

**Update****China****2006 Annual Reports of Listed Companies**

The China Institute of Certified Public Accountants recently completed an analysis on 2006 Annual Reports of Listed Companies: Among the 1,456 listed companies, 1307 companies (89.77%) had a standard unqualified audit report; 149 (10.23%) companies with the qualified opinions in the audit report. Of the companies with qualified opinions, 85 companies got matters of emphasis; 35 companies are of reservation in the audit opinions; and there were 29 companies in which auditors could not express opinions. The proportions are basically same as the previous year. (Source: CICPA at <http://www.cicpa.org.cn>)

**New Energy Saving Law passed on 28 October 2007**

The Law will be effective from 1 April 2008. Though the Law currently only provides a framework for regulating the energy consumption, more regulations will be introduced for different industries.

Articles 18 and 19 require producers and importers of household electrical appliances to adopt energy efficiency label on its products, packages and explanation of use.

**Sewage Charges and Inspection**

The new Regulations for Sewage Charges Collection and Inspection was adopted by State Environmental Protection Administration on 7 September 2007 and will be effective from 1 December 2007. The regulations state how an inspection of sewage will be conducted and the procedure of inspection.

It also provides that there will be no time limit for an inspection of sewage for charges, and an inspector should not participate the investigation if he has a direct interest on the case.

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*We will manage to address your concern in future issues.*

**Written Employment Contract**

The New China Labor Law which will be effective from 1 January 2008 requires employers to enter into written contracts with all employees.

Employers are encouraged to have employment contracts with written details prior to the commencement of employment. Otherwise, if there is a labor dispute, the employer might encounter substantial difficulties in proving the agreed terms



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of an employment contract. As in a Hong Kong labor dispute case, *Sum Yiu Kee v. Tak Hing Restaurant*, HCLA20/2004, 22 April 2004, an employee was terminated after working about three weeks. He demanded his employer to pay a sum of one month wages as payment in lieu of notice (instead of 7 days' wages for termination within probation period). Without a written contract, the employer was not able to prove that there was an agreed probation period.

**China Labor Law** : Article 19 requires a labor contract shall be concluded in written form and contain: (1) term of a labor contract; (2) contents of work; (3) labor protection and working conditions; (4) labor remuneration; (5) labor disciplines; (6) conditions for the termination of a labor contract; and (7) responsibility for the violation of a labor contract. Article 21 provides that a probation period may be agreed upon in a labor contract and shall not exceed six months.

## When Circumstances Change

### Boilerplate clauses regulate a contract going forward

"Boilerplate Clauses" refer to any standardized or "one size fits all" contractual provision, for examples, the choice of law provision, notice provision, the force majeure provision, etc. People tend to think that these are only of secondary importance and used to refer it as "Miscellaneous" or "Administrative" Provision.

There are two types of the "Miscellaneous Provision". One is relating to the enforcement, amendment and interpretation of the contract. Another type is that specific to the contracted subject matter or transaction but does not fall into any other sections of the contract.

Generally, the first type is referred as boilerplate clauses. These clauses actually provide details on how the parties regulate their contractual relationship and administer the contract acts. Here are some illustrations:

**Choice of Law** It specifies which law will be applied if any disputes arising under the contract. A common formulation of it should comprise the interpretation and enforcement of a contract.

**Force majeure** It manages to free both parties from liability or obligation when a supervening event or circumstance beyond the control of the parties occurred, such as war, strike, act of God (e.g., flooding,

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earthquake), that prevents any or both parties from performing their obligations under the contract.

**Integration** It provides that the contract is the entire and exclusive agreement between the parties with respect to the subject matter. This prevents any arguments on referring to other side agreements or based on some "mutual understandings" that had never been set out.

**Severability** If a particular provision of an agreement is found to be invalid, that provision should be cut-off from the whole agreement. This may ensure the gist of the agreement can still be carried on.

**Amendments** It describes the requirements for entering into any subsequent amendment, consent and waiver of the contract.

**Indemnification** It concerns the obligation of one party who may be legally responsible for a particular loss. Such as in license agreements, it is required to protect licensees against liabilities arising from claims relating to the ownership of the trademark or patent.

**Hint:** Take advantage of the benefits of boilerplate provision to minimize the possibility of disputes.

#### Why is it called "boilerplate" ?

There are different theories: With the invention of steam boilers to power machines, (1) each boiler was attached with a standard size plate; (2) each boiler was built by using a standard size of iron plate. (3) In the newspaper world, identical plates were used to print articles. In any way, the term "boilerplate" connotes something standardized, mechanical and formulaic.

## Life/Balance

### **Mojave Desert, California (II)** (Continued from last issue of Mojave Airport, CA)

(by Mr. Eric CK Yeung, a traveler who is very keen on exploring scenic places)

Most of the planes in the Mojave Airport have been parted out, especially the most valuable part-engines. This is still a good place if you are interested in plane models as it serves like an open airplanes museum, but free for public.

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Just at the junction of the 58 and the 14 freeway, Mojave is a town that you can take a rest for a meal or stay overnight. There are restaurants in the town which used the "old aircraft cabin" or even "cockpit" as their themes. This adds more fun to aircraft lovers.

If heading westward on driveway 58 (approx 20 minutes drive), travellers should not miss the old railway town, Tehachapi. An area which stands at around 4,000 feet of the mountain is now known as Tehachapi-Mojave Wind Resource Area. The area is known for the Tehachapi Loop, electricity generating wind turbines. Tehachapi is close to Edwards Air Force Base and is an excellent place for gliding sports as well as for Hollywood scenes.

Besides, Tehachapi Airport is also famous for providing "\$100 Hamburger" run. (An aviation slang for pilots who are looking for an excuse to fly and pay about US\$100 for a short flight and dining at a restaurant of other airport.)

Why this area chosen as a wind resources area? It is because the big hot wind daily generates from Mojave Desert and combines together with the influence of Pacific onshore wind on the other side. More than 4,500 wind turbines are installed at the site which provide electricity for the nearby communities.

The population and size of wind turbines installation are obviously smaller than the one near Desert Hill Factory Outlet which is close to Palm Spring, CA where Hong Kong tours used to visit. The wind turbines in Tehachapi are different from there. They stand discretely on each side of the mountain and can be viewed along the driveway. They are positioned either at left or right side of the road with a certain distance. You will easily feel how great the wind is when driving along this area. So be careful !

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#### Reminder

15 Nov 2007 - Extended due date for submitting company's profit tax return for year ended 31 March 2007.

**CAUTION:** Where returns are not lodged by the extended due date, penalty and/or estimated assessments may be issued by the Inland Revenue Department. If a taxpayer had a persistently late filing record, he is more likely to face penalty action.

**Tax Holdover:** Consider an application for holding over of payment of provisional profits tax if the assessable profits for the year of assessment are likely to be less than 90% of that of the preceding year of assessment.

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