



I. Legal News

1. New Judicial Interpretations Improving the Business Environment in China

The Supreme People's Court ("SPC") has recently issued two judicial interpretations to streamline the procedures for lawsuits and bankruptcies, both of which are effective from March 28, 2019.

A. The Decision on Amending the SPC's Provisions on Strictly Regulating the Trial Period Extension and Postponing the Opening of Court Hearings for Civil and Commercial Cases (the "Amendment").

The SPC's Provisions concern two important matters for the proceedings of civil and commercial cases, which are "trial period extension"¹ as well as "postponing the opening of court hearings". The Amendment released recently further clarifies the latter one.

For "postponing the opening of court hearings", according to PRC Civil Procedure Law, the opening of a trial hearing of a civil and commercial case may be adjourned in any of the following circumstances:

1. the parties or other participants who are required to appear in the trial hearing fail to attend the hearing;
2. a party concerned makes an extempore application for the withdrawal of a judicial officer;
3. it is necessary to summon new witnesses to court, collect new evidences, make a new expert examination or inquest, or make a supplementary investigation; or
4. other circumstances that need to postpone the opening of the trial.

The Amendment clarifies what falls within the definition of "other circumstances that need to postpone the opening of the trial" regulated in PRC Civil Procedure Law. Specifically, the other circumstances shall only refer to force majeure or accident. This clarification will restrict the court to postpone the opening of trial at its own discretion.

In addition, the Amendment clarifies that an opening of civil and commercial trial can only be postponed twice at most. For trial under simplified procedures, it shall not be postponed more than once.

The Amendment is meant to achieve the effect of streamlining the procedures, to quicken the trial process and to help minimize the economic losses for the companies involved in lawsuits, said by the SPC.

B. Provision (III) of SPC on Several Issues Concerning the Application of the Enterprise Bankruptcy Law of the PRC (the "Provision").

Last year, the Chinese courts accepted 18,823 bankruptcy and liquidation cases and 11,669 of them were concluded. In the end of 2018, 98 panels for bankruptcy-related lawsuits had been formed across the State, while three special bankruptcy courts were established in Beijing, Shanghai and Shenzhen earlier this year. A speaker from SPC said that by improving judicial efficiency, companies heavily in debt can be cleared from the market as soon as possible, and those who remain valued in the market can be rebuilt faster. It is also said that big data and information platforms will be adopted to speed up the handling of bankruptcy cases.

Several issues are clarified in the Provision, including the sequence of paying off loans after accepting a bankruptcy application, the creditor's right to know, the voting mechanism for creditors' meetings and the authority and procedure for a trustee to manage the debtors' major assets. Overall, the legitimate rights and interests of creditors and other stakeholders during the bankruptcy process are further safeguarded, the financial support to sustain debtor's continuous operation is encouraged, and the preserved or increased value of debtors' assets is promoted.

(<http://www.court.gov.cn/fabu-xiangqing-148662.html>)

(<http://www.court.gov.cn/fabu-xiangqing-148672.html>)

2. Time Period Required for Incorporation of An Enterprise Further Shortened

There is another critical indicator to evaluate a business environment, which is the convenience for incorporation of an enterprise in China. The State Administration for Market Regulation has recently issued the Opinion of Five Departments on Continually Deepening the Shortening of the Time Period Required for Establishing an Enterprise (Draft for Comment) (the "Opinion") to seek public comments before March 29.

Aiming to create a better business environment and to promote the companies' and the public's experience on the facilitation of business start-up, the Opinion makes several proposals. The overall target is to shorten the timeframe needed for incorporation of an enterprise to within five working days by the end of 2019. Also, it is encouraged to shorten such time period to within three working days when certain conditions are met.

To this end, the Opinion presents some specific measures including the promotion of a comprehensive "one-stop" platform to process the establishment of an enterprise, and further optimization of the enterprise registration services. The platform is expected to combine different matters concerning the start-up of an enterprise and to integrate various resources for better information sharing. In this way, enterprises may log into one platform and submit their information thereon for only one time, and are expected to receive feedback through such platform.²

(http://www.saic.gov.cn/hd/zjdc/201903/t20190325_292288.html)

II. Case

First Winning Battle by Land Rover over Its Chinese Copycat

After three years of litigation, Beijing Chaoyang Court (the "Court") recently ruled that the vehicle "Land Wind X7" produced by Jiangling Motors Corporation ("Jiangling") was a direct plagiarism from the vehicle "Range Rover Evoque" produced by Jaguar Land Rover ("JLR"). In the judgement, the Court ordered the immediate cessation of the production, sales and marketing promotion of the Land Wind X7.

According to article 23 of PRC Patent Law, any design shall be distinctively different from existing designs or combinations of the features of existing designs. The Court decided that Land Wind X7 manufactured by Jiangling had copied five distinctive design features of Range Rover Evoque, and the similarity has led to Chinese consumer's confusion. Accordingly, the Court ruled that the designs successfully obtained by Jiangling are invalid.

In the past, it might be difficult to win a vehicle design lawsuit in China. The success of this legal case may be significant to JLR. After the announcement of the judgement, the global legal director of JLR indicated that the ruling is welcomed and would further strengthen their investment in investing in China and in the fairness of the intellectual property rulings of the Chinese courts.

(http://auto.sina.com.cn/j_kandian.d.html?docid=hsxncyh6071846&subch=bauto&hpid=00042)

① For trial period in China, for litigation of first instance, the judgement shall be issued within six months upon filing the case, however, under certain circumstances and upon approval, it is possible to have an extension of six months. Such "trial period extension" is clearly regulated in PRC Civil Procedure Law as well as the SPC's Provisions. In the Amendment, there is no reform on such "trial period extension".

② Regarding this topic, the cancellation of enterprise's name pre-approval and the promotion of a self-declaration system online is one of the policies released earlier this year, please refer to our previous newsletter for more information:

<http://asiallians.com/en/china-legal-update-samr-invites-opinions-reform-enterprise-name-registration-system/>

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