



CHINA LEGAL BRIEFING 51

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1. *National*

China Began to Adopt ISO14020

Recently, China announced that it would start to adopt ISO14020 standard with a view to encouraging "green consumption". According to the Standard in question, 8 expressions are banned from appearing on the packages and in instructions of products. These misleading phrases include safe for environment, environment friendly, no harm to the earth, no pollution, green, friend of nature, no harm to ozone layer, and sustainability. According to some commentators, using these prohibitory words in advertisements may be subject to sanctions prescribed in the Law on Advertisement.

The ISO 14020 standard entitled "Environmental labels and declarations - General principles" was promulgated by the International Organization for Standardization in 1998, which establishes guiding principles for the development and use of environmental labels and declarations. (www.law-star.com)

Significant Reform to be Made in Forex Administration

Recently, Mr. GUO Shuqing, head of State Administration of Foreign Exchange told Xinhua News Agency that significant reforms were expected in the sector of capital account. According to him, a series of measures will be

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adopted in short and medium run for the purpose of releasing control over certain items under capital account. The measures under consideration include: (1) encouraging domestic enterprises to make overseas direct investment; (2) approving temporarily unused funds of certain foreign transnational companies to be transferred overseas for other business purposes; (3) supporting Chinese transnational companies to increase the capital and operation funds of their overseas branches; (4) permitting transfer of legitimate assets overseas owned by Chinese citizens legally residing in other countries; (5) allowing selected foreign financial institutions to issue RMB bond in China; (6) introducing the regime of domestic qualified institutional investors; (7) greenlighting qualified non-bank financial institutions to invest in securities overseas. (www.people.com.cn)

CBRC Raised Shareholding Ceiling of Single Foreign Investor

On 1 December 2003, China Banking Regulatory Commission announced that it would increase the shareholding ceiling of a single foreign investor for domestic banks from 15% to 20%. The nature and business scope of the bank will not be affected provided that the overall foreign sharing holding accounts less than 25%. According to CBRC, there are 5 domestic banks, including Bank of Shanghai, Shanghai Pudong Development Bank and Nanjing Urban Commercial Bank, approved by the State Council to take in foreign investment. (www.cbrc.gov.cn)

MOJ Regulation on Association Operation of Law Firms under CEPAs

On 30 November 2003, Ministry of Justice promulgated Provisions on Administration of Association Operation of Law Firms from the Mainland, HKSAR and Macao SAR, (“香港特别行政区和澳门特别行政区律师事务所与内地律师事务所联营管理办法”), which will take effect as of 1 January 2004, with a view to implementing relevant provisions in Closer Economic Partnership Agreements between the Mainland and the two special administrative regions respectively. Under the Provisions, a law firm from Hong Kong or Macao may step into an agreement with another law firm registered in the place of representative office of the former, under which they may conduct association operation by providing legal services to clients from the perspectives of mainland, Hong Kong and Macao legal systems. However, the association operation entity may not take the form of partnership, nor may it possess legal personality. The participating parties shall keep independent in terms of legal status, business name and accounting. The applications for association operation shall be filed with administrations of justice at provincial level, which will make their decisions within 20 working days and in no case more than 30 working days. It should be noted that the participating lawyers from Hong Kong and Macao shall not handle matters of the Mainland law. (www.law-lib.com)

MOF Regulation on Employment of HK and Macao Practitioners

On 30 November 2003, Ministry of Justice promulgated Provisions on Administration of Employment of Hong

Kong and Macao Practitioners as Legal Advisers by Mainland Law Firms (“香港法律执业者和澳门执业律师受聘于内地律师事务所担任法律顾问管理办法”), which is enacted to effect relevant provisions in the two CEPAs and will come into force as of 1 January 2004. According to the Provisions, practitioners from Hong Kong and Macao may be employed by Mainland law firms as legal advisers to provide legal services of the two special jurisdictions. However, they are prohibited from handling matters of Mainland law. Each practitioner may be employed only by one Mainland law firm. Moreover, they may not simultaneously employed by foreign law firms, nor may they act as representatives of Hong Kong and Macao law firms in their Mainland representative offices. Applications for the Legal Adviser Permit shall be filed with administrations of justice at municipal level, which will forward these applications to their superior at provincial level for final approval. (www.law-lib.com)

MOJ Regulation on Practice of Hong Kong and Macao Residents in Mainland

On 30 November 2003, Ministry of Justice released Provisions on Practice in Mainland of Hong Kong and Macao Residents Holding Legal Profession Qualifications Granted by Mainland (“取得内地法律职业资格的香港特别行政区和澳门特别行政区居民在内地从事律师职业管理办法”), which is also a follow-up for the two CEPAs and will commence its effect as of 1 January 2004. Under the Provisions, residents of Hong Kong and Macao, having passed the National Judicial Exam, may apply for starting practice in Mainland after one year of internship in a Mainland law firm arranged or recommended by administrations of justice at municipal level. However, these mainland-licensed Hong Kong and Macao lawyers may only handle non-litigation business in Mainland and may only practice in one Mainland law firm. (www.law-lib.com)

Regulation on Foreign-Invested Cinemas

On 25 November 2003, Ministry of Commerce, Ministry of Culture and State Administration of Radio, Film and Television jointly released Provisional Rules on Investment in Cinemas by Foreign Investors (“外商投资电影院暂行规定”), which will be effective as of 1 January 2004. According to this regulation, foreign investors may establish Sino-foreign equity or cooperative cinemas. However, wholly foreign owned cinemas will not be approved. Foreign investors are further banned from establishing cinema companies. The minimum registered capital for foreign-invested cinemas is RMB 6 million. The shareholding of foreign investors may not exceed 49%, except in Beijing, Shanghai, Guangzhou, Chengdu, Xi'an, Wuhan and Nanjing, where the ceiling is 75%. The business term of foreign-invested cinemas shall be less than 30 years.

There are special arrangements for investors from Hong Kong and Macao, who enjoy 75% ceiling in all parts of Mainland. (www.sarft.gov.cn)

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