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GRANDWAY LAW OFFICES

Newsletter

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Update

GAC Introduces More Convenient Measures for AEO Enterprises to Increase the Volume and Raise the Quality of Foreign Trade

On April 6, 2024, the General Administration of Customs (GAC) issued the *Circular on Taking More Convenience Measures for AEO Enterprises to Increase the Volume and Raise the Quality of Foreign Trade* (the "Circular"), to be effective on April 6, 2024.

The Circular introduces a total of 17 measures in four aspects for authorized economic operator (AEO) enterprises, including reducing the frequency of inspection and quarantine supervision, lowering import and export costs for enterprises, and raising the level of intelligence of the convenience measures, as well as the level of precision service for enterprises. It sets forth the following specific provisions: lowering the sampled inspection and quarantine proportion for AEO enterprises which export food and cosmetics to 20 percent below that for enterprises subject to regular administrative measures; optimizing the performance

inspection cycle to one year for export-oriented dangerous goods packaging produced by AEO enterprises; reducing the number of on-site inspections for enterprises which are included in the remote territorial inspection reform; conditionally piloting tax exemption guarantee exemption for production-oriented enterprises that have been certified as an AEO enterprise for more than five years; and expanding the scope of AEO data automatic exchange.

The 27th EU-China Competition Week Held in Beijing

From March 19 to 21, 2024, the State Administration for Market Regulation and the European Commission's Directorate – General for Competition jointly held the 27th EU-China Competition Week was held in Beijing. The roundtable discussions focused on the EU's and China's experiences with the implementation of their regulatory approaches to digital markets, as well as gun jumping in merger control and trends and experiences in remedies and procedures. Officials also discussed the principles and application of the Fair Competition Review System in China, and the interaction of EU State aid rules. Finally, experts discussed the interaction between competition and Standard Essential Patents.

The two sides agreed to deepen exchanges and cooperation in the field of competition and create a fair and competitive market environment for the healthy development of the economic and trade relations between them. Xu Xinjian, the anti-monopoly director of the State Administration for Market Regulation (SAMR), and Olivier Guersent, Director-General of the EU's Directorate-General for Competition, made the opening remarks.

China to Consolidate Financing Credit Platforms to Support MSMEs

On April 2, 2024, the Chinese government released the *Action Plan on Coordinating the Building of Financing Credit Service Platforms to Facilitate Financing for Micro, Small and Medium Enterprises (MSMEs)* (the "Action Plan").

The Action Plan has 12 entries in five aspects. It is annexed with the Credit Information Collection and Sharing List, which specifies the details and methods for the collection and sharing of 17 types of credit information. It proposes to build a national financing credit service platform by consolidating local financing credit service platforms. The national platform will serve as the "sole portal" to provide financial institutions with public credit information. The platform consolidation is expected to be completed by the end of 2024.

The Action Plan specifies that information on major personnel of enterprises, qualifications, and imports and exports will be incorporated in the Credit Information Collection and Sharing List. It vows to launch special products of "Credit Loans" on a pilot basis, and encourages localities to improve the mechanism of "finding the right persons with policies" so that MSMEs and other business entities can get access to the various favorable financial policies via the platform.

Shanghai Vows to Support Foreign-funded Enterprises in Participating in the Work on Standardization

On April 2, 2024, Shanghai Municipal Administration for Market Regulation and two other departments

in Shanghai jointly released the *Several Measures of Shanghai on Further Supporting Foreign-funded Enterprises in Participating in the Work on Standardization* (the "Measures"), to be effective on April 2, 2024, in an effort to continuously improve the business environment, promote the institutional opening-up for standardization, and boost both domestic and international economic circulation.

The Measures propose nine actions, including establishing a collaboration platform for foreign-funded enterprises, encouraging their participation in international standardization activities, improving convenience for them to participate in the drafting of national standards and industry standards, and increasing their participation in drafting local standards. It also stresses the need to include the representatives of some qualified foreign-funded enterprises in the expert database for the technical review of standardization.

China Issues Rules on Infrastructure and Public Utilities Franchising

On March 28, 2024, the National Development and Reform Commission (NDRC) and five other Chinese government departments released the *Rules on Infrastructure and Public Utilities Franchising* (the "Rules"), to be effective on May 1, 2024.

With 67 articles in eight chapters, the Rules clarify that infrastructure and public utilities franchising is based on the PPP (Public-Private Partnership) model, and there is no new administrative licensing item for it. A franchisee has the exclusive right to invest, construct and operate the specific infrastructure and public utilities project for gains within the period agreed in the agreement, and it is forbidden to add any new administrative licensing item without a legal or regulatory basis or charge a franchisee through the said unauthorized addition of an administrative licensing item. Where a franchising period is set to exceed 40 years, it shall be fully demonstrated in the franchising plan and be submitted for approval together with the plan. The Rules also stress that government payments can only be used to subsidize operations according to the Rules, instead of subsidizing construction costs, and it is forbidden to use fiscal funds to make up for the project construction investment and operating costs through viability gap funding, guaranteed rate of return, availability payments and other ways.

China Issues Document to Improve the Fiscal and Tax System to Boost Capital Innovation and Market Vibrancy

On April 12, 2024, the Chinese government issued *Several Opinions of the State Council on Strengthening the Regulation and Risk Prevention and Promoting the High-Quality Development of the Capital Market* (the "Opinions"), which took effect on April 4, 2024, setting forth provisions in nine aspects. This is a further guiding document issued by the State Council on the capital market following the two Nine-Point Opinions it issued in 2004 and 2014, respectively.

Specifically, the Opinions call for tightening the ongoing supervision of listed companies, rectifying financial fraud, fund occupancy and other illegal and irregular behaviors in key areas, comprehensively improving the systems and rules on holdings reduction, and severely cracking down on all types of rule-breaching reduction of holdings. It also calls for intensifying the supervision of delisting and getting stricter with financial indicators for delisting; strengthening the supervision of mergers, acquisitions and

reorganizations, stepping up the regulation of "shell listing", and cracking down on various rule-breaching acts of "shell protection"; and getting strict with delisting implementation and severely cracking down on illegal activities such as financial fraud, market manipulation, and malicious delisting evasion. It stresses the need to implement and improve tax policies for listed companies, including equity incentives, medium and long-term funds, private equity venture capital funds, real estate investment trusts, etc., as well as the need to improve the financial and tax system that is conducive to the formation of innovative capital and the creation of a buoyant market.

CSRC Calls for Adopting Stricter Standards for Compulsory Delisting

On April 12, 2024, in an effort to implement the third important document in China's capital market, the China Securities Regulatory Commission (CSRC) formulated and released the *Guidelines on Strict Implementation of Delisting Regulation* (the "Guidelines"), to be effective on April 12, 2024, which introduce measures in five aspects.

First, the Guidelines demand adopting stricter standards for compulsory delisting. It lowers the thresholds for triggering delisting in serious violations of financial fraud within two years, and specifies the circumstances under which companies found guilty of serious falsification within a year or engaging in continuous falsification should be forced to delist. Second, it diversifies the delisting channels, calling for improving policies and regulations in areas such as mergers and acquisitions, and encouraging and guiding leading companies to integrate industrial chains based on their main businesses. Third, it reduces the value of "shell" resources, strengthens the regulation of reorganization, and intensifies the oversight of the quality of investment. It also demands strict satisfaction of conditions for "regarding a backdoor listing as an IPO". Fourth, it tightens delisting regulation, calling for a resolute crackdown on financial frauds and other illegal acts. Fifth, it calls for implementing investor compensation and remedy mechanisms.

China-Germany Economic Advisory Committee Holds a Symposium in Beijing

At a symposium of the China-Germany Economic Advisory Committee held at the Great Hall of the People on April 16, 2024, Premier Li Qiang and German Chancellor Olaf Scholz held talks with more than 20 Chinese and German entrepreneurs.

China will further shorten the negative list for foreign investment, fully ensure national treatment for foreign investors, and adjust and optimize the arrangements on cross-border data flow, Li said. The country will continue to listen to the views of foreign companies on a regular basis, and actively respond to their reasonable requests. Germany attaches importance to safeguarding and developing economic and trade relations with China, and is against "decoupling" from China, Scholz said. Germany will deepen economic and trade exchanges with China, and expand practical cooperation. Chinese enterprises are welcome to invest in Germany.

Article(s)

Methods and Regulations for the Repatriation of Funds from Chinese Offshore USD Bonds Issuance

by Esther Lin

Repatriating funds raised from USD bond issuances is a critical step for Chinese companies after the pricing and issuance of bonds. This process typically includes foreign debt registration, opening a foreign debt special account, foreign exchange settlement, and fund withdrawal. According to the *Guidelines for Foreign Exchange Business under the Capital Account (2024 Edition)* ("Guidelines 2024"), domestic institutions that issue bonds abroad must complete foreign debt registration with the State Administration of Foreign Exchange (SAFE) within 15 working days after the settlement of the foreign bonds. The methods of repatriating funds and the regulatory constraints vary depending on the issuance structure.

I. Methods of Repatriation

1．Direct Issuance

Under the direct issuance structure, the repatriation process is relatively straightforward. After completing foreign debt registration with the SAFE, domestic enterprises can convert the foreign exchange capital in their capital account into RMB at an appropriate time, to be managed in the pending foreign exchange settlement account. When the domestic enterprise needs to use the settled funds for payments, the bank will review the usage of the settled funds. In principle, the funds raised from Chinese USD bonds under direct issuance need to be fully repatriated. According to the Guidelines 2024, non-bank borrowers who borrow foreign debt or issue bonds abroad should, in principle, repatriate the involved funds for domestic use, except with SAFE approval for retention abroad. Additionally, the overall principle of SAFE's fund supervision follows "what comes in must go out"; if funds are not repatriated, it may be challenging to remit domestic funds out for principal and interest payments.

2．Cross-border Guarantee Issuance

According to SAFE's *Notice on Further Advancing Foreign Exchange Administration Reform and Improving Authenticity and Compliance Review (Huifa [2017] No. 3)* ("Notice 2017"), funds under a domestic guarantee for overseas loans can be repatriated for domestic use. The debtor can repatriate the funds under the guarantee by lending them to the domestic guarantor or through equity investment.

Thus, under the guarantee issuance structure, there are mainly two methods for repatriation: (1) Lending to Domestic Entities: the overseas issuer lends the raised funds to the domestic guarantor, constituting a foreign debt. This requires both the guarantee registration and foreign debt registration with SAFE; (2) Equity Investment: the overseas issuer uses the raised funds to establish a new foreign-invested enterprise or acquire a domestic enterprise, subject to regulations governing foreign direct investment (FDI).

3．Keep-well Agreements

Similar to the guarantee issuance structure, keep-well agreements can also achieve fund repatriation through domestic lending or equity investment. Lending to domestic entities under a keep-well agreement also requires foreign debt registration with SAFE. Additionally, other methods under keep-well

agreements include financing leasing channels, cross-border two-way RMB capital pools, overseas retention for domestic lending, and domestic guarantees for overseas loans.

Under the current regulatory framework, the difficulty of fund repatriation across different issuance structures has become relatively comparable.

II. Regulation of Repatriated Funds

1. Regulatory Authorities

The issuance of Chinese USD bonds and the repatriation of funds mainly involve two regulatory bodies: the National Development and Reform Commission (NDRC) and SAFE. The NDRC is primarily responsible for issuance approval, i.e., filing and registration of foreign debt, while SAFE is responsible for fund supervision, including foreign debt registration, foreign exchange settlement, and fund withdrawal. SAFE is the core institution overseeing the repatriation of funds for Chinese USD bonds.

2. Regulatory policies

The regulation of fund repatriation for Chinese USD bonds has undergone three phases from tight to relaxed:

(1) Strict Regulation Period (Before 2015): Under the constraints of Huifa [2013] No. 19 and Huifa [2014] No. 29, fund repatriation under direct issuance and guarantee issuance structures was strictly limited, leading to the emergence of keep-well agreements.

(2) Partial Relaxation Period (2015-2016): The restrictions on fund repatriation under direct issuance were gradually relaxed, first in key areas and then comprehensively.

(3) Full Relaxation Period (Since 2017): The restrictions on fund repatriation under the guarantee structure were significantly loosened. On January 26, 2017, SAFE issued the Notice 2017, allowing funds under a domestic guarantee for overseas loans to be repatriated through domestic lending, equity investment, etc.

Understanding these methods and regulatory frameworks is essential for navigating the complexities of repatriating funds from USD bond issuances.

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