



## CHINA LEGAL BRIEFING 38

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### 1. National

#### *Regulation on Legal Aid Took Effect*

As of 1 September 2003, Regulation on Legal Aid (“法律援助条例”), which was adopted by State Council on 16 July 2003, has taken effect. The regulation aims to help the impoverished seek necessary legal services, and to promote and steer the legal aid program onto the right track, a step towards building the country under the rule of law. The beneficiary of this regulation is limited to individuals, who are entitled to gratuitous legal services including consultancy and counsel in civil as well as criminal proceedings provided that certain criteria set by this regulation are met. It provides that furnishing legal aid is the responsibility of the government and administrations of justice above county level shall establish institutions in charge of legal aid in their respective jurisdictions. The individuals who cannot be represented by counsels due to resources constraint may pray for legal aid in the cases arising out of controversies over state compensation, social security benefits, pensions, alms, estovers, alimonies, maintenances, work compensations, and etc. Apart from provisions prescribing substantive rights, this regulation lays down procedural rules for applying for legal aid in different scenarios.

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### ***Judicial Interpretation on Labor Issues Involving Institutions***

On 27 August 2003, Supreme People's Court promulgated Provisions on Certain Questions Regarding Adjudicating Labor Issues Involving Institutions

(“最高人民法院关于人民法院审理事业单位人事争议案件若干问题的规定”), which was adopted on June 17 and has taken effect as of September 5. Labor issues for the purpose of this document refer to controversies between institutions and their personnel arising from resignation, dismissal, and implementation of employment contracts. According to this judicial interpretation, PRC Labor Law shall govern such controversies. Parties to the controversy may initiate an action within 15 days of service of awards after this matter has been dealt with by competent arbitration organizations. ([www.xinhuanet.com](http://www.xinhuanet.com))

### ***CSRC & SASAC Circular on Related Transactions and Outward Guarantees***

On 28 August 2003, China Securities Regulatory Commission and State Assets Supervision and Administration Commission co-released Circular on Certain Issues regarding Regulating Capital Flow between Listed Companies and Related Parties and Regarding Outward Guarantee Provided by Listed Companies

(“关于规范上市公司与关联方资金往来及上市公司对外担保若干问题的通知”), which has come into effect as of the date of promulgation. According to this circular, listed companies shall not provide capital to controlling shareholders and other related parties by means of, *inter alia*, (1) loans, directly or through financial institutions; or (2) investment activities in which controlling shareholders and other related parties act as agents of the listed companies; or (3) commercial acceptance bill not accompanied by real transactions; or (4) settlement of debts on behalf of controlling shareholders and other related parties. As for outward guarantee, the circular prescribes that listed companies shall not provide guarantee for controlling shareholders and other related parties. Furthermore, total amount of outward guarantees shall not exceed 50% of net assets evidenced by consolidated financial reports of the latest year. Outward guarantees shall not be made unless counter guarantees are provided. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

### ***SAFE Adjusted Policies for Purchase of Forex by Domestic Residents***

On 1 September 2003, State Administration of Foreign Exchange released Circular on Adjusting Policies for Purchase of Foreign Exchange by Domestic Residents Under Current Account

(“关于调整境内居民个人经常项目下购汇政策的通知”), which will come into effect as of October 1. The striking point of this circular is that the quota of foreign exchange for single exit per person is raised from USD 2000 or equivalent to USD 3000 or equivalent in the case of the trip lasts less than half a year, and to USD 5000 or equivalent where the trip extends more than half a year. For such items not accompanied by actual exist as membership fees for international institutions, overseas purchase by post, and help offered to overseas direct relatives, the quota is raised from USD 2000 or equivalent to USD 3000 or equivalent.

[www.safe.gov.cn](http://www.safe.gov.cn)

## 2. *Beijing*

### ***Beijing to Revoke Temporary Residence Permit for Foreigners***

It is reported that foreigners will not be required to obtain temporary residence permits as of the second half of this year. According to an official from Beijing Bureau of Public Security, the justifications for such a requirement have gone and hence the authority has decided to revoke it without hesitation. Furthermore, the division in charge of entry and exit will provide “green channel” service to those investors making remarkable contributions to the capital city. ([www.law-star.com](http://www.law-star.com))

### ***Beijing Released Circular on Tax Issues for Less -Than -25% FIE***

It is reported that Beijing Municipal Taxation Administration has recently released Circular on Taxation Issues for Foreign Invested Enterprises in Which Foreign Investment Accounts for Less Than 25% by Beijing Municipal Taxation Administration's

(“北京市地方税务局关于外国投资者出资比例低于25%的外商投资企业税务处理问题的通知”).

According to this circular, foreign invested enterprises in which foreign investment accounts for less than 25% shall be registered as domestic invested enterprises in tax registration and granted a domestic enterprise tax registration certificate and hence be denied preferential treatments normally extended to foreign invested enterprises. This can be seen as an implementation step of Circular on Taxation Issues for Foreign Invested Enterprises in which Foreign Investment Accounts for Less Than 25% by State Administration of Taxation of China, which was promulgated on April 18, 2003. ([www.china.org.cn](http://www.china.org.cn))

### 3. *Shanghai*

#### *Shanghai Enacted Detailed Rules for Foreign Investor's M & A*

On 4 August, Shanghai Municipality promulgated Detailed Rules Implementing Certain Opinions on Merger and Acquisition of State Owned Enterprises by Foreign Investors

(“关于外资并购本市国有企业若干意见的实施细则”), which has taken effect as of the date of promulgation. State Owned Enterprises (SOEs) for the purpose of this regulation refer to SOEs other than financial enterprises and listed companies. According to this regulation, merger and acquisition of SOEs conducted by foreign investment shall go through such stages as assets evaluation, transfer of ownership, and alternation of registration. A comprehensive division will be established at Shanghai Property Exchange as well as Shanghai Technical Property Exchange to facilitate the transactions. ([www.law-lib.com](http://www.law-lib.com))

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