

# CHINA LEGAL BRIEFING\* 197

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## **Guiding Opinions for Further Reforming and Improving the Initial Public Offering (IPO) System (Draft for opinions)**

关于进一步改革和完善新股发行体制的指导意见(征求意见稿)

Issued By	<b>The China Securities Regulatory Commission</b>
Subject	<b>IPO</b>
Promulgated on	<b>May 22th, 2009</b>
Source	<a href="http://www.csrc.gov.cn">http://www.csrc.gov.cn</a>

On May 22nd, 2009, the China Securities Regulatory Commission issued the Guiding Opinions for Further Reforming and Improving the Initial Public Offering System (hereafter: “Draft for Opinions”) to solicit public opinions until June 5th, 2009. After the end of the solicitation period and after the Draft for Opinions has been rendered effective, IPOs will be possible again in China, after a suspension period of 8 months.

The Draft for Opinions plans to carry out the following main reform policies:

- To improve the binding mechanism for price inquiry and subscription, so as to form a more market-oriented pricing mechanism.
- To optimize the online issuance mechanisms by separating the online and offline subscribers.
- To set an upper limit for individual online subscription accounts.
- To provide more risk reminders for the subscription of new shares.

The Draft for Opinions points out that the issuer and its lead underwriters should, based on the size and market conditions, reasonably set the minimum amount of each purchase. Any allotment subject can only choose one way, the online or offline, to subscribe to new shares. In principle, the upper limit for individual online subscription accounts to not more than one-thousandth of all shares offered for subscription online. These policies intend to protect the rights and interests of purchasers of small amount, and small investors will be inclined in new offering shares in future. The situation that allotment shares based on the amount of founding will be gradually changed, and the situation that huge amount of money to purchase new shares will expect to be ameliorated.

The Draft Opinions also points out that the inquiry of purchasers should be truthfully quoted, the inquiry quotation and the purchase pricing quotation should be in logical consistency. In this regard, the inquiry of institutions shall be more rational and responsible, and the pricing mechanism will be further market-orientated, and the profits of new shares may be in a limited trend.

## **Interpretation of Several Issues During Trials Concerning Distinguishable Ownership of Building Disputes**

**最高人民法院关于审理建筑物区分所有权纠纷案件具体应用法律若干问题的解释**

Issued By	<b>Supreme People's Court</b>
Subject	<b>Interpretation of Distinguishable Ownership of Building and Property Management Service</b>
Promulgated on	<b>May 14th , 2009 and May 15th, 2009 respectively</b>
Effective from	<b>Oct 1st , 2009</b>
Source	<b><a href="http://www.court.gov.cn/">http://www.court.gov.cn/</a></b>

In middle May of 2009, the Supreme People's Court released the Interpretation of Several Issues During Trials Concerning Distinguishable Ownership of Building Disputes and the Interpretation of Several Issues During Trials Concerning Property Management Service Disputes (hereafter: the "two Interpretations"). As to the heated and difficult points in the trials of cases concerning distinguishable ownership of buildings and property management service disputes, the two Interpretations, which will become effective on Oct. 1st, 2009, provide definite practice rules of the Real Right Law of PRC (hereafter: "RRL").

Some general principles of the RRL are clarified and specified in the two Interpretations. Furthermore, the two Interpretations clearly define some vague terms such as "Common Parts" and "Exclusive Parts" of Distinguishable Property of Building, "Important Matters" which are stipulated in Article 76 of the RRL, the "Affected Owners", the "Total Area" of the Building and the "Area of Exclusive Parts". These definite provisions may protect the existing rights and interests for owners and may provide clear guidance for judges.

One of the most remarkable points of the two Interpretations is that the construction units shall allocate the parking places and garages within a building area in distribution proportion. This provision will be binding for construction units and will in the future prevent that the whole planned parking area is transferred to certain owners. It will therefore make the distribution of parking places and garages more equal and fair.

In addition, the Interpretation stipulates that an owner must, when changing a residential house (apartment) into a house used for business purpose, obtain the consent of all the other owners in that building. The people's court should not support such a demand, even though in case the owner claims that the consent of the majority of the affected owners was obtained. This stipulation will make it much more difficult for an owner to change a residential house into a house used for business purposes.

The two Interpretations clarify the rights and obligations of both owners and property management service enterprises. For property management service enterprises, the commitments and terms of service publicly announced by them shall be considered as component parts of the property management service contracts. The property management service enterprises shall not, after the termination of the service contract, ask for service charges by claiming the existence of actual services. For owners, the property management service contract legitimately signed between the construction unit and the property management service enterprise, is also binding on all the owners. If the property management enterprise has provided service in accordance with the property management contract and relevant regulations, the owners should pay management fees even though they didn't live in the building or didn't enjoy certain service.

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