Newsletter Asia

Number 9

December 2015

SUMMARY

I. ***CHINA*** : The Importance of the Internal Rules for the Company

Nowadays, the rapid improvement of the legal system in China together with the accrued knowledge of Chinese employees concerning their rights, companies have to deal not only with unexpected increment of labor costs but also with various rules which aim the protection of employees.

Thus, it is very important for the company to have internal rules, not only for good employee management but also to clearly establish disciplinary rules.
Internal rules are meant to protect the company and its employees, as companies need to ensure that their employees are aware of their labor rights but also fulfill their obligations.

Usually, the main elements to be included in the internal rules pertain to the recruitment/training systems, the working hours , the remuneration and leaves, confidentiality, termination of labor agreement, etc.

In addition to the abovementioned elements, the company could stipulate other elements that may be considered necessary to be included therein these internal rules.

Pursuant to the various labor legislation, a specific procedure is set forth with regards to internal rules. It clearly sets out the formulation or modification of these rules and regulations which may have a direct consequence on the immediate interests of the employees, such as remuneration, working hours, rest and vacation, working safety and sanitation, insurance and welfare, training of employees, labor discipline or management of production quota, etc.; As per these dispositions, the company needs to follow diligent drafting methods, specific review and announcement procedures in order to enable these rules and regulations to be opposable to various employees.

In case of a dispute with an employee who petitions against the company to protect its interests or simply seeks compensation on the basis of the infringement of its rights; the company bears the burden of proof in the case where the latter wishes to invoke the violation of such internal rules . If the company can prove that the employee was aware of the existence of the internal rules adopted according to the procedure provided in the law, then these internals rules will be accepted by the judge.

Nevertheless, any provision included in the internal rules contrary to Chinese laws and regulations will be deemed to be invalid; and if the internal rules do not provide a clear and favorable interpretation they will be interpreted in favor of the employee.

As for the adoption procedure of the internal rules, the basic steps can be found below

1. Following the drafting of the internal rules, the company needs to discuss the content with the employees' representatives or with all the employees. The discussion can be held for example during a meeting or by sending emails to all the employees or through announcements;

2. Then, the company needs to forward the plans and suggestions to the trade union or the employees' representatives, if there is no trade union;

At this stage it is not mandatory to reach an agreement, but it is important for the company to keep proofs that discussions have been held at each step. Such proofs may consist of the meeting minutes discussing the draft of the internal rules signed by the employees, the confirmation email acknowledging receipt by the employees, the comments of the employees sent by email, etc.

3. The company shall inform the employees of the final content and application of the internal rules by way of public announcement on a board which may be seen by all employees or by having all employees sign a receipt of a copy of the internal rules (depending on the large scale of employees of the company).

At this level, the best seconded method is to request all the employees to sign a receipt of the internal rules by which the employees declare the reception of a copy of the internal rules which will be applicable to them.

This procedure sets forth the enforceability of the internal rules by the employees in case of a dispute.

II. ***JAPAN*** : Recent Amendments to the Act on the Protection of Personal Information

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The Act on the Protection of Personal Information of 2003 (the Act) has very recently been amended. The amended Act must be implemented within two years. The main purposes of the amendments are to better protect privacy, establish a government watchdog and align the Act with international rules and practices. The key points introduced by the amendments are as follows:

Additional definitions: "Personal information" is defined as information on a living individual that contains an identifier of the said individual (data subject). This includes information which, put together with other information may easily result in the identification of the data subject. Two additional categories of data are introduced in this definition: Sensitive information includes information about a person's race, creed, social status, criminal record, and medical history or any other information that may lead to discrimination. Transmission thereof is subject to stricter measures, including the requirement to obtain consent for collection and disclosure. In contrast, "anonymized information" which refers to sanitized information on individuals from which all personal information that may help identifying a specific individual has been removed. It can be disclosed to third parties without the data subject's consent. Previously, a data subject's prior consent was required before the individual's personal information could be transferred to a third party and the individual could refuse his or her consent to stop transmission. Clearly that creates problems in the world of Big Data and cloud services and outsourcing. The amendments facilitate the transmission of personal information provided certain conditions (including public disclosure requirements) are satisfied. The data subject must "opt out" to avoid the transfer of personal data.

International transfers of personal data: Previously, the Act did not specifically address (and prohibit) overseas data transfers. The amendments list a number of conditions to be met to transfer personal information overseas (including the requirement that the foreign jurisdiction should have an adequate level of data protection, the need for the transferor to

obtain the prior consent of the data subjects whose personal information will be provided to a third party based in a foreign country. The opt out option will be available if the foreign jurisdiction applies adequate data protection standards.

***De minimis* exemption for limited amounts of data:** The convenient exemption for the benefit of business operators handling personal data of less than 5,000 individuals in the prior 6 months will no longer apply. The amendments remove this *de minimis* exemption (while certain types of data are excluded).

Penalties for breaches of the Act: Previously, the Act did not include any punishment for unlawful disclosures of personal data. It is now a criminal offence to steal or disclose personal information for the purpose of making illegal gains. The penalties are imprisonment for up to one year or a fine of up to JPY 500,000.

Creation of the Privacy Protection Commission: Privacy protection used to be supervised by each Ministry in charge of its own industry sector and applying its own guidelines and by the Consumer Affairs Agency. The amendments create the Privacy Protection Commission as a neutral and independent authority under the Cabinet Office. It will act as a governmental watchdog overseeing issues relating to privacy protection. As part of its missions, the Commission will have to devise and provide the details necessary to implement a number of provisions of the amended Act.

III. INDIA : Indian e-commerce: to Retail or not to Retail ?

While the government is holding discussion on allowing foreign direct investment ("FDI") in B2C e-commerce, where do e-commerce players stand in India?

Currently, as per the Consolidated FDI Policy, 2015 ("**FDI Policy**"):

- 100% FDI is permitted in companies engaging in B2B e-commerce
- while it is prohibited in any entity involved in retail trading/B2C e-commerce.

In the context of on-going discussion on allowing FDI in B2C e-commerce, e-commerce players (Indian and alien) are making their way in a fast growing market. According to a report by the Associated Chambers of Commerce and Industry of India along with PricewaterhouseCoopers, India's e-commerce sector is expected to log a compound annual growth rate of 35% and cross the $100 billion mark in value by 2019.

To circumvent the existing prohibition, companies (such as Amazon and Flipkart who raised funds from foreign investors) operate as marketplaces, being mere platforms through which third party retailers can sell their goods to customers. Ownership of the inventory in this model vests with the enterprises which advertise their products on the website and who are the ultimate sellers of goods or services. The marketplace, thus, works as a facilitator of e-commerce and technically does not engage in retail trading.

Since they do not actually "sell" anything, these marketplaces claim they do not violate the B2C FDI restriction and can therefore get funded by foreign entities.

Although the marketplace model has been under the scanner for a while now (as some marketplaces have been suspected by the Reserve Bank of India to sell directly to consumers), the Department of Industrial Policy and Promotion ("**DIPP**") does not deem it as retail trading and therefore allows FDI in such model.

Interestingly, sales by these marketplaces are being taxed by the government as retail sales. The Delhi High Court, questioned on this issue, observed In its Order dated September 23, 2015 that the Union as well as the State Governments cannot, on the one hand, for the purpose of tax, treat such sales as retail and on the other hand, for the purposes of investment, not treat the same as retail sale.

It would be interesting to see how the Government explains the difference in treatment of sales through these marketplaces, for tax and investment purposes.

Free trade agreement between the European Union and Vietnam

The European Commission announced on Tuesday August 4th, 2015, the conclusion of a free trade agreement between the European Union and Vietnam following two years and a half of negotiations. This free trade agreement aims to suppress most of the customs taxes (99%) on goods traded between both partners, either immediately, or on a period going up to 7 years. The negotiations are still proceeding to finalize the text. The agreement shall as well be approved by both the Council and the Parliament.

The Trans Pacific Partnership (TPP)

On October 4, 2015, in Atlanta, Ministers of the 12 Trans-Pacific Partnership (TPP) countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam – reached an agreement, marking the conclusion of five years of tense negotiations. Yet, the deal still has to be ratified in each country. Details of how the deal will be implemented will be argued out with each country's' legislature in the coming weeks and months before being ratified.

The Trans-Pacific Partnership (TPP) is a trade agreement regarding a variety of matters of economic policy and will create a free trade between the 12 countries. The TPP main aims are to decrease trade barriers, establish a common framework for intellectual property, enforce standards for both labor law and environmental law, and establish an investor-state dispute settlement mechanism. Its thus aims are to enhance trade and investments, to promote innovation and help economic growth among the 12 countries. For example, under the TPP, 11.000 tariffs lines would be eliminated among the parties, in order to reduce barrier to trade.

TPP is one of the most ambitious free trade agreement ever signed, involving 12 countries with a population of about 800 millions and linking about 40% of world trade and economy.

Decision No. 19/2015/QD-TTg providing criteria to determine high tech enterprises

According to Article 16 of the Law on Investments, incentives may be granted to high tech activities, high tech ancillary products, research and development.

On June 15th, 2015, the Prime Minister issued a decision providing criteria to determine high tech enterprises. These requirements, cumulatively with the ones provided in the LOI, are:

- Revenue from high tech products must represent at least 70% of the total annual net revenue;
- The expenses engaged for research and development activities conducted in Vietnam by small and medium enterprises must represent at least 1% of the total annual net revenue, and at least 0.5% for enterprises having total capital over 100 billion VND (4,6millions USD) and total employees over 300;
- Employees having a specialized or higher degree and directly conducting research and development activities must represent at least 5% of the total employees in small and medium enterprises, and at least 2.5 % in enterprises having total capital over 100 billion VND and total employees over 300.

V. *SINGAPORE* : Two-Phase Implementation of Companies (Amendment) Act 2014

The Companies (Amendment) Bill was passed by Parliament in October 2014. On 15 April 2015, ACRA announced that the legislative changes to the Companies Act will be effected in two phases. The first phase will be implemented on 1 July 2015. The second phase will commence in the first quarter of 2016.

To reduce the regulatory burden on small companies and move further towards a risk-based approach, a new small company concept will be introduced for exemption from statutory audit.

The audit exemption applies to a company with respect to financial statements for a financial year commencing on or after 1 July 2015.