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# China News Alert Issue 291

## Capital Markets

### Draft guidelines for listing unveiled

China's securities regulator has recently released, for public feedback, draft guidelines for listing reforms.

"The reform will be implemented in stages with four measures taken in the first stage. The IPO market will resume when the new listing scheme comes out," said a spokesman for the China Securities Regulatory Commission (CSRC).

According to the draft, the four measures include improving price inquiries and subscriptions, limiting subscription channels to either the Internet or through agents (earlier institutional investors were permitted to use both subscription channels), setting a maximum subscription amount for each investor that subscribes over the Internet and highlighting the risks for investors.

"The measures are meant to make the price of new shares more reasonable and provide more opportunities for individual investors to purchase shares," the spokesman said.

China's securities watchdog suspended new IPOs in mid-September 2008 and the floating of over 30 companies, 1.84 billion shares, has been delayed.

The CSRC will collect public opinion until 5 June and select a "proper time" to formally release the regulations, the spokesman said.

[Source: Zero2ipo](http://www.zero2ipo.com.cn/en/n/2009-5-25/200952593755.shtml) ([see archive](Draft_Norms_for_Listing_Unveiled.pdf))

## Corporate & Commercial

### The Supreme People's Court releases Judicial Interpretation II of the Contract Law

The Supreme People's Court recently released 'Judicial Interpretation II on Several Issues Concerning the Application of the Contract Law of the People's Republic of China' (Interpretation II) in response to increasing numbers of litigation in the commercial field under the slowdown of the global economy.

Interpretation II came into force on 13 May and mainly focuses on the conclusion, effectiveness, performance, termination and liabilities caused by breach of contracts.

Provisions for changed circumstances have been added to Interpretation II. According to an official from the Supreme People's Court, the principle of changed circumstances is introduced to prevent unfair results after a contract is agreed, due to economic turmoil. This principle has been introduced mainly to solve the problem of obvious unfairness after the execution of contracts. Even if the circumstances are fair at the time of the execution of a contract, the changed circumstance principle may be applied where social circumstances change dramatically thereafter, bringing large losses to one party, causing obvious unfairness between the two parties and making it impossible to perform the contract.

Interpretation II requires the cautious application of the changed circumstances principle and a clear distinction to be made between normal market risks and changed circumstances. Judgments made under the changed circumstance principle should be submitted to the higher people's courts for examination and approval to ensure trade safety and market order.

Pursuant to Interpretation II, a fingerprint has the same legal effect as a signature or seal. Interpretation II also prescribes that where the contract is concluded in writing, and the agreed place of execution differs from the actual place of execution, the people's court shall recognise the former instead of latter as the place of execution.

[Source: Xinhua](http://www.gx.xinhuanet.com/newscenter/2009-05/14/content_16518348.htm) ([see archive](The_Supreme_Peoples_Court_releases_Judicial_Interpretation_II_of_the_Contract_Law.pdf))

### China to ease controls on investment approval

China will ease government controls this year to stimulate private-sector investment amid the economic slowdown, the top economic planner said in an online statement recently.

The government will narrow the scope of projects requiring approval "by the maximum extent," the National Development and Reform Commission said in its 2009 plan on deepening economic reforms. It said that the plan had been approved by the State Council.

The power of approval will be transferred to lower government levels to spur private investment.

The government encourages the use of non-governmental capital in such key sectors as petroleum, railways, power generation, telecommunications and public facilities.

China hopes investment and consumer spending will support its slowing economy, as exports have slumped under the impact of the global downturn.

The government announced a stimulus package in November 2008 to spend four trillion yuan (US$586 billion) by the end of 2010. It has spent 230 billion yuan so far.

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2009-05/26/content_7943943.htm) ([see archive](China_to_ease_controls_on_investment_approval.pdf))

### China's first special economic zone aims to be five times bigger

The government of Shenzhen city has drawn up a blueprint to expand the country's first special economic zone (SEZ) to include the whole city, as a restructuring strategy to increase its competitiveness amid the economic downturn.

"Legislators are working on the proposal to expand the scope of Shenzhen SEZ to the whole city, but it needs the approval of the State Council," an official with the legislative affairs office of the Shenzhen Municipal People's Congress, who did not want to be identified, was quoted as saying.

Earlier this month, the State Council added the city to the list of two more areas to pilot comprehensive reforms. But "important reforms regarding the scope of the SEZ, land and finance must get approval on a case by case basis," the document specified.

If the proposal is approved, Bao'an and Longgang districts, which make up four-fifths of the city's landmass, will become part of the SEZ, the area of which will swell from the current 395.81 square kilometers to more than 1,900 square kilometers.

"In the face of the economic downturn, the SEZ has been retooling its strategy to bring in more high-tech enterprises in place of labour-intensive industries. The economic restructuring will sharpen its competitive edge," explained Cheng Jiansan, an economist with the Guangdong Academy of Social Sciences.

In the land-strapped SEZ, where the government also needs to develop commercial facilities and green areas for residents, IT enterprises like Huawei have hardly any room for expansion, he said. Huawei is moving its production base to Longgang district, which is not yet part of the SEZ. "But if, in the future, Longgang district becomes part of the SEZ, IT companies like Huawei will be able to enjoy preferential policies like lower income tax," he said.

The city can have a balanced development with the removal of long-existing policy and legal differences inside and outside the SEZ, scholars say.

Cheng said the Zhuhai and Shantou SEZs face a similar problem and "if Shenzhen's proposal for expansion is approved, I believe Zhuhai will try to go down the same path".

Linus Yip, strategist at the Hong Kong-based First Shanghai Securities, believes the expansion of Shenzhen SEZ will also benefit development in the Pearl River Delta region (PRD). Yip also said it is just a matter of time before Shenzhen expands and combines with Hong Kong. "The two cities are, at the moment, quite closely correlated in terms of economic activities, and it will be irresistible for them to merge," Yip said, adding that a merger would bring synergy.

Since 1980, the Chinese government has set up five SEZs (Shenzhen, Zhuhai and Shantou in Guangdong Province, Xiamen in Fujian Province, and Hainan Island). In 2005 and 2006, the State Council designated Shanghai Pudong and Tianjin Binhai as comprehensive reform pilot areas, with Shenzhen added to the list in May 2009.

On 6 May, Shanghai Pudong secured approval to expand by merging with Nanhui District, to facilitate its plan of becoming an international financial and shipping center.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-05/22/content_11417842.htm) ([see archive](Chinas_first_special_economic_zone_aims_to_be_5_times_bigger.pdf))

## Other

### Court rulings go part of the way to resolving disputes for China's homeowners

Legal experts say interpretations from China's Supreme People's Court on the country's two-year-old Property Law have settled some ambiguities, but other possible points of dispute remain.

The court recently released two interpretations of the Law, which will be considered legal bases for settling disputes between homeowners, property developers and management companies in residential communities.

Patrick Randolph, professor at the Center for Real Estate Law at Peking University, said that "the two interpretations do solve some important uncertainties with the law."

Lou Jianbo, director of the center, said, "The two interpretations are very practical as the Supreme People's Court has made the regulations in accordance with many cases handled previously by local courts with great difficulty because of a lack of legal support."

The two interpretations, one focusing on property ownership determination and another on management company services, will take effect in October 2009.

The main public focus of the interpretations regards parking space sale and distribution, management company service fees, property ownership definition and conditions on redesignating homes for commercial use.

The court ruled that property developers must distribute parking places fairly so that homeowners have first refusal on places in their residential compounds. In China, the distribution of open and underground garage parking often causes huge disputes in residential communities. Developers are often accused of selling parking areas to one buyer, usually a close relative, who then sells them on to other owners at a very high mark-up. The interpretation requires developers to offer parking spaces to every homeowner at a reasonable price.

Also, if an owner wants to redesignate their home as a commercial property, they must obtain approval from all residents of the building. Previously they were required to obtain permission from immediate neighbours only.

The interpretation redefines the "owner" as the person who has purchased the property, even if they have yet to obtain the official ownership certificate, which previously proved ownership.

Property management companies will be prohibited from charging service fees unless they have a valid contract with the residents. They also require residents to pay service fees even when they are not living in the property, such as when they are out of the country.

All these items are applicable to foreign homeowners. "They share the same rights and shoulder the same responsibilities as local owners in the Property Law and its interpretations," Lou Jianbo said.

However, some areas of dispute still exist and are not covered by the law, said Lou, such as, "what is a reasonable fee for management services, acceptable to both homeowners and service companies?"

Lou and Randolph agreed that a resolution mechanism was still along way off. Homeowners should show more trust of management companies in their professional opinions on building maintenance and environment plans, instead of "always cutting the budget," Randolph said. "Sometimes homeowners do not know what is the best choice for them." Meanwhile, management companies must earn trust by ensuring they provide their services dutifully, he said.

In order to provide equal protection to both state and private property, China released the draft Property Law in July 2005. The law took effect in October 2007.

[Source: Xinhua](http://news.xinhuanet.com/english/2009-05/27/content_11442274.htm) ([see archive](Court_rulings_go_part_way_to_resolving_disputes_for_Chinas_homeowners.pdf))

### Mainland courts further recognise Taiwanese verdicts

The Supreme People's Court (SPC) of China issued a judicial interpretation recently to further regulate mainland courts' recognition of verdicts in civil cases made by Taiwanese courts.

The judicial interpretation specifies the range of civil cases entitled to recognition and clearly states that verdicts made by Taiwanese courts, once recognised by mainland courts, have the same effect in the mainland as verdicts made by mainland courts.

Recognition is for Taiwanese people who live in the mainland and are involved in civil cases for which a Taiwanese court has already issued a verdict.

Due to decades of political stand-off, the judicial systems of the mainland and Taiwan used to have little exchange or cooperation, which made jurisdiction very difficult―especially when economic exchange between the two increased and more Taiwanese businessmen came to live in the mainland.

As a follow-up effort to an agreement on mutual judicial assistance signed by top negotiators from the two sides on 26 April in the east mainland city of Nanjing, the new judicial interpretation says that civil cases on commercial affairs, intellectual property and maritime affairs are also entitled to recognition.

Previously, most Taiwanese court verdicts recognised by mainland courts were on civil cases concerning relationships and identity, a judge from the Number One Civil Tribunal of SPC told.

In addition to court verdicts, conciliation statements and orders of payment on civil cases made by Taiwanese courts, and arbitrations reached by Taiwanese arbitration institutions are also entitled to recognition, according to the interpretation.

Those who apply for recognition can ask for property preservation at the time the case is submitted or after it is heard. Property preservation should be applied for with "effective guarantee" before the court decides whether or not to recognise the previous verdict, the interpretation said. Property preservation refers to the measures taken by courts to restrict involved parties' disposal of controversial properties when the case is put under examination. "Property preservation aims at best balancing the interests of the plaintiff and the defendant," the judge said.

The time limit to apply for recognition is extended to two years after the verdict or arbitration was made in Taiwan. The previous time limit was one year.

The interpretation also states that those who apply for recognition bear the responsibility to prove the evidence they provide, such as authenticity and effectiveness of the verdict, and existence of the properties.

SPC issued the first such judicial interpretation in May of 1998.

[Source: China.org](http://www.china.org.cn/government/central_government/2009-05/15/content_17779645.htm) ([see archive](Mainland_courts_further_recognize_Taiwan_verdicts.pdf))

### New Internet law mere scrap of paper

The country's first law that demands netizens reveal their real names when online is still not being policed almost one month after its implementation.

The Hangzhou municipal government in Zhejiang province has required Internet portals under its administration to ask for the real identity of their users from 1 May. The law is designed to protect national security, social order and the social moral system.

However, nearly one month after enactment, netizens can still post opinions on most of the city's popular bulletin boards without registering their personal details.

A spokeswoman surnamed Zhou from 19lou.com, a popular local online forum, said yesterday that authorities had not yet asked the website to change its registration process. "It could be quite complex if the regulation comes into force because our system doesn't support real name registration, it might still take some time," Zhou said.

A recent online survey by qq.com found about 78 per cent of those polled, or more than 35,000 people, were not in favour of the law. "The law may be able to curb online rumours and violence, but it may also violate our privacy and freedom of speech, as well as discourage online supervision over political corruption," a netizen called Baiyunzhijia wrote on bbs.zhoushan.cn.

"The Internet has played a key role in the supervision of government work and in the fight against corruption in recent years," said another online user, Dazhanpeng. "It would have been impossible for Zhou Jiugeng, former director of a real estate management bureau in Jiangsu province, to have been pulled from his post unless online photographs exposed his lavish lifestyle last year."

Li Li, deputy director of Shanghai Information Law Association, said the law still faced challenges if it were to be executed. "It is difficult to implement because people in Hangzhou still have the choice to browse websites in other cities if they don't want to provide their real identities," he said.

Procurator Yangtao from Ganzhou, Jiangxi province, wrote on his blog that the regulation was unclear. "It prohibits spreading rumours online, but the question is how to define rumour. Faced with dangerous situations, people will naturally take precautions and send warnings to their friends. Can information spread that way really be called rumour?"

Li added: "Netizens already know that even if they don't use their real names, they can still be tracked by authorities through their IP address. The regulation has only angered them by making that point explicit."

[Source: China Daily](http://www.chinadaily.com.cn/bizchina/2009-05/26/content_7942222.htm) ([see archive](New_Internet_law_mere_scrap_of_paper.pdf))

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