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1. **MOFCOM amends the Measures for Overseas Investment Management**
2. **Supreme Court clarifies the recognition of work-related injuries**

1. MOFCOM amends the Measures for Overseas Investment Management

MOFCOM released the amended Measures for Overseas Investment Management (“the Measures”) on 6 September 2014, which will come into effect on 6 October 2014. The Measures confirm the path to a management system focusing on simple filing instead of approvals for overseas investments, thereby widely simplifying the procedures and facilitating the overseas investment. The Measures have five sections, the major contents of which are:

1. General provisions

A negative list for overseas investments is introduced for the first time. According to the Measures, overseas investments shall not: (1) cause damages to national sovereignty, safety, social public interests or the relations between PRC and other countries; (2) violate Chinese law and international treaties China signed or joined; and (3) lead to export of products and technology prohibited by the PRC.

2. Filing and approval

The procedures for setting up overseas investments are simplified. Before the implementation of the Measures, all overseas investments were subject to a prior approval by the competent commercial departments at the provincial level. Now, the Measures provide that only overseas investments related to sensitive countries and regions and sensitive industries shall be subject to approval by MOFCOM or the competent commercial departments at the provincial level; for all other overseas investments, simple filing is sufficient.

The time limit for approvals is shortened: for enterprises under central state administration, MOFCOM will decide on approval within 20 working days; for other enterprises, a decision on approval will be made within 30 working days.

Filing will be effected within 3 working days of submission as long as the standard form for filing is correctly submitted with all required information.

The content of the Overseas Investments Certificate for Enterprises is adjusted accordingly.

3. Regulations and Service

In keeping with the spirit of the previous rules, the Measures add requirements for enterprises to fulfill their social responsibilities provide environment and labor protection, build a corporate culture, etc.

4. Liability and enforcement

The Measures provide for penalty measures for enterprises who obtain the approval or filing confirmation by submitting fake documents or false information. Furthermore, overseas investments violating the general principles as outlined under section 1 above are subject to penalties.

2. Supreme Court clarifies the recognition of work-related injuries

The Rules of the Supreme Court on Several Issues regarding the Work-related Injuries Insurance Administrative Cases (“the Rules”) went into effect on 1 September 2014. The Rules include 10 articles which regulate the following main parameters: the responsible entity that has the obligation of providing for a work-related injuries insurance, the recognition of work-related injuries, and the consequences of work-related injuries caused by third parties. Details are as follows:

1. Entities responsible for work-related injuries

According to Article 3 of the Rules, an entity under any of the following circumstances shall be liable for work-related injury insurance:

- (1) Where a worker has labor relations with two or more entities, the entity for which the worker is working at the time of occurrence of the relevant work-related injury accident shall be liable for work-related injury insurance;
- (2) Where a worker dispatched by a labor dispatching entity to work for an employer is injured or dies due to work-related causes when working for the employer, the labor dispatching entity shall be liable for work-related injury insurance;
- (3) Where a worker assigned by an entity to work for another entity is injured or dies due to work-related causes, the assigning entity shall be liable for work-related injury insurance;
- (4) Where an employer violates laws or regulations to subcontract its contracting business to an organization or a natural person that is not qualified as an employer, and a worker employed by the said organization or natural person is injured, or dies, due to work-related causes when working for the contracting business, the employer shall be liable for work-related injury insurance.

2. What is “the way to or from work”?

According to article 14.6 of the Regulation on Work-Related Injury Insurance release by the State Council in 2010, an Employee shall be determined as having a work-related injury if he is injured due to traffic accidents, including mass transit, passenger ferries or train accidents, that occur without his own fault and on the way to or back from work. However, so far a clear definition of what constitutes “the way to or from work” has been lacking.

The Rules determine four alternatives to be covered by the definition of “the way to or from work”:

- (a) the reasonable route between the work place and the domicile, habitual residence, or company dorms, covered within reasonable time;
- (b) the reasonable route between the work place and the domicile of a spouse, parents, or children, covered within reasonable time;
- (c) activities necessary for daily work routine if such activities occur on a reasonable route and within a reasonable time frame;
- (d) other reasonable routines within reasonable time.

In the above-mentioned article, “reasonable” is the key word. The Rules do not provide further guidance as to what may be considered “reasonable”, the courts have a wide discretion. Aside from the above, the Rules also contain three alternative circumstances that are considered as “work-related travel”.

3. Work-related injuries caused by third parties

In case work injuries caused by third parties, the employee is entitled to either file a civil lawsuit with the court to claim for damages against the injuring third party, or to directly claim for a compensation by the work-related injury insurance.
