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1. National

Provisions of the Supreme People's Court on Adjudication of Cases Regarding Foreign-Related Arbitration and Foreign Arbitration (Consultation Document)

最高人民法院关于人民法院处理涉外仲裁及外国仲裁案件的若干规定（征求意见稿）

【**Drafter**】 Supreme People's Court

【**Subject**】 Arbitration

【**Source**】 www.chinacourt.org

The Provisions will apply to cases involving acknowledgement of the validity of agreements for foreign related arbitration, enforcement and annulment of foreign-related arbitration awards as well as recognition and enforcement of foreign arbitration awards. Reference may be made to the Provisions in cases where Hong Kong, Macao and Taiwan are concerned.

The personal jurisdiction of the courts in arbitration cases will be decided upon the cause of action. In acknowledgement cases, the courts which may exercise jurisdiction are medium courts at the domicile of the applicant, or at the domicile of the respondent, or at the place of conclusion of arbitration agreements, or at the seat of the agreed arbitration institutions. In enforce-

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ment cases, the medium courts at the domicile of the respondent or at the location of his assets may seize the matter. In annulment cases, the complaint should be filed with medium courts at the seat of arbitration institutions rendering the award at issue.

For the most significant preliminary issue – the effect of arbitration agreements, rules are elaborated.

The validity of arbitration agreements will be governed by laws agreed by parties. In absence of such agreement, it will be governed by the law of the seat of the agreed arbitration institutions. In absence of both, it will be governed by the *lex forum*.

The draft Provisions tend to give validity to arbitration agreements once the intention to arbitration is manifest, even if they are not appropriately drafted. This is evidenced by the unaffected validity of arbitration agreements in which more than one arbitration institution are designated, or the place of arbitration is decided without specifying the name of the arbitration institutions, or the name of the designated arbitration institution has to be inferred from the surrounding circumstances due to inaccuracy of its name. However, the validity of the agreement for ad hoc arbitration will not be recognized unless the parties are nationals of member states to 1958 New York Convention and the laws of their national states do not preclude ac hoc arbitration.

The Provision also tries to give effect to the arbitration agreements in the event of merger and division of the original parties to the agreement, assignment of rights and obligations of the contract which contains arbitration clause, exercise of the right of subrogation, and explicit incorporation into the bill of lading of the arbitration clause contained in the charter party.

Supplementary Rules for Provisions on Administration of Foreign Invested Construction Enterprises

《外商投资建筑业企业管理规定》的补充规定

【Issued By】 Ministry of Commerce, Ministry of Construction

【Subject】 Foreign Investment ,CEPA

【Adopted On】 9 December 2003

【Effective From】 1 January 2004

【Source】 www.law-lib.com

The Rules are enacted to give effect to the two Closer Economic Partnership Arrangements, concluded by the Mainland respectively with Hong Kong and Macao last year, by granting more preferential treatments to service suppliers from the two regions.

In applying for the establishment of construction enterprises in the Mainland, service suppliers from Hong Kong

and Macao may establish their overall business performance for the purpose of qualification ranking by combining their respective performance in the Mainland and in the two regions. Moreover, the service suppliers from the two regions may conduct a 100% acquisition of construction enterprises in the Mainland. Furthermore, the limitation on percentage of foreign investment in Sino-foreign joint projects does not apply to construction enterprises established in the Mainland by service suppliers from the two regions.

Supplementary Rules for Provisions on Administration of Foreign-Invested Construction Project Design Enterprises

《外商投资建设工程设计企业管理规定》的补充规定

【Issued By】 Ministry of Commerce, Ministry of Construction

【Subject】 Foreign Investment , CEPA

【Adopted On】 9 December 2003

【Effective From】 January 1st 2004

【Source】 www.law-lib.com

The Rules are another move to effectuate the two CEPA's between the Mainland and Hong Kong and Macao. As of January 1st 2004, the service suppliers from the two regions may establish wholly foreign invested construction project design enterprises. The Provisions on Administration of Foreign Invested Construction Project Design Enterprises ("外商投资建设工程设计企业管理规定", 2002.9.17) shall be applied to the applications by the service suppliers from the two regions for establishment of the said enterprises, the qualification of which shall be governed by relevant rules regulating qualification of construction project design enterprises.

Supplementary Rules for Provisions on Administration of Foreign-Invested Urban Design Service Enterprises

《外商投资城市规划服务企业管理规定》的补充规定

【Issued By】 Ministry of Commerce, Ministry of Construction

【Subject】 Foreign Investment, CEPA

【Adopted On】 9 December 2003

【Effective From】 January 1st 2004

【Source】 www.law-lib.com

The Rules are the last step of the tripartite move taken by Ministry of Commerce and Ministry of Construction to implement provisions on construction service under the two CEPA's. Unsurprisingly, as of January 1st 2004, service suppliers from the two regions may establish WOFE urban design service enterprises. Other matters related to the establishment of such enterprises shall still be governed by Provisions on Administration of Foreign Invested Urban Design Service Enterprises (“外商投资城市规划服务企业管理规定”, 2003.1.30)

Circular on the Strict Observance of Rules on China Appointed Attesting Officers to Faithfully Implement the CPA between the Mainland and Hong Kong

关于认真落实内地与香港关于建立更紧密经贸关系的安排严格执行委托公证人制度的通知

【Issued By】 Ministry of Commerce, Ministry of Justice

【Subject】 Civil Procedure, CEPA

【Adopted On】 17 December 2003

【Effective From】 1 January 2004

【Source】 www.law-lib.com

A HK service supplier invoking preferential treatments under CEPA has to prove that it has satisfied the requirements of a HK service supplier by producing documentation attested by “attesting officers recognized by the Mainland” (Article 6.3, Annex V, CEPA). These “mainland recognized attesting officers” are referred to as China Appointed Attesting Officers (中国委托公证人).

In reviewing applications by HK service suppliers for preferential treatments under CEPA, the Circular requests the authorities nationwide to ensure that the documentation, statutory declarations and identification documents have been attested by China Appointed Attesting Officers and certified by China Legal Service Limited (HK).

As appendix the list of China Appointed Attesting Officers is included in this Circular.

Provisional Measures of Shanghai Municipality on Administration of Collection of Personal Credit Information

上海市个人信用征信管理试行办法

【Issued By】 Shanghai Municipal Government

【Subject】 Personal Credit Information

【Adopted On】 22 December 2003

【Effective From】 1 February 2004

【Source】 <http://jsq.sh.gov.cn/>

This regulation governs the collection, compilation and provision of information regarding personal credit record, which includes (1) basic information on identity, family and profession; (2) information on credit relationship with financial institutions or housing accumulation fund; (3) information related to “purchase on credit” and payment of utility bills; (4) public record related to personal credit kept by administrative organs, administrative enforcement organs and judicial organs in performing their duties.

The collection of personal credit information shall be conducted upon approval from the person concerned unless it falls in the following categories: (1) bad credit record in such transactions as loan, purchase on credit and payment of utility bills; (2) record of disciplinary measures against practitioners in the mediated business such as attestation, appraisal, agency and consultation; (3) record open to the public kept by administrative organs, administrative enforcement organs and judicial organs in performing their duties; (4) publicized personal credit information.

The personal credit information shall not be disclosed unless: (1) the person whose information is to be disclosed so requests; (2) the disclosure is authorized by the person whose information is to be disclosed and justified by proper reasons such as the intention of a third party to provide loan, purchase on credit, lease, employment, insurance and guarantee to the person concerned; (3) the existence of such business intention as to call a default is evidenced by relevant documentation; (4) there are statutory grounds justifying disclosure.

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