Charltons - China News Alerts Newsletter - 15 December 2008

[online version](http://www.charltonslaw.com/china-news-alert-issue-270/)

# China News Alert Issue 270

## Capital Markets

### China pledges to further open financial sevices sector

China recently pledged to further open its financial services sector and further integrate into global markets.

The pledge came at the end of the two-day China-US Strategic Economic Dialogue(SED) in Beijing.

"Foreign incorporated banks in China will be allowed to trade bonds in China in the inter-bank market, both for their customers or their own accounts," according to a SED fact sheet released by the Chinese side.

"This action opens up market opportunities for US banks that were previously limited to Chinese banks," said a US fact sheet.

To promote financial stability, China will allow foreign banks to increase their liquidity through either guarantees or foreign currency loans from overseas affiliates on a temporary basis, notwithstanding foreign currency debt quotas.

The US fact sheet said the move helped maintain investor and depositor confidence so that US banks can continue to grow their business in China.

The twice-yearly SED, initiated by the two presidents, is currently the highest-level economic dialogue between the two nations.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-12/05/content_7276041.htm) ([see archive](China_pledges_to_further_open_financial_sevices_sector.pdf))

### Institutions to be set up for smaller enterprises

Smaller enterprises, which have long had trouble getting finance, are expected to get better access to loans as new institutions will be set up specifically for that purpose.

The China Banking Regulatory Commission (CBRC) said the new financial institutions are intended to offer better financial support for smaller enterprises to avoid widespread bankruptcies and massive lay-offs, because such companies are less proficient at handling risks, especially amid the financial turmoil that is now affecting China.

These institutions will be established by commercial banks as a quasi-corporate body or subsidiary that will run independently, the CBRC said.

The commission said smaller enterprises are identified as those with an authorized credit of 5 million yuan ($720,000), assets of less than 10 million yuan or annual sales of less than 30 million yuan. However, these standards only applied to document filing, and banks could set other definitions.

Large policy banks and national commercial banks were targeted in the guidelines issued by the CBRC, as such large banks are reluctant to lend to smaller enterprises, which they consider more risky.

The commission said the independent institutions could have a system for the provision of bad loans, separate from the parent banks, and work out a mechanism to speed up writedowns of bad loans, leaving these large banks unimpaired by higher risks.

Amid the global financial crisis, China's small and medium-sized enterprises, largely labor-intensive and vulnerable to fluctuations in domestic and external demand, are affected most.

In the first half of 2008, 67,000 such companies, each with a business volume exceeding 5 million yuan, closed and laid off more than 20 million employees, said the National Development and Reform Commission.

That figure doesn't include service industry firms or small companies with sales of less than 5 million yuan, as there are no authoritative figures available on those categories

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-12/06/content_7279077.htm) ([see archive](Institutions_to_be_set_up_for_smaller_enterprises.pdf))

## Taxation

### China unveils scheme for fuel tax reform

China unveiled its long-awaited plan on fuel tax reform recently, hiking the fixed amount of money levied on oil consumption, while phasing out some fees levied on drivers.

The tax on each liter of gasoline will rise from 0.2 yuan to 1 yuan, while that for diesel will jump from 0.1 yuan to 0.8 yuan starting from January 1, 2009, according to a statement jointly issued by four ministries. They are the National Development and Reform Commission (NDRC), the Ministry of Finance, Ministry of Transportation and State Administration of Taxation.

Despite the tax hike, Chinese motorists do not have to pay more for fuel, according to the statement. Analysts said that may mean an actual cut on retail fuel prices before enacting the tax increase. Global crude oil prices have fallen more than 70 percent since peaking in July. But Chinese drivers have not enjoyed the benefits of cheaper oil, as the government-set prices are yet to be reduced.

The announced plan put an end to wild guessing games, including speculations that oil consumers will have to pay a fixed percentage of the fuel price as consumption tax. The rumored tax rate ranged from 20 percent to 50 percent, prompting fears among private car-owners that their spending power will be eroded.

As other nations are racing to stimulate spending amid a major global economic slowdown, Chinese policy-makers do not want to add burdens on consumers, as they are working to boost domestic consumption to help cushion an economic downturn.

Coupled with the tax hike, six types of fees on road and waterway maintenance will be canceled, while tolls on second-class roads built by the government on loans will be phased out, the statement said.

As a remedy, the increased fuel tax revenue will be used to cover expenditure on road and waterway maintenance and management, subsidize the losses of local governments due to the abolishment of road tolls and support farmers and disadvantaged people affected by the reform.

The reform was also part of the government's efforts to reduce the green house effect and cut down the country's energy intensity. The plan "is aimed at facilitating energy saving and emission cut as well as the economic structural adjustment," the four ministries said in the statement.

In a major reform of the country's oil-pricing mechanism, the statement said the State will set a ceiling on the fuel price. Currently, the NDRC determined a benchmark price, allowing refiners to charge buyers 8 percent more or less.

The four ministries are soliciting public opinions on the plan before December 12.

[Source: China Daily](http://www.chinadaily.com.cn/china/2008-12/05/content_7277307.htm) ([see archive](China_unveils_scheme_for_fuel_tax_reform.pdf))

### China explains on proposed refrom of fuel tax, pricing

CHINA recently gave further explanation on the proposed reform of fuel tax and pricing in a bid to dispel misunderstanding that a higher consumption tax will mean higher pump prices.

The authorities released a draft reform plan to solicit public opinions till Dec. 12. It had been long advocated by experts as key for energy saving and economic structure transform.

The plan, scheduled to take effect on Jan. 1, will abolish six fees now charged for road or waterway maintenance and management.

But drivers will pay higher fuel consumption taxes. Gasoline taxes will be raised from 0.2 yuan (about 3 US cents) per liter to 1 yuan and diesel taxes from 0.1 yuan per liter to 0.8 yuan.

The government reiterated its statement that the pump prices, which include the higher tax, won't be raised and the reform won't increase costs for fuel consumers.

The tax is reflected in the pump prices and isn't an additional increase to the retail prices, said a joint statement by the National Development and Reform Commission (NDRC), Ministry of Finance, Ministry of Transport and State Administration of Taxation.

The proposed tax is lower than the level in the European Union and also in the neighboring countries and regions, it said.

The draft said China's domestic crude oil prices should be set directly in line with world prices, but the link should be controlled and indirect for refined petroleum prices.

There will be a ceiling on pump prices as part of the plan. The government said it will continue to properly regulate domestic pump prices to prevent the negative impacts of huge fluctuations in the international oil prices on the domestic market.

The reform helps to promote a healthy development of the oil sector and energy saving, and to ensure domestic fuel supply and a stable economic growth, said the statement.

But it said the government will increase subsidies to farmers, taxi drivers, and sectors of fishing, forestry, and public transport.

The reform will be a significant step towards liberalizing retail fuel prices, said researcher Zhou Dadi from the Energy Research Institute of the NDRC.

China has been pushing for fuel tax reform for many years, and the idea of a fuel tax was raised as early as 1994. Both officials and economists said the plunge in global oil price presents a window of opportunity for this reform.

The world crude oil price has plunged almost 70 percent from a peak of US$147 per barrel in mid-July.

Even with oil prices tumbling so much, Chinese drivers are paying much more than those in many other countries because domestic fuel prices have been unchanged since June. Government-set prices are changed only infrequently.

The pump prices are higher than the levels in the United States, but lower than that in some European and Asian nations, said the statement. But it noted this is because of oil resource shortages in the European and Asian countries and their intention to use higher prices to encourage energy saving.

[Source: Shanghai Daily](http://www.shanghaidaily.com/article/?id=383582&type=Business&page=1) (Link no longer active)

### Nude Transfer of Land and House Ownership Between Nature Person and Their Individual Wholly-funded Enterprises to be Exempted from Deed Tax

Nude transfer of land and house ownership between nature person and their individual wholly-funded enterprises or one-person limited liability companies shall be subject to the nude transfer of land and house ownership inside a same investor, and shall be exempted from the deed tax.

The aforementioned provisions were made by the Circular on Issues Concerning the Deed Tax on Land and House Ownership Transfer between Nature Person and Their Individual Wholly-funded Enterprises or One-person Limited Liability Companies, which was released by China's Ministry of Finance and the State Administration of Taxation on November 17, 2008.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5090) ([see archive](Nude_Transfer_of_Land_and_House_Ownership_Between_Nature_Person_and_Their_Individual_Wholly-funded_Enterprises_to_be_Exempted_from_Deed_Tax.pdf))

### Tax cuts for businesses in pipeline

As top policymakers ponder ways to ensure GDP growth of at least 8 percent next year, the government is "very likely" to initiate cuts in business tax to add impetus to the slowing economy.

The officials on December 8 began the three-day annual Central Economic Work Conference in Beijing, which sets the tone for policies next year.

The authorities may soon cut business tax for enterprises by 1 percentage point from the current 5 percent, a source close to policymakers told, without mentioning a timeframe.

That would amount to 120 billion yuan ($17.5 billion) worth of tax cuts given annual business tax revenues of more than 600 billion yuan ($87.6 billion) last year.

Business tax - distinct from enterprise income tax and value added tax - is levied on enterprises and individuals that provide labor services, transfer intangible assets or sell immovable property in China.

It was also reported earlier that policymakers would discuss raising the threshold of personal income tax from 2,000 yuan to 3,000 yuan a month to spur domestic consumption.

The government, which announced a massive $586 billion stimulus package on Nov 9, wants at least 8 percent growth to provide employment opportunities to the roughly 10 million people entering the job market each year.

Policymakers at the economic conference are expected to reach a consensus on how to implement the stimulus plan in a coordinated manner.

"The economic conference this week may be mostly about fine-tuning these stimulus measures and thinking ahead to what next," said David Dollar, the World Bank country chief for China.

"I think the stimulus will be enough to keep China growing at a healthy rate so the focus now should be on good implementation."

"They (policymakers) will be laying out just how big the kitchen sink has to be to re-invigorate the economy," said Stephen Green, senior Standard Chartered Bank economist in Shanghai. "All the data suggests the economy has further skidded into the fourth quarter."

"How to co-ordinate all that, how to judge its effectiveness, and what is next in terms of policy will likely all be discussed at the conference," Green said.

The major task at the conference is for policymakers to take concerted steps to keep the economy from being derailed by the global financial crisis and economic slowdown.

"Above all else, the aim of the meeting will be to get everyone on the same page - growth, above all else," he said, adding that the effect of the stimulus policies would surface in the second quarter of next year.

The nation's economic growth dropped to 9 percent in the third quarter, compared with 11.4 percent last year. The global economic slowdown may even drag down China's growth to 7.5 percent in 2009, the lowest in two decades, the World Bank forecast earlier.

The Chinese Academy of Social Sciences, however, was more upbeat in a report last week, tipping growth of around 9 percent next year.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-12/09/content_7283566.htm) ([see archive](Tax_cuts_for_businesses_in_pipeline.pdf))

## Corporate & Commercial

### Shanghai welcomes more int'l companies to nest

The Shanghai municipal government is looking to attract more international companies to set up regional headquarters in the city, an official said recently.

New policies, involving governmental subsidies, capital management, and minimum registered capital, will be announced soon, said Sha Hailin, head of the business affairs commission of the municipal government.

The municipal government would provide a bounty of five million yuan ( US$750,000) for those who set a new investment company and ten million yuan for a new national headquarters, Sha said.

According to municipal regulations revised in July, the examination period of a new regional headquarters will be cut from30 to 10 workdays.

The Germany company ZF Friedrichshafen AG, a leading worldwide supplier of automobile parts, recently established its national and Asian headquarter in Shanghai.

The company's CFO of Asia area, Klaus Billetter, said the international financial crisis had hit the automobile industry but had not stopped development in China.

Shanghai has more than 223 regional headquarters of international companies as of 2008.

[Source: China Daily](http://www.chinadaily.com.cn/china/2008-12/05/content_7275287.htm) ([see archive](Shanghai_welcomes_more_intl_companies_to_nest.pdf))

### Courts to give economic cases priority

Courts will give economic cases priority to ensure the interests of workers, banks and companies are properly protected.

"Time is of the essence in cases involving the illegal withdrawal of funds by domestic and foreign investors," Supreme People's Court spokesman Ni Shouming told a press conference recently.

The courts will make sure that people attempting to transfer assets will be put under tight scrutiny.

Ni said property and other assets of a company will be frozen to ensure the rights of workers and banks are not compromised before a case is concluded.

The courts will take measures to see that in such cases shareholders and senior management do not flee, making litigation more complicated and time consuming, he said.

"We will penalize people who try to take advantage of flaws in the investment guidelines. We will make sure all liquidation takes place according to the law so that the rights and interests of creditors are protected," Ni said.

The number cases in which people have fled after selling the assets of company without the knowledge of the authorities and the banks have increased in the past two years.

This year in particular, many companies are feeling the effects of changes to export tax rebates, interest and taxation rates, and the high costs of raw materials and labor.

Statistics show that the number of labor disputes have increased by nearly 94 percent in the first 10 months year-on-year.

"As most of the foreign funded companies are supported by domestic companies, any flight of capital by foreign funded companies will affect the domestic ones," Ni said.

Su Haopeng, a professor with China University of International Business and Economics, said the new Labor Contract Law, introduced earlier this year, had gone a long way to protecting the interests of workers and their social security, and this in turn, had led to an increase in costs for companies.

"New policies on pollution, already in force in some of the provinces, are also pushing more companies to flee," Su said.

He said the liquidation of assets should only be done after defaulted wages have been paid, social insurance commitments met, and outstanding taxes paid.

In Shandong province, 87 companies funded by investors from the Republic of Korea (ROK), withdrew from the province without the proper liquidation of assets last year. This number had grown from 21 in 2003.

On Jan 12 this year, more than 10 ROK company officials suddenly abandoned their Yantai Shigang Fiber Co Ltd in Shandong, and fled due to financial difficulties.

They left without paying more than 3,000 workers, and unpaid debts of 54 million yuan ($7.8 million).

"The courts will equally protect the lawful rights and interests of domestic and foreign enterprises, and individuals," Ni said.

"The courts will follow international rules and regulations along with Chinese laws to give fair hearings to domestic and foreign parties involved in disputes."

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-12/05/content_7273879.htm) ([see archive](Courts_to_give_economic_cases_priority.pdf))

### Sponsors Eligible to be Present in the Shareholder's Meeting

Beginning on December 8, 2008, sponsor institutions and the sponsor representatives will be eligible to be present in the meeting of board of directors, meeting of supervisors and the shareholders' meeting of the share issuers. They also have the rights to check in the commercial banks the information of special accounts of funds raised by listed companies.

The Shenzhen Stock Exchange (SSE) released on December 8 the Guidelines of the Shenzhen Stock Exchange for the Sponsor of Small and Medium-sized Enterprise Board (Revised in 2008) (Guidelines). Under the Guidelines, when the sponsor institutions or sponsor representatives change, the former institutions and representatives must coordinate with the hand-over works, and submit the documents, in written, concerning the problems and risks of the listed firms to the new sponsor institutions.

The bourse released in August 2004 the guidelines for sponsor of small and medium-sized enterprise board for the first time, so as to regulate the continuous supervision and guiding of the sponsor institutions and representatives.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=5098) ([see archive](Sponsors_Eligible_to_be_Present_in_the_Shareholders_Meeting.pdf))

## Other

### HKEx to work with Shanghai counterpart

Hong Kong Exchanges & Clearing (HKEx), operator of Asia's third-largest stock market, said it will team up with its Shanghai counterpart to better serve companies trading shares in both cities simultaneously.

Paul Chow, chief executive of HKEx, said that focusing on the mainland will be a strategy to leverage the strength of the bourse. "We will continue to conduct roadshows on the mainland and overseas," he said at a luncheon recently.

Although the influx of mainland companies seeking floatation in Hong Kong has shrunk as potential issuers worried their offers can't receive strong demand from investors, mainland enterprises, whose well-being relies heavily on the region, still play an important role in the city's financial market.

As of Nov 30, as many as 150 mainland companies have listed their stocks in Hong Kong; some 93 public companies in the bourse have most of their operations on the mainland; another 221 companies are non-H-share mainland private enterprise, or NHMPE, according to HKEx's statistics.

Chow said the operator has been working closely with its Shanghai counterpart and is considering possible areas of harmonization in cross-border market operations and regulation.

"We have several meetings in a year; we have staff exchange and training programs to help us better understand each other's operation and regulations," Chow said, adding the collaboration will benefit dually listed companies.

Asked if an acquisition or merger of the two bourse operators has been considered, he said it is "too early to say."

As of late October this year, over 50 public companies in Hong Kong bourse are dually listed in A and H-share markets, according to HKEx.

Chow said the bourse should go back to the basics and improve market quality. "If we don't have good quality, investors won't have confidence in the market."

HKEx posted a second straight decline in quarterly profit last month as a worsening economic outlook hurt trading.

Its net income fell 43 percent to HK$959.6 million from HK$1.68 billion a year earlier. Revenue declined 30 percent to HK$1.64 billion as fees from securities trading on the bourse dropped 26 percent to HK$655 million.

The average value of daily trading was HK$59.2 billion this quarter so far, about a third of the figure in 2007.

The bourse operator has also been pressured by an over 60 percent loss in the mainland's equity market.

[Source: China Daily](http://www.chinadaily.com.cn/hkedition/2008-12/05/content_7273200.htm) ([see archive](HKEx_to_work_with_Shanghai_counterpart.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 270 - 15 December 2008**