



China Law Update



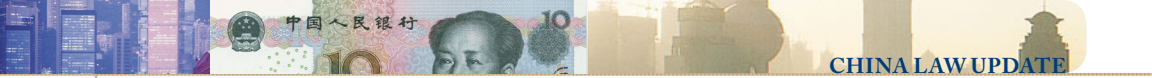


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This issue of *China Law Update* discusses the Ministry of Commerce's first list of "China Time Honored Brands"—products and companies that are deemed by virtue of their history and reputation to merit special protection against mergers and acquisitions—which was published in November 2006.

We also summarize a new law that brings authority for the death penalty back to the Supreme People's Court.

Finally, we look at tax laws and regulations that affect China's processing trade and seek to encourage foreign investors to use Hong Kong as their base for investments in China.

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China's First List of "China Time-Honored Brands"

Issuing Body: The Ministry of Commerce

Issuing Date: November 7, 2006

Effective Date: November 7, 2006

On November 16, 2006, the Ministry of Commerce (MOFCOM) published the first list of "China Time-Honored Brands" on its official website. (The Chinese version is available at <http://syggs.mofcom.gov.cn/aarticle/af/200611/20061103768164.html>.) This first list contains famous old restaurants, food processors, drug stores, distilled alcohol producers, and department stores in 30 provinces and cities around China. Most are traditional Chinese products.

The standard for inclusion on this list is that a business or product must "have a long history, great features, honest, good quality and a reasonable price." In all, 434 China Time-Honored Brands are recognized in this first list. Reports suggest that MOFCOM plans to recognize as many as 1000 China Time-Honored Brands. MOFCOM is also expected to issue new administrative measures to protect and support traditional national brands and their owners. MOFCOM has encouraged more traditional brands to apply for recognition.

According to Article 12 of the Provisions on Acquisitions of Domestic Enterprises by Foreign Investors, which was issued in July 2006, both Chinese and foreign entities that participate in a merger or acquisition involving a China Time-Honored Brand (as recognized by MOFCOM) or a "Famous Trademark" (as recognized by courts or the State Administration of Industry and Commerce) should report details of the transaction to MOFCOM. MOFCOM may then conduct an investigation, if necessary, and decide whether or not to approve the transaction. If the parties fail to report the transaction, the Ministry of Commerce may require that the deal be aborted, require equity or assets to be transferred back to Chinese ownership, or take other measures as necessary to protect the China Time-Honored Brand or Famous Trademark. This Article 12 is one of the most controversial requirements in the July 2006 provisions. It has been criticized for being overly protective of traditional Chinese industries.

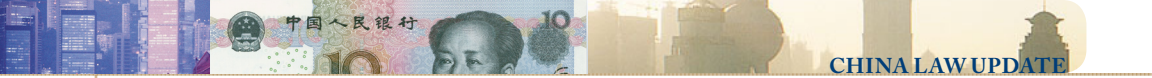
Revised PRC People's Court Organization Law

Issuing Body: The National People's Congress

Revising Date: October 31, 2006

Revising Body: The Standing Committee of the National People's Congress

Revision Effective Date: January 1, 2007



As of January 1, 2007, China’s Supreme People’s Court again has authority for the final review and ratification of the death penalty. Since 1983, the Supreme Court had given the power to review and verify the death penalty to lower courts. Subject to a recent amendment to the PRC People’s Court Organization Law, after January 1, 2007, all death penalty decisions should be reviewed by the Supreme People’s Court.

Circular of Relevant Issues on Adjusting the Export Tax Refund Rate on Various Commodities and Revising the Catalog of Prohibited Commodities in the Processing Trade

Issuing Bodies: Ministry of Finance, National Development and Reform Commission, Ministry of Commerce, State Administration of Customs, and State Administration of Taxation
Issuing Date: September 14, 2006
Effective Date: September 14, 2006

Supplementary Circular of Relevant Issues on Adjusting the Export Tax Refund Rate on Various Commodities

Issuing Bodies: Ministry of Finance, State Administration of Customs, and State Administration of Taxation
Issuing Date: September 29, 2006
Effective Date: September 29, 2006

Catalog of Prohibited Commodities in the Processing Trade

Issuing Bodies: Ministry of Commerce, State Administration of Customs, and State Environmental Protection Administration
Issuing Date: November 1, 2006
Effective Date: November 22, 2006

In late 2006, China extensively revised its policies on the processing trade, canceling the value-added tax (VAT) refund on certain commodities and revising the Catalog of Prohibited Commodities in the Processing Trade (the “Prohibited Commodities

Catalog”), which has been issued and revised by the Ministry of Commerce, the State Administration of Customs, and the State Environmental Protection Administration since 2004. These two circulars abolish the VAT export refund on almost all non-metal mineral products, coal, natural gas, asphalt, and polluting substances such as pesticides. The abolished products will automatically be included in the Prohibited Commodities Catalog. Once included in this catalog, a material can no longer be imported duty-free for processing, but instead will be subject to duties and other taxes.

The VAT refund rates for steel, cement, nonferrous metal, pottery, furniture, plastics, leather, glass, textile and some other products are reduced to between five and 13 percent, depending on the specific product. In contrast, the VAT refund rate for several high tech products has been increased to 17 percent, while the rate on processed agricultural products has been raised to 13 percent.

These new policies also provide for an exemption period for all processing manufacturers that have filed processing contracts with local processing trade authorities to operate a prohibited trade until November 22, 2007, in order to fulfill existing contracts. Local processing trade authorities will not accept processing trade applications filed after November 22, 2007, if they involve abolished commodities.

According to statistics provided by the Ministry of Commerce, the Prohibited Commodities Catalog generally prohibits about 1145 commodities for the processing trade, which accounts for 9.3 percent of all kinds of import and export commodities.

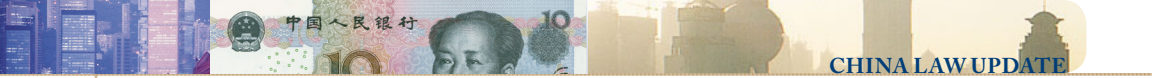
Tax Agreement Between Mainland China and the Hong Kong Special Administrative Region for Avoidance of Double Taxation on Income and Prevention of Tax Evasion

Issuing Bodies: State Administration of Taxation

Issuing Date: September 27, 2006

Effective Date: January 1, 2007 (Mainland); April 1, 2007 (Hong Kong)

This new tax agreement between the mainland and Hong Kong replaces the former agreement enacted in 1998, prescribing the most preferential tax policies on withholding income tax in any of China’s bilateral tax treaties. The uniquely low withholding tax rate is designed to attract more foreign investors to use Hong Kong as their base for investments in China. Cooperation between the mainland and Hong Kong would also be greatly improved. The features of the tax agreement are summarized below.



Withholding Tax

According to the new tax agreement, the income tax withholding rate on Hong Kong investors for dividends on investments in mainland enterprises is reduced to ten percent; if Hong Kong investors hold more than 25 percent of shares in a company, the rate is reduced further, to five percent. The normal income tax withholding rate for dividends paid to foreign investors is 20 percent, though foreign investors are now exempted by preferential tax policies; should current tax exemptions be cancelled in the future, this tax agreement guarantees Hong Kong investors a ten percent income tax withholding rate (five percent if Hong Kong investors hold more than 25 percent of shares).

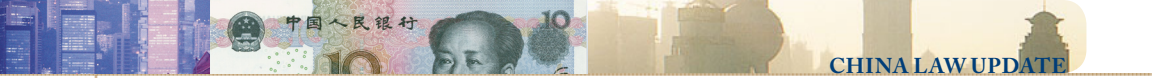
For Hong Kong residents and Hong Kong registered companies, the withholding tax rate on interest and royalty income for the mainland is reduced to no more than seven percent, which is three percent below the rates in China's other bilateral treaties.

Information Exchange

The new agreement further stipulates that taxation administrations on the mainland and in Hong Kong should exchange information as is necessary to implement the rules in the agreement. Exchanged information should be kept confidential and used only for tax purposes, subject to this agreement.

In addition, the tax agreement also contains detailed rules to avoid double taxation on individual income. This change may benefit thousands of Hong Kong residents working in mainland China.

This new tax agreement is effective as of January 1, 2007, in mainland China and April 1, 2007, in Hong Kong.



Faegre & Benson's Greater China Practice

Faegre & Benson LLP has extensive experience advising U.S., European and Asian clients on entering the China business environment, as well as on investment, trade and commercial matters throughout the Greater China region. From our offices in Shanghai and Minneapolis, lawyers in our China practice regularly provide international structuring, documentation and negotiation assistance for transactions both inbound to and outbound from Mainland China, Taiwan and Hong Kong.

The core of our team includes highly experienced legal professionals who have studied and practiced in both the U.S. and in China. In addition, we collaborate with an extensive informal network of local law firms, which possess expertise vital in an often ambiguous regulatory environment, where local custom and practice can vary.

Lawyers in our China practice represent clients ranging from privately held emerging companies to Fortune 50 multinationals in connection with their cross-border business dealings involving China. Our experience includes work in the industrial manufacturing, consumer products, telecommunications, hospitality, financial services, software, automotive, engineering, chemical products, pharmaceuticals, infrastructure, restaurant, and construction industries.

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