



CHINA LEGAL BRIEFING 91

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1. *National*

Provisions on Issues Regarding Mediation Presided by the People's Courts in Civil Cases

最高人民法院关于人民法院民事调解工作若干问题的规定

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

【**Subject**】 Civil Procedure

【**Promulgated on**】 September 16th 2004

【**Effective From**】 November 1st 2004

【**Source**】 www.court.gov.cn

The Provisions imposes an obligation upon People's Courts to conduct mediation where civil disputes are possible to be resolved in this manner. Nevertheless, people's courts shall not conduct mediation in cases to which the Special Procedure, Procedure for Hastening Debt Recovery, Procedure for Publicizing Public Notice for Assertion of Claims, and Procedure for Bankruptcy and Debt Repayment of Legal Person apply, in cases involving confirmation of matrimonial and personal relationship, and in other cases for their nature cannot be mediated.

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People's Courts may conduct mediation after pleadings have been completed but before judgments have been rendered. Mediation may also be conducted before pleadings have been completed where parties so agree.

People's Courts may render mediation statements, which are legally binding and enforceable upon applications from parties who have reached settlement through negotiations during the proceedings. However, the courts shall not render judgments upon applications from parties asking the courts to give judgments on the basis of settlement or mediation agreements reached between parties. The courts will not incorporate the provision into the mediation statements to the effect that the non-defaulting party to the mediation agreements may ask the courts to give judgments.

People's Courts shall not deny the guarantee provision contained in the mediation agreement reached between parties or the arrangement whereby the third party provides security for the creditor. In the latter case, the mediation statements shall state the name of the security provider, who shall be serviced a copy of the mediation statement. The refusal of the security provider to sign for receipt of the mediation statement shall not prevent the mediation statement from taking effect.

Provisional Rules on Acknowledgement of Investments Made by Enterprises

企业投资项目核准暂行办法

【Issued By】 State Development and Reform Commission

【Subject】 Investment Administration

【Promulgated on】 September 15th 2004

【Effective From】 September 15th 2004

【Source】 www.china.org.cn

This regulation is enacted to give effect to Law on Administrative Licensing (行政许可法, CLB No. 37, and 国务院关于投资体制改革的决定, CLB No. 83), with a view to push on reforms in administration of investments. Acknowledgement of foreign investments in China and overseas investments by Chinese companies is to be regulated by a separate instrument.

The Provisional Rules provides that the State adopts and promulgates a Catalogue on Investment Projects Subject to Governmental Acknowledgement, setting the scope of investment projects subject to acknowledgement, and dividing powers between authorities at different levels. The Catalogue will be amended in accordance with economic situations and the needs of macro-control.

Project applications shall be prepared by institutions with the qualification to give relevant construction consultancy. The applications shall include the following contents:

- Description of the applicant;
- Statement of the project to be constructed;
- Construction land and relevant plan;
- Analysis of resource use and energy consumption;
- Assessment of ecological effects;
- Calculation of economic and social effects.

The acknowledgement certificate, once granted, is valid for 2 years. Failure to obtain such certificates when they should have been obtained will entail refusal from relevant authorities, such as land resources, environmental protection, foreign exchange, and production safety supervision, to give relevant permits. The failure will also result in denial of giving credit by financial institutions.

Circular on Further Regulating Matters Related to Initial Public Offering

关于进一步规范股票首次发行上市有关工作的通知

【Issued By】 China Securities Regulatory Commission

【Subject】 IPO

【Promulgated on】 September 19th 2003

【Effective From】 October 1st 2003

【Source】 www.csrc.gov.cn

The Circular prescribes more stringent requirements regarding performance, independence and financing amount for companies wishing to conduct initial public offering (IPO).

It provides that as of January 1st 2005 companies limited by shares shall not conduct IPO until they have been in existence for no less than 3 years. This requirement may not apply in the event that state-owned enterprises are transformed *en bloc* to companies limited by shares, or limited companies are transformed *en bloc* to companies limited by shares in accordance with relevant laws, or the State Council has waived such a requirement.

To make the requirement that "the issuer shall keep making profits in the past three years preceding the IPO"¹ capable of being compared, the Circular provides that there shall be no substantial changes to the actual controller, the management, and the business of the issuer within this period. Where there are substantial changes to the business of the issuer, no IPO may be conducted for three years after the transactions leading to such changes.

¹ Company Law, Article 152.

In addition to the general requirements of being independent in personnel, assets and accounting, the Circular sets out various indicators to assess the independence of the issuer from controlling shareholders or actual controllers. It further provides that the issuer shall include independent directors into the Board, among whom there shall be at least one accounting professional.

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