

# 小耘法律简讯

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### ***REAL ESTATE***

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◆ **Draft Version of Interpretation of Some Issues concerning the Application of Law for the Trial of Cases on the Partitioned Ownership of Building Areas (“Draft Interpretation”)**

**Issuing Authority:** Supreme People's Court

**Issuing Date:** June 18, 2008

After the Real Right Law came into effect, Draft Interpretation is the first judicial interpretation released by the Supreme People's Court in accordance with the corresponding regulations of the Real Right Law. In order to accurately implement and enforce the relevant regulations of the Real Right Law and appropriately deal with the dispute about the Partitioned Ownership of Building Area, Supreme People's Court issued Draft Interpretation for suggestion.

The main contents of Draft Interpretation are as follows: further elaborates the definition of the exclusive parts of the building and the common parts of the building; interprets the first paragraph of Article 74 of the Real Right Law regarding to problems of the parking spaces and garages that are within the building area ; Illustrates that any owner may not endanger the safety of the building or infringe upon the lawful rights and interests of any other owner when changing a residential house into a house used for business purposes ,and clarifies the means of civil relief for the interested owner;

Specifies that the owner's committee has the plaintiff qualification when the common interest of the owner suffers from infringement, impediments or potential impediments.

### ***DISPUTE RESOLUTIONS***

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◆ **Provisions of the Supreme Court on Several Issues Related to the Trial of Disputes over Vessel Collision (“the Provisions”)**

**Issuing Authority:** the Judicial Committee of the Supreme Court

**Issuing Date:** April 28, 2008

**Effective Date:** May 23, 2008

The Provisions are applicable to the trial of cases of ship collision disputes, including dispute of damage claim arising from ship collision, dispute between the cargo interests and the carrying vessel arising from contract of carriage of goods by sea, dispute between cargo interests or the third party and the carrying vessel arising from ship collision and claim of loss of life or personal injury to a third party arising from ship collision.

The Provisions are judicial interpretation to Chapter VIII of Maritime Code of the PRC, and therefore, the ship collision mentioned in the Provisions refers to that governed by the Chapter

VIII and excludes any ship collision occurring in inland rivers. Meanwhile, considering that Article 170 of Maritime Code stipulates that where a ship has caused damage to another ship and persons, goods or other property on board that ship, either by the execution or non-execution of a manoeuvre or by the non-observance of navigation regulations, even if no collision has actually occurred, the provisions of Chapter VIII shall apply, therefore, such damage caused by the above accident is also governed by the Provisions.

## ***LABOR***

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### **◆ Draft Regulations Version of Implementing Regulations for the Labor Contract Law of the People's Republic of China**

**Issuing Authority:** Legislative Affairs Office of the State Council

**Issuing Date:** May 8, 2008

On May. 8 2008, the Legislative Affairs Office of the State Council promulgated the Draft version of Implementing Regulations for the Labor Contract Law ("LCI") of the People's Republic of China ("Draft Regulations") for suggestion.

The Draft Regulations consists of 45 clauses, mainly focusing on the issues in the implementation of LCI relating to open-ended employment contracts, relationships between economic compensation and indemnification, labor dispatch etc.

#### **I. Open-ended employment contracts**

#### **1. Dissolution of open-ended employment contracts**

The Draft Regulations expressly prescribes the terms and conditions for the dissolution of the open-ended employment contracts which are the same as those for the fixed-term employment contracts. Under following conditions set forth in LCI, open-ended employment contract is allowed to be dissolved by employer or employee :

- 1) An employer and an employee may terminate their employment contract if they so agree after consultations;
- 2) The employee is proved during the probation period not to satisfy the conditions for employment;
- 3) An employee Materially breaches the Employer's rules and regulations;
- 4) The employee Commits serious dereliction of duty or practices graft, causing substantial damage to the Employer;
- 5) The employee has additionally established an employment relationship with another employer;
- 6) As provided in Item 1 of Article 26 of LCI, the employee uses such means as deception or coercion, or takes advantage of the other party's difficulties, to cause the other party to conclude an employment contract, or to make an amendment thereto, that is contrary to that party's true intent;

- 7) The employee has criminal liability pursued in accordance with relevant law;
- 8) After the set period of medical care for an illness or non-work-related injury, the employee can engage neither in his original work nor in other work arranged for him by his employer;
- 9) The employee is incompetent and remains incompetent after training or adjustment of his position;
- 10) A major change in the objective circumstances relied upon at the time of conclusion of the employment contract renders it unperformable and, after consultations, the employer and employee are unable to reach agreement on amending the employment contract;
- 11) The employer undergoes restructuring pursuant to the Enterprise Bankruptcy Law;
- 12) The employer encounters serious difficulties in production and/or business operations;
- 13) The enterprise switches production, introduces a major technological innovation or revises its business method, and, after amendment of employment contracts, still needs to reduce its workforce;
- 14) Another major change in the objective economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable ;

2. Termination of open-ended employment contracts

The open-ended employment contracts shall be terminated if:

- 1) The employee has commenced drawing his basic old age insurance pension in accordance with the law;
- 2) The employee dies, or is declared dead or missing by a People's Court;
- 3) The employer is declared bankrupt;
- 4) The employer has its business license revoked, is ordered to close or is closed down, or the employer decides on early liquidation;
- 5) Other circumstances specified in laws or administrative statutes arise;

. Economic compensation and damage

The Draft Regulations expressly describe the relationship between economic compensation and damage, provides:

1. if an employer terminates or ends an employment contract in violation of this Law, it shall pay damages to the employee at twice the rate of the severance pay in accordance with Article 87 of LCI;
2. When the employer has paid damages to the employee at twice the rate of the severance pay in accordance with Article 87 of LCI, it has no need to pay economic compensation any more.

### III. Labor Dispatch

The Draft Regulations provides detailed provisions on labor dispatch, which sets strict limitations as follows:

1. Generally, the employer may use the dispatched employee for i) auxiliary job position; ii) position with a duration no more than 6 months; or iii) the position for which the original employee is absent for study/vocation and so a dispatched employee is needed;
2. The employer shall not stipulate probation period with the dispatch employee;
3. The staffing firms shall not employ part-time employee, but they may dispatch their employees to the accepting units for part-time job positions;
4. Staffing firms invested, controlled in shares or established through partnership by the employers or their subordinate units shall fall into the “staffing firms” prescribed in article 67 of LCI.

## **Our Firm:**

Richard Wang & Co. is one of the leading law firms in China, specializing in general corporate, investment, merger and acquisition, litigation, real estate, finance, tax, international trade, and maritime practices. Established in 1994 as one of the earliest private law firms in China with an international focus, the firm has its head office in Shanghai and has offices in Beijing, New York and Tianjin.

The clients of Richard Wang & Co. range from multinational corporations to start-up companies of inland China, from governmental and diplomatic entities to the flourishing private enterprises in China's coastal regions, and from chemical plants to sports companies. Most of these clients are foreign entities or their subsidiaries in China. Richard Wang & Co. has extensive experience advising clients on business and financial transactions in and outside China. Richard Wang & Co. is truly one of a small number of law firms in China that are capable of providing full-range high-quality legal services to international and domestic clients.

A key strength of Richard Wang & Co. is its well-trained and experienced lawyers. The firm has approximately 50 lawyers organized into different practice groups. The firm's lawyers received solid education and training at prestigious Chinese law schools, and some have furthered their legal education at U.S. and European universities. Many of the firm's lawyers have previously worked as judges at PRC courts for years, and a large number of the lawyers have had experience working with foreign law firms. They have worked on a large number of transactions in the areas of dispute resolution, international finance, investment, securities, international trade, commercial law, maritime, intellectual property, anti-dumping, corporate restructuring and real property. The firm routinely prepares documents in Chinese as well as in English.

As an independent partnership, Richard Wang & Co. has, however, cultivated a close and cordial working relationship with government authorities in many cities including Shanghai, Beijing and Tianjin, which in turn benefits the firm and the firm's clients significantly. The firm is also widely associated with international law firms in Asia, the United States and Europe.

We also act as long-term PRC legal counsel for international companies operating in China, and represent clients before Chinese courts or before domestic and international arbitral tribunals and provide legal consultation, testimony, and legal opinions, and reports.

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