



CHINA UPDATE 2006

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PRC Property Law Draft to be Further Revised

Key Points:

- **Public vs. private property protection issue debated**
- **Revised draft may be submitted to NPC Standing Committee for further review**

Law professors and scholars in Beijing first began preparing a draft of the PRC Property Law in 1998, right after the PRC National People's Congress ("NPC") unified contract laws in China. Previously, there were different contract laws for domestic entities and foreign parties. To date, there have been six draft versions of the Law, and the draft has been submitted to the NPC Standing Committee three times. Last July, it was made public for public comments, an extremely rare practice in China's legislative history.

Recently, the draft law has become highly controversial and a politically sensitive issue because of a fierce ideological debate between officials and academics over state and private rights. Some law professors have claimed that the draft does not differentiate public-owned properties from private-owned properties and eventually will cause state assets to lose their dominant place in the national economy, violating the PRC Constitution. The drafters have argued that the law should provide equal protection to both state and private assets.

Sheng Huaren, vice chair of the NPC Standing Committee, said in a recent seminar: "[The draft should be further revised, and] the revised draft should attach great importance to protecting state assets, prevent losing them and guarantee farmers' rights." He expected the revised draft will be submitted to the NPC Standing Committee for further review very soon.

– Ye Guojun

PSB and AIC Strengthen Coordination and Cooperation on Trademark Infringement Crack-Downs

Key Points:

- **Responsibilities for enforcement defined**
- **PSB and AIC required to combine efforts**

On January 13, 2006, the PRC Ministry of Public Security and State Administration of Industry and Commerce jointly issued the Provisional Regulation on Coordination and Cooperation for Crack-Downs on Trademark Infringements and Crimes. This regulation clearly outlines the responsibilities of the public security bureaus ("PSB") and the Administration of Industry and Commerce ("AIC") to coordinate and cooperate with each other to crack down on trademark infringement.

Under the PRC Trademark Law amended in 2001, Article 54 provides only if AIC finds a

severe trademark infringement is it a crime and it shall transfer the investigation to judicial authorities. But the Trademark Law and its rules do not clearly indicate the responsibilities of AIC and judicial authorities such as PSB, and how the different authorities can work together. The new regulation, however, aims to strengthen coordination and cooperation between PSB and AIC. It sets up a “Joint Meeting” rule requiring the PSB and AIC to convene at least one joint meeting per year to discuss detailed cooperation measures. The regulation also requires PSB and AIC to notify each other in a timely fashion when they discover a trademark infringement, and that PSB and AIC offices begin investigations within three business days after receiving a notice of trademark infringement from their counterparts. Even when PSB or AIC offices find no trademark violations in a case, they must still report their findings in writing to each other.

This Regulation took effect on the date of issue.

– *Zhang Wei*

A Boost for Renewable Energy Development

Key Points:

- ***Renewable energy defined***
- ***Several preferential policies offered***
- ***Sales channel of renewable energy guaranteed***

After almost one year’s waiting, the Renewable Energy Law (the “Law”), passed by the Standing Committee of the 10th NPC on February 28, 2005, finally came into effect on January 1, 2006.

In 2003, China’s renewable energy consumption accounted for only 3% of the country’s total energy consumption. The government plans to increase this figure to 10% by 2020.

According to the Law, “renewable energy” refers to all non-fossil energies, including wind energy, solar energy, hydroenergy, bioenergy, geothermal energy and ocean energy, all of which should be taken into consideration in state and local plans.

To encourage more enterprises to enter the renewable energy industry, the Law offers several incentives. A special fund will be established by the state for the development of renewable energy, and projects falling into the scope of Renewable Energy Industry Development Guidance Catalogue (the

“Catalogue”), promulgated by the National Development and Reform Commission (NDRC) on November 29, 2005, will receive tax incentives and low interest rate loans from financial institutions.

The Law also guarantees a sales channel for products of renewable energies. For instance, compulsory purchase of the full amount of electricity generated by renewable energy is imposed on electricity grid enterprises nationwide. The end user will bear a legally determined apportionment of any increased cost to these enterprises, which may lead to an increase in electrical rates.

Some follow-up has been done since the Law has taken effect. On January 12, 2006, the NDRC issued two implementation rules regarding electricity generated by renewable energy, stipulating that the purchase price of such electricity be determined by the state or under the direction of the state, depending on the kind of renewable energy from which such electricity is generated. Zhang Guo Bao, deputy director of NDRC, has confirmed that more follow-ups will be released soon, with specific provisions to fully support the Law for the purpose of achieving an environmentally friendly energy policy in China.

– Luo Xiao

China’s “Administrative Measures for Prevention of Pollution Caused by Electronic Information Products (ROHS)” Released

Key Points:

- *Use of six hazardous substances in electronic products restricted*
- *Covers all parties in chain of commerce, not just manufacturers*

On February 28, 2006, China officially released the Administrative Measures for the Prevention of Pollution Caused by Electronic Information Products (“Measures”). The Measures, which take effect on March 1, 2007, were promulgated by six ministries including the Ministry of Information Industry, the Ministry of Commerce, the State Administration of Industry and Commerce, and the General Administration of Custom. China is the second jurisdiction, after the European Union, to release restrictions over the use of hazardous substances in electronic products.

The Measures currently restrict the use of six kinds of hazardous substances in electronic information products. The defined hazardous substances are lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers. Electronic information products covered by the Measures include electronic radar products, electronic communication products, computers

and household electronics. However, the full scope of products is not clear, and further clarification is expected. For example, it is unclear whether home appliances, such as toasters and toys using extremely simple electronic components, are covered.

The Measures impose obligations on all parties in the chain of commerce, including designers, manufacturers, importers, wholesalers and retailers, in contrast to the EU's counterpart regulation, which covers only manufacturers. The following parties are subject to administrative sanctions for violating the measures:

- 1) Designers: When designing products, designers must use their best efforts to avoid the use of hazardous substances and must consider recycling issues.
- 2) Manufacturers: Manufacturers must use all possible technology to make hazardous substances easily recyclable or disposable, and products must meet forthcoming minimum state safety standards.
- 3) Manufacturers and Importers: Must explicitly label safety expiration dates on products and provide detailed explanations in the operation manual. The format of the label will be standardized. They must also provide detailed lists of substances used, their volume, and information on proper means of

recycling and disposal. Manufacturers and importers must use non-hazardous and recyclable materials in product packaging.

- 4) Sellers: Sellers must not sell any products that do not meet the state standard or do not come from a proper channel of commerce.

The Measures do not apply to exporter and exporting products.

– Jia Weiheng

New Wave of Foreign Investment in China's Financial Market

Key Points:

- *Foreign investors may directly invest in China's A share stock market*
- *Threshold for QFII expected to be lower*

A significant breakthrough came when the Administrative Measures on Foreign Investors' Strategic Investment on Listed Companies (the "Measures") were jointly promulgated by the Ministry of Commerce, the China Securities Regulatory Commission, the State Administration of Taxation, the State Administration of Industry and Commerce, and the State Administration of Foreign Exchange ("SAFE") on December 31, 2005. Effective as of January 31, 2006, foreign investors were permitted to acquire shares of domestic listed companies accomplishing stock partition reform, namely "G shares," or shares of the

new listed company. On February 14, 2006, China Securities Depository and Clearing Corporation Limited issued "Notice on A Share Securities Account Opening for Foreign Strategic Investors" and removed the last policy and practical barrier to foreign investment in China's A share market. In the past, foreign investors were permitted to buy domestic shares of listed companies only as Qualified Foreign Institutional Investors ("QFII").

Under the new scheme, the tangible overseas assets of the foreign investor may be no less than US\$100 million, or the tangible overseas assets managed by the foreign investor may be no less than US\$500 million, or its parent must satisfy such criteria. This is in contrast to the restrictions of QFII, whereby a foreign investor may buy up to 10% of the shares in a single listed company. The investment may be conducted in installments, but the first installment acquired shall be no less than 10% of the outstanding shares, except in restricted or prohibited industries. The acquired A shares may not be transferred for three years.

The Measures encourage medium- and long-term strategic foreign investors. China's government anticipates that this move will introduce advanced corporate governance skills, technology and capital, improving the management structure of China's listed

companies through a new wave of mergers and acquisitions.

However, after part of foreign investments shift to long-term investments, the government plans to relax the rules and make it easier for QFII to invest in China's domestic stock market. An official in SAFE has said that a decrease in entry requirements and a shortened lockup period for the QFII program can be expected this year. Through December 2005, QFII's investment quota amounted to US\$4 billion. That figure is expected to double in 2006.

– *Carole Fan*

Articles and Publications

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

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

Amy L. Sommers, "Foreign Investment Verification: Reform, Status Quo, or Bafflement?," *China Business Review*, November-December 2005. Access to the article is available at:

http://www.ssd.com/publications/pub_detail.aspx?pubid=9426

"Cal Law 2005 Roundtable Series: Doing Business in China," *GC California Magazine*, November 2005. The article features Jerome J. Joondeph Jr., partner in Squire Sanders' Palo Alto office, on a panel discussing US companies and law firms setting up operations in China. Access to the article is available at:

http://www.ssd.com/resources/news_detail.aspx?newsid=12381

Wei Zhong, "Legal Analysis for International Protection of Chinese Brands," *China Development Observation*, Issue 12, 2005. Mr. Zhong is an associate in Squire Sanders' Beijing office. *China Development Observation* is a journal published by the State Council Development Research Center, the most influential think tank in China. Access to the article (in Chinese) is available at:

<http://www.chinado.cn/ReadNews.asp?NewsID=466>

Aaron Winingar, "Awareness of Foreign Filing Requirements for Inventions Originating Abroad Prevents Adverse Consequences for Foreign Investors," *New Matter* (quarterly publication of the Intellectual Property Section of the California State Bar), Vol. 31, No. 1. Mr. Winingar is a national partner in Squire Sanders' Shanghai and Palo Alto offices.

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Presentations and Recent Events

Dan Roules, partner in Squire Sanders' Beijing and Shanghai offices, and **Zijie (Lesley) Li**, consultant in the Shanghai office, participated in a client presentation, "Mergers and Acquisitions in China."

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This newsletter provides free information on the influence of certain aspects of the Chinese legal environment and does not constitute legal advice.

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