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Implementing Regulations on the Labor Contract Law of the People's Republic of China (Draft)

中华人民共和国劳动合同法实施条例（草案）

Issued By **The Legislative Affairs Office of the State Council P.R.China**
Subject **Labor Contract**
Promulgated on **May 9th 2008**
Effective from **not available**
Source www.chinalaw.gov.cn

The P.R. China issued a draft of the Implementation Regulations on the Labor Contract Law (hereinafter “the Draft”) to solicit public opinions, on May 9th, 2008. The public-input process is scheduled to end on May 20th 2008.

The Draft, which consists of 45 clauses, clarifies some problems, regarding the new Labor Contract Law, such as problems related with labor contracts with indefinite-term, the relationship between economic compensation and damage payment, as well as the dispatch of the employees.

The Labor Contract Law, which took effect on Jan. 1st, 2008, entitles employees, which were employed at least 10 years, to sign labor contracts with indefinite term. The goal of this is, to promote a stable and harmonious relationship between the two parties. The Draft specifies 14 circumstances under which employers have the right to terminate such indefinite-term labor contracts. Following are some examples under which circumstances an employer is allowed to terminate such a labor contract: If an employee has seriously violated his employer's rules and regulations; if an employee can neither take up his original job nor any other new jobs assigned by his employer after completing medical treatment for illness or injury not suffered from work; or if an employee is not capable of living up to his job requirements during the trial use period.

An indefinite contract may also be terminated i.e. under following circumstances:

1. if an employee is entitled to enjoy the old-age insurance;
2. if an employee is deceased, or is declared dead or missing;
3. if the employer is declared bankrupt, this indefinite contract is automatically terminated; and
4. if the employer's business licenses is revoked or if he is ordered to close down its businesses or to dissolve its business entity or if the employer decides to liquidate its business ahead of schedule. The indefinite contract is automatically terminated.

Article 35 of the Draft regulates that, if an employer violates the Labor Contract Law by dissolving or terminating a labor contract on their own will, the employer must pay damages to the employee, which will accumulate to double the amount of the economic compensation as defined in the Labor Contract Law.

Regarding the dispatch of employees, the labor dispatching units should not stipulate any probation period for the dispatched employees. The employee dispatch services shall normally be used for positions of the non-major business, or for employment periods of no longer than 6 months, or other substituting positions.

Furthermore, the Draft contains explanations regarding the aspects of labor relationships, such as definition and suspension of labor relationships with a suspension period not exceeding 5 years.

If any section of a labor contract which has been signed before the implementation of the Labor Contract Law and which remains valid after the implementation of the Labor Contract Law, conflicts with the provisions in the Labor Contract Law, this section will be invalid starting January 1st, 2008.

Catalogue for Importing Old Major Mechanical and Electrical Products

《重点旧机电产品进口目录》

Issued By	Ministry of Commerce of the People's Republic of China, the General Administration of Customs and the General Administration of Quality Supervision Inspection and Quarantine
Subject	Mechanical and Electrical Products
Promulgated on	April 9th 2008
Effective from	June 1st 2008
Source	www.mofcom.gov.cn

On April 9th, 2008, the Ministry of Commerce of the People's Republic of China (hereinafter "MOFCOM"), the General Administration of Customs (hereinafter "GAC") and the General Administration of Quality Supervision Inspection and Quarantine (hereinafter "GAQSIQ") released an Announcement to issue the Catalogue for Importing Old Major Mechanical and Electrical Products (hereinafter "Catalogue"), which is drafted according to the Administrative Measures of Importing Mechanical and Electrical Products and the Administrative Measures of Importing Old Major Mechanical and Electrical Products. The Catalogue divides old mechanical and electrical products into 12 different categories,

which again are divided into 99 harmonized system commodity code numbers (hereinafter “HS Code”). The Catalogue is scheduled to become effective on June 1st, 2008.

The Announcement stipulates that enterprises that import old mechanical and electrical products listed in the Catalogue with Automatic Import Licenses before June 1st, 2008, may continue their operations within the validity period of their respective licenses. Thereafter, in order to import old mechanical and electrical products as listed in the Catalogue, the enterprises shall go through the relevant importing procedures in accordance with Measures for Administration of Importing Old Mechanical and Electronic Products (hereinafter “Measures”), which was issued on April 7th, 2008 as follows:

1. Preparation of Application Documents

- (1) Explanations of purposes of the major old mechanical and electronic products applied for import.
- (2) The Application Form for Import of Mechanical and Electronic Products
- (3) Business Licenses (duplicates).
- (4) Evidentiary materials of manufacturing time of the major old mechanical and electronic products applied for import.
- (5) Descriptions of the equipment situation by the entities applying for import.
- (6) Other documents required by other relevant laws and administrative regulations.

2. Online or Written Applications

Online:

- (1) Visit <http://www.chinabidding.com/> to enter the application system of import license for mechanical and electronic products;
- (2) Fill out the Application Form;
- (3) Mechanical and Electronic Import and Export Offices in local areas and departments report to the MOFCOM after a check of the relevant materials; and
- (4) Submit relevant written materials stipulated from Article 8 to Article 10 of the Measures to the MOFCOM after foresaid checking as mentioned under (3).

Written:

- (1) Obtain the Application Form for Import of Mechanical and Electronic Products from issuance agencies or download from <http://www.chinabidding.com/>;
- (2) Fill out the Application Form
- (3) Provide relevant written materials stipulated from Article 8 to Article 10 hereof at the meantime;
- (4) Mechanical and Electronic Import and Export Offices in local areas and departments report to the MOFCOM after a check of the relevant materials.

3. Approval by MOFCOM

4. Issuance the Import License by The Bureau of Quota License Affairs of the MOFCOM against approval documents by the MOFCOM.

Please find the “Catalogue for Importing Old Major Mechanical and Electrical Products” in details under <http://www.mofcom.gov.cn>.

Regulation on the Supervision and Administration of Securities Companies

证券公司监督管理条例

Issued By	State Council
Subject	Securities
Promulgated on	April 23rd 2008
Effective from	June 1st 2008
Source	www.chinalaw.gov.cn

The promulgation of the Regulation on the Supervision and Administration of Securities Companies (hereinafter “the Regulation”) makes great effort to promote the basic construction of the capital market, strengthen and improve the supervision and administration of securities companies, to regulate the behaviors of securities companies, to take precautions of the risks of securities companies, to protect the lawful rights and interests of the clients and public interests of the society.

The main measures to protect the assets of the clients are prescribed as follows:

1. Clarifying and regulating the deposit and custody system, so as to prevent from misappropriation of the assets of the clients.
2. Clarifying the nature of the assets of the clients, this namely by stipulating that the client’s trading settlement funds and the trusted funds of the client of the securities assets management companies belong to the client.
3. Stipulating special rules for the delivery and inquisition of trading information and assets information.

Regarding concealed accounts, the Regulation pointed out that:

1. When a securities company is engaged in self-run business, it should use self-run securities accounts with its true name. Self-run securities accounts of a securities company should be submitted to the stock exchange for filing within 3 trading days of

the opening of the account. To entrust others to buy or sell securities for a security company is forbidden. Also those Securities account opened by the securities company for securities assets management customer should be submitted to stock exchange for filing.

2. Information Submission System for Securities Company, Deposit banks, designated commercial banks, asset management agencies, security exchanges, securities registration and clearing agencies of a securities firm.
3. Strengthening of supervision liabilities and measures of China Securities Regulatory Commission.

Otherwise the requirements for the securities companies to enter into the market are formulated in four aspects:

1. Means of Contribution: Shareholders of securities companies shall make capital contribution by monetary property or non-monetary property necessary for the operation of the securities companies. The non-monetary property amount shall not exceed 30% of registered capital of securities companies.
2. Qualification of the Shareholder or Actual Controller: I.e. a person sentenced with a penalty due to a deliberate crime, who has completed this penalty less than three years ago, or who is incapable to discharge due liability cannot be a shareholder or an actual controller with 5% equity or more of a securities company.
3. Shareholding: No unit or individual can entrust others or being entrusted to hold or manage equity of the securities company without approval of the securities regulatory agency under the State Council. Shareholders of the securities company shall not violate national prescription by agreeing to exercise voting rights in violation of investment proportion.
4. Management: A securities company should have three officers or more, who should have held management position in the securities industry for at least two years

Last but not least, the Regulation makes further explanations on the aspects of corporate management structure, supervision measures on management, risk control, etc.

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