



CHINA LEGAL BRIEFING 20

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1. National

Supreme Court Circular on Treatment of Land Use Right and Effect of Mortgage in Bankruptcy Proceedings

Supreme Court Circular on Several Issues Including Whether Land Use Right of State Owned Enterprises by Allocation Should Be Treated as Bankrupt Property, which was passed by the Supreme Court on 11 November 2002, took effect as of 18 April 2003. According to this Circular, land use right by allocation shall not be treated as bankrupt property, which should be retaken by relevant authorities. Further, the mortgage of land use right by allocation is without effect unless the transaction is approved by competent authorities and registered. For mortgage of buildings, two scenarios are envisaged. In the case of buildings residing on the land obtained by allocation, the mortgage of the buildings together with the land use right will be without effect unless approval is granted from competent authorities; in the case of buildings residing on the land obtained by lease or transferal, the validity of mortgage of the buildings together with the land use right is not subject to government approval. (www.chinalawinfo.com)

CSRC Revised Disclosure Rules

On 14 April 2003, China Securities Regulatory Commission issued Circulars on Revising Rule No.1, No. 11, No 13 for Public Listed Companies Regarding Content and Formality of Disclosure. Rule No.1 is directed to prospectus for Initial

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Public Offering; Rule No.11 is for prospectus for issuance of new shares; Rule No. 13 is to regulate prospectus for convertible bond. For excerpts of these prospectus, issuers are required to decline the jargons and technical terms not familiar to investors whenever possible; to use diagrams, charts if possible; to prevent inconsistency with the text. Further, the duration of prospectus are extended from 3 months to 6 months, commencing from the latest signature before the approval letter from the CSRC. (www.csrc.gov.cn)

SAIC Clarifies Rules Against Unfair Competition

Recently, in a response to its Sichuan Branch, State Administration of Industry and Commerce clarified rules against unfair competition. According to its clarification, where consumers are disinformed sufficiently to be misled, the act of using package or decoration the same as or similar to that of famous commodities without authorization may constitute unfair competition in the sense of Article 5 (2) of Unfair Competition Law, even if such package or decoration has been granted designs according to Patent Law. Such acts may be stopped in accordance with Article 5(2) of Unfair Competition Law and Rules on Forbidding Unfair Competition Acts of Copying Names, Package and Decorations of Famous Commodities by State Administration of Industry and Commerce. (www.law-star.com)

Supplementary Rules for Oversea Projects

On 15 April 2003, Ministry of Commerce and Ministry of Finance jointly issued Rules Supplementary to Provisional Rules on Management of Fund for Risk of Guarantee Letter for Domestic Contractors Conducting Oversea Construction Business, which makes three supplements for the existent rule. First, the scope of application for the Fund is extended to guarantee letter for bidding, guarantee letter for performance as well as guarantee letter for advance payment. Second, threshold for qualified applicants is lowered to enterprises whose total assets are no less than RMB 80 million with owners' input of no less than RMB 15 million, profiting for two consecutive years. Third, quota for single enterprise is risen to RMB 30 million and at maximum to RMB 40 million. (www.moftec.gov.cn)

MOC's Implementing Rules on Grade Management for FIE of Construction

On 8 April 2003, Ministry of Construction issued Implementing Rules on Grade Management as Provided by Provisions on Foreign Invested Enterprises (FIE) of Construction. According to this rule, Grade Certificates for FIEs of construction will be granted to WOFE, JV as well as enterprises invested by FIEs. However, such certificates will not be granted to branches of foreign enterprises and organizations. Further, FIEs of construction may conduct such business as civil engineering, construction, pipelines installation as well as decoration. (www.chinalawinfo.com)

Restriction on Gold Trading Lifted

Recently, People's Bank of China announced that production, processing, wholesale and retail of gold would be no longer subject to approval. An effect of this decision is that foreign companies may free to invest in gold business of

production, processing and retail provided that raw materials are obtained from domestic resources. However, exportation of gold products processed in China is still subject to approval from People's Bank of China. (www.law-star.com)

Mandatory Identification for Products

As of 1 May 2003, a mandatory identification system will be adopted for products relevant to personal health, environment protection as well as public safety. Hereafter, products failing in the identification test may not be imported or sold in the domestic market. The first block of products subject to identification includes household apparatuses, automobiles, motorcycles, information technology, video & audio products, illumination equipments, as well as medical equipments, etc. It is required to get identification certificates for these products by 1 May 2003 and put identification marks thereon. Foreign products absent from identification may not be sold in China. (www.law-star.com)

Draft Regulation on Digital Signature Completed

Recently, the drafting of Regulation on Digital Signature has been completed, which, after consultation with the public, has been forwarded to State Council for review and is expected to be passed in the foreseeable future. The draft mainly concerns two aspects. On the one hand, it confirms the legal status of electronic documentation and digital signature; on the other hand, it lays down rules for protection of information security. (www.chinalawinfo.com)

2. Local

Xi'an City Passed Regulation on Development Zone

Recently, Xi'an City, Shan'xi Province passed Regulation on Development Zone. Comparing with other similar rules of other jurisdictions, this Regulation has two breakthroughs. First, the scope of business of foreign invested enterprises seated in development zones in that city will not be specified unless for those business forbidden or limited by laws and regulations. Second, the percentage of shares resulting from contribution of high technology or other technology may be freely set by agreement between parties. (www.lar-star.com)

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