



### I. Legal News:

#### 1. E-Commerce: Draft revised E-Commerce Law to Improve Protection of IP Rights

China recently published a Draft for Comment to solicit public comments regarding the amendment of two articles of the PRC E-commerce Law (the "Draft").<sup>1</sup>

Under the PRC E-Commerce Law, a **"notice and take-down" mechanism**<sup>2</sup> was introduced to strengthen IP protection:

- (1) An IP rights holder who finds out that an online vendor infringes its IP rights is entitled to notify the e-commerce platform operator to take preliminary measures such as "deleting, blocking, and disconnecting hyperlinks, or terminating the transactions and services" by submitting prima facie evidence of said infringement.
- (2) Platform operators shall take the afore-mentioned preliminary measures accordingly upon receipt of notification as well as timely transfer the IP infringement notification to the online vendor.
- (3) Platform operators failing to take preliminary measures shall be ordered to make corrections or be imposed a penalty amounting up to RMB 2 million.
- (4) If the online vendor denies such infringement, it shall submit a non-infringement statement as well as preliminary evidence to the platform operator.
- (5) The platform operator is obliged to forward the non-infringement statement to the IP rights holder and notify him to make a complaint or initial a lawsuit.
- (6) Within 15 days upon receipt of the notification by the IP rights holder, if the platform operator does not receive a notice of a complaint or a lawsuit, then all preliminary measures can be lifted.

According to the Draft, four details are added in the two amended articles to clarify the "notice and take-down" mechanism:

- (1) For platform operators who fail to take preliminary measures, one more administrative liability is introduced: Relevant e-commerce platform operator's licenses/permits would be revoked if it fails to take necessary measures against vendors who infringe on IP rights and the situation is serious.
- (2) In paragraph 6 above, 15 days is prolonged to 20 business days.
- (3) The preliminary measures taken by the platform operators can be suspended: If the online vendor provides a guarantee for compensating the losses caused by the potential IP infringement, the platform operators may suspend the preliminary measures. However, the specific requirements/procedures on the guarantee are not detailed.
- (4) More liability is incurred: if the online vendor submits a false non-infringement statement to the platform operator maliciously, resulting the increase of loss of the IP rights owner, then punitive damages shall be imposed.

[http://www.samr.gov.cn/hd/zjdc/202108/t20210831\\_334252.html](http://www.samr.gov.cn/hd/zjdc/202108/t20210831_334252.html)

#### 2. Labor Law: Ceiling Amount of Maximum Social Insurance Contribution Released

The average monthly salary is important for calculating the ceiling amount of social insurance contributions. Employers and employees cannot make social insurance contributions higher than the ceiling amount, even if in reality the employee is paid far more than that amount.

Generally, the contribution base of the social insurance is capped at 3 times of the average salary of the city. For example, this year in Shanghai and Shenzhen, the ceiling amount of paying severance and ceiling amount for social insurance contribution base are the same.

However, Beijing, and Guangzhou implemented special rules to decrease the ceiling amount of social security contribution base in order to reduce the burden on enterprises during the COVID-19 epidemic. Taking pension fund base for example:

In Beijing, 2020 average monthly salary for employees working in legal entities is RMB 12613.3 yuan/month, and this is the amount used for calculating ceiling amount of paying severance payment. However, for the base of pension fund, HR Bureau released the ceiling amount is RMB 28221 yuan/month, instead of three times of average monthly salary RMB 37839.9 yuan/month.

We summarize the following table for your reference:

	2020 Average Monthly salary	Ceiling amount of paying severance payment	Ceiling amount of pension fund base
Beijing	RMB 12613.3 <sup>3</sup>	RMB 37839.9	RMB 28221 <sup>4</sup>
Shanghai	RMB 10338 <sup>5</sup>	RMB 31014	RMB 31014 <sup>6</sup>
Shenzhen	RMB 11620 <sup>7</sup>	RMB 34860	RMB 34860 <sup>8</sup>
Guangzhou	RMB 11261.5 <sup>9</sup>	RMB 33784.5	RMB 22941 <sup>10</sup>

As always, Asiallians remains at your service and our teams are currently mobilized in all our offices in Mainland China, Hong Kong and Taipei.

<sup>1</sup> Decision to Amend the E-Commerce Law of the People's Republic of China (Draft for Comment) issued by the State Administration for Market Regulation ("SAMR") and the deadline for submitting feedbacks is October 14, 2021. The Draft for Comments is to amend article 43 and article 84 of PRC E-commerce Law.

<sup>2</sup> Article 42,43,44,45 and 84 of PRC E-Commerce Law

<sup>3</sup> [http://tjj.beijing.gov.cn/tjsj\\_31433/tjbmbfjh/ndtjzl\\_31437/\\_2021ndtjzl/202012/t20201231\\_2191210.html](http://tjj.beijing.gov.cn/tjsj_31433/tjbmbfjh/ndtjzl_31437/_2021ndtjzl/202012/t20201231_2191210.html)

<sup>4</sup> [http://rsj.beijing.gov.cn/xxgk/tzgg/202108/t20210804\\_2456371.html](http://rsj.beijing.gov.cn/xxgk/tzgg/202108/t20210804_2456371.html)

<sup>5</sup> <https://mp.weixin.qq.com/s/re3XWWE1iwEzSmqsze9fkg>

<sup>6</sup> <http://sh.bendibao.com/zffw/201643/158732.shtm>

<sup>7</sup> [http://tjj.sz.gov.cn/zwgk/zfxgkml/tjsj/tjgb/content/post\\_8844535.html](http://tjj.sz.gov.cn/zwgk/zfxgkml/tjsj/tjgb/content/post_8844535.html)

<sup>8</sup> [http://hrss.sz.gov.cn/szsrlyzhshbzbjwzqkml/szsrlyzhshbzbjwzqkml/seztfw/shbz/wyc/sybx/content/post\\_9025903.html](http://hrss.sz.gov.cn/szsrlyzhshbzbjwzqkml/szsrlyzhshbzbjwzqkml/seztfw/shbz/wyc/sybx/content/post_9025903.html)

<sup>9</sup> [http://tjj.gz.gov.cn/tjgb/qtgb/content/post\\_7319136.html](http://tjj.gz.gov.cn/tjgb/qtgb/content/post_7319136.html)

<sup>10</sup> [https://guangdong.chinatax.gov.cn/gdsw/jmsw\\_tzgg/2021-07/30/content\\_acc7958670594e988efc50bc31e3c087.shtm](https://guangdong.chinatax.gov.cn/gdsw/jmsw_tzgg/2021-07/30/content_acc7958670594e988efc50bc31e3c087.shtm)

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