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### **Laws and Regulations Updates**

#### **I. Several Opinions of the State Council on Further and Better Utilization of Foreign Capital**

The Several Opinions on Further and Better Utilization of Foreign Capital (the “Opinions”) was promulgated by the State Council on 6<sup>th</sup> April 2010.

The Opinions put forward that the government shall revise the “Catalogue and Guidelines of Industries for Foreign Investment” in accordance with economic development demands to expand the open market areas and encourage foreign capital to invest in high-end manufacturing, high-technology industries, modern service sectors as well as new energy, energy-saving and environmental industries by exercising strict control over highly-polluting, energy-intensive and resources-dependent, as well as low-level and overcapacity projects.

In order to promote diversification in the utilization of foreign capital, the Opinions encourage foreign investment in domestic corporate reorganization, merger and restructuring through equity investment, mergers and acquisitions, and provide support to eligible foreign investment enterprises in launching domestic public offerings, issuing corporate bonds and medium term notes, so as to expand financing

channels, attract further credit support from financial institutions and steadily promote the issuance of Renminbi bonds by foreign entities in the domestic market.

The Opinions stipulate that the Government shall encourage both domestic and foreign strategic investors to be introduced to A-share listed companies, standardize foreign investment in domestic securities and corporate merger and acquisition, carry out anti-monopoly inspections in accordance with the law, and shall establish as soon as possible a national security inspection mechanism for mergers and acquisitions in the PRC.

The Opinions provide stipulations on utilizing foreign capital markets. In order to enhance the competitiveness of domestic enterprises by fully utilizing both domestic and foreign markets and resources, the government shall continue to support eligible enterprises to be listed on overseas stock exchanges according to the state's development strategies and the development needs of the enterprise. The government shall further pursue the trial measures regarding the establishment of foreign-funded SME security companies. Foreign investors are encouraged to make investments through establishing venture capital investment enterprises. Utilization of private equity funds is encouraged and procedures of withdrawal from the market shall be improved.

The Opinions provide that in order to maintain the inflow of foreign investments into the western region, the government shall continue to offer corporate income tax privilege to eligible foreign investment enterprises in the western region. With regard to foreign investment enterprises moving from the eastern region to north-western region, further support shall be provided with respect to open-door policies and backup for technology and capital, and administrative services shall be improved to facilitate business, tax, foreign exchange and social security procedures. Foreign banks are encouraged to set-up offices and operate in the north-western region.

## **II. Guidelines on Further and Better Sponsorship of the Growth Enterprise Market (“GEM”) Board**

The China Securities Regulatory Commission promulgated the Guidelines on Further and Better Sponsorship of the GEM Board (the “Guidelines”) on 19<sup>th</sup> March 2010, which is supplementary to the Interim Measures on the Administration of Initial Public Offering and Listing of Shares on the GEM Board.

1. The Guidelines specify the key industries and fields which sponsors shall focus on under the state’s development strategies and industrial restructuring, and provide clear stipulations in relation to the industries and fields of which sponsors shall be cautious of when acting as sponsors. In the premises, the Guidelines emphasize that sponsors shall pay close attention to the innovative capacity of the sponsored enterprises, express specific opinions on the sustainability of development of the same, and disclose any risk associated with the future growth and development of such enterprises.
2. The Guidelines clearly stipulates that sponsors shall sponsor the GEM Board enterprises in industries align with the development directions of emerging industries under the state’s development strategies, in particular, new energy and materials, information technology, biology and new medicine, energy-saving and environmental protection, aviation and space technology, marine, advanced manufacturing and high-tech services, as well as innovative and enterprises with development potential in other industries.
3. The Guidelines specify the key fields of which sponsors shall be cautious of: (1) textile and garment industry; (2) public utilities including electricity, gas and water production and supply; (3) real estate development and management, civil engineering; (4) transportation; (5) alcohol, food and beverages; (6) finance; (7)

general service industry; and (8) industries expressly restrained under the State Industrial Policies due to overcapacity and redundant development.

### **III. Decision of the State Council on Amending the “Regulations of the People’s Republic of China Regarding Customs Protection on Intellectual Property Rights”**

The State Council promulgated the Decision on Amending the Regulations of the People's Republic of China Regarding Customs Protection on Intellectual Property Rights (“the Amendments”) on 24<sup>th</sup> March 2010. The Amendments effected from 1<sup>st</sup> April 2010 and its contents are as follows:

1. Article 11 has been revised as: “In case of any change to the registration of an intellectual property right, the right holder shall, within 30 working days as of such change, file application for alteration or cancellation of registration at the General Administration of Customs.”

“In case the right holder fails to make such alteration or cancellation as prescribed above and causes serious adverse impacts on the others’ legitimate import and export operations and the Customs’ performance of the monitoring duties thereof, the General Administration of Customs may cancel the relevant registration on its own initiative or upon application of the relevant parties interested.”

2. Paragraph 1 of Article 23 has been revised as: “The right holder may, after making application to the Customs for protection, file an application with the people's court for injunction against the infringing act or taking property preservation measures with regard to the goods detained for alleged infringement in accordance with the Trademark Law of the People's Republic of China, Copyright Law of the People’s Republic of China or the Patent Law of the People's Republic of China or other relevant legislations.”

3. A Paragraph has been inserted as Paragraph 5 of Article 24: "Where, before the Customs confirms that such alleged infringing goods being detained are infringing goods, the right holder withdraws the application for detaining such goods."

4. Paragraph 3 of Article 27 has been revised as: "Where the confiscated infringing goods may be used for social welfare, the Customs shall refer them to the relevant social welfare organizations to be used for social welfare; where the holder of the intellectual property right intends to purchase such goods, the Customs may dispose the same to the right holder at value. Where the confiscated infringing goods cannot be used for social welfare and the holder of the intellectual property right has no intention to acquire such goods, the Customs may auction such goods after removing the infringing features, and yet, unless under special circumstances, imported goods bearing counterfeit trademarks shall not be permitted to be traded notwithstanding that such infringing features have been removed; and where the infringing features cannot be removed, the Customs shall destroy such goods."

5. Article 28 has been revised as Article 31: "Where an individual carries or posts in or out of the border articles exceeding the reasonable amount for personal use and have infringed the intellectual property right provided for in Article 2 herein, such articles shall be regarded as infringing goods."

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](mailto:alexchan@sfks.com.hk)