



## I. Legal News Review

### The Company Law Revised to Upgrade Stock Buyback System

The Chinese legislator - the standing committee of the 13th National People's Congress ("SCNPC") - has approved a decision to revise the Company Law ("Decision"), on October 26, 2018, where a more dynamic stock buyback system could be expected.

The Decision firstly legalizes two more circumstances for a company buying back its shares where it is to convert the convertible corporate bonds it has issued, or it is to maintain the company's value and its shareholders' rights and interests.

The decision further simplifies the decision-making procedures for buying back shares, raises the maximum of shares that could be hold by the company itself (from 5% to 10%), and extends the period when a company can hold its buy-back shares (from 6 month to 3 years).

It also requires relevant government departments to update supporting regulations, for both a better incorporation governance and healthier market development.

([http://www.npc.gov.cn/npc/xinwen/2018-10/26/content\\_2064464.htm](http://www.npc.gov.cn/npc/xinwen/2018-10/26/content_2064464.htm))

### China Amends the Criminal Procedure Law

On October 26, 2018, the SCNPC voted and adopted the Decision on Amending the Criminal Procedure Law ("Amendment") after several rounds of discussion on the draft for comments we mentioned in our article dated May 25, 2018<sup>1</sup> Below are the key changes stipulated in the Amendment:

1. Default judgment procedure has been enacted in article 291. It indicates that China is determined to crack down corruption-related cases, as well as cases endangering state security and terrorist activities from the judicial level in the new era. The new default mechanism enables the criminal trial to continue even if the suspects/defendants have escaped abroad;
2. Fast-track proceedings with a single judge has been introduced in article 222 to improve the efficiency of the judicial system. It applies to cases under the jurisdiction of grassroot court where the facts of the case are clear, the evidence is true and sufficient, and the defendant pleads guilty and accepts a fixed-term prison sentence of up to 3 years;
3. Lenient punishment system applicable to suspects pleading guilty/accepting punishments has been improved. For example, in article 182, for a suspect who confesses the fact of his crime voluntarily and faithfully as well as renders meritorious services, upon approval of the Supreme People's Procuratorate, the public security organ may withdraw the case; and
4. Investigation functions and powers of people's procuratorates for the corruption and bribery case have been removed from their authority. Such amendment is to make the new procedure in line with the newly released PRC Supervision Law in which corresponding functions and powers are now on the shoulder of supervisory bodies.

([http://www.npc.gov.cn/npc/xinwen/2018-10/26/content\\_2064435.htm](http://www.npc.gov.cn/npc/xinwen/2018-10/26/content_2064435.htm))

### CBIRC Seeks Comments on the Modified Administrative Regulations on Foreign-invested Banks

PRC Administrative Regulations on Foreign-invested Banks (Draft for Comment) (the "Draft") has been released by the China Banking and Insurance Regulatory Commission ("CBIRC"). It is open for public comments until November 5, 2018.

According to the Draft, there will be a new article that "a foreign bank may establish both a wholly foreign-owned bank and its branches, or both a Sino-foreign joint venture bank and its branches in China".

Moreover, the business scope of foreign-invested banks is extended to "issue, honor and sell government bonds as an agent"; besides, the minimum amount of the time deposits a branch of a foreign bank may absorb for a single deal lowers from RMB 1 million to RMB 500,000.

Furthermore, as existing law regulates the proportion of the RMB part in the sum of a foreign bank's working capital plus reserves and other funds, to its RMB-denominated risk assets shall not be lower than 8%, the draft provides exemptions for the branches whose parent banks sustainably meets the capital adequacy ratio requirements of CBIRC and the counterparts of their own countries.

(<http://www.cbirc.gov.cn/chinese/home/docView/FEF65CFE14294C578C7FDD33970AAD4F.html>)

### Multiple Authorities Jointly Vow to Crack Down on the Disruptions of Medical Service Order

The memorandum of understanding, issued by 28 department including National Development and Reform Commission and China Railway Corporation, targets individuals who are held criminally liable for seriously disrupting the normal order of medical service and/or who are engaged into illegal medical care activities, thus receive heavier punishments than administrative detention. The disciplinary measures include restricting the supporting subsidies, restrictions on luxurious transportation consumption like flight, G-highspeed rails and first-class seat of other highspeed trains, etc.

This memorandum of understanding responds to the public loud concern, triggered from that a doctor in Peking University People's Hospital was hit by a pregnant woman's husband and daughter on October 13, 2018.

For the serious disruptions undermining the medical service order and endangering medical staff's personal right, incurred from time to time in recent years, China has adopted criminal law, civil rules and administrative regulations to tackle the issue, and before specific laws announced (the Basic Laws for Health Care and Health Promotion has been proposed for deliberation), this memorandum of understanding is regarded as a concrete solution.

([http://www.ndrc.gov.cn/zcfb/zcfbtz/201810/t20181016\\_916450.html](http://www.ndrc.gov.cn/zcfb/zcfbtz/201810/t20181016_916450.html))

(<http://news.sina.com.cn/o/2018-10-31/doc-ihnfikvc5653249.shtml>)

## II. Hot Topics

### In 2019 Comes A National IP Appeal Court

As approved by SCNPC, the Supreme People's Court (SPC) is to set up a specialized court for IP appeals, which will come into force on January 1, 2019.

Chief Justice Zhou Qiang clarified that the court is mainly for civil and administrative IP disputes appeals which require more technological expertise. He also figured out the court would work to prevent inconsistency of legal application and promote the quality and efficiency of the trials.

According to the draft resolution, the proposed IP court under SPC will hear the appeals relating to trademarks, patent, trade secrets, IC design, new plant variety, computer software and unfair competitions. The court will also hear the challenge of a valid judgement of first instance concerning those cases.

In 2014, China established specialized IP courts in Beijing, Shanghai and Guangzhou. Under currently legal system, these IP-dedicated court and other intermediate courts at the city will hear the complicated IP disputes respectively within their jurisdiction. And the parties concerned may appeal to the high courts at the provincial level.

The draft resolution states that the national IP court will be carried out for a first phase of 3 years and then SPC will be responsible to submit a special report to the SCNPC about the implementation of the resolution.

([http://www.npc.gov.cn/npc/xinwen/2018-10/26/content\\_2064473.htm](http://www.npc.gov.cn/npc/xinwen/2018-10/26/content_2064473.htm))

([http://www.chinadaily.com.cn/cndy/2018-10/25/content\\_37133012.htm](http://www.chinadaily.com.cn/cndy/2018-10/25/content_37133012.htm))

<http://asiallians.com/china-legal-update-criminal-procedure-law-draft-amendment-seeking-public-opinions/>

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