



CHINA LEGAL BRIEFING 63

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1. National

New Judicial Interpretations under Consideration

【Subject】 Herald of Judicial Interpretations

【Source】 www.law-star.com

It is reported that the six pieces of judicial interpretations, which are expected to be adopted by the end of this year, are under consideration by the Supreme People's Court. To ameliorate the regulation of the real estate market, the Court is conducting further research regarding the draft judicial interpretations respectively on transfer of land use rights over state owned land, on contract of construction projects, and on contractual operation of land by farmers. Further, a piece of judicial interpretation on employment disputes is also under way. With a view to streamlining the civil procedure, the Court has planned to adopt two documents respectively on the service of documentation by post and on the formality of judgments.

Circular on Procedural Matters Concerning the Application for Transfer of State Shares in Public Companies to Foreign Investors and Foreign Invested Enterprises

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关于上市公司国有股向外国投资者及外商投资企业转让申报程序有关问题的通

【Issued By】 Ministry of Commerce; State Owned Assets Supervision and Administration Commission

【Subject】 Transfer of State Shares

【Adopted On】 January 21st 2004

【Effective From】 January 21st 2004

【Source】 www.law-lib.com

This circular, which applies to state shares held by non-financial enterprises, is adopted to effectuate the Provisional Rules on Merger and Acquisition of Domestic Chinese Enterprises by Foreign Investors (“外国投资者并购境内企业暂行规定”, 2003.1.2).

The application for transfer shall be filed with the State Owned Assets Supervision and Administration Commission (SASAC), which shall forward the application to the Ministry of Commerce (MOC) for comments. After reviewing the application the MOC shall make observations in accordance to the state policy for foreign investment. Based on the positive response from the MOC, the SASAC shall make its own decision on the application. Once approval from the SASAC has been obtained, the applicant shall prepare the relevant documents and file them with MOC to get approval for the transfer of shares to foreign investors/foreign invested enterprises and alteration of articles of association of the public companies. The decision of the MOC shall be notified to SASAC, the State Administration of Industry and Commerce, and the China Securities Regulatory Commission.

Provisions on the Administration of the Capital Adequacy Ratio of Commercial Banks

商业银行资本充足率管理办法

【Issued By】 China Banking Regulatory Commission

【Subject】 Capital Adequacy Ratio

【Adopted On】 February 23rd 2004

【Effective From】 March 1st 2004

【Source】 www.cbrc.gov.cn

The regulation, enacted on the basis 1988 Basel Accord and with some elements taken from the New Basel Accord, applies to commercial banks incorporated in China including domestic Chinese commercial banks, wholly foreign invested commercial banks and Sino-foreign joint venture commercial banks. They shall be fully in compliance with the requirements of the regulation no later than January 1st 2007. In the transitional period,

commercial banks not meeting the requirements shall achieve the policy goal progressively and report their action plans to the China Banking Regulatory Commission.

Compared with the existent rules on capital adequacy ratio, there are four new aspects brought about by the regulation. First, the appraisal of risk factors for the overseas debts shall be based upon the rating reports for the relevant countries or regions. Second, the preferential regulatory treatments for state owned extra-large enterprises, large state owned enterprises and non-banking financial institutions are brought to an end. Third, preferential regulatory treatments for loans secured by houses, residence buildings and movables are repealed. Fourth, the risk of off-balance sheet items shall be calculated on the basis of parameters for the relevant assets and the identities of the party other than the commercial bank itself in the transaction.

Risk Rating Scheme of Commercial Banks Limited by Shares (Provisional)

股份制商业银行风险评级体系(暂行)

【Issued By】 China Banking Regulatory Commission

【Subject】 Risk Rating

【Source】 www.financialnews.com.cn

The recently adopted scheme sets out rules for overall assessment of operation elements of commercial banks limited by shares. It is divided into seven parts, each addressing an aspect of the overall assessment, namely, capital adequacy ratio, safety of the assets, management, generation of revenues, liquidity, sensibility to market risk, overall assessment (rating).

The result of the rating forms the basis of supervision. It also plays a role in the consideration of granting market access and the administration of qualification requirements of senior management.

Guidelines on Follow-Up Measures in the Case of Termination of Public Trading of Shares of Companies Limited by Shares

关于做好股份有限公司终止上市后续工作的指导意见

【Issued By】 China Securities Regulatory Commission

【Subject】 Termination of Trading

【Adopted On】 February 25th 2004

【Effective From】 February 25th 2004

【Source】 www.s-a-c.org.cn

As a document giving effect to the State Council Observations of the State Council on the Promotion of Reform, Opening Up and Steady Development of the Capital Market (" ", China Legal Briefing No.60), the Guidelines at the outset pronounce two policy objectives, namely, protecting the interests of investors and streamlining the rules governing market exit.

To protect the investors, the Guidelines provide that the rights of shareholders to benefit, make decisions, and select management are not affected by the termination of public trading of shares of the company; that shares issued by the company whose public trading is terminated should be placed under the custody of the China Securities Depository and Clearance Clearing Cooperation Limited and free to transfer in accordance with laws; that a market ban should be imposed upon directors and senior management of the company in question who have failed to discharge their obligations of protecting the investors; that interests of all the shareholders and creditors should be protected in the event of restructuring the assets.

To apply for resumption of public trading, the company should comply with the conditions for public trading and continuous capacity of operation. To restart public trading of shares of companies to which market exit is conducted: (1) consent must be obtained from provincial governments; (2) sponsors must be retained who will supervise and advise them within 2 years of the restart of public trading; (3) the letter of compliance and non-objection must be acquired from the Securities Association of China; and (4) approval must be granted for securities exchanges upon authorization from the China Securities Regulatory Commission.

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