



CHINA LEGAL BRIEFING 18

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1. National

SAFE Issued Rules on Foreign Invested Fund Management Company

On 29 March 2003, State Administration of Foreign Exchange issued Circular on Foreign Exchange Management Relating to Foreign Invested Fund Management Company. This regulation applies to fund management companies jointly established by Chinese and foreign investors as well as those whose shares are transferred to or subscribed by foreign investors. Under this rule, the fund management companies may not conduct such business under capital account as financing overseas or writing guarantees for foreign institutions unless given go-ahead by SAFE. Furthermore, they may not open foreign exchange account until granted an approval of starting business by the CSRC, China Securities Regulatory Commission. (www.safe.gov.cn)

SAFE Provisional Rules on Overdue Writing-Off

As of 1 April 2003, Provisional Rules on Overdue Writing Off of Foreign Exchange took effect, which was promulgated by State Administration of Foreign Exchange on 13 March 2003. The "overdue writing-off" refers to failure to write off foreign exchange paid or collected within one month from the date of declaration for importation or within the prescribed period from the date of declaration for exportation. The forbidden conducts will be handled by

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investigation branch of the administrations of foreign exchange, and if proved, may be fined at a ratio of RMB 1000 per USD 5000 with a ceiling of RMB 300,000. (www.safe.gov.cn)

SAFE Circular on Sale and Payment of Foreign Exchange for Non-Prescribed Items

As of 1 April 2003, the Circular on Sale and Payment of Foreign Exchange for Non-Prescribed Items took effect, which was promulgated by State Administration of Foreign Exchange on 6 March 2003. This circular is made to fill up the lacuna left by Manual for Administrating Foreign Currency Sale and Payment under Non-Trade Transactions and Income and Payment in Foreign Currency of Domestic Individuals (SAFE Decree No.29, 2002). Under the new circular, whether a sum under non-trade transaction is subject to approval from administrations of foreign exchange depends on the amount. For a sum under USD 50,000 or equivalent, no approval is needed. For a sum between USD 50,000 and 500,000 or equivalent, approval is needed from local administrations. For a sum over USD 500,000, approval must be obtained from SAFE. However, for entities with good reputation or great contribution as defined in the circular, no approval is required at all. (www.safe.gov.cn)

Provisions on Administration of FIE for Distributing Books, Newspapers and Journals

On 17 March 2003, Provisions on Administration of Foreign Invested Enterprises for Distributing Books, Newspapers and Journals were co-promulgated by Press and Publication Administration and by the then Ministry of Foreign Trade and Economic Cooperation. Under this rule, such enterprises may take the form of limited company or company limited by shares. The threshold of registered capital for those conducting wholesale business is RMB 30,000,000; it is RMB 5,000,000 for those conducting retail business. The authorities invested with approval power are administrations of publications and press and administrations in charge of foreign trade and economic cooperation. (www.moftec.gov.cn)

CSRC Issued Revised Rule for Quarterly Report

On 26 March 2003, the CSRC, China Securities Regulatory Commission issued revised Disclosure Rule No.13 for Public Company, elaborating content and formality requirements for quarterly reports. The companies are required by this rule to prepare their quarterly reports within one month after the end of the third and the ninth months of the accounting year. The text of reports should be published in the designated newspapers, while text together with appendixes should be posted on the website of CSRC. (www.csrc.gov.cn)

CSRC Revoked Approval Requirements for 27 Items and Changed Regulating Methods for 7 Items

On 1 April 2003, China Securities Regulatory Commission issued an announcement abolishing approval requirements for 27 items and reshaping regulating methods for 7 items, as a response to the State Council Decision Abolishing Approval Requirements and Reshaping Regulating Methods for Certain Items dated 27 February 2003. For the 7 items of which the regulating methods are reshaped, the power to regulate is passed from CSRC where they were subject to approval, to The Securities Association of China and The Futures Association of China respectively where self-regulation is the case. (www.csrc.gov.cn)

SSE& SZSE Circular on Early Warning System for Companies Vulnerable to Delist

Recently, Shanghai Stock Exchange and Shenzhen Stock Exchange issued Circular on Strengthening Warning Against Risks Arising from Companies Whose Shares Are Possibly Subject to Termination of Trading, as a response to Rules supplementing the Implementing Measures on the Suspension and Termination of Public Trading for Companies Suffering Losses promulgated by CSRC. Under this circular, those companies concerned will be highlighted with the mark of "*ST" and the limitation on daily fluctuation of share prices is set on 5%, lower than 10% of the normal level. Moreover, a warning period will be set before the termination occurs so that investors may make prudent decisions.

ICBC to Offer Forward Forex Service

As of 1 April 2003, the Industrial and Commercial Bank of China (ICBC) began to provide forward foreign exchange services to domestic institutions nationwide. Contracts are available for 10 major foreign currencies including the US dollar, euro, the Japanese yen and the Australian dollar. (www.isinolaw.com)

2. Local

Chongqing Simplified Foreign Investment Procedure

Chongqing Municipality officially started up a "one stop " service platform for foreign investment to meet the requirement in a new round of foreign investment upsurge, and to improve the environment of foreign investment. The most outstanding feature of the "one stop" service platform is: to bring all the service agencies necessary for foreign investment into a "one stop " service hall, to offer whole journey services and follow-up services to foreign investors; service principle of "one window for foreign investment, coordinated process of service, and one office to address complaints" shall be implemented. (www.isinolaw.com)

Shenzhen Delegated FIE Registration Power to Lower Branches

As of 1 April, Shenzhen Administration of Industry and Commerce began to delegate its power in respect of FIE (Foreign Invested Enterprise) registration to local branches. According to the new arrangement, local branches will be responsible for such registration matters as establishment registration of FIEs, as well as alternation, termination, and record registration of FIEs which are not subject to special licenses and the total capital of which is less than USD 30,000,000. (<http://www.szaic.gov.cn/>)

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