

CHINA LEGAL BRIEFING* 218

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Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises (I)

最高人民法院关于审理外商投资企业纠纷案件若干问题的规定

【Issued by】 Supreme People's Court

【Subject】 Economic Trial

【Promulgated on】 August 5th, 2010

【Effective from】 August 16th, 2011

【Source】 <http://www.court.gov.cn>

On August 5, 2010, the Supreme People's Court issued the Provisions on Several Issues Concerning the Trial of Disputes Involving Foreign-Invested Enterprises (I) (hereinafter referred to as "Provisions"). The Provisions were implemented as of August 16, 2010, mainly for the purpose of settling disputes arising out of the establishment of and changes in foreign-invested enterprises, such as contractual joint ventures, equity joint ventures and wholly foreign owned enterprises.

Most contracts signed in the process of establishing of and changing in a Foreign-Invested Enterprise ("FIE") shall be submitted to a relevant authority for approval. The Provisions provide that if the contract is legally established, even if it lacks a factor of effectiveness, because the contracts have not yet been examined and approved by the relevant authority, the contract provisions on the parties' obligation to apply for approval and registration are binding to both parties.

In addition, when the parties agree on supplementary provisions to a contract, which has already been approved by the competent authority, these supplementary provisions do not need government approval to be valid, if they do not constitute "significant and substantial modifications" to the contract.

Furthermore, according to Article 4 of the Provisions, if the contributing party has delivered the property to the FIE and has also completed registration of the change of title within a reasonable period of time, this party will be deemed as having fulfilled its obligation of capital contribution. If the FIE or any of its shareholders proves that the contributing party has caused losses to the FIE due to delay in handling the alteration registration of ownership and claims for damages, the People's Court shall uphold all such claims.

If, after the share transfer agreement for a FIE is signed, the transferor fails to perform its obligation to report for approval, the transferee can request to terminate the contract and obtain compensation for the loss, or request the transferor to perform the obligation to

report for approval. If the transferor continues to fail to perform its obligation, the transferee can request for the termination of the contract again and for the loss of compensation including the loss in the difference in price of stock, the loss of share proceeds and other reasonable losses.

In addition, the Provisions also provide detailed regulations on handling of disputes related to (i) the contract of mortgage of shares of FIEs; (ii) the reporting for approval for share changes by offering falsified information; (iii) right of approval for shareholders of a FIE in share transfers and (iv) right of first refusal in share transfers.

People's Mediation Law

人民调解法

【Issues by】 Standing Committee of the National People's Congress

【Subject】 Civil Litigation

【Promulgated on】 August 28th, 2010

【Effective from】 January 01, 2011

【Source】 <http://www.npc.gov.cn>

The Standing Committee of the National People's Congress issued the People's Mediation Law (hereinafter referred to as "the Law") on August 28, 2010. It encourages people to settle disputes at the neighborhood-level, outside of courts and arbitration. The Law became effective on January 1st, 2011.

The term "people's mediation" refers to a process that a people's mediation commission persuades the parties concerned to a dispute into reaching a mediation agreement on the basis of equal negotiation and free will and thus solves the dispute between them.

According to the Law, the people's mediation committee is the legal organization to resolve disputes among the people. People's mediation commissions may not charge any fees for the mediation of disputes among the people. Governments at county levels and above should provide financial support for mediation work and should honor and reward outstanding mediation committees and mediators.

The Law stipulates that the parties concerned to a dispute can apply to a people's mediation commission for mediation, and a people's mediation commission can also voluntarily offer to mediate. Courts at the grassroots level, as well as police offices, should inform parties involved in disputes about the possibility of solving such disputes through

mediation. However, no mediation should be undertaken if one party has expressly refused to settle the dispute through mediation.

In accordance with the Law the agreements reached in the mediation procedure are legally binding and the parties concerned may jointly apply to the people's court for judicial confirmation within 30 days after the mediation agreement becomes effective. After the people's court confirms the effect of the mediation agreement, if one party refuses to perform or fails to fully perform it, the other party can apply to the people's court for enforcement.

Regulations against Price Fixing

反价格垄断规定

【 Issued by 】 National Development and Reform Commission

【 Subject 】 Anti-Unfair-Competition

【 Promulgated on 】 December 29th, 2010

【 Effective from 】 February 01, 2011

【 Source 】 <http://www.stpc.gov.cn>

In order to prevent and curb price fixing acts, protect fair market competition and maintain consumer interests and public interests, the National Development and Reform Commission issued the Regulations against Price Fixing (hereinafter referred to as “the Regulations”) on December 29, 2010. The Provisions became effective on February 1, 2011.

The Provisions apply to the price fixing acts in economic activities within the territory of China, as well as the price fixing acts outside China that have the impact of eliminating or restricting competition on the domestic market. The price fixing acts cover matters including price monopoly agreements, abuse of market dominance and abuse of executive power.

According to the Regulations, business partners will be barred from agreeing to minimum resale prices. Moreover, competitors will be banned from reaching the following price fixing agreements to fix prices:

1. agreement which fixes or changes the price level of commodities and services;
2. agreement which fixes or changes the magnitude of change in price;
3. agreement which fixes or changes the handling charges, discounts or other fees that have an impact on price;
4. agreement which provide an agreed price for the transaction with a third party;
5. agreement which provides a standard formula for price calculation;

6. agreement which provides that no price changes shall be made without the consent of other business operators to the agreement;
7. agreement which otherwise fixes or changes a price; or
8. other agreement as determined by the competent price department of the State Council.

Under the Regulations, the operators that have a dominant market share are prohibited from engaging in business practices such as charging "unfairly high prices" for their goods, paying "unfairly low prices" for inputs, charging differential prices, or charging unreasonable fees. They are also prohibited from pricing goods below their production cost. In accordance with the Regulations, a company will be considered to be dominant if its market share is $\frac{1}{2}$ or greater, two companies are considered to be "dominant" if their joint market share reaches $\frac{2}{3}$ and three companies are considered to be "dominant" if their joint market share reaches $\frac{3}{4}$. However, if one of the business operators has a market share of less than $\frac{1}{10}$, such a business operator will not be considered to have a dominant market status.

In addition, the Regulations also provide that the Government officials should not abuse their administrative power to force operators to engage in price fixing behavior. They should not make regulations that eliminate or restrict price competition.

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