



I. Legal News

PBC Plans to Completely Abolish the Licensing Mechanism for Corporate Bank Accounts by the End of 2019

The People's Bank of China ("PBC") has recently issued the Order [2019] No. 1 to arrange the cancellation of the licensing mechanism for corporate bank accounts and meanwhile distributed the Circular on Abolishing the Licensing Mechanism for Corporate Bank Accounts (the "Circular") to clarify relevant work arrangements.

The opening permit for corporate bank accounts (the "Bank Open Permit") is a certificate issued by the PBC under the licensing mechanism to allow the enterprise to open a basic bank account. An enterprise can only have one basic bank account, which is meanwhile the host account for the enterprise to handle transfer settlement and cash payment. According to the Circular, the previous licensing mechanism will be superseded by a record-filing mechanism, as long as the enterprises are legally established within the territory of China, meaning that PBC will no longer issue the Bank Open Permit.

The Circular clarifies that licensing mechanism will gradually be abolished as of February 25, 2019 in Jiangsu Province and Zhejiang Province and is expected to be completely abolished nationwide by the end of this year.

Cancellation of Bank Open Permit is a sign that China's banking system continues to liberalize, which will play a positive role in supporting enterprises.

<http://www.pbc.gov.cn/zhengwugongkai/127924/128038/128109/3762494/index.html>
<http://news.cnstock.com/news,yw-201902-4335320.htm>

NDRC and MOFCOM Jointly Solicit Comments on the Catalog of Industries for Encouraged Foreign Investment

The National Development and Reform Commission ("NDRC") and the Ministry of Commerce ("MOFCOM") have recently enacted and issued the Catalog of Industries for Encouraged Foreign Investment (Draft for Comment) (the "Draft for Comment") for public consultation by March 2, 2019.

The Draft for Comment consists of two parts. The first part is namely the national catalog of industries where foreign investment is encouraged, serving as a revised encouraged category of the current Guiding Catalog of Industries for Foreign Investment, in which the banned categories and the restricted categories have already been updated in the newly enacted Special Administrative Measures on Access to Foreign Investment 2018 (the "Negative List"). This revised encouraged category will apply to foreign investment projects in all provinces.

The second part is the catalog of priority industries for foreign investment in central and western China, a revision of the current Catalog of Priority Industries for Foreign Investment in Central and Western China. It applies to foreign investment in central and western areas, northeastern areas and Hainan Province. Investment made by foreign investors in central and western areas, northeastern areas and Hainan Province, may enjoy polices for both catalogs.

The goal is to include more encouraged industries in the catalog, such as modern agriculture, mining and manufacturing, high-tech sectors, health care and modern services and so forth, so as to encourage more foreign investment.

<http://www.mofcom.gov.cn/article/b/f/201902/20190202832681.shtml>

SPC and SPP Jointly Released Judicial Interpretations to Crack Down Illegal Trading of Foreign Currencies

Recently, the Supreme People's Court ("SPC") and the Supreme People's Procuratorate ("SPP") have jointly distributed the Interpretations on Several Issues Concerning the Application of Law in Handling Criminal Cases Involving Illegal Fund Payment and Settlement Business and Illegal Foreign Exchange Trading (the "Interpretations"), with effect from February 1, 2019.

The Interpretations regulates the increasingly severe criminal activities engaged in illegal trading of foreign currencies and clarifies its conviction and sentencing standards. Specifically, in case of engagement in illegal foreign exchange trading, such as reselling foreign exchange at a profit or selling foreign exchange in a disguised form, and if the circumstance is serious, the serious offenders will be charged with the "crime of illegal business operations" according to item 4 of Article 225 of PRC Criminal Law.

The Interpretations stipulates that the following circumstances of illegal trading of foreign currencies shall be deemed to have a "serious circumstance" or a "particularly serious circumstance" that shall be subject to sentences of "crime of illegal business operations":

Serious circumstance:	Particularly serious circumstance:
(1) money involved totals more than RMB 5 million; or (2) illegal income reaches more than RMB 100,000	(1) money involved totals more than RMB 25 million; or (2) illegal income reaches more than RMB 500,000.
Sentences:	Sentences:
(1) fixed-term imprisonment of no more than 5 years; and (2) a fine amounting to no less than one time but no more than five times the amount of illegal gains.	(1) fixed-term imprisonment of more than five years; and (2) a fine amounting to not less than one time but not more than five times the amount of illegal gains; or (3) confiscation of property:

The Interpretations highlights the attitude and determination of China to crack down on money laundering and tackle terrorist crimes in accordance with laws.

http://www.spp.gov.cn/xwfbh/wsfbt/201901/t20190131_407161.shtml#2
http://english.court.gov.cn/2019-02/11/content_37435615.htm

II. Cases

A Punitive Compensation Amounting to RMB 2.1 Million Was Imposed for First Malicious IP Complaint Case Since the Effectiveness of E-Commerce Law

On January 24, 2019, Hangzhou Court of Internet (the "Court") pronounced a judgment on malicious IP complaint, which is the first case ruled based on the new "notice and take-down" mechanism regulated in the new PRC E-Commerce Law.

A "notice and take-down" mechanism was introduced in article 42 of PRC E-Commerce Law, which clarifies that if an IP right holder believes that an in-platform operator has infringed its IP right, the IP right holder can notify the platform operator to take necessary measures, such as deleting, blocking and disconnecting hyperlinks, or terminating transactions and services ("Preliminary Measures"). Upon receipt of the notice, the platform operator shall take Preliminary Measures, otherwise the platform operator will be jointly and severally liable for the additional part of damage caused. However, if the notice is unreal, the "IP right holder" shall be held liable if it causes any damage to the in-platform operator. In addition, if the "IP right holder" submits a notice with malice, it shall compensate in the amount equals to several times of the damages to the in-platform operator.

The plaintiff of this case, Wang, runs a sportswear shop on Taobao, the biggest e-commerce retail platform in China. In December 2016, Wang got complained by the defendant, Jiang, another Taobao operator, who appealed to the Taobao intellectual property protection platform (the "Taobao Platform") as a trademark owner requesting Taobao Platform to remove certain links to Wang's infringing products. According to the evidence provided by Jiang, Taobao Platform deleted the product links involved in the complaint.

In January 2017, Wang filed a complaint with Taobao Platform. After winning the review, links to Wang's products involved were restored. However, subsequently, Wang was counter-appealed by Jiang, resulting in another round of removing links to Wang's products by Taobao Platform.

Then, Wang filed a law suit before the Court, claiming that Jiang made malicious IP complaints and requesting Jiang to compensate for his economic losses. After trial, the Court eventually found that Jiang was not the legitimate owner of the trademark but used false identification materials and fabricated trademark certificates to file appeals against Wang, who was a direct competitor to him. The court held that conducting a malicious IP complaint violates the principles of good faith and commercial morality and damages the legitimate interests of Wang. According to Article 42 in the PRC E-Commercial Law, the court held that the Jiang's acts of malicious IP complaint constitute unfair competition and this malicious complaint should be promptly stopped and Jiang should pay a Punitive Compensation amounting to RMB 2.1 million.

The court also reminds all online operators that unfair use of platform rules to gain competitive advantage and to disrupt competition order in the e-commerce market should be stopped immediately to avoid facing punitive damages, as online trading activities are scrutinized more strictly in line with the new E-commerce Law.

<http://www.100ec.cn/detail-6493456.html>

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