



CHINA LEGAL BRIEFING 47

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1. *National*

CBRC Further Open RMB Business to Foreign Financial Institutions

On 24 October 2003, China Banking Regulatory Commission announced that it would further open the RMB business to foreign financial institutions in two aspects.

The geographical expansion grants market access as of December 1 to foreign financial institutions in four additional cities including Jinan, Fuzhou, Chongqing, Chengdu by providing that foreign financial institutions incorporated in the said cities may apply to the local offices of CBRC for conducting RMB businesses. The local offices will then submit the applications to head office of CBRC for approval. The foreign financial institutions that are already authorized to operate RMB businesses are automatically allowed to conduct RMB businesses in the aforesaid four cities.

The business scope extension makes it possible for foreign financial institutions as of December 1 to provide RMB services for Chinese enterprises, subject to CBRC approval, in regions where foreign financial institutions are permitted to conduct RMB businesses. The foreign financial institutions that are already authorized to operate RMB businesses may apply for providing RMB services for the Chinese enterprises, subject to the following conditions: (a) being profitable for two consecutive years prior to the application; (b)

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meeting other prudential requirements of the CBRC, including good corporate governance, sound risk management and internal controls, effective management information system, good business performance, compliance with laws and regulations in all material areas, and efficient anti-money laundering measures.

(www.cbrc.gov.cn)

MOF & CSRC Regulation on Replacement of Signing CPA

Recently, Ministry of Finance and China Securities Regulatory Commission jointly released Provisions on Regular Replacement of Signing Certified Public Accountants in Audit for Securities and Futures Business

(“关于证券期货审计业务签字注册会计师定期轮换的规定”), which will be effective as of 1 January

2003. The key requirement of the Provisions is that institutions, including listed companies, securities and futures dealing institutions, securities and futures exchanges, securities investment funds and its custodians, securities registration and settlement institutions, shall replace the signing CPA conducting audit for them at least once every five years. For companies conducting IPO, the service term of the signing CPA providing audit service shall be less than 2 accounting years commencing from the shares of the company has been traded. However, after a two-year period, these CPA may re-conduct audit for the institutions for which they once worked.

(www.henicpa.org.cn)

MOC Regulations on Investigation of Industry Injuries

On 17 October 2003, Ministry of Commerce published three regulations on investigation of industry injuries respectively for anti-dumping, anti-subsidy and safeguard measures, which will come into effect within 30 days of promulgation and replace three regulations for the same subject matters adopted by the then State Economic and Trade Commission. According to the newly-adopted regulations, Ministry of Commerce is responsible for conducting investigation of industry injuries. (www.mofcom.gov.cn)

SARFT Regulation on Qualifications for Film Industry

On 29 October 2003, State Administration of Radio Film and Television promulgated Provisional Rules on Qualifications for Production, Issuance and Project of Films (“电影制片、发行、放映经营资格准入暂行规定”), which will be effective as of December 1. This Rules concerns qualifications for production, issuance and project of films by domestic enterprises, whether they are state owned or not. Equally, the Rules applies to obtainment of qualifications for production and project of films by foreign entities. According to the Rules, foreign investors

may establish joint venture film production companies in China with the registered capital no less than RMB 5 million. However, shareholding of foreign investors in JV film production companies shall not exceed 49%. Nevertheless, foreign investors may be controlling shareholders in JV film technology companies.

(www.sarft.gov.cn)

2. Local

Beijing High Court Rules on Publicity of Enforcement

On 5 November 2003, High Court of Beijing Municipality released Certain Measures on Publicity of the Process of Enforcement, (“关于实行案件执行全程公开制度的若干规定”), which has taken effect as of November 1. According to the Measures, ten components of the enforcement process should be made public. At the outset, the initiation of the procedure should be unveiled by notifying in written the parties the status of the case and their respective rights and obligations. Furthermore, the names and contact information of the enforcing officers should be disclosed. In addition, the enforcement measures and restrictive orders should be available to the public. These new Rules are very welcomed and hopefully improve the difficult task of enforcing judgments in China. (www.chineselawyer.com.cn)

Sichuan Guidelines on Restructure of Listed Companies

Recently, Sichuan Provincial Government adopted Guidelines on Regulating and Enhancing Restructure of Listed Companies (“关于规范和促进上市公司资产重组的指导意见”). According to the Guidelines, provincial and municipal governments should implement their obligations as investors where state shares are concerned in the process of restructure. In allocating the “shells”, priority should be given to pillar industries such as electronic information, medicine and chemistry engineering.

To be qualified for conducting restructure, the company should: (1) surmount the target company in terms of total assets, net assets and profits, with the current ratio no more than 60%; and (2) have kept profiting in the past three consecutive years with the net asset income ratio of the last year more than 10%; and (3) have established satisfactory structure of corporate governance without material contraventions with laws and regulations in the past three consecutive years; and (4) be capable of profiting through the assets or projects to be invested in the target company. (www.law-star.com)

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