



Newsletter

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January 30, 2024

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Update

Asset Appraisal Not Required in Eight Situations, Said SASAC

The State-owned Assets Supervision and Administration Commission of the State Council (SASAC) released on January 30, 2024 the *Circular on Improving Asset Appraisal Management in Centrally-administrated State-owned Enterprises* (the “Circular”), which is attached with the Guidelines for Centrally-administrated State-owned Enterprises to Review Valuation Reports. The Circular will come into effect on January 30, 2024. The Circular aims to fuel the layout optimization and structural adjustment of the public economy, help enterprises realize high-quality development, and improve enterprises’ State-owned asset appraisal management.

The Circular proposes for the first time that centrally-administrated State-owned enterprises (central SOEs) should implement classification management on asset appraisal projects. It lists eight situations

under which asset appraisal may not be required, as scattered in existing institutional documents, including one related to sale or leasing of housing of which the market prices can be known through the public market, provided that the transaction must be conducted through public quote. The Circular clarifies five situations for the application of valuation reports, calling on central SOEs to develop the asset appraisal management system, and improve the ways of trading, circulating and pricing such assets including intellectual property rights, technological achievements, and data assets. The Circular also clarifies some hot issues commonly seen in enterprises' State-owned asset appraisal management.

China Deploys Tasks to Promote Innovation-driven Development of Future Industries

The Ministry of Industry and Information Technology (MIIT) released on January 29, 2024 the *Guidelines on Promoting the Innovation-driven Development of the Future Industries* (the "Guidelines"), which came into effect on January 18, 2024.

The Guidelines lay out 16 major tasks in six aspects, proposing development objectives revolving around technological innovation, product breakthroughs, enterprise cultivation, scenario development and industrial competitiveness for the period from 2025 to 2027. According to the Guidelines, policies would be unveiled for the development of brain-computer interface, quantum information and other professional fields. A complete policy system would be established for future industries. An action plan for centrally-administrated State-owned enterprises to lead in the development of future industries would be launched. The Guidelines also call for investing in technology-based enterprises in earlier stage, funds of small scale and hard technologies, improving financial and tax policies, guiding localities to set up special funds for future industries, exploring to set up special risk compensation funds, and optimizing other risk compensation measures such as risk provision funds.

Shanghai Supports Pudong, Lin'gang and Other Three Areas in Building a Cluster of Producer Online Service Platforms

Shanghai Municipal People's Government released on January 30, 2024 the *Circular on Issuing Measures to Support Pudong New Area and Other Four Areas in Building a Cluster of Producer Online Service Platforms* (the "Circular"), in which the government introduces policy measures for the five areas including Pudong New Area, Baoshan District, Putuo District, Lin'gang Special Area and Hongqiao International Central Business District. The Circular came into effect on January 15, 2024.

The Circular proposed for Pudong New Area includes gathering high-capacity platform enterprises, attracting and fostering service-oriented platform enterprises, encouraging service-oriented platform enterprises to establish regional headquarters of multinational companies, large enterprise headquarters, operation headquarters and regional headquarters by rewarding them based on their comprehensive contributions, and strengthening the cooperation of service platforms in the "Belt and Road" initiative. The Circular for Lin'gang Special Area includes encouraging domestic and foreign platforms to set up headquarters in the area, supporting settlement and development of related platforms with rewards for their comprehensive contributions to social development, rental subsidies, and capacity promotion awards, and supporting institutional innovation for cross-border data flow.

State Council Executive Meeting Pledges to Enhance the Quality and Investment Value of Listed Companies

Premier Li Qiang chaired a State Council executive meeting on January 22, 2024, listening to the reports on the capital market operations and work considerations, studying and arranging for new industrialization with artificial intelligence, and discussing several draft laws.

The meeting stressed the need to improve the capital market's fundamental system further, paying more attention to maintaining a dynamic balance between investment and financing, enhancing the quality and investment value of listed companies, increasing flows of medium and long-term funds into the market, and strengthening the market's inherent stability. The meeting pledged to boost capital market regulation and take stronger, more effective measures to stabilize the market.

The meeting also deliberated and adopted the Guidelines for Promoting the High-Quality Development of the Instant Delivery Industry, made arrangements for facilitating new industrialization with artificial intelligence, discussed the Atomic Energy Law of the People's Republic of China (Draft) and the Anti-money Laundering Law of the People's Republic of China (Draft Revision), which will be submitted to the Standing Committee of the National People's Congress for review.

GAC Issues Provisions on Procedure for Administrative Reconsideration Cases

The General Administration of Customs (GAC) recently issued the *Provisions on the Procedure for the Trial of Administrative Reconsideration Cases by Customs of the People's Republic of China* (the "Provisions"), which will take effect on March 1, 2024.

The Provisions consist of 38 articles in six chapters, including General Provisions, Application for Administrative Reconsideration, Acceptance to Handle Administrative Reconsideration, Trial of Administrative Reconsideration Cases, Decision on Administrative Reconsideration, etc. The Provisions specify that if citizens, legal persons, or other organizations which believe that the normative documents on which the administrative actions taken by customs are based are illegal, they may also submit an application for the review of such normative documents when applying for administrative reconsideration of the administrative actions. Citizens, legal persons, or other organizations which believe that customs administrative actions have infringed upon their legitimate rights and interests may apply for administrative reconsideration within 60 days from the date upon which they know or ought to know such administrative actions, except where the application deadline specified by law exceeds 60 days.

Shanghai Starts a New Round of High-standard Opening-up for Cross-Border Trade and Investment

To implement the No.30 (2023) Document issued by the Shanghai Municipal People's Government, the State Administration of Foreign Exchange Shanghai Branch issued on January 23, 2024 the *Circular of the State Administration of Foreign Exchange Shanghai Branch on Carrying out High-Standard Pilot Opening -up for Cross-Border Trade and Investment* (the "Circular"), which came into effect on January

19, 2024.

The Circular consists of five detailed implementation rules, including one for the current account, and four for the capital account. Among them, the four detailed implementation rules related to the capital account specify the implementation plan for pilot policy measures, including the sharing of external debt quotas between parent and subsidiary companies in financing leasing, exemption from registration of domestic reinvestment by foreign-invested enterprises, direct handling of registration procedures for borrowing external debts by qualified non-financial enterprises with banks, and direct handling of registration procedures with banks by qualified non-financial enterprises to go public overseas.

CSRC Improves Institutional Design to Build an Investor-centered Capital Market

In a recent media interview, Wang Jianjun, Vice Chairman of the China Securities Regulatory Commission (CSRC), responded to the increased volatility of a less fluctuating capital market, making it clear that CSRC will strive to build an investor-centered capital market.

Wang said that market investment and financing are two sides of the same thing and that CSRC will place greater emphasis on investor centricism, run this idea through the whole process of market system design and regulatory enforcement and accelerate the improvement of the institutional mechanism for investor protection. As for institutional design, the CSRC will vigorously improve the quality of listed companies, leverage the role of securities and fund institutions, sort out and enhance the basic institutional arrangements; energetically promote listed companies to better repay investors through repurchase and cancellation, increased dividend distribution, and other means. Wang iterated that “a stock market is only more sustainable if its long-term returns are higher than the returns on deposits and bonds”. The CSRC will establish a sound evaluation mechanism for sponsoring institutions, highlight the quality assessment of their sponsored companies, especially the assessment of their returns to investors; comprehensively evaluate the issuance pricing, inquiry and other mechanisms, support more investors to participate, improve the quantitative trading supervision system that is suitable for China’s national and market conditions, enhance and optimize the institutional rules on holdings reduction, securities lending, refinancing, and so on.

China Unveils Plan for Comprehensive Reform of Pudong New Area

The General Office of the CPC Central Committee and the General Office of the State Council recently issued the Implementation Plan for the Pilot Comprehensive Reform of the Pudong New Area (2023-2027). The Plan, with 23 articles in seven aspects, aims to support the high-level reform and opening up of Pudong New Area, as well as efforts to build Pudong into a leading area for socialist modernization.

The plan calls for new measures to build a high-level market access system in the Pudong New Area, and consideration of ways to ease the foreign access restrictions in telecommunications services, health care and other services. It supports efforts to explore the system for separating the rights to hold data resources, the rights to process and use data and the rights to run data products, explore to allow parties involved in foreign-related commercial disputes in Pudong New Area to agree on their discretions to the application of

the specific arbitration rules in Pudong New Area, and pilot the use of digital Renminbi in trade settlement, e-commerce payment, carbon trading, green electricity trading and other areas. It also urges to test data assets management, and international certification of digital identity, improve the institutional arrangements in the capital markets for listing, financing, mergers and acquisitions of sci-tech enterprises, study to launch new options on the STAR Market, and fully implement the notification and commitment system for administrative licensing based on corporate credits.

Article(s)

The Supreme Court and the Supreme Procuratorate Jointly Issued the Interpretation on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Refusal to Execute Judgments or Rulings

by Sophie Chen

The Supreme Court and the Supreme Procuratorate Jointly Issued the *Interpretation on Several Issues Concerning the Application of Law in the Handling of Criminal Cases of Refusal to Execute Judgments or Rulings* (“Interpretation”), which will be effective on December 1, 2024. This interpretation consists of 16 articles, replacing the 8-article version issued in 2015, and imposes additional restrictions on judgment debtors.

This Interpretation builds upon the *Interpretation of Article 313 of the Criminal Law* issued by the Standing Committee of the National People’s Congress in 2002. It further enumerates ten circumstances classified as “having the ability to execute but refusing to do so, with serious consequences”. Key scenarios include: maliciously and gratuitously disposing of property rights by abandoning claims or claim guarantees, maliciously extending the performance period of matured claims, or disposing of property rights through fraudulent settlements or transfers, thereby resulting in the inability to execute judgments or rulings; engaging in malicious acts that significantly diminish liable assets, such as purchasing others’ property at obviously unreasonable high prices or providing guarantees for others’ debts, thus rendering judgments or rulings unenforceable; refusing to fulfill obligations to cooperate in exercising personal rights, even after being subjected to coercive measures such as fines or detention, and causing judgments or rulings to remain unenforceable under aggravated circumstances.; obstructing enforcement personnel from accessing execution sites through methods such as intimidation, insults, crowd disturbances, or threats, which leads to the inability to carry out enforcement work under severe circumstances.

This Interpretation specifies five circumstances in which judgment debtors, despite having the ability to execute, refuse to do so under serious conditions. These include: obstructing enforcement by means of fraudulent litigation, fraudulent arbitration, or fraudulent notarization, resulting in the judgment or ruling being inexecutable; mobilizing crowds to storm the execution site, thereby preventing enforcement work from being carried out; using violent methods such as besieging, detaining, or assaulting enforcement personnel, which renders enforcement efforts impossible; refusal to execute resulting in severe consequences, such as the applicant for enforcement committing suicide, self-harming, or causing other serious harm; other circumstances that are considered particularly serious.

This Interpretation stipulates that if judgment debtors in order to evade their enforcement obligations, engage in actions such as concealing or transferring assets after the lawsuit has begun but before the judgment becomes final, and it is verified after the judgment or ruling becomes effective, then their refusal to execute the judgment despite having the ability to do so may be considered as refusal to execute with serious circumstances. In such cases, such party can be criminally prosecuted under the charge of refusal to execute a judgment or ruling.

This Interpretation provides that if a third party, knowing that judgment debtors have the ability to do so but refuses to comply with the court's judgment or ruling, conspires with such judgment debtors and assists in actions such as concealing or transferring assets to evade execution, thus preventing the judgment or ruling from being enforced, the third party will be treated as an accomplice in the crime of refusal to execute a judgment or ruling and held criminally liable.

This Interpretation clarifies circumstances for both aggravated and mitigated penalties in criminal cases. For aggravated circumstances, this Interpretation stipulates that refusal to execute judgments or rulings involving payments for alimony, child support, maintenance, compensation for dependents, medical expenses, wages, and similar obligations, when constituting a crime, should be subject to stricter punishment in accordance with the law. For mitigated circumstances, this Interpretation provides that if the defendant fulfills all or part of their enforcement obligations before the prosecution is initiated and the criminal offense is minor, the case may not be prosecuted according to law. If the defendant fulfills all or part of their enforcement obligations before the first-instance judgment is announced and the criminal offense is minor, a lighter penalty or exemption from punishment may be applied in accordance with the law.

This Interpretation stipulates that when prosecuting a defendant for the crime of refusal to execute a judgment or ruling, any property unlawfully disposed of by the defendant through intentional damage, gratuitous transfer, disposal at an obviously unreasonable price, or fraudulent transfer shall be subject to recovery or restitution according to law. The recovered or restituted property shall be handed over to the enforcement court for lawful disposition. The People's Procuratorate is required to review the handling of the assets involved in the case based on the investigation and transfer materials and to provide clear recommendations regarding the disposal of such assets when filing the public prosecution. The Court must issue a judgment in accordance with the law and determine the disposition of the involved assets.

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