



浦瑞律师事务所
CENLAW & PARTNERS

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It has been one month since the grand opening of the Expo Shanghai 2010 and over 5 million people visited the Expo site.



Some foreign cooperators and friends of Cenlaw have come to visit Shanghai or are scheduling their visit to the site of Expo.

Confucius, the famous philosopher of ancient China, has one famous saying: "It is such a delight to have friends coming from afar."



This may fully express our feeling at this moment.

We hope more friends will visit Shanghai and Expo, and pay a visit to Cenlaw by this chance.

When visiting the Expo site, lawyers of Cenlaw took valuable pictures of different countries and made a special introduction, which might be helpful for you to have a deeper understanding of the Expo.

Welcome to Shanghai!

Welcome to Cenlaw!



Cooperation News

US

One of Cenlaw's clients in Shanghai that proposed to takeover an American company appointed, after the introduction made by Cenlaw, an American law firm to carry out the due diligence investigation on the target American company.

Hong Kong

Cenlaw's cooperation partner in Hong Kong helped Cenlaw's American client to establish a subsidiary in Hong Kong. The American client proposed to invest in production and trading business in China through the Hong Kong subsidiary.

Israel

Amos Hacmun, partner of Heskia-Hacmun Law Firm, visited Cenlaw in May. Heskia - Hacmun Law Firm provides civil-commercial legal services in Israel. The law firm is specialized in corporate and banking law, dispute resolution, international transactions and Israeli tax law. The law firm has also a special expertise in intellectual property (patents & trademarks).

Hong Kong

The liquidator of a Hong Kong company appointed Cenlaw as the advisor in the protection of assets located in Shanghai of the Hong Kong company.

US

A solar technology company located in Wuxi City, Jiangsu Province appointed Cenlaw to review the legal documents relating to its trade with an American company.

India

An Indian company imported a batch of sewing needles from China. While being inspected by Shanghai customs, the sewing needles were found infringing on trademark of another company and were detained provisionally at the customs. The Indian company has appointed Cenlaw to solve related legal issues.

Taiwan

A Taiwan company concluded a brokerage agreement with a PRC company located in Kunshan and the two parties agreed to submit disputes to the Court of Taipei for resolution. The parties were involved in disputes concerning the agreement and the Taiwan company filed a petition against the Kunshan company, subsequently to which the Court of Taipei judged a payment to be made by the Kunshan company.

Cenlaw was appointed by the Taiwan company to execute the judgment in mainland. After numerous efforts made by Cenlaw's lawyer, the Intermediate Court of Suzhou finally accepted the case and verdict to uphold and execute the judgment of Court of Taipei.

International Trade & Foreign Investment

Supplementary Agreement VII To The CEPA Inked In Hong Kong

Supplementary Agreement VII to the “Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA)” has been signed in Hong Kong and shall come into effect as of 1 January 2011. It further expands opening to Hong Kong on the basis of the CEPA and its 6 supplementary agreements. For the trade service, the Mainland shall take 27 specific measures in 14 sectors to Hong Kong, including further relaxing market access conditions, cancellation of equity restrictions and relaxation of business range and operation area, etc. in construction, medical treatment, audiovisual, distribution, banking, securities, social services, tourism, culture & entertainment, air transport, profession and technical qualification examinations and individual business operators, etc. based on the original openness commitment. In addition, Supplementary Agreement VII to the CEPA newly adds commitments to technical testing & analysis and inspection of goods as well as professional design.

SAIC Introduces Policies To Serve Foreign-Invested Enterprises

The State Administration for Industry and Commerce (SAIC) has recently issued the “Opinions on Giving Full Play to the Administrative Function of Industry and Commerce to Further Serve the Development of Foreign-invested Enterprises”. Pursuant to the Opinions, to engage in modern service industries or high-tech industries, a wholly foreign-owned enterprise using the name of the investing companies in a foreign country (region) or a foreign holding enterprise, which has registered capital of 30 million yuan, may use the word ‘China’ in the middle of its name. The Opinions also provide that the name of an enterprise group can be abbreviated. A subsidiary may add the name or abbreviation of the enterprise group in its name and, upon consent of the management of the enterprise group, a joint stock company is allowed to add the name or abbreviation of the enterprise group in its name.

State Council Gives Opinions Encouraging And Guiding Private Investment

The State Council has issued the “Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment” requiring the further expansion of the scope and areas of private investment. The Opinions state that the government shall encourage and direct private investment in financial services, social services, trading, primary industry and infrastructure constructions as well as other industries and areas which are not expressly prohibited by laws and regulations. The Opinions also state that private capital should be allowed in establishing financial institutions and increasing commercial banks' capital by share transfers as well as participating in the transformation of rural credit cooperatives and urban credit cooperatives.

NDRC Decentralizes Authority To Approve Foreign-Funded Projects

The National Development and Reform Commission (NDRC) has recently issued a Notice to make clear matters relating to the decentralization of authority to approve foreign investment projects. To be specific, projects with total investment (including capital increases) of 300 million U.S. dollars encouraged or permitted in the “Catalogue for the Guidance of Foreign Investment Industries”, which are originally subject to the approval of the NDRC, shall be approved thereafter

by a provincial development and reform commission with the exception of those that are subject to the approval of the relevant departments of the State Council under the “Catalogue of Investment Projects Subject to the Approval of Government”. After the decentralization of authority for approval, project application reports as well as content, conditions and procedures of approval shall still be implemented pursuant to the “Interim Measures for the Administration of Approval for Foreign Investment Projects”. However, the authority to approve projects restricted in the “Catalogue for the Guidance of Foreign Investment Industries” shall not be decentralized temporarily. In addition, this Notice emphasizes the “improvement of quality of foreign capital utilization, streamlining the approval process of projects, creating a good environment for investment and enhancing supervision and inspection of projects”.

Intellectual Property Right

Tomatoll Cases Settled Out Of Court - Microsoft Wins RMB3 M Compensation

The recent high-profile cases regarding civil actions commenced by Microsoft against the alleged infringers for infringement of software copyright have been settled out of court on a condition that the alleged infringers will pay Microsoft RMB3 million. It was earlier alleged that a Sichuan online advertisement company and a Chengdu software company had produced a series of software, named "Tomatoll" for public download for profit-making purposes since December 2006. In July 2008, Microsoft report the infringement to the authority of public security. Following the criminal action in which the alleged infringers were held criminally liable, Microsoft filed a civil claim for RMB8 million at damages. With the aid of the Suzhou Intermediate People's Court, the parties in the case has agreed to settled the cases.

Finance & Taxation

CSRC Releases Newly Amended Administrative Reconsideration Measures

After extensive consultation, the China Securities Regulatory Commission (CSRC) has released the newly amended “*Measures of the China Securities Regulatory Commission on Administrative Reconsideration*” with effect from 1 July 2010. After amendment, the Measures clarify the extent of power of the administrative reconsideration commission by adjusting the provision “responsible for propose reconsideration opinions on administrative reconsideration cases being reviewed and discussed” in Article 3 to “review major and complex administrative reconsideration cases” in Article 5. Meanwhile, the Measures introduce the avoidance system, providing that “case handling persons or reconsideration commission members present in the meeting shall avoid being involved in the case if they are a stakeholder or have other relations with the case that might affect the fairness in the review of administrative reconsideration cases.”

CSRC Amends Securities Companies Classified Supervision Provisions’ Clauses

The China Securities Regulatory Commission (CSRC) has released the “*Decision on Amending the ‘Provisions on the Classified Supervision of Securities Companies’*”, revising and releasing several articles in the “*Provisions on the Classified Supervision of Securities Companies*”. Upon

amendment, the Provisions clarify the standard for offence points deducted for illegal acts conducted by main management personnel. If a securities company is given a warning such as an administrative penalty, or any director, supervisor or senior manager is given a warning in relation to the company's illegal act, four points shall be deducted; if the company is fined as an administrative penalty, five points shall be deducted. Meanwhile, the provision that "securities companies may not disclose the classification result to the public" has been deleted and listed securities companies are allowed to disclose the classification result in an appropriate manner.

CIRC Releases Insurance Companies' Information Disclosure Measures

In order to further regulate the information disclosure of insurance companies, the China Insurance Regulatory Commission (CIRC) has released the *"Measures on the Administration of Information Disclosure of Insurance Companies"* with effect from 12 June 2010. The Measures provide for the content, method and time of information disclosure. Under the Measures, insurance companies shall disclose the basic information of the company on their official website. In case of any change to the basic information, the company shall update such information within 10 working days from the date of alteration. The company's annual information disclosure report for the past five years and temporary information disclosure report for the past three years shall be kept on the website.

CIRC Publishes Measures For Administration Of Stock Equities Of Insurance Companies

In order to reinforce the supervision of stock equities of insurance companies, the CIRC has recently published the Measures for the Administration of Stock Equities of Insurance Companies which shall take effect as of 10 June 2010. These Measures mainly provide in detail the qualification for shareholders who become a shareholder by investment, changes in shareholding, material submission and other content. These Measures provide that the contributions made or shares held by a single shareholder of an insurance company shall be no more than 20% of such company's registered capital; a shareholder who becomes a shareholder by investment in an insurance company shall be a domestic business entity or an overseas financial institution which meets the conditions provided in these Measures, except those shareholders who buy the shares of a listed insurance company at a stock exchange.

SAT Clarifies Transitional Preferential Corporate Income Tax Policies

The State Administration of Taxation has issued the *"Notice on Further Specifying the Consistency in Implementing the Transitional Preferential Corporate Income Tax Policies"* specifying that resident enterprises which are recognized as high-tech enterprises and are entitled to "Two-Year Exemption and Three-Year Half Reduction", "Five-Year Exemption and Five-Year Half Reduction" or other transitional preferential corporate income tax policies under the *"Notice of the State Council on the Implementation of the Transitional Preferential Corporate Income Tax Policies"* may choose the applicable tax rates for the specified transitional period and a 50% tax reduction for the rest of the qualifying period or 15% tax rate for high-tech enterprises without the entitlement to the 50% tax reduction at the 15% tax rate.

SAT Clarifies Land Appreciation Tax Rules

The State Administration of Taxation (SAT) has recently published a notice clarifying the land appreciation tax rules, including those governing the relevant time, deduction of expenses on property development, determination of land appreciation tax on relocation of properties and deductible items in connection with the transfer of old properties. The notice provides that deed tax payable by property developers on the acquisitions of land use rights shall be deemed as the "nationwide standard relevant fees" and deductible under the item, "expenses incurred in acquiring land use rights". However, unused land charges paid by property developers due to late development are not deductible.

SAT Clarifies Opinions In VAT General Taxpayers Qualification Recognition Measures

The State Administration of Taxation (SAT) has released a notice to clarify several opinions in the *"Administrative Measures for Qualification Recognition of Value-added Tax (VAT) General Taxpayers"*. Under the Notice, the term "annual taxable sales amount" as mentioned in the Measures shall include sales amounts that are subject to tax declaration, supplementary declaration after audit, adjustment after tax assessment, of which the official invoices are issued by the tax authority and that are subject to tax exemption; the reporting period as mentioned in Article 8.1 refers to the reporting period of the month (or quarter) in which the annual taxable sales amount of a taxpayer has exceeded the standard for small-scale taxpayers; the newly established taxpayers in Article 11 refer to taxpayers who apply for recognition of VAT general taxpayers within 30 days after the date of tax registration.

AIC Anti-Cartel Rules Under Public Comment

According to the *Anti-monopoly Law of the People's Republic of China*, the State Administration for Industry & Commerce (SAIC) recently drafted three rules, which have been released for public comment with a deadline set for 7 June 2010. Of the three rules, the *Rules for Prohibition of Cartel Action by Administrative Authorities for Industry and Commerce* expressly prohibit business operators from reaching any monopoly agreement in their business activities, stipulating that any business operator violating the Rules to reach and implement any monopoly agreement will be ordered to cease illegal acts, have illegal proceeds confiscated, and be fined between 1 percent and 10 percent of the sales revenue of the previous year; any business operator intending to implement its signed monopoly agreement may be imposed a fine of no more than 500,000 yuan, and any industry association that organizes business operators of the industry to conclude any monopoly agreement may be imposed a fine of no more than 500,000 yuan by the administrative authorities for industry and commerce, which may request cancellation of the registration of the industry association by the organs in charge of registration of social groups according to the law if the circumstances are serious.

AIC Rules Governing Dominant Market Position Abuse Under Public Comment

According to the *Anti-monopoly Law of the People's Republic of China*, the State Administration for Industry & Commerce (SAIC) recently drafted three rules, which have been released for public comment with a deadline set for 7 June 2010. Of the three rules, the *Rules for Prohibition of Abuse of Dominant Market Position by Administrative Authorities for Industry and Commerce* (draft for comment) expressly prohibit business operators in a dominant market position from

abusing their dominant position to eliminate or restrict competition in their business activities, providing that any business operator violating the Rules by abusing its dominant market position will be ordered to stop illegal activities, have illegal proceeds confiscated, and be imposed a fine of between 1 per cent and 10 per cent of its sales revenue from the previous year.

AIC Rules Against Administrative Power Abuse Reducing Competition Under Comment

According to the *Anti-monopoly Law of the People's Republic of China*, the State Administration for Industry & Commerce (SAIC) recently drafted three rules, which have been released for public comment with a deadline set for 7 June 2010. Of the three rules, *the Rules for Administrative Authorities for Industry and Commerce to Prevent Abuse of Administrative Power from Eliminating or Restricting Competition* (draft for comment) expressly prohibit any administrative authorities and organization tasked by the relevant laws and regulations with the administration of relevant public affairs from abusing its administrative power to eliminate or restrict competition. The Rules provide that any administrative authority or organization tasked by the relevant laws and regulations with the administration of relevant public affairs, if abusing its administrative power to eliminate or restrict competition, will be ordered by the competent superior authorities to make rectification of the abuse or shall voluntarily cancel the restriction or authorization that eliminates or restricts competition, or annul any provision that encourages competition elimination or restriction, and, the officers directly responsible for the abuse, as well as other directly responsible persons, will be punished under the law.

Labor & Employment

Overseas Labour Service Statistical System Under Public Comment

The Ministry of Commerce (MOFCOM) is soliciting public opinions on the Foreign Labour Service Cooperation and *Overseas Employment Business Statistical System* issued in 2008, in an effort to make amendments to the System for the purpose of meeting the needs for China's development of foreign labour service cooperation and overseas employment businesses and effectively providing monitoring services for statistics of foreign labour service cooperation and overseas employment. The deadline for the public comment is set for 30 June 2010.

Others

Authorities Regulate Case Filing & Prosecution Criteria For Various Economic Crimes

The Supreme People's Procuratorate and the Ministry of Public Security have jointly issued "Provisions II on Case Filing and Prosecution Criteria for Crimes under the Jurisdiction of the Public Security Authorities", providing the case filing and prosecution criteria for 86 kinds of criminal case under the jurisdiction of the economic crime investigation department of the public security authorities. Provisions II specify the case filing and prosecution criteria for a total of 86 kinds of criminal case under the jurisdiction of the economic crime investigation department of the public security authorities, among which the case filing and prosecution criteria for 48 kinds of cases are newly enacted or improved with supplements and amendments based on the combination

of all factors. For example, the case filing and prosecution criteria for the crime of organization and leadership of the activities of pyramid sales are added in accordance with “Amendment VII to the Criminal Law” and that for the crime of tax evasion has been adjusted significantly.

Law Enforcement Authorities Make Rules Of Evidence Clear

The Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice have jointly issued two circulars, requiring law enforcement authorities at all levels to perform their duties with an accountable attitude towards people and history, to strictly carry out the Criminal Law and the Criminal Procedure Law, to punish crime and protect human rights in accordance with the law, to ensure that each case handled shall stand the test of history. One of the circulars, the “Provisions on Certain Issues concerning the Review and Judgment of Evidence in the Trial of Death Penalty Cases”, provides the basic principles of criminal evidence, specifies the standard of proof for capital cases in detail and also further regulates the collection, review & judgment and use of various types of evidence. Another circular, the “Provisions on Certain Issues concerning the Review and Judgment of Evidence in the Trial of Criminal Cases”, stresses that the oral evidence obtained by using torture and other illegal means shall not be taken as a basis for judgment of a case. In addition, it stipulates specific criteria for procedures on the review and exclusion of illegal evidence, the burden of proof, appearance of the questioned personnel, etc.

Legal Comments

A Way to Avoid and Resolve Quality Disputes Faced in Trade with Chinese Suppliers

By Paul Huang and Aileen Weng

While purchasing products from numerous Chinese suppliers, foreign companies occasionally find themselves involved in trade disputes with these suppliers, and particularly, a high proportion of the foregoing disputes are caused by quality defects. Cenlaw & Partners has recently been appointed to represent three different foreign clients involved in similar trade disputes relating to quality problems. Quality dispute in foreign trade is one common issue that might be solved effectively through reasonable ways. Our lawyers are delighted to provide some analysis and advice on the approaches to avoid the disputes and the strategies in dispute resolution of this category.

1. UNDERSTANDING THE CHINESE SUPPLIERS AND THE GOODS

First and foremost, precautions measures are always the best way to effectively control risks in international trading. For purchasers, price of goods is not always the first concern. Before making an order or purchasing relevant goods required, the investigation on the good will and reputation of the supplier or the understanding of the target goods and the brand thereof are of crucial importance.

A best way to investigate a Chinese supplier is to visit them in person. However, if visiting in person is not feasible, some tips are quite useful for the foreign purchaser:

a. Check the contact information of the supplier

If even the contact information is wrong, the supplier will probably be a company with low credibility.

b. Check the supplier with local administration of industry and commerce (AIC)

Check the supplier on the website of local AIC. Many websites of local AIC offer a quick check on the basic information of a company.

c. Be cautious over incredibly low prices

In case the price of goods offered by the supplier is incredibly low compared with quotations from other suppliers, the purchaser should be careful about the quality, or whether the goods are fake products.

2. SET FORTH DETAILED PROVISIONS CONCERNING GOODS IN AGREEMENT

We advise international purchasers set forth detailed provisions concerning the brand,

standard, quality and warranty and after sale services of products in the agreement with Chinese suppliers to avoid the potential disputes over the quality of products. And particular attention should be paid to:

a. Inspection Institution

In international trade, the sellers and buyers are always situated in different countries or regions, The purchasers may find themselves in dilemma as the arbitration commission or court might not accept the testing results detected in other countries. However, the goods are always not feasible to be transported back to China.

Therefore, the parties should stipulate the inspection institution, standard, testing method, inspection responsibility and validity in the contract.

b. Sales by Sample

Currently, it is the common practice that both sides agree to submit the sample to a third party, once the quality dispute comes about, the quality standard shall subject to the sealed samples of the third party.

However, Chinese law also stipulates " In a sale by sample, if the buyer is not aware of a latent defect in the sample, the subject matter delivered by the seller shall nevertheless comply with the normal quality standard for a like item, even though the subject matter delivered complies with the sample." Therefore, sales by sample still need sample quality specifications besides the sealed sample.

3. INSPECTION AND NOTIFICATION

a. Timely Inspection

Under Article 157 of the Contract Law of the People's Republic of China (the Contract Law), upon receipt of the goods, the buyer shall inspect it within the agreed inspection period. Where no inspection period is agreed, the buyer shall timely inspect the goods.

Also under Article 38 of UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG), the buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

b. Notification of Quality Problem

- (1) Where the parties have agreed upon an inspection period, the buyer shall notify the seller of any non-compliance in quantity or quality of the goods within such inspection period.

Where the buyer delayed in notifying the seller, the quantity or quality of the subject matter is deemed to comply with the contract.

- (2) Where no inspection period is agreed, the buyer shall notify the seller within a reasonable period, commencing on the date when the buyer discovered or should have discovered the quantity or quality non-compliance.

Under CISG, the buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

4. SECURITY MEASURES OVER EVIDENCES

If any problems are found during the inspection over the goods, the purchaser should take security measures over relevant evidences

The foreign purchaser needs to properly keep the evidences for the quality disputes:

- agreement executed with the Chinese supplier,
- communications between the two parties,
- the payment statement
- the sample in case of a sales by sample
- the goods in problem
- inspection report
- other evidences required

5. GOVERNING LAW AND DISPUTE RESOLUTION

a. Governing Law

(1) Chinese Law

Where the parties involved have no agreement on governing law or the governing law clause is invalid, Chinese law is frequently chosen as the governing law for many cases of this type under the closest connection doctrine. The most important PRC laws in this regard include;

The Contract Law of the People's Republic of China (the Contract Law)

General Principles of the Civil Law of the People's Republic of China (the Civil Law)

(2) Law of Another Country

Under some circumstances where the parties both agree or chosen by the court or arbitration tribunal, law of another country may be applicable instead of the Chinese laws.

(3) International Conventions

International Conventions play a critical part in the international trade arena, the most important international convention on international trade is: UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG). China is one member state of CISG.

Pursuant to Article 142 of the Civil Law, where there are any discrepancies between PRC Laws and CISG, CISG shall prevail.

Parties to an international trading agreement should identify and determine the relevant governing law. Foreign parties to an international trade agreement with Chinese suppliers still often prefer to choose another legal system they are familiar with and certain of. However, generally speaking, the content of Chinese law is within the normal expectations

of most foreign parties.

When choosing the law of another country as governing law, it should not be in conflict with “public interests” of China, nor should it attempt to avoid Chinese mandatory laws and regulations¹.

b. Dispute Resolution

(1) Arbitration

As it is unusual for parties to agree on arbitration after the occurrences of quality disputes, the parties should conclude an arbitration clause beforehand.

In China, a valid arbitration agreement must reflect a clear intent to arbitrate and clearly identify the arbitration commission.

Compared with litigation, arbitration is preferred by foreign parties in international trade as it's time-saving and final. However, international arbitration awards may face some risks in execution in China.

(2) Litigation

With the improvement in Chinese judicial system, litigation is becoming increasingly used to solve disputes of quality disputes faced by foreign parties with Chinese suppliers. And in litigation procedures in China, the enforcement problem for arbitration no longer restricts the foreign party.

By taking appropriate precaution measures, foreign companies may effectively avoid quality disputes and even in the event that any dispute arises, the foreign companies may find themselves in favorable position.

¹ *The Provisions of the Supreme People's Court on Certain Issues Concerning the Proper Law When Trailing Cases regarding Disputes about Civil and Commercial Contracts Involving Foreign Elements*

A Study on the Provisional Measures Regarding Environmental Management of the Soil of Contaminated Sites (Draft for Comments)

By Honghui Hu (Partner of Cenlaw)

The Ministry of Environmental Protection (the MEP) of the People's Republic of China released recently the Provisional Measures on Environmental Management of the Soil of Contaminated Sites (Draft for Comments) (the Measures). CENLAW hereby summarizes the Measures as follows and offers some practical advice to tackle the situation under the new rules.

1. Definition of Contaminated Soil

Under the Measures, contaminated soil might be caused by three reasons: (1) toxic and harmful materials; (2) abandoned materials; (2) mining. It can be concluded that sites of ordinary factories and enterprises may not be recognized as contaminated soil. Real estate developers are advised to be cautious when investing in relevant land.

2. Scope of the Measures

The Measures apply to the procedures of alteration of land use right (LUR) or alteration of land use mode (LUM), to which effect management on contaminated soil is only required when transferring land. However, in practice, remediation of contaminated sites is of high importance even under the circumstances where no alteration is made to LUR or LUM, for example, establishing offices, dormitories or canteens in the existing factories.

3. The party causes contamination or owner of LUR shall be held liable for the pollution of soil. Where the assignee of land use right accepts land without making environmental assessment on the same, it may bear the risks for relevant investigation and remediation expenses. Assignee of potentially contaminated site should (1) conduct environmental due diligence on the land to be transferred; (2) set forth reasonable and detail provisions with regard to follow-up treatment, bread-down of expense and default liabilities in the transfer agreement, and include environment remediation provisions in the agreement where necessary.

4. In the event that no responsible party is identified, the government shall pay the expenses for site remediation. Nevertheless, the basis and deadline of identification are not stated in the Measures, which means the government may identify responsible person at any time and recover the expense from the responsible party.

5. The Measures solely prescribe "investigation and assessment before alteration of LUM", without prescriptions in relation to "investigation and assessment before transfer of LUR", which may be construed that the former is compulsory while the latter remains voluntary. In this regard, it is critical that the assignee of land decides on whether to conduct investigation and assessment on the land when receiving the land, which might exert influence on the follow-up cost of land after transfer.

6. Pursuant to the Measures, the responsible party should appoint a qualified agent in investigation before alteration of LUM. As the only method to be adopted for investigation is soil sampling, the investigation method, investigation procedures and conditions for re-investigation are of great significance and are supposed to be set forth in the appointment agreement between the responsible party and the investigation agent, with a purpose of ensuring the authenticity of data and reducing expenses in the future.

7. According to the Measures, “investigation and assessment,” “treatment and remediation” and “supervision” enterprises are required to have proper qualifications, without prescribing the details of the said qualifications. Therefore, the appointer, relevant companies involved should attach great importance to the qualification application and approval procedures in order to share the contamination remediation market promptly after the promulgation of detailed qualification standards. From the point of view of an experienced lawyer in real estate and construction sector, the technologies regarding remediation of contaminated sites must be connected with the construction sector, and the MEP and Ministry of Construction might be jointly responsible for relevant approval of qualifications.

8. The Measures have provisions regarding the prevention of secondary contamination. The identification of the party that cause relevant secondary contamination (the investigation and assessment agent, constructor or the owner), and the breakdown of responsibilities and expenses may bring complexity to site remediation agreement.

9. Standards for Acceptance and Completion

According to the Measures, a third party institution shall be liable for final acceptance. The uncertainty of whether the previous investigation and assessment agent is allowed to conduct acceptance, and the standards, procedures thereof will cause risks to relevant enterprises.

10. The promulgation of the regulation regarding soil contamination remediation will provide high-tech enterprises with abundant development opportunities.

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

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