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# China News Alert Issue 304

## Capital Markets

### Small exporters to have guarantee support

The Ministry of Finance (MOF) recently issued interim measures on the administration of special guarantee funds for the financing of small and medium-sized foreign trade enterprises, to encourage guarantee agencies to offer such services.

The fund will be mainly used in the following three ways.

1. Guarantee agencies providing services for the financing of small and medium-sized foreign trade enterprises will be granted a subsidy of no more than two per cent of the total amount guaranteed.
2. Guarantee agencies will be encouraged to provide low-cost guarantee services. Under the prerequisite of not increasing other fee standards, guarantee services will be rewarded for the financing of small and medium-sized exporters with a service charge rate lower than 50 per cent of the benchmark lending rate of banks for the same period.
3. The local governments of regions with under-developed credit guarantee services will be supported in financing the establishment of guarantee agencies and carrying out guarantee services for the financing of small and medium-sized foreign trade enterprises. They will be granted no more than 30 per cent of the total funds from the local government. Subsidies to support the establishment of guarantee agencies should not exceed 30 per cent of the special funds allocated to local governments by the central government.

The measures also specify qualification requirements for small and medium-sized foreign trade enterprises. Such enterprises should have a real export turnover in 2008 or 2009.

Guarantee agencies applying for special funds must have the following three qualifications.

1. They must be set up according to the law and possess independent legal person status.
2. They must have a sound fiscal administrative system and withdraw, manage and use various types of reserve funds according to regulations.
3. They must have good accounting, tax-paying and bank credit.

In addition, the MOF will adopt random inspections to prevent improper fund utilisation and management.

[Source: People's Daily Online](http://english.people.com.cn/90001/90778/90857/90861/6739139.html) ([see archive](Small_exporters_to_have_guarantee_support.pdf))

### SSE Issues Guidelines for the Election and Conduct of Directors of Listed Companies

On 25th August the Shanghai Stock Exchange (SSE) released the "SSE Guidelines for the Election and Conduct of Directors of Listed Companies".

With the aim of regulating the election and duty fulfillment of directors of listed companies, as well as to detail the requirements for their election qualifications and the procedures for the exercising of their powers, the guidelines provide practical rules for due diligence and the faithful fulfillment of duties.

The guidelines provide regulations for the election of directors, covering areas including directorate member requirements, procedures for the nomination of directors, qualifications for holding the position, appraisals and resignation. They emphasise the review of directors' qualifications and the appraisal of their professional qualities and duty fulfillment.

According to the guidelines, nominators and candidates for director should reply to any enquiries raised at the shareholders' meeting.

The candidates must not have had imposed on them any administrative sanction by the China Securities Regulatory Commission, any public censure or more than two stock exchange criticism circulars in the previous three years. They must not be currently classed by a stock exchange as unsuitable to hold the position of director.

In light of the company law, the guidelines also require listed companies' supervisors to conduct an annual appraisal of directors for due diligence purposes.

The guidelines, based on relevant regulations such as the company law, define the obligations to be faithfully fulfilled by directors. These include correcting any behaviour that damages the interests of the listed company, disclosing information about any relationship with interested parties and other obligations including non-competition, confidentiality and shareholder management.

In addition, the guidelines also require that directors must not damage the interests of the listed company for any interests of other parties. They should take necessary measures to prevent listed companies' interests from being damaged.

In line with previous regulatory practices, the guidelines focus on duty fulfillment standards of directors. Directors are required to look after the best interests of the listed company regarding business interests and risk management, by being aware of possible judgments involving other parties in similar situations.

Directors are not exempted from obligations by claiming ignorance of the companies' business or other relevant issues.

Directors should attend the directorate meetings in person. They can only vote after making their opinions clear during discussion and having them minuted. When discussing and submitting issues to be decided by the directorate, directors should first require relevant staff to provide them with detailed material and explanations before coming to a decision.

The guidelines require that the chairmen of the directorate should ensure correct procedures during directorate meetings, and cannot, in any way, restrict or hinder other directors from exercising their powers. They have obligations to inform the directors of significant issues regarding the company.

The guidelines specify the issues and functions that independent directors should pay special attention to when exercising their powers.

The annual office hours of a director of a listed company, as defined in the guidelines, should not be less than 10 days.

All of this will help listed companies further improve their quality and level of corporate governance.

[Source: Shanghai Stock Exchange](http://english.sse.com.cn/aboutsse/news/c/28642.shtml) ([see archive](SSE_Issues_Guidelines_of_Election_Conducts_of_Directors_of_Listed_Companies.pdf))

### Shanghai cracks barriers to foreign PEs' development

Thanks to the proposed regulations on foreign funded equity investment management enterprises issued by the government of Pudong district in June, Shanghai became the first Chinese city to allow foreign PEs to register as "equity investment management enterprises". The city's new policy has aroused foreign funded PEs' enthusiasm to set up asset management companies there.

"Shanghai's new policy marks that fact that foreign PEs now enjoy equal national treatment with domestic enterprises," said a partner in a foreign PE firm.

At the end of 2008, aiming to curb the inflow of hot money, the State Administration of Foreign Exchange (SAFE) issued a "Circular on Relevant Business Operations Issues Concerning Improving the Administration of the Payment and Settlement of Foreign Exchange Capital of Foreign-Funded Enterprises", restricting foreign PE/VCs' investment in China.

"As our limited partners (LPs) are domestic funded, our funds are civil funded corporate bodies in China. According to Shanghai's new policy, there is no limitation on our investment," said Victor Chu, the chairman of China's largest investment firm, First Eastern Investment Group.

Foreign funded PE/VCs used to enter China by setting up wholly foreign owned enterprises (WFOEs) and using RMB obtained from capital settlement for equity investment. However, the SAFE's circular stipulated that "unless otherwise specified, RMB obtained from the settlement of capital shall not be used for domestic equity investment."

Shanghai municipal government has exchanged views with the SAFE, hoping to ease this restriction, said a report in the Shanghai Securities News.

The city is also trying to expand investment by yuan funds that contain foreign capital. Funds that mainly consist of RMB capital should be treated as domestic funds, said Fang Xinghai, director of the Shanghai government's financial services office.

"Limited partners are lacking in China," said Cao Wenlian, Deputy Director-General at the Department of Fiscal and Financial Affairs, National Development and Reform Commission (NDRC). China has only a very small number of LPs and most of them are not yet mature.

Shanghai has abundant state-owned capital. How to arouse state-owned capital's interest in private equity investment and make them mature LPs are two questions Shanghai municipal government is studying, said Fang.

Yangtze River Delta, the country's major economic powerhouse, will also offer strong support to the PEs in Shanghai.

[Source: People's Daily Online](http://english.people.com.cn/90001/90778/90857/90859/6738767.html) ([see archive](Shanghai_cracks_barriers_to_foreign_PEs_development.pdf))

## Corporate & Commercial

### China orders environmental evaluation on new projects

China recently published a regulation to enforce environmental impact assessments on new projects from October, in an effort to prevent pollution or ecological destruction from their outset.

According to the regulation, approved on 12th August by the State Council, environmental evaluations are required before planning approval for development projects is granted.

Under the regulation, environmental evaluation of city-level projects will be conducted by local environmental authorities, while provincial projects must be evaluated by environmental authorities under the State Council.

The regulation covers all development activities, from land use and the development of rivers or oceans, to development projects relating to industrial, agricultural, husbandry, and forestry sectors as well as energy, water conservation, transportation, urban construction, tourism, and the exploration of natural resources.

[Source: China.org](http://www.china.org.cn/environment/news/2009-08/22/content_18380098.htm) ([see archive](China_orders_environmental_evaluation_on_new_projects.pdf))

### HSBC enters China's life insurance market

HSBC Life Insurance Company Limited, a joint venture set up by HSBC and the Beijing-based National Trust, opened for business in Shanghai recently, marking the global financial giant's entrance into one of the world's fastest-growing life insurance markets.

The joint venture, headquartered in Shanghai, has a registered capital of 500 million yuan (US$73.2 million). HSBC and the National Trust each hold a 50 per cent stake.

The company will focus on the sector of China's population that has rapidly-growing discretionary income and will offer life, pension and medical insurance products.

"China is the focus of HSBC's strategy in emerging markets," said Zheng Haiquan, chairman of HSBC Asia Pacific. "If HSBC has no insurance business in China, we could not be called one of the world's largest insurance companies and China's largest foreign bank."

China's total life insurance premiums amounted to 733.8 billion yuan in 2008, up 48 per cent from the previous year, the second in scale in Asia after Japan. But its insurance penetration, or premiums as a percentage of the economy, was low at 3.3 per cent, said David Fried, board chairman of the joint venture and chief executive officer of HSBC Insurance for Asia Pacific.

China's large population, low insurance penetration and ongoing economic reforms make for confidence in the important role the Chinese market would play for HSBC insurance's global expansion, he said.

HSBC also holds 16.78 per cent of Ping An Insurance (Group) Company of China, the country's second largest life insurer.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-08/27/content_11954391.htm) ([see archive](HSBC_enters_Chinas_life_insurance_market.pdf))

## Other

### Top legislature passes armed police law

China's top legislature recently passed the country's first law on the armed police, giving the force new duties and statutory authority to respond to security emergencies.

The Law on the People's Armed Police Force (PAPF) of the People's Republic of China mandates the mobilisation of the 660,000-strong PAPF to deal with riots, disruptions, serious violent crimes, terrorist attacks and other emergencies.

Armed PAPF officers will patrol China's municipalities, provincial and regional capitals during periods of unrest, and take responsibility for the security of major transport lines and important public facilities.

Without defining the times when such activities would be authorised, the law says the PAPF will also have a duty to assist other law enforcement agencies in arrest, pursuit and escort operations.

The law was passed by legislators after its second reading at the 10th session of the Standing Committee of the 11th National People's Congress (NPC), and endorsed by President Hu Jintao on 27th August to make it effective.

Under the 38-article law, PAPF troops can establish security checkpoints to examine all personnel and vehicles entering and departing an area under their authority. PAPF personnel can interrogate suspicious persons and check their identification documents, belongings and vehicles.

They are also authorised to "take necessary measures" to dispel large assemblies of people that compromise social order and the security of facilities the PAPF protects.

However, the law prohibits PAPF troops from restricting individual freedom by detention or body searches as well as raiding individual residences without a legal warrant.

PAPF troops on duty or operations should wear their olive green uniforms and bear their credentials, the law says.

Although governments above county-level can request the engagement of the PAPF in security operations, the law strictly limits the authority to mobilise and deploy the PAPF to the State Council and the Central Military Commission (CMC).

The PAPF―drawn from China's police force―was founded in 1982 as an internal security force to provide services ranging from protecting important political figures to urban firefighting.

Under the dual command of the CMC and the State Council, the armed police played a major role in quelling riots in Lhasa on 14th March last year and in Urumqi on 5th July.

[Source: China Daily](http://www.chinadaily.com.cn/china/2009-08/27/content_8625494.htm) ([see archive](Top_legislature_passes_armed_police_law.pdf))

### Legislature takes urgent action in climate change fight

China's top legislature recently approved a resolution on climate change, which was originally not on its work plan for the year, speeding up the country's effort to fight global warming.

The move was taken ahead of next month's UN climate summit, which is expected to provide high-level political impetus to the negotiating process for an international climate treaty.

The resolution was endorsed by lawmakers at the closing of a four-day session of the Standing Committee of National People's Congress (NPC).

It said the country should "strengthen energy-saving and emission reduction", and "strive to control greenhouse gas emissions", while including such efforts in national development plans.

The resolution, not originally listed for legislators' deliberation this year, was proposed by NPC deputies earlier this year, said Pu Haiqing, a deputy director of NPC's environment and resource protection committee.

"Fighting climate change has become an urgent task, with the country facing an increased frequency of extreme weather and climate disasters," Pu said.

The proactive attitude of the country's parliament shows China is "strengthening and speeding up" its domestic efforts in combating climate change, He Jiankun, deputy head of the State Council's expert panel on climate change policies, said recently.

"The country is already carrying out pilot projects on low-carbon economy in some provinces, where the carbon intensity is listed as one of the major assessment indicators," said He. "Also, the country will carry out pilot carbon trading projects in some designated areas and industries."

"The lawmakers have expressed a very active attitude, and, obviously, China is taking bigger steps in dealing with the climate change," He said.

Wu Changhua, Greater China director of the London-based Climate Group, said that with the resolution, China has determined to take the "green economy" as its path for future development.

"Taking mitigation and adaptation actions are now viewed as a necessity for China's own development, not out of consideration for international climate negotiations," Wu said.

The resolution said China will draft laws and regulations to provide more vigorous legal backing for fighting climate change.

[Source: People's Daily Online](http://english.people.com.cn/90001/90776/90785/6741872.html) ([see archive](Legislature_takes_urgent_action_in_climate_change_fight.pdf))

### China's legislature updates laws

China's top legislature recently agreed a legislation overhaul with the updating and revision of 141 provisions in 59 different laws.

Most amendments focused on deleting outdated terms or clarifying them, as well as making certain provisions consistent with revised laws.

Article 7 of the General Principle of the Civil Law of the People's Republic of China, which reads, "Civil activities shall have respect for social ethics and shall not harm the public interest, undermine state economic plans or disrupt social economic order," has had the expression "undermine state economic plans" deleted.

The Standing Committee of the National People's Congress (NPC) agreed that "state economic plans" had been made redundant with China's transition from a planned to a market-oriented economy over the past three decades.

In laws regarding fisheries, railways, urban real estate and electric power, the expression "requisition" has been changed into "levy". In China, "requisition" refers to the transfer of the right of use, while "levy" refers to the transfer of ownership from individuals or groups to the state.

In many laws regarding mineral resources, wild life protection, frontier hygiene and quarantine, teaching, and civil aviation, references to specific articles of the Criminal Law have been altered to "according to relevant provisions of the Criminal Law".

The 10th session of the Standing Committee of the 11th NPC was held in Beijing from 24th to 27th August. At the ninth session held in June, eight laws and regulations were annulled.

[Source: China.org](http://www.china.org.cn/government/central_government/2009-08/27/content_18415603.htm) ([see archive](Chinas_legislature_updates_laws.pdf))

### Top legislature reviews draft law on government powers

China's top legislature considered for the third time a draft law regulating government mandatory power, the first of its kind to prevent abuses of administrative power.

The draft administrative mandatory power law was submitted to the Standing Committee of the National People's Congress (NPC), the top legislature, for a third reading. It had its first reading in December 2005 and second reading in October 2007.

The draft law, once adopted, would mark the completion of the legal framework regarding the administrative authority of government agencies, experts say.

An official with the NPC Law Committee said that due to a lack of a unified law, mandatory power was often abused by the government, and public interest infringed upon.

He said some government departments did not effectively carry out their administrative duty, or administrative power was abused.

The law will eventually stipulate which government departments could exercise mandatory power. Other departments should apply to the court for a warrant to execute a mandate. The draft law does not yet state which departments could exercise mandatory powers.

The draft says government departments should attempt to reach reconciliation with people involved in disputes if their interests or the public interest were not damaged.

"Government departments should not carry out mandatory power at night or on holidays," it says.

Actions such as "cutting water, electricity, heating or fuel gas supplies" must not be used to force people to yield to power.

Under China's Legislation Law, deliberations on a draft bill cease if it fails to be listed in the top legislature's schedule for two years.

The reading of the law at this legislative session, almost two years from the second reading in October 2007, has kept the draft "active".

[Source: China.org](http://www.china.org.cn/government/central_government/2009-08/25/content_18394627.htm) ([see archive](Top_legislature_reviews_draft_law_on_govt_powers.pdf))

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