



CHINA LEGAL BRIEFING 25

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1. National

MOC Shaped Up

A recent circular from General Office of State Council portrays the structure of the nascent Ministry of Commerce, which took the place of Ministry of Foreign Trade and Economic Cooperation and State Commission on Economy and Trade in accordance with the decision of National People's Congress this March. According to this Circular, Ministry of Commerce is a department of State Council responsible for administration of domestic and foreign trade as well as international economic cooperation. Its responsibilities are prescribed in 14 aspects including rules drafting, foreign trade regulating, foreign investment administrating and overseas business missions managing. This Circular makes it clear that the power to grant export license for items involving proliferation issues is invested with the Ministry. (www.law-star.com)

CSRC Stonewalled Collective Investment Scheme

On 20 May 2003, China Securities Regulatory Commission published its Circular on Issues Regarding Collective Investment as Principal Conducted by Securities Companies. According to this Circular, CSRC is drafting rules on this topic. Before it comes out, securities companies are banned from offering collective investment as principal to specific or nonspecific investors. The ongoing offering must be stopped immediately as of the date of promulgation of this Circular. The

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securities companies which had conducted such business heretofore shall file relevant documents with the CSRC for scrutiny and correct their irregularities. In doing so, such rules shall be followed as: (1) securities companies may not, in written or oral form, explicitly or implicitly, guarantee the investors free from loss or promise profits. The prediction of profits must be based on sufficient evidence and investors shall be informed in writing that it is just for reference and the risks are borne by themselves. (2) The accounts used by collective investment shall be managed by banks holding the custodianship of securities investment fund. (3) The key terms of the collective investment scheme shall be in line with Circular on Regulating Investment Management as Principal Conducted by Securities Companies.

(www.csrc.gov.cn)

CSRC Circular on Takeover by Offer

On 20 May 2003, China Securities Regulatory Commission promulgated Circular on Issues Regarding Listing and Trading of Shares of the Target Company Under Takeover by Offer, aiming at clarifying rules for this issue in the case of the shares held by the purchaser exceed 75%. According to this Circular, where the distribution of shares ownership has not met the requirements for listing as prescribed by Law of Corporations and the purchaser has the intent to terminate its listing and trading, the shares of the target company shall be terminated from listing and trading at stock exchanges. However, where the purchaser does not have such intent, this issue will be treated separately under different circumstances. If the distribution of shares ownership still meets the requirements for listing and trading as provided for by the Law of Corporations, its status of listing and trading is not affected. If, however, the requirements are not satisfied any more, the purchaser shall put forward a plan to maintain listing and trading of the shares and implement it within one month after 6 months since expiry of the term of takeover offer. Before such plan is completely carried out, the shares will be specially treated since the expiry of the term of takeover offer to warn investors against the risk of termination of trading. The special treatment will be lifted after the plan is successfully carried out. However, the shares will be terminated from listing and trading if the implementation of the plan is not accomplished within the prescribed period. (www.csrc.gov.cn)

CIRC Rules on Accurate Calculation of New Life Insurance Products

On 19 May 2003, China Insurance Regulatory Commission promulgated Provisions on Accurate Calculation of New Life Insurance Products. The new Rules, which include the design, debt evaluation and determination of non-guaranteed insurable interests of such products as distribution insurance, investment-connected insurance, omnipotence insurance, will take effect as of July 1. (www.circ.gov.cn)

SAT Circular on Law of Tax Collection

On 20 May 2003, State Administration of Taxation promulgated Circular on Issues Regarding Implementation of Law of Tax Collection and Detailed Rules Thereof. This Circular deals with such issues as tax registration number, tax withholding by agents, administration of business activities of taxpayers outside registration area, administration of

tax declaration, calculation and enforcement of delay charge, administration of tax relief and exemption, loss of tax registration certificate, reward for reporting irregularities, inspection of books and records, term of retrospective adjustment of related transactions, simplified declaration, applicability of tax determination, book-keeping language of foreign invested enterprises, inspection of electronic books and records. (www.chinatax.gov.cn)

CICPA Guidelines on Audit Report

On 21 May 2003, China Institute of Certified Public Accountants issued Practice Guidelines No.5 for Chinese Certified Public Accountants: Audit Report. This Guideline focuses on three aspects. First, it defines several terms giving rise to controversies such as “fair representation” and “accomplishment of auditing work”. Second, it elaborates basic contents, forms and types of audit report. Third, it lays down rules for audit reports for series of financial statements, which throws light on audit of initial financing and re-financing at capital market and of leaving the post.

(www.cicpa.org)

MOF Favorable Policies for Enterprises against SARS

Recently, Ministry of Finance adopted a set of measures to offset negative impacts by SARS on national economy. Upon approval from State Council, the Ministry applied preferential policies to certain industries in SARS-hit areas within prescribed period. These measures include reducing and suspending 18 administrative levies, 15 governmental funds and certain taxes, and providing subsidies for interests of short-term loans extended to national airlines and tourism agencies. Furthermore, the Ministry is considering raising the quotas for export tax refund, which is believed to contribute to relieving economy of impacts from SARS. (www.law-star.com)

New Market Indices Launched

On 21 May 2003, Xinhua/FTSE Index (XFI), the independent China index provider, announced the launch of the Xinhua/FTSE China Government Bond Index and the Xinhua/FTSE China A 200 Composite Index as an extension to the existing equity index series. Xinhua/FTSE China A 200 Composite Index reflects the performance of both the domestic equity and bond markets of Mainland China. Xinhua/FTSE China Government Bond Index is, however, designed to include all China Government bonds trading on the Shanghai and Shenzhen stock exchanges. Initially, Xinhua/FTSE China Government Bond Index is launched with 15 constituents. (www.nfx.com)

2. Local

Shenzhen to Cool Property Market

Shenzhen Special Economic Zone is to cut supply of commercial land over the next three years with a view to cooling the real estate market. In the next three years, the annual average land approved for real estate will be capped

to within 50 hectares, much less than the 95 hectares last year. The decision was made in response to local concerns that the city's real estate market is becoming overheated. The municipal government will no longer approve any industrial parks or science and technology parks. (www.isinolaw.com)

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