

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.

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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.

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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 Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

Tax Policies in Support of Prevention and Control of COVID-19 Outbreak Announced

The Ministry of Finance (“MOF”) and the State Taxation Administration (“STA”) have recently issued the Announcement on Tax Policies in Support of Prevention and Control of the Pneumonia Outbreak Caused by Novel Coronavirus (the “Announcement”), the Announcement on the Tax Policy for Donations in Support of Prevention and Control of the Pneumonia Outbreak Caused by Novel Coronavirus and the Announcement on the Individual Income Tax Policy for Prevention and Control of the Pneumonia Outbreak Caused by Novel Coronavirus, all of which shall retrospectively take effect from January 1, 2020 till the date to be announced separately depending on developments in the epidemic situation.

The Announcement reads that: 1. The costs of relevant equipment newly purchased for capacity expansion by enterprises that manufacture key supplies indispensable for prevention and control of the pneumonia outbreak could be counted, on a lump-sum basis, into the costs and expenses for the current period and are deductible before the calculation of enterprise income tax. 2. Enterprises that manufacture key supplies indispensable for prevention and control of the pneumonia outbreak may file applications with the competent tax authorities, on a monthly basis, for a refund of all incremental tax credits of value-added tax (VAT). 3. The income obtained by taxpayers from transportation of key supplies indispensable for prevention and control of the pneumonia outbreak will be exempt from VAT. 4. The losses incurred in 2020 by enterprises engaged in those industries getting into difficulty as a result of the epidemic may be carried forward for a period of up to eight years, instead of the previous five years. 5. The income obtained by taxpayers from the provision of public transportation services and daily life services and from the provision of express delivery services for daily necessities of residents will be exempt from VAT.

(Source: Ministry of Finance)

MOF Releases Administrative Measures for Government Procurement of Services

The Ministry of Finance (“MOF”) has recently issued the Administrative Measures for Government Procurement of Services (the “Measures”), with effect from March 1, 2020.

The Measures consist of 35 articles divided into seven chapters, including chapters expounding on purchasers and service providers, subject matters of procurement and catalogs of procurement, conducting of activities involved in procurement, contracts and contract performance, supervision and administration, and legal liability respectively, in addition to general provisions and supplementary provisions. The Measures provide a “negative list” regarding government procurement of services, clearly stating that six types of matters, including “service items beyond the scope of government duties” and “matters involving duties that should be directly performed by the government itself”, shall not be the subject matters of government procurement of services. As for service items within the scope of government duties, the procurement should be made in a standard way as prescribed by state laws and regulations. Also, the Measures highlight that qualified individuals may be the providers of services purchased by the government, and meanwhile, disguised forms of use of workforces under the guise of government procurement of services are prohibited.

(Source: Ministry of Finance)

Basic Specification for Collecting Personal Information in Mobile Internet Apps Released for Public Consultation

The National Information Security Standardization Technical Committee (“NISSTC”) has recently issued the Information Security Technology - Basic Specification for Collecting Personal Information in Mobile Internet Applications (App) (Draft for Comment) (the “Draft for Comment”) for public comment by March 20, 2020.

To address current issues concerning personal information protection associated with mobile internet applications (App), such as default authorization, bundling, collection of information beyond the authorized scope, the Draft for Comment sets forth the management requirements and technical requirements for collection of personal information by Apps, and the minimum necessary information collectable by Apps that offer common services such as navigation, online ride sharing, and instant messaging, thus providing a technical guidance on efforts to further regulate the collection of personal information in mobile internet Apps. Among others, the Draft for Comment prescribes that collection of personal information in an App requires the fulfillment of multiple requirements, including two requirements reading “the App operator shall perform its duties to safeguard the safety of personal information and take necessary measures to ensure the safety of personal information” and “the rules for how to collect personal information in an App should be made public in the App’s privacy policy or by other means”.

(Source: National Information Security Standardization Technical Committee)



Foreign-invested Banks Allowed to Apply for Adjusted Increase in Scale of Medium- and Long-term Foreign Debts by December 31

The General Office of the National Development and Reform Commission (“NDRC”) has recently issued the Circular on the Application for the Scale of Medium- and Long-term Foreign Debts in 2020 by Foreign-invested Banks in China (the “Circular”).

The Circular reads that a foreign-invested bank may submit, to the NDRC through the relevant provincial-level development and reform commission, an application for an adjusted increase in the scale of medium- and long-term foreign debts, by the deadline of December 31, 2020. Branches established in China by a foreign-invested bank may share and adjust, among themselves, the medium- and long-term foreign debt quota, but the internal adjustment should be reported by its leading reporting branch in China to the NDRC for record-filing. Meanwhile, the Circular expressly states that in determining the scale of medium- and long-term foreign debts in 2020, the NDRC will mainly give consideration to the actual use of foreign debts in the most recent three years and the demands for foreign exchange in the loans for investment projects of fixed assets and the loans for medium- and long-term working capital in 2020. The Circular also notes that each foreign-invested bank shall make good use of foreign debt capital in line with national industry policies and the key priorities stated in the strategic planning, to give stronger support to the real economy, promote the integrated development of financial capital and industrial capital and add impetus to industrial transformation and upgrading and the supply-side structural reform.

(Source: National Development and Reform Commission)

CBIRC Releases Administrative Measures for Handling of Consumer Complaints in Banking and Insurance Sectors

The China Banking and Insurance Regulatory Commission (“CBIRC”) has recently issued the Administrative Measures for Handling of Consumer Complaints in Banking and Insurance Sectors (the “Measures”), with effect from March 1, 2020.

The Measures are divided into six sections, namely general provisions, organizational management, complaint handling, working systems, supervision and administration, and supplementary provisions. Among others, the Measures advocate higher efficiency of complaint handling, adding that for consumer complaints in which facts are clear and the matters in dispute are simple, banks and insurance institutions shall complete handling such complaints within 15 days and inform complainants of the results, and in case of complicated matters, the 15-day time limit may be extended to 30 days; if the circumstance is especially complex or due to other special reasons, the time limit may be extended again by another 30 days, subject to the necessary examination and approval process. In addition, the Measures call on banks and insurance institutions to establish sound systems for retrospectively finding out and rectifying the root causes and for pursuing the liability, improve the mechanisms concerning information disclosure and evaluation and assessment, and establish the mechanism of withdrawal from complaint handling. Furthermore, the Measures prescribe that banks and insurance institutions shall neither refuse to accept reasonable requests made by complainants, nor require complainants to provide materials that the institutions have already had or could obtain through checking internal archives.

(Source: China Banking and Insurance Regulatory Commission)

CBIRC Releases Interim Measures for the Equity Management of Trust Companies

The China Banking and Insurance Regulatory Commission (“CBIRC”) has recently enacted and issued the Interim Measures for the Equity Management of Trust Companies (the “Measures”), with effect from March 1, 2020.

The major contents of the Measures deal with three aspects as below. The first is further stepping up the management of shareholders, particularly major shareholders, of trust companies, from the perspectives of market access, dynamic management of equity information, category-based management and control of shareholders’ behavior, etc. The second is further intensifying the management of related-party transactions of trust companies from the angles of principles for management of related-party transactions, the name list-based management of related parties, and internal control mechanism for related-party transactions, in order to have trust companies fulfill their responsibilities for management of related-party transactions. And the third is prompting trust companies to improve the building of the corporate governance mechanism by assigning responsibilities for corporate governance to their shareholders and at the company level and clearly defining the responsibilities of different subjects in the process of equity changes and of equity holdings. The regulatory guideline that regulatory agencies encourage trust companies to optimize their equity structure and incorporate strategic investors that care about long-term development and have mature experience in management to promote the transformative development of trust companies and raise the level of professional services, is made clear.

(Source: China Banking and Insurance Regulatory Commission)



CNIPA Clarifies the Handling of Trademark Applications Amid the Pneumonia Outbreak

The Trademark Office of the China National Intellectual Property Administration (“CNIPA”) has recently issued the Circular on the Handling of Trademark Applications during the Period of Epidemic Prevention and Control (the “Circular”).

The Circular provides clarity in three aspects as below. First, it is recommended that relevant business be handled through the online service system for trademark affairs. 24 types of trademark applications, including trademark registration applications, alteration applications, renewal applications and assignment applications, could be handled through the aforesaid online service system, and the online payment function has already been launched. Applicants are advised to give preference to online submission of documents, online payment of fees, among other online business functions. Second, paper documents that could be submitted by post should be posted as far as possible. Documents may be submitted in this way to handle the opposition to a trademark, the review of a trademark, or other business. Third, applicants are advised to pay close attention to service notices released by local service windows if they choose to handle trademark applications at the nearest service window. They are also advised not to handle affairs at physical service windows in all regions as far as possible. In case it is truly necessary to handle affairs at local service windows for acceptance of trademark applications or in the service halls of the non-Beijing trademark examination cooperation centers, applicants are advised to follow instructions on the work notices released by local relevant institutions during the period of epidemic prevention and control.

(Source: China National Intellectual Property Administration)



SAMR Solicits Comments on Interim Provisions on Examination of Concentrations of Undertakings

The State Administration for Market Regulation (“SAMR”) has recently issued the Interim Provisions on Examination of Concentrations of Undertakings (Draft for Comment) (the “Draft for Comment”) for public comments by February 7, 2020.

According to the Draft for Comment, regarding the declaration of a concentration of undertakings, the turnover shall include the revenue obtained by related undertakings from sale of products and provision of services during the preceding accounting year, exclusive of relevant tax payments and the associated surcharges. Prior to the formal declaration, undertakings participating in a concentration may apply with the SAMR for consultations on issues related to the declaration of such concentration. The Draft for Comment prescribes that the SAMR shall, within the time limit specified in Article 26 of the Anti-Monopoly Law, decide on whether to prohibit the proposed concentration of undertakings and notify the declarant in writing of its decision. In case the proposed concentration of undertakings is not banned, the SAMR may decide to impose additional restrictive conditions to mitigate the negative effects caused by such concentration on competition. Furthermore, the Draft for Comment clearly states that any entities and individuals shall have the right to report to the SAMR any suspected concentrations of undertakings, adding that the SAMR shall keep the information on whistleblowers confidential.



(Source: State Administration for Market Regulation)

Pilot Reform of Civil Proceedings for the Separation of Complicated Cases from Simple Ones Kicks off

The Supreme People’s Court (“SPC”) has recently issued the Plan for the Pilot Reform of Civil Proceedings for the Separation of Complicated Cases from Simple Ones (the “Plan”) and the Implementing Measures for the Pilot Reform of Civil Proceedings for the Separation of Complicated Cases from Simple Ones (the “Measures”), signaling the official kick-off of the two-year pilot reform.

The Plan clarifies the goals and basic principles of the reform, key work of the pilot reform, coverage and duration of the pilot program, implementation of the plan, organizational guarantee, etc. The Measures set out more details based on the Plan and serve as the basis of future work on the pilot reform. Major contents of the Plan and the Measures touch upon five aspects, including: 1. optimizing the judicial confirmation procedure; 2. improving the legal proceedings for small-amount lawsuits; 3. refining the rules for simplified proceedings; 4. expanding the scope of application of the sole-judge proceedings; and 5. bettering the rules for online litigation. The Plan and the Measures stipulate that the pilot reform of civil proceedings for the separation of complicated cases from simple ones will be launched among intermediate courts, specialized courts, and grass-roots courts within the jurisdiction thereof, in 15 provinces, autonomous regions and municipalities directly under the Central Government, including Beijing, Shanghai, Jiangsu, Zhejiang, Fujian and Guangdong. Courts under the pilot reform will adjust the application of relevant legal provisions, as authorized by the Standing Committee of the National People’s Congress (“NPC”).

(Source: Supreme People’s Court)

Revised Text of Mainland-Macao Arrangement for Serving Judicial Documents and Obtaining Evidence in Civil and Commercial Cases Signed

The Supreme People’s Court (“SPC”) has recently issued the Decision on Revising the Arrangement Concerning Entrusting Each Other with Serving Judicial Documents and Obtaining Evidence in Civil and Commercial Cases by the Courts of the Mainland and of the Macao Special Administrative Region (the “Decision”), with effect from March 1, 2020.

According to the Decision, the revised Arrangement Concerning Entrusting Each Other with Serving Judicial Documents and Obtaining Evidence in Civil and Commercial Cases by the Courts of the Mainland and of the Macao Special Administrative Region (the “Arrangement”) stipulates that where the courts of the Mainland and of the Macao Special Administrative Region entrust each other with serving judicial documents and obtaining evidence, the relevant documents and information should be transmitted and forwarded electronically through the Mainland-Macao judicial assistance network platform. This platform has been basically completed so far and will be officially put into operation upon the effectiveness of the revised text of the Arrangement. Once launched, the platform will enable the courts of the Mainland and of the Macao Special Administrative Region to transmit and forward, examine, process and follow up online the relevant documents and information throughout the process in cases requiring the service of such documents and the collection of evidence. Also, the Arrangement notes that the SPC may authorize the entrustment of service of judicial documents and obtainment of evidence between some intermediate people’s courts and grassroots-level people’s courts and the Court of Final Appeal of Macao, cutting a previous step of examination and forwarding by high courts. In addition, the Arrangement incorporates new provisions in respect of witness testimony given through video and audio records.

(Source: Supreme People’s Court)