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Laws and Regulations Updates

I. Measures on Management of Pilot Program for Preference Shares

In order to regulate the issue and transaction of preference shares and protect investors' legitimate interest, the China Securities Regulatory Commission (CSRC) promulgated the Measures on Management of Pilot Program for Preference Shares (the "Measures") on 21 March 2014. The Measures set out regulations on matters like the types of listed company eligible for the issue of preference shares, the nominal value of preference shares as well as on how to prevent transfer of interests etc. The Measures were announced with immediate effect.

According to the Measures, listed companies issuing preference shares to the public shall meet one of the following conditions: 1) its ordinary shares are one of the constituent stocks of the SSE 50 Index ; 2) the public offering of preference shares is a payment method for the acquisition or amalgamation of other listed companies; 3) for the purpose of repurchasing ordinary shares to reduce registered capital, preference shares may be issued to the public as a payment method; alternatively, preference shares not exceeding the total amount of the repurchase and capital reduction may also be issued after the repurchase proposal is completed.

The Measures also stated that listed companies may issue preference shares in separate occasions after obtaining an overall approval for the issue. In a private placement, a company shall not issue preference shares to more than 200 people in each occasion, while the aggregate number of people who have been offered preference shares with the same terms shall not exceed 200. The requirement regarding investors in the transaction or transfer of preference shares shall be consistent with the requirement applicable during the issue of such shares. After a transaction or transfer, the number of investors for preference shares issued with the same terms under private placement shall not exceed 200.

II. Explanations on Several Matters Concerning the Applicable Laws for Hearing of Contractual Disputes on Finance Lease

The Supreme People's Court promulgated the Explanations on Several Matters Concerning the Applicable Laws for Hearing of Contractual Disputes on Finance Lease (the "Explanations") on 24 February 2014. The Explanations contain 5 sections and 26 articles, which provide regulations on various matters such as the acknowledgement and effectiveness of finance lease, the performance of finance lease, the termination of finance lease, the responsibility for default, as well as the parties concerned and the limitation of period for proceedings regarding contractual disputes on finance lease. The Explanations have come into effect on 1 March 2014.

In article 1 of the Explanations, it is explicitly set out that the People's Court shall, in accordance with article 237 of the Contract Law, determine whether it acknowledges the legal relationship constituted in a finance lease with reference to the nature and

value of the subject item, the composition of the rental fee as well as the contractual rights and obligations of the parties.

The Explanations also acknowledge the contractual nature of finance lease for sale-and-leaseback, which is a common practice in the actual operation of the finance lease industry. When the lessor and the lessee enter into a sale-and-leaseback contract, if in reality there is no leased item or such leased item is overvalued, so that in actual sense the finance lease is a mean to provide loan and money borrowing, the People's Court shall then treat the finance lease as a loan contract.

According to the Explanations, when the lessee is required to obtain administrative permit for the operation of the leased item, the People's Court shall not deem the finance lease as void solely on the ground that the lessor does not possess such administrative permit.

Since the leased item is occupied and used by the lessee, very frequently there is issue where the lessee mortgages the leased item or transfers the same to a third party. Article 9 of the Explanations has provided a favorable response to the matter regarding the protection of lessors' right. According to the article, the People's Court shall not support the claim of a third party who has obtained the ownership or other rights of the leased item if the lessee or the actual user of the leased item transfer the leased item or create other rights on it without the lessor's consent and the lessor demands the right of such third party be refused.

III. Measures on Management of Financial Leasing Companies

In order to further advance the progress on the setting up of financial leasing companies by commercial banks and promote the healthy development of the industry, the China Banking Regulatory Commission promulgated with immediate effect the amended Measures on Management of Financial Leasing Companies (the “Measures”) on 13 March 2014. The amended Measures contain 6 sections and 61 articles. It mainly amends and improves regulations on matters such as entry requirement, scope of business, operation regulations and supervision and management.

1. Change the main contributor mechanism to promoter mechanism. There is now no differentiation between main contributor and normal contributor and the five types of institutions which meet the requirement may, as promoters, set up financial leasing companies. Meanwhile, the requirement that the main contributor shall contribute more than 50% of the capital has also been removed. Taking into consideration the needs in business development, risk control and professional development of financial leasing companies, it is also required that the promoters shall include at least one qualified commercial bank, manufacturing enterprise or foreign financial leasing company which contributes no less than 30% of the capital;
2. Implement a classified management system. Apart from normal business, the Measures also allow qualified financial leasing companies to commence advanced businesses such as the issue of financial bond, asset securitization and setting up of specialized companies in bonded area within the PRC;
3. Strengthen shareholders’ awareness on risk responsibility. The Measures require promoters to agree in the constitutive documents of the financial leasing

company that if the financial leasing company experiences difficulties in repaying its debts, the promoters shall offer liquidity assistance; if the financial leasing company suffers a loss in capital during its operation, the promoters shall replenish the same in a timely manner and provide better protection to the lawful interest of the relevant party in order to support a sustainable and stable operation of the company;

4. Improve the operation regulations and supervision requirement. The Measures strengthen the management on leased items and the unguaranteed value thereof. Also, it has enhanced the prudential regulations on capital management and connected transaction etc.;
5. Allow financial leasing company to set up subsidiaries for horizontal and comprehensive development in specific industries in order to improve its professional level and core capability.

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.

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as well as information about the legal services that our firm is able to provide to its clients. We hope that you find these communications and information useful and of value and we would like to continue to send them to you if you agree. If you no longer wish to receive our communications, please email us at sfks@sfks.com.hk. If you have any queries, or you would like to update your contact details, please also email us at sfks@sfks.com.hk.