Charltons - China News Alerts Newsletter - 27 August 2008

[online version](http://www.charltonslaw.com/china-news-alert-issue-255/)

# China News Alert Issue 255

## Capital Markets

### China considers expansion of insider trading ban

Employees of financial institutes who take advantage of non-public information for personal gains in trading will face criminal prosecution, according to the draft amendment to the Criminal Law submitted to China's top legislature recently.

Employees of fund management companies, securities firms, commercial banks and other financial establishments could be jailed for up to 10 years and fined up to five times their illegal gains, if they seek, or advise others, to profit from non-public information, the draft says.

The draft amendment, submitted to the Standing Committee of the National People's Congress (NPC) for its first hearing, marks the country's latest initiative to crack down on insider trading.

The existing Criminal Law bans individuals with access to classified information from trading in related stocks and securities. The prohibition did not include other non-public information such as the fund flow information of the company's trusted funds.

The amendment came after an insider trading case involving Tang Jian, a fund manager at the Shanghai-based China International Fund Management Company, in which JP Morgan Asset Management (UK) Limited holds a 49-per cent stake.

Tang bought more than 260,000 shares in Xinjiang Jionworld Company through the accounts of his father and a third person before his fund started to buy the shares in 2006.

Three China International Fund Management Company funds bought shares in Xinjiang Jionworld. Its shares surged to 27.50 yuan in May 2007 from around 17 yuan in late September 2006, and Tang made illegal profits of 1.5 million yuan using the insider information.

The China Securities Regulatory Commission fined Tang and banned him from practicing in the securities market, but he faced no criminal penalties as the Criminal Law had no relevant provisions.

The NPC Standing Committee, China's top legislature, started a five-day session recently to review draft laws and amendments to criminal law and food safety, among other issues.

[Source: People's Daily Online](http://english.people.com.cn/90001/90776/90884/6486471.html) ([see archive](China_considers_expansion_of_insider_trading_ban.pdf))

### China amends law to broaden investment channels for insurance funds

China is to broaden investment channels for insurance funds, allowing them to invest in the real estate industry, if a draft revision to the Insurance Law is adopted by the national legislature.

Investment channels for insurance funds would be widened to include securities such as bonds, stocks, funds and the real estate industry, according to the draft submitted to the Standing Committee of the National People's Congress (NPC) recently.

The current law only allows insurance funds to invest in government bonds and financial bonds.

"It is necessary to revise the law to boost the steady and fast development of the insurance industry. It will help to better regulate insurers' business conduct, prevent and control risks and protect insurants' interests," said the China Insurance Regulatory Commission chairman, Wu Dingfu, when explaining the draft at the fourth session of the NPC Standing Committee.

The revision also includes tighter supervision of insurance fund use, in a bid to prevent investment risks.

The legislative session is scheduled to end on 29th August.

[Source: People's Daily Online](http://english.people.com.cn/90001/90776/90884/6486427.html) ([see archive](China_amends_law_to_broaden_investment_channel_of_insurance_funds.pdf))

### Securities watchdog raises refinancing threshold

China's securities watchdog recently announced that it will raise the refinancing threshold for listed companies. The move is aimed at fostering a long-term investment environment and facilitating the sustainable and healthy development of the capital market.

"For listed companies scheduled to refinance on the market, the dividend they have paid to shareholders in the past three years must be no less than 30 per cent of their distributed profits," said the China Securities Regulatory Commission (CSRC) in a new administrative rule.

The dividend can be paid either in cash or stock. The previous limit was 20 per cent.

The market watchdog also asked listed firms to reveal their cash dividend policies and previous cash dividend data to investors in their annual reports in a bid to improve transparency.

"Listed company must give reasons why they fail to pay cash dividends, if they are able, and where that money goes," the rule states.

Amid the broad decline of the A-share stock market, excess supply was a problem because "the unlocking of non-tradable shares and listed companies' insatiable demand for equity refinancing" meant there was a need for fresh capital. Now "wary investors are cashing in their shares," said Cao Honghui, a Chinese Academy of Social Sciences senior researcher.

The benchmark Shanghai Composite Index has fallen more than 60 per cent from its peak in mid October 2007.

Zhai Peng, a Guotai Junan Securities analyst, said this new move would help to boost sluggish investors confidence.

However, some experts believe that the key concern of investors in the near future will still be the unlocking of large amounts of non-tradable shares.

The CSRC will seek public opinion on this new rule until 29th August. The public can submit their comments on the rules by email.

[Source: China Securities Journal](http://www.cs.com.cn/english/com/200808/t20080825_1565399.html) ([see archive](Securities_watchdog_raises_refinancing_threshold.pdf))

### Non-banking foreign currency exchange services launched

People will now be able to exchange foreign currency at non-banking sites, according to the Beijing Administration Department of Foreign Exchange under the State Administration of Foreign Exchange.

The first chartered site has been established at the Beijing Capital International Airport.

Trials of individual chartered domestic and foreign currency exchange businesses were recently launched in Shanghai and Beijing. Two companies have won chartered currency exchange nameplates from the regulator.

With the establishment of the chartered currency exchange site at the airport, people can enjoy more flexible service times. It will be open 24 hours a day and is able to exchange 16 currencies.

Chartered currency exchange sites are also expected to be established in travel agencies involved in overseas tourism, in Beijing's Financial Street and in the Central Business District (CBD).

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/21/content_6958008.htm) ([see archive](Non-banking_foreign_currency_exchange_services_launched.pdf))

### ICBC considers bond issue

The Industrial and Commercial Bank of China Limited (ICBC), the world's most profitable bank, may sell as much as 100 billion yuan (US$14.6 billion) worth of bonds after domestic loan growth and acquisitions overseas have drained its capital.

The Beijing-based lender, which overtook its closest rival HSBC Holdings Plc after its profits soared 57 per cent in the first half of 2008, plans to sell the subordinated debt in batches by 2011, it said in a recent statement to the Shanghai Stock Exchange.

Shareholders will vote on the plan on 27th October.

Annual economic growth of more than 10 per cent bolstered corporate loans and services to China's growing number of wealthy, helping ICBC more than double profit since 2005.

[Source: Xinhua](http://cs.xinhuanet.com/english/com/200808/t20080825_1565402.htm) (Link no longer active)

## IPR

### China to amend patent law including stricter penalty for violators

China has recently unveiled draft amendments to the patent law, raising application standards and promising heavier fines for piracy.

Tabled at the current session of China's top legislature for a second reading, the draft amendments raises the requirements for invention applications, accepting only inventions that have not been unknown to the public either in China or abroad.

Under the draft amendments, applicants can apply for foreign patents even before obtaining Chinese patents.

Applicants are supposed to go through a check held by patent authorities of the State Council for the sake of state security, said Tian Lipu, director of the State Intellectual Property Office, at the current session of the Standing committee of the National People's Congress.

The draft amendments also include harsher penalties for acts of piracy. Violators can be fined up to four times their illegal gains or face a fine of up to 200,000 yuan (US$29,200) if they have no illegal gains. The current figure for the penalty is three times and 50,000 yuan respectively.

[Source: People's Daily Online](http://english.people.com.cn/90001/90776/90884/6486472.html) ([see archive](China_to_amend_patent_law_eyes_stricter_penalty_for_violators.pdf))

## Corporate & Commercial

### China to scrap administrative fees for individual-owned businesses

China is to cancel the decade-old administrative fees for individual-owned businesses and market vendors from 1st September.

The cancellation was announced by the Ministry of Finance (MOF), the National Development and Reform Commission and the State Administration for Industry and Commerce (SAIC) in a joint circular released on the MOF website.

The move is aimed at cutting costs for individual business owners and encouraging more people to start businesses in a bid to create jobs.

In February, the government vowed to help 10 million urban residents find jobs this year.

The administrative fees have been collected by local SAIC agencies for approximately two decades and were criticised by individual business owners as being too burdensome, almost twice as much as business taxes.

The administrative fees were previously aimed at establishing local markets, covering small business owners' and vendors' service charges for local market watchdogs and recovering some of the operational costs of local SAIC authorities.

The charges varied from region to region, but were an important source of revenue for local authorities.

A few areas including Beijing, Shanghai and Zhejiang had already abolished the fees.

The administrative fee has been blamed for the reduction in the number of individual business owners from 31.6 million in 1999 to less than 26 million in 2006.

[Source: Xinhua](http://news.xinhuanet.com/english/2008-08/23/content_9661260.htm) ([see archive](China_to_scrap_administrative_fees_for_individual-owned_businesses.pdf))

### MOF specify issues to be examined for advance recovery of foreign investment

China's Ministry of Finance (MOF) has specified, in a recently released circular, the issues to be focused on by financial authorities when they examine and approve the advance recovery of investment by foreign parties of cooperative enterprises.

According to the Circular on 'Issues Concerning the Advance Recovery of Investment by Foreign Parties of Sino-foreign Cooperative Joint Venture Enterprises' released on 6th August by the MOF, the issues to be emphasised in the examination and approval process include:

* the rationality of the advance recovery of foreign cooperative parties;
* the business and financial status of the enterprises: prior to the offset of the enterprise's loss, foreign cooperative parties are not allowed to recover their investment; and
* the commitments of foreign cooperative parties to related debts: foreign cooperative parties must issue a commitment letter, promising that the payment of the enterprise's debts will take precedence over the advance recovery of their investment, and that they will bear linked liability for the enterprise's debts within the advanced recovered debts.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=4583) ([see archive](MOF_Specified_Issues_to_be_Examined_for_Advance_Recovery_of_Foreign_Investment.pdf))

### Creditors may apply for bankruptcy liquidation of debtors without clear property status

China's Supreme People's Court (the Court) decided that, as of 18th August, if creditors apply for the bankruptcy liquidation of debtors whose personnel are missing or whose property status is not clear, and if the rules governing the corporate bankruptcy are met, the people's courts must accept the application.

The Court clarified in its reply to a related issue (Fashi[2008]10) that after the courts decide to hear the aforementioned bankruptcy cases, they must appoint a manager to pursue and collect the debtors' property in line with related rules under the corporate bankruptcy law.

If, after the liquidation conducted according to law, the debtors have no property for allotment, the courts then must announce the bankruptcy of the debtors and the conclusion of the bankruptcy procedures.

If the debtors are detected to have property recoverable according to law or other property to be allocated within 2 years of the conclusion of procedures, the creditors may request additional allotment from the Court.

If related personnel of the debtors fail to perform their statutory obligations, the Court may investigate their legal liabilities in line with related laws and regulations.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=4566) ([see archive](Creditors_May_Apply_for_Bankruptcy_Liquidation_of_Debtors_without_Clear_Property_Status.pdf))

## Other

### China weighs tougher penalties for corruption

Government officials with large assets from unidentified sources will face tougher penalties under the draft amendment of the Criminal Law that began making its way through China's top legislature recently.

The draft stipulates that government officials who cannot explain the source of their assets will face a maximum jail term of 10 years, double the current penalty.

Retired officials, relatives and close friends of officials will also face criminal penalties if they take advantage of officials' positions to take bribes or make improper profits.

It is necessary to give heavier penalties to officials abusing their power for personal gain, as they are betraying the public interest, said Li Shishi, director of the NPC Standing Committee's Legal Affairs Commission.

The offence of holding unexplained assets was first determined in 1988 by the Standing Committee of the National People's Congress (NPC). Under the 1997 Criminal Law, people who cannot explain the source of their assets face up to five years in prison.

Yin Guoyuan, former deputy director of the Shanghai Municipal Housing, Land and Resource Administration Bureau, was charged with taking bribes and holding unexplained assets of more than 8 million yuan (US$1.17 million) in early August 2008.

The maximum five-year jail term is too light to punish corrupt officials and deter corruption, said Professor Ma Huaide, of the China University of Political Science and Law.

Legal experts have said that some corrupt officials refused to reveal the sources of their assets after being caught. The money would therefore be classed as unexplained assets rather than bribes, incurring lighter penalties compared with charges of graft and bribery, which have a maximum sentence of death.

"The revision to a maximum ten-year sentence increases the punishment and distinguishes it from graft and bribery," said Li Shishi, director of the NPC Standing Committee's Legal Affairs Commission.

"Judicial authorities will also spare no effort in investigating suspected graft and bribery cases," Li said.

NPC member, Zhang Wenxian, said at the first session of the 11th National People's Congress in March that people connected to officials had increasingly been found participating in graft and corruption crimes.

The Standing Committee of the National People's Congress, China's top legislature, started a five-day session recently to review draft laws and amendments to criminal law and food safety, among other issues.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/26/content_6972598.htm) ([see archive](China_weighs_tougher_penalties_on_corruption.pdf))

### China seeks opinion on contractor qualification rules

China's Ministry of Commerce (MOC) recently announced that it will seek public opinions until 25th August on its administrative rules on the qualifications of international contractors.

The State Council issued a regulation on the country's international project contracting on 28th July. The move was to promote healthy industry development, but it did not reveal detailed contractor qualifications.

The ministry said the registered capital of qualified international contracting companies should be no less than 300 million yuan (US$43.65 million) with a debt-to-asset ratio of less than 80 per cent.

"Qualified contractors should have sound safety protection and emergency response mechanisms. They need to establish an overseas safety protection group with company executives as members. This group must have at least two permanent members," the MOC said.

Eligible international contractors need to have well-established work safety procedures and be without serious work safety accidents for the previous two years.

Those who employ foreign contractors without proper international contractor qualifications must pay a fine between 500,000 yuan and 1 million yuan, according to the administrative rules.

The public can submit their comments about the rules via the MOC website.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/22/content_6961048.htm) ([see archive](China_seeks_opinion_on_contractor_qualification_rules.pdf))

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at [unsubscribe@charltonslaw.com](mailto:unsubscribe@charltonslaw.com?subject=unsubscribe%20-China%20News%20Alerts-)

**Charltons - China News Alerts Newsletter - Issue 255 - 27 August 2008**