

# China Legal Briefing\* 234

October 2013



\* CHINA LEGAL BRIEFING is a regularly issued collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers.

WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

Circular on Import Tax Policies for Pingtan Comprehensive Experimental Zone  
关于平潭综合实验区有关进口税收政策的通知

Rules on Protecting Personal Information of Telecommunication and Internet Users  
电信和互联网用户个人信息保护规定

Certain Provisions of the Supreme People's Court on Disclosing Information on the Lists of Dishonest Persons Subject to Execution  
最高人民法院关于公布失信被执行人名单信息的若干规定

## 1. Circular on Import Tax Policies for Pingtan Comprehensive Experimental Zone 关于平潭综合实验区有关进口税收政策的通知

【Issued by】	the Standing Committee of the National People's Congress
【Subject】	Free Trade Zone
【Promulgated on】	August 30, 2013
【Effective from】	October 1, 2013
【Source】	<a href="http://www.npc.gov.cn">www.npc.gov.cn</a>

Pursuant to The General Development Plan of Pingtan Comprehensive Experimental Zone (“the Zone”), the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation jointly introduced the Circular on Import Tax Policies for the Pingtan Comprehensive Experimental Zone (“the Circular”) on September 3, 2013. Pingtan is an island located close to Taiwan in China’s southern Fujian province. With regard to the import tax policies for goods going into Pingtan from international sources (“front line”) and for goods going out of Pingtan into China (“secondary line”), the Circular has provided detailed guidance as to the scope of goods eligible for tariff-exemption and tariff-bonding treatment, in particular as in the following highlights:

1. For front line goods, the following will enjoy tariff-exemption treatment: (1) machines and equipment needed for production-related infrastructural construction as well as material supplies needed for the construction of factories and warehouse within the Zone; (2) machines, equipment, molds as well as other spare and accessory parts for reparation necessary for the operation of the production enterprises in the Zone; (3) machines and equipment necessary for and imported by enterprises in the Zone that are in the business of research, development and design, inspection and maintenance, logistics and service outsourcing etc.
2. For front line goods, the following will enjoy tariff-bonding treatment: (1) raw material, spare and accessory parts, components, packaging material and consumption materials necessary for the enterprises in the Zone to process and export products; (2) goods imported by the logistic enterprises in the Zone for transferring and distribution.
3. In addition to the general rules outlined in the above two points, the Circular has also published two lists in which goods not eligible for tariff-exemption and tariff-bonding are specifically listed. Some of the examples are: goods mandatorily prohibited for importing, goods necessary for commercial real estate development project, certain food and drugs etc. Such exceptions to the general tax free policy shows that the intended encouragement is specifically directed to production enterprises in the Zone.
4. For goods which already enjoyed tax-exemption and tax-bonding from the front line and are going through the second line, there are little favorable tax reduction treatments. Generally speaking, all goods going out of Pingtan into China will be subject to import tax, as well as value-added tax and consumption tax if applicable.

## 2. Rules on Protecting Personal Information of Telecommunication and Internet Users 电信和互联网用户个人信息保护规定

【Issued by】	Ministry of Industry and Information Technology
【Subject】	Internet Security; Personal Privacy
【Promulgated on】	July 16, 2013
【Effective from】	September 1, 2013
【Source】	<a href="http://www.miit.gov.cn">www.miit.gov.cn</a>

With the entrance and growing preponderance of electronic business and related internet services in recent years, a drastically increasing number of internet users find themselves in the situation where personal information is being leaked to unknown third parties, often through internet service providers and agents who obtained such information during their normal course of work. To cope with this alarming problem, on July 16, 2013 the PRC Ministry of Industry and Information Technology promulgated Rules on Protecting Personal Information of Telecommunication and Internet Users (“the Rules”) to be effective on September 1, 2013. Purported to provide better protection to the personal information of telecommunication and internet users, the Rules have provided for regulations in the following four main areas:

1. Standards on information collection and usage: such standards apply to all telecommunication service providers and internet information and service providers (“the Service Providers”), according to which the service providers has to fulfill the following obligations during collecting and using the personal information of internet users:
  - a. The Service Providers shall formulate rules on information collection and usage; such rules shall be published either on their website or operating place.
  - b. The consent of the internet user shall be the precondition to all collection and usage.
  - c. During the course of information collection and usage, the Service Providers shall expressly inform the internet users with regard to the purpose, means and scope of the collection and usage, available channels for information inquiry, alteration as well as the consequence of refusing to provide the respective information; the service providers shall collect and use such information according to law and strictly within its scope and purpose; upon termination of the service, the Service Providers shall immediately stop the collection and usage and cancel the respective account.
  - d. The Service Providers shall keep the information strictly confidential, unaltered and unimpaired and refrain from selling and providing the information to any other parties. Further, the Service Providers shall supervise and manage their agents accordingly.
  - e. The Service Providers shall establish complaint mechanism for their users and respond within 15 days once a complaint is filed.

2. Safety Measures: apart from the above obligations, the Service Provider shall also take some safety measures to ensure that personal information is confidential, unaltered, unimpaired and available. Such measures include (but are not limited to):
  - a. To implement access control on its employees and agent, to review specifically any information export, copy and write-off in large sizes
  - b. To properly safe keep user information stored on paper, through optical media or through electro-magnetic media
  - c. To implement access control to its information storage system in order to prevent internet hacking and virus infection
  - d. To record the time, place and matter where any personnel operates with the user's information
  
3. Supervision and Inspection: the Ministry of Industry and Information Technology and its counterparts at provincial and city levels shall be the competent authorities to administer, supervise and inspect the Service Providers. Their supervision and inspection will cover the following areas: to enter the operating place of the Service Provider and inspect its business operation; to conduct annual inspection of the Service Providers during which inspection on information protection status will be conducted; to record any Service Providers in violation of the Rules and publish the such violation in its credit record; to encourage the establishment of industrial associations as well as a disciplinary management system.
  
4. Legal Liabilities:

Violations to the Rules may result in an administrative penalty issued by the competent authorities in the forms of a warning, an administrative order or a fine up to RMB 30,000. Further, any violations which are also in violation of the PRC Criminal Law will also result in criminal liabilities.

Given that the true victims of outlined violations by are telecommunication and internet users whose personal information has been leaked, we were expecting the Rules – which purport to protect the users – to also give some reference to the civil liabilities towards the users whose privacy and civil rights have been violated. However, for want of such provisions, such internet users may only find their basis of claims in the PRC Tort Law and Contract Law.

### 3. Certain Provisions of the Supreme People's Court on Disclosing Information on the Lists of Dishonest Persons Subject to Execution 最高人民法院关于公布失信被执行人名单信息的若干规定

【Issued by】	the Supreme People's Court
【Subject】	Civil Procedure; Execution
【Promulgated on】	July 16, 2013
【Effective from】	October 1, 2013
【Source】	<a href="http://www.court.gov.cn">www.court.gov.cn</a>

In accordance with the PRC Civil Procedure Law and for the purpose of urging the parties to honor their obligations according to decisions duly rendered by the PRC Courts, on July 16 2013 the Supreme People's Court has promulgated Certain Provisions of the Supreme People's Court on Disclosing Information on the Lists of Dishonest Persons

Subject to Execution (“the Provisions”) to be effective on October 1 2013. For the first time in the history of PRC modern legislation, the Courts have sought for the supervision and enforcement power of the public to facilitate the execution of court decisions. The Provision as the first attempt in this respective area contains only 7 articles regulating 5 basic issues which will be introduced in more details below:

1. Where a party has the capacity to execute a court decision but failed to do so, it shall be listed as a dishonest person if such party fits one of the following conditions:
  - a. To obstruct or refuse execution by forging evidence, by means of violence and threat etc.
  - b. To avoid execution by fraudulent litigation, fraudulent arbitration, concealing or transferring assets
  - c. To violate the asset reporting rules
  - d. To violate expense limitation orders
  - e. To refuse to execute a settlement agreement without any reasonable cause
  - f. Others
2. Any person could request a court by means of an application to include a person (fulfilling the conditions above) to figure on the dishonesty list; a court could also on its own initiative include such person in the dishonesty list. The decision to include any person in the list of dishonest persons shall be made in the form of decision letter to be served on the listed person.
3. The dishonesty list to be recorded and published shall include the following information:
  - a. the name, organizational code, legal representative or person in charge of the listed legal person
  - b. the name, gender, age and ID number of the listed natural person
  - c. the content and execution status of the related court decision
  - d. the specific details of the dishonest act of the listed person
  - e. the institution, case number, filing date and execution court of the related court decision
  - f. Other information not related to national secrecy, business secrecy and personal privacy which is deemed necessary by the court
4. Such dishonesty list shall be recorded by the courts and published through the database platform set up by the Supreme People’s Court; in addition, the local courts may also publish the dishonesty list through newspaper, radio broadcast, television, internet, court bulletin board and by other applicable means. The listed persons will receive credit disciplinary measures in areas such as government procurement, tendering and bidding, administrative approval, government support, credit financing, market admission, qualification issuance etc.
5. Any listed person who fulfills one of the following conditions shall be deleted from the dishonesty list:
  - a. The listed person has fulfilled all its obligations under the valid court decisions
  - b. The listed person has reached a settlement agreement on execution with the other party and the other party has confirmed a complete execution
  - c. The court has terminated the execution according to the law

Within this very brief piece of legislation, some of the details such as how the credit disciplinary measures will be implemented, to what extent, by which authorities and which courts will be competent to treat such cases and publish the dishonesty list etc., are left unexplained. Whether these left-open areas will be interpreted and implemented well by the competent courts and government departments remains to be seen.

\*\*\*\*\*

© Wenfei, Beijing, October 2013

Check the China Legal Briefing archives on: <http://www.wenfei.com/publications.html>

Obtain your personal subscription from: [china@wenfei.com](mailto:china@wenfei.com)