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CHINA LEGAL BRIEFING 54

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1. *National*

NPC First Reading of Amendments to Foreign Trade Law

On 22 December 2003, Standing Committee of National People's Congress heard the legislative proposal submitted by Ministry of Commerce to revise the existent Foreign Trade Law (对外贸易法). Major changes will be introduced by the revision. First, the scope of foreign traders will be extended as to include individuals. Second, the approval system of qualification for foreign trade will be replaced by a registration system. Third, provisions will be added to protect the trade related intellectual property rights. Fourth, investigation of foreign trade matters will be provided for in the revised law. Fifth, remedies for foreign trade infringement will be completed. (www.law-lib.com)

Supreme Court Judicial Interpretation on Compensation for Personal Injuries

On 4 December 2003, Supreme People's Court adopted Interpretation of Certain Issues Regarding Applicable Law in Adjudication of Compensation for Personal Injuries ("关于审理人身损害赔偿案件适用法律若干问题的解释"), which will come into force as of 1 May 2004. According to the Interpretation, personal injuries, suffered from under-performance of duty of

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safety by operators of business places such as hotels, restaurants and entertainment business, will be compensated. Moreover, employers will be liable for personal injuries arising from the conducts of their employees in performing their duties under employment contracts. However, where the employee inflicting personal injuries upon others acts in a materially negligent manner, he or she will be jointly liable with his or her employers. The employer may be indemnified by the employee at fault once he has paid the damages under jointly liability.

With regard to sum of compensation, the Interpretation adopts the notion that the damages should be sufficient to cover the loss sustained by the victims. To materialize this notion, sum of compensation for death and disability resulting from personal injuries has been significant raised. (www.court.gov.cn)

Supreme Court Judicial Interpretation on Marriage Law (Part II)

On 4 December 2003, Supreme People's Court adopted Interpretation of Certain issues in Application of Marriage Law (II) ("关于适用《中华人民共和国婚姻法》若干问题的解释(二)"), which will be effective as of 1 April 2004. This interpretation gives detailed rules for partition of investments from marital common property respectively in limited companies, partnership and sole proprietorship enterprise. (www.court.gov.cn)

MPS & SAFE Regulation against Money Laundering

On 23 December 2003, Ministry of Public Security and State Administration of Foreign Exchange promulgated MPS & SAFE Provisions on Cooperation in Campaign against Money Laundering in the Filed of Foreign Exchange ("公安部、国家外汇管理局外汇领域反洗钱合作规定"). The adoption of the Provisions prescribes contents and procedure of cooperation between the two departments in cracking down on money laundering, signaling the carry-out of trans-departmental campaign against money laundering in the field of foreign exchange. (www.safe.gov.cn)

CSRC Revised Disclosure Requirements of Annual Report

On 22 December 2003, China Securities Regulatory Commission announced its decision to revise Rule No.2 for the Content and Formality of Information Disclosed by Public Companies-Content and Formality of Annual Report ("公开发行证券的公司信息披露内容与格式准则第2号<年度报告的内容与格式>"). In the revised Rule No.2, the top 10 circulation share holders should be disclosed. The related status should also be disclosed if any. Moreover, where significant loss occurs, the company should further disclose any remedies taken, including resolutions adopted, exercise of recourse, and internal disciplinary measures. In addition, the special statement on use of capital by the controlling shareholder and other related parties should be disclosed.

As to guarantees, the observations of independent directors on standing guarantees should be disclosed. Further, the guarantees provided to controlled subsidiaries of the report year should also be disclosed.

(www.csrc.gov.cn)

NAC New Codes on Audit

Recently, National Audit Office pronounced 5 new codes on audit, which will be effective as of 1 February 2004. These new codes are Audit Office Code of Audit Significance and Audit Risk Assessment (“审计机关审计重要性与审计风险评价准则”), Audit Office Code of Analytical Reexamination (“审计机关分析性复核准则”), Audit Office Code of Internal Control and Assessment (“审计机关内部控制测评准则”), Audit Office Code of Sample (“审计机关审计抽样准则”) and Audit Office Code of Evaluation of Audited Matters (“审计机关审计事项评价准则”). (www.law-star.com)

Nation Curbs Illegal Land and Resources Deals

China will step up its efforts to curb illegal allocation of land resources and illegal mining, and cases involving leading officials will be a priority.

China decided last year to rectify the land market, and most localities that illegally delegated the power of approving land deals to subordinate government departments have taken back such rights. Some leading officials and departments have approved land deals against laws and regulations for personal gain in recent years.

China will popularize the use of satellite and remote sensing technology to monitor the country's land resources, and set up a hotline for the general public to report illegal land and resource deals, and will continue to make public major illegal land deals and development projects through the mass media.

China has cancelled 2,720 development zones of various kinds to curb illegal land use and protect its cultivated land resources, which has caused a drastic shrinking of farmland in recent years and tens of thousands of farmers lost their farmland for very little compensation to industrial and commercial development projects.

(www.chinacourt.org)

Constitutional Amendment Paves Way for Drafting Emergency Law

A draft amendment to China's Constitution that contains the change of "state of siege" into "state of emergency" will lay a constitutional foundation for the country's first Emergency Law, which law experts say will mark a major progress in social development after more than 20 years of market-oriented reforms.

The second plenary session of the 10th National People's Congress (NPC) is expected to discuss and approve the draft amendment when it is convened in March 2004.

According to the draft, "state of siege" will be replaced by "state of emergency." This change will enable the country's top legislature to draft the Emergency Law, which has already been listed as one of the 76 laws in the 10th NPC's five-year legislation plan.

The current Constitution, which contains 138 articles in four chapters, was formulated in 1982. Some scholars explained, at that time China implemented a planned economy, which allowed the government to allocate social and natural resources at will; while today in the socialist market economy, people's awareness of autonomy has been greatly enhanced. In such a situation, the government has no right to allocate resources as its pleases; it should obtain a legal basis to allocate resources when an emergency situation occurs.

www.chinacourt.org

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