



CHINA LEGAL BRIEFING 65

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1. National

Amendments to the Constitution of the People's Republic of China

中华人民共和国宪法修正案

【Adopted By】 National People's Congress (NPC)

【Adopted On】 March 14th 2004

【Subject】 Constitutional Amendments

【Effective From】 March 14th 2004

【Source】 www.china.org.cn

This is the fourth time that National People's Congress, the highest organ of State power of the PRC, amends the 1982 Constitution. The previous amendments were made respectively in 1988, 1993, and 1999.

A total of 31 amendments have been adopted by this Congress, several being innovative. It is the first time that protection of private property is recognized in the Chinese Constitution of 1949. The revised Article 13 reads: "The legitimate private property of citizens is sacred. The State protects the private property and the right of inheritance in accordance with laws. The State may launch expropriation or requisition against private property of citizens, provi-

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ded that such actions are conducted in accordance with laws, justified by public interests and followed by compensation.”

It is also the first time that human rights are incorporated in the Constitution. A provision is added to Article 33 as paragraph 3, reads: “The State respects and protects human rights”.

Provisions on Call-Back of Flawed Automobile Products

缺陷汽车产品召回管理规定

【Issued By】 State Administration of Quality Supervision, Inspection and Quarantine

【Adopted On】 March 12th 2004

【Subject】 Call Back, Automobile Products

【Effective From】 October 1st 2004

【Source】 www.law-lib.com

The regulation applies to production, importation, sale, lease and reparation of automobiles carried out in China. However, at the present stage, it only applies to automobiles with less than 9 passenger seats, including the seat of the driver. The application to other categories of automobiles, which fall outside this scope of application, awaits further notice.

The Producer and the Importer are obliged to call back the deficient automobiles and bear the transportation costs and costs for removing the deficiencies. The Seller, the Lessor and the Repairer shall assist the Producer in implementing the call-back obligation. The “Producer” refers to the producer incorporated in China that produces or assembles automobile products and issues a quality permit in its own name as well as to the foreign producer whose products have been sold to China.

The call-back refers to the process in which the Producer and the Importer remove the deficiencies which may give rise to personal injury and property loss by way of retaking, repairing or replacing the deficient product. The call-back period is the quality guarantee period or 10 years, whichever is longer, starting from the moment the automobile is delivered to the first user.

There are two call-back procedures. In the first one, the voluntary call-back, the initiative goes out from the Producer and the Importer which have discovered the deficiencies through their own information system, or reports and complaints from the retailer, the repairer and the customer, or notification from the products quality supervisory bodies. In the second procedure, the non-voluntary call-back, the initiative goes out from the product quality supervisory bodies in case the Producer and the Importer deliberately fail to take call-back initiatives, or they knowingly conceal the deficiencies of the products, or they handle the deficient products in an

improper manner.

Provisions on Investment in Advertisement Enterprises by Foreign Investors

外商投资广告企业管理规定

【Issued By】 Ministry of Commerce, State Administration of Industry and Commerce

【Subject】 Advertisement Enterprise

【Adopted On】 March 2nd 2004

【Effective From】 March 2nd 2004

【Source】 www.law-lib.com

This regulation applies to the investment in the advertisement industry by foreign investors, including adding advertisement to the existent scope of business. Moreover, in the event that foreign investors wish to invest in the advertisement industry by way of merger and acquisition, the rules governing M & A by foreign investors shall be applied together with this regulation.

The foreign invested advertisement enterprise may take the form of a joint venture or a wholly foreign invested enterprise. The foreign investor may have a controlling shareholding in the joint venture but not exceeding 70%. However, no wholly foreign invested enterprise is permitted before 10 December 2005 unless the investor is qualified as a Hong Kong Service Provider or a Macao Service Provider whose scope of business includes advertisement.

This regulation does not provide for the requirement of a minimum registered capital. However, the parties to the joint venture shall be enterprises conducting advertisement business, which have been established and have been operating for more than 2 years and have a performance record of advertisement. For wholly foreign invested enterprises, the requirements for the foreign investor are increased to the establishment and operation of minimum 3 years and having advertisement as their major business. The foreign invested advertisement enterprise may not establish branches unless the registered capital has been actually contributed and the annual business income is more than RMB 2 million.

The approving authorities are the State Administration of Industry and Commerce (or its provincial offices) and the Ministry of Commerce (or its provincial bureaus). The applicant shall first seek approval from the State Administration of Industry and Commerce (or its provincial offices) for the project proposal and feasibility study report. Once approved, it shall submit the contracts and articles of association to the Ministry of Commerce (or its provincial bureaus) for approval. Where both stages are successful, the applicant may complete the procedure by registering the enterprise.

Guidelines on Corporate Governance Reforms and Supervision of the Bank of China and the Construction Bank of China

关于中国银行、中国建设银行公司治理改革与监管指引

【Issued By】 China Banking Regulatory Commission

【Subject】 Corporate Governance

【Adopted On】 March 11th 2004

【Effective From】 March 11th 2004

【Source】 www.cbrc.gov.cn

The Guidelines, although specifically addressed to the Bank of China and the Construction Bank of China, may set a precedent for further joint-stock reforms of other state-owned commercial banks.

The Guidelines prescribe various requirements in relation to corporate governance for the two banks, affecting such aspects of organization, selection of investors, development plans, decision-making, internal control, management of risks, business management, disclosure of information, application of information technology, human resources and use of intermediary institutions.

The Guidelines also set out performance assessment indicators, including ROA (Return on Assets), the ROE (Return on Equity), the cost/income ratio, the non-performing asset ratio, the capital adequacy ratio, largest exposure concentration and the NPL provisioning coverage ratio.

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