



CHINA LEGAL BRIEFING 30

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1. *National*

NPC to Revise Securities Law

It is reported that the proposed amendments to Securities Law prepared by China Securities Regulatory Commission will soon be submitted to Standing Committee of National People's Congress for debate, following the decision to include revision of Securities Law into NPC's legislation plan of 2003 (China Legal Briefing No.29). The amendments under consideration are not revamping; material changes are expected. According to sources, the provisions restricting entry into market by fund from banks, loan pledged by stocks, involvement of state owned enterprises in stock trading, will be removed. Moreover, securities companies may in the future engage securities trading activities that are financed by funds or securities obtained from their clients, which is forbidden under the existent law (Article 36). (www.xinhuanet.org)

NPC Debated on Second Draft of Law on Securities Investment Fund

The third session of Standing Committee of 9th National People's Congress has been debating on the second draft of Law on Securities Investment Fund, which has been revised following the first reading conducted in last July. The revision made to the first draft mainly relates to definition of securities in-

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vestment fund, scope of fund managers and custodians, and trading of quotas of closed fund. Compared with the first draft, the second draft elaborates conditions and procedure for trading of quotas of closed fund. Moreover, the requirement that sufficient cash and government bonds should be kept in open fund is added.

(www.xinhuanet.org)

Supreme Court Interpretation on Futures Trading

On 23 June 2003, Supreme Court promulgated Provisions on Several Issues Regarding Adjudication of Cases Involving Futures Disputes, which will take effect as of 1 July this year. This judicial interpretation deals with such aspects as jurisdiction, undertaker of liabilities, void contract, liabilities of trading act, liabilities of overdraft, obligation of warranty of contract performance, liabilities of tort, burden of proof, provisional measures and enforcement. Under this interpretation, the futures agency contract shall be void where the person conducting agency business holds no such qualification, or where the person engaging in trading of futures holds no such qualification, or where mandatory provisions of laws and regulations are contravened. (www.law-lib.com)

CSRC Guideline on Half-Year Report

On 26 June 2003, China Securities Regulatory Commission released the revised No. 3 Guideline on Content and Form of Information Disclosed by Public Companies (Half Year Report). Compared with its 2001 version, 8 major amendments are made to requirements for report text and 2 are made to requirements for report compendium. Under the new Guideline, the statement of head of management as well as head of accounting department should be included in the half-year report in line with the requirement for annual report. Moreover, current asset, current liabilities and total asset should be disclosed. At the same time, the information of dominant shareholders and actual controlling person are no longer required to be elaborated; instead, a cross reference may be made indicating the name and issue of the designated newspaper disclosing such information.

(www.csrc.gov.cn)

CSRC Memo on Issuance Review

Recently, China Securities Regulatory Commission issued No.4 Memorandum on Criteria for Stock Issuance Review, clarifying requirements for financial information contained in application documents. According to this Memo, the applicant issuer should submit the latest income tax declaration form as well as those for the last three years. Moreover, the Memo indicates that "original financial statements for the last three years" refer to the reports submitted to local tax and finance authorities. (www.law-star.com)

CSA Rule on Qualification for Securities Professional

On 27 June 2003, China Securities Association promulgated Detailed Rules on Administration of Qualification for Securities Professional, which will take effect as of July 1 this year. According to these Rules, professionals working in the following institutions have to obtain Practice Permit in addition to relevant qualifications: securities companies, fund management companies, fund custodian institutions, fund sale institutions, consultant institutions for securities investment, securities rating institutions, other institutions approved by China Securities Regulatory Commission to engage in securities business. China Securities Association is responsible for administration of qualification and practice permit. It is notable that qualification is open to foreigners. (www.s-a-c.org.cn)

NDRC Regulation on Bidding

On 19 June 2003, National Development and Reform Commission promulgated Provisions on Bidding and Invitation for Bidding for Reconnaissance and Design of Construction Project, which will take effect as of August 1 this year. According to this regulation, the tenderer may divide the bidding process of reconnaissance and design of construction project into several stages or parts where the technology so requires. Moreover, rules are laid down for protection of intellectual property rights by requiring the successful bidders and tenderers to obtain written approval from the losing bidder and pay reasonable royalties if they would like to apply what is contained in the bidding documents of the loser. (www.sdpc.gov.cn)

MLR Regulation on Contractual Transfer of Land Use Right

On 11 June 2003, Ministry of Land Resource promulgated Provisions on Contractual Transfer of State Owned Land Use Right, which will take effect as of August 1 this year. According to this regulation, contractual transfer of state owned land use right shall not take place unless other means are exhausted such as auction and bidding. Land use right proposed from such business activities as commerce, tourism, commodity premise and entertainment shall not be transferred by contract. Moreover, contractual transfer shall not apply where more than 2 applicants compete for one piece of land.

SFDA Circular on Import and Export of Drugs

On 6 June 2003, State Food and Drugs Administration and Customs General Administration jointly promulgated Circular on Altering Authority Responsible for Import and Export Approval for narcotic and psychotropic Drugs. According to this circular, the power to grant import and export approval for narcotic and psychotropic drugs is transferred from State Drug Administration to State Food and Drug Administration, which has merged State Drug Administration and State Food Administration. However, the permits issued by the former remain valid until they expire. (www.sda.gov.cn)

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