



CHINA LEGAL BRIEFING 83

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1. National

Supreme Court Circular on Prohibition of Sitting Judges to Act as Arbitrators

关于现职法官不得担任仲裁员的通知

【**Issued By**】 Supreme People's Court

【**Subject**】 Professional Ethics

【**Promulgated on**】 July 13th 2004

【**Effective From**】 July 13th 2004

【**Source**】 www.court.gov.cn

Faced with the enquiry posed by representatives of National People's Congress on whether judges may be nominated to the list of arbitrators, the Supreme People's Court gave negative answer:

Having regard to relevant provisions of Law on Judges and Law on Arbitration of the PRC, a judge will act beyond the power invested in the courts as well as members of the bench, if he takes up the post of arbitrator and handle arbitration cases, which contravenes relevant legal rules and does no help to protect legitimate rights and interests of parties to the disputes. Considering this, judges shall not act as arbitrators. Judges who had been nominated to the list of arbitrators by associations

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of arbitration shall decline the nomination within one month of the promulgation of the Circular and terminate the relationship with the associations.

Supreme Court Interpretation of Certain Issues Concerning the Application of Law on Arbitration of PRC (Consultation Paper)

最高人民法院关于适用《中华人民共和国仲裁法》若干问题的解释（征求意见稿）

【Issued By】 Supreme People's Court

【Subject】 Arbitration

【Promulgated on】 July 22nd 2004

【Closing Date】 August 22nd 2004

【Source】 www.chinacourt.org

The 27-article judicial interpretation is composed of 5 parts, dealing respectively with effects of arbitration clause, seizure and obtainment of evidence, annulment of arbitral awards, enforcement of arbitral awards, and miscellaneous matters.

In the part outlining the most import preliminary issue, the Interpretation addresses the effect of arbitration clauses in various circumstances, including changes to the personality of parties to the arbitration clause, transfer of contractual rights and obligations, arbitration clause in the articles of association and memorandums contemplating unspecified future disputes, contracts not concluded or never taking effect, inclusion of more than one arbitration institutions in the arbitration clauses, incorrect identification of arbitration institutions in the arbitration clauses, options of arbitration and judicial means, challenges for arbitration clause.

For seizure of properties and evidence, the Interpretation provides that courts at the place of the properties or evidence shall exercise these matters. Courts at the domicile of the respondents shall also have the jurisdiction over the applications for seizure of properties. However, the courts shall only accept applications submitted via arbitration institutions.

For annulment, the courts shall not register the applications for annulment made on the ground of new emerged evidence, unless such new evidence are discovered after the arbitral awards have been rendered and will materially affect the impartiality of the awards.

State Council Decision on Reform of Investment System

国务院关于投资体制改革的决定

【Issued By】 State Council

【Subject】 Investment Administration

【Promulgated on】 July 16th 2004

【Effective From】 July 16th 2004

【Source】 www.law-lib.com

The Decision, composed of 5 parts and an appendix, blueprints the reforms to take place in the following years. It addresses such topics as guiding principles and objectives of reform, investment by enterprises, investment by governments, macro-control, and administration and supervision of investments.

Enterprises will be given more autonomy in making investment decisions and government control over investment by enterprises will be loosened. The present practice that all of the projects are subject to approval on the basis of investment value regardless of investors, sources of investment and nature of investment will be dropped. No approval will be needed for projects, which in the future will be subject to acknowledgement and filing. The projects subject to acknowledgement are those regarded as being significant or restricted, which are listed by industry in the appendix to the Decision. Projects not included in the regularly-updated appendix will be subject to filing. In the instance of acknowledgement, only project applications shall be submitted to relevant authorities. There will be no need to submit project plan, feasibility study and report of construction commencement.

Private investment will be encouraged. Private capital may be invested to infrastructure and public facilities if the laws and regulations do not preclude such entry. The governments will adopt such measures as provision of capital, subsidies for interests and preferential taxation treatments to encourage and incent private capital be invested to infrastructure and profit-making public facilities in the form of wholly owned enterprise, equity joint venture, cooperative joint venture, contractual cooperation, and project finance.

Draft Amendments to Company Law

【Source】 www.chinalaw.gov.cn

The Legal Office of State Council has finished drafting amendments to Company Law early this month, which is being circulated among relevant institutions for comments and is expected to be submitted to the Standing Committee of the National People's Congress for debate late this year. It is reported that over 120 articles will be revised and the number of changes has amounted to over 400.

- Restriction upon Investment by Companies: The existent Company Law has a 50% limit on the total investments made by a company to other companies unless the investing company is an investment company or holding company. In the draft amendments, this restriction is removed.
- Single Shareholder Company: The minimum number of shareholders for a limited company under the present Law is two. The draft amendments recognize single shareholder companies. However, each natural person can establish only one single shareholder company and demonstrate such nature in the name of the company.
- Independent Director: The present legal source for independent directors is a regulation promulgated by China Securities Regulatory Commission. The Law itself does not provide for independent director. The draft amendments require that at least 1/3 of the board members of a public company shall be independent directors.
- Registered Capital and Contribution: The minimum amount of registered capital for a limited company is RMB 100,000 under the present Law, which silences on whether shares may be used as contribution to registered capital. The draft amendments reduce the threshold to RMB 50,000 and give positive answer to the question of contribution by shares. Furthermore, it removes the 20% limit on contributions of industrial property rights and non-patent technologies.
- Conditions of Listing: Under the current Law, the threshold of share value is RMB 50 million for a company limited by shares wishing to be listed. The draft amendments reduce the threshold to RMB 30 million.

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