



CHINA LEGAL BRIEFING 37

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1. National

NPC Adopted Law on Administrative Licenses

On 27 August 2003, Standing Committee of National People's Congress adopted Law on Administrative Licenses, which will take effect as of 1 July 2004.

For the purpose of this legislation, administrative licenses refer to the issuing of formal legal permission to conduct business or business-related activities on the basis of administrative organs' review in accordance with relevant legal sources applications submitted by individuals, legal persons and other entities. However, internal licenses procedure, in which administrative organs are on one side and other organs and administrative entities on the other, are not subject to this law.

The legal sources for administrative licenses include legislations adopted by National People's Congress, administrative regulations and decrees adopted by State Council, local regulation adopted by authorized local legislature, and local rules adopted by authorized local governments. Hence, administrative rules adopted by branches of State Council may not serve as legal basis for administrative licenses.

In this legislation, transparency is highlighted by providing that provisions not being promulgated may not be applied in the process of administrative li-

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censes. Following this line of thoughts, 6 categories of matters subject to administrative licenses are explicitly prescribed. Furthermore, the hearing process is introduced in the law.

In order to protect the legitimate rights of applicants for administrative licenses, the law spells out the liability for compensation by administrative departments when they cause harm to citizens while exercising their powers to revoke licenses. And according to the law, even if a license is changed or cancelled legally, administrative departments should compensate the holder of the license for any losses incurred. (www.chinalawinfo.com)

CSRC Provisional Rules on Bonds Issued by Securities Companies

On 29 August 2003, China Securities Regulatory Commission promulgated Provisional Rules on Administration of Bonds Issued by Securities Companies, which will take effect as of 8 October 2003. This regulation is enacted to surmount the existent scarcity of financing vehicles available to securities companies. It applies to such activities as issuance, underwriting, trusteeship and transfer. However, it does not apply to convertible bonds. A feature of this regulation is the inclusion of Qualified Investor, which refers to legal persons or investment entities whose registered capital is no less than RMB 10 million or whose audited net assets are no less than RMB 20 million and which may engage in bond investment business in accordance with their articles of association. As a result, private offering may be made to Qualified Investors. The net assets of companies making public offering may not be less than RMB 1 billion, and only companies whose net assets are no less than RMB 500 million may make private offering. (<http://www.csrc.gov.cn>)

CSRC Released 5 Model Documents for Bonds Issuance

Following the promulgation of Provisional Rules on Administration of Bonds Issued by Securities Companies (2003.8.29), China Securities Regulatory Commission released 5 model documents for bonds issuance conducted by securities companies, which makes the initiative more practical. These model documents are prepared for public offering and private placement respectively, including Applications for Issuance of Bonds by Securities Companies, Prospectus for Public Offering of Bonds, Announcement of Public Trading of Bonds, Guidelines for Disclosure in the Case of Private Placement, and Guidelines for Rating Report Prepared by Rating Agencies of Bonds of Securities Companies. (www.csrc.gov.cn)

SAFE & Customs Adjusted Policies on Carrying Forex

On 28 August 2003, State Administration of Foreign Exchange and Customs General Administration jointly released Provisional Rules on Administration of Carrying Cashes in Foreign Exchange in the Case of Exit and Entry of China, which will take effect as of 1 September 2003. Two major developments come about after

promulgation of this regulation. First, foreign exchanges in the form of drafts, traveler's checks, bonds and stocks are no longer subject to declaration and supervision, leaving cash the sole form subject to this requirement. Second, the difference between residents and nonresidents in respect of sum is removed and the quotas are raised (USD):

<i>Entry</i>	<i>Resident</i>	<i>Nonresident</i>
Before	0 - 2000, No Declaration Over 2000, Declaration	0 - 5000 No Declaration Over 5000, Declaration
After	0 - 5000: No Declaration Over 5000: Declaration	0 - 5000: No Declaration Over 5000: Declaration
<i>Exit</i>		
Before	0 – 2000: No Declaration 2000 - 4000: Permit Over 4000: Permit and Approval Over 10000 in Cash, Not Allowed	0 – 5000: No Declaration 5000 – 10000: Permit Over 10000: Permit and Approval Over 10000 in Cash, Not Allowed
After	0 – 5000: No Declaration 5000 - 10000: Permit Over 10000 in Cash, Not Allowed Unless Permit Granted	0 – 5000: No Declaration 5000 - 10000: Permit Over 10000 in Cash, Not Allowed Unless Permit Granted

(www.safe.gov.cn)

MOC Circular on Qualification for Import and Export

On 26 August 2003, Ministry of Commerce released Circular on Adjusting Requirements for Qualification for Import and Export and Its Certification Procedure. According to this circular, as of September 1, the threshold of registered capital for trading companies conducting import and export business will be lowered from RMB 5 million (3 million in central and western areas) to 1 million (500 thousand in central and western areas). Moreover, the requirement of at least 1 year of operation will be removed. For production companies engaging in foreign trade in their own right, the threshold of registered capital will be decreased from RMB 3 million (2 million in central and western areas) to 500 thousand. With the requirement on registered capital loosed, the power to certify qualification for import and export will be delegated to authorities in charge of commerce at

provincial level. To perform the commitments provided in the Legal Instruments on China's Accession to the World Trade Organization, China has made a lot of effort. A case in point is the promulgation of this circular. (www.mofcom.gov.cn)

MOST & MOC Catalogue of Encouraged High-tech Products

On 16 July 2003, Ministry of Science and Technology and Ministry of Commerce jointly released Catalogue of Encouraged High Technology Products Invested by Foreign Investors, which is prepared on the basis of Catalogue on Guidance of Foreign Investment. This special catalogue is promulgated to implement the state policy of encouraging the development of high technology industries and to attract more foreign investment to this field. Different from its parent catalogue, the new one lists encouraged products instead of encouraged industries, which is more specific and practical. The products encouraged are within 11 categories which include electronic information, software, aeronautics and astronautics, optical, mechanical and electronic integration, biological medicine and medical appliances, new materials, new resources and highly efficient energy conservation, environment protection, aerospace and sea, applied nuclear technology and modern agriculture. However, policies applied to these products are still under consideration. (www.law-star.com)

2. Shanghai

Shanghai Released Guidance of Foreign Investment

On 28 August 2003, Shanghai Municipality promulgated Guidance of Foreign Investment in Industries of Shanghai. According to this guidance, those industries encouraged are finance, logistics, distribution, social industries (education, culture, health and athletics), scientific research and comprehensive technology service, real estate, tourism, information consultancy, urban infrastructure and public facilities. (www.law-star.com)

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