

W&B Legal Newsletter

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Spotlights

THE LATEST FROM WATSON & BAND

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INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 400 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, Zhengzhou, Chengdu, 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 re-sponsible 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 Again Tops the 2024 LEGALBAND's Client's Guide to Top Ranked Law Firms and Lawyers in China

On April 16, 2024, the prestigious legal rating agency LEGALBAND released its annual list of the top law firms and lawyers in China for 2024

Watson & Band, with its long-standing excellence in business capabilities, impressive performance records, and strong industry reputation, received high recommendations in several practice areas, including IP litigation, non-contentious intellectual property, bankruptcy reorganization and liquidation, as well as cybersecurity and data compliance. While Watson & Band has consistently led in intellectual property litigation and bankruptcy reorganization for many years, this year also marked notable achievements in non-contentious intellectual property and cybersecurity and data compliance.

A Client's Guide: 

Top Ranked Law Firms

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SPC Seeks Comments on the Interpretation on the Application of the Book on Marriage and Family of the Civil Code (II)

On April 7, the Supreme People's Court (SPC) issued the Interpretation on the *Application of the Book on Marriage and Family of the Civil Code of the People's Republic of China (II) (Draft for Comment)* (the "Draft") to solicit public opinions by April 30, 2024.

The *Draft* aims to clarify 20 hot topics, including the inapplicability of validity correction for bigamy in principle, the handling of "fake divorce" claims by parties, the handling of cohabitation property division disputes, and the handling of marriage-based house gift. Notably, regarding the handling of marriage-based house gift, the *Draft* specifies that, prior to or during the marriage, if one party changes the registration of a house solely owned by him or her and registers such house under the name of the other party or both parties, and then the original owner requests the return of the house in a divorce lawsuit, the court shall, based on the party's request and the purpose of the house gift, comprehensively consider such facts as the duration of marriage, fault in divorce, and financial conditions of both parties, rule that the ownership of the house should be granted to one party, and order the party obtaining the house to pay appropriate compensation to the other party with reference to the market price of the house, unless otherwise agreed by both parties.

(Source: Supreme People's Court)

MOFCOM Issues Negative Lists for Cross-border Trade in Services Nationwide and for FTZs

On March 25, the Ministry of Commerce (MOFCOM) issued the *Special Administrative Measures (Negative List) for Cross-border Trade in Services (2024)* and the *Special Administrative Measures (Negative List) for Cross-border Trade in Services in Pilot Free Trade Zones (2024)* (collectively as the "Lists"), with effect from April 21, 2024.

The *Lists* involve 11 categories, including: agriculture, forestry, animal husbandry and fishery; construction; wholesale and retail; transport, warehousing and postal services; information transmission, software and information technology services; finance; leasing and commercial services; scientific research and technological services; education; health and social work; and culture, sports, and entertainment. The nationwide negative list for cross-border trade in services includes 71 items while that for pilot free trade zones (FTZs) 68 items. Specifically, the Lists follow the industrial classification for national economic activities and uniformly identify the special administrative measures for the cross-border provision of services by overseas service providers (in the modes of cross-border delivery, overseas consumption, and movement of natural persons).

(Source: Ministry of Commerce)



CNIPA Seeks Comments on the Measures for Calculation of Illegal Turnover in Trademark Infringement Cases

On April 12, the China National Intellectual Property Administration (CNIPA) drafted the *Measures for Calculation of Illegal Turnover in Trademark Infringement Cases (Draft for Comment)* (the “*Draft*”) to solicit public opinions by May 15, 2024.

The *Draft* mainly involves: (1) defining the purpose and legal basis, applicable subjects, scope of cases, and the principles to be followed, among other matters; (2) clarifying the definition of illegal turnover; (3) detailing the general calculation standards for illegal turnover (including the calculation of sold goods, unsold goods, middle market rate, and the illegal turnover in service trademark infringement); (4) clarifying the calculation standards for illegal turnover in complex infringement circumstances (including infringement in contract for labor and materials, gift, renovation, trademark logo, assistance, leasing, publicity, and licensing); (5) specifying the handling of cases where the actual illegal turnover cannot be verified; (6) clarifying the cumulative calculation of illegal turnover for multiple infringements; and (7) stipulating the special circumstances where an amount will not be included in illegal turnover.

(Source: China National Intellectual Property Administration)



Cybersecurity and Data Protection

MIIT Releases the Catalog of Typical Service Programs for Cybersecurity Insurance

On April 10, the General Office of the Ministry of Industry and Information Technology (MIIT) released the *Catalog of Typical Service Programs for Cybersecurity Insurance* (the “Catalog”).

The *Catalog* covers two categories of programs: enterprise-specific programs and product-specific service programs. The former includes 36 items such as “Worry-free on the Cloud” cybersecurity insurance service program, “Cloud and Cyber Security” integrated program for cybersecurity insurance services for cloud service enterprises, and cybersecurity insurance service program for industrial supply chain; the latter includes 13 items, such as the cybersecurity insurance service solutions for programs for protection against cyber ransom, cybersecurity terminal (host) protection products + cybersecurity insurance solutions. For each program, the Catalog sets out information such as the lead application entity. The entities concerned will organize and carry out pilot work on cybersecurity insurance services based on the Catalog, and explore the establishment of cybersecurity insurance service models.

(Source: Ministry of Industry and Information Technology)



TC260 to Promote Effective Integration of Asset Information for Network Security Product Interconnect

On March 26, the National Technical Committee 260 on Cybersecurity of Standardization Administration of China (TC260) released the *Practical Guide to Cybersecurity Standard – Asset Information Format for Network Security Product Interconnect* (the “Guide”).

According to the *Guide*, the network security product interconnect involves the interconnected functions and interconnected information. The interconnected information is mainly divided into six categories: asset information, vulnerability information, threat information, behavior information, alarm information, and incident information. The *Guide* standardizes the description formats of the asset information for network security product interconnect, which is applicable to the design, development, application, and testing of network security products. Asset information is composed of general information and additional information. The former includes basic information, location information, network information, etc.; the latter includes device-related addition information, operating system-related additional information, etc.

(Source: National Technical Committee 260 on Cybersecurity of Standardization Administration of China)

Cybersecurity and Data Protection

CAC Publishes Provisions on Facilitating and Regulating Cross-border Data Flow

On March 25, the Cyberspace Administration of China (CAC) released the *Provisions on Facilitating and Regulating Cross-border Data Flow* (the “*Provisions*”), effective from the date of release.

The *Provisions* mainly involve: (1) clarifying the declaration standards for security assessment of cross-border transfer of important data; (2) clarifying the conditions under which outbound data transfer activities are exempt from the declaration for the security assessment, the conclusion of the standard contract, and the personal information protection certification; (3) establishing a negative list system for pilot free trade zones; (4) adjusting the conditions under which outbound data transfer activities shall be subject to the declaration for the security assessment, the conclusion of the standard contract, and the personal information protection certification; (5) extending the validity period of the security assessment results and adding the provisions enable data processors to apply for extending the validity period. According to the *Provisions*, six categories of outbound data transfer activities are exempted from the declaration for the security assessment, the conclusion of the standard contract, and the personal information protection certification, including “where it is truly necessary to transfer any personal information overseas in emergency for the purpose of protecting the health, life, and property safety of a natural person”.

(Source: Cyberspace Administration of China)



SAMR Seeks Comments on Anti-monopoly Compliance Guide for Business Operators

On March 22, the State Administration for Market Regulation (SAMR) revised and formed the *Anti-monopoly Compliance Guide for Business Operators (Draft for Comment)* (the “Draft”) to solicit public opinions, which has come to an end by now.

The *Draft* covers general provisions, compliance management body, compliance risk management, compliance management operation and guarantee, compliance incentive, among others. Regarding compliance management body, the *Draft* specifies that an anti-monopoly compliance management body shall be formed by compliance governance body, responsible person for compliance management, and the leading department of compliance management. Business operators may establish an anti-monopoly compliance governance structure based on actual conditions and divide corresponding anti-monopoly compliance management responsibilities at the three levels of decision-making, management, and execution. Regarding legal liability and risk, the *Draft* identifies seven categories of liability, including the legal liability for entering into monopolistic agreement, the legal liability for abuse of dominant market position, and the legal liability for illegally implementing the concentration of undertakings.

(Source: State Administration for Market Regulation)



SAMR to Revise the Declaration Form for Anti-monopoly Review of Summary Cases of Concentrations of Undertakings

On April 9, the State Administration for Market Regulation (SAMR) released the revised *Declaration Form for Anti-monopoly Review of Summary Cases of Concentrations of Undertakings (Revision)* and the *Disclosure Form for Summary Cases of Concentrations of Undertakings (Revision)*, and also drafted a consultation paper to seek public comments by April 22, 2024.

According to the consultation paper, this revision aims to better utilize the system for summary cases of concentrations of undertakings, facilitate declarations by business entities, and reduce declaration costs. The *Declaration Form for Anti-monopoly Review of Summary Cases of Concentrations of Undertakings* in the consultation paper covers 14 items, including the name of transaction, nature of transaction, declaration basis, reasons for applying for summary review procedure, undertakings involved in the concentration, other undertakings in the transaction, an overview of the concentration transaction, impact on competition in the relevant market, and a commitment letter. Additionally, explanatory notes on filling out the form are provided in footnotes.

(Source: State Administration for Market Regulation)

CSRC Calls for Strictly Implementing the Delisting System and Seeks Comments on Six Rules

On April 15, the China Securities Regulatory Commission (CSRC) issued the *Opinions on Strictly Implementing the Delisting System* (the “*Opinions*”) and drafted six rules, including the *Decision on Revising the Guidelines for Evaluation of Science and Technology Innovation Attributes (for Trial Implementation) (Draft for Comment)* and the *Decision on Revising the List of the China Securities Regulatory Commission on Random Inspection Matters (Draft for Comment)*, to solicit public opinions by April 27, 2024.

The *Opinions*, with a view to raising the overall quality of the existing listed companies, ramp up efforts to eliminate “zombie”, “shell” and “black sheep” companies, and reduce the value of “shell” resources by strictly implementing the delisting standards; meanwhile, the *Opinions* call for providing diversified delisting channels and enhancing the protection of the investors of delisted firms. Specific actions involve the following areas: (1) strictly implementing mandatory delisting standards; (2) further providing smooth multiple delisting channels; (3) reducing the value of “shell” resources; (4) strengthening the regulation of delisting; and (5) ensuring compensation relief for delisted investors.

(Source: China Securities Regulatory Commission)

