

REVISED MEASURES FOR THE REGISTRATION OF PLEDGE OF ACCOUNT RECEIVABLES

On 25 October 2017, the People's Bank of China ("**PBoC**") issued the revised *Measures for the Registration of Pledge of Account Receivables* (the "**Revised Measures**"), which will become effective on 1 December 2017. The Revised Measures are expected to improve the current registration system to keep up with developments of the fast-growing account receivables financing business.

BACKGROUND

The Property Law of the People's Republic of China (the "**Property Law**") promulgated by the PRC National People's Congress in March 2007 explicitly categorised account receivables as one of the rights that can be pledged as a security interest. The Property Law also provides that the pledge of account receivables shall be effective at the time of the registration.

In the same year, the PBoC issued the *Measures for the Registration of Pledge of Account Receivables* (the "**2007 Measures**"), which specified the requirements for the registration of pledge of account receivables, and designated the Credit Reference Centre, the People's Bank of China ("**CRC**") as the registration authority. CRC then published detailed rules in relation to the registration of account receivables pledge.

KEY DEVELOPMENTS

Set out below are the key areas of developments of the Revised Measures.

- **Extension of the scope of "account receivables"**

One catch-all limb is added in the definition of "account receivables" under the Revised Measures, extending the scope of account receivables to almost all kinds of rights to payments, except those generated from negotiable instruments or other negotiable securities and those which are prohibited to be transferred.

In addition, two existing types of account receivables are further clarified to reflect developments in the market:

- "claims arising from the provision of services" now specifically cover claims arising from the provision of services in areas of medical care, education as well as tourism; and

Key issues

- Extension of the scope of "account receivables"
- Extension of the registration period
- Introduction of the registration of transfer of account receivables

- "charging rights in respect of immovable properties" is replaced with a broader term, i.e. "rights to earnings derived from infrastructure and public utilities".

- **Extension of the registration period**

The Revised Measures extend the registration period from 1 year to 5 years to at least 6 months but no more than 30 years, and the maximum registration extension period has also been extended from 5 years to 30 years. These extensions are perceived to be catering for the financing demands for account receivables with both short and long terms.

Importantly, the Revised Measures have removed the previous provision that a registration expiry will lead to the ineffectiveness of a pledge registration. Such provision had been perceived not in consistency with the Property Law's position that the pledge shall take effect upon registration.

- **Introduction of the registration of transfer of account receivables**

The Revised Measures have a new provision providing that the registration of transfer of account receivables for financing purposes shall be regulated by reference to the Revised Measures. This indicates a new focus from the PBoC on the transfer of account receivables, which is a key pillar of the factoring business.

It should be noted that the registration for the transfer of account receivables is different from that for the account receivables pledge. The transfer is currently governed by *the Contract Law of the People's Republic of China*, under which registration is neither a requirement for validity nor the defense against a third party. Therefore, queries may arise as to (a) the rationale for regulating the transfer of account receivables with a registration system and (b) the justification for setting up a registration system for the transfer transactions by reference to the pledge registration system.

CONCLUSION

The Revised Measures are envisaged as a good effort in streamlining the registration process to facilitate the development of account receivables financing. From a practical perspective, the extension of the registration periods allows financiers to have the account receivables pledge perfected in a more straightforward manner. In the meantime, the trial of registration of the transfer of account receivables may contribute to the development of the overall factoring business.

CONTACTS

Ni Jiahua
Partner

T +8610 6535 2206
86 21 2320 7206
E Jiahua.Ni
@cliffordchance.com

Timothy Democratis
Partner

T +8610 6535 2260
E Timothy.Democratis
@cliffordchance.com

Katherine Ke
Counsel

T +86 212320 7248
E Katherine.Ke
@cliffordchance.com

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No. 1 Jianguomenwai Dajie, Chaoyang
District, Beijing 100004, People's Republic Of
China

Clifford Chance, 25/F, HKRI Centre Tower 2,
HKRI Taikoo Hui, 288 Shi Men Yi Road,
Shanghai 200041, People's Republic of China
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