Charltons - China News Alerts Newsletter - 06 August 2008

[online version](http://www.charltonslaw.com/china-news-alert-issue-252/)

# China News Alert Issue 252

## Capital Markets

### Top economic body considers bank for SMEs

The Chinese government is considering setting up a bank specialising in lending to small and medium-sized enterprises (SMEs) in an effort to broaden their finance sources at a time when monetary policy is being tightened to rein in inflation.

The National Development and Reform Commission (NDRC) will take charge of the planning, according to reports quoting an NDRC official at a recent forum held in Guangzhou.

The official also reportedly called on domestic commercial banks to increase their lines of credit to SMEs at a rate close or equal to that of the national credit expansion.

The official said the government will continue to lend support to SMEs by providing subsidies to cover the cost of loan guarantee agencies to secure bank loans, and improve the credit guarantee system.

Greater effort will also be needed to increase technology innovation funds for SMEs in order to help them improve and expand. The funds, beginning with an allocation from the treasury, amounted to 3.5 billion yuan in 2007.

Economists and industry experts have said that domestic enterprises still rely too heavily on bank loans to finance growth. This reliance has seriously restricted the growth of many SMEs as banks traditionally prefer to lend only to large State-owned enterprises.

Lending by commercial banks in the first quarter of 2008 totaled 2.2 trillion yuan, of which only 300 billion yuan of credit, 15 per cent of the total, was extended to SMEs.

The total value of loans obtained by SMEs in the first quarter of 2008 dropped by 30 billion yuan from the previous year, according to figures released by the China Banking Regulatory Commission.

Zhao Xijun, a professor of finance at Renmin University of China, said the expected move would be good news for SMEs troubled by a combination of factors, including tightening monetary policies, rising material costs and mounting pressure from global recession.

According to the latest statistics from the NDRC, in the first six months of 2008, about 10 per cent of SMEs in China saw a mere 30 per cent increase in industrial added value, down 15 per cent from the first half of 2007.

During the same period, 67,000 SMEs went out of business. The hardest hit were those in labour-intensive sectors such as textiles and garments. In the first half of 2008, approximately 10,000 textile factories have closed down and nearly two-thirds of textile manufacturers were on the brink of bankruptcy.

"But whether the proposed bank can fulfill its function of providing loans to SMEs will depend on how much the government is prepared to put up as initial capital and what kind of preferential treatment such a bank would receive," said Zhao of Renmin University of China.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/05/content_6904423.htm) ([see archive](Top_economic_body_mulls_bank_for_SMEs.pdf))

### China's stock investors get legal cushion

China is drafting a law to better protect stock investors from cases of brokerage bankruptcy or regulatory takeover because of mismanagement and misappropriation.

"The China Securities Protection Fund Law is being mapped out as part of the country's protection system for stock investors," Zhuang Xinyi, deputy chairman of the China Securities Regulatory Commission, said recently.

Creating a protection system for China's stock investors is viewed as a primary task in order to improve the country's legal framework, Zhuang said.

Zhuang made the remarks at a recent conference held by the state-run China Securities Protection Fund Company.

Zhuang said the regulator has devised six measures to reduce possible damage to investor interests, including a strict threshold for new entries, a third-party deposit and management system, a fair and transparent information disclosure system, a risk-control system and a compensation system.

China's central government set up the securities investors' protection fund in September 2005 as the country launched a campaign to clean up the scandal-ridden stock industry. China Securities Protection Fund Company runs the fund, from which money is taken to protect stock investors from brokerage bankruptcy or regulatory takeover due to mismanagement and misappropriation.

The company has paid 21.4 billion yuan (US$3.12 billion) so far to protect the interests of more than 7 million clients, and the fund has been regarded as the beginning of a market-oriented and long-term risk-disposal mechanism.

The initial capital in the fund came from loans from the central bank and the Ministry of Finance.

The fund also received interest income generated from investors' capital frozen during their subscriptions for new stock sales.

Brokerages have also had to pay between 0.5 per cent and 5 per cent of their revenue to the fund based on their own risk levels.

[Source: Shanghai Daily](http://www.shanghaidaily.com/article/?id=369344) (Link no longer active)

### Careful preparations ahead for index futures

The long-awaited stock index futures in the mainland market needs further preparation due to changing situations, a senior official with the China Securities Regulatory Commission (CSRC) said, dampening market hopes that the product will be launched this year.

At the CSRC's half-yearly work meeting this week, a senior official said the regulator will continue preparatory work for the stock index futures in order to achieve high standards and a smooth start.

While fortifying operations for existing futures products, the regulator will steadily introduce new trading products, the official said.

Currently, the nation's fuel oil and metal futures contracts are traded on the Shanghai Futures Exchange, while farm produce futures are handled in Zhengzhou and Dalian.

Established in 2006, the China Financial Futures Exchange will cover trading of financial derivatives, including stock index futures.

There had been market rumours that preparations for the index futures were coming to an end and that their launch was imminent.

Although the regulator has expressed similar expectations on other occasions, the situation has now changed, the CSRC official said. He vowed that the financial authorities will review the market performance and make suitable preparations.

The official noted that regulators will carefully consider individual investors' degrees of acceptance in the design of index futures. They will also draw lessons from warrants issued to prevent excessive speculation.

Last week, a source from China International Capital Company said that stock index futures trading is likely to be launched in January 2009 rather than sometime this year.

The source stressed that the authorities deemed it prudent to launch index futures trading in a stable stock market environment with limited daily price fluctuations.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-07/31/content_6893939.htm) ([see archive](Regulator_Careful_preparations_ahead_for_index_futures.pdf))

## Corporate & Commercial

### China sets up anti-monopoly commission

The National Anti-Monopoly Commission was set up recently to enforce China's first anti-monopoly law and to uphold fair competition.

The new body sits directly under the State Council. The National Development and Reform Commission, the Ministry of Commerce and the State Administration for Industry and Commerce have all taken part responsibility for the new commission.

The announcement came after the anti-monopoly law took effect on 1st August. The law, dubbed the "constitution for the market economy", was first proposed 15 years ago but was not passed until 2007.

The new commission is responsible for anti-monopoly policy research, monitoring market performance and coordination among law enforcement to create a level playing field for all enterprises by preventing dominating companies from abusing their superior market positions.

EU Competition Commissioner, Neelie Kroes, congratulated China on the entry into force of its anti-monopoly law.

"The entry into force of the anti-monopoly law today is an important step forward in the development of China's economy," Kroes said. "I am delighted that the efforts of the Chinese authorities to push forward this law have borne fruit."

He said the implementation of a transparent and non-discriminatory competition framework will be a challenging task and he stressed that the EU stands ready to strengthen bilateral cooperation in this important area.

The anti-monopoly commission will coordinate policy-making among the enforcement authorities and draft detailed implementing guidelines on anti-trust and merger control.

"It is expected that these rules will provide more clarity and predictability for companies operating in the Chinese market," said the commissioner.

The merger of two of the world's mining giants will be among the first group of multinationals subject to the anti-monopoly law, industry sources said.

The law states that monopolies that restrict domestic competition are subject to regulation, even if the deal happens outside the country. Therefore, BHP Billiton Limited submitted an application for the takeover bid for Rio Tino to the Ministry of Commerce earlier last month, according to the Shanghai Securities News.

The merger of the two companies, that will then control around one-third of iron ore worldwide, has drawn concerns from industries in China, the world's largest steelmaker and consumer of about half of the world's iron ore production.

"We should maintain the principle of fair trade and oppose a monopoly market, which would have a negative impact on consumers," Luo Bingsheng, vice-chairman of China Iron and Steel Association, said recently.

Luo said a combined company may lead to increased pricing power. "We already have three companies monopolising the market. If they become two companies it will be easier for them to control the market and prices, and that would have a negative impact on consumers," Reuters quoted Luo as saying.

Zhao Xiangge, an analyst from Everbright Securities, said the merger of the two steel giants may give them more space to maneuver in price negotiations. "Chinese steel enterprises hope that the merger will not succeed, and I think Chinese enterprises and the government will try to stop the merger altogether," said Zhao.

It has also applied to authorities in the US, EU, Australia, South Africa and Canada. The company said earlier that US anti-trust regulators have given partial approval for the deal but the case is still under consideration in the EU.

BHP expects international regulators to complete their review of its bid for rival Rio Tinto by the end of 2008, it said in a letter sent to Rio Tino shareholders.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/02/content_6898777.htm) ([see archive](China_sets_up_anti-monopoly_commission.pdf))

### Declaration required for a global turnover in excess of RMB10 billion

The 'Provisions of the State Council on the Standards for Operator Concentration Declaration' (Provisions) were released on 4th August. Under the Provisions, operators' business volume, an internationally accepted index, is adopted to decide whether a declaration is necessary.

The Provisions provide two standards for declaration: global turnover and domestic turnover.

If the total global turnover for all concentration participants exceeds RMB10 billion in the previous accounting year and at least two of the operators have a turnover in excess of RMB400 million in China in the previous accounting year, or if the total domestic turnover of all the participants exceeds RMB2 billion and at least two of them have a turnover over RMB400 million in China in the previous accounting year, a declaration must be made.

In addition, if the concentration of operators is likely to restrict competition, even if the aforementioned limits are not reached, anti-monopoly enforcement authorities must conduct an investigation in line with the law.

A concentration refers to the following circumstances:

1. the merger of business operators;
2. acquiring control over other business operators by virtue of acquiring their equities or assets; or
3. acquiring control over other business operators or possibility of exercising decisive influence on other business operators by virtue of contact or any other means.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=4473) ([see archive](Declaration_Required_for_a_Global_Turnover_in_Excess_of_RMB_10_Billion.pdf))

### State Council approves insurance law revised draft

China's State Council recently approved the revised draft of the insurance law to increase efforts for market supervision and boost the industry's development.

The State Council agreed at an executive meeting presided over by Premier Wen Jiabao that as the industry landscape was changing and new problems occurring, it was necessary to revise the current insurance law. "This will help to regulate insurers' business conduct, prevent and control risks and protect insurants' interests".

The revision added some supplementary provisions and self-regulation items to the industry's basic system and increased the market watchdog's supervision responsibilities, without revealing further details.

It was agreed at the executive meeting that the draft would be submitted to the Standing Committee of the National People's Congress (NPC) for review after further revisions.

China's insurance industry has witnessed fast development in recent years, with its premium income rising to 561.79 billion yuan (US$82.09 billion) in the first half of 2008, up 51 per cent over the same period last year.

The total assets of the Chinese insurance industry topped 3.02 trillion yuan by June 2008, compared with 2.9 trillion yuan by the end of 2007.

Revisions to the current regulations on the management of foreign exchange were also agreed at the meeting. This is to facilitate trade and investment activities, strike an international payments balance and strengthen cross-border capital flow.

The draft provisions for the declaration of the concentration of business operators were also reviewed and agreed upon at the meeting.

"Taking control over other business operators through mergers or acquiring shares or assets is closely related to the fair market order. Controlling business operators' concentrations is a key element of the anti-monopoly law, " the meeting said.

China's first anti-monopoly law took effect on 4th August, a milestone in its efforts to promote a fair competition market and crack down on monopolies.

The revised regulation will be announced and take effect after further revisions, the meeting said.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2008-08/02/content_6899052.htm) ([see archive](State_Council_approves_insurance_law_revision_draft.pdf))

### Garment exporters get long-awaited tax relief

China raised export tax rebates on textiles and garments by two percentage points recently, in a long-anticipated move to aid an industry hurt by the yuan's appreciation and rising costs.

The rebates were raised to 13 per cent from 11 per cent, the State Administration of Taxation announced on its Website.

They were cut in July last year to help ease trade frictions with Western nations.

"Exporters need higher rebates, as many of them rely on the rebate to make a profit," said Tian Hao, general manager of ShanghaiMart, which organises regular trade exhibitions for textiles and clothing businesses.

This came after a slowdown in China's textiles and garments exports, which rose 11.11 per cent in value in the first half of 2008, against the nation's overall export growth of 21.9 per cent in the same period.

Most textile firms have been unprofitable in the first five months of 2008, a trade chamber official said. The situation has forced the Ministry of Commerce to urge the Cabinet to rein in the yuan's gains and boost export rebates.

Zhao Guangwang, a manager of Zhejiang-based Pinghu Yuechun Wool Sweater & Garments Company, which employs approximately 800 people and exports to the United States and Europe, said he had expected a rebate of 15 per cent, but he was happy to settle for 13 per cent.

"The government is doing what it should do," Zhao said. "Still I worry that the benefits from the rebate rise will be erased in half a year with the yuan continuing to rise."

The yuan climbed 0.33 per cent against the US dollar in July, the smallest monthly gain since March 2007.

It has appreciated 6.9 per cent so far this year, matching the full-year increase last year. Every percentage point gain in the yuan could affect sales margins by 1 to 4 per cent for garment exports, according to a China Merchants Securities (Hong Kong) report.

Even with higher rebates, the textile and garment industry has had to grapple with rising input prices and labour costs as well as the slowdown in international market demand.

"Companies should increase efforts to expand home markets to avoid over competition in exports," China Merchants said. "They also should use more non-US dollar settlements to avoid the risk of the dollar's depreciation."

[Source: China Finance Net](http://active.zgjrw.com/News/200881/ChinaFinaceNet/268460329100.html) (Link no longer active)

## Other

### Foreign investors may be eligible to invest in mineral resource exploration

China will encourage foreign investors with mineral resource exploration experience or mineral financing capabilities to invest in mineral resource exploration. China will also encourage foreign-invested mineral resource exploration enterprises to engage in exploration activities via cutting edge technologies.

The 'Administrative Measures for Foreign-invested Mineral Exploration Enterprises' (Measures), jointly released by China's Ministry of Commerce (MOFCOM) and the Ministry of Land and Resources (MLR), will take effect on 20th August 2008.

The aforementioned enterprises must apply for and acquire geological exploration qualification certificates for exploration activities that correspond to their qualifications.

The Measures also stipulate that foreign investors planning to list on foreign markets with their mineral exploration achievements in China must file a record in written form to the MOFCOM and the MLR.

[Source: Lexis Nexis](http://hk.lexiscn.com/latest_message.php?id=4456) ([see archive](Foreign_Investors_Or_Be_Eligible_to_Invest_in_Mineral_Resource_Exploration.pdf))

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

**Charltons - China News Alerts Newsletter - Issue 252 - 06 August 2008**