

China Law Reporter

New Measures on the Registration of Pledges of Equity Interests

On 1 September, the State Administration for Industry and Commerce issued the *Measures on the Registration of Pledges of Equity Interests*, effective 1 October 2008. The measures set forth documentary requirements and application procedures and apply to limited liability companies and most companies limited by shares. The pledged equity interest must be freely transferable. Pledges involving an equity interest in a foreign invested enterprise (FIE) are subject to prior approval by the FIE's original approval authority. According to the measures an application to establish, amend or terminate a pledge of an equity interest must be submitted by the pledgor and the pledgee. By contrast, an application to rescind a pledge may be submitted by the pledgor or the pledgee, but rescission is permitted only upon the occurrence of certain specified events. The registration process is completed and becomes effective immediately upon receipt of a complete application.

Notification Requirements on Business Operator Concentrations

On 3 August 2008, the State Council promulgated the *Implementing Regulations on the Notification of Concentrations of Business Operators*. If one of the following thresholds is exceeded, a business operator is required to notify the Anti-Monopoly Enforcement Agency (AMEA):

- the aggregate global turnover of all relevant business operators for the preceding financial year is in excess of RMB10 billion, and there are at least two business operators each of whose turnover in China for the preceding financial year is in excess of RMB400 million;
- the aggregate turnover in China of all relevant business operators for the preceding financial year is in excess of RMB2 billion, and there are at least two Business Operators each of whose turnover in China for the preceding financial year is in excess of RMB400 million.

The AMEA still has the authority to investigate cases that fail to meet the thresholds where the facts and evidence show that the concentration has or may have the effect of eliminating or restricting competition.

Upon receipt of a complete application, the AMEA has 30 days to conduct its preliminary examination and a further 90 days to carry out further investigations as it deems necessary. The AMEA may also extend the timetable by up to a further 60 days in certain circumstances.

The AMEA is empowered (1) to prohibit concentrations that have or are likely to have the effect of excluding or restricting effective competition in the relevant market, and (2) to impose conditions on concentrations to reduce potentially harmful effects on competition.

Revised Foreign Exchange Regulations

On 5 August 2008, the State Council issued a substantial revision of the *Regulations of the People's Republic of China on Foreign Exchange Control*. The amended regulations require inward and outward foreign exchange remittances to be supported by genuine and consistent documentation as verified by a financial institution authorized to buy and sell foreign currency ("Authorized Forex Bank"). In a break with the past, the new rules permit recipients of an inward current account foreign exchange remittance to keep the remittance in foreign currency. Recipients of an inward capital account foreign exchange remittance may keep the remittance only upon approval. Outward foreign exchange remittances still must flow through an Authorized Forex Bank. The rules regarding foreign exchange registration, foreign debt registration and the issuance of foreign commercial loans remain largely unchanged, but the amended regulations permit the issuance of foreign guarantees, subject to prior approval from the relevant department in charge of the administration of foreign exchange (SAFE). The underlying contract also must be registered with SAFE after the contract is signed.

NDRC Issues Notice to Bolster Review and Approval of FDI Projects

In September 2004, the State Council issued the *Decision of the State Council on Investment System Reform* ("Decision"), which consolidated the control of investment and resources under the National Development and Reform Commission (NDRC). That October, the NDRC issued the *Provisional Measures on the Review and Approval of Foreign Investment Projects* ("Provisional Measures") to implement the Decision with respect to foreign investment. The Provisional Measures applied to the establishment of all types of FIEs, as well as to certain changes to existing FIEs, but its enforcement by some provincial and local level development and reform commissions ("Local DRCs") and foreign investment approval authorities was inconsistent.

In July 2008, the NDRC issued the *Notice on Further Strengthening and Standardizing the Administration of Foreign Invested Projects* ("Notice") to ensure that the various Local DRCs strictly apply the project review and approval system required under the Provisional Measures (including the review and approval of wholly foreign owned enterprises and acquisitions of domestic enterprises by foreign investors), strengthen the investigation of FDI projects and foreign investors by Local DRCs and their authorized consultants, adhere to the foreign investment approval thresholds required by law, and thoroughly examine the preconditions to the commencement of new projects (including approvals from the relevant planning, land and environmental protection agencies).

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