

# Latest reforms and trends of Business legislation in China

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# I. Fair Legal Environment

**1. Amendment to Anti-unfair Competition Law: adding new regulations on new types of unfair competition behaviours, eliminating uncertain factors and resolving problems**

2. Interpretation IV of PRC Company Law: improving corporate governance and protection of shareholders' rights and interests

3. General Provisions of the PRC Civil Law: extending the limitation of action to three years from the previous two years

# 1. Amendment to Anti-unfair Competition Law

On November 4, 2017, the Standing Committee of the National People's Congress adopted an Amendment to PRC Anti-Unfair Competition Law and it has already been effective as of January 1, 2018.

The Revised Law substantially amends the Previous Anti-Competition Law which was promulgated long before in 1993 and has implemented for 24 years from the following aspects:

- (1) Commercial Confusion
- (2) Commercial Bribery
- (3) False Propaganda
- (4) Trade Secrets
- (5) Internet Clause
- (7) Administrative Measures



# (1) Commercial Confusion

## a. New scope of Commercial Confusion:

such as the principal part of a domain name, the name of a webpage, etc. which is developed in pace with the new economic situation.

## b. New punishment is implemented:

### i. amount of penalties are changed

Previous Law	Revised Law
In light of the circumstances, a fine shall be imposed of not less than one time but not more than three times the illegal earnings.	(1) If the illicit turnover exceeds CNY50, 000, it shall be fined up to five times the illicit turnover. (2) If there is no illicit turnover or the illicit turnover is less than CNY50, 000, it shall be fined up to CNY 250, 000; (3) If it is truly difficult to determine the actual losses suffered by the obligee, the people's court shall award the obligee less than CNY 3 million in damages, depending on the seriousness of the infringement.

### ii. Illegal corporate name will be released as “a unified social credit code” on government website

## (2) Commercial Bribery

- a. Scope of Commercial Bribery was broadened;
- b. Scope of the recipient of Commercial Bribery was broadened;
- c. Employers are now bearing more liabilities;
- d. Business operator in violation of Commercial Bribery are facing more administrative penalties:

minimum fine:

from CNY 10,000 to CNY 100,000;

maximum fine:

from CNY 200,000 to CMY 3 million.



# (3) False Propaganda

In addition to the false propaganda carried out by a business operator on its own products, revised law added that “helping others to create false sales volume, to give false user comments, to grant false honors and other false acts, will also be severely punished”.

e.g. illegal online platform operators like Network Water Army (“网络水军”) who fabricate data to mislead netizens in their purchase decisions will also be severely punished under the Revised Law.



## **Punishment is increased:**

a. Amount of penalties are changed with a new ceiling amount to CNY 2 million. Detailed changes are listed below:

Previous Law	Revised Law
In light of the circumstances, a fine shall be imposed of not less than CNY 10,000 but not more than CNY 200,000.	(1) A fine shall be imposed of between CNY 200, 000 and CNY 1 million; (2) If the circumstance is serious, it shall be fined between CNY 1 million and CNY 2 million.

b. The business license of the business operator who infringes false propaganda may be revoked if the circumstance is regarded as serious.

## (4) Trade Secrets

- a. Trade Secrets does not need to have “economic interests” or “practical value” anymore;
- b. Infringement means are detailed;
- c. Employees and former employees are now clearly mentioned;
- d. Penalties on infringing Trade Secrets are increased;
- e. Administrative officers are clearly subject to obligation of confidentiality





## (5) Internet Clause

Unfair competition activities carried out by technological means on the Internet:

Inserting a link into a network product or service legally provided by another operator to visit another webpage without the approval of such operator;

Misleading, deceiving or forcing users into modifying, closing, or uninstalling a network product or service legally provided by another business operator;

Maliciously making the network products or service incompatible with the Internet Products or services legally provided by another business operator; or

Any other act that impedes or disrupts the normal operation of network products or services legally provided by another business operator.



**Corresponding penalties are regulated**

CNY 100, 000 and CNY 500, 000;

If the circumstance is serious, between CNY 500, 000 and CNY 3 million.

# (6) Administrative Measures

## **1. Administrative measures of supervision and inspection have been strengthened**

- (1) Accessing business premises for administrative investigation
- (2) Sealing up and detaining property
- (3) Checking bank accounts

## **2. Measures to prevent abuse of administrative powers of supervision and inspection**

## **3. More administrative measures have been implemented**

- (1) Imperiling credit record
- (2) Penalty for obstructing a supervision and inspection



# I. Fair Legal Environment

1. Amendment to Anti-unfair Competition Law: adding new regulations on new types of unfair competition behaviours, eliminating uncertain factors and resolving problems

**2. Interpretation IV of PRC Company Law: improving corporate governance and protection of shareholders' rights and interests**

3. General Provisions of the PRC Civil Law: extending the limitation of action to three years from the previous two years

## 2. Interpretation IV of PRC Company Law

China's Supreme Court issued the fourth judicial interpretation of the PRC Company Law at a press conference on August 28, 2017 to further standardize company governance, and enhance protection to the minority shareholders and creditors, with effect from September 1, 2017.



Main content:

1. Validity of company resolutions;
2. Shareholders' rights to know;
3. Shareholders' rights on distribution of company's profits;
4. Shareholders' preemptive right ;
5. Shareholder representative litigation.

# 1. Validity of company resolutions

- a. Adding five circumstances that trigger the company resolutions to be non-existent (article 5)
  
- a. Clarifying that minor defects on procedure will not lead to a company's resolution to be canceled. (article 4)



## 2. Shareholders' rights to know

Perfecting the protection of Shareholders' rights to know:

1. It is not permitted to deprive shareholders' rights to know by AOA or shareholders agreement (article 9)
2. Senior management is liable for shareholders' loss occurred due to depriving shareholders' right to know (article 12)



### 3. Shareholders' rights on distribution of company's profits

It is the first time to mention shareholders' rights on distribution of company's profit on paper.

And the main content including:

When shareholder requests the distribution of company's profits, the company shall be the defendant; (article 13) When requesting distribution, shareholder shall provides an effective resolution that is adopted at the shareholders' meeting and specifies the distribution plan in details, other wise the court will dismiss its claim (article 14 and 15), unless the failure to distribute the company's profits is attributed to any shareholder's abuse of shareholder rights and results in losses suffered by other shareholders.





## 4. Shareholders' preemptive right

Interpretation IV specifies more details on the procedure.

For example:

1. Duly notification: notify in writing or by any other reasonable means possible to confirm receipt of their consent (article 17);
2. Clarification "equal condition: including the quantity or equities to be transferred, the equity transfer price, the payment methods, and the time limit for payment (article 18);
3. Period for exercising the preemptive rights (article 19)





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### 3. General Provisions of the PRC Civil Law



The General Provisions of the PRC Civil Law was adopted on March 15, 2017 and has entered into force on October 1, 2017.

**Extending the limitation of action to three years from the previous two years**

**three years starting from “the date when the right holder knows or should know of the infringement of rights and the obligor”**

**Customs as a source of law**

## II. Attraction on Foreign Investor

- **1. Continuing relaxing restrictions on access of foreign investment**
- 2. Preferential Tax Support For Foreign Investors Who Reinvest Profit
- 3. Facilitating entry and exit of foreign talent – R visa

# 1. Continuing relaxing restrictions on access of foreign investment



(1) Foreign Investment Industries Guidance Catalogue (2017 version) released on June 28, 2017

(2) Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones (2017 version) released on June 5, 2017

# (1) Foreign Investment Industries Guidance Catalogue (2017 version)

## a. Further Reduction of Restrictive Measures, and Expansion of Opened Sectors

The 2017 Catalogue has further reduced the restrictive items. There are a total of 63 items (including 35 restricted items and 28 prohibited items) subject to restrictive measures in 2017 Catalogue, which is 30 items less than the 93 items (including 19 encouraged items subject to equity percentage requirement, 38 restricted items and 36 prohibited items) in the 2015 Catalogue.

## b. Increase in Encouraged Items and Promotion of Industrial Restructuring And Optimization

such as, development and production of formula food for special medical use; research & development and manufacture of Virtual Reality (VR) and Augmented Reality (AR) equipment; research & development and manufacture of 3D printing equipment key components; construction and operation of hydrogen refueling stations; manufacture of intelligent emergency medical rescue equipment; manufacture of hydrological monitoring sensors; manufacture of flue gas desulfurization equipment and flue gas dust removal equipment; construction and operation of urban parking facilities; and so on – so as to further encourage foreign investment in the areas like advanced manufacturing, high technology, energy saving technologies, environmental protection technologies, etc.

## (2) Special Administrative Measures (Negative List) for Foreign Investment Access to Pilot Free Trade Zones (2017 version)

### Free Trade Zones and administrative measures

Released Year	Number of administrative measures	Applicable regions
1 <sup>st</sup> in 2013	<b>190</b>	<b>1 FTZ:</b> Shanghai FTZ
2 <sup>nd</sup> in 2014	<b>139</b> (16 categories, 56 items)	<b>1 FTZ:</b> Shanghai FTZ
3 <sup>rd</sup> in 2015	<b>122</b> (15 categories, 50 items)	<b>4 FTZs:</b> Shanghai; Fujian, Guangdong, and Tianjin FTZs
4 <sup>th</sup> in 2017	<b>95</b> (15 categories, 40 items)	<b>11 FTZs:</b> Shanghai; Fujian; Guangdong; Tianjin; Chongqing; Henan; Hubei; Liaoning; Shaanxi; Sichuan; and Zhejiang FTZs.

### Reducing more restricted measures in 2017

In order to further opening up, the current FTZ Negative List also removed many restricted industries listed in 2015 negative list. Such removed measures include manufacturing of railway transport equipment, road transportation, accounting audit and other commercial services.

## II. Attraction on Foreign Investor

- 1. Continuing relaxing restrictions on access of foreign investment
- **2. Preferential Tax Support For Foreign Investors Who Reinvest Profit**
- 3. Facilitating entry and exit of foreign talent – R Visa

## 2. Preferential Tax Support For Foreign Investors Who Reinvest Profit

**Circular on Policy Issues concerning Temporarily Not Levying the Withholding Income Tax for Direct Profit Reinvestment Made by Foreign Investors released on December 21, 2017**



Main content:

- New preferential tax policy allows foreign investors temporarily not be subject to withholding income tax (WIT) anymore if said foreign investors reinvest profit in China pursuant to specific tax deferral treatment criteria; however, later, when the foreign investor disposes its reinvestment, the WIT shall still be paid back.
- The reinvestment under preferential tax policy only applies to investment projects under certain the encouraged categories.
- New preferential tax policy comes into force as of January 1, 2017 which is a retroactive policy.



## II. Attraction on Foreign Investor

- 1. Continuing relaxing restrictions on access of foreign investment
- 2. Preferential Tax Support For Foreign Investors Who Reinvest Profit
- 3. **Facilitating entry and exit of foreign talent – R visa**

# 3. Facilitating entry and exit of foreign talent – R Visa



**On January 2, 2018, the first "Confirmation Letter for High Level Foreign Talent" was issued to Mr. Sajualumootil George, Microsoft's HR Director in the Asia Pacific area.**

- The new rules on R Visa refer to the Implementation Measures regarding Foreign Talent Visa System released on November 28, 2017;
- Nine provinces or cities, including Beijing, are listed as the first pilot regions;
- Foreigners that can apply for an R visa are those with high-level talent and urgently needed specialized talents sought-after by China: e.g. scientists, leading talents in science and technology field, international entrepreneurs, experts and high-skilled professionals;
- Fast Green Channel and Application with "Zero Cost";
- Five or Ten Years Validity Period with Multiple Entries;
- R Visa Holders Who Work in China Are Required to Apply for a Work Permit.

# III. Development on New Technology and Emerging Industries



Tencent 腾讯



Second draft of E-Commerce Law released for public comments on November 7, 2017

The main content includes:

(1) Further strengthen the management responsibilities of platform operators;

(2) Improve platform operators' formulation of service agreements and rules of trade;

(3) Strengthen the obligations of platform operators to protect consumer rights and interests;

(4) Strengthen the intellectual property rights protection responsibilities of platform operators.

# E-Commerce

(1) Further strengthen the management responsibilities of platform operators

- a. e-commerce platform operators are obliged to verify the identity and administrative license information of the vendors who log onto the platform;
- b. Increase the information reporting obligations of e-commerce platform operators.

(2) Improve platform operators' formulation of service agreements and rules of trade;

- a. E-commerce platform operators need to sign relevant service agreements with Vendors that join the platform, and clarify trading rules and policies applicable to the transactions occurring on the platform;
- b. E-commerce platform operators may not impose unreasonable restrictions or impose unreasonable conditions to the transactions that occur on their platforms via services agreements or rules of trade, and platform operators may not charge Vendors unreasonable fees.

# E-commerce

(3) Strengthen the obligations of platform operators to protect consumer rights and interests;

- a. e-commerce platform operators are requested to provide consumers with a means of making comments regarding the products or services purchased on the platform; platform operators may not delete the consumers' comments other than those containing insulting, defamatory or clearly false information;
- b. E-commerce platform operators are requested to display search results for products or services in various ways such as by price, sales volume and credit level, and mark paid product ranking as "advertisements" prominently.

(4) Strengthen the intellectual property rights protection responsibilities of platform operators.

If a platform fails to take necessary measures in a timely manner after receiving a notice of infringement from an intellectual property rights owner, the platform will bear joint and several liability with the infringing party on the platform for the expanded part of the loss.

## IV. Security

### **1: Cyber Security**

### 2: Security in Food Industry

# 1. Cyber Security

## **(1) Management of Internet Information Content**

(2) Protection on Security of Critical Information Infrastructure

(3) Protection on Personal Information and Important Data

(4) Management of Network Products and Services

➤ **The new law on cyber security came into force on June 1st 2017**

- Asserts the sovereignty and national security as priorities to cyberspace management;
- Consolidates the existing obligations about online security;
- Grants extra rights to the government agencies to regulate cyberspace;
- Completes the existing framework on the national security, the national security law and counter terrorism law;
- A larger application scope



## B - Critical information infrastructure (CII)

- **Concerned areas:** Public communication and information services, Energy, Transport, Water conservation, Finance, Public services, E- government or sectors and other critical IT infrastructures, which in case of destruction, lost or subject to data leakage, could cause great harm to national security, national economy, the life of people and public interest.
- **Imposed obligations critical IT infrastructure operators:** risk assessment, reinforcement protection measures, security review.

## **C – Some provisions bring a concern...**

- Surveillance and technical support to security agencies
- Equipment and cyber security specific products to be inspected & certified
- Localization of personal information and important data on Chinese territory

# (1) Management of Internet Information Content

Date	Legislations
May 2, 2017	Administrative Provisions for Internet News Information Services
May 2, 2017	Provisions on the Administrative Law Enforcement Procedures for Management of Internet Information Content
May 22, 2017	Implementing Rules for the Administration of the Licensing for Internet News Information Services
Aug 25, 2017	Administrative Provisions on Internet Follow-up Comment Services
Aug 25, 2017	Administrative Provisions on Internet Forum and Community Services
Sep 7, 2017	Administrative Provisions on the Information Services Provided through Official Accounts of Internet Users
Sep 7, 2017	Provisions on the Administration of Information Services Provided through Chat Groups on the Internet
Feb 2, 2018	Administrative Provisions on Information Services on Microblogs

# 1. Cyber Security

(1) Management of Internet Information Content

**(2) Protection on Security of Critical Information Infrastructure**

(3) Protection on Personal Information and Important Data

(4) Management of Network Products and Services

## (2) Protection on Security of Critical Information Infrastructure

### Regulations on the Protection of the Security of Critical Information Infrastructure (CII) (Draft for Comments) released on July 10, 2017

Article 18 of the Draft further elaborates the criteria of the PRC Cyber Security Law further and adds certain new industries into the industrial criteria: “the network facilities and information systems operated or managed by the following entities, that may endanger national security, people’s livelihood and public interest in case of damage, function loss or data leakage, shall be included into the scope of CII:

- 1、 Government organs, and entities in the industries or fields of energy, finance, transportation, irrigation, healthcare, education, social security, environment protection, public utilities and so forth;
- 2、 Information networks such as telecommunications networks, radio and television networks, and the Internet; and entities providing cloud computing, big data, and other public information network services on a large scale;
- 3、 Scientific research and manufacturing entities in sectors such as national defense and science industry, heavy equipment industry, chemical industry, and food and pharmaceutical industry;
- 4、 News report entities such as radio stations, television stations and news agencies; and
- 5、 Other key entities.”

# 1. Cyber Security

(1) Management of Internet Information Content

(2) Protection on Security of Critical Information Infrastructure

**(3) Protection on Personal Information and Important Data**

(4) Management of Network Products and Services

## (3) Protection on Personal Information and Important Data

a. Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Law in the Handling of Criminal Cases Involving Infringement of Citizens' Personal Information released on May 9, 2017

b. Measures for Evaluating the Security of Transmitting Personal Information and Important Data Overseas (Draft for Comments) released on April 11, 2017

c. Information Security Technology – Guidelines for Data Cross-border Transfer Security Assessment (Draft) released on May 27, 2017

d. Information Technology – Personal Information Security Specification (GB/T 35273-2017) released on December 29, 2017

# 1. Cyber Security

(1) Management of Internet Information Content

(2) Protection on Security of Critical Information Infrastructure

(3) Protection on Personal Information and Important Data

**(4) Management of Network Products and Services**



## (4) Management of Network Products and Services

Measures for Security Review of Network Products and Services released on May 2, 2017

- A. No administrative access approvalS;
- B. Security Review Criteria;
- C. Multi-party participation;
- D. Reviews to be commenced by regulatory departments;
- E. Security assessment reports



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