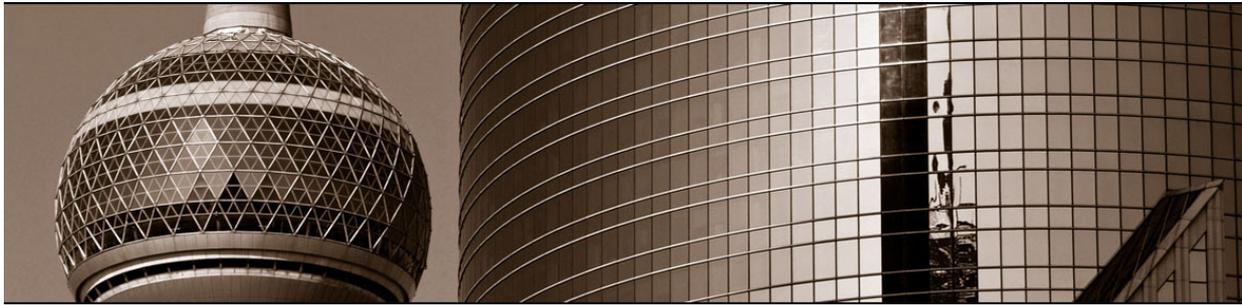


CUATRECASAS, GONÇALVES PEREIRA



LEGAL FLASH | SHANGHAI OFFICE

April 2013

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ADMINISTRATIVE MEASURES FOR LABOR DISPATCH LICENSING (DRAFT FOR COMMENTS)
("DRAFT") (劳务派遣行政许可管理办法 (征求意见稿)), ISSUED BY THE MINISTRY OF HUMAN
RESOURCES AND SOCIAL SECURITY ("MHRSS")

The Draft is enacted in accordance with the new rules on labor dispatch specified by the Decision on Amending the Employment Contract Law issued by the Standing Committee of the National People's Congress ("Decision") (全国人大常委会关于修改《劳动合同法》的决定) on December 28, 2012, aimed at establishing an administrative licensing system for labor dispatch. The Decision requires all existing labor agencies and labor agencies to be incorporated to obtain licenses to carry out labor dispatch activities after it comes into force on July 1, 2013 (see our Newsletter of January 2013).

The Draft reiterates the requirements that labor agencies must meet when applying for a labor dispatch license ("License") as specified in the Decision, including those on registered capital, business premises and internal regulations and rules on labor dispatch. The competent labor authority will issue Licenses for a term of 3 years to the qualified applicants and such License can be renewed upon application by the labor agency 60 days prior to its expiration.

The Draft clarifies that the "internal regulations and rules on labor dispatch" of a labor agency must include information such as template employment contract, template labor dispatch agreement, internal control and management systems, and numbers of full-time staff, among others.

The Draft stipulates that, if a labor agency intends to carry out labor dispatch activities beyond the provincial jurisdiction where it is registered, it shall set up a branch in the place it intends to do so. The branch is subject to a record filing registration with the competent labor authority.

The Draft reinforces the labor authorities' supervision of labor agencies by requiring them to submit annual reports of the operation of labor dispatch activities by the first quarter of the following year. Information on employment contracts, dispatch agreements, participation in trade unions, salaries, and social security contributions with regard to the dispatched employees must be included in the annual reports. A labor agency will be disqualified from renewing its License if it:

- fails to submit the annual report on time, still failing to do so after two warnings;
- submits the annual report with false information, still failing to rectify this after being warned; or
- violates labor laws and regulations, and receives administrative punishment for two or more times.

The Draft establishes the following legal liabilities to be assumed by labor agencies for their illegal operation and non-compliance of the law:

- Where a labor agency illegally carries out labor dispatch activities without the License, the labor authority can order it to stop operating and confiscate the amount it has gained illegally, imposing a fine of between one and five times the amount of the illegal gain. If there is no illegal gain, it can impose a maximum fine of RMB 50,000.
- Where a labor agent fails to rectify its violation of the Employment Contract Law after being warned by the labor authority, the labor authority may revoke its License and impose a fine of between RMB 5,000 and RMB 10,000 for each employee dispatched illegally.
- Where a labor agency fraudulently obtains or incorrectly uses its License, the labor authority can impose a maximum fine of RMB 10,000 for minor offences, and between RMB 10,000 and RMB 30,000 for serious offences.

Date of issue: April 19, 2013. Deadline for submitting comments: May 19, 2013.

RULES FOR THE PROTECTION OF PERSONAL INFORMATION OF TELECOMMUNICATION AND INTERNET USERS (DRAFT FOR COMMENTS) ("DRAFT")
(电信和互联网用户个人信息保护规定(征求意见稿)), ISSUED BY THE MINISTRY OF INDUSTRY AND INFORMATION TECHNOLOGY ("MIIT")

The Draft is enacted to implement the general provisions set out in the Decision on strengthening the protection of online information ("Decision") (全国人民代表大会常务委员会关于加强网络信息保护的決定), issued by the Standing Committee of the National People's Congress on December 28, 2012. (See our Newsletter of January 2013)

The Draft defines "users' personal information" as any information that the telecommunication service provider ("TSP") or internet service provider ("ISP") collect while providing services and that can, individually or together, with other information identify the user. This includes names, dates of birth, ID numbers, addresses, and any information in relation to the service, such as user's account, and time and place of providing the service.

The Draft establishes the following principles with regard to collecting and using users' personal information:

- TSP and ISP are not allowed to collect or use the users' personal information without their consent.

- TSP and ISP must clearly notify the users about the purpose and scope of the information, how it is collected, how long they will keep it for, how users can access or correct it, and the consequence of refusing to provide it.
- TSP and ISP are not allowed to collect any personal information of users that is not necessary for the services provided.
- TSP and ISP are not allowed to obtain the users' personal information in any way that is fraudulent or misleading, or that violates the applicable laws, regulations and the agreements between the service provider and the user.
- TSP and ISP must keep the users' personal information strictly confidential while providing the services and must not distort, damage, sell or illegally disclose this information.
- TSP and ISP must adopt comprehensive policies to safeguard the user's personal information.

The Draft provides that the government authorities are also obliged to keep confidential the personal information obtained while supervising and inspecting TSPs and ISPs.

The Draft establishes the liability for violation of its provisions. TSPs or ISPs that incur a violation of relevant provisions under the Draft might be warned or fined with between RMB 10,000 and RMB 30,000, and ordered to rectify. If such violation constitutes a crime, the TSP or ISP will be prosecuted for criminal liabilities.

Date of issue: April 10, 2013. Deadline for submitting comments: May 15, 2013.

PROVISIONS ON REGULATING COMPETITION ACTS IN THE FIELD OF OUTBOUND INVESTMENT AND COOPERATION ("PROVISIONS") (规范对外投资合作领域竞争行为的规定), ISSUED BY THE MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA ("MOFCOM")

The Provisions are promulgated to regulate the increasing numbers of companies trying to invest overseas. They explicitly encourage legitimate competition for outbound investments whilst prohibit unfair competition that may be detrimental to other companies. While making their outbound investments, companies must comply with the principles of equality, fairness and honesty, as well as commercial ethics.

The Provisions consider the following as unfair competition acts:

- Pursuing business opportunities by means of commercial bribery.
- Carrying out unfair price competition with the aim of squeezing out competitors.

- Colliding in bids.
- Defaming competitors' commercial reputations.
- Making false propaganda about achievements.

While participating in fair competitions, companies must comply with the relevant regulations and rules, such as Regulations on the Administration of Contracting Foreign Projects (对外承包工程管理条例), Administrative Regulations for Foreign Labor Service Cooperation (对外劳务合作管理条例) and Measures for the Administration of Outbound Investment (境外投资管理办法).

MOFCOM, together with other relevant authorities, will establish a "bad credit record system" ("System") to supervise competition acts in relation to outbound investments. Any company whose behavior constitutes unfair competition and is recorded in the System will be disqualified from enjoying the government's favorable policies during the following three years.

Date of issue: March 18, 2013. Effective date: April 18, 2013.

LI KEQIANG HELD AN EXECUTIVE MEETING OF THE STATE COUNCIL, WHICH DECIDED TO EXPAND THE SCOPE OF PILOT CITIES WHERE BUSINESS TAX WILL BE REPLACED WITH VALUE ADDED TAX ("VAT")

Li Keqiang (Prime Minister) held an executive meeting of the State Council, which decided to expand the scope of pilot cities where business tax will be replaced with VAT for levying. The main conclusions were that:

- (1) the VAT reform currently taking place in nine pilot areas will be extended to all of China as from August 1, 2013; and
- (2) VAT, instead of business tax, will apply to railway transportation, postal services and telecommunication services.

Date: April 10, 2013.

ANNOUNCEMENT ON BUSINESS TAX ON TAXPAYERS' INVESTMENTS IN GOVERNMENT LAND TRANSFORMATION PROJECTS (THE "ANNOUNCEMENT") (ANNOUNCEMENT [2013] NO. 15)
(国家税务总局关于纳税人投资政府土地改造项目有关营业税问题的公告), ISSUED BY SAT

According to the Announcement, when enterprises/entrepreneurs invest in a government land-transformation project (i.e., corporate relocation, demolition of dilapidated buildings, land leveling or land consolidation), if the plot of land complies with the state requirements on land transfer, the local government will list it for transfer. If the transaction price is lower than the investment made by the entity/entrepreneur, it alone will bear the losses. If the transaction price is higher than the investment, the entity/entrepreneur will be entitled to all the proceeds.

In this process, the entity's/entrepreneur's activities are considered investment activities falling beyond the scope of business tax, meaning business tax is not applicable to these investment proceeds.

However, income that planning & design, and construction entities obtain from their services related to the land-transformation project is subject to business tax under the applicable regulations.

Date of issue: April 15, 2013. Effective date: May 1, 2013.

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