



CHINA LEGAL BRIEFING 35

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1. *National*

State Council Decides to Check up and Reorganize Open Economic Zones

On July 30, 2003, the General Office of State Council issued a circular on checking up and reorganizing open economic zones in China. In recent years some local governments and departments have approved the institution of open economic zones without authorization. The interests of farmers and the state has been injured severely. So it is of great importance to enhance the management to the use of land in construction. In line with this circular, an overall checkup should be conducted by provincial People's Government and on the basis of the checkup open economic zones should be reorganized. In the future, the centralized management of the use of the land of open economic zones should be strengthened and more strict conditions should be satisfied during the course of setting up an open economic zone where tracts of land will be developed.

MPS's Launches New Rules on Residence, Driving, Passport Application

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On Aug. 7, 2003 China's Ministry of Public Security (MPS) introduced a series of measures which are aimed to help Chinese citizens enjoy more convenience and freedom in residence registry, driving and passport application.

China has, for a long time, practiced strict administration on residence registry. The new measures are expected to encourage university graduates to live and work in underdeveloped western China, giving them the choice of registering their residence either in the region where they work or in their original domicile. The new measures abolish the requirement for investors, entrepreneurs and skilled workers in western regions to re-register their residence. Those who have already re-registered may return their registration to their original home if they return to work or live.

Many senior or disabled people will be able to realize their dreams of driving with the new measures. According to the ministry's circular, the maximum age limit for people applying for driving licenses will be extended to 70 years from the current 60 years on Sept. 1, 2003. Driving license holders who are above the age of 70 may continue driving if they pass an annual driving examination and physical check-up, the circular said. The new measures also permit "persons with a disabled lower left limb" to take the examination and obtain driving licenses for small cars with automatic transmission.

In addition, Chinese residents will find it easier to apply for a passport. So far only residents in 25 big Chinese cities can apply for passports on proof of need, with ID cards and residence booklets. People in other cities still have to complete complicated paperwork when filing an application. According to the new measures, the ministry will simplify passport application procedure in as many as 100 large and medium-sized cities by the end of this year.

An official from SPS said the new measures are made based on suggestions from various social sectors and the ministry will continue to take suggestions to further improve services. (www.chinacourt.com)

2. Local

The Higher People's Court of Tianjin Issues First Legal Precedents

The Higher People's Court of Tianjin has recently issued three cases to which lower courts can refer in making judgments, the first time a Chinese higher court has issued legal precedents.

All the three cases were civil disputes, including the case of a bank that sued a wool spinning factory that defaulted on loans totaling four million Yuan (482,000 US dollars).

Law experts held that legal precedents could offer remedies to relative imprecision and vagueness of civil laws under which judges are usually allowed more freedom in their decisions.

Legal precedents are not endorsed as part of legislation in China, but on some occasions "typical" cases that have been settled are referred to in making judgments. The Supreme People's Court released typical cases it

collected and thought instructive on a quarterly basis to instruct lower courts, and the Law Research Institute under the Supreme People's Court published Selected Cases Settled by People's Courts.

Law specialists agreed that the practice of legal precedents could help to protect the integration of the law and guarantee impartiality and efficiency in administering justice. It will prevent different laws being applied to similar cases or contradictory verdicts on similar cases despite the application of the same law by inexperienced or incapable judges. Consistency between legislation and enforcement will be maintained, too. Moreover, legal precedents could promote supervision of law enforcement as law experts, lawyers and the public were able to consult specific cases as well as established legislation.

The Higher People's Court of Tianjin Municipality took nine months to select sample cases to be issued as precedents. The legal precedents were chosen and selected through discussion by experienced senior judges and verified by the judicial committee of the higher court.

China's lower courts had numerous examples of similar disputes receiving contradictory judgments due to the increasing number of cases and the differing opinions of judges.

The precedents issued by the Higher People's Court of Tianjin Municipality are for consultations, and were not compulsorily binding for judges. However, lower courts should give reasons for not following precedents in trying similar cases. If no convincing reasons were provided to justify verdicts against the principle of legal precedent, the verdicts were likely to be amended. It is said that the higher court would issue more typical cases to instruct judges in civil law cases in lower courts.

Law experts said the practice of legal precedents would not affect the principle of the independence of Chinese courts at all levels in accordance with the law. (www.chinacourt.com)

Beijing Court Adopts Measures to Protect Suspects' Rights

The Beijing No 1 Intermediate People's Court has revealed that the accused in a criminal action will be given full respect by court to guarantee their legal rights before the court makes a final judgment. The court vowed to create a healthy environment for suspects through strict disinfection measures at detention rooms and in police transportation.

According to a series of measures adopted by the court, the heads of culprits will be covered by non-reusable skullcaps when being apprehended and moved to protect their human rights. Handcuffs on criminal suspects will be removed when entering the courtroom.

Meanwhile, religious beliefs and social customs observed by foreign suspects and those belonging to ethnic groups are to be fully respected by court policemen.

Criminal case defendants who are elderly, disabled or in poor health will be taken care of during their stay at the court as necessary medicines will be provided for them. And for those criminal suspects aged under 18, separate rooms will be provided to them to guarantee the defendants' psychological health.

(www.xinhuanet.com)

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