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PRC STATE COUNCIL BULLETIN

No 28, 20 OCTOBER 1985

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CHINA REPORT

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PRC STATE COUNCIL BULLETIN

No 28, 20 OCTOBER 1985

Beijing ZHONGHUA RENMIN GONGHEGUO GUOWUYUAN GONGBAO [PRC STATE COUNCIL BULLETIN] in Chinese No 28, 20 October 1985

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CONTENTS

Premier Zhao Ziyang's Toast at National Day Reception (30 September 1985) [previously published in FBIS-CHI-85-190, 1 October 1985, pp K1-2]

Congratulatory Message From the CPC Central Committee, the NPC Standing Committee, and the State Council on the 30th Anniversary of the Founding of the Xinjiang Uygur Autonomous Region (1 October 1985) [previously published in FBIS-CHI-85-191, 2 October 1985, p T-1]

State Council Circular on the Approval and Circulation of the Provisional Regulations of the State Economic Commission and the State Commission for Restructuring the Economic System Concerning Some Questions on Instilling Greater Vitality in Large and Medium-sized State Industrial Enterprises (11 September 1985) [previously published in FBIS-CHI-85-186, 25 September 1985, pp K12-13]

Provisional Regulations of the State Economic Commission and the State Commission for Restructuring the Economic System Concerning Some Questions on Instilling Greater Vitality in Large and Medium-sized State Industrial Enterprises (11 September 1985) [previously published in FBIS-CHI-85-184, 23 September 1985, pp K-18-22]

Provisional Regulations on Bonus Tax (20 September 1985) [previously published in FBIS-CEA-85-098, 6 November 1985, p P-39]

State Council General Office Circular on the Approval and Circulation of the "Provisional Regulations on the Automobile Trading Market of the State Administration for Industry and Commerce (11 September 1985) [not translated]

Provisional Regulations on the Automobile Trading Market of the State Administration for Industry and Commerce (11 September 1985) [not translated]

President Li Xiannian's Message of Sympathy to the Mexican President on the Earthquake (20 September 1985) [not translated]

Congratulatory Message of President Li Xiannian and Premier Zhao Ziyang to Bangladesh President on the 10th Anniversary of the Establishment of Diplomatic Relations Between China and Bangladesh (3 October 1985) [previously published in FBIS-CHI-85-192, 3 October 1985, p F-1]

Premier Zhao Ziyang's Congratulatory Message to the World Federation of UN Associations on the Occasion of the Opening of the 30th Plenary Assembly of the Organization (30 September 1985) [previously published in FBIS-CHI-85-189, 30 September 1985, p A-2]

Premier Zhao Ziyang's Congratulatory Message to Nikolay Ryzhkov on His Assumption to the Post of Chairman of the Council of Ministers of the Soviet Union (29 September 1985) (Summary)..... 1

PRC Foreign Ministry Statement (2 October 1985) [previously published in FBIS-CHI-85-192, 3 October 1985, p I-1]

PRC Foreign Ministry Spokesman's Statement on South Korea's Failure to Return the Crew of a Chinese Military Aircraft (30 August 1985) [previously published in FBIS-CHI-85-169, 30 August 1985, p D-1]

Statement by the Spokesman for the Family Planning Commission on the U.S. Agency for International Development's Attack on China's Population Policy (27 September 1985) [not translated]

Joint Communique of China and Grenada on the Establishment of Diplomatic Relations (1 October 1985) [previously published in FBIS-CHI-85-191, 2 October 1985, p J-1]

Regulations Governing the Examination and Approval of the Introduction of Technology (Approved by the State Council on 26 August 1985, promulgated by the Ministry of Foreign Economic Relations and Trade on 1 October 1985) 2

Provisional Regulations Governing Patent Representation (Approved by the State Council on 4 September 1985, Promulgated by the Patent Bureau on 12 September 1985)..... 7

Detailed Rules of the Provisional Regulations on Bonus Tax for State Enterprises (Promulgated by the Finance Ministry on 12 September 1985) [not translated]

Detailed Rules of the Provisional Regulations on Wage Adjustment Tax for State Enterprises (Promulgated by the Finance Ministry on 18 September 1985) [not translated]

State Council Approval of a Request by the Yunnan Provincial People's Government to Rename Benglong Nationality Deang Nationality (17 September 1985) [previously published in FBIS-CHI-85-189, 30 September 1985, p C-1]

Appointments and Removals by the PRC President (29 September 1985) [previously published in FBIS-CHI-85-189, 30 September 1985, p B-1]

ZHAO ZIYANG GREETES RYZHKOV ON APPOINTMENT

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 20 Oct 85 p 960

[Premier Zhao Ziyang's Congratulatory Message to Nikolay Ryzhkov on His Assumption of the Post of Chairman of the Council of Ministers of the Soviet Union]

[Text]

Moscow

The Council of Ministers of the Soviet Union

Chairman Nikolay Ryzhkov,

I would like to extend my cordial greetings to you on the occasion of your being appointed as Chairman of the Council of Ministers of the Soviet Union. I wish you new achievements at this lofty post.

I hope that Sino-Soviet relations will be continuously improved and developed on the basis of the five principles of peaceful coexistence.

Zhao Ziyang, Premier of the State Council
of the People's Republic of China

Beijing, 29 September 1985

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CSO: 4005/609

REGULATIONS ON TECHNOLOGY IMPORT CONTRACTS

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 20 Oct 85 pp 963-966

[Regulations Governing the Examination and Approval of Contracts for the Introduction of Technology (Approved by the State Council on 26 August 1985, promulgated by the Ministry of Foreign Economic Relations and Trade on 1 October 1985)]

(Guohanzi [0948 4099 1316] (1985) No 131)

[Text] Article 1. The present Regulations are formulated in accordance with the "Regulations of the People's Republic of China Concerning the Management of Contracts for the Introduction of Technology," (published in issue No 16, 1985 of this Bulletin).

Article 2. The following types of contracts for the introduction of technology shall be examined and approved by the government according to the procedures prescribed in the present Regulations irrespective of the country to the supplying party, the source of funds, and the method of payment:

1. Contracts for the transfer of industrial property and know-how or licensing contracts;
2. Technological service contracts, including contracts for entrusting, or cooperating with, foreign enterprises to carry out feasibility studies or to make project designs, contracts for employing foreign geological prospecting teams or construction teams to provide technological service, and contracts for entrusting foreign enterprises to provide technological services for enterprise transformation, improvement in production processes or designs of products, quality control, and enterprise management, but not including contracts for employing foreigners to take up posts in Chinese enterprises;
3. Contracts for cooperative production which involve the transfer of industrial property and know-how or licensing, but not including contracts merely for the assembling of supplied parts or processing them according to given requirements;
4. Contracts for providing a complete set of equipment for a production line, workshop, or factory, which involve the transfer of industrial property and know-how, or licensing, and technological service;

5. Other contracts for the purchase of machinery, equipment, or goods, which involve the transfer of industrial property, know-how, licensing, and technological service, but not including contracts merely for the purchase or leasing of machinery and equipment, or the purchase of goods, for providing technical data such as operation manuals and maintenance instructions attached to machines, or for general maintenance service.

Article 3. Contracts for the introduction of technology from the foreign investing party or another foreign party which are signed by wholly foreign-owned enterprises, Chinese foreign joint ventures, or Chinese-foreign cooperative enterprises set up in the People's Republic of China, shall be examined and approved in accordance with the present Regulations.

Contracts in which the foreign investing party uses industrial property or know-how as capital stock shall be examined and approved in accordance with the "Regulations for the Implementation of the Chinese Foreign Joint Venture Law of the People's Republic of China" (published in Issue No 21, 1983 of this Bulletin) and the provisions of other relevant laws and administrative regulations.

Article 4. Contracts for the introduction of technology shall be examined and approved according to the following:

1. According to existing regulations on quotas, contracts of above-quota projects whose feasibility study report or document equivalent to a feasibility study report is approved by the State Planning Commission, shall be examined and approved by the Ministry of Foreign Economic Relations and Trade.

2. According to existing regulations on quotas, contracts of below-quota projects whose feasibility study report or document equivalent to a feasibility study report is approved by a relevant competent department of the State Council or a bureau directly under the State Council, shall be examined and approved by the Ministry of Foreign Economic Relations and Trade, or by a relevant competent department of the State Council or a bureau directly under the State Council authorized by the Ministry of Foreign Economic Relations and Trade; and all "Certificates of Approved Contracts for the Introduction of Technology" shall be issued by the Ministry of Foreign Economic Relations and Trade.

3. According to existing regulations on quotas, contracts of below-quota projects whose feasibility study report or document equivalent to a feasibility study report is approved by a province, autonomous region, municipality, special economic zone, coastal city open to the outside world, or city with province-level economic decision-making authority, shall be examined and approved by the respective department (committee or bureau) of foreign economic relations and trade. Contracts of projects whose feasibility study report or the document equivalent to a feasibility study report is approved by a city or county, shall be examined and approved by the department (committee or bureau) of foreign economic relations and trade of the province, autonomous region, or municipality in which the respective city or county is located.

4. With the exception of contracts stipulated in the second paragraph of Article 3 of the present Regulations, contracts for the introduction of technology signed by a wholly foreign-owned enterprise, Chinese foreign joint venture, or Chinese-foreign cooperative enterprise with a foreign investing party or another foreign party, shall be examined and approved by the department (committee or bureau) of foreign economic relations and trade of the province, autonomous region, municipality, special economic zone, coastal city open to the outside world, or city with province-level economic decision-making authority in which the enterprise is registered.

Article 4. The recipient party to a contract for the introduction of technology mentioned in the foregoing Article shall submit the following documents to the contract examination-approval department for examination and approval within 30 days after the contract is signed:

1. An application for approval;
2. A copy of the contract and the translated version of the contract;
3. Certificates of the legal status of both parties to the contract.

The examination-approval department may require the applicant to submit other documents or information needed for the examination of the contract if necessary.

Article 6. The examination-approval department shall pay attention to examining the following contents after receiving an application for the examination and approval of a contract:

1. Whether or not the contents of the contract conform with the approved feasibility study report or document equivalent to the feasibility study report on the project;
2. Whether or not the basic provisions of the contract is sound;
3. Whether or not the contract contains clear and reasonable stipulations concerning the industrial property of the technology to be transferred and the responsibilities and ways for resolving possible disputes arising from such transfer of industrial property;
4. Whether or not the contract contains reasonable stipulations concerning the required level of the technology to be transferred, including guarantee to the quality of the products produced with the said technology;
5. Whether or not the prices and method of payment of the contract are reasonable;
6. Whether or not the contract's stipulations concerning the rights, responsibilities, and obligations of various parties to the contract are clear, reciprocal and reasonable;

7. Whether or not the contract contains any promise about preferential treatment in taxation which is not approved by China's taxation departments;

8. Whether or not the contract contains any article which violates China's existing laws and regulations;

9. Whether or not the contract contains any article which does harm to China's sovereignty.

Article 7. The contract examination-approval department shall complete the work of examination and approval within 60 days after receiving the application for the examination and approval of a contract:

1. Once a contract is examined and approved, the examination-approval department shall issue a "Certificate of an Approved Contract for the Introduction of Technology" which is printed and given a serial number by the Ministry of Foreign Economic Relations and Trade.

2. If a contract is not approved after examination, the examination-approval department shall give an explanation as early as possible and shall ask the recipient party to the contract to negotiate with the technology supplying party to revise the contract before approving it.

To ensure smooth approval of the contract, the recipient party to the negotiation may solicit opinions from the examination-approval department concerning the main contents or some provisions of the contract before and during the negotiation or may apply for a pre-examination.

Article 8. After the contract for the introduction of technology is approved by the government, the examination-approval department shall submit to the Ministry of Foreign Economic Relations and Trade for registration a photocopy of the "Certificate of an Approved Contract for the Introduction of Technology" and the data concerned. Concrete stipulations concerning the submission of data shall be given in a separate circular by the Ministry of Foreign Economic Relations and Trade.

Article 9. In the course of fulfilling the contract for the introduction of technology, the "Certificate of an Approved Contract for the Introduction of Technology" or a photocopy of such a certificate must be produced before matters such as bank guaranty, letter of credit, payment, settlement of exchange, clearance of goods through the customs, tax payment, application for tax reduction or exemption are handled. The banks, customs, and taxation departments have the right to refuse handling the above-mentioned matters for those who fail to produce the "Certificate of an Approved Contract for the Introduction of Technology" or a photocopy of such a certificate.

Article 10. In the course of fulfilling a contract for the introduction of technology, if any substantive alteration of the contract is made, or if the contract term is extended, new application for examination and approval shall be made in accordance with relevant provisions prescribed in the present Regulations.

Article 11. Interpretation of the present Regulations shall be made by the Ministry of Foreign Economic Relations and Trade.

Article 12. The present Regulations shall come into force on the date of promulgation.

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CSO: 4005/609

PROVISIONAL PATENT AGENCY REGULATIONS

Beijing STATE COUNCIL BULLETIN in Chinese No 28, 20 Oct 85 pp 966-968

[Provisional Regulations Governing Patent Agency (Approved by the State Council on 4 September 1985, promulgated by the Patent Office on 12 September 1985)]

(Guohanzi (1985) No 138)

[Text] Article 1. The present Regulations are formulated for the purpose of implementing the provisions concerning patent agency prescribed in the "Patent Law of the People's Republic of China" (published in Issue No 6, 1984 of this Bulletin).

Article 2. Entrusted by the individual applying for a patent or another party concerned, a patent agency shall handle patent application and other patent matters in accordance with Articles 19 and 20 of the "Patent Law of the People's Republic of China."

Article 3. Patent agencies mentioned in the present Regulations include:

- 1) Patent agencies designated by the State Council;
- 2) Patent agencies established with the approval of a competent department of the State Council, or a patent administrative department of the people's government of a province, autonomous region, municipality, city open to the outside world, or a special economic zone;
- 3) Lawyers' offices authorized to handle patent agency matters by a patent administrative department of the people's government of a province, autonomous region, municipality, city open to the outside world, or special economic zone.

Patent agencies mentioned in 2) and 3) shall be reported by patent administrative departments to the Patent Office of the People's Republic of China for the record.

Article 4. Before acting for a client, a patent agency shall obtain from the client a written document, signed or sealed, clearly stating the limits of authority.

A patent agency shall charge for handling a client's matters according to regulations concerned.

Article 5. Patent agencies shall have patent agents to handle the following matters:

- 1) to provide advisory service related to patent matters;
- 2) to write patent application documents and to handle other matters related to patent application;
- 3) to request for substantive examination or to request for re-examination;
- 4) to handle matters concerning the raising of an objection or the request for declaring the invalidity of a patent right;
- 5) to handle matters related to the transfer of a patent right or a patent license;
- 6) other patent matters.

Patent agents may be employed as patent consultants.

Article 6. Any citizen of the People's Republic of China who has the right to vote and to be voted for according to law and who fulfills the following requirements may file an application for the registration as a patent agent with the Patent Office of the People's Republic of China:

- 1) A graduate of a specialized field of study from a college of science and engineering (or one with the same educational level) who has a good command of a foreign language and has more than 3 years' experience in scientific and technological work or more than 5 years' experience in other kind of work related to science and technology;
- 2) A person who has received training concerning the Patent Law and patent matters and who has acquired basic legal knowledge concerning patent agency work.

In addition to the requirements mentioned above, a person engaging in patent agency work involving foreigners must also be familiar with the laws and treaties of relevant countries and international laws and treaties concerning the protection of industrial property and must acquire a high proficiency in a foreign language.

Article 7. The Patent Office of the People's Republic of China, the Ministry of Justice, China's Council for the Promotion of International Trade and departments and organizations concerned shall establish a Patent Agents Assessment Committee to:

- 1) assess those who apply to be registered as a patent agent;
- 2) supervise and give guidance to patent agency work.

Article 8. If an applicant for the registration as a patent agent is found qualified by the Patent Agents Assessment Committee, and has acquired the qualifications of a patent agent, he shall be registered as a patent agent with the Patent Office of the People's Republic of China, and shall be given a Patent Agent Certificate.

Article 9. A patent agent shall perform duties at a patent agency and shall fulfill tasks assigned by the patent agency. He shall not undertake tasks entrusted directly by a client.

Article 10. A patent agent shall perform duties in accordance with law and with the protection by state laws. No individual or entity shall interfere with his work.

Article 11. The acts within the limits of authority of a patent agent shall have the same legal effect as acts of the person who has appointed him as a patent agent.

Article 12. A patent agent shall be obliged to keep secret the invention-creation which he has come to know in his professional activities unless the invention-creation has been promulgated and announced.

Article 13. The Patent Agents Assessment Committee has the right to deprive a patent agent of his qualifications if that patent agent is found:

- 1) to plagiarize, or to purposely disclose the contents of, the invention-creation of the person who has appointed him as a patent agent, or to seriously infringe in any other way upon the interest of the person who has appointed him as a patent agent;
- 2) to be completely incompetent.

The Patent Agents Assessment Committee shall inform the Patent Office of the People's Republic of China of the decision on depriving a patent agent of his qualifications. The Patent Office of the People's Republic of China shall cancel the registration of the patent agent and shall take back his Patent Agent Certification for cancellation.

Article 14. A patent agent who is found to have committed the offenses mentioned in Article 13 (1) shall be subject to administrative sanctions by the entity to which he belongs. Legal responsibility for serious offenses shall be investigated and affixed according to law.

Article 15. Interpretation of the present Regulations shall be made by the Patent Office of the People's Republic of China.

Article 16. The present Regulations shall enter into force on the date of promulgation.

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END