



*EXPRESS
YOUR LEGAL VIEW
IN ENGLISH*

用**英语表达**
你的法律观点

——第三届全国法律英语大赛论文集

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法律出版社
LAW PRESS·CHINA

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Contents

1	Introduction
20	Yesterday Once More? —A Close Look at the New Securities Law
35	Introduction to the Sunshine Community Correction Service Center, Chaoyang District, Beijing—A Research Report
57	An Important Milestone in the Process of Chinese Travel and Tourism Law Legislation
67	To Protect Legal Rights and Interests of the Samaritans
76	The Promising Development of Administrative Guidance in China
89	Criminal Responsibility of Drunken Driving
100	The Legal Consideration of Campus Murders
108	The Rationality and Necessity of Shooting – dead on the Spot: A Jurisprudential Perspective
119	Assessing the Balance between Economic Liberties and Fundamental Rights in EU Law Context
127	GMO Regulations: Food Safety or Trade Barrier? —GMOs and GM Foods in China
143	A Probe into the Civil Juristic Relationship of the Bankcard Stolen
150	The Ownership of Underground Garage in Residential District—As the Dispute of “Today Garden”
160	On the Legal Protection of Unregistered Trademarks in China
171	On Celebrity Endorsement Engaging in False Advertising in China
184	China’s Selection of The Codification Mode of The Civil Law; From The Perspective of The Rise And Fall of The Civil Law
197	How to Keep the Balance of the Independent Principle and Fraud Exception—A Brief Analysis of the Two Principles in L/C Transaction

210	Research on the Trust – type Property under the Current Legal System
223	An Inquiry into Chasing Thieves to Death
233	Chinese Contract Law—How to Use the Anglo-American Contract Law for Reference
237	Paradise Lost or Paradise Gained
244	People’s Mediation in Medical Dispute Settlement System—Based on Fielding Inspection in Jiangxi
258	Collective Bargaining Is Not Far away in China
273	The Reform of Sentencing Procedure in China
277	The Analysis and Proposals on Legal Problems of Legal Assistance in China
284	The Interpretation of China’s Schedule of Specific Commitments on Services—In the Light of the US-China WTO Publication and Audiovisual Products Case
295	Synthetical Mode of Thinking and Chinese-English Legal Translation
307	On Confession
317	The Human Rights of Migrant Workers in China—In Comparison with US Immigration Laws for Chinese – Americans
325	Legislative Legitimacy of Euthanasia: A Moral Analysis Perspective
333	China’s Civil Law Protection for the Citizen’s Rights to Environment in the Field of Ecological Civilization
346	On the Ecologization of the Good Faith Doctrine of Civil Law
359	The Survey and Analysis on Farmers’ Environmental Rights—A Case Study on Wangzhuang Village, Zhejiang Province
365	Study of the Marriage between Stepchildren
373	The Legal Protection of the Juveniles in China
380	WTO Case Analysis—Pakistan: The Consequences of a Change in the EC Rice Regime
386	Economic Analysis on the Governance of Drunk Driving
396	The Role of FTA on Multilateral Trade System
404	Inspirations from the Legal Gender Equity Movement in Taiwan Region

413	On the Conception of Culpa in Contrahendo—On the Basis of the “KFC Seckill Scandal”
421	The New Application of the Doctrine of the Most Significant Relationship with the Background of Limit Exemption Principle—Compared with the Application of Absolute Exemption Principle
427	On the Government’s Role in the Process of Commercial House Demolition
437	Confidentiality in PRC: Conflict and Solution
448	A Sino-US Comparison on The System of Constitutional Review
458	The Current Situation and Improving Proposals of Community Correction
468	The God of the Law in the United States
479	Personal Information Protection in the Context of E-government: China’s Legislative Choice
488	Reflections on Judicial Independence in China
503	On Celebrity Endorsement Engaging in False Advertising in China
516	The Application of ADR: on the Reformation of CAFTA Arbitration System
530	“The Same Value for the Life” or “the Different Value for the Life”—Thinking on the Death Compensation under the Tort Law of PRC
540	Pilot Study on the Legal Guarantee of Intellectual Property Rights Strategy



and these innovations of legal system have a great function on protecting the legal rights of travelers and travel agents and operators. At last, this provision has dealt with many problems which have been disputed in the academic field of travel and tourism law, so some content has advanced the development of Chinese travel and tourism law and is helpful to the earlier establishment of the Travel and Tourism Law Act of the People's Republic of China and Travel Agency Act. Apart from the above, this paper has also put forward some suggestions to further improve the Provision in future.

In the paper "*To Protect Legal Rights and Interests of the Samaritans*", Zhang Xiao, a student from Law School, Southwest University for Nationalities, writes that there is no doubt that the spirit of taking up the cudgel for a just cause is one of the most important traditional virtues of Chinese. People that do these righteous acts are usually called Samaritans. They play an important role in upholding justice and maintaining harmony in society. On the one hand, we admire and advocate this noble character behind those touching heroic epics. On the other hand, when the glory fades, the legal rights and interests of the Samaritans are often ignored. This issue has led to hot debate. In this paper the author summarizes the current legislation and analyzes the shortage of the current legal system for protecting legal rights and interests of Samaritans. Through the holistic analysis, the paper tries to provide some suggestions for improving legal protection on Samaritans' rights and interests.

In the paper "*The Promising Development of Administrative Guidance in China*", Xu Lianli, a student from Renmin University of China, points out that it is inevitable to solve the inherent conflict in administrative guidance and rule of law. Whether and how administrative guidance should develop in China: abandon or accept? Develop or discard? It depends on different categories of administrative guidance. Extra-statutory guidance should be prudentially developed by learning the lessons from Japan and strengthening the rule of law in the present transitional period. Those controlling measures are: 1) to perfect the organization law, enforce procedure control and 2) to widen its relief channels. And when rule of law is developed, we should minimize its use. Intra-statutory guidance should have a promising development both the developing and developed period of rule of law in China as well as in other countries because it is approximately compatible with rule of law, and it can serve as an efficient way to solve the inherent defects of rule of law and to respond the challenge surging in the globalization of economy and the new arrival of information society.

Under the title of “*Criminal Responsibility of Drunken Driving*”, Zhang Yunlun, a student from Law Faculty, Southwest University for Nationalities, stresses that drunken driving is a kind of dangerous driving action which greatly endangers public security. This article aims at demonstrating that in the current criminal law system, the act of drunken driving should be convicted of the crime of causing traffic casualties rather than the crime of endangering public security with dangerous method. However, with societal advances, the crime of causing traffic casualties can not effectively control the action of drunken driving any longer, therefore this article also offers some legislative advice.

In “*The Legal Consideration of Campus Murders*”, Jing Saihong, a student from Tianjin Polytechnic University, writes that Campus murders have been committed one after another in succession in mainland China since March, 2010. The immediate cause which marks these events lies within the unsound laws and regulations for campus safety management and the imperfect security arrangement on campus, while deep-seated social problems are hidden behind these murders. With the development of market economy, the gap between the rich and poor is growing. In addition, the social security system is not perfect so the living conditions of the disadvantaged groups are becoming worse and worse. Ultimately, they let off steam by slaughtering a score of children.

“*The Rationality and Necessity of Shooting-dead on the Spot: A Jurisprudential Perspective*”, written by Liu Jing, a student from East China University of Political Science and Law, discusses this serious topic. That is, a series of violent incidents that happened in different parts of China earlier this year (2010) ended up with the offenders being shot dead on the spot. This has been under a wide range of discussion on numerous grounds. This article discusses the rationality and necessity of shooting dead on the spot under certain circumstances nowadays in China; holds that the key point of the option-whether to keep it or not-lies in a process of balancing the police power and the offender’s right to life; proves the value of keeping the shooting-dead-on-the-spot policy; and finally calls for further legislation to authorize and set standards to supervise the execution as well.

In “*Assessing the Balance between Economic Liberties and Fundamental Rights in EU Law Context*”, Zhao Mengyi, a student from the School of Law, Tsinghua University, says that this article deals with how the European Court of Justice strikes the balance between basic economic liberty which constitutes the

European Union market and the protection of human rights, based on two cases raised before ECJ. From a value-choice perspective, this article explains why such balance is considered as a problem and also, tries to draw attention on the importance and complexity of the problem, thus raising questions while leaving open for future researches on possible answers.

Luo Shuhui, a student from Shantou University Law School, put forward some analysis about “*GMO Regulations: Food Safety or Trade Barrier?*” In this paper the author noted that in recent years, a heated international debate has developed regarding the production and consumption of GMO and GM products. The widely trading of genetically modified (GM) foods has led to several disputes in WTO when countries have different regulations concerning the testing and approval procedures of GMOs and its products. Due to the lack of sound infrastructure, developing countries stand passively in a disadvantage position. This paper provides a brief summary of the potential benefits and risks of GM foods and legal issues associated with the trading of GMO and GM products. The first part introduced the background of GMO, its rising consumption and thriving world market. Considering the fact that different GM organisms include different genes inserted in different ways, the assessment of GMOs should be judged on a case by case based. The third section discusses the multilateral legal frameworks, especially the Cartagena Protocol on Biosafety and a set of WTO rules and agreements. Since these legal frameworks have different priority, the conflicts between precautionary and free trade principle can be seen within several articles. To what extent a domestic measure can be interpreted into trade protectionism can be determined by three elements mention in Article 5.5 of SPS. The final section covers about the regulations and rules on biosafety in China and how China can benefit from this gene revolution by developing innovations and establishing a national biosafety management law to cultivate strong biosafety management and coordinate with international laws.

In “*A Probe into the Civil Juristic Relationship of Bankcard steeling*”, Liu Yingke, another student from Tianjin Polytechnic University, writes that as a new type of electronic service production, the bankcard has grown greatly popular in China. However, as the operation of bankcard extending rapidly, the theft of bankcard cases are increasing. In line with the analysis of the cases of bankcard steeling, this paper considers that it is a loan contract relationship between the cardholders and card issuers. The bankcard is a voucher of the creditor's rights. Based on this, the paper aims to distinguish the cases in different situation and

analyze the civil liabilities of each civil subject.

In the paper “*The Ownership of Underground Garage in Residential District—As the Dispute of ‘today Garden’*”, Liu Jing yuan, a student from East China University of Political Science and Law, points out that the nature of underground garage determines its transfer and ownership rules. Before “Property Law”, the underground garage attached to the land use rights of the owners of the residential buildings, is affiliated facility. There is no independent status, or independent registration. So it is owned by the owners after the transaction of the buildings; while after “Property Law”, the hierarchical land use system is established, hence, the underground garage can be separated from the buildings as independent transaction, which provides the possibility for developers to retain the ownership of it, and even it can be owned by other people outside the district.

In the paper of “*On the Legal Protection of Unregistered Trademarks in China*”, Liang Yudun, a student from Southwest University of Political Science and Law, writes that by stating the theoretical and practical necessities of the protection of unregistered trademarks, analyzing the improvement of the Third Revision Draft of Trademark Law issued in 2008, and introducing the legal protection of unregistered trademarks in some common law and civil law countries, the author of this endeavor presents a point of view that unregistered trademarks are in need of effective legal protection, and the Trademark Law of China and other relevant law needs further improvement.

In “*On Celebrity Endorsement Engaging in False Advertising in China*”, Li Ming qian, a student from East China University of Political Science and Law, says that advertisers have attempted to quantify the use of celebrities with the aim of evaluating their influence on the consumer. However, sometimes celebrities who engage in false or deceptive advertising are very likely to mislead consumers which may cause harm to consumers in terms of property loss and personal damage. Due to celebrity endorsements being highly visible to the public, the solution to this issue is of significant relevance to consumers and the general public. Therefore, advanced experience on celebrity endorsement should be drawn from abroad, and a clear assignment of obligation standard is highly desirable.

In the paper of “*China’s Selection of the Codification Mode of the Civil Law—From the Perspective of the Rise and Fall of American Codification Movement*”, the author Lei Yu points out that the Chinese legislation of the Civil Code has gained access to the state of being settled down after the enactment of *The Tort Law of the People’s Republic of China*. Current discussion of the Civil

Code in China concentrates on what legislation style is to be chosen. Many scholars have expressed their opinions, which give rise to a variety of points of view. The final resolution, the author of the present endeavor believes, lies in jumping out of the Civil Law tradition and getting some useful ideas in terms of the choice of the Civil Code via analyzing the American codification movement.

In *“How to Keep the Balance of the Independent Principle and Fraud Exception—A Brief Analysis of the Two Principles in L/C Transaction”*, Guo Lihua, a student from Tianjin Polytechnic University, writes that to protect the L/C's effectiveness as a financing tool in international trade, it is essential to stick to the independence principle in L/C trade. However, also because of this principle, the banks only on the surface review to the documents for L/C's settlement and not review the goods and basic contract. Such a system design leads to the frequent occurrences of fraud cases by using L/C in international trade. Based on the complying with independence principle, the principle of fraud exception has been universally accepted. But at the same time, the question of fraud abuse remains. For the promotion of the international trade's development, it is very important to keep the balance of the two principles. In this article, the author discusses questions such as the conception and basic principles of the L/C, the fraud exception and so on. Further more, the author propose recommendations of how to balance the relationship of the two.

In *“Research on the Trust-type Property under the Current Legal System”*, Anqi Du, a student from Tianjin Polytechnic University, points out that since the property management being introduced to China, there are many problems existing in this industry. In order to solve these problems, scholars have spent a lot of energy searching for a mode that really fits our conditions. Trust - type property is a most representative attempt. However, in the practice, the mode is not ideal. It is only a simple mix of trust and property services, lacking of theoretical and practical support. Under the current legal system, it has to be confronted with a lot of legal barriers and needs our correct guidance.

In *“An Inquiry into Chasing Thieves to Death”*, Fu Qiyi, a student from Shantou University says that it is moral and legal for people to run after the thief or robber if their properties are stolen or robbed. Cases of chasing the thief or robber to death occur from time to time. The judgment of these cases should be made seriously and rightly. The judgments relate to people's courage to protect with their own strength and to behave righteously. This paper analyzes Cao's case which is far from clear in terms of the legitimacy of chasing, due defense,

fortuitous event and presumption of innocence, thereby comes to the consequence: Cao should be innocent. Further, this paper also analyzes the reasons why due defense should be perfected and suggests the scope of “unlawful infringement”, the time of due defense and the limit of due defense to perfect due defense.

In “*Chinese Contract Law—How to Use the Anglo-American Contract Law for Reference*”, Gai Junya, a student from Southwest University of Political Science and Law, writes that contract law, during all kinds of laws in the world, plays an important role, whatever a country’s social system is. In China and civil law system, contract law is known as one part of civil law. While it is regarded as an independent law in Anglo-American Legal system together with property law, tort law, etc. This thesis focuses on the comparison between contract law of China and contract law of Anglo-American Legal system, points out some characteristics of Anglo-American Contract Law, and investigates a topic that for Contract Law of China, how to use the Anglo-American Contract Law for reference.

In the paper of “*Paradise Lost or Paradise Gained*”, Long Yun, a student from Shenyang Normal University, points out that women in modern times make great contribution to the development of our society. The role of women is more emphasized and many laws are passed to pay extra attention to women. However, female workers also confront visible or invisible obstacles in hunting for a job. Obtaining equal employment rights remain a surreal dream. But women are still facing disadvantageous situations in the job market. Gender discrimination remains a globally persistent problem. Education plays an increasingly important role in promoting women’s employment.

In the paper “*People’s Mediation in Medical Dispute Settlement System—Base on Fielding Inspection in Jiangxi*”, Ye Jing, a student from East China University of Political Science and Law, deals with the issues of medical disputes. The author points out that the people’s mediation system of China is a democratic legal system with cultural tradition and characteristics of the Chinese Nation. The existing people’s mediation system has been established after the foundation of new China and has been quite popular among the masses. Given to the shortcomings of other settlements and advantages of people’s mediation, medical dispute people’s mediation has been made pilot in Shanxi since 2006. Owing to the successful experience of the pilot in Shanxi, other provinces began to promote the establishment of medical dispute people’s mediation system.

remedies for a citizen, especially the disadvantaged minority in China. The legal assistance system has partly helped the disadvantaged protect legal rights, but it is far from satisfaction and some loopholes need to be regulated in order to strengthen the protection of the disadvantaged and perfect our legal assistance system. Some proposals have been addressed after the analysis of current legal problems of legal assistance in China.

In *"The Interpretation of China's Schedule of Specific Commitments on Services—In the Light of the US-China WTO Publication and Audiovisual Products Case"*, Zhang Min, a student from Fudan University points out that the WTO dispute settlement case "China-Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products" has finally been settled. In this case, lots of disputes arise over the interpretation of China's Schedule of Specific Commitments on Services. The Panel concludes that, according to the interpretation rules codified in Article 31 and Article 32 of the Vienna Convention on the Law of Treaties, the entry "sound recording distribution services" covers the electronic distribution of sound recordings. This article analyzes the Panel's interpretation step by step, demonstrates the mistakes in its reasoning, explores the relevant legal issues and sheds light on the dilemma of such interpretation.

In *"Synthetical Mode of Thinking and Chinese-English Legal Translation"*, the author discusses something about the mode of thinking and Chinese-English legal translation. Yang Hui, a student from Southwest University of Political Science and Law, points out that the mode of thinking between China and the Western world are different objectively, due to the influences of their nature and humane conditions. Legal English is analytic language which emphasizes formal logics and explicates the information in the way of linking devices; while legal Chinese seeks for rich meaning with simple language, casting out unnecessary forms, which belongs to synthetic language. The difficulty of legal translation lies in understanding. In order to correctly grasp purport of the text, the thought differences between English and Chinese shall be traced. Adopting an analytical and Synthetical approach, the present endeavor examines concrete application in legal languages and probes into the laws of translation between different languages and reflections of differences in thought in their own language application from perspectives of morpheme, words and sentences. The author thus recommends that the characteristics of analytical and Synthetical structures in English and Chinese be researched in a dialectic way, so as to promote further

contrastive study of the two languages.

“*On Confession*” is a paper about procedure law. The author Xu Keqin, a student from Southwest University of Political Science and Law, points out in this paper that as evidence adverse to the very person who made it, as well as a fair reason for a commutation, confession is by its nature having “two opposite sides”. The common law and Chinese law have respectively adopted one side of it. However, the plea bargaining practice is pretty similar to the law of confession in China. Comparison between the law of confession in the two countries and comparison between Chinese confession and plea bargaining help to get a better view of confession in addition to the respective study.

“*The Human Rights of Migrant Workers in China—In Comparison with US Immigration Laws for Chinese-Americans*” discusses the human rights of migrant workers in China. The author Xia Yuan from Zhejiang Gongshang University firstly discusses the history of the immigration legislation of United States back to the late 19th century and stresses that Chinese Exclusion Act (1882) has been imposed regardless of the violation of Chinese Americans’ constitutional rights. The exclusion act was repealed because of the discrimination against Chinese Americans which violated the Equal Protection Clause in the 14th amendment to the constitution of United States. This is a restriction on the development of freedom and liberty in the US legal system. But in comparison with China, it isn’t alone. In recent decades in China, another form of “illegal immigration”—has occurred and that being; rural migrant workers, who move illegally from the countryside to the cities, have become one of the most controversial social issues in China. The household registration system of China, which is known as “hukou”, has triggered numerous international and domestic denunciations. There are analogues when comparing the discrimination against migrant workers to the exclusion to Chinese people in US immigrant history. And from the removal of the Chinese Exclusion Act in 1882 and the restitution of civil rights as Chinese citizens, Chinese legislature authority and the whole domestic society may gain illumination for reference.

In “*Legislative Legitimacy of Euthanasia: A Moral Analysis Perspective*”, Wu Yingpeng, a student from the School of Law, Renmin University of China, points out that proponents opposed to active euthanasia argue that only passive euthanasia should be legally permitted while other activists advocate that active euthanasia should also be made readily available to those who want it. The main topic of discussion within this essay will be based on the moral legitimacy behind

resolve the puzzle is to provide diversified mechanisms instead of drunk driving, not only administer it by legal stiff measures. Finally, there are some suggestions to improve the governance on the basis of economic analysis.

“*The Role of FTA on Multilateral Trade System*”, written by Shi Libin, a student from Shanghai Institute of Foreign Trade, points out that the free trade agreement has experienced a great increase in recent years. The issue concerning what is its influence on the existing multilateral trade system is controversial. There are some rules set out in the WTO agreements but they are rather ambiguous. Meanwhile, FTA shows conflict with the WTO system. Since the trend of FTA is irresistible, this article suggests some measures in dealing with the relationship between FTA and the multilateral trade system.

“*Inspirations from the Legal Gender Equity Movement in Taiwan Region*” is a special paper. The author, Liu Yisheng, from the School of Law, Tsinghua University, points out in his paper that no doubt gender equity is widely accepted as a common value in modern society. Most countries and regions legally state that men and women have equal status. Considering patriarchy as a Chinese tradition for thousands of years, despite declaring gender equity in general, the legal system in Taiwan region still showed a priority to men in many detailed rules before 1980's. In recent 20 years, however, through a series of legal reforms, the condition of gender equity in Taiwan has made a great progress, which may be an inspiration on today's mainland China.

“*On the Conception of Culpa in Contrahendo—On the Basis of the KFC Seckill Scandal*”, written by Liu Xuemei from Nanjing Normal University, expresses such an idea that in the “KFC seckill scandal”, the KFC Corporation promised consumers three rounds of seckill promotions, but canceled the latter two rounds of seckill promotions unilaterally because situations which had not been predicted in the marketing activity plan appeared. On this, some people hold that KFC shall bear the *culpa in Contrahendo* for violating pre-contractual liabilities. Some, however, think that KFC can only be condemned morally rather than punished legally. In this thesis, the author will prove the KFC Corporation's liability by inviting the theory of *culpa in Contrahendo* and analyzing the three essential elements of *culpa in Contrahendo*—occurring after entering into a contract and before the contract becomes valid, violation of pre-contract liabilities and the damage of the reliance interest.

“*The New Application of the Doctrine of the Most Significant Relationship with the Background of Limit Exemption Principle—Compared with the*

from East China Normal University, points out that cloud computing is increasingly becoming the focus of the IT industry. At the same time, the emergence of new technologies is always bound to challenge the existing social science theory. Especially in the political, economic and legal contexts, we need to do our research on cloud computing under legal perspectives, so that it can better meet the demands of social development. This article aims to expose cloud computing under legal contexts, and to find some potential or ‘ budding ’ concerns, which are related to privacy in civil law, jurisdiction, as well as the cloud-computing commitment in criminal law. Besides, it tries to explain, analyze and solve all those problems by the legal theory and methods. This article, accordingly, is composed to raise the awareness of legal issues in cloud computing as well as the importance of network legislation.

In the paper “*The Current Situation and Improving Proposals of Community Correction*”, Chen Hui, from East China University of Political Science and Law, discusses the current situation and improving proposals of community correction in China. The author says that community correction started in China back in 2003. In the process of implement, we have witnessed some encouraging achievements. For example, we have formed a relatively complete pattern of organization and cooperation and have gained good effects. However, because our country has set up the system of community correction for a short time, there are some problems and difficulties in theory and in practice, such as people having cognitive deviation towards community correction, laggardness of legislation, and lack of professional workers. In order to settle these problems, the author proposes to improve the construction of community correction from the following angles: correcting cognitive deviation and encouraging people to participate in this work, enhancing legislation progressively, perfect the work team of community correction.

In the paper “*The God of the Law in the United States*”, written by Dong Liang (Lyon), from National University of Singapore & East China University of Politics and Law, deals with something about the system of American judges. The author says that the judge is the oracle of the law and the guardian of the constitution. This article is intent to illustrate the system of the American judge. First, the author desires to do some research on the cause of the formation of the system of American judges nowadays from a historical perspective and to analyze how the United States has such excellent judges from the angle of system level. Meanwhile, speaking of the functions of judges, the author is going to deliver

promoting the development of judicial independence in China.

At last, I am grateful for the financial support of the Legal English Contest and publishing of this book from Beijing International Studies University, especially I would like to thank Vice President Professor Qiuming for greatly supporting our legal English contest these years, and would also like to thank Dr. Bjorndal, a foreign professor in Beijing International Studies University, for humbly correcting this introduction for me, for this is the first time I have written an introduction to the works which I have edited in English.

Yesterday Once More?

—A Close Look at the New Securities Law

By Zhu Weiyr^①

Abstract: The article highlights the major amendments to China's Securities Law of 2006, and where appropriate, comparisons are made about the relevant parts of the US Securities Law and the Chinese Securities Law. With more emphasis on deregulation, the amended law is more in line with the US Securities Law. The real effect of such amendments, however, still remains to be tested.

Key words: Offering, Self-regulation, Securities Company, and Mergers and Acquisitions

The amended Securities Law of the People's Republic of China ("SL") took effect on January 1, 2006, approximately seven years from July 1, 1999 when the Securities Law ("99 SL") came into existence. SL has been hailed as an important achievement in improving the legal framework of China's securities market. While some changes are superficial, others are significant for various players. This article is an attempt to highlight some of the more important changes with background stories. Where appropriate, the similar provisions of the US laws will also be described for comparative purpose.

"Article" hereafter refers to an amended article of or one newly added to SL unless otherwise indicated. At this moment, China Securities Regulatory Commission ("CSRC") is the securities regulatory authorities of the State, and for the purpose of this article, the two terms are interchangeable.

I. Offering

With respect to offerings of securities, the most significant changes under SL are probably the definition of public offering and delegation of regulatory power

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