



CHINA LEGAL BRIEFING 61

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1. *National*

Circular on Regulation of Certain Issues Regarding Enforcement by the People's Courts and Enforcement Assistance by Administrations of Real Estate

最高人民法院、国土资源部、建设部关于依法规范人民法院执行和国土资源房地产管理部门协助执行若干问题的通知

【Issued By】 Supreme People's Court, Ministry of Land and Resources, Ministry of Construction

【Subject】 Civil Procedure, Enforcement, Real Estate

【Adopted On】 February 10th 2004

【Effective From】 March 1st 2004

【Source】 www.cin.gov.cn

This circular mainly deals with legal issues involved in the seizure and anticipatory seizure of real estate such as land use rights and premises.

The anticipatory seizure (预查封) may be conducted against certain categories of unregistered premises: (1) unsold commodity premises belonging to the defendant developer for which anticipatory sale permits have been granted; (2) the commodity premises purchased by the defendant, for which

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preliminary registration has been finished by the developer; (3) the commodity premise purchased by the defendant, for which the anticipatory sale contract has been recorded or the anticipatory registration has been completed.

One noteworthy feature of the Circular is the full faith and credit given to the registration of real estate. A piece of real estate shall not be seized once it is registered as property of a third party, even if the registration is false. Although the court may seize real estate even after the application for registration of transfer has been filed with the registrar, it may not do so in any event once the registration of transfer has been completed.

On the part of the registrar, no fees shall be charged on the requests from the courts for enforcement assistance. Such requests of the courts are not subject to the substantive review of registrar.

***Provisions on Certain Issues Regarding Mediation Presided by the People's Courts
(Consultation Paper)***

最高人民法院关于人民法院调解工作若干问题的规定（征求意见稿）

【Issued By】 Supreme People's Court

【Subject】 Civil Procedure, Mediation

【Source】 www.law-lib.com

The draft Provisions first make it clear that the validity of mediation rests upon mutual consent and non-contravention with mandatory legal provisions. The court prepares the mediation statements based upon the agreements between parties, which shall be final and binding.

The mediation shall be conducted in cases involving a personal relationship such as marriage, adoption, inheritance, alimony and maintenance fees. It shall also be mandatory in cases involving utilization of adjacent real estate and in cases to which a simplified procedure is applied. However, the mediation shall be precluded in the following cases: (1) subrogation of contractual rights; (2) shareholder's derivative suits; (3) declaration for invalidity of legal acts; (4) cases involving state or public interests; (5) cases applying Special Procedures, Procedures for Hastening Debt Recovery, Procedures for Publicizing Public Notice for Assertion of Claims, and Procedures for Bankruptcy and Debt Repayment of a Legal Person; (6) verification of a personal relationship; (7) other cases not suited for mediation due to their nature.

The clauses on non-performance liability and guarantee contained in the mediation agreement may be recognized by the court. However, the provision that the injured party may seek judgment from the court where the other party does not implement the mediation agreement will not be recognized by the court.

The court is at discretion to render a partial mediation statement once parties have partly agreed. The unsettlement of the allocation of litigation costs shall not prevent the court from rendering a final mediation statement

once the parties have agreed on all the other points. The court is free to make its own decision upon some disagreed claims and incorporate such decision in the mediation statement, provided that the parties have agreed on principal claims and have expressed their willingness to accept the court's decision on unsettled matters.

Circular on Personal Tax Exemption for Allowances Such as Subsidies for Accommodation in Hong Kong and Macao Given to Foreigners

财政部、国家税务总局关于外籍个人取得港澳地区住房等补贴征免个人所得税的通知

【Issued By】 Ministry of Finance, State Administration of Taxation

【Subject】 Personal Income Tax

【Adopted On】 January 1st 2004

【Effective From】 January 29th 2004

【Source】 www.chinatax.gov.cn

Considering some foreigners (Hong Kong and Macao residents excluded) employed by mainland enterprises live in Hong Kong and Macao and shuttle on every working day, the state tax authorities decided that the allowances given to such foreigners by mainland enterprises or their related enterprises for accommodation, meals, laundry and conveying, shall be exempted from personal tax. They further decided that there should also be a personal tax waiver applied to allowances given to such foreigners for language training for themselves and for education costs of their children in Hong Kong and Macao insofar as these allowances are reasonable.

CBRC Encourages Private and Foreign Capital to Invest in Commercial Banks

【Source】 www.law-star.com

Reportedly the China Banking Regulatory Commission recently expressed its encouragement for investment in commercial banks by private and foreign capital. The Commission prescribed six requirements for the Baohai Bank, which is being established, and the Zhejiang Commercial Bank, which is being restructured. These requirements may throw some light on future developments: (1) the newly-established bank should be innovative to some extent in terms of corporate governance; (2) the risk arising out of related transactions and related loans must be placed under control; (3) the government agencies should not interfere with the normal business operation of banks; (4) the initiators of the bank should encompass overseas strategic investors; (5) the bank should establish a self-regulating personnel management system with incentives and equip itself with highly qualified professionals; (6) there should be an effective control mechanism for capital adequacy, capital debt ratio and risk management.

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