Charltons - China News Alerts Newsletter - 26 November 2008

[online version](http://www.charltonslaw.com/china-news-alert-issue-267/)

# China News Alert Issue 267

## Capital Markets

### China to impose stricter checks on listed companies

The China Securities Regulatory Commission (CSRC) said recently it would conduct more checks of listed companies in a bid to avoid malpractice in stock trading.

Majority shareholders of listed companies, relevant parties involved in mergers and acquisitions and securities brokers would all be subject to examinations, the CSRC said in a draft revision.

In the past, local regulators would only examine listed companies when monitoring stock trading practices, according to regulation published in 2001.

CSRC also said future examination would focus on corporate governance and information disclosure of listed companies, in order to avoid insider trading and price manipulation to protect the interests of small investors.

Also on the same day, the regulator announced huge fines for companies and individuals for profiteering from stock price manipulation.

Wang Jianzhong, legal representative of Beijing Shoufang Investment Consulting, was fined 125 million yuan ($18.3 million), the same amount he earned through price rigging from January 2007 to May of this year, according to the commission. Illegal earnings would also be confiscated.

A Wuhan-based Xinlande investment consulting company in central China received a penalty of 7.35 million yuan for price manipulation. The company earned the same amount of money from malpractice in 2007.

In both cases, the person or company bought certain shares in advance before trying to push stock prices higher by recommending these stocks to investors. They could then sell the stocks and profit from the price margin.

The commission also said a couple was fined 300,000 yuan for not disclosing information promptly, as they were obliged to according to a securities regulation, after they bought more than five percent of a company's shares in June last year.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-11/22/content_7230730.htm) ([see archive](China_to_impose_stricter_checks_on_listed_companies.pdf))

### CIRC to Tighten Control over Life Insurance Service Standards

For cases with complete compensation-claim materials and clear accident responsibilities, and no investigation is necessary for such cases, insurance companies must settle the case within 10 working days since the receipt of the compensation-claim applications.

The China Insurance Regulatory Commission (CIRC) released on November 19, 2008 the Basic Service Standards for Life Insurance Businesses (Draft for Comment) (Standards) for public comments. The Standards stipulated the basic requirements from such aspects as sale, acceptance, service extension, compensation, contingency mechanism, information disclosure and service quality guarantee and supervision of life insurance businesses. And it shall be basic standards of insurance services that the insurance companies must provide for their customers.

Besides, the Standards also stipulated that insurance companies must ensure the authenticity, objectiveness and completeness of the disclosed information. And such information must be examined and approved by headquarters of the insurance companies.

The public-input process is scheduled to conclude on November 25, 2008.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5023) ([see archive](CIRC_to_Tighten_Control_over_Life_Insurance_Service_Standards.pdf))

### CIRC to Tighten Control over Representative Offices Established by Foreign Insurance Institutions in China

Beginning on December 1, 2008, for foreign insurance institutions that apply for establishing representative offices in China, their year-end assets one year prior to the application must exceed 2 billion US dollars, and the chief representative candidates must soundly understanding the insurance knowledge and the relevant regulations with the representative office operation.

Under the Interpretations on Several Issues Concerning the Application of the Administrative Measures for the Representative Offices in China of Foreign Insurance Institutions (Interpretations), which was released by the China Insurance Regulatory Commission (CIRC) on November 25, 2008, general representatives or chief representatives in China of foreign insurance institutions must not hold a post in more than two representative offices that are established by foreign insurance institutions and other institutions in China.

Besides, the aforementioned representative offices and their staff must not be engaged or participate, in any manner, in the operation activities. Whether the representative offices or relevant individuals have gained interests or not shall not have any impact on cognizing features of their activities.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5048) ([see archive](CIRC_to_Tighten_Control_over_Representative_Offices_Established_by_Foreign_Insurance_Institutions_in_China.pdf))

## Taxation

### China to raise individual income tax threshold

China's highest legislative body has already "reached a consensus" to boost the individual income tax threshold soon to encourage domestic consumption, China's leading economist Zhou Qiren revealed recently.

Zhou announced the latest development while calling on "aggressive tax-reduction measures" at corporate and personal levels to stimulate downward domestic demand brought by worsening external economic surroundings.

"As far as I know, the National People's Congress has already reached the consensus to do that (increase the benchmark of individual income taxation)," Professor Zhou from Peking University told up to 500 businessmen at a management forum in Beijing.

Zhou himself also said the individual income tax threshold should be increased to a much higher level from the current 2000 yuan per month in order to boost personal disposable income and spending.

Zhou didn't reveal what exactly that figure should be but said the proposed threshold of 8,000 yuan per month by some experts is "too high."

At a corporate level, Zhou said China should not only step up with value-added tax (VAT) reform but also reduce the VAT taxation rate from current 17 percentage points to seven percentage points.

Two weeks ago, the Chinese government has announced a four-trillion-yuan stimulus package and measures of VAT reform, under which companies will no longer pay for equipment purchases. "That is not enough and the country should reduce VAT rate dramatically to decrease the enterprises burden."

Meanwhile, China should reduce import taxes while increasing the export tax rebate.

"All these measures will put the government in a difficult position financially but we have to," said Zhou, urging governments at various levels to cut their own administrative spending to partly meet the budget deficit.

Zhou said the radical taxation cut package was among the suggestions which he has submitted to the central government. He also said apart from the fiscal stimulus and monetary polices, China needs comprehensive reforms and broader policy packages to cushion the negative impacts of the unfolding global financial crisis.

He urged the government to take further measures to lift barriers private enterprises have faced when they invest in monopoly sectors, education and health care.

He even suggested that the government should give up pricing regulation and let the market have a final say. "It's high time we should do that and today's worsening economic situation has partly resulted from incorrect signals due to too much pricing regulation," said Zhou, who has predicated this time last year that "all Chinese enterprises should be ready to spend a winter in business."

As to how long China's economic slowdown will last, he replied: "I will give you a standard answer: I don't know." But he forecasted the coming two or three months will become "even harder."

"I can tell you that around the Spring Festival (which falls in January), there will be a lot of bad news," Zhou warned.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-11/21/content_7229363.htm) ([see archive](China_to_raise_individual_income_tax_threshhold.pdf))

## Corporate & Commercial

### Foreign funds for roads urged

The authorities are calling for more foreign investment in road and port construction next year, in line with plans to spur domestic demand in the sector, a transport official said recently.

Road and port infrastructure projects will need 1 trillion yuan ($147 billion) of investment next year, up from about 800 billion yuan needed this year, Li Xinghua, deputy director of the planning department of the Ministry of Transport, told a press conference.

"The gap in capital financing next year means more foreign capital is needed," he said.

Past road constructions have preferred domestic funds over foreign capital because they were said to offer "more favorable terms than foreign loans", Li said.

But the amount of foreign funds in road construction is "sure to exceed" that of the past, he said.

The country currently uses $600 million to $800 million of loans from the World Bank, Asian Development Bank and foreign governments each year for building roads, with the amount of funds expected to increase next year, Li said.

"From expressways to ports, all transport infrastructure projects are open to foreign capital as usual, and we have already established mature operational mechanisms for using the funds from past experiences," he said.

The foreign capital, as well as central and local government funds and domestic private capital, will together fund large-scale road and port construction next year, Li said.

The majority of investments next year will go to expressway projects, he said. About one-fifth will go to rural road projects, 70 billion yuan to coastal port projects and 20 billion yuan to inland port projects.

The exact amount of investment in expressways will have to be approved by the State Council, or the country's Cabinet, Li said.

The ministry's plans for the sector follow latest efforts of the State Council to fend off economic slowdown by investing 4 trillion yuan in areas that also cover housing and rural infrastructure.

The focus on expressways also stems from the strong effect such projects have in spurring demand, seen in the late 1990s when the Asian financial crisis struck, Transport Ministry spokesman He Jianzhong said.

He cited studies saying that building 1 km of expressway will consume 1,000 tons of steel, 9,000 tons of cement and 1,900 tons of asphalt on average, and every 100 million yuan invested in the roads will create 1,800 jobs directly and 2,100 jobs indirectly.

These large-scale investments on the transport network will help boost plans for a 100,000-km national highway network, He said. The country had 54,000 km of expressways by the end of last year.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-11/26/content_7240347.htm) ([see archive](Foreign_funds_for_roads_urged.pdf))

### Nationwide inspections target fund misuse

Local authorities caught misusing funds from the central government's 100-billion-yuan ($14.6 billion) economic stimulus package risk having their allocated amount withdrawn or cut, an official statement said recently.

The 24 central government inspection teams sent out nationwide this week will check waste and fraud arising from the use of the funds, the statement jointly issued by the Communist Party of China Central Commission for Discipline Inspection, the National Development and Reform Commission, the Ministry of Supervision, the Ministry of Finance and the National Audit Office said.

Each of the teams includes an official of vice-minister level leading members from the five government agencies, who will be stationed at local governments for three months to oversee the use of the funds, the statement said.

The move is the latest attempt to ensure the proper use of the economic stimulus plan, announced by the State Council on Nov 9.

Ministries and local governments allocated the funds are being required to use them before early March, in areas such as social welfare, infrastructure, environmental protection and industrial restructuring.

The inspection teams have been tasked to check all aspects concerning the use of the funds, including project planning, assessment and approval, procurement and construction, the statement said. Inspectors will look out for:

* Projects built for "image or achievement" that waste money and manpower.
* Money being misused for constructing Party or government office buildings, or for setting up polluting industries.
* Hasty construction carried out at the price of quality.
* Projects that have not gone through proper examination and approval procedures.

"Any official found to be negligent, cheating, embezzling and taking bribes in fund management will receive Party or administrative punishment or even face criminal charges," the statement said.

It is timely for the central government to map such supervision following the announcement of the stimulus package, analysts said.

"It will definitely work toward the prevention of fund misuse," said Ren Jianming, director of the clean government research center at Tsinghua University. Still, Ren said it is better for such supervision to be accompanied by more public involvement.

"The people can be more effective in supervision than a few central government officials," he said.

Separate spending proposals announced in the past week by local authorities, dwarfing the central government's package at about 10 trillion yuan in total, were also a cause for concern.

"But so far we see no new supervision plan for these local funds," Ren said.

[Source: Sina](http://english.sina.com/business/p/2008/1124/200238.html) ([see archive](Nationwide_inspections_target_fund_misuse.pdf))

### State Council approves Chongqing's bonded area application

The State Council recently cleared Chongqing's application seeking bonded port status for Cuntan Harbor on the Yangtze River.

The bonded port area, scheduled to come up on an area of 8.37 sq km, will have a bonded river port area of 6 sq km and another bonded airport area of 2.37 sq km.

According to the Bureau of City Planning in Chongqing, the bonded port area is expected to spur the city's economic growth.

The bonded river port area will start from Ganjiaobao Community in Cuntan Village, Jiangbei District on the east side and end at an intersection named Tongjiayuanzi in Renhe County, Yubei District on the west. On the north side, it begins from No. 220 National Highway and finishes at the Dafou Temple Bridge on the Yuqian Highway along the Yangtze River on the south.

The bonded airport area also has two parts. The first part, an area of 1.04 square kilometers, starts from No. 11 Community in Xinhua Village, Yubei District on the west and ends at No. 7 Community in Qiaotian Village, Yubei District on the east.

The second part, measured at 1.33 square kilometers, begins from No. 8 Community in Ronghua Village, Yubei District on the east and finishes at No. 16 Community in Lijia Village, Yubei District on the west. On the north it starts from No. 7 Community in Ronghua Village, Yubei District and ends at No. 6 Community in Ronghua Village, Yubei District on the south.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-11/25/content_7238991.htm) ([see archive](State_Council_approves_Chongqings_bonded_area_application.pdf))

### MOFCOM approves InBev, AB merger

China's Ministry of Commerce (MOFCOM) recently gave the nod for Belgium brewer Inbev's $52 billion takeover of Anheuser-Busch Cos Inc (AB), but said the two parties are not allowed to increase their ownership stakes in domestic beer companies without approval from the ministry.

This is the first acquisition deal that has passed MOFCOM's review under China's Anti-Monopoly Law since it took effect in August, a ministry spokesperson said.

MOFCOM concluded that the tie-up of the two companies would not restrict competition in the domestic beer market.

However, to maintain a competitive environment, the ministry also instructed that without its approval, AB could not raise its 27 percent share in Tsingtao Beer and Inbev could not increase its 28.56 percent share in Zhujiang Brewery Group.

Also, the two parties are not allowed to acquire shares in CR Snow or Beijing Yanjing Brewery, two of the largest domestic brewers, the statement said.

The conditional approval of the acquisition deal is aimed at upholding fair competition in China's beer market and to protect major domestic brands, said Huang Qiong, a research analyst with Euromonitor International.

Currently, Inbev and AB jointly have a 13 percent share of China's beer market, according to the market research firm.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-11/19/content_7219360.htm) ([see archive](MOFCOM_approves_InBev_AB_merger.pdf))

## Other

### Doctors, teachers may face graft charges

Doctors and teachers may now face bribery charges if they receive monetary and other forms of reward in exchange for favors made through their work, the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) said in a new judicial interpretation issued recently.

Under the interpretation, medical staff faces being charged with commercial bribery if they receive bribes from sales agents of pharmaceutical companies and suppliers of medical equipment, or if they help promote pharmaceutical products through their prescriptions for the benefits.

Similarly, teachers face the charges if they accept bribes from sales agents of textbooks, teaching facilities, school uniforms and other related items during the course of their work. Organizers of sports and cultural activities will also be covered under the interpretation.

Members of judicial or evaluation groups, members of committees for the procurement of items and members of bidding procurement groups, can also be punished for crimes committed under the circumstances of receiving illegal returns.

Those found guilty of the crimes could be jailed.

The latest move by the SPC and SPP is in accordance with two amendments to the Criminal Law issued in November 2005 and June 2006.

Previously, the Criminal Law stipulated that crimes of bribery were limited to government officials or employees of State companies.

An interpretation released last November included commercial crimes of non-government officials and employees to the legal definition.

Public servants, State company employees and those who were "employees of other institutions" were also previously subject to commercial bribery laws.

The new interpretation has clarified that the "other institutions" include State organs, social institutions, community residents' committees, village committees and organizing committees for sports and cultural activities.

"The interpretation further clarifies the circumstances in facing crimes of bribery, especially the affirmation of commercial bribery, to staff of companies, enterprises and other institutions," the SPC and SPP said.

The interpretation also clarified that rewards of monetary value given to suspects will be considered bribes, including home furnishing, travel packages and shopping coupons.

Bribery cases have been on the rise in recent years.

From 2002-2007, official records showed that the SPP dealt with 19,963 commercial bribery cases involving government officials.

Since 2006, the SPC and SPP have reportedly cracked down on commercial bribery by focusing on areas ranging from construction, land transfer, property transactions and the purchase of medical and pharmaceutical products, to bank loans, securities, and commercial insurance.

[Source: Xinhua](http://news.xinhuanet.com/english/2008-11/25/content_10408969.htm) ([see archive](Doctors_teachers_may_face_graft_charges.pdf))

### China to cut 19b yuan in administrative fees to boost economy

An administrative fee cut on 100 items will save Chinese enterprises about 19 billion yuan ($2.78 billion), announced the Ministry of Finance (MOF) recently.

On November 13, the MOF and the National Development and Reform Committee (NDRC), the country's top economic planner, jointly announced a decision to abolish administrative fees in areas such as business license applications, industrial construction, foreign trade, agricultural production, employment and education, among others.

The fiscal policy takes effect on January 1, 2009.

"The move supports the government's decision to stimulate domestic demand and promote economic growth," the MOF said on its web site.

According to the ministry, such a "powerful" measure will help encourage company investment and social consumption.

Meanwhile, financial departments at all levels have been ordered to properly arrange fiscal budgets and guarantee administration funds to tackle the decrease in governmental income caused by the fee cuts.

The MOF didn't specify the estimated revenue loss.

In September, China ceased administrative charges on local markets and individual merchants, saving about 17 billion yuan for the related economic sector, MOF statistics showed.

[Source: Ministry of Commerce](http://english.mofcom.gov.cn/article/newsrelease/counselorsoffice/westernasiaandafricareport/200811/20081105904497.shtml) ([see archive](China_to_cut_19b_yuan_in_administrative_fees_to_boost_economy.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

**Charltons - China News Alerts Newsletter - Issue 267 - 26 November 2008**