



CHINA LEGAL BRIEFING 27

WENGER VIELI BELSER BEIJING OFFICE

June 2 - June 6, 2003

CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENGER VIELI BELSER and distributed to its clients and CHINA LEGAL REPORT SUBSCRIBERS. WVB does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide legal advice.

1. National

State Council Regulation on State Owned Assets

On 4 June 2003, Legal Office of State Council briefed the Xinhua News Agency the newly adopted Provisional Regulation on Supervision and Management of State Owned Assets in Enterprises, which came into effect as of promulgation. According to the Office, this regulation applies to state assets in state owned enterprises, state held enterprises, and enterprises in which state holds shares. However, it does not apply to state assets in financial institutions, government agencies, institutions funded by state budget, and state owned natural resources. The responsibilities of investors are taken by State Council, provincial governments and city governments, which perform this function through relevant state asset management agencies established thereof. The state asset management agencies adopt different means of supervision based on the degree of state control. For wholly state owned enterprises, the agencies directly decide material matters; for state held enterprises, however, the agencies will act through the designated shareholders and directors. (www.chinalawinfo.com)

SIPO Provisions on Patent Labeling

Recently, State Intellectual Property Office promulgated Provisions on Means of Labeling Patent Marks and Its Registration Number, which will be effective as of 1 July this year. According to the Provisions, within duration of patents, the right

Telephone +86 10 64687331
Fax +86 10 64603132
电话: +86 10 64687331
传真: +86 10 64603132

mail@wenfei.com
www.wenfei.com

Wenger Vieli Belser
Room 722
Golden Land Building
No. 32 Liang Ma Qiao Road
Chaoyang District
Beijing 100016 P.R.C

北京办事处
北京市朝阳区亮马桥路32号
高澜大厦7层722
邮编: 100016

Offices Zurich
Wenger Vieli Belser
Dufourstrasse 56 and
Mühlebachstrasse 38
CH-8034 Zürich

Office Zug
Industriestrasse 7
P.O. Box
CH-6301 Zug

holders and licensees may label the patent marks and registration numbers thereof on the patented products, products directly processed from patented methods and their package. In doing so, classification of patents, namely inventions, utility models or designs, and its respective registration number showing date of application and classification, shall be demonstrated. The right holder and licensees may apply additional characters and graphs to the label within the limitation that no misleading is made. Inappropriate labeling constituting imitation of patent may be subject to penalties. (www.sipo.gov.cn)

CGA Regulation on Customs Evaluation of Royalties of Imports

On 30 May 2003, Customs General Administration promulgated Provisions on Evaluation of Royalties of Imports, which will take effect as of July 1 this year and supersede Provisional Rules on Duty Imposing and Exemption for Royalties of Imports of 1993. The royalties for the purpose of this regulation refer to payment for such items as patent, trademark, copyright, know-how, right to sub-distribution and resale. The royalties shall be included into duty-paying value where: (1) it relates to the imported item; and (2) payment of royalties is a prerequisite for export of such items by the seller to China for sale. However, cost paid for duplication of imported items within China, for technical training and for market research conducted outside China, will not be included into duty-paying value after verification from customs office. (www.customs.gov.cn)

CBRC Regulation on Financial Business License

On 2 June 2003, China Banking Regulatory Commission came up with Provisions on Administration of Financial Business License, which will take effect as of July 1 this year. Under this regulation, the existent annual inspection of "Legal Person License of Financial Institutions" and "License of Conducting Financial Business" will be abolished. The licenses relating to financial business will remain valid for a long period of time once issued. Unless in the case of changes in place of business, names of institutions and merger, etc, it is unnecessary to apply for new licenses. The Commission will be responsible for publicity of establishment of financial institutions and alternation thereof. Foreign invested financial institutions shall also announce changes in registered capital and clients. (www.cbrc.gov.cn)

SAIC Circular on Pharmaceutical Ads

Recently, State Administration of Industry and Commerce issued Circular on Prohibition of Covert Advertisement of Medicines Subject to Prescription by Using Trademarks and Trade Names, which reacts to the attempt of evading the provision that no advertisement of medicines subject to prescription may be made in mass media or by other means with general public as target group. According to this Circular, advertisements, in which trade names and trademarks which resemble to names of medicines subject to prescription, are required to go through approval procedure from competent authorities. Moreover, trademarks and trade names which resemble to names of medicines subject to prescription may not be used for advertisement purpose in journals other than those designated medical

specials. At the same time, consultancy institutions and medical service institutions, whose trade names resemble to names or trademarks of medicines subject to prescription, may not advertise in mass media. The violations are subject to penalties by authorities of industry and commerce. (www.law-lib.com)

SAFE Set Forex Quotas for QFIs

On 6 June 2003, State Administration of Foreign Exchange announced that it had endorsed foreign exchange quotas for the two newly approved Qualified Foreign Institutional Investors. For UBS Limited, the quota is USD 300 million; for the other one, Nomura Securities, the quota is USD 50 million. This move completed all the procedure needed for QFII, after which the two institutions may enter the A share market in China. (www.safe.gov.cn)

SAFE to Strengthen Supervision over Securities Companies and Insurers

Recently, State Administration of Foreign Exchange expressed its intent to strengthen supervision over securities companies and insurers. The scheme include reinforcing supervision of securities companies on market access to foreign exchange business, enacting rules for administration of payment in foreign exchanges made to foreign reinsurance acceptor, laying down detailed manuals for administration of foreign exchanges under insurance items. The Administration is further quoted as saying that measures would be taken to standardize administration of foreign exchanges for non-banking financial institutions such as trust companies, finance companies, lease companies, foreign invested fund management companies. (www.chinalawinfo.com)

Developments in Protection of Famous Trademarks

As of 1 June, Provisions on Verification and Protection of Famous Trademarks has taken effect, which modifies the protection regime in this field to some effect. Under the new rule, there is no separate procedure for beforehand verification of famous trademarks. The application for verification shall be accompanied by claims against infringement of trademarks, whether such infringement takes place in the process of applying for new trademarks or using the existent trademarks. (www.chinataxtrade.com)

Inspection for Compulsory Certification Scheme Postponed

According to an official from China Certification and Accreditation Administration, the commencement of the project of China Compulsory Certification has been postponed from May 1 to August 1 this year, due to outbreak of SARS. Under the project, products without going through tests and labeling the mark of "CCC" (refers to China Compulsory Certification) shall not be put in market and used in the course of business. Up to date, more than 70% products regulated by this project have got such certification. (www.isinolaw.com)

No Restrictions on GMO Soybean

Recently, Ministry of Commerce announced that there will be no restriction on importation of Genetically Modified Organism soybean. Due to SARS, the entry-exist inspection becomes more stringent. However, the Ministry has made it clear that this policy is not adopted to restrict importation of GMO soybean. (www.isinolaw.com)

Citibank's New Forex Option

Recently, People's Bank of China has given approval to the Citibank to launch a new foreign exchange service option in China. It is the first time that a foreign bank has been given approval to provide such services. This service is available to individual investors who will automatically get a foreign exchange trading option at the time of opening a foreign currency deposit account with the bank. (www.isinolaw.com)

© Wenger Vieli Belser, Beijing, June 6, 2003

DISCLAIMER

THIS PUBLICATION IS INTENDED TO PROVIDE ACCURATE INFORMATION IN REGARD TO THE SUBJECT MATTER COVERED. READERS ENTERING INTO TRANSACTION ON THE BASIS OF SUCH INFORMATION SHOULD SEEK ADDITIONAL, IN-DEPTH SERVICES OF A COMPETENT PROFESSIONAL ADVISOR. WENGER VIELI BELSER, THE AUTHOR, CONSULTANT OR GENERAL EDITOR OF THIS PUBLICATION EXPRESSLY DISCLAIM ALL AND ANY LIABILITY AND RESPONSIBILITY TO ANY PERSON, WHETHER A FUTURE CLIENT OR MERE READER OF THIS PUBLICATION OR NOT, IN RESPECT OF ANYTHING AND OF THE CONSEQUENCES OF ANYTHING, DONE OR OMITTED TO BE DONE BY ANY SUCH PERSON IN RELIANCE, WHETHER WHOLLY OR PARTIALLY, UPON THE WHOLE OR ANY PART OF THE CONTENTS OF THIS PUBLICATION.