

W&B Legal Newsletter

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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 Assisted with “the First Transaction” of the Data Product “Jiushi Keliubao” Listed on Shanghai Data Exchange

Global Data Ecosystem Conference 2021 was held in Shanghai on November 25, 2021. The Shanghai Data Exchange was established on the same day and a total of 20 data products were listed, covering eight categories such as finance, transportation and communication. Shanghai Public Transportation Card Co., Ltd. (hereinafter “SPTCC”), a subsidiary of Shanghai Jiushi (Group) Co., Ltd., made the first transaction of its data product “Jiushi Keliubao” (the passenger flow statistics and analysis system) successfully listed on the Exchange.

SPTCC engaged Watson & Band Law Offices to assess the legal compliance of listing and transaction of its data product “Jiushi Keliubao” on the Shanghai Data Exchange. The Data Law Service Team of W&B made a full-scale analysis and demonstration of “Jiushi Keliubao” in terms of the legitimacy of data resources, tradability and data flow security, and issued assessment opinions on compliance of the listing and transaction of the data product, thus clearing the way for its successful listing. This project is handled by partner Cathy Wu and lawyers Xin He and Siyuan Li, under the direction of Prof. Fuping Gao, Senior Partner of W&B.

Founded on May 25, 1999, SPTCC is a public service enterprise providing services ranging from the public transportation information service to the construction, operation and settlement of the system of Shanghai public transportation, highway transportation and city tour cards. The listing of SPTCC’s data product “Jiushi Keliubao” would help optimize urban planning and build a smart city of Shanghai.



SASAC Bans Central Enterprises' Provision of Guarantees for Non-group Companies



On November 22, the China State-owned Assets Supervision and Administration Commission (“SASAC”) of the State Council issued the *Circular on Strengthening the Management of Financing Guarantees of Central Enterprises* (the “Circular”).

The *Circular* regulates central enterprises from eight aspects: improving the financing guarantee management system, strengthening budget management of financing guarantee, strictly restricting the entities for which financing guarantee is provided, and strictly controlling the scale of financing guarantee, etc. The *Circular* emphasizes that, a central enterprise is strictly prohibited from providing any form of guarantee to non-

group companies in which it holds no stakes. It is also not allowed to provide guarantees for sub-companies or affiliated companies that are unable to maintain ongoing operations because they are subject to reorganization or insolvency and liquidation proceedings, become insolvent, operate at loss for three consecutive years or more and have negative operating net cash flows; it is not allowed to provide guarantee for its financial sub-companies; and sub-companies in a group that do not have a direct equity relationship shall not provide guarantee for each other. If the guarantee is really needed under any of the above three scenarios due to objective circumstances and the risks are controllable, the approval of the group’s board of directors is required.

(Source: China State-owned Assets Supervision and Administration Commission)

CNIPA Issues the Guide on Trademark Examination and Adjudication

On November 23, the China National Intellectual Property Administration (“CNIPA”) issued the *Guide on Trademark Examination and Adjudication* (the “*Guide*”), with effect on January 1, 2022.

The *Guide* consists of two parts, respectively regulating the formality examination and trademark affairs as well as trademark examination and adjudication. Among them, the part “trademark examination and adjudication” includes the examination and adjudication of: (a) malicious trademark registration applications that are not intended for use, (b) marks that cannot be used as trademarks, (c) distinctive features of trademarks, (d) identical and similar trademarks, and (e) three-dimensional mark trademarks. With the “examination and adjudication of malicious trademark registration applications that are not intended for use” as an example, the *Guide* lists the legal basis, interpretation, applicable elements, consideration factors, applicable scenarios, typical cases, etc., with a view to ensuring the uniform application of laws and implementation of uniform standards in the whole process of trademark examination and adjudication.

Watson & Band, as one of China’s oldest intellectual property service providers with the qualifications as a foreign-related patent agency, maintains a leading position in the intellectual property industry due to its extensive experience. Watson & Band’s IP-related services cover agency and consulting services concerning trademarks, patents, copyrights and other new types of IP rights, enforcement and litigation services, and commercial IP-related legal services.

(Source: China National Intellectual Property Administration)

CNIPA Issues the Revised Measures for the Registration of Pledge of Patent Rights

On November 17, the China National Intellectual Property Administration (“CNIPA”) issued the *Measures for the Registration of Pledge of Patent Rights (2021 Version)* (the “*Measures*”) for implementation from the date of issuance.

The *Measures* propose material revisions to Articles 6, 7 and 10, which are of great significance. The texts of the remaining provisions are also revised for the purpose of adjusting orders, streamlining contents, and standardizing expressions. The revisions to the main provisions involve: (1) promoting the pledge registration procedures by means of commitment; (2) reducing the circumstances for non-approvable registration; (3) shortening the time limit required for registration review; (4) optimizing relevant registration services. Among others, the *Measures* specify that the party concerned may choose to register the pledge of a patent right by means of commitment, and when a commitment letter is submitted, identity certificate, certificate for change, certificate for deregistration, and other evidential materials are no longer required. The CNIPA will strengthen in-process and ex-post regulation and will lawfully impose disciplinary measures for dishonesty to those who make false commitment.

(Source: China National Intellectual Property Administration)

Cyber Security and Data Protection

CAC Seeks Comments on Administrative Regulations on Internet Data Security

On November 15, the Cyberspace Administration of China (“CAC”) issued the *Administrative Regulations on Internet Data Security (Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions. Solicitation has ended by this date.

The *Draft for Comment* reiterates that China shall establish a category- and class-based data protection system. The data will be classified into common data, important data, and core data on account of its importance to national security, public interests, as well as the legitimate rights and interests of relevant individuals or organizations. Different protection measures will be imposed depending on the classifications. China will provide key protection for personal information and important data and strict protection for core data. The *Draft for Comment* further specifies that data processors shall conduct risk assessment regarding the necessity and security when they perform personal identification by means of biometric features, and shall not take biometric data, such as face, gait, fingerprint, iris and vocal print, as an exclusive method for personal identification to coercively collect personal biometric information.

(Source: Cyberspace Administration of China)



MIIT Issues the Development Plan for the Big Data Industry during the "14th Five-Year Plan" Period

On November 30, the China Ministry of Industry and Information Technology (“MIIT”) issued the *Development Plan for the Big Data Industry* during the “14th Five-Year Plan” Period (the “*Plan*”).

The *Plan*, based on the definitions and connotations concerning the big data industry set forth in the 13th Five-Year Plan, further emphasizes the value of data elements. The *Plan* is divided into five chapters, which include six key tasks, six special actions, and six support measures. Among them, the six key tasks are to (1) accelerate the cultivation of the data element market; (2) give play to the unique advantages of big data; (3) consolidate the foundation for industry development; (4) build a stable and efficient industrial chain; (5) create a prosperous and orderly industrial ecology; and (6) build a strong line of defense for data security. The *Plan*, centering on the whole process of measurement, exchange and distribution of the value of data elements, calls for efforts to build a data value system, improve element market rules, and enhance the role of data element in allocation, and to promote the market-oriented allocation of data elements.

(Source: China Ministry of Industry and Information Technology)

SAFE Issues the Guidelines on the Code of Conduct for Transactions in the Foreign Exchange Market

On December 6, 2021, the China State Administration of Foreign Exchange (“SAFE”) issued the *Guidelines on the Code of Conduct for Transactions in the Foreign Exchange Market* (the “*Guidelines*”), with effect on January 1, 2022.

The *Guidelines* aim to promote the honest, fair, orderly and efficient operation of the foreign exchange (FX) market. The *Guidelines* include the main content as follows: the provisions of the Guidelines (1) are applicable to the inter-bank market and the over-the-counter (OTC) market; (2) regulate all parties involved in the FX market, including not only institutions engaged in FX transactions, but also the China Foreign Exchange Trading Center (“CFETC”), Shanghai Clearing House, and currency brokerage companies; (3) place focus on regulating the FX market transaction conduct, centering on transaction management and information management; and (4) set a one-year transitional period for banks and other financial institutions to conduct FX OTC transactions with customers.

(Source: China State Administration of Foreign Exchange)

SAFE Releases the Measures for the Determination of Administrative Penalties for Foreign Exchange Administration

On November 8, the China State Administration of Foreign Exchange (“SAFE”) issued the *Measures for the Determination of Administrative Penalties for Foreign Exchange Administration* (the “*Measures*”), with effect on the date of issuance.

The *Measures*, consisting of four chapters and 18 articles, detail the circumstances under which administrative penalties shall be imposed for foreign exchange administration purposes as well as the range of penalties. Under the *Measures*, those who voluntarily confess illegal acts that the administrative agency has not yet known or cooperate with the administrative agency in investigating and punishing the illegal acts with meritorious service shall be given a lighter or mitigated administrative punishment. The *Measures* clarify that a director, supervisor, senior manager, or any other directly liable person of a financial institution who deliberately violates regulations for seeking illegal benefits, or who prompts other persons to violate regulations through coercion, collusion or instigation, shall be given a warning and fined not less than CNY50,000 but not more than CNY500,000, in addition to imposition of punishment on the financial institution.

(Source: Ministry of Industry and Information Technology)



SAMR to Regulate the Identification of Illegal Gains in Cases of Administrative Penalties Imposed by Market Regulatory Authorities

On December 7, 2021, the China State Administration for Market Regulation (“SAMR”) drafted the Measures for the *Identification of Illegal Gains in Cases of Administrative Penalties Imposed by Market Regulatory Authorities (Draft for Comment)* (the “*Draft for Comment*”) for public comments by January 5, 2022.

The *Draft for Comment* mainly clarifies the following: (1) the relevant definitions of illegal gains and basic methods of calculating illegal gains; (2) the deduction circumstances in calculating illegal gains; and (3) how to cope with situations where it is difficult to accurately calculate illegal gains. Among them, the *Draft for Comment* takes into account the protection of the rights of the parties concerned and the needs of law enforcement practice, by enumerating in Article 5 the necessary expenses for deduction and specifying the burden of proof for the parties concerned. Considering the severity of the violation and the degree of harm, Article 6 provides for exceptions where the deduction is not allowed, while Articles 7 and 8 clarify the principle of tax and fee deduction and the calculation of the amount of compensation that the parties have already refunded in accordance with the law.

(Source: China State Administration for Market Regulation)

SAMR Seeks Comments on Guide to the Classification and Grading of Internet Platforms and Others

On November 1, the China State Administration for Market Regulation (“SAMR”) drafted the Guide to the *Classification and Grading of Internet Platforms (Draft for Comment)* and the *Guide to Implementation of the Primary Responsibilities of Internet Platforms (Draft for Comment)* to solicit public comments. Solicitation has ended by this date.

According to the Guide to the *Classification and Grading of Internet Platforms (Draft for Comment)*, internet platforms will be divided into six categories depending on their targets and functions, including online sales platforms and life services platforms. Internet platforms may also be graded into mega platforms, large platforms and medium and small-sized platforms given their users scale, business type and capability in restriction. Requirements in 34 aspects are given under the *Guide to Implementation of the Primary Responsibilities of Internet Platforms (Draft for Comment)*, covering fair competition demonstration, equal governance, open ecology, and anti-monopoly. Among others, regarding fair competition demonstration, it is stipulated that, when conducting fair competition, operators of mega platforms, without justified cause, shall not use non-public data generated or provided by the operators within the platforms or the users in their use of the platforms.

(Source: China State Administration for Market Regulation)