



漢坤律師事務所  
HAN KUN LAW OFFICES

# Newsletter

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## Insights & Ideas

### **Introduction to the Decisions of the State Council to Amend the Regulations on Work Injury Insurance (Author: Najuan MA; Na CAI)**

On December 20, 2010, the State Council promulgated the *Decisions to Amend the Regulations on Work Injury Insurance*, which amended the then effective *Regulations on Work Injury Insurance* (the “**Former Regulations**”). The amended Regulations on Work Injury Insurance (the “**Amended Regulations**”) came into force as of January 1, 2011. The Amended Regulations changes certain provisions on protection of the rights of staffs and workers, which are introduced as following.

#### **Expand the Application of Work Injury Insurance**

The Former Regulations provided that all enterprises and individual businesses with staff members (employees) shall participate in work injury insurance, however, detailed measures for work injuries insurance for other public institutions, public organizations and the private non-enterprise units with staffs members are authorized to be made by relevant departments under the State Council. The *Notice on Issues Concerning Work-Related Injuries of Personnel of Public Institutions and Private Non-profit Organizations*, which was promulgated jointly by the former Ministry of Labor and Social Security, former Ministry of Personnel, Ministry of Civil Affairs and Ministry of Finance as of December 29, 2005, provided clear guidance to the work injury insurance policy for the two categories of public institutions, social organizations, foundations and private non-enterprise units which are not covered by support of fiscal allotment or do not have regular fiscal allotment, and which are administered by reference to the State’s civil service system. Work injury policies for other public institutions, social organizations, foundations and private non-enterprise units which fall out of the above two categories are authorized to be made by provincial government. At present, such provisions have not been formulated by most local governments, and the existing provisions are not united.

To solve this problem of lack of definition and unitarity of the work injury policies for employees of the abovementioned organizations, the Amended Regulations, which expand the scope of application of the work injury insurance, include all public institutions, social organizations, private non-enterprise units, foundations, law firms, accounting firms and other organizations into the applicable scope of work injury insurance. As of January 1, 2011, all enterprises, public institutions, social organizations, private non-enterprises, foundations, law firms, accounting firms and other organizations and the individual entrepreneurs with employees shall pay for work injury insurance for all staffs, workers or employees.

### **Adjust the Scope of Determination of Work Injury**

The Amended Regulations make two adjustments to the scope of determination of work injury. First, scope of work injury on way to and from work is expanded to include injury from traffic accidents caused by motor vehicles and non-motor vehicles on way to and from work, and injury from accidents on urban railway transit, passenger ferry and trains, at the same time, limitation is made to such accidents as “main responsibility is not lied in the injured employee”. Second, scope of injury not qualified as work injury is adjusted in accordance with relevant provisions in the Social Insurance Law, deleting the provision that injury and death caused by the negligence crime or violation of public security administration by the employee cannot be recognized as work injury, and adding the provision that injury and death caused by drug taking by the employee shall not be recognized as work injury.

### **Simplify the Determination Procedure of Work Injury**

Before the promulgation of the Amended Regulations, the determination and evaluation of work injury and the dispute resolution procedures were complex and time-consuming. This amendment has made studies to simplify the procedure issues. The Amended Regulations make the following three revisions. First, the Amended Regulations add summary procedures for determination of work injury, for application of determination of work injury where the fact and the rights and obligations are clear, the determination of work injury shall be made within 15 days. Second, the Amended Regulations clarify that the time limit for re-evaluation of working capability shall be made in reference to the time limit for the initial procedure evaluation. Third, the Amended Regulations cancel the provision that administrative review shall be prepositive procedure to administrative litigation, and provide that if work injury dispute arises, the relevant employer or employee may apply for administrative review, or directly bring administrative suit at the people’s court in accordance with relevant laws.

### **Increase the Level of Certain Work Injury Allowance**

Currently, the level of the lump sum allowance for death resulting from work injury in certain covered regions is too low, where the lowest level is about 30,000 to 40,000 RMB, and the national average level is 102,400. Such level of allowance is insufficient to safeguard the basic living needs of the injured employee and the relative he/she raises or supports, and affects the enthusiasm of the employer to participate in the insurance plan. Thus, the Amended Regulations increase the level of the lump sum allowance for death resulting from work injury to 20 times of the national urban per capita disposable income in the previous year.

At the same time, to avoid that the difference between allowance to dead employee and injured and permanently disabled employee becomes too much, based on the financial capacity of the

work injury insurance funds, the Amended Regulations also increase the level of lump sum allowance for permanent disability resulting from work injury: for disabled employee from level one to level four, the allowance is increased by 3 months' salary of the employee himself/herself; for disabled employee from level five to level six, the allowance is increased by 2 months' salary of the employee himself/herself; for disabled employee from level seven to level ten, the allowance is increased by one month's salary of the employee himself/herself.

### **Reduce Costs of Employers**

To further utilize the function of the work injury insurance funds and relieve burdens of employers, the Amended Regulations make two revisions. First, certain expenses that originally shall be borne by employers, such as lump sum medical allowance for work injury, hospital food subsidiaries, transportation, food and accommodation expenses incurred from seeking medical treatment outside the covered region, are currently paid from the work injury insurance funds. Second, to strengthen the prevention of work injury, and avoid the occurrence of work injury accidents and occupational diseases in the first place, the Amended Regulations list the work injury prevention expenses as expense item to be paid from the work injury insurance funds to be primarily used in the education and training of prevention of work injury. Meanwhile, to strengthen the administration of work injury prevention expenses and ensure that the funds are used only for its intended usage, and to ensure that such funds can really play a role in preventing the occurrence of work injury accidents and occupational diseases, the Amended Regulations provide that the detailed measures for the withdrawal ratio, usage and administration of work injury prevention expenses will be formulated by the social insurance administration department under the State Council jointly with the departments of finance, health administration and safe production supervision under the State Council.

## Legal Updates

### 1. Summary of the Notice on Promoting the Healthy Development of Network Distribution of Publications (Author: Xiaolin TENG)

General Administration of Press and Publication promulgated the *Notice on Promoting the Healthy Development of Network Distribution of Publications* (the “**Notice**”) on December 7, 2010. The Notice provides that relevant operation licenses shall be obtained in order to engage in network distribution of publications, and the words “Network Distribution” shall be added after the operation scope in such operation licenses.

Pursuant to the Notice, the establishment of network bookstores that engage in publication distribution, the engagement in publication distribution in network trading platforms or the engagement in publication distribution by any other means through the network shall be approved by administration departments of press and publication and shall obtain Operation License for Publications and Operation License for Audio-visual Products in accordance with the *Administration Provisions on the Publication Market* and the *Administration Measures for the Wholesaling, Retailing and Leasing of Audio-visual Products*. If enterprises that are engaged in general distribution, wholesale sales, chain operation and retail sales of publications and have acquired the Operation License for Publications and enterprises that are engaged in wholesale sales, chain operation and retail sales of audio-visual products and have acquired the Operation License for Audio-visual Products commence network distribution within the approved operation scope, they shall file with the administration departments of press and publication that gives the original approval within thirty days after commencing the network distribution and shall add the words "Network Distribution" after the operation scope in their Operation License for Publications and the Operation License for Audio-visual Products.

The Notice further sets forth application requirements for the following circumstances:

- ◆ Enterprises applying for the engagement in the retail sales of publications through network shall comply with the provisions of Article 10 under the *Administration Provisions on the Publication Market* (including having a fixed site for operation in line of their business) and shall be approved by the local administration department of press and publication of the people’s government at county level.
- ◆ Enterprises applying for engagement in wholesaling sales of publications through network shall comply with the provisions of Article 8 under the *Administration Provisions on the Publication Market* (including having a registered capital of no less than RMB 2 million and a premise for operation of no less than 50 square meters) and shall be

approved by the administration department of press and publication of the people's government of the local provinces, autonomous regions and municipalities directly under the Central Government.

- ◆ Enterprises applying for engagement in general distribution of publications through network shall comply with the relevant provisions of Article 6 under the *Administration Provisions on the Publication Market* and shall be approved by the General Administration of Press and Publication.
- ◆ Foreign invested books, newspapers and periodicals distribution enterprises which engage in network distribution shall carry out the provisions of Article 18 under the *Administration Measures on Foreign Invested Books, Newspapers and Periodicals Distribution Enterprises*. Foreign invested audio-visual products distribution enterprises which engage in network distribution shall carry out the provisions of Article 9 under the *Administrative Measures on Foreign-Sino Cooperative Joint Venture Audio-visual Products Distribution Enterprises*.

According to the Notice, enterprises which have formally commenced the network distribution operation before the promulgation of the Notice and still engages in such business until now, shall go through the formalities of obtaining the Operation License for Publications with the local administration department of press and publication pursuant to the Notice before January 31, 2011 and regulate its operation activities. If an entity that has not gone through the formalities for the acquisition of the Operation License for Publications still engages in network distribution, the administration department of press and publication will ban such entity in accordance with laws and will submit the case to the public security, industry and commerce administration, or competent telecommunication department which will close down the violating website.

## **2. Summary of the Opinions on Further Encouraging and Guiding Social Capital in Setup of Medical Facilities (Author: Jinjing SHI; Hong JIANG)**

On November 26, 2010, the General Office of the State Council forwarded the *Opinions of the National Development and Reform Commission, the Ministry of Health, the Ministry of Finance, the Ministry of Commerce and the Ministry of Human Resource and Social Security on Further Encouraging and Guiding Social Capital in Setup of Medical Facilities* (hereinafter referred to as the “**Opinions**”), providing 25 opinions regarding scope of access, practice environment, strengthening guidance and supervision, etc..

### **To Expand the Scope of Accessible Industries**

The Opinions raise the subject of expanding the scope for social capital in setup of medical facilities, which is reflected in the following aspects: (a) encouraging and supporting social capital in setup of non-profit and for-profit medical facilities; (b) encouraging individuals with required qualifications to setup private clinics; (c) giving priority to social capital when adjusting and increasing medical and health resources; (d) reasonably determining the scope of practice for non-public medical facilities and prohibiting imposing restrictions on the scope of practice for non-public medical facilities without sound reasons; (e) encouraging social capital to participate in the restructuring of public hospitals.

The Opinions also put forward relevant measures in connection with setting up medical facilities by foreign capital, which are reflected in the following aspects: (a) resetting the setup of medical facilities by foreign capital as foreign-invested projects under permitted category; (b) permitting foreign medical facilities, enterprises and economic organizations to set up medical facilities with the domestic medical facilities, enterprises and economic organizations in the form of equity joint ventures or cooperation joint ventures, and gradually removing the restrictions on equity proportion for foreign capital; (c) allowing eligible foreign capital to set up solely-funded medical facilities within China on a pilot basis; (d) encouraging foreign capitals to set up medical facilities in central and western part of China; (e) giving preferential supporting policy to capital from Hong Kong and Macau special administrative regions and Taiwan to be invested in the setup of medical facilities, in accordance with relevant provisions; (f) simplifying and standardizing the examination and approval procedures for foreign capital in setup of medical facilities: the establishment of the medical facilities in the form of sino-foreign equity joint ventures and sino-foreign cooperative joint ventures shall be approved by the health authorities and commerce authorities on provincial level, and the establishment of medical facilities wholly owned by foreign entities shall be approved by the Ministry of Health and the Ministry of Commerce.

### **To Improve the Practice Environment for Setup of Medical Facilities by Social Capital**

The Opinions put forward several measures in relation to improving the practice environment for setup of medical facilities by social capital, which include, primarily, the following: (a) non-profit medical facilities setup by social capital are entitled to the tax preference policy according to the relevant provisions of the State, and enjoy the same price for electricity, water, gas and heating as those applicable to public medical facilities; (b) for-profit medical facilities set up by social capitals shall pay enterprise income taxes according to the provisions of the State, have the right to price their medical service and be exempted from business taxes; (c) including the eligible non-public medical facilities as service providers for medical insurance plans. The local administrative departments shall not include the nature of investors as the conditions for approving medical facilities' application for service provider

for medical insurance plans; (d) encouraging reasonable flow of medical practitioners between public and non-public medical facilities. The academic status, the evaluation of professional titles, identification of professional skills, the training on professional and occupational skills of medical practitioners shall not be affected by his/her change of employment; (e) non-public medical facilities established by social capital shall be entitled to the same policy in terms of land use as public facilities are entitled to; (f) improve the relevant policies regarding the exit of non-public medical facilities. In the event that a non-profit medical facility set up by social capital is to be converted into a for-profit medical facility, it can file an application and go through the formalities for such conversion in accordance with the applicable laws and regulations.

The Opinions also set limits to social capital in setup of medical facilities, which include, primarily, the following: (a) non-profit medical facilities shall not alter its use of land without a prior approval. To alter its use of land, the facilities shall go through the formalities for use of land; (b) in principle, non-profit medical facilities established by social capital may not be converted into for-profit medical facilities. If such conversion is necessary, it shall be approved by the authority that originally approved the establishment of the same medical facility, and the relevant formalities shall be completed.

### **Strengthening Guidance and Supervision**

The Opinions set forth several requirements regarding the legitimate operation of non-public medical facilities. Such requirements mainly include the following: (a) non-public medical facilities shall abide by related regulations and rules, such as regulations on the administration of medical facilities and its implementation rules, and obtain permit for providing medical services; (b) non-public medical facilities are strictly prohibited from providing services beyond their practice scope. Any illegal provision of medical services or medical fraud will be cracked down on; (c) the advertisements made by non-public medical facilities shall be standardized and any publication of fake or illegal medical advertisements are strictly prohibited; (d) seduced or excessive medical treatment is strictly forbidden; (e) for non-profit medical facilities, diversion of balance of revenue and expenditure to pay dividends or to pay dividends in a disguised form is strictly forbidden.

### **3. Brief of Administrative Measures for the Leasing of Commodity Housing (Author: Muchun XU)**

On December 1, 2010, the *Administrative Measures for the Leasing of Commodity Housing* (hereinafter referred to as the “**Measures**”) was promulgated by Ministry of Housing and Urban-Rural Development for the purposes of strengthening the administration of the leasing of commodity housing, regulating the leasing of commodity housing and protecting the legal

rights and interests of the lessor and the lessee involved in the leasing of commodity housing. The Measures shall apply to the leasing of commodity housing on State-owned land in the urban planning area and the supervision and administration of such leasing, while the leasing of social welfare housing shall be regulated in accordance with the relevant provisions of the State.

The Measures regulate the leasing of commodity housing under the following circumstances.

### **Strengthening the Administration of the Leasing of the Commodity Housing**

In order to strengthen the administration of the leasing of the commodity housing, the Measures require that the departments in charge of construction (real estate) of the people's governments in the Municipalities directly under the Central Government, the Cities and the Counties shall strengthen the publicity of the administrative provisions on the leasing of housing and the knowledge about the safety use of housing and shall publish information related to the market rent of different types of housing by region on a regular basis, and shall establish and improve the information system for the registration and filing procedure of the leasing of housing. Besides, according to the Measures, the housing in any of the following conditions shall not be leased: (a) is constructed illegally; (b) does not comply with the mandatory standards on safety and disaster prevention works; (c) the nature of use of the housing is changed in violation of the provisions; (d) other situations in which leasing is prohibited by the provisions of the laws and regulations.

### **Regulating the Leasing of Commodity Housing**

In order to solve the apparent problems existing in the market of housing leasing, there are some new provisions in the Measures. For the fact that the lessor leases the housing divided into several parts to different lessees, the Measures stipulate that if the housing is for lease, the room originally designed shall be the smallest unit for lease and the per-capita floor area for leasing shall not be smaller than the minimum standard stipulated by the local people's government, and the kitchen, washroom, balcony and underground storeroom shall not be leased to people for living purpose. For the fact that the lessor increases the rent at its discretion which will injure the living rights of the lessee the Measures stipulate that the lessor shall not increase the rent arbitrarily and unilaterally, during the term of the housing lease contract.

### **Protecting and Balancing the Legal Rights and Interest of the Lessor and the Lessee Involved in the Leasing of Commodity Housing**

The Measures further clarify the provisions that the lessor shall perform the obligation to

repair the housing and ensure the safety of the housing, and the lessee shall use the housing in a reasonable manner. For example, the lessor shall perform the obligation to repair the housing and ensure the safety of the housing and the indoor facilities in accordance with the contract. If the normal use by the lessee is affected because the damaged housing is not restored in a timely manner, the lessor shall assume the compensation liability or the rent shall be reduced as agreed. The Measures also require that the lessee shall use the housing in a reasonable manner according to the leasing purpose and the requirements on the use as stipulated in the contract, shall not alter the load-bearing structure of the housing or remove or modify the indoor facilities without authorization and shall not prejudice the legal interest of other property owners and users. If the housing and facilities leased are damaged by the lessee for reasons such as improper use, the lessee shall take responsibility for the repair or be liable for compensation. Further, the Measures require that a lessee that subleases the housing shall obtain the written consent of the lessor. If the lessee subleases the housing without the written consent of the lessor, the lessor may terminate the lease contract, take back the possession of the housing and request the lessee to compensate for the loss.

Besides, the Measures specify the provisions on the right of first refusal of the lessee and the principle of Leasing Overrides Sale in order to protect the lessee's right and stabilize the leasing relationship between the lessor and lessee. For example, the Measures stipulate that during the lease term of the housing, the original housing lease contract shall continue to take effect if the housing is transferred as a gift or due to the division of properties, inheritance or the buying and selling of the housing. If the lessee dies during the lease term of the housing, the people living with him when he is alive may lease the housing in accordance with the original lease contract. The lessor that intends to sell the housing that is rented out during the lease term of the housing shall notify the lessee within a reasonable period before the sales and the lessee shall have the right of first refusal under the same conditions.

#### **4. Brief of the Announcement on Issues Concerning Assessing and Determining the Basis of Calculating Individual Income Tax on Incomes Derived from Equity Transfer (Author: Bing XUE; Jiaxin LIU)**

On December 14, 2010, the State Administration of Taxation (SAT) published the *Announcement on Issues Concerning Assessing and Determining the Basis of Calculating Individual Income Tax on Incomes Derived from Equity Transfer* (SAT Announcement [2010] No. 27, "**Announcement No. 27**"), clarifying relevant issues concerning the individual income tax calculation basis where a natural person obtains incomes from transferring the equity (shares) he/she holds in an enterprise ("Equity Transfer", excluding the transfer of shares of listed companies). Announcement No. 27 became effective on January 14, 2011.

In May 2009, the SAT issued *Notice of the State Administration of Taxation on Strengthening the Administration of Individual Income Tax on Incomes from Equity Transfer* (Guoshuihan [2009] No. 285, “**Circular 285**”), setting out the framework and rules for individual income tax collection with respect to Equity Transfer. However, there remained quite a number of unclear issues, both technical and procedural, in Circular 285.

As a result, both taxpayers and PRC tax authorities encountered difficulties in adopting and complying with the relevant tax regulations as per Circular 285, which resulted in compliance risks to both sides. Obviously, the SAT was aware of such undesirable situation and issued Announcement No.27 to clarify some policy-type issues arising from tax administration practice. We set out below salient points of Announcement No.27.

### **Tax Calculation Basis: Fair Trade Price**

If the tax calculation basis is significantly low and without justifiable reasons, the competent tax authority may adopt the following methods to determine the incomes derived from Equity Transfer:

- ◆ making reference to the net asset value per share or the share of the net assets corresponding to the equity ratio the taxpayer is entitled to ( if the aggregate of intellectual property rights, land use rights, real estate, right of prospecting, right of mining and equity accounts for more than 50% of the total assets of the target enterprise, then the value of net assets of the target enterprise should be assessed by a third-party valuator);
- ◆ making reference to the Equity Transfer prices of other shareholders or the same shareholder within the same enterprise under the same or similar conditions;
- ◆ making reference to the Equity Transfer prices of enterprises within the same industry under the same or similar conditions;
- ◆ if the taxpayer disagrees with the determination method adopted by the competent tax authority, he/she shall provide relevant evidence to support his/her argument. The competent tax authority may adopt other reasonable determination methodology if the evidence is verified and accepted by the tax authority.

### **Reasonable Testing Methods on Determining Tax Calculation Basis**

- ◆ According to Announcement No.27, when characterized by any of the following situations without justifiable reason, the tax calculation basis may be deemed as significantly low:

- (a) the filed Equity Transfer price is lower than the initial investment cost or lower than the payments paid for obtaining this equity plus relevant fees and taxes;
  - (b) the filed Equity Transfer price is lower than the corresponding share of net assets; or
  - (c) the filed Equity Transfer price is lower than the Equity Transfer price of other shareholders or the same shareholder within the same enterprise under the same or similar conditions; or
  - (d) the filed Equity Transfer price is lower than the Equity Transfer price of enterprises within the same industry under the same or similar conditions; or
  - (e) other situations as may be provided by the competent tax authority.
- ◆ Announcement No.27 also provides that there may be justifiable reasons for a low price. Examples given include:
- (a) target is in a loss position for more than three (inclusive) consecutive years; or
  - (b) the investor is selling equity at an artificially low price due to an adjustment of state policy; or
  - (c) as part of a family re-structuring ( i.e. where the equity-holder transfers equity to a spouse, parent, child, grandparent, grandchild, sibling or any relative that has a direct obligation to raise or support the transferor); or
  - (d) other justifiable reasons as may be provided by the competent tax authority.

### **Tax Calculation Basis for Previous Equity Transfer**

Where a taxpayer transfers the equity acquired by him/her, the Equity Transfer cost shall be the trade price of the previous transfer plus the relevant fees and taxes paid by the buyer.

## **5. Introduction to the Implementation Measures of Shanghai Municipality for Carrying Out the Pilot Program of Foreign-Invested Equity Investment Enterprises (Author: Yong WANG; Shaokai WANG)**

On December 24, 2010, Shanghai Municipal Finance Services Office, Shanghai Municipal Commission of Commerce and Shanghai Municipal Administration of Industry and Commerce jointly promulgated the *Implementation Measures of Shanghai Municipality for Carrying Out the Pilot Program of Foreign-invested Equity Investment Enterprises* (the “**Measures**”), which provide that foreign investors can establish equity investment enterprises and equity investment management enterprises in Shanghai in the form of a partnership. The Measures will come into effect 30 days after the date of promulgation.

The main contents of the Measures include:

### **Foreign Investors May Establish Equity Investment Enterprises in Form of Partnership**

The Measures emphasize that foreign investors may establish equity investment enterprises in the form of a partnership in Shanghai.

According to the Measures, an application for establishing a foreign-invested equity investment enterprise in the form of a partnership shall be submitted directly to the Shanghai Municipal Administration of Industry and Commerce, where the pre-approval from Shanghai commerce authority is not needed. Shanghai Municipal Administration of Industry and Commerce will consult with the Municipal Finance Services Office in writing within 5 days after receiving all application documents. This procedure of consultation is an internal procedure between the relevant authorities, which does not require the applicant's participation. A foreign-invested equity investment enterprise in the form of a partnership shall, with the industry and commerce registration documents, promptly conduct relevant foreign exchange administration formalities, such as foreign exchange registration and account opening approval, with the Shanghai Branch of the State Administration of Foreign Exchange, but it still cannot make foreign exchange settlement of foreign capital unless it is an approved pilot enterprise as described below.

### **Special Requirements for the Names of Foreign-Invested Equity Investment Management Enterprises and Foreign-Invested Equity Investment Enterprises**

According to the Measures, foreign-invested enterprises that engage in equity investment management as their principal business and whose names include "equity investment fund management" shall meet the following requirements: (a) there shall be at least one investor, whose, or one of whose affiliate's, business scope is related to equity investment or equity investment management; (b) when applying for the establishment, there shall be at least 2 senior managerial personnel (vice general manager and above, or senior managerial personnel with equivalent positions), who should meet the following requirements: i. at least 5 years of experience engaging in equity investment or equity investment management; ii. at least 2 years of work experience as senior managerial personnel; iii. having China-related equity investment experience or working experience at Chinese financial organizations; iv. having no recorded regulation violation in the recent 5 years or pending economic disputes or litigations, and with good personal credit records; (c) the registered capital (or subscribed capital contribution) shall be no less than US\$2,000,000 and shall be contributed in cash. More than 20% of the registered capital (or subscribed capital contribution) shall be paid within 3 months after the issuance of the business license, and the balance shall be paid within 2 years.

According to the Measures, foreign-invested enterprises that engage in equity investment as their principal business and whose names include “equity investment fund” shall meet the following requirements: (1) the subscribed contribution shall be no less than US\$15,000,000 and the form of contribution is limited to cash only; (2) the partners shall make contributions in their own names, and the contribution of each limited partner (not including the general partner) shall be no less than US\$1,000,000; (3) the cash contribution by foreign investors shall be made in freely convertible foreign currency or RMB profits sourced within China or lawful RMB revenues from activities such as share conversion and liquidation, and Chinese investors shall make capital contribution in RMB.

### **Special Treatment for Foreign-Invested Equity Investment Pilot Enterprises**

Foreign-invested equity investment pilot enterprises referred to in the Measures shall mean such foreign-invested equity investment enterprises and foreign-invested equity investment management enterprises as determined by the Joint Conference, which is convened by the relevant leaders under the Shanghai Municipal People’s Government and whose members include Shanghai Municipal Finance Services Office, Shanghai Municipal Administration of Industrial and Commerce, Shanghai Municipal National Development and Reform Commission, Shanghai Municipal Commission of Economy and Informatization, Shanghai Municipal Science and Technology Commission, Shanghai Municipal Finance Bureau, Shanghai Local Taxation Bureau, Shanghai Municipal Housing Security and Building Management Bureau, Shanghai Municipal Government Legislative Affairs Office, Shanghai Branch of State Administration of Foreign Exchange, Shanghai Banking Regulatory Bureau, Shanghai Securities Regulatory Bureau and Shanghai Pudong New District People’s Government, etc. The Joint Conference Office is located at Shanghai Finance Services Office. Shanghai Finance Services Office is in charge of the daily work of the Joint Conference, Shanghai Municipal Commission of Commerce is responsible for the approval of establishment of foreign-invested equity investment management enterprises and approval of investment activities in Shanghai of foreign-invested equity investment enterprises, Shanghai Municipal Administration of Industry and Commerce is responsible for the registration of foreign-invested equity investment enterprises and foreign-invested equity investment management enterprises, Shanghai Branch of State Administration of Foreign Exchange is responsible for the foreign exchange administration matters provided under the Measures, and other members of the Joint Conference shall be responsible for relevant work pursuant to their respective responsibilities to promote the pilot program of foreign-invested equity investment enterprises in Shanghai. The Joint Conference is responsible for coordinating the pilot program of foreign-invested equity investment enterprises in Shanghai.

Approved foreign-invested equity investment pilot enterprises may conduct foreign exchange

settlement of foreign exchange capital with the foreign exchange authority. Offshore investors of the foreign-invested equity investment enterprise that applies for the pilot enterprise status shall meet the following conditions: (a) it shall be comprised of offshore sovereign funds, pension funds, endowment funds, charitable foundations, fund of funds, insurance companies, banks, security companies and other offshore institutional investors recognized by the Joint Conference; (b) during the preceding fiscal year, its own assets shall be not less than US\$500,000,000 or the assets under management by it shall be not less than US\$1,000,000,000; (c) it shall have sound governance and internal control system and shall not have received any punishment from judicial departments and relevant supervision organizations within the recent 2 years; (d) the offshore investors or its affiliates shall have more than 5 years of relevant investment experience; (e) other conditions that may be required by the Joint Conference.

Approved foreign-invested equity investment management pilot enterprises may use foreign currency capital to contribute to the equity investment enterprise sponsored and established by it, and the amount of such contribution shall not exceed 5% of the total amount of the funds raised. Such capital contribution in foreign currency will not affect the nature of the equity investment enterprise invested by it, which means that if all other partners are domestic partners and make capital contribution in RMB, the nature of the fund shall be a purely domestic fund, but the fund may not invest in industries where foreign investments are prohibited. Furthermore, the Measures expressly prohibit foreign-invested equity investment enterprises from investing in secondary securities transactions, financial derivatives transactions, non-self-use real estate investment use or using non-self-owned funds to make investments or to provide loans or guarantees to third parties.

### **Contribution Custodian System for Foreign-Invested Equity Investment Pilot Enterprises**

According to the Measures, contributions made to foreign-invested equity investment pilot enterprises will be put in custody of certain custodian bank, and the custodian account and use of the funds in the account shall be managed by the custodian bank in accordance with relevant rules. The responsibilities taken by the custodian bank include, but are not limited to: (a) regularly reporting information regarding fund operation and investment projects of the foreign-invested equity investment pilot enterprise to the Joint Conference Office and the relevant members of the Joint Conference; (b) after the end of each fiscal year, submitting to the Joint Conference Office an annual report of the domestic equity investments in said year that shall have been verified as consistent by all parties to the foreign-invested equity investment pilot enterprise; (c) supervising over the operation of the investments of the foreign-invested equity investment pilot enterprise, and in case of any violation of laws and

regulations or the fund custodian agreement, refusing to execute such investment activities and report promptly to the Joint Conference Office; (d) other matters subject to supervision as determined by the Joint Conference.

## **Important Announcement**

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