



CHINA LEGAL BRIEFING 29

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1. National

NPC Drew Up Legislation Plan of This Year

It is reported that legislation plan of 2003 for Standing Committee of National People's Congress has been set, according to which 13 draft laws are to be debated. Among these laws, more than half relate closely to business. The new legislations are Law on Securities Investment Fund, Law on Digital Signature and Law on Administrative Approval; the existent laws to be revised are Securities Law, Law on Foreign Trade, Law on People's Bank and Law on Commercial Banks. Moreover, the NPC decided to speed up the process to draft Code of Right *in Rem* and revise Law on Unfair Competition and Law on Corporations (www.people.com.cn)

State Council Regulation on Property Management

On 28 May 2003, State Council by its Decree No.379 promulgated Regulation on Property Management, which will take effect as of 1 September 2003. This regulation is enacted in the context that houses have been progressively privatized.

To protect the interests of emerging owners, the Regulation is drafted to govern the relationships between owners, developers and management companies. According to this regulation, owners in a set area may establish Assembly of Owners and Commission of Owners. The Assembly decides material matters relating to property management in the interests of all the owners, while the

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Commission is responsible for daily management on their behalf. To regulate conducts of the developer, the Regulation provides that the developer may not make unauthorized disposal of shared parts and facilities of the property. For management companies, they may not change the usage of property parts serving for property management, which are owned by the owners, and may not charge extras when collecting fees for utilities as agent.

(www.people.com.cn)

MOC Provisions on WOFE Traveling Agency

On 10 June 2003, State Administration of Tourism and Ministry of Commerce jointly issued Provisional Rules on Establishment of Foreign Controlled and Wholly Foreign Owned Traveling Agencies, which will take effect after 30 days from the date of promulgation. According to the Rules, foreign investors may apply to establish foreign controlled or wholly foreign owned traveling agencies in National Tourism Zone approved by State Council and in Beijing, Shanghai, Guangzhou, Shenzhen and Xi'an. To qualify the requirements, the threshold for registered capital is RMB 4 Million. Foreign investors shall have annual business income no less than USD 40 Million for foreign controlled traveling agencies or no less than USD 5 billion for wholly foreign owned traveling agencies.

(www.mofcom.gov.cn)

SIPO Provisions on Compulsory License for Exploitation of Patent

On 13 June 2003, State Intellectual Property Office released Provisions on Compulsory License for Exploitation of Patent, which will take effect as of 15 July 2003. The Provisions lays down separate procedural rules for applications for compulsory license for exploitation, royalties paid under compulsory license and revocation of compulsory license. According to the Provisions, the competent authority responsible for these matters is State Intellectual Property Office. All the applications and supporting documents shall be made in Chinese. Applications in foreign languages without Chinese translations will be treated as never being submitted. The interested parties to the procedure for compulsory license have the right to be heard. The parties to the procedure for royalties may make oral submissions. However, the parties to the procedure for revocation of compulsory license enjoy less procedural safeguards, as no hearing or oral submission is available. (www.law-lib.com)

SIPO Circular on Approval for Copyright Business

On 4 June 2003, State Intellectual Property Office issued Circular on Approval for Copyright Business, clarifying rules for qualification to conduct copyright business and its approval. According to this Circular, sale of copyrights is in its essence a legal act to transfer copyright, which may be conducted without approval from bureaus of copyright administration in accordance with Article 10 of Copyright Law provided that such transfer is made in line with relevant laws and regulations. However, the business to conduct foreign-related transfer of or licensing copyright as agent constitute foreign related copyright agency, which is subject to approval from State Intellectual Property Office and register at bureaus of industry and commerce in accordance with Provisional Rules on Foreign Related Copyright

Agencies of 1996. (www.law-lib.com)

Death Horn for Profit Sharing Health Insurance

On 19 June 2003, China Insurance Regulatory Commission briefed the media the ultimatum for profit sharing health insurance, which is posed by Provisions on Accurate Calculation of New Life Insurance Products (China Legal Briefing No.25). According to CIRC, the ultimatum is 1 October 2003, after which profit sharing health insurance may not be sold. However, this move does not veto all the profit sharing life insurance products. They may take the forms of lifetime insurance and pensions. The objective of eliminating health insurance from profit sharing products is to facilitate risk management. (www.circ.gov.cn)

PBC Circular on Credits Relating to Real Property

On 5 June 2005, People's Bank of China, Chinese central bank, issued Circular on Improving Administration of Credits Relating to Real Property. This Circular deals with such debtors as real property developer, land reservation institutions, constructors, and individual commodity premise buyers. In the case of development, no credits may be extended to real property developers failing to get Land Use Permit, Land Planning Permit, Project Planning Permit and Construction Permit. The owner's asset of applicant developers shall be no less than 20% of total investment. The loan may be used solely for local projects; trans-regional use is forbidden. For constructors, the usage of loan is limited to purchase of necessary equipments such as bulldozers. (www.law-lib.com)

CBRC to Promulgate New Rules

It is reported that China Banking Regulatory Commission is drafting Provisional Measures on Administration of Service Fees of Business of Commercial Banks, Provisional Measures on Administration of Automobile Financing Companies, and Provisional Rules on Administration of Transactions of Financial Derivatives. In addition, the Commission is ready to regulate such fields as administration of market risks, administration of capital sufficiency, risk control of loans between related parties. (www.law-star.com)

2. Local

Foreign Insurer Open Business in SW China

It is reported that China Insurance Regulatory Commission has granted license to a French insurance company Groupama to conduct businesses in Chengdu, Sichuan Province and Chongqing Municipality. It is expected that the French insurer will provide agricultural insurance in future. To start with, Groupama will set up a property insurance subordinate in those two places. China has already opened its insurance market for foreigners in Beijing, Tianjin, Suzhou and Guangzhou. (www.isinolaw.com)

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