



CHINA LEGAL BRIEFING 36

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1. *National*

State Council Adopted in Principle Regulation on Verification and Certification

On 20 August 2003, Standing Committee of State Council Adopted in principle Regulation on Verification and Certification, which will be promulgated after necessary revision. This regulation lays down specific rules applied to conduction of verification and certification, clarifies accompanying responsibilities, and shapes system of governmental supervision over institutions engaging in such business. (www.xinhuanet.com)

PBC to Increase Rate of Deposit Reserve Fund

On 21 August 2003, People's Bank of China, Chinese central Bank, announced that it would increase the rate of deposit reserve fund from 6% to 7% as of 21 September this year. This decision applies to such financial institutions as solely state owed commercial banks, joint stock commercial banks, urban commercial banks, rural commercial banks, China Agriculture Development Bank, trust investment companies, financial companies, financial lease companies and relevant foreign invested financial institutions. However, the requirement does not apply to urban and rural joint credit, which will continue adopting the rate of 6%. In this process, institutions meeting with

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difficulty of currency may sell bonds with a view to raising capital. (www.pbc.gov.cn)

CSRC Et Al to Draft Detailed Rules for FI-Conducted M&A

It is recently reported that relevant government agencies, including China Securities Regulatory Commission, State Owned Assets Supervision and Administration Commission, Ministry of Finance and Ministry of Commerce, are collaborating in drafting detailed rules to implement Circular on Transfer of State Owned Shares and Legal Person Shares in Public Companies to Foreign Investors (CSRC, 2002.11.01), as the provisions of this circular is too general to enforce. In the blueprint, the main issue is pricing measures. The detailed rules will prescribe public bidding as major means of pricing, with conditioned agreement as complement. To avoid speculation, foreign investors may not sell their investments until a minimum holding period of one year lapses. (www.law-star.com)

SAFE Provisions on Write Off of Export Proceeds in Forex

On 18 August 2003, State Administration of Foreign Exchange released revised Provisions on Administration of Write-Off of Export Proceeds in Foreign Exchange, which will take effect as of October 1 this year. Two major amendments are made in the revised version. First, administrations in charge of foreign exchange begin to exercise their supervision powers through electronic data system upon the declarations made by exporters. Second, block write-off and automatic write-off are added to the existing category of write-off sum by sum. (www.safe.gov.cn)

SAFE Loosed Control Over Certain Items Under Current Account

On 5 August 2003, State Administration of Foreign Exchange promulgated Circular on Adjusting Policies Regarding Administration of Foreign Exchange Account for Certain Items Including International Contractual Operation of Construction Project Under Current Account, which will take effect as of September 1 this year. According to this circular, the quota of self-kept foreign exchange for certain items will be raised from 20% to 100%. These items include international contractual operation of construction project, international labor service, international marine transportation, international cargo forwarding, international shipping agency, and international bidding. (www.safe.gov.cn)

CIRC Draft Revised Regulation on Insurance Companies

On 18 August 2003, China Insurance Regulatory Commission published its draft revised Regulation on Administration of Insurance Companies for consultation. In the draft regulation, several new provisions merit attention. First, natural person may for the first time act as investor of insurance companies. The shares held by single

individual shall not exceed 5% of totality, while the sum of shares held by all the natural persons shall not exceed 15%. Second, the ceiling of shares held by single legal persons is raised from 10% to 15%. Third, the regulation does not distinguish national insurance companies and regional insurance companies, to both of whom a single minimum registered capital of RMB 2 billion shall apply. (www.law-star.com)

SDRC to Frame Development Policy for Automobile Industry

Recently, State Development and Reform Commission is speeding up its effort to draft Development Policies for Automobile Industry. It is reported that three changes are expected after the promulgation of the pager. First, works whose production is dependent upon assembling parts will be restricted. Second, automobiles assembled by using imported parts characteristic of complete automobiles will be taxed as complete ones. Third, technical standards for newly-established automobile production works will be raised. (www.law-star.com)

State Council Adopted in Principle 3 Bills on Banking

On 6 August 2003, Standing Committee of State Council adopted in general draft Law on Administration and Supervision over Banks and amendments to Law on People's Bank of China as well as Law on Commercial Banks, which will be submitted to National People's Congress for further discussion and approval. A possible breakthrough heralded by these bills is that banks may in the future conduct business of trust and stock trading through holding financial companies, which is explicitly forbidden under Article 43 of existent Law on Commercial Banks 1995. (www.law-star.com)

SHFE Announced 9 Revised Transaction Rules

On 6 August 2003, Shanghai Futures Exchange announced that it had revised 9 transaction rules, which had been submitted to China Securities Regulatory Commission for record and would take effect as of September 1 this year. These rules include Provisions on Risk Management and Control, Detailed Rules for Trading, Detailed Rules for Settlement, Detailed Rules for Delivery, Provisions on Designated Warehouse for Delivery, Provisions on Membership Administration, Provisions on Punishment of Misconduct, Provisions on Hedging, and Provisions on Administration of Standard Bill. (www.shfe.com.cn)

CSRC Zero Tolerance toward 3 Misconducts

It is recently reported that China Securities Regulatory Commission has announced that it will adopt zero tolerance policy towards three kinds of misconducts. These misconducts include appropriation of capital of clients, appropriation of assets managed as agency, and appropriation of bonds trusted by clients. (www.law-star.com)

Beijing High Court Publicized 10 Leading IP Cases

It is reported that Beijing High Court, the highest court for Beijing Municipality, recently publicized 10 leading cases judged by that court regarding intellectual property rights. Case No.1 is "Fighting Against Tiger" (" "), whose issue is interrelationship between copyright and trademark. Case No.2 is "Chen Peisi & Zhu Shimao" (" "), which revolves on right of actors. Case No.3 is "PKU Founder v. Gaoshu Tianli" (" "), which focuses on protection of software. Case No.4 is "INTERLEGO AG v. Kegao" (" "), in which products of the plaintiff Swiss company was protected by applying Bern Convention. Case No.5 is "Hutong Trip Company" (" "), which relates to unfair competition of imitation of packaging and decoration of famous products or service. Case No.6 is "Big Millwork" (" "), which concerns exclusive right of trademark. Case No.7 is "Olympic Symbol" (" "), which is the sole case up to present concerning protection of the five-ring symbol. Case No.8 is "Millennium Dragon" (" "), which is a typical case of Chinese company challenging infringement of trademark conducted by foreign company. Case No.9 is "IKEA" (" "), which deals with malicious registration of domain names. Case No.10 is "Super Functional Calcium" (" "), which is relevant to unfair competition of advertisement by improper comparison. (www.law-star.com)

China to Regulate ABS

It is recently reported that relevant government agencies led by Ministry of Finance are conducting preliminary research into the feasibility of enacting regulation governing Asset Based Securities (ABS). The researchers are prone to establishing the scheme by using the structure of trust instead of Special Purpose Vehicle (SPV). However, the regulation is not expected in a year. (www.law-star.com)

CIRC Consultation Paper for Detailed Rules for FI Insurance Companies

On 31 July 2003, China Insurance Regulatory Commission published a consultation paper on draft Detailed Rules for Regulation on Administration of Foreign Invested Insurance Companies. According to the draft rules contained in the consultation paper, joint venture life insurance companies may be established; however, foreign investment shall not exceed 50% of total shares of the JV. As to threshold of registered capital, foreign insurance companies approved before commencement of effect of this regulation but not satisfying minimum registered capital of RMB 2 billion or equivalent convertible currencies shall make it up within 2 years of commencement of effect of this regulation. Otherwise, they may not open new branches in China. Moreover, branches whose operation capital is less than RMB 2 billion or equivalent convertible currencies may not be transferred to WOFE insurance companies. (www.circ.gov.cn)

SAFE Circular on Forex Issues of Transnational Companies

On 30 July 2003, State Administration of Foreign Exchange released Circular on Sale and Purchase of Foreign Exchange by Transnational Companies for Non-Trade Items, which applies to such companies registered in Beijing, Shanghai and Shenzhen. According to this circular, transnational companies, including foreign transnational companies and Chinese invested enterprise groups, and their related companies within China, may directly make payments through their foreign exchange accounts or purchase foreign exchange with RMB, where they make payments to overseas parent companies or overseas related companies for cash advance or apportioned cost for non-trade transactions. Not surprisingly, the scope of transnational companies, domestic related companies and overseas-related companies are defined respectively in this circular. (www.safe.gov.cn)

NAC Regulation on Administrative Sanctions Against Copyright Infringement

On 24 July 2003, National Copyright Administration promulgated revised Detailed Rules for Administrative Sanctions Against Copyright Infringement, which will take effect as of September 1 this year. The revision is made mainly with a view to bringing this regulation in line with revised Copyright Law, Implementing Rules for Copyright Law and Regulation on Protection of Software. Under the revised version, the government agencies in charge of enforcing Copyright Law are National Copyright Administration and relevant local government bureaus (no longer limited to local copyright administrations as provided for in old version). Further, infringement is redefined as act infringes copyrights as well as jeopardizes public interests. With reference to forms of sanctions, confiscation of tools for infringement is added while reprimand is removed. (www.ncac.gov.cn)

SAFE Circular on Write Off of Proceeds under Export Factoring

On 24 July 2003, State Administration of Foreign Exchange released Circular on Certain Issues Regarding Administration of Write Off of Proceeds in Foreign Exchange Under Export Factoring. Under this circular, cases are dealt with differently based upon whether right to recourse exists. To be specific, where no financial service is provided or right to recourse exists, write off will be conducted after payment for goods is collected. Where, however, no right to recourse exists, write off may be done by using the sum from financial service. (www.safe.gov.cn)

MOF Circular on Credit Guarantee Institutions for SME

On 17 July 2003, Ministry of Finance released Circular on Supporting for and Administration of Credit Guarantee Institutions for Small and Medium Enterprises by Local Administrations of Finance, which has taken effect as of promulgation. According to this circular, the move of raising capital conducted by government-invested institutions by means of bonds shall be approved by responsible financial administrations. Further, assets taken over

by these institutions to offset debts shall not in principle serve their own use. In the case of these assets used by the institutions themselves, they shall not be booked exceeding 20% of total assets of the institutions. Where the institutions are government invested ones, such moves shall be subject to approval from local financial administrations. Moreover, local financial administrations assume limited liability towards loss sustained by credit guarantee institutions as a result of subrogation. (www.law-lib.com)

SAT Circular on Real Property Tax and Urban Land Use Tax

On 15 July 2003, State Administration of Taxation released Circular on Certain Policies Regarding Real Property Tax and Urban Land Use Tax, which concerns with tax issues for commodity premises. According to this circular, real property tax is not levied upon the developers for commodity premises that are not sold. However, this preferential treatment does not apply once they are used by the developers or they are leased or lent to a third party. In addition, the circular prescribes occurrence of tax based on different scenarios. (www.law-lib.com)

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