

W&B Legal Newsletter

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INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 professionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department responsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

Contact Us

Shanghai Office

**Address: 26th Floor, The Center, No.989
Changle Road, Shanghai 200031 P.R.C.**

Tel: (86-21) 5292-1111; (86-21) 6350-0777

Fax: (86-21)5292-1001; (86-21) 6272-6366

E-mail: mail@watsonband.com ;
mail-ip@watsonband.com

Beijing Office

**Address: 5C, D Block, Fuhua Mansion,
No. 8 North Chaoyangmen Street,
Dongcheng District, Beijing 100027
P.R.C.**

Tel: (86-10) 6625-6025

Fax: (86-10) 6445-2797

E-mail: beijing@watsonband.com ;
mail-ip@watsonband.com

Hong Kong Office

**Address: Room 2004, Kinwick Center, 32
Hollywood Road, Central District, Hong
Kong**

Tel: (86-21) 5292-1111*123;
(86-21) 852-3197-0091

Harbin Office

**Address: Room A2, Madi-er Shopping
Center No.37 West Badao Street, Daoli
District, Harbin 150010 P.R.C.**

Tel: (86-451) 8457-3032;

(86-451) 8457-3032

E-mail: harbin@watsonband.com

Gansu Office

**Room 1823, Real Estate Tower, No.1
Tongwei Road, Lanzhou, Gansu Province,
730000, P.R.C.**

E-mail: gansu@watsonband.com



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Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by State Intellectual Property Office, China Trademark Office, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.



W&B Successfully Hosted China Law Salon Themed on E-commerce Law and Corporate Compliance Practices

On the afternoon of February 28, the first China Law Salon of 2019 was successfully held at Watson & Band's Shanghai Head Office. Themed on "E-commerce Law and Corporate Compliance Practices", the lecture specially invited Watson & Band's Senior Partner Fuping Gao, who was the first to engage in researches in the e-commerce law field, to be the guest host. Three members on the team of Watson & Band's Partner Cathy Wu, led discussions among the audience about four hot topics.

The lawyers shared their understandings and practical experience regarding issues such as advertising compliance within the e-commerce field. Starting from recent focus cases and provisions under the E-commerce Law regarding advertising compliance, the lawyer cited typical cases to analyze issues attracting extensive public attention, including how to distinguish apart advertising information and non-advertising information, and explained about soft advertisements, advertisements released through WeChat Moments, content compliance and paid listing compliance, and false advertising, etc.

In the interactive Q&A session, the attendees proposed some questions to the lawyers and the lawyers briefly answered them to the point. The lecture was well-received among the attendees for its informative content, detailed examples and strong practicability.

Watson & Band Partners Participate in Panel Discussion at LCOUNCIL's Forum

Prior to March 15 – the International Consumer Rights Day, LCOUNCIL hosted a forum on the afternoon of March 1. The forum focused on topics including risk analysis for enterprises concerning typical consumer rights enforcement actions in online and offline sales models, general practices in administrative enforcement actions, trends in judicial discretion and self risk inspection prior to the International Consumer Rights Day.

Over 60 legal counsels of enterprises having online and/or offline sales channels from various industries including consumer goods, pharmaceutical and medical, TMT, automobile and parts, manufacturing, real estates, education, logistics, finance and trade, participated in this event. Watson & Band Managing Partner Frank Qian, Senior Partner Fuping Gao and Partner Cathy Wu were invited as honored guests in the panel discussion session.

Watson & Band Managing Partner Jean Yang Honored as Shanghai's March 8 Woman Pace-setter

On the afternoon of March 6, Xuhui District hosted a ceremony entitled "Paying Tributes to New China and Forging Ahead to New Era" for the 109th anniversary of the International Women's Day. At the ceremony, excellent female representatives were praised and awarded with the honor "2017-2018 Shanghai's March 8 Woman Pace-setter". Watson & Band Managing Partner, Jean Yang, received said honor for her excellence within the legal industry and her precipitation in various social activities.

Ms. Yang, with her excellent performances and outstanding accomplishments within the legal industry, she was a candidate for "Shanghai's First Oriental Lawyers Award" in 2007 and was honored as an "Outstanding Shanghai Female Lawyer" in 2008. In 2016, she was awarded as "China's Top 15 IP Lawyer" by the authoritative legal ranking agency Asian Legal Business. In 2019, she was ranked in Tier 1 for the field of IP services on the Asia-Pacific Regional Billboard published by the well-known legal ranking agency The Legal 500.



Watson & Band Partners Selected into the List of National Top 1000 Lawyer Talents Specializing in Foreign Matters

Recently, the Ministry of Justice published the List of National Top 1000 Lawyer Talents Specializing in Foreign Matters. A total of 985 lawyers from provinces and cities all over China are selected into the List. The top five provinces and cities in terms of the number of locally registered lawyers selected into the List are: Beijing, Shanghai, Guangdong, Jiangsu and Shandong. The 99 lawyers from Shanghai account for approximately 10.1% of the total, contributing to the second place for Shanghai in terms of the listed lawyers.

Watson & Band's Managing Partner Frank Qian, and Partners Xiaosu Zhu and Liming Zhang are honored to be selected into the said List of National Top 1000 Lawyer Talents Specializing in Foreign Matters.

Foreign Investment Law Enacted, Effective as of January 1, 2020

The Foreign Investment Law of the People's Republic of China (the "Law") was adopted by vote at the Second Session of the 13th National People's Congress on March 15, 2019. This Law will be implemented as of January 1, 2020.

Encompassing 41 articles, the Law is divided into six chapters which are general provisions, investment promotion, investment protection, investment management, legal liabilities, and supplementary provisions, setting forth fundamental and definite provisions for the new legal system for foreign investment. Its major contents cover: 1. the determination of the scope of foreign investment; 2. the promotion of foreign investment; 3. the protection of foreign investment; and 4. the administration of foreign investment. According to the Law, China will adopt the administrative regime of pre-entry national treatment plus negative list for foreign investment. Where there are more preferential provisions in relation to treatment for foreign investors' entry in those international treaties and conventions that China has concluded or acceded to, such provisions shall apply. Meanwhile, foreign investors shall not invest in any field forbidden by the negative list for access of foreign investment and foreign investors shall conform to the investment conditions stipulated under the negative list for any field restricted by the negative list.

(Source: www.npc.gov.cn)



State Council Cancels 25 and Delegates 6 Administrative Approval Items

The State Council has recently issued the Decision on Cancelling and Delegating a Batch of Administrative Approval Items (the "Decision").

According to the Decision, the State Council abolishes 25 administrative approval items and delegates six administrative approval items to lower-level authorities. Among others, the Decision states that among the 25 cancelled administrative approval items are "approval for overall plans for developing petroleum and natural gas (including coalbed methane) with foreign parties", "approval for projects constructing transmission network (including broadcast network) arteries in China", "the approval and issue of registers of seagoing vessels" and "pre-approval of proposed names". Also, the Decision notes that another six administrative approval items, including "the issue of transport business permits for passenger vessels (including ro-ro passenger vessels and passenger-cargo vessels) business and shipping of dangerous bulk liquid cargo between the mainland and Hong Kong/Macao", "the approval and issue of licenses for security guards overseeing facilities at ports" and "the issue of operating permits for transporting passengers on inter-provincial and inter-city roads and on roads linking regions adjacent to county-level administrative regions", will be delegated.

(Source: www.npc.gov.cn)

SAMR Seeks Comments on Revisions to Administrative Regulations on the Registration of Companies and Other Administrative Regulations

The State Administration for Market Regulation ("SAMR") recently enacted and issued the Proposal for Amending Relevant Administrative Regulations Including the Administrative Regulations on the Registration of Companies and the Administrative Regulations on the Registration of Enterprise Legal Persons and released the draft for public comments by April 3, 2019.

The draft for comments proposes revisions in nine aspects to the Administrative Regulations on the Registration of Companies, including the introduction of a new article as Article 41, reading: the deregistration of a company shall be processed under the corresponding procedures, as provided by these Regulations. As for the Administrative Regulations on the Registration of Enterprise Legal Persons, the draft for comments puts forward modifications in two aspects. For instance, one paragraph is added into Article 21, reading: provisions in respect of documents required to be submitted for the deregistration of an enterprise legal person, set out in other laws, administrative regulations or decisions made by the State Council, if any, shall prevail. Furthermore, revisions in eight aspects are proposed in the draft for comments to the Administrative Regulations on the Registration of Partnership Enterprises, including the introduction of a new article as Article 21, reading: the deregistration of a partnership enterprise shall be processed under the corresponding procedures, as provided by these Regulations.

(Source: SAMR)

Two Departments Renew VAT Policies in Support of Culture Businesses' Development

Recently, the Ministry of Finance ("MOF") and the State Taxation Administration ("STA") jointly issued the Circular on Renewing Value-added Tax Policies in Support of the Development of Culture Enterprises (the "Circular"), retrospectively effective from January 1, 2019 till December 31, 2023.

The Circular expressly states that, for film group companies, film studios and other film-related enterprises that engage in the production, distribution and screening of films, as approved by competent film authorities within their respective functions and authority, both their income derived from the sale of film copies, the transfer of film copyright and the distribution of films, and the income earned from screening movies in rural areas, will be exempt from value-added tax (VAT). Moreover, the Circular provides that, the basic cable digital TV viewership maintenance costs, and the basic fees for rural cable TV viewership, charged by enterprises offering operating services for radio and TV programs, will also be exempt from VAT. Where the VAT payments that could be exempted under this Circular have already been collected and included into the treasury before this Circular is released, the amount of such VAT payments could be used to offset their payable VAT for future tax periods, or alternatively be refunded.

(Source: MOF)

STA Cancels 15 More Tax Certification Items

The State Taxation Administration ("STA") recently issued the Decision on Cancelling a Batch of Tax Certification Items (the "Decision"), immediately effective from the date of issuance

The Decision states that, among 15 tax certification items abolished this time are five items previously requiring taxpayers to obtain certificates specifically from third parties, such as the certificate provided by a relevant department to attest a taxpayer's financial difficulty in making tax payments due to impacts caused by natural disasters, which shall be furnished when tax relief formalities for the vehicle and vessel tax are handled, and the resource tax administration certificate provided by the seller which shall be presented when formalities for the exemption of resource tax payments are handled. The other 10 items relate to statutory licenses and permits of taxpayers which are previously required to be provided, such as the vehicle and vessel ownership certificate that shall be provided when formalities for the exemption of vehicle and vessel tax are handled and the active duty retirement certificate that shall be submitted when formalities for the relevant tax relief granted to retired soldiers seeking employment by themselves are handled. Moreover, the Decision explicitly states that, the supporting documents concerned will no longer be required and provided after the cancellation of such 15 tax certification items. Instead, some items will be verified and checked internally by authorities, while others will be replaced by information shared between different departments.

(Source: STA)

Relevant Authorities Clarify Operational Issues Related to Tax Policies for Supporting and Promoting Entrepreneurship and Employment of Key Groups

Recently, four departments including the State Taxation Administration ("STA") have issued the Announcement on Specific Operational Issues Concerning the Implementation of Tax Policies Aimed at Supporting and Promoting Entrepreneurship and Employment of Key Groups (the "Announcement"), retrospectively effective from January 1, 2019.

The Announcement clarifies the methods for key groups engaging in privately-owned business and enterprises employing key groups to enjoy preferential tax policies. First, key groups engaging in the privately-owned business will be granted tax incentives. Second, enterprises that employ key groups will receive tax incentives. Among others, enterprises eligible for enjoying the preferential tax policy designed for the employment of key groups, may each file an application for this purpose with the local department of human resources and social security above the county level. Departments of human resources and social security will, after verification, clearly indicate the wording "Tax Policy for Enterprises Creating Jobs" on the Employment and Entrepreneurship Certificates held by key groups that manage to find jobs, and issue the Certification for Enterprises Employing Key Groups to qualified enterprises. Qualified enterprises may file tax returns on their own to receive tax incentives. Furthermore, the Announcement states that to enjoy preferential tax policies, enterprises will be required to retain relevant documents for future reference, instead of filing a record for this purpose as before.

(Source: STA)

MOFCOM Specifies Anti-dumping and Anti-subsidy Measures Expiring in This Year's Second Half

Recently, the Ministry of Commerce ("MOFCOM") issued the Announcement on Some Anti-dumping and Anti-subsidy Measures Expiring in the Second Half of 2019 (the "Announcement").

According to the Announcement: 1. The anti-dumping and anti-subsidy measures (see the Annex) that will expire between July 1, 2019 and December 31, 2019 will be notified to the general public in this Announcement, and the MOFCOM will not make a separate announcement for each measure at its expiry thereafter; 2. Where a domestic relevant industry, or a natural person, a legal person or a relevant organization that is representative in a domestic industry, claims that terminating a particular anti-dumping or anti-subsidy measure, listed in the annex to this announcement, is likely to result in the continuation or re-occurrence of dumping and harm or subsidies and harm, a written application may be filed with the MOFCOM for an expiry review, 60 days prior to the expiry date of that measure; 3. A written application for an expiry review shall include: an express request for an expiry review, and supporting documentation proving the claim that terminating a particular anti-dumping or anti-subsidy measure is likely to result in the continuation or re-occurrence of dumping and harm or subsidies and harm.

(Source: MOFCOM)

GAC Announces "Entry First and Inspection Next" Policy for Inbound Animal and Plant Products Entering Comprehensive Bonded Areas

Recently, the General Administration of Customs ("GAC") issued the Announcement [2019] No.36 to clarify matters concerning the "entry first and inspection next" policy for inspection items for inbound animal and plant products entering comprehensive bonded areas. This announcement has taken effect immediately from the date of issuance.

The announcement provides that: 1. animal and plant products refer to the animal and plant products (excluding food) that are carried from overseas into comprehensive bonded areas, and then transported to other domestic regions outside the bonded areas or processed before being transported to other domestic regions outside the bonded areas or to regions outside the territory of China, and these products are subject to inspection and quarantine tests in accordance with Chinese laws and regulations. 2. Inspection items cover the items for hygienic safety purpose, include pesticide (veterinary drug) residue, environmental pollutants, biotoxin and heavy metal contained in animal and plant products. 3. The "entry first and inspection next" regulatory mode will be performed under the following principle: after animal and plant products have gone through applicable quarantine procedures at the ports of entry, the customs will allow them to be transported first into the supervised warehouses in comprehensive bonded areas, then randomly draw samples to test them for relevant inspection items and make an overall assessment, and deal with the products subsequently according to the test results.



(Source: GAC)

MOHURD Promotes Comprehensive Rectification of Safety Risks Related to Dangerous Chemicals

The General Office of the Ministry of Housing and Urban-rural Development ("MOHURD") recently issued the Circular on Further Advancing the Comprehensive Rectification of Safety Risks Related to Dangerous Chemicals Used within the Housing and Urban-rural Development System (the "Circular").

The Circular states that through the comprehensive rectification program will safety risks and major sources of danger concerning dangerous chemicals used within the housing and urban-rural development system be further made clear and brought under effective control and enterprises' subject responsibilities for work safety be practically fulfilled. The Circular lays down certain major tasks, among which are "thoroughly promoting the rectification to ensure safety during the use of gas in urban and rural areas" and "improving safety management for dangerous chemicals during the operation of public facilities". Among others, the Circular calls for intensifying supervisory checks, urging entities engaged in engineering construction to earnestly fulfill their subject responsibilities for work safety, carrying out a survey to rule out safety risks and hidden dangers that may arise when flammable and explosive materials, such as acetylene, and other poisonous and harmful materials, including paint and coating, are stored, and taking effective precautions to prevent such safety accidents as fire, explosion and poisoning.

(Source: GAC)

Contact us

If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.



Frank Qian

Executive Managing Partner, Attorney-at-law

E-mail : Frank.qian@watsonband.com



Cathy Wu

Partner, Attorney-at-law

E-mail : Cathy.wu@watsonband.com



Ze Gao

Partner, Attorney-at-law

E-mail : Ze.gao@watsonband.com

SAMR Antitrust Division Website Officially Launched

The official website of the Antitrust Division of the State Administration for Market Regulation (SAMR) was formally launched on March 12, 2019 at the URL <http://www.samr.gov.cn/fldj/>. The website consists of 8 sections: Introduction to the Division, News, Policy and Regulation, Administrative Affairs, Notices and Announcements, Antitrust Information, Summary Antitrust Cases, and International Cooperation. Cases regarding administrative penalties and conditional approvals/bans on concentrations of business operators are disclosed and publicly announced in the Notices and Announcements section. The original website of the Antitrust Division of the Ministry of Commerce is being phased out.

(Source: Antitrust Review)

Chinese People's Political Consultative Conference (CPPCC) Takes a New Direction: Recommending Antitrust Investigations of Certain Suppliers of Scientific Instruments

During China's Two Sessions this year, Lan Minbo, CPPCC member from the East China University of Science and Technology, submitted a proposal targeting the chaotic situation in the current scientific instruments maintenance market.

The current scientific instrument maintenance market is subject to serious monopolies and an extreme lack of competition. Some suppliers abuse their dominant market position by setting unfair prices or business terms, resulting in a loss of research funds by the government and procurement entities while at the same time impeding the progress of scientific research projects. As a consequence of this state of affairs, responsive antitrust measures are urgently needed to promote the healthy development of the scientific instrument maintenance market", the proposal stated. Meanwhile, some suppliers have taken advantage of their dominant market position to reap windfall profits by improper means such as arbitrary price increases, lowered service standards, exclusion of third-party suppliers from the market, and the imposition of a mandatory "replacement instead of repair" policy. According to publicly available statistics, the maintenance income of certain suppliers has not only exceeded 30% of total domestic sales revenue but has been growing year after year.

The proposal advises the initiation of antitrust investigations of suppliers suspected of abusing their dominant market position and who have exerted an adverse impact on the scientific instruments industry. It also urges the competent authorities to update applicable statutes and regulations by (i) amending legislation to strengthen antitrust efforts in the scientific instrument industry and to enhance purchaser protection, (ii) establishing an effective system to open up the scientific instrument maintenance market by allowing and encouraging the entry of third-party enterprises into the market, and (iii) enforcing regulatory requirements through the establishment of a price negotiation mechanism.

(Source: Antitrust Review)



MOF Arranges Submission of Quarterly Flash Reports on Economic Benefits of Central Cultural Enterprises in 2019

The General Office of the Ministry of Finance ("MOF") has recently issued the Circular on Initiating the Submission of Quarterly Flash Reports on Economic Benefits of Some Central Cultural Enterprises in 2019 (the "Circular").

The Circular calls for attaching high importance to work on quarterly reports, strengthening the management of quarterly reports and making in-depth analysis of quarterly reports. Entities required to submit the quarterly reports are some centrally-administered cultural enterprises and their subsidiaries at different levels, and the submission of quarterly reports covers entities at all levels. The Circular expressly states that, reports to be submitted include quarterly statements and analysis reports. The former includes a cover of the statements, a statement presenting key indicators of economic benefits, a statement revealing key indicators of assets and liabilities, and a statement manifesting indicators of production and business operations. A parent company and its subsidiaries at different levels shall prepare and submit quarterly reports respectively, and the parent company is also required to prepare the consolidated quarterly reports. The latter mainly includes the basic conditions, economic operation, existing problems and the strategy for work in the next step. Moreover, the Circular requires that, quarterly reports shall be submitted to the competent authorities within five working days after the end of each quarter, and the competent authorities will review and gather together the quarterly reports and then forward them to the Culture Department of the MOF by the 10th day of the month following the end of that quarter.

(Source: MOF)

WeChat to Crack Down on Drug Dealing: Even Forwarders of Friend's Posts May be Punished

The WeChat Security Center recently announced that any release of distribution information related to illegal or prohibited items via personal WeChat accounts will be considered a criminal offense under the PRC Criminal Law and its implementing regulations. The WeChat Security Team affirmed its commitment to investigating and acting aggressively against any such violations. WeChat also announced that holders of personal WeChat accounts are prohibited from releasing, displaying or transmitting distribution information concerning various "illegal or prohibited items" including drugs, medical supplies, illegal healthcare products and aphrodisiacs.

WeChat also announced that any WeChat user who releases distribution information concerning illegal or prohibited items through his or her personal account or in a chat group will be guilty of breaking the law; likewise, a user who assists his/her friends in forwarding or promoting distribution information on illegal or prohibited items through his/her Moments or WeChat groups is guilty as well. In such cases, both the distributor and the information forwarder will be subject to administrative punishment.

(Source: www.legal daily.cn)

Personal Information Security Specification(Draft): Users Shall Have Right to Refuse Personalized Push

Recently the Secretariat of the National Information Security Standardization Technical Committee ("NISSTC") released the Information Security Technology: Personal Information Security Specifications (Draft) (the "Draft") for public consultation. The Draft clearly bans the forced collection of personal information and entitles users to refuse personalized information push.

Draft states that when a product or service provides multiple business functions that require the collection of personal information, the personal information controller may not force the personal information subject to accept the business functions provided by the product or service and the corresponding request for the collection of personal information against the will of the personal information subject.

Draft specifies that The period that personal information can be stored shall be limited to the shortest time needed to realize the purposes of use authorized by the personal information subject, unless otherwise specified by laws and regulations or agreed by the personal information subject; after the period that the personal information can be stored has expired, the personal information shall be deleted or anonymized. If a personal information controller suspends operation in regard to its products or services, it shall a) promptly stop activities that will continue to collect personal information; b) serve a notice of suspended operation on each personal information subject or publicly release an announcement for this purpose; and c) delete or anonymize the personal information it holds.

(Source: www.Chinanews.com)

SPC Specifies Procedures for Handling National Judicial Aid Cases

In order to further promote the regulation of people's court's national judicial aid work and refine the operation norms, the Supreme People's Court ("SPC") released the Provisions on People's Courts' Procedures for Handling National Judicial Aid Cases (for Trial Implementation), the Template of the National Judicial Aid Document of People's Courts (for Trial Implementation) and the Working Rules of the Judicial Aid Commission of the Supreme People's Court (for Trial Implementation) on February 26th 2019.

It was understood that the Provisions on People's Courts' Procedures for Handling National Judicial Aid Cases (for Trial Implementation) include 27 articles in total which specifies the case filing and jurisdiction rules for judicial aid cases based on the original case regarding the special circumstances where the original case may have undergone different trial levels and may be in different chains such as trial and enforcement. Moreover, given the current reality of "inversion" phenomenon between the judicial aid funds and the trial level of the court, the Provisions reaffirmed the joint relief principle and specified the rules for case filing and jurisdiction.

In addition, the Provisions further regulated the two ways to seek judicial aid, in which people's courts will notify, within their authority, the parties concerned of their rights to claim judicial aid or the parties concerned may claim judicial aid on their own and clarified, refined the entire process of case handling, including acceptance and handling of cases, decision making, application and distribution of the aid funds, and specified timeframe for each stage.

(Source: www.xinhuanet.com)

