

# Workshop on Recent Legal Developments in China

Steven Robinson, Hogan Lovells Beijing Office

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# Topics Overview

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## I. Mergers and Acquisitions ("M&A")

- National security review and latest trends in merger control decisions
- Possible legal challenges to the variable interest entity structure ("**VIE Structure**") used in technology, media and telecom ("**TMT**") and venture capital ("**VC**") transactions
- Update on State-owned assets and the position of SASAC on whether 50-50 joint ventures need to follow rules on State-owned assets
- New MOFCOM/SAFE restrictions on use of loans from within China by holding companies for M&A

## II. FIE Formation

- Draft rules on contribution of equity interests of foreign invested enterprises ("**FIE**")
- New rules on convertible loans for FIEs
- Internationalisation of the RMB and use of RMB in cross-border transactions
- Impact of 2010 Supreme Court Interpretation on FIE laws and regulations

# Topics Overview (Cont'd)

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## III. FIE Operation

- Impact of the latest Supreme Court Interpretation on the Enterprise Insolvency Law
- Land auction practices and challenges.
- Possible merger of value added tax ("VAT") and business tax into a single turnover tax – VAT, and the impact of the trial taking place in Shanghai
- Hi-tech enterprise status and the position on indigenous innovation following the repeal of various rules
- Social Insurance Policy for Foreigners Employed in China

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- **I. Mergers and Acquisitions ("M&A")**

# National security review and latest trends in merger control decisions

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- **General review of national security review**

- In March 2011, the State Council officially launched the National Security Review regime by issuing the Security Review Circular --another regulatory hurdle for foreign companies to acquire Chinese companies in addition to the existing merger control review under the Anti-Monopoly Law ("**AML**").
- The interim and final version of the Ministry of Commerce ("**MOFCOM**") *Implementing Provisions* provided further procedure guidance on the National Security Review.

- **Targeted sectors**

- Category A Target: where the target is a military industry enterprise, a supporting enterprise for military industry enterprises or an enterprise located close to sensitive military facilities, it will be subject to National Security Review, regardless of other factors.
- Category B Target: where the target involves agricultural products, energy sources and resources, infrastructure, transportation services, technologies, and equipment manufacturing, it will only be covered where :
  - the Category B Target is involved in important/key/critical products or technologies etc.;
  - they are related to national security; and
  - where the foreign investor will acquire "actual control" over the target company as a result of the M&A transaction.

# National security review and latest trends in merger control decisions (Cont'd)

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- Types of Covered Transaction (including equity interest and assets transactions)
  - A foreign investor acquires equity interests in a non-foreign-invested enterprise in China ("**Domestic Enterprise**"), or subscribes for an increase in the registered capital of a Domestic Enterprise, thereby converting the Domestic Enterprise into an FIE.
  - A foreign investor acquires the equity interests of the Chinese shareholder in an FIE in China, or subscribes to an increase in the capital of such enterprise.
  - A foreign investor establishes an FIE and agrees by contract to acquire and operate the assets of a Domestic Enterprise through such FIE; or the foreign investor acquires equity interests in a Domestic Enterprise through such FIE.
  - A foreign investor directly acquires the assets of a Domestic Enterprise and uses such assets to invest in and establish an FIE to operate said assets.
- No cases have been reported since the regime was launched; thus how it will be implemented remains unclear.

# National security review and latest trends in merger control decisions (Cont'd)

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- **Considered factors include:**
  - the production and supply of products and services and the relevant facilities necessary for national defence within China;
  - national economic stability;
  - order within society;
  - China's ability to research and develop key technologies relating to national security.
- **Review Process**
  - Review Authority: a "cross-ministerial joint conference", led by the NDRC and the MOFCOM under the leadership of the State Council. Other members depend on the specific industry sectors involved.
  - Applicant: foreign investors who are a party to the M&A transaction.
  - Like an AML merger control filing, involves a two-phase procedure, "general review" and "special review".
- **Consequences**
  - If found to have caused or likely to have a significant negative impact on national security, the consequences could be: terminate the transaction, order transfer of shares or assets, or take other actions to eliminate the negative impact on state security.

# National security review and latest trends in merger control decisions (Cont'd)

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- **The recent merger control decision on private equity fund:**
  - On October 31, 2011, the Anti-Monopoly Bureau of MOFCOM cleared the acquisition of Savio by Alpha V, a private equity fund, subject to certain conditions (i.e., the divestiture of Alpha V's stake in Uster to an unrelated third party).
  - Thresholds for merger control review under the AML:
    - the global revenue of all operators involved in the concentration exceeds RMB10billion in the last accounting year, and the revenue in China of at least two operators exceeds RMB400 million in the last accounting year; or
    - revenue in China of all operators involved in the concentration exceeds RMB2billion in the last accounting year, and the revenue in China of at least two operators exceeds RMB400 million in the last accounting year.
  - If the thresholds are triggered, the transaction will be subject to the merger control review, regardless that the transaction is taking place outside China.



# National security review and latest trends in merger control decisions (Cont'd)

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- **Key facts:**

- Alpha V agreed to acquire Savio, a textile machinery producer based in Italy, through an SPV.
- Alpha V's main areas of investment concern non-ferrous metal recycling, home textiles and textile machinery. One of Alpha V's other portfolio companies (with 27.9% of the issued shares) is Uster, a Swiss company.
- Savio is a provider of winder and yarn quality control systems, also holding all of the shares in a Swiss subsidiary company, Loepfe. Ulster and Loepfe are the only two players in the relevant market.

- **Significance:**

- The eighth occasion on which MOFCOM has attached conditions to its approving decision under the AML;
- The first conditional decision relating to a private equity investor, illustrating MOFCOM regards private equity funds in much the same way as it does corporate industrial groups.

- **Implications:**

- The decision sheds some light on how MOFCOM deals with minority interests under the merger control rules, for example:
  - Though Alpha V only holds 27.9% issued shares of Ulster, after examining several factors, MOFCOM concluded that it "could not exclude the possibility" that Alpha V participated in, or influenced, Ulster's business activities.
  - MOFCOM found that not only could Alpha V engage in anti-competitive conduct through its control or influence over Ulster and Loepfe post-transaction, but it also highlighted the possibility that the two Swiss companies could – by way of coordinating their conduct "through" Alpha V, their common shareholder – restrict competition.

# Possible legal challenges to the VIE Structure used in TMT and VC transactions

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- **VIE Structure is widely used in TMT and VC transactions in order to avoid Chinese market entry restrictions and regulatory approvals.**
- **Typically, the VIE structure mainly includes the following elements:**
  - A cooperation agreement or technical services agreement between the WFOE and OpCo for profits transfer;
  - A voting proxy from the registered shareholders of the OpCo granting the HoldCo or its affiliates the right to exercise shareholders' rights and management control over the OpCo;
  - An equity pledge agreement between the OpCo's registered shareholders and the WFOE as security for the proper performance of the contractual arrangement; and
  - An option agreement granting the HoldCo or its affiliates the right to acquire, if and when permitted by PRC law, the equity interests in and/or assets of the OpCo for the lowest possible permitted price.

# Possible legal challenges to the VIE Structure used in TMT and VC transactions (Cont'd)

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- **Now VIE structure is facing challenges:**
  - The 2006 MII Circular in relation to VATS reiterated a long-standing principle that domestic VATS companies may not "lease, lend, transfer or resell operating permits to foreign investors in any disguised form", a thinly-veiled attack on VIEs.
  - According to the Security Review Circular, the VIE structure may be subject to the national security review regime if relevant conditions are met.
  - In September 2011, CSRC's internal report on issues for VIE structures was made public:
    - Recommended overseas listing using the VIE Structure be subject to the approval of MOFCOM and the CSRC. Other authorities in charge of taxation, foreign exchange controls or industry and commerce are required to cooperate with these requirements.
    - Suggested overseas listings using VIE structures formed in the past would not be subject to crackdowns, and encouraged major Internet companies to be dual-listed on the Chinese A-share market. It is not clear, however, whether it is advocating a clean-up of existing unlisted VIE structures as well.
    - It is anticipated any unilateral CSRC efforts to rein in the VIE structures will take time to obtain required support from other government authorities without blessing of the State Council.

# Possible legal challenges to the VIE Structure used in TMT and VC transactions (Cont'd)

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- Another attack comes from HKEx, which published in November 2011 a revised listing decision with tougher requirements for VIE Structures.
  - HKEx confirmed that it allows VIE Structures on a case-by-case basis after full consideration of the reasons for adopting such arrangements.
  - However, HKEx requires any listing applicant using this structure to:
    - ✓ provide reasons for the use of this structure in its business operation;
    - ✓ unwind this structure as soon as the law allows the business to be operated without them;
    - ✓ ensure that this structure includes specified clauses on a power of attorney to exercise the OpCo's shareholder rights as well as specified dispute resolution clauses; and
    - ✓ encompass dealing with the OpCo's assets, and not only the right to manage its business and the right to revenue. This is to ensure that the liquidator can seize the OpCo's assets in winding up.

# Update on State-owned assets and the Position of SASAC on whether 50-50 joint ventures need to follow rules on State-owned assets

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- PRC Enterprise State-owned Assets Law ("SOA Law") took effect in 2009
- Circular on Issues Concerning Transfer of the State-owned Property Right of Central Enterprises through Agreement in 2010
- Circular on Issues Concerning State-owned Equity Exchange Between Central Enterprises in 2011
- Interim Measures for the Supervision and Administration of Overseas State-owned Assets of Central State-owned Enterprises in 2011

# Update on State-owned assets and the Position of SASAC on whether 50-50 joint ventures need to follow rules on State-owned assets (Cont'd)

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- Normally, a company that is wholly-owned or controlled by the State will be deemed as a State-owned enterprise ("**SOE**").
- Things become unclear when the company in question is partially owned, but not controlled by the State or an SOE.
- Based on no-name telephone inquiries with central SASAC and Beijing SASAC:
  - The current SASAC policy is not to impose a decision on the parties as to whether the assets of a 50:50 joint venture ("**JV**") constitute SOA and hence disposals need to go through mandatory valuation and public auction process on a property rights exchange.
  - The internal organ of the JV, i.e. the board, will determine if such a JV needs to go through the SOA processes based on the provisions of the Articles of Association of the JV. The officials pointed out that the Chinese SOE shareholder will, in any event, exercise rights on behalf of the State through the board.

# New MOFCOM/SAFE restrictions on use of loans from within China by holding companies for M&A

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- On December 8, 2011, MOFCOM and SAFE issued the *Circular on Further Improving the Administration Measures Concerning Foreign-funded Investment Companies* (the "Circular")
  - It specifies that funding from domestic loans to foreign-funded investment companies shall not be used for domestic reinvestment (acquiring interests in other companies).
  - According to the Circular, foreign-funded investment companies may directly use RMB profits obtained from China, the legitimate RMB income from refund of invested capital, liquidation, equity transfer and capital reduction for domestic investment after the approval by local SAFE; foreign-funded investment companies may also carry out domestic investment after using the above legitimate income to make the contribution to themselves as registered capital (or a capital increase).

# New MOFCOM/SAFE restrictions on use of loans from within China by holding companies for M&A-Impact (Cont'd)

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- The Circular regulates the examination and approval and foreign exchange management of foreign-funded investment companies, and promotes the further development of foreign-funded investment companies.
- The MOFCOM requirement that "no domestic loans of foreign-funded investment companies shall be used for domestic reinvestment" is really only a restatement of the existing requirements in Lending General Provisions (1996 Version), which generally applies to domestic enterprises. As a general matter, domestic enterprises cannot (1) engage in lending business; nor can they (2) use loan proceeds for reinvestment.
- It is stated that this regulation is to manage domestic loans, to curb speculation on the RMB and related capital products.



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- **II. FIE Formation**

# Draft rules on capital contribution with equity interests of FIEs

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- Measures on the Administration of Capital Contribution with Equity Interests of Foreign Invested Enterprises in (Draft)
  - Started soliciting opinions from May 2011 but have not been officially published until now because of the difficulty to incorporate complex rules governing FIEs (thus very few published cases as yet).
  - Local government authorities including authorities in Shanghai and Sichuan start permitting contribution with equity interests of FIEs on a trial basis before the Measures were published.
- Related Regulations:
  - Provisions on the Acquisition of Domestic Enterprises by Foreign Investors in 2006
    - allows a share swap between listed companies offshore and onshore; in practice, no such deals have ever been done
  - Administration Measures on the Registration of Capital Contribution with Equity Interests in 2009
    - applicable to all PRC companies; focuses on company registration only
  - Reply to Relevant Issues Regarding the Capital Verification and Confirmation through Inquiries on Capital Contribution with the Onshore Equity Interests by Foreign Shareholders of Foreign Invested Enterprises in 2010
    - Focuses on capital verification of the equity interest only

# Draft rules on capital contribution with equity interests of FIEs (Cont'd)

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- Apply to both the establishment of a new FIE and capital increase for an existing company (a domestic company or an FIE)
- Requirements for the equity interests to be contributed:
  - Registered capital fully paid in
  - Neither pledged nor frozen
  - Passed annual inspection
  - No equity of a foreign invested investment company or a foreign invested venture capital investment enterprise can be used
- Equity interests need to be valued by a PRC valuation firm
- Registered capital represented by equity interest cannot exceed the valuation price; difference with the valuation price can be put in capital reserve
- Equity interests cannot represent more than 70% of the total registered capital
- Example: Shenzhou Jiren Medicine Co., Ltd., a joint venture of a HK company and a Chinese company located in Jiangyin city of Jiangsu province, increased by RMB 7 million its registered capital by contributing 100% equity interest of an FIE invested by the HK shareholder's in the same city.

# New rules on convertible loans for FIEs and their impact

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- Administrative Measures on the Registration of the Conversion of Loan to Equity Interests in November 2011 ("**Administrative Measures**")
  - Applicable circumstances:
    - The loan is lawful and the creditor has fulfilled its contractual obligation; or
    - There is an order of a binding court judgment; or
    - The conversion is approved by a court in a bankruptcy proceeding.
  - Equity interests converted from a loan must not exceed 70% of the registered capital.
  - Valuation is required; value of converted equity interests must not exceed the valuation price.
  - The Administrative Measures do not specifically address FIEs; there is only a broad requirement that where laws require approval, such approval should be obtained.
  - Local rules were available for FIEs before the Administrative Measures, but the use of a convertible loan is restricted to the FIE's foreign exchange loans.

# **New rules on convertible loans for FIEs and their impact (Cont'd)**

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- **Local rules in Zhejiang (2011) – requirements for a convertible loan**
  - must be the FIE's registered foreign exchange loan or its interest;
  - registered capital of the FIE has been duly paid in;
  - approved by the FIE's highest authority
  - lawful and not subject to any dispute; and
  - possible to evaluate and transferrable.
- **Local rules in Shanghai (2009) – requirements for a convertible loan**
  - consent of all shareholders of the FIE;
  - registered capital of the FIE has been duly paid in; and
  - the foreign exchange loan has been approved by SAFE.

# Internationalisation of the RMB and use of RMB in cross-border transactions

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- **Cross-border RMB-denominated trade settlement scheme**
  - Administrative Measures for the Trial RMB Settlement of Cross-board Trade were introduced in 2009.
  - Circular of the People's Bank of China on Releasing the Implementing Rules for the Administrative Measures for the Trial RMB Settlement of Cross-board Trade was introduced in 2009.
- **Overseas RMB-denominated investment scheme**
  - Measures for Administration of Pilot Settlement in RMB for Overseas Direct Investments were introduced in 2011.
- **RMB-denominated foreign direct investments**
  - The People's Bank of China ("**PBOC**") issued the *Administrative Measures on RMB Settlement in Relation to Foreign Direct Investment* were introduced in 2011 ("**PBOC Measures**").
  - The Ministry of Commerce ("**MOFCOM**") issued the *Notice on Relevant Issues on Cross-Border RMB Direct Investment* was introduced in 2011 ("**MOFCOM Notice**").

# Internationalisation of the RMB and use of RMB in cross-border transactions (Cont'd)

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- According to the PBOC Measures and the MOFCOM Notice:
  - Sources of overseas RMB
    - RMB payments from international trade
    - Proceeds from offshore issuance of RMB-dominated bonds or stocks
    - RMB profits or proceeds from existing FDI projects
  - Prohibited use of RMB investment
    - to invest in securities or financial derivative products (except for the foreign strategic investor)
    - to arrange entrustment loans
  - MOFCOM approval and PBOC registration required
- Recent successful examples:
  - Shanghai - Japan Wool Textile Co. set up its regional headquarter with capital contribution in RMB.
  - Shandong province – AGCO, the U.S. agriculture machine company, acquired an 80% equity stake of a Chinese agriculture machine manufacturing company with RMB168.5 million from nine Chinese individual shareholders.

# Impact of 2010 Supreme Court Interpretation on FIE laws and regulations

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- The Supreme People's Court of China ("SPC") issued the Provisions of the Supreme People's Court on Certain Issues Concerning the Trial of Disputes Involving Foreign Investment Enterprises (I) (the "Provisions"), taking effect on August 16, 2010.
- The Provisions have clarified several of the disputable issues must subject to disputes concerning FIEs, including: validity of an unapproved contract, exercise of pre-emptive rights, validity of a nominee arrangement, etc.



# Impact of 2010 Supreme Court Interpretation on FIE laws and regulations (Cont'd)

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- A contract requiring approval will only take effect upon approval; the lack of approval, however, does not release a party's obligation to submit application for approval
- Only the effectiveness of an amendment to substantial/material terms of a JV contract is subject to approval
- Lack of approval of an equity transfer agreement does not release the parties' obligations to submit application for approval; transferee has the right to request specific performance or compensation for damages
- Contribution in kind (such as the land use right) will be recognized if it has been actually delivered to the FIE for use, even though the change of registration has not been duly made
- A shareholder will be deemed to have waived its pre-emptive rights if it does not respond to a written notice of equity transfer within 30 days after receiving it; the statute of limitation for claiming the infringement of pre-emptive rights is one year after the shareholder has actual knowledge or should have knowledge
- An equity pledge contract shall take effect upon its execution; registration of the contract only gives the pledgor the rights against a third party
- The validity of the nominee investment contract is confirmed; the actual investor has the right against the nominee investor but has no right against the FIE

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## **III. FIE Operation**

# Impact of the latest Supreme Court Interpretation on the Enterprise Insolvency Law

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- **The China Bankruptcy Law has been in effect since June 1, 2007. However, PRC courts had been reluctant to accept creditors' applications due to unclear guidance on criteria for filing and the burden of proof.**
- **On September 9, 2011, the Supreme Court issued its first judicial interpretation on China's Bankruptcy Law, making it easier for the creditors to file bankruptcy proceedings in China.**
  - It clarifies that a court is obliged to accept an application for bankruptcy if the following conditions are met;
    - the debtor is unable to pay its debt as they falls due (i.e., debtor is insolvent); and
    - the debtor's assets are insufficient to discharge its entire indebtedness; OR the debtor obviously lacks the ability to discharge its indebtedness (i.e., it obviously lacks liquidity).
  - It clarifies the burden of proof in petitioning for bankruptcy: the creditor is only required to provide evidence proving the debtor's insolvency (being the first condition mentioned above) in its petition for bankruptcy, and unless the debtor is able to prove otherwise within the time stipulated in the Law, the court shall accept such petition accordingly.
  - If the relevant (lower) court fails or refuses to accept an application for bankruptcy, the applicant may submit its application to the next higher court for a review.

# Land auction practices and challenges

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- **In China, all land is owned by the State or by a rural collective. Rights of ownership in land are not transferrable.**
- **By contrast, the right to use State-owned land use rights ("LUR") is transferrable and such LURs can be leased or mortgaged.**
- **The land intended for industrial, commerce, tourism, entertainment and residential use must be granted by way of public bidding, auction or listing on a land exchange.**
- **The maximum term of the land use rights granted depends on the nature of the use to which the land will be put on the LUR certificate. The maximum period for industrial land is 50 years, commercial land 40 years.**

# Land auction practices and challenges (Cont'd)

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- **Key Milestones of the Land Acquisition**

- Bidding Process

- The land authority publishes the land bidding notice on its official website and on the newspaper designated by the land authority.
    - A government-related company will handle the bidding matters (“Bidding Company”). The representative(s) of the bidder must physically go to the Bidding Company and collect the Bidding Documents within a specified period.
    - The deposit and the payment deadline of the land bidding will be set out in the official Bidding Documents. This is normally a certain percentage of the base price of the land.
    - The bidder needs to participate in the actual bidding process by its representatives and submit its bid on the date (“Bidding Day”) as required by the Bidding Documents. The bid price is set by the bidder and cannot be less than 70% of the floor price provided in relevant laws.
    - On the Bidding Day, a letter of bid acceptance will be issued to and signed by the winning bidder to confirm it has won the bid on the Bidding Day, which is a standard form and typically not subject to amendment.

# Land auction practices and challenges (Cont'd)

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- **Key Milestones of the Land Acquisition**

- Entering into and executing the land grant contract
  - The successful bidder will enter into the land grant contract with the land authority within 10 working days of the issuance of the Letter of Bid Acceptance.
  - The land grant contract is a standard document prepared by the land authority, which sets tight deadlines for payment of the land grant price and the commencement and completion of construction. (There is some possibility to negotiate this contract. It would be advisable to enter into early negotiations, usually prior to the Bidding Day, with the Land Authority to reach consensus on various terms you desire to discuss.)
  - Within 30 days of the execution date of the land grant contract, the bidder shall pay the initial payment for the land grant price, which shall be 50% of its total amount.
  - Typically within one year from the execution date of the land grant contract, the bidder will be required to pay the balance 50%. (In some cases, this deadline can be much shorter.)
  - Within two years from the execution date, the bidder will also be required to commence the construction. Or else, the land authority has the discretion to withdraw the land for free or impose a penalty equal to 20% of the land grant price.
  - Subsequently, the bidder will need to purchase and obtain certain land archives relating to the LUR from the land authority, and further apply for the LUR Certificate, which evidences ownership of LUR.

# Possible merger of VAT and business tax into a single turnover tax (VAT) and the impact of the trial taking place in Shanghai

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- **The pilot Value Added Tax (VAT) reform program launched by the State Council started from 1 January 2012.**
  - Initially applies to transportation and modern service industries in Shanghai;
  - Will be rolled out nationwide when conditions permit.
- **China's current indirect tax system:**
  - VAT: the supply of goods, the provision of repair, processing and replacement services, and on imports, at rates of 13% or 17%.
  - Business Tax: the provision of other services and the transfer of intangibles and real property, at rates of 3% or 5% (with a maximum 20% rate applying to the entertainment industry).
- **Issues caused such as double (or multiple) taxation, because of:**
  - an input tax credit is available for VAT payers; while
  - no such mechanism exists under the Business Tax system.
- **Aims of the pilot program:**
  - to resolve the double taxation issues ,and
  - to foster the development of specified modern service industries by gradually transitioning these industries from liability to Business Tax to liability to VAT.

# Possible merger of VAT and business tax into a single turnover tax (VAT) and the impact of the trial taking place in Shanghai (Cont'd)

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- **Highlights of the pilot program**

- The taxation of specified sectors will transition to being subject to VAT rather than business tax;
- The pilot program initially will be implemented in the transportation sector and certain modern service industries in Shanghai. The program may be expanded nationwide for selected industries when conditions permit;
- Two new tax rates of 11% and 6% will be introduced, which will apply in conjunction with the current rates of 17% and 13%;
- During the pilot period, the VAT revenue (which is currently Business Tax revenue of the local governments) will be retained by the local governments;
- Business Tax incentives applicable to the pilot industries will be adapted to the VAT reform so that the incentives continue to apply; and
- VAT paid by taxpayers under the pilot program will be creditable provided all other requirements are met under the VAT rules.



# Hi-tech enterprise status and the position on indigenous innovation following the repeal of various rules

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- **Hi-Tech Enterprises enjoy a 15% enterprise income tax rate (compared with standard rate of 25% for most enterprises) as well as other industry or location-based tax incentives.**
- **2008 Administrative Measures for Recognition of Innovative and High-Tech Enterprises**
- **Qualified sectors:**
  - Electronic information technology
  - Biotechnology and new pharmaceutical technology
  - Aviation technology
  - New materials technology
  - New energy and energy conservation technology
  - Resources and environmental technology
  - Hi-tech services industry
  - Hi-tech of changing traditional industries

# Hi-tech enterprise status and the position on indigenous innovation following the repeal of various rules

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- **Qualification Criteria for Hi-Tech Enterprises:**

- Carry out business in one of the Qualified Sectors;
- Registered enterprise in China (excluding companies from Hong Kong, Macau and Taiwan)
- Own/hold intellectual property rights for the core technology of its main products (services) through R&D, transfer, donation, or acquisition in the past three years or through an exclusive license for more than five years;
- Over 30% of its total personnel are technical personnel with a college degree or above, of which the R&D personnel must be more than 10% of its total personnel;
- Continuously engaged in R&D activities with its R&D expenditures at least the following percentage or its total sales revenue over the three most recent fiscal years:
  - No less than 6%, if revenue is less than RMB 50.
  - No less than 4%, if revenue is between RMB 50 million and RMB 200 million.
  - No less than 3%, if revenue is more than RMB 200 million.
- 60% of the total revenue is generated from the products(services) using the innovative and high-tech; and
- Requirements on management, number of self-owned IPR rights, etc..

# Social Insurance Policy for Foreigners Employed in China

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- **Interim Measures for the Participation of Foreigners Employed in China in Social Insurance (effective as of Oct. 15, 2011):**
  - Foreigners who enjoy social insurance in China: (1) foreigners who have obtained the Employment Certificate for Foreigner, the Certificate of Foreign Expert, the Certificate of Permanent Foreign Correspondent or other employment certificates and residence certificates, or (2) those who hold the Permanent Residence Certificate for Foreigner and have lawfully been employed in China.
  - Types of Social Insurance: basic pension insurance, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance (the "Five Insurances").
  - Both the employer and the foreigner are obligated to contribute to the Five Insurances.
  - The social insurance policy also applies to the overseas employer that second its employee to work in its PRC branch or representative office. The foreigner employee shall participate in the Five Insurances, and the PRC office and the foreigner shall pay the insurance contributions.
  - The balance of social insurance account may be inherited upon death of the insured.
  - A foreigner insured shall submit a certificate to the social insurance agency that is responsible for paying him/her the social insurance benefits at least once a year.
  - Social security numbers for foreigners and social security cards shall be distributed.

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