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MOFCOM Releases New Rules on Financing Leasing Enterprises

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On September 18, 2013, the Ministry of Commerce (“**MOFCOM**”) promulgated the *Administrative Measures for the Supervision on Financing Leasing Enterprises (Shang Liu Tong Fa [2013] No. 337)* (“**Circular 337**”), making further regulations for the supervision on financing leasing enterprises’ business operations and operational risks. Circular 337 has been in effect since October 1, 2013.

Integration of Supervision on both Domestic and Foreign-invested Financing Leasing Enterprises

Before the issuance of Circular 337, there existed two regulations for the two different kinds of financing leasing enterprises. The *Administrative Measures for Foreign Investment in the Leasing Industry (Order of the Ministry of Commerce [2005] No. 5)* (“**Circular 5**”) applied to foreign-invested financing leasing enterprises, while the *Circular of the Ministry of Commerce and the State Administration of Taxation on the Relevant Issues concerning Undertaking Financing Lease Business (Shang Jian Fa [2004] No. 560)* (“**Circular 560**”) applied to domestic financing leasing enterprises. Both Circular 5 and Circular 560 focused more on the establishment conditions and procedures for financing leasing enterprises, and paid less attention to the supervision of business operations and related risks after establishment. However, the requirements of establishment conditions, business scope, supervision and administration in the two regulations differ from one another.

Article 2 of Circular 337 provides that “the financing leasing enterprises herein refer to the enterprises engaging in the financing leasing business in accordance with the relevant regulations of the Ministry of Commerce”. This means that Circular 337 applies to both domestic and Foreign-invested financing leasing Enterprises. According to Circular 337, the establishment of domestic financing leasing enterprises will change from Circular 560’s pilot scheme to being based on a more formal administrative approval process, from the joint

confirmation process by MOFCOM and the State Administration of Taxation into an independent approval process by MOFCOM. Besides standardizing the establishment of financing leasing enterprises, Circular 337 focuses on the supervision of business operations and operational risks in order to comprehensively promote the healthy development of the financing leasing industry.

Establishment Conditions for Financing Leasing Enterprises

According to Article 3 and Article 4 of Circular 337, the following business and professional conditions shall be satisfied in order to establish a financing leasing enterprise: (1) having the asset size, financial strength and risk control capability in line with the business size; (2) having foreign investors comply with the related regulations on foreign investment; (3) having employees with professional knowledge, skills and experience in finance, trade, law, accounting and other areas and with good practice records; (4) having executives, including a general manager, deputy general manager and risk control supervisor, with no less than three years of experience in the leasing business or in managing financial institutions.

Compared with the establishment conditions provided in Circular 5 and Circular 560, Circular 337 maintains the high level requirements for the profession and experience of employees and executives, but does not mention the minimum registered capital requirement. According to Circular 5, the registered capital of foreign-invested financing leasing enterprises should be no less than USD 10 million. Circular 560 provided that the register capital of domestic leasing enterprise should be no less than RMB 40 million (if established before August 31, 2001) or RMB 170 million (if established between September 1, 2001 and December 31, 2003).

Business Operations of Financing Leasing Enterprises

According to Article 8 and Article 9 of Circular 337, financing leasing enterprises are allowed to carry out financing leasing businesses in forms such as direct leases, subleases, sale-and-lease-backs, leveraged leases, entrusted leases and joint leases. While assuming leasing businesses such as financing leasing as the principal businesses, financing leasing enterprises may also carry out businesses in relation to the principal businesses such as the purchase of leased property, disposal and maintenance of the residual value of property for leases and leasing transaction advisory.

Supervision on Financing Leasing Enterprises

As stipulated in Circular 337, the competent provincial level commercial departments shall be in charge of the supervision and administration of financing leasing enterprises. The content of supervision includes: continuously monitoring the business operations and operational risks of enterprises, setting up risk early warning and emergency treatment mechanisms, strictly

supervising and managing whether financing leasing enterprises are involved in any illegal activities such as deposit taking, loan issuing and operations beyond scope.

In addition to supervision by the competent provincial level commercial departments, MOFCOM will establish and improve the National Management Information System of Financing Leasing Enterprises, so as to dynamically understand, supervise and manage the business operations, internal controls, risk profiles, etc. of financing leasing enterprises by means of information technology. According to the *Notice on the Operation of National Management Information System of Financing Leasing Enterprises* issued by the General Office of MOFCOM on July 23, 2013, financing leasing enterprises shall use management information systems to file basic information on records, timely update the business information (Contract Registration Form and the Receivable Situations), register the lease for public information and inquiry, fill in the financing statements, inquire about the industry information, report and inquire about lessee contract breaches. The specific requirements for using the management information system include the following: (i) prepare and report the numerical statements and brief descriptions about the business conditions of the previous quarter within 15 business days after the end of each quarter; (ii) prepare and report the numerical statements and descriptions about the business conditions of the previous year, and submit and report the financing statements of the previous fiscal year (including the footnotes) audited by an accounting firm by April 30th of each year.

Important Announcement

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