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AMENDMENT TO COMPANY LAW OF THE PEOPLE'S REPUBLIC OF CHINA ("AMENDMENT"), ISSUED BY THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS

The Amendment marks the first significant step in the reform of China’s capital registration systems, aiming to alleviate the financial burden on investors when starting up businesses. The Amendment:

- abolishes minimum requirements for registered capital unless as otherwise required under special laws, administrative regulations or State Council decisions;
- lifts the 30% minimum ratio of cash contribution under current company law, to encourage investors to make capital contributions in kind (IP rights, land use rights or other non-monetary property); and
- removes statutory timeframe for capital contribution; investors will only have to pay the contribution according to the company’s articles of association.

Therefore, since the Amendment comes into force, investors will be able to freely agree on the registered capital, capital contribution method and the capital contribution schedule in the articles of association.

It is still unknown how this Amendment will affect on foreign investors, whether the approving authority will still require a minimum registered capital based on the foreign investor’s business, or whether foreign-invested enterprises ("FIEs") will benefit from the lifting of restrictions in the same way as domestic-invested companies under the principle of national treatment.

When the Amendment comes into force, some current laws and regulations will become inconsistent with the company law. However, government authorities are expected to amend these laws and regulations in the upcoming months. For example, SAIC has announced that it will soon adjust the Regulations of the People’s Republic of China on Registration Administration of Companies in accordance with the Amendment; laws and regulations relating to FIEs are likely to be affected; and PRC Criminal Law provisions relating to the offense of false capital contribution may also be revised.

Date of issue: December 28, 2013. Effective date: March 1, 2014.
INTERIM PROVISIONS ON LABOR DISPATCH ("PROVISIONS") (劳务派遣暂行规定),
ISSUED BY THE MINISTRY OF HUMAN RESOURCES AND SOCIAL SECURITY ("MHRSS")

Our legal flash published in August 2013 refers to the draft Several Provisions on Labor Dispatch (the "Draft") formulated by the MHRSS. With further developments based on the Draft, the Provisions are recognized as the first comprehensive rules standardizing labor dispatch activities in China.

The Provisions illustrate the three characteristics of labor dispatch positions. Employers are only allowed to use labor dispatch for temporary, auxiliary and substitutive positions. However, representative offices of foreign enterprises, representative offices of foreign financial institutions, and employers of sailors are not subject to this restriction on dispatched workers’ positions.

The Provisions establish the maximum ratio for dispatched employees at 10% of the total number of employees. They also define the total number of employees as the sum of employees that directly enter into labor contracts with employers plus the dispatched workers.

The Provisions remove the general penalty for non-compliance of between RMB 5,000 and RMB 10,000 per dispatched worker as proposed by the Draft. Any violation of the obligations under the Provisions shall be subject to the corresponding penalties specified under the Employment Contract Law ("ECL") and the Implementing Measures of Administration of Labor Dispatch License.

Under the Provisions, companies receiving labor dispatch are subject to most obligations and liabilities of the regular employees as specified under the ECL. The Provisions for the first time prohibit the company from returning the labor dispatched workers to the labor dispatching entity if any of the circumstances specified under article 42 of the ECL are met: (1) if workers engaged in activities exposing them to occupational hazards were not given a pre-departure occupational health examination or are suspected of having contracted an occupational illness and are being diagnosed or under medical observation; (2) if workers contracted occupational illnesses or sustained work-related injuries and it has been confirmed that those workers have lost full or partial capacity to work; (3) if workers contracted illnesses or sustained non-work-related injuries and the period established for medical treatment has not expired; (4) if workers are female employees in pregnancy, maternity leave or nursing period; (5) if workers have been working for the company for at least 15 consecutive years and are within five years of statutory retirement age (in practice, this latter circumstance would occur on exceptional cases only).
Under the Provisions, employers have a two-year grace period to bring their employment structure in line with the ECL and the Provisions, and they are not allowed to recruit new dispatched workers until they comply with the 10% ratio ceiling.

Nonetheless the above, the Provisions allow employment contracts or labor dispatch agreements to be carried out until these contracts expire if their expiry dates are more than two years after the effective date of the Provisions.

Date of issue: January 24, 2014. Effective date: March 1, 2014.

REPORTING MEASURES OF INTERNATIONAL RECEIPT AND PAYMENT STATISTICS
("MEASURES") (国际收支统计申报办法), ISSUED BY THE STATE COUNCIL

The Measures require the residents of the People's Republic of China ("PRC residents") to report their overseas financial assets and liabilities as well as the cross-border transactions to the State Administration of Foreign Exchange ("SAFE").

Under the Measures, the concept of "PRC residents" includes:

1. Individuals who have resided in the PRC for more than one year, excluding overseas students, persons residing in the PRC only for medical treatment, foreign staffs of foreign countries' embassies or consulates and their family members.
2. PRC citizens who have been away from the PRC for less than one year, or PRC citizens studying, receiving medical treatment or working for PRC embassies or consulates in foreign countries.
3. Enterprises incorporated in the PRC, including foreign-invested companies and foreign-invested financial institutions.
4. A representative office or branch of a foreign enterprise, excluding the embassy or consulate of foreign countries.
5. PRC governmental authorities.

In addition to the PRC residents as defined under the Measures, a non-resident who conducts economic transactions within the PRC territory is also subject to the reporting obligations.

The Measures do not clearly define the overseas financial assets and liabilities that shall be reported, the cross-border transactions under the scope of the reporting obligations, or the reporting procedures. Detailed implementing rules are expected to be promulgated.
The Measures stipulate that SAFE and its employees must keep any information from the reporting obligations confidential from other governmental authorities, except as otherwise provided by law.

Date of issue: November 9, 2013; Effective date: January 1, 2014.

CATALOGUE OF INVESTMENT PROJECTS APPROVED BY GOVERNMENT (2013 EDITION) ("CATALOGUE") (政府核准的投资项目目录（2013年本）), ISSUED BY THE STATE COUNCIL

The Catalogue has been updated based on the previous one, issued in 2004, specifying the approving authority for several types of investment projects in different sectors, such as water conversation, energy, transportation, telecommunications, hi-tech and machine manufacturing.

The Catalogue establishes two chapters specifically for foreign investment projects and outbound investment projects, as follows:

Foreign direct investment

1. Encouraged projects specified under the Catalogue of Industries for Guiding Foreign Investment ("Guiding Catalogue") that must be controlled by Chinese investors, with total investment (or capital increase) of over USD 300 million and restricted projects (excluding real estate projects) with total investment (or capital increase) of over USD 50 million are subject to approval by the state-level NDRC or MOFCOM.

2. Restricted real estate projects and projects restricted under the Guiding Catalogue with total investment (or capital increase) of less than USD 50 million are subject to approval by the provincial-level government.

3. Encouraged projects that must be controlled by Chinese investors, with total investment (or capital increase) of less than USD 300 million, are subject to local government approval.

Outbound investment

6. Outbound investment projects involving sensitive countries, regions or industries, with investments over USD 1 billion by a Chinese party, are subject to approval by the state-level NDRC or MOFCOM.
7. Outbound investment projects by enterprises under the administration of the central government, or projects with over USD 300 million by local enterprises must file records with the state-level NDRC or MOFCOM.

8. Overseas enterprises (excluding financial enterprises) incorporated by domestic investors involving sensitive countries, regions or industries, are subject to approval by the state-level MOFCOM.

Other outbound investment projects are subject to record-filing formalities, instead of approval.

In contrast to the 2004 edition, the Catalogue partially delegates the approving power on inbound and outbound investments to lower level governments.

Date of issue: December 2, 2013. Effective date: December 2, 2013.

NOTICE ON CERTAIN ISSUES RELATING TO CORRECT HANDLING OF JUDICIAL REVIEW OF ARBITRATION MATTERS ("NOTICE") (最高人民法院关于正确审理仲裁审查案件有关问题的通知), ISSUED BY THE SUPREME PEOPLE’S COURT

In 2013, the former Shanghai sub-commission and South China sub-commission ("Former Sub-commissions") of the China International Economic and Trade Arbitration Commission ("CIETAC") announced their independence from the CIETAC, and successively changed their official names into and Shenzhen Court of International Arbitration (abbreviated as SCIA), respectively.

The formal split of CIETAC has led to uncertainty on the pre-split arbitration clauses providing for the Former Sub-commissions as the institution agreed by the parties for dispute resolution. Local courts have differed quite a lot when dealing with the enforcement of arbitral awards rendered by the Former Sub-commissions. Being aware of the increasing concerns arising from the local court’s chaos in their decisions, the Supreme People’s Court ("SPC") issued the Notice to address this matter.

Under the Notice, any lower court that hear a case arising out of the split of CIETAC must report its intended decision to the SPC on a level-by-level basis; local courts are not permitted to make any rulings before the SPC gives its opinions on the reported cases.

Date of issue: September 4, 2013.
INTERPRETATION VI OF THE ENTERPRISE ACCOUNTING STANDARDS ("INTERPRETATION")
(关于印发《企业会计准则解释第 6 号》的通知), ISSUED BY THE MINISTRY OF FINANCE ("MOF")

In the context of a merger of enterprises under common control (i.e. both the merged and the acquiring companies are controlled by the same entity -"the ultimate controller"- before and after the merger, and this control is not temporary), the Interpretation clarifies how to value the assets and liabilities of the merged entity in the accounts of the company resulting from the merger.

In line with "Accounting Standards for Enterprises No. 20 – Enterprises’ Merger", when the merged entity was under common control since its incorporation, its assets and liabilities shall be assessed at their value in the merged entities’ books on the date of the merger.

Under the scenario that the ultimate controller had acquired its stake in the merged entity from a third party, the merged entity’s assets and liabilities shall be assessed at their value in the consolidated books.

Date of issue: January 17, 2014. Effective date: January 17, 2014.

CIRCULAR OF THE MINISTRY OF FINANCE ON PRINTING AND DISTRIBUTING THE PROVISIONS ON ACCOUNTING TREATMENT FOR THE EXEMPTION FROM VALUE-ADDED TAX AND BUSINESSS TAX OF SMALL AND MICRO ENTERPRISES ("CIRCULAR") (财政部印发《关于小微企业免征增值税和营业税的会计处理规定》的通知), ISSUED BY THE MOF

In our newsletter of August 2013 we referred to the temporary exemption for value added tax ("VAT") and business tax ("BT") payers with monthly sales volume not exceeding RMB 20,000 ("small and micro enterprises").

Now the MOF clarifies the accounting treatment of the VAT and BT for these small and micro enterprises: for VAT payers, the VAT payable shall be calculated according to the standard rules and transferred to non-operating income, while for BT payers the tax is regarded inexistent and not even recorded in the accounts.

Date of issue: December 24, 2013. Effective date: December 24, 2013.
EXCHANGE OF INFORMATION AGREEMENT BETWEEN CHINA AND LIECHTENSTEIN SIGNED

On 27 January 2014, China and Liechtenstein signed an exchange of information agreement ("Agreement") relating to tax matters, in Vaduz.

This is the tenth agreement for exchange of information that China has entered into since 2009.

Date of issue: January 27, 2013.

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