



CHINA LEGAL BRIEFING 9

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1. National

China Adopted Foreign Debts Rules

On January 8, 2003, the State Development and Planning Commission, the Ministry of Finance and the State Administration of Foreign Exchange jointly promulgated Interim Regulations on the Administration of Foreign Debts to regulate foreign debts, which will become effective as of March 1st, 2003. Interim Regulations cover the definition of foreign debt, the examining process for borrowing of foreign debts, the guarantee for foreign debts, use of foreign debts, repayment of foreign debts, risk management, and foreign debt supervision. (www.law-lib.com)

The Central Bank Adopted Rules Fighting Money Laundering

On January 3, 2003, China's central bank, the People's Bank of China, released Regulations for Countering Money Laundering by Financial Institutions, which will become effective as of March 1st, 2003. The Regulations state that no financial institutions in China may be involved in money laundering, which is defined as "disguise and conceal by all means the source and nature of unlawful earnings and the accrued proceeds of drug crimes, organized crimes with the nature of gangs, terrorism crimes, smuggle crimes or other types of crimes, thereby in form legalizing such earnings and proceeds". The Regula-

Telephone +86 10 64687331
Fax +86 10 64603132
电话: +86 10 64687331
传真: +86 10 64603132

mail@wenfei.com
www.wenfei.com

Wenger Vieli Belser
Room 722
Golden Land Building
No. 32 Liang Ma Qiao Road
Chaoyang District
Beijing 100016 P.R.C

北京办事处
北京市朝阳区亮马桥路32号
高澜大厦7层722
邮编: 100016

Offices Zurich
Wenger Vieli Belser
Dufourstrasse 56 and
Mühlebachstrasse 38
CH-8034 Zürich

Office Zug
Industriestrasse 7
P.O. Box
CH-6301 Zug

tions provide for the guidelines and responsibilities that financial institutions have to follow to fight money laundering and punishments for provision of money laundering services. (www.law-lib.com)

A Foreign-Invested Enterprise may have less than 25% foreign Investment

On December 30, 2002, the Ministry of Foreign Trade and Economic Cooperation, the State Administration of Taxation, the State Administration of Foreign Exchange, the State Administration for Industry and Commerce jointly released Circular concerning Relevant Issues for Strengthening the Administration of Foreign-Invested Enterprises Approval, Registration, Foreign Exchange, and Tax Collection, which became effective as of January 1, 2003. Under such Circular, Chinese companies in which the foreign participation accounts for less than 25% of the total equity will be treated as regular foreign-invested enterprises and are required to obtain approval and registration based on the currently applicable approval process. Previously, only a PRC company with 25% foreign equity or more was classified as "foreign-invested enterprise" ("FIE") and was required to obtain approval from the Ministry of Foreign Trade and Economic Cooperation or its local branches.

The Circular requires existing PRC companies with less than 25% foreign equity to complete approval and registration process by July 1, 2003.

It is worth noting that the Circular expressly states that a FIE with less than 25% foreign equity may not be entitled to preferential tax treatments, which are usually available to various FIEs with 25% or more foreign equity. (www.law-lib.com)

News Rules for Foreign Investment in International Freight Forwarding Enterprises

On December 11, 2002, the Ministry of Foreign Trade and Economic Cooperation released Measures for the Administration of Foreign Investment in International Freight Forwarding Enterprises, which replaced the similar 2001 rules. The Measures state that a foreign-invested international freight forwarding enterprise may take the form of Sino-foreign equity joint venture, Sino-foreign cooperative joint venture, or a wholly foreign-owned enterprise ("WFOE"). The Measures provide for the minimum qualifications for foreign investors and Chinese investors of, the minimum conditions for, a foreign-invested international freight forwarding enterprise, and the application process.

While a foreign-invested international freight forwarding enterprise may be established in the form of a WFOE, the Measures, however, state that the Ministry of Foreign Trade and Economic Cooperation separately announces the time for considering its applications, which means at this moment, foreign investors still can not choose a WFOE.

2. *Beijing*

Beijing expects to remove its limitation on foreigners' choice of lodging in Beijing

Beijing expects to remove its limitation on foreigners' choice of lodging in Beijing, by which foreigners may choose wherever they wish to live in Beijing even local residents' houses. Previously, foreign nationals may not choose their lodging at their discretion and may only choose the designated hotels qualified to accommodate foreigners. It is said that such removal was adopted for the purpose of meeting WTO commitments. (www.law-star.com, January 15, 2003)

3. *Local*

Tianjin

Tianjin expects to permit foreign investment to acquire exclusive right to develop areas landscape spots. Tianjin is planning to develop a lot of tourism facilities and wishes to absorb international foreign companies in development of landscape spots and luxury hotels in Tianjin. An exclusive right to develop a whole area may be granted to foreign companies. (www.law-star.com, January 16, 2003)

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