

On July 26, 2023, the Ministry of Industry and Information Technology (“MIIT”) released the *Guidance for the Building of a National Standard System for Intelligent Connected Vehicles (“ICVs”) in the Internet of Vehicles (“IoV”) Industry (2023 Version)* (the “Guidance”).

The Guidance is planned to formulate and revise over 100 ICV related standards by 2025, covering standards for combined driver assistance, critical system for automatic driving, basic functions and operating systems of ICVs, high-performance computing chips and data applications. It is estimated that by 2030, more than 140 standards related to ICVs will be formulated and revised, forming an intelligent networked vehicle standard system that supports the coordinated development of bicycle intelligence and empowerment. It is clarified that the ICV standard system will be horizontally based on the layer of intelligent perception and information communication, the layer of decision control and execution, and the layer of resource management and application, and vertically supported with general specifications and technologies with respect to functional safety and expected functional safety, network safety and data safety, creating a “three horizontal and two vertical” core technical framework.

SAFE Eases Restriction on the Scale of ODI Upfront Expenses

On July 24, 2023, the State Administration of Foreign Exchange (“SAFE”) released the *Circular on Further Deepening Reform to Facilitate Cross-border Trade and Investment* (Exposure Draft) (the “Circular”) for public comment until August 2, 2023.

The Circular intends to promote three policies covering ten items. The first is to improve the cross-border trade opening policy, which includes four current account policies. The second is to expand the coverage of the capital account facilitation measures, covering three policies, i.e. the policy of facilitating cross-border financing for technology-based small and medium-sized enterprises, the policy of easing the restriction on the scale of upfront expenses of overseas direct investment (ODI), and the policy of facilitating the payment and use of equity transfer funds under domestic reinvestment of foreign-invested enterprises (FDI) and funds raised from overseas listing. The third is to optimize the foreign exchange management measures for capital accounts.

CAAC to Revise the Civil Aviation Standardization Management Regulations

On July 24, 2023, the Ministry of Justice released the *Civil Aviation Standardization Management Regulations* (Exposure Draft) (the “Regulations”) drafted by the Civil Aviation Administration of China (CAAC) for public comments until August 24.

The Regulations have six chapters and 25 articles. This revision mainly clarifies the scope of civil aviation standards, increases active participation in international standardization activities, promotes the transformation of China's civil aviation standards into international standards, adjusts standardization work responsibilities, and clarifies the subject and scope of standard formulation. It also adds relevant contents to guide civil aviation group standards, requirements for information feedback on the implementation of standards and evaluation of implementation effects.

PBC to Release Data Security Rules in Business Area

On July 24, 2023, the People's Bank of China ("PBC") released the *Circular on Solicitation of Public Opinions on the Measures of the People's Bank of China for Data Security Administration in Business Area* (Exposure Draft) (the "Measures"). The deadline for submitting comments is August 24, 2023.

The Measures have 57 articles in eight chapters, and provide for data classification and grading, general requirements for data security protection, management measures for data security protection, technical measures for data security protection, and risk monitoring, evaluation, auditing and event handling measures. It is emphasized that data processors should establish data classification and grading systems and procedures, sort out categorized information in data resource catalogues, uniformly classify data, specify data security responsibilities, and establish data security accountability and punishment systems, as well as the whole-process security management system for data processing. Through the Measures, data processors know what security protection management and technical measures it should take in collection, storage, use, processing, transmission, provision, disclosure and deletion of data before they can be deemed having met the bottom-line compliance requirements.

Article(s)

CSRC Improve the Supervision of Specific Short-Swing Trading

by Sophie Chen

On July 21, 2023, China Securities Regulatory Commission ("CSRC") issued the "Several Regulations on Improving the Supervision of Specific Short-Swing Trading (Draft for Comment)" (hereinafter referred to as the "Regulations"). Pursuant to article 44 of the *Securities Law* promulgated in 2019 by Standing Committee of the National People's Congress, specific short-swing trading means that a shareholder holding more than 5% of the shares of a listed company or a company whose shares are traded on a nationwide stock exchange approved by the State Council, as well as a director, supervisor and senior management personnel, sells the company's shares or other securities of equity nature that he/she holds within six months of purchase or buys again within six months of sale.

The Regulations stipulates that the scope of applicable subjects of specific short-swing trading is limited to specific investors such as shareholders, directors, supervisors, and senior managers of listed companies or companies listed on the National Equities Exchange and Quotations ("NEEQ").

At present, there is dispute on whether the perpetrator of a specific short-swing trading needs to have the above identity at the time of both purchase and sale. Article 4 of the Regulations clearly that if the perpetrator does not have the above identity at the time of purchase but do have it at the time of sale, it constitutes a short-swing trading. However, the Regulations still do not solve the question whether a perpetrator who has the above identity at the time of purchase but does not have it at the time of sale constitutes a short-swing trading.

Pursuant to the Regulations, the number of specific shares held by the accounts under the names of the perpetrator's spouse, parents, and children, as well as other shares actually held by the perpetrator, will be combined to determine the perpetrator's shareholding ratio.

The prohibition of short-swing trading protects the interests of investors and prevents insider trading in advance. The Regulations also list the following eleven exemption situations, which are normal business and are not involved in insider trading: (1) preferred stock conversion; (2) exchangeable corporate bonds swaps; (3) conversion of convertible corporate bonds; (4) subscription and redemption of Exchange Traded Fund ("ETF"); (5) refinancing business in accordance with *Pilot Measures for Supervision and Administration of Refinancing Business* amended in 2020 by CSRC; (6) judicial enforcement, inheritance, donation and other non-trading activities; (7) non-reimbursable transfer of State-owned shares; (8) private placement of companies listed on the NEEQ; (9) acts related to equity incentive exercise; (10) securities companies purchase remaining stocks after underwriting; (11) securities companies carry out stock marketing business in accordance with laws and regulations.

Moreover, the Regulations grants the CSRC to issue warnings and impose fines at the same time. The perpetrators are encouraged to voluntarily confess to the relevant regulator the illegal acts which the regulator has not acknowledged, and the punishments will be reduced or exempted thereunder.

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