

LEHMAN, LEE & XU



雷曼律师事务所

## PRESS RELEASE

### Measures For The Supervision And Administration Of The Contract Violations

Beijing, China –Nov 11, 2010

Measures for the Supervision and Administration of the Contract Violations is already discussed and passed in the meeting of State Administration of Industry and Commerce of the People's Republic of China, now promulgated, and shall be implemented from the 13th November 2010.

Minister Zhou Bohua

13th October 2010

Measures for the Supervision and Administration of the Contract Violations

Article 1 In order to maintain the economic order of the market, protect national interest, public interest of the society and the parties' legal interests, this Measures is established according to relevant provisions in the Contract Law of the People's Republic of China and relevant laws and regulations.

Article 2 The contract violation behaviours referred to in this Measures, means the behaviours of natural persons, legal persons and other entities, for the purpose of obtain illegal interests, which are against laws and regulations and this Measure.

Article 3 Parties signing and performing a contract, should comply with the law and administrative regulations, respect social morals, must not disturb social economic order or damage the national interest or social public interests.

Article 4 The industry and commerce administration authorities at each level shall, within the respective terms of reference, according to provisions of relevant laws and regulations and this Measure, be responsible for the supervision and administration of contract violations.

Article 5 Where supervision and administration of contract violations are conducted by the industry and commerce administration authorities at each level, punishments and guidance should be combined, sanctions and educations should be combined, administrative guidance should be promoted, to urge

and guide the parties to conclude and perform contracts by law and to protect the national interest and the social public interest.

Article 6 Parties are prohibited from implementing the following fraudulent conducts using the contract:

- (1) Forging the contract;
- (2) Faking the qualifications of the contract principals or embezzling or using other names to conclude a contract;
- (3) Faking the subject matter of the contract or faking the commodity supply or the distribution channels to seduce others into concluding and performing a contract;
- (4) Releasing or using false information, to seduce others into concluding a contract;
- (5) Holding back important facts, beguiling the counterparty to give wrong declaration to conclude a contract or beguiling the counterparty to perform a contract;
- (6) Without the actual abilities of performing, beguiling the counterparty to conclude or perform a contract by performing a small amount contract or partly perform a contract first.
- (7) Malevolently laying down terms which are in fact impossible to be performed, resulting in the counterparty unable to perform the contract;
- (8) Making up false reasons to stop (terminate) the contract, defraud property;
- (9) Providing false guarantees;
- (10) Concluding and performing a contract by other deceiving ways.

Article 7 The parties are prohibited from implementing the following activities which damage national interest and the social public interests by taking advantage of the contract:

- (1) Concluding and performing contracts by ways of bribery or threats, which damage national interest and the social public interests;

- (2) Concluding and performing contracts by way of malevolent collusion, which damage national interest and the social public interests;
- (3) Illegally buying or selling properties which are prohibited or restricted to be traded by the State;
- (4) Without proper reasons, do not perform contract duties of a prescriptive nature by the State;
- (5) Other contract violations which damage national interest and the social public interests.

Article 8 Any organisations or individuals, when being informed or reasonable expected to be informed, are prohibited from providing proves, licences, stamps, accounts or other convenient conditions to others for implementing the unlawful acts prescribed in Article 6 and 7 of this Measure.

Article 9 Where the operator and the consumers conclude the contract with standard terms, the operator shall not exempt themselves from the following liabilities in the standard terms:

- (1) Liabilities of personal harms caused to the consumers;
- (2) Liabilities of property loss caused to the consumers due to deliberation or culpable negligence;
- (3) The guarantee liability of the products or services provided which shall be assumed by law;
- (4) Violation liabilities which shall be assumed by law due to any violations;
- (5) Other liabilities which shall be assumed by law.

Article 10 Where the operator and the consumers conclude the contract with standard terms, the operator shall not aggravate the consumers of the following liabilities in the standard terms:

- (1) Liquidated damages or damage awards exceeding the legal amount or the reasonable amounts;
- (2) Assume the operational risk responsibilities which shall be taken by the standard term provider;
- (3) Other responsibilities which shall not be assumed by the consumers according to laws and regulations;

Article 11 Where the operator and the consumers conclude the contract with standard terms, the operator shall not exclude the consumers from the following rights in the standard terms:

- (1) Rights to alter or terminate the contract by law;
- (2) Rights to apply for payment of liquidated damages;
- (3) Rights to apply for damage awards;
- (4) Rights to be explained about the standard terms;
- (5) Rights to institute legal proceedings due to a dispute over the standard terms;
- (6) Other rights which the consumers shall possess by law.

Article 12 When parties violate Article 6, 7, 8, 9, 10 or 11 of this Measure, where there is provisions in laws and regulations, the provisions shall be followed; where there is no provisions in laws and regulations, the industry and commerce administration authorities shall, according to the seriousness of the case, give warnings, penalties which is less than three times the illegal earnings but which cannot exceed 30,000 Yuan, where there is no illegal earnings, penalties of less than 10,000 Yuan shall be given.

Article 13 Where the contract violations by the parties are minor and rectification is done timely, and where there is no damaging results, administrative penalties shall not be given by law; where initiatives are taken to eliminate or mitigate the damaging results, lighter administrative penalties shall be given or the administrative penalties shall be mitigated; where initiatives are taken to rectify or terminate contract violations in time after being urged or guided to do so, lighter administrative penalties shall be imposed.

Article 14 Where violations of this Measure concerns criminal acts, the industry and commerce administration authorities shall refer the case to judicial authorities to investigate the criminal liabilities according to relevant regulations.

Article 15 The State Administration of Industry and Commerce of the People's Republic of China is responsible for explaining this Measure.

Article 16 This Measure shall be implemented from 13th November 2010.

LEHMAN, LEE & XU

雷曼律师事务所



Lehman, Lee & Xu is a prominent Chinese corporate law firm and trademark and patent agency with offices in Beijing, Shanghai, Shenzhen, Hong Kong, Macau, and Mongolia. The firm has been recognized as one of the top trademark firms in China by several intellectual property magazines and is managed by Mr. Edward Lehman, a leading expert on corporate law with 20 years of practice experience in Mainland China.

To learn more about us, please visit our website at [www.lehmanlaw.com](http://www.lehmanlaw.com).