

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.

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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 Copy-right Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

SAMR Releases Several Provisions on Regulation of Trademark Registration Application Practices

The State Administration for Market Regulation (“SAMR”) recently issued the Several Provisions on Regulation of Trademark Registration Application Practices (the “Provisions”), with effect from December 1, 2019.

According to the Provisions, trademark registration applications should comply with the good faith principle, and should be free of certain practices, including “the intention to file a malicious trademark registration application not for the purpose of use, as banned in Article 4 of the Trademark Law”. Trademark agencies are also required to observe the good faith principle. If a trademark agency knows or should know that the trademark registration application proposed by a client falls under any of certain circumstances, e.g. “being malicious and filed not for the purpose of use, which is prohibited in Article 4 of the Trademark Law”, it shall refuse to be entrusted to handle the registration. In addition, the Provisions expressly state that where a registered trademark has been left unused for three consecutive years, without justifiable reasons, any entity or individual may apply with the trademark registry for invalidation of said registered trademark. Furthermore, the Provisions stress that trademark agency associations shall improve their self-regulation rules for the industry, strengthen self-discipline within the industry, take disciplinary actions against members in violation of the self-regulation rules, and make public the violation in a timely manner.

(Source: State Administration for Market Regulation)

(Trial) Administrative Measures for Lists of Seriously Dishonest Parties Subject to Joint Disciplinary Actions in the Patent Sector will be implemented on December 1st

On October 17th the National Intellectual Property Administration issued the (Trial) Administrative Measures for Lists of Seriously Dishonest Parties Subject to Joint Disciplinary Actions in the Patent Sector (the “Administrative Measures”) to regulate the administration of said lists in the patent sector. The Administrative Measures will be implemented as of December 1st.

The Administrative Measures incorporate 27 articles in five chapters, including General Provisions; Determination of Act; Inclusion in the List, Joint Disciplinary Actions and Removal from the List; Credit Repair; and Supplementary Provisions.

(Source: National Intellectual Property Administration)

State Council Releases the Revised Implementing Regulations of the Food Safety Law

The State Council recently issued the Implementing Regulations of the Food Safety Law of the People’s Republic of China (Revised in 2019) (the “Regulations”) which will take effect from December 1, 2019.

The Regulations strengthen supervision of food safety, require governments at and above county level to establish a unified and authoritative regulatory regime, reinforce the building of supervisory capacity, introduce extra regulatory means such as random supervisory checks, improve the reward system for whistleblowers, and establish the system of the blacklist of producers and operators with serious violations and the joint punishment mechanism against discreditable acts. Meanwhile, the Regulations optimize the fundamental systems concerning food safety risk monitoring, food safety standards and others, call for better application of food safety risk monitoring results, regulate the formulation of local food safety standards, and clearly specify the scope of enterprise standards subject to record-filing. Moreover, the Regulations ascertain the primary responsibility of producers and operators for food safety, detail the responsibilities of principals of enterprises, standardize the storage and delivery of food, forbid false advertising for food, and optimize the administrative system for special food. The Regulations also make improvement to the legal liability for food safety violations and clarify rigid legal liability accordingly in case of breach of the newly-added mandatory provisions.

Opinions on Strengthening Intellectual Property Protection Released

The General Office of the Central Committee of the Communist Party of China (“CPCCC”) and the General Office of the State Council recently issued the Opinions on Strengthening Intellectual Property Protection (the “Opinions”).

The Opinions set out the overall requirement of effectively curbing the trend of frequent infringement and significantly alleviating the situation where intellectual property right (IPR) holders are confronted with “difficulties in burden of proof, lengthy process, high costs and low compensation” while seeking to defend their rights, by the year 2022. To this end, the Opinions put forward 23 opinions, including giving harsher punishment against infringement and counterfeiting, strictly standardizing the evidence standards and rolling out stronger measures to guarantee enforcement, from six perspectives, including rolling out policies toward rigorous intellectual property protection. Among others, the Opinions call for efforts to accelerate revising and refining the Patent Law, the Trademark Law and the Copyright Law, etc.; make improvement to the legislation regarding protection of geographical indications; introduce the system of punitive damages in the patent and copyright fields as soon as possible; dramatically heighten the upper limit of the statutory compensation standard on infringement and require higher compensation for the damage inflicted; regulate and restrain malicious trademark registration, abnormal patent applications, lawsuits filed for evil purposes, among other behavior; and explore ways to strengthen the effective protection of trade secrets, classified business information as well as its source codes, etc.

(Source: www.gov.cn)

CNIPA Seeks Comments on Administrative Measures for Use of Special Marks of Geographical Indications

The China National Intellectual Property Administration recently issued the Administrative Measures for Use of Special Marks of Geographical Indications (Draft for Comments) (the “Draft for Comments”) for public comments. Comments solicitation has ended by now.

According to the Draft for Comments, parties having the legal right to use special marks of geographical indications shall follow the good faith principle, and organize the production pursuant to relevant standards, management norms and use management rules, and timely publish and regularly submit to the local intellectual property authority with jurisdiction the information about the use of special marks of geographical indications. Meanwhile, the Draft for Comments sets out clear requirements for the use. It is provided, for example, that for products bearing protected geographical indications, the unified social credit code, etc. shall be marked in the designated position for the special mark of geographical indications. The Draft for Comments also stipulates that where a party with the legal right to use the special mark of a geographical indication fails to organize the production in accordance with the corresponding standards, management norms or relevant use management rules, or does not use, within two years, the special mark on the products with the protected geographical indication, the intellectual property authority shall disqualify it from using the special mark of this geographical indication.



(Source: National Intellectual Property Administration)

Multiple Departments Release Their Own Policy Documents on Full Coverage of the Pilot Reform of "Decoupling Operating Permits from Business Licenses"

The Ministry of Commerce ("MOFCOM") recently issued the Implementation Plan on Initiating the Pilot Program for the Full-coverage Reform of "Decoupling Business Licenses from Operating Permits" in Pilot Free Trade Zones (the "Plan"), and several other authorities, including the General Office of the Ministry of Human Resources and Social Security ("MOHRSS"), the China Securities Regulatory Commission ("CSRC"), the State Administration of Foreign Exchange ("SAFE") and the State Administration for Market Regulation ("SAMR"), also released their counterpart documents respectively.

The Plan states that starting from December 1, 2019, 13 enterprise-related business items subject to operating permits, including record-filing of foreign trade operators, (preliminary) examination and approval for the business qualification for wholesaling finished oil products, and accreditation of the qualification for state trading of imports and exports, shall be reformed according to their category in all 18 pilot free trade zones including the Shanghai Pilot Free Trade Zone. For this purpose, four different approaches, namely, directly canceling the examination and approval process, replacing the examination and approval requirement with the record-filing requirement, practicing the notification and commitment mechanism, and optimizing the examination and approval services, shall be adopted accordingly.

(Source: Ministry of Commerce)

MOJ Invites Comments on Implementing Regulations of Foreign Investment Law and Mulls Allowing Foreign-invested Enterprises to Issue Stocks

The Ministry of Justice ("MOJ") recently issued the Implementing Regulations of the Foreign Investment Law of the People's Republic of China (Draft for Comments) (the "Draft for Comments") to seek opinions from the entities concerned and people from all walks of life. Comments solicitation has ended by now.

The Draft for Comments primarily expounds on the basic issues on foreign investment, promotion of foreign investment, protection of foreign investment, administration of foreign investment, the transitional arrangements

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.



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regarding organizational forms of existing foreign-invested enterprises and the application of law to investment made by investors from Hong Kong, Macao and Taiwan. Among others, the Draft for Comments stipulates that a foreign-invested enterprise may apply for loans from financial institutions or seek financing by other means, through publicly offering stocks or corporate bonds within or outside of China according to law, or by issuing other financing instruments in a public or non-public manner. The Draft for Comments also provides that China establishes the system of punitive damages for intellectual property infringement, propels setting up the swift and coordinated intellectual property protection mechanism, improves the diversified intellectual property dispute resolution mechanism and the assistance mechanism for enforcing intellectual property rights, and ramps up efforts to protect intellectual property rights held by foreign investors and foreign-invested enterprises.

(Source: Ministry of Justice)

Law of the People's Republic of China on Value-added Tax Released for Public Comments

Recently, the Ministry of Finance (“MOF”) and the State Taxation Administration (“STA”) jointly drew up and issued the Law of the People’s Republic of China on Value-added Tax (Draft for Comments) (the “Draft for Comments”) for public opinions. Comments solicitation has ended by now.

The Draft for Comments touches upon ten aspects, including the scope of taxation, tax rates and the rate of value-added tax levied on a deemed basis, and taxation period. Among others, the Draft for Comments proposes a few adjustments to the tax rates, setting the applicable tax rate at 13% for sale of goods, processing, repair and replacement services, leasing services of tangible movable property, and imported goods, and at 9% for sale of transportation, postal services, basic telecommunications services, construction, leasing services of real property, real property, transfer of land use right, sale or import of such goods as agricultural products, and keeping it unchanged at 6% for sales services, intangible assets, and financial products. In addition, the rate of value-added tax levied on a deemed basis is set at 3%. Moreover, for the purpose of smooth transition, the Draft for Comments expressly states that “where it is truly necessary to renew the tax policies released before the publication of this law, the renewal may last at latest till the end of five years following the effectiveness of this law, as stipulated by the State Council.”

(Source: Ministry of Finance)



CSRC to Shorten Time Frame for Examination of Refinancing on SSE STAR Market to Two Months

The China Securities Regulatory Commission (“CSRC”) recently issued the Administrative Measures for Registration of Issuance of Securities by Listed Companies on the SSE STAR Market (for Trial Implementation) (Draft for Comments) (the “Draft for Comments”) for public consultation, and the Shanghai Stock Exchange (“SSE”) subsequently issued the Rules for Examination of Issuance and Listing of Securities by Listed Companies on the SSE STAR Market (Draft for Comments) and the Implementing Rules for Issuing and Underwriting Securities of Listed Companies on the SSE STAR Market (Draft for Comments) for public comments. Comments solicitation has ended by now.

Major contents of the Draft for Comments include: (1) setting out the basic issuance conditions to regulate refinancing activities of listed companies and practically safeguard the lawful rights and interests of investors and the public interests; (2) optimizing and adjusting the institutional arrangement for private placement of shares, a move to support listed companies in introducing strategic investors; and (3) setting convenient and efficient registration procedures to boost financing efficiency. For the purpose of reducing, to the largest extent, the time frame required for examination and registration by the regulators, the SSE and the CSRC are expected to conclude the examination and approval process and the registration process within two months and 15 working days, respectively. Moreover, the SSE is authorized to conduct research and enact the business rules for small-amount financing, according to the overall situation of refinancing on the SSE STAR Market and actual market needs.

(Source: China Securities Regulatory Commission, Shanghai Stock Exchange)

CSRC Invites Comments on Revisions to Re-financing Rules Including Administrative Measures for the Issuance of Securities by Listed Companies

The China Securities Regulatory Commission (“CSRC”) recently issued the Decision on Revising the Administrative Measures for the Issuance of Securities by Listed Companies (Draft for Comments), the Decision on Revising the Interim Administrative Measures for the Issuance of Securities of Listed Companies on the Growth Enterprise Market (Draft for Comments) and the Decision on Revising the Implementing Rules for Private Placement of Shares by Listed Companies (Draft for Comments) (collectively as the “Draft for Comments”) for public comments. Comments solicitation has ended by now.

According to the Draft for Comments, the principal changes proposed include: (1) simplifying the issuance conditions and expanding the coverage of refinancing on the Growth Enterprise Market; (2) optimizing the institutional arrangement for non-public issuance, a move to support listed companies in introducing strategic investors; and (3) extending the valid term of the approval document to a proper extent, to make it more convenient for listed companies to determine the gap period between approval and issuance. Among others, the Draft for Comments removes a previous requirement for the public issuance of securities on the Growth Enterprise Market, reading “the asset-liability ratio by the end of the last period shall be higher than 45%”; removes another requirement for private placement of shares on the Growth Enterprise Market, reading “having made profits for two consecutive years”; and adjusts the requirement, reading “the funds raised from the last issuance on the Growth Enterprise Market have been used up basically, and the progress and effect of such use are basically identical with the information disclosed”, to be one of the requirements for information disclosure, instead of one of the issuance conditions.

(Source: China Securities Regulatory Commission)

CAC Seeks Comments on Administrative Measures for Publication of Information on Network Security Threats

The Cyberspace Administration of China (“CAC”) recently issued the Administrative Measures for Publication of Information on Network Security Threats (Draft for Comments) (the “Draft for Comments”) for public opinions. Comments solicitation has ended by now.

The Draft for Comments stipulates that the published information on network security threats shall not contain seven types of content, including “the source codes of and methods on how to create computer viruses, Trojan horses, ransomware and other malwares”. In addition, the Draft for Comments expressly states that prior to the publication of information about a network security incident, such as attack, damage or illegal access to a network or information system, the incident shall be reported to the public security organ above the prefecture level of the place where such incident occurs. Any enterprise, social organization or individual shall submit a report beforehand to the cyberspace regulator and the public security organ above the prefecture level of the place involved, before publishing a regional comprehensive analysis report on network security attacks, incidents, risks and vulnerability. Moreover, the Draft for Comments notes that without approval or authorization of the government agency, any enterprises, social organizations and individuals shall not add the phase “early warning” to the titles of messages on network security threats they publish.

(Source: Cyberspace Administration of China)



Administrative Provisions on Online Audio-visual Information Services Unveiled

Recently, three authorities including the Cyberspace Administration of China (“CAC”) jointly issued the Administrative Provisions on Online Audio-visual Information Services (the “Provisions”), with effect from January 1, 2020.

The Provisions clearly state that online audio-visual information service providers shall legally obtain the relevant qualifications required under the laws and administrative regulations; and shall establish and improve their bylaws regarding user registration, review of information releases, information safety management, etc. Any organization and individual shall not take advantage of online audio-visual information services and the related information technology to carry out any activities prohibited by laws and regulations that infringe upon the legitimate rights and interests of others. Further, the Provisions set out requirements for utilization of new applications underpinned by such emerging technology as deep learning and virtual reality to produce, publish and disseminate audio-visual information, including requirements for safety evaluation, label requirements, requirements for management of news information, requirements for management of information on violations, and requirements for refuting rumors. The Provisions also emphasize that online audio-visual information service providers and online audio-visual information service users will be dealt with by three authorities including the cyberspace regulator in accordance with the Cybersecurity Law and other applicable laws and regulations, if they breach these Provisions.

(Source: Cyberspace Administration of China)

SAMR Seeks Comments on Antitrust Compliance Guide for Undertakings

The State Administration for Market Regulation (“SAMR”) recently drafted and issued the Antitrust Compliance Guide for Undertakings (Draft for Comments) (the “Draft for Comments”) to seek public comments. Comments solicitation has ended by now.

The Draft for Comments expressly states that compliance risks mainly focus on issues in eight aspects, including “prohibition of reaching a monopoly agreement”, “prohibition of abusing a dominant market position” and “law-based concentration of undertakings”. Among others, the Draft for Comments stipulates that an undertaking shall not reach an agreement, a decision or engage in a concerted practice aimed at excluding or restricting competition with another undertaking or organize other undertakings to do so. As to whether certain behavior constitutes the concerted practice of other types, undertakings may refer to the Interim Provisions on the Prohibition of Monopoly Agreements. Undertakings shall neither accede to nor support the monopoly agreement reached under the industry association’s leadership. Meanwhile, the Draft for Comments states that an undertaking with a dominant market position shall not commit acts of abuse of market dominance as prohibited under the relevant provisions of the Antitrust Law. Relevant factors mentioned in the Interim Provisions on Prohibiting Acts of Abuse of a Dominant Market Position may be referenced to evaluate and determine whether an undertaking has a dominant market position.

(Source: State Administration for Market Regulation)



SPC Seeks Comments on Judicial Interpretations for Trial of Lawsuits Involving Objections to Enforcement

The Supreme People's Court ("SPC") recently issued the Interpretations on Issues Concerning the Application of Law in the Trial of Lawsuits Involving Objections to Enforcement (I) (Draft for Public Comments) (the "Draft for Comments") for public comments by December 23, 2019.

The Draft for Comments incorporates 20 articles, touching upon jurisdiction over a lawsuit involving an objection to enforcement when the court in charge of enforcement is changed, handling of a lawsuit involving an objection to enforcement filed after the enforcement has been completed, and handling of a lawsuit involving an objection to enforcement filed after the enforcement has been terminated. Among others, the Draft for Comments provides that a lawsuit involving an objection to enforcement filed by an outsider shall fall under the jurisdiction of the court in charge of enforcement. In case the court in charge of enforcement is changed before the first-instance court trial, as a result of enforcement designation for the enforcement case, the lawsuit involving an objection to enforcement filed by an outsider shall fall under the court currently in charge of enforcement after occurrence of such change. However, if the court currently in charge of enforcement is a people's court subordinate to the original court in charge of enforcement, the original court in charge of enforcement shall have jurisdiction over this lawsuit. Also, the Draft for Comments states that in the case of a lawsuit involving an objection to enforcement filed by an outsider, if the enforcement on the targeted subject matter involved in the objection raised by the outsider has been completed when the trial of such lawsuit or the examination of an application for a retrial is under way, this situation does not affect the ongoing trial or possible retrial of the case by the people's court.

(Source: Supreme People's Court)

