

W&B Legal Newsletter

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The Latest from Watson & Band

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W&B Successfully Hosted a Legal Session for the Performing Arts Industry at the China Shanghai International Arts Festival

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Intellectual Property

NMPA Issues the Revised Procedures for the Special Evaluation of Innovative Medical Devices

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.



W&B Successfully Hosted the First W&B Forum -- Summit on Legal and IP Protection for Artificial Intelligence

The 2018 World Artificial Intelligence Conference (WAIC) had its grand opening ceremony on the morning of September 17th, 2018. In the afternoon on the same day, the First Watson & Band Forum – Summit on Legal and IP Protection for Artificial Intelligence, jointly hosted by Watson & Band Law Offices, Watson & Band IP Agent Ltd. and Shanghai West Bund Development (Group) Co., Ltd., co-organized by ECUPL Data Law Research Center and LCOUNCIL, and supported by a number of institutions including INTELLIGEAST, LVXIN News, Corporate Counsel Alliance, ACELAW SCHOOL and LEXISNEXIS, was successfully hosted in the Conference Room on the third floor of Shanghai Hang Hui Tower.

The W&B Forum brought not only a platform for experience sharing and exchange among the attending peers, but also first-hand analyses and discussions over the cutting-edge information. In response to the WAIC theme “Artificial Intelligence Empowering the New Era”, Watson & Band specially applied self-service check-in for better AI experience of the attendees. Meanwhile, Watson & Band arranged for full live broadcast on the Internet, uploading photos and videos for network users. Till the final curtain of the forum, approximately 10,000 users witnessed this grand summit on legal and IP protection for artificial intelligence.



W&B Successfully Hosted a Legal Session for the Performing Arts Industry at the China Shanghai International Arts Festival

On the afternoon of October 21, Watson & Band successfully hosted a Legal Session for the Performing Arts Industry at Jing An Intercontinental Hotel during the China Shanghai International Arts Festival. This Legal Session was organized by the Organizing Committee Office of the 20th China Shanghai International Arts Festival, co-organized by China Shanghai International Arts Festival and jointly supported by Watson & Band Law Offices, Watson & Band IP Agent Ltd. and Corporate Counsel Alliance.

Watson & Band’s Managing Partner Jean Yang made an opening speech for the Session and officially launched the event. Watson & Band’s Partner Yiqi Cai presided over the entire Session. The Session, in the form of a workshop, invited three partners of Watson & Band to be the hosts for three topics. Centering on those topics, legal counsels, senior managers and tax accountants from renowned enterprises within the industry shared their views and experience and aroused thinking and discussions among the attendees. The Session discussed cutting-edge issues in a relaxing atmosphere.





JIPA F5 Research Group Visits Watson & Band

Recently Japan Intellectual Property Association (“JIPA”) F5 Research Group came to Shanghai for a two-day research project and paid a visit to Watson & Band’s head office. Watson & Band’s Senior Founding Partner, Mr. Shenmin Xu, together with other core members of Watson & Band’s IP service team warmly received F5 Research Group and hosted a special workshop for it.

Session 1 of the workshop mainly discussed issues related to patent infringement lawsuits. Mr. Shenmin Xu, the lecturer, introduced evidence collection involved in patent infringement litigation and the corresponding litigation proceedings, and addressed concerns of the F5 group members.

In Session 2 of the workshop, Watson & Band’s senior patent attorney, Mr. Jianhua Chen, introduced the differences in the patent application practices between China and Japan, as well as matters worthy of special attention in patent applications filed by Japanese applicants in China. Mr. Chen provided the F5 group members with professional opinions and suggestions based on his over two decades of practice as a patent attorney.

At the meeting the two sides also exchanged latest developments in the IP area in China and Japan and shared an outlook into potential future cooperation.



W&B Partners Attend the 2018 Jing An International Big Data Forum

Recently the 2018 Jing An International Big Data Forum was held at the Shanghai Exhibition Center. The Forum, themed “Big Data and Urban Intelligence – Data Aggregation Contributes to Intelligent Cities”, was jointly hosted by the National Development and Reform Commission, the Ministry of Science and Technology, the Ministry of Industry and Information Technology, the National Internet Information Office, the Chinese Academy of Sciences, the Chinese Academy of Engineering and the Shanghai Municipal People’s Government.

Watson & Band’s Senior Partner and Professor from ECUPL, Mr. Fuping Gao, and Watson & Band’s Partner, Ms. Cathy Wu, attended the Forum and participated in three sessions on the agenda. First, they published the Best Practice Initiative on Protection for Data Circulation and Personal Information, which was designed to push forward the legislation progress concerning personal information and privacy. Second, they participated in the workshop themed “Data

Opening and Cross-border Data Circulation”, which aimed to formulate regulations applicable for all data controllers, a unified list of information prohibited from exportation, different regulatory policies for departures, and rules on protection and utilization of personal data. Third, they attended the sessions entitled “Urban Intelligence Innovative Projects Sharing Session” and “Healthcare Information Protection and Data Circulation” that involved regulations on personal information protection, data circulation and healthcare information treatment.



Implementing Regulations of Individual Income Tax Law and Interim Measures on Additional Special Deductions Issued for Public Comment

The Ministry of Finance (“MOF”) and the State Administration of Taxation (“SAT”) have recently issued the Implementing Regulations of the Law of the People’s Republic of China on Individual Income Tax (Revised Draft for Comment) (the “Revised Draft for Comment”) and the Interim Measures on Additional Special Deductions for Individual Income Tax (Draft for Comment) (the “Draft for Comment”), to seek public comments by November 4, 2018.

Compared with the former version of the implementing regulations, the Revised Draft for Comment introduces revisions to 25 articles, removes 19 articles and adds 19 new articles. The proposed revisions this time involve the improvement to taxpayer-related provisions, the scope of China-sourced income and the scope of taxable income, include certain anti-tax evasion articles and perfect the rules concerning tax collection and administration. The Draft for Comment clarifies respective principles and standards, for the extra deduction of six special types of fees, namely child education tuition, continuing education fee, medical expenses for a serious disease, mortgage interest, housing rent, and elderly care fee. For expenses borne by taxpayers for the preschool education and degree education received by their children, for example, a fixed deductible amount of CNY12,000 per annum or CNY1,000 per month is set for each child. (Source: [Http://www.mof.gov.cn](http://www.mof.gov.cn))



SAMR to Release New Regulations to Unify Market Supervision Administration and Punishment Procedures

The State Administration for Market Regulations (“SAMR”) has recently issued the Interim Provisions on Administrative Punishment Procedures for Market Supervision Administration Authorities (Draft for Comment) and the Interim Measures on Hearings for Administrative Punishments Imposed by Market Supervision Administration Authorities (Draft for Comment) to satisfy the needs of the reforms on market supervision administration system and administrative enforcement system.

The Interim Provisions on Administrative Punishment Procedures for Market Supervision Administration Authorities (Draft for Comment) (the “Procedure Provisions”), comprised of 81 articles in 7 chapters, provides more details on investigations to collect evidence and detailed rules on the collection, access, preparation and preservation of evidence of various types and adds requirements on the time limits for relevant processes of handing cases. The Procedure Provision also proposes mandatory requirements on the publication of administrative punishment decisions and specifies respective ways to serve law enforcement documents of different types.

The Interim Measures on Hearings for Administrative Punishments Imposed by Market Supervision Administration Authorities (Draft for Comment)(the “Hearing Measures”) comprises 36 articles in 6 chapters, setting forth specific rules in terms of legislation purpose, basic principles, scope, application and acceptance of hearings, participants to hearings and their rights and obligations, procedures and requirements on preparation and holding of hearings, circumstances of postpone and termination of hearings and preparation of hearing records and hearing report. (Source: <http://samr.saic.gov.cn/>)

Standing Committee of the NPC Decides to Amend Fifteen Laws including Advertising Law and Environmental Protection Tax Law

Recently, the Decision of the Standing Committee of the National People's Congress on Amending Fifteen Laws Including the Law of the People's Republic of China on the Protection of Wild Animals(the "Decision"), adopted at the Sixth Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China has been promulgated for implementation as of the date of promulgation

The Decision amended fifteen laws including the Wild Animals Protection Law, the Law on the Prevention and Control of Atmospheric Pollution, the Advertising Law, the Energy Conservation Law and the Environmental Protection Tax Law, etc. According to the Decision, "authorities of press, publication, radio and TV" and "industrial and commercial authorities" in Article 68 of the Advertising Law is amended as "competent authorities of press, publication, radio and TV" and "market regulation departments", and "industrial and commercial authorities" in multiple articles including Article 6 is amended as "market regulation departments". In addition, the Decision amended the Environmental Protection Tax Law by changing "competent marine affairs authority" in Article 22 as "competent authority for the ecological environment" and "competent environmental protection authority" in Articles 10 and other articles as "competent authority for the ecological environment".

(Source: [http:// www.npc.gov.cn](http://www.npc.gov.cn))

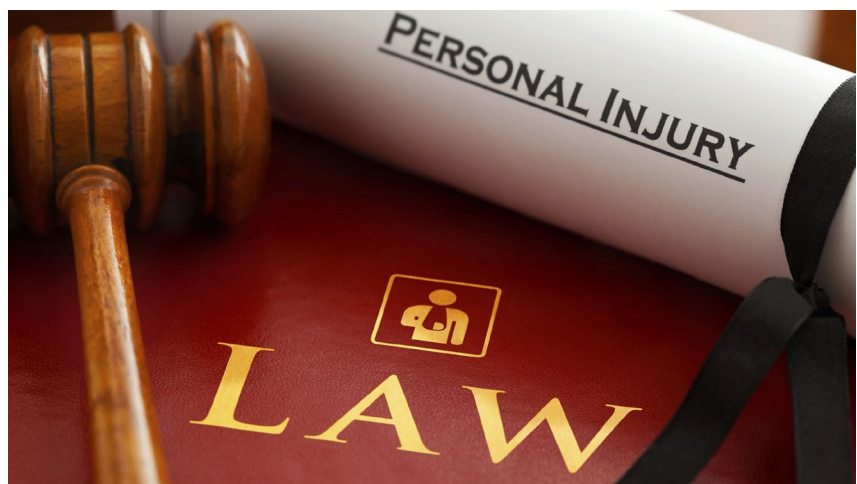
China's First E-commerce Law to be Implemented as of January 1, 2019

The E-commerce Law of the People's Republic of China, recently adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress, will enter into force on January 1, 2019. This landmark law was enacted after four reviews and three issuances for public comments over the past five years.

Article 10 of the E-Commerce Law clearly states that E-commerce operators, including individuals, must register as market entities and complete taxation registration. According to the finalized version of this law, registration is the basic standard, and non-registration is an exception that includes "individuals engaged in occasional small transactions" according to the third draft for comments. Under the E-commerce Law, E-commerce operators are subject to taxation. Meanwhile, the state also grants favorable taxation policies to e-commerce operators to protect small businesses, to promote market competition and to improve renovation capabilities.

In terms of the determination of a platform's liability, the draft E-commerce Law was amended from "joint and several liability" to "additional liability" and finally to "applicable liability" as a compromise. The enactment of the E-Commerce Law reflects the approach of the comprehensive e-commerce era, which will soon develop into a more stable and mature state with the end of the current irregular and abnormal "wild west" atmosphere. More and more companies, particularly e-commerce platform operators, will be expected to take responsibility for creating a healthier ecology for the e-commerce industry.

(Source: TMTPost.com)





Approval of Revisions to the Company Law Signals the “Upgraded” Stock Repurchase System

The Decision on Amending the Company Law of the People’s Republic of China (the “Decision”) has been recently adopted at the Sixth Session of the Standing Committee of the 13th National People’s Congress (“NPC”) and taken effect immediately from the date of issuance.

According to the Decision, a listed company is allowed to buy back its own shares under a wider range of six circumstances, including: 1. Where it reduces its registered capital; 2. Where it plans to merge with a company that is one of its existing shareholders; 3. Where it buys back its shares to operate an employee stock ownership plan or an employee stock incentive plan; 4. Where shareholders request it to purchase their shares of the company, as they oppose to the resolution adopted at the general meeting of shareholders in respect of the combination or division of the company; 5. Where it buys back its shares to convert the convertible corporate bonds it has issued; and 6. Where it has to buy back its shares to maintain the company’s value and its shareholders’ rights and interests. The Decision expressly states that, the modified Company Law also properly streamlines decision-making procedures for some circumstances with respect to the repurchase of shares, raises the upper bound of shares that could be held by a listed company itself, and prolongs the period for which the company may hold the repurchased shares. (Source: [http:// www.npc.gov.cn](http://www.npc.gov.cn))

MOFCOM Seeks Public Commentary for Amendment of the Administrative Measures for the Standardization of the Commercial Sector

With a view toward strengthening the standardization of the commercial sector, improving the administrative system for standardization and enhancing the legislation and normalization of standardization efforts, the Ministry of Commerce (“MOFCOM”) recently revised the Administrative Measures for the Standardization of the Commercial Sector (for Trial Implementation) in accordance with the newly-revised Standardization Law of the People’s Republic of China as well as relevant supporting administrative systems. It did so by drafting the Administrative Measures for the Standardization of the Commercial Sector (Revised Draft for Comments).

The Administrative Measures for the Standardization of the Commercial Sector (Revised Draft) is comprised of 49 articles in 7 chapters, including:

- Chapter 1 (General Provisions), which defines the standards and provides the time frame for creating standards;
- Chapter 2 (Administration of Standardization), which establishes the duties of the competent commerce authorities at all levels in charge of the standardization of the commercial sector;
- Chapter 3 (Formulation of Standards), which sets out the specific requirements for the formulation of appropriate standards;
- Chapter 4 (Approval and Issuance of Standards), which stipulates the requirements for the administration of recordation and the issuance of standards;
- Chapter 5 (Request for Comments);
- Chapter 6 (Implementation, Review and Supervision of Standards); and
- Chapter 7 (Supplementary Provisions), which provide interpretations and explanations of the Measures.

(Source: Department of Treaty and Law of MOFCOM)



SAT Confirms Enterprise Liability Insurance Premiums are Tax-Deductible

The State Administration of Taxation (the “SAT”) recently issued the Announcement of the State Administration of Taxation on Matters Concerning the Deduction of Liability Insurance Premiums Before the Calculation of Enterprise Income Tax (hereinafter referred to as the “Announcement”), stipulating that insurance premiums required to be paid by enterprises for employer liability insurance, public liability insurance and other types of liability insurance, are deductible from their taxable income.

Liability insurance has become an increasingly frequent operational expense for enterprises, and it functions as a significant tool for mitigating corporate risks in operational liabilities, by offering concrete protection for the rights and interests of parties involved and by promoting social stability and harmony. Since premiums paid by enterprises for liability insurance are expenses that are actually incurred, and since liability insurance is defined as a type of property insurance by the PRC Insurance Law, in accordance with the relevant provisions of the Enterprise Income Tax Law and the Implementing Regulations of the Law of the People’s Republic of China on Enterprise Income Tax, the relevant tax treatment is prescribed as follows:

Liability insurance, such as employer liability insurance and public liability insurance, refers to insurance taken out by an enterprise to be insured when an incident covered by the insurance policy occurs and such enterprise is liable for compensation for a third party’s loss or damage. Because the premiums paid by enterprises for liability insurance, such as employer liability insurance and public liability insurance, are expenses that are actually incurred, and because liability insurance is defined as a type of property insurance by the Insurance Law, under the Enterprise Income Tax Law and its implementing regulations, the Announcement specifies that required insurance premiums that are actually paid by enterprises for employer liability insurance, public liability insurance and other types of liability insurance, are deductible from taxable income for enterprise income tax purposes. (Source: Sina News)

Administrative Measures for Anti-Money Laundering and Counter-Terrorism Financing for Banking and Financial Institutions Specify Regulatory Functions and Duties of Financial Institutions

Recently, the China Banking and Insurance Regulatory Commission issued the Administrative Measures for Anti-Money Laundering and Counter-Terrorist Financing for Banking and Financial Institutions (Draft for Comments) (hereinafter referred to as the “Measures”). The Measures specify the obligations, functions and duties of banking and financial institutions with respect to anti-money laundering and counter-terrorism financing.

The Measures, composed of 53 Articles in five Chapters, clearly stipulate the obligations, functions and duties of banking and financial institutions with respect to anti-money laundering and counter-terrorism financing. They also obligate banking and financial institutions to incorporate money laundering and terrorism financing risk management into a comprehensive risk management system, to embed anti-money laundering and counter-terrorism financing requirements into the compliance management and internal control system, and to ensure that the anti-money laundering and counter-terrorism financing risk management system comprehensively covers all of their products and services.

(Source: Shanghai Securities News)



NMPA Seeks Comments on the Working Rules for Testing of Medical Devices

The Department of General Affairs of the National Medical Products Administration (“NMPA”) has recently enacted and issued the Working Rules for Testing of Medical Devices (Draft for Comment) (the “Draft for Comment”) to seek public comments.

The Draft for Comment states that, testing agencies and their staff members shall remain independent from interested parties involved in their work on testing medical devices, and ensure their testing activities are conducted in a scientific and independent manner, and they shall not issue any test reports containing untruthful data or false results. Besides, testing agencies and their staff members are banned from committing certain acts, including “seeking unjustified interests from principals or interested parties”. In addition, the Draft for Comment clearly states that, a testing agency shall obtain the corresponding qualification to test medical devices or be designated by the corresponding registration approval authority, before conducting tests within the testing scope, and be competent enough to conduct tests in accordance with currently valid national standards; it also shall have the capacity, as needed, to make a preliminary evaluation of technical requirements of products provided by the principal. Furthermore, the Draft for Comment requires that, conclusions presented in a test report shall be explicit and the testing agency shall be held accountable for any information contained in the test report. (Source: NMPA)

relevant market”, stimulate the vitality of market players, accelerate the profound transformation of government functions and create a legal, international and convenient business environment, the State Council has decided to promote the reform of “separating operating permits and business licenses” nationwide on the basis of the previous pilot implementation thereof

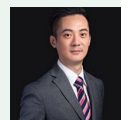
It is highlighted in the Circular to cut back on the permits and certificates now required once a business license is issued and cut all that can be cut, and merge all that can be merged. Appropriate management methods shall be adopted to minimize examination, approval and issuance of certificates, effectively distinguish the functions of “certificates” and “licenses” and strive to solve the problem of “prohibition against doing relevant business although having access to the relevant market”. It is necessary to promote the reform methods in accordance with the law by directly canceling the approval of enterprise-related administrative approval items, subjecting such items to record-filing instead of approval, applying the notification commitment system to such items, and optimizing access services for such items. A comprehensively reform on examination and approval methods shall be conducted to streamline permits and licenses related to enterprises, strengthen in-process and ex post comprehensive supervision and administration, and innovate government management methods, so as to further create a stable, fair, transparent and predictable market access environment, fully release market vitality and promote high-quality economic development.

(Source: www.gov.cn)

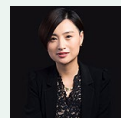
Circular of the State Council on Promoting the Reform of “Separating Operating Permits and Business Licenses” across the Country

The pilot implementation, in Pudong New Area, Shanghai, and wider replication and promotion of the reform of “separating operating permits and business licenses” has effectively reduced the institutional transaction costs of enterprises and achieved remarkable results. In order to further solve the problem of “prohibition against doing relevant business although having access to the

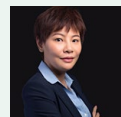
If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.



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SAMR Amends Guiding Opinions on the Notification of Concentration of Undertakings and Other Documents

The State Administration for Market Regulation (“SAMR”) has recently released the revised Guiding Opinions on the Notification of Concentration of Undertakings (Revised on September 29, 2018) (the “Opinions”), and, meanwhile, the Anti-monopoly Bureau of the SAMR has formulated and issued the Guiding Opinions on Documents and Materials for the Notification of Concentration of Undertakings (Revised on September 29, 2018), the Guiding Opinions on the Notification of Simple Cases Involving the Concentration of Undertakings (Revised on September 29, 2018) and the Guiding Opinions on the Notified Names of Cases Involving the Concentration of Undertakings (Revised on September 29, 2018).

The Opinions provide clear definitions of such terms as the “concentration of undertakings” and “threshold for notification”, adding that the controlling right in the sense of concentration of undertakings covers both the independent controlling right and the jointly-held controlling right. Where, in a newly established cooperative enterprise, there are at least two business operators who jointly control this cooperative enterprise, the concentration of undertakings is constituted; however, if this cooperative enterprise is solely controlled by one business operator, while other business operators do not hold the controlling right, the concentration of undertakings does not exist. (Source: SAMR)



The Anti-Monopoly Law and the New Anti-Unfair Competition Law Have Been Reconciled since the Latter’s Implementation This Year

The recent implementation of the new Anti-Unfair Competition Law has reconciled its relationship with the Anti-Monopoly Law, enabling the two laws to perform their own functions. On one hand, the new Anti-Unfair Competition Law severed its provisions from those of the Anti-Monopoly Law by striking out four clauses that overlapped provisions of the Anti-Monopoly Law, including prohibitions against:

- ※ anti-competitive activities by public companies,
- ※ anti-competitive activities and restriction of competition through the abuse of administrative power,
- ※ dumping; and
- ※ tie-in sales.

On the other hand, the new Anti-Unfair Competition Law separates its scope from that of the Bid Invitation and Bidding Law by eliminating all clauses relating to bid invitations and bidding. Meanwhile, the new Anti-Unfair Competition Law optimized rules to identify unfair-competition acts as well as relevant liability to be imposed.

The new Anti-Unfair Competition Law reduces the number of unfair-competition acts from 11 to 7. These acts include counterfeiting and acts causing market confusion, commercial bribery, false advertising, infringement of commercial secrets, commercial defamation, improper prize-attached sales activities, and unfair competition on the Internet. Highlights of this revision include:

- ※ Regulation of unfair competition acts by use of Internet technology that were added to Article 12;
- ※ Article 25’s stipulation that where a business operator performs any act of unfair competition act in violation of the revised provisions, and if such operator proactively eliminates or mitigates the harmful consequence of its illegal act, it shall be subject to a lighter or mitigated administrative penalty
- ※ If an illegal act is considered minor and is corrected in a timely manner without leading to any harmful consequences, it may be exempted from any administrative penalty.

(Source: SOHU.com)

Monopoly & Competition

Latest News about the Lawsuit Filed by Jin Yong against Defendants Jiang Nan et al. for Copyright Infringement and Unfair Competition

The first instance trial of the lawsuit filed by Louis Cha against defendants Yang et. al for copyright infringement and unfair competition (the lawsuit filed by Jin Yong against defendants Jiang Nan et. al for copyright infringement and unfair competition) was recently concluded with a ruling that Yang's act of publishing the novel *There They Were*, which incorporates elements of works of the plaintiff such as character names and relationships, with a view to gaining competitive advantage, gained the defendant huge profits and seriously impeded the plaintiff's ability to exploit his own work. Consequently, the court ruled that these acts constituted acts of unfair competition, and the defendants were held liable for infringement in accordance with the law.

Article 2 of the Anti-Unfair Competition Law (revised in 2017) stipulates that, while carrying out production or business activities, a business operator must abide by the principles of consent, equality, fairness and good faith, and must comply with applicable law and business ethics. For the purpose of the law, "unfair competition" refers to any business operator's act of participating in productive or operational activities in violation of the provisions of the law that disrupt the competitive order of the market and infringe upon the legitimate rights and interests of other business operators or consumers. Although *There They Were* was written by Yang and was first placed online for netizens to read free of charge, Yang and the other defendants repeatedly published the novel with a huge circulation for profit after the novel gained increasing attention from readers. The act exceeded necessary limits by forming a competitive relationship with the plaintiff in the market of book publishing, planning and distribution with respect to sales, market share, the development of derivative works, etc. Consequently, the acts of the two parties fell within the scope of the Anti-Unfair Competition Law, under which Yang's act was improper by nature, contravened business ethics that are publicly recognized by the cultural industry, and are therefore prohibited by the Anti-Unfair Competition Law.

(Source: SOHU.com)



Relying on its rich theoretical knowledge and practical experience, W&B is able to thoroughly understand the legislative trend in the anti-monopoly law. Meanwhile, with its close cooperation and active communication with the relevant administrative and judicial authorities, W&B is able to assist the clients by properly applying the anti-monopoly law system to effectively reduce the risk of occurrence of monopolistic and unfair competition acts, to provide prompt solutions in the event of legal issues or imminent legal penalties, and to adequately safeguard their legitimate rights and interests in the face of monopolistic or unfair competition acts of other business operators or competitors.

Merger of Linde Group and Praxair Approved by SAMR with Restrictions

Recently, the much-anticipated 87 billion-dollar merger in the gas industry (the merger of Linde Group and Praxair Company) has been investigated and approved with restrictive conditions by the State Administration for Market Regulation ("SAMR") of China.

Given the possibility of unfair competition arising from the merger that might further enhance the ability of Linde Group and Praxair to monopolize the market, SAMR carried out an in-depth analyses on the effect of this merger on market competition under Article 27 of the Anti-Monopoly Law, including its effect on market share and the ability of the merger participants to control the market, as well as the effect of the merger on consumers and other operators. As a result, SAMR decided to approve the merger with restrictive conditions because the merger was deemed to have or be likely to have the effect of eliminating or restricting competition in the global helium market, the global inert rare gas mixture market, the global fluorine-containing rare gas mixture market, the global hydrogen chloride rare gas mixture market, the liquid oxygen market in Guangdong Province and the liquid nitrogen market in Guangdong Province.

(Source: State Administration for Market Regulation of PRC)

NRTA to Standardize the Administration of the Introduction and Dissemination of Overseas Visual-audio Programs

The National Radio and Television Administration (“NRTA”) has recently formulated and issued the Administrative Provisions on the Introduction and Dissemination of Overseas Visual-audio Programs (Draft for Comment) (the “Draft for Comment”) and the Administrative Provisions on the Overseas Personnel’s Participation in the Production of Radio and Television Programs (Draft for Comment), to seek public comments by October 19 and October 20 respectively.

The Draft for Comment stipulates that, any overseas visual-audio program introduced shall not include “the content that violates basic principles outlined in China’s Constitution or that incites any action to resist or disrupt the implementation of the Constitution, laws or administrative regulations” or other seven kinds of information. Any effort to introduce a program, which is produced with the participation of an overseas organization that carries out activities of harming China’s national dignity, honor or interests, jeopardizing social stability or weakening the national sentiment, or in which an individual having such behavior takes part, is banned. Additionally, it is made clear in the Draft for Comment that, the length of time for overseas films, TV series, animations, documentaries and other TV programs played every day on each channel of a radio or TV broadcaster shall account for up to 30 percent of the total time of all programs of the same category played on the current day. Furthermore, the Draft for Comment emphasizes that any entity or individual is prohibited from introducing any overseas program of news and current affairs. (Source: www.chinalaw.gov.cn)

SAT Calls for Maintaining the Taxation Order in the Film and TV Industry

The State Administration of Taxation (“SAT”) has recently issued the Circular on Further Maintaining the Taxation Order in the Film and Television Industry (the “Circular”).

The Circular expressly states that, from October 2018 till the end of July 2019, a series of steps will be taken, including self-inspections and proactive self-corrections, urged corrections, targeted inspections, and summaries and improvements, to gradually have the taxation order in the film and television industry get back on the right track. In particular, the Circular provides that, starting from October 10, 2018, tax authorities in all regions shall inform film and television production companies, agent companies, performing arts companies, celebrities’ workshops, etc., as well as high-income practitioners in the film and TV industry, in the local region, of conducting self-inspections of their tax return filing since 2016 and taking remedial measures. Enterprises and practitioners in the film and television industry will be exempt from administrative punishments and fines, as long as they have conducted self-inspections efficiently and voluntarily pay the overdue tax by the end of December 2018. Furthermore, the Circular warns that, during the period from March 2019 to the end of June 2019, tax authorities will launch targeted inspections among those enterprises and practitioners doing business in the film and television industry that refuse to take corrective actions, and seriously cope with their possible violations according to the law. (Source: SAT)

GASC Releases Measures for the Administration of the Blacklist of the Sports Market to Cover Eight Violations

The PRC General Administration of Sports (the “GASC”) recently released the Measures for the Administration of the Blacklist of the Sports Market (the “Measures”), which provide that an operating entity or participant in the sports industry who commits any of the following eight circumstances such as doping, serious safety accidents and “enforcement by a People’s Court for losing credits” among others will be placed in the sports market blacklist.

According to the Measures, the GASC is the entity that enacts guidelines and oversees the implementation of the Measures. The sport administrative authorities of the provincial people’s governments are responsible for implementing the blacklist system by establishing a review and adjudication committee for the blacklisting of sports market participants that will deliberate and compile the blacklist, determine publication deadlines, accept the statements and arguments of interested parties, etc.

Article 5 of the Measures clearly sets forth the circumstances to be included in the blacklist of the sports market, including six specific offences and two general “catch-all” clauses. Of course, the circumstances defined by Article 5 of the Measures will not be included in the blacklist without legal measures such as administrative action and court adjudication. The GASC will publish the local blacklist of the sports market throughout China in a special column of its official website. The duration of inclusion in the blacklist will vary from 3 to 36 months, depending on the degree of seriousness of the offenses that led to the blacklisting. (Source: <http://www.sport.gov.cn/>)

SPC and SPP Release Judicial Interpretations for Handling Criminal Cases Involving False Litigation

Recently, the Supreme People's Court ("SPC") and the Supreme People's Procuratorate ("SPP") have jointly released the Interpretations on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving False Litigation (the "Interpretations"), with effect from October 1, 2018.

Twelve articles in the Interpretations embrace different aspects of criminal behaviors in bringing false litigation, including the identification of such criminal behaviors, the criteria of conviction and sentencing, punishment principles for the concurrence of crimes, understanding of criminal policies, and determination of the territorial jurisdiction. Further, the Interpretations expressly state that, where a party, either by itself or in malicious collusion with others, forges a fake civil legal relationship and invents a civil dispute by fabricating evidence and making false representations, thereby filing a civil action to the court, such practice shall be identified as a criminal behavior in bringing false litigation as mentioned in the Criminal Law; applying to the court for enforcing an arbitration award or a notarized document for the creditor's rights which is rendered on the basis of a made-up story, or raising an objection to the subject matter to be enforced or applying for gaining benefits distributed from the property to be enforced, on the basis of a made-up story, will fall into the scope of criminal behaviors in bringing false litigation as provided in the Criminal Law. Furthermore, the Interpretations provide that, a criminal case involving the false litigation shall fall under the jurisdiction of a court at the place where the court accepting the false civil action or the court in charge of the enforcement is located. (Source: SPC)

SPC Releases Judicial Interpretations to Regulate the Execution of Notarized Documents for Creditors' Rights

The Supreme People's Court ("SPC") has recently issued the Provisions on Several Issues Concerning the Execution of Notarized Documents for Creditors' Rights (the "Provisions"), effective from October 1, 2018.

The Provisions provide clarity on such issues as how to grasp the execution basis in cases involving the execution of notarized documents for creditors' rights, how to calculate the period for applying for the execution, how to determine what to be executed, what remedial actions could be taken in case of any mistakes. Further, the Provisions clearly specify that the basis of the execution of notarized documents for creditors' rights is such notarized documents themselves, and also note that, when a creditor files the execution application, it shall submit the execution certificate as

well which will be used as the proof for the performance and other affairs. Moreover, the Provisions make clear what information shall be specified in the notarized documents for creditors' rights if they could be used as the execution basis, and basic requirements on case acceptance. As for issues arising in practices, such as the indefinite ways to seek remedies and the inconsistent judgment criteria, the Provisions enumerate circumstances "where an application could be filed for not executing the said documents due to the serious violation of statutory notarial procedures", based on legal provisions in respect of notarial procedures. (Source: SPC)



NPC Standing Committee Approved Revisions to the Criminal Procedure Law to Establish the Default Judgment System

The Decision on Amending the Criminal Procedure Law of the People's Republic of China (the "Decision") has been recently adopted at the Sixth Session of the Standing Committee of the 13th National People's Congress ("NPC") and taken effect immediately from the date of issuance.

The Decision clearly states that, revisions introduced this time are aimed at optimizing the connection between the supervision and criminal proceedings, establishing the default judgment system for criminal cases, improving the lenient punishment system applicable to criminals pleading guilty in criminal cases, and introducing the rapid adjudication procedures, among others. The Decision adds a new chapter, titled Chapter III Default Judgment Procedures, into the original Part V (on Special Procedures). This new chapter provides that where the criminal suspect or the defendant in a case stays outside the territory of China, and such case involves crimes of corruption and bribery, or should be tried and settled in a timely fashion as it involves crimes or terrorist activities seriously endangering the national security, as examined and approved by the Supreme People's Procuratorate ("SPP"), the people's procuratorate may institute a public prosecution to the people's court, if it believes that facts about the crimes have been ascertained and are supported by conclusive and sufficient evidence and the criminal suspect or the defendant shall be held criminally liable in accordance with the law, after receiving this case referred to it by the supervisory or public security organ; the people's court shall decide to open the court session and render a judgment, if it considers after the examination of this case that the indictment specifies clear facts about the accusation and conditions to apply the default judgment procedures are met. (Source: www.npc.gov.cn)

Explanation and Application of the Supreme People's Court's Provisions on Several Issues Concerning the Trial of Cases by Cyberspace Courts

The Supreme People's Court released the Provisions on Several Issues Concerning the Trial of Cases by Cyberspace Courts (Fa Shi (2018) No.16, hereinafter referred to as the "Provisions") on September 6, 2018, which set out a series of regulations on the jurisdiction of cyberspace courts, outline the appeals process, and enhance the litigation platform, identity authentication, case acceptance, defense, evidence submission, courtroom trials, services, signatures and archives for online litigation. The Provisions play an important role in guaranteeing the handling of cases under the law by cyberspace courts, facilitating the lawful participation in litigation by interested parties, and regulating cyberspace according to the law. (Source: www.chinacourt.org)



Interpretations of the Supreme People's Court on Issues Concerning the Application of the Law in the Trial of Construction Project Contract Disputes (II) is Deliberated and Passed in Principle at the Plenary Meeting of the Judicial Committee of the Supreme People's Court

Recently, Zhou Qiang, Chief Justice and President of the Supreme People's Court, chaired a plenary meeting of the Judicial Committee of the Supreme People's Court, where the Interpretations of the Supreme People's Court on Issues Concerning the Application of the Law in the Trial of Construction Project Contract Disputes (II) (hereinafter referred to as the "Interpretations (II)") were deliberated upon and passed in principle.

The Interpretations of the Supreme People's Court on Issues Concerning the Application of the Law to the Trial of Construction Project Contract Disputes, effective on January 1, 2005, played an important role in unifying the application of relevant laws, ensuring the quality of construction projects, regulating the construction market, and protecting all types of market entities, especially disadvantaged groups such as migrant workers. The current judicial practice in China has encountered a surge in the number and financial magnitude of construction project contract disputes, which requires urgent further formulation and improvement of judicial interpretations in the field of construction project contract disputes, so as to provide guidance for trials across the country. To this end, after multiple revisions, the Supreme People's Court formulated the draft of the Interpretation (II) for deliberation at the plenary meeting. The draft addresses issues including the validity of construction project contracts, the settlement of construction costs, construction project authentication, the exercise of the priority right to receive compensation for construction costs, and the implementation of protection of workers' rights. The Interpretation (II) was passed in principle at the meeting after deliberation. In addition, the Rules of the Committee of Experts on the International Business of the Supreme People's Court (Trial Implementation) and the Procedural Rules for the International Commercial Tribunal of the Supreme People's Court (Trial Implementation) were also passed at the meeting after deliberation.

(Source: The People's Courts News and Communication Agency)



NPC Standing Committee Provides Clarity on Several Issues Concerning Judicial Proceedings for Cases Involving Patents and Other IPRs

The Decision on Several Issues Concerning Judicial Proceedings for Cases Involving Patents and Other Intellectual Property Rights (the "Decision"), has been recently adopted at the Sixth Session of the Standing Committee of the 13th National People's Congress ("NPC") and will come into effect from January 1, 2019.

The Decision provides clarity in three aspects. First, the appeal filed by a litigant against the first-instance judgement or ruling rendered for an IP-related civil case that involves a subject matter containing specialized expertise, such as a patent for invention, a utility model patent, a new plant variety, an integrated circuit layout design, a technology secret, a computer software, and a monopolistic IP, shall be tried by the Supreme People's Court ("SPC"). Second, the appeal filed by a litigant against the first-instance judgement or ruling rendered for an IP-related administrative case that involves a subject matter containing specialized expertise, such as a patent, a new plant variety, an integrated circuit layout design, a technology secret, a computer software, and a monopolistic IP, shall be also tried by the SPC. Third, the re-trial claimed or the counter-appeal filed, in accordance with the law, against a legally effective first-instance judgment, ruling or mediation document rendered for an abovementioned case, may be tried by the SPC, provided that the trial supervision procedures apply; alternatively, the SPC may designate a court at a lower level according to the law to retry the case.

(Source: www.npc.gov.cn)

NMPA Issues the Revised Procedures for the Special Evaluation of Innovative Medical Devices

The National Medical Products Administration ("NMPA") has recently issued the Procedures for the Special Evaluation of Innovative Medical Devices (the "Evaluation Procedures"), effective immediately from December 1, 2018.

The Evaluation Procedures mainly clarify patent-related requirements, means to inform enterprises of and contents of evaluation results, ways to communicate with enterprises, and other matters, among procedures for the special evaluation of innovative medical devices. Further, the Evaluation Procedures specify that, in light of the situation that some applications involving patents for invention of core technologies have been published by the administrative department of patent of the State Council but the patent rights are not granted eventually, efforts will be stepped up to conduct the preliminary evaluation of products' core technical programs. An applicant may file a search application to the Patent Search and Consultation Center of the National Intellectual Property Administration ("CNIPA"). Meanwhile, in consideration of characteristics of patents and the average period of time needed to research and develop a type of medical device, it is decided that the gap between the time to apply for the special evaluation of a type of innovative medical device and the date of announcement concerning the granting of the patent right, shall be up to five years. Moreover, the Evaluation Procedures expressly state that, as Class I medical devices are subject to administration by record-filing, these procedures do not apply to them.

(Source: NMPA)

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