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CHINA LEGAL BRIEFING 39

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1. *National*

Supreme Court to Strengthen Enforcement

On 10 September 2003, People Daily reported that Supreme People's Court would reinforce enforcement of judgments and decisions. The measures include notification of risks to both parties, guidance in the process of enforcement, mechanism of inquiries and explanations, reform in enforcement charge, flow chart of enforcement, notification of overdue cases, separation of power between decision making and decision implementing, regulation of declaration of assets and audit, regulation of measures and procedure of detention, seizure and freezing, regulation of evaluation, auction and sale of enforced properties, regulation of enforcement remedies, and regulation of enforcement complaint mechanism. (www.china.com.cn)

State Council Regulation on Verification and Certification

On 3 September 2003, State Council by its Decree 390 adopted PRC Regulation on Verification and Certification (“中华人民共和国认证认可条例”), which will take effect as of November 1. Under this regulation, verification is defined as assessment of conformity of products, service and management system with relevant technical criteria, compulsory requirements or standards of relevant technical criteria. Certification refers to assessment of capabilities

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and qualifications of verification agencies, inspection agencies and laboratories together with personnel conducting verification. According to this regulation, foreign investment may enter verification business with a minimum registered capital of RMB 3 million. Representative offices of foreign verification agencies may engage in promotion of products. However, they are banned from conducting verification business in China.

(www.law-lib.com)

MOC to Promulgate Rules on WOFE Export Procurement Centers

On 10 September 2003, MR. HU Jingyan, Director of Foreign Investment Department of Ministry of Commerce, indicated at 7th China Fair for Investment and Trade that the rules on Wholly Foreign Invested Export Procurement Centers (“外商独资出口采购中心”) are to be promulgated. He was quoted as saying that the sole requirement for establishment of WOFE procurement centers lies in that the registered capital is no less than RMB 30 million. According to him, these centers may engage in such businesses as export and export-related storage, commissioned processing business for re-export, and import of samples for procurement export. Moreover, they may enjoy tax rebate by referring to relevant rules applied to foreign investment companies which export domestics of China.

It is estimated that the transnational retail groups purchase more than 30 billion US dollars of goods in China every year. The promulgation of the rules will play an important role in enlarging China's export and attracting more transnational corporations to invest and purchase in China. (www.law-star.com)

MOC Circular on SEAs

On 2 September 2003, Ministry of Construction released Circular on Improving and Standardizing Planning, Construction and Administration of Various Special Economic Areas (“建设部发布关于进一步加强与规范各类开发区规划建设管理的通知”). According to this circular, Special Economic Areas (SEAs) established without approval of State Council or provincial governments will be examined. The SEAs whose location or construction is in conformity with systematic city plan and overall urban plan shall be temporarily stopped and brought in line therewith. With regard to establishment of new SEAs, an explicit proposed location must be put forward after the applications are examined in the light of systematic and overall urban plan. Further, the establishment of new SEAs and expansion of existent ones shall conform to short-term city development plan. (www.bjwto.net)

CIRC Circular on Business Area

On 9 September 2003, China Insurance Regulatory Commission declared that it had released a circular relieving the limitation on business areas. According to this circular, the insurance companies are no longer required as of

October 1 to establish branches in an area as a precondition to provide service therein. Once they have established one branch within a province, they may provide service freely anywhere through professional brokerage companies or sale agency within that province. In the past, insurance companies had to establish branches one after another, even at county level, if they would like to expand their business. However, this circular does not apply to foreign invested insurance companies, whose business area is still limited to certain open cities committed under WTO agreements until 11 December 2004. (www.circ.gov.cn)

SAFE Circular on Inter-Bank Borrowing/Lending

On 1 September 2003, State Administration of Foreign Exchange promulgated Circular on Issues Regarding Domestic Inter-Bank Borrowing/Lending in Foreign Exchange Conducted by Insurance Companies (“关于保险公司开办境内外汇同业拆借业务有关问题的通知”), which will take effect as of October 1. According to this circular, Chinese invested insurance corporations, JV insurance companies and branches of foreign insurance companies, which hold qualifications issued by SAFE for inter-banking borrowing/lending, may conduct such transactions at China Foreign Exchange Trading Center. The other party of inter-bank borrowing/lending must be domestic financial institutions having agreements with the Center. Insurance companies may not conduct such transactions with overseas financial institutions. The maximum term of transaction shall not exceed 4 months. The overall borrowed money shall not exceed 50% of their own capital in foreign exchange. The borrowed money under single transaction shall not exceed 10% of their own capital in foreign exchange. The lent money under single transaction shall not exceed 15% of their own capital in foreign exchange. (www.safe.gov.cn)

MOF & SAT Circular on Deed Tax for Enterprises Restructure

On 20 August 2003, Ministry of Finance and State Administration of Taxation adopted Circular on Certain Policies for Deed Tax in the Case of Enterprise Transformation and Restructure (“关于企业改制重组若干契税政策的通知”), which is effective between 1 October 2003 and 31 December 2005. This circular provides zero or reduced rate for deed tax in various circumstances regarding enterprise transformation and restructure, including company transformation, share restructure, merger, dissolution, sale, termination and insolvency. (www.law-lib.com)

Beijing Sets up a 3-Level-Emergency System for SARS

On 11 September 2003, Beijing municipal government released Prepared Response for Prevention and Cure of SARS (“北京防治传染性非典型肺炎应急预案”), with a view to establish early warning mechanism to crack down on possible recrudescence. This document prescribes three levels of emergency and lays down responses in each scenario.

2. Local

Higher Court upholds ruling against Chinese-Dutch tycoon Yang Bin

On September 7 Liaoning Provincial Higher People's Court Sunday made a final judgment by rejecting an appeal made by Chinese-Dutch business tycoon Yang Bin and upholding a ruling given by a lower court.

Yang was sentenced to 18 years of imprisonment, plus a fine of 2.3 million yuan (about 277,100 US dollars) for being convicted of fraud by the Intermediate People's Court of Shenyang City, capital of northeast China's Liaoning Province, in a first-instant trial held on July 14. The charges listed in the court verdict relating to his property and horticulture business include the forging of documents, fraudulent contracts, bribery and the illegal use of land.

For involvement in the case, Shenyang Eurasia Industrial Co., Ltd. was fined 5.6 million yuan (674,700 US dollars) for the illegal use of arable land, contract fraud and bribery. Shenyang Eurasia Agricultural Development Co., Ltd. was also fined 400,000 yuan (48,200 US dollars) for forging financial documents.

www.chinacourt.org

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