

China Legal Briefing* 252

December 2015



* CHINA LEGAL BRIEFING is a regularly issued collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers. WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

1. PRC Anti Terrorism Law
2. Revised PRC Population and Family Planning Law
3. Revised PRC Atmospheric Pollution Prevention and Control Law
4. Disciplinary Regulations of the Chinese Communist Party
5. The Temporary Regulations on Residence Permit
6. Transaction Rules of Shanghai Stock Exchange
7. The revised Managing Rules on Foreign Aid Projects

1. PRC Anti-Terrorism Law

On 27 December 2015, less than two months after the terrorist attack happened in Paris, the National People's Congress Standing Committee released a new Anti-Terrorism Law which will come into effect on 1 January 2016.

The PRC Anti-Terrorism Law defines terrorism as follows: acts which create social panic, jeopardize public security, infringe personal or property right, or coerce government authorities or international organizations by violence, vandalism and intimidation in order to achieve a political or ideological purpose or act (a rather broad definition). The PRC Anti-Terrorism Law explicitly stipulates that all counter-terrorism activity must be conducted respecting human rights and religious beliefs. Terrorists, will face the already existing criminal charges and fines according to PRC Criminal Law; but in additions, persons or entities that support terrorist act by promoting terrorism, harbouring terrorists, or failing to assist the counter terrorism act by the authorities such as freezing the assets of terrorists, will face fines and detentions even if no criminal charges will be brought against them according to Criminal Law. This is the first time the PRC Government issues a counter-terrorism law on national level. It is believed that the PRC Anti-Terrorism Law shows the intention of PRC authority to suppress possible domestic terrorism, especially rioting in Xinjiang Province by the Islamic militants.

While still a draft, the PRC Anti-Terrorism Law has been the target of criticism from western media and governments who fear that the Anti-Terrorism Law may serve as an excuse for PRC authorities to request key information from foreign information technology companies, as in the PRC Anti-Terrorism Law there is a specific obligation for internet service providers to provide interface or encryption keys to authorities if requested and, even more, the liability of fines more than RMB 500,000 and detentions on major responsible personnel up to 15 days if they fail to provide aforementioned information. The internet service providers would face serious risk of information leaking considering the encryption keys are commonly valued as the critical technology secret in such type of companies. However, such concerns and criticisms did not keep the PRC government from releasing the Anti-Terrorism Law. Whether the PRC authorities will use the law to force key information out of foreign company remains unclear.

2. Revised PRC Population and Family Planning Law

On 27 December 2015, the Decision to Revise the Population and Family Planning Law of People's Republic of China by the National People's Congress Standing Committee was approved; the Decision will be effective from 1 January 2016.

The biggest revision in the Decision is the change of principle from one child to two children allowed for each couple. When the Decision enters into force, the era of the one child policy in China will be officially over. From 1 January 2016, regardless of whether the parents are themselves single children in their original families, each couple is allowed to have two children at maximum. Having

additional children will still lead to fines imposed by the authorities just as under the original law.

Another major revision in the Decision is the removal of special leave for late marriage and late maternity, which was originally stipulated in Article 25 of the Law. However, whether the special leave would be withdrawn completely still depends on the release of implementing rules and local provisions.

3. Revised PRC Atmospheric Pollution Prevention and Control Law

Recently China, especially its northern regions, is famous for its severe air pollution. Both indexes of PM 10 and PM 2.5 are frequently over 300 and the short term measures adopted by local government often only lead to unsatisfactory results.

Under these circumstances, the National People's Congress Standing Committee, on 29 August 2015, decided to revise the current version of Atmospheric Pollution Prevention and Control Law of the PRC (previously revised on 29 April 2000), as the law released 15 years ago is no longer sufficient for current needs. The Revised Law will be effective from 1 January 2016.

The Revisions intend to target the prominent air pollution problem of PM 2.5 by prevention and control of venting of particles, sulfur dioxide, nitrogen oxide, volatile organic compounds, and ammonia. It also clarifies that the sources of severe air pollution in China are coal, industry, motor-driven vehicles and vessels, dust, and agriculture. In addition to setting up relevant standards for air quality and establishing a monitoring and warning system for heavy pollution weather, clean energy is encouraged to use in industries, regional collaboration by local governments is required and penalty as well as fines are imposed for excessive pollutants emission. Further, for enterprises that emit pollutants in violation of the Law, the authorities may seal up or detain relevant equipment or carry out other administrative measures. Although it remains questionable how big the outcome could be achieved by this new Law, it at least shows the determination of the PRC authorities to improve the air quality in China.

4. Disciplinary Regulations of the Chinese Communist Party

Ever since Xi Jinping became president, he has shown determination to fight corruption within the Communist Party. Thereafter, multiple high officials in Communist Party have been taken into custody or have been prosecuted for corruption.

Given the circumstances, it is not surprising that the Central Committee of the Communist Party of China released the harshest Disciplinary Regulations of the Chinese Communist Party ever in 21 October 2015, which will come into force on 1 January 2016.

In the newly revised Disciplinary Regulations, Party members are prohibited from commenting on principles and major policies of the Party in a "false and negative

way”, which allows for a wide discretion in removing unwanted elements within the Party. Also, causing relatives to indulge in corruption by using the power or influence of the party member would also be punished by the Party. Most importantly, Party members who commit crimes which are of severe enough to be criminally relevant are still going to face internal punishments by the Party.

5. The Temporary Regulations on Residence Permit (for Chinese citizens)

On 26 November 2015, the State Council issued the Temporary Regulations on Residence Permit, which will come into force on 1 January, 2016. According to the Regulations, every city above county level shall establish a system of residence permit for non-native Chinese residents so that citizens who are above the age of 16 and fulfil certain requirements established by the local authorities are able to apply for the permit. Any holder of this new (domestic) Residence Permit will be able to enjoy public and social benefits (such as access to local hospitals, social insurance) and send their children to the local schools. Such privileges were until now restricted to holders of a local *hukou*. After obtaining the residence permit for certain period of time, upon the satisfaction of local requirements, the residence permit owner will be able to remove its *hukou* to the residence city.

A *hukou* is a record in the system of household registration required by law in China and identifies a person as a resident of an area. It is usually issued only to people born in this area or whose family originates in such area. For a long time, possessing of a *hukou* in big and developed city means privilege to access local medical and educational resources, which, in certain level, prevents the flowing of labor from the Midwest to the east of China. Under such circumstance, the Temporary Regulations on Residence Permit certainly will help creating a fairer living environment for non-native population and therefore accelerate the population flowing. However, considering that local government has the entitlement to provide requirements for obtaining the residence permit as well as *hukou* in the city (such as the payment of a certain amount of taxes), it still will be a long way to completely remove the barriers and roadblocks to the free flow of people in China.

6. Transaction Rules of Shanghai Stock Exchange

On 4 December 2015, the Shanghai Stock Exchange revised its Transaction Rules which will be effective on 1 January 2016. A new Chapter regarding Circuit Breaker Mechanism was added to Chapter IV of the Transaction Rules by the Shanghai Stock Exchange.

The Circuit Breaker Mechanism refers to the mechanism that the Shanghai Stock Exchange is entitled to suspend the stock exchange trades for certain time period upon special occasions:

1. upon the first time in the trading day that the Hu Shen 300 index (i.e. the Benchmark Index of the SSE) rises or drops more than 5 % (inclusive) compared to its closing price in the previous day, the Shanghai Stock Exchange may suspend the trades of stock products for 15 minutes;

- upon the first time in the trading day that the Hu Shen 300 index rises or drops more than 7% (inclusive) compared to its closing price in the previous day, the Shanghai Stock Exchange may suspend the trades of stock products until 15:00, i.e. no trades for rest of the trading day.

The Circuit Breaker Mechanism is a protection mechanism for stabilizing stock price and preventing stock market from drastic fluctuation. The mechanism is only a trial run for Shanghai Stock Exchange starting from 1 January 2016 and, as most of the stock exchange takes place in the SSE, we are eager to see the impact the mechanism will have on the Chinese stock exchange market. From an economic point of view, it seems that the government is eager to create a legal basis to intervene in case of a crash or panic of the stock markets after the crisis in summer 2015. It remains to be seen if simply suspending trading will be effective in curbing market trends.

It is worth mentioning that on 4 January 2016, the conditions for the Circuit Breaker Mechanism was already triggered after the Hu Shen 300 Index dropped by 7%. The stock exchange trades therefore were suspended for the whole trading day.

7. The Managing Rules on Foreign Aid Turnkey Project

On 9 December 2015, the Ministry of Commerce issued the Managing Rules on Foreign Aid Turnkey Project (trial version) which will come into force on 8 January 2016.

The term “turnkey project” in the Managing Rules refers to a project realized using Chinese aid funds either by a Chinese company or by a local company in the country that received the aid fund. The Ministry of Commerce shall provide the establishment, management and supervision of the project and the commercial department of the Chinese embassy in the country that receives the aid shall be responsible for the specific overseas monitoring of the project. In the Managing Rules, the detailed provisions regarding the construction, procurement, project managing, and inspection of the project are provided.

Nowadays billions of yuans are transferred to certain foreign countries as free aid fund from China, and large amounts of money have already been lost, wasted or misused during the realization of such projects due to lack of surveillance. Hopefully, the Managing Rules will alter the situation and put the foreign aid money in better use from now on.
