



CHINA LEGAL BRIEFING 102

W E N G E R & V I E L I B E I J I N G O F F I C E

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1. National

Reminder of Entry into Force

As of January 1st 2005, the following instruments have entered into force:

- Provisions on Service of Civil Litigation Documents by Post in the Form of Special Judicial Express ("最高人民法院关于以法院专递方式邮寄送达民事诉讼文书的若干规定", CLB No. 92)
- Interpretation of the Supreme People's Court on Issues Concerning the Application of Law for the Trial of Cases of Dispute over Contracts on Undertaking Construction Projects ("最高人民法院关于审理建设工程施工合同纠纷案件适用法律问题的解释", CLB No. 96)
- Provisions on Sale and Auction of Properties in Civil Enforcement Proceedings by People's Court ("关于人民法院民事执行中拍卖、变卖财产的规定", CLB No. 100)

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- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

- Temporary Measures on Management of Product Oil Market ("成品油市场管理暂行办法", CLB No. 101)
- Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law in the Trial of Technology Contract Disputes
("最高人民法院关于审理技术合同纠纷案件适用法律若干问题的解释", CLB No. 101)

Administrative Measures on Commercial Franchising Operations

商业特许经营管理办法

【Issued By】 Ministry of Commerce

【Subject】 Commercial Regulation

【Promulgated on】 December 31st 2004

【Effective From】 February 1st 2005

【Source】 <http://www.mofcom.gov.cn/>

The "Administrative Measures" will govern the administration of all franchising operations in the Mainland, including those franchising businesses operated by foreign investors. "Commercial Franchising Operation" in the Administrative Measures refers to a contractual arrangement under which franchisers grant franchisees the rights to use trademarks, trade names, business modes and other economic resources of which the use rights are legally transferable, whilst franchisees pay a franchise fee to franchisers in consideration of obtaining their memberships in a consolidated system of business undertakings.

The criteria of being a franchiser are detailed in the Measures as follows: (1) Being a legally incorporated enterprise or other types of economic organization, (2) Having trademarks, trade names, business modes and other economic resources of which the use rights are legally transferable to others, (3) Having the capacity of providing business instruction and training services to franchisees in a long run, (4) Having at least two direct-sale stores which have respectively run businesses in China over one year; alternatively the direct-sale stores can be established by subsidiary companies or the parent company of the franchiser, (5) If a franchise necessitates supply of specific products to franchisees, the franchiser should have a stable supply chain system to deliver products unimpaired in quality and be able to provide logistic services as needed, and (6) Having a good business credit and having a clean sheet of frauds history on franchise. Additionally, the Measures also stipulate the criteria of being a franchisee and what kinds of fees franchise fees include.

Regulations on Collective Management of Copyright

著作权集体管理条例

【 Issued By 】 State Council

【 Subject 】 Copyright Law

【 Promulgated on 】 December 28th 2004

【 Effective From 】 March 1st 2005

【 Source 】 <http://www.people.com.cn/>

The Regulation is formulated for the purpose of standardizing activities of collective management of copyright and facilitating copyright owners to exercise their lawful rights. The Regulation, which has been developed on the basis of taking into account experience from developed countries, is also applied to foreign copyright owners that hope to enjoy copyright protection in China.

Those legitimate rights that are listed in the Copyright Law and difficult for the copyright owners to effectively safeguard, such rights as hiring, performance, projection, broadcasting, duplication and Internet-based information distribution, can be entrusted to collective management organizations for protection under the 48-article regulation concerned.

According to the Regulation, management organizations that are authorized by the owner can sign agreements with the copyright users to be allowed to use products, pay for using products and other relevant activities. Moreover, it is also possible for the foreigners to protect their legitimate copyrights by means of authorizing Chinese copyright management organizations to manage their copyrights in accordance with relevant laws within the territory of China.

Circular on Further Improving the Implementation of the <Sponsorship System for Offering and Listing of Securities Tentative Procedures>

关于进一步做好《证券发行上市保荐制度暂行办法》实施工作的通知

【 Issued By 】 China Securities Regulatory Commission

【 Subject 】 Securities

【 Promulgated on 】 December 31st 2004

【 Source 】 <http://www.csrc.com.cn/>

The Circular provides that starting from January 1st 2005, the China Securities Regulatory Commission (CSRC) will not, prior to the issuance of securities by issuers for which a sponsor representative is specifically responsible for such recommendations, accept to handling applications for the issuance of securities by other issuers for which the same sponsor representative is specifically responsible pursuant to Item 1 of the Circular.

It further explains the term of "Investment Banking Business Experience" of Article 11 (1) of the "Sponsorship System for Offering and Listing of Securities Tentative Procedures" in Item 2 of the Circular as having experience in investment banking business for three years or above, and having assumed the post of project manager for at least one domestic or foreign securities issuance project that was completed within the past year.

In the last item, it specifies that "Investment Banking Business Experience" referred to in Article 17 (2) of the "Sponsorship System for Offering and Listing of Securities Tentative Procedures" means continuing engagement in investment banking business, specific participation in project works, and participation in business training for sponsor representatives organized by the Securities Association of China or other institutions approved by the CSRC every year.

Circular on Certain Issues Relating to Finance Lease Companies

关于从事融资租赁业务有关问题的通知

【 Issued By 】 Ministry of Commerce, State Administration of Taxation

【 Subject 】 Finance Lease

【 Promulgated on 】 December 30th 2004

【 Source 】 <http://www.mofcom.com.cn/>

The main points of this Circular are as follows:

- Market entrance and industrial regulatory administration of foreign investment lease companies should continue to be governed by the related regulations promulgated by the Ministry of Commerce (MOFCOM);
- The MOFCOM will select certain qualifying domestic lease operators as pilot enterprises in a finance lease program;

- Finance lease companies are eligible for the Business Tax policies for finance lease operators in accordance with the Circular on Certain Issues relating to Business Tax;
- When a finance lease company purchases equipments from a related party manufacturing enterprise, the purchase price should not be lower than that at which the manufacture sells the same types of equipments to a third party.

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