



CHINA LEGAL BRIEFING 40

WENGER VIELI BELSER BEIJING OFFICE

September 15 - September 19, 2003

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1. *National*

Supreme Court Judicial Interpretation on Summary Procedure

On 10 September 2003, Supreme People's Court promulgated Certain Provisions Regarding Applying Summary Procedure to Civil Cases

(“最高人民法院关于适用简易程序审理民事案件的若干规定”), which was adopted on July 4 and will take effect as of December 1, 2003. This judicial interpretation applies to straightforward cases provided for in Article 142 of PRC Law on Civil Procedure, except where (1) the whereabouts of defendants are unknown at the time of complaint; or (2) retrial is held as a result of remand; or (3) one party or both parties of joint action are multitudinous; or (4) cases are to be tried by applying procedure for trial supervision, procedure for hastening debt recovery, procedure for publicizing public notice for assertion of claims, procedure for bankruptcy and debt repayment of legal person; or (5) the cases are decided by courts as inappropriate to be tried in line with summary procedure.

A striking feature of the judicial interpretation is that parties may opt for summary procedure by agreement in cases to which ordinary procedure should otherwise be applied. However, the agreement between parties is not effective unless approved by the trial court.

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According to Civil Procedure Law of PRC, compared with ordinary procedure, if summary procedure is followed, the court shall conclude the case within three months after placing the case on the docket and take simple trial procedures. In contrast, the court shall, in handling a case to which ordinary procedure is applied, close it within six months from filing the case and take more complicated trial procedures. (www.china.com.cn)

MOU on Supervision of Financial Holding Companies

On 18 September 2003, China Banking Regulatory Commission (CBRC), China Securities Regulatory Commission (CSRC) and China Insurance Regulatory Commission (CIRC) held a joint meeting, at which Memorandum of Understanding on Work Division and Cooperation in Financial Supervision was adopted. This MOU sets a leading regulatory and supervisory system for financial holding companies, whereby the supervision over the internal organizations and businesses of the financial holding companies will be done on the basis of nature of their businesses, while the corporations of the financial holding companies will be supervised by corresponding regulatory organizations based upon the nature of their pillar businesses. The three regulatory bodies will hold quarterly meetings to address issues arising out of supervision work. (www.cbrc.gov.cn)

SAFE Circular on Border Trade

On 22 September 2003, State Administration of Foreign Exchange issued Provisions on Administration of Foreign Exchange in Border Trade (“*边境贸易外汇管理办法*”), which will take effect as of October 1. For the purpose of this regulation, border trade refers to exchange and trade of goods by border residents, border trade of small amount, and outward economic and technical cooperation of border regions. Border trade enterprises refer to enterprises which are licensed to conduct border trade of small amount or to engage in such outward economic and technical cooperation as contractual operation of construction project and output of labor in neighboring countries. Border trade enterprises may open accounts in currencies of neighboring countries in banks of border regions. Foreign institutions conducting trade, at the same time, may open current accounts in foreign exchange and in currencies of neighboring counties in banks of border regions. Border trade enterprises may keep the convertible currencies gained from border trade in their foreign exchange accounts at designated banks provided that they are within the quota allocated to them. The surplus exceeding allocated quota, however, has to be sold to designated banks. (www.safe.gov.cn)

SAFE Circular on Forex Issue of QFII

On 9 September 2003, General Department of State Administration of Foreign Exchange released Circular on Operation of Foreign Exchange Management of Qualified Foreign Institutional Investor (“*QFII*”). This circular deals with many important issues such as special RMB account opened and managed by domestic trustees, percentage for initial remittance of principal, outward transfer of investment proceeds, transfer of investment,

applications of foreign fund management companies, and change of trustees. According to this circular, QFII may not open accounts other than the aforesaid special RMB account at other trustee's. They may not invest in securities where they have not remitted the required principal of USD 50 million. The circular further provides that overseas fund management companies have to apply either in form of a closed fund or an open fund each time. Different forms will be treated as separate applications instead of increased investment.

(www.safe.gov.cn)

SAFE Circular on Two-Way Dealing of Inter-bank Forex Market

On 9 September 2003, State Administration of Foreign Exchange released Circular on Two-Way Dealing of Inter-bank Foreign Exchange Market (“关于银行间外汇市场开展双向交易的通知”). According to this circular, as of October 1, member units of China Foreign Exchange Trading Center may conduct two-way (sale and purchase) dealings in a single transaction. The Center will charge its member units commission on the basis of net offset balance of the foreign exchange transacted. The rate for commission remains at the previous level.

(www.safe.gov.cn)

SAC & SIPO to Enact Rules on Standardization and Patent

It is reported that State Standardization Administration and State Intellectual Property Office will in the foreseeable future put forward Provisions on Administration of Standardization and Patent (“标准与专利管理办法”). This move is a response to the trend that more and more multinational giant companies are apt to maximize the benefit of their patents by way of standardization of patent technologies and that Chinese enterprises have not realized the importance the rules of this game and are placed at disadvantage in this process. The new Provisions will be focused on the relations between standardization and patent, how the standardization embody patent and how to safeguard the legal interests of patent owners. (www.law-star.com)

2. *Beijing*

Beijing Raised Personal Income Tax Exemption

On 18 September 2003, Beijing Municipal Bureau of Finance and Municipal Bureau of Taxation announced that personal income tax exemption for weighing allowance of wages and salaries would be raised from RMB 200 to 400, which means that personal income of wages and salaries less than RMB 1,200 is not taxed. However, this policy does not apply to foreigners working in Beijing, whose exemption sum keeps at RMB 4,000. This adjustment shows the trend of personal income tax in China: wider tax basis and lower tax rate.

www.tax861.gov.cn

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