

INSIDE

Copyright Rules Take Effect 1

New Regulation on Foreign Investment in Leasing Businesses Takes Effect 2

Regulation Controls the Sale of Branded Automobiles 2

New Rules Allow Insurance Companies to Enter the PRC Stock Market Independently 3

Criminal Law Amendment Passed on Credit Card Crime 3

Other Articles and Publications 4

COPYRIGHT RULES TAKE EFFECT

Key Points:

- **Copyright Collective Administration Organizations established**
- **Prevent copyright infringements for the owners**

On December 28, 2004 the Copyright Collective Administration Regulation (the “Regulation”) was issued by State Council and came into effect on March 1, 2005. This Regulation provides detailed rules governing the establishment, administration and activities of Copyright Collective Administration Organizations.

Drawing on experience in copyright administration from developed countries, the general description of a Copyright Collective Administration Organization (“CCAO”) was first provided by Article 8 of “Copyright Law,” which was issued on June 1, 1991. The purpose of this Regulation is to clarify the nature of

CCAOs, regulate their activities and improve their administration.

According to this Regulation, a CCAO is a nonprofit social organization. It administers copyrights and other relevant rights under copyright owners’ authorization, and the scope of the copyrights administered shall be the rights that cannot be protected by the owners themselves, such as rights concerning hiring, performance, projection, broadcasting, duplication and Internet-based information distribution.

Like other famous copyright protection organizations such as BMI (Broadcast Music, Inc.) and ASCAP (the American Society of Composers, Authors and Publishers) in the United States, CCAOs can protect copyrights for owners who do not have the opportunity to manage their own copyrights or protect their rights from infringement. That is, a CCAO can collect a certain amount of royalties from

users for owners pursuant to the charging standard announced by the National Copyright Administration of China. After an administration fee is deducted from the royalties, the remaining royalties will be forwarded to the owners.

The specific rules for the establishment and activities of a CCAO and the aforesaid payment structure will strongly support the System on Legally Permitted Utilization in China and prevent circumstances in which the copyright owner cannot be informed of where and how his own intellectual property is being used while users cannot find the owner and pay the relevant royalties for the usage. The Regulation provides that the amount of CCAO promoters should be no fewer than 50 and that each of them should be copyright owners. Meanwhile, a CCAO should have the capability to represent the rights of owners nationwide. All of these rules will allow a CCAO, which is a legal organization under governmental supervision, to – it is hoped – protect copyrights more efficiently and successfully than an individual.

– Zhang Wei

NEW REGULATION ON FOREIGN INVESTMENT IN LEASING BUSINESSES TAKES EFFECT

Key Points:

- **Replaces old regulation of 2001**
- **Threshold requirements relaxed for foreign investors**

Consistent with China's commitments under the WTO agreements, the threshold for foreign investors to invest in the leasing business in China was lowered pursuant to the new regulation. Among others, one of the most notable changes is that

foreign investors are now allowed to set up wholly foreign owned subsidiaries, while previously only joint ventures with Chinese partners were allowed.

With the lowered threshold, many more foreign investors become eligible to set up a leasing business in China. The minimum required registered capital of a foreign invested leasing company is now US\$10 million (for a financial lease business) or the "minimum required by the Company Law" – RMB100,000-500,000 (for other lease businesses), as opposed to the US\$50 million (for a financial lease business) and US\$5 million (for other lease businesses) under the old regulations.

As for the foreign investor itself, the only remaining requirement under the new regulation is that the foreign investor must have total assets of no less than US\$5 million, which is not a large amount, and all the other requirements under the old regulation are now abolished.

Government approval procedures are also relaxed. Under the new regulation, provincial governments can grant approval to all foreign invested leasing companies, except those for conducting a financial lease business, which are still subject to approval at the national level. – Zhao Yong

REGULATION CONTROLS THE SALE OF BRANDED AUTOMOBILES

Key Points:

- **Regulations reflect the new Automobile Sector Development Plan (2004)**
- **Authorized dealers and manufacturers required to register “dealership” contracts**

One of its major pillar industries, China's auto industry is booming – and with it has emerged a new Automobile Sector Development Plan (2004) and a series of regulations designed to serve to protect the interests of the Chinese motorist and to regulate sales and distribution of automobiles nationwide. The most recent arrival to the plethora of regulations in this sector is the *Implementing Regulations on the Administration of Branded Automobile Sales* (collectively released by MOFCOM, NDRC and SAIC). The new regulations, which follow the provisional regulations issued in late 2004, reflect the market and resource management requirements set forth in the Automobile Sector Development Plan. That Development Plan calls for the coordinated development of China's auto sector so that the country will emerge as a world leader in automobile manufacturing by 2010. The Development Plan set forth policy objectives in numerous areas, including, inter alia, the areas of technological development, environmental protection, enterprise restructuring, marketing and investment.

One of the key areas addressed recently is the regulation of the branded automobile sales market. The new regulations apply to passenger cars from April 2005 and to other vehicles from the end of 2006. The new regulations distinguish between “macro dealers,” who engage in large-scale

distribution, and “local dealers,” who retail at the forecourt to consumers. There is also a requirement that dealers possess evidence of brand authorization granted by manufacturers and that dealers comply with certain safety requirements and offer after-sales service to customers. The new regulations also require dealers to register details of their dealerships and evidence of authorization with the authorities. Interestingly, auto manufacturers and industry suppliers are required to register details of their customers by the end of September 2005. This registration process is expected to enhance the ability of the authorities to monitor the lucrative trade in counterfeit parts and components and ensure that automobiles are sold by reputable, authorized dealers. It's certainly good news for the consumer. Expect further regulations that will give real teeth to China's Automobile Sector Development Plan. --

Diarmuid O'Brien

NEW RULES ALLOW INSURANCE COMPANIES TO ENTER THE PRC STOCK MARKET INDEPENDENTLY

Key Points:

- **Insurance companies in China are allowed to invest directly in the PRC stock market**
- **Branches of foreign insurance companies are also allowed to invest directly in the PRC stock market**

The China Insurance Regulatory Commission (CIRC) and China Securities Regulatory Commission (CSRC) jointly issued a notice on February 15, 2005 governing direct investment by insurance companies into China's stock market (“Notice”). The Notice follows the Provisional Regulations regarding the Management of Insurance Companies' Investments

in the Stock Market, issued in October 2004 by CIRC and CSRC. Issuance of this Notice aims to remove technical obstacles for insurance companies to enter the stock market independently.

The Notice specifies relevant issues such as the management of security accounts, exchange seats, funds settlements and investment ratios. According to the Notice, insurance companies must conduct stock exchange through independent exchange seats. The Notice also clarifies the procedures insurance companies must follow to invest in the Chinese stock market and the responsibilities of the relevant parties involved in such investment.

The Notice also grants branches of foreign insurance companies the same treatment as Chinese insurance companies and allows branches of foreign insurance companies in China to invest in stock market pursuant to the Notice.

With issuance and implementation of the Notice and other relevant regulations that are expected soon, the PRC stock market is expecting more investment from insurance companies. – *Jennifer Liu*

CRIMINAL LAW AMENDMENT PASSED ON CREDIT CARD CRIME

Key Points:

- ***China reinforces the administration of financial order and punishment of credit card crime***

The Standing Committee of the National People's Congress ("NPC"), which exercises NPC's power and assumes broad legislative functions when the NPC is not in session, passed the Fifth Amendment to the Criminal Law (the "Amendment"). The purpose

of the Amendment is to reinforce the administration of credit cards and punish financial crime.

In China, there are two categories of bank cards, called "credit card" and "debit card." Two types of credit card are the "Dai Ji Card" (normal credit card) and the "Zhun Dai Ji Card" (pre-credit card), so named because of the different security requirements.

The Amendment revised two articles of credit card crime:

Under Chapter III, Section 4, "Crimes of Disrupting the Order of Financial Administration," some regulations are added to Article 177, indicating that the conduct below will constitute a crime: (1) possession or transportation of a false credit card, or possession or transportation of a false blank credit card, when the amount involved is relatively large; (2) illegally taking someone else's credit card, when the amount involved is relatively large; (3) obtaining the rights to another person's credit card through use of a false ID; or (4) selling, purchasing, or providing a false credit card or another person's credit card, obtained by means of a false ID, to others. In addition, one is liable if one steals, purchases or illegally provides the credit card information of another person. Employees of banks or other financial institutions who take advantage of their positions to engage in the above conduct will be punished more heavily.

Under Chapter III, Section 5, "Crime of Financial Fraud," one is liable for credit card fraud if one obtains the rights to another's credit card through using a false ID, when the amount involved is relatively large.

The Amendment also regulates the “Crime of Involuntary Sabotages of Military Telecommunications.”

In the draft of the Amendment, the regulations regarding “fraud through bankruptcy” and “crime on making profit by use of a severely injured person and child” are still under discussion. – *Carole Fan*

Other articles and publications

Please let us know if you would like copies of any of the following:

James Zimmerman, *China Law Deskbook, Second Edition (2005): A Legal Guide for Foreign-Invested Enterprises*. More information is available on ABA’s Web site:

<http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=5210139>.

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