LLINKS Law Offices
通力律师事务所

**Shanghai**
21F, South Tower
Shanghai Stock Exchange Bldg.
528 Pudong Road South
Shanghai 200120 P.R.China
Tel: (86 21) 6881 8100
Fax: (86 21) 6881 6880

**Beijing**
Units 902-903
Winland International Finance Centre
No.7 Finance Street, Xicheng District
Beijing 100034 P.R.China
Tel: (86 10) 6655 5050
Fax: (86 10) 6655 5060

上海
上海市浦东南路528号
上海证券大厦南塔21楼
邮政编码: 200120
电话: (86 21) 6881 8100
传真: (86 21) 6881 6880

北京
北京市西城区金融大街7号
英蓝国际金融中心9楼02-03单元
邮政编码: 100034
电话: (86 10) 6655 5050
传真: (86 10) 6655 5060

www.llinkslaw.com
master@llinkslaw.com

**Llinks Asset Management Bulletin**
April 2008

# Analysis of the State Council's Decision to Repeal a Series of Administrative Regulations

**By Grant Chen**

On 15 January 2008, the State Council announced the "*Decision of the State Council on Abolishing Certain Administrative Regulations*" (**the Decision**) with immediate effect.

Administrative regulations always play a very important role in the Chinese legal system. In fact, the large volume of administrative regulations has caused difficulty in their enforcement. The promulgation of the Decision is seen as another attempt to organize currently enforced administrative regulations by the State Council after the previous two attempts made on 16 May 1994 and 6 October 2001.

In the Decision, 92 administrative regulations are revoked, 49 of which have been repealed by new laws or administrative regulations. The other 43 are invalidated because they have expired or their subject matter has ceased to exist.

The promulgation of the Decision once again prompted the author to analyze various issues concerning administrative regulations.

## Recognition of the Regulatory Instruments

Some of the 92 administrative regulations repealed by the Decision are actually regulatory instruments rather than administrative regulations as strictly defined in the "*Legislation Law of the People's Republic of China*", "*Regulations on the Procedures for the Enactment of the Administrative Regulations*" and the original "*Interim Regulations on the Procedures for the Enactment of the Administrative Regulations*".

In many people's opinions, the aforesaid regulatory instruments fall within the broad definition of administrative regulations. However, whether or not the legal effect of these regulatory instruments is same as that of formal administrative regulations in judicial practice is still questionable.

如果您需要本出版物的中文本，请与下列人员联系：

韩东红: (86 21) 6881 8100 - 6609
Publication@llinkslaw.com

If you would like other Llinks publications, please contact:

**Lily Han:** (86 21) 6881 8100 - 6609
Publication@llinkslaw.com

**Llinks Law Offices**
www.llinkslaw.com

## Legal Instruments Approved and Forwarded by the State Council

Many of the administrative regulations repealed by the Decision were not directly promulgated or approved by the State Council. Rather, they were *forwarded* or *approved to be forwarded* by the State Council. Then, what exactly do "forwarded" and "approved to be forwarded" mean?

Generally, instruments forwarded by the State Council are formulated by its subordinate functional departments or other units with independent capacity to issue instruments, whereas instruments approved to be forwarded by the State Council are formulated by its subordinate functional departments or other units with no independent capacity to issue instruments. The purpose of expressing "forwarded" or "approved to be forwarded" is to upgrade the authority and effect of such instruments to become enforceable as administrative regulations.

## Interpretation of "Expiry" and "Subject Matter Ceases to Exist"

One important reason for the repeal of administrative regulations as set forth in the Decision is that they have lapsed or that their subject matter has ceased to exist.

The Head of the Legislative Affairs Office of the State Council replied to the reporters that, "some administrative regulations are only applicable at a certain stage of economic and social development or to specific subject matter in specific historical periods. Such administrative regulations should be declared invalid upon the end of such stages of development or when such specific subject matter ceases to exist". This is also the sole official explanation of the "Expiry" and "Subject Matter Ceases to Exist" so far. However, it is suggested that this explanation cannot fully reflect the true reason behind the invalidation of some of the administrative regulations.

- Query on the Time of Repeal: as mentioned above, on 16 May 1994 and 6 October 2001 respectively, the State Council also made decisions to repeal a number of administrative regulations for similar reasons. Nevertheless, according to the aforesaid official interpretation, some more administrative regulations should have been repealed on these two occasions. Why have they been left until the promulgation of the Decision?

- Query on the Reason for Repeal: the reason to repeal two administrative regulations, the "*General Rules on the Financial Affairs of Enterprises*" (1992) and "*Corporate Accounting Rules*" (1992), is worth discussing. The true reason behind is that these two administrative regulations were replaced by the "*General Rules on the Financial Affairs of Enterprises* " and "*Corporate Accounting Rules – Basic Principles*" promulgated by the Ministry of Finance respectively on 4 December 2006 and 15 February 2006, rather than the "expiry and no longer effective" as set forth in the Decision. It seems unusual that the State Council has devised such a reason to avoid the embarrassment of administrative regulations being replaced by ministerial rules.

**Contact Details**

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Llinks contact.


**Christophe Han**
Tel: (86 21) 6881 8100 - 6618 (86 10) 6655 5050
Christophe.Han@llinkslaw.com

**Charles Qin**
Tel: (86 21) 6881 8100 - 6612 (86 10) 6655 5020
Charles.Qin@llinkslaw.com