



CHINA LEGAL BRIEFING 57

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1. *National*

The Supreme Court Drafts Judicial Interpretation on Appraisal, Auction and Sale in Enforcement Procedure

On 15 January 2004, the Supreme People's Court published its draft Provisions on Certain Issues Regarding Appraisal, Auction and Sale in Enforcement Procedure ("关于执行中评估、拍卖、变卖若干问题的规定") for comments.

The draft gives auction priority over sale in cashing the attached property. Auction shall be conducted by an auctioneer retained by the court, which shall ensure the auction in compliance with legal procedure. A retentive price shall be pre-decided, by agreement between the parties or by court enforcement in case of failure to reach such an agreement. For property to be auctioned, except for movables of small value or having a market price, auction shall be carried out by means of public bidding. For real estate and other property rights other than movables, auction may also be conducted in the form of bidding. (www.china.org.cn)

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State Council Regulation on Production Safety Certificate

On 13 January 2004, the State Council promulgated the Regulation on Production Safety Certificate (“安全生产许可证条例”), which has taken effect as of the date of promulgation.

The production safety certificate scheme applies to mining enterprises, construction enterprises, enterprises producing hazardous chemicals, fireworks and civil explosive equipments. The aforesaid enterprises shall not start production unless such certificate is obtained.

The certificate is issued by different authorities, as the case may be. The coal mining enterprise shall obtain the certificate from authorities responsible for supervision over coal mining production safety. The certificate for construction enterprises is granted by authorities responsible for construction administration. The enterprises engaging in production of civil explosive equipments shall obtain the certificate from the department of State Council responsible for national defense industry administration. In all the other cases, the certificate shall be issued by authorities responsible for supervision of production safety.

The term of validity for the certificate is 3 years, which may be automatically renewed provided that there were no serious accidents during that term. (www.people.com.cn)

MII Regulation on Electronic Products Pollution

Recently, the Ministry of Information Industry adopted the Provisions on Administration of Prevention and Abatement of Electronic Products Pollution (“电子信息产品污染防治管理办法”), which will be effective as of 1 January 2005. The Provisions will apply to domestic producers, importers and overseas producers exporting electronic products to China. It lays down rules for all the aspects including design, production, instruction, and package. To effect this regulation, an industry standard regarding electronic products pollution will be prepared and a catalogue of priority areas will be drafted. (www.law-star.com)

Anti-Trust Law Being Drafted

It is reported that the first anti-trust law of China is being drafted respectively by the Ministry of Commerce and the State Administration of Industry and Commerce. Agreement has been reached on the framework, although the lead drafter has not yet been appointed. The Anti-Trust law has been put into the Legislation Plan of this Congress, which is expected to be adopted by it. (www.chinalawinfo.com)

Individual May File for Insolvency in the Draft Insolvency Law

It is reported that in the forthcoming Insolvency Law, which has been put into the Legislation Plan of this Congress, individuals may file for insolvency. However, this provision only applies to commercial individuals such as

partners and investors. Another controversial issue is insolvency of financial institutions. In the draft law, financial institutions will be excluded from the scope of application. (www.chinalawinfo.com)

Three Rules of Origin to Implement International and Inter-Regional Economic Agreements

On 30 December 2003, the Customs General Administration announced two rules of origin to implement two Closer Economic Partnership Arrangements concluded by the Mainland, respectively with Hong Kong and Macao. On the same day, the Customs General Administration promulgated another rule of origin to implement the Framework Agreement on China-ASEAN Comprehensive Economic Cooperation, which was concluded in 2002. These rules of origin have come into force as of January 1st 2004. (www.law-lib.com)

SAT Regulation on Taxation Registration

On 17 December 2003, the State Administration of Taxation promulgated the Provisions on Administration of Taxation Registration (“*税务登记管理办法*”), which will be effective as of 1 February 2004. According to the regulation, all the taxpayers shall undertake taxation registration at the places of business except for government agencies and countryside peddlers without permanent business establishments. In addition, the persons with the responsibility of withholding tax (except government agencies) shall also be registered.

The registration process is divided into such aspects as business commencement registration, alternation registration, shutdown registration, resumption of business registration and termination registration. (www.law-lib.com)

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