

China Legal Briefing*303

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I. **Interim Measures for the Participation in Social Insurance of Foreigners Employed in China (2024 Revision)**

In order to fulfill China's obligation to accede to *the Convention on the Elimination of the Requirement for the Authentication of Foreign Public Documents*, and considering the changes in the names and coding rules of the documents related to the participation of foreigners in social insurance, the Ministry of Human Resources and Social Security released the *Interim Measures for the Participation in Social Insurance of Foreigners Employed in China (2024 Revision)* (“**the Measures**”). The Measures contain 12 articles. In this publication, we will briefly introduce you to the main content.

- **Definition of Foreigners Employed in China**

Article 2 of the Measures stipulates that Foreigners employed in China refer to persons of non-Chinese nationality who are legally employed within the territory of PRC, who have obtained employment documents such as the Work Permit for Foreigners or Resident Foreign Correspondent’s Press Card, or who hold a Residence Permit for Foreigners.

- **Verification of Eligibility for Social Security Benefits**

Article 7 of the Measures makes it clear that foreigners living outside China who are entitled to monthly social insurance benefits should have their eligibility verified once a year. Verification of eligibility can be done by providing the social insurance agency responsible for paying the benefits with a certificate of survival issued by the Chinese embassy or consulate abroad, a certificate of survival notarized and authenticated by the relevant institution in the country of the foreigner’s residence and certified by the Chinese embassy or consulate abroad, or through self-service online. If an international treaty concluded or participated in by

China stipulates otherwise, it should be handled in accordance with the certification procedures stipulated in the treaty.

If a foreigner lives in China legally, his/her eligibility for social insurance benefits should also be verified once a year. Verification of eligibility could be carried out through self-service online, or by going to the social insurance administration organization in person to verify their survival.

- **Unlawful Employment**

When an employer recruits a foreigner, who has not obtained a legal employment document or does not hold a Permanent Residence Permit for Foreigners, such unlawful employment should be handled in accordance with *the Provisions on the Administration of Employment of Foreigners in China*. (Article 11)

- **Conclusion**

The Measures are minor adjustments based on changes in the recent regulatory and practical environment. For the specific handling of issues related to foreigners' participation in China's social insurance, we recommend continuing to follow the provisions of *the Measures* and *the Social Insurance Law of the PRC for the Participation of Foreigners in Social Insurance* and consider the local practical requirements to ensure social insurance compliance.

II. Supreme People's Court Releases First Batch of Typical Cases on Lawful Protection of Foreign Investors Rights

- **Introduction**

On January 2, 2025, the Supreme People's Court (SPC) of China released the first batch of typical cases focused on disputes involving foreign-invested enterprises (FIEs). This release coincides with the fifth anniversary of the implementation of the Foreign Investment Law (FIL),

which unified and replaced previous foreign investment-related laws to create a streamlined legal framework defining the rights and obligations of FIEs in China.

The selected cases highlight common disputes faced by FIEs and provide guidance on the judicial approach to resolving such issues efficiently.

This release includes five cases, primarily covering the following types of typical disputes:

1. Self-Dealing

- **Case Summary:** A manager signed contracts with a company owned by their spouse without disclosing the conflict of interest, leading to financial losses for the FIE.
- **Court Decision:** The court ruled that the manager had engaged in self-dealing and ordered the return of the illegal gains to the company.

2. Shareholder Rights

- **Case Summary:** A Korean shareholder was denied access to the financial and operational records of its wholly-owned Chinese subsidiary.
- **Court Decision:** The court upheld the shareholder's right to information, applying both Korean and Chinese laws to ensure equal protection.

3. Company Deadlock

- **Case Summary:** A joint venture faced operational paralysis due to irreconcilable differences between the majority foreign shareholder and the minority Chinese shareholder.
- **Court Decision:** While the Intermediate People's Court denied the existence of a deadlock, the High People's Court overturned

this decision, confirmed the deadlock, and ordered the dissolution of the company. The High People's court also encouraged the parties to explore new opportunities for future cooperation.

4. Licenses and Documents Control

- **Case Summary:** A general manager of a FIE refused to return the company's seals and licenses after being replaced.
- **Court Decision:** The court issued a behaviour preservation order, compelling the manager to hand over the company seal and documents to protect the company's interests.

5. Related Transactions

- **Case Summary:** A Chinese shareholder accused a foreign party in a joint venture of selling products at below-market prices to its parent company, causing harm to the joint venture's financial interests.
- **Court Decision:** The SPC facilitated a settlement between the parties, allowing them to continue their business relationship while resolving the dispute.

Legal Implications

This is the first time the SPC has released typical cases on foreign investment protection, emphasizing several key legal principles and practices related to foreign investors in China, which appear to include strengthened judicial protection, equal treatment for foreign and domestic parties, and efficient dispute resolution. While this certainly shows the SPC's ambitions, the undeniable reality according to our experience is that FIEs and foreign investors are still cautious towards the judicial system in China especially when it comes to international disputes and disputes with large state-owned entities. International

dispute resolution institutions are still widely favoured and for valid reasons.

Recommendations for FIEs

To mitigate legal risks and ensure compliance with Chinese laws, FIEs are encouraged to take proactive measures. These include conducting periodic audits of corporate governance to ensure the implementation of robust internal controls and transparency in decision-making processes; regularly reviewing and enforcing shareholder agreements while safeguarding access to company records; and closely monitoring regulatory changes, including updates to the FIL, Company Law and related local regulations. And last but not least, include valid and appropriate dispute resolution clauses in important contracts to avoid ending up in an unstable or even sometime possibly hostile jurisdiction.

III. The Supreme People’s Court’s Latest Opinions on Guaranteeing Scientific and Technological Innovation with High-Quality Trial Services

On December 31, 2024, the Supreme People’s Court issued the Opinions on Guaranteeing Scientific and Technological Innovation with High-Quality Trial Services (the “**Opinions**”). This publication examines the key judicial principles and policy directions set forth in the Opinions.

- **Strengthening Judicial Protection of Scientific and Technological Innovation Achievements in Accordance with the Law and Assisting in the Development of New Quality Productivity in Light of Local Circumstances**

This section focuses on fortifying legal safeguards for patents, utility models, and industrial designs. Courts are instructed to impose tighter

standards for patent validation to reduce frivolous applications and clarify novelty and inventiveness boundaries. The Opinions also advocate nuanced criteria for industrial design protection, avoiding overly broad infringement claims. Specialized technologies—such as integrated circuits, biotechnology, and innovative medicinal products require clear ownership rights, deterrents against unauthorized disclosures, and an environment conducive to research and development.

- **Strengthening the Judicial Protection of Scientific and Technological Innovation Subjects in Accordance with the Law, and Fully Stimulating the Vitality of Innovation and Creativity in the Whole Society**

In this section, the Opinions highlight clarifying and protecting the rights of inventors and innovation-focused entities, including service inventions and fair allocation in technology contracts and equity structures. Courts must distinguish between functional and non-functional achievements, safeguard the rightful interests of employees who are separated from their employers, and ensure fair distribution of rewards and damages. By respecting party autonomy and investor rights, the Opinions encourage stable governance in scientific enterprises and an open labour market. It also underscores fault tolerance to spur innovation, protecting scientists' discretion in project decisions, and applying incrimination measures appropriately when research activities lead to criminal allegations.

- **Strengthening the Protection of Scientific and Technological Innovation in Accordance with the Law, and Resolutely Cracking Down on All Kinds of Infringement Behaviours**

To deter infringement and protect market integrity, courts should adopt expedited measures such as expedited preservation orders and prior

judgments to protect innovation achievements. Compensation should reflect actual market harm, and punitive damages should be applied more frequently to deter intentional and repeated infringement. Strict oversight of malicious litigations and fabricated patent applications aim to ensure that genuine innovation is protected, academic integrity remains intact, and abusive lawsuits are curtailed.

- **Strengthening the Construction of a Law-Based International Market Environment for Scientific and Technological Innovation, and Assisting in Building a High-Level Socialist Market Economic System**

The Opinions emphasize the need for a unified and transparent market environment that supports fair competition and deters monopolistic practices. Courts should regulate unfair competition in emerging industries, define the boundaries between legitimate intellectual property use and anti-competitive behaviour, and oversee platform economies. Financial support is reinforced by improvements in adjudicating loan disputes, equity financing, and venture capital. In addition to encouraging regional collaboration to strengthen intellectual property protection and foster integrated innovation ecosystems, the Opinions also seem to promote international cooperation by providing equal protection for foreign and domestic entities, streamlining cross-border legal processes, and advancing judicial exchanges.

- **Improving the Fair Judicial System and Mechanism to More Effectively Serve and Ensure the Implementation of the Innovation-Driven Development Strategy**

This section focuses on enhancing the judicial capabilities in intellectual property cases matters across criminal, administrative, and civil proceedings. The Opinions advocate refining specialized intellectual property courts, optimizing appellate procedures, and leveraging

internet platforms for emerging issues in the digital era. The text also emphasizes building a stable pool of trial professionals with combined expertise in science, engineering, and law, while promoting data sharing and big data analysis to unify adjudication standards.

- **Conclusion**

While the Opinions have certainly envisaged an idealistic landscape in which scientific and technological innovations are strengthened by enhanced judicial capabilities. Judicial power, as all powers go, is a double-edged sword. The envisaged landscape is only possible if judicial powers are exercised in a checked and consistent manner to ensure that the fundamental legal system is transparent, efficient and predictable and actually works to strengthen protection and eliminate infringement of all market players alike. As China competes in a global innovation landscape, there is still significant room for improvement for its judicial system. In the meanwhile, we remain interested observers hoping for the effective implementation of these judicial reforms.

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