

CHINA LEGAL BRIEFING



November 6 -10, 2006

- 1 Guidelines for the Information System of Banking Financial Institutions
- 2 Circular of the State Food and Drug Administration Concerning Establishing the Re-examination System for Advertisements of Pharmaceuticals, Medical Appliances and Health Food (Guoshiyaojianzi [2006] No. 518)

1 Anti-Money-Laundering Law of the People's Republic of China 中华人民共和国反洗钱法

Issued By	The People's Congress of the People's Republic of China
Subject	Anti-Money-Laundering
Promulgated On	October 31st 2006
Effective From	January 1st 2007
Source	http://npc.people.com.cn

The Anti-Money-Laundering Law of the People's Republic of China (the "Law") is enacted by the People's Congress of the People's Republic of China with the purpose of attacking money-laundering crimes. The definition of the "money-laundering" mentioned hereto shall mainly including illegal drug trafficking, organized crime, terrorist crimes, smuggling, corruption, bribe taking, violating financial management regulations and financial fraud. Such definition is much expanded compared with previous provisions.

According to the Law, all financial and non-financial institutions incorporated within the territory of China shall be responsible for establishing necessary procedures and systems to attack money-laundering. The Law also stipulates that the information such as commercial secrets gained from movements of attacking money-laundering shall be used only for legal investigation and litigation.

An anti-money-laundering information center shall be established as per the requirements of the Law, and the responsibilities of such center shall be receiving and analyzing suspicious deals and deals with amounts above a certain limit.

Where new financial institutions or new branches of existing financial institutions are established, the internal system of anti-money-laundering should be completed. Actual and effective identity information of clients shall be recorded.

The Law has a separate chapter concerning anti-money-laundering investigation, and specific procedures are prepared for implementing such investigation. The Law also mentions the international cooperation on anti-money-laundering. The Law stipulates specific and strict responsibilities and penalty rules for financial institutions and the staff of financial institutions in order to ensure the effect of anti-money-laundering.

The Law shall also apply to the supervision of funds concerning terrorists crimes, where it is expressly stipulated by other laws, then the other laws shall prevail.

In practice, the People's Bank of China, the Chinese central bank, is the competent administration.

2 Administrative Provisions on the Right to Use Sea Areas 海域使用权管理规定

Issued By	The State Oceanic Administration
Subject	The Right to Use Sea Areas
Promulgated On	October 13th 2006
Effective From	January 1st 2007
Source	http://www.soa.gov.cn/

The Administrative Provisions on the Right to Use Sea Areas (the “Provisions”) are enacted with the purpose of implementing the PRC Law on the Administration of Sea Areas. The Provisions shall apply to the application, approval, bidding, auction, transfer, lease and mortgage of the right to use sea areas.

Regarding using a sea area, demonstration and reasoning shall be conducted by the competent oceanic administrations of municipal and county-level governments. And such demonstration and reasoning report shall be only valid for 3 years. However, no demonstration or reasoning is required where the sea area is used for breeding.

There are six categories of projects, including energy projects and projects within state protection zones, that shall be filed to the State Oceanic Administration for approval. Other projects shall be filed to the county-level oceanic administration with the documents required by the Provisions.

The Provisions also mention the specific requirements, qualifications and the documents required for transfer, auction, bidding, lease, mortgage and so forth. Penalty rules are also stipulated by the Provisions to ensure the enforceability of the Provisions. The Provisions also encourage the establishment of an information enquiry system for the public by the oceanic administrations of and above the county-level governments so that the public might get to know the statistical information of using of sea areas.

3 Opinions of the State Administration for Industry and Commerce regarding Strengthening the Construction of the Primary Level of the System of Administration for Industry and Commerce (Gongshangrenzi [2006] No. 178) 关于加强工商行政管理系统基层建设的意见(工商人字[2006]178号)

Issued By	The State Administration for Industry and Commerce
Subject	Construction of the Primary Level of the AIC
Promulgated On	September 26 th 2006
Effective From	September 26 th 2006
Source	http://www.saic.gov.cn

The Opinions of the State Administration for Industry and Commerce regarding Strengthening the Construction of the Primary Level of the System of Administration for Industry and Commerce (Gongshangrenzi [2006] No. 178) (the “Opinions”) have been promulgated with the purpose of improving and strengthening the development and construction of local AIC offices.

The Opinions aim at improving local AIC offices in five years by reorganize and reallocate AIC resources. There is a “two 70%” goal that the working staff of local AIC offices shall account for 70% of that of county-level AIC branches, and more than 70% working staff of local AIC offices shall be qualified to execute laws, rules and regulations, and to perform AIC operations.

The Opinions encourage the relocation of local AIC offices, and require that the core of the AIC operation shall be borne by local AIC offices and therefore the scale of county-level AIC branches shall be minimized. In principle, there are shall be no less than 10 working staff for each local AIC office. The internal structure of county-level AIC branches shall be redesigned in line with the practical needs.

According to the Opinions, local AIC offices shall be authorized with more competent power to execute legal rights and responsibilities. Local AIC offices shall take more detailed work and have more power in order to accomplish AIC’s duties. On the other hand, working staff of local AIC offices shall improve their capabilities by learning more knowledge and skills of laws, rules and regulations and no abuse of authorized power is acceptable.

The Opinions also mention inter alia the administrative quality, professional moral, application of modern office facilities, internal AIC culture and human resources.

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