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1. *National*

Circular on Prohibiting Revising Step by Step Procedural Enforcement Measures with a View to Attributing Liabilities of Respondents to their Institutions at Higher Level

最高人民法院关于采取民事强制措施不得逐级变更由行为人的上级机构承担责任的通告

【*Issued By*】 Supreme People's Court

【*Subject*】 Enforcement Proceedings

【*Promulgated on*】 July 9th 2004

【*Effective From*】 July 9th 2004

【*Source*】 www.law-lib.com

Given the recent practice of some local courts in proceedings against assisting financial institutions or low level financial institutions as respondents in which further enforcement measures such as fine and judicial detention were adopted against the respondents' related higher level financial institutions, the Supreme People's Court denounced such practice and pronounced its positions thereon:

- Change of respondents in enforcement proceedings shall be subject to strict conditions laid down in the Circular on Regulation of Enforcement by Peo-

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ple's Courts and of Assistance in Enforcement by Financial Institutions

(“关于依法规范人民法院执行和金融机构协助执行的通知”, Supreme People's Court and People's Bank of China, 2000). In brief, related financial institutions at higher levels shall not be liable for the obligations of their lower institutions unless the enforcement against the latter have turned out to be unable to satisfy the claims and the former is jointly liable for such claims.

- Only when the conditions set out in paragraph one have been satisfied and the institutions at higher level have been identified as respondents in the enforcement proceedings, and only when such institutions fail to discharge its obligations within the 15-day time limit, enforcement measures might be adopted against them.
- Cases in which financial institutions act as assisting agencies are distinct from the particular cases in which they are obliged in the enforcement proceedings. The liability to be subject of enforcement measures shall be borne by such institutions themselves. Imposing those measures against their institutions at higher level is erroneous as a matter of law.
- Finding of fault on the part of financial institutions is the precondition for enforcement measures, which can only be imposed against intentional acts that impede the enforcement proceedings.
- Financial institutions against which enforcement measures have been imposed are entitled to review the underlying imposition decision by higher courts. Though the effect of such measures shall not be suspended while the final decision of higher courts is still pending.

Observations on Further Regulation of Tendering and Bidding

国务院办公厅关于进一步规范招标投标活动的若干意见

【Issued By】 General Office of State Council

【Subject】 Tendering and Bidding

【Promulgated on】 July 12th 2004

【Closing Date】 July 12th 2004

【Source】 www.cein.gov.cn

This document is published to correct the irregularities since the promulgation of Law on Tendering and Bidding, 2000. It addresses such issues as sectional and regional anticompetitive conducts, transparency, assessment of tenders, agency, expansion of use of tenders, and administrative surveillance.

To increase the unity of national market, the Observations provides that sectional and regional monopolization must be removed; that no restrictive conditions may be imposed upon bidders from other regions and other

sectors; that unlawful procedural requirements such as bidding permit, inspection of qualification, and registration shall be put to an end; that awards from the host region or the host sector shall be neither given extra credits nor been treated as the condition precedent; that no pressure, either expressly or implicitly, shall be imposed upon the successful bidders to sub-contract the projects to contractors and suppliers from the host regions or the host sectors.

Circular on Certain Issues Regarding Overseas Listing of Enterprises Affiliated to Domestic Public Companies

关于规范境内上市公司所属企业到境外上市有关问题的通知

【Issued By】 China Securities Regulatory Commission (CSRC)

【Subject】 Overseas Listing

【Promulgated on】 August 10th 2004

【Effective From】 August 10th 2004

【Source】 www.law-lib.com

This Circular, enacted in accordance with Securities Law, Company Law and Special Rules by the State Council on Overseas Marketing of Equities and Public Listing

(“国务院关于印发股份有限公司境外募集股份及上市的特别规定”), applies to overseas public listing of enterprises controlled by domestic public companies. It does not, however, apply to companies that issue both A-shares and B-shares.

The Circular expressly provides that overseas listing is subject to approval from the CSRC. It set out financial requirements for the enterprises wishing to be listed overseas, internal decisions which shall be adopted by the public companies, retaining of financial consultant from securities agencies included in the rolls of sponsors by the CSRC, and obligations to disclose information.

Circular on Certain Issues Regarding the Application of Taxation Agreements and Law on Personal Income Tax to Individuals without Domicile within China

国家税务总局关于在中国境内无住所的个人执行税收协定和个人所得税法若干问题的通知

【Issued By】 State Administration of Taxation

【Subject】 Personal Income Tax

【Promulgated on】 July 23rd 2004

【Effective From】 July 1st 2004

【Source】 www.chinatax.gov.cn

The Circular mainly clarifies rules for three issues: calculation of length of stay in China, calculation of the actual working time on the date of arrival and leaving, application of tax agreements to senior management staff.

The non-domiciled individuals' length of stay in China, which is the basis for determining the category of taxation obligations, shall be calculated in accordance with his actual length of stay. The day on which they arrive at or leave China shall be counted as one day.

When calculating the working time of non-domiciled individuals who hold positions both in domestic and overseas institutions or only hold positions in overseas institutions, the day on which they arrive at or leaves China shall be counted as half-day.

Where non-domiciled individuals hold senior management positions in China-based enterprises and the taxation agreement between their national State and China do not specify whether payment derived from such senior management positions is covered by the provisions on director's fees, such payment shall be taxed in accordance with provisions on dependent personal services. On the other hand, where such persons hold both the directorship and senior management positions in China-based enterprises, the payment derived from these positions shall be taxed under the head of director's fees.

Provisional Measures on the Administration of Overseas Utilization of Insurance Funds in Foreign Exchange

保险外汇资金境外运用管理暂行办法

【Issued By】 China Insurance Regulatory Commission (CIRC)

People's Bank of China

【Subject】 Overseas Investment

【Promulgated on】 August 9th 2004

【Effective From】 August 9th 2004

【Source】 www.circ.gov.cn

Given the scarcity of investment options in respect of funds in foreign exchange available to insurance companies,¹ the CIRC enacted Provisional Measures with a view to diversifying investment risks and offsetting the pressure on RMB.

Insurance Companies for the purpose of this regulation refer to insurance companies within China which have been duly approved by the CIRC and registered in accordance with law, including Chinese-Invested Insurance Companies, Wholly Foreign Invested Insurance Companies, Sino-Foreign Joint Equity Insurance Companies and branches of Foreign Insurance Companies. Insurance funds for the purpose of this regulation refer to the combination of capital, provident fund, undistributed profit, reserve, and deposit.

The CIRC gives effect to the principle of prudent supervision in 5 aspects:

- Prescribing the eligibility to utilize insurance funds in foreign exchange overseas in terms of financial indicators (overall assets, funds in foreign exchange at disposal) and internal control (Chapter 2);
- Restricting the scope of permissible investment and imposing ratio limits upon investment (Chapter 3);
- Custodian Requirement (Chapter 5);
- Recognizing the role of overseas professional investment institutions (Chapter 4);
- Establishing coordinated supervision formed by the CIRC, the State Administration of Foreign Exchange and other regulatory bodies (Chapter 6).

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¹ At present, investment of insurance funds in foreign exchange is limited to bank deposit, inter-company borrowing, and overseas bonds in foreign exchange.

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