

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.

Watson & Band Again Awarded as the 2018 Outstanding IP Service Team in China

On the evening of January 12th, the Award Ceremony and Banquet for the 9th China International IP New Year Forum & the 2019 Annual Conference of In-house IP Managers in China was held at the JW Marriot Hotel in Beijing. At the Ceremony, awards including “2018 Outstanding IP Service Team in China” and “2018 Outstanding IP Managers in China”, among others, were announced.

The annual appraisal and selection of Outstanding IP Service Teams in China is hosted by China Intellectual Property magazine. In order to comprehensively and impartially evaluate the overall capacities of the candidate teams, this year’s appraisal started with the practices and expertise advantages of candidate IP services teams, and it applied a method combining special index rankings with comprehensive interviews and reports. With our professional quality, outstanding performance and good reputation, Watson & Band stood out from the other candidates and received the award “2018 Outstanding IP Service Team in China” for the third time.



Watson & Band Managing Partner Frank Qian Lectures on Big Data, IOT and AI Related Legal Issues at JETRO Shanghai Office

On the afternoon of January 7th, Watson & Band Managing Partner Frank Qian was invited to JETRO Shanghai Office, where he delivered a lecture on big data, IOT and AI related legal issues. The lecture was simulcast via the Internet for JETRO IPG members in both Shanghai and Beijing.

The lecture focused on issues in the data service area, including: (i) matters to note in big data transactions; (ii) matters to note in selling user data; (iii) copyright issues concerning in big data processing involving individuals; (iv) ownership, use and protection of deep learning algorithm and result data; (v) nature and ownership of AI creations; (vi) AI legal personality and (vii) matters to note in the composition agreement involving AI composition. All these are cutting-edge issues in the big data era. Mr. Qian elaborated on the said issues based on his theoretical understanding and practice experience and interpreted the currently applicable laws and regulations in China.

The lecture was well received among the JETRO attendees and hit a complete success.

Watson & Band Partner Xiaosu Zhu Elected among the First Members of the Shanghai Youth Legal Talents Pool

Recently the Shanghai Law Society published the name list of first members of the Shanghai Youth Legal Talents Pool (the “Talent Pool”). Watson & Band Partner Xiaosu Zhu is honored as one of the first 145 members, of whom only six are lawyers. The Talent Pool established by the Shanghai Law Society aims to better serve the talents cultivation in Shanghai’s legal industry, to provide better conditions for the healthy growth of youth legal talents and help them stand out from other practitioners, and ultimately to play the youth legal talents’ roles in carrying out legal researches and promoting the rule of law.

In the latest 2019 Asia-Pacific Guide published by Chambers and Partners, Mr. Zhu was recommended in the Corporate and Commercial area. The comment he received in the Guide is as follows: Mr. Xiaosu Zhu from Watson & Band is well recognized among domestic and foreign companies for his expertise in legal practices in areas including foreign direct investment, routine operations, joint venture and liquidation, etc.

NPC Seeks Public Comments on the Draft Amendment to Land Administration Law and Urban Real Estate Administration Law

The full text of the Amendments (Draft) to the Land Administration Law of the People's Republic of China and to the Urban Real Estate Administration Law of the People's Republic of China, deliberated at the Seventh Session of the Standing Committee of the 13th National People's Congress, has been released for public comments by February 3, 2019.

The Amendment (Draft) to the Land Administration Law, encompassing 29 articles, abolishes a former provision that "construction activities carried out for non-agricultural purposes must utilize the State-owned land or the land formerly collectively-owned but already expropriated by the State, a move to remove the legal barrier to the circulation of collective land for the construction use into the market. Also, to narrow down the scope of land expropriation and standardize procedures for land expropriation, it clearly defines specific circumstances for allowable collectively-owned land expropriation and adds extra processes, such as "assessing social stability risks" and "signing the contract first and then processing the examination and approval of land expropriation", to the said procedures. Furthermore, for the purpose of optimizing the protection mechanism for farmers with their land expropriated, it modifies the provision requiring that compensation offered for the land expropriated shall be several times the annual yield from the land, and proposes better social security and higher housing compensation for farmers facing land expropriation.

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



SPC Specifies Relevant Matters for the Establishment of the IP Tribunal

Recently, the Supreme People's Court ("SPC") issued the Announcement on Matters Related to the Establishment of the Intellectual Property Tribunal (the "Announcement").

The Announcement provides that:

1. The IP tribunal established by the SPC starts the performance of its statutory duties from January 1, 2019.
2. Under the Civil Procedure Law and other provisions, the SPC's IP tribunal will primarily hear civil and administrative appeals related to intellectual property involving specialized expertise, such as patents.
3. Appeals legally filed by parties concerned against, or applications legally submitted by them for reviews of, judgments, rulings or decisions for cases of first instance, as mentioned in Article 2 of the Provisions of the Supreme People's Court on Several Issues Related to the Intellectual Property Tribunal, will be tried by courts at the next higher level to the courts of original trials, if such judgements, rulings or decisions are rendered before January 1, 2019, and be tried by the SPC's IP tribunal if rendered after January 1, 2019.
4. Where a party concerned intends to file an appeal to the SPC's IP tribunal, it shall, as required by the Civil Procedure Law and other provisions, file its petition of appeal through the court of the first instance to the IP tribunal of PSC.

(Source: SPC)

SAT Decides to Abolish and Amend Certain Tax-related Normative Documents

Recently , the State Administration of Taxation (“SAT”) has recently issued the Announcement on Abolishing and Amending Some Tax-related Normative Documents (the “Announcement”), immediately effective from the date of issuance.

According to the Announcement: 1. The Circular of the State Administration of Taxation on Adjusting Procedures of Examination and Approval for the Exemption from Value-added Tax on Fodder Made by Fodder Manufacturers is annulled; 2. Article 1 of the Circular of the State Administration of Taxation on Enhanced Follow-up Administration After the Cancellation of Procedures of Examination and Approval for the Exemption from Value-added Tax on Fodder Products is also abolished; 3. The Announcement of the State Administration of Taxation on Streamlining Procedures to Handle Tax Administrative Approval Items has been revised and is re-issued together with this Announcement.

Further, the Announcement expressly states that, revisions introduced under the aforesaid third clause are aimed at putting into practice the requirement, as set out in the Announcement of the State Administration of Taxation [2018] No.65), stating that a previous tax certification item requiring a taxpayer to submit a certification issued by the public security organ for a force majeure accident prior to the deadline for tax payment if it has to defer the tax payment due to force majeure, shall be removed.

(Source: STA)

NPC Standing Committee Amends 17 Laws Including the Enterprise Income Law and the Labor Law

A series of legislative proposals, including the Decision on Amending Five Laws Including the Product Quality Law of the People’s Republic of China, the Decision on Amending Four Laws Including the Electric Power Law of the People’s Republic of China, the Decision on Amending Seven Laws Including the Labor Law of the People’s Republic of China and the Decision on Amending the Social Insurance Law of the People’s Republic of China (collectively as the “Decisions”), have been recently deliberated and adopted at the Seventh Session of the Standing Committee of the 13th National People’s Congress (“NPC”) and taken effect immediately from the date of issuance.

Under the Decisions, the provision of Paragraph 1, Article 51 of the Law on Enterprise Income Tax, which is “a non-resident enterprise having established within the territory of China two or more establishments or offices may, upon approval of the tax authority after examination, ...”, is revised to “a non-resident enterprise having established within the territory of China two or more establishments or offices may ..., provided that requirements set out by the competent tax authority of the State Council are met”. Also, the Decision introduces modifications to Article 15.2, Articles 69 and 94 of the Labor Law. where the requirement specified in Paragraph 2 of Article 15 which reads “..., must go through formalities for examination and approval, in accordance with relevant provisions of the State”, is revised to “..., must abide by relevant provisions of the State”.

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





Draft Foreign Investment Law Released for Public Consultation

The full text of the Foreign Investment Law of the People's Republic of China (Draft) (the "Draft"), deliberated at the Seventh Session of the Standing Committee of the 13th National People's Congress, has recently been released for public consultation by February 24, 2019.

The Draft, expected to be a unified fundamental legislation for foreign investment, will provide stronger legal guarantee for further opening up and making positive and effective use of foreign investment in the new situation. The Draft provides for: 1. the definition and scenarios of foreign investment; 2. investment promotion; 3. investment protection; and 4. investment administration. Among others, with a view to actively boosting foreign investment, the Draft states that in principle, China will carry out policies in favor of high-level investment liberation and facilitation, establish and improve its mechanisms for the promotion of foreign investment, and create a stable, transparent and foreseeable investment environment, and then mainly introduces detailed rules in five aspects, including "implementing the pre-establishment national treatment and negative list management systems". Furthermore, the Draft sets out provisions from four perspectives, such as "improving the protection of property rights held by foreign-invested enterprises", so as to better safeguard legal rights and interests of foreign investors. (Source: [http:// www.npc.gov.cn](http://www.npc.gov.cn))

The Customs Tariff Commission of the State Council to Adjust Certain Import and Export Tariffs from January 1, 2019

The Customs Tariff Commission of the State Council has recently issued the 2019 Plan for Adjustments to Temporary Tariff Rates for Imports and Exports and Other Tax Rates (the "Plan"), with effect from January 1, 2019.

The Plan states that, beginning from January 1, 2019, temporary tariff rates will take effect on 706 types of imported commodities. For instance, a new policy is introduced to impose zero tariffs on mixed meals and on some raw materials used to produce drugs, and the sliding duty on cotton and the temporary tariff rate on some imported fur will be lowered appropriately. Moreover, the Plan expressly states that, from January 1, 2019, 94 categories of commodities, covering fertilizer, apatite, iron sand, slag, coal tar, and wood pulp, will no longer be subject to tariffs when they are exported. Meanwhile, in 2019, China will apply conventional tariff rates to some commodities originating from 23 countries or regions. For example, further tariff cuts will be offered under the free trade agreement between China and New Zealand and between China and Peru, among others, and under the Asia-Pacific Trade Agreement (APTA). Furthermore, the Plan reads that from July 1, 2019, China will take its 4th step to reduce the most favored nation tariff rates on 298 information technology products, and meanwhile, adjust accordingly the temporary tariff rates on some information technology products. (Source: MOF)

CAC Releases Administrative Provisions for Block Chain Information Services

The Cyberspace Administration of China ("CAC") has recently distributed the Administrative Provisions for Block Chain Information Services (the "Provisions"), with effect from February 15, 2019.

The Provisions provide that, block chain information service providers shall fulfill their subject responsibilities for safety management of the information content, be equipped with technical conditions commensurate with their services, formulate and publish management rules and platform agreements, and implement the real identity verification mechanism; they shall not take advantage of block chain information services to carry out any activities banned under laws and regulations or to produce, reproduce, publish or disseminate information content prohibited under laws and administrative regulations; a block chain information service user will be subject to certain measures under the law or as per the agreement, if it breaches any laws, administrative regulations or the service agreement.

(Source: www.cac.gov.cn)

Compliance & Management



Customs Declaration Entity Registration Certificates to be Included into the Coverage of Reform in “Consolidating Multiple Certificates into One”

General Administration of Customs (“GAC”) and the State Administration for Market Regulation (“SAMR”) have recently issued the Announcement [2019] No.14 to clarify matters concerning the inclusion of Customs Declaration Entity Registration Certificates (for Import Consignees and Export Consignors) into the coverage of the reform in “consolidating multiple certificates into one”. This announcement will enter into force from February 1, 2019.

According to the announcement, when an applicant handles the registration of the industry and commerce, it will be required to tick the “record-filing” option for import consignees and export consignors, if it needs to apply for the Customs Declaration Entity Registration Certificate (for Import Consignees and Export Consignors), and to provide additional information for the record-filing purpose. Further, the announcement provides that, market regulators will complete processing the registration under procedures for “consolidating multiple certificates into one”, and exchange data, at the SAMR level, with the GAC. Record-filing will be considered completed once customs offices have confirmed their receipt of information regarding the industry and commerce registration of enterprises and business information filed under record, which means that enterprises will no longer have to carry out record-filing formalities with the customs.

(Source: GAC)

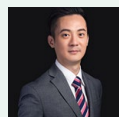
SAMR Specifies Procedures and Hear Measures for Administrative Punishment

The State Administration for Market Regulation (“SAMR”) has recently issued the Interim Provisions on Administrative Punishment Procedures for Market Regulation Departments (the “Provisions”) and the Interim Measures on Hearings for Administrative Punishment Imposed by Market Regulation Departments (the “Measures”), both of which will go into effect from April 1, 2019.

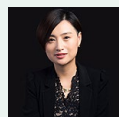
Encompassing 79 articles in seven chapters, the Provisions expressly state in the Chapter “General Administrative Punishment Procedures” that a market regulatory department shall verify the clues of an illicit act discovered subject to its supervision and inspection authority, or through such means as complaining or reporting, within 15 working days of discovery of the evidence or receipt of materials, and the principal of the market regulatory department shall decide whether to place the case on file; under a special circumstance, the time limit may be extended by another 15 working days upon approval of the principal of the market regulation authority. The Measures are comprised of 35 articles in six chapters, and with regard to the application and acceptance of a hearing, they provide that, in case of four circumstances, such as “where the party concerned will be ordered to halt production and business operations”, a market regulation authority shall notify the party concerned of its right to request a hearing, prior to its decision to issue an administrative punishment.

(Source: SAMR)

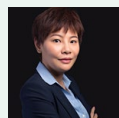
If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.



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SAMR Empowers Provincial Market Regulators to Take Charge of Antitrust Law Enforcement within Local Administrative Regions

The State Administration for Market Regulation (“SAMR”) has recently issued the Circular on the Authority for Antitrust Law Enforcement (the “Circular”).

The Circular calls for efforts to 1) establish a scientific and efficient antitrust law enforcement mechanism, 2) strictly perform the statutory duties and 3) practically improve organizational guarantees. Among others, the Circular clearly states that, the SAMR will be responsible for the unified antitrust law enforcement, while relevant provincial market regulators directly under the SAMR’s jurisdiction or duly authorized, will be in charge of handling three types of cases, including “cases related to monopolistic agreements or the abuse of dominant market position or of administrative powers to eliminate and restrict competition, in which market players across multiple provinces, autonomous regions and municipalities directly under the Central Government are involved, and the abuse of provincial governments’ administrative powers to eliminate and restrict competition”. Moreover, the Circular notes that, provincial market regulators will take the responsibility for antitrust law enforcement within their respective administrative regions, in cases involving monopolistic agreements or the abuse of dominant market position or of administrative powers to eliminate and restrict competition, and are allowed to make decisions according to law on these cases in their own name. During case reviews and investigations, the SAMR may authorize provincial market regulators to launch corresponding investigations.

(Source: SAMR)



SAMR Releases Provisions on the Prohibition of Monopoly Agreements (Draft for Comments)

The State Administration for Market Regulation (“SAMR”) recently released the Provisions on the Prohibition of Monopoly Agreements (Draft for Comments) to seek public commentary.

Based on the enforcement practices of the anti-monopoly enforcement authorities and the experience of other jurisdictions around the world, except for certain types of monopoly agreements clearly defined in the Anti-monopoly Law, market participants have little anti-competitive effect unless they already enjoy significant market share. As a consequence of this limitation, a “safe harbor” mechanism was inserted into the Draft for Comments in order to conserve enforcement resources and to provide market participants with clearer guidance.

The Draft for Comments refines Article 45 of the Anti-monopoly Law by specifying the procedural requirements for suspending investigations. For example, new obligations of supervision and mandatory reporting have been imposed upon enforcement authorities and market participants respectively with respect to the termination of an investigation and the issuance of an investigation suspension decision letter, which provide clear guidelines that allow market participants who are under investigation to apply for the suspension of an investigation according to law.

(Source: news.163.com)

CNSA Releases Detailed Rules on Content Censorship Criteria for Online Short Clips -- 100 “Red Lines” Restrict Short Clip Content

The China Netcasting Services Association (the “CNSA”) issued the Detailed Rules on Content Censorship Criteria for Online Short Clips (the “Rules”) onto its official website on January 9th, 2018. The Rules include 100 criteria for censorship that specify content that is prohibited in online short clips. The Rules set forth 21 restrictions involving the language, performance, subtitles and backgrounds of online short clip programs as well as titles, names, comments, bullet-screen comments, emojis and other items associated with online short clips.

The 21 restrictions include content that attacks China’s political and legal system; disrupts the government; damages China’s national image; harms the image of China’s revolutionary leaders, heroes and martyrs; leaks state secrets; destabilizes society; distorts or demeans valuable ethnic culture and traditions; advocates feudal superstitions and contravenes the spirit of science; promotes unhealthy, negative and decadent outlooks and values; or displays violence, bloodshed, depraved acts, horror scenes, etc.

(Source: ThePaper.cn)

Multiple Departments to Impose Joint Punishments on Market Players Conducting Illegal and Dishonest Acts in the Cultural Industry

Multiple national level government bureaus jointly issued the Memorandum of Understanding on Imposing Joint Punishment on Market Participants and Related Personnel Charged with Serious Illegal and Dishonest Acts in the Cultural Industry (the "MOU"). The MOU was signed by:

- The National Development and Reform Commission
- The People’s Bank of China
- The Ministry of Culture and Tourism
- The Organization Department of the CPC Central Committee;
- The Publicity Department of the CPC Central Committee;
- The United Front Work Department of the CPC Central Committee;
- The Civilization Office of the CPC Central Committee;
- The Ministry of Science and Technology;
- The Ministry of Finance;
- The Ministry of Human Resources and Social Security;
- The Ministry of Natural Resources; The General Administration of Customs;
- The State Taxation Administration; The State Administration for Market Regulation;
- The China Banking Regulatory Commission; The China Securities Regulatory Commission; and
- The All-China Federation of Trade Unions.

The MOU was established for the purposes of accelerating the development of the credit system in the cultural industry market and establishing and perfecting a unified sanctions regime against dishonesty in the cultural industry.

The MOU states that a cultural industry market participant that receives an administrative sanction for violating applicable laws or regulations, or conducts business in the cultural industry without permission, will be added to a national cultural industry blacklist along with its legal representatives or major principal in charge, under at least one of the following circumstances:

- (i) its unlicensed business activities in the cultural industry lead to a serious accident or extremely harmful social influence;
- (ii) its license is revoked by the Ministry of Culture and Tourism or by another law enforcement authority with jurisdiction over the cultural industry;
- (iii) its license or approval document is revoked by the Ministry of Culture and Tourism for obtaining its license by dishonest means such as deception, intentional concealment or falsification/alteration of documents; or if irrefutable evidence proves that it falsified or altered a license or approval document; or
- (iv) other circumstances where applicable law justifies the blacklisting of a market participant or its legal representatives or major principal in charge.

(Source: Shanghai Securities News)

SPC Releases Interpretations (II) on Issues Concerning the Application of Law in the Trial of Construction Project Contract Dispute Cases

The Supreme People's Court ("SPC") has recently issued the Interpretations (II) on Issues Concerning the Application of Law in the Trial of Construction Project Contract Dispute Cases (the "Interpretations"), with effect from February 1, 2019. SPC

The Interpretations provide for the validity of construction project contracts, the settlement of payments for construction projects, authentication for construction projects, the priority right to claim for payments for construction projects, protection of rights of de facto constructors. With regard to the determination of the amount of compensation for losses incurred from a void construction project contract, among others, the Interpretations adhere to the principle of awarding compensation to the extent of actual losses, adding that a party concerned may require to determine the degree of losses by reference to the quality standard, construction period, the agreed time when payments will be made for the construction project, and other factors set out in the contract, if there is a difficulty in working out the amount of actual losses. As for civil liability for the construction project contract signed by a contracting party having the loan of others' qualifications, the Interpretations clarify that where an entity or individual without relevant qualifications signs a construction project contract in the name of a qualified construction enterprise, the party contracting out the construction shall have the right to claim that the qualification lender shall, together with such entity or individual using its qualifications, bear joint and several liability for compensating losses attributed to the loan of qualifications that are incurred from the substandard quality of the construction project.

(Source: SPC)

Official Launch of the SPC IP Tribunal Turns China into a Preferred Venue for the Resolution of International IP Disputes

Between 2013 and 2017, 683,000 intellectual property cases were adjudicated and closed in first-instance Chinese courts. Chinese courts explored the application of punitive damages and the establishment of a litigation credit system to effectively mitigate problems in the enforcement of intellectual property rights such as ineffective infringement disincentives, high enforcement costs and difficulty in evidence collection.

The establishment of the SPC IP Tribunal will help to:

- unify and standardize adjudication criteria;
- integrate the two major litigation procedures (the determination of the existence of intellectual property rights and the determination of infringement of those rights) and adjudication criteria;
- resolve the problem of inconsistent adjudication standards (which stifles scientific and technical innovation);
- improve the quality and efficiency of the adjudication of intellectual property disputes;
- strengthen the judicial protection of intellectual property rights; and
- enhance judicial credibility.

(Source: The Legal Daily)

