

# W&B Legal Newsletter

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## Spotlights

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Watson & Band Received Top Ranking in the Trademark Contentious Area on 2020 IP STARS  
Watson & Band Wins 2020 China Business Law Awards in the Data Protection and Privacy Area  
Watson & Band Listed among 2020 LEGALBAND Top Ranked Law Firms

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### Labor and Employment

Employers and Laborers Allowed to Enter into Electronic Labor Contracts by Consensus

# 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 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 Received Top Ranking in the Trademark Contentious Area on 2020 IP STARS

Recently, the famous authoritative IP media Managing IP published in 2020 IP STARS Trademark Ranking. Watson & Band, with its long-term outstanding performance and good reputation in the intellectual property area, received top ranking in the “Trademark: Contentious” area.

IP STARS is the leading specialist guide to IP law firms and practitioners worldwide. Managing IP published its first legal directory in 1994 and rebranded it in 2013 as IP STARS. The research for IP STARS covers a variety of IP practice areas and more than 80 jurisdictions, making it the most comprehensive and widely respected guide in the IP profession.

Before compiling the rankings, IP STARS’ research analysts also conducted their own independent research, including an analysis of publicly available information (such as court or IP office data) and existing data we hold on firms. The aspects assessed for the firm rankings include expertise, workload, market reputation/record, outcomes achieved for clients, and unique strengths in a given practice area.



## Watson & Band Wins 2020 China Business Law Awards in the Data Protection and Privacy Area



On April 8, China Business Law Journal announced winners of its 2020 China Business Law Awards. With its professionalism and excellence in the data-related legal and IP services area in recent years, Watson & Band is honored as an award winner in the Data Protection and Privacy category.

The China Business Law Awards aim to recognize and praise law firms with outstanding performances in the various legal and industrial areas. The decisions this year are based on thousands of votes and recommendations received from in-house counsels, other senior corporate executives and legal professionals from around the world, as well as hundreds of submissions from Chinese and international law firms.

## Watson & Band Listed among 2020 LEGALBAND Top Ranked Law Firms

On April 14, the world famous legal media LEGALBAND published its 2020 Top Ranked Law Firms and Top Ranked Lawyers.

Watson & Band’s with its strengths in the intellectual property area, continues to take a lead in Band 2 in the intellectual property litigation area. Our Senior Founding Partner, Mr. Shenmin Xu, is honored among the Top Ranked Lawyers for his over three decades’ outstanding performance in this practice area.

Meanwhile, Watson & Band, with its outstanding performance in the bankruptcy, reorganization and liquidation area, is again honored among the Top Ranked Law Firms in this area. Mr. Xiaosu Zhu, Partner of Watson & Band, is also listed among the Top Ranked Lawyers for his dedication to this practice area in more than a decade’s time.



## SAMR Releases Its 2020 Legislative Plan

The State Administration for Market Regulation (“SAMR”) recently issued the 2020 Legislative Plan (the “Plan”).

The Plan touches upon contents in three aspects, including “scheduling legislative programs in a science-based and rational manner, with the focus on priorities regarding market regulation”. Among others, the Plan states that seven laws and administrative regulations, including the Anti-Monopoly Law, the Product Quality Law and the Regulations on Commercial Registration, will be drawn up and submitted for review; among the 48 departmental rules to be enacted and revised are the Measures for the Implementation of the Administration of Enterprise Name Registration, the Interim Measures for Random Inspection on Information Publicized by Enterprises, and the Interim Provisions on Examination of Concentrations of Undertakings. Meanwhile, effective work will continue to support the deliberation of revisions to the Patent Law and the formulation and revision of the Administrative Provisions on the Registration of Enterprise Names, the Regulations on Individual Businesses and the Regulations on Supervision and Administration of Medical Devices.

(Source: State Administration for Market Regulation)



## **CSRC Announces the Framework of Evaluation Indicators Regarding Sci-tech Innovation Attributes for STAR Market**

The China Securities Regulatory Commission (“CSRC”) recently issued the Guidelines for Evaluation of Science and Technology Innovation Attributes (for Trial Implementation) (the “Guidelines”), immediately effective from the date of issuance.

The Guidelines clarify the basic conditions to be recognized as enterprises featuring science and technology innovation, as well as some exceptions in this regard, and provide a framework of evaluation indicators regarding science and technology innovation attributes. The framework of evaluation indicators contains three general indicators and five exceptions. Three general indicators are “the amount of money invested in research and development or the proportion of research and development input in the business revenues”, “patented inventions”, and “business revenues or the compound annual growth rate of business revenues”. These general indicators are mainly used to measure an enterprise’s research and development input, fruits and their actual impacts on its business operations, and could give a relatively full picture of the enterprise’s research and development input, achievements, and the scientific and technological content of the achievements. According to the Guidelines, an enterprise will be recognized as one featuring science and technology innovation, provided that it satisfies all requirements under three general indicators, or that it falls in any of the five exceptions, although it does not satisfy all requirements under three general indicators.

(Source: China Securities Regulatory Commission)

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## **CNIPA Releases Administrative Measures for Use of Special Marks of Geographical Indications (for Trial Implementation)**

The China National Intellectual Property Administration (“CNIPA”) has recently enacted and issued the Administrative Measures for Use of Special Marks of Geographical Indications (for Trial Implementation) (the “Measures”) which takes effect immediately from the date of issuance.

According to the Measures, four types of subjects, including “producers that have been approved, as stated in public announcements, to use the special marks of geographical indications on their products”, are the legal users of special marks of geographical indications. These legal users shall observe the principle of good faith, fulfill three obligations including “organizing the production of geographical indication products pursuant to relevant standards, management practices and administrative rules for such use”. Meanwhile, the Measures prescribe that where a legal user of the special mark of a geographical indication fails to organize production activities in accordance with the corresponding standards, management practices or relevant administrative rules for use, or has not used, within two years, the special mark on the protected geographical indication products, the intellectual property authority shall disqualify it from using the special mark of the geographical indication concerned. In addition, the Measures mandate a transition period till December 31, 2020 for the use of the original special marks of geographical indications, stating that products bearing the original marks that are produced before December 31, 2020 may continue to be circulated in the market.

(Source: China National Intellectual Property Administration)

## CNIPA Invites Comments on Guidelines for Determination of Generic Terms in Geographical Indication Protection

The China National Intellectual Property Administration (“CNIPA”) recently drafted and issued the Guidelines for Determination of Generic Terms in Geographical Indication Protection (Draft for Comments) (the “Draft for Comments”) for public consultation by May 9, 2020.

The Draft for Comments stipulates that a geographical indication seeking protection should not be a generic term used in China. In case a combination of terms is used to apply for geographical indication protection, the separate component of the terms that is or could become a generic term will not be protected for the geographical indication purpose. In addition, the Draft for Comments states that determining whether the term associated to a geographical indication should be considered generic should give consideration to five factors, including “use of such term in China’s laws, regulations, national standards or industry standards to represent a specific type or category of products”. Moreover, the Draft for Comments proposes that before an announcement for geographical indication protection or an administrative decision is made, the part in the combination of terms that will not be protected should be made public under Article 5 of the Draft for Comments.

(Source: China National Intellectual Property Administration)



## **NISSTC Invites Comments on Guide to Self-evaluation of Collection and Use of Personal Information by Mobile Apps**

The Secretariat of the National Information Security Standardization Technical Committee (“NISSTC”) recently enacted and issued the Practical Guide to Cyber Security Standards: Guide to Self-evaluation of Collection and Use of Personal Information by Mobile Internet Applications (App) (Draft for Comments) (the “Draft for Comments”) for public consultation, which has ended by the moment.

The Draft for Comments outlines six key points of the evaluation: (1) whether the rules for collection and use of personal information are made public; (2) whether the purposes and methods to collect and use personal information and the scope of personal information to be collected and used are explicitly clarified; (3) whether users’ consent to collection and use of personal information is obtained; (4) whether the principle of necessity is observed to collect and use only personal information directly related to the services offered; (5) whether personal information is offered without consent to others; and (6) whether the function for deleting or updating personal information is available as legally required, or information on how to lodge a complaint or submit a report is published. The Draft for Comments further clarifies the specific circumstances regarding each of these six points. For instance, the first point is crystallized into six specific questions, including whether the privacy policy and other rules on collection and use of personal information are provided.

(Source: National Information Security Standardization Technical Committee)

## **NISSTC to Standardize Personal Information Safety Protection for Apps**

The Secretariat of the National Information Security Standardization Technical Committee (“NISSTC”) recently enacted and issued the Practical Guide to Cyber Security Standards: Guidelines for the Safety Protection of Personal Information on Mobile Internet Applications (App) (Draft for Comments) (the “Draft for Comments”) for public consultation, which has ended by the moment.

The Draft for Comments lays out the specific circumstances related to ten problems, including collecting personal information beyond the permitted scope, being impossible to cancel the registration of a user account or setting unreasonable conditions for such cancellation, and compelling users to grant authorization, and the corresponding precautionary measures. Among others, the Draft for Comments proposes that specific scenarios of APP’s collection of personal information beyond the permitted scope include but are not limited to collecting irrelevant information, collecting non-essential information forcibly, and collecting information at an unreasonable frequency. In addition, the precautionary measures for such problem include but are not limited to seven measures, such as “not collecting personal information irrelevant to App services, not demanding the system authorization irrelevant to App services (such demand is not allowable even if the user is given an option to refuse to grant authorization)” and “observing the minimum necessity principle to collect/demand personal information/system authorization directly related to App services”.

(Source: National Information Security Standardization Technical Committee)



## Registration System for Corporate Bond Issuance Kicks in

The National Development and Reform Commission (“NDRC”) recently issued the Circular on Matters Concerning the Implementation of the Registration System for Corporate Bond Issuance (the “Circular”).

The Circular touches upon contents in six aspects as follows: (1) regulating corporate bond issuance through the registration system; (2) stipulating the conditions for issuing corporate bonds; (3) intensifying the information disclosure requirements and the responsibilities of intermediary agencies; (4) urging provincial development and reform commissions to fulfill their regulatory duties; (5) improving coordination and collaboration with relevant departments; and (6) ensuring a smooth transition from the old system to the new one. Among others, the Circular clearly states that issuance of corporate bonds will be subject to the registration system, instead of the previous examination and approval system. The NDRC is the statutory registry in charge of registration of corporate bonds, and issuance of corporate bonds should be registered with the NDRC in accordance with law. In addition, the Circular clarifies that a corporate bond issuer shall meet certain conditions, including having a complete and well-functioning organizational structure and the average distributable profits of the most recent three years being sufficient to cover the one-year interest accrued on corporate bonds. Moreover, the Circular requires that the information-disclosure-centered regulatory philosophy for the registration regime shall be established, and makes it clear that corporate bond issuers are the parties held primarily responsible for information disclosures.

(Source: State Administration for Market Regulation)

## MOF Unveils Operating Guidelines for PPP Project Performance Management

The Ministry of Finance (“MOF”) recently issued the Operating Guidelines for Performance Management of Public-Private Partnership (PPP) Projects (the “Guidelines”) which will go into effect 30 days after the date of issuance.

The Guidelines are divided into six chapters, including performance objectives and management of performance indicators for PPP projects, monitoring of PPP project performance and evaluation of PPP project performance, and shall apply to all PPP projects, including government-payment projects, viability gap funding projects and user-charges projects. The Guidelines clearly state that performance objectives of PPP projects include overall performance objectives and annual performance objectives, adding that performance objectives of PPP projects should touch upon the expected output, desired effects, project management, etc. Meanwhile, the Guidelines require that project implementation agencies shall, as agreed by the project contract, monitor the performance of PPP projects, while the project companies (private capital) shall be responsible for routine performance monitoring. PPP project performance monitoring usually aims at checking the accomplishment of objectives, safeguard measures to ensure the accomplishment, deviation from the objectives, elimination of such deviation, etc.



(Source: Ministry of Finance)

## CSRC Invites Comments on Implementing Measures for Regulatory Measures for Securities and Futures Markets

The China Securities Regulatory Commission (“CSRC”) recently issued the Implementing Measures for Regulatory Measures for Securities and Futures Markets (Draft for Comments) (the “Draft for Comments”) for public comments by April 26, 2020.

The Draft for Comments touches upon contents in five aspects, including: 1. specifying the categories of and how to institute the regulatory measures; 2. clarifying the application of regulatory measures; 3. setting the general procedures for enforcing regulatory measures; 4. setting the detailed procedures for enforcing each category of regulatory measures; and 5. setting out the requirements for making decisions on regulatory measures. The Draft for Comments lists 16 common categories of regulatory measures, includes a catchall clause of “other regulatory measures stipulated by laws, administrative regulations and rules”, and proposes that normative documents other than the CSRC rules cannot stipulate regulatory measures. Moreover, the Draft for Comments requires that enforcement of regulatory measures should be justified by ample evidence and legal basis, and notification procedures should be performed beforehand if certain regulatory measures are enforced, and relevant entities may be briefed on such enforcement.

(Source: China Securities Regulatory Commission)





## **Employers and Laborers Allowed to Enter into Electronic Labor Contracts by Consensus**

The General Office of the Ministry of Human Resources and Social Security (“MOHRSS”) recently issued the Letter on Matters concerning the Conclusion of Electronic Labor Contracts (the “Letter”).

The Letter reads that the Request for Instructions on Electronization of Labor Contract Management during the Epidemic Prevention and Control Period submitted by the Beijing Municipal Human Resources and Social Security Bureau has been well received, and a feedback is given as below after research: an employer may enter into, in electronic form, a written labor contract with a laborer by consensus. In a labor contract made electronically, data messages that could be considered as the written form and reliable electronic signatures may be employed provided that they conform to the provisions of such laws and regulations as the Law on Electronic Signatures. Employers shall ensure that the generation, transmission and storage of electronic labor contracts meet the requirements as set out in such laws and regulations as the Law on Electronic Signatures and that the contracts are complete, accurate and not modifiable. An electronic labor contract that complies with the provisions of the Labor Contract Law and the aforesaid requirements will be legally effective once it has been concluded, and the employer and the laborer shall, as agreed in the electronic labor contract, fulfill their respective obligations.

(Source: State Administration for Market Regulation)