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# China News Alert Issue 81

## Headlines

### Listing Approval Committee postpones new IPOs until Spring Festival of 2005

The Listing Approval Committee of the China Securities Regulatory Commission ("CSRC") may undergo a radical overhaul in the wake of the recent reported arrest of Mr Wang Xiaoshi, vice chief of the working division of the Committee. It is anticipated that half of the incumbent members of the Committee will be replaced, with two members of the Committee already tendering their resignation. The internal reorganisation of the Committee means that the CSRC is unlikely to resume its review of IPO applications until the Spring Festival of 2005. The CSRC has already informed certain market participants that IPO and secondary financing applications have been suspended as of November.

Under applicable regulations, the CSRC aims to give preliminary feedback on IPO applications within one month of receipt of the application. Applicants are then required to submit any supplemental documentation within 10 days of receiving the CSRC's intitial comments. On this basis, the CSRC determines whether or not a review meeting is required. The IPO application process usually takes approximately 2 months. Back to top

### MOLSS and CSRC issue advice regulating securities investment of enterprises' annuity funds

The Ministry of Labour and Social Security (MOLSS) and the CSRC have jointly issued Advice on regulating securities investment of enterprises' annuity funds, and have promulgated Guidelines for registration and settlement of securities investment of enterprises' annuity funds, which set out the procedures to be followed by enterprises when opening accounts or handling settlement of securities investment of annuity funds.

The advice requires fiduciaries, principals and investment managers of annuity funds to manage annuity funds in accordance with the Provisional methods for management of enterprises' annuity funds and related regulations. Securities accounts must be opened for each portfolio managed by investment managers of the annuity fund. Principals will be responsible for settlement, payments and collections relating to the annuity fund. Investment managers are responsible for securities transactions by the annuity fund, and will bear the liability of any overbuy and short selling arising from their investments. The management of securities accounts, and the registration, custody and settlement of securities are to be conducted in accordance with the Guidelines for registration and settlement of securities investment of enterprises' annuity funds issued by the China Securities Depository Clearing Corporation (CSDC).

### China encourages foreign investment in mineral resources sector

Mr Wang Min, the Deputy Director General of the Ministry of Land Resources has spoken of the need to encourage foreign investment in the exploration and exploitation of mineral resources in China, including petroleum and natural gas, copper, lead, zinc and aluminium ores and low-grade metallurgy ores, and sulphur, phosphorus and kalium.

According to Mr Wang, potential foreign investment in the Chinese mineral resources sector is far from being fully realized. Drawing lessons from experiences in international mining capital markets, China aims to establish new mechanisms for commercial ore prospecting and exploitation, to support the introduction of “social capital” in the mining industry, and to develop the management of ore resources, whilst continuing to respect its WTO commitments and guaranteeing the national treatment of foreign investors in the mining industry.

According to Mr Wang, China will also accelerate the implementation of the provisions of the Several Suggestions on Encouraging Foreign Investors to Prospect Mineral Resource Exclusive of Petroleum and Gas, which will cover areas such as the establishment of foreign-invested exploration and exploitation enterprises, and applications for mining permits. Mr Wang commented that the legal framework for foreign investment in the mining industry needs to be improved substantially, in particular in the following areas:

* examination and approval of applications for mineral resource exploration and exploitation rights/licences, in particular by prohibiting land resource administrations at different levels from arbitrarily imposing additional licensing conditions;
* standardized procedures for acquiring mineral resource licences based on international practice and the “early application, early acquirement” principle;
* guaranteeing exploration/exploitation rights of licence holders under relevant legislation and ensuring that exploration licence holders have priority in acquiring related exploitation rights;
* development and standardisation of the market for transferring mineral resource rights/licences.

### Foreign investment in broadcasting and television companies

The State Administration of Radio, Film and Television ("SARFT"), together with the Ministry of Commerce, have adopted the Temporary Regulations on Management of Sino-foreign Joint Ventures or Cooperatives in the Broadcasting and Television Production and Operation Sector. As of 28 November, foreign media companies will be permitted to buy a stake of up to 49% in domestic broadcasting and television production and operation enterprises. Financial investors without sufficient media background, such as private securities funds, will not be entitled to invest in domestic broadcasting and television enterprises. The Regulations also limit the scope of content provision and brand marketing. For example, overseas firms will not be allowed to buy stakes in certain news providers.

Several foreign media companies have already executed letters of intent to cooperate with domestic enterprises, and it is anticipated that the Chinese television market will develop rapidly, with significant inflows of foreign capital. Joint cooperative enterprises will only be permitted to produce certain broadcasting and television programs. At least two-thirds of the programs produced by joint enterprises must deal with Chinese issues.

The new Regulation also eases restrictions on foreign investment in large state-owned media groups. This provides an official legal basis for equity participation plans previously executed by Viacom and Shanghai Media Group. Finally, the Regulations encourage joint cooperatives to engage Chinese professional personnel in program production.

## Capital Markets

### New regulation on management of settlement reserve funds

The CSDC has issued a Notice on managing settlement reserve funds in separate accounts. The notice requires agencies involved in settlement to declare their self-operated securities accounts with CSDC, and to take responsibility for the authenticity, accuracy and legality of their declarations. In relation to accounts operated by securities companies on behalf of third parties, the relevant regulations provide that such accounts may only be used to sell rather than buy. Once the value of securities within such accounts declines to zero, the accounts are to be cancelled by the CSDC.

The CSDC Notice follows an earlier notice issued by the CSRC on managing securities companies' settlement reserve funds by separate accounts, which set out a number of requirements relating to settlement funds and agencies involved in settlement, including the following:

* securities companies must report information regarding transaction seat allocation and the accounts used for self-operated business;
* agencies engaged in both self-operated business and brokerage services may apply to the CSDC to open additional fund settlement accounts provided that the conditions set out in the Notice and other relevant regulations are met;
* agencies engaged only in securities brokerage services may use existing fund settlement accounts as client fund settlement accounts, and are not required to open new fund settlement accounts;
* agencies should clearly designate accounts and transaction seats in a satisfactory manner before applying to the CSDC to open additional fund settlement accounts and to manage settlement funds through separate accounts;
* agencies should reenter into a securities fund settlement agreement with the CSDC setting out the parties' respective liabilities, prior to undergoing the formalities for the management of settlement fund accounts;
* agencies should apply to the CSDC in order to alter the routes by which transaction seats are settled on the principle of corresponding the settlement of client transaction seats with client fund settlement accounts, and the settlement of self-operated transaction seats with self-operated fund settlement accounts;
* agencies should declare all unmatured "repos" before segregating settlement reserve fund accounts, and agencies must satisfy certain conditions where they intend to make client repos available for settlement in clients' seats;
* where agencies possessing both client and self-operated fund settlement accounts transfer funds between their client and self-operated accounts, the purpose of transfer must be clearly stated.

### Freezing, Distrainment and Transfer of Securities Transactions Settlement Funds

The CSRC and the Supreme Court have jointly issued a Notice on Related Issues Concerning Freezing, Distrainment and Transfer of Securities Transaction Settlement Funds. The Notice provides that courts will not freeze, distrain or order the transfer of client funds held in special deposit accounts for client transaction settlements or client settlement reserve funds deposited by securities companies at the CSDC. In relation to tradeable securities, the court may order the business department of the relevant securities company to sell the securities within 30 business days, and then directly transfer the proceeds from such sale to an account designated by the court.

### Supervision and Development of City Commercial Banks

The China Banking Regulatory Commission (CBRC) has adopted the Outline on Supervision and Development of City Commercial Banks, covering the supervision, reform and development of city commercial banks. The Outline covers areas such as capital supervision, risk control, internal governance, restructuring procedures, asset quality, and information disclosure by city commercial banks. The CBRC has stressed the importance of promoting institutional reform and service innovation by city commercial banks, and has noted the successes of city commercial banks in relation to restructuring and alliances, disposal of non-performing assets and the introduction of strategic overseas partners. Observers consider that the CBRC will continue to play an important role in guiding the management and development of city commercial banks, as well as in helping to standardise business conduct procedures and to make the banks more competitive.

### PBOC raises domestic interest rates on USD deposits

The People's Bank of China (PBOC) has decided to raise the upper limit on domestic interest rates on one-year deposits of small amounts of U.S. dollars by 0.3125 percentage points to 0.875%. The rise will take effect as of 18 November 2004. At the same time, the PBOC has transferred to commercial banks the authority to decide and announce the upper limit of interest rates on two-year deposits denominated in US dollars, euro, yen and HK dollars with effect from the same date.

## Insurance

### CIRC approves first mutual insurance company in Heilongjiang

The China Insurance Regulatory Commission (CIRC) has approved the establishment of the Sunshine Agriculture Mutual Insurance Company in Heilongjiang, the first such kind of insurer in the province. As a pilot project in China's agricultural insurance system, the organisational structure, business scope and supervision procedures of the Sunshine Agriculture Mutual Insurance Company was carefully reviewed by the CIRC prior to granting its approval.

The company will take form of a mutual company, and will manage the insurance needs of agricultural businesses in the Heilongjiang Reclamation Area. Unlike a joint-stock insurance company, a mutual insurance company is owned by its policy holders (rather than stock or shareholders). Mutual insurance is used by most developed countries in their agricultural sectors.

The Reclamation Area of Heilongjiang has launched agriculture mutual insurance on a trial basis since 1993. To date, the number of farmer households holding mutual insurance policies has reached 250, with 265 million mu (one mu is equivalent to 666.7 hectares) of planting area covered and indemnification of RMB1.08 billion paid. A total of 1,485,000 rural households have benefited from the insurance directly. The average annual grain harvest of Reclamation Area of Heilongjiang has been 9 billion kilograms in recent years, making it an important commodity grain production base and strategic grain backup base.

### CIRC issues notice on requirements for practicing actuaries

The CIRC has issued a Notice on Relevant Requirements for Qualifications of Actuaries, relating to the management of actuaries engaged by domestic life insurers, endowment insurers and health insurers. The Notice will come into effect on 1 January 2005.

Under China's Insurance Law, insurers may only engage the services of those actuaries which satisfy the requirements of insurance regulatory authorities. However, the significant increase in the number of insurers has resulted in the perceived easing of qualification requirements for actuaries.

The CIRC Notice provides that anyone meeting either of the following qualification requirements is eligible for the post of actuary:

* a person qualified as a Chinese actuary, with over 3 years' relevant experience ;
* a person holding membership of the Society of Actuaries, the Association of Consulting Actuaries, the Institute of Actuaries of Australia or the Institute of Actuaries of France, with over 3 years relevant experience, and who is familiar with China's related actuarial regulations; such persons may, with the approval of CIRC, act as actuaries for renewable terms of one year.

In addition, any eligible actuary must be domiciled in China, have no criminal record, and no previous convictions for fraud in the relevant area.

The Notice prohibits actuaries from working concurrently work for two or more agencies, with the exception of the subsidiaries or parent companies of their employers.

## Taxation

### Stamp tax update

The Ministry of Finance and the State Administration for Taxation have jointly issued a Notice on Changing the Management Measures for Periodic Aggregate Stamp Tax Payment. Under the Notice, stamp tax payers can opt to make periodic aggregate tax payment measures. The Notice provides that in the case of taxable documents that require to be frequently stamped, taxpayers can opt to make monthly aggregate tax payments. A tax payer opting to make periodic payments cannot reverse his decision for at least a year.

## Corporate & Commercial

### CSRC approves merger of No.1 Department Store and Shanghai Hualian

The CSRC has approved the proposed merger of No.1 Department Store and Shanghai Hualian, the country's first merger case involving two domestic listed companies. The merged entity - Shanghai Bailian (Group) Holding Co., Ltd - will resume listing on 26 November, with the stock name of Bailian Holding.

Under the terms of the merger, all shareholders of non-tradable shares in Shanghai Hualian will convert their shares into non-tradable shares in No.1 Department Store according to the conversion proportion for non-tradable shares. All assets, liabilities, rights and interests of Shanghai Hualian will be taken over by No.1 Department Store. The terms of the merger also provide for a cash option, and a share repurchase guarantee to minority shareholders in the event of significant stock price volatility during the course of the merger.

Bailian Group will be the largest shareholder of the merged entity, holding a 43.47% stake. Bailian Group has undertaken to inject assets into the merged entity, including interests in Shanghai Friendship Group Holding Co., Ltd, Hualian Supermarket Holding Co., Ltd, Shanghai Sanlian (Group) Co., Ltd, Shanghai Xinluda Commerce (Group) Co., Ltd and Shanghai Baihong Commerce and Trade Co., Ltd.

### Notice on trade union membership

The All-China Federation of Trade Unions recently issued a Notice on Organizing Labour of Enterprises (in Various Ownership Forms) and Government Institutions to Join Trade Unions. The Notice provides that all (manual) labourers working at enterprises and government institutions, who have established an employment relationship with their employers, should be admitted to trade unions, regardless of the form their employment takes, or how long they have been employed.

The Notice describes three ways in which labourers can join trade unions:

* where a labourer signs a labour contract directly with an enterprise or government institution and his employer is responsible for organizing him into a trade union, his membership is managed by the trade union of his employer;
* where a labourer signs a labour contract with a labour company and joins its trade union, the labour company will then entrust trade union membership to its employers; if a labour company has not set up a trade union, the employer¡¯s trade union may admit the laborers on the basis of a de facto "labour relationship";
* in the case of the trade unions of institutions exporting transprovincial labour services, the trade unions will take over labourers' membership from their employers.

The Notice also sets out rules relating to the payment of trade union dues, as follows:

* where a labourer joins an employer's trade union, then the employer should pay the relevant trade union dues;
* where a labourer joins a labour company's trade union, then the labour company should pay the relevant dues.

## Real Estate

### Ministry of Construction promulgates the Interim Measures of Construction Works Management

The Ministry of Construction has adopted Interim Measures on Construction Works Management, which will come into effect on 1 December 2004. The measures aim to clarify provisions on the qualification of project management enterprises, practicing requirements of professionals engaged in project management, the scope of services provided by project management enterprises, methods for the selection of project management enterprises, joint bidding, and service charges.

## WTO

### Ministry of Commerce reviews China's performance of WTO commitments

Speaking at the in "WTO and China: Beijing International Forum", Mr Wang Qinhua, Director of the Bureau of Industry Injury Investigation within the Ministry of Commerce, declared that the Chinese Government has honoured its WTO commitments, created fairer market conditions for foreign investors, and opened up trade in goods and services.

According to Wang Qinhua, China's implementation of WTO commitments is reflected in the following areas:

* reduced tariffs: the general level of tariff has been reduced from 15.6% in 2000 to 10.6% in 2004, and will be further reduced to 10.1% in 2005, and 10% in 2008; the average tariff for industrial products will be reduced to 9.3% in 2005; in relation to certain industrial products, such as automobiles, the applicable tariff was 80% to 100% before China's WTO entry, but was lowered to 43.8% in the first year following China¡¯s entry into the WTO entry; it is foreseen that the tariff on automobiles will be reduced to 25% on 1 July 2006; the tariff of IT products will be reduced 0% in 2005;
* increased imports: the volume of China's imports reached US$412.8 billion in 2003, reflecting a year-on-year increase of 39.9%, and making China the third biggest importer in the world; imports in the first three quarters of 2004 amounted to US$412.3 billion, an increase of 38.2% compared with last year;
* foreign investment: China is one of the largest recipients of foreign investment in the world, and has ranked first among developing countries for the last ten years; in 2003, utilised foreign investment amounted to US$53.5 billion in 2003; utilised foreign investment in the first three quarters of this year was US$48.7 billion, an increase of 21% compared with last year; among foreign invested projects, there has been an increase in capital and technology intensive projects and in the number of multinational companies establishing regional headquarters in China; in particular, high-tech industries represented by common communication technology continue to shift to China; of the top 100 enterprises in the global IT sector, 90% have invested in China; market opening in service sectors (such as banking, securities, distribution, law, tourism and education) is also being implemented; taking banking as an example, over 60 foreign banks of nearly 20 countries have established about 200 business organizations in China, among which over 80 organizations are permitted to engage in renminbi business; the loan balance of foreign banks in China has exceeded US$20 billion.
* strengthening of the legal system and improving the investment environment: in the past three years, China has adopted over 2300 national laws and sector regulations, concerning, among other things, trade in goods and services, intellectual property and foreign investment. local laws, government regulations, policies and measures continue to be revised and rescinded in line with WTO rules; China has revised the Sino-foreign Joint Venture Law, the Sino-foreign Cooperative Law and the Foreign-invested Enterprise Law, as well as various enforcement regulations; the revised Foreign Trade Law came into effect on 1 July 2004, under which the approval system for foreign trade licences has been converted to a register system.

### Beijing market opening under WTO

The WTO transition period of certain sensitive service sectors in Beijing will come to an end and market opening established from 11 December 2004. The service sectors include financial markets (banking, insurance and securities sectors), building, and logistics. From 1 January 2005, China will enter a "post-transition" period in which tariffs and market access thresholds will be sharply reduced and China will open up nine sectors, including commerce, transportation, finance and tourism, and more than 90 sub-sectors. Beijing is one of the cities which will be opened up to foreign investors in the post-transition period:

* Beijing will open up renminbi business for foreign-invested banks from 11 December 2004, enabling branches of foreign-invested banks to engage in renminbi business in Beijing (Beijing will be the fourteenth city to open up the renminbi business);
* Sino-foreign joint-venture banks will be permitted;
* during the post-transition period, foreign-invested property insurers will also be allowed to run all life insurance business, in addition to their statutory insurance services.
* foreign securities brokerages will be able to penetrate Beijing's securities market by setting up joint-venture securities companies.

Pursuant to the Information Technology Protocol, China has been obliged to lift two thirds of the tariffs on information technology products from January 2003, and will impose zero tariffs and cancel quotas for such products from 1 January 2005. In addition, from 11 December 2004, China will allow foreign investors to set up joint ventures in domestic and international infrastructure telecommunication services, with a maximum stake of 25%, which will be increased to 35% in 2006 and 49% in 2007.

Finally, Beijing will allow the establishment of joint-venture travel agencies controlled by foreign investors from 11 December 2004, and wholly foreign-owned travel agencies from 11 December 2007. The geographical limitation for establishment of foreign-invested travel agencies will also be removed on December 11, 2007.

## Other

### Transfer of personal assets overseas

The PBOC has adopted Provisional Measures for Management of Sale and Purchase of Foreign Exchange Involving Outward Transfer of Personal Assets, which will come into effect on 1 December 2004. The measures set out certain rules for individuals converting "immigrant" and "inheritance" assets into foreign currency and transferring those assets out of China.

Under the measures, the outward transfer of personal assets is divided into two categories:

* transfer of "immigrant assets", which concerns natural persons planning to migrate from Mainland China to another country or to Hong Kong or Macau; such persons will be allowed to convert into foreign currencies legal assets acquired in China before the granting of immigrant status, and to remit those converted assets overseas;
* transfer of inheritance assets, allowing foreign nationals (or Hong Kong or Macau citizens) to convert and transfer assets inherited lawfully in China.

The measures may also be referred to in the case of transfer of personal assets to Taiwan. The transfer of personal assets in other forms is outside of the scope of the measures.

China's foreign exchange control authority will not accept applications for transferring abroad of certain assets, including the following:

* assets upon which a judicial or supervisory authority imposes restrictions according to applicable laws;
* assets which are uncertified with respect to their legal source or involved in a pending criminal or civil case;

If the sum of the relevant assets is less than RMB500,000, application should be made to local branches of the State Administration of Foreign Exchange ("SAFE"). For sums in excess of RMB500,000, applications should be submitted to the head office of SAFE for approval.

### SAFE adjusts policies on foreign currency purchase for studying abroad

SAFE has adopted a Circular Concerning Adjustment on Guiding Limitations on Purchase of Foreign Exchange by Chinese Citizens for Studying Abroad, which will come into effect on 20 December 2004.

Under the Circular, foreign currency purchases will be approved separately to cover tuition fees and living expenses. Purchases of foreign currencies to cover tuition fees will be subject to an annual limit indicated in confirmations of enrollment or certificates of tuition fees issued by overseas schools. The annual guiding limit on foreign currency purchases for living expenses will be set at US$20,000 per person. Persons may apply directly to designated foreign exchange banks if the amount of foreign currency to be purchased for living expenses does not exceed US$20,000. The prior approval of SAFE should be obtained where amounts in excess of US$20,000 are sought.

No certificate of living expenses will be required if the amount of foreign currency purchased does not exceed US$20,000. For amounts in excess of US$20,000, certificates of living expenses should be submitted to SAFE.

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