

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.

CONTACT US

Shanghai Office

Address: 26th Floor, The Center, No.989 Changle Road, Shanghai 200031 P.R.C.

Tel: (86-21) 5292-1111; (86-21) 6350-0777

Fax: (86-21)5292-1001; (86-21) 6272-6366

E-mail: mail@watsonband.com ;
mail-ip@watsonband.com

Beijing Office

Address: 5C, D Block, Fuhua Mansion, No. 8 North Chaoyangmen Street, Dongcheng District, Beijing 100027 P.R.C.

Tel: (86-10) 6625-6025

Fax:(86-10) 6445-2797

E-mail: beijing@watsonband.com;
mail-ip@watsonband.com

Hong Kong Office

Address: Room 2004, Kinwick Center, 32 Hollywood Road, Central District, Hong Kong

Tel: (86-21) 5292-1111*123;
(86-21) 852-3197-0091

Harbin Office

Address: Room A2, Madi-er Shopping Center No.37 West Badao Street, Daoli District, Harbin 150010 P.R.C.

Tel: (86-451) 8457-3032;

(86-451) 8457-3032

E-mail: harbin@watsonband.com

Gansu Office

Room 1823, Real Estate Tower, No.1 Tongwei Road, Lanzhou, Gansu Province, 730000, P.R.C.

E-mail: gansu@watsonband.com



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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.

The Supreme People's Court Cleans Up and Abolishes 103 Judicial Interpretations

In order to adapt to the development and changes of the situation, and ensure unified and correct application of the P.R.C. law, based on the relevant laws and regulations and the real judicial practice needs, the Supreme People's Court decided to abolish 103 judicial interpretations. This decision took effect on July 20, 2019.

The abolished judicial interpretations include (1) 53 civil judicial interpretations, such as Several Regulations on Strict Enforcement of the Civil Procedure Law of the People's Republic of China in Economic Trials, Several Regulations on Issues Concerning the Reform of Civil Economic Trial Methods, etc.; (2) 24 criminal judicial interpretations, such as Response to the Question of Whether Reeducation through Labor Periods can be Converted to Prison Sentence Periods, Response to the Question of How to Determine the Nature of Crimes Committed by Rural Cooperative Foundation Members, etc.; and (3) 26 general and administrative procedure judicial interpretations, such as Visitor Reception Work Specifications of the Supreme Court's Division of Complaints and Appeals, Regulations on Several Issues Concerning the Jurisdiction of Administrative Cases, etc.

This comprehensive cleanup task focused on solving the inconsistency between certain judicial interpretations and current laws and/or later-promulgated judicial interpretations. The 103 abolished judicial interpretations were mainly (i) inconsistent with current laws, (ii) replaced by later-promulgated judicial interpretations, or (iii) in conflict with later-promulgated judicial interpretations.

(Source: gov.cn)

Measures for Management of Major Breach of Law and Dishonesty Roster (Revised Draft for Comments) Released for Public Consultation

Recently, the State Administration for Market Regulation (SAMR) drafted the Measures for Management of Major Breach of Law and Dishonesty Blacklist (Revised Draft for Comments) and released it for public consultation until August 10, 2019.

The key revisions include: 1) Expand the applicable targets: expanding the targets included in the Major Breach of Law and Dishonesty Blacklist from companies to companies, individual businesses, other organizations, natural persons who hold specific positions in dishonest subjects and are directly liable for major breach of law and dishonesty acts, and natural persons who directly participate in market operation; 2) Expand the applicable situations: forming uniform standards for applicable situations provided by the SAMR's various business lines, the State Food and Drug Administration and the National Intellectual Property Administration, refining and integrating identical or similar situations, and deleting situations which clearly do not conform to the inclusion principles of the Major Breach of Law and Dishonesty Blacklist; 3) Adjust and manage duty assignment: having market supervision departments at various levels manage the Major Breach of Law and Dishonesty Blacklist in the areas within their own jurisdictions, in accordance with the general principle of "management goes to those with jurisdiction"; 4) Improve the inclusion and exclusion procedure; 5) Strengthen the punishment for dishonesty; and 6) Improve the credit repair.

(Source: Ministry of Justice)

China Releases 11 New Measures to Open Up Its Finance Sector

On July 20, the Office of the Financial Stability and Development Committee of the State Council announced to the public that in order to carry out the CPC and the State Council's decision to expand the opening-up policy, based on the principle of "the earlier and faster the better", after in-depth researches and assessments, the Office released the following 11 measures to open up the financial sector:

1. Allowing foreign institutions to rate all types of bonds on the interbank bond market and the exchange bond market when they carry out credit rating businesses in China;

2. Encouraging foreign financial institutions to participate in establishing and investing in financial management subsidiaries of commercial banks;

3. Allowing foreign asset management institutions and subsidiaries of Chinese banks or insurance companies to establish joint venture financial management companies controlled by the foreign party;

4. Allowing foreign financial institutions to invest and establish or purchase shares in pension management companies;

5. Supporting wholly foreign funded companies to establish or purchase shares in money brokerage companies;

6. Early terminating the transition period for raising the limit of foreign shareholding ratio of personal insurance from 51% to 100% by 2020 instead of the original 2021;

7. Removing the restriction that domestic insurance companies must collectively hold more than 75% of the shares of insurance asset management companies, and allowing foreign investors to hold more than 25% of the shares.

8. Easing the entry conditions for foreign-funded insurance companies and removing the requirement on 30 years of operation;

9. Advancing the deadline for removing restrictions on foreign stock ratio of securities companies, fund management companies and futures companies from 2021 to 2020;

10. Allowing foreign-funded institutions to receive the interbank bond market Type A main underwriting license;

11. Further facilitating foreign institutional investors' to invest in the interbank bond market.

(Source: gov.cn)



Accelerated Improvement in the Market Entity Exit Mechanism

In order to further clear the exit channel for market entities, lower the cost of exit for market entities, invigorate competition between market entities, improve the survival of the fittest market system, and push forward quality economic growth, with approval from the State Council, 13 departments including the National Development and Reform Commission recently jointly issued the Reform Plan for Accelerated Improvement in Market Entity Exit Mechanism.

According to Wei Meng, the press spokesman of the National Development and Reform Commission, market entity exit is an inevitable result of the survival of the fittest market mechanism. Accelerated improvement in market entity exit mechanism reform is beneficial to (i) deepening the structural reform on the supply side, and creating a good system environment for optimizing reserve, preventing and resolving overcapacity and accelerating clearance of zombie companies; (ii) optimizing the business environment and allowing China's bankruptcy system to further adapt to its economic development and social improvement; and also (iii) beneficial to improving the socialist market economy system, optimizing the exit method, improving the exit procedure, and increasing exit efficiency.

(Source: MOF)

Regulations for Optimization of Business Environment (Draft) Released for Public Comments

Recently, the National Development and Reform Commission released the Regulations for Optimization of Business Environment (Draft for Comments) (hereinafter the “Draft”) for public consultation. According to the Draft, the State Government guarantees that market entities of all types of ownership may equally obtain production factors including human resources, capital, land use rights and natural resources in accordance with the law, and participate in fair market competition.

According to the Draft, various areas and departments shall guarantee market entities of all types of ownership and in all areas are fairly treated in terms of government funding, land supply, tax benefits, cost reduction, qualification permits, standard setting, project declaration and title assessment in accordance with the law. Abuse of administrative power to eliminate and limit competition shall be prohibited. Bidding & tendering and government procurement shall be

open, transparent, fair and just, and shall equally treat market entities of all types of ownership and in all areas. Restricting or eliminating market entities by unreasonable conditions shall be prohibited.

The Draft makes clear that the State Government strengthens IP protection, strictly punishes illegal acts of IP infringement in accordance with the law, pushes forward the establishment of the system of punitive damages for IP infringement, and fully protects the legitimate rights and interests of IP rights owners. Financial institutions shall provide identical loan interest rates and loan conditions for market entities of all types of ownership under equal application conditions, and shall not set discriminatory loan approval requirements for market entities of different types of ownership.

The Draft incorporates 7 chapters with a total of 68 articles, detailed by General Provisions, Market Entities, Market



Environment, Government Services, Supervision and Law Enforcement, Legal System Guarantee and Supplementary Provisions,

(Source: gov.cn)

Four Ministries Jointly Release the Cloud Computing Service Security Assessment Measures

On July 22, the State Internet Information Office (SIIO), the National Development and Reform Commission (NDRC), the Ministry of Industry and Information Technology (MIIT), and the Ministry of Finance (MOF) jointly released the Measures for Security Assessment of Cloud Computing Services. The four ministries jointly conducted the cloud computing service security assessment in order to improve the security and controllability of cloud computing services procured and used by party and government agencies and critical information infrastructure operators, as well as to reduce the network security risks brought about by procuring and using the cloud computing services, and to improve the confidence of party and government agencies and critical information infrastructure operators in shifting their business and data to cloud service platforms.

Cloud computing service security assessment are a security assessment targeted at cloud platforms that provide service to party and government agencies and critical information infrastructure operators, upon application by the cloud service provider. Different cloud platforms operated by the same cloud service provider must separately apply for the security assessment. The steps mainly include: declaration, acceptance, evaluation by professional technical institutes, comprehensive evaluation by the cloud computing service security assessment expert panel, deliberation regarding the coordinating mechanism for cloud computing service security assessment work, approval by the SIIO, publication of the assessment results, and continual supervision, etc.

(Source: Ministry of Finance)

Password Law (Draft) Released for Public Consultation

The Password Law of the People's Republic of China (Draft) was deliberated at the 11th Session of the 13th Standing Committee of the National People's Congress. On July 5, the Password Law of the People's Republic of China (Draft) (hereinafter the "Draft") was released for public consultation on the NPC's official website (www.npc.gov.cn) until September 2, 2019.

The overall legislative thinking behind the Draft included three points: (1) make clear the principles for classification and management of core passwords, normal passwords and commercial passwords; (2) focus on the balance between functional transformation and the need for lessening government intervention, and ensuring national security; (3) pay close attention to handling the relationship between the Draft and the Network Security Law, the Law on Guarding State Secrets and other relevant laws. The Draft includes a total of 5 chapters and 44 articles, with main contents including: the leadership and management system for password work; the principles for classification and management passwords; the development and safeguard measures for passwords; core passwords and normal passwords; and commercial passwords.



(Source: National Network Information Office)

Measures for Management of Securities Brokerage Business (Draft) Released for Public Consultation

In order to further regulate securities brokerage business activities and to prevent financial risks, the China Securities Regulatory Commission drafted the Measures for Management of Securities Brokerage Business (Draft) (hereinafter the “Draft”), and released it for public consultation on July 26. The public consultation period ends on August 26, 2019.

The main contents of the Draft include: (1) Try to define securities brokerage business for the first time. With reference to Article 112 and other related provisions of the Securities Law, clear rules were provided as a basis for cracking down on illegal securities brokerage business. (2) Protect the legitimate rights and interests of investors. Securities brokerage companies are required to protect the investors’ right to information, right to property security and right to fair deals; necessary systematic protection should be provided for specific matters such as collection of transaction commissions, protection of clients’ property, provision of account statements, handling account transfers and cancellations, and handling of complaints, etc. (3) Fully regulate major business stages. Rules were provided for the marketing, account opening, transaction and settlement stages involved in securities brokerage business. (4) Strengthen internal management and control responsibilities of securities brokerage companies. Regulations were set forth in terms of separation walls, personnel management, organizational guarantees, compliance auditing, information systems and operation locations, etc. (5) Strengthen supervision and management and responsibility investigation. The corresponding administrative supervision and administrative punishment measures were both provided within the scope permitted by the law, and the “double punishment” principle should be applied; in addition to the responsibilities of the companies, the responsibilities of the relevant individuals should also be investigated.

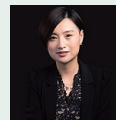
(Source: Ministry of Justice)



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.



Frank Qian
Managing Partner, Attorney-at-law
E-mail : Frank.qian@watsonband.com



Cathy Wu
Partner, Attorney-at-law
E-mail : Cathy.wu@watsonband.com



Ze Gao
Partner, Attorney-at-law
E-mail : Ze.gao@watsonband.com

Provisional Measures for Supervision and Management of Financial Holding Companies (Draft) Released for Public Consultation

Recently, the People’s Bank of China and the relevant departments jointly drafted the Provisional Measures for Supervision and Management of Financial Holding Companies (Measures) (hereinafter the “Measures”), and released it for public consultation on July 26. The public consultation period ends on August 24.

The main contents of the Measures include: (1) establish a market entry permit for financial holding companies; make market entry the first threshold for risk prevention and control, and have the People’s Bank supervise financial holding companies that satisfy certain requirements and were incorporated through investment of non-financial institutions in financial institutions; (2) strictly supervise shareholder qualifications; set forth conditions for becoming financial holding company shareholders and their prohibited actions by means of positive and negative lists; (3) strengthen the accuracy of capital sources and supervise the compliance of capital use; (4) clarify shareholding structure management; (5) strengthen the corporate governance and the supervision of connected transactions; (6) improve the risk “firewall” system; and (7) implement a transition period.

(Source: Ministry of Justice)

State Administration for Market Regulation Promulgates the Provisional Regulations on Prohibition of Monopoly Agreements

The Provisional Regulations for Prohibition of Monopoly Agreements (hereinafter the “Provisional Regulations”) promulgated by the State Administration for Market Regulation (SAMR) on July 1, 2019, as a complementary set of regulations to the Anti-Monopoly Law, will take effect on September 1, 2019. The promulgation of the Provisional Regulations is a major adjustment made to the Anti-Monopoly Law complementary regulations since the merging of the three anti-monopoly enforcement agencies. It indicates that China’s anti-monopoly law enforcement will be further strengthened, and also provides clear guidance for law enforcement by anti-monopoly enforcement agencies and anti-monopoly compliance by companies.



According to the Provisional Regulations, operators in competition are prohibited to conclude the following types of monopoly agreements on product or service prices: 1) Fix or change price levels, price fluctuation ranges, profit margins or other fees such as discounts and service charges; 2) Agree to use standard formulas to calculate prices; 3) Limit the independent pricing right of operators participating in the agreement; 4) Fix or change prices through other methods. Industry associations are prohibited from the following actions: (i) formulate or issue industry association constitutions, rules, decisions, notices, or standards with contents eliminating or restricting competition; (ii) call together, organize, or push forth operators in the industry to reach agreements, resolutions, summaries, or memorandums that with contents eliminating or restricting competition.

(Source: State Administration for Market Regulation)

Law on Promotion of the Cultural Industry (Draft) Released for Public Consultation

On June 28, the Law on Promotion of the Cultural Industry (Draft for Comments) (hereinafter the “Draft”) of over 7,700 words was released for public consultation.

The Draft clarified for the first time the definition of the cultural industry: “The cultural industry stated in this Law collectively refers to (i) operational activities involving creation, production, dissemination and display of cultural products, as well as provision of cultural services that hold culture as their core content; and (ii) activities necessary for realizing the above operational activities, such as cultural auxiliary production and intermediary services, cultural equipment production, and culture consumption terminal production, etc.”

“This serves as the logical start of the legislation, and a realistic need in order to ensure precision and effectiveness of the promotional measures,” says the President of the Central University of Finance and Economics (CUFE) Academy of Culture and Economics, Pengju Wei, who believes that the operational cultural industry is a corresponding concept to the public benefit cultural industry. The definition and the scope of the cultural industry should primarily be based on the Classification of Cultural and Related Industries (2018), revised and published by the State Statistical Bureau, including operational activities involving creation, production, dissemination and display of cultural products, as well as provision of cultural services that hold culture as their core content, as along with other related auxiliary activities. That is a scientific conclusion of theories and practices in the cultural industry over the past years.

(Source: gov.cn)

State Internet Information Office: Internet Rumor Spreaders will be Listed in the Blacklist of Dishonest Subjects

Recently, the State Internet Information Office drafted the Measures for Management of Credit Information of Internet Information Service Subjects with Major Dishonest Acts (Draft) (hereinafter the “Draft”), and released it for public consultation.

According to the Draft, if internet information service providers and users are involved in any of the following situations, the subject of the act will be listed in the blacklist of internet information service subjects with major dishonest acts:

(1) Due to a violation of the relevant laws or regulations on internet information content management, was given administrative punishment by internet information departments independently or jointly with other departments, including closing the website, revoking the relevant business permit or license, withdrawing permit or canceling recordation;

(2) Due to a violation of the relevant laws or regulations on internet information content management, was given administrative punishment other than those stated in (1) by internet information departments independently or jointly with other departments, and refused to perform or did not perform accordingly within the required time limit;

(3) Fabricated, posted, or disseminated information that violates social morality, business ethics or good faith through the Internet, or intentionally provided technical / equipment support or other services for the fabrication, posting or dissemination of information that violates social morality, business ethics or good faith, which seriously jeopardized the order of dissemination in cyberspace, harmed public social welfare and the legitimate rights and interests of the public, and caused abominable impacts on the society;

(4) Other situations involving violations of laws or administrative regulations and major acts of dishonesty.

(Source: The Legal Daily)

China Consumers Association's First Public Interest Action Concluded through Mediation

On July 22, the public interest action involving illegal production and sale of right three-wheeled motorcycles between China Consumers Association (CCA) and Lovol Heavy Industry Co., Ltd. et al reached a civil mediation agreement under the court's presidency. All six claims of the CCA were realized.

This is the first public interest action filed by the CCA, and also China's first consumer-related civil public interest action that is concluded through mediation. Upon the start of this public interest action, Lovol paid great attention and immediately took rectification measures, fully stopped the production and sale of the non-standard right three-wheeled motorcycles, and under guidance from the CCA, actively carried out consumer rights protection and enterprise production & operation compliance improvement work.

It is reported that on July 1, 2016, the CCA filed a consumer-related civil public interest action against Lovol and three other defendants on the ground of their illegal production and sale of right three-wheeled motorcycles. On July 25, 2016, the Beijing Fourth Intermediate People's Court officially accepted the case. Over the course of the action, the CCA and the four defendants including Lovol had rounds of talks, mediation and evidence cross-examination, and reached a preliminary mediation agreement on April 26, 2019. After announcement and examination by the People's Court, the Beijing Fourth Intermediate People's Court officially issued a civil mediation letter on June 10, 2019. The CCA publicized the full text of the civil mediation letter on its official website.

(Source: gov.cn)

