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International trade & Foreign Investment

MOFCOM Announces Amended Commercial Franchising Filing Rules

The Ministry of Commerce (MOFCOM) has officially announced the amended "*Measures on the Administration of the Filing Process for Commercial Franchising*" which will take effect as of 1 February 2012 and at the same time repeal the original measures published in Decree of MOFCOM No. 15 in 2007. According to the Amended Measures, the MOFCOM may delegate power to the provincial, autonomous regional and municipal departments of commerce to handle the filing process for inter-provincial, -autonomous regional and -municipal commercial franchising. However, the provincial, autonomous regional and municipal departments of commerce are not allowed to further delegate their power to any other organization or individual to handle the said filing process.

MSA Clarifies Fees for Agreement on Cleaning Up Pollution Caused by Vessels

The Maritime Safety Administration has released the "*Announcement on the Matters Relating to the Fees for Agreements on Cleaning Up Pollution Caused by Vessels*" which expressly prohibits entities from engaging in cleaning up pollution caused by vessels and vessel operators from hindering the effectiveness of implementing agreements on cleaning up pollution caused by vessels by maliciously increasing or reducing prices or offering services for free, or applying different charging schemes from those used in the internal practice for vessels of similar types or sizes.

China Exempts Import VAT for Imported Seed Sources During "12th Five-Year" Period

The Ministry of Finance (MOF), General Administration of Customs (GAC) and State Administration of Taxation (SAT) have jointly released the *Circular on Issuance of the Measures for the Administration of Tax Exemption Policy for Imported Seed Sources during the "12th Five-Year" Period*. The Measures take effect from 1 January 2012 and remain effective until 31 December 2015. Under the Notice, during the "12th five-year" period, imported seed sources of seeds (seedling), breeding stock (birds), fish seeds (seedlings), and wild animals and plants used as seeds will be exempt from import value-added tax (VAT).

Newly Revised Foreign Investment Industrial Guidance Catalogue Published

After public consultation, the National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) have recently published the full text of the *Catalogue for the Guidance of Foreign Investment Industries* (Revised in 2011), which is due to take effect from 30 January 2012. The new Catalogue adds entries of new products and new technologies in areas such as textile, chemical industry and machinery manufacturing, as well as entries relating to the recycling and processing of discarded and old electric appliances and products, electromechanical devices and batteries into the industries for which foreign investment is encouraged and deletes the entries concerning manufacturing of complete cars, polycrystalline silicon and coal chemical industry therefrom. The new Catalogue also encourages involvement of foreign investment into strategically new emerging industries such as energy conservation and environmental protection, new generation of information technology, biology, manufacturing of high-end equipment, new energy, new materials, and new energy automobiles, and cancels the share ratio restriction on

entries relating to new energy generating equipment.

Company Law

Two Depts. Further Improve Foreign-Funded Investment Companies' Management Measures

The Ministry of Commerce and the State Administration of Foreign Exchange have jointly released the “*Notice on Further Improving Relevant Management Measures for Foreign-funded Investment Companies*”. Under the Notice, foreign-funded investment companies may make their domestic investments directly with RMB they receive in the PRC from business profits, withdrawal of their investment in advance, liquidation, equity transfer and reduction of capital upon approval of the local competent foreign exchange administrations; foreign investors may also make capital contribution (or capital increase) to the registered capital of investment companies with RMB received in the aforesaid events before making domestic investments. No domestic loan of foreign-funded investment companies may be used for domestic reinvestment.

CSRC to Revise Listed Companies' Takeover Measures

The China Securities Regulatory Commission has released the “Decisions on Revising Articles 62 and 63 of the ‘Administrative Measures for the Takeover of Listed Companies’ (Consultative Draft)” for public consultation by 16 January 2012. Under the Consultative Draft, some provisions in Articles 62 and 63 have been revised, cancelling the administrative permission for the waiver from the offer obligation as a result of the issuance of stocks, providing a 2% shareholding increase by majority shareholders holding over 30% of the shares annually, an unlimited shareholding increase by majority shareholders holding over 50% of the shares and the inheritance of shares.

Interim Rules Promoting SME Development through Government Procurement Released

The Ministry of Finance (MOF) and Ministry of Industry and Information Technology (MIIT) have recently issued the Interim Measures for Promoting the Development of Small and Medium-sized Enterprises through Government Procurement, which require that no entity or individual shall hinder or restrict any small or medium-sized enterprise (SME) from entering the government procurement market in the region and the industry freely, and stress that over 30% of the budget for government procurement projects will be specifically reserved for SMEs, with the percentage thereof reserved for small and micro enterprises being no less than 60%.

Finance & Taxation

Supplied Material Processors Transforming into Legal Entities Exempted from Import Duty

The Ministry of Finance (MOF) on 14 November 2011 circulated the *Notice on Certain Issues concerning the Tax Policy on Imported Equipment of Supplied Material Processing Enterprises Transforming into Legal Entities*. The Notice clarifies that, for those supplied material processing enterprises without the status of legal entity that establish legal entities during the period from 1

July 2011 to 31 December 2012 with all their non-priced equipment as provided by foreign investors as the investment, or for those supplied material processing enterprises that invest all their non-priced equipment in the legal entities that have been established by the same investors during the period from 1 July 2011 to 31 December 2012, their non-priced equipment for which they went through the process of filing of processing trade on or prior to 31 December 2008 and filed for import on or prior to 30 June 2009 but have not conducted customs supervision clearance are entitled to the exemption of import duty and import value-added tax.

DTA between China and Zambia Put into Effect

The State Administration of Taxation (SAT) has announced that the "Agreement between the Government of the People's Republic of China and the Government of the Republic of Zambia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income" was officially given full force on 30 June 2011 and is applicable to affected taxpayers who earn income from 1 January 2012.

Place of Origin Criteria for Goods from HK & Macau Subject to Zero Tariff in 2012 Issued

The General Administration of Customs (GAC) has made Announcement No. 70 / 2011 with which the "*Conditions for Place of Origin for Newly Recognized Goods from Hong Kong Qualifying for Zero Tariff for 2012*" and "*Conditions for Place of Origin for Newly Recognized Goods from Macau Qualifying for Zero Tariff for 2012*" are enclosed with effect as of 1 January 2012. In the Announcement, certain conditions for place of origin for existing goods from Hong Kong that qualify for the specific preferential treatments have been amended and the "Five Batches of Brands of Watch Solely Owned by Hong Kong Traders" announced.

1st Batch of Sino-Invested Vessels Qualifying for Preferential Import Tax Treatment Announced

The State Administration of Taxation (SAT) has announced the "*Notice on the First Batch of Sino-Invested Vessels with 'Flags of Convenience' Qualifying for Preferential Import Tax Treatment during the 12th Five-Year Period*" under which vessels officially recognized under the earlier instrument, Caishui [2011] No. 63 may be exempted from import tax and input VAT. Such vessels shall undergo the registration procedures under the "*Vessel Registration Regulation of the People's Republic of China*" (Decree of State Council No. 155) and other relevant provisions.

SAFE Regulates RQFII's Domestic Securities Investment

The State Administration of Foreign Exchange (SAFE) has released the "Notice of the State Administration of Foreign Exchange on Issues concerning Pilot Domestic Securities Investment by RMB Qualified Foreign Institutional Investors (RQFII) of Fund Management Companies and Securities Companies". Under the Notice, the SAFE will implement balance management of the line of credit of investments ("Investment Credit Line") made by RQFIIs. The accumulated net RMB capital invested by RQFIIs may not exceed the approved investment credit line. No RQFII may transfer or sell its investment credit line to other institutions or individuals.

CSRC Issues Provisions on RQFII Domestic Investment Pilot Measures

The China Securities Regulatory Commission (CSRC) has released the "*Provisions on*

Implementing the 'Pilot Measures for Domestic Securities Investment by Fund Management Companies and Securities Companies as RMB Qualified Foreign Institutional Investors (RQFII)'. Under the Provisions, when making domestic securities investment with funds in RMB raised in Hong Kong, pilot institutions' asset allocation shall meet the following requirements: within the approved investment limit, no more than 20% of the raised funds shall be invested in stocks and stock funds, and no less than 80% of the raised funds shall be invested in fixed income securities including various bonds and funds with fixed income.

Three Depts. Issue Measures to Regulate Bidding on Contracts for Overseas Projects

The Ministry of Commerce (MOFCOM), China Banking Regulatory Commission (CBRC) and China Insurance Regulatory Commission (CIRC) have jointly issued the "*Administrative Measures on the Permit for Bidding (Negotiated Bidding) on Undertaking Overseas Projects*" (the Measures), which shall take effect as of 15 January 2012. The Measures specify that enterprises which win contracts for overseas projects and other organizations which win contracts for overseas construction projects with the offered contract price being more than USD5 million by bidding or negotiated bidding shall apply to the competent authority for approval before making any offer in such biddings. Without such approval, domestic financial institutions shall not issue letters of guarantee, or offer loans or credit insurance to them.

Miscellaneous

MOFCOM Extends Imported Photographic Papers' Anti-Dumping Investigation Period

The Ministry of Commerce (MOFCOM) has decided to extend the period of the anti-dumping investigation into photographic paper products imported from the European Union, United States and Japan for three months, according to its Announcement [2011] No.88 issued on 23 December 2011. The MOFCOM opened the investigation on 23 December 2010 and made the decision to extend the period of investigation as the case is relatively special and complex. The deadline for the investigation period is 23 March 2012.

MFA Issues China Consular Certificates Service Guideline

On 28 December 2011, the Ministry of Foreign Affairs (MFA) issued the *Guideline for China Consular Certificates Service* (the Guideline), which comprises six parts, namely, "Preparation", "Exit & Entry", "Residence Abroad", "Certificates Application", "Safe Use" as well as "Special Tips". The Guideline comprehensively introduces the details of consular certificates based on the generality and characteristics of all kinds of certificates, and also gives special tips on problems which usually arise when people go abroad.

Three Depts. Issue Pilot Scheme to Launch RQFII

The China Securities Regulatory Commission (CSRC), People's Bank of China (PBoC) and State Administration of Foreign Exchange (SAFE) recently jointly released the *Rules for the Pilot Scheme on Investment in Mainland Securities by RMB Qualified Foreign Institutional Investors of Fund Management & Securities Companies* (the Rules), which allow Hong Kong subsidiaries of qualified Mainland fund management and securities companies to use RMB raised in Hong Kong

to invest in Mainland securities markets. The Rules provide that Hong Kong subsidiaries that conduct Mainland securities investment, as pilot institutions, shall entrust a qualified Chinese commercial bank to act as an asset custodian, and entrust a domestic securities company to act as principals in trading securities.

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