

君合专题研究报告



2021年2月25日

君合特殊机会投资法律研究—金融资产管理公司立身之本 “十二条司法解释”废止对不良资产交易的影响及应对措施

引言

伴随着金融资产管理公司处置不良资产战略部署的逐步深入，最高人民法院先后颁布了多项司法解释类文件，逐步奠定和巩固金融资产管理公司在特殊机会投资市场的特殊主体地位。在该等司法解释类文件中，由最高人民法院公布并于2001年4月23日起施行的《最高人民法院关于审理涉及金融资产管理公司收购、管理、处置国有银行不良贷款形成的资产的案件适用法律若干问题的规定》

（法释[2001]12号）（以下简称“《十二条司法解释》”）尤其引人瞩目，因其行之有效地解决了金融资产管理公司在成立初期遇到的困难和挑战，富有创造性地回应了金融资产管理公司关于金融不良资产处置工作中面临的诸多争议性法律问题，同时为众多投资人从金融资产管理公司收购不良资产提供了有利的法律保障，堪称行业发展的基石。

为配合《民法典》及相关配套司法解释的颁布和施行，保证国家法律统一正确适用，最高人民法院于2020年12月29日公布《最高人民法院关于废止部分司法解释及相关规范性文件的决定》（法释[2020]16号），自2021年1月1日起废止包括《十二条司法解释》在内的116件司法解释及相关规范性文件。《十二条司法解释》被废止的信息在不良资产行业内引起强烈反响，金融资产管理公司和不良

资产投资人开始对此表示困惑和担忧。本文旨在旧规定废止但相关法律问题尚未明晰之际，梳理《十二条司法解释》废止可能给不良资产交易造成的实质影响，并就相关法律风险提出切实可行的应对措施。

一、《十二条司法解释》及相关文件解决的主要法律问题

在践行《十二条司法解释》并逐步规范不良资产交易的过程中，最高人民法院陆续出台了《对〈关于贯彻执行最高人民法院“十二条”司法解释有关问题的函〉的答复》（以下简称“《十二条解释答复》”）、《关于金融资产管理公司收购、处置银行不良资产有关问题的补充通知》（以下简称“《补充通知》”）和《关于审理涉及金融不良债权转让案件工作座谈会纪要》（以下简称“《海南纪要》”）等文件（以下统称“十二条解释相关文件”）。在人民法院审理金融资产管理公司参与的不良资产转让交易案件中，《十二条司法解释》与十二条解释相关文件一并为人民法院判断相关法律问题提供了重要指引和裁判依据。

根据《十二条司法解释》及十二条解释相关文件解决的主要法律问题以及对应条文如下：

1、通过省级以上报纸进行债权转让通知并中断诉讼时效及主张权利

文件	主要规定
《十二条司法解释》	<ul style="list-style-type: none">◆ 国有银行债权转让后，原债权银行可通过在全国或省级有影响的报纸上发布债权转让公告或通知的方式履行债权转让通知义务，若该公告或通知有催收债务内容的，可起到诉讼时效中断的效果
《十二条解释答复》	<ul style="list-style-type: none">◆ 金融资产管理公司在全国或省级有影响的报纸上发布的有催收内容的债权转让公告或通知所构成的诉讼时效中断，可以溯及至金融资产管理公司受让原债权银行债权之日◆ 金融资产管理公司对已承接的债权，可以在上述报纸上以发布催收公告的方式中断诉讼时效或主张权利
《海南纪要》	<ul style="list-style-type: none">◆ 国有银行⁵或者金融资产管理公司根据《十二条解释答复》的规定，在全国或省级有影响的报纸上发布有催收内容的债权转让通知或公告的，该公告或通知之日应为诉讼时效的实际中断日，新的诉讼时效应自此起算，前述公告或者通知对保证合同诉讼时效发生同等效力

2、自动受让原有的担保权利

文件	主要规定
《十二条司法解释》	<ul style="list-style-type: none">◆ 金融资产管理公司受让有抵押担保的债权后，可依法取得相关抵押权，原抵押权登记继续有效
《补充通知》	<ul style="list-style-type: none">◆ 国有商业银行（包括国有控股银行）向金融资产管理公司转让不良贷款，或者金融资产管理公司收购、处置不良贷款的，担保债权同时转让无须征得担保人的同意，担保人仍应在原担保范围内对受让人继续承担担保责任，担保合同中关于合同变更需经担保人同意的约定对债权人转让债权没有约束力

3、特定情况下诉讼、执行主体的变更

文件	主要规定
《十二条司法解释》	<ul style="list-style-type: none">◆ 对于国有银行在转让债权前已经提起诉讼但尚未审结的案件，人民法院可根据原债权银行或金融资产管理公司的申请将诉讼主体变更为受让债权的金融资产管理公司
《补充通知》	<ul style="list-style-type: none">◆ 金融资产管理公司转让、处置已经涉及诉讼、执行或者破产等程序的不良债权时，人民法院应当根据债权转让协议和转让人或者受让人的申请，裁定变更诉讼或者执行主体

⁵ 此处包括国有独资商业银行、国有控股商业银行以及国有政策性银行。

4、诉讼管辖和财产保全担保

文件	主要规定
《十二条司法解释》	<ul style="list-style-type: none">◆ 金融资产管理公司向债务人提起诉讼的，应当由被告人住所地人民法院管辖，若原债权银行与债务人有协议管辖约定的，该约定继续有效◆ 金融资产管理公司申请财产保全的，可以不提供担保

二、《十二条司法解释》废止的实质影响

最高人民法院在废止《十二条司法解释》时，未明确与之相关的文件的适用性。我们理解，虽然十二条解释相关文件依然有效，但由于《十二条解释答复》系最高人民法院针对《十二条司法解释》作出的答复，而《补充通知》和《海南纪要》系在引用少量《十二条司法解释》条款的情况下就不动产交易作出进一步规范，依据一般的法理逻辑，我们倾向于认为随着《十二条司法解释》的废止，《十二条解释答复》、《补充通知》第一条⁶、《海南纪要》第十一条⁷将无法适用，但《补充通知》和《海南纪要》的其他部分依然可以继续适用。

在《十二条司法解释》被废止以及十二条解释相关文件部分内容无法继续适用的情况下，不意味着其规范的所有事项都无法可依，由于《补充通知》和《海南纪要》的绝大部分依然可适用，并且《民法典》、《民事诉讼法》、《最高人民法院关于人民法院办理财产保全案件若干问题的规定》等规定在一

定程度上重述了《十二条司法解释》和十二条解释相关文件项下的部分规定⁸，因此绝大多数事项仍然可以找到相关依据。

但是，我们注意到《十二条司法解释》、《十二条解释答复》和《海南纪要》第十一条明确规定了原债权银行和金融资产管理公司可以通过发布债权转让暨债务催收联合公告（简称“**联合公告**”）的方式起到履行债权转让通知义务并中断诉讼时效或主张权利的效果，在前述规定无法适用后，联合公告的实际作用将具有较大不确定性。因此，当前需要重点关注原债权银行和金融资产管理公司能否继续通过发布联合公告的方式履行债权转让通知义务并中断诉讼时效或主张权利。

三、不良资产交易中针对联合公告法律效果不确定性的应对措施

虽然目前联合公告能否继续帮助债权人履行债权转让通知义务以及中断诉讼时效或主张权利变得不再确定，但不良资产交易仍不断发生，在新

⁶ 《补充通知》第一条规定：“国有商业银行(包括国有控股银行)向金融资产管理公司转让不良贷款，或者金融资产管理公司受让不良贷款后，通过债权转让方式处置不良资产的，可以适用本院发布的上述规定。”

⁷ 《海南纪要》第十一条规定：“会议认为，国有银行向金融资产管理公司转让不良债权，或者金融资产管理公司受让不良债权后，通过债权转让方式处置不良资产的，可以适用最高人民法院《关于审理金融资产管理公司收购、管理、处置国有银行不良贷款形成的资产的案件适用法律若干问题的规定》、《关于贯彻执行最高人民法院“十二条”司法解释有关问题的函的答复》、《关于金融资产管理公司收购、管理、处置银行不良资产有关问题的补充通知》和《关于国有金融资产管理公司处置国有商业银行不良资产案件交纳诉讼费用的通知》。受让人受让不良债权后再行转让的，不适用上述规定，但受让人为相关地方人民政府或者代表本级人民政府履行出资人职责的机构、部门或者持有国有企业债务人国有资本的集团公司除外。国有银行或者金融资产管理公司根据《关于贯彻执行最高人民法院“十二

条”司法解释有关问题的函的答复》的规定，在全国或省级有影响的报纸上发布有催收内容的债权转让通知或公告的，该公告或通知之日应为诉讼时效的实际中断日，新的诉讼时效应自此起算。上述公告或者通知对保证合同诉讼时效发生同等效力。”

⁸ 例如，根据《民法典》第五百四十七条的规定，债权人转让债权的，受让人取得与债权有关的从权利，但是该从权利专属于债权人自身的除外，受让人取得从权利不因该从权利未办理转移登记手续或者未转移占有而受到影响，据此《十二条司法解释》第九条项下的规则已经获得保障；再如，根据《最高人民法院关于人民法院办理财产保全案件若干问题的规定》第九条的规定，申请保全人为商业银行、保险公司等由金融监管部门批准设立的具有独立偿付债务能力的金融机构及其分支机构的，人民法院可以不要求提供担保，在司法实践中诸多法院认为金融资产管理公司属于前述金融机构而不要求其提供担保，据此《十二条司法解释》第五条项下的规则也已经获得一定程度的保障。

的规定明确联合公告的法律效果之前，金融资产管理公司和境内外投资人均应当采取积极的应对措施以保障自身利益。

对于金融资产管理公司而言，因其由国家出资设立且扮演着化解不良资产风险的重要角色，我们建议金融资产管理公司就《十二条司法解释》的废止与最高人民法院作充分沟通，说明司法解释废止可能给不良资产交易造成的不确定性，并就如何解决交易不确定性以及新旧规定的衔接提出方案。与此同时，我们建议金融资产管理公司采取以下措施：

- (1) 当金融资产管理公司从国有商业银行（包括国有控股银行）收购不良债权时，在相关债权转让协议中增加条款，要求原债权银行在全国或省级有影响的报纸上发布有催收内容的债权转让公告或通知，并且就每一户项下的所有债务人以公证送达的方式单独发送债权转让通知及债务催收函件，同时要求原债权银行作出陈述与保证，若将来任何立法机关、司法机关或行政机关就债权转让和/或债务催收作出新的规定，原债权银行应当立即按照相关规定履行义务；另外，与原债权银行沟通协商（亦可在相关债权转让协议中作出约定），若任何债务人在司法程序中以未收到债权转让通知为由提出抗辩，原债权银行应当立即向司法机关和债务人同时书面告知债权转让事宜。
- (2) 当金融资产管理公司通过债权转让方式处置不良资产时，仍然在全国或省级有影响的报纸上发布有催收内容的债权转让公告或通知，并且对每一户项下的所有债务人以公证送达的方式单独发送债权转让通知及债务催收函件，尽可能保障和落实债权转让和债务催收的法律效果。

对于不良资产投资人而言，我们建议采取以下措施：

- (1) 在相关债权转让协议中增加条款，要求金融资产管理公司在全国或省级有影响的报纸上发布有催收内容的债权转让公告或通知，并且就每一户项下的所有债务人以公证送达的方式单独发送债权转让通知及债务催收函件，同时要求金融资产管理公司作出陈述与保证，若将来任何立法机关、司法机关或行政机关就债权转让和/或债务催收作出新的规定，金融资产管理公司应当立即按照相关规定履行义务；
- (2) 与金融资产管理公司沟通协商（亦可在相关债权转让协议中作出约定），若任何债务人在司法程序中以未收到债权转让通知为由提出抗辩，金融资产管理公司应当立即向司法机关和债务人同时书面告知债权转让事宜。

四、结语

在现行法律框架的运作下，《十二条司法解释》废止对不良资产交易造成的主要影响是国有银行（包括国有控股银行）及金融资产管理公司能否继续通过联合公告履行债权转让通知义务以及中断诉讼时效或主张权利存在不确定性，除此之外没有其他的实质性影响，因此金融资产管理公司和不良资产投资人无需过度担心。

尽管原债权银行和金融资产管理公司依然可以通过单独通知的方式告知债权转让事宜并中断诉讼时效和主张权利，而且在司法实践中部分法院认可通过债权受让人起诉并借助法院送达起诉状的方式实现债权转让通知的效果，同时法院有权在诉讼中将债权受让人追加为无独立请求权的第三人进而保障债权人的利益，但这将显著增加原债权银行和金融资产管理公司的负担。

由于收购、管理和处置国有银行不良贷款是金融资产管理公司的核心工作，为平衡金融资产管理公司的责任和负担，我们期待新规定的出台解决因

《十二条司法解释》废止给不良资产交易带来的不确定性，同时我们愿为新规定的落地出谋划策，为

维护不良资产交易模式的稳定和提升不良资产的处置效率提供新思路。

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JUNHE SPECIAL REPORT



February 25, 2021

JunHe Special Situation Investment Legal Review: The Impact and Some Solutions Regarding Non-Performing Asset Transactions to the Repeal of the “12-Article Judicial Interpretation” as the Foundation of Financial Asset Management Companies

Introduction

With a view to strengthening strategies to dispose of non-performing assets by financial asset management companies, the Supreme People's Court of China successively promulgated several judicial interpretation documents which have gradually established and consolidated the special status of financial asset management companies in the special situation investment market. Among such judicial interpretation documents, the *Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases Involving Assets Formed in the Acquisition, Management or Disposal of Non-performing Loans of State-owned Banks by Financial Asset Management Companies* (in Chinese, 最高人民法院关于审理涉及金融资产管理公司收购、管理、处置国有银行不良贷款形成的资产案件适用法律若干问题的规定) (Fa Shi [2001] No. 12) (the “**12-Article Judicial Interpretation**”) promulgated by the Supreme People's Court, which came into effect on 23 April 2001, is particularly noteworthy. The 12-Article Judicial Interpretation has effectively dealt with some of the difficulties and challenges encountered by financial asset management companies during the early stages of their establishment and responded creatively to many controversial legal issues encountered by financial asset management companies in the

disposal of non-performing assets. It has provided favorable legal protections for many investors in acquiring non-performing assets from financial asset management companies and it is regarded as a new cornerstone in the development of the industry.

In order to align with the *Civil Code* and other relevant judicial interpretations and ensure the unification and correct application of laws, the Supreme People's Court promulgated the *Decision of the Supreme People's Court to Repeal Certain Judicial Interpretations and Relevant Regulatory Documents* (Fa Shi [2020] No. 16) on 29 December 2020, repealing 116 judicial interpretations and other relevant regulatory documents including the 12-Article Judicial Interpretation as from 1 January 2021. The repeal of the 12-Article Judicial Interpretation has resulted in some strong reactions in the non-performing assets industry. Some financial asset management companies and investors of non-performing assets have begun to express concerns. Several legal issues remain uncertain due to the repeal of the previous regulations and this article aims to sort out the substantial impact on non-performing asset transactions caused by the repeal of the 12-Article Judicial Interpretation and to put forward some practical and feasible solutions to mitigate the relevant legal risks.

1 Main Legal Issues Addressed by the 12-

Article Judicial Interpretation and Relevant Documents

In the process of implementing the 12-Article Judicial Interpretation and gradually standardizing non-performing asset transactions, the Supreme People's Court has successively promulgated the *Reply to the Letter on Issues Relating to Implementation of the 12-Article Judicial Interpretation of the Supreme People's Court* (in Chinese, 对〈关于贯彻执行最高人民法院“十二条”司法解释有关问题的函〉的答复, the “**Reply to 12-Article Interpretation**”), the *Supplementary Notice on Issues Relating to Acquisition and Disposal of Non-performing Assets of Banks by Financial Asset Management Companies* (in Chinese, 关于金融资产管理公司收购、处置银行不良资产有关问题的补充通知, the “**Supplementary Notice**”) and the *Minutes of the*

Symposium on Hearing Cases Concerning Transfer of Financial Non-performing Loans by the Supreme People's Court (in Chinese, 关于审理涉及金融不良债权转让案件工作座谈会纪要, the “**Hainan Minutes**”) and other documents (collectively, the “**12-Article Interpretation Relevant Documents**”). Where the courts handle cases regarding non-performing asset transactions involving financial asset management companies, the 12-Article Judicial Interpretation and 12-Article Interpretation Relevant Documents provide important guidelines and a solid basis for the relevant legal issues.

According to the 12-Article Judicial Interpretations and the 12-Article Interpretation Relevant Documents, the major legal issues addressed, and the corresponding provisions are as follows:

a) Notification of claims transfers, preservation of statute of limitations and pursuit of claims by way of newspapers at the provincial level or above

Documents	Main Provisions
12-Article Judicial Interpretation	<ul style="list-style-type: none"> After the transfer of claims owned by a state-owned bank, the bank may perform the obligation of notifying the claims transfer by publishing an announcement or notice in respect to the transfer of claims in a newspaper which has national or provincial influence. If a pursuit of claims has been included under the announcement or notice, it shall achieve the effect of preserving the statute of limitation.
Reply to 12-Article Interpretation	<ul style="list-style-type: none"> In the event that a financial asset management company preserves the statute of limitation by way of publishing an announcement or notice in respect to the claims transfer and pursuit of claims in a newspaper which has national or provincial influence, the statute of limitation may recommence on the date of claims transfer. A financial asset management company can preserve the statute of limitation of acquired claims by way of publishing an announcement or notice to pursue claims in a newspaper as mentioned above.
Hainan Minutes	<ul style="list-style-type: none"> Where a state-owned bank¹ or financial asset management company publishes a notice or announcement in respect to a claims transfer and pursuit of claims in a newspaper which has national or provincial influence in accordance with the Reply to 12-Article Interpretation, the statute of limitation shall recommence on the date of the notice or announcement, and the aforesaid notice or announcement shall also achieve the same effect for the statute of limitation of guarantee contracts.

b) Automatic transfer of original guarantee and security

¹ This shall include wholly state-owned commercial banks, state-controlled commercial banks and state-owned policy banks.

Documents	Main Provisions
12-Article Judicial Interpretation	<ul style="list-style-type: none"> ◆ A financial asset management company will obtain the relevant mortgages in accordance with the law after the acquisition of claims secured by mortgages, and the original registration of mortgages shall remain valid.
Supplementary Notice	<ul style="list-style-type: none"> ◆ If a state-owned commercial bank (including a state-controlled bank) transfers a non-performing loan to a financial asset management company, or a financial asset management company acquires or disposes of a non-performing loan, the guarantee and security shall be transferred at the same time without the consent of the guarantor or security provider, and the guarantor and security provider shall continue to undertake the liability within the original liability scope, and any provisions requiring consent from the guarantor or security provider for the transfer of the guarantee or security shall not be binding when creditors transfer claims.

c) Change of litigants and enforcement applicants in particular circumstances

Documents	Main Provisions
12-Article Judicial Interpretation	<ul style="list-style-type: none"> ◆ In ongoing cases whereby a state-owned bank has filed a lawsuit before the transfer of claims, the court may, on the application of the bank or the financial asset management company, change the litigant to the financial asset management company which is the transferee of the claims.
Supplementary Notice	<ul style="list-style-type: none"> ◆ When a financial asset management company transfers or disposes of any non-performing loan that has been involved in litigation, enforcement or bankruptcy, the court shall order to change the litigant or enforcement applicant in accordance with the claims transfer agreement and the application made by the transferor or transferee.

d) Jurisdiction of litigation and guarantee for property attachment

Documents	Main Provisions
12-Article Judicial Interpretation	<ul style="list-style-type: none"> ◆ Where a financial asset management company files a lawsuit against a debtor, the lawsuit shall be under the jurisdiction of the court at the location where the defendant is domiciled, unless otherwise agreed to by the original lender and the debtor. ◆ Financial asset management companies are not required to provide guarantees or security for the property attachment.

2 Substantive Impact of the Repeal of the 12-Article Judicial Interpretation

The Supreme People’s Court did not specify the applicability of other relevant documents when it repealed the 12-Article Judicial Interpretation. We understand that even though the 12-Article Interpretation Relevant Documents remain valid, since the Reply to 12-Article Interpretation is a reply made by the Supreme People’s Court to the 12-Article Judicial Interpretation and the Supplementary Notice, and the Hainan Minutes aim to further regulate the non-performing asset transactions with a small number of provisions in

the 12-Article Judicial Interpretation cited, in light of accepted legal wisdom, we tend to believe that with the repeal of the 12-Article Judicial Interpretation, the Reply to 12-Article Interpretation, Article 1 of the Supplementary

Notice² and Article 11 of the Hainan Minutes³ shall not be applicable, however other parts of the Supplementary Notice and the Hainan Minutes shall continue to be applicable.

Although the 12-Article Judicial Interpretation is repealed and part of the 12-Article Interpretation Relevant Documents is no longer applicable, this does not mean that all matters regulated will be proceeded without legal basis. This is because most of the provisions in the Supplementary Notice and the Hainan Minutes remain applicable, and the *Civil Code*, the *Civil Procedure Law*, the *Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases of Property Preservation by the People's Courts* (in Chinese, 最高人民法院关于人民法院办理财产保全案件若干问题的规定) and some other regulations, to a certain extent, restate the regulations under the 12-Article Judicial Interpretation and 12-Article Interpretation Relevant Documents⁴, thus most of the matters still have a relevant legal basis.

² According to Article 1 of the Supplementary Notice, the 12-Article Judicial Interpretation, the Reply to 12-Article Interpretation, and the *Notice of the Supreme People's Court on Payment of Litigation Fees for Cases Where State-owned Financial Asset Management Companies Dispose of Non-performing Assets from State-owned Commercial Banks* (in Chinese, 最高人民法院关于国有金融资产管理公司处置国有商业银行不良资产案件交纳诉讼费用的通知, the “**Litigation Fees Notice**”) are applicable to cases where state-owned commercial banks (including state-controlled banks) transfer non-performing loans to financial asset management companies or financial asset management companies dispose of non-performing loans by loan transfer.

³ According to Article 11 of the Hainan Minutes, where a state-owned bank transfers a non-performing loan to a financial asset management company, or where a financial asset management company disposes of non-performing assets by loan transfer upon the acquisition of non-performing loans, the 12-Article Judicial Interpretation, Reply to 12-Article Interpretation, Supplementary Notice and Litigation Fees Notice shall be applicable. Where a transferee retransfers the non-performing loans, the aforesaid regulations shall not be applicable except where the transferee is a relevant government, institution or department that acts as a contributor on behalf of the corresponding government or a group company that holds the state-owned assets of the state-owned enterprise debtor; where a state-owned bank or financial asset management company publishes a notice or announcement in respect of the claims

The 12-Article Judicial Interpretation, the Reply to 12-Article Interpretation and Article 11 of the Hainan Minutes explicitly provide that original lenders and financial asset management companies may perform the notification obligations regarding claim transfers and preserve the statute of limitation or pursue claims by way of publishing a joint announcement for claims transfer and debt collection (the “**Joint Announcement**”). However, since the aforesaid regulations became inapplicable, the actual effect of the Joint Announcement is uncertain. Therefore, it should be noted whether or not the original lenders and financial asset management companies may continue to perform the notification obligations regarding the claims transfer and preserve the statute of limitation or pursue claims by way of publishing a Joint Announcement.

3 Solutions to the Uncertainty of the Legal Effect of the Joint Announcement on Non-performing Asset Transactions

transfer and pursuit of claims in a newspaper which has national or provincial influence in accordance with the Reply to 12-Article Interpretation, the statute of limitation shall recommence on the date of the notice or announcement, and the aforesaid notice or announcement shall also achieve the same effect for the statute of limitation of guarantee contracts.

⁴ For example, according to Article 547 of the *Civil Code*, if a creditor transfers its claims, the transferee shall acquire any accessory right related to the claims, unless the accessory right exclusively belongs to the creditor, and the accessory right shall not be affected by the failure to complete transfer registrations or shift possession. In this regard, the rules under Article 9 of the 12-Article Judicial Interpretation have been restated. As another example, according to Article 9 of the *Provisions of the Supreme People's Court on Several Issues Concerning the Handling of Cases of Property Preservation by the People's Courts* (in Chinese, 最高人民法院关于人民法院办理财产保全案件若干问题的规定), where the applicant for property preservation is a commercial bank, an insurance company or another type of financial institution with independent debt repayment capabilities that is established upon approval by the relevant financial regulatory authority or a branch thereof, the court may not require the applicant to provide a guarantee or security, and in judicial practice, many courts believe that financial asset management companies shall belong to the aforesaid financial institutions and therefore waive the guarantee or security. In this regard, the rules under Article 5 of the 12-Article Judicial Interpretation have been restated to a certain extent.

Whether or not the Joint Announcement will continue to help creditors perform their notification obligations regarding claim transfers and preserve the statute of limitation or pursue claims has become uncertain, non-performing asset transactions will continue to occur. Before any new regulations come into effect to specify the legal effect of the Joint Announcement, financial asset management companies and investors should take proactive measures to protect their interests.

As far as financial asset management companies are concerned, as they were established by the State and play an important role in mitigating the risks of non-performing assets, we suggest that financial asset management companies have thorough communications with the Supreme People's Court in respect of the repeal of the 12-Article Judicial Interpretation, elaborate on the issues that may be caused by the repeal of the judicial interpretation, and provide proposals to resolve any issues and connect the new regulations with the repealed regulations. In the interim, it is advisable for financial asset management companies to take the following measures:

(1) When financial asset management companies acquire non-performing loans from state-owned commercial banks (including state-controlled banks), they should insert clauses in the relevant claims transfer agreement, requiring the original lenders to (i) publish an announcement or notice in respect of the claims transfer and claims pursuit in a newspaper which has national or provincial influence and (ii) send separate claims transfer notices and debt collection letters to all debtors in each connection by way of the notary service. Meanwhile, the original lenders should make representations and warranties that if any legislative institution, judicial institution or administrative institution promulgate new regulations in respect to claim transfers

and/or debt collections in the future, the original lenders shall perform all obligations immediately pursuant to the relevant regulations. Further, financial asset management companies should communicate with the original lenders (or have clauses inserted in the relevant claims transfer agreements) that if any debtor makes a defense on the grounds of non-receipt of the claims transfer notice in judicial proceedings, the original lenders shall immediately notify the judicial institution and debtor of the claims transfer in writing.

(2) When financial asset management companies transfer non-performing assets, they should still publish an announcement or notice in respect of the claims transfer and claims pursuit in a newspaper with national or provincial influence, and send separate claims transfer notices and debt collection letters to all debtors in each connection by way of the notary service, with a view to ensure and achieve the legal effect of claim transfer and debt collection.

As far as the investors of non-performing assets are concerned, it is advisable to take the following measures:

(1) The investors should insert clauses in the relevant claims transfer agreement, requiring financial asset management companies to (i) publish an announcement or notice in respect of the claims transfer and claims pursuit in a newspaper which has national or provincial influence and (ii) send separate claims transfer notices and debt collection letters to all debtors in each connection by way of the notary service. Meanwhile, financial asset management companies should make representations and warranties that if any legislative institution, judicial institution or administrative institution promulgate new regulations in respect to claim transfers

and/or debt collection in the future, financial asset management companies shall perform all obligations immediately pursuant to the relevant regulations.

- (2) The investors should communicate with financial asset management companies (or have clauses inserted in the relevant claims transfer agreement) that if any debtor makes a defense on the ground of non-receipt of the claims transfer notice in judicial proceedings, financial asset management companies shall immediately notify the judicial institution and debtor of the claims transfer in writing.

4 Conclusion

Under the operation of the existing legal framework, the main impact of the repeal of the 12-Article Judicial Interpretation on non-performing asset transactions is whether state-owned banks (including state-controlled banks) and financial asset management companies can continue to perform the notification obligations regarding claim transfers and preserve the statute of limitation or pursue claims by way of publishing a Joint Announcement has become uncertain. We are not aware of any other material impact, thus financial asset management companies and non-performing asset investors do not need to be overly concerned.

Although (i) the original lenders and financial asset management companies can notify of the claims transfer, preserve the statute of limitation and pursue claims by way of separate notices, and in judicial practice, (ii) some courts endorse the notification of claim transfers by lawsuit filing and service of civil complaint, and (iii) the courts shall have the power to add the transferee of claims as a third party without an independent claim in court proceedings to protect the interests of creditors, this will significantly increase the burden of the original lenders and financial asset management companies.

As the acquisition, management and disposal of non-performing loans from state-owned banks are the core work of financial asset management companies, in order to balance the responsibilities and burdens of financial asset management companies, we expect new regulations to resolve the issues caused by the repeal of the 12-Article Judicial Interpretation, and we are happy to give advice on the implementation of the new regulations. We can also provide new ideas to maintain the stability of the transaction structures so as to improve efficiency in disposing of non-performing assets.

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