

CHINA LEGAL BRIEFING* 232

JULY 8 – JULY 12



* CHINA LEGAL BRIEFING is a weekly collection of Chinese law related news gathered from various media and news services, edited by WENFEI ATTORNEYS-AT-LAW LTD. distributed to its clients and CHINA LEGAL BRIEFING subscribers. WENFEI ATTORNEYS-AT-LAW LTD. does not accept responsibility for accuracy of quotes or truthfulness of content. CHINA LEGAL BRIEFING is not intended to provide advice.

RECENT IMPORTANT NEW LAWS, MEASURES, RULES AND ANNOUNCEMENTS

1. New exit and entry law entered into force on July 1 2013
2. SCRC will regulate private equity funds in China
3. China is expected to double fines for trademark infringement
4. Amended labor contract law targets equal pay
5. Detailed rules on labor dispatch released
6. CSRC Publishes 2013 Revised Draft for Standards for Semiyearly Reports of Listed Companies on Growth Enterprise Board
7. CSRC Revises Administrative Measures for Customer Asset Management Business of Securities Companies and Implementing Rules for Collective Asset Management Business of Securities Companies
8. Intellectual property shall be a must to carry out fund service.

1. New exit and entry law entered into force on July 1 2013

A new exit and entry law that stipulates harsher punishments for foreigners, who illegally enter, live or work in China took effect on July 1, 2013. After three readings since December 2011, the draft law was adopted at the five-day bimonthly session of the National People's Congress (NPC) Standing Committee in 2012. The law provides that foreigners must obtain valid identification documents when working in China, adding that foreigners may not be employed without valid employment certificates.

According to the law, employers will be fined 10,000 yuan for every foreigner they illegally employ up to a maximum of 100,000 yuan. Any monetary gain resulting from such employment will also be confiscated. Units or personnel employing foreigners or enrolling foreign students should report employment information to local police departments, while citizens are encouraged to "report clues" regarding foreigners who may be illegally living or working in China.

2. SCRC will regulate private equity funds in China

On June 27, 2013, the State Commission Office for Public Sector Reform of China (SCOPSR) announced that the China Securities Regulatory Commission (CSRC) will be responsible for the administration of private equity funds in China.

However, the National Development and Reform Commission is not completely out of the picture because it will be responsible for the formulation of policies to promote the private equity industry, including issuing regulations on the Chinese government's investments in private equity funds.

The SCOPSR's announcement seems to promise to resolve the dispute between the CSRC and the NDRC and raises hopes of a coordinated regulatory framework that will bring greater stability and certainty to the market. It is expected that a comprehensive regulatory framework will soon be established by a series of new laws and rules to be promulgated.

3. China is expected to double fines for trademark infringement

China is expected to double the compensation ceiling for trademark infringement to 2 million yuan, according to the latest draft amendment to the Trademark Law. Compensation ranging from 20,000 yuan to 2 million yuan shall be paid to the holders of trademark rights in the case of infringement, according to the draft tabled for a second reading at the ongoing four-day bimonthly session of the Standing Committee of the National People's Congress (NPC), China's top legislature. The first draft amendment set the compensation ceiling at 1 million yuan, up from 500,000 yuan under the current law.

The move aims to better protect exclusive trademark rights and further crack down on infringement.

4. Amended labor contract law targets equal pay

A new amended labor contract law has come into effect in China from July 1 2013, which emphasizes that the so-called outsourced workers should get the same amount of pay as regular staff doing the same job. Outsourced workers only sign contracts with a third-party labour dispatch agency rather than being employed directly by the companies they end up working for. So some companies end up paying their outsourced workers less money than regular staffers. Right now, the Labor Law added regulations stating that the three way contracts between outsourced workers, labour dispatch agencies and companies should indicate that the workers are not underpaid.

5. Detailed rules on labour dispatch released

From 1 July 2013, all labour dispatch companies are required to hold a labour dispatch permit. However, companies engaged in labour dispatch prior to 1 July 2013 will have a grace period until 1 July 2014. During the grace period they are able to continue with existing labour dispatch contracts, but will be unable to take up new dispatch business until the permit is obtained.

The Rules specify the documentation and procedures for applications for labour dispatch permits. Applications must be submitted to the local labour bureau, which may take up to 20 working days for review and approval. The review period may be extended to 30 working days upon approval by the head of the labour bureau.

A labour dispatch permit will be valid for three years. An application for renewal of a labour dispatch permit must be submitted to the local labour bureau at least 60 days before expiry. If a labour dispatch company misses this deadline then it will need to apply for a new labour dispatch permit.

Each labour dispatch company is required to submit an annual report to the labour bureau in the first quarter of each year. The report must disclose certain details of its operation of labour dispatch business for the preceding year.

6. CSRC Publishes 2013 Revised Draft for Standards for Semi-yearly Reports of Listed Companies on Growth Enterprise Board

On June 28, 2013, the China Securities Regulatory Commission (CSRC) promulgated the Standards for the Information Disclosure Contents and Formats of Companies Publicly Offering Securities No. 31 – Semi-yearly Report Content and Format of Listed Companies on the Growth Enterprise Board (Revised in 2013) (hereinafter referred to as the "Semi-yearly Report Standards of the Growth Enterprise Board"), effective as of the date of promulgation.

The revised Semi-yearly Report Standards of the Growth Enterprise Board contain 53 articles in four chapters. The revision mainly includes: (1) adding information disclosure particulars to protrude the characteristics of the growth enterprise board; (2) highlighting the disclosure of risk factors to fully reveal the risks; (3) simplifying the semi-yearly summary to improve the direction of information disclosure; (4) promoting the electronic disclosure to reduce disclosure costs; and (5) making necessary adjustments, supplements and improvements to some provisions.

7. CSRC Revises Administrative Measures for Customer Asset Management Business of Securities Companies and Implementing Rules for Collective Asset Management Business of Securities Companies

The revised Securities Investment Fund Law took effect on June 1, 2013. In order to ensure the consistency with the new Securities Investment Fund Law, the China Securities Regulatory Commission (CSRC) promulgated the Decision on Revising the Administrative Measures for the Customer Asset Management Business of Securities Companies and the Decision on Revising the Implementing Rules for the Collective Asset Management Business of Securities Companies on June 26, 2013, which took effect on the date of promulgation.

The revision mainly covers: revising the adjustment scope of the Administrative Measures for the Customer Asset Management Business of Securities Companies and the Implementing Rules for the Collective Asset Management Business of Securities Companies, deleting relevant provisions on collective plans for investors of more than

200 people; and adjusting the regulatory requirements for asset management plans of securities companies in accordance with the unified provisions of the new Fund Law.

8. Intellectual property shall be a must to carry out fund service.

On May 17, 2013, the China Securities Regulatory Commission (CSRC) released the Administrative Measures for the Operations of Securities Investment Fund Service Institutions (Draft for Comments) (the "Measures").

According to the Measures, when the fund manager, the custodian and the fund service institution choosing the information technology system services, the services agreement to be signed shall include the related IP rights.

© Wenfei, Beijing, July 2013
Check the China Legal Briefing archives on: <http://www.wenfei.com/publications.html>
Obtain your personal subscription from: china@wenfei.com