

Guidelines for pursuing foreign investors' liabilities in the case of abnormal capital withdrawal

Description

On November 19, 2008, four Chinese ministries, namely, Ministry of Commerce, Ministry of Foreign Affairs and Ministry of Justice jointly issued a circular, *Guidelines for Cross-border Pursuit and Litigation by Chinese Parties in respect of Abnormal Capital Withdrawal by Foreign Investors* (the **Guidelines**), an attempt to curb deviant withdrawal of foreign capital which will invite civil or criminal liabilities on the part of foreign investors.

The Guidelines encourage relevant judicial authorities (courts, police etc.) to take advantage of those judicial assistance treaties concluded between China and other states during any legal proceedings against foreign persons.

For those foreign parties who have not properly conducted liquidation of their debts before capital withdrawal, leaving domestic creditors in losses, the Guidelines encourage the Chinese parties who have won a case in Chinese court, to apply to foreign courts for recognizing and executing judgments rendered by Chinese courts against assets or properties of such foreign parties, in accordance with relevant treaties.

For foreign parties who have a large amount of tax liability to discharge yet before capital withdrawal, which may give rise to criminal penalty under Chinese law, the relevant authorities may through diplomatic channels pursue such criminal liabilities by virtue of requesting the extradition of criminal suspects to China or transfer of criminal proceeding to China.

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Date Created

October 2011

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