



浦瑞律师事务所
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Preface

During the last half year, CENLAW & PARTNERS has made remarkable achievements by providing legal services in cross-border transactions and cooperation with foreign lawyers.

In the first seven months of 2010, CENLAW has represented clients in great number of cases involving a total amount of over RMB 1 billion. We cooperated with lawyers from over 20 countries to jointly offer our services, and referred our clients to law firms of different countries.

We helped foreign invested enterprises in establishing business, daily operation and wind-up procedures. We recovered damages and losses for our clients arising out of trade disputes. We advised clients on a broad range of non-litigation issues.

The recent trend of Chinese companies to invest abroad is obviously offering benefits to CENLAW. We are helping an increasing number of Chinese companies in their outbound investment. The number of Chinese companies engaged in outbound investment doubled this year compared with the figure for the same period of last year.

And we also help foreign companies in investment in Chinese mainland. With the improvement of China's legal environment and legislation, foreign clients tend to accept the local practice and resolution methods in an easier way. Our cost-effective solutions are always favored by clients.

CENLAW will pursue further development in our business in the next half year of 2010, and seek more opportunities in cooperation with law firms across the world.

Cooperation News

Japan

Cenlaw recently cooperated with a Japanese law firm to review an agreement in respect of the legal issues for a BVI company that proposed to list on the Japanese capital market.

America

In July, Cenlaw was entrusted to provide agreement review service for an American pharmaceutical company regarding receiving marketing services provided to a Chinese company.

America

In July, Cenlaw has successfully helped an American company to find business partner in China. The American company is intending to set up a joint venture in China.

Singapore

Cenlaw referred a cooperation law firm in Qingdao of China to a Singapore law firm. Cenlaw also has an extensive network of Chinese lawyers.

Australia

Cenlaw was recently appointed by a domestic company to recover the demurrage fee from an Australian trading company.

Germany

Cenlaw has been recently appointed to represent an international divorce case involving a German and a Japanese. The case is to be trailed at the People's Court of Qingpu District.

International Trade & Foreign Investment

Supreme Court To Provide Judicial Protection For Foreign-Related Commercial Disputes

The Supreme People's Court of China has released a document in order to provide judicial guarantee and services for accelerating the transformation of economic development manner with an emphasis on properly handling foreign-related commercial disputes, environmental protection-related disputes and other disputes by taking more mediation methods. The Opinions aim to properly handle such matters which will occur in a great amount and involve employment, personnel placement and other deep-seated issues as corporate restructuring, merger and bankruptcy, elimination of enterprises with high energy consumption and pollution, house removal and land expropriation, and will facilitate the people's courts in properly handling relevant consumer interest disputes, financial disputes, compulsory liquidation for bankruptcy disputes, labour disputes and social insurance cases.

MOFCOM Reduces Time For Split Business To 3 Months

The Ministry of Commerce (MOFCOM) has released the *"Interim Provisions on the Separation of Assets or Businesses in the Centralization of Operators"*. Under the Provisions, the entrusting party for supervision and separation must be a natural person, legal person or any other organization who has necessary resources and capacity to undertake entrustment business and who shall be independent of and is not a material stakeholder of the operators or buyers participating in the centralization or split business. The buyers of split business shall be independent of and not material stakeholders of the operators participating in the centralization. Meanwhile, the purchase of split business shall not eliminate or restrict competition. In addition, the split business obligor shall transfer the split business to the buyer within three months from the conclusion of the sales agreement and other relevant agreements and complete the transfer of ownership and other relevant legal procedures.

SAFE Regulates Domestic Banks' Overseas Direct Investment Exchange

As an effort to regulate the foreign exchange businesses relating to the overseas direct investments of Chinese domestic banks, the State Administration of Foreign Exchange (SAFE) recently released the *Notice on Certain Issues concerning the Foreign Exchange Control for Overseas Direct Investments by Domestic Banks*, which is due to be effective from 1 September 2010. The Notice provides that the profit to be generated from the overseas direct investment of any domestic bank shall not be settled separately, instead, it shall be incorporated into the bank's exchange profits for uniform administration before being settled according to the applicable provisions, and, if any domestic bank sells all or part of its equity stake in an overseas institution gained through the overseas direct investment to other domestic institution, the relevant payment shall be made within the PRC territory in Renminbi.

Rules On Corporate Entitlement For Full Foreign Aid Projects Released For Consultation

The Ministry of Commerce (MOFCOM) has revised and released the *"Measures for Recognition of Qualifications of the Enterprises Undertaking the Construction of the Complete Foreign Aid Projects (Trial)"* (Order [2004] No.9 of the MORCOM) which has been renamed the *"Measures on the Administration of Qualifications of the Enterprises Undertaking the Complete Foreign Aid"*

Projects” for public consultation by 26 July 2010. The complete foreign aid projects as mentioned in the Measures refer to the case of the Chinese government providing the recipient country with free assistance, interest-free loans, or low-interest loans or other aid funds, in relation to which the enterprises selected by the Chinese government will undertake the project investigation, survey and design, provide equipment and materials, and designate engineers and technical personnel, organize or direct the construction, installation and pilot production of various engineering projects in the whole or partial process.

Intellectual Property Right

SAIC Releases Rules On Trademarks Containing “China” Or “National”

The State Administration for Industry and Commerce has recently issued the “Criteria for the Examination of Trademarks Containing “China” or the Character “National” as the First Word” with a view to strictly reviewing the trademarks with the character “national” as the first word. Pursuant to the Criteria, trademarks with the character “national” as the first word shall be reviewed in strict accordance with the following criteria: any application for trademarks consisting of “national + name of specific goods under the trademark” or trademarks containing the words “national + name of specific goods under the trademark” shall be rejected on the ground of “constituting hype and being deceitful”, “lack of distinctive characters” and “having a negative impact”; however, the application for a trademark with the character “national” as the first word but not consisting of “national + name of specific goods under the trademark” shall be treated differently.

Finance & Taxation

Hangzhou Vows To Further Develop Equity Investment Sector

As an effort to promote the development of its equity investment sector so as to attract sufficient capital, the municipal government of Hangzhou, a city of eastern China, has recently released the relevant implementation measures, according to which the government promises to offer a start-up reward of up to RMB300,000 and investment increase reward of up to RMB5 million, as well as subsidies for office housing and tax preference for the various equity investment enterprises and equity investment administration enterprises that have been established in Hangzhou in the form of corporations, partnerships, Sino-foreign cooperation as a non-legal person and have handled the business registration formalities, received the business licence, and have their taxation registration places located within the jurisdiction of Hangzhou.

Jilin Issues Equity Investment Fund Administration Interim Measures

The Jilin Provincial Government recently issued the Interim Measures for the Administration of Equity Investment Funds, in a move to promote the development of the province’s equity investment fund sector. The Measures contain provisions on the applicable objects, the requirements for establishment, the supporting policies, the supporting services, etc. According to the Measures, for registration of equity investment funds or management business within the

province, in the case of equity investment funds, the minimum paid-in capital shall be no less than RMB 30 million, and, in the case of management business, the minimum registered capital shall be no less than RMB10 million. The registered capital is allowed to be paid in instalments, and the down payment shall be no less than RMB 15 million in the case of equity investment funds, and no less than RMB5 million in the case of management business. All the investors shall make their contributions in cash.

Instruction Of State Council On Encouraging Private Investments Given, Specifying 40 Tasks

In the past few days, the General Office of the State Council promulgated a document, further specifying the division of work and the tasks of the central and local governmental departments in encouraging and guiding private investments to develop in a healthy way. More than 20 departments such as the National Development and Reform Commission, Ministry of Commerce, Ministry of Finance, etc. undertook separate relevant tasks. The Circular indicates that private capitals shall be encouraged and guided to enter into the financial services area, and be allowed to initiate financial institutions; under the preconditions of enhancing efficient supervision, promoting standardized operations and preventing financial risks, the restrictions on the percentage of shareholdings of financial institutions shall be relaxed. The circular also indicates that, the Ministry of Finance, National Development and Reform Commission and Ministry of Science and Technology shall stimulate private enterprises to strengthen their independent innovations, transformations and upgrading. This includes implementing the tax-beneficial policy which encourages the enterprises to increase research investments, so that the private enterprises are encouraged to increase their research investment, improve their independent innovation abilities and master core technologies with independent intellectual property rights.

Guidance For Overseas Corporate Income Tax Credit Released

The State Administration of Taxation has released the “Announcement on Distributing the ‘Operating Guidance for Tax Credit of Overseas Corporate Income Tax’” (Announcement [2010] No.1 of the State Administration of Taxation). The Guidance sets out specific provisions concerning the scope of application, basic items, calculation and verification of overseas income tax amount that can be credited, as well as the calculation of indirectly borne tax, calculation of shareholding proportion of foreign enterprises, verification of tax payable of tax sparing credit, calculation of credit limit and actual credited overseas tax, verification of credit calculated under simplified method and the tax year for overseas branch office and China’s tax year, calculation of income tax payable in the tax credit of overseas income tax, definition of dependent tax status, incomes derived from Hong Kong, Macau and Taiwan region, application and execution date of preferential principle of tax treaties.

Mainland And Hong Kong Signs Revised Clearing Agreement

A recent news report said that the People’s Bank of China (PBOC) on 19 July signed the Supplementary Memorandum of Co-operation with the Hong Kong Monetary Authority, and also signed the revised Clearing Agreement for RMB business with the Bank of China (Hong Kong) Limited, specifying that banks in Hong Kong that participate in RMB business may provide enterprises and institutional clients with RMB banking business according to the laws and

regulations in Hong Kong, and the flow of RMB funds in and out of the Mainland shall meet the relevant provisions of the Mainland. The conclusion of the two legal instruments will facilitate the pilot cross-border trade RMB settlement.

MEP Intensifies Listed Company Environmental Protection Inspection

According to a notice recently released by the Ministry of Environmental Protection (MEP), the provincial-level environmental authorities are required to urge the listed companies within their own jurisdiction to announce their environmental information and release their annual environmental reports in a timely, complete and accurate manner. The annual environmental report of a listed company shall reflect the situations of the listed company in the implementation of the industry policies, environmental impact assessment, up-to-standard emission and overall control, declaration of pollutant discharge and payment of pollutant discharge fees, clean production examination, prevention and control of heavy metal pollution, operation of environmental facilities, environmental control systems like environmental risk control, etc., and the environmental authorities shall assess the environmental protection of the listed companies on the basis of the said situations.

Securities Watchdog Revises Rules On Supervision Over Listed Securities Firms

The Securities Regulatory Commission has recently issued the “Decision on Revising the Provisions for Strengthening the Supervision over Listed Securities Companies”, amending and improving the “Provisions for Strengthening the Supervision over Listed Securities Companies” issued in March 2009. Pursuant to the amendments, a listed security firm shall disclose its monthly business operation and other main financial information, including current operating income, current net profit, net assets at the end of period and other data, on the official website of the stock exchange in the form of interim notice simultaneously when it submits such information to the regulatory authority. It’s also required to disclose administrative licensing items and so on in a timely manner.

Others

MEP Able To Apply To Courts For Compulsory Enforcement Of Order Rectification Decisions

In the past few days the Ministry of Environmental Protection responded to the request about the issues on the Fujian Environmental Protection Department and published *the Reply about Environmental Protection Departments Being Able to Apply to the People’s Court for Compulsory Enforcement of Order Rectification Decisions*. The *reply* indicates that according to the above rules and regulations, if the parties concerned do not apply for administrative reconsideration, bring an administrative action or carry out the order rectification decisions, the environmental protection departments can apply to the People’s Courts for compulsory enforcements. The reply also indicates that where the environmental protection departments have made order rectification decisions, the departments should notify the person subject to administration that he has the right to apply for administrative reconsideration or to bring an administrative action.

SPP Announces New Criminal Damages Standards

The Criminal Damages Office of the Supreme People's Procuratorate (SPP) has issued a notice requiring all local procuratorates to apply a new criminal damages rate, which is equivalent to RMB125.43 per day under the "Notice on Forwarding the National Average Daily Employment Wages 2009" in handling cases regarding criminal damages. It is reported that the SPP is currently drafting new rules governing damages payable by the State.

Supreme Court Specifies Application Of Tort Liability Law

The Supreme Court has recently issued the Notice of the Supreme People's Court on Certain Issues Related to the Application of the "Tort Liability Law of the People's Republic of China", making it clear that (i) civil disputes arising from violations occurring after the implementation of the Tort Liability Law shall apply to the law; (ii) those arising from violations occurring before the implementation but the consequences of the damage appear after the implementation shall also apply to the law; (iii) when applying the law in hearing a civil dispute case in which medical damage identification is necessary, the people's court shall, at the request of the litigating party or on its own initiative, organize such identification in accordance with the relevant provisions^[1]; (iv) when applying the law in the trial of a civil dispute case, if the victim has dependents, the people's court shall take the dependents' living expenses into account the compensation for disability or death in accordance with Article 28 of the "Interpretation of the Supreme People's Court on Certain Issues Related to the Trial of Cases Regarding Personal Injury Compensation".

Legal Comments

The Practice of Recognition and Enforcement of Taiwan's Judgments in PRC

-----Case Analysis Regarding the Recognition and Enforcement of a Taiwan Judgment

By Paul Huang & Sherry Xu

Although two special judicial interpretations have been promulgated by the Supreme Court in 1998 and 2009 respectively regarding the issue of recognition and enforcement of judgments made by Taiwan courts, there are still rare cases of such recognition and enforcement in practice. Also, lacking practical and systematic procedures, judges and lawyers may represent different comprehension during the operation of the cases, which raises the difficulties in relevant work.

During November 2009 and July 2010, entrusted by a listed company in Taiwan, CENLAW & PARTNERS has won a case at the Jiangsu Intermediate People's Court of Zhejiang Province relating to reorganization and enforcement of a judgment made by Taiwan court on August 4, 2009. Through effective communication with the judges, in-depth study of the regulation and laws, and coordination at some specific procedural stages, we have accumulated some practical experience for applying recognition and enforcement of this type of cases.

Preliminary Facts

The applicant, TA Shares Limited Company (a listed company in Taiwan, hereinafter referred as "TA Company") signed an agreement with the respondent, KS Industry Limited Company (hereinafter referred as "KS company"), which stipulates that KS Company will take over the agency business as the third party to TA Company, and therefore KS Company promise to pay the commission to TA Company at a fixed rate. In addition, the agreement also empowers Taiwan Taipei Local Court the jurisdiction of the first instance. Due to the refusal of KS Company to pay the commission, TA Company brought a lawsuit to the Taiwan Taipei Local Court in accordance with the agreement.

During the trial of Suzhou Intermediate People's Court, worried about the possible property transfer by KS Company, TA Company applied for property reservation to Taiwan Court (which is called "provisional seizure" in Taiwan) and paid the earnest money. TA Company then asked CENLAW for the assistance to apply for the property reservation of KS Company in mainland. However, in accordance with the relevant judicial interpretation of PRC, although the enforcement of civil judgment after recognition is practicable under PRC regulations, the court to which the party applies for property reservation shall also be the court to bring the lawsuit in practice. Therefore, the mainland courts do not have the capacity to deal with the property reservation issue regarding the pending cases of Taiwan courts.

As for TA Company, the only available scheme was to apply for recognition and enforcement after the adjudication of the Taiwan Taipei Local Court. On August 4, 2009, Taiwan Taipei Local Court made the judgment which declared the failure of TA Company in the case. After the

judgment came effective, TA Company entrusted CENLAW to apply for the recognition of the judgment made by Taiwan Taipei Local Court to Suzhou Intermediate People's Court of Jiangsu Province, where KS Company was located in.

During the trial of Suzhou Intermediate People's Court, the respondent argued that the recognition and enforcement of the judgment will lead to the failure of the mainland government to receive the business tax and income tax which shall be contributed by TA Company. Therefore, according to Article 9 first paragraph of *Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province*, the judgment of Taipei Local Court violated the basic principle of PRC law, and the respondent whereby asked the court not to recognize the judgment.

After the trial, the Suzhou Intermediate People's Court of Jiangsu Province held that the judgment of Taiwan Court, which stipulated KS Company's obligation to effect the payment to TA Company, was made upon the basis of the relationship of brokerage contract, and there was no relation to any issue of tax evasion or any other situations under Article 9 of *Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province*. As a result, the mainland court recognized the effectiveness of the judgment.

The civil verdict which recognized the effectiveness of the judgment came into force upon delivery. Afterwards, TA Company, represented by CENLAW, applied for compulsory enforcement to the Suzhou Intermediate People's Court, and during the process of enforcement, KS Company voluntarily implemented its relevant duty in the face with the regular operation of the company.

Crucial Problems during the Process of Recognition and Enforcement

A. The Expanded Scope of the Recognition and Enforcement of Taiwan Judgments

The Supplementary Regulations of the Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province, which was promulgated in 2009 (hereinafter referred to "Supplementary Regulations") ensures that the Taiwan judgments regarding commerce, intellectual property, and maritime issues can be applied for the recognition and enforcement in PRC courts. In judicial practice, the recognition and enforcement of the Taiwan judgments is usually relating to divorce. Referring to this case, it is obvious that the scope of the recognition and enforcement of Taiwan judgments has been expanded.

B. A Broader Range of Taiwan Legal Instruments that Can Be Recognized in Mainland

In 1998, the Supreme People's Court promulgated *the Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province* (hereinafter referred as "the Provisions"), which merely recognizes the civil judgment, civil ruling, and arbitration award of Taiwan province.

The Supplementary Regulations promulgated in 2009 expands the scope for recognition of Taiwan legal instruments to the civil ruling, mediation agreement, payment order, arbitration awards of Taiwan province, etc.

C. Clarification of the Applicants and the PRC Courts with Jurisdiction

The subjects to apply for recognition and enforcement of Taiwan civil judgments are the parties relating to the relevant legal instruments issued by Taiwan courts; Taiwan courts and other subjects are not permitted to apply for the recognition and enforcement of judgment of Taiwan courts directly to mainland courts.

The intermediate people's court within the territory of the place of residence, place of habitual residence of the applicant has the jurisdiction to the recognition and enforcement of Taiwan civil judgments; the applicant is also allowed to apply for the recognition to intermediate people's court within the territory of the place of the property, and the relevant evidence to prove the existence of the property shall be provided thereof.

D. Extension for the Period of Application for the Recognition of Taiwan's Legal Instruments

The Provisions of 1998 stipulates: the applicant shall apply for the recognition of the civil judgment made by Taiwan courts within 1 year after the entry into force of the same.

Nonetheless, the Supplementary Regulations of 2009 extend the application period to 2 years.

E. The Particularity for the Property Reservation**a. Property Reservation during the Litigation**

During the trial of the case in Taiwan court, the Taiwan court may make a civil ruling for "provisional seizure" with immediate effectiveness, if the plaintiff applies for the property reservation. However, it is not practicable for Taiwan court to reserve the defendant's property in mainland. Therefore, when such "provisional seizure" civil ruling is supposed to be enforced in mainland, application for recognition beforehand is still required. Such reservation property may be enforced by the mainland court in theory, however, in practice, only the court dealing with the relevant litigation is permitted to do the property reservation considering there may be failure to pursue the responsibilities for the wrong property reservation. Hence, this type of property reservation is not practicable in mainland China.

b. Property Reservation during the Recognition Application Period

The Supplementary Regulations of 2009 provides that the applicant may apply for property reservation when applying for the recognition of the Taiwan civil judgment or after the court's acceptance to the case and prior to giving a decision. Meanwhile, when applying for property reservation, the applicant shall provide effective guarantees. The application will be rejected if the applicant fails to provide qualified guarantees.

Overall, civil judgments made by Taiwan courts can be recognized and enforced by the mainland courts, and the property reservation is only achievable when it is applied during the application for the recognition and enforcement or within the recognition period, and the property guarantees must be provided to the mainland court.

F. The Indispensable Procedure: Notarization and Authentication

Vary from the notarization procedure overseas, Taiwan notarization procedure is to notarize relevant materials by notarization organization in Taiwan, and the notarization organization will

deliver the original copy to the applicant with the duplicated copy to China Notary Public Association intermediated by Strait Exchange Foundation and Association for Relations Across the Taiwan Strait. As a result, the applicant is merely required to do the authentication at the notarization association of the province, the municipality directly under the central government, or the autonomous region where the documents is used.

G. The Resolution for the Problem of the Remittance of the Recovered Money

Most clients are concerned about whether the recovered money can be remitted successfully to Taiwan or other places. Up till now, there are only few cases of this type. The relevant courts including the business chamber, the case filing chamber, the accountant of the courts, and the stuff of the court's bank of deposit are usually not clear with the operation. By communicating with the government institutions, which are responsible for the exchange control, we confirmed every required document with the departments of the court and the bank one by one, pursuant to their former practice. After the fulfillment of all the documents required, the recovered money will be transferred to the applicant's account.

The Basic Laws, Regulations and Rules to Recognize and Enforce the Judgments Made by Taiwan Courts

A. PRC Civil Procedural Law

B. the Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province promulgated by the highest court in January, 1998

C. the Supplementary Regulations of the Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province promulgated in March, 2009

The Influence and Impact of the Case

This case is one of the few successful cases regarding the recognition and enforcement of Taiwan commercial judgments by mainland courts after the promulgation of the *Provisions on the People's Courts' Recognition of the Judgments on Civil Cases Made by Courts of Taiwan Province* in 2009. Beforehand, most of the recognized and enforced civil judgments made by Taiwan court are marriage cases. With the enhancement of the bilateral commercial and economic intercourse, the recognition and enforcement of the commercial judgment will certainly provide sufficient reference for mainland courts when recognizing and enforcing Taiwan commercial judgments.

On the other hand, during the whole process of the case, some defects of the existing recognition and enforcement system of Taiwan civil judgments also come into our notice, where our legislation and jurisdiction shall be improved:

a. Our legislation are still silent regarding the problem of how the property reservation can be implemented when the plaintiff is supposed to apply for property reservation during the litigation in Taiwan court to the defendant (a mainland enterprise). As a result, the rights of plaintiff cannot be ensured to some extent.

b. The standards for the litigation fee of the case concerning recognition and enforcement Taiwan civil judgments have not been promulgated, which enlarges the discretionary power of the judges.

c. The time limit of trails for the recognition case is 6 months. Nonetheless, this type of cases will

usually be related to the supplementary of documents, notarization and authentication, extraterritorial service, etc., which may be involved in long-term work. It may be more feasible if the time period for such work is not taken into account to the limit of trials to ensure the court to accomplish relevant work within 6 months.

d. Objection to the jurisdiction: the Provisions do not provide resolutions for the objection to the jurisdiction, and no definite regulation for whether the Civil Procedural Law can be applied to the recognition and enforcement cases represented.

An Analysis on Recent Pollution Caused by Zijin Mining and the Environmental Information Report and Disclosure Obligations of Enterprises

By Honghui Hu & Junhui Li

Zijin Mining Group Co. (Zijin) recently disclosed a leakage of waste water containing acidic copper at Zijinshan mine, a property under the name of Zijin and located at Shanghang County of Fujian Province. 9100 cubic meters' waste water seeped into Ting River on July 3, 2010, poisoning tons of fish and causing the pollution of the water in the river.

The relevant authority of Fujian Province has preliminarily identified this case as a major and emergency environmental accident. The enterprise disclosed this accident to the public through the Fujian Provincial Department of Environmental Protection 9 days later on July 12, which caused broad attention by the government, the public and the media on the delayed environmental information disclosure (EID) by Zijin. This article will discuss the issues to be covered and highlighted under the current environmental regime of the People's Republic of China (PRC).

The Time Requirement on the Disclosure of Environmental Accidents

In contrast to the reactions in the Zijin pollution case, EID should be in time and prompt.

In accordance with the National Contingency Plan of Emergency Environmental Accidents (the Plan), relevant responsible person of enterprises should react within 1 hour after the detection of a leakage accident.

Meanwhile, Zijin, as a listed company, is also required to abide by the Administrative Measures on Information Disclosure by Listed Companies (the Measures). Pursuant to the Measures, following the suspension of production due to the leakage accident that bring heavy losses to the company, which should be recognized as a major accident, the company is required to disclose the information immediately and explain the reason, current situation and possible influences thus caused.

And the Guide of Shanghai Stock Exchange on the Environmental Information Disclosure of Listed Companies also stipulates that listed companies should promptly disclose any major accidents relating to environmental protection within two days following the occurrence of such events, and the potential influences to be caused to stakeholders and to business operation of the company.

Requirements on Different Types of Companies

The EID liabilities, procedures and time requirements may vary among different types of companies. Generally companies subjected to EID liabilities are divided into two types: listed companies and non-listed companies.

The Measures are promulgated by China Securities Regulatory Commission (CSRC) which is a

commission directly under the State Council, and have a higher enforceability. The Rules on Information Disclosure of Non-Listed Companies are released by a non-profit social organization: Securities Association of China, and merely constitute a guide to EID by non-listed companies rather than a set of rules to be compulsorily enforced.

To this extent, in contrast to non-listed companies, listed companies are subject to more detailed rules and should undertake more liabilities in terms of EID.

The Nature of the Environmental Pollution Accident As a Crucial Factor to Environmental Information Report and EID

The State Council promulgated the Plan in accordance with relevant laws and regulations as early as on January 24, 2006. The Plan was released with a goal to establish and promote a complete contingency system to emergency environmental accidents, improve the resolution of environmental accidents causing public crisis by governments at different levels, maintain the stability of the society, secure the safety of the life, health and property of the public, protect the environment and promote the overall, coordinated and sustainable development of the society. The Plan divides emergency environmental accidents into four levels corresponding to the severity and emergency of the foregoing accidents, namely particularly major environmental accident (Level I), major environmental accident (Level II), relatively major environmental accident (Level III) and ordinary environmental accident (Level IV) and prescribes relevant response mode and procedures for the accidents under each level. For instance, any major environmental accident (Level II) should be reported to relevant government authority at provincial level with 1 hour; any particularly major environmental accident (Level I) should be immediately reported to relevant department under the State Council and notified to other related departments.

Different pollution report and information disclosure requirements are applicable to environmental accidents of different nature. Some accidents are required to be reported to government and the later will further consider whether to publish a forecast to the public, like Article 15 of the Law of the People's Republic of China on Prevention and Control of Desertification. Under some pollution accidents, the government should notify the public the pollution simultaneously at the receipt of the pollution report and during the process of taking relevant measures, like Article 33 of the Law of the People's Republic of China on Prevention and Control of Radioactive Pollution, and Article 20 of the Law of the Peoples Republic of China on the Prevention and Control of Air Pollution. As permitted, some information may be published upon the request for government information disclosure submitted by corporate, individuals and other organizations.

The nature of environmental accidents also determines whether the information is allowed to be published and the way of publication. State secret, trade secret and individual privacy are not allowed to be published. Some accidents should be published by government authorities to guide the comments of the public and maintain stability.

An enterprise should disclose and explain to the public the potential damages that might be caused by pollution, and adopt strict prevention measures to avoid damages and risks. The responsible officer must report the accident promptly in case of a major pollution accident. The parties to receive the information disclosed will be different under different cases.

	Ordinary Pollution		Severe Pollution	
	Government Department	The Public	Government Department	The Public
Air pollution	Local administrative department on environmental protection	The enterprises and residents that might be affected by air pollution		Local residents
Water pollution	Government or environmental protection department at or above county level of the place of accident			
Solid waste pollution	Environmental protection department and other related department of government at or above county level	The enterprises and residents that might be affected by pollution	Report to the government at same level and relevant administrative departments of the government one level higher ¹	
Dangerous chemicals pollution	Environmental protection department at or above county level	The enterprises and residents that might be affected by pollution		
Radioactive pollution	Police department, hygiene department and environmental protection department	The government should release the information to the public		

Conclusion

EID and environmental information report system is one requirement set by law and relevant rules.

¹ By environmental department or other departments responsible for monitoring and management of solid wastes of government at or above county level

Currently, the 3 responsible persons involved in the cover-up of Zijin accident are under criminal custody. Some officials in local government have been punished accordingly. Enterprises or their responsible persons that fail to perform the EID or environmental information report duties as prescribed in laws and regulations will possibly be subject to civil compensation liabilities, administrative liabilities or even criminal liabilities.

EID system is a relatively independent regime that reflects the emergency of the cases and is categorized by the nature of pollution. With the increasing prominence of environmental problems, the regime should be improved gradually. Sustainable development is foreseeable only when environmental issues are solved properly.

Overview of Franchising Business Division

Cenlaw & Partners was engaged in the study and application of laws and regulations governing franchising business earlier in China. We set up a professional website on HOW TO FRANCHISE IN CHINA(www.fcnlaw.com)

Thanks to the rich experience accumulated in this regard, it is positioned to offer legal & consulting services in terms of franchise system establishment and franchising-related disputes settlement. As one of the pioneering law firms specialized in providing legal service for commercial franchising, Cenlaw & Partners now takes the lead in this area after several years of continuous exploring.

The Legal services that we provide are described as following:

(I) Providing legal support for international commercial franchising activities

- Analysis of legal feasibility, investigation of legal environment, policy and system for internationally-based franchisors wishing to expand business into China.
- Formulation of the development strategy and implementation plan for commercial franchising business, legal consultation for enterprises to implement strategic program , detailed recommendation and proposals specific to individual cases.
- Translation and localization of documentation used for the franchise system, especially the contracts of franchising business.
- Recommendation and investigation of candidate franchisees, involvement in franchising negotiation, management of franchisees, settlement of disputes between both sides.
- Consultation and training course on franchising business

(II) Constructing a legal document system for franchising business

Working out and examining a complete series of legal documentation for franchising business implementation, including:

- Contract of single-outlet franchising
- Contract of regional franchising
- Contract of relevant logistics and distribution
- Contract of trade mark license
- Contract of patent license
- Contract of commercial secret protection and competition restriction
- Contract of outlet management
- Contract of technical support, marketing guidance and business training
- Contract of franchising advertisement and promotion

(III) Handling records of commercial franchising on behalf of clients

We assist franchisors to go through recording procedure based on applicable laws and regulations of the mainland of China, including the preparation and compilation of the record files.

(IV) Providing legal service for information disclosure in commercial franchising

- We assist franchisors to prepare a complete series of disclosure documents that not only comply with legal requirements of disclosure but also protect commercial secrets to the maximum extent.
- We assist franchisors to draft related security agreements.
- We assist franchisors to work out specific disclosure methods.

(V) Conducting examination of legal compliance of franchise system

- We examine the existing organizational structures of the franchisors and provide legal advice in an effort to ensure the legality and efficiency in the process of operating franchising programs and to effectively guard against potential legal risks.
- We examine relevant documents such as brochures on franchising business and bulletins of investment attraction.
- We offer specific proposals and approaches for legal compliance.

(VI) Providing protection of intellectual property in franchising business

- We assist franchisors to examine and design the framework of intellectual property.
- We assist franchisors to examine and draft the system and contract of

intellectual property.

■ We provide suggestions on the registration and protection measures of intellectual property including trade marks, patents, signs, private technologies and business know-how, etc.

■ We assist franchisors to handle the infringement case of intellectual property.

(VII) Providing legal service for capital operation of franchisors

■ We assist franchisors to attract investment in venture capital or private equity, to participate in business talk, to examine and draft contracts concerned.

■ We conduct due diligence and legal feasibility analysis for financing program.

■ We assist in the design of reorganizing and restructuring plans, help to establish and improve the corporate governance structure.

■ We assist franchisors to conduct IPO in the capital markets both at home and abroad.

In the area of legal service for commercial franchising, our clients are active in such industries as catering, education, hotel, real estate agency and photography. Some are among the first batch of cross-provincial franchising businesses whose records have been successfully approved by the Ministry of Commerce of the People's Republic of China.

Non-litigation Cases

◆ Legal service for localization of franchise system was provided for certain international brand of education entering the mainland of China.

◆ Legal service was provided for certain catering brand in its whole process of entering the mainland of China, including investigation of legal environment, policy and system of the mainland of China, analysis of legal feasibility, design of franchising organizational structure and franchise system.

◆ Legal service for the protection of intellectual property was provided for certain well-known brand of photography.

◆ Legal service was provided for certain chain hotels that developed franchising business.

◆ Examination of legal compliance was provided for certain renowned real estate agency that conducted franchising business in China.

Litigation Cases

- ◆ Legal proceedings of commercial franchising contract disputes taken by certain well-known food corporation against its franchisee
- ◆ Legal proceedings of IP disputes taken by certain photography franchisor against non-franchisee
- ◆ Legal proceedings of commercial franchising contract disputes taken by certain education franchisor against its franchisee
- ◆ Legal proceedings of trade mark infringement and disputes on illegitimate competition taken by certain healthcare technology company against certain fitness service center in Shanghai
- ◆ Legal proceedings of copyright infringement taken by a person with the first name Zhao against certain catering company in Shanghai

This Periodical has been prepared for CLIENTS and COOPERATION PARTNERS of CENLAW&PARTNERS . Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this Periodical should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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