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1. National

Foreign Trade Law (Amended)

对外贸易法(修订)

【**Issued By**】 Standing Committee of National People's Congress

【**Adopted On**】 6 April 2004

【**Subject**】 Foreign Trade

【**Effective From**】 July 1st 2004

【**Source**】 www.china.org.cn

The Law is revised to reflect the developments in the field of foreign trade, notably the commitments under the WTO agreements, since it was first adopted in 1994. It applies to foreign trade, which refers to importation and exportation of goods and technologies and trade in service, and protection of trade-related intellectual property rights. However, it does not apply to separate custom territories of China.

There are 11 chapters in the Law, namely, general principles, foreign trade operator, importation and exportation of goods and technology, international trade in services, protection of trade related intellectual property rights, order

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of foreign trade, investigation of foreign trade, remedies of foreign trade, promotion of foreign trade, sanctions and final clause.

In relation to the foreign trade operator, the Law lifts the restrictions of the capacity of individuals to engage in foreign trade. Furthermore, the Law abolishes the current approval procedures for foreign trade operators. In addition, the Law provides for state trade, which applies to certain goods and can only be dealt with by certain authorized enterprises, both subject to later announcements.

With reference to trade in goods, technologies and services, the Law enshrines the principle of foreign trade. However, this principle is qualified by exceptions listed in Article 16 and 26, which resemble those of Article 20 GATT.

As for the protection of trade related intellectual property rights, the department of the State Council in charge of foreign trade may impose a ban upon certain imports where such imports infringe IP rights and jeopardize foreign trade orders. At the same time, the Law authorizes the said department to take necessary measures to remove the damage brought about by unfair trade terms in license agreements such as waiver of challenge and exclusive license-back constructions.

Provisions on Certain Issues in Adjudicating Cases Involving Letter of Credit (Consultation Document)

最高人民法院关于审理信用证纠纷案件若干问题的规定（征求意见稿）

【Issued By】 Supreme People's Court

【Subject】 letter of credit

【Closing Date】 June 1st 2004

【Source】 www.court.gov.cn

The judicial interpretation is drafted by referring to the Uniform Customs and Practices for Documentary Credit. It is divided into 4 parts: the scope of letter of credit cases and applicable law, the separate nature of the letter of credit and examination of documents, fraud and injunction, and guarantee for letter of credit.

The people's courts, in adjudicating cases involving letter of credit as defined in part I, shall apply international customs and other rules agreed by parties. In absence of such agreement, they shall apply the Uniform Customs and Practice for Documentary Credit and other international customs.

The letter of credit is documentary transaction separate from the underlying transaction on which it may be based. The issuing bank is by no means bound by the underlying transaction between the applicant and the beneficiary and shall make the payment within the set period where the documents are consistent with each

other and in compliance with the terms and conditions of the letter of credit. The inconsistencies between documents, between documents and the letter of credit will not be considered as discrepancies provided that they will not lead to different interpretations.

The judicial interpretation devotes many of its provisions to anti-fraud. The fraud will occur where:

- (1) The applicant, in conspiracy with the beneficiary or the third party, presents fake documents without genuine underlying transactions;
- (2) The beneficiary does not make delivery or the goods delivered by him are of little value;
- (3) The beneficiary forges documents or presents documents containing fraudulent statements;
- (4) Other fraudulent use of documents.

The issuing bank or the applicant may seek the injunction from the court having jurisdiction when the fraud comes to their notice.

However, even if it has affirmed fraud exists the court shall not render injunction by order or by judgment in the following cases:

- (1) The bank designated or authorized by the issuing bank has made the payment upon the instruction from the issuing bank;
- (2) The holder in due course of the draft accepted by the issuing bank, or the bank designated by it, has paid the value of the drafts in good faith;
- (3) The confirming bank has made the payment in good faith;
- (4) The negotiating bank has negotiated the letter of credit in good faith;
- (5) The second beneficiary under the transferable letter of credit has paid the value of credit in good faith.

Provisions on the Administration of Related Transactions between Commercial Banks and Insiders or Shareholders

商业银行与内部人和股东关联交易管理办法

【Issued By】 China Banking Regulatory Commission

【Promulgated on】 April 2nd

【Subject】 Related Transaction of Commercial Banks

【Effective From】 May 1st 2004

【Source】 www.cbrc.gov.cn

The regulation consists of 6 parts with the following headings: general principles, related parties, related transactions, administration of related transactions, sanctions, and miscellaneous matters.

There are three categories of related parties to commercial banks. The first category includes parties having an actual related relationship with commercial banks (Article 7-9). The second category refers to parties having contractual arrangements with commercial banks, which makes them meet one of scenarios of first category related parties (Article 10). The third category of parties is presumed related when engaging in a transaction with commercial banks which is unfair and not carried out on market basis, making such parties benefit on the cost of the commercial banks.

The related transaction may take one of the following forms: grant of credit, guarantee, transfer of assets, provision of service and other related transactions defined by the CBRC. To facilitate management and administration, the related transactions are divided into two groups: ordinary related transaction and material related transaction, based on ratio of value of single transaction and ratio of overall transactions.

The administration system comprises 4 pillars. The first pillar is the requirement to establish a management scheme for related transactions by commercial banks. The key factor is the commission on related transactions chaired by an independent director comprising at least 3 members. The second pillar is to prescribe approval and report procedures for related transactions. The third pillar is to ban and restrict certain transactions. The fourth pillar is to provide rules for auditing and disclosure.

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