

COMPLIANCE NEWSLETTER IN 2014

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ZHONG LUN NEWS

- ❏ On April 24, 2014, the 11th annual ALB China Law Awards was held at the Park Hyatt, Beijing. Zhong Lun Law Firm was nominated for 20 awards and won five awards including Beijing Law Firm of the Year. (*read more. . .*)
- ❏ The first FT Asia-Pacific Innovative Lawyers Awards recently shortlisted Zhong Lun Law Firm in the Innovation in Corporate Strategy (Asia-Pacific Headquartered Law Firms) category for co-founding the new outbound investment information platform for Chinese enterprises - China Going Global Think Tank ("CGG"). (*read more. . .*)
- ❏ In February 2014, Global Arbitration Review ("GAR") published the latest edition of the GAR 100, which is a listing of the world's most prominent international arbitration practices and gives readers access to the top

Compliance Events

□ Third Party Research Company Surfaced and Where should the Private Detective Go?

First Domestic Case regarding Illegal Investigation Carried Out by a Company Registered in China by Foreigners being Prosecuted

The case regarding illegal investigation carried out by Shelian Consultancy (Shanghai) Co., Ltd that has garnered particular attention from both inside and outside of China sees new progress recently. Shelian's general manager Peter William Humphrey and its legal presentative Yu Ying Zeng have been prosecuted by first branch of Shanghai Municipal People's Procuratorate at Shanghai Municipal First Intermediate People's Court for their suspicious involvement of constitution of "Crime of Illegally Obtaining Personal Information of Citizens". This is the very first case regarding Illegal Investigation Carried Out by a Company Registered in China by Foreigners being prosecuted within China.

The defendant Peter William Humphrey, male, born in March 1956, a British; Yu Ying Zeng, female, born in August 1953, an American, Humphrey's wife. In July 2013, two of them were criminally detained by Shanghai Public Security Bureau for their suspicious involvement of constitution of "Crime of Illegally Obtaining Personal Information of Citizens" and in August the same year, their arrest was approved. In January 2014, the case was submitted to the first branch of Shanghai Municipal People's Procuratorate by Shanghai Public Security Bureau for examination and prosecution.

☛ Learn more, please click:

arbitration practitioners. Zhong Lun Law Firm was ranked in the GAR for the second consecutive year and was one of only three ranked PRC law firms in the GAR 100 this year. (*read more. . . .*)

- Zhong Lun Law Firm partners Bao Wei and Cao Lijun were recently recognized as "2014 ALB Top 15 China Litigators" by Asian Legal Business, a well-respected law magazine in Asia. (*read more*)

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About Zhong Lun

Zhong Lun is a leading Chinese full-service business law firm.

The firm has more than 160 partners and 700 lawyers in ten offices: Beijing, Shanghai, Shenzhen, Guangzhou, Tokyo, Wuhan, Hong Kong, Chengdu, London and New York.

Practice areas include:

- Real Estate
- Capital Markets/Securities
- Private Equity & Investment Funds
- Corporate/Foreign Direct Investment

http://news.xinhuanet.com/legal/2014-07/14/c_126746173.htm

□ Zhonglun's View

From the compliance perspective, in the past, it is an open secret that engagement of private detective agencies by international enterprises in probing and collecting compliance-related information (for instance, to investigate whether their employees are involving in any commercial bribery or corruption) within territory of China and the Chinese government authorities had certain tolerance to it. It is actually a kind of “gray area” under Chinese law. Along with the arrest of the foreign private investigators, we are concerned that Chinese government authorities may bring such private investigation on the table and restrain it with penalty and even criminal offense, such as “crime of illegally obtaining personal information of citizens”, “crime of selling and illegally supplying personal information of citizens”.

Under the circumstances, how to make sure the information collected by third party investigation company could be used legally and effectively in the case as well as mitigate the hiring company's legal risk to the greatest extent would be the concerns worth our attention and consideration in our future professional work. Zhonglun has the leading compliance team, being comprised of very experienced lawyers, including former judges and former procurators etc. Drawing lessons and experience from numerous major compliance cases handled by Zhonglun, the team will strictly control the potential legal risks may be involved in similar, so as to protect client's best interests.

- Mergers & Acquisitions
- Banking and Finance
- Dispute Resolution
- Intellectual Property
- Construction & Infrastructure
- Antitrust/Competition
- WTO/International Trade
- Overseas Investments
- Taxation & Wealth Planning
- Labor and Employment
- Securitization & Financial Products
- Bankruptcy & Reorganization
- Hospitality
- Technology, Media and Telecoms and Entertainment
- Regulatory/Anti-bribery
- Environmental, Energy and Natural Resources
- Shipping

□ Influence Imposed on China's Anti-corruption by FATCA Treaty and Swiss Banks' Commitment

U.S. Willing to Provide Bank Account Information in U.S. of Chinese Citizens

As reported by Wall Street Journal, Treasury Department of U.S had expressed that a draft of a treaty had been entered into between and by U.S. and China, aiming at carrying out a federal law passed in 2010 for curbing the offshore tax evasion. Two countries have reached consensus agreement on the terms and conditions, while the detailed rules and regulations shall be deliberated prior to the official execution.

The law for curbing the offshore tax evasion requires the foreign banks to provide all the American citizens' bank account information to Internal Revenue Service (IRS), which will force all the banks over the world not to make the payment to any of the financing institutions that in nonobservance of it. The law has been officially named as Foreign Account Tax Compliance Act (FATCA).....

A reciprocal treaty has been signed between and by U.S. and China, under which China shall provide U.S. government the American citizens' financing account information and vice versa.

☛ Learn more, please click:

http://www.shm.com.cn/ytwb/html/2014-06/29/content_3025121.htm

China Probes into the Possibility of Fully Accessing Citizens' Oversea Assets

The FATCA act (Foreign Account Tax Compliance Act) in U.S. has come into force on July 1th, 2014, whether China will sign an inter-government agreements (IGA) with U.S. based on this act raised eyebrows globally.

Once China signed this agreement, it will be capable of sharing and exchanging bank accounts information of our citizens with more countries. This strategy will facilitate government' inquiry about oversea assets both comprehensively and timely, meanwhile, it will strengthen our tax management and promote tax-payers' abidance of tax law. Besides launching iron-hands in anti-graft campaign and anti-terrorism strategy, this agreement will surely be employed to monitor overflow of migration.

☛ Learn more, please click:

<http://finance.nandu.com/html/201404/19/974937.html>

The End of Confidentiality Era: Switzerland Promise to Hand Out Account Information of Foreign Clients

According to the latest report from the famous mouthpiece of Financial Times, Switzerland, the largest offshore financial center in the world promised to hand out account information of its foreign clients voluntarily. This was surely rendered to be one of the important breakthroughs in stamping out tax evasion in global adjustment.

On the European finance ministers meeting held in Paris, Switzerland agreed to sign a new global rule for automatic exchange of information. This is a decisive move, symbolizing the Swiss farewell to hundreds of years of insistence on protecting consumer privacy practices. This is a huge step forward for governments,

As the media claims that the strong anti-graft campaign since the 18th Communist Party Congress has frightened local officials to the extent of selling out luxurious villas and transferring their cash through illegal channel to Swiss banks to cover their astonishingly oversized asset.

☛ Learn more, please click:

<http://news.qq.com/a/20140507/027624.htm>

The End of Confidentiality for Clients by Swiss Banks, A Treaty with China may be Signed at A Relatively Later Time

The question “will the Chinese citizens’ bank account information at Swiss banks be released” has drawn much attention from Chinese citizens. Since Swiss banks used to be called as “haven for tax evasion”, the funds of major tax dodgers as reported, or the assets that had been moved abroad by greedy officials have led Chinese people’s speculation. No doubt that Switzerland’s goodbye to the bank’s confidentiality law will do a significant favor to China’s anti-corruption.

As reported by Financial Times, some offshore bank accounts’ owners have transferred their funds to a few offshore centers resisting the transparent mechanism. When being asked by the

reporters from Beijing Youth Daily “whether any of these offshore bank accounts’ owners involves Chinese client”, a positive reply was declined by Frank. However, as explained by him, upon the implementation of detailed rules, bilingual treaties will be executed between countries and Switzerland will enter into the bilingual treaty with its neighboring countries while the time to sign a treaty with China may be relatively late.

☛ Learn more, please click:

<http://finance.huanqiu.com/world/2014-05/4989980.html>

▣ Zhonglun's View

Financial Information exchange promoted by FATCA will contribute to the prevention of bribery originated from other countries. Meanwhile, the difficulty in using American bank accounts to accept bribe or transfer the illegal assets by non-residents would be increased by FATCA, whereby it would be easier to restrain the corruption from bribe-taking side. Therefore, FATCA will be deemed as supplementary to the FCPA. Besides, for a long period, U.S. has been always holding a negative attitude to China's overseas anti-corruption. No doubt that FATCA treaty will create favorable conditions for the cooperation between U.S. and China in crackdown against corruption.

Sheltered by the bank's confidentiality system, huge assets from all over the world are flowing to Switzerland. However, for the lack of transparency of the bank's confidentiality system and suspicion of involvement in assisting clients in tax evasion, Switzerland has been always widely criticized by the outside world. More than a few people evade tax by taking advantage of the loopholes of law and

even transfer and conceal their illegal assets. From compliance perspective, Swiss banks' commitment means the illegal assets obtained by means of corruption etc. may lose its important oversea shelters. This will no doubt benefit Chinese government's crackdown of corruption.

□ **Anti-graft Policy from Central Committee**

Wang Qishan: Put Individual Responsibility and Supervision of Party Conduct and Clean Government Mechanism into Practice

Wang Qishan, a member of the Central Discipline Inspection Commission Secretary of the CPC and central Political Bureau, while visiting State Organs Work Committee of Central Government Departments and Central Work Committee for offices directly under the Central Government, emphasized the importance of fully implementing the spirit in 18th party congress and its second plenary session and third plenary session as well as the important speeches of Xi Jinping, Chinese president, for central commission and government departments. Besides, it is required to fully advocate and commit to the opinions proposed in the three plenaries of Central Discipline Inspection Commission as follows: party shall maintain its management role in leading and educating its party members by serious approaches; play leading role in putting individual responsibility and supervision of party conduct and clean government mechanism into practice; fully advocate party conduct and anti-graft policy.

☛ Learn more, please click :

http://www.ccdi.gov.cn/gcsy/201404/t20140415_21767.html

□ Zhonglun's View

Chinese government has sent clear signals towards corruption since the new leaders took their positions, such as zero tolerance, no exception policy. Meanwhile, Chinese government has paid more attention to strike out commercial bribery of foreign companies to promote a clean commercial environment. We can also see government position in dealing with GSK case in which they were charged with serious commercial bribery.

Therefore, it is really important for cross-border enterprises, foreign companies which operate business and invest in China to pay sufficient attention and improve their efforts on their compliance and risk prevention. Zhonglun boasts a first-class lawyer team in compliance. We are capable of providing compliance service for daily business operation and investment, such as legal consulting and support on anti-graft and anti-commercial bribery. Besides, we are also able to assist clients in building compliance and risk prevention mechanism based on their business models.

□ Current Awareness of Anti-monopoly

Break Industry Monopolies, National Edition of Negative List Published by State Council

The recently promulgated Several Opinions of the State Council on Promoting Fair Market Competition and Safeguarding the Normal Market Order ("Opinions") by State Council aims to relaxing control on market entry, breaking up regional blockades and industry monopolies.

The Opinions fully elaborates the specific measures to relax control on market entry, break up regional blockades and industry monopolies, which will be further refined, divided and allocated to each of central ministries and commissions and local governments. One of the biggest draws of the Opinions is the generalization of Negative List for the market entry.

In the face of the regional blockades and industry monopolies as the market "malignant tumor" for years, Mr. Yang Hongtao, the expert specially invited by Ministry of Commerce and director of commercial economy research institute of Beijing Industry and Commerce University stated to journalist of National Business Daily that differentiate from previous practice, i.e. only the introduction of policies, the Opinions implies that the decomposition and allocation of the missions to every ministry and commission has begun to be put into real action.

It is explicitly pointed out by the Opinions that insofar as the investment management and civil commercial activities are carried out voluntarily by market players, which neither fall into the entry of industries forbidden by laws and regulations, nor prejudice any third party's legitimate interests, social interest or state security, then the limits shall not be imposed on the entry by the government and the regional blockades and industry monopolies shall be broken up. One may conclude that theoretically, it is implied by the "Negative List" that "market players can engage in all activities not prohibited by law".

☛ Learn more, please click:

http://finance.ifeng.com/a/20140709/12678273_0.shtml

□ New Laws and Regulations

Measures for Management of Expenses for Temporary Overseas Business Trips

Issued at the date of December 20th, 2013, Measures for Management of Expenses for Temporary Overseas Business Trips entered into force at January 19th, 2014. This regulation was enacted in accordance with Budget Law of the People's Republic of China, Regulations on Requiring Party and Government Organs to Rigorously Enforce Thrift and Oppose Waste and other laws and regulations by the Ministry of Finance, Ministry of Foreign Affairs, with the purpose of strengthening the administration of funds in temporarily overseas official leave, beefing up budget monitoring and raising the efficiency of fund use to ensure the efficient operation of foreign affairs.

Measures for the Administration of Training Fees in Temporary Overseas Official Leave

Measures for the Administration of Training Fees in Temporary Overseas Official Leave was issued at the date of February 25th, 2014 and entered into force at April 1th, 2014. This regulation was enacted in accordance with Regulations on Requiring Party and Government Organs to Rigorously Enforce Thrift and Oppose Waste and other laws and regulations by the Ministry of Finance and State Administration of Foreign Experts Affairs, with the purpose of strengthening the administration of training fees in temporarily overseas official leave, beefing up budget monitoring and raising the efficiency of fund use to ensure the efficient

operation of oversea training.

Measures of Administration on Travel Fees of Central Government and State Organs

Measures of Administration on Travel Fees of Central Government and State Organs, being promulgated by Financial Department on December 31, 2013 and came into effective on January 1, 2014, enacted in accordance with Regulations on Requiring Party and Government Organs to Rigorously Enforce Thrift and Oppose Waste, with the purpose of strengthening and regulating domestic traveling fees of central government and state organs while enforcing thrift and waste reduction.

Measures of Administration on Training Fees of Central Government and State Organs

Measures of Administration on Training Fees of Central Government and State Organs, being promulgated by Financial Department on December 29, 2013 and came into effective on January 1, 2014, with the purpose of regulating training fees of central government and state organs, improving the efficiency and effect of training, strengthening management of training fees and reducing training cost.

Opinions of the State Council on Promoting Fair Market Competition and Maintaining the Normal Market Order

Opinions of the State Council on Promoting Fair Market Competition and Maintaining the Normal Market Order was issued

at the date of June 4th, 2014 and came into effect on the same date. In accordance with the spirit of the Decision of the Central Committee of the Communist Party of China on Major Issues concerning the Full-Scale Deepening of Reform and the requirement of the State Council for institutional reform and shift of functions, the following opinions on improving the market regulation system, promoting fair market competition and maintaining the normal market order were hereby issued.

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