

Summary of the Revision of the Regulations for Merger and Acquisition of Domestic Enterprises by Foreign Investors (promulgated on July 23, 2009)

On July 23, 2009, the Ministry of Commerce of the People's Republic of China (the "MOFCOM" of the PRC) promulgated the revised *Regulations for Merger and Acquisition of Domestic Enterprises by Foreign Investors* (Order of the MOFCOM, No.6, 2009) (the "New Regulations of M&A"). The New Regulations of M&A became effective as of the promulgation date and replaced the old Regulations of M&A which was promulgated by the MOFCOM together with the other five ministries and committees of the PRC through the Order of the MOFCOM, No.10, 2006 and became effective on September 8, 2006. (the "No.10 Regulations"). The revision was mainly made in accordance with the *Anti-Monopolization Law of the PRC* (took effect on August 1, 2008) and the *Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators* (took effect on August 3, 2008), specifically focused on the anti-monopolization examination of the merger and acquisition of domestic enterprises by foreign investors.

Chapter 5 of the No.10 Regulations (provisions on the anti-monopolization examination) was taken off from the New Regulations of M&A; the relevant provisions appear in the Supplementary Part of the New Regulations of M&A and the anti-monopolization examination is in accordance with the *Anti-Monopolization Law* and the *Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators*.

Based on the New Regulations of M&A, whether a transaction of merger with and acquisition of domestic enterprises by foreign investors needs to go through the anti-monopolization examination shall be subject to the *Anti-Monopolization Law* and the *Provisions of the State Council on the Standard for Declaration of Concentration of Business Operators*. If a merger with and/or acquisition of domestic enterprises by foreign investors meet the declaration standard specified by the *Provisions of the State Council on the Standards for Declaration of Concentration of Business Operators* under the *Anti-Monopolization Law*, the business operators shall declare to the MOFCOM for its approval prior to the transaction; the transaction will be prohibited if the relevant party fails to make the said requisite declaration.

Besides the foregoing principal revision, the New Regulations of M&A also involved a little literal and punctuative amendments compared to the No.10 Regulations, including a technical Chinese expressional amendment in the Subsection 4 of Section 16, a punctuative amendment in the Subsection 1 of Section 36 and two expressional amendments in Sections 42 and 44. We will not specify these amendments in this Newsletter as they are not material to M&A transactions made by foreign investors.

If you have any questions about the above information, please feel free to contact us. Thank you.

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