



## CHINA LEGAL BRIEFING 19

WENGER VIELI BELSER BEIJING OFFICE

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### 1. National

#### Revised Rules on Foreign Investment Company Took Effect

As of 7 April 2003, the Decision Revising Provisional Rules on Foreign Investment Company and Supplementary Rules Thereof promulgated by the then Ministry of Foreign Trade and Economic Cooperation took effect. There are several new noticeable points in this revised version. First, a foreign investment company may act as promoter for the purpose of establishing foreign invested companies limited by shares. Second, a foreign investment company may hold un-traded legal person shares of foreign invested companies limited by shares and of domestic companies limited by shares. Third, in respect of scope of business, foreign investment company may, apart from what had been already permitted, provide such service as internal personnel management for its investing enterprises, market information and investment policies for its affiliated enterprises. However, the threshold of registered capital amounting to USD 3'000'000 and the two-year grace period for contribution remain unaffected. ([www.lar-star.com](http://www.lar-star.com))

#### Templates for FIE Announcement & Notification in Case of Merger, Dissolution and Capital Reduction

Recently, the then Ministry of Foreign Trade and Economic Cooperation has issued Templates for FIE Announcement & Notification in Case of Mergers, Dissolution and Capital Reduction for the sake of protecting interests of creditors.

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Before that, some Foreign invested enterprises had not completely and appropriately performed their obligations of disclosure when carrying out the said transactions. However, these templates are without binding force, which are to be provided by authorities exercising approval power at various level to foreign invested enterprises concerned for reference. ([www.moftec.gov.cn](http://www.moftec.gov.cn))

#### **SAT Circular on Taxation on Permanent Representative Organs of FIE**

Recently, State Administration of Taxation promulgated Circular on Issues Regarding Taxation on Permanent Representative Organs of Foreign Invested Enterprises, which will take effect as of 1 July 2003, as a follow-up to further implement its Circular on Strengthening Taxation on Permanent Representative Organs (Decree No.15, 1996). Under this circular, Permanent Representative Organs which conduct business in China should get themselves registered at relevant taxation authorities and submit their business report on regular basis; the Representative Organs which are granted exemption from taxation should submit their annual business reports within one month after the end of each year. For Representative Organs conducting consultancy business such as legal consultancy, accounting and auditing services are required to establish book-keeping system and record their actual income. For Representative Organs conducting service business such as agency and trade, their revenues should be determined on the basis their expenses incurred.

#### **Customs General Administration Announcement of Tariff on Exportation under Processing Trade**

On 4 April 2003, Customs General Administration promulgated Announcement on Tariff on Exportation under Processing Trade. Under this announcement, the exporting items which are processed from absolute imported materials are exempted from exportation tariff. For those processed from imported materials together with domestic stuff, the exportation tariff will be determined by the ratio of domestic stuff used in the processing process, which is expressed in a formula as:  $\text{Exportation Custom} = \text{Exportation Price} * \text{Tariff} * \text{Ratio of Demotic Stuff}$ . ([www.customs.gov.cn](http://www.customs.gov.cn))

#### **MOF Response to Implementation of Enterprises Accounting System and Relevant Accounting Standards (II)**

Recently, Ministry of Finance issued the second Response to Implementation of Enterprises Accounting System and Relevant Accounting Standards. According to this Response, four kinds of groups of enterprises must combine their financial reports: enterprises authorized to administer and profit from state assets; enterprises with public traded shares; enterprises conducting foreign trade which are required to do so; other enterprises which are required to do so. ([www.lar-star.com](http://www.lar-star.com))

#### **Foreign Trade Law to Be Revised**

On 8 April 2003, China daily reported that a draft to revise existent Foreign Trade Law had been completed and the legislators are expected to debate on this draft later this year. This draft highlights several points worthy of notice.

First, the existent foreign trade system will be further reformed to meet China's commitments to the WTO. Second, the draft lays out guidelines to facilitate investigations into the legality of trade barriers erected by foreign countries, offering domestic firms an official path for redress. Third, individuals will for the first time act as foreign traders to meet their increasing demands to conduct foreign trade. Fourth, administration of foreign trade will be reshaped by changing the approval system into a registration system. ([www.chinadaily.com](http://www.chinadaily.com))

#### **CSRC Drafted Provisional Rules on Issuance of Bonds by Securities Company**

Recently, China Securities Regulatory Commission has completed its draft of Provisional Rules on Issuance of Bonds by Securities Company and forwarded to interested parties for comments. This draft will regulate such transaction from several aspects. First, the issuance will be divided into public offering and private placement, each subject to different threshold. Second, special accountants must be established for the purpose of performance of due payment. Third, guarantee must be arranged for issuance, be it public or not. Fourth, public offering must be underwritten by those securities companies qualified as leading underwriters. Fifth, the maturity of bonds may vary from one year to five years. ([www.law-star.com](http://www.law-star.com))

#### **The Second JV Fund Management Company Debuts**

Fortune SGAM Management Co., Ltd., the second Joint Venture Fund Management Company recently made its debut in Shanghai. This company was set up by China's Fortune Trust & Investment Co., Ltd. and France's Societe Generale Asset Management SA, with registration capital of RMB 100 million. Chinese Fortune Trust & Investment Co Ltd. holds 67 percent of the shares of Fortune SGAM Management Co Ltd. and the French company holds 33 percent, as foreign shares are to be kept under 33% until three years after China's entry into the WTO, when the percentage may rise to 49%. ([www.xinhuanet.com](http://www.xinhuanet.com))

## 2. Local

### **Beijing to Lower the Costs of Enterprises**

Vice mayor of Beijing Municipality told reporters at the News Conference for Improving Investment Environments that working emphasis of 2003 would be laid on lowering the costs of enterprises. To achieve this goal, 40 items out of 175 administrative charges will be scraped. Further, several annual inspections will be abolished and several others will be combined. Moreover, training provided by governments will be gratuitous in the future. ([www.ibdaily.com](http://www.ibdaily.com))

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