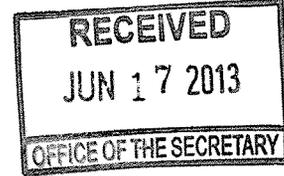


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File Nos. 3-14872, 3-15116



In the Matter of

BDO China Dahua CPA Co., Ltd.;
Ernst & Young Hua Ming LLP;
KPMG Huazhen (Special General
Partnership);
Deloitte Touche Tohmatsu Certified Public
Accountants Ltd.; and
PricewaterhouseCoopers Zhong Tian
CPAs Limited,

The Honorable Cameron Elliot,
Administrative Law Judge

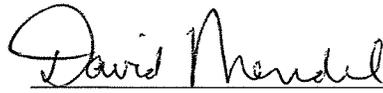
Respondents.

**DIVISION OF ENFORCEMENT'S DISCLOSURE OF ITS
CHINESE LAW EXPERT**

Pursuant to the Court's Order On Joint Motion To Amend Hearing and Prehearing Schedules, dated June 10, 2013 ("Scheduling Order"), the SEC's Division of Enforcement ("Division") hereby discloses its Chinese law expert, Donald Clarke, on issues that the Division will present in its case-in-chief. Attached hereto is the Expert Report of Donald Clarke and accompanying exhibits.

Dated: June 17, 2013

Respectfully submitted,



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COUNSEL FOR DIVISION OF ENFORCEMENT

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

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RECEIVED
JUN 17 2013
OFFICE OF THE SECRETARY

In the Matter of :
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:
BDO CHINA DAHUA CPA CO., LTD., :
ERNST & YOUNG HUA MING LLP, :
KPMG HUAZHEN (SPECIAL GENERAL :
PARTNERSHIP), :
DELOITTE TOUCHE TOHMATSU CERTIFIED :
PUBLIC ACCOUNTANTS LTD., and :
PRICEWATERHOUSECOOPERS ZHONG :
TIAN CPAs LIMITED :
:

The Honorable Cameron Elliot,
Hearing Officer

EXPERT REPORT OF DONALD CLARKE

June 17, 2013

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TABLE OF CONTENTS

I. Introduction3
II. My Qualifications.....4
III. Summary of Opinions6
IV. The Regulatory Framework for Responding to Document Requests7
V. DTTC’s Obligations at the Time It Received Its First Section 106 Request.....26

Exhibit 1: Curriculum Vitae

Exhibit 2: List of Laws, Regulatory Material, and Industry Standards and Translations Thereof

Exhibit 3: List of Documents Reviewed or Relied Upon

Exhibit 4: Correspondence from CSRC Offered by Respondents

I. Introduction

1. My name is Donald Clarke. I am a professor at the George Washington University Law School, where I specialize in the law of the People's Republic of China. I discuss my qualifications in more detail in Section II of this report; my *curriculum vitae* (including a list of all publications I have authored in the last ten years) is attached as Exhibit 1.
2. I have been retained by the Division of Enforcement (the "Division") of the U.S. Securities and Exchange Commission (the "SEC") to provide this expert report opining on various issues related to Chinese law in the captioned administrative proceeding, as described more specifically below.
3. I have been retained by the Division to present my opinions as to (a) obligations of accounting firms under Chinese state secrets laws, archives laws, and certain other laws referenced by Respondents;¹ and (b) the approvals and reports required under Chinese law for an accounting firm to respond to a request for documents from an overseas regulator. More specifically, I have been asked to examine various assertions made in correspondence and the Wells submissions of the Respondents predating the institution of these proceedings to the effect that various rules of Chinese law prohibited them from producing documents requested by the SEC under Section 106 of the Sarbanes-Oxley Act, as amended ("Section 106 requests" or "requests").

¹ Throughout this Report and its Exhibits, I abbreviate the Respondents' names as follows:

- BDO China Dahua CPA Co., Ltd.: "BDO Dahua";
- Ernst & Young Hua Ming LLP: "EYHM";
- KPMG Huazhen (Special General Partnership): "KPMG Huazhen";
- Deloitte Touche Tohmatsu Certified Public Accountants Ltd.: "DTTC"; and
- PriceWaterhouseCoopers Zhong Tian CPAs Limited: "PwC Zhong Tian".

4. In preparing this report, I have reviewed various relevant items of Chinese legislation and agency rules. A list of cited provisions, with translations as relevant, is attached as Exhibit 2. I have also reviewed correspondence and the Wells submissions of the Respondents, among other materials, as set forth in Exhibit 3 and Exhibit 4.
5. In this Report, I set forth my qualifications in Part II. In Part III, I summarize my opinions. In Part IV, I discuss the Chinese regulatory framework for firms such as the Respondents when they receive document requests from a foreign regulator. This discussion includes the subjects of state secrets, archives, rules governing accounting firms, and a specific document known as Regulation 29. In Part V, I discuss DTTC's obligations at the time it received the first Section 106 request directed to it.

II. My Qualifications

6. My academic specialization is the law of the People's Republic of China in general and the legal regime of Chinese economic reform in particular. I speak and read Chinese fluently.
7. I have been on the faculty of the George Washington University Law School since 2005. From 1988 through 2004, I was on the faculty of the University of Washington School of Law ("UWLS"), and I have been a visiting professor at New York University Law School, University of California at Los Angeles School of Law, and Duke Law School. From 1995 to 1998, I was on a leave of absence from UWLS and worked as an attorney at Paul, Weiss, Rifkind, Wharton & Garrison ("Paul, Weiss"), a large United States law firm with a substantial China business practice. During that period, I visited China and Hong Kong approximately twice a year in the course of my work, a substantial amount of which was related to China. From 1998 through 2003, I regularly worked with Paul, Weiss as a

consultant on Chinese law matters. Since that time I have maintained an independent consulting practice.

8. I have published widely in the field of Chinese law; a list of publications is set forth in my curriculum vitae, attached hereto as Exhibit 1.
9. I graduated *cum laude* from Harvard Law School in 1987, where my studies focused on East Asian legal systems and I served as an editor of the Harvard Law Review. I earned a graduate degree (M.Sc. with Honors) in the Government and Politics of China from the School of Oriental and African Studies at the University of London in 1983. I also studied Chinese history for two years at Beijing University and Nanjing University in China from 1977 to 1979. I earned my undergraduate degree from Princeton University in 1977.
10. I have served as adviser or consultant on Chinese law matters to a number of bodies, including the Asian Development Bank, the Agency for International Development, and the World Bank's Financial Sector Reform and Strengthening Initiative. I have testified on aspects of the Chinese legal system before the Congressional-Executive Commission on China and the United States-China Economic and Security Review Commission. I have been appointed to the Academic Advisory Group to the US-China Working Group of the United States Congress. I am admitted to practice in the state of New York (1988) and am a member of the Council on Foreign Relations.
11. I am being compensated for these proceedings under two contracts. One contract provides for an hourly rate of \$500 and the other provides for an hourly rate of \$650. My compensation is not contingent in any way upon the substance of the opinions, the analysis expressed in this Report, or the outcome of these proceedings. I have not within the past four years testified as an expert witness in a deposition or at a trial or administrative proceeding.

III. Summary of Opinions

12. Whatever Chinese officials may have told Respondents orally, I have found no written document either submitted by Respondents or discovered in the course of my own research requiring Respondents to report to and get approval from the CSRC prior to producing documents in response to a request from a foreign regulator such as the SEC. In particular, Regulation 29 does not contain such a requirement for off-site inspections of the kind at issue in this proceeding.
13. Chinese law provides mechanisms for an accounting firm to determine whether audit work papers and related documents in its possession contain state secrets. In particular, the accounting firm can confer with the audited company, which has an independent obligation to identify state secrets before transmitting its materials to the accounting firm. The accounting firm also can seek a determination from the local branch of China's State Secrets Bureau ("SSB"). These mechanisms can reduce or eliminate the risk of uncertainty. Also, whether or not an accounting firm employs these mechanisms, the firm could make a determination that some documents do not contain state secrets, or at least present a very low risk of containing state secrets. I did not see any evidence in the record for these proceedings that (a) any of the Respondents conferred with their respective audit clients about state secrets, or (b) Respondents DTTC, EYHM, or PwC Zhong Tian sought a determination from the SSB as to whether the requested documents contain state secrets.
14. Audit work papers are deemed archives by the State Archives Administration. Such archives may generally not be transferred abroad without approval, although there is no criminal sanction for transferring without authorization non-state-owned archives that do not contain state secrets. There exists a procedure for seeking approval for the transfer of such archives.

It does not appear from the Respondents' submissions that any of them have sought to use such a procedure.

15. The duty of confidentiality in Article 19 of the Law on Certified Public Accountants is not absolute and unwaivable. It can be waived by client consent. Violation of Article 19 cannot result in criminal liability if such a waiver is present. DTTC's July 2010 production of documents to the China Securities Regulatory Commission ("CSRC") has not to my knowledge resulted in criminal, administrative, or civil liability as a result of a claimed violation of Article 19.

16. At the time DTTC received the Section 106 request with respect to DTTC Client A, it was not required by Regulation 29 or any other written law, regulation, order, or communication of China or Chinese regulatory authorities to report to the CSRC and seek its approval before producing documents.

IV. The Regulatory Framework for Responding to Document Requests

17. Accounting firms in China are regulated generally by the Ministry of Finance ("MOF")² and by the Chinese Institute of Certified Public Accountants (the "CICPA"), a body under MOF. Moreover, to the extent that accounting firms in China engage in "securities service business", they must have the approval of the CSRC.³

² Certified Public Accountants Law ("CPA Law"), Art. 5. Unless otherwise indicated, all citations to laws are to laws of the People's Republic of China. In this report, unless otherwise indicated, the term "law" refers to enactments of the National People's Congress and its Standing Committee as well as administrative regulations issued by the State Council and its subordinate bodies, including the Ministry of Finance, the China Securities Regulatory Commission, the State Archives Administration, and the State Secrets Bureau.

³ Securities Law, Art. 169. It is not clear to me that "securities service business" in the Securities Law was intended by the legislators to include providing audit services to companies listed on foreign exchanges—in effect, the *export* of auditing services—but the CSRC appears to be asserting jurisdiction over the

18. The production of work papers to a foreign regulator could, in the view of the Chinese authorities, in certain circumstances also implicate laws relating to state secrets and to archives administration.

State Secrets

19. China's law regarding state secrets is contained primarily in the Law on the Protection of State Secrets (the "State Secrets Law") and the Measures for the Implementation of the Law on State Secrets (the "State Secrets Measures"). These laws provide for the identification of material that should be classified as a state secret, list the type of material that should be considered a state secret, and also provide a general definition of state secret as "other secret matters as determined by state authorities for the protection of secrets."⁴

20. If companies audited by the Respondents transmitted to the Respondents materials containing state secrets, such materials should be marked accordingly. It is the duty of entities producing state secrets (in this case, the audited companies) to identify them as such with an appropriate classification⁵ and to mark them as well.⁶ Where the material cannot be marked, the entity producing the secret material should notify all those who will come in contact with it.⁷

21. Thus, if any of the audited companies believed they were transmitting material containing state secrets to their auditors, they should have marked it accordingly or otherwise informed

Respondents on those grounds, and for the purposes of this report I will assume that as a practical matter it has the power to enforce that assertion of jurisdiction.

⁴ State Secrets Law, Art. 9.

⁵ See State Secrets Law, Art. 14.

⁶ See State Secrets Law, Art. 17.

⁷ See State Secrets Measures, Art. 13.

the auditors that it was secret. It is not clear to me from reading the Wells submissions of the Respondents whether any material received from the companies they audited is so marked.

22. The fact that material is not marked as a state secret does not guarantee that the authorities would not consider it a state secret. In addition, I assume for purposes of this Report that it is possible that work papers generated by an accounting firm could include state secrets to the extent that such work papers incorporate materials with state secrets transmitted from the audited company to the accounting firm. By the same token, if materials transmitted from the audited company to the auditor do not contain state secrets, then presumptively the work papers generated by the auditor should not contain state secrets, either. I do not know of actual cases, and the correspondence and Wells submissions of the Respondents have not offered cases, in which the work papers of accounting firms have been found to contain state secrets.
23. The unauthorized disclosure of state secrets can lead to criminal penalties.⁸ In their Wells submissions related to this matter, Respondents have expressed a concern that they and their personnel could be liable to criminal punishment if they transmit the requested audit work papers to the SEC and such work papers are deemed by the Chinese authorities to contain state secrets. They have further expressed a concern that the Chinese law on state secrets is vague and unpredictable, making it unreasonably risky for them to attempt to determine on their own what might constitute a state secret.
24. China's laws and regulations on state secrets, however, do provide a method for substantially reducing and perhaps eliminating such uncertainty.

⁸ Criminal Law, Art. 111.

25. First, as noted above, it is the responsibility of any audited company that supplied documents to the respondents to identify content that is a state secret. If none of the documents supplied by the audited companies to the Respondents were marked as state secrets, the Respondents could question whether the audited companies had neglected to perform their duty under the State Secrets Law, and they could seek clarification from the audited companies as to the procedures they had used.⁹ If *some* of the documents were marked as state secrets, however, then that is evidence that the transmitting company performed a classification exercise and that documents not so marked are not state secrets.

26. I note that at least one of the Respondents, PwC Zhong Tian, has a policy of specifically requesting certain clients to inform it in writing as to whether any information provided by such clients contains state secrets.¹⁰

27. Second, if an entity such as a Respondent in this matter is still unsure as to whether documents it has received contain state secrets, there are two ways provided for by law and regulation to make that determination. First, the receiving entity can go back to the providing entity and request that it make the determination. Second, the receiving entity can go to its local branch of the State Secrets Bureau (the “SSB”) and ask it to make a determination.¹¹

28. In its Wells submission, Respondent KPMG Huazhen states that it attempted to procure a determination from the relevant branch of the SSB but was turned down on the grounds that

⁹ I note that Respondent PwC Zhong Tian, for example, states that none of the information provided to it by Client I, an audit client, was marked as containing state secrets. *See* Letter from Michael S. Flynn to Hemma B. Ramrattan, Nov. 2, 2011, at 9, *in* PwC Zhong Tian Wells Submission, Exhibit 12 (hereinafter “Flynn Letter”).

¹⁰ *See* “PwC Audit Alert 2010/10: China State Secrets—Inclusion of an Additional Clause in Letter of Representation”, appendix to Flynn Letter, *supra* note 9, Bates-stamped PwC_Zhong_Tian_WA_000044 *et seq.* (hereinafter “PwC Audit Alert”)

¹¹ State Secrets Law, Art. 12; State Secrets Measures, Art. 11.

any request for a determination must be submitted by another Chinese government body, and that requests for a determination from private entities and individuals would not be entertained.¹²

29. It is worth noting that such a rejection seems contrary to Chinese law.¹³ Article 20 of the State Secrets Law states that “organs (*jiguan*) and units (*danwei*)” can apply for a determination. The term “*jiguan*” unquestionably refers to Chinese government bodies. The term “*danwei*”, however, is broader and refers essentially to any entity that employs people. There is no reason to believe that the drafters of the State Secrets Law, most recently revised in 2010 when private entities were widespread and important in China’s economy and society, intended *danwei* to mean only state-owned entities and not to cover private entities as well. Thus, under Article 20 of the State Secrets Law, it should be possible for Respondents to secure a state secrets determination from the SSB.

30. I note that the Declaration of Professor Xin Tang (the “Tang Declaration”), submitted as Exhibit 17 to the Wells submission of PwC Zhong Tian,¹⁴ agrees with this position in Para.

¹² Letter from Geoffrey F. Aronow to Barry A. Kamer et al., March 27, 2012, at 14, *in* KPMG Huazhen Wells Submission, Exhibit 1 (hereinafter “Aronow SEC Letter”). Respondent BDO Dahua also states, albeit in somewhat vague terms, that it unsuccessfully sought approvals from the MOF, the SSB, and the SAA:

The CSRC . . . directed BDO Dahua to seek approval from the Ministry of Finance and the State Secrets Bureau and the State Archives Bureau, as appropriate. BDO Dahua has sought approvals, but those PRC agencies have not provided them.

Letter from BDO Dahua to Daniel A. Weinstein, April 2, 2012, at 2, *in* BDO Dahua Wells Submission, Exhibit 8.

¹³ I do not mean to suggest that Chinese government agencies never act contrary to Chinese law, or that KPMG Huazhen’s account is implausible on its face.

¹⁴ The declaration in question was submitted by Respondent DTTC in a district court proceeding brought by the SEC to enforce a subpoena. That proceeding is *SEC v. Deloitte Touche Tohmatsu CPA Ltd.*, Miscellaneous Action No. 11-0512 GK/DAR (Dist. D.C.).

36; it states that DTTC (and therefore the other Respondents as well, all of which are private entities) may submit documents to the SSB for a state secrets determination.

31. I note further that Respondent PwC Zhong Tian in the PwC Audit Alert takes the same position, stating, “If it is unclear whether . . . information [generated by an entity] constitutes state secrets and/or which classification it falls into, the entity shall seek confirmation on these issues from the appropriate level of the state secret authorities”¹⁵

32. In the materials that I have reviewed for these proceedings, I have seen no statements or claims by the Respondents that (a) any of the documents sought by any of the SEC’s requests under the Sarbanes-Oxley Act have been designated, or include information that has been designated, state secrets by the audited companies, Respondents, or the Chinese government; or (b) any of the Respondents have sought clarification from the audited companies as to whether materials and information transmitted by such companies to the Respondents that could be among the documents sought by the Section 106 requests include state secrets. In addition, I have seen no statements or claims by Respondents DTTC, EYHM, or PwC Zhong Tian that they have asked the SSB to review for state secrets any of the documents sought by the Section 106 requests relating to their respective clients.

Archives Administration

33. China’s law relating to archives administration is contained in the Archives Law and in the Archives Law Implementation Measures (the “Archives Measures”). The state body in charge of China’s archives management regime is the State Archives Administration (the “SAA”) and its local branches.

¹⁵ PwC Audit Alert, *supra* note 10.

34. China's laws on archives do not exhaustively define what constitutes archives. Archives are defined generically as "historical and current records in various forms, including writings in different languages, pictures, diagrams, audio-visual, etc., whose preservation is of value to the state and society and which have been or are being directly formed by state agencies, public organizations and individuals in their political, military, economic, scientific, technological, cultural, religious and other activities."¹⁶
35. The Archives Law sets out various duties with respect to archives. Article 10 states that materials of an entity that should be filed and kept as archives must be regularly handed over to the archives division or archivist of the entity in question. Article 11 states that enterprises in possession of archives must regularly hand them over to archives repositories. Article 15 prohibits the unauthorized destruction of archives. Articles 16 and 24 forbid the sale or donation of archives to foreigners. Article 18 forbids the unauthorized transfer out of China of archives or their duplicates.
36. Regulation 29, which was co-issued by the State Archives Administration, indicates that audit work papers are considered "archives."¹⁷
37. Nevertheless, this appears to be a recent change in policy. The record in these proceedings does not contain any indication that Chinese accounting firms have ever considered work papers to be regulated archives or that they are currently following required archives procedures for audit work papers.
38. For example, if accounting firms believed that audit work papers constituted archives, one would expect to see appropriate policies adopted by the firms. Accounting firms would have

¹⁶ Archives Law, Art. 2.

¹⁷ See Regulation 29, Art. 6.

specialized personnel dedicated to archives administration (Archives Law, Art. 10). They would regularly hand over work papers to archives repositories (Archives Law, Art. 11). Their policies on document retention and destruction would provide that audit workpapers may *never* be destroyed without permission from the SAA (Archives Law, Art. 15). They would *never* transfer audit work papers or copies of such work papers outside the borders of Mainland China (*i.e.*, not even to Hong Kong) without prior authorization from the Chinese government (Archives Law, Art. 18).¹⁸

39. I have not seen anything in the record that suggests that the internal management practices of Chinese accounting firms in fact are as above and thus reflect a belief that audit work papers are archives governed by China's archives management regime. The Flynn Letter, for example, contains an appendix setting forth the document retention policies for PwC Zhong Tian.¹⁹ Paper files are normally retained for ten years in China, while the retention period for electronic files is 120 months after the report signing date for China. The document retention policy makes no mention of any need to ascertain whether the files constitute archives subject to China's Archives Law or of the need to obtain the permission of the SAA before destruction of such files.

40. If the work papers requested by the SEC constitute archives, then permission from the SAA is required before they may be transferred abroad. However, *there is no criminal sanction for*

¹⁸ Article 18 forbids the unauthorized transfer out of China of state-owned archives and "archives specified in Article 16 of this Law." Article 16 of the Archives Law refers to "[c]ollectively owned or individually-owned archives whose preservation is of value to the state or society or which should be kept confidential". Under Article 2 of the Archives Law, a necessary condition for a record being deemed an archive subject to regulation is that its preservation be of value to the state and society. Records whose preservation is not of value are not deemed archives at all. Thus, to assert that work papers constitute archives under the Archives Law is necessarily to assert that their preservation is of value to the state and society. Consequently, the rule of Article 18 against unauthorized transfer applies to *all* materials deemed archives.

¹⁹ See Flynn Letter, *supra* note 9. The relevant page is Bates-stamped PwC_Zhong_Tian_WA_000005.

transferring without authorization non-state-owned archives that do not contain secrets.

Section 8.3.1 of a legal opinion offered on behalf of KPMG Huazhen in a letter to the SEC states that persons who transfer restricted archives out of China without obtaining requisite approvals can be held criminally liable.²⁰ Similarly, Respondent EYHM states that “the unauthorized transfer of archives outside of Mainland China is subject to criminal penalties.”²¹ *These claims are simply not accurate as far as the current proceedings are concerned.*²² Criminal liability attaches only to the unauthorized transfer of *state-owned* archives (Criminal Law, Art. 329), and to the best of my knowledge none of the Respondents has asserted or now asserts that the work papers requested by the SEC are state-owned archives.

41. Chinese law sets forth various procedures for obtaining permission to transfer archives abroad. For any transfer of archives the preservation of which is of value to the state and society or which should be kept confidential, approval of the SAA at the county level or above is required.²³ The procedure for obtaining approval to transfer non-state-owned archives is set forth in a document posted on the SAA’s web site.²⁴ According to that document, the Archives Transfer Provisions, the applicant must submit an application, a

²⁰ See Letter from Linklaters and Century-Link & Xin Ji Yuan Law Office, March 27, 2012, *attached to Aronow SEC Letter, supra* note 12 (hereinafter “KPMG Linklaters Opinion”).

²¹ EYHM Client C Wells Submission, at 19-20.

²² Even less accurate is the exaggerated claim of the PwC Zhong Tian Wells Submission that “[a]ny violation of the Archives Law can result in severe criminal liability.” PwC Zhong Tian Wells Submission, at 19 (emphasis added).

²³ See Archives Measures, Art. 17. Although Article 17 appears to state absolutely that archives may not be transferred abroad, it is clear from other regulations that transfer abroad is permitted provided appropriate approvals are obtained.

²⁴ See Approval [Procedures] for the Sale, Transfer, or Donation of Collectively-Owned, Individually-Owned, and other Non-State-Owned Archives that Have Preservation Value to the State and Society or Should Be Kept Confidential, http://www.saac.gov.cn/xxgk/2011-12/30/content_13341.htm (hereinafter “Archives Transfer Provisions”).

letter of introduction if the applicant is a unit or identification documents if the applicant is an individual, an opinion letter from the receiving unit or individual, and a copy of the archives in question.

42. The procedure for obtaining approval to take archives outside of Mainland China is set forth in another document posted on the SAA's web site.²⁵ (The term "Mainland China" (*jingwai*) *does not include* territories such as Hong Kong or Macau, so this procedure applies to taking archives to Hong Kong and Macau as well.) According to that document, the Archives Foreign Transfer Provisions, the applicant must submit the same set of documents that are required under the Archives Transfer Provisions.

Notification to and Approval from the CSRC, and Regulation 29

43. In correspondence with SEC staff and in Wells submissions, Respondents have alleged that, beginning as early as April 2011, the CSRC directed Respondents, in meetings, correspondence, or other communications, not to produce documents directly to U.S. regulators (including the SEC) in response to information requests.²⁶ In particular, Respondents highlight meetings in October 2011 in which they state that they received directions not to produce documents directly to the SEC. I do not address these contentions in this Report, except to note that the referenced letters do not contain any such explicit direction. For example, a CSRC letter to KPMG Huazhen bearing an issue date of October

²⁵ See Approval [Procedures] for Carrying, Shipping, or Mailing Archives Out of Mainland China, http://www.saac.gov.cn/xxgk/2011-12/21/content_12537.htm (hereinafter "Archives Foreign Transfer Provisions").

²⁶ See Letter from Douglas R. Cox to Amy L. Friedman, April 29, 2011 (attorney's letter to SEC staff on behalf of DTTC) (hereinafter Cox Letter); Letter from Michael D. Warden to Marshall Sprung and Junling Ma, April 17, 2012 (attorney's letter to SEC staff on behalf of DTTC); Aronow SEC Letter, *supra* note 12 (attorney's letter to SEC staff on behalf of KPMG Huazhen); Letter from Robert G. Cohen to Marc Johnson, May 25, 2012 (attorney's letter to SEC staff on behalf of EYHM); Letter from Michael S. Flynn to John J. Kaleba, April 12, 2012 (attorney's letter to SEC staff on behalf of PwC Zhong Tian).

17, 2011 simply instructs recipients to follow existing law, something they were already required to do.²⁷

44. The Division has asked me to opine on whether, apart from the above-referenced oral directions²⁸ that Respondents state they have received from the CSRC, Chinese law requires China-based accounting firms to notify and/or to seek approval from the CSRC before producing documents directly to U.S. regulators in response to information requests. So far as I am aware, there is no such requirement. For example, the PwC Zhong Tian Wells Submission states that Regulation 29, discussed below, provides that “a Chinese CPA firm that receives a request for audit work papers from a foreign regulator such as the SEC must report the request to the CSRC and obtain its approval before producing the work papers to the foreign regulator.”²⁹ Whatever the CSRC may have told the Respondents orally, this statement about the content of Regulation 29 is simply not correct. As explained further below, one can look at the plain language of Regulation 29 and see that the alleged requirement of reporting and approval simply does not appear.³⁰ All the written documents issued by the CSRC that Respondents have cited in effect simply instruct the Respondents to follow existing law in the case of off-site inspection requests and do not add obligations not

²⁷ See CSRC Reply Letter Concerning the Provision of Audit Archives Overseas by Certain CPA Firms, dated October 17, 2011, attached as Appendix 3 to KPMG Linklaters Opinion, *supra* note 20 (the “CSRC Second Audit Archives Letter”).

²⁸ Whether such oral directions should be categorized as “law” depends on the purpose of the categorization and cannot be answered in the abstract.

²⁹ PwC Zhong Tian Wells Submission, at 20.

³⁰ The relevant language appears in Para. 3 of Article 8 dealing with requests for off-site inspections. I discuss below the arguments to the contrary of Prof. Xin Tang and why I do not find them persuasive.

already in existence.³¹ Not a single document of which I am aware unequivocally states that Respondents may not hand over documents to the SEC without the approval of the CSRC.³²

45. As a result of Chinese government concerns over requests by foreign regulators for on- and off-site inspections of Chinese accounting firms, Chinese government authorities in 2009 produced a document that specifically addresses those concerns and spells out what is expected of such firms when they receive such requests. This document, known variously as “Regulation 29” and “the 2009 Directives”,³³ was issued jointly by the CSRC, the SAA, and the SSB. Because it is exactly on point, Regulation 29 is an important document in understanding the obligations of accounting firms. In my opinion, Regulation 29 cannot be read as by itself requiring an accounting firm to notify or seek approval from the CSRC before producing documents directly to an overseas regulator in response to an information request. If such a requirement exists, it must be found outside of Regulation 29.

46. Regulation 29 distinguishes between requests from foreign regulators to conduct on-site inspections and requests from such regulators to conduct off-site inspections (through the

³¹ A typical example is the CSRC Reply Letter Concerning the Provision of Archives Such As Audit Work Papers by Certain CPA Firms (the “CSRC Audit Work Papers Letter”), bearing a date of Oct. 26, 2011 and cited on p. 15 of the PwC Zhong Tian Wells Submission. According to the Wells Submission, the portion of the letter dealing with auditors’ obligations states that “audit firms providing work papers or client information to foreign parties in violation of Chinese law will be subject to legal liability.” This statement provides no new information to, and imposes no new obligations on, the addressees; it simply states that laws must be followed but is not itself a new legal rule.

³² Compare, for example, the oral instruction that Respondent EYHM states it received from the CSRC’s Chief Accountant on Dec. 8, 2011: “PRC firms are not allowed to provide work papers directly to parties outside China, *whether those work papers are prohibited by law or not.*” EYHM Wells Submission related to Client C, at 11 (hereinafter “EYHM Client C Wells Submission”) (emphasis added). This is indeed an unequivocal statement. Not having been present when it is said to have been delivered, I express no opinion on whether such a statement was actually made in those terms. But I note that it is precisely the kind of unequivocal statement that is missing from the written regulations and CSRC correspondence.

³³ The official name is the “Rules on Strengthening Work Related to Preservation of Secrets and Archives Administration in Overseas Securities Issuing and Public Listing,” Oct. 20, 2009.

production of papers). All of the Sarbanes-Oxley Act requests at issue in these proceedings are requests for off-site inspections under this nomenclature. The Tang Declaration³⁴ supports this conclusion.

47. Requests for on-site inspections are covered by Paragraph 2 of Article 8 of Regulation 29.

When an accounting firm receives a request from a foreign regulator for an on-site inspection, the firm “shall report the same to the China Securities Regulatory Commission and the relevant in-charge authorities in advance.” Paragraph 2 does not spell out the identity of such “in-charge authorities”; in effect, it is reminding the firms that if other laws require that other authorities be notified, then the firms must obey such laws. Paragraph 2 further provides that the firms “shall obtain prior approvals from the relevant authorities for matters for which such prior approvals are required to be obtained.” This provision does not impose any new obligation to obtain approvals, but reminds the firms that they must follow existing laws. Although Paragraph 2 does not spell out the identity of the “relevant authorities,” in my opinion they would include the SSB and the SAA, with the caveat that they would be “relevant” only to the extent that laws on state secrets and archives administration were implicated by any proposed action of the firms. Approval from the SSB is not required, for example, for the production of documents that do not contain state secrets.³⁵

48. Requests for off-site inspections are covered by Paragraph 3 of Article 8 of Regulation 29.

When an accounting firm receives a request from a foreign regulator for an *off-site* inspection, Regulation 29 uses different language to describe its obligations. First, it must notify and obtain approval from the SSB to the extent that state secrets are involved. Second,

³⁴ Cited at note 14, *supra*, and accompanying text.

³⁵ I discuss the issue of how to determine whether a document contains state secrets in Paras. 27-31, *supra*.

it must notify and obtain approval from the SAA to the extent matters of archives administration are involved. Third, Paragraph 3 states: “If any matter is required to be approved in advance by any other relevant authorities, the [accounting firm] shall obtain approval from such other relevant authorities in advance.”

49. Paragraph 3 does not contain Paragraph 2’s express requirement of a “report” to the CSRC.

In addition, in my opinion, Paragraph 3’s tautological requirement to obtain approval from other relevant authorities “[i]f any matter is required to be approved in advance” by such authorities cannot reasonably be read to impose an obligation to seek the approval of the CSRC in the case of off-site inspections.

50. First, the relevant language of Regulation 29, by virtue of the “if” clause of Paragraph 3, merely states the truism that existing regulations must be followed. It does not by itself impose new duties that do not already exist; it refers the reader to other rules, stating that if they impose an approval requirement, they must be followed. The question, therefore, is whether there exist other rules imposing this duty.

51. I know of no other rules imposing this duty. The Tang Declaration suggests two sources for an existing (*i.e.*, pre-Regulation 29) duty on the part of DTTC (and by extension, any similarly situated auditing firm) to report to and receive approval from the CSRC when it is asked for work papers from an overseas regulator. First, it notes that the Securities Law provides that DTTC is regulated by both the CSRC and the MOF.³⁶ This fact would indeed permit the CSRC to assert its authority and require notice and approval when regulated firms are asked for work papers. But the fact that the CSRC and the MOF regulate DTTC and have this authority is not in itself an assertion of such authority. That assertion of authority would

³⁶ See Tang Declaration, Para. 34(a).

be made in rules promulgated by the CSRC and the MOF regulating the actions of accounting firms. The Tang Declaration does not point to any CSRC or MOF rule requiring notice to and approval by the CSRC in cases such as this one.

52. Second, the Tang Declaration notes that the Securities Law and Regulation 29 state that the CSRC is responsible for carrying out exchanges and cooperation with overseas securities regulatory authorities in various areas, including confidentiality and archives administration.³⁷ I agree that it would be reasonable to read this as a grant of authority to the CSRC, and perhaps even the imposition of a duty upon it, to negotiate with bodies such as the SEC on matters such as document requests from overseas regulators. But it is far from obvious that this abstract and general language imposes a specific duty *on the part of regulated accounting firms* to notify and seek approval from the CSRC when they receive document requests from overseas regulators.

53. Perhaps the strongest indication that such a duty did not exist prior to, and is not imposed by, Regulation 29 is the structure of Article 8 itself. If a duty to notify and seek approval existed prior to Regulation 29, surely it would apply not just to requests for off-site inspections, but *a fortiori* to requests for on-site inspections. Yet only Para. 2 of Art. 8—the paragraph applying to requests for on-site inspections—speaks of a duty to notify the CSRC. If the duty to report already existed prior to Regulation 29 for the reasons stated in the Tang Declaration, and therefore did not need to be stated explicitly in Para. 3, then it is hard to understand why the issuing authorities would have perceived the need to state it explicitly in Para. 2. Prof. Tang's construction renders Paragraph 2's provision for reporting to the CSRC superfluous.

³⁷ See Tang Declaration, Para. 34(b).

54. In short, Art. 8 of Regulation 29 clearly imposes the duty to notify the CSRC in the case of requests for on-site inspections. The CRSC was a co-drafter of this document and clearly knew how to insert language imposing this duty. The language imposing the duty is missing from Para. 3 of Art. 8, which deals with requests for off-site inspections. I have not seen any papers submitted by Respondents in this matter that explain why the CSRC and its co-drafters would use quite different language if they wanted to express exactly the same thing. The Tang Declaration states that the CSRC has the authority to impose such a duty and I agree. But it is impossible to find the exercise of that authority in the plain language of Para. 3 of Art. 8 of Regulation 29 (dealing with off-site inspections).

55. Furthermore, in the case of off-site inspections under Regulation 29, notification to and clearance from the SAA and the SSB are required, but only to the extent matters under their jurisdiction are implicated. If no state secrets are involved, for example, there is no requirement to notify the SSB and have it confirm that fact. Putting aside other oral instructions from the CSRC (assertions about which, as noted above, I do not express an opinion in this Report), the Respondents could have made for themselves a judgment that their work papers (or that certain of its work papers) contained no state secrets, and produced the requested documents (or at least a subset of such documents) to the SEC without necessarily violating any Chinese law on state secrets.

Other Asserted Obstacles to Document Production

56. As noted above, Regulation 29 instructs accounting firms to follow existing law with respect to two named areas—state secrets and archives administration—and with respect to other unnamed areas if relevant. I do not express an opinion as to what those other unnamed areas

might be (except to say that, as explained above, the reference to “other relevant authorities” in Article 8, Para. 3, does not include the CSRC).

57. A comprehensive statement of the obstacles to production of documents in the view of at least one Respondent can be found in the KPMG Linklaters Opinion.³⁸

58. The KPMG Linklaters Opinion asserts that approvals could be required from the CSRC as well as the SSB and the SAA. It does not mention other specific approvals from governmental authorities. It does assert that the production of documents to the CSRC could result in a breach of Article 19 of the Law on Certified Public Accountants (the “CPA Law”), resulting (it asserts) in potential criminal, administrative, and civil liability. It further asserts that neither the MOF nor the CICPA could validly exempt accounting firms from such liability.

59. I express no opinion on the assertion that neither the MOF nor the CICPA can validly exempt accounting firms from liability for violation of Article 19 of the CPA Law. In my view, however, the KPMG Linklaters Opinion’s statement that production to the CSRC could breach Article 19 is contrary to the experience of at least one other Respondent in these proceedings. Specifically, DTTC has stated that it produced work papers and related documents concerning DTTC Client A to the CSRC in July of 2010, almost three years ago.³⁹ To the best of my knowledge, DTTC has not in its subsequent filings with the SEC made any mention of having suffered any criminal, administrative, or civil liability as a result of a claim that that action breached Article 19 of the CPA Law.

³⁸ *Supra* note 20.

³⁹ *See* Cox Letter, *supra* note 26.

60. I question the assertion of the KPMG Linklaters Opinion that an accountant's Article 19 obligation of confidentiality is not curable by consent or waiver.
61. Article 19 of the CPA Law states, "Certified public accountants have an obligation of confidentiality with respect to commercial secrets of which they obtain knowledge in the course of performing their duties." Chapter 6 of the CPA Law deals with legal liability for violations of the law, and specifies sections of the law the violation of which can lead to criminal or administrative sanctions. Article 19 is not mentioned among them. It further states generally that violations of the CPA Law can, if resulting in damage, lead to civil liability to the injured party (*i.e.*, the audited client). But there is no reason to believe that a potential plaintiff could not waive its right to sue.
62. The KPMG Linklaters Opinion states that criminal liability can result from a violation of Article 19. But the sections of the Criminal Law that it cites in support, Articles 219 and 220, do not support its argument that such liability could not be cured by waiver. The relevant part of Article 219⁴⁰ makes it an offense for a person to "disclose, use, or allow others to use, *in violation of an agreement with the rightful owner or the rightful owner's request to keep the commercial secrets, the commercial secrets he is holding*" (emphasis added). A necessary premise of a violation, therefore, is that the disclosure be against the will of the owner of the commercial secret. A consent or waiver is precisely a manifestation that disclosure is *not* against the will of the owner, and so the prohibition would not be violated and criminal liability would not ensue.
63. For the same reasons, I disagree with the suggestion of the KPMG Linklaters Opinion that Article 10 of the Law Against Unfair Competition is a source of liability for disclosure of

⁴⁰ There is no need to discuss Article 220, because it is premised on a violation of Article 219.

commercial secrets in violation of Article 19 of the CPA Law. Article 10 uses exactly the same language⁴¹ as Article 219 of the Criminal Law to define the offense of disclosing commercial secrets. As discussed above, a consent or waiver would clearly negate the offense.

64. EYHM argues that the Article 19 obligation of confidentiality is non-waivable, citing in support Articles 26(1) and 27(1) of the Code of Ethics for Chinese Certified Public Accountants No. 1 (the “Ethics Code”).⁴² But the cited provisions in fact support exactly the opposite point. Article 26(1) states (emphasis added):

In the following circumstances, a certified public accountant may disclose confidential information:

(1) disclosure is permitted by laws and regulations, *and the client’s authorization has been obtained*[.]

Article 27(1) states (emphasis added):

When deciding whether or not to disclose confidential information, a certified public accountant should take into account the following:

(1) Whether [disclosure of] the confidential information *to the disclosure of which the client consents* is forbidden by laws or regulations[.]

These provisions clearly contemplate that a disclosure that might otherwise be unlawful can be made lawful with client consent. They simply point out the obvious: that client consent alone does not make a disclosure lawful if it is otherwise prohibited.

⁴¹ The relevant sections differ only in one extremely minor point of style that is probably accidental and does not affect the meaning in any way.

⁴² See Letter from Robert G. Cohen to Douglas A. Gordimer, April 4, 2012, at 12.

65. In summary, the sole governmental approvals mentioned as potentially necessary in the KPMG Linklaters Opinion are from the CSRC, the SSB, and the SAA. I have discussed my opinion as to whether such approvals are in fact necessary above. The only other obstacle to production of documents mentioned in the KPMG Linklaters Opinion is the potentially problematic disclosure of commercial secrets. I do not offer an opinion here on the consequences that might follow from a disclosure of commercial secrets without the consent of the owner of those secrets. I do offer, however, the opinion that the laws cited in the KPMG Linklaters Opinion as imposing criminal, administrative, and civil liability in fact do not appear to do so if the owner of the secrets consents to disclosure or otherwise waives its legal rights.

V. DTTC's Obligations at the Time It Received Its First Section 106 Request

66. I have been asked to address the specific question of DTTC's obligations at the time it received the SEC's Section 106 request for the production of work papers, which is at issue in Administrative Proceeding File No. 3-14872 (that is, the request regarding DTTC Client A). That request was made in March of 2011. In my opinion, at the time DTTC received the Section 106 request, it was not required by Regulation 29 or any other written law, regulation, order, or communication of China or Chinese regulatory authorities to report to the CSRC and seek its approval before producing documents.

67. I have examined the Wells submissions of the Respondents in this case and the various regulations cited therein in support of Respondents' position that they were required to report the SEC's Section 106 request to the CSRC and to seek its approval before producing responsive documents.

68. The only regulatory document cited by Respondents in their various Wells submissions that addresses the issue of reporting and approval and that was in existence in March of 2011 is Regulation 29. As I have stated above, Regulation 29 imposes a requirement of notice to the CSRC in the case of requests for *on-site* inspections, but fails to impose such a notice requirement (or an approval requirement) in the case of requests for *off-site* inspections.

69. Indeed, not even the CSRC Reply Letter Concerning Providing Audit Archives Overseas by Certain CPA Firms (the “CSRC Audit Archives Letter”), bearing an issue date of October 11, 2011 and cited throughout the Tang Declaration,⁴³ expressly requires accounting firms to obtain CSRC approval before producing documents to an overseas securities regulator such as the SEC. It simply instructs recipients to follow existing law, something they were already obliged to do. I take note of the Respondents’ assertions that CSRC officials have, in various meetings or other communications with the Respondents, orally made clear the CSRC’s position that its approval is required. These meetings and communications, however, took place *after* DTTC received the Section 106 request.⁴⁴

Submitted by:



Donald Clarke

June 17, 2013

⁴³ See Exhibit 2, Item 5 of the Tang Declaration, *supra* note 14.

⁴⁴ The SEC’s Section 106 request to DTTC regarding DTTC Client A was dated March 11, 2011. DTTC states that after receiving this request it contacted the CSRC and was told that DTTC was not permitted to produce documents directly to the SEC, but that the CSRC would not provide a written confirmation of this position. See Cox Letter, *supra* note 26.

Exhibit 1

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CURRENT POSITION

- Professor, George Washington University Law School, Washington, DC (from Jan. 2005)

Courses taught:

- Chinese Law
- Chinese Business Law
- Business Organizations
- Law and Development

OTHER POSITIONS AND VISITORSHIPS

- Visiting Professor, Duke University Law School, Durham, NC (Spring 2012)
- Visiting Professor, University of California at Los Angeles School of Law, Los Angeles, CA (Fall 2008)
- Visiting Professor, New York University School of Law, New York, NY (2007-08)
- Professor, University of Washington School of Law, Seattle, Washington (1988-2004)
- Attorney, Paul Weiss Rifkind Wharton & Garrison, New York, New York (Sept. 1995-Aug. 1998) (on leave from University of Washington)
Areas of practice: Corporate, East Asia (focusing on China)
- Lecturer in Commercial Law of the Far East, Department of Law, School of Oriental and African Studies, University of London, UK (Sept. 1985-July 1988)

EDUCATION

- *Harvard Law School*, Cambridge, Mass., USA (1983-85, 1986-87)—JD cum laude 1987
Activities: Editorial Board, *Harvard Law Review*
Harvard International Law Journal
- *School of Oriental and African Studies*, University of London, UK (1981-83)—MSc 1983 in Government and Politics of China
Honors: Award of Distinction for thesis

- *Beijing University and Nanjing University*, People's Republic of China (1977-79)— Non-degree academic exchange program
Major area of study: Chinese history
- *Princeton University*, Princeton, New Jersey, USA (1973-77)—BA cum laude 1977
Major areas of study: International affairs (Woodrow Wilson School of Public and International Affairs); Certificate of Proficiency in East Asian Studies

SCHOLARSHIPS AND FELLOWSHIPS

- Rowdget Young Visiting Fellow, Faculty of Law, University of Hong Kong, June 2005
- Fulbright Research Fellowship, 2003 (Tsinghua University Faculty of Law, Beijing)
- Visiting Fellow, China Law Center, Yale Law School, Fall 2001
- Research Fellowship, National Program, Committee on Scholarly Communication with the People's Republic of China, 1991-92
- Foreign Language and Area Studies Fellowship, 1986-87 (Harvard Law School)
- Foreign Language and Area Studies Fellowship, 1984-85 (Harvard Law School)
- Commonwealth Scholarship, 1981-83 (University of London)
- Canada-China Exchange Scholarship, 1977-79 (Peking University, Nanking University)

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS

- Member, Council on Foreign Relations
- Member, New York Bar
- Member, Executive Editorial Board, *American Journal of Comparative Law*
- Member, Editorial Board, *The China Quarterly*
- Member, Editorial Board, *Journal of Comparative Law*
- Member, Academic Advisory Group, US-China Working Group, United States Congress
- Affiliate Professor, University of Washington School of Law
- Director, U.S. China Law Society
- Director, Pacific Rim Law and Policy Association (publisher of *Pacific Rim Law and Policy Journal*)
- Member, Advisory Board, Center for Real Estate Law, Peking University Law School

CONSULTANCIES (SELECTED)

- Financial Sector Reform and Strengthening (FIRST) Initiative, *Amendments to the Securities Law of the People's Republic of China*, 2004-2005
- Asian Development Bank, *Economic Law in the People's Republic of China: Retrospect and Prospect*, 2004-2005
- Asian Development Bank, *Amendments to the Company Law of the People's Republic of China*, 2001-2005
- Agency for International Development, *Commercial Law Reform in the Former Soviet Republics*, 2002
- Asian Development Bank, *China's Legal and Administrative System*, 2001

OTHER TEACHING

- *Chinese Business Law* (intensive Executive MBA course), October-November 2004, Hong Kong University of Science and Technology, Shenzhen Campus, Shenzhen, China
- *Chinese Business Law* (intensive Executive MBA course), March 2004, Shanghai Jiaotong University, Shanghai, China

LANGUAGES

- Chinese (Mandarin) (fluent)
- French, Japanese (reading: very good; spoken: fair)
- Spanish, Latin (fair)

COMMUNITY SERVICE

- Co-editor (with Prof. Veronica Taylor) of *Asian Law Abstracts*, a journal of the Social Science Research Network (www.ssrn.com)
- Establishment and maintenance of Chinese Law Prof Blog (chineselawblog.net), a member of the Law Professor Blogs Network
- Establishment and maintenance of the Chinalaw listserv (formerly the Chinese Law Net), an Internet discussion group on issues of Chinese law (web site address: chinalawlist.org)
- Refereeing of grant applications to various bodies, including the Committee on Scholarly Communication with China and the Social Sciences and Humanities Research Council of Canada
- Refereeing articles and book manuscripts for various journals and publishers including the China Quarterly, Oxford University Press, and Stanford University Press

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- “Ruhe quezhi yijia gongsi de cunzai: Zhongguo fa shang de kunhuo he falü duoyuan zhuyi” (How Do We Know When an Enterprise Exists? Unanswerable Questions and Legal Polycentricity in Chinese Law), in Wang Baoshu (ed.), *Quanqiu Jingzheng Tizhi Xia de Gongsi Fa Gaige* (Company Law Reform in a System of Global Competition) (Beijing: Shehui Kexue Wenxian Chubanshe [Social Sciences Documentation Press], 2003): 74-76
- “Corporatisation, Not Privatisation,” *China Economic Quarterly*, vol. 7, no. 3 (2003): 27-30
- Review of Peter Murrell (ed.), *Assessing the Value of Law in Transition Economies* (Ann Arbor: Univ. of Michigan Press, 2001), in *Journal of Economic Literature*, vol. 41 (June 2003): 624-625

- “China” (with Nicholas Howson and Lester Ross), in *Insolvency & Restructuring 2003* (London: Law Business Research, 2003): Chapter 9
- Statement Before the Congressional-Executive Commission on China (June 6, 2002), in “WTO: Will China Keep Its Promises? Can It?”, *Hearing Before the Congressional-Executive Commission on China*, 107th Congress, Second Session (Washington, D.C.: U.S. Government Printing Office, 2002): 66-78
- Statement Before the United States-China Security Review Commission (Jan. 18, 2002) [on China’s accession to the World Trade Organization], in *Compilation of Hearings Held Before the U.S.-China Security Review Commission*, 107th Congress, First and Second Sessions (Washington, D.C.: U.S. Government Printing Office, 2002): 1171-1181
- “China” (with Lester Ross), in *Insolvency & Restructuring 2002* (London: Law Business Research, 2002): 57-63 (Chapter 9)
- “Dispute Resolution in China: The Arbitration Option” (with Angela H. Davis), in Asia Law and Practice (ed.), *China 2000: Emerging Investment, Funding and Advisory Opportunities for a New China* (Hong Kong: Euromoney Publications (Jersey) Limited, 1999): 151-162
- “State Council Notice Nullifies Statutory Rights of Creditors,” *East Asian Executive Reports*, vol. 19, no. 4 (April 15, 1997): 9-15
- “China’s New Partnership Law” (with Nicholas Howson and Gangliang Qiao), *The China Business Review*, July-August 1997: 30-33
- “Shanghai Measures on Land Use by FIEs: An Indication of Coming Changes in the National System?” (with Nicholas C. Howson), *East Asian Executive Reports*, vol. 18, no. 11 (November 15, 1996): 9-13
- “Bill Jones: An Appreciation,” *Washington University Law Quarterly*, vol. 74 (Fall 1996): 545-546
- “Methodologies for Research in Chinese Law,” *University of British Columbia Law Review*, vol. 30, no. 1 (1996): 201-209
- “One Step Back Permits Two Steps Forward,” *China Rights Forum*, Fall 1996: 8-11
- “Developing P.R.C. Property and Real Estate Law: Revised Land Registration Rules” (with Nicholas C. Howson), *East Asian Executive Reports*, vol. 18, no. 4 (April 15, 1996): 9, 13-17
- “Implementation of Central Policy and the Law in China,” *European Association for Chinese Law Information Bulletin* (1991)

“Foreign Economic Laws and Bureaucracy in China,” *European Association for Chinese Law Information Bulletin*, vol. 5, no. 4 (December 1989): 3-7

Review of Frank K. Upham, *Law and Social Change in Postwar Japan* (1987), in *Bulletin of the School of Oriental and African Studies* (1989)

Contribution on the People’s Republic of China for “Crime and Punishment” section of the *Encyclopaedia Britannica* (1989)

Review of Michael J. Moser (ed.), *Foreign Trade, Investment, and the Law in the People’s Republic of China* (2nd ed. 1987), in *Lloyd’s Maritime and Commercial Law Quarterly*, 1989, Part 1: 129-130 (February 1989)

“Relief on the Way for Foreign Investors,” *South* (June 1987): 32

Review of J. Oldham (ed.), *China’s Legal Development* (1986), in *China Quarterly*, no. 109 (March 1987): 122-123

Review of D.T.C. Wang, *Les sources du droit de la République populaire de Chine* (1982), in *China Quarterly*, no. 108 (December 1986): 727-728

Review of M.D. Pendleton, *Intellectual Property Law in the People’s Republic of China* (1986), in *European Intellectual Property Review*, vol. 8, no. 10 (October 1986): 323-324

Review of D. Solinger, *Chinese Business Under Socialism. The Politics of Domestic Commerce, 1949-1980* (1984), in *China Quarterly*, no. 106 (June 1986): 348-350

Review of P. Gladwin & A. Hameed, *Guide to the Patent Law of the People’s Republic of China* (1985), in *European Intellectual Property Review*, vol. 8, no. 5 (May 1986): 160

“China’s New Rule of Law,” *Britain-China*, no. 31 (Spring 1986): 11-14

“Proposed Consent Agreement Between General Motors Corporation and Toyota Motor Corporation,” *Harvard International Law Journal*, vol. 25, no. 2 (Spring 1984): 421-427

LECTURES, INTERVIEWS, PRESENTATIONS, AND CONFERENCE APPEARANCES

“China’s Stealth Urban Land Revolution,” seminar presentation, Yale Law School, April 4, 2013

“China’s Stealth Urban Land Revolution,” seminar presentation, Columbia Law School, March 1, 2013

Participant in Fourth Sino-American Dialog on Rule of Law and Human Rights, sponsored by the National Council on US-China Relations and the China Foundation for Human Rights Development, Haikou, China, Dec. 3-7, 2012

Discussant at *Festschrift Conference in Honor of Professor John Haley: Law in Japan and Its Role in Asia—Between East and West*, University of Washington School of Law, Seattle, Oct. 19, 2012

“China’s Stealth Urban Land Revolution,” invited lecture at University of Amsterdam, June 18, 2012

“China’s Informal Constitutional Order,” presentation at *Social Change and the Constitution: A Conference on the Occasion of the 30th Anniversary of the 1982 Constitution of the People’s Republic of China*, Free University of Berlin, June 15-17, 2012

“Local Government Bonds in China: What’s Behind Them?,” presentation at *Shanghai Forum 2012*, sponsored by Fudan University and Korean Foundation for Advanced Studies, Shanghai, May 27, 2012 (in Chinese)

“China’s Stealth Urban Land Revolution,” presentation at *Perspectives on Chinese Law* conference, George Washington University Law School, Washington, DC, April 13, 2012

Panelist in “Who Makes Your iPhone? China Migration, Labor, and Human Rights,” *Program in Public Law*, Duke Law School, Durham, NC, April 4, 2012

Panelist in “China’s Environmental Policy,” Duke Law School, Durham, NC, March 29, 2012

Interviewed by Radio Australia on recent developments in Chinese law, Mar. 21, 2012

Roundtable participant in conference on *Democracy in China and Southeast Asia: Local and National Perspectives*, Princeton University, Princeton, NJ, March 15, 2012

“China’s Stealth Urban Land Revolution,” Duke Law School, Durham, NC, Feb. 29, 2012

Participated in panel on “The Rule of Law and Economic Background” at conference on *Patents, Trade, and Innovation in China*, George Washington University Law School, Washington, DC, Dec. 13, 2011

Panelist at NYU Law School’s *17th Annual Timothy A. Gelatt Dialogue on the Rule of Law in Asia, China’s Quest for Justice: Law and Legal Institutions Since the Empire’s Collapse*, Nov. 7, 2011

“Zhongguo de yinxing chengshi tudi geming” (China’s Stealth Urban Land Revolution), presentation to Hongfan Institute of Law and Economics, Beijing, June 25, 2011 (in Chinese)

“Recent Developments in China’s Legal System and Their Implications for Rule of Law,” presentation sponsored by Economist Intelligence Unit, Shanghai, May 27, 2011

“Derivative Actions in China,” invited lecture at Hong Kong University Faculty of Law, Hong Kong, May 12, 2011

Commentator, conference on *Criminal Justice in China: Comparative Perspectives*, sponsored by Chinese University of Hong Kong, Hong Kong, May 7-8, 2011

“Derivative Actions in China,” presentation to faculty at Fordham University Law School, New York, March 7, 2011

“Derivative Actions in China,” presentation to faculty at Duke University Law School, Durham, March 3, 2011

Discussant, *Second Sino-American Dialogue on the Rule of Law and Human Rights*, sponsored by the National Council on US-China Relations and the China Foundation for Human Rights Development, Xiamen, Dec. 7-8, 2010

“Transnational Litigation Involving China,” presentation at conference on *Law and Business in China*, sponsored by the Faculty of Law and the Asian Studies Program of Pontificia Universidad Católica de Chile, Santiago, Nov. 25-26, 2010

“Understanding the Chinese Legal System: Searching for the Right Paradigm,” invited lecture at University of Buenos Aires Faculty of Law, Buenos Aires, Nov. 22, 2010

“Is Chinese Law Different?,” invited lecture at Universidad Torcuato Di Tella Faculty of Law, Buenos Aires, Nov. 22, 2010

“Governance and China’s Evolving Relationship with Its Citizens,” panel presentation at *Economist* conference *China Summit: China and the New World Disorder*, Beijing, Nov. 3, 2010

“Derivative Actions in the People’s Republic of China,” presentation at conference on *The Prospect of Structural Reform of the Corporate Legal System*, sponsored by Tsinghua University Faculty of Law, Beijing, Oct. 30-31, 2010

“The Interface Between the Regulation of China’s Internal Market and the Global Trading System,” seminar presentation, Yale Law School, Oct. 5, 2010

“The Interface Between the Regulation of China’s Internal Market and the Global Trading System,” seminar presentation, Columbia Law School, New York, Sept. 28, 2010

Commentator at conference on *The Global Financial Crisis and China's Development*, sponsored by the University of Chicago Center in Beijing and Renmin University School of Economics, Beijing, July 30-31, 2010

“Local Experimentation in the Chinese Legislative System,” paper presented at *China-US Rule of Law Dialogue*, sponsored by the China-US Exchange Foundation, Beijing, July 29-30, 2010

“Shareholder Derivative Suits in China,” invited lecture, Hong Kong University Faculty of Law, Hong Kong, June 1, 2010

Panelist on “Business Law” panel at George Washington University Law School- Georgetown University Law Center conference *Six Decades of Asian Law: A Celebration of Professor Jerome Cohen*, Washington, D.C., February 19, 2010

“Lawyers and the State in China: Recent Developments,” testimony at hearing on *Human Rights and Rule of Law in China*, Congressional-Executive Commission on China, Washington, D.C., October 7, 2009

“Trends in Comparative Corporate Law Scholarship,” panel presentation at Association of American Law Schools Mid-Year Conference, Long Beach, California, June 9, 2009

“Who and What Matters in Chinese Stock Markets: Implications for Regulation,” presentation at symposium *A New Era Dawns for Asian Capital Markets*, Asia Law Society, University of Michigan Law School, Ann Arbor, 21 March 2009

“The Concept of the Extra-Legal in Chinese Law,” presentation at Global Law Workshop, George Washington University Law School, Washington, D.C., 23 February 2009

“Is Chinese Law Different?,” lecture presented at United States Naval Academy, Annapolis, Maryland, 13 February 2009

“Does Chinese Law Matter?,” presentation to United States Treasury Department, Washington, D.C., 12 February 2009

“The Concept of the Extra-Legal in Chinese Law and Its Significance,” lecture presented at seminar *Are Politics Really in Command? China and the Rule of Law*, Norwegian Centre for Human Rights, China Programme, Oslo, 16 January 2009

“Private Enforcement of the Public Interest in China: Potential and Pitfalls,” lecture presented at UCLA Center for Chinese Studies, Los Angeles, 24 November 2008

“The Ecology of Corporate Governance in China,” presentation at UCLA School of Law Faculty Colloquium, Los Angeles, 14 November 2008

- “Selfishness in the Public Interest? The ‘Private Attorney-General’ in China,” lecture presented at School of International Relations and Pacific Studies, University of California at San Diego, 30 October 2008
- “New Developments in Chinese Property Law,” presentation at 2008 US-China Business Law Conference at UCLA, Los Angeles, 24 October 2008
- “The Ecology of Corporate Governance in China,” presentation at University of Illinois Law School Faculty Workshop, Champaign, Ill., 20 October 2008
- “Delaware’s Dysfunctional Derivative Suit Doctrine,” lecture presented at Faculty of Law, Renmin University, Beijing, 11 June 2008 (in Chinese)
- “Three Concepts of the Independent Director,” paper presented at Contemporary Corporate Law Scholarship Reading Group (seminar course conducted by Prof. Jeffrey Gordon, Columbia Law School), 23 April 2008
- “Chinese Corporate Governance in Global Context,” lecture presented at Yale University, sponsored by Yale Working Group on Corporate Governance and Millstein Center for Corporate Governance and Performance, 22 April 2008
- “Corporate Governance Institutions in China,” presentation at New York University School of Law Faculty Workshop, 14 April 2008
- Commentator at *Conference on Law, Commerce and Development*, New York University School of Law, New York, 12 April 2008
- Discussant at panel on *New Dimensions in China Watching: Internet Forums and the Study of Contemporary China*, Association for Asian Studies Annual Meeting, Atlanta, 3 April 2008
- “Chinese Corporate Governance: All Sizzle, No Steak?,” roundtable presentation at Council on Foreign Relations, New York, 19 November 2007
- “The Institutional Environment of Chinese Corporate Governance,” lecture presented at China House series on *The Legal Infrastructure of New China*, New York University, New York, 14 November 2007
- “Forum Non Conveniens Issues in China-Related Litigation,” presentation at *Global Justice Forum*, Columbia Law School, New York, 2 November 2007
- “The Ecology of Chinese Corporate Governance,” presentation at Chinese Law Workshop, Yale Law School, New Haven, 29 October 2007

“Private Attorney-General Litigation in China,” paper presented at conference on *Chinese Justice*, Fairbank Center for East Asian Research, Harvard University, 12 October 2007

“The Ecology of Chinese Corporate Governance,” lecture delivered at Max Planck Institute, Hamburg, Germany, 30 July 2007

Discussant at panel on *Comparative Corporate Governance: Law in Context*, Law and Society Association Annual Meeting, Berlin, 26 July 2007

“The Ecology of Chinese Corporate Governance,” paper presented at panel on *Law and Development: The China Consensus?*, Law and Society Association Annual Meeting, Berlin, 26 July 2007

“China: Creating a Legal System for a Market Economy,” report delivered at symposium on *Development and Reform of China’s Legal and Judicial System: Review and Prospect*, sponsored by the Asian Development Bank, Beijing, 14-15 May 2007

Commentator, conference on *China’s Financial System Reforms and Governance*, School of Advanced International Studies, Johns Hopkins University, Washington DC, 16 April 2007

“Is Chinese Law Different?”, public lecture sponsored by East Asian Studies Program, Princeton University, Princeton, New Jersey, 10 April 2007

“The Role of Law in China’s Economic Development,” public lecture sponsored by Department of Economics, Middlebury College, Middlebury, Vermont, 5 April 2007

Panelist, “The Academic Perspective and Recent Research,” *OECD-China Policy Dialogue on Corporate Governance*, sponsored by the OECD, Shanghai Stock Exchange, State Assets Supervision and Administration Commission, Chinese Securities Regulatory Commission, Development Research Center, Government of Japan, Global Corporate Governance Forum, and Millstein Center for Corporate Governance and Performance at Yale School of Management, 29-30 March 2007

Public lecture, “The Ecology of Chinese Corporate Governance,” sponsored by Asian Institute of International Financial Law, Faculty of Law, University of Hong Kong, 2 March 2007

“The Rule of Law in China,” roundtable discussion (with Jerome A. Cohen), MITRE Corporation, Washington, DC, 2 February 2007

Guest lecturer, National Taiwan University Faculty of Law, “The Institutional Environment of Corporate Governance in China” (in Chinese), 22 December 2006

Guest lecturer, New York University Law School, “Chinese Constitutional Law”, 14 November 2006

- “The Institutional Environment of Corporate Governance in China”, lecture presented as part of Clarke Program Colloquium Series, Cornell Law School, 3 November 2006
- “The Role of Non-Legal Institutions in Chinese Corporate Governance”, paper presented at authors’ workshop on *A Decade After Crisis: The Transformation of Corporate Governance in East Asia* sponsored by the Center of Excellence Program in Soft Law at the University of Tokyo, the Center on Financial Law at Seoul National University, and the Center for Japanese Legal Studies at Columbia Law School, Tokyo, 1 October 2006
- “The Institutional Environment of Chinese Corporate Governance”, paper presented at panel on *Legal Aspects of the Economic Transformation in China*, annual conference of the International Society for New Institutional Economics, Boulder, Colorado, 23 September 2006
- “Law and the Economy in China: The Past Decade”, paper presented at authors’ workshop on *Developments in Chinese Law: The Last Ten Years*, sponsored by *The China Quarterly* and All Souls College, Oxford University, Oxford, UK, 15 September 2006
- “The Institutional Environment of Corporate Governance in China and Its Policy Implications”, paper presented at conference on *Corporate Governance in East Asia: Culture, Psychology, Economics and Law*, Berkeley Center for Law, Business and the Economy, Boalt Hall School of Law, 5 May 2006
- Guest lecturer, Yale Law School, “Recent Revisions to China’s Securities Law”, 4 April 2006
- Commentator, Roundtable on “China’s Emerging Financial Markets: Opportunities and Obstacles,” Transactional Studies Program, Columbia Law School, New York, 19 January 2006
- Speaker at Timothy A. Gelatt Memorial Dialog on Law and Development in Asia, New York University Law School, New York, 18 January 2006
- Speaker and participant in workshop on administrative rule-making under China’s new Securities Law, sponsored by the FIRST Initiative, the Finance and Economics Committee of the National People’s Congress, and the World Bank, Beijing, 14-15 January 2006
- Panelist, “The Globalization of American Law? Comparative Law and the New Legal Transplants”, Section on Comparative Law, American Association of Law Schools annual meeting, Washington, DC, 5 January 2006
- Panelist, “Improving the Fairness and Transparency of Judicial Decisions”, conference on *Rule of Law Developments in China*, sponsored by the Bureau of Democracy, Human Rights, and Labor, Department of State, Washington, DC, 7 November 2005

Interviewed on BBC World Service on recent developments in death penalty procedures in China, 26 October 2005

“Lost in Translation: Legal Transplants in Chinese Corporate Law”, Rowdget Young Visiting Fellow Lecture, University of Hong Kong Faculty of Law, Hong Kong, 4 June 2005

“The Independent Director in Chinese Corporate Governance”, invited paper presented at 4th Asian Corporate Governance Conference, co-hosted by Asian Institute of Corporate Governance, Korea University and Center for Financial Law, Seoul National University, sponsored by World Bank Global Corporate Governance Forum, Seoul, 19-20 May 2005

“The Legacy of History in China’s Legal System”, paper presented at conference on *The Rule of Law: Chinese Law and Business*, Centre for Socio-Legal Studies, Oxford University, May 11-13, 2005

“The Emerging Private Sector and China’s Legal System”, paper presented at conference on *China’s Economic and Sociopolitical Transformation: Measuring China’s Emerging Private Sector and Its Impact*, Washington, DC, 22 April 2005

“How Do We Know When an Enterprise Exists? Unanswerable Questions and Legal Polycentricity in China”, paper presented at conference on *New Scholarship in Chinese Law: A Celebration in Honor of Stanley Lubman*, Center for Chinese Legal Studies, Columbia Law School, New York, 15 April 2005

“Lost in Translation? Corporate Law in China”, paper presented at conference on *Asia in a Globalizing World*, Center for East Asian and Pacific Studies, University of Illinois at Urbana-Champaign, 9 April 2005

Guest lecturer in course on “China and Globalization”, Prof. Reuven Avi-Yonah, University of Michigan Law School, Ann Arbor, 1 April 2005

“Law, Institutions, and Property Rights”, paper presented at conference on *China’s Economy: Retrospect and Prospect*, Woodrow Wilson International Center for Scholars, Washington, DC, 2 March 2005

“Insider Trading Law in the United States and China”, lecture presented in Chinese at East China University of Politics and Law, Shanghai, 25 November 2004

“Law, Property Rights, and Institutions” (with Peter Murrell and Susan Whiting), paper presented at conference on *China’s Economic Transition: Origins, Mechanisms, and Consequences* (Part II), University of Pittsburgh, 5-7 November 2004

“The Independent Director in Chinese Corporate Governance”, opening paper presented at conference on *Amendment of the Company Law* organized by the Legislative Affairs Office of the

State Council, the China Securities Regulatory Commission, and the Shanghai Stock Exchange, 10 October 2004

“Insider Trading Law in the United States and China”, talk presented to Shanghai Institute of Law and Economics, Beijing, 28 September 2004

“China’s Proposed Bankruptcy Law”, commentator at conference on *Legal and Financial Infrastructure Requirements for Residential Mortgage Securitization in China* organized by Beijing University School of Law, Center for Real Estate Law and Financial Law Institute, Beijing, 17 July 2004

“Does Law Matter in China?”, talk presented at Global Business Center, University of Washington School of Business, 15 January 2004

“Why China Should Not Adopt United States Insider Trading Law”, paper presented at conference on *Corporate Fraud and Governance: American and Chinese Perspectives* organized by Shanghai Jiaotong University and New York University School of Law, Shanghai, 16 December 2003

“Human Rights and Culture”, paper presented at conference on *Sino-U.S. Human Rights Conference* organized by Georgetown University Law Center, Beijing, 14 December 2003

“The History of Corporate Governance in China”, commentator at conference organized by Shanghai Institute of Law and Economics, Beijing, 15 November 2003

“Professional Ethics of Defense Lawyers”, commentator at conference on *The Defense Functions of Lawyers and Judicial Justice* organized by the All-China Lawyers Association, the American Bar Association, Renmin University of China, and New York University School of Law, Beijing, 21 September 2003

“The Independent Director in Chinese Corporate Governance”, lecture presented at Tsinghua University Faculty of Law, Beijing, 10 April 2003

“The Independent Director in Chinese Corporate Governance”, paper presented to the School of Business and Management, Hong Kong University of Science and Technology, 7 March 2003

“Assessing the Value of Law in China’s Economy” (with Peter Murrell and Susan Whiting), paper presented at conference on *China’s Economic Transition: Origins, Mechanisms, and Consequences* (Part I), University of Toronto, 15-17 November 2002

“China’s Entry into the WTO: Prospects for Compliance”, paper presented at conference on *China’s Accession to the World Trade Organization*, Georgetown University Law Center, 10 Oct. 2002

“How Do We Know When an Enterprise Exists? Unanswerable Questions and Legal Polycentricity in China”, paper presented at conference on *The Reform of Corporate Law Under Global Competition*,

Commercial Law Research Center of the Faculty of Law, Tsinghua University, Beijing, China,
15 Sept. 2002

“Zhongguo youdai fazhan duoyuanhua de jiandu jizhi” (China Has Yet to Develop a Multidimensional Monitoring Mechanism), *21 Shiji Jingji Baodao* (21st Century Economic Report), 19 Aug. 2002, p. 39, col. 1 (interview)

Testified before the Congressional-Executive Commission on China, Washington, D.C., on issues relating to China’s compliance with its WTO commitments, 6 June 2002

“Business Regulation in the Bureaucratic State: Enterprise Law in China”, paper presented at panel on *The Rule of Law and Enterprise Reform in China*, Association for Asian Studies annual meeting, 5 April 2002

“What WTO Accession Does *Not* Mean for China”, paper presented at panel on *WTO and the International Rule of Law*, American Society of International Law annual meeting, 15 March 2002

Testified before United States-China Security Review Commission, Washington, DC, on issues relating to China’s WTO accession, 18 Jan. 2002

“The Independent Director in Chinese Corporate Governance”, paper presented at conference on “Protection of Investors’ Interests: International Experience and Chinese Practice”, Commercial Law Research Center of the Faculty of Law, Tsinghua University, Beijing, China, 18-19 November 2001

“Economic Development and the Rights Hypothesis: The China Problem”, paper presented at conference on *Law Reform in Developing and Transitional Economies*, Ulaanbaatar, Mongolia, 2-3 July 2001

Interviewed for feature entitled “Detained in China”, broadcast on PBS, *The News Hour with Jim Lehrer*, 18 May 2001 <http://www.pbs.org/newshour/bb/asia/jan-june01/detained_05-18.html>

“Empirical Research in Chinese Law,” paper presented to Rule of Law Workshop, Stanford Law School, 18 April 2001

“Transparency in China’s Regulation of International Trade,” presentation made to audiences from Chinese government, business, and academia in Beijing and Shanghai as part of 5-member United States government mission, 13-25 March 2000

“Courts and Markets in Post-Socialist Transition: China,” paper presented at workshop on *Courts and Markets in Post-Socialist Transition*, University of Wisconsin School of Law, 3 March 2000

- “Incentives and the Top-Down Model of Regulation in Chinese Land Law,” paper presented (in Chinese) at *International Conference on the Legal Framework for Rural Land Use Rights in China*, China Institute for Reform and Development, Haikou, Hainan Province, China, 12-14 January 2000
- “Corporate Governance in China,” paper presented to members of Project on Corporate Governance in China, Stanford University, Stanford, California, 29 October 1999
- “Alternative Approaches to Chinese Law,” lecture delivered at UCLA School of Law, Los Angeles, 28 October 1999
- Panelist on “Rule of Law in China – Recent Developments and Prospects,” Inaugural Session of Global Business Briefing Series, Pacific Council on International Relations, Los Angeles, 28 October 1999
- “Misunderstanding Chinese Law: The Lure of the ‘Rule of Law’ Paradigm,” lecture delivered at Faculty of Law, City University of Hong Kong, 27 September 1999
- Guest lecturer, Chinese administrative law class of Prof. Wang Xixin, Beijing University Faculty of Law, Beijing, China, 23 September 1999
- “Bankruptcy in Capitalist and Reforming Socialist Economies,” brief course taught to delegation of North Korean legal officials and academics at Beijing University, Beijing, China, 20-23 September 1999
- “Misunderstanding Chinese Law: The Lure of the ‘Rule of Law’ Paradigm,” lecture delivered at Faculty of Law, Waseda University, Tokyo, Japan, 23 June 1999
- “The Enforcement of Civil Judgments in China,” lecture delivered at Faculty of Law, Waseda University, Tokyo, Japan, 19 June 1999
- “China’s Revised Criminal Law,” paper presented at conference on *Contemporary Chinese Legal Development*, sponsored by Chinese Law Society of America, Harvard Law School, Cambridge, Mass., 26-27 March 1999
- “Alternative Approaches to Chinese Law,” lecture delivered at Yale Law School, 25 March 1999
- Commentator, conference on *Administrative Law Reform in China*, sponsored by UCLA Center for Chinese Studies, International Studies & Overseas Programs, UCLA School of Law and Southern California China Colloquium, Los Angeles, 6 March 1999
- Participant, *U.S.-China Symposium on the Legal Protection of Human Rights*, The Aspen Institute, 11-13 December 1998

“Private Enforcement of Intellectual Property Rights,” paper presented at *Sino-U.S. Conference on Intellectual Property Rights and Economic Development: 1998 Chongqing*, sponsored by the National Bureau of Asian Research, Chongqing, China, 16-18 September 1998

Commentator, conference on *Law and Development in Asia*, co-sponsored by Asian Development Bank and Harvard University, Council on Foreign Relations, New York, 21 May 1998

“Introduction to U.S. Capital Markets for Chinese Enterprises,” speech (in Chinese) presented at Investment Promotion Forum sponsored by United Nations Industrial Development Organization, Beijing, 31 March 1998

“Legal Order as a Prerequisite for Cooperation: The China Problem,” paper presented at *Inaugural University of California at San Diego Social Sciences Research Conference on Cooperation Under Difficult Conditions*, Graduate School of International Relations and Pacific Studies, 18 October 1997

“Recent Developments in Criminal and Administrative Punishments in China,” paper presented at University of Washington School of Law Conference on Asian Law, Seattle, Washington, 3 August 1996

“Enforcement of International Awards Involving China and Hong Kong,” paper presented at EuroForum conference on *Dispute Resolution in China and Hong Kong*, London, 31 May 1996

“China and the WTO,” paper presented at American Conference Institute conference on *Doing Business in China and Hong Kong*, New York, 10 May 1996

“Recent Developments in Chinese Foreign Investment Law,” talk presented at conference on *Trade and Investment in Emerging Markets: China and India*, New York University School of Law, 17 November 1995

Commentator on China at *Timothy A. Gelatt Dialogue on Law and Development in Asia*, New York University School of Law, 14 September 1995

“Round Pegs and Square Holes: China and the GATT,” paper presented at panel on *China in the World Economic Order* at the annual meeting of the Association for Asian Studies, Washington, DC, April 1995

“Civil Rights in China,” talk delivered to Civil Rights Committee of the Seattle-King County Bar Association, Seattle, March 1995

“Foreign Business Law and China’s Application to the GATT/WTO,” paper presented at 1990 Institute Conference on Chinese Foreign Trade and Investment Law, San Francisco, March 1995

- “China and the GATT/WTO,” talk delivered to the World Affairs Club, Juneau, Alaska, March 1995
- “The Chinese Court System,” paper presented at *Winter Workshop on East Asian Law*, Center for Pacific Rim Studies, University of California at Los Angeles, January 1995
- “Enforcement of Civil Judgments in a Changing Society: A Chinese Example,” paper presented at annual meeting of the Law and Society Association, Phoenix, Arizona, 17 June 1994
- “The Enforcement of Civil and Economic Judgments in China,” paper presented at symposium on *The Chinese Legal System*, sponsored by the China Quarterly and the School of Oriental and African Studies, University of London, London, U.K., 10-12 May 1994
- “GATT Membership for China?,” paper presented at symposium on *Pacific Rim Trade*, University of Puget Sound School of Law, Washington, 5 November 1993
- “The Creation of a Legal Structure for Market Institutions in China,” paper presented at conference on *The Evolution of Market Institutions in Transition Economies*, Graduate School of International Relations and Pacific Studies, University of California, San Diego, 14-15 May 1993
- Chair/discussant at panel on “Theoretical Perspectives in China’s Legal Reform,” conference on *Chinese Law -- A Re-Examination of the Field: Theoretical and Methodological Approaches to the Study of Chinese Law*, Faculty of Law, University of British Columbia, Vancouver, 22 March 1993
- “Research Methodologies in Chinese Law,” paper presented at conference on *Chinese Law -- A Re-Examination of the Field: Theoretical and Methodological Approaches to the Study of Chinese Law*, Faculty of Law, University of British Columbia, Vancouver, 22 March 1993
- “Enforcement of Civil Judgments in China,” talk delivered at *China Studies Seminar*, University of British Columbia, October 1992
- Discussant at conference on *The Modernization of Chinese Law on Both Sides of the Taiwan Straits*, National Taiwan University College of Law, September 1992
- “Enforcement of Civil Judgments in the People’s Republic of China: Notes from the Field,” talk delivered at Attorney-General’s Chambers, Hong Kong, August 1992
- “Dispute Resolution in China,” talk delivered at Chinese University of Hong Kong, November 1991
- Interviewed on modern Chinese law for program on East Asian legal systems broadcast by BBC World Service (London), September 1991

- Discussant at panel on *New Perspectives on Chinese Economic Development*, Western Economic Association Annual Conference, Seattle, 30 June-3 July 1991
- “The Trials of the June 4th Defendants,” talk delivered at *East Asian Legal Studies Lunchtime Colloquium*, Harvard Law School, 22 March 1991
- “What’s Law Got to Do with It? Legal Institutions and Economic Reform in China,” talk delivered at *East Asian Legal Studies Workshop*, Harvard Law School, 21 March 1991
- Guest lecturer, Chinese law class of Prof. William C. Jones, Washington University School of Law, St. Louis, Missouri, 30 January 1991
- “Legal Problems of Industrial Economic Reform in China,” talk delivered to *Faculty Forum*, Washington University School of Law, St. Louis, Missouri, 30 January 1991
- Speaker and panel chairman, “Chinese Business Law,” at *China Trade Update: Doing Business with China in the 1990s*, conference sponsored by the Washington State China Relations Council, Seattle, Washington, 5 November 1990
- “The Future of Democracy in China,” panel discussion sponsored by the Council of International Organizations, Citizens International Center, Seattle, Washington, 21 April 1990
- “Why Laws Fail: Central Legislation and the Structure of the Chinese Polity,” paper delivered at *Winter Workshop on East Asian Law*, Center for Pacific Rim Studies, University of California at Los Angeles, 20 January 1990
- “The Legal Background to the Behavior of State-Owned Enterprises,” paper delivered at conference on *Ownership Reforms and Efficiency of State-Owned Enterprises* sponsored by the Institute of Economics of the Chinese Academy of Social Sciences and the Ford Foundation, Shenzhen, China, 6 January 1990
- “Implications of Recent Events in China for Sino-U.S. Relations,” panel discussion sponsored by U.S.-China People’s Friendship Association and the East Asian Resource Centre, University of Washington, 11 July 1989
- “Law and Economic Reform in China,” *London China Seminar*, School of Oriental and African Studies, University of London, 19 May 1988
- “Urban Enterprises and the Role of Law in China’s Economic Reforms,” Conference on *The Chinese Developmental State: Change and Continuum*, Institute of Development Studies, University of Sussex, 7-9 April 1988

Interviewed for feature entitled "How is China Run?", broadcast on BBC World Service, *The World Today*, 25 March 1988

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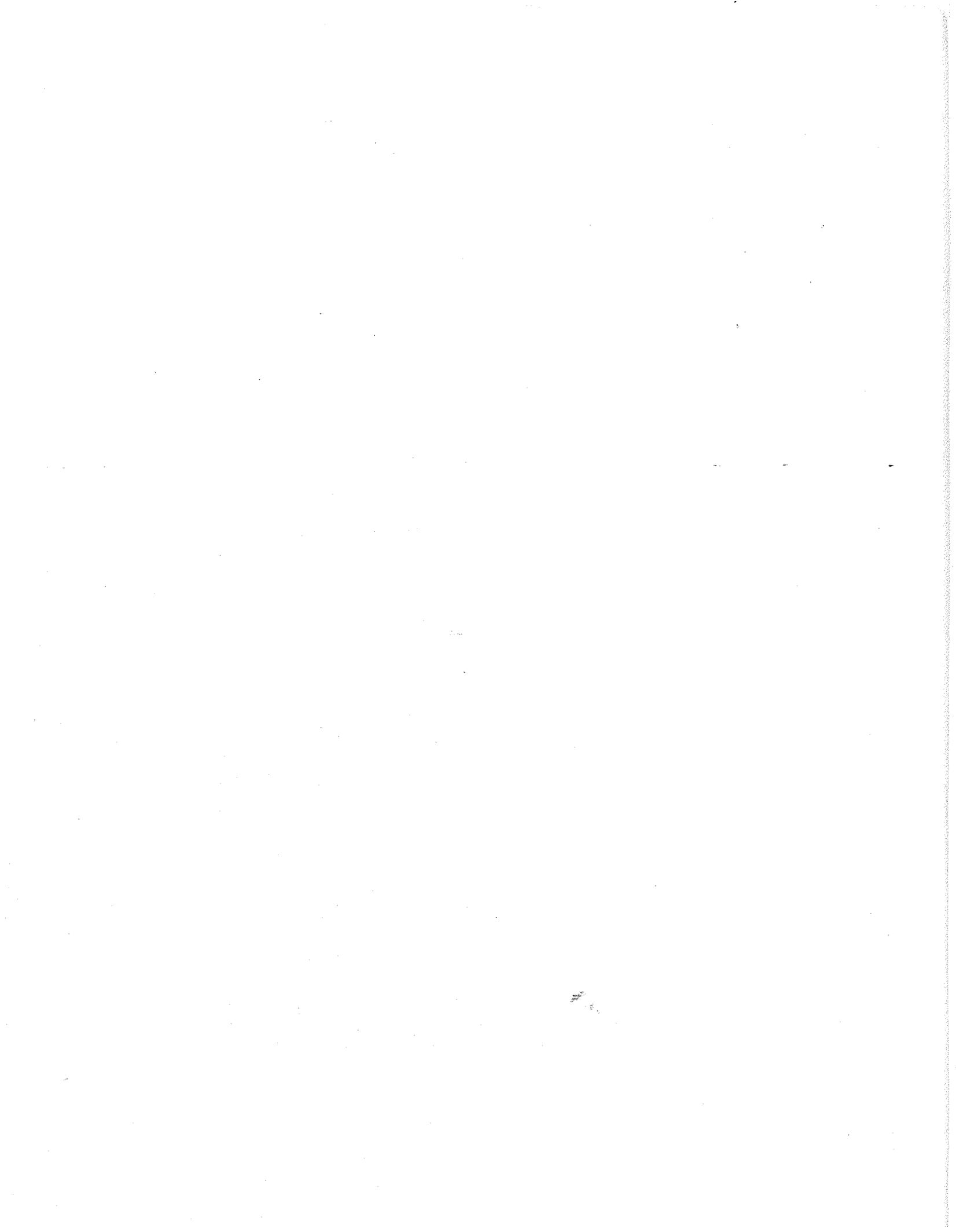


Exhibit 2

List of Laws, Regulatory Material, and Industry Standards and Translations Thereof

<i>Item #</i>	<i>Short Name</i>	<i>Full Name¹</i>	<i>Provisions Cited and Translated</i>
1	Archives Law	Archives Law	Full text
2	Archives Measures	Archives Law Implementation Measures	Art. 17
3	Archives Transfer Provisions	Approval [Procedures] for the Sale, Transfer, or Donation of Collectively-Owned, Individually-Owned, and other Non-State-Owned Archives that Have Preservation Value to the State and Society or Should Be Kept Confidential	Full text
4	Archives Foreign Transfer Provisions	Approval [Procedures] for Carrying, Shipping, or Mailing Archives Out of Mainland China	Full text
5	CPA Law	Certified Public Accountants Law	Art. 5, 19
6	Criminal Law	Criminal Law	Art. 111, 219, 329
7	Ethics Code	Code of Ethics for Chinese Certified Public Accountants No. 1	Art. 26(1), 27(1)
8	Law Against Unfair Competition	Law Against Unfair Competition	Art. 10
9	Regulation 29	Rules on Strengthening Work Related to Preservation of Secrets and Archives Administration in Overseas Securities Issuing and Public Listing	Art. 6, 8
10	Securities Law	Securities Law	Art. 169
11	State Secrets Law	Law on the Protection of State Secrets	Full text
12	State Secrets Measures	Measures for the Implementation of the Law on State Secrets	Art. 11, 13

¹Chinese statutes often contain the words “People’s Republic of China” in the name. I have omitted it in this list. All material cited in this list is Chinese unless otherwise indicated.

Item 1

Archives Law

Archives Law of the People's Republic of China

Order of the President of the People's Republic of China No. 71

The Decision of the Standing Committee of the National People's Congress on the Revision of the Archives Law of the People's Republic of China, adopted at the 20th Meeting of the Standing Committee of the Eighth National People's Congress of the People's Republic of China on July 5, 1996, is hereby promulgated and shall enter into force as of the date of promulgation.

Jiang Zemin
President of the People's Republic of China
July 5, 1996

Archives Law of the People's Republic of China

(Adopted at the 22nd Meeting of the Standing Committee of the Sixth National People's Congress on September 5, 1987, and revised in accordance with the Decision of the Standing Committee of the Eighth National People's Congress on the Revision of the Archives Law of the People's Republic of China adopted at its 20th Meeting on July 5, 1996)

Contents

- Chapter I: General Provisions
- Chapter II: Archives Institutions and Their Responsibilities
- Chapter III: Administration of Archives
- Chapter IV: Use and Publication of Archives
- Chapter V: Legal Responsibility
- Chapter VI: Supplementary Provisions

Chapter I: General Provisions

Article 1 This Law is enacted with a view to strengthening the management, collection and arrangement of archives and effectively protecting and using archives in the service of socialist modernization.

Article 2 For the purpose of this Law, "archives" mean historical and current records in various forms, including writings in different languages, pictures, diagrams, audio-visual, etc., whose preservation is of value to the state and society and which have been or are being directly formed by state agencies, public organizations and individuals in their political, military, economic, scientific, technological, cultural, religious and other activities.

Article 3 Every state agency, unit of the armed forces, political party, public organization, enterprise, institution, entity and every citizen shall have the obligation to protect archives.

Article 4 The people's governments at various levels shall strengthen their leadership in archival work and incorporate the development of undertakings of archives into the program

of the national economic and social development.

Article 5 In archival work, the principle of unified leadership and administration at different levels shall be practiced in order to ensure the integrity and safety of archives and facilitate their use by people of various quarters of society.

Chapter II: Archives Institutions and Their Responsibilities

Article 6 The national archives administration department shall be responsible for archival work throughout the country. It shall make an overall plan, coordinate the organizations, unify the systems, and exercise supervision and provide guidance with regard to the undertakings of archives in the whole country.

The archives administration departments of the people's governments at or above the county level shall be responsible for the undertakings of archives within their respective administrative areas. They shall supervise and direct the archival work of the state agencies, public organizations, enterprises, institutions and other entities under their jurisdiction.

The people's governments of townships, nationality townships and towns shall designate personnel to take charge of preserving the archives of their own offices and to supervise and direct the archival work of their subordinate units.

Article 7 The archives institutions or archivists of state agencies, public organizations, enterprises, institutions and other entities shall be responsible for preserving the archives of their own units and supervise and direct the archival work of their subordinate units.

Article 8 The national archives repositories and local archives repositories of various types at or above the county level shall be cultural institutions for the centralized administration of archives. They shall be responsible for receiving, collecting, arranging and keeping archives within their respective jurisdiction and making them available to users.

Article 9 Archivists shall be devoted to their duty, observe discipline and possess professional knowledge.

Entities and individuals that have made outstanding achievements in the collection, arrangement and protection of archives and in making them available to users shall be rewarded by the people's governments at the relevant levels.

Chapter III: Administration of Archives

Article 10 Materials of an entity that should be filed and kept as archives pursuant to state regulations must, in accordance with the relevant regulations, be regularly handed over to the archives division or archivists of the entity for centralized administration. Nobody may keep such materials as his personal property.

Materials that should not be kept as archives pursuant to state regulations shall not be kept as archives without due authorization.

Article 11 State agencies, public organizations, enterprises, institutions and other entities must, in accordance with state regulations, regularly hand over archives to the archives repositories concerned.

Article 12 The cultural relics, books and reference materials which are concurrently archives and kept in museums, libraries, memorial halls and other entities may be administered by the above-mentioned units in accordance with the provisions of laws and administrative rules and regulations.

Archives repositories shall cooperate with the above-mentioned entities in the use of archives.

Article 13 Archives repositories of all types and at all levels and archives divisions of state agencies, public organizations, enterprises, institutions and other entities shall establish a system of scientific administration to facilitate the use of archives. They shall be equipped with necessary facilities to ensure the safety of the archives. They shall adopt advanced technology to modernize the administration of archives.

Article 14 The administration and use of confidential archives, changes in their security classification, and the declassification of such archives must be effected according to the provisions of the laws and administrative rules and regulations of the state regarding secrecy.

Article 15 The principles by which the value of archives for preservation is appraised, the standards for determining the periods of preservation, and the procedures and methods for destroying archives shall be formulated by the national archives administration department. Unauthorized destruction of archives shall be prohibited.

Article 16 Collectively-owned or individually-owned archives whose preservation is of value to the state and society or which should be kept confidential shall be properly preserved by the owners. If the archives are considered liable to serious damage or unsafe because of the adverse conditions under which they are kept or because of any other reason, the national archives administration department shall have the authority to take such measures as may ensure the integrity and safety of the archives, such as by keeping the archives on the owner's behalf or, when necessary, by purchasing such archives or requisitioning them by purchase.

With respect to the archives mentioned in the preceding paragraph, owners may deposit them with or sell them to state archives repositories; selling of such archives to any entities or individuals other than state archives repositories shall, according to relevant state regulations, be subject to approval of the archives administration departments of the people's governments at or above the county level. It shall be strictly forbidden to sell such archives for profit, or to sell them or give them to foreigners.

Whoever donates archives to the state shall be rewarded by the archives repositories concerned.

Article 17 The sale of archives owned by the state shall be prohibited.

Specific measures for the simultaneous transfer of records regarding the assets to be transferred by state-owned enterprises or institutions shall be formulated by the national archives administration department.

The exchange, transfer and sale of duplicates of archives shall be handled according to state regulations.

Article 18 State-owned archives and the archives specified in Article 16 of this Law as well as duplicates of such archives shall not be carried or transported out of mainland China without authorization.

Chapter IV: Use and Publication of Archives

Article 19 Archives kept by state archives repositories shall in general be open to the public upon the expiration of 30 years from the date of their formation. Archives in economic, scientific, technological and cultural fields may be open to the public in less than 30 years; archives involving the security or vital interests of the state and other archives which remain unsuitable for accessibility to the public upon the expiration of 30 years may be open to the public after more than 30 years. The specific time limits shall be defined by the national archives administration department and submitted to the State Council for approval before they become effective.

Archives repositories shall regularly publish catalogues of records that are open to the public, create conditions and simplify procedures for the convenient use of archives.

Citizens and organizations of the People's Republic of China possessing lawful identifications may use archives which are open to the public.

Article 20 State agencies, public organizations, enterprises, institutions, other entities and citizens may, according to needs in economic construction, national defense construction, education, scientific research and other work, and pursuant to the relevant regulations, use the archives which are not yet open to the public and the archives which are preserved by relevant state agencies, public organizations, enterprises, institutions or other entities.

Measures for using the archives that are not yet open to the public shall be laid down by the national archives administration department and the competent authorities.

Article 21 Entities or individuals that have transferred or donated archives to archives repositories or deposited archives with them shall have priority in the use of such archives and may propose restrictions on the use of parts of the archives that are not suitable for accessibility to the public, and the archives repositories shall protect the lawful rights and interests of such units or individuals.

Article 22 State-owned archives shall be made public by archives repositories or state agencies authorized by the state; no organization or individual shall have the right to make public such archives without permission from such archives repositories or state agencies.

With respect to collectively-owned or individually-owned archives, the owners shall have the right to make them public but they must abide by the relevant state regulations, and may not endanger the security and interests of the state or encroach upon the lawful rights and interests of others.

Article 23 Archives repositories of all types and at all levels shall have research personnel to improve research in arrangement of archives, and compile and publish archives in a planned way for distribution within various circles.

Chapter V: Legal Responsibility

Article 24 If any of the following acts is committed, the archives administration department of the people's government at or above the county level, or the competent authorities concerned shall, in accordance with law, impose administrative sanctions on persons directly in charge or other persons directly responsible for the case; and if the case constitutes a crime, criminal responsibility shall be investigated according to law:

- (1) damaging or losing state-owned archives;

- (2) providing, transcribing, publicizing, or destroying state-owned archives without authorization;
- (3) altering or forging archives;
- (4) selling or transferring archives without authorization in violation of Article 16 or Article 17 of this Law;
- (5) selling archives for profit or selling or giving archives to foreigners;
- (6) failing to file records in accordance with regulations or failing to transfer archives as scheduled, in violation of the provisions of Article 10 or Article 11 of this Law;
- (7) failing to adopt any measures for the archives being preserved, with knowledge that they are in danger, thus causing damage to the archives; or
- (8) causing losses to archives as a result of neglect of duty on the part of archivists.

Whoever commits an illegal act as specified in sub-paragraph (1), (2) or (3) of the preceding paragraph in the course of using records of an archives repository, the archives administration department of the people's government at or above the county level shall give him a warning and may also impose a fine; those who have caused losses shall be ordered to compensate the losses.

If an enterprise, institution or individual commits an illegal act as specified in sub-paragraph (4) or (5) of the first paragraph, the archives administration department of the people's government at or above the county level shall issue a warning, and may also impose a fine; the illegal income, if there is any, shall be confiscated; and the archives that have been sold or given away may be requisitioned by purchase according to the provisions of Article 16 of this Law.

Article 25 If anyone carries or transports archives or duplicates thereof, the exit of which from mainland China is forbidden, out of mainland China, such archives or duplicates thereof shall be confiscated by the Customs, a fine may also be imposed; and the confiscated archives or duplicates thereof shall be transferred to the archives administration department; if the case constitutes a crime, criminal liabilities shall be pursued according to law.

Chapter VI: Supplementary Provisions

Article 26 Measures for the implementation of this Law shall be formulated by the national archives administration department and shall enter into force after being submitted to and approved by the State Council.

Article 27 This Law shall come into force as of January 1, 1988.

中华人民共和国档案法

中华人民共和国主席令
第七十一号

《全国人民代表大会常务委员会关于修改〈中华人民共和国档案法〉的决定》已由中华人民共和国第八届全国人民代表大会常务委员会第二十次会议于 1996 年 7 月 5 日通过，现予公布，自公布之日起施行。

中华人民共和国主席 江泽民

1996年7月5日

中华人民共和国档案法

(1987年9月5日第六届全国人民代表大会常务委员会第二十二次会议通过 根据1996年7月5日第八届全国人民代表大会常务委员会第二十次会议《关于修改〈中华人民共和国档案法〉的决定》修正)

目录

- 第一章 总则
- 第二章 档案机构及其职责
- 第三章 档案的管理
- 第四章 档案的利用和公布
- 第五章 法律责任
- 第六章 附则

第一章 总则

第一条 为了加强对档案的管理和收集、整理工作，有效地保护和利用档案，为社会主义现代化建设服务，制定本法。

第二条 本法所称的档案，是指过去和现在的国家机构、社会组织以及个人从事政治、军事、经济、科学、技术、文化、宗教等活动直接形成的对国家和社会有保存价值的各种文字、图表、声像等不同形式的历史记录。

第三条 一切国家机关、武装力量、政党、社会团体、企业事业单位和公民都有保护档案的义务。

第四条 各级人民政府应当加强对档案工作的领导，把档案事业的建设列入国民经济和社会发展规划。

第五条 档案工作实行统一领导、分级管理的原则，维护档案完整与安全，便于社会各方面的利用。

第二章 档案机构及其职责

第六条 国家档案行政管理部门主管全国档案事业，对全国的档案事业实行统筹规划，组织协调，统一制度，监督和指导。

县级以上地方各级人民政府的档案行政管理部门主管本行政区域内的档案事业，并对本行政区域内机关、团体、企业事业单位和其他组织的档案工作实行监督和指导。

乡、民族乡、镇人民政府应当指定人员负责保管本机关的档案，并对所属单位的档案工作实行监督和指导。

第七条 机关、团体、企业事业单位和其他组织的档案机构或者档案工作人员，负责保管本单位的档案，并对所属机构的档案工作实行监督和指导。

第八条 中央和县级以上地方各级各类档案馆，是集中管理档案的文化事业机构，负责接收、收集、整理、保管和提供利用各分管范围内的档案。

第九条 档案工作人员应当忠于职守，遵守纪律，具备专业知识。

在档案的收集、整理、保护和提供利用等方面成绩显著的单位或者个人，由各级人民政府给予奖励。

第三章 档案的管理

第十条 对国家规定的应当立卷归档的材料，必须按照规定，定期向本单位档案机构或者档案工作人员移交，集中管理，任何个人不得据为己有。

国家规定不得归档的材料，禁止擅自归档。

第十一条 机关、团体、企业事业单位和其他组织必须按照国家规定，定期向档案馆移交档案。

第十二条 博物馆、图书馆、纪念馆等单位保存的文物、图书资料同时是档案的，可以按照法律和行政法规的规定，由上述单位自行管理。

档案馆与上述单位应当在档案的利用方面互相协作。

第十三条 各级各类档案馆，机关、团体、企业事业单位和其他组织的档案机构，应当建立科学的管理制度，便于对档案的利用；配置必要的设施，确保档案的安全；采用先进技术，实现档案管理的现代化。

第十四条 保密档案的管理和利用，密级的变更和解密，必须按照国家有关保密的法律和行政法规的规定办理。

第十五条 鉴定档案保存价值的原则、保管期限的标准以及销毁档案的程序和办法，由国家档案行政管理部门制定。禁止擅自销毁档案。

第十六条 集体所有的和个人所有的对国家和社会具有保存价值的或者应当保密的档案，档案所有者应当妥善保管。对于保管条件恶劣或者其他原因被认为可能导致档案严重损毁和不安全的，国家档案行政管理部门有权采取代为保管等确保档案完整和安全的措施；必要时，可以收购或者征购。

前款所列档案，档案所有者可以向国家档案馆寄存或者出卖；向国家档案馆以外的任何单位或者个人出卖的，应当按照有关规定由县级以上人民政府档案行政管理部门批准。严禁倒卖牟利，严禁卖给或者赠送给外国人。

向国家捐赠档案的，档案馆应当予以奖励。

第十七条 禁止出卖属于国家所有的档案。

国有企业事业单位资产转让时，转让有关档案的具体办法由国家档案行政管理部门制定。

档案复制件的交换、转让和出卖，按照国家规定办理。

第十八条 属于国家所有的档案和本法第十六条规定的档案以及这些档案的复制件，禁

止私自携运出境。

第四章 档案的利用和公布

第十九条 国家档案馆保管的档案，一般应当自形成之日起满三十年向社会开放。经济、科学、技术、文化等类档案向社会开放的期限，可以少于三十年，涉及国家安全或者重大利益以及其他到期不宜开放的档案向社会开放的期限，可以多于三十年，具体期限由国家档案行政管理部门制订，报国务院批准施行。

档案馆应当定期公布开放档案的目录，并为档案的利用创造条件，简化手续，提供方便。

中华人民共和国公民和组织持有合法证明，可以利用已经开放的档案。

第二十条 机关、团体、企业事业单位和其他组织以及公民根据经济建设、国防建设、教学科研和其他各项工作的需要，可以按照有关规定，利用档案馆未开放的档案以及有关机关、团体、企业事业单位和其他组织保存的档案。

利用未开放档案的办法，由国家档案行政管理部门和有关主管部门规定。

第二十一条 向档案馆移交、捐赠、寄存档案的单位和个人，对其档案享有优先利用权，并可对其档案中不宜向社会开放的部分提出限制利用的意见，档案馆应当维护他们的合法权益。

第二十二条 属于国家所有的档案，由国家授权的档案馆或者有关机关公布；未经档案馆或者有关机关同意，任何组织和个人无权公布。

集体所有的和个人所有的档案，档案的所有者有权公布，但必须遵守国家有关规定，不得损害国家安全和利益，不得侵犯他人的合法权益。

第二十三条 各级各类档案馆应当配备研究人员，加强对档案的研究整理，有计划地组织编辑出版档案材料，在不同范围内发行。

第五章 法律责任

第二十四条 有下列行为之一的，由县级以上人民政府档案行政管理部门、有关主管部门对直接负责的主管人员或者其他直接责任人员依法给予行政处分；构成犯罪的，依法追究刑事责任：

- (一)损毁、丢失属于国家所有的档案的；
- (二)擅自提供、抄录、公布、销毁属于国家所有的档案的；
- (三)涂改、伪造档案的；
- (四)违反本法第十六条、第十七条规定，擅自出卖或者转让档案的；
- (五)倒卖档案牟利或者将档案卖给、赠送给外国人的；
- (六)违反本法第十条、第十一条规定，不按规定归档或者不按期移交档案的；
- (七)明知所保存的档案面临危险而不采取措施，造成档案损失的；
- (八)档案工作人员玩忽职守，造成档案损失的。

在利用档案馆的档案中，有前款第一项、第二项、第三项违法行为的，由县级以上人民政府档案行政管理部门给予警告，可以并处罚款；造成损失的，责令赔偿损失。

企业事业组织或者个人有第一款第四项、第五项违法行为的，由县级以上人民政府档

案行政管理部门给予警告，可以并处罚款；有违法所得的，没收违法所得；并可以依照本法第十六条的规定征购所出卖或者赠送的档案。

第二十五条 携运禁止出境的档案或者其复制件出境的，由海关予以没收，可以并处罚款；并将没收的档案或者其复制件移交档案行政管理部门；构成犯罪的，依法追究刑事责任。

第六章 附 则

第二十六条 本法实施办法，由国家档案行政管理部门制定，报国务院批准后施行。

第二十七条 本法自 1988 年 1 月 1 日起施行。

Item 2

Archives Law Implementation Measures

Art. 17 With respect to archives that are collectively- or individually-owned and other non-state-owned archives, where their preservation is of value to the state and society or they should be kept confidential, the owner of the archives may deposit, donate, or sell them to state archives repositories at various levels. Where the archives are sold, transferred, or donated to any unit or individual other than state archives repositories at various levels, it is necessary to report for approval from the archives administration department of the people's government at the county level or above. It is strictly forbidden to sell or donate archives to foreign individuals or organizations.

第十七条 属于集体所有、个人所有以及其他不属于国家所有的对国家和社会具有保存价值的或者应当保密的档案，档案所有者可以向各级国家档案馆寄存、捐赠或者出卖。向各级国家档案馆以外的任何单位或者个人出卖、转让或者赠送的，必须报经县级以上人民政府档案行政管理部门批准；严禁向外国人和外国组织出卖或者赠送。

Item 3

Approval [Procedures] for the Sale, Transfer, or Donation of Collectively-Owned, Individually-Owned, and other Non-State-Owned Archives that Have Preservation Value to the State and Society or Should Be Kept Confidential

<p>行政许可名称</p> <p>Name of administrative approval</p>	<p>行政许可依据</p> <p>Basis for administrative approval</p>	<p>申请材料目录</p> <p>List of application materials</p>
<p>对出卖、转让、赠送集体所有、个人所有以及其他不属于国家所有的对国家和社会具有保存价值的或者应当保密的档案的审批</p> <p>Approval for the Sale, Transfer, or Donation of Collectively-Owned, Individually-Owned, and other Non-State-Owned Archives that Have Preservation Value to the State and Society or Should Be Kept Confidential</p>	<p>档案法第十六条； Archives Law, Art. 18</p> <p>档案法实施办法第十七条</p> <p>Archives Law Implementation Measures, Art.19</p>	<ol style="list-style-type: none"> 1. 申请书； Application 2. 申请单位介绍信或身份证明文件及复印件； a letter of introduction if the applicant is a unit or identification documents if the applicant is an individual, as well as copies [in each case] 3. 受让单位或个人出具的意见书； an opinion letter from the receiving unit or individual 4. 档案的复制件。 a copy of the archives in question.

Item 4

Approval [Procedures] for Carrying, Shipping, or Mailing Archives Out of Mainland China

<p>行政许可名称</p> <p>Name of administrative approval</p>	<p>行政许可依据</p> <p>Basis for administrative approval</p>	<p>申请材料目录</p> <p>List of application materials</p>
<p>对携带、运输、邮寄档案出境的审批</p> <p>Approval for Carrying, Shipping, or Mailing Archives Out of Mainland China</p>	<p>档案法第十八条；</p> <p>档案法实施办法第十九条</p>	<p>1. 申请书； Application</p> <p>2. 申请单位介绍信或身份证明文件及复印件； a letter of introduction if the applicant is a unit or identification documents if the applicant is an individual, as well as copies [in each case]</p> <p>3. 受让单位或个人出具的意见书； an opinion letter from the receiving unit or individual</p> <p>4. 档案的复制件。 a copy of the archives in question.</p>

Item 5

Certified Public Accountants Law

Article 5

"The financial department under the State Council and financial departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall regulate and guide the activities of certified public accountants, public accounting firms and institutes of certified public accountants according to law."

第五条 国务院财政部门和省、自治区、直辖市人民政府财政部门，依法对注册会计师、会计师事务所和注册会计师协会进行监督、指导。

Article 19

"Certified public accountants have an obligation to keep confidential all commercial secrets that they learn of in the course of carrying on their business"

第十九条 注册会计师对在执行业务中知悉的商业秘密，负有保密义务。

Item 6

Criminal Law

Article 111 Whoever steals, secretly gathers, purchases, or illegally provides state secrets or intelligence for an organization, institution, or personnel outside the country is to be sentenced from not less than five years to not more than 10 years of fixed-term imprisonment; when the circumstances are particularly serious, he is to be sentenced to not less than 10 years of fixed-term imprisonment or a life sentence; and when the circumstances are relatively minor, he is to be sentenced to not more than five years of fixed-term imprisonment, criminal detention, control, or deprivation of political rights.

第一百一十一条 为境外的机构、组织、人员窃取、刺探、收买、非法提供国家秘密或者情报的，处五年以上十年以下有期徒刑；情节特别严重的，处十年以上有期徒刑或者无期徒刑；情节较轻的，处五年以下有期徒刑、拘役、管制或者剥夺政治权利。

Article 219 Whoever commits any of the following acts of infringing on business secrets and thus causes heavy losses to the obligee shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention with a criminal fine imposed concurrently or shall be only subject to a criminal fine; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years with a criminal fine imposed concurrently:

(1) obtaining an obligee's business secrets by stealing, luring, coercion or any other illegitimate means;

(2) disclosing, using or allowing another to use the business secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) disclosing, using or allowing another person to use the business secrets kept [by the offender] in violation of an agreement, or in violation of a demand by the obligee to keep the business secrets confidential.

Whoever obtains, uses or discloses another's business secrets, which he clearly knows or ought to know falls under the categories of the acts listed in the preceding paragraph, shall be deemed an offender who infringes on business secrets.

"Business secrets" as mentioned in this Article refers to technology information and business information which is unknown to the public, can bring about economic benefits to the obligee, is of practical use and with regard to which the obligee has adopted secret-keeping measures.

"Obligee" as mentioned in this Article refers to the owner of business secrets and the person who is permitted by the owner to use the business secrets.

第二百一十九条 有下列侵犯商业秘密行为之一，给商业秘密的权利人造成重大损失的，处三年以下有期徒刑或者拘役，并处或者单处罚金；造成特别严重后果的，处三年以上七年以下有期徒刑，并处罚金：

(一) 以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密的；

(二) 披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密的；

(三) 违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密的。

明知或者应知前款所列行为，获取、使用或者披露他人的商业秘密的，以侵犯商业秘密论。

本条所称商业秘密，是指不为公众所知悉，能为权利人带来经济利益，具有实用性并经权利人采取保密措施的技术信息和经营信息。

本条所称权利人，是指商业秘密的所有人和经商业秘密所有人许可的商业秘密使用人。

Article 329 Whoever seizes or steals state-owned archives is to be sentenced to not more than five years of fixed-term imprisonment or criminal detention.

Whoever, in violation of the provisions of the Archives Law, sells or transfers state-owned records without authorization, shall if the circumstances are serious be sentenced to not more than three years of fixed-term imprisonment or criminal detention.

If someone commits either of the acts in the preceding two paragraphs and at the same time such act constitutes a crime under another provision of this Law, the act shall be punished according to the provision providing for the more severe punishment.

第三百二十九条 抢夺、窃取国家所有的档案的，处五年以下有期徒刑或者拘役。

违反档案法的规定，擅自出卖、转让国家所有的档案，情节严重的，处三年以下有期徒刑或者拘役。

有前两款行为，同时又构成本法规定的其他犯罪的，依照处罚较重的规定定罪处罚。

Item 7

Code of Ethics for Chinese Certified Public Accountants No. 1

第二十六条: 在下列情形下, 注册会计师可以披露涉密信息:
(一)法律法规允许披露, 并取得客户的授权

Article 26: In the following circumstances, a certified public accountant may disclose confidential information:

(1) disclosure is permitted by laws and regulations, and the client's authorization has been obtained;

<remainder omitted>

第二十七条: 在决定是否披露涉密信息时, 注册会计师应当考虑下列因素:
(一)客户同意披露的涉密信息, 是否为法律法规所禁止

Article 27: When deciding whether or not to disclose confidential information, a certified public accountant should take into account the following:

(1) Whether [disclosure of] the confidential information to the disclosure of which the client consents is forbidden by laws or regulations;

<remainder omitted>

Item 8

Law Against Unfair Competition

Article 10

"A business operator shall not use any of the following methods to infringe upon the commercial secret of its owner:

- (I) to obtain the commercial secret from the owners by theft, inducement, coercion or other improper means;*
- (II) to disclose, use or permit others to use the commercial secret obtained from the owner as mentioned in the preceding sub-paragraph;*
- (III) to disclose, use or permit others to use the commercial secret in its possession in violation of the relevant agreement or the requirements of the owner concerning the maintenance of confidentiality of the said commercial secret."*

A third party who knows or ought to know the unlawful activities as mentioned in the preceding paragraph obtains, uses or discloses the commercial secret of the others shall be deemed to have infringed upon the commercial secret.

'Commercial secret' referred to in this Article means the practical information about technologies and business operations, which is unknown to the public and is able to bring economic benefit to the owner and for which the owner has taken confidentiality measures."

第十条 经营者不得采用下列手段侵犯商业秘密：

- (一) 以盗窃、利诱、胁迫或者其他不正当手段获取权利人的商业秘密；
- (二) 披露、使用或者允许他人使用以前项手段获取的权利人的商业秘密；
- (三) 违反约定或者违反权利人有关保守商业秘密的要求，披露、使用或者允许他人使用其所掌握的商业秘密。

第三人明知或者应知前款所列违法行为，获取、使用或者披露他人的商业秘密，视为侵犯商业秘密。

本条所称的商业秘密，是指不为公众所知悉、能为权利人带来经济利益、具有实用性并经权利人采取保密措施的技术信息和经营信息。

Item 9

Rules on Strengthening Work Related to Preservation of Secrets and Archives Administration in Overseas Securities Issuing and Public Listing

**Announcement of China Securities Regulatory Commission, State Secrecy Bureau,
State Archives Administration
([2009] No. 29)**

The China Securities Regulatory Commission, the State Secrecy Bureau, and the State Archives Administration jointly formulate the *Provisions on Strengthening Confidentiality and Archives Administration in Overseas Issuance and Listing of Securities*. These Provisions are hereby issued and shall come into effect on the date of promulgation.

China Securities Regulatory Commission

State Archives Administration

State Archives Administration

October 20, 2009

**Provisions on Strengthening Confidentiality and Archives Administration in
Overseas Issuance and Listing of Securities**

1. For the purposes of safeguarding the stability of the State's economy and protecting the interests of the general public, these Provisions are formulated in accordance with the relevant provisions in the laws and regulations, including the *Law of the People's Republic of China on Securities*, the *Law of the People's Republic of China on Guarding State Secrets* and the *Archives Law of the People's Republic of China*.
2. An overseas listed company, hereinafter including those to be listed, as well as the securities company and securities service institution which provide the relevant securities services shall, in the course of any overseas issuance and listing of the securities of such company, strictly and consistently implement the relevant laws and regulations as well as the requirements of these Provisions to raise the legal awareness of state secrets protection and archives administration, develop and improve the relevant rules and regulations, strengthen the education and management of the relevant personnel, implement detailed measures and make further efforts in the protection of secrets and archive administration.
3. In the event that an overseas listed company shall provide or publicly disclose to the relevant securities company, securities service institution and overseas regulatory authority any document, material or other items which involve any state secrets in the course of any overseas issuance and listing of the securities of such company, the

overseas listed company shall report the same to the in-charge authorities with examination and approval power for approval in accordance with the law and shall make a filing with the secrecy administrative department at the same level for records. Where it is uncertain or in dispute whether such item contains state secrets, such issue shall be submitted to the relevant secrecy administrative department for determination.

4. In the event that an overseas listed company shall provide or disclose to the relevant securities company, securities service institution and overseas regulatory authority any archives that involve national security or vital interests of the State in the course of any overseas issuance and listing of the securities of such company, an application for such provision or disclosure shall be made to the State Archives Administration for approval in accordance with the law.
5. When an overseas listed company enters into any service agreement with the relevant securities company and securities service institution, the scope of obligation of confidentiality on the part of the relevant securities company and securities service institution shall be clearly stipulated in accordance with the relevant laws and regulations, including the *Law of the People's Republic of China on Guarding State Secrets*, and these Provisions; where any provisions on the governing law and obligation of confidentiality on the part of the relevant securities company and securities service institution in the service agreement are not in compliance with the requirements stipulated in the relevant PRC laws and regulations or these Provisions, such provisions shall be promptly revised.
6. Any archives, including workpapers, which are created in mainland China by the securities company and securities service institution providing relevant securities service in the course of any overseas issuance and listing of the securities, shall be stored in mainland China.

In the event that the workpapers referred to in the preceding paragraph involve any state secrets, national security or vital interests of the State, such workpapers shall not be stored in, processed with or transferred via any non-confidential computer information systems; without the approval of the relevant in-charge authorities, such workpapers shall not be carried or shipped overseas, or delivered to overseas institutions or individuals through any means such as information technology.

7. The relevant in-charge authorities such as the China Securities Regulatory Commission, the State Secrecy Bureau and the State Archives Administration shall establish a coordination mechanism to regulate and inspect, within their respective scopes of authority and in accordance with the law, matters arising from the course of any overseas issuance and listing of the securities of an overseas listed company which involve the protection of secrets and archive administration.

The term “inspect” as referred to in the preceding paragraph shall include on-site inspection and off-site inspection.

8. CSRC shall be responsible for carrying out exchanges and co-operation with overseas securities regulatory authorities and other relevant bodies with regard to cross-border securities regulatory matters involved in the confidentiality and archives administration during the process of overseas issuance and listing of securities.

Where overseas securities regulatory authorities and other relevant entities propose to conduct on-site inspection in mainland China on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report the same to the China Securities Regulatory Commission and the relevant in-charge authorities in advance, and shall obtain prior approvals from the relevant authorities for matters for which such prior approvals are required to be obtained. On-site inspection shall be conducted mainly by the regulatory authorities of the PRC, or shall rely on the results of the inspection conducted by the regulatory authorities of the PRC.

Where overseas securities regulatory authorities and other relevant entities propose to conduct off-site inspection on an overseas listed company, securities company or securities service institution providing securities services for overseas issuance and listing of securities (including such affiliates of the overseas securities company or securities service institution that are established in mainland China as a member entity, representative entity, joint venture or cooperative entity), the relevant overseas listed company, securities company and securities service institution shall report any matter involving state secrets to the in-charge authorities with examination and approval power for approval in accordance with the law and shall make a filing with the secrecy administrative department at the same level for records. The relevant overseas listed company, securities company and securities service institution shall report any matter involving archives administration to the State Archives Administration for approval in accordance with the law. If any matter is required to be approved in advance by any other relevant authorities, the relevant overseas listed company, securities company or securities service institution shall obtain approval from such other relevant authorities in advance.

9. Where an entity or individual violates laws and regulations such as the *Law of the People's Republic of China on Guarding State Secrets* and the *Archives Law of the*

People's Republic of China in the course of any overseas issuance and listing of securities, the relevant authorities shall pursue the legal liabilities of such entity or individual in accordance with the law; in case of suspected crime, such entity or individual shall be referred to the judicial authorities in order for the criminal liability to be pursued.

10. For the purpose of these Provisions, the term “overseas listed company” shall mean domestic companies limited by shares that issue overseas-listed stock to foreign investors.
11. Domestic persons holding equity in overseas listed companies with the controlling shareholder(s) being Chinese investor(s) and the securities companies and securities service institutions that provide securities service for such companies shall also follow these Provisions.
12. These Provisions shall come into effect on the date of promulgation.

中国证券监督管理委员会、国家保密局、国家档案局公告
([2009]29号)

中国证券监督管理委员会会同国家保密局、国家档案局制定了《关于加强在境外发行证券与上市相关保密和档案管理工作的规定》，现予公布，自公布之日起施行。

中国证券监督管理委员会
国家保密局
国家档案局
二〇〇九年十月二十日

关于加强在境外发行证券与上市相关保密和档案管理工作的规定

一、为保障国家经济安全，保护社会公共利益，根据《中华人民共和国证券法》、《中华人民共和国保守国家秘密法》和《中华人民共和国档案法》等法律法规的有关规定，制定本规定。

二、在境外发行证券与上市过程中，境外上市公司（包括拟上市公司，下同）以及提供相关证券服务的证券公司、证券服务机构应当严格贯彻执行有关法律法规的规定以及本规定的要求，增强保守国家秘密和加强档案管理的法律意识，建立和完善专项规章制度，加强对有关人员的教育和管理，认真落实各项具体措施，进一步做好保密和档案管理工作。

三、在境外发行证券与上市过程中，境外上市公司向有关证券公司、证券服务机构和境外监管机构提供或者公开披露涉及国家秘密的文件、资料和其他物品的，应当依法报有审批权限的主管部门批准，并报同级保密行政管理部门备案。是否属于国家秘密不明确或者有争议的，应当报有关保密行政管理部门确定。

四、在境外发行证券与上市过程中，境外上市公司向有关证券公司、证券服务机构和境外监管机构提供或者公开披露涉及国家安全或者重大利益的档案的，应当依法报国家档案局批准。

五、境外上市公司在与有关证券公司、证券服务机构签订服务协议时，应当依照《中华人民共和国保守国家秘密法》等法律法规及本规定，对有关证券公司、证券服务机构承担保密义务的范围等事项依法作出明确的约定；服务协议关于适用法律以及有关证券公司和证券服务机构承担保密义务的约定条款与中国有关法律法规的规定以及本规定不符的，应当及时修改。

六、在境外发行证券与上市过程中，提供相关证券服务的证券公司、证券服务机构在境内形成的工作底稿等档案应当存放在境内。

前款所称工作底稿涉及国家秘密、国家安全或者重大利益的，不得在非涉密计算机信息系统中存储、处理和传输；未经有关主管部门批准，也不得将其携带、寄运至境外或者通过信息技术等任何手段传递给境外机构或者个人。

七、证监会、国家保密局和国家档案局等有关主管部门建立协作机制，在各自的职权范围内依法对在境外发行证券与上市过程中涉及保密和档案管理的有关事项进行监督检查。

前款所称检查，包括现场检查和非现场检查。

八、证监会负责就在境外发行证券与上市保密和档案管理工作涉及的跨境证券监管事宜，与境外证券监管机构和其他相关机构开展交流与合作。

境外证券监管机构和其他相关机构提出对境外上市公司以及为境外发行证券与上市提供证券服务的证券公司、证券服务机构（包括境外证券公司和证券服务机构在境内设立的成员机构、代表机构、联营机构、合作机构等关联机构）在境内进行现场检查的，有关境外上市公司、证券公司和证券服务机构应当事先向证监会和有关主管部门报告，涉及需要事先经有关部门批准的事项，应当事先取得有关部门的批准。现场检查应以我国监管机构为主进行，或者依赖我国监管机构的检查结果。

境外证券监管机构和其他相关机构提出对境外上市公司以及为境外发行证券与上市提供证券服务的证券公司、证券服务机构（包括境外证券公司和证券服务机构在境内设立的成员机构、代表机构、联营机构、合作机构等关联机构）进行非现场检查的，涉及国家秘密的事项，有关境外上市公司、证券公司和证券服务机构应当依法报有审批权限的主管部门批准，并报同级保密行政管理部门备案；涉及档案管理的事项，有关境外上市公司、证券公司和证券服务机构应当依法报国家档案局批准。涉及需要事先经其他有关部门批准的事项，有关境外上市公司、证券公司和证券服务机构应当事先取得其他有关部门的批准。

九、在境外发行证券与上市过程中，任何单位和个人违反《中华人民共和国保守国家秘密法》和《中华人民共和国档案法》等法律法规的，由有关部门依法追究法律责任；涉嫌犯罪的，移送司法机关依法追究刑事责任。

十、本规定所称境外上市公司，是指发行境外上市外资股的境内股份有限公司。

十一、境外中资控股上市公司的境内股权持有单位以及为上述公司提供证券服务的证券公司和证券服务机构参照本规定执行。

十二、本规定自公布之日起施行。

Item 10

Securities Law

Article 169. When investment advisory bodies, financial consulting bodies, credit rating bodies, asset evaluation bodies, and accounting firms engage in securities service business, they must have permission from the securities regulatory body of the State Council and the relevant department in charge. Without the permission of the securities regulatory body of the State Council and the relevant department in charge, they may not engage in securities business.

Procedures for the administration of examination and approval of investment advisory bodies, financial consulting bodies, credit rating bodies, asset evaluation bodies, and accounting firms to engage in securities business, and business rules for the foregoing, shall be formulated by the securities regulatory body of the State Council and relevant departments in charge.

第一百六十九条投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务，必须经国务院证券监督管理机构和有关主管部门批准。

投资咨询机构、财务顾问机构、资信评级机构、资产评估机构、会计师事务所从事证券服务业务的审批管理办法，由国务院证券监督管理机构和有关主管部门制定。

Item 11

Law on the Protection of State Secrets

Law of the People's Republic of China on Guarding State Secrets

Order of the President of the People's Republic of China No. 28

The Law of the People's Republic of China on Guarding State Secrets has been adopted at the 14th Session of the 11th Standing Committee of the National People's Congress of the People's Republic of China on April 29, 2010, and the revised Law of the People's Republic of China on Guarding State Secrets is hereby promulgated and shall become effective from October 1, 2010.

Hu Jintao, President of the People's Republic of China
April 29, 2010

Law of the People's Republic of China on Guarding State Secrets

(Adopted at the Third Session of the Seventh Standing Committee of the National People's Congress of the People's Republic of China on September 5, 1988; and revised at the 14th Session of the 11th Standing Committee of the National People's Congress of the People's Republic of China on April 29, 2010)

Contents

- Chapter 1: General Provisions
- Chapter 2: Scopes and Categories of State Secrets
- Chapter 3: Security Rules
- Chapter 4: Supervision and Administration
- Chapter 5: Legal Liability
- Chapter 6: Supplementary Provisions

Chapter 1: General Provisions

Article 1 This Law is enacted for the purpose of guarding state secrets, safeguarding State security and national interests and ensuring the smooth progress of reform, of opening to the outside world, and of socialist construction.

Article 2 State secrets shall be any matters that have a bearing on state security and interests and, as determined according to procedures prescribed by law, are made known to a chosen group of people within a certain scope for a given period of time.

Article 3 State secrets shall be protected by the law.

All State agencies, armed forces, political parties, social groups, enterprises, public institutions and citizens shall have the obligation to guard state secrets.

Any act that jeopardizes the security of a state secret shall be subject to legal liability.

Article 4 The work of guarding state secrets (hereinafter referred to as "the secret-guarding work") shall be in line with the principles of actively preventing their divulgence, laying emphasis on priorities and carrying out administration legally so that state secrets are kept

while the rational use of information resources is facilitated.

The matters that are publicized as required by the laws and administrative regulations shall be publicized in accordance with the law.

Article 5 The State secrecy administrative department shall take charge of the national secret-guarding work. The local secrecy administrative department at or above the county level shall take charge of the secret-guarding work within their respective administrative area.

Article 6 State agencies and the entities that involve state secrets (hereinafter referred to as "agencies" and "entities") shall administer the secret-guarding work of their own agencies and entities.

The central State agencies shall, within the scope of their functions and powers, administer or guide the secret-guarding work within their own system.

Article 7 The agencies and entities shall adopt the secret-guarding accountability system, improve the secret-guarding management system, perfect protective secret-guarding measures, carry out secret-guarding publicity and education, and strengthen the secret-guarding inspection.

Article 8 The State shall grant awards to the entities or individuals that have made notable achievements in guarding and protecting state secrets and improving techniques and measures, etc. for guiding secrets.

Chapter 2: Scopes and Categories of State Secrets

Article 9 The following matters involving state security and interests shall be determined as state secrets if the divulgence of such matters is likely to jeopardize State security and national interests in the fields such as political affairs, economy, national defense and foreign affairs:

- (1) secrets concerning major policy decisions on state affairs;
- (2) secrets in the building of national defense and in the activities of the armed forces;
- (3) secrets in diplomatic activities and in the activities related to foreign affairs as well as secrets to be kept as commitments to foreign countries;
- (4) secrets in the national economic and social development;
- (5) secrets concerning science and technology;
- (6) secrets concerning the activities for safeguarding State security and the investigation of criminal offences; and
- (7) other matters that are classified as state secrets by the state secrecy administrative department.

Secrets of political parties that conform to the provisions of the preceding paragraph shall be state secrets.

Article 10 State secrets shall fall into three categories: most confidential, classified and confidential.

The most confidential information refers to vital state secrets, the divulgence of which will cause extremely serious harm to state security and national interests; classified information refers to important state secrets, the divulgence of which will cause serious harm to state security and national interests; and confidential information refers to ordinary state secrets, the divulgence of which will cause harm to state security and national interests.

Article 11 The specific scopes and categories of state secrets shall be determined by the state secrecy administrative department respectively with the ministries of foreign affairs, public security and state security and other central agencies concerned.

The specific scopes and categories of state secrets related to military affairs shall be determined by the Central Military Commission.

Stipulations on the specific scopes and categories of state secrets shall be made known within relevant scope, and adjusted in a timely manner in response to changing circumstances.

Article 12 The responsible person of an agency or entity or the person designated by such responsible person shall be the person in charge of classifying state secrets, and be responsible for the work of classifying, modifying and declassifying state secrets of the agency or entity.

When an agency or entity classifies, modifies or declassifies its own state secrets, the person who handles the matter shall formulate a specific opinion thereon, to be examined, verified and approved by the person in charge of classifying state secrets.

Article 13 The categories of state secrets shall be subject to the authority for classifying state secrets.

A central state agency or an agency at the level of province or its authorized agency or entity may classify state secrets as most confidential, classified and confidential; and the agency at the level of city with districts or autonomous prefecture or its authorized agency or entity may classify state secrets as classified and confidential. Specific authority for classifying state secrets and the scope of authorization shall be determined by the state secrecy administrative department.

Where an agency or entity carries out a matter that is determined as state secrets by its superior department and needs to classify the matter, such classification shall be made according to the category of the state secret. Where the agency or entity at a lower level considers that the relevant matter to be classified arising in the agency or entity falls under the authority of its superior department, security measures shall be taken in advance, and the matter shall be forthwith reported to the superior department for classification; in the absence of such superior department, the matter shall be forthwith reported to the relevant government department overseeing the work of the agency or entity with the appropriate authority for classification or the secrecy administrative department.

A public security agency or state security agency shall, within the scope of its responsibilities, classify state secrets according to the specified authority limits.

Article 14 An agency or entity shall, in accordance with the provisions on the specific scopes of state secrets and their categories, classify the state secrets arising in the agency or entity, and determine the time limit for guarding the state secrets and the scope of availability of the state secrets.

Article 15 The period for guarding a state secret shall, based on the nature and characteristics of the state secret, be restricted to a necessary time limit according to the needs of maintaining state security and national interests; if the period fails to be determined, the conditions for declassifying the secret shall be determined.

Unless otherwise provided, the period for guarding a state secret that is most confidential shall not exceed 30 years, the period for guarding a state secret that is classified shall not exceed 20 years, and the period for guarding a state secret that is confidential shall not exceed ten years.

An agency or entity shall, according to the actual needs, determine specific period for guarding state secrets, or date or conditions for declassifying state secrets.

Where an agency or entity decides, according to the actual needs, to publicize the matters determined as state secrets in deciding on or handling relevant matters, the matters shall be deemed as having been declassified upon formal publicity.

Article 16 The availability of a state secret shall be limited to the minimum scope according to the actual needs.

The scope of availability of a state secret shall be defined to specific personnel if possible, and, if not possible, to the agency or entity which shall limit the scope to specific personnel.

Where the personnel out of the scope of availability of a state secret need to know the state secret according to the the needs of work, the approval of the in-charge person of the relevant agency or entity shall be required.

Article 17 An agency or entity shall indicate the mark of state secret on items containing state secret such as paper and optical or magnetic media (hereinafter referred to as "item(s) containing state secret") and equipment and products that are state secrets.

The mark of state secret shall not be indicated on those that do not fall within state secrets.

Article 18 The categories of state secrets, the periods for guarding them and the scope of their availability shall be modified in response to changing circumstances. Such modifications shall be decided by the agency or entity that originally determined the categories of the secrets and the periods for guarding them and the scope of their availability or by the relevant superior departments.

The agencies or entities or personnel within the scope of availability of state secrets shall be notified, in writing and in a timely manner, of modifications of the categories of the state secrets, the periods for guarding them and the scope of their availability if any.

Article 19 A state secret shall be automatically declassified upon the expiration of the period for guarding it.

An agency or entity shall regularly examine and verify state secrets as determined. Where the matters are no longer kept as state secrets within the periods for guarding them due to the adjustment of the scope of state secrets, or it is unnecessary to continue to keep the state secrets because the publicity of the state secrets will not prejudice state security and national interests, the state secrets shall be declassified in a timely manner; where it is necessary to extend the periods for guiding secrets, the periods shall be determined anew prior to the expiration thereof. The earlier declassification of the state secrets or the extension of the period for guarding them shall be decided by the agency or entity that originally determined the declassification of the state secrets or the extension of the periods or by its superior department.

Article 20 Where an agency or entity is unclear about or has dispute in determining whether or not a matter is a state secret or which category it should be classified into, the determination shall be made by the state secrecy administrative department or the secrecy administrative department of a province, autonomous region or municipality directly under the Central Government.

Chapter 3: Secret-guiding Rules

Article 21 The preparation, receipt, dispatch, delivery, use, reproduction, preservation, maintenance and destruction of items containing state secret shall conform to the

secret-guarding provisions of the state.

Items containing state secret that are most confidential shall be preserved on the facilities or equipment that comply with the secret-guarding standard of the state, and personnel shall be specially designated to manage the said facilities or equipment; the reproduction and extraction of such items shall not be made without the approval by the agency or entity that originally classified the state secrets or its superior department; personnel shall be designated to take charge of the receipt, dispatch, delivery or carrying of such items, and necessary security measures shall be taken.

Article 22 The development, production, transportation, use, preservation, maintenance and destruction of equipment or products that are state secrets shall conform to the secret-guarding provisions of the state.

Article 23 Hierarchical protection shall be applied to the computer information systems that store or handle state secrets (hereinafter referred to as "secret-related information systems") according to the extent to which they are related to secrets.

A secret-related system shall be equipped with the secret-guarding facilities or equipment according to the secret-guarding standard of the state. The secret-guarding facilities or equipment shall be planned, constructed and operated synchronously with the secret-related information system.

The secret-related information system shall, in accordance with the provisions, not be put into use before passing inspection.

Article 24 An agency or entity shall strengthen the management of secret-related information systems, and no entity or individual may conduct the following acts:

- (1) connecting a secret-related computer or secret-related storage equipment to the Internet or any other public information network;
- (2) without taking any protective measures, exchanging information between a secret-related information system and the Internet or any other public information systems;
- (3) using a non-secret-related computer or non-secret-related storage equipment to handle information pertaining to state secrets;
- (4) uninstalling or revising the security technology programs or management programs of a secret-related information system without approval; and
- (5) presenting as a gift, selling, discarding, or altering the purpose of a secret-related computer or secret-related storage equipment that is no longer in use and has not been approached with security technology.

Article 25 An agency or entity shall strengthen the management of items containing state secret, and no organization or individual may conduct the following acts:

- (1) illegally obtaining or possessing items containing state secret;
- (2) buying, selling, transmitting or privately destroying items containing state secret;
- (3) transmitting items containing state secret through channels without any security measures such as ordinary mail and express delivery;
- (4) mailing or consigning items containing state secret out of mainland China; and
- (5) carrying or transmitting items containing state secret out of mainland China without approval by the relevant authority.

Article 26 State secrets shall be prohibited from being illegally reproduced, recorded or stored.

State secrets shall be prohibited from being transmitted on the Internet or any other public information network or via wire or wireless communications without any security

measures.

No state secrets may be involved in private contacts or correspondence.

Article 27 The editing, publication, printing and distribution of newspapers, books, audio-video products and electronic publications, the production and broadcasting of broadcasts, television programs and films, the information compilation and release on the Internet, mobile communications networks and other public information networks and via other media shall comply with the secret-guiding provisions.

Article 28 Internet operators and other public information network operators and service providers shall provide cooperation in the investigation over cases involving the divulgence of state secrets conducted by the public security agencies, state security agencies and procuratorial agencies; when discovering that the information released on the Internet or any other public information network involves divulgence of state secrets, the operators and providers shall immediately stop the transmission thereof, keep the relevant records, and make a report to the public security agencies, the state security agencies or the secrecy administrative departments; the information involving the divulgence of state secrets shall be deleted as required by the public security agencies, the state security agencies or the secrecy administrative departments.

Article 29 An agency or entity shall observe the secret-guiding provisions in publicly releasing information and making purchase in connection with the construction, goods and services that involve state secrets.

Article 30 Where an agency or entity needs to provide a state secret for the benefits of contacts and co-operation with foreign countries, or a foreign-appointed or foreign-employed person needs to know a state secret because of the needs of work, the agency or entity shall report the same to the relevant in-charge department of the State Council or the relevant in-charge department of the people's government of a province, autonomous region or municipality directly under the Central Government for approval, and conclude an agreement on confidentiality with the other party.

Article 31 Where meetings and other activities involve state secrets, the sponsor entities shall take secret-guiding measures, conduct secret-guiding education among the participants, and formulate specific requirements for guiding secrets.

Article 32 An agency or entity shall determine its section that involves the most confidential state secrets or a relatively large number of classified or confidential state secrets as a key secret-guarding department, determine the special place where the manufacture, storage and custody of items containing state secret are conducted on a centralized basis as a key location, and provide and use necessary technical protection facilities or equipment in accordance with the secret-guiding provisions and standards of the state.

Article 33 Military forbidden zones and other places and locations that are state secrets and are not open to the public shall be protected by security measures; without approval of the relevant department, no decision may be made to open them to the public or to enlarge the area that is open to the public.

Article 34 An enterprise or public institution that engages in the manufacture, reproduction, maintenance and destruction of items containing state secret, the integration of secret-related

information systems, or the business involving state secrets such as scientific research and production of weaponry shall be subject to confidentiality review, and specific measures shall be provided by the State Council.

When appointing an enterprise or public institution to engage in the business set forth in the preceding paragraph, the agency or entity shall conclude an agreement on confidentiality with the enterprise or public institution, lay down the requirements for guarding secrets and take confidentiality measures.

Article 35 Personnel who hold secret-related posts (hereinafter referred to as "secret-related personnel") shall, based on the extent to which they are related to secrets, be classified as core secret-related personnel, important secret-related personnel and ordinary secret-related personnel, and shall be subject to classified management.

Examination shall be conducted in respect of appointment or employment of secret-related personnel in accordance with the relevant provisions.

Secret-related personnel shall have good political quality and behavior, and be competent for a secret-related post.

Legitimate rights and interests of secret-related personnel shall be protected by law.

Article 36 Before taking post, secret-related personnel shall receive secret-guarding education and training, master secret-guarding knowledge and skills, sign a confidentiality undertaking, and strictly observe security rules and regulations, and shall not divulge state secrets in any way.

Article 37 Secret-related personnel shall only leave China upon approval of the relevant departments. If the relevant agencies consider that secret-related personnel's leaving China will cause harm to state security or cause heavy loss to national interests, secret-related personnel shall not be approved to leave China.

Article 38 Secret-related personnel shall be subject to the administration whereby they are kept away from secrets during a specific period of time when leaving their post or position. Within such period, secret-related personnel shall perform their obligation for guarding secrets in accordance with the provisions, and shall not be employed in violation of the provisions or divulge state secrets in any way.

Article 39 An agency or entity shall establish and improve the management system for secret-related personnel, specify the rights of secret-related personnel and their post responsibilities and requirements, and constantly supervise and inspect secret-related personnel's performance of responsibilities.

Article 40 When a functionary or any other citizen discovers that a state secret has been divulged or is likely to be divulged, he or she shall forthwith take remedial measures and report the same to the relevant agency or entity in a timely manner. The agency or entity shall, after receiving the report, forthwith handle the matter and report the same to the relevant secrecy administrative department in a timely manner.

Chapter 4: Supervision and Administration

Article 41 The state secrecy administrative department shall, in accordance with the provisions of laws and administrative regulations, formulate secret-guarding rules and the state secret-guarding standard.

Article 42 A secrecy administrative department shall, in accordance with the law, organize and carry out the work relating to the dissemination of the knowledge about secret guarding, secret-guarding inspection, and investigation and punishment of cases involving the protection of secret-guarding technology and secret divulcation, and guide and supervise the secret-guarding work of agencies and entities.

Article 43 Where a secrecy administrative department discovers any inappropriate classification, modification or declassification of a state secret, the department shall promptly notify the relevant agency or entity to make corrections.

Article 44 When a secrecy administrative department inspects an agency or entity in terms of its compliance with security rules, the relevant agency or entity shall provide cooperation. Where a secrecy administrative department discovers that there is a hidden danger for divulcation of secrets with an agency or entity, the department shall require the agency or entity to take measures and make corrections within a specified time limit; the department shall order the agency or entity to suspend the use of any facilities, equipment or place with a hidden trouble for divulcation of secrets; the department shall make a suggestion to the relevant agency or entity for imposing disciplinary measures on secret-related personnel who seriously violate the provisions regarding secret-guarding and removing them from their secret-related post; if it is discovered that the personnel are suspected of divulcating a state secret, the department shall supervise or guide the relevant agency or entity to conduct investigation and impose punishment accordingly. If the personnel are suspected of committing a criminal offense, the case shall be transferred to the relevant judicial authorities for handling.

Article 45 A secrecy administrative department shall take over any illegally obtained or possessed items containing state secret that are discovered in the secret-guarding inspection.

Article 46 Where an agency that handles a case involving suspected divulcation of a state secret needs to determine whether or not the relevant matter is a state secret or which category it should be classified into, such determination shall be made by the state secrecy administrative department or the secrecy administrative department of the relevant province, autonomous region or municipality directly under the Central Government.

Article 47 Where an agency or entity fails to impose disciplinary measures in accordance with the law on a person who violates the secret-guarding provisions, the relevant secrecy administrative department shall make a suggestion on making corrections and, in the event of refusal to make corrections, shall submit the same to the agency at the next higher level or the supervision agency for dealing with the leaders bearing responsibility and persons subject to direct liability of the agency or entity in accordance with the law.

Chapter 5: Legal Liability

Article 48 In the case of any of the following acts in violation of the provisions of this Law, disciplinary measures shall be imposed in accordance with the law; if the conduct constitutes a criminal offense, criminal liability shall be imposed in accordance with the law:

- (1) illegally obtaining or possessing items containing state secret;
- (2) buying, selling, transmitting or privately destroying items containing state secret;
- (3) transmitting items containing state secret through channels without any security measures such as ordinary mail and express delivery;

(4) mailing or consigning items containing state secret out of mainland China, or carrying or transmitting any item containing state secret out of mainland China without approval by the relevant authority;

(5) illegally reproducing, recording or storing state secrets;

(6) involving state secrets in private contacts or correspondence;

(7) transmitting state secrets on the Internet or any other public information network or via wire or wireless communications without any security measures;

(8) connecting a secret-related computer or secret-related storage equipment to the Internet or any other public information network;

(9) without taking any protective measures, exchanging information between a secret-related information system and the Internet or any other public information systems;

(10) using a non-secret-related computer or non-secret-related storage equipment to handle information pertaining to state secrets;

(11) uninstalling or revising the security technology programs or management programs of a secret-related information system without approval; and

(12) presenting as a gift, selling, discarding, or altering the purpose of, a secret-related computer or secret-related storage equipment that is no longer in use and has not been approached with security technology.

Where a person commits any of the acts set forth in the preceding paragraph but such act does not constitute a criminal offense and disciplinary measures are not applicable, the relevant secrecy administrative department shall urge his or her agency or entity to deal with the person.

Article 49 Where an agency or entity violates the provisions of this Law resulting in the occurrence of a significant case involving divulgence of secrets, the relevant agency or entity shall impose disciplinary measures on the person directly in charge and the persons subject to direct liability; for the persons to whom the disciplinary measures are not applicable, the secrecy administrative department shall urge the department in charge of the person to deal with the person.

Where, in violation of the provisions of this Law, an agency or entity fails to classify a matter that is required to be classified or classifies a matter that is not required to be classified, thereby causing serious consequences, the relevant agency or entity shall impose disciplinary measures on the person directly in charge and the persons subject to direct liability.

Article 50 Where an Internet operator or any other public information network operator or service provider violates the provisions of Article 28 of this Law, the relevant public security agency or state security agency and the competent information industry department shall, according to their respective functions and duties, impose a penalty thereon in accordance with the law.

Article 51 Where a staff member of a secrecy administrative department is derelict in his or her duties, practices favoritism or commits irregularities, disciplinary measures shall be imposed thereon in accordance with the law; if the act constitutes a criminal offense, criminal liability shall be imposed thereon in accordance with the law.

Chapter 6: Supplementary Provisions

Article 52 The Central Military Commission shall formulate the Regulations of the Chinese People's Liberation Army on the Guarding of Secrets in accordance with this Law.

Article 53 This Law shall become effective from October 1, 2010.

中华人民共和国保守国家秘密法

中华人民共和国主席令 第二十八号

《中华人民共和国保守国家秘密法》已由中华人民共和国第十一届全国人民代表大会常务委员会第十四次会议于2010年4月29日修订通过，现将修订后的《中华人民共和国保守国家秘密法》公布，自2010年10月1日起施行。

中华人民共和国主席
胡锦涛
2010年4月29日

中华人民共和国保守国家秘密法

(中华人民共和国保守国家秘密法(1988年9月5日第七届全国人民代表大会常务委员会第三次会议通过 2010年4月29日第十一届全国人民代表大会常务委员会第十四次会议修订)

目录

- 第一章 总则
- 第二章 国家秘密的范围和密级
- 第三章 保密制度
- 第四章 监督管理
- 第五章 法律责任
- 第六章 附则

第一章 总则

第一条 为了保守国家秘密,维护国家安全和利益,保障改革开放和社会主义建设事业的顺利进行,制定本法。

第二条 国家秘密是关系国家安全和利益,依照法定程序确定,在一定时间内只限一定范围的人员知悉的事项。

第三条 国家秘密受法律保护。

一切国家机关、武装力量、政党、社会团体、企业事业单位和公民都有保守国家秘密的义务。

任何危害国家秘密安全的行为,都必须受到法律追究。

第四条 保守国家秘密的工作(以下简称保密工作),实行积极防范、突出重点、依法管理的方针,既确保国家秘密安全,又便利信息资源合理利用。

法律、行政法规规定公开的事项,应当依法公开。

第五条 国家保密行政管理部门主管全国的保密工作。县级以上地方各级保密行政管理部门主管本行政区域的保密工作。

第六条 国家机关和涉及国家秘密的单位(以下简称机关、单位)管理本机关和本单位的保密工作。

中央国家机关在其职权范围内,管理或者指导本系统的保密工作。

第七条 机关、单位应当实行保密工作责任制,健全保密管理制度,完善保密防护措施,开展保密宣传教育,加强保密检查。

第八条 国家对在保守、保护国家秘密以及改进保密技术、措施等方面成绩显著的单位或者个人给予奖励。

第二章 国家秘密的范围和密级

第九条 下列涉及国家安全和利益的事项,泄露后可能损害国家在政治、经济、国防、外交等领域的安全和利益的,应当确定为国家秘密:

(一)国家事务重大决策中的秘密事项;

(二)国防建设和武装力量活动中的秘密事项;

(三)外交和外事活动中的秘密事项以及对外承担保密义务的秘密事项;

(四)国民经济和社会发展中的秘密事项;

(五)科学技术中的秘密事项;

(六)维护国家安全活动和追查刑事犯罪中的秘密事项;

(七)经国家保密行政管理部门确定的其他秘密事项。

政党的秘密事项中符合前款规定的,属于国家秘密。

第十条 国家秘密的密级分为绝密、机密、秘密三级。

绝密级国家秘密是最重要的国家秘密,泄露会使国家安全和利益遭受特别严重的损害;机密级国家秘密是重要的国家秘密,泄露会使国家安全和利益遭受严重的损害;秘密级国家秘密是一般的国家秘密,泄露会使国家安全和利益遭受损害。

第十一条 国家秘密及其密级的具体范围,由国家保密行政管理部门分别会同外交、公安、国家安全和其他中央有关机关规定。

军事方面的国家秘密及其密级的具体范围,由中央军事委员会规定。

国家秘密及其密级的具体范围的规定,应当在有关范围内公布,并根据情况变化及时调整。

第十二条 机关、单位负责人及其指定的人员为定密责任人,负责本机关、本单位的国家秘密确定、变更和解除工作。

机关、单位确定、变更和解除本机关、本单位的国家秘密,应当由承办人提出具体意见,经定密责任人审核批准。

第十三条 确定国家秘密的密级,应当遵守定密权限。

中央国家机关、省级机关及其授权的机关、单位可以确定绝密级、机密级和秘密级国家秘密;设区的市、自治州一级的机关及其授权的机关、单位可以确定机密级和秘密级

国家秘密。具体的定密权限、授权范围由国家保密行政管理部门规定。

机关、单位执行上级确定的国家秘密事项,需要定密的,根据所执行的国家秘密事项的密级确定。下级机关、单位认为本机关、本单位产生的有关定密事项属于上级机关、单位的定密权限,应当先行采取保密措施,并立即报请上级机关、单位确定;没有上级机关、单位的,应当立即提请有相应定密权限的业务主管部门或者保密行政管理部门确定。

公安、国家安全机关在其工作范围内按照规定的权限确定国家秘密的密级。

第十四条 机关、单位对所产生的国家秘密事项,应当按照国家秘密及其密级的具体范围的规定确定密级,同时确定保密期限和知悉范围。

第十五条 国家秘密的保密期限,应当根据事项的性质和特点,按照维护国家安全和利益的需要,限定在必要的期限内;不能确定期限的,应当确定解密的条件。

国家秘密的保密期限,除另有规定外,绝密级不超过三十年,机密级不超过二十年,秘密级不超过十年。

机关、单位应当根据工作需要,确定具体的保密期限、解密时间或者解密条件。

机关、单位对在决定和处理有关事项工作过程中确定需要保密的事项,根据工作需要决定公开的,正式公布时即视为解密。

第十六条 国家秘密的知悉范围,应当根据工作需要限定在最小范围。

国家秘密的知悉范围能够限定到具体人员的,限定到具体人员;不能限定到具体人员的,限定到机关、单位,由机关、单位限定到具体人员。

国家秘密的知悉范围以外的人员,因工作需要知悉国家秘密的,应当经过机关、单位负责人批准。

第十七条 机关、单位对承载国家秘密的纸介质、光介质、电磁介质等载体(以下简称国家秘密载体)以及属于国家秘密的设备、产品,应当做出国家秘密标志。

不属于国家秘密的,不应当做出国家秘密标志。

第十八条 国家秘密的密级、保密期限和知悉范围,应当根据情况变化及时变更。国家秘密的密级、保密期限和知悉范围的变更,由原定密机关、单位决定,也可以由其上级机关决定。

国家秘密的密级、保密期限和知悉范围变更的,应当及时书面通知知悉范围内的机关、单位或者人员。

第十九条 国家秘密的保密期限已满的,自行解密。

机关、单位应当定期审核所确定的国家秘密。对在保密期限内因保密事项范围调整不再作为国家秘密事项,或者公开后不会损害国家安全和利益,不需要继续保密的,应当及时解密;对需要延长保密期限的,应当在原保密期限届满前重新确定保密期限。提前解密或者延长保密期限的,由原定密机关、单位决定,也可以由其上级机关决定。

第二十条 机关、单位对是否属于国家秘密或者属于何种密级不明确或者有争议的,由国家保密行政管理部门或者省、自治区、直辖市保密行政管理部门确定。

第三章 保密制度

第二十一条 国家秘密载体的制作、收发、传递、使用、复制、保存、维修和销毁,应当

符合国家保密规定。

绝密级国家秘密载体应当在符合国家保密标准的设施、设备中保存,并指定专人管理;未经原定密机关、单位或者其上级机关批准,不得复制和摘抄;收发、传递和外出携带,应当指定人员负责,并采取必要的安全措施。

第二十二条 属于国家秘密的设备、产品的研制、生产、运输、使用、保存、维修和销毁,应当符合国家保密规定。

第二十三条 存储、处理国家秘密的计算机信息系统(以下简称涉密信息系统)按照涉密程度实行分级保护。

涉密信息系统应当按照国家保密标准配备保密设施、设备。保密设施、设备应当与涉密信息系统同步规划,同步建设,同步运行。

涉密信息系统应当按照规定,经检查合格后,方可投入使用。

第二十四条 机关、单位应当加强对涉密信息系统的管理,任何组织和个人不得有下列行为:

- (一)将涉密计算机、涉密存储设备接入互联网及其他公共信息网络;
- (二)在未采取防护措施的情况下,在涉密信息系统与互联网及其他公共信息网络之间进行信息交换;
- (三)使用非涉密计算机、非涉密存储设备存储、处理国家秘密信息;
- (四)擅自卸载、修改涉密信息系统的安全技术程序、管理程序;
- (五)将未经安全技术处理的退出使用的涉密计算机、涉密存储设备赠送、出售、丢弃或者改作其他用途。

第二十五条 机关、单位应当加强对国家秘密载体的管理,任何组织和个人不得有下列行为:

- (一)非法获取、持有国家秘密载体;
- (二)买卖、转送或者私自销毁国家秘密载体;
- (三)通过普通邮政、快递等无保密措施的渠道传递国家秘密载体;
- (四)邮寄、托运国家秘密载体出境;
- (五)未经有关主管部门批准,携带、传递国家秘密载体出境。

第二十六条 禁止非法复制、记录、存储国家秘密。

禁止在互联网及其他公共信息网络或者未采取保密措施的有线和无线通信中传递国家秘密。

禁止在私人交往和通信中涉及国家秘密。

第二十七条 报刊、图书、音像制品、电子出版物的编辑、出版、印制、发行,广播节目、电视节目、电影的制作和播放,互联网、移动通信网等公共信息网络及其他传媒的信息编辑、发布,应当遵守有关保密规定。

第二十八条 互联网及其他公共信息网络运营商、服务商应当配合公安机关、国家安全机关、检察机关对泄密案件进行调查;发现利用互联网及其他公共信息网络发布的信息涉及泄露国家秘密的,应当立即停止传输,保存有关记录,向公安机关、国家安全机关或者保密行政管理部门报告;应当根据公安机关、国家安全机关或者保密行政管理部门的要

求,删除涉及泄露国家秘密的信息。

第二十九条 机关、单位公开发布信息以及对涉及国家秘密的工程、货物、服务进行采购时,应当遵守保密规定。

第三十条 机关、单位对外交往与合作中需要提供国家秘密事项,或者任用、聘用的境外人员因工作需要知悉国家秘密的,应当报国务院有关主管部门或者省、自治区、直辖市人民政府有关主管部门批准,并与对方签订保密协议。

第三十一条 举办会议或者其他活动涉及国家秘密的,主办单位应当采取保密措施,并对参加人员进行保密教育,提出具体保密要求。

第三十二条 机关、单位应当将涉及绝密级或者较多机密级、秘密级国家秘密的机构确定为保密要害部门,将集中制作、存放、保管国家秘密载体的专门场所确定为保密要害部位,按照国家保密规定和标准配备、使用必要的技术防护设施、设备。

第三十三条 军事禁区 and 属于国家秘密不对外开放的其他场所、部位,应当采取保密措施,未经有关部门批准,不得擅自决定对外开放或者扩大开放范围。

第三十四条 从事国家秘密载体制作、复制、维修、销毁,涉密信息系统集成,或者武器装备科研生产等涉及国家秘密业务的企业事业单位,应当经过保密审查,具体办法由国务院规定。

机关、单位委托企业事业单位从事前款规定的业务,应当与其签订保密协议,提出保密要求,采取保密措施。

第三十五条 在涉密岗位工作的人员(以下简称涉密人员),按照涉密程度分为核心涉密人员、重要涉密人员和一般涉密人员,实行分类管理。

任用、聘用涉密人员应当按照有关规定进行审查。

涉密人员应当具有良好的政治素质和品行,具有胜任涉密岗位所要求的工作能力。

涉密人员的合法权益受法律保护。

第三十六条 涉密人员上岗应当经过保密教育培训,掌握保密知识技能,签订保密承诺书,严格遵守保密规章制度,不得以任何方式泄露国家秘密。

第三十七条 涉密人员出境应当经有关部门批准,有关机关认为涉密人员出境将对国家安全造成危害或者对国家利益造成重大损失的,不得批准出境。

第三十八条 涉密人员离岗离职实行脱密期管理。涉密人员在脱密期内,应当按照规定履行保密义务,不得违反规定就业,不得以任何方式泄露国家秘密。

第三十九条 机关、单位应当建立健全涉密人员管理制度,明确涉密人员的权利、岗位责任和要求,对涉密人员履行职责情况开展经常性的监督检查。

第四十条 国家工作人员或者其他公民发现国家秘密已经泄露或者可能泄露时,应当立即采取补救措施并及时报告有关机关、单位。机关、单位接到报告后,应当立即作出处理,并及时向保密行政管理部门报告。

第四章 监督管理

第四十一条 国家保密行政管理部门依照法律、行政法规的规定,制定保密规章和国家保密标准。

第四十二条 保密行政管理部门依法组织开展保密宣传教育、保密检查、保密技术防护和泄密案件查处工作,对机关、单位的保密工作进行指导和监督。

第四十三条 保密行政管理部门发现国家秘密确定、变更或者解除不当的,应当及时通知有关机关、单位予以纠正。

第四十四条 保密行政管理部门对机关、单位遵守保密制度的情况进行检查,有关机关、单位应当配合。保密行政管理部门发现机关、单位存在泄密隐患的,应当要求其采取措施,限期整改;对存在泄密隐患的设施、设备、场所,应当责令停止使用;对严重违反保密规定的涉密人员,应当建议有关机关、单位给予处分并调离涉密岗位;发现涉嫌泄露国家秘密的,应当督促、指导有关机关、单位进行调查处理。涉嫌犯罪的,移送司法机关处理。

第四十五条 保密行政管理部门对保密检查中发现的非法获取、持有的国家秘密载体,应当予以收缴。

第四十六条 办理涉嫌泄露国家秘密案件的机关,需要对有关事项是否属于国家秘密以及属于何种密级进行鉴定的,由国家保密行政管理部门或者省、自治区、直辖市保密行政管理部门鉴定。

第四十七条 机关、单位对违反保密规定的人员不依法给予处分的,保密行政管理部门应当建议纠正,对拒不纠正的,提请其上一级机关或者监察机关对该机关、单位负有责任的领导人员和直接责任人员依法予以处理。

第五章 法律责任

第四十八条 违反本法规定,有下列行为之一的,依法给予处分;构成犯罪的,依法追究刑事责任:

- (一)非法获取、持有国家秘密载体的;
- (二)买卖、转送或者私自销毁国家秘密载体的;
- (三)通过普通邮政、快递等无保密措施的渠道传递国家秘密载体的;
- (四)邮寄、托运国家秘密载体出境,或者未经有关主管部门批准,携带、传递国家秘密载体出境的;
- (五)非法复制、记录、存储国家秘密的;
- (六)在私人交往和通信中涉及国家秘密的;
- (七)在互联网及其他公共信息网络或者未采取保密措施的有线和无线通信中传递国家秘密的;
- (八)将涉密计算机、涉密存储设备接入互联网及其他公共信息网络的;
- (九)在未采取防护措施的情况下,在涉密信息系统与互联网及其他公共信息网络之间进行信息交换的;
- (十)使用非涉密计算机、非涉密存储设备存储、处理国家秘密信息的;

(十一)擅自卸载、修改涉密信息系统的安全技术程序、管理程序的;

(十二)将未经安全技术处理的退出使用的涉密计算机、涉密存储设备赠送、出售、丢弃或者改作其他用途的。

有前款行为尚不构成犯罪,且不适用处分的人员,由保密行政管理部门督促其所在机关、单位予以处理。

第四十九条 机关、单位违反本法规定,发生重大泄密案件的,由有关机关、单位依法对直接负责的主管人员和其他直接责任人员给予处分;不适用处分的人员,由保密行政管理部门督促其主管部门予以处理。

机关、单位违反本法规定,对应当定密的事项不定密,或者对不应当定密的事项定密,造成严重后果的,由有关机关、单位依法对直接负责的主管人员和其他直接责任人员给予处分。

第五十条 互联网及其他公共信息网络运营商、服务商违反本法第二十八条规定的,由公安机关或者国家安全机关、信息产业主管部门按照各自职责分工依法予以处罚。

第五十一条 保密行政管理部门的工作人员在履行保密管理职责中滥用职权、玩忽职守、徇私舞弊的,依法给予处分;构成犯罪的,依法追究刑事责任。

第六章 附则

第五十二条 中央军事委员会根据本法制定中国人民解放军保密条例。

第五十三条 本法自 2010 年 10 月 1 日起施行。

Item 12

Measures for the Implementation of the Law on State Secrets

Art. 11 When it is not clear whether an item should be a state secret or, if so, what its classification should be, where the organ or unit that produced it does not have the authority to make a classification, it should make a draft classification and within ten days of making such draft classification apply in accordance with the following rules for a determination of the class of secret:

(1) With respect to matters within the scope of work [of the organ or unit], the question should be passed up level by level to the superior organ that has been authorized by the state secrecy department to classify the secrecy level of the item in question;

(2) With respect to other matters, the question should be passed up level by level to the secrecy department with authority to classify the secrecy level of the item in question.

The organ or secrecy department receiving the application should issue a response within 30 days.

第十一条 对是否属于国家秘密和属于何种密级不明确的事项，产生该事项的机关、单位无相应确定密级权的，应当及时拟定密级，并在拟定密级后的十日内依照下列规定申请确定密级：

（一）属于主管业务方面的事项，逐级报至国家保密工作部门审定的有权确定该事项密级的上级机关；

（二）其他方面的事项，逐级报至有权确定该事项密级的保密工作部门。

接到申请的机关或者保密工作部门，应当在三十日内作出批复。

Art. 13 The classifying organ or unit shall mark the secrecy classification of documents, materials, and other items that are state secrets. Where the classification is made in accordance with Articles 10 and 11 of these Rules, the marking shall be done by the applying organ or unit. Where items that are state secrets cannot be marked, the organ or unit that produced the item are responsible for informing personnel who will come in contact with such items.

第十三条 属于国家秘密的文件、资料和其他物品，由确定密级的机关、单位标明密级；依照本办法第十条、第十一条的规定确定密级的，由提出申请的机关、单位标明密级。属于国家秘密的事项不能标明密级的，由产生该事项的机关、单位负责通知接触范围内的人员。



Exhibit 3

List of Documents Reviewed or Relied Upon

1. *Wells Submissions*

- a. Wells submission of BDO China Dahua CPA Co., Ltd. (“BDO Dahua”), and certain attachments thereto, including:
 - i. Exhibit 1: Letter from CSRC to DTTC, Oct. 11, 2011 (No. 413)
 - ii. Exhibit 3: Interim Measures for the Examination, Approval and Supervision of Accounting Firms
 - iii. Exhibit 5: Letter from Century-Link & Xin Ji Yuan Law Offices to BDO Dahua, June 15, 2005
 - iv. Exhibit 6: Letter from Joan Chen to Lisa Morris, May 24, 2011
 - v. Exhibit 7: Letter from Joan Chen to Lisa Morris, Oct. 17, 2011
 - vi. Exhibit 8: Letter from BDO Dahua to David A. Weinstein, April 2, 2012
 - vii. Exhibit 9: Letter from BDO Dahua to CSRC, May 11, 2012
 - viii. Exhibit 10: Press report (“CSRC responds to US’s accusation”), May 17, 2012
 - ix. Exhibit 11: Press report (“Doty scores visibility to China’s inspection process”), May 9, 2012
- b. Wells submission of Ernst & Young Hua Ming LLP (“EYHM”) in the matter of Client C and certain attachments thereto, including:
 - i. Exhibit 2: Letter from Century-Link & Xin Ji Yuan Law Offices to EYHM, April 29, 2004, including Appendix 1 thereto
 - ii. Exhibit 4: Letter from CSRC to Certain Accounting Firms, Oct. 26, 2011 (No. 437)
 - iii. Exhibit 5
 - (1) Letter from EYHM to CSRC, Oct. 12, 2011
 - (2) Letter from EYHM to MOF, Oct. 12, 2011
 - (3) Letter from EYHM to CSRC, Dec. 7, 2011
 - (4) Letter from EYHM to CSRC, Feb. 23, 2012
 - (5) Letter from EYHM to CSRC, March 12, 2012
 - (6) Letter from EYHM to CSRC, May 4, 2012
 - (7) Letter from EYHM to MOF, May 9, 2012

- (8) Letter from EYHM to CSRC, May 11, 2012
- c. Wells submission of Ernst & Young Hua Ming LLP (“EYHM”) in the matter of Client B and certain attachments thereto, including:
- i. Exhibit 2: Letter from Robert G. Cohen to Marc Johnson, May 25, 2012, and certain attachments thereto, including:
- (1) Exhibit 2: CSRC Letter to Certain Accounting Firms, Oct. 26, 2011 (No. 437)
- (2) Exhibit 4: Letter from EYHM to Client B, March 15, 2011, Bates-stamped EYHM-000042 *et seq.*
- d. Wells submission of KPMG Huazhen (Special General Partnership) (“KPMG Huazhen”) and certain attachments thereto including:
- i. Exhibit 1: Letter from Geoffrey F. Aronow to Barry A. Kamar and other SEC staff, March 27, 2012, and certain attachments thereto, including:
- (1) Legal Opinion issued by Linklaters and Century-Link & Xin Ji Yuan Law Office, March 27, 2012, and certain attachments thereto, including:
- (a) Appendix 1: PRC Law and Regulations Cited
- (b) Appendix 2: Letters Issued by the CSRC to the PCAOB and the SEC dated Jan. 22, 2009 and May 15, 2009
- (c) Appendix 3: Letter from CSRC to KPMG Huazhen, Oct. 17, 2011 (No. 422)
- (d) Appendix 4: Letter from KPMG Huazhen to CSRC, Feb. 24, 2012
- (e) Appendix 5: Letter from KPMG Huazhen to CSRC and MOF, March 8, 2012
- (f) Appendix 6: Letter issued by HKICPA to KPMG Hong Kong and all Hong Kong CPA firms dated respectively July 14, 2009 and July 12, 2011
- ii. Exhibit 2: Letter from KPMG Huazhen to CSRC, May 14, 2012
- e. Wells submission of Deloitte Touche Tohmatsu Certified Public Accountants Ltd. (“DTTC”) in the matter of Client G
- f. Wells submission of Deloitte Touche Tohmatsu Certified Public Accountants Ltd. (“DTTC”) in the matter of Client A
- g. Supplemental Wells submission of Deloitte Touche Tohmatsu Certified Public Accountants Ltd. (“DTTC”) in the matter of Client A

- h. Wells submission of PriceWaterhouseCoopers Zhong Tian CPAs Limited (“PwC Zhong Tian”) and certain attachments thereto, including:
 - i. Exhibit 12: Letter from Michael S. Flynn to Hemma B. Ramrattan, Nov. 2, 2011 and certain attachments thereto, including:
 - (1) CSRC Reply Letter Concerning the Provision of Archives Such As Audit Work Papers by Certain CPA Firms, dated October 26, 2011
 - (2) Letter from Linklaters and Century-Link & Xin Ji Yuan Law Office to SEC, Nov. 2, 2011 and appendices thereto, including:
 - (a) Letter from CSRC to PCAOB, Jan. 22, 2009
 - (b) Letter from CSRC to SEC, May 15, 2009
 - ii. Exhibit 13: Letter from CSRC to PwC Zhong Tian, Nov. 3, 2011
 - iii. Exhibit 15: Letter from Michael S. Flynn to Hemma B. Ramrattan, Dec. 2, 2011 and certain attachments thereto, including:
 - (1) Letter from PwC Zhong Tian to CSRC, Dec. 1, 2011
 - (2) Letter from Linklaters and Century-Link & Xin Ji Yuan Law Office to SEC, Dec. 1, 2011
 - iv. Exhibit 17: Declaration of Professor Xin Tang
 - v. Exhibit 18: Declaration of Professor James V. Feinerman
 - vi. Exhibit 19: Letter from Michael S. Flynn to Stephen T. Kaiser, April 12, 2012, and certain attachments thereto, including:
 - (1) Letter from PwC Zhong Tian to Mr. Li, March 22, 2012
 - vii. Exhibit 20: Letter from Michael S. Flynn to John J. Kaleba, April 12, 2012, and certain attachments thereto, including:
 - (1) Letter from CSRC to Relevant CPA Firms, Oct. 26, 2011

2. *Filings in Legal Proceedings*

- a. In the matter of BDO China Dahua CPA Ltd., et al., Respondents, Administrative Proceeding, File No. 3-15116, Before the Securities and Exchange Commission
 - i. Respondents' Motion for Summary Disposition as to Certain Threshold Issues and Memorandum in Support, Feb. 1, 2013, and attachments thereto, including:
 - (1) Declaration of James V. Feinerman, Feb. 1, 2013, and attachments thereto
 - ii. Division of Enforcement's Consolidated Opposition to Respondent's

Motion for Summary Disposition as to Certain Threshold Issues, Feb. 22, 2013

- iii. Respondents' Reply Memorandum in Support of Respondents' Motion for Summary Disposition as to Certain Threshold Issues, March 8, 2013, and attachments thereto, including:
 - (1) Supplemental Declaration of James V. Feinerman, March 8, 2013, and attachments thereto
- iv. Order on Motions for Summary Disposition as to Certain Threshold Issues, April 30, 2013
- v. Respondents' Response to the Division of Enforcement's and Office of International Affairs' Oppositions to Respondents' Request for the Issuance of a Subpoena Directed at the Securities and Exchange Commission, June 3, 2013, and Exhibits 1 through 9 thereto

b. SEC v. Deloitte Touche Tohmatsu CPA Ltd., Misc. Action No. 11-0512 GK/DAR (U.S. District Ct. for the District of Columbia)

- i. Application for Order to Show Cause and for Order Requiring Compliance with a Subpoena, Sept. 8, 2011
- ii. Declaration of Lisa Deitch Pursuant to 28 U.S.C. § 1746, Sept. 8, 2011, and certain attachments thereto, including:
 - (1) Exhibit D: Letter from Michael Warden to Lisa Deitch and Helaine Schwartz, July 8, 2011
- iii. SEC's Memorandum of Points and Authorities in Support of Application for Order to Show Cause and for Order Requiring Compliance with a Subpoena, Sept. 8, 2011
- iv. SEC's Memorandum of Law in Further Support of its Application for Order to Show Cause, Oct. 13, 2011
- v. Respondent DTTC's Statement of Points and Authorities Opposing the SEC's Application for Order to Show Cause and for Order Requiring Compliance with a Subpoena, April 11, 2012
- vi. Declaration of James V. Feinerman, April 11, 2012, and attachments
- vii. Declaration of Prof. Xin Tang, April 11, 2012, and attachments
- viii. SEC's Reply Memorandum in Support of its Application for an Order Requiring Compliance with Subpoena, Dec. 3, 2012
- ix. Memorandum Opinion and Order, March 4, 2013
- x. Respondent's Memorandum in Reply to Petitioner's Opposition to

Emergency Motion for Continuance of March 13, 2013 Hearing

- xi. Respondent DTTC's Memorandum of Points and Authorities Opposing the Sec's Renewed Application for Order Requiring Compliance With a Subpoena, May 15, 2013
 - xii. Second Declaration of Prof. Xin Tang, May 15, 2013, and attachments thereto
3. *Laws, Regulations, Orders, Communications, and Other Normative Material from Chinese Regulatory Authorities*
- a. All items listed in Exhibit 2 to this Report.
 - b. All items listed in Exhibit 4 to this Report.
 - c. Relevant items listed in Section 1 of this Exhibit.
4. *SEC-CSRC Correspondence*
- a. Correspondence between the SEC and the CSRC between June 7, 2010 and Nov. 6, 2012, Bates-stamped SEC_SUPP_AUDIT 000001 to SEC_SUPP_AUDIT 000184
5. *Other Materials*
- a. Letter from Douglas R. Cox to Amy L. Friedman, April 29, 2011
 - b. Letter from Robert G. Cohen to Douglas A. Gordimer, April 4, 2012
 - c. Letter from Michael D. Warden to Marshall Sprung and Junling Ma, April 17, 2012
 - d. Letter from Robert G. Cohen to Marc Johnson, May 25, 2012

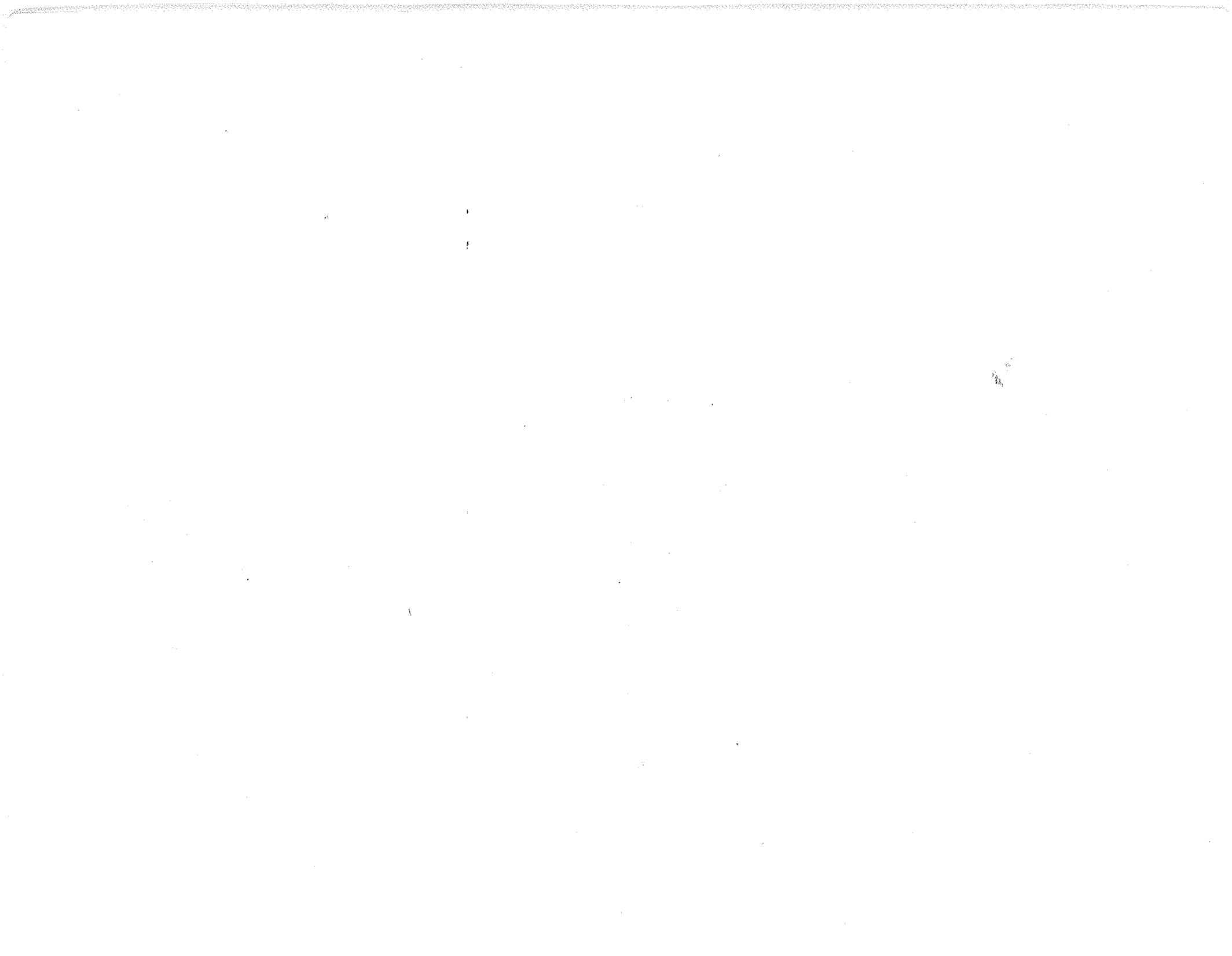


Exhibit 4

Correspondence from CSRC Offered by Respondents

<i>Item #</i>	<i>Short Name</i>	<i>Full Name</i>	<i>Provisions Cited and Translated</i>
1	CSRC Audit Archives Letter	CSRC Reply Letter Concerning the Provision of Audit Archives Overseas by Certain CPA Firms, dated October 11, 2011	Full text
2	CSRC Audit Work Papers Letter	CSRC Reply Letter Concerning the Provision of Archives Such As Audit Work Papers by Certain CPA Firms, dated October 26, 2011	Full text
3	CSRC Second Audit Archives Letter	CSRC Reply Letter Concerning the Provision of Audit Archives Overseas by Certain CPA Firms, dated October 17, 2011	Full text

Item 1

CSRC Reply Letter Concerning the Provision of Audit
Archives Overseas by Certain CPA Firms, dated October
11, 2011

[REDACTED]

[Redacted text block]

二〇一一年十月十一日
監査部

[Redacted]

Item 2

CSRC Reply Letter Concerning the Provision of Archives
Such As Audit Work Papers by Certain CPA Firms, dated
October 26, 2011

中国证券监督管理委员会

会计部函[2011]437号

中国证监会关于部分会计师事务所向境外提供审计 工作底稿等档案文件的复函

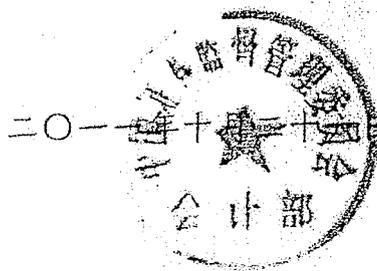
相关会计师事务所：

近期，部分会计师事务所就向境外提供审计工作底稿等档案文件事宜向我会请示。经研究并商财政部，现就有关事宜回复如下：

会计师事务所向境外提供审计工作底稿等审计档案文件，应当符合《中华人民共和国证券法》、《中华人民共和国注册会计师法》、《中华人民共和国保守国家秘密法》、《中华人民共和国档案法》等有关法律法规及规章制度，并经过相应的法律程序。

境外监管机构履行法定职责需要相关审计工作底稿等档案文件的，应通过与中方监管机构的监管合作机制共同协商解决。

会计师事务所必须遵守中国有关法律法规及规章制度，妥善处理好相关事宜；违反有关法律法规及规章制度擅自向境外提供审计档案和其他文件的，有关部门将依法追究其法律责任。



China Securities Regulatory Commission

Department of Accounting Correspondence [2011] No. 437

CSRC Official Reply Concerning the Provision of Audit Working Papers and Other File Documents Abroad by Some Accounting Firms

To the Accounting Firms Concerned:

Recently, certain accounting firms asked the Commission for instructions concerning the provision of audit working papers and other file documents abroad. After studying the matter and consulting with the Ministry of Finance, our reply regarding the relevant matters is as follows:

The provision of audit working papers and other audit file documents abroad by accounting firms has to comply with the *Securities Law of the People's Republic of China*, the *Law of the People's Republic of China on Certified Public Accountants*, the *Law of the People's Republic of China on Guarding State Secrets*, the *Archives Law of the People's Republic of China*. These relevant laws, regulations, rules and regulation must be followed, together with the corresponding legal procedures.

In the event that foreign regulatory agencies require relevant audit working papers and other file documents in the performance of their statutory responsibilities, they should resolve such matters through joint consultations using regulatory cooperation mechanisms with the Chinese regulatory agencies.

Accounting firms must adhere to the relevant Chinese laws, regulations, rules and systems, and properly respond to the relevant matters. Any breach of the laws, rules and regulations, including providing working papers and other documents without authorization, would be held legally responsible by our relevant departments, according to the law.

[seal:] Department of Accounting
China Securities Regulatory Commission

October 26, 2011

Item 3

CSRC Reply Letter Concerning the Provision of Audit
Archives Overseas by Certain CPA Firms, dated October
17, 2011

[Letterhead of China Securities Regulatory Commission]

Accounting Department Letter No.[2011]422

CSRC's reply regarding certain audit firm's production of audit work papers overseas

To KPMG Huazhen,

We have received your letter "Regarding China Integrated Energy, Inc. and Shengda Tech, Inc. - Report and request for direction in respect of the further demand made by the US Public Company Accounting Oversight Board" issued on October 12, 2011. After deliberating and discussing with the Ministry of Finance, our reply is as follows:

With respect to the production of audit work papers and other materials overseas, audit firms should comply with the relevant laws, regulations and requirements of the PRC Securities Law, the PRC Certified Public Accountants Law, the PRC Law on Guarding State Secrets and the PRC Archives Law and should follow the required legal procedures, or otherwise bear any legal consequences.

Where overseas securities regulatory authorities would like to demand relevant audit work papers and other documents for the purpose of fulfilling their statutory duty, they should consult and agree with the PRC regulatory authority based on the audit oversight cooperation established with the authority.

Audit firms should properly handle the related matters in compliance with the applicable laws, regulations and requirements in the PRC. Any production of audit work papers and other documents overseas without appropriate permission in accordance with law shall be subject to legal liability.

October 17, 2011

中国证券监督管理委员会

会计部函[2011]422号

中国证监会关于部分会计师事务所向境外提供审计 档案的复函

毕马威华振会计师事务所：

你所2011年10月12日《关于中国联合能源集团有限公司及山东盛大科技(集团)股份有限公司—美国监管机构对本所提出进一步要求的汇报和请示》收悉。经研究并商财政部，现回复如下：

会计师事务所对境外提供审计工作底稿等档案材料，应当符合《中华人民共和国证券法》、《中华人民共和国注册会计师法》、《中华人民共和国保守国家秘密法》、《中华人民共和国档案法》等有关法律法规及相关规定，并经过相应的法律程序，否则将依法承担法律后果。

境外证券监管机构履行其法定职责需要相关审计档案和其他文件的，应通过与中方监管机构的监管合作机制共

同协商解决。

会计师事务所必须遵守中国有关法律法规和相关规定，妥善处理好相关事宜；违反法律擅自向境外提供审计档案和其他文件的，依法追究其法律责任。

