



CHINA LEGAL BRIEFING 56

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1. National

Supreme Court Revised Judicial Interpretation on Internet Copyright

On 23 December 2003, the Supreme People's Court took a decision to revise the Interpretation on Certain Issues Regarding Applicable Laws in Adjudicating Disputes over Copyright on the Internet (“审理涉及计算机网络著作权纠纷案件适用法律若干问题的解释”), which was adopted by the Court in 2000.

The revised interpretation imposes more responsibilities upon the internet service provider (ISP) by making it subject to liability of tort where it knowingly uploads, spreads or provides methods, equipments or materials that may be used to evade or infringe the copyrights of others.

The revised interpretation also offers more protection to the copyright holders by making it possible for them to seek preliminary injunctions and orders to preserve evidence before the complaint is filed. (www.court.gov.cn)

CBRC to Adopt Regulations to Implement Law on Banking Regulation and Supervision

Telephone +86 10 64687331
Fax +86 10 64603132
电话: +86 10 64687331
传真: +86 10 64603132

mail@wenfei.com
www.wenfei.com

Wenger Vieli Belser
Room 722
Golden Land Building
No. 32 Liang Ma Qiao Road
Chaoyang District
Beijing 100016 P.R.C

北京办事处
北京市朝阳区亮马桥路32号
高澜大厦7层722
邮编: 100016

Offices Zurich
Wenger Vieli Belser
Dufourstrasse 56 and
Mühlebachstrasse 38
CH-8034 Zürich

Office Zug
Industriestrasse 7
P.O. Box
CH-6301 Zug

It is reported that China Banking Regulatory Commission is considering drafting three regulations to implement the newly adopted Law on Banking Regulation and Supervision (China Legal Briefing No.55). The regulations being drafted are CBRC Provisions on Administrative Sanctions (“中国银监会行政处罚办法”), CBRC Provisions on Administrative Reconsideration (“中国银监会行政复议办法”), and CBRC Working Rules of Legal Affairs (“中国银监会法律事务工作规定”). (www.law-star.com)

CSRC Circular on Transfer of Control of Public Companies

On 7 January 2004, the China Securities Regulatory Commission published the Circular on Regulating Certain Issues Regarding Transfer of *De Facto* Control of Public Companies (“关于规范上市公司实际控制权转移行为有关问题的通知”). This circular is adopted to address the potential prejudice to public companies and their shareholders as a result of transfer of *de facto* control under the cloak of “custodianship of shares” (股权托管) or “custodianship of companies” (公司托管).

The Circular proscribes evasion of relevant legal rules pertaining to takeover in the name of “custodianship of shares” or “custodianship of companies”. In the event of takeover by agreement, the controlling shareholder and the company conducting the takeover shall make arrangements for the transitional period until the transfer of shares is completed. In particular, the controlling shareholder and the purchaser shall not prejudice the interests of the target company and other shareholders. They shall, among others, strictly observe the Code of Corporate Governance for Public Companies; not interfere with normal business operation of the company; not motion to re-elect board members; not make the company provide security to the purchaser and its related parties. (www.csrc.gov.cn)

CSRC Circular on Quality of Disclosure

On 6 January 2004, the China Securities Regulatory Commission promulgated the Circular on Further Improving the Quality of Disclosure of Financial Information by Public Companies (“关于进一步提高上市公司财务信息披露质量的通知”). According to this circular, public companies shall not manipulate revenues by means of loss preparation, related transactions, limitation on audit scope, correction of accounting errors, material uncertain events, and asset appraisal. (www.csrc.gov.cn)

CSRC Circular to Implement Regulation on Sponsorship

On 2 January 2004, China Securities Regulatory Commission promulgated the Circular on Certain Issues Regarding Implementation of Provisional Rules on Sponsorship for Public Offering of Shares (China Legal Briefing No.55) (“关于实施《证券发行上市保荐制度暂行办法》相关事项的通知”). This circular mainly elaborates

tes eligibility of sponsoring representatives by clarifying the requirement of “relevant experience in investment banking” as provided for in Article 11(1) of the regulation on sponsorship. (www.csrc.gov.cn)

CSRC to Put Forward Rules on Investor Relationship

It is reported that China Securities Regulatory Commission is researching relevant issues for the purpose of drafting Working Guidelines on Management of Investor Relationship of Public Companies (“上市公司投资者关系管理工作指引”). This is another step to strengthen the regulation of investor relationship, following the promulgation of the Circular on Urging Public Companies to Improve Management of Investor Relationship (“关于推动上市公司加强投资者关系管理工作的通知”) last year. (www.chinalawinfo.com)

Regulation on Transfer of State-Owned Assets

On 31 December 2003, the State-Owned Asset Supervision and Administration Committee and the Ministry of Finance co-promulgated Provisional Rules on Administration of Transfer of State-Owned Assets in Enterprises (“企业国有产权转让管理暂行办法”), which is to be effective as of 1 February 2004.

This regulation applies to the transfer of state-owned assets, by state-owned assets supervision and administration authorities and enterprises possessing state-owned assets, to enterprises, individuals and other entities from home and abroad, at an agreed price. However, transfer of assets of state-owned financial enterprise and state-owned shares in public companies will be subject to other relevant rules.

The steps of transfer include: (1) internal decision of transferor; (2) approval by competent authorities; (3) sorting, counting and audit of the subject matter assets; (4) appraisal of the subject matter assets; (5) announcement of the intention to transfer and invitation for offer; (6) transaction by way of auction, bidding or agreement, based upon the number of prospective purchasers; (7) registration of the transaction.

Where the purchaser is from foreign countries or from Hong Kong, Macao or Taiwan, the transaction shall be in line with the Catalogue on Guidance of Foreign Investment. (www.sasac.gov.cn)

China to Adopt Call-back and Further Implement Market Access Standards

It is reported that China will adopt rules within this year on the call-back of products with deficiencies. Auto industry is expected to be the first sector subject to the new rules. Other measures to promote consumer protection include further implementing market access standards for foodstuff such as rice, flour, oil, soy, and vinegar. The objective is to apply market access standards to 28 categories of foodstuff by the end of 2004. (www.law-star.com)

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