



## CHINA LEGAL BRIEFING 60

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### 1. National

*Observations of the State Council on the Promotion of Reform, Opening Up and Steady Development of the Capital Market*

国务院关于推进资本市场改革开放和稳定发展的若干意见

【**Issued By**】 State Council

【**Subject**】 Capital Market

【**Adopted On**】 31<sup>st</sup> of January 2004

【**Source**】 [www.people.com.cn](http://www.people.com.cn)

The Observations first of all clarify the significance of the guiding principles for the development of the capital market and then outline the future policy directions.

Importance will be attached to the financial return of the capital market, enabling the investors to benefit from the economic development. This is the first time that reward of the capital market is emphasized. In the past, the function of the capital market was mainly defined as "financing and restructuring".

Insurance funds will be encouraged to directly enter the capital market by various means, which will put an end to the restrictions on direct entry. It

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further provides that efforts will be made to improve the percentage of social security funds, enterprise subsidiary pension funds and commercial insurance funds in the capital market.

Other breakthroughs include measures to facilitate securities companies' financing by means of loans, and the financing of fund management companies on an experimental basis.

***Provisional Rules on Derivative Transactions of Financial Institutions***

金融机构衍生产品交易业务管理暂行办法

**【Issued By】** China Banking Regulatory Commission

**【Subject】** Financial Derivatives

**【Adopted On】** February 4<sup>th</sup> 2004

**【Effective From】** March 1<sup>st</sup> 2004

**【Source】** [www.cbrc.gov.cn](http://www.cbrc.gov.cn)

The four-part regulation addresses such topics as the definition and classification of derivatives, market access requirements, risk management and supervision, and the sanctioning of irregularities.

The definition of derivatives is borrowed from the Basel Committee. It is broadly defined as a financial contract, the basic forms of which include forwards, futures, swaps and options. It also encompasses structural financial vehicles having the features of one or more than one of the foregoing basic forms. The derivatives are further divided into two groups. In the first scenario, the transactions are conducted to transfer risk or obtain profit for the institutions initiating such deals. In the second scenario, the products are provided for customers including other financial institutions.

The financial institutions referred to in this regulation include banks, trust investment companies, financial companies, financial lease companies, auto financial companies, which are incorporated in China, and local branches of foreign banks.

The supervisory power is vested with the China Banking Regulatory Commission. No financial institutions may conduct derivative transactions unless approved by the Commission.

As to market access requirements, the threshold for local branches of foreign banks is lower than that for Chinese institutions. They may be exempted from the various requirements of complete risk management and internal control, transaction operation system and instantaneous risk management system, qualified personnel, and adequate places and equipment, provided that their derivative transactions are authorized by their headquarters, which are responsible for the handling and risk management of these transactions.

***Provisions on the Administration of Representative Institutions of Foreign Insurance Institutions***

外国保险机构驻华代表机构管理办法

**【Issued By】** China Insurance Regulatory Commission

**【Subject】** Foreign Investment , Insurance

**【Adopted On】** January 15<sup>th</sup> 2004

**【Effective From】** March 1<sup>st</sup> 2004

**【Source】** [www.circ.gov.cn](http://www.circ.gov.cn)

This regulation will replace the 1999 Provisions on Administration of Representative Institutions of Foreign Invested Insurance Institutions (“外资保险机构驻华代表机构管理办法”), which are amended or completed in several ways. Considering the local offices of China Insurance Regulatory Commission have been established, the Regulation authorizes them to conduct routine supervision over institutions within their respective jurisdictions. In addition, the approval procedure is streamlined by setting a twenty-day limit for approval, which may be extended 10 days upon decision of the chairman of CIRC. The extension of business terms of the representative institutions is no longer subject to approval. For such matters as the change of business place, representatives and associate representatives, and the number of foreign staff, a report is sufficient.

***Circular on Regulating Certain Issues Related to Auto Loan Insurance***

关于规范汽车消费贷款保证保险业务有关问题的通知

**【Issued By】** China Insurance Regulatory Commission

**【Subject】** Foreign Investment , Insurance

**【Adopted On】** January 15<sup>th</sup> 2004

**【Effective From】** January 15<sup>th</sup> 2004

**【Source】** [www.circ.gov.cn](http://www.circ.gov.cn)

The Circular decides that the existent insurance clauses applied to auto loan insurance shall be rescinded by March 31<sup>st</sup> 2004. The insurance companies should redesign relevant clauses and strictly abide by the following principles.

The coverage should in principle be limited to cars bought for private purpose. Vehicles bought for production purposes shall be covered by separate policies specially designed for them. The term of the policy shall not exceed 3 years. In no case is it allowed to assume the obligation of guarantor by the insurance companies.

It must be explicitly laid down in the policy that the insurance will only take effect if proper security has been provided to the insured (creditor) by the debtor. It shall be further provided in the policy that the insured has the duty to examine the validity of the security, as its unenforceability will lead to denial of coverage. The insurer shall only be responsible for the sum that cannot be recovered by duly enforcing the security. For all claims, there should be an absolute deduction no less than 10%.

### *Provisions on Minimum Wages*

最低工资规定

**【Issued By】** Ministry of Labor and Social Security

**【Subject】** Labor Protection

**【Adopted On】** December 30<sup>th</sup> 2003

**【Effective From】** March 1<sup>st</sup> 2004

**【Source】** [www.law-lib.com](http://www.law-lib.com)

This regulation will supersede the 1993 Provisions regarding Minimum Wages of Enterprises (企业最低工资规定). It applies to enterprises, private non-enterprise entities and individual businesses employing people other than family members. It also governs the labor relationship between government agencies, administrative institutions, social entities, and their employees, with whom there are employment contracts.

The level of minimum wages shall be co-decided by the administrations responsible for labor and social security at the provincial level together with societies of entrepreneurs and trade unions. The wages paid to the employees, after deducting the following items, shall not be lower than the local minimum wage standard: (1) compensation for overtime; (2) subsidies for night shift and exposure to special working conditions such as high temperature, low temperature and toxic environment; (3) statutory benefit.

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