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Laws and Regulations Updates

I. Interim Measures on Management of Financial Guarantee Companies (the “Interim Measures”)

In order to facilitate healthy development of the financial guarantee industry, and to standardize the operation of financial guarantee companies and to strengthen the supervision thereon, the Interim Measures has been promulgated and implemented in March 2010 upon the approval of the State Council. The Interim Measures is comprised of 7 chapters with 54 articles and the main contents are as follows:

1. A financial guarantee refers to a contract between a guarantor and creditors (including banking and financial institutions) which provides that where the guarantee fails to perform its financial liabilities to the creditors, the guarantor shall assume the guarantee obligations in accordance with the contract.
2. The Interim Measures mainly regulate financial guarantee companies, i.e., limited liability companies and companies limited by shares duly established and are engaging in financial guarantee business. Non-company financial guarantee institutions shall be regulated with reference to relevant stipulations under the Interim Measures, and specific implementation measures shall be enacted by the provincial, autonomous region, and municipal governments.

3. Subject to approval of relevant regulatory bodies, financial guarantee companies may engage in all or part of the following financial guarantee activities: (1) loan guarantee; (2) accepted note guarantee; (3) trade financing guarantee; (4) project financing guarantee; (5) letter of credit guarantee; (6) other financial guarantee activities. Financial guarantee companies may concurrently engage in all or part of the following financial guarantee businesses upon approval from regulatory bodies: (1) guarantee of asset preservation in litigation cases; (2) other performance guarantee businesses including tender guarantee, advance payment guarantee, project performance guarantee and guarantee for balance of payment under contract; (3) agency services in relation to guarantee businesses including finance and financial consulting; (4) investment by own equity fund; (5) other activities approved by the regulatory authorities.
4. Financial guarantee companies shall not engage in the following activities: (1) accepting deposits; (2) granting loans; (3) releasing loans on trust; (4) making investment on trust; (5) any other activity prohibited by the regulatory authorities. Any financial guarantee company engaging in illegal fund-raising activities shall be subject to investigation and penalties to be imposed by the relevant authorities in accordance with the law.

II. Supreme People's Court's Interpretations on Several Issues Concerning the Applicable Laws for Trial of Cases arising from Disputes over Damages for Personal Injuries Caused by Railway Transport (the "Interpretations")

With a view to properly decide cases arising from disputes over damages for personal injuries caused by railway transport and to safeguard the legal rights and interests of the parties, in March 2010, the Supreme People's Court provided interpretations on issues concerning the applicable laws based on relevant provisions of such laws as the General Principles of the Civil Law of the People's Republic of China, the PRC Railway Law and the PRC Civil

Litigation Law, and the relevant case law:

1. The Interpretations shall be applicable to cases arising from disputes over damages for personal injuries caused by railway accidents and other railway operation accidents, including cases concerning personal injuries caused by collisions between pedestrians, motor vehicles and trains or involving personal injuries to railway passengers. However, the Interpretations shall not apply to personal injuries occurred in the course of work to railway staff who has entered into an employment contract or established an employment relationship with railway transport enterprises (i.e., industrial injury and death cases); the same shall be handled in accordance with the laws and regulations governing employment relationship and other relevant laws and regulations.
2. The competent court with jurisdiction shall be determined by the claimant's causes of action: where the claimant requests the opposite party to assume tortious liability, such case shall be subject to the jurisdiction of the railway transport court of where the accident takes place, where the train first arrives after the accident or that of the defendant's domicile. Where the claimant requests the carrier to assume tortious liability for breach of contract, such case shall be subject to the jurisdiction of the railway transport court of the origin, destination or the defendant's domicile.
3. The Interpretations provides that where railway passengers suffer personal injuries in the course of transportation, the claimant shall be entitled to request the railway transport enterprise to assume liability for breach of contract or tortious liability. Where the claimant requests the railway transport enterprise to assume liability for breach of contract, such case shall be considered as a contract dispute and shall be handled by the people's court in accordance with the relevant stipulations under the Contract Law. Where the claimant requests the railway transport enterprise to assume tortious liability, such case shall be considered as a dispute over tortious damages and shall be handled by the people's court according to the law on tortious liability. Where

railway passengers suffered personal injuries in the course of transportation due to a tort committed by a third party, such third party shall assume tortious liability. Where the railway transport enterprise is at fault, such enterprise shall assume corresponding supplementary liability for injuries that may be prevented or mitigated, and shall be entitled to recover the same from such third party after having assumed such liability. Where railway passengers suffered personal injuries caused by third parties outside the train, e.g., throwing stones at the train, and the claimant demands the railway transport enterprise to account for damages in advance, the people's court shall uphold such request. The railway transport enterprise shall be entitled to recover the paid damages from such third party.

III. The Decision on Revising the Copyright Law of the People's Republic of China (the "Decision")

In February 2010, the Standing Committee of the National People's Congress decided to revise the Copyright Law of the People's Republic of China as follows:

1. Article 4 shall be revised as follows: "Copyright owners shall neither violate the Constitution and the law nor infringe upon the public interest while exercising the copyrights thereof. The state shall supervise and regulate the publication and circulation of works in accordance with the law."
2. A new article has been added as Article 26: "Where a copyright is pledged, both the pledgor and pledgee shall register the pledge with the copyright administrative authorities of the State Council."
3. The Decision shall take effect on 1st April 2010. The Copyright Law of the People's Republic of China shall be re-promulgated upon revision and re-arrangement of the articles in accordance therewith.

The summary is only intended to provide an outline of certain recent developments in the PRC and is not intended to be relied upon or taken as legal advice provided by Sit, Fung, Kwong & Shum or Hong Kong Sit, Fung, Kwong & Shum Xi'an Representative Office. If you have any enquiry, please contact Alex Chan, our partner in Xi'an Representative Office at Tel: (852) 29097320 and fax: (852) 28459292 (Hong Kong) or Tel: (8629) 87203203 and fax: (8629) 87203033 (Xi'an) e-mail: alexchan@sfks.com.hk