

China updates: CBRC financial leasing companies permitted to set up specialised subsidiaries and State Council's circular on encouraging the development of the leasing industry

Overview

On 28 July 2014, the China Banking Regulatory Commission ("CBRC") issued the Interim Provisions on the Administration of Specialised Subsidiaries of Financial Leasing Companies (the "Interim Provisions") which, for the first time, officially set out the legal basis for CBRC financial leasing companies ("CBRC FLCs") to establish onshore or offshore subsidiaries specialised in particular industries such as aviation and shipping ("Specialised Subsidiaries"). These provisions also supplement the Measures for the Administration of Financial Leasing Companies issued by CBRC earlier this year.

On 6 August 2014, the State Council issued the Guidance on Accelerating the Development of Productive Services Industry and Promoting the Restructuring and Upgrading of Industrial Structure (the "Guidance") which emphasised the need for the development of a healthy financial leasing industry.

Specialised Subsidiaries of CBRC FLCs

The Interim Provisions permit a CBRC FLC to establish subsidiaries that are specialised in certain sectors (including aviation, shipping and other unspecified sectors) either in the free trade zones in China or outside of China, subject to CBRC's approval.

Specialised Subsidiaries may carry out business activities within the scope of business of the parent CBRC FLC except inter-bank loans and fixed-gain securities investment, and may also set up project companies (either onshore or offshore) for purposes of conducting leasing transaction and issuing bonds.

Eligibility Requirements

A CBRC FLC intending to establish an onshore or offshore Specialised Subsidiary (the "Promoter") needs to satisfy certain eligibility requirements. The key requirements are set out in the chart below:

	Onshore Specialised Subsidiary	Offshore Specialised Subsidiary
Capital Adequacy Ratio Requirement	total equity investment in the Specialised Subsidiary may not exceed 50% of the net assets of the Promoter	
Equity Capital Requirement	only proprietary funds can be used to set up the Specialised Subsidiary	
Shareholding Requirement	In principle, the Promoter shall hold 100% of the shares in the Specialised Subsidiary; where there is a need to have investors other than the Promoter, the shareholding ratio of the Promoter shall not fall below 51%; such other investors shall meet the requirements for promoters of financial leasing companies as set out in the <i>Measures for the Administration of Financial Leasing Companies</i> ¹ and such investors shall also possess the expertise in the area where a specialised subsidiary carries out its business.	It is unclear whether the Promoter can set up offshore Specialised Subsidiaries with other investors.
Registered Capital	A minimum of RMB50 million or equivalent thereof in other currencies	No specific requirement for minimum registered capital from the PRC perspective
Profitability Track Record	No profitability requirement exists for the Promoter	The Promoter must have been profitable in the last two years

¹ As defined in the *Measures for the Administration of Financial Leasing Companies* Promoter means (i) commercial banks with independent legal person qualifications that are registered within or outside the territory of China, (ii) large enterprises registered within the territory of China whose core business is the manufacturing of products suitable for financial leasing transactions, (iii) financing leasing companies registered outside the territory of China, and (iv) other promoters recognised by the CBRC. For more details, please [click here](#) for our client briefing dated April 2014.

CBRC's Administration: pre-establishment approval and post-establishment reporting requirements

The Interim Provisions require Promoters to obtain CBRC approval before setting up Specialised Subsidiaries and require the Promoters to report to CBRC relevant issues relating to the Specialised Subsidiaries such as operations commencement, occurrences of material loss, material litigation and material changes in law of the relevant jurisdiction. The Promoter shall consolidate the business data of its Specialised Subsidiaries into its statistics and submit statements as required to CBRC. The Specialised Subsidiary is also required to submit its own financial statements to local CBRC authority.

State Council's Guidance to encourage the development of financial leasing industry

In the Guidance, the State Council sets out its blueprint for development of the financial leasing industry through establishing and improving the operation and management information system of the financial leasing industry, increasing leasing modes and upgrading the professional level, so as to build a financial leasing framework with multiple financing channels, intensive development, effective supervision and sound legal system framework. Efforts shall be made to promote financial leasing services in industries including large-scale manufacturing equipment, construction equipment, transportation facilities and production line. Leasing companies are encouraged to cooperate with financial institutions to take full advantage of offshore funds and achieve scale operation. The Guidance also calls for the establishment of public registration and search systems for leases.

This Guidance only sets out high-level policies which hopefully will be followed and supplemented with more detailed implementation regulations in the future.

Conclusion

The recent regulations noted in this briefing represent a further step in implementing the Chinese government's long-term goal to promote healthy development in the financial leasing industry. It has been reported that several CBRC FLCs have already taken advantage of these regulatory changes to set up aviation leasing companies under the Specialised Subsidiaries regime outlined by the Interim Provisions and we can expect more such subsidiaries in the future.

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