



## CHINA LEGAL BRIEFING 28

WENGER VIELI BELSER BEIJING OFFICE

June 9 - June 13, 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

#### SAT Circular on M&A

On 28 May 2003, State Administration of Taxation promulgated Circular on Issues Regarding Taxation in the Event of Acquisition of Shares of Domestic Enterprises by Foreign Investors, which had taken effect retroactively as of 1 January this year. According to this Circular, foreign invested enterprises, in which foreign shares account for more than 25% as a result of acquisition of shares originally held by domestic shareholders or purchase of increased capital, may pay their tax in accordance with laws and regulations applied to foreign invested enterprise. Where these enterprises satisfy conditions set forth in the Law on Income Tax of Foreign Invested Enterprises and Foreign Enterprises and its implementing rules, they may enjoy preferential income tax rate. The Circular further makes arrangements for transitional period such as duration of business, tackling of loss prior to acquisition and determination of commencement of profit.

[www.chinatax.gov.cn](http://www.chinatax.gov.cn)

#### SAT Circular on Initial Investment Enterprises

On 4 June 2003, State Administration of Taxation released Circular on Income Tax Paid by Initial Investment Enterprises Established by Foreign Investors, which had taken effect retroactively as of 1 March this year. Initial Investment enterprises covered by this Circular refer to businesses established in accor-

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

dance Provisions on Administration of Initial Investment Enterprises with the phrase of “initial investment” included in their trade names. Those, which conduct business of investment in and transfer of shares, management of initial investment or consultancy, are not production enterprise in the sense of Law on Income Tax of Foreign Invested Enterprises and Foreign Enterprises and hence are declined enjoyment of preferential income tax treatment to this category of enterprises. Enterprises with legal personality shall pay their income tax in their own right. For enterprises without legal personality, income tax shall be paid separately by their investors or paid jointly upon approval local taxation authorities. ([www.mofcom.gov.cn](http://www.mofcom.gov.cn))

#### **SAT to Launch Inspection on Income and Business Tax of FIE**

On 13 June 2003, State Administration of Taxation announced that it would launch a national wide inspection on payment of income tax and business tax by foreign invested enterprises receiving interests, dividends, rents, royalties and profits of property transfer originated from China, no matter they have domestic business establishments or not. The targets encompass domestic institutions including both foreign invested and domestic enterprises, which have paid the aforesaid items to foreign institutions and individuals or have booked these items as their cost even if payments have not been made. The preliminary stage of inspection is expected to conclude by the end of September this year. ([www.chinatax.gov.cn](http://www.chinatax.gov.cn))

#### **MOC Provisions on Investment Companies**

On 10 June 2003, Ministry of Commerce by its Decree No.1 of 2003 promulgated Provisions on Investment Companies Established by Foreign Investors, which will take effect after 30 days of promulgation. This regulation is nothing but a compilation of existent regulations on this topic issued by its forerunner, Ministry of Foreign Trade and Economic Cooperation. The components include Provisional Rules on Investment Companies Established by Foreign Investors of 1995, its supplementary rules issued in 1999 and 2001, and its amendments adopted in 2003. ([www.mofcom.gov.cn](http://www.mofcom.gov.cn))

#### **CSRC Set Minimum Standard for Internal Risks Control**

Recently, China Securities Regulatory Commission laid down 76 minimum standards for internal risks control of fund management companies, among which 21 are on assessment and control of human resources risk management, 48 are relevant to assessment and control of investment and trading risks, 7 are about assessment and control of related transaction risks. As core standards, management of investment and trading risks covers almost all the stages of transactions including investment research, investment authorization, investment decision, implementation of transactions, confirmation of income from shares of funds, risk analysis of funds and evaluation of performance. ([www.xinhuanet.org](http://www.xinhuanet.org))

**CSRC Approved Another Two QFIs**

On 8 June 2003, China Securities Regulatory Commission announced that it had approved applications for Qualified Foreign Institutional Investor submitted by Morgan Stanley Co. International Limited and Citigroup Global Transactions Services, following its decision to grant such status to UBS Limited and Nomura Securities Co Ltd two week ago. The remaining work left for the two new comers is to await approval for foreign exchanges quotas from State Administration of Foreign Exchange. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

**CSRC Signed MOU with Swiss Counterpart**

Recently, China Securities Regulatory Commission signed with Federal Banking Commission of Switzerland the Memorandum of Understandings on Cooperation in Supervision on Securities and Futures. This is the 22nd MOU for this end. ([www.law-star.com](http://www.law-star.com))

**CIRC Approved Asset Management Companies**

Recently, China Insurance Regulatory Commission gave go-ahead to People's Insurance Company to establish its own asset management company, following its decision to grant such approval to China Life Insurance Company. These moves are interpreted to enhance efficient management of insurance funds. ([www.people.com.cn](http://www.people.com.cn))

**CIRC Revised Rules on Investment in Enterprise Bonds**

On 2 June 2003, China Insurance Regulatory Commission released its revised Provisional Rules on Investment in Enterprise Bonds by Insurance Companies, which has taken effect as of promulgation. Under the revised rule, the limitation of bonds to central enterprises in such fields as Three Gorge, railway, electricity and mobiles is lifted. The insurers may invest in any enterprises bonds approved by competent authorities with the rating above AA. Furthermore, the cap of 10% of total assets is raised to 20%. ([www.circ.gov.cn](http://www.circ.gov.cn))

**Funds of Social Security Entered Securities Market**

On 9 June 2003, National Commission of Social Security Funds Management announced that it had authorized 6 fund management companies, including Southern fund, Bo Shi Fund, China Asset, Peng Hua Fund, Chang Sheng Fund, and Harvest Fund, to act as limited custodians of social security funds. The initial funds trusted to these companies amount to RMB 140 billion. ([www.sina.com.cn](http://www.sina.com.cn))

**SOEs May Appoint Foreign Managers**

Recently, the State-owned Assets Supervision and Administration Commission has indicated that domestic State Owned Enterprises will be allowed to appoint foreigners and private businessmen as managers. The Commission will set sound standards and create favorable conditions to employ qualified talents, regardless of their nationality and current status. However, the work experience of incumbent will be given priority over academic qualifications.

([www.isinolaw.com](http://www.isinolaw.com))

© Wenger Vieli Belser, Beijing, June 13, 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.