



China Legal Update – September, 2009

The purpose of all materials in our update is to update you on business and legal developments and permit you to learn more about our office, our services and our experience. The information presented is not legal advice, is not to be acted on as such, may not be current and is subject to change without notice. No one is allowed to print, reprint, translate or reproduce without our prior written consent.

New Laws:

1. **Measures on the Administration of Food Trading Licenses**
2. **Measures on the Administration of Food Safety Supervision in Circulation Links (Advertisements)**
3. **Implementing Rules of the Regulations on the Administration of Commercial Performances**
4. **Measures for the Administration of Taxation on Non-residents Claiming for Preferential Treatment under Double Taxation Treaties**

General News:

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2. **Large Solar Power Program Starts in Central China**

New Laws:

1. Measures on the Administration of Food Trading Licenses

Authority: The State Administration for Industry and Commerce

Date of Promulgation: 30/07/2009

Effective Date: 30/07/2009

The State Administration for Industry and Commerce has issued the "Measures on the Administration of Food Trading Licenses" (the Measures) which provide that a party who wishes to trade in foodstuffs shall acquire a food trading license before acquiring a business license.

The food trading license shall be valid for 3 years. A licensee who has acquired a food trading license by deception, bribery or other improper means shall be prohibited from making application for a license for a 3 year-period.

The criteria for a license include that (i) the business premises are safe such that equipment and facilities for sterilization and ventilation as well as prevention of germs, dust and pests are installed and that (ii) reasonable working procedures are established under the supervision of the full-time managers and work methods. The food trading license covers the business location, management personnel and the permissible business scope.

2. Measures on the Administration of Food Safety Supervision in Circulation Links (Advertisements)

Issuing Authority: The State Administration for Industry and Commerce

Date of Promulgation: 30/07/2009

Effective Date: 30/07/2009

The State Administration for Industry and Commerce (SAIC) has issued the "*Measures on the Administration of Food Safety Supervision in Circulation Links*", under which the content of food advertisements shall be true and lawful, and may not be falsified or exaggerated or involve disease prevention or medical benefit assertions.

It is particularly stated in the Measures that if any social group or other organization or individual recommends any food to consumers in a false advertisement causing consumers' legitimate rights and interests to be damaged, such group or organization or individual shall be jointly and severally liable together with the food manufacturers and operators.

The Measures have also listed 13 types of food stuffs prohibited from operation. The list is as follows:

- 1) Food produced by non-food raw materials, chemical substances other than permitted food additives or recycled food as raw materials and other food harmful to human health;
- 2) Food which contains more than the limited standard of pathogenic micro-organisms, pesticide residues, veterinary drug residues, heavy metals, pollutants and other substances;

- 3) Nutrients that do not meet food safety standards specifically for infants and young children, and other specific groups of primary and secondary food;
- 4) Food that is spoiled, rancid, mildewed insect infested, mixed with foreign matter, adulterated, or doped with abnormal sensory characteristics of food;
- 5) Ill or dead, poisoned poultry, livestock, wild animals, aquatic animals, meat and products;
- 6) Meat products which have failed inspection or testing;
- 7) Food contaminated by packaging materials, containers, vehicles;
- 8) Food which exceeds the shelf life period;
- 9) Pre-packaged food without labels;
- 10) Food banned from production for national disease prevention measures;
- 11) Food labels and instructions which do not meet the requirements in the Article 48 (3) of "Food Safety Law";
- 12) Food without food labels and instructions or the food labels and instructions do not meet the requirements in the Article 66 of " Food Safety Law";
- 13) Others food products which do not meet food safety standards or requirements.

Where the advertised price of the food product in an illegal operation is less than RMB10,000, a fine shall be imposed from RMB2,000 up to RMB50,000; where the price exceeds RMB10,000, a fine shall be imposed between 5-10 times of the food product price; and where the case is particularly serious, the business permit shall be revoked.

3. Implementing Rules of the Regulations on the Administration of Commercial Performances

Issuing Authority: The Ministry of Culture

Date of Promulgation: 03/09/2009

Effective Date: 01/10/2009

The Ministry of Culture has amended and released the *"Implementing Rules of the Regulations on the Administration of Commercial Performances"* (Order No.47 of the Ministry of Culture and hereinafter referred to as the "Implementing Rules") with effect from 1 October 2009.

Broker activities such as contracting to supply performers, promotion and agency will be subject to the administration of the Implementing Rules: any one engaged in the contracting or brokerage of stage performers, promotion, agency and other broker business shall obtain a license for commercial performances in accordance with the prescribed conditions and procedures.

The Implementing Rules have also clarified the establishment procedures for Hong Kong and Macau wholly-owned performance broker institutions, and have simplified the relevant approval procedures for performances, set out the procedures for inspection and accepting the construction quality of temporary

stages and sets as well as strengthening the restrictions on lip syncing and fake performances and administration of penalties.

4. Measures for the Administration of Taxation on Non-residents Claiming for Preferential Treatment under Double Taxation Treaties

Issuing Authority: The State Administration of Taxation

Date of Promulgation: 24/08/2009

Effective Date: 01/10/2009

The State Administration of Tax (SAT) has issued Circular 124 that further regulates tax administration for non-residents enjoying preferential tax treatment provided by double tax treaty arrangements on their income in China.

Where the non-residents would like to enjoy the tax preferential treatment according to the following articles under the Tax Treaty Arrangements, they shall apply to the competent Tax authority:

1. Dividends Article under the Tax Treaty Arrangements
2. Interests Article under the Tax Treaty Arrangements
3. Royalty Article under the Tax Treaty Arrangements
4. Property Income Article under the Tax Treaty Arrangements

The required documents for the application are as follows:

1. Application form of non-resident's claim for treatment under Double Taxation Agreement;
2. Personal Information form of non-residents claiming for treatment under Double Taxation Agreement;
3. Qualification of taxpayers as a fiscal resident of the last fiscal year by the tax authority of the other contracting party ;
4. Relevant title certificates, contract, agreements, payment receipts or other proof issued by the qualified agents or public notaries relating to the income;
5. Other documents required by the tax authority.

Relevant bilingual application forms are available at the below website:

<http://www.chinatax.gov.cn/n8136506/n8136593/n8137537/n8138502/9248284.html>

Documentation needs to be filed with the local competent tax bureau for a pre-approval process lasting up to 40 days, with a further 10 days if additional investigation be required. If no response of the tax

bureau is provided at the expiration of the 50 days, the application shall be deemed as having been approved.

However, should the applicant be asked to submit further documentation, this shall not be considered as part of the pre-approval period.

Circular 124 also permits random investigation of cases. The circular tightens considerably the application requirements and procedures for applying for tax treaty status and requires more disclosure.

It should be noted that these requirements now also allow the SAT to look into special purposes entities or offshore company transactions. It is recommended that non-residents shall seek professional advice when completing such documentation for the local tax authorities.

News Items:

1. International Fair for Investment, Trade Opens in Xiamen

The 13th China International Fair for Investment and Trade (CIFIT) opened in Xiamen on 8 September.

Ma Kai, state councilor and secretary general of the State Council, used a key to symbolically open a door to a hall in the fair's main venue.

The ceremony to mark the start of the fair also saw the presence of Li Wuwei, vice chairman of the National Committee of the Chinese People's Political Consultative Conference, Minister of Commerce Chen Deming, and Edmund Ho Hau Wah, chief executive of China's Macao Special Administrative Region.

With the theme of boosting cross-border investment and pushing forward economic recovery, this year's fair has attracted 13,000 overseas businessmen, a record number, the CIFIT organizing committee said. The fair this year covers 60,000 square meters, 8,000 square meters more than last year, with 2,800 exhibition booths, making it the largest in the fair's history. Addressing the opening ceremony, Chen Deming said the 13th CIFIT highlighted greater international features and was of special significance, attracting nearly 50,000 guests from more than 100 countries and regions. A total of 23 forums are expected to be held, covering themes such as service outsourcing, government procurement, trade facilitation, green industry, risks control, and international investment protection. The fair is sponsored by the Ministry of Commerce and organized by Fujian provincial government, the Xiamen city government and the MOC Investment Promotion Bureau, with support from five international organizations. Launched in 1997, CIFIT has become one of China's most influential international platforms for the promotion of investment.

2. Large Solar Power Program Starts in Central China

Construction of a large solar power project with an investment of USD 450 million was launched on 30 August in Wuhan, the capital of Hubei Province in central China.

The 500-megawatt project is a joint venture of Greenway Solar-Tech (China) Co. Ltd. and Evergreen Solar Inc. of the United States, according to Ding Kongxian, chief executive officer of Greenway Solar-Tech.

The project is scheduled to go into production in three years with an annual product value of 1 billion U.S. dollars to turn out products related to solar power industry.

Nasdaq-listed Evergreen Solar manufactures and markets solar power products, including solar cells, panels and systems. It finalized its agreement with Greenway Solar-Tech and the government of Wuhan City on July 30, 2009.