



CHINA LEGAL BRIEFING 58

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1. *National*

Draft Regulation on Auto Loans

On the 21st of January 2004, the People's Bank of China published its draft Regulation on Administration of Auto Loans ("汽车贷款管理办法") for consultation, which set out respective rules for auto loans granted to different kinds of debtors as well as for risk management.

The term "auto loans" in this regulation refers to loans issued for the purpose of purchase and sale of autos. Individuals, auto-dealers and other legal persons may obtain auto loans. Each scenario is addressed by a separate part of the regulation.

The financial institutions which may issue auto loans include commercial banks, urban & country credit cooperatives and other financial institutions, which are incorporated in China and approved to handle RMB loans by the department of the State Council responsible for banking supervision and regulation.

The maximum term of each auto loan is five years. An auto loan meeting the set requirements may be renewed once. However, the term of the renewal shall not exceed half of its previous term.

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As far as risk management is concerned, the sum of the loan shall not exceed 80% of the market price of the autos (tax and administrative charges excluded) where they are granted to individuals and legal persons other than auto dealers for consumption purposes. Moreover, the sum of the loans shall not exceed 70% of the market price of the autos where they are granted to the debtors in the preceding scenario for business purposes. However, in all the cases of used cars, the maximum sum is 70% of market-estimated prices of the autos. (www.pbc.gov.cn)

SAFE Warns Against Covert Financing

On 17 January 2004, the State Administration of Foreign Exchanges issued a warning against covert financing in the name of advance payment. During the Special Inspection on the Foreign Exchange Purchase and Sale Business of Designated Foreign Exchange Banks, which took place at the end of 2003, the SAFE had discovered cases of covert financing and foreign-debt borrowing under the cloak of advance payments for foreign trade. In these cases, enterprises received advance payments disproportionately more than their actual exportation value. In some cases, the advance payments were even totally refunded.

The SAFE expressed its strong disapproval with this evasion of foreign exchange regulations and vowed to correct the loopholes in the existent regulatory regime. (www.safe.gov.cn)

China Unionpay Card May be Used in HK

On 16 January 2004, the People's Bank of China announced that as of 18 January 2004, the RMB card issued by mainland banks bearing the sign of "China Unionpay" (中国银联), either a debit card or credit card, may be used in Hong Kong in the outlets with the same sign. The cardholder may withdraw up to HKD 5000 within one day at the ATMs with the sign. (www.pbc.gov.cn)

2. *Local*

Beijing High Court Judicial Interpretation on Property Management

On 24 December 2003, the Beijing High Court promulgated the Provisions of the High Court of the Beijing Municipality on Adjudication of Disputes Over Property Management (Provisional) (“北京市高级人民法院关于审理物业管理纠纷案件的意见（试行）”), which have come into force as of 1st of January 2004.

This judicial interpretation only applies to disputes between owners, commission of owners or occupiers of common rooms within the property management area and property management enterprises with such qualification.

Additionally, the interpretation also addresses the status of the parties and clarifies the rules for disputes over effect of management contract, management power, management fees, withholding charges, and management liability. (www.law-lib.com)

Shanghai Regulation on Tourism

On the 31st of December 2003, the Shanghai legislature adopted the Regulation on Tourism of the Shanghai Municipality (“上海市旅游条例”), which will come into force as of 1 March 2004.

The regulation imposes stricter responsibilities upon tourism agencies by providing that the tourist may seek compensation directly from tourism agencies even if the failure of discharge of the contract between them is attributed to other contractors. To protect the interests of tourists, the regulation also provides that the tourist may seek compensation from the tourism agencies for deficient products purchased from a souvenir shop agreed in the contract between them. To ensure the rights of tourists, the tourism agencies are required to make deposits with the tourism administrations, which will be used to compensate the loss of the tourists where the liable tourism agencies are unwilling or unable to pay the damages.

The operation of the tourism route is subject to franchise, which will be granted by competent authorities designated by the municipal government. (www.law-lib.com)

Shenzhen Circular on Deeds

On 29 December 2003, the Shenzhen municipal government promulgated the Circular of the Shenzhen Municipal Government on the Strict Implementation of State Policies on Deeds Tax (“深圳市人民政府关于严格执行国家契税政策有关问题的通知”), which has been effective as of 1 January 2004.

The circular reiterates that deeds tax must be collected where there is a transfer of land use rights and apartments unless a statutory waiver exists. For transfer of ordinary commodity apartments, a rate of 1.5% shall apply. For transfer of land use rights and luxury apartments, a rate of 3% shall apply. The circular also emphasizes that deeds tax shall be applied where transfer of land use rights is made in the following manner: (1) in kind contribution; (2) setoff; (3) obtainment as a prize; (4) obtainment as compensation for requisition of land; (5) obtainment by way of advance purchase or as advance payment for the share of fund-raising for construction. (www.law-lib.com)

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