



## CHINA LEGAL BRIEFING 53

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### 1. *National*

#### *Supreme Court Judicial Interpretation on Maritime Lien*

On 8 December 2003, Supreme People's Court promulgated Reply to the Question of Whether Claims for Water-Route Maintenance Fees May be Secured by Maritime Lien ("关于可否将航道养护费的缴付请求列入船舶优先权问题的批复"), which has commenced its effect as of 13 December 2003. In this Reply addressed to the High Court of Guangdong Province, the Supreme People's Court makes it clear that the Water-Route Maintenance Fee, which is provided in Regulation on Water-Route Administration and Regulation on Watercourse Transportation Administration, shall be secured by the maritime lien in accordance with Article 22(1).1 of Maritime Law of PRC. ([www.court.gov.cn](http://www.court.gov.cn))

#### *CSDCC Rules on Bond Issued by Securities Companies*

Recently, China Securities Depository and Clearing Company released Rules on Conduction of Depository and Clearance of Bond Issued by Securities Companies ("证券公司债券登记结算业务办理规则"), which has been approved by China Securities Regulatory Commission and hence taken effect. The Rules apply to target issuance of bond by securities companies. For the depository and clearance of public-issued bond, reference will be made to

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CSDCC rules governing public-traded securities. The CSDCC will handle the depository, custody, clearance and other business relevant to issuance and transfer of bond issued by securities companies in accordance with this Rules upon applications from securities companies on behalf of qualified investors.

For the purpose of subscription and transfer of the said bond, the qualified investor should, acting through the securities company providing transfer service, apply for opening a special account for bond at CSDCC. In principle, each qualified investor may only open one special account for bond at CSDCC. ([www.xinhua.org](http://www.xinhua.org))

### ***CSRC Regulation on Asset Management***

On 18 December 2003, China Securities Regulatory Commission promulgated Provisional Rules on Business of Asset Management for Clients Conducted by Securities Companies (“证券公司客户资产管理业务试行办法”), which will come into effect as of 1 February 2004. The concept of Asset Management for Clients (客户资产管理) develops from the concept of Commissioned Investment Management (受托投资管理), which was first recognized by CSRC in 2001 in the Circular on Standardization of Commissioned Investment Management Business Conducted by Securities Companies (“关于规范证券公司受托投资管理业务的通知”).

Compared with its precedent, the new regulation expands the scope of the products by adding two new categories. Apart from elaborating provisions on Targeted Asset Management, which is designed for a single client, the new regulation prescribes rules for Collective Asset Management, a new multi-client product, and for Special Purpose Asset Management, another new product tailored for special objectives of clients.

Of the three products within the family of Asset Management for Clients, emphasis is placed on Collective Asset Management. It is noteworthy that this product in question is different in essence from securities investment fund, which is mainly designed for qualified investors while Collective Asset Management is offered to the general public.

The Rules is concentrated on the avoidance of risks, which aims at enhancing the business innovation of securities companies by means of standardizing the business of asset management for clients. To that end, securities companies shall not guarantee minimum proceeds. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

### ***CSRC Revised Shares Issuance Review Memorandum No.16***

Recently, China Securities Regulatory Commission revised Memorandum No.16 for Standards of Shares Issuance Review-Review Requirements of Special Reexamination for Companies Conducting Initial Public Offering (股票发行审核标准备忘录第16号——首次公开发行股票的公司专项复核的审核要求). After the revision, the accounting firm, which conducts special reexamination of the filed financial statements as well as inter-

nal control mechanism of accounting, shall be commissioned by CSRC itself while in the past such accounting firm is commissioned by the applicant companies. ([www.law-star.com](http://www.law-star.com))

#### ***CSRC Detailed Working Rules for Commission on Shares Issuance Review***

On 11 December 2003, China Securities Regulatory Commission promulgated Detailed Working Rules for Commission on Shares Issuance Review (“股票发行审核委员会工作细则”), which has come into effect as the date of promulgation. The Working Rules addresses such topics as pre-session preparation, procedure of the session, after-session work, and discipline for members of the Commission. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

#### ***CSRC Circular on Internal Control of Business Branches of Securities Companies***

On 15 December 2003, China Securities Regulatory Commission released Circular on Certain Measures Strengthening Internal Control of Business Branches of Securities Companies (“关于加强证券公司营业部内部控制若干措施的意见”). According to the Circular, work will be done in the following fields including personnel management, responsibilities of business branches, collective administration of capital of clients, and inspection. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

#### ***CSRC Code of Securities Companies Governance***

On 15 December 2003, China Securities Regulatory Commission promulgated Code of Securities Companies Governance (Provisional)(“证券公司治理准则（试行）”), which will come into force as of 15 January 2004. Apart from setting down rules for shareholders, directors, supervisory board and management, the Code prescribes fundamental principals governing the relationship between clients and securities companies. It is provided that securities companies have the fiduciary duty towards their clients; that they should not embezzle the capital of clients, assets of clients under their management, and bond in their custody; that they have the duty of confidentiality; that they have the duty of disclosure; that they shall establish departments handling customer relationship. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

#### ***CSRC Guidelines for Internal Control of Securities Companies***

On 15 December 2003, China Securities Regulatory Commission published Guidelines for Internal Control of Securities Companies (“证券公司内部控制指引”). According to the Guideline, internal control of securities companies shall fully take into consideration of such factors as circumstances of control, risk identification and assessment, activities and measures for control, information exchange and feedback, supervision and evaluation. The Guidelines further sets out standards for a number of business sections and departments of securities

companies including brokerage, business operated by themselves, investment banking, asset management, research and consultancy, innovation products, business branches, financial management, accounting system, information system, and human resources. ([www.csrc.gov.cn](http://www.csrc.gov.cn))

***Sino-US Agreement on Financial Supervision Cooperation***

On 8 December 2003, China Banking Regulatory Commission concluded Agreement on Exchange of Information for Supervision (“*监管信息交换协议*”) with its US counterpart. According to CBRC, it has concluded the similar agreements with relevant authorities of Hong Kong, Macao and United Kingdom. ([www.cbrc.gov.cn](http://www.cbrc.gov.cn))

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