

W&B Legal Newsletter

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INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 pro-fessionals 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 National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, 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.



Watson & Band Listed on 2020 ALB China IP Rankings and among Finalists for 2020 ALB China Law Awards Again

On May 20, the high-end legal journal Asian Legal Business under Thomson Reuters (hereinafter “ALB”) published in 2020 ALB China IP Rankings. Watson & Band ranked in Tier 2 for both “China Domestic Firms: Patent” and “China Domestic Firms: Trademarks/Copyrights”.

On May 21, ALB announced the finalists for its 2020 China Law Awards. Watson & Band is honored a finalist for the two awards – “IP Firm of the Year” and “Shanghai Firm of the Year”.



Cases by Watson & Band Lawyers Selected into Typical Cases of the Year by both Supreme People’s Court and Shanghai Higher People’s Court

Welcoming the annual World Intellectual Property Day on April 26, Watson & Band’s long-time dedication to the protection for clients’ IP rights and public interests was also recognized by the People’s Courts.

The administrative case involving invalidation of the “MLGB” trademark, which was initiated by Watson & Band’s lawyer, Hongjun Yao, was selected as a Top 10 IP Case of 2019 by the Supreme People’s Court.

Meanwhile, the unfair competition case involving the passing-off of a celebrity’s network name – “papi” and “papi 酱”, which was handled by Watson & Band’s partners Jingjing Zhu and Mingli Zheng and lawyer Han Zhang, was selected as a “Typical Case of Strengthened Protection for IP Rights Heard by Shanghai Courts in 2019”.

Watson & Band Assists China Baowu in Successfully Issuing Twelve-Billion Three-Year Medium Term Notes

On May 22, China Baowu Group successfully issued twelve-billion three-year medium term notes on the interbank market, at a nominal interest rate of 2.37%.

Watson & Band, acting as the issuer’s lawyer, cooperated with the principal underwriter and the assessment agency, and provided professional services during the issuance process. Watson & Band’s Managing Partner Frank Qian, Partner Cathy Wu, and lawyer Jialong Chen, participated in the project and provided full legal services throughout the process.



Civil Code Published in Full and Set to Take Effect on January 1, 2021

The Civil Code of the People's Republic of China (the "Civil Code") was recently adopted by vote at the Third Session of the 13th National People's Congress ("NPC") and shall enter into force from January 1, 2021.

The 1,260-article Civil Code contains seven parts that provide for general provisions, property rights, contracts, personality rights, marriage and family, inheritance, and tort liability respectively, in addition to the supplementary provisions. The Civil Code is the product of an all-round and systematic codification of several existing separate laws for civil affairs in China, including the General Principles of the Civil Law, the Real Rights Law, the Contract Law, and the Guaranty Law, that were enacted and launched in different phases. The code with Chinese characteristics reflects the characteristics of the new era and represents aspirations of the people. Based on the current Contract Law, Part III on Contracts, for example, is designed to improve the system of contracts, with a view to implementing the spirit for deepening reforms in all aspects, stressing safeguarding contracts, give-and-take principle and fair competition and promoting free flow of commodities and elements. The improvement is embodied in three subparts of Part III on Contracts, i.e. general rules, typical contracts and quasi contracts. To be more specific, additional four types of contracts, including guarantee contracts and factoring contracts, are added to the subpart on typical contracts; improvement to some other existing typical contracts, such as sales contracts and loan contracts, is incorporated.

(Source: <http://www.xinhuanet.com>)

Newly Revised Law on the Prevention and Control of Environmental Pollution Caused by Solid Waste Adopted and Set to Take Effect on September 1

The Law of the People's Republic of China on the Prevention and Control of Environmental Pollution Caused by Solid Waste (Revised in 2020) (the "Law on the Prevention and Control of Environmental Pollution Caused by Solid Waste") was recently adopted at the 17th Session of the Standing Committee of the 13th National People's Congress ("NPC") and shall take effect on September 1, 2020.

The Law on the Prevention and Control of Environmental Pollution Caused by Solid Waste mandates efforts to strengthen the administration of medical waste, particularly the medical waste, generated in response to the outbreak of a serious epidemic disease, optimizes the measures aimed at prevention and control of pollution caused by domestic waste and the provisions with respect to prevention and control of pollution caused by construction waste, steps up the regulation of overpacking and plastic pollution, etc. To be more specific, the system of prevention and control of environmental pollution caused by industrial solid waste is improved by enhancing manufacturers' responsibilities and adding the systems regarding pollution discharge permission, management standing books, evaluation of comprehensive utilization of resources, etc. Additionally, it is made clear that China practices the domestic waste classification system; the system of prevention and control of environmental pollution caused by dangerous waste is refined through stipulating category-specific and level-based management, information technology-based regulatory system, and construction of regional centralized disposal facilities, for dangerous waste. Moreover, unlawful acts will result in harsh punishments and fines of a higher amount, more types of punishment will be adopted, and punishments will be imposed on liable persons; additional provisions concerning legal liability for some unlawful acts are incorporated.

(Source: <http://www.xinhuanet.com>)

SAMR to Severely Combat Unlawful and Criminal Acts in the IP Field

The State Administration for Market Regulation (“SAMR”) recently drafted and issued the Provisions on Referral of Suspected Criminal Cases by the Administrative Law Enforcement Organs (Revised Draft for Comment) (the “Draft for Comment”) for public comments by June 28, 2020.

The Draft for Comment proposes revisions to Article 3, adding a new paragraph as Paragraph 2 in addition to the existing one to clarify the procedures for referral of intellectual property (IP)-related cases involving suspected crimes. Specifically, the new paragraph reads: “for IP-related cases, the administrative law enforcement organs may refer them to public security organs, if they think it necessary to take further investigative measures to obtain more evidence to determine whether the criteria for putting these cases as criminal ones on file are fulfilled, as they cast reasonable doubts on the existence of crimes, based on the case facts they have ascertained and the evidence they have collected during their probes.”

(Source: <http://www.samr.gov.cn>)



MIIT Provides Guidance on Industrial Big Data Development

The Ministry of Industry and Information Technology (“MIIT”) recently issued the Guiding Opinions on Industrial Big Data Development (the “Opinions”).

With a view to tapping the potential of industrial data elements and lifting the development of the industrial big data sector to higher levels, the Opinions map out 18 key tasks in six aspects: (1) accelerating data aggregation; (2) promoting data sharing; (3) deepening data application; (4) improving data governance; (5) strengthening data security; and (6) Facilitating development of this sector. Among others, two key tasks outlined by the Opinions that are aimed at gradually facilitating data sharing and flow on a larger scale and in a more sufficient and orderly manner, are: supporting enterprises in jointly building safe and reliable industrial data space and guiding and regulating the opening up and flow of public data resources; and conducting research to acquire key technologies of data flow, building an industrial big data asset value appraisal system, clarifying the trading rules, tightening market regulation and creating an industrial data market.

(Source: <http://www.miit.gov.cn>)

Measures for Cybersecurity Review Unveiled

Twelve departments including the Cyberspace Administration of China (“CAC”) recently issued the Measures for Cybersecurity Review (the “Measures”), with effect from June 1, 2020.

According to the Measures, cybersecurity review should be performed in accordance with the Measures, if the network products and services to be purchased by key information infrastructure operators (the “operators”) affect or may affect national security. Operators that will purchase network products and services shall identify beforehand possible risks to national security that may emerge after such products and services are put into use. In case that the products and services affect or may affect national security, they shall file applications with the Cybersecurity Review Office to undergo cybersecurity review. The Measures prescribe that a cybersecurity review should focus on evaluating the national security risks that may arise from the purchase of the network products and services, and primarily give consideration to certain factors, including “harm caused by product and service supply disruptions to business continuity for the key information infrastructure”. Additionally, the Measures clarify that, a cybersecurity review should be generally completed within 45 working days, and in complicated circumstances, an extension of 15 working days may be granted. If the special review procedures are initiated, the review can take another 45 working days or longer. Moreover, the Measures provide for protection of enterprises’ trade secrets and intellectual property, legal liability for the breach of the Measures, etc.

(Source: <http://www.cac.gov.cn>)

Updated Standards to Be Released for the Implementation of the Latest Securities Law and the Registration-based IPO Reform for the ChiNext Board

The China Securities Regulatory Commission (“CSRC”) recently issued five documents, including the Standards on the Contents and Formats of Information Disclosure by Companies Publicly Offering Securities No.28—Prospectus of ChiNext Companies (Revised Draft for Comment) (the “Draft for Comment”).

The principle of revision and the principal changes stated in the Draft for Comment are: 1. learning from the experience gained from the registration-based IPO system for the SSE STAR Market, and ensuring overall alignment with the rules for the SSE STAR Market; 2. highlighting unique information disclosures for ChiNext enterprises, according to the positioning of the ChiNext Board; 3. focusing information disclosure on investors’ demands; and 4. underscoring the protection of investors’ rights and interests. Among others, the Draft for Comment requires that an issuer shall fully disclose, in the parts of “Overview” and “Business and Technology”, the features of its own innovations, creations and originality, particulars of science and technology innovation, innovation in business models, innovation in business forms, integration of emerging and traditional industries, among other information.

(Source: <http://www.csrc.gov.cn>)



SSE Improves the Trading Mechanism for Relisted Stocks on the First Day of Relisting

The Shanghai Stock Exchange (“SSE”) recently issued the Circular on Revising the Administrative Measures of the Shanghai Stock Exchange for Stock Trading on the Risk Alert Board (the “Circular”), immediately effective from the date of issuance.

According to the Circular, adjustments in two aspects are made. The first is adjusting the circumstances in which the intraday ad hoc suspension may occur for a relisted stock on the first day when it is relisted. To be specific, compared with the opening price on that trading day, intraday ad hoc suspension will be triggered when the intraday price undergoes the first rise or drop of 30% or higher and again when the intraday price undergoes the first rise or drop of 60% or higher. Intra-day ad hoc suspension will no longer be applied when the intraday turnover rate reaches or exceeds 30%, one of the circumstances that trigger such suspension stated in the previous edition. The second is adding new provisions regarding the duration of intraday ad hoc suspension and release of announcements on suspension.

(Source: <http://www.sse.com.cn>)

Matters concerning the Pre-tax Deduction of Public Welfare Donations Clarified

Three departments including the Ministry of Finance (“MOF”) recently issued the Announcement on Matters concerning the Pre-tax Deduction of Public Welfare Donations (the “Announcement”), retrospectively effective from January 1, 2020.

According to the Announcement, expenditures on donations for the cause of public charity that meet the legal requirements, made by enterprises or individuals through public-interest social organizations or state organs including people’s governments above the county level and their departments, are deductible from the taxable income in accordance with the provisions of the applicable tax law. Meanwhile, the Announcement states that to be qualified for pre-tax deduction of public welfare donations, charities and other social organizations, legally registered with the authorities of civil affairs, shall also fulfill eight requirements, including “meeting the conditions stated in Subparagraph 1 through Subparagraph 8 of Article 52 of the Implementing Regulations of the Enterprise Income Tax Law”. The qualification for pre-tax deduction of public welfare donations will be effective nationwide and valid for three years. Furthermore, the Announcement provides clarifications on specific circumstances in which a public-interest social organization will be disqualified from pre-tax deduction of public welfare donations and in which such social organization will be disqualified from pre-tax deduction of public welfare donations and banned from regaining the qualification.

(Source: <http://szs.mof.gov.cn>)



SPC Releases Guiding Opinions (II) on Several Issues concerning Trial of COVID-19 Epidemic Related Civil Cases

The Supreme People's Court ("SPC") recently distributed the Guiding Opinions (II) on Several Issues concerning Law-based and Proper Trial of Civil Cases Related to the Novel Coronavirus Pneumonia (COVID-19) Epidemic (the "Opinions").

The Opinions focus on cases involving sales contracts, property lease contracts, financial contracts, medical insurance, and corporate bankruptcy, etc. that are greatly affected by the epidemic, and provide clarifications in four aspects. The first is taking serving and ensuring "six guarantees" as an important approach to achieve "stabilization in six areas", and defusing the debt crisis facing enterprises through bankruptcy reorganization, bankruptcy reconciliation and improvement of the well-intentioned and civilized enforcement, so as to shore up market players. The second is trying cases involving disputes over sales contracts in accordance with the law to stabilize industrial and supply chains. The third is trying cases involving disputes over educational training or medical insurance contracts in accordance with the law to respond to the needs of people's livelihoods. And the fourth is effectively implementing an array of preferential policies announced amid the ongoing epidemic by the State for the benefit of enterprises and citizens, to serve and safeguard economic and social development. Among others, in response to issues that arouse great concern in the general public, including the impossibility of performance of the offline training contracts due to the impact of the epidemic, the dispute over money paid by minors on online games and tips given by them to hosts of live streaming platforms, and possible disputes over commercial medical insurance arising from the impact of the epidemic, the Opinions give detailed explanations on these issues.

(Source: <http://www.court.gov.cn/>)

MOJ Improves Appearance of Forensic Experts to Testify in Court

The Ministry of Justice ("MOJ") recently issued the Guiding Opinions on Further Regulating and Improving the Appearance of Forensic Experts to Testify in Court (the "Opinions"), immediately effective from the date of issuance.

According to the Opinions, where the notice of appearance issued by the people's court designates a specific forensic expert to appear in court, that forensic expert is obligated to appear and testify in court; however, if no specific forensic expert is designated, the forensic authentication institution may appoint one or several forensic experts that sign the expertise report, to appear and testify in court. Meanwhile, the Opinions state that after the people's court has notified a forensic expert of giving testimony in court, the forensic expert may submit to that people's court an application for not appearing before the court, if the notice of appearance is not delivered within the statutory time limit, or under four other circumstances. With the consent of the people's court, a forensic expert that does not appear in court may submit feedback or explanations in writing, or give his or her testimony with the aid of technologies such as the video link. In addition, the Opinions clarify the preparatory work forensic experts need to conduct before the appearance in court, matters they need to deal with in court, certain circumstances in which forensic experts may raise requests in a timely manner to the people's court while testifying in court, etc.

(Source: <http://www.moj.gov.cn/>)