



CHINA LEGAL BRIEFING 41

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1. *National*

State Council Amended Regulation on EPZs

On 13 September 2003, State Council adopted a decision to amend Provisional Measures on Customs Supervision and Control of Export Processing Zone (“海关对出口加工区监管的暂行办法”), which will take effect as of November 1. There are two major changes in the revision.

The first change is mainly concerned with transferal of items from these zones to other parts of China. To be specific, ordinary items regulated by import license are no longer subject to this requirement when transported outside these zones. However, items which are listed in the Catalogue of Import-restricted Scraps Used for Raw Materials are still subject to import license issued by environment protection departments. Moreover, the customs levied upon these transferred items are decided based upon their status of domestic sale instead of values declared and later approved by customs, which was the case before revision.

Second, the article 44, which provides that the General Administration of Customs shall be responsible for the interpretation of these Measures, has been deleted.

SAFE Set Eligibility for USD Bonds

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On 25 September 2003, State Administration of Foreign Exchange prescribed eligibility for underwriting and dealing the five-year USD bond issued by State Development Bank. According to SAFE, securities companies, being members of inter-bank market, holding Foreign Exchange Permit for Securities Business and whose business scope includes underwriting securities in foreign exchange, may take part in underwriting the bond. The capital needed for underwriting must be their own or purchased from banks. For dealing of bond, securities companies holding the aforesaid permit and membership may conduct such transactions. However, the capital needed for dealing must be their own and no purchase of foreign exchange is permitted. In either case, appropriation of capital of clients is forbidden. (www.safe.gov.cn)

SAFE Circular on Forex Administration of Overseas Listed Companies

On 9 September 2003, State Administration of Foreign Exchange adopted Circular on Certain Issues Regarding Improving Foreign Exchange Administration of Overseas Listed Companies (“关于完善境外上市外汇管理有关问题的通知”). Simultaneously, Rules of Operation for Foreign Exchange Administration of Overseas Listing (“境外上市外汇管理操作规程”) was released. This circular resets the registration and administration scope of foreign exchange of overseas listing by requiring that overseas listed companies as well as domestic entities holding shares in overseas listed Chinese-controlled companies go through registration procedure for foreign exchange shares once they have got the go-ahead from China Securities Regulatory Commission (CSRC) to issue shares and trade them overseas. The circular provides that SAFE shall intensify its efforts to achieve continuing administration of newly approved overseas public offering. (www.safe.gov.cn)

SAFE Detailed Rules on Writing-off of Export Proceeds in Forex

On 8 September 2003, State Administration of Foreign Exchange adopted Detailed Rules for Provisions on Administration of Writing-off of Export Proceeds in Foreign Exchange (“出口收汇核销管理办法实施细则”), which will take effect as of October 1. This regulation specifies its parent regulation which was adopted on 18 August 2003 (China Legal Briefing 36) by providing detailed procedures write-off sum by sum, write-off by block and automatic write-off. To respond to the latest developments, this regulation prescribes how banks should produce write-off receipt in the case of bonded zones, export processing zones, diamond exchanges, offshore accounts, export factoring and buyer's credit. (www.safe.gov.cn)

CSRC Circular on IPO

On 19 September 2003, China Securities Regulatory Commission released Circular on Certain Issues Regarding Further Regulating the Initial Public Offering (“关于进一步规范股票首次发行上市有关工作的通知”),

which will take effect as of October 1. According to this circular, shares limited companies may not apply for initial public offering within 3 years of establishment unless they are results of *en bloc* restructure of state owned enterprises, or *en bloc* transformation from limited companies, or exempted by State Council. To make the profit of the latest three years more comparative, the circular requires that there must be no significant changes in such aspects of the issuer as business, the management and actual controller. To guarantee the independence of listed companies, the circular prescribes a set of parameters that shall be abided by in relation to main shareholders. (www.csrc.gov.cn)

CSRC Drafting Code for Governance of Fund Management Companies

It is reported that Code for Governance of Fund Management Companies (“基金管理公司治理准则”) has been drafted and sent to interested parties for comments. In the draft code, related transactions are strictly regulated by setting clear rules for related parties, related matters, and principles and procedure for related transactions with a view to protecting investors and the company itself. Moreover, the responsibilities of the board and the management are further clarified and the role of independent directors is emphasized.

(www.law-star.com)

SASAC Provisions on Inspection and Evaluation of State Owned Assets

On 9 September 2003, State Owned Assets Supervision and Administration Committee adopted Provisions on Inspection and Evaluation of State Owned Assets (“国有企业清产核资办法”), which has taken effect as of promulgation. According to this regulation, inspection and evaluation of state owned assets may be initiated by an order from authorities in charge of supervision and administration of state owned assets or by an application from the enterprises itself. Where there are significant changes in the structure of assets or ownership as a result of dissolution, merger, restructure, transformation or termination, the enterprises shall apply for inspection and evaluation. The work may be done by intermediaries commissioned by competent authorities in charge of state owned assets, or be done by the enterprise itself where the changes in ownership happen to its subsidiaries. (www.sasac.gov.cn)

Court rules against English language school in copyright lawsuit

On September 27, Beijing No. 1 Intermediate Court A local court Saturday ruled against the Beijing-based New Oriental School in a copyright and trademark lawsuit brought by two American educational organizations, and ordered the Chinese school to pay some 10 million yuan (1.21 million US dollars) in compensation.

As the developer and sponsor of the widely recognized "Test of English as a Foreign Language" (TOEFL) and "Graduate Record Examination" (GRE), two examinations that students from non English-speaking countries

are required to take before applying to graduate schools in the United States, the New Jersey-based Educational Testing Service (ETS) has registered the copyright of TOEFL and GRE test questions with the American Copyright Bureau, and has registered "TOEFL" and "GRE" as trademarks in China. The Virginia-based Graduate Management Admission Council (GMAC), developer and sponsor of the "Graduate Management Admission Test" (GMAT), has also done the same procedures.

However, the New Oriental School, a well-known private English training center, has been selling copies of TOEFL, GRE and GMAT test questions for years to Chinese students who want to study overseas without ETS and GMAC permission. Internet surfers can also access the test questions by logging onto the New Oriental website.

The Beijing No. 1 Intermediate People's Court found the activities of the New Oriental School infringed on the rights of ETS and GMAC and ordered the immediate termination of the illegal activities. The New Oriental School was also ordered by the court to hand in all illegal copies of ETS and GMAC materials and to publish an apology to the two American institutions in the Chinese newspaper Legal Daily. In addition, New Oriental has to pay 8.9 million (1.1 million US dollars) and 410,000 yuan (49,580 US dollars) to ETS and GMAC respectively for economic losses as well as shoulder the lawsuit fees of 1.016 million yuan (122,900 US dollars).

According to lawyers of the New Oriental School, the decision on whether to launch an appeal is subject to further consultation with the school. (www.xinhuanet.com)

2. Local

Beijing Rescinded Seven Items of Administrative Charge

It is reported that Beijing has decided to rescind 7 items of administrative charge. These items include real property ownership registration fee, inspection fee for trade mark registration certificate and education fee for students who self fund their study abroad. (www.law-star.com)

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