



CHINA LEGAL BRIEFING 67

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1. National

Certain Provisions on the Disposal of Infringement upon Consumer Rights

关于处理侵害消费者权益行为的若干规定

【**Adopted By**】 State Administration of Industry and Commerce

【**Adopted On**】 March 12th 2004

【**Subject**】 Consumer Protection

【**Effective From**】 March 12th 2004

【**Source**】 www.saic.gov.cn

This regulation is adopted to enhance the implementation of the Law on the Protection of Rights and Benefits of Consumers (“消费者权益保护法”) on its 10th anniversary.

In case of discrepancies between the terms and conditions agreed upon or undertaken by the business operator, the one more favorable for the consumer shall apply. In addition, the business operator shall stop selling the products and services that may cause personal harm to the consumer or damage consumer property even if properly utilized, and also is obliged to retrieve the sold products. Further, the business operator shall not include such

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provisions as shifting the obligation of the operator to the consumer, increase the burden of the consumer, exclude or restrict the consumer's right to alter or terminate the contract, request for compensation and damages, and initiate lawsuits.

The bureaus of industry and commerce are empowered to correct the irregularities and issue orders for compliance. They may also record the misbehaviors in the market participant credit supervision system.

Provisions on Penalties of Misconducts of Lawyers and Law Firms

律师和律师事务所违法行为处罚办法

【Issued By】 Ministry of Justice

【Promulgated On】 March 19th 2004

【Subject】 Penalties

【Effective From】 May 1st 2004

【Source】 www.china.com.cn

This regulation repeals the 1997 Provisions on Penalties of Misconducts of Lawyers (“律师违法行为处罚办法”). Compared to its forerunner, the scope of punishable acts has been expanded.

The authorities that are entitled to impose penalties in accordance with the Lawyer's Law and this regulation are the administrations of justice at various levels. The penalties against lawyers include admonition, confiscation of illegal benefits, suspension of practice and revocation of practice license. The sanctions against law firms embody admonition, confiscation of illegal benefits, suspension of business and correction or revocation of business license.

This list of punishable acts committed by the lawyer in this regulation are an interpretation of “other punishable acts” in Article 44 (11) of the Lawyer's Law. They concern such aspects as conflicts of interests, unfair competition, infringement upon the rights of clients, interference with the administration of justice, and perjury.

Procedural Rules for Collection of Legal Fees by Law Firms

律师事务所收费程序规则

【Issued By】 Ministry of Justice

【Adopted On】 March 16th 2004

【Subject】 Legal Fees

【Effective From】 May 1st 2004

【Source】 www.china.com.cn

The Rules provide that the collection of legal fees shall be governed by the 1997 Provisional Rules on the Administration of Collection of Legal Fees (“*律师服务收费管理暂行办法*”) and other regulations on legal fees promulgated by provincial price authorities and administrations of justice.

Only law firms shall collect legal fees. An individual lawyer is not entitled to do so. Law firms shall publicize billable items, the calculation basis, and the means of payment by notifications or brochures. Law firms shall conclude legal fee contracts or include a clause on legal fees in the power of attorney.

Costs independent from legal fees borne by the party, such as costs for appraisal and notarization, shall be notified in advance to the party. The scope and payment of these costs shall be agreed between the law firm and the party. Costs for appraisal, notarization, translation and fees charged by the courts should be paid on a reimbursement basis. Traveling costs may be collected in advance on the basis of a budget agreed by the party.

The law firm may establish special accounts for the party to keep contract funds, funds collected from enforcement and a security account for the implementation of contract.

Provisional Rules on the Supervision and Examination of Non-performing Assets of Commercial Banks

商业银行不良资产监测和考核暂行办法

【Issued By】 China Banking Regulatory Commission

【Adopted On】 March 25th 2004

【Subject】 Non-performing Assets

【Effective From】 March 25th 2004

【Source】 www.cbrc.gov.cn

This regulation is divided into seven parts with the following headings: general principles, supervision of non-

performing assets, analysis of non-performing assets, examination of non-performing assets, sources and analysis of data and information & time-limit for submission of reports, liabilities for administration and supervision of non-performing assets, final clause.

Compared to the existent rules on the supervision of unperformed assets, there are two new features in the regulation. First, the scope of supervision is more comprehensive, including loans, non-loaned assets and off-balance sheet transactions. Secondly, emphasis is placed both on the balance and the ratio of unperformed assets.

Commercial banks shall exercise direct supervision over their institutions and clients. The institutions include: the top 5 bank branches in terms of unperforming assets ratio, bank branches whose balance or ratio of unperforming assets keep rising, the top 5 bank branches in terms of anticipated loss-ratio in non-loaned assets, bank branches whose off-balance sheet transactions are in disorder. The clients include: clients with more than RMB 100 million outstanding unperforming loans, the group clients owning more than 5 related enterprises with an overall outstanding amount of unperformed loans more than RMB 100 million.

Code of Corporate Governance for Futures Brokerage Companies (Provisional)

期货经纪公司治理准则(试行)

【Issued By】 China Securities Regulatory Commission

【Adopted On】 March 15th 2004

【Subject】 Corporate Governance, Futures Brokerage Companies

【Effective From】 March 15th 2004

【Source】 www.law-lib.com

The Code applies to futures brokerage companies incorporated in China. The corporate governance for the purpose of this code refers to the corporate structure comprising the conference of shareholders, board of directors, board of supervisors, and the management, as well as arrangements including decision-making, restrictions and incentives to guarantee the effective functioning of the foregoing organs and the balance of power between them.

In order to improve corporate governance the following principles shall be adhered to: the improvement of the balance of power, the reinforcement of risk control of futures brokerage, the protection of the equality and the rights of all shareholders and the perfection of the incentives and restrictions.

The position of an independent director shall be established in one of the following cases: (1) the registered capital is no less than RMB 50 million; (2) the single shareholder or ultimate beneficiary directly or indirectly holds more than 50% of the shares; (3) the position of chairman of the Board of directors and the general manager are held by the same person; (4) the financial institutions directly or indirectly act as shareholders

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