



I. Legal News

SPC Urges Greater Judicial Openness and Transparency

The Supreme People's Court ("SPC") has recently issued the Opinions on Further Deepening Judicial Openness (the "Opinions").

The Opinions proposes a mechanism of "justice in sunshine", which refers to an open and transparent judicial system releasing comprehensive and substantial judicial information in a voluntary, legal, timely and detailed fashion.

According to the Opinion, courts should improve judicial procedures to make it easier for parties and lawyers to obtain information.

Basic information of courts regarding the enforcement of judgments, lawsuit services, judicial reform, judicial administrative affairs, international cooperation and judicial teams shall be voluntarily made public in an appropriate form, unless the disclosure is banned under relevant laws, regulations or judicial interpretations or is considered inappropriate.

The Opinions also expressly expands scope of judicial disclosure in all aspects, adding that judicial information that involves legitimate rights and interests of the concerned parties or social and public interests or needs to be made widely known among the general public, shall be included into the scope of judicial disclosure, but attention shall be paid to whether to disclose such information merely among the concerned parties or extensively among the general public, depending on the nature and characteristics of such information.

(<http://www.court.gov.cn/fabu-xiangqing-132411.html>)

SPC and SPP Amend Judicial Interpretations for Credit Card Related Crimes

The Supreme People's Court ("SPC") and the Supreme People's Procuratorate ("SPP") have recently issued the Decision on Amending the Interpretations on Several Issues Concerning the Application of Law in the Trial of Criminal Cases Involving the Obstruction of Credit Card Management (the "Decision"), with effect from December 1, 2018.

The Decision upgrades the conviction and sentencing threshold for the crime of credit card fraud involving the malicious overdraft, stating that an overdraft with malicious intent of more than RMB 50,000 will be subject to Criminal Law. By comparison, previously, such threshold is RMB 10,000¹. In addition, an overdraft of more than RMB 5 million will qualify as the "tremendous amount" set out in article 196 of the PRC Criminal law, with maximum punishment of life imprisonment.

The Decision also expressly stipulates that the identification of the malicious overdraft "for the purpose of illegal possession" shall adhere to the principle of taking multiple factors into account, for example, his/her repayment ability and willingness, purpose of overdraft and performance after overdraft, etc. This is to clarify that "for the purpose of illegal possession" may not be determined solely on the fact that the cardholder fails to repay the overdraft.

Moreover, the Decision sets out that if such overdraft is repaid in full before a first-instance judgment is made, the cardholder may be exempted from criminal punishment, unless the cardholder has been subject to two or more punishments for credit card fraud.

(<http://www.court.gov.cn/fabu-xiangqing-132701.html>)

China Simplifies Incorporation of Wholly Foreign-owned Shipping Service Companies

Recently, the Ministry of Transport ("MOT") and the Ministry of Commerce ("MOFCOM") have jointly issued the Decision on Amending the Administrative Measures for the Examination and Approval of Wholly Foreign-owned Shipping Service Companies (the "Decision"), with effect from January 1, 2019.

According to the Decision, "Administrative Measures for the Examination and Approval of Wholly Foreign-owned Shipping Service Companies" is renamed as "Administrative Measures on the Establishment of Wholly Foreign-owned Shipping Service Companies", and the relaxed policy covers the following two aspects:

1. Previously, before going through the regular registration procedures for the incorporation of a wholly foreign-owned shipping company at competent commercial departments (to obtain a business license), a foreign shipping company shall first submit an application to the MOT and MOFCOM to obtain their approval upon examination. Currently, a foreign shipping company is allowed to go through the regular registration procedures directly without obtaining administrative approval.

2. The wholly foreign-owned shipping service companies are not requested to hire at least 85% Chinese employees anymore.

However, after obtaining the business license of a Wholly Foreign-owned Shipping Service Company, an Operation Permit for a Wholly Foreign-owned Shipping Service Company granted by competent transport authority is still requested before carrying out business operations.

(http://xxgk.mot.gov.cn/jigou/fgs/201812/t20181203_3138798.html)

II. Hot Topic

Online Content Companies Face Rigorous Scrutiny

Over the past few years, China has been on a drive to clean up its online environment, increasing scrutiny on advertisements. For example, on November 7, 2018, Baidu was fined RMB 600,000 for publishing advertisements containing pornography, gambling, superstition and violence which is in violation of article 9 paragraph 8 of PRC Advertisement Law². Consequently, the illegal advertisement income amounting to RMB 26220.46 was confiscated as well.

On November 16, 2018, Office of the Central Cyberspace Affairs Commission has summoned 10 platform operators including but not limited to Baidu, Tencent, Sina, Jirritoutiao and Sohu to conduct clean-ups of their services to remove what it called vulgar content, rumors, illegal advertisements as well as fake accounts.

Followed by the tightened administrative management, Bytedance, which runs news aggregator Jirritoutiao, was ordered to pay a fine amounting to RMB 3.7 million as it failed to submit three medical advertisements for regulatory checks as well as verify the content of the advertisements. This was not the first time that Bytedance was fined. Earlier in March this year, Jirritoutiao was fined RMB 700,000 for posting nine illegal advertisements seen as misleading and harmful to public.

Accordingly, some mainland internet companies have regulated their platforms ever more tightly. On November 30, 2018, Tencent made an announcement to halt its long-running "Drift bottle" function on its platforms WeChat and QQ email. It is a running operated for 8 years that enables users to leave text or voice messages for random strangers to pick up. Taking down this function is to create a healthy online environment as pornography messages are overwhelming though the "Drift bottle".

(http://www.sohu.com/a/276671533_775042
http://www.sohu.com/a/279125040_649045
<https://www.xiancai8.com/guonei/181130173522545.html>
<http://tech.sina.com.cn/j/2018-12-02/doc-ihpevhcm7468193.shtm1>)

Ofo's Struggle in Deposit Refund Raised Widespread Concerns

Ofo, along with other bike sharing companies, bring the former bicycle kingdom into the midst of a cycling revival. However, winter has come earlier than it did last year for Ofo. Its long-lasting struggle of deposit refund has caused widespread concerns. The frustration of users was fueled further by the news released on December 4th, 2018 that the refund function in its app was invalid. The failure to respond to customers' needs as well as adding extra conditions to refund procedure make the conditions worse for the users to get their money back. The fact that such middle or small sized companies involving in e-commerce activities are vulnerable to the effect of the broken capital chains and financing problems raises new legal risks to protect the property rights of the consumers.

The PRC Standing Committee of the National People's Congress released the E-Commerce Law of the People's Republic of China in August 2018. The new law, which will come into force in January 1st, 2019, is expected to lower the legal risks in e-commerce conducts. In accordance to the new law, the e-commerce businesses are required to make a refund in a timely manner with no unreasonable conditions or procedures, otherwise the company will be held to pay a fine up to RMB 500,000. The severe punishment mechanism is supposed to make a difference. However detailed regulations for implementation are still in the air and the factual effect is not clear.

The governments attached great importance to controlling the situation before the new e-commerce law come into power. According to the guidelines released by Beijing government on encouraging standardized development of bike sharing, the companies are required to manage the deposit through third specialized escrow agencies, like banks, while the banks shall strengthen their supervision on the accounts for the deposit³. In the meanwhile, a well-round market withdrawal mechanism is being set up for bike sharing enterprises to ensure the safety of users' deposit when the companies can no longer provide their services due to the financial failure⁴. The Ministry of Transport has also issued the Guiding Opinions on Encouraging and Regulating the Development of the Internet Bike Rental Business, encouraging enterprises to provide the rental services without charging a deposit⁵.

(<https://www.caixinglobal.com/2018-11-23/ofo-is-getting-so-many-refund-requests-that-one-user-had-to-call-156-times-to-reach-them-101351232.html>
<http://www.tchhg.com/news/word/2018/1205/126404.html>)

① Article 6 of Interpretations of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues Concerning the Application of Laws to the Hearing of Criminal Offences Impeding the Management of Credit Cards effective on December 16, 2009.

② Article 9 of PRC Advertisement Law
 Any advertisement shall not involve any of the following circumstances:
 1. using or using in disguised form the National Flag, the National Anthem or the National Emblem, or the Army Flag, the Army Anthem or the Army Emblem of the People's Republic of China;
 2. using or using in disguised form the names or images of state organs or their functionaries;
 3. using "state-level", "the highest-grade", "the best" or other similar words;
 4. damaging the dignity or interest of the State, or revealing state secrets;
 5. hampering social stability or damaging social public interest;
 6. damaging personal or property safety, or revealing personal privacy;
 7. hampering the social public order or going against good social practice;
 8. containing any information suggesting obscenity, pornography, gambling, superstitious, terror or violence;
 9. containing any information of ethnic, racial, religious or sexual discrimination;
 10. hindering the protection of the environment, natural resources or cultural heritage; or
 11. falling in other circumstances as prohibited under laws and regulations.

③ Article 14 of Guiding Opinions of Beijing Municipality on Encouraging and Regulating the Development of Bike Sharing Business (Tentative) effective on September 15, 2017.

④ Article 15 of Guiding Opinions of Beijing Municipality on Encouraging and Regulating the Development of Bike Sharing Business (Tentative) effective on September 15, 2017.

⑤ Article 12 of Guiding Opinions on Encouraging and Regulating the Development of the Internet Bike Rental Business effective on August 1, 2017.

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