



CHINA LEGAL BRIEFING 31

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1. National

NDRC Rules on Price Monopoly

On 18 June 2003, National Development and Reform Commission released Provisional Rules on Prohibiting Price Monopoly, which will take effect as of 1 November 2003. Under this regulation, price monopoly refers to manipulation of market price conducted by operators, either through collusion or abuse of dominant position, which results in injuries to legitimate interests of other operators or consumers, or to public interests. The operators may not through agreement, decision or coordination collude to adopt the following policies of price monopoly, *inter alia*: (1) determine, sustain or alter prices concertedly; (2) manipulate prices by retrenching output or availability; (3) maneuver prices in bidding process or auction. Moreover, the operators may not compulsorily restrict resale prices through their dominant position. In addition, price dumping and price discrimination are forbidden. In determining dominant position, such factors as market percentage, substitutability of products and market access of new competitors will be taken into consideration.

www.sdpc.gov.cn

SAFE & CIRC Circular on Forex Issues Regarding Reinsurance

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

On 20 June 2003, State Administration of Foreign Exchange and China Insurance Regulatory Commission jointly issued Circular on Certain Issues Regarding Sale and Payment of Foreign Exchange in Outward Business of Overseas Reinsurance, which has been effective as of 1 July 2003. According to this Circular, domestic insurers, including Chinese invested and Foreign invested ones, may conduct overseas outward business of reinsurance, whether the original insurance is calculated in RMB or Forex, provided that they have obtained the qualifications for Forex reinsurance from administrations of foreign exchange. However, insurers may purchase Forex in their outward business of reinsurance only for insurance calculated in RMB, where (1) overseas reinsurance is made in the form of Excess of Loss Ratio Reinsurance; or (2) the sum of liability under a single contract exceeds RMB 50,000,000; or (3) total premium in RMB collected for a single product exceeds the sum of capital and common reserve. (www.safe.gov.cn)

SAT Circular on Permanent Establishment of FIE Took Effect

As of 1 July 2003, Circular on Issues Regarding Taxation on Permanent Establishment of Foreign Invested Enterprises has taken effect, which was released by State Administration of Taxation on 12 March 2003 (China Legal Briefing 19). This Circular mainly makes clear three points. Firstly, permanent establishment shall report their business activities, even if they are free or exempted from taxation. Secondly, permanent establishments engaging in trade whether in their own name or as agency shall be taxed. Thirdly, there are two gauges for calculation of tax: actual income or deduced income on the basis of expenses. The permanent establishments influenced most by this Circular are consultancy (accounting, auditing or business consulting) institutions, as they are required to establish and improve books of account, which will raise the running cost of those mini companies. (www.law-star.com)

MOC Regulation on Bidding for Prophase Property Management

On 26 June 2003, Ministry of Construction issued Provisional Rules on Administration of Bidding for Prophase Property Management, which will be effective as of 1 September 2003. Under this regulation, prophase property management refers to the arrangements made by the developer until choices are made by owners or Conference of Owners. The developer shall select through bidding qualified property management companies for residences, with the exception that arrangements may be made by agreement where there are less than 3 bidders or the scale of the residences is small. The bidding may take the form of public bidding or invitation bidding. In the latter case, invitations should be made to at least three prospective bidders. Moreover, the bidding process shall be completed 30 days ahead of commencement of sale for existent units or before obtaining the Sale in Advance Permit for units under construction. (www.cin.gov.cn)

CBRC Regulation on Service Fees of Commercial Banks

On 26 June 2003, China Banking Regulatory Commission issued Provisional Rules on Administration of Service Fees of Commercial Banks, which will take effect as of 1 November 2003. This regulation applies to banking institutions established in accordance with Law on Commercial Banks and Regulation on Administration of Foreign Financial Institutions. Under this regulation, service fees are grouped in two categories, adopting respectively market-adjusted price and government -directed price. The latter applies to basic settlement business in RMB, including bank's draft, bank's acceptance, promise, check, remittance, collection, acceptance and payment under collection. Fees of other services outside this scope including all the services in foreign exchange adopt market-adjusted price. However, only headquarters of commercial banks and branches of foreign banks may decide service fees for those items adopting market-adjusted price. (www.cbrc.gov.cn)

Insurers Allowed to Sell Forex Policies

Recently, State Administration of Foreign Exchange prescribed a list of insurers eligible for selling policies in foreign exchange in China. Those obtaining Permit to Conduct Business in Foreign Exchange includes Chinese insurers, JV insurers and foreign insurers. This move was made in accordance with Provisional Rules on Administration of Foreign Exchange in Insurance (2002.9), which requires insurers conducting business in foreign exchange to get approval from State Administration of Foreign Exchange as well as the Permit to Conduct Business in Foreign Exchange. (www.safe.gov.cn)

2. Shanghai

Shanghai to Broad Scope of Investors

It is reported that the municipal government of Shanghai will adopt measures to green light the investment in enterprises from persons in office other than civil servants, management staff in state owned enterprises and other persons forbidden by law to do so (such as lawyers, accountants, judges, etc). Under the existent rule, only country people, city people out of employment, individual businessman, persons leaving office may be individual shareholder of enterprises. Contrastingly, the new rule envisages that all the persons with legal capacity to act other than the forbidden categories aforesaid prescribed, whether they are residents of Shanghai, may invest in enterprises. However, this measures will be tried out first in Pudong Area. (www.law-star.com)

3. *Local*

CSRC (Shenzhen) Circular on State Bond

Recently, Shenzhen Office of China Securities Regulatory Commission issued Circular on Tightening Administration of State Bond Business and Prevention of Business Risks, with a view to improving risk management of state bond business in its jurisdiction. According to this Circular, securities companies may not conduct covert financing business under the cloak of state bond trusteeship and investment, nor may they step in any illegal investment agency agreement in whatever form. Moreover, no appropriation of state bond of clients may be made without effective authorization from qualified investors. The securities companies are required to strengthen management in this regard, including adopting measures to decline signing of state bond financing agreement. (www.law-star.com)

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