

LEGAL DEVELOPMENT

Remarkable Progress Was Made in Financial Legislation to Improve the Legal Environment for the Financial Sector

The PBC made full efforts in strengthening the basic legal system related to the central bank mandates so as to achieve a sound financial ecosystem. The PBC played an active role in drafting or amending certain laws related to the financial sector, such as the *Law of the People's Republic of China on Social Security*, the *Statistics Law of the People's Republic of China* and the *Criminal Law of the People's Republic of China*. It also continued its efforts in facilitating the formulation or amendment of administrative regulations, including the *Regulations on Credit Information Management*, the *Provisional Regulations on Cash Management*, the *Administrative Regulations on Gold Market Trading* and the *Regulations on Money Lenders*. In addition, the State Administration of Foreign Exchange (SAFE) and the PBC jointly concluded the drafting work of the amendment to the *Regulations on the Foreign Exchange System of the People's Republic of China* (referred to as the Regulations below), which was released by the State Council and came into force on August 5, 2008. In view of the recent developments in China's external economic activities, and the new situations and problems in foreign exchange administration, the revised Regulations draws on the positive experience in reforms of the current account, capital account, foreign exchange market and the RMB exchange rate regime. It remains on the track of reform and opening-up, and at the same time, leaves enough policy room for future reform and innovation. The revised Regulations focuses on priorities of the macroeconomic adjustment, and carries out well-balanced administration of both foreign exchange inflows and outflows with the aim of maintaining an equilibrium of the balance of payments, compared to the previous Regulations which focused on

administering foreign exchange outflows and paid less attention to inflows. The revised Regulations also helps to create an environment that fosters fair competition by eliminating differential treatment between domestic enterprises and foreign-funded enterprises, state-owned enterprises and private enterprises, and organizations and individuals and by replacing it with supervision according to the nature of transactions.

In 2008, the PBC issued one regulation and dozens of administrative documents, involving monetary policy, financial statistics, financial market, credit policy, payment and settlement, etc. According to the overall arrangements of the State Council, the PBC completed streamlining its existing rules and announced to abolish 15 rules in January. On April 9, in order to further encourage independent innovations of market participants and reform the management mechanism in the interbank market, the PBC issued the *Administrative Rules on Debt Financing Instruments for Non-financial Corporations in the Interbank Bond Market* (referred to as the Rules below), on the basis of the *Administrative Rules on Short-term Financing Bills* promulgated in 2005. The Rules stipulated to apply registration requirements to issuance of debt financing instruments for non-financial enterprises, such as short-term financing bills and medium-term notes, and authorized the National Association of Financial Market Institutional Investors (NAFMII) to handle the self-regulating and procedural issues in the management of debt financing of non-financial enterprises. In order to achieve successful establishment and sound functioning of the domestic foreign currency payment system, in April and May, the PBC issued the *Administrative Rules on the Domestic Foreign Currency Payment System (Provisional)*, the *Administrative Rules on Operations of the Domestic Foreign Currency Payment System (Provisional)* and the *Rules on Business Processing of*

the Domestic Foreign Currency Payment System (Provisional) in succession. To implement the important measures of the CPC Central Committee to stimulate domestic demand and promote stable and rapid economic growth and the overall arrangements of the State Council to solve the housing difficulties of low-income families, the PBC, together with the China Banking Regulatory Commission (CBRC), issued the *Administrative Rules on Affordable Housing Development Loans* and the *Administrative Rules on Low-rent Housing Construction Loans*.

Legal Research Was Intensified to Lay a Theoretical Foundation for Financial Legislation

In response to the global financial crisis and the new issues arising in the financial system, forward-looking legal research was actively promoted. The PBC paid close attention to the impact of implementation of the *Property Law of the People's Republic of China* and the *Enterprise Bankruptcy Law of the People's Republic of China* on the financial sector, and studied relevant issues in the drafting of judicial interpretations to the two laws. Legal issues related to trading of OTC financial derivatives were explored to promote the establishment of the performance guarantee and closeout netting mechanism for financial derivatives trading. Efforts were made to draw on experience of and lessons from the financial crisis, and study relevant legal issues on the reform of the international financial system. The PBC successfully convened the Financial Legal Work Conference of 2009, examining and discussing relevant issues concerning financial crisis and financial legislation with experts from legislative, judicial and financial institutions. Studies were also conducted on penalization of money laundering and terrorist financing activities as well as confiscating or freezing of assets suspected of terrorist financing, so as to further improve the criminal legislation for anti-money laundering and counter terrorist financing in China.

Active Measures Were Taken to Enhance Administrative Review to Effectively Fulfill Its Function of Supervising Law Enforcement

In 2008, the PBC fulfilled its responsibility of administrative review under the guidance of the scientific development approach, aiming at protecting the legitimate rights and interests of citizens, legal entities or other organizations, and safeguarding and supervising the legal functioning of the PBC offices at all levels. In the whole year, 127 appeal cases were handled, with 76 cases settled by the PBCHO. While effectively fulfilling the function of administrative review in supervising law enforcement, the PBC made best efforts to settle administrative disputes, and helped to reconcile law enforcement agencies and appealers on relevant disputes on the principle of “people-oriented”, so as to avoid deterioration of conflicts and protect the PBC's authority in law enforcement as well as the legitimate rights and interests of administrative counterparts. Among the appeal cases handled by the PBCHO, 10 appeals were withdrawn after mediation and none of the others were brought into litigation, indicating that the principle of “resolving the disputes” was concretely implemented.

Litigation Cases Were Actively Handled to Efficiently Manage the Legal Risks of the PBC

In 2008, there were altogether 115 litigation cases filed against the PBC, with 5 cases against the PBCHO. The PBC legal departments at all levels made active research to deal with the cases rightfully, protecting the legitimate rights and interests of the PBC and administrative counterparts and making proper suggestions for further improvement. On the one hand, the increase of the number of litigation cases indicates that the dispute settlement in responsibility fulfillment of the PBC is now gradually brought into the legal system, and it also reflects, from another angle, the