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China Update

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Business News

China cuts bank reserve requirement to spur growth

On February 4, the People's Bank of China (PBOC) announced a cut to bank reserve requirements to unleash a fresh flood of liquidity to fight off economic slowdown and looming deflation. The announcement cuts reserve requirements - the amount of cash banks must hold back from lending - to 19.5 percent for big banks, a reduction of 50 basis points that would free up 600 billion Yuan or more held in reserve at Chinese banks - which could then inject 2-3 trillion Yuan into the economy after accounting for the multiplying effect of loans. The reduction follows a surprise cut to guidance lending rates by PBOC in November last year, but that adjustment had negligible impact on spurring productive investment, so many had predicted the more dramatic move that PBOC has now delivered.

First private bank starts trial operation

China's first private bank named as Shenzhen Qianhai Weizhong Bank started trial operation on February 1. It invited a limited number of potential customers for the test run of its operation. The invited customers include its shareholders, its employees and some targeted clients. The bank with a registered capital of 3 billion Yuan will focus on personal banking and lending to small and medium-sized enterprises. Internet giant Tencent Holdings Ltd is the bank's largest shareholder with a 30 percent stake.

China vows supervision for scandal-hit milk industry

On February 4, the Ministry of Agriculture said that China will step up monitoring of the raw milk industry this year to ensure safety and quality of the country's dairy products. Dairies and vehicles transporting raw milk are subject to monitoring by local authorities and random inspection will be strictly carried out to ensure no illegal substances are added. The supervision will focus on raw milk produced for infant formula and a source-tracing monitoring system will be established in a bid to guarantee the safety of infant formula.

More than 1,800 foreign dairy producers approved in China

China has seen growing demand for safe and high-quality milk products after a tainted baby formula scandal in 2008 dented society's confidence in domestic dairy food safety. At the end of last year, China had approved the registration of 1,836 overseas milk producers including 64 baby formula makers. Meanwhile, China banned the imports of unregistered foreign dairy products last May with the aim to ensuring food safety. The Country will keep real-time supervision over registered foreign milk producers, conduct checks and punish those which violate food safety regulations according to the Country's quality watchdog on December 30, 2014.

Top 10 Chinese brands of 2015

The combined value of Chinese corporate brands rose significantly last year, with the brand values of private enterprises more than doubling. The top 10 Chinese brands in the full list of 2015 compiled by global communications group WPP and brand agency Millward Brown are Tencent, Alibaba, China Mobile, Industrial and Commercial Bank of China, Baidu, China Construction Bank, Sinopec, Agricultural Bank of China, PetroChina, and Bank of China. It indicates that State-owned Enterprises continue to remain significant contributors to the overall ranking and still play a key role in China's broader economy.

China agrees to allow imports of US apples

On January 26, The US Department of Agriculture (USDA) announced that China's General Administration of Quality Supervision, Inspection and Quarantine had reached an agreement with USDA to allow all US grown apples to enter Chinese market in San Francisco, California. It will give a significant boost to sales for American apple producers. With this new agreement, the apple industry estimates that within two years, exports to China will reach a value of around US$100 million per year.

China levies consumption tax on batteries, paint

On January 27, the Ministry of Finance announced China will impose consumption tax on some types of batteries and paint to encourage environmental protection. In accordance with the announcement, a four-percent tax will be levied on the production, processing and import of batteries and coating from Feb 1 this year. But cleaner batteries including mercury-free, nickel-hydrogen, lithium and solar cell varieties will be exempted and taxation on lead storage batteries will be postponed till January 1, 2016 and coatings that contains volatile organic compounds of less than 420 grams per liter will also be excluded from the list.

Regulator lowers PE crowdfunding threshold

On January 26, Chinese media reported that China will lower the threshold for investors participating in private equity funds through crowdfunding, an online financing platform, to expand fundraising channels for small- and medium-sized enterprises. The minimum investment in one particular project will be reduced from one million Yuan to 100,000 Yuan. The regulation also requires investors to have a minimum of one million Yuan in financial assets, down from the previous limit of three million Yuan. Meanwhile, the requirement for individual investors' annual income over the past three years will be cut from 500,000 Yuan to

300,000 Yuan. The regulator also scrapped its rule that institutional investors should have net assets of at least 10 million Yuan.

China's 2015 GDP growth forecast at 6.8%

On January 26, it is reported that China's 2015 GDP growth forecast has been maintained at 6.8 percent, as further policy support and export recovery is expected to help bolster the sluggish economy. Several leading economic commentators are already saying that it could be revised downwards to 6.5% given the ongoing slow down in economic activity, in particular exports.

China's 2014 retail sales rises 12%

On January 20, the National Bureau of Statistics said that China's retail sales rose by around 12 percent in 2014 to roughly 26.6 trillion Yuan. Retail sales, a key indicator of consumer spending, continued to accelerate in December, rising 11.9 percent from a year earlier. The figure was up from November's 11.7 percent and October's 11.5 percent. Retail sales growth in rural areas outpaced that in urban China. Last year, sales in rural regions rose 12.9 percent from a year ago, while sales in urban areas climbed 11.8 percent. Online sales showed robust growth last year, soaring 49.7 percent year on year to 2.79 trillion Yuan. Looking ahead at 2015, retail sales are expected to rise 12.2 percent year on year, according to a working paper published last month by a group of economists of the People's Bank of China.

Legal News

Intellectual Property & Privacy

Ministry to step up effort to crack down on fake goods online

On January 29, a spokesman of China's Ministry of Commerce said in a news conference in Beijing that the Ministry will step up its efforts to crack down on counterfeits and shady products in the nation's booming online market through cooperating with government and industrial organizations as well as enterprises in order to maintain healthy order in the market. Shen said that the booming online shopping market in China not only created more job opportunities but also boosted consumption. During 2014, the Ministry investigated and handled more than 11,000 cases involved with intellectual property rights violations, even though it is not actually tasked with such responsibilities according to local regulations. It is likely that the Ministry will put pressure on the traditional IP policing agencies to increase online take down supervision, and encourage legal action against online shopping malls who continue to allow repeat offenders to set up shops selling goods that are obviously counterfeit.

SIPO seeks public opinions on draft amendments to measures for Patent Administrative Law Enforcement

On January 27, 2015, the State Intellectual Property Office of China (SIPO) published the *Amendments to Measures for Patent Administrative Law Enforcement* (Draft for Comments) to invite public opinions on the draft amendments in order to more effectively regulate the administrative law enforcement in connection with patents. The main modified content include: implementing the principle of the rule of law; improving enforcement procedures and standardizing enforcement activities according to the law; and adapting to the new demands of internet development. Members of the public may voice their opinions before 15 March 2015.

SAIC publishes measures defining consumer personal information

On January 5, the State Administration for Industry and Commerce of the People's Republic of China published its *Measures for the Punishment of Conduct Infringing the Rights and Interests of Consumers*. The Measures contain a number of provisions defining circumstances or actions under which enterprise operators may be deemed to have infringed the rights or interests of consumers. These provisions are consistent with the basic rules in the currently effective *P.R.C. Law on the Protection of Consumer Rights and Interests*. For example, Article 11 of the Measures provides a list of actions that enterprise operators may not undertake because they infringe upon the personal information of consumers. The list provided in the Article 11 is similar in concept to the amendment to the *P.R.C. Law on the Protection of Consumer Rights and Interests*. The Measures will take effect on March 15, 2015.

Civil Procedure

China's first circuit court established in Shenzhen

In late October, 2014, the 18th Communist Party of China Central Committee decided to establish the circuit courts to facilitate the public to file cases in local communities and get their disputes solved more quickly and locally (with less opportunity for local protectionism and corruption). The First Circuit Court of China's Supreme People's Court (SPC), inaugurated in Shenzhen City of Guangdong Province on January 28, mainly handles major administrative, civil and commercial cases which should be heard by the SPC, in the provinces of Guangdong and Hainan, and Guangxi Zhuang Autonomous Region. Meanwhile, the Second Circuit Court is set up in Shenyang of northeast China's Liaoning Province to cover the provinces of Liaoning, Jilin and Heilongjiang. Both the Circuit Courts start to take and hear cases from February 2, 2015.

Corporate/M&A/Antitrust

China sees 55% rise in M&A

In accordance with a report of PwC released in January 27, merger and acquisitions activity reached a record high in China last year, with the number of deals amounting to 6,899 and the total value surging to $407 billion, both of which went up by around 55 percent. Technology, consumer-related and financial services were the most active sectors in terms of M&A, partly reflecting the development of the economy. Real estate remained the biggest sector by value. Foreign-inbound strategic M&A also hit a record high in value, reaching nearly $25 billion and led by the increase in banking and financial services sectors.

Merger control penalty decisions published for first time

On March 21 last year, the Ministry of Commerce (MOFCOM) previously announced in a statement that it would begin publishing penalty decisions on undertakings which fail to file a notifiable merger. On December 2, 2014, MOFCOM published for the first time three penalty decisions regarding concentrations of undertakings. The first penalty decision was issued against integrated circuit manufacturer Unigroup for its failure to notify MOFCOM of its acquisition of RDA Microelectronics. The second and third penalty decisions were issued against US Western Digital for its failure to obey the post-merger remedies. Each of these violations was imposed a fine of Rmb300, 000.

Notice Concerning Parallel Administrative Approval Work on Mergers, Acquisitions and Restructurings of Public Companies

On Oct. 24 last year, the Ministry of Industry and Information Technology, China Securities Regulatory Commission (CSRC), National Development and Reform Commission (NDRC) and Ministry of Commerce (MOFCOM) jointly issued the *Notice Concerning Parallel Administrative Approval Work on Mergers and Restructurings of Public Companies* in order to streamline the administrative approval procedures and shorten the timeline for the completion of the mergers, acquisitions and restructurings of public companies, and benefit the development of the Chinese capital market. In accordance with the Notice, the governmental approvals such as NDRC's approval or registration of overseas investment carried out by the public company, MOFCOM's approval for strategic investment by foreign investors, and MOFCOM's merger control approval will no longer be required to be obtained prior to CSRC's approval for any merger, acquisition or restructuring of public companies. During CSRC's review of the proposed transaction, if another authority grants its approval with respect to the transaction, the public company is required to make a public disclosure that such approval has been obtained.

NDRC confirms Qualcomm's monopoly

On February 9, Qualcomm announced that it reached a resolution with China's National Development and Reform Commission (NDRC) regarding the NDRC's investigation of Qualcomm under China's Anti-Monopoly Law (AML). The NDRC issued an Administrative Sanction Decision finding that Qualcomm has violated the AML and imposed a fine of 6.088 billion Yuan. Qualcomm agreed to implement a rectification plan that modifies certain of its business practices in China and that fully satisfies the requirements of the NDRC's order. The rectification plan of Qualcomm includes offering licenses to its current 3G and 4G essential Chinese patents separately from licenses to its other patents and it will provide patent lists during the negotiation process; charging royalties of 5% for 3G devices and 3.5% for 4G devices that do not implement CDMA or WCDMA for licenses of Qualcomm's 3G and 4G essential Chinese patents for branded devices sold for use in Chin, in each case using a royalty base of 65% of the net selling price of the device; giving its existing licensees an opportunity to elect to take the new terms for sales of branded devices for use in China as of January 1, 2015; and not conditioning the sale of baseband chips on the chip customer signing a license agreement with terms that the NDRC found to be unreasonable or on the chip customer not challenging unreasonable terms in its license agreement. Qualcomm was also fined for past contraventions of China's Anti-Monopoly Law.

Foreign Direct Investment

Draft foreign investment law

On 19 January 2015, the Chinese Ministry of Commerce published the draft Foreign Investment Law ("Draft FIL") for the purpose of soliciting public comments until 17 February 2015. The Draft FIL, once enacted, will eventually replace the trio of the *Sino-foreign Equity Joint Venture Enterprise Law,* the *Sino-foreign Cooperative Joint Venture Enterprise Law* and the *Wholly Foreign-invested Enterprise Law* ("Three FIE Laws") as well as its implementation rules and ancillary regulations and will have a long-lasting impact upon foreign investment by significantly reshaping the entire Chinese foreign investment regulatory regime. The Draft FIL contains 11 chapters and 170 articles, and covers: (1) definitions of foreign investors and foreign investments; (2) administration of foreign investments which are subject to entry clearance (3) national security review; (4) comprehensive foreign investment information reporting system; (5) promoting investment, protecting investment and coordinating complaints; (6) legal liabilities and (7) miscellaneous provisions. Compared to the more abstract provisions in the Three FIE Laws, the Draft FIL is more extensive and specific as to how foreign capital will be admitted and administered within China.

New rules for foreigners on short-term work assignments in China

On 6 November 2014, the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs, the Ministry of Public Security and the Ministry of Culture jointly issued the *Relevant Handling Procedures for Foreign Nationals' Entry into China to Perform Short-Term Work Assignments* which will take effect on 1 January 2015. The key points of the Procedures include: defining certain activities for less than 90 days as short-term work assignment or non-short-term work assignment; and listing the application process for foreign nationals' entry into China for short-term work assignment. In the past, foreigners could come to China for short-term work assignments of less than 90 days by holding a business visa. However, according to the Procedures, after 1 January 2015, foreigners entering China to conduct certain activities for up to 90 days will need to apply for an employment license or approval and work certificate, which means a longer and more complicated application process prior to the foreigner's entry into China.