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China Newsletter | Q1 2023/Issue No. 56

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This China Newsletter provides an overview of key developments during Q1 2023 in the following areas:

1. **Advertising & Marketing:**

- *SAMR issues guidelines on the use of absolute terms in advertising*: clarifying the scope of "absolute terms" and associated penalties.
- *SAMR promulgates new regulations for online advertising*: providing new guidelines for internet advertisements.

2. **Civil Law:**

- *China's Supreme Court proposes judicial interpretations regarding the Tort Part of PRC Civil Code*: clarifying the tort liabilities in certain scenarios.

3. **Data, Privacy & Cybersecurity:**

- *China finalizes standard contractual clauses (SCCs) for cross-border data transfers*: data exporters using SCCs as the legal basis to transfer personal data offshore to execute China SCCs and complete filing with the Cyberspace Administration of China before Nov. 30, 2023.

- *TC260 solicits opinions on National Standard of certification requirements for cross-border transfers of personal information*: maintaining the former provisions proposed by TC260.

4. Labor:

- *China releases reference text for better protection of female employees*: aiming to eliminate workplace sexual harassment and providing special protections to female employees.

5. Private Equity Funds:

- *Asset Management Association of China (AMAC) releases guidelines for real estate private investment fund pilot filing*: providing new requirements on the scope of targets of real estate investment and on qualifications of fund managers.
- *AMAC issues updated rules on private equity fund registration and filing*: providing guidance on registration requirements on private fund managers and relevant entities and individuals.

6. Securities:

- *China fully implements registration-based IPO regime*: issuer to be listed on mainboards of stock exchanges in Shanghai and Shenzhen no longer subject to thorough review and approval by the China Securities Regulatory Commission (CSRC).
- *CSRC finalizes regulations for filing-based administration of overseas offering and listing of China-based enterprises*: China-based enterprises to complete the filing at CSRC before being listed on overseas markets.

7. Trademark:

- *China National Intellectual Property Administration (CNIPA) proposes new amendments to China's Trademark Law*, aiming to combat bad faith filing and streamline the trademark application process.

Advertising & Marketing

SAMR issues guidelines on use of absolute terms in advertising.

国家市场监督管理总局发布《广告绝对化用语执法指南》

On March 20, 2023, the State Administration for Market Regulation (SAMR) issued *Guidelines for Absolute Language Enforcement in Advertisement* (the Guidelines), which aim to help local market regulators properly enforce the *Advertising Law*. Per Article 9 of the *Advertising Law*, it is prohibited to use "absolute words" like "national level," "highest level," and "best" in advertisements. And following the Advertising Law, the Guidelines clarify the scenarios when and where these "absolute words" are permitted as well as penalties for any improper use of "absolute words."

According to the Guidelines, "absolute words" used in ads will not be treated as a violation when they are not in reference to any of the promoted products or services, including when (a) the "absolute words" are only expressing the service attitude, corporate culture, subjective wishes or the goals of the commodity

operator; or (b) the content referenced by the "absolute words" is not directly related to the performance and quality of the promoted product or service in the advertisement, and will not mislead consumers.

Additionally, if "absolute words" refer to the product or service in the advertisement but do not mislead customers or belittle other market players, then using such "absolute words" in the ad may not be regarded as a violation. To be specific, where the "absolute words": (a) are used to compare the product with another product of the same brand or the same company; (b) are used to publicize a reminder to consumers such as the method of use, time of use, or shelf life of the product; (c) are included in the language for product classification determined in accordance with any national standard, industry standard, local standard, etc., and the basis can be provided; (d) are contained in the product name, specifications, model, registered trademark or patent, and the ad uses the product name, specifications, model, registered trademark, or patent to refer to the product to distinguish it from other products; (e) are contained in any award or title granted in accordance with relevant national regulations; or (f) describe the objective situation of spatial or temporal sequential order, or publicize factual information of product sales, sales volume, market share, etc., with the time period, geographical area, and other conditions specified, the provisions relating to "absolute words" shall not apply.

Any failure of the advertiser, advertising agent or advertisement publisher to comply with the Article 9 of the *Advertising Law* may lead to administrative penalties such as confiscation of the advertising fee, imposition of a fine (range from RMB200,000 to RMB1 million), revocation of the business license and any approval documents, etc. And the Guidelines emphasize that the market administrative authorities should consider the facts and the degree of social harm when enforcing the *Advertising Law*. If the ads haven't had harmful consequences and have been rectified on time, there should be either no punishment or a lighter punishment.

SAMR promulgates new regulations for online advertising

国家市场监督管理总局发布《互联网广告管理办法》

On March 25, 2023, SAMR issued *Measures for the Administration of Internet Advertisements* (the Measures), which took effect May 1, 2023. The Measures were made under the *Advertising Law*, the *E-Commerce Law* and will replace SAMR's 2016 *Interim Measures for the Administration of Internet Advertising*.

New rules under the Measures are as follows:

- Though tobacco ads have been banned for nearly 20 years, the marketing of electronic cigarettes haven't been constrained by the law until the Measures were released. The Measures prohibit online advertising of tobacco, including electronic cigarettes;
- Per the *Advertising Law*, the advertisement of drugs, functional food, food for special medical purposes, and medical devices are subject to prior review of the competent authority. The Measures further specify that it is forbidden to promote drugs, functional food, food for special medical purposes, and medical devices under the guise of introducing or promoting health and wellness knowledge;
- No ads for medical treatment, drugs, functional food, food for special medical purposes, medical devices, cosmetics, alcohol, etc. may be targeted to teenagers online, such as on websites, apps and official accounts;
- Prohibition on paid search advertisements in search results for government services;

- Advertisers, advertising agencies, and publishers are responsible for verifying the advertising content in next-level links (if any);
- It is prohibited to deliver any online advertisement to any means of transport, navigation equipment, smart home appliance, etc., without user consent or user request.

According to the *Advertising Law*, the main participants of advertisement are advertisers, ad agencies, ad publishers, and internet service provider. The Measures expand the scope of the subjects – in live-streaming, the participants who conduct advertising activities are also deemed ad subjects and therefore bear the corresponding responsibilities. Based on their roles and functions in the advertising activities, the advertiser will take the initial responsibility for advertising activities. Any violation of the Measures will be punished according to the Advertising Law.

Civil Law

China's Supreme Court proposes judicial interpretations regarding the Tort Part of PRC Civil Code

最高人民法院就民法典侵权责任编司法解释征求意见

On March 29, 2023, the Supreme People's Court issued the *Draft Interpretation on the Application of the Civil Code Part on Tort Liability* (the "Draft for Comments") for public comment. The highlights of the Draft for Comments are set forth below:

1. *Tort Liability in Connection with Guardianship*

The Draft for Comments introduces new provisions to guide judicial practices for infringement cases in connection with guardianship, including: (i) a guardian is entitled to request mental damage compensation from a tortfeasor who illegally takes the ward out of guardianship; (ii) a tortfeasor who lacks legal capacity may jointly assume non-property liability with the guardian such as apologizing, stopping infringement, eliminating danger, eliminating influence, etc. to the degree corresponding to the age, intelligence and mental health of such person; (iii) in case of an infringement by a tortfeasor who lacks legal capacity, the victim may request that the guardian bear full responsibility or that the person who performs the temporary guardianship duty on behalf of the guardian bear the corresponding responsibility within the scope of fault-based liability.

2. *Employer Liability*

As a general principle, the Civil Code provides that an employer shall be responsible for acts of its employees carried out in the course of employment. The Draft for Comments further provides that an employer shall also be liable for conduct of a person carried out when performing tasks of the employer, regardless of employment relationship.

3. *Division of Tort liability in Labor Dispatch*

Labor dispatch is the practice of an employer engaging staff through an employment service provider ("staff agency") as opposed to direct employment. To clarify the division of responsibility between the employer and staff agency, the Draft for Comments provides that in the course of labor dispatching, if the dispatched staff causes damage to others when carrying out work tasks, the infringee may request that the

employer assume full responsibility of the tortfeasor, or that the staff agency assume corresponding responsibility for the fault of wrongful action of dispatched staff. If the employer and the staff agency are co-defendants, the staff agency shall be jointly liable with the employer within the scope of its fault.

Data, Privacy & Cybersecurity

China finalizes Standard Contractual Clauses for Cross-Border Data Transfers

网信办发布《个人信息出境标准合同办法》和标准合同模板

On Feb. 24, 2023, the Cyberspace Administration of China (CAC) released the long-awaited final version of standard contractual clauses for cross-border transfers of personal information (China SCCs) via the *Measures for Standard Contracts for Transferring Personal Information Overseas* (SCC Measures), which came into effect June 1, 2023.

1. *Who should consider a China SCC approach?*

Data exporters that do not meet the thresholds for the CAC-led security assessment or that have not obtained a third-party certification for cross-border transfer **must** execute the China SCCs to legitimize their transfers of personal information outside of mainland China.

As a reminder, a mandatory CAC-led security assessment is triggered if the exporter fits in any one of the following: (1) organizations designated as a Critical Information Infrastructure Operator (CIIO); (2) organizations that export "important data"; (3) organizations processing China-based personal information (PI) of more than one million individuals, or (4) organizations that have transferred PI of more than 100,000 individuals or sensitive PI of more than 10,000 individuals in aggregate outbound since Jan. 1, 2022. Notably, in the final version of SCC Measures, CAC explicitly prohibits data exporters from circumventing mandatory security assessment by splitting data transfer volumes or other means so as to slip under the above thresholds.

Data exporters that do not meet all the above thresholds can choose either certification or China SCCs as the legal basis for transferring personal data overseas. However, if choosing the certification approach, the data exporters will be subject to the review by the state-approved third-party institution (i.e.,

China Cybersecurity Review Technology and Certification Center) and shall meet certain requirements (please refer to "*China Initiates PIP Certification, Updates Guidelines for Certification of PI Cross-Border Transfers*" in our previous issue, pp. 8-11). Using the China SCCs may be more convenient, as it is less invasive and potentially less costly, particularly in proportion to the small scale of the data transfers addressed by these routes to compliance.

2. *Grace period and compliance actions*

After June 1, all new in-scope data exports from China must adopt the new China SCCs, while the data exporters will be given a six-month grace period until Nov. 30 to make any necessary rectification to the existing cross-border data transfers, including:

a. completing a self-assessment in respect of the cross-border data transfers, namely, the "Personal Information Protection Impact Assessment" (PIPIA);

b. preparing and executing the China SCCs with offshore importers; and

c. filing the executed SCCs and PIPIA report with the local provincial CAC within 10 business days of the effective date of the executed SCC.

3. *Self-assessment prior to data transfers*

The data exporters must complete a PIPIA and prepare a corresponding report (which must be retained for at least three years) for filing with CAC before the commencement of the cross-border transfers. The assessment must address the following issues:

- the legitimacy, proportionality and necessity of the cross-border transfers;
- the scale, scope, type and sensitivity of the personal data to be transferred abroad, and potential risks to data subjects' rights and interests;
- the obligations to be undertaken by the data importers, and the technical or organizational measures to be adopted by the data exporters to ensure the security of data;
- potential risks of personal data being breached, leaked, damaged or illegally utilized after the transfer and whether channels for data subject complaints are available;
- data protection legal framework of the destination country/region, and its impact on the performance of the China SCCs, which is similar to a Transfer Impact Assessment (TIA) under the EU General Data Protection Regulation (GDPR). Article 4 of the China SCC specifies the detailed content of such assessment.
- Other factors which may affect the security of data transfers.

4. *Specific requirements under China SCCs*

Although the China SCCs resemble the EU Standard Contractual Clauses (EU SCCs) in certain key respects such as data importer obligations and data subject rights, there are also some notable differences:

- Overall structure: Unlike EU SCCs which cover four modules of processing arrangements, the China SCCs adopt a "one-size-fits-all" template, which appears to be based on the assumption that the personal information handler (equivalent to a data controller under GDPR) will be located within mainland China. That being said, the exporter equivalent to a data processor under GDPR may not be able to use the China SCCs.
- Flexibility of contract: The China SCCs must be used verbatim. However, the SCC Measures allow the data exporters and data importers to negotiate and incorporate non-standard terms into Appendix II of the China SCCs, provided that such terms do not conflict with the China SCCs.
- Data subjects' contractual rights: Under the China SCCs data subjects as third-party beneficiaries have the contractual right to make a claim against both the data exporters and the data importers.
- Governing law and dispute resolution: The China SCCs must be governed by Chinese laws, while the GDPR SCCs allows flexibility to choose either an EU country law or a non-EU country law as the governing law.

For disputes between parties to the China SCCs, the data exporter and data importer can resolve the dispute through (1) arbitration by a Chinese arbitration tribunal or an international arbitration tribunal

(which is a party to the 1958 New York Convention) or (2) litigation conducted in courts in mainland China.

Where a data subject brings an action against the data exporter or data importer as a third-party beneficiary, the jurisdiction should be determined in accordance with the provisions of China's Civil Procedure Law.

5. *Other noteworthy points of China SCCs*

- Oversight by Chinese authorities: Similar to the EU SCCs, the China SCCs require the data importer to accept Chinese regulatory authority supervision and management during the implementation of the SCCs, including responding to authority inquiries, coordinating with investigations or examinations, and complying with measures adopted or decisions made by the supervisory authority. Parties to the China SCCs should also be able to demonstrate their compliance, provide documentation evidencing all necessary actions already taken, and provide such evidence to the regulatory authorities on request.
- Separate Consent: The final version of the China SCCs clarifies that a separate consent is required only where the cross-border transfer of personal data relies on an individual's consent. That being said, if the data export is based on other lawful bases provided for under PIPL instead of consent, then the data exporter does not have to obtain a separate consent specific to such data export.
- Liability allocation between data exporters and data importers: The CAC has simplified the treatment of contractual liabilities in the final SCCs, providing that data exporters and data importers will be jointly liable to data subjects only in the event that such joint liability is required by Chinese laws and regulations. Meanwhile, either party is entitled to recover contribution from the other party if it assumes a liability that exceeds its due share.

6. *Next steps*

The finalization of the SCC Measures and the China SCCs indicates that all three major legal mechanisms under PIPL for cross-border data transfers are fully established with necessary details for implementation. Organizations that do not meet the thresholds for a CAC-led security assessment should evaluate their use of the SCCs, noting third-party certification as an alternative approach to the SCCs. Businesses relying on the SCC approach for the data export will need to put processes as mentioned in Section 2 above in place to meet the grace period deadline and the filing requirements.

TC260 solicits opinions on National Standard of certification requirements for cross-border transfers of personal information

信安标委就《信息安全技术 个人信息跨境传输认证要求》征求意见

On March 16, 2023, the National Information Security Standardization Technical Committee (TC260) released the draft version of a National Standard, namely *Information security technology-Certification requirements for cross-border transmission of personal information* (《信息安全技术 个人信息跨境传输认证要求》) (the "Certification Requirements Standard"), soliciting public feedback until May 15. The Certification Requirements Standard outlines the basic principles and requirements for the cross-border personal data processing activities, as well as the rights of data subjects and the obligations of personal information handlers and outland importers under the personal information protection certification (PIP Certification) approach.

As mentioned in our previous issue (see pp. 8-11), TC260 released and updated another practical guidance regarding the PIP Certification in 2022, i.e., *Security Certification Specification for Cross-border Processing of Personal Information* (TC260-PG-20222A) (the "Cross-border Certification Guidelines V2.0"), to serve as the temporary technical standards for PIP Certification before the formal launching of the Certification Requirements Standard. Notably, the current draft version of the Certification Requirements Standard is almost identical to the previously issued Cross-border Certification Guidelines V2.0, except it adds the definitions of "personal information," "sensitive personal information" and "separate consent."

For more information about the PIP Certification and its requirements, please refer to "*China Initiates PIP Certification, Updates Guidelines for Certification of PI Cross-Border Transfers*" in our previous issue (pp. 8-11).

Labor

China releases reference texts for better protection of female employees

六部门发布操作指南进一步保障女职工权益

Following the release of the *Law on the Protection of Rights and Interests of Women*, on Mach 8, 2023, the general office of six government agencies (including the Ministry of Human Resources and Social Security, the Supreme People's Procuratorate, All-China Federation of Trade Unions, and China Enterprise Confederation/China Enterprise Directors Association) jointly released two documents: the *Policy for the Elimination of Sexual Harassment in the Workplace (Reference Text)* and the *Policy for the Special Labor Protection of Female Employees in the Workplace (Reference Text)*. Employers are recommended to establish and implement internal systems and draft or revise employment contracts according to the two reference texts.

- *Policy for the Elimination of Sexual Harassment in the Workplace (Reference Text)*. This policy consists of seven chapters, covering aspects like publicity and training, employee complaint procedures, investigations, union participation, and supervision. This policy provides a detailed list of examples of conduct that may constitute workplace sexual harassment. Significantly, it characterizes sexual harassment as conduct that causes sexually related discomfort against the will of another employee, whether by language, action, text, image, or any other means.

  This Policy also requires employers to implement procedures to prevent, receive complaints about, and investigate incidents of sexual harassment in the workplace. The Policy requires employers to take precautions to maintain confidentiality and not to disclose any information about individuals involved in sexual harassment complaints, including but not limited to the complainants, accused parties, and witnesses.
- *Policy for the Special Labor Protection of Female Employees in the Workplace (Reference Text)*. This Policy, containing 26 articles, serves as a reference text for employers developing internal rules for female employees in the workplace, including provisions regarding non-discrimination in recruitment, equal remuneration, protections for female employees, and safety and health issues in the workplace. This Policy does not create new rules; rather, it simplifies and streamlines the existing rules in the Law on the Protection of Rights and Interests of Women.

Notably, the two policies are designated as "reference texts," meaning they should be treated as guidance and not as law that can be directly enforced.

Private Equity Funds

AMAC releases guidelines for real estate private investment fund pilot filing

中基协发布《不动产私募投资基金试点备案指引》

On Feb. 20, 2023, Asset Management Association of China (AMAC) released the Guidelines for the Filing of Pilot Real Estate Private Investment Funds (for Trial Implementation) (the "Guidelines"), which allows qualified private equity fund managers to set up real estate private investment funds with the aim of introducing institutional capital into projects in connection with specific residential housing, commercial business housing, and infrastructure. The Guidelines mainly introduce provisions to regulate the market with regard to fundraising, investment, operation, and information disclosure, and they set up new requirements on the scope of targets of real estate investment and on qualifications of fund managers. Highlights include:

1. *Scope of Targets of Real Estate Investment*

Real estate private funds may invest in the following projects:

a. stock commercial housing that has obtained related construction permits, land use certificates, and presale permits, and is available for sale or is under construction, including residential houses and apartments;

b. government-subsidized housing built under specific statutory requirements to address housing difficulties, including public rental housing, government-subsidized rental housing, and co-ownership housing;

c. market-oriented rental housing, which has obtained a land certificate and is built for the purpose of long-standing market-oriented rental operation;

d. commercial premises, including office buildings, shopping malls, and hotels; and

e. infrastructure projects.

2. *Qualifications of Fund Managers*

A fund manager may set up a real estate private fund if their private equity fund meets the following requirements:

a. Registered with AMAC as a private equity fund manager;

b. Principal contributors have not changed in the last two years;

c. Principal contributors must not be affiliated with a real estate development enterprise;

d. The fund has a sound governance structure, management system, decision-making process, and internal control mechanism;

e. Has a paid-up capital no less than RMB 20 million;

f. Experience managing real estate investment and has a total principal of no less than RMB 5 billion invested in real estate or an accumulated principal no less than RMB 10 billion since its registration as fund manager (in a case where the investors of a fund are institutional investors, the requirements for principal can be reduced to RMB 3 billion and RMB 6 billion, respectively);

g. Successful exits from at least three real estate investment projects;

h. Employs professionals with real estate experience—the investment department must have at least eight professionals with more than three years of real estate investment experience, of which three have more than five years of experience;

i. Has not committed major violations of laws and regulations in the last three years.

3. *Investor Eligibility*

The first round of paid-up capital contribution to a real estate fund must be no less than RMB 30 million and each investor must have a first round of paid-up investment of no less than RMB 10 million. In case of individual investors, the total capital contribution of the individual investors must not exceed 20% of the fund's total paid-up capital.

4. *Operation Requirements*

a. Gearing ratio. The total assets of a real estate private investment fund must not exceed 200% of the net assets.

b. Fund custody. Real estate private investment funds must be under the custody of a qualified institution.

c. Reporting obligations. Fund managers must submit the information and materials in connection with the fundraising plan, qualification of major contributors to the fund manager, capital of the fund manager, etc. to the AMAC before carrying out fundraising, management, and other business activities.

d. Filing obligations. Fund managers , within 20 working days of the completion of fundraising for a real estate private investment fund, must submit basic information and materials including the fund contract, fund custody agreement, fund prospectus, risk disclosure documents, capital contribution certificates, etc., to the AMAC.

e. Requirements on provisions of guaranty to investment targets. A real estate private investment fund must satisfy the following requirements before providing guaranty or loans to investment target companies:

i. The provisions of guaranty or loan are agreed upon in the fund contracts;

ii. The maturity date of the loan or guaranty must not be later than the completion date of fund liquidation;

iii. Where there is any individual investor, the fund must hold no less than 75% equity of the target company; and

iv. Where all investors are institutional investors, the fund must hold no less than 75% equity of the target company or 51% equity of target company only if the target company provides a guaranty.

AMAC issues updated rules on private equity fund registration and filing

中基协修订《私募投资基金登记备案办法》及配套指引

On Feb. 24, 2023, AMAC issued the Private Investment Fund Registration and Filing Measures (the "New Measures"), which took effect May 1, 2023, and replaced the Measures for the Registration of Private Investment Fund Managers and Filing of Funds (for Trial Implementation), issued by AMAC in 2014 as the basic rules governing funds registration in China. The New Measures aim to further standardize the registration process for fund managers and fund products and apply higher regulatory requirements to the relevant entities in the fund market.

I. ***Registration of Private Fund Managers.***

1.	General Requirements	– The legal form for a private fund manager must be a PRC-registered company or partnership. – A private fund manager must have a paid-in capital no less than RMB 10 million. – The controlling shareholder, ultimate controller, and general partner of a private fund manager must have qualified experiences. – The legal representative, executive partner or their designated representative, and the senior officers in charge of investment management of a private fund manager must hold a certain percentage of the equity in such private fund manager. – A private fund manager must have no less than five full-time employees. – The senior managers of a private fund manager must have qualified experiences. – A private fund manager must have internal control policies in line with AMAC's requirements. – A private fund manager must have an entity name, business scope, business premise, and other facilities in line with AMAC's requirements.
2.	Special Requirements for Foreign	A private security fund manager with 25% or more equity owned by offshore shareholders must fulfill additional requirements, including:

	Invested Private Securities Fund Managers	– The offshore shareholder must be a qualified financial institution licensed by the financial regulatory authority at the location of such foreign shareholder; and – The private fund manager and the offshore shareholders have no material administrative or judicial punishment records in the last three years.
3.	Qualification Restrictions on Shareholders, Partners, and Actual Controller	The shareholders, partners, and the actual controller of a private fund manager must not meet any of the following circumstances: – Failure to make contribution with self-owned funds or with complicated equity structures such as shareholding proxy and cross-shareholding; – Inappropriate ratio of assets to liabilities and leverage; – Fewer than five years of experience in the asset management and investment industry; or – Maintaining positions in an unaffiliated manager or engaging in conflict business in the last five years.
4.	Qualification Restrictions on Legal Representative, Senior Officers, Executive Partner, and Designated Representative	The legal representative, senior officers, executive partner, or the designated representative of a private fund manager must not meet any of the following circumstances: – Engaging in conflict business in the last five years; – Failure to obtain practice qualifications as required by law; or – Lack of competent management ability or working experiences.
5.	Qualification Restrictions on Controlling Shareholder, Actual Controller, General Partner, and Major Funder	The shareholders, partners, and the actual controller of a private fund manager must not meet any of the following circumstances: – Any circumstances set forth in Article 16 of the New Measures: – Being revoked as a private fund manager by AMAC in the last three years; – Rejection of a registration application for a private fund manager in the last three years due to submission of false information or conducting private fund business without registration; – Existence of material business risk; – Engaging in business conflicting with private fund management; or – Existence of significant adverse credit history which has not been repaired.

II. *Filing of Private Fund*

1.	Investment Scope	– For private security funds: stocks, bonds, depositary receipts, asset-backed securities, futures contracts, option contracts, swap contracts, forward contracts, shares of securities investment funds; and – For private equity funds: equity of unlisted companies, shares of unlisted stock companies, shares of listed companies issued to specific targets, shares of listed companies traded in bulk transactions, agreement transfers, etc., convertible bonds and exchangeable bonds not publicly issued or traded, debt-to-equity swaps, and shares of equity investment funds.
2.	Minimum Initial Paid-in Capital	– For a private security fund, the initial paid-in capital must be no less than 10 million yuan; – For a private equity fund, the initial paid-in capital must be no less than 10 million yuan and for venture capital fund, the initial paid-in capital can be reduced to 5 million yuan but must be increased to no less than 10 million within 6 months after the fund filing; – For any private fund which invests in a single project, the initial paid-in capital must be no less than 20 million yuan.
3.	Duration	The agreed duration of a private equity fund must not be less than five years.
4.	Filing Documentation	The private fund manager must submit the following filing documentation to AMAC after signing of fund contracts and payment of initial investment: – Fund contract; – Custody agreement or documents related to institutional measures to safeguard funds; – The fundraising account supervision agreement; – Risk disclosure letter and investor suitability related documents; – Documents proving the payment of funds raised; – Basic information of investors and their subscription.

On the same day the New Measures were issued, AMAC also released corresponding rules providing guidance on registration requirements for private fund managers and relevant entities and individuals by setting forth detailed requirements on the name, business scope and premise of the fund manager, the timing of registration application of a private fund manager, work experience of individual shareholders, partners, the actual controller, legal representative, and senior officers of a fund manager, etc.

Securities

China implements registration-based IPO regime

中国全面实行股票发行注册制制度

On Feb. 17, 2023, the China Securities Regulatory Commission (CSRC) released a series of rules on reform of the regulatory regime for initial public offerings (IPO), expanding the registration-based IPO regime to the main boards of stock exchanges in Shanghai and Shenzhen (the "Reform"). Two stock exchanges also respectively released their supporting rules and guidance on the same day to implement the new regime.

Prior to the Reform, the registration-based IPO regime had already been implemented on a small scale in specific markets of Chinese stock exchanges. The Shanghai Stock Exchange Science and Technology Innovation Board (SSE STAR market) has piloted the registration-based system since its launch in 2019, which was followed by the ChiNext market on the SZSE in 2020, and the Beijing Stock Exchange (BSE) which is designed to serve small and medium-sized enterprises (SMEs) in 2021. The Reform indicates the full implementation of the registration-based regime across the entire spectrum of China's capital markets.

Below are some key takeaways for companies and investors:

1. *Difference between registration-based system and approval-based system*

Under the old approval-based IPO regime, companies seeking IPOs on main boards of stock exchanges in mainland China had to receive approval from CSRC following a strict vetting process. CSRC was responsible for receiving and reviewing companies' IPO applications, which involved a long list of procedures including pre-filing reviews, document filing with the CSRC, possible inspections and audits by the CSRC, and more. The whole procedure could take months or even years to complete.

Under the registration-based system, the stock exchanges, by their listing review committees, can review and determine whether a company meets their IPO criteria and information disclosure requirements. The CSRC will take a supervisory role, responsible for registration of the listing applications based on the stock exchanges' decisions. The CSRC's review during its registration process will focus on limited issues such as whether the company complies with national industrial policies and is suitable for listing at the relevant board.

2. *IPO Criteria*

The Reform also cuts back the listing criteria for IPO applicants. Taking IPOs on the main boards of Shanghai Stock Exchange (SSE) and Shenzhen Stock Exchange (SZSE) as example, the new regime provides domestic applicants with three sets of financial criteria to select, and applicants no longer need to have a track record of three consecutive profitable years. Furthermore, the requirement of no-unrecovered-losses at the end of the most recent accounting period and the 20% cap on intangible assets have also been removed. However, it should be noted that financial and capital thresholds under the new regime are much higher than the ones of the old regime:

IPO Eligibility Criteria to be listed on main boards of SSE and SZSE	
Share requirements	– Total share capital after issuance must be at least RMB 50 million; – Publicly issued shares must account for more than 25% of issuer's total shares; if the total share capital exceeds RMB 400 million, the proportion of publicly issued shares must be above 10%.
Market capitalization and financial requirements	The issuer must meet at least one set of the following criteria: <u>Selection One</u>: a. Positive net profits in the last three years; b. Accumulated net profit in the last three years of at least RMB 150 million; c. Net profits in the last year of at least RMB 60 million; and d. Accumulated net cash flow from operating activities in the last three years of at least RMB 100 million or cumulative revenue of at least RMB 1 billion. <u>Selection Two</u>: a. Having an estimated market value of at least RMB 5 billion; b. Positive net profits in the last year; c. Revenue in the last year of at least RMB 600 million; and d. Accumulated net cash flow from operating activities of at least RMB 150 million in the last three years. <u>Selection Three</u>: a. Having an estimated market value of at least RMB 8 billion; b. Positive net profits in the last year; and c. Revenue in the last year of at least RMB 800 million.

3. *Special voting rights arrangement*

The new regime also allows issuers with special voting rights to be listed on the main boards, provided that the details of such special voting rights arrangement be fully disclosed in the prospectus, as well as its potential risks and impact on the corporate governance. Similarly, the sponsor and legal counsel of the issuer are required to opine on the arrangement, including the qualifications of holders of such shares, the ratio of such shares to ordinary shares, the scope of matters shareholders may vote on, as well as any lock-up arrangement and transfer restrictions.

However, the new regime imposes strict financial requirements for issuers with a special voting rights arrangement. The issuer should meet either set of the following criteria:

- (a) having an estimated market value of at least RMB 20 billion, and (b) positive net profits in the last year; or
- (a) having an estimated market value of at least RMB 10 billion, (b) positive net profits in the last year, and (c) revenue in the last year of at least RMB 1 billion.

CSRC finalizes regulations for filing-based administration of overseas offering and listing of China-based enterprises.

证监会公布境外上市备案管理制度规则

On Dec. 24, 2021, China Securities Regulatory Commission (CSRC), China's top securities regulator, released the following two draft rules to regulate overseas IPOs of China-based companies, soliciting public comments for a period ending Jan. 23, 2022:

- *Provisions of the State Council on the Administration of Overseas Securities Offering and Listing by Domestic Companies (Draft for Comments); and*
- *Administrative Measures for the Filing of Overseas Securities Offering and Listing by Domestic Companies (Draft for Comments) (collectively as the "Draft Rules").*

The finalized rules which combined the above two Draft Rules, called the *Trial Administrative Measures of Overseas Securities Offering and Listing by Domestic Companies* (the "Trial Measures"), were promulgated by CSRC Feb. 17, 2023, and took effect March 31, 2023, along with 5 supporting guidelines.

1. *What changes are proposed under the Trial Measures?*

As early as the 1990s, China-based companies sought to tap the international capital market seeking IPOs on overseas stock exchanges including NYSE and Nasdaq. These efforts spawned a series of regulations including the *Special Provisions on Securities Offering and Listing Abroad by Joint-stock Companies released in 1994, and the Notice on Further Strengthening the Administration of Overseas Stock Offering and Listing* released in 1997. The regulatory regime underwent changes over time resulting in a discrete system under which certain China-based companies consummate public offerings on overseas stock exchanges without passing CSRC's review, many of such issuers employing variable interest entity (VIE) structures, enabling China-based companies to run businesses that are restricted or prohibited against foreign investors.

By revoking these regulations enacted in the 1990s, the Trial Measures establish a new comprehensive regulatory regime, requiring both the direct overseas offering of securities of China-incorporated issuers and the "indirect overseas offering and listing" of non-Chinese issuers with a majority of their operations located within China to pass filings with CSRC. The Trial Measures specify a limited range of circumstances where an overseas offering and listing is prohibited.

In response to the 2022 Didi case, Article 9 of the Trial Measures require China-based companies to be "in strict compliance" with relevant Chinese laws and regulations concerning national security in spheres of foreign investment, cybersecurity, and data security, and to obtain clearance for applicable "security review(s)," to the extent their overseas offering and listing would trigger such reviews, including the national security review applicable to foreign investment (please refer to GT Alert: China Further Strengthens National Security Review of Foreign Investment), the data security review as being contemplated under China's Data Security Law, and the cybersecurity review the implementing rules of

which were separately promulgated under the auspices of the Cyberspace Administration of China (CAC). The Trial Measures further empower the competent authorities to mandate business divestment or other remedies against issuers to eliminate any identified threat to national security.

2. *What offerings and listings are covered under the Trial Measures?*

According to the Trial Measures, both direct and indirect overseas offerings and listings of China-based companies will be covered and required to pass filings with CSRC. Direct offering and listing, according to the Trial Measures, refers to offering or trading of securities directly issued by China-incorporated joint stock companies on an overseas stock exchange.

The "indirect overseas offering and listing," pursuant to Article 2 of the Trial Measures, is defined as offering or trading of securities on an overseas stock exchange of a non-Chinese issuer having a majority of its operation within China, and "based on the underlying interest" of the issuer's Chinese operation entities. Article 15 of the Trial Measures sets forth two criteria, and the satisfaction of both will give rise to CSRC's determination of "indirect overseas offering and listing":

- The financial criteria: the total assets, net assets, revenues, or profits of the issuer's Chinese operation entities in the immediately preceding financial year account for more than 50% of the issuer's audited and consolidated financial result in the same period; and
- The management and operation criteria: a majority of the issuer's senior management in charge of business operations are Chinese citizens or Chinese residents, or the issuer's primary site of business is located, or its principal business activities occur in China.

Notably, the Trial Measures will stick to a "substance over form" principle in determining indirect overseas offerings and listings even if the above two criteria are not met. Section 4 of Guideline No. 1 for the Trial Measure further clarifies that, if a non-Chinese issuer does not meet the criteria above but (a) is required to submit the listing application pursuant to the listing rules for non-domestic (or regional) applicants of such offshore market, and (b) the risk factors disclosed in its application documents are mainly PRC-related, the securities company and issuer's PRC counsel must conduct comprehensive explanation and identification with regard to whether the issuer falls within the scope of filing.

The "offering and listing" used in the Trial Measures is broadly interpreted to cover, apart from traditional IPOs, direct listing of securities without concurrently raising capital, and reverse takeovers or de-SPAC transactions through which Chinese operation entities are acquired by existing public companies trading on overseas stock exchanges. Offering of shares, depositary receipts, corporate bonds convertible into shares, or other equity-like securities are all covered.

3. *Are issuers with VIE structures covered under the Trial Measures?*

In a news release following the publication of the Trial Measures, CSRC officers explicitly referred to China-based companies with VIE structures, indicating that CSRC will seek opinions from other relevant Chinese regulators and approve the filing for overseas offerings and listings of issuers with VIE structures that "satisfy the compliance requirements". It is yet unknown what CSRC's exact standard of review with respect to issuers with VIE structures will be, and if such issuers would need to complete any additional regulatory review.

Notably, on Dec. 28, 2021, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) released the 2021 version of the *Special Administrative Measures for Foreign*

Investment Access (the "Negative List") providing an updated list of business areas where foreign investment is restricted or prohibited. The Negative List inserts a new provision which permits China-based companies engaging in prohibited businesses to complete overseas offering and listing on the satisfaction of the following three conditions: (1) competent authorities have reviewed and approved, (2) foreign investors are not permitted to participate in the operation and management of the Chinese companies, and (3) the foreign investment must be subject to a shareholding percentage limit currently applicable to foreign investment in the Chinese stock market, i.e., any single foreign investor (including with its affiliates) cannot hold more than 10% of the issuer's total capitalization, and all foreign investors cannot hold more than 30% of the issuer's total capitalization. The 2021 version of the Negative List took effect Jan. 1, 2022; however, it is still unclear whether the aforementioned permission will apply to indirect overseas offerings of an issuer with VIE structures.

4. *What overseas offering and listing is prohibited under the Trial Measures?*

According to Article 8 of the Trail Measures, a covered overseas offering and listing of China-based companies will be prohibited if any of the following circumstances exists:

- the relevant listing and financing are explicitly prohibited by Chinese laws, regulations, or policies;
- as determined by competent authorities, the overseas offering and listing will threat or jeopardize national security;
- there is material dispute over ownership of equity, core assets, and technologies;
- the Chinese operation entities or their controlling shareholders and/or ultimate controllers have, within three years prior to the offering and listing, committed certain criminal offences or been subject to ongoing investigation for criminal offence or other serious violation of laws;
- the directors, supervisors, and senior management have, within three years prior to the offering and listing, been subject to administrative penalties with serious circumstances, or ongoing investigation for criminal offence or other serious violation of laws;
- other circumstances to be prescribed by the State Council.

Article 15 of the Trial Measures further provides that, if any circumstance above occurs before overseas offering and listing, such offering and listing should be suspended or cancelled, and the issuer, securities companies (including sponsor and lead underwriter), or other intermediates must timely report with CSRC or other competent authorities.

Article 10 of the Trial Measures also prohibits overseas offerings being made to Chinese investors. However, in a direct overseas offering and listing for purposes of equity incentive or asset acquisition, the issuer may issue securities to specific domestic investors that meet CSRC requirements, including Qualified Domestic Institutional Investors (QDIIs) and investors that have completed the Outbound Direct Investment (ODI) filings.

5. *When and how to complete the filing with CSRC?*

The Trial Measures and five supporting guidelines provide detailed requirements regarding filings with CSRC which may be initiated by the Chinese-incorporated issuer in case of a direct overseas offering and listing, and a Chinese operation entity designated by the issuer in case of an indirect overseas offering and listing. Below are details of the filing requirements:

No.	Types of Transactions	Timing for Filing	Remarks	Filing Documents
1.	IPO	Within three working days after the submission of IPO application.	– For confidential or non-public submissions in overseas markets, CSRC allows listing applicants to apply to postpone publishing the filing results, and the applicants should report with CSRC within three working days after the application documents are published overseas. – In the case of major changes to the applicants before listing in the areas of (i) principal business or business qualification; (ii) control or shareholding structure; or (iii) listing proposal or offering structure, the filing should be updated within three working days.	1) Filing report in the form given in Guideline No. 1, attached with: a. Letters of commitment by issuer and securities companies on the authenticity, accuracy, and completeness of filing documents; b. Resolutions from issuer's shareholders meeting and the board; c. Issuer's complete shareholding structure and control structure; d. List and contact information of issuer and intermediaries' project team members; 2) Regulatory opinions, filing or approval documents issued by the competent authorities of the industry concerned (if applicable); 3) Securities review opinions (if applicable); 4) Legal opinions and commitments by PRC counsel; 5) Prospectus or listing documents.
2.	Subsequent securities offering in the	Within **three** working days	– Including issuances of convertible bonds, exchangeable bonds,	Documents 1) and 4) as listed above.

No.	Types of Transactions	Timing for Filing	Remarks	Filing Documents
	same market after IPO	after completion of the offering.	and preferred shares; – Excluding issuances of securities for the purpose of implementing equity incentives, conversion of reserved funds into share capital, distribution of stock dividends, or share split.	
3.	Listing in other stock markets by a listed issuer	Same as IPO requirements listed above.	– Including secondary listing and primary listing; – Switching listing status (such as from secondary listing to dual primary listing) or switching the boards, which do not involve issuance of securities, will not subject issuers to the filing requirements, but issuers should report with CSRC within 3 working days after the occurrence and the announcement of such events.	Same as IPO.
4.	Listing of assets via multiple acquisitions, share swaps, transfers of shares (e.g., reverse takeover)	Within **three** working days after the submission of the listing application or the first public announcement of the transaction.	/	Same as IPO.

Pursuant to the Trial Measures, CSRC will issue the filing notice and publish the filing results on its website within 20 working days after receipt of complete documentation if the filing submitted is in full compliance with CSRC's requirements. Furthermore, If CSRC suspects any circumstances that may render the proposed offering and listing invalid pursuant to Article 8 of the Trial Measures, CSRC may consult with other government authorities, and the time required for such consultation will not be counted towards the 20-working-day time frame. CSRC may also request supplemental filings within 5 workings days upon receipt of the documentation if the filing documents are incomplete or fail to meet the requirements, and the applicant must provide supplemental submissions in response within 30 working days thereafter.

6. *Pre-filing consultations with the CSRC*

As specified in Guideline No. 4, the Trial Measures provide the issuer, securities companies (mainly covering issuer's sponsors and lead underwriters), or other intermediates engaged in the overseas listing and offering with the opportunity to consult with CSRC before or during the filing. Consultation applications may be filed via CSRC's filing system by the issuer regarding the following issues, but CSRC also sets certain restrictions concerning the consultation:

	Prior to the filing	**During the supplemental filing**
Issues	1. Regulatory policies, controlling structure (such as VIE structure) related to issuer; 2. Whether the issuer is subject to the filing requirements; 3. Others.	1. Further questions regarding the documents required for supplemental filing; 2. New situations or changes occur during the filing, which may affect the overseas listing and offering; 3. Others.
Restrictions	– CSRC will not accept the consultation application when reviewing the filing documents, until sending issuer the request for supplemental filing (at most five days); – CSRC will not accept the consultation regarding non-substantial issues such as reviewing progress or internal arrangements; – Issuers and securities companies must not provide or disclose any confidential or insider information during the consultations; – CSRC's responses must not be deemed as the final decision or guarantee on relevant issues, and must not be quoted as proof of compliance for overseas listings and offerings.	

7. *Post-filing obligations of issuers*

The Trial Measures also impose several reporting obligations on the listed issuers when the following events occur:

Reporting Issues	Timing for report	Notes
IPO	After listing	– Report must include a summary of the share issuance – such as methods of listing, stock codes of applicant, general listing timetable, expected listing proceeds, listing expenses, offering size and structure, underwriting amount, pricing, details of cornerstone investors, etc. – Report must be submitted in the names of issuers, together with sponsors or lead underwriters.
Certain material events after listing	Within three workings days after the occurrence and announcement of a material event.	– Material events include: a. Change of Control (see below); b. Investigations or sanctions imposed by overseas regulatory agencies or authorities; c. Change of listing status or transfer of listing segment; d. Voluntary or mandatory delisting.
Change of Control	Same as above	– Report on Change of Control must cover: a. details of the change e.g., timing and form of change, compliance with disclosure obligations, shareholdings of substantial shareholders before and after the change, etc.; b. details of the ultimate actual controller e.g., background, percentage of shareholdings, etc. c. In the case of change through trusts or asset management arrangements, details of the relevant arrangements, etc. d. In the case of change through nominee shareholding arrangements, details of the nominee relationship, etc. – Control, as defined in Section 6 of Guideline No. 1, means the actual control via shareholding, voting rights, trust, agreement, or other arrangements, solely or jointly, directly, or indirectly.
Major changes to issuer's main business which causes the Trial	Within three working days after the	– In the case of a major change to issuer's main business after the overseas listing causing the Trial Measures to no longer apply to the issuer,

Reporting Issues	Timing for report	Notes
Measures to no longer apply	occurrence of such major change.	the issuer must submit a report with CSRC on such changes; – PRC counsel's opinions must be submitted as well.

8. *What are the requirements for the issuer's sponsors and underwriters?*

Foreign securities companies engaged in an overseas listing and offering as sponsors or lead underwriters are also subject to several obligations under the Trial Measures, including:

Obligations	Notes
One-time filing with CSRC	– As transitional arrangements, sponsors and lead underwriters engaged before March 31, 2023, for an overseas listing and offering must file with the CSRC within 30 working days after March 31, 2023, in a prescribed form specified in Guideline No. 5; – Sponsors or lead underwriters who are being engaged for an overseas listing and offering after March 31, 2023, must, within 10 working days after signing its first engagement agreement, submit to the CSRC a prescribed form specified in Guideline No. 5; – Such filing only needs to be done once. – Updates to the filing must be completed within 10 working days if any filed information has changed.
Verification and supervisory obligations	– Securities companies, along with law firms, must thoroughly examine and verify the documents for CSRC filing; – Securities companies must ensure that: a. there are no material inconsistencies in the filing documents; b. the filing documents are properly drafted; c. explanation on whether the listing will constitute an "indirect listing and offering" has been fully made (see Section 2 above); and d. material events are timely reported.
Undertaking the authenticity, accuracy, and completeness of filing documents	– As mentioned in Section 5 above, the sponsors and underwriters should issue and submit letters of commitment along with other filing documents to CSRC, in which they should: – Undertake the authenticity, accuracy, and completeness of filing documents, ensuring there are no misrepresentations, misleading statements, or material omissions.

Obligations	Notes
Obligations in pre-filing consultations with CSRC	– Securities companies must assist the issuers in pre-filing consultations, and must not provide or disclose any confidential or insider information.
Annual report	– Before Jan. 31 of each year, securities companies must report the covered overseas offerings and listings they have worked for in the previous year to CSRC.

CSRC is empowered to notify the competent overseas securities regulatory authorities if the securities companies fail to complete the one-time filing or annual report duties. Furthermore, where securities companies' failure in performing their verification and supervisory obligations causes issues in the domestic market or damages to Chinese investors, CSRC is entitled to issue a reprimand and impose a monetary fine in an amount between 1 and 10 times the revenue (or RMB 500,000 to RMB 5 million in absence of revenue). The direct persons-in-charge or other responsible persons may also be fined RMB 200,000 to RMB 2 million.

9. *What are the penalties of violating the filing requirements?*

If any China-based company (a) completes an overseas offering and listing without passing CSRC's review, or (b) completes an overseas offering and listing prohibited under Article 8 and Article 25 of the Trial Measures (see Section 4 above), or (c) there is any misrepresentation, misleading statement, or material omission in the filing documents, CSRC is empowered to issue a reprimand and impose a monetary fine ranging between RMB 1 million and RMB 10 million on the issuers (or the Chinese operation entities of foreign issuers in case of indirect offering and listing), their controlling shareholders, or their ultimate controllers. Monetary penalties between RMB 500,000 and RMB 5 million may also be imposed upon direct persons-in-charge or other directly responsible persons.

Securities companies and law firms who have failed their duties under the Trial Measures will be issued with a reprimand and imposed with a monetary fine between RMB 500,000 and RMB 5 million, while their direct persons-in-charge or other directly responsible persons may be fined RMB 200,000 to RMB 2 million.

10. *Cross-Border Securities Regulatory Cooperation*

Article 26 of the Trial Measures also addresses the investigation and evidence collecting by foreign securities regulators upon China-based companies, which is understood to include audit oversight by SEC and/or PCAOB. The Trial Measures specify that such requests for audit oversight must be channeled through CSRC pursuant to "cross-border regulatory cooperation mechanism" and submission of any files and documentation by Chinese operation entities in response to such audit requests must be reported to and consented by CSRC and competent regulatory authorities.

Trademark

CNIPA purposes new amendments to China's Trademark Law

国家知识产权局就商标法修订草案征求意见

On Jan. 13, the China National Intellectual Property Administration (CNIPA) released draft amendments to the PRC Trademark Law ("Draft Amendments"), open for public comments until Feb. 27, 2023. Below are some key highlights in the proposed amendments:

1. *Prohibition on bad faith trademark filing*

Article 22 of the Draft Amendments introduces the concept of bad faith trademark filing, intending to prohibit malicious trademark application activities such as trademark squatters. The following actions are considered bad faith filings under the Draft Amendments:

- massive filings without intent to use;
- filings in deceptive or other improper means;
- filings which cause damage to national interests, public interests, or which have other significant negative influence;
- filings which violate the provisions of Articles 18 [prohibiting the copy, imitation, or translation of a well-known trademark], 19 [restricting agents or representatives from registering trademarks of the principal or represented person in their own name without authorization], and 23 [restricting preemptive registration of a trademark that already has a certain level of influence] of PRC Trademark Law, deliberately damaging the legitimate rights or interests of others or seeking illegitimate interests; or
- filings in other malicious ways.

The above bad faith filings may not only face rejection during the trademark application process, but also punishment such as monetary fines imposed by the regulatory authorities. Applicants who engage in bad faith filings may receive warnings or be imposed fines with a maximum of RMB 250,000, and any illegal gains could be confiscated. In addition to the aforesaid administrative punishment, applicants may also face civil actions brought by any party that suffers loss due to the bad faith filing, where the plaintiffs can claim a compensation covering at least the reasonable expenses for stopping the bad faith filing(s).

For trademarks already registered in bad faith, the Draft Amendments provide for a mandatory transfer mechanism, which allows the genuine trademark owner to request the transfer of the squatted trademark back to them, provided that such trademark either:

(i) infringes the genuine owner's well-known trademark,

(ii) was filed by the genuine owner's agent or representative without authorization, or

(iii) constitutes a preemptive registration of the genuine owner's trademark that was in prior use and enjoys a certain degree of influence.

2. *Prohibition on repeated filings of identical trademarks*

The Draft Amendments stipulate a new rule that, unless otherwise specified, the same applicant can only register one identical trademark for the same commodity or service (Article 14). Specifically, a trademark application must not be identical to a prior trademark registered or applied by the same applicant for the same goods or services, or a prior trademark that has been revoked, cancelled, or declared invalid within one year before the application date. Nevertheless, the Draft Amendments also provide some exceptions to the prohibition, e.g., if the applicant fails to renew the prior trademark due to reasons not attributable to itself.

3. *Additional post-registration obligation for trademark owner*

The Draft Amendments introduce a new obligation, requiring the trademark owner to provide a statement for the use of the trademark (or valid justification for non-use) every five years after the trademark is granted. The statement must be filed within 12 months (with an additional six-month grace period at most), otherwise such trademark will be automatically deregistered. CNIPA is also empowered to conduct random verification over the authenticity of such statement and can request the trademark owner to submit supplemental evidence. If the statement provided by the trademark owner is not authentic, CNIPA is also entitled to cancel the registration. This arrangement aims to clean up unused and idle trademarks.

4. *Improving the efficiency of the trademark opposition process*

Under the current PRC Trademark Law, a prior trademark rights holder or interested party is permitted to raise objections to a trademark registration within three months, if they believe such registration violates their rights. The Draft Amendments shorten the objection period from three months to two months.

Additionally, under the Draft Amendments, the opposition appeal procedure at the CNIPA level is cancelled entirely. If a trademark application is rejected by CNIPA as a result of a successful opposition, the losing party can only file an appeal with the court if it is dissatisfied with the outcome.

** This GT Newsletter is limited to non-U.S. matters and law.*

Read previous issues of GT's China Newsletter.

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