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China Legal Update

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I. Legal News

1. A Giant Step in Opening-up of the Financial Sector in China: Decisions on Revising two Administrative Regulations on Foreign-invested Banks and Foreign-invested Insurance Companies

On October 15, 2019, the State Council of PRC announced the decision to modify certain provisions in the Administrative Regulations on Foreign-invested Banks(《中华人民共和国外资银行管理条例》）and Administrative Regulations on Foreign-invested Insurance Companies（《中华人民共和国外资保险公司管理条例》）with immediate effect (the "Announcement").

Since two Regulations released in 2001 (Insurance) and 2006 (Bank) respectively, several amendments have been made gradually to further opening the banking and insurance sectors by loosening regulatory requirements and lifting business restrictions on foreign banks and foreign insurance companies. The main modifications released in the Announcement are listed below with the analysis on the effects they may further bring about:

A. Banking Industry

1. Relax the access threshold for foreign-invested banks:

• Relax the restrictions on Chinese shareholders of Sino-foreign equity joint venture bank ("JV Bank"): Remove the requirement that "the Chinese sole or key shareholder of a JV Bank shall be a financial institution[1]"

- This modification allows foreign investors to choose from a larger panel of Chinese partners, and Chinese financial institutions do not need anymore to be mandatorily appointed as the Chinese party in the JV.

Actually, for many Chinese private banks, their major shareholders are state-owned enterprises or certain local governments, who have the advantage of strong capital and social relationship. This revision allows foreign-invested banks to cooperate directly with the Chinese local governments and certain state-owned enterprises.

• Delete the minimum asset requirement of foreign shareholder on the establishment of wholly foreign owned bank or JV Bank in China: Cancel the minimum asset requirement (USD 10 million).

• Delete the minimum asset requirement of foreign shareholder on the establishment of branch of foreign bank in China: Cancel the minimum asset requirement (USD 20 million);

- These deletions offer convenience to those small-scaled foreign banks with an aim to establish bank (including branch) in China.

2. Permit foreign banks to establish (1) branches of foreign banks in China and (2) locally established banks (wholly foreign owned bank or JV Bank) simultaneously;

- This measure better satisfies the demand of foreign banks to expand their business in China

3. Relax restrictions on the business scope of foreign banks:

• expand the business scope of foreign-funded banks by adding "agency services for issuance, cashing and underwriting of government bonds" and "agency services for receipts and payments";

• lower the minimum amount of the fixed term renminbi deposit that branches of foreign banks in China can accept from Chinese individuals (from no less than 1 million yuan to no less than 0.5 million yuan per deposit)

• cancel examination and approval for foreign-funded banks engaging in RMB related business.

- These measures help the foreign-invested bank have a comprehensive service capacity in both local and foreign currencies as soon as it establishes.

B. Insurance industry

1. Enrich types of shareholders of foreign-invested insurance company:

• Clarify that foreign insurance group companies are able to set up foreign-invested insurance companies in China;

• Clarify that overseas financial institutions are able to hold shares in foreign-invested insurance companies in China.

2. Remove two requirements that a foreign insurance company shall meet[2] for the application of establishment of a foreign-invested insurance companies in China:

• Remove the requirement of establishment for a foreign insurance company that "it has engaged in insurance business for more than 30 years";[3]

• Remove the requirement of establishment for a foreign insurance company that "it has established a representative office within the territory of China for more than 2 years".

It is reported that China Banking and Insurance Regulatory Commission shall expedite revision of the corresponding complementary systems such as the implementation regulations, etc. These measures will enable the long-awaited opening-up of the finance sector in China, bringing opportunities for foreign investors and stimulating the vitality of financial markets.

(http://politics.people.com.cn/n1/2019/1015/c1001-31401608.html)

2. Foreign Travelers to Enjoy 144-Hour Visa-free Transit Policy in More Cities in China

As of 2013, eligible foreign travelers are entitled to stay in 18 cities in China without applying for a visa by showing connecting tickets to a third country or region. Upon gradually releasing visa-free transit preferential policies these years, more Chinese cities are implemented a 144-hour visa-free transit policy.

On October 23, 2019, the National Immigration Administration further announced that four more cities will be added in the list, bringing the total cities to 20. Specifically, starting from December 1, 2019, Ningbo in Zhejiang province, Chongqing municipality, Chengdu in Sichuan province[4] and Xi'an in Shaanxi province were added in the list which allows the foreign travelers to have more choices of cities to visit.

Below is the list of 20 cities for 144-hour visa-free transit policy as of December 1, 2019[5]:

Beijing	Tianjin	Shanghai	Nanjing	Guangzhou
Shenzhen	Xiamen	Qingdao	Chongqing	Xi'an
Kunming	Wuhan	Chengdu	Hangzhou	Shenyang
Dalian	Ningbo	Shijiazhuang	Qinhuangdao	Jieyang

In addition, not all foreign travelers are entitled to enjoy the 144-hour visa-free policy. Currently, only foreign travelers from 53 countries[6] can enjoy the policy with valid travel documents.

It is reported that till September this year, 451,000 foreign travelers benefited from the visa-free policy, and the new policy will bring a tourism boost for these cities in the future.

II. Case

1. Three Times of Punitive Compensation for IP Infringement Applied in Shanghai Court

On September 6, 2019, Pudong District Court of Shanghai made a judgement in support of punitive compensation on trademark infringement between a U.S company and a Chinese sports equipment company. This is the first case in Shanghai as well as a rare nationwide case applying punitive damages directly and adjudicating high compensation to the malicious trademark infringer since the implementation of PRC Trademark Law revised in 2013[7].

According to media reports, the U.S. company (the "Plaintiff") sued the Chinese company (the "Defendant") for manufacturing and selling the same type of physical fitness devices which infringed upon its own trademark "MORT". The court found that the Defendant used the same type of body-building equipment with trademark identical to Claimant's registered trademark involved at an exhibition. Meanwhile, the Defendant also promoted the claimed products through WeChat Mall, factory sites and so on. More seriously, the Defendant previously infringed the IP right of the Plaintiff in 2011 and a settlement agreement was reached at that time in which the defendant undertook not to conduct infringement activities anymore.

The Trademark Law revised in 2013 has added provisions regarding punitive compensation. According to article 63 thereof, where the exclusive rights of trademarks have been infringed in a malicious way, and where the case is serious, the amount of actual compensation for such malicious infringement can be up to three times the benefit gained by the infringer or the losses suffered by the rights holder.

The Court deemed that according to article 63, the main conditions of application of punitive compensation are "malicious" and "serious", which have been satisfied in this case in consideration of the repetitive infringements by the Defendant who refused to abide by the settlement agreement reached before and the huge amount of interests (around one million yuan's benefit gained after execution of settlement agreement by the Defendant) gained by selling counterfeit products of poor quality. As a consequence, the court awarded the threefold punitive damage (three million yuan) in support of all the claims of the Plaintiff.

The revised Trademark Law in 2013 introduce the punitive compensation in order to raise the potential cost of infringements and reverse the situation of "high cost of rights protection and low cost of infringements". However, trapped in the difficulty of qualifying the two conditions "malicious" and "serious", punitive compensation has rarely applied in China.It is reported that this case actively explores the punitive compensation system in terms of the review of applicable conditions and the determination of the compensation base, not only providing a valuable reference to the trial of similar cases, but also of great significance to the continuous enhancement of the judicial protection of intellectual property rights in China.

We also stress that Revision of PRC Trademark Law 2019 will come into force as of November 1, 2019, and the punitive compensation has been raised up to a maximum of five times the amount. When it is hard to determine the right owner's actual losses or the infringer's interests obtained due to the serious malicious infringement, the People's Court may decide a compensation of an amount up to RMB 5 million (Now it is RMB 3 million).

(http://www.shzgh.org/zscq/mtjj/n2512/u1ai23819.html)

2. A French related Dispute over $38.8m was settled in Haikou Maritime Court

Recently, Haikou Maritime Court, located in Hainan, Chinese southernmost island province, has succeeded in settling a French-related dispute over a loan contract worth up to 275 million yuan ($38.8 million).

BNP PARIBAS (The French banking giant) applied to the Hainan Maritime Court for the detainment and further auction of one of the oil tankers owned by Brightoil Gem (a Hong Kong-based shipping company) who failed to pay its mature debts to BNP PARIBAS. The claimed tanker, weighing over 300,000 tons and worth more than $60 million, is by far the heaviest and most valuable vessel detained by the court. After multiple rounds of mediation conducted by the court, the parties finally reached consensus on all the issues and voluntarily signed the mediation agreement on October 8, 2019.

Hainan, as an important Pilot Free Trade Zone, has developed both in economic and legal construction. There are many other measures taken by Chinese government gradually to optimize the environment of foreign investment. According to the latest news, two foreign-related civil and commercial tribunals and one intellectual property tribunal in Hainan province were created on September 26, 2019. Reportedly, the two foreign-related civil and commercial tribunals, which are the first provincial-level cross-regional special tribunals in China, will hear cases whose subject matter are worth five billion yuan ($700.98 million). The IP tribunal is the 20th special intellectual property tribunal[8] approved by the China's Supreme Court.

(http://english.court.gov.cn/2019-09/27/content_37514175.htm)

1. Defined as banking depository financial institutions, banking non-depository financial institutions, securities, insurance, trading institutions, financial holding company, micro-loan company. See the *Coding Standards for Financial Institutions* http://www.cfstc.org/jinbiaowei/2929546/2929550/2971311/index.html.

2. Other requirements remain the same. For example, the foreign insurance company's total assets as at the end of the year prior to the application for establishment shall be no less than USD 5 billion.

3. In our legal update dated July 30, 2019, China had unveiled several measures for further opening its financial industry. It specifies that previously, foreign insurers were required to have been in operation for at least 30 years. And now, such 30-year entry condition was removed. See: http://asiallians.com/en/china-legal-update-china-cuts-social-insurance-contribution-reduce-enterprises-burden/ After two months, currently, the Revision on Administrative Regulations on Foreign-invested Insurance Companies reflects such change and make such change formally in a document with higher legal effect.

4. Chengdu is in the list already but more border ports in Chengdu are added.

5. There are also three more cities applying for a 72-hour visa-free transit policy, which are Changsha, Guilin, and Harbin.

6. Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Monaco, Russia, United Kingdom, Ireland, Cyprus, Bulgaria, Romania, Ukraine, Serbia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Albania, Belarus, the United States, Canada, Brazil, Mexico, Argentina, Chile, Australia, New Zealand, South Korea, Japan, Singapore, Brunei, United Arab Emirates, Qatar.

7. Currently, the Trademark Law in effect is the one revised in 2013. However, a new revision has been made in 2019 and will be effective soon (as of November 1, 2019).

8. There are three IP courts located in Beijing, Shanghai, and Guangzhou. In addition to the three IP courts, there are altogether twenty IP tribunals which are located in Nanjing, Suzhou, Wuhan, Chengdu, Hangzhou, Ningbo, Hefei, Fuzhou, Jinan, Qingdao, Shenzhen, Tianjin, Zhengzhou, Changsha, Xi'an, Nanchang, Lanzhou, Changchun, Urumqi, Haikou.

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