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Circular of the Ministry of Construction and the Ministry of Railways on Maintaining the Opening of the Railway Construction Market (No. 87 [2006] of the Ministry of Construction)

建设部、铁道部关于继续开放铁路建设市场的通知（建市【2006】87号）

Issued By Ministry of Construction and the Ministry of Railways
Subject Railway Construction
Promulgated on April 14th 2006
Effective from April 14th 2006
Source www.cin.gov.cn

The Circular of the Ministry of Construction and the Ministry of Railways on Maintaining the Opening of the Railway Construction Market (No. 87 [2006] of the Ministry of Construction) has been promulgated in order to assist to build a unified, competitive, ordered open market for railway construction. This latest circular mainly concerns three areas, i.e. the design, the construction and the supervision of railway construction.

Design: a designing institute with the Grade-A design qualifications of highways (including highways, particularly huge bridges and particularly huge tunnels), and with the design qualifications of city tracks simultaneously may engage in the designing work of ordinary railways with a speed below 200KM/H; a designing institute with the design qualifications of city tracks may engage in the designing work of ordinary railways with a speed below 160KM/H; a designing institute with the Grade-A design qualifications of harbors may engage in the designing work of railway container terminal; and a designing institute with the Grade-A design qualifications of telecommunications may engage in the designing work of railway telecommunications.

Construction: an enterprise with the Special-Grade qualifications of highway construction, harbor and sea-routes, irrigation works and water conservancy, and town and city planning engineering may engage in the construction work of railways as well; and an enterprise with the Special-Grade qualifications of real estate construction may engage in the construction work of railway stations.

Supervision: a supervision enterprise with the Grade-A qualifications of electric power projects may engage in the supervision of railway electric power projects; a supervision enterprise with the Grade-A qualifications of telecommunication projects may engage in the supervision of railway telecommunication projects; and a supervision enterprise with

the Grade-A qualifications of real estate projects may engage in the supervision of railway station projects.

Foreign investors are normally concerned about the issue of whether the Chinese railway construction and operation market is open for them. There are both positive as well as not encouraging news for foreign investors in the railways sector. On the positive side, according to the Xinhua News Agency, in June 2005, the high-speed railway project from Wuhan to Guangzhou was opened to various investors, including foreign investors. The project plans to build railway lines of 989 kilometers and requires a total investment of 116 billion Renminbi. 24 billion Renminbi was sought from so-called non-public-owned investors. Earlier in 2004, the Guangdong Province in China's South tried to seek to obtain foreign financial support for local railway projects. In conclusion, in principle, the Chinese railway construction market is at least partially open to foreign investors.

On the down-side, the private capital only account for 29% of the railway project from Wuhan to Guangzhou. This can be interpreted as a signal that private, including foreign investment does not take the lead in the railway industry, at least not at the moment. Furthermore, the railway industry in China is still a state-owned monopoly, and there is no clear signal of a change in the status quo so far so far. Even if allowed into the industry, Chinese private investment and foreign investment have no right to determine the ticket price because the railway industry in China still has strong characteristics of the planned-economy. Since the policies are not sufficiently clear, foreign investors are at present to heavily in the railway sector. However, now that the door appear to open up a little bit, it is possible to see a wider space in the future.

The Interim Measures for the Administration of Commercial Banks' Business on Operating the Overseas Financial Management for Clients

商业银行开办代客境外理财业务管理暂行办法

Issued By	The People's Bank of China, China Banking Regulatory Commission, and the State Administration of Foreign Exchange
Subject	Commercial Banks, Overseas Financial Management
Promulgated on	April 17th 2006
Effective from	April 17th 2006
Source	www.pbc.gov.cn

Approved by the State Council, the Interim Measures for the Administration of Commercial Banks' Business on Operating the Overseas Financial Management for Clients (hereinafter

the Interim Measures) have been enacted, in order to allow domestic institutions and individuals to entrust commercial banks to make overseas financial investment. The Interim Measures are another significant means to actively broaden the investment channels for domestic citizens and encourage international balance on income and expenses.

The commercial banks entitled to operate such overseas financial management services for domestic clients shall be designated foreign exchange banks and must satisfy the following qualifications: They must have already established an effective risk and inner control system. They must be capable of making overseas investment and related administration, and with sufficient experiences in this field and they must not have been punished by the China Banking Regulatory Commission (hereinafter “CBRC”) for reason of unsound financial management service one year prior to the application. Other prudential conditions may be imposed by the CBRC.

Where commercial banks operate such overseas financial management services, they should entrust other domestic commercial banks with a trusteeship qualification issued by CBRC as their trustee to take care of all assets that used to make overseas investment. The trustee shall perform the following obligations besides the regulated ones by CBRC: To open domestic trusteeship accounts, accounts for balancing the overseas foreign exchange capitals, and securities trusteeship accounts for those commercial banks; to supervise the commercial banks’ operations and report any irregularity to the State Administration of Foreign Exchanges (hereinafter “SAFE”); to record the commercial banks’ history of funds-flow and to assist the SAFE to undertake necessary checks and inspections.

The Interim Measures have clear provisions on investment scales for the commercial banks’ overseas financial management services, and establishes an operating system based on advanced experiences from the international market. As a result, domestic institutions and individuals may take advantage of both domestic and international market to disperse financial risks and increase capabilities to keep the capital values. The adoption of the Interim Measures may even be a step to steadily encourage Renminbi’s freely convertible currency under the capital account.

Five International Companies Brought Accusation against Beijing Xiushui Market for Infringing Their Trademarks and Gain a Compensation of Renminbi 20,000 Each

五家跨国公司针对北京秀水市场商标侵权提起诉讼并各获赔偿人民币两万圆

Subject IPR, Trademark
Source <http://bjgy.chinacourt.org/>

In September 2005, in order to protect their trademark rights in China, five famous international companies, i.e. Louis Vuitton, Gucci, Burberry, Prada and Chanel sued the famous “Silk Market” in Beijing (the Xiushui Market). This was the first time for the Xiushui Market directly, instead of the individual shop keepers, to be the target of a court action.

On 18th April 2006, the Higher People’s Court of Beijing Municipality confirmed that the defendants were guilty and ordered them to make a compensation of 20,000 RMB to each plaintiff.

The Silk market, as the defendant, argued that they have anti-piracy policies and that they even punished some individual tenants who sold products with un-authorized trademarks. However, the market was found not have performed its obligations duly and completely since no sufficient and effective measures were undertaken to cease the tenants’ infringement, the codefendants in this case.

The Court believes that the aforesaid five trademarks are registered trademarks which deserve legal protection. Therefore, the defendant’s distribution of products with such trademarks without authorization is a serious breach of the Trademark Law of the People’s Republic of China and the Regulation for the Implementation of the Trademark Law of the People’s Republic of China.

This development may form of a broader trend of the Chinese authorities’ more assertive approach in the field of intellectual property rights (IPR). After China’s entry into the WTO, the Chinese government has continuously strengthened such protection, also according to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) obligations. On 11th April 2006, for example, Mr. Bo Xilai, the Chinese Minister of Commerce confirmed that the protection on IPR has become one of the country’s basic national policies.

Wenger & Vieli, Beijing, April 24th 2006

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