



## I. Legal News

### Draft of the Civil Code Published for Comments

The National's People Congress, China's legislative body, has published all six sections of a draft Civil Code (the "Draft"), which is soliciting public opinion until November 3<sup>rd</sup>, 2018.

China's first Civil Code was adopted in 1930 but it was then abrogated at the creation of the People's Republic of China in 1949. Three civil code projects were published in 1954, 1962 and 1979 but failed to be adopted. The current codification movement is based on the General Principles of Civil Laws ("GPCL"), which were adopted in 1986. A draft of civil code was reviewed in 2002, which was once again abandoned as the time is not ripe to compile a completed civil code. The codification of Chinese's civil law restarted in 2012 with the 18<sup>th</sup> congress of the Communist Party and we are now expecting a Civil Code to be adopted in 2020.

The Draft is composed of 1,034 articles and divided into 6 sections, which are Real Rights, Contracts, Personality Rights, Marriage and Family, Inheritance and Tort Liability, which is based on the existing GPCL, the Real Right Law, the Marriage Law and other regulations; however, changes were also proposed. For example, in the Real Rights section, land use rights of residential properties will be extended automatically upon expiry of 70-year use rights. In the Marriage and Family section, a one-month cooling-off period enables either side of the couple to revoke the divorce application before divorce is introduced. In the Personality Rights section, obligations of the companies to take measures to prevent sexual harassment in the workplace are added.

[http://www.npc.gov.cn/npc/flcazqyj/2018-09/05/content\\_2060674.htm](http://www.npc.gov.cn/npc/flcazqyj/2018-09/05/content_2060674.htm)

### Interim Administrative Measures for the Social Insurance Blacklists for Serious Discreditable Conduct

The General Office of the Ministry of Human Resources and Social Security has published a series of Interim Administrative Measures for the Social Insurance Blacklists for Serious Discreditable Conduct (the "Draft") which are open to public comments until October 25<sup>th</sup> 2018.

According to the Draft, an authority that makes such a list will be accountable for it, in accordance with the laws and regulations as well as the principles of fairness and justice. Where an employer fails to participate in the social insurance scheme and refuses to remedy his violation, he should be blacklisted by the competent social insurance agency.

The Draft also states that all levels of social insurance agencies shall share the information of their blacklist in the local and national credit information sharing platform, the relevant department will then sanction the blacklisted according to their duties and powers (mainly traveling restriction, licensing accreditation, borrowing, market access, tax incentives, tendering and bidding, etc.)

These measures are issued in the broader context of the progressive implementation of China's Social Credit System which intends to monitor the behavior of the population. Since 2013, a blacklist system has been put into place, according to their social behavior people can be restricted from accessing certain public services, trains, planes, etc.

[http://www.mohrss.gov.cn/SYRlzyhshbzb/zcfg/SYzhengqiyujian/201810/t20181016\\_302940.html](http://www.mohrss.gov.cn/SYRlzyhshbzb/zcfg/SYzhengqiyujian/201810/t20181016_302940.html)  
<http://www.ecns.cn/news/society/2018-08-28/detail-ifyxikfc9644616.shtml>

### Paperless Operations for the Application for Goods Import Permits and the Customs Clearance

On the 12<sup>th</sup> of October, 2018, the Ministry of Commerce and the General Administration of Customs have released the Announcement No.82 to clarify matters concerning paperless operations for the application for goods import permits and the customs clearance.

As of 15<sup>th</sup> of October 2018, the application for import permits and custom clearance have been made paperless on all the Chinese territory for the goods subject to the automatic import approval and goods governed via import permits (excluding ozone depleting substances). Specifically, since that date an importer can choose between the paper-based and the paperless procedure. In the second option, he has to apply for the electronic PRC Automatic Import Permit or the electronic PRC Import Permit and then go through the formalities with the Customs office in a paperless way for the declaration of imports.

<http://www.mofcom.gov.cn/article/b/e/201810/20181002794907.shtml>

## II. Hot Topics

### Different Verdicts for Daoxiangcun Trademark Infringement Disputes Between the North and the South

Daoxiangcun (□□□) is a famous Chinese bakery brand, and it is famous thanks to both northern-style pastries made by the Beijing's Daoxiangcun Foodstuff Co., Ltd and southern-style ones made by Suzhou Daoxiangcun Food Industry Co., Ltd.

These two companies have been existing under the same name for over a century. We can trace back a Suzhou Daoxiangcun Tea Foods Store as far as 1773, under the Qing Dynasty<sup>1</sup>. The Suzhou company registered the three Chinese characters as its trademark in 1983 listed in Class 30 "Cookies, Bread, Cake". Its Beijing competitor was created in 1895 and registered its trademark in 1997 but for dumplings and glutinous rice cakes.

In 2006 the companies started a legal battle over the trademark of the three Chinese characters (□□□). Suzhou Daoxiangcun applied at the State Administration for Industry and Commerce ("SAIC") to register a fan shaped logo, with the three characters inside, as its trademark. This application was granted and then the Beijing based Daoxiangcun filed an appeal to the SAIC, arguing that because the logo included the three characters it infringed on the trademark it had registered in 1997. Eventually, in 2013, the SAIC's trademark review board concluded, in favor of Beijing Daoxiangcun, that the registration should be revoked. Following to this decision, in 2014, Suzhou Daoxiangcun company went to the Beijing First Intermediate People's Court, which confirmed SAIC's review board decision. It then appealed to the Beijing Higher People's Court, which dismissed the appeal. Finally, the company applied to the Supreme People's Court for a retrial and the application was dismissed again on the 19<sup>th</sup> of December 2014.

Despite this decision, Suzhou Daoxiangcun kept using the logo and in 2015 Beijing Daoxiangcun filed a "trademark infringement" lawsuit in front of the Beijing Intellectual Property Court. In September 2018, the Court ordered the Suzhou Daoxiangcun Company to pay RMB 30 million of compensation to its Beijing homonym for trademark infringement and unfair competition.

However, On October 12<sup>th</sup> 2018, the Suzhou Industrial Park People's Court took a different decision and prohibited Beijing's Daoxiangcun Foodstuff Co., Ltd from printing the three-Chinese-characters trademark on its packaging. The Court also asked the defendant to pay RMB 1.15 million in compensation to Suzhou Daoxiangcun.

These two verdicts, from two local courts, give the impression of a ruling made to protect local business.

<http://www.c1010.com/trademark/398.html>  
<https://mp.weixin.qq.com/s/wGkixEJulcnTuaSRoVScqA>  
<http://ctplo.com/blog/perspectives-on-the-dispute-of-daoxiangcun>

□ <http://ctplo.com/blog/perspectives-on-the-dispute-of-daoxiangcun>"

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