Charltons - China News Alerts Newsletter - 30 August 2012

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# China News Alert Issue 360

## Law

### New legislation, rules and standards come into effect in August

The Standing Committee of the State Council has decided that, from 1 August 2012 to the end of 2012, the scope of the pilot program to levy value-added tax upon the transportation industry and some other modern services industries will be expanded in phases from Shanghai to 11 other provinces and cities. Jiangsu, Beijing, Tianjin, Zhejiang, Anhui, Fujian, Hubei, Guangdong, Xiamen and Shenzhen will be included within the scope of the pilot program. Reforms in trade and foreign exchange will be implemented. These reforms aim to simplify the existing procedures and process in the settlement of import and export transactions. The documents and procedures required by banks for these transactions will be simplified.

[Source](http://finance.people.com.cn/n/2012/0801/c1004-18643846.html) ([see archive](New_legislation_rules_and_standards_come_into_effect_in_August.pdf))

### Specific provisions will regulate fund services providers for the first time

The draft securities investment fund amendment bill will include a chapter dedicated to regulating fund services providers.

As the existing law lacks sufficient detail in relation to the regulation of firms such as fund sales firms, fund share registration firms and fund valuation firms, it is not suitable for the needs of the fast developing fund industry. Therefore, there is a need for the draft amendment bill to also regulate fund services providers specifically.

This dedicated chapter will be distinguished by an emphasis on clear rules for such services as fund sales, fund clearing, fund share registration, fund valuation, fund investment advisory, fund assessment and information technology systems services. It will require providers of such services to register with the China Securities Regulatory Commission. Fund sales firms will also be required to explain fully to the investors the level of risk that the investments pose, sell investment products of appropriate risk according to the amount of risk that each investor is capable of accepting and fulfill their customer identification and anti-money laundering obligations.

The draft amendment bill will also require fund sales firms, fund clearing firms and fund share registration firms to ensure the safety and independence of settlement funds, preventing any entity or person from using any means to misappropriate them.

[Source](http://www.npc.gov.cn/huiyi/lfzt/zqtzjjfxdca/2012-06/27/content_1726888.htm) ([see archive](Specific_provisions_will_regulate_fund_services_providers_for_the_first_time.pdf))

### Fund managers to be prohibited from engaging in insider trading

The draft Amendment Bill on Securities Investment Funds will address existing problems in the operation of public fundraising.

In accordance with the requirements of the securities law, the amendment bill includes the managers, shareholders and controllers of funds within the scope of regulation. Fund managers and practitioners will be prohibited from engaging in insider trading, conflicts of interest, falsifying finances, holding securities on behalf of others or withdrawing investors' capital contributions.

The China Securities Regulatory Commission will order the appropriate disciplinary measures for shareholders and controllers of fund management companies who commit the aforementioned crimes or shareholders who do not meet the requirements of the law, requiring the transfer of the owned or controlled equity interests managed by the fund. If fund management companies operate illegally or assume too much risk, such that serious danger or disorder is brought to the securities market or the interests of the fund's investors are endangered, the China Securities Regulatory Commission may order the suspension of the fund management company's operations and appoint another firm to manage its funds or hold them in trust or for the funds to be returned to the investors.

[Source](http://www.npc.gov.cn/huiyi/lfzt/zqtzjjfxdca/2012-06/27/content_1726887.htm) ([see archive](Fund_managers_to_be_prohibited_from_engaging_in_insider_trading.pdf))

### Private equity funds to be included within the scope of regulation

The draft Amendment Bill on Securities Investment Fund has been submitted to the 27th session of the 11th Standing Committee of the National People's Congress for deliberation. As at the end of 2011, the amount of funds managed by China's 69 fund management companies totaled RMB 2.2 trillion. Securities investment funds are now the most important institutional investors in the securities market, their influence in society and on the market growing daily. The existing Law on Securities Investment Fund is insufficient for the needs of market development and fund regulation and requires amendment. To regulate the fund industry, and in particular the establishment and operation of non-public capital raising, the restriction of various means of illegal financing, the strengthening of the regulation of funds and the expansion of protection for investors' rights, the draft amendment bill focuses on four areas:

1. the inclusion of non-public capital raising within the scope of reform;
2. the lowering of the requirements to hold shareholders' meetings;
3. the inclusion of shareholders and controllers of fund managers within the scope of reform; and
4. the heightening of requirements for fund services institutions.

[Source](http://www.npc.gov.cn/huiyi/cwh/1127/2012-06/27/content_1726655.htm) ([see archive](Private_equity_funds_to_be_included_within_the_scope_of_regulation.pdf))

## M&A

### Anti-monopoly report in relation to additional conditions imposed on Walmart's acquisition of 33.6% shareholding interest in Niu Hai Holdings released

In accordance with article 27 of the Anti-Monopoly Law, the Ministry of Commerce has conducted an assessment of this acquisition. The Ministry of Commerce concluded that Walmart's acquisition of 33.6% equity interest in Niu Hai Holdings gives it control over the Yishiduo E-Commerce network, which may give it an unfair advantage over the rest of the industry, limiting competitiveness.

During the assessment, Walmart submitted to the Ministry of Commerce a final commitment to resolve the problem of limiting competitiveness. The Ministry of Commerce concluded that Walmart's commitment is sufficient to address the negative effects that the acquisition of equity interest poses to the market. The Ministry of Commerce accepted Walmart's commitment and imposed additional conditions before approving its acquisition of equity interest.

[Source](http://fldj.mofcom.gov.cn/article/zcfb/201208/20120808284410.shtml) ([see archive](Anti-monopoly_report_in_relation_to_additional_conditions_imposed_on_Walmarts_acquisition_of_336_shareholding_interest_in_Niu_Hai_Holdings_released.pdf))

## IP

### Apple faces new lawsuit following patent claims

Apple Inc.'s FaceTime software may violate intellectual property rights. Recently, Apple has been involved in a high-profile case in relation to its iPad trademark. Now, Apple is in a new lawsuit filed by a man in Taiwan over the alleged violation of intellectual property rights of FaceTime. The Zhejiang Intermediate People's Court will hear this case. The plaintiff's claim calls for Apple to cease its alleged infringement of intellectual property rights but does not specify any damages being sought.

[Source](http://www.chinaipr.gov.cn/newsarticle/news/enterprise/201208/1678686_1.html) ([see archive](Apple_faces_new_suit_over_patent_claim.pdf))

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