



CHINA LEGAL BRIEFING 24

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1. National

State Council Adopted in Principle Regulation on State Assets

Recently, Provisional Regulation on Supervision and Management of State Assets was adopted in principle at Executive Meeting of State Council, which is expected to be promulgated soon after necessary revision. This regulation was drafted by the nascent State Assets Management Commission, which will function as investor of State Owed Enterprises. The enterprises themselves, according to the Regulation, enjoy discretions in management, the business activities of which are free from interference. The Regulation also lays down rules for administration exercised by the Commission of senior management, material matters of enterprises and state assets. Some commentators believe the establishment of the Commission and promulgation of the Regulation may enhance transferability of state owned shares in enterprises, although it may not be done in secondary market. (www.law-star.com)

State Council Health Regulation on Emergency Response

On 7 May 2003, State Council by its Decree No.376 promulgated Regulation on Emergency Response to Paroxysmal Public Health Incidents to lay down legal basis for dealing with such emergencies as SARS. Different from other relevant laws, this Regulation sets a clear-cut deadline for reporting by substituting ambiguous expressions of "immediately" or "in time" with "one" or "two" hours.

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Moreover, in the event of such emergencies, State Council instead of Health Ministry will take the matter by establishing an emergency headquarter comprising of Health Ministry and other relevant departments of State Council. To avoid buck-passing, this Regulation delineates responsibilities of Ministries of Health, Transportation and Public Security. (www.people.com.cn)

SAT Circular on Income Tax

On 7 May 2003, State Administration of Taxation promulgated Circular on Issues of Income Tax in Implementing Accounting Principles for Enterprises. This Circular harmonizes tax laws and accounting principles by clarifying rules for such items as cost of loans for investment, donations, reserves, permanent or substantial damage to assets, endowment, health and unemployment insurance, reorganization of enterprise, classification of lease, bad debts and refund of products. (www.chinatax.gov.cn)

SAT Circular on Preferential Tax Rate for Increased Investment of FIE

On 7 May, State Administration of Taxation promulgated Supplementary Circular on Issues Regarding Preferential Tax Rate for Foreign Invested Enterprises Increasing Their Investment to implement its circular issued in 2002 on this topic. This Circular is mainly concerned with four aspects. First, the scope of “Encouraged Projects”, for which date of approval is decisive. Before 1 April 2002, the scope includes projects under the headings of “encouraged” as well as “restricted (B)” in the Catalogue for the Guidance of Foreign Investment Industries 1997. However, for increased investment approved after 1 April 2002, the scope refers to the heading of “encouraged” in Catalogue 2002. Second, several installments of increased investment may be combined as a single one in calculating the added registered capital. Third, the term of “original registered capital” is defined as the one before investment is added to. Fourth, the method for determining term of preferential tax rate is prescribed in the event of increased investment taking the form of installments. (www.chinatax.gov.cn)

SAT Circular on Less-Than-25% FIE

On 7 May 2003, State Administration of Taxation issued Circular on Taxation Issues Regarding Foreign Invested Enterprises in Which Foreign Contribution is Less Than 25%. According to this Circular, unless provided otherwise by State Council, these enterprises are governed by taxation regime applied to domestic enterprises and may not enjoy treatment granted to foreign invested enterprises. Moreover, unless otherwise indicated by State Council, the taxation registration of these enterprises is governed by rules applied to domestic enterprises. (www.chinatax.gov.cn)

CSRC Vetoes Financial Product Co-Managed by Securities Companies and Banks

It is reported that a recent communication of China Securities Regulatory Commission vetoes the trust finance management product co-initiated by securities companies and banks. According to this Communication, trust finance

management product co-initiated by securities companies and banks shall be subject to approval from CSRC. Moreover, securities companies may not promise in advance minimum profit for their trust finance management products. Commentators maintain that this communication amounts to a ban although expressions to this effect are not explicitly included. (www.xinhua.org)

New Property Insurance Against SARS

Following the mushroom of life insurance products against SARS, property insurers echoed to this trend by putting their new products into market. Up to 16 May, China Insurance Regulatory Commission has approved 11 products from 5 property insurers including People's Insurance Company, Ping An Property, Pacific Property, Huatai Property and Yong'an Property. Products of People's Insurance Company provide special coverage for medical care institutions and carriers of public transportation. Products from other insurers mainly extend existent coverage of employer liabilities insurance to SARS by new additional clauses. (www.circ.gov.cn)

Regulation on Auto Financing to Come Out

Recently, an official from People's Bank of China indicated that Regulation on Administration of Auto Financial Institutions was under way and it is expected to come out in this year. Under the draft regulation, business of auto purchase financing is not exclusive for banks. All the institutions, whether financial or not, may start the business provided they meet the criteria set forth in the regulation. In the draft regulation under consultation, the threshold for auto financing institutions is : (1) registered capital no less than RMB 5 billion or equivalent convertible foreign exchanges; (2) total asset of the year before application no less than RMB 80 billion or equivalent convertible foreign exchanges; (2) overall investment no more than 50% of net asset; (4) profits in the past three consecutive years. (www.larstar.com)

Monopolization of Tobacco Not to Be Revoked

On 16 May 2003, an official from Bureau of Tobacco Monopolization told Xinhua New Agency that monopolization in this industry would not be weakened or revoked. He further maintained that the reports that monopolization will be revoked in two years, tobacco enterprises may be listed and joint venture may be established, were totally groundless. (www.xinhua.net)

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