



## Company

### 1. SAIC Clarifies Issues Concerning Implementation of Interim Regulations on the Public Disclosure of Enterprise Information

工商总局发布《关于贯彻落实〈企业信息公示暂行条例〉有关问题的通知》(09/02/2014)

On Sept. 2, 2014, the State Administration for Industry and Commerce (the **SAIC**) released the *Circular on Issues concerning the Implementation of the Interim Regulations on the Public Disclosure of Enterprise Information* (the **Circular**), which became effective on the same day.

The Interim Regulations on the Public Disclosure of Enterprise Information (the **Regulations**) were released by the State Council Aug. 7, 2014 and became effective Oct. 1, 2014. The Regulations establish a system for the public disclosure of enterprise annual reports and the enterprise credit information database. Further, the Circular make the following clarifications regarding the Regulations:

#### Standardization of the Public Disclosure of Enterprise Information

Except for the enterprise information that should be registered and/or filed with SAIC or its local counterparts (collectively, the **Industry and Commerce Authorities**), all enterprise information created prior to the implementation of the Regulations is not subject to public disclosure. Enterprises whose business licenses have been revoked before the implementation of the Regulations should be marked with “revoked,” and their names, registration numbers and license revocation dates are required to be made public, in the enterprise credit information database.

### Credit Constraints versus Administrative Penalties

The Circular emphasizes that the Industry and Commerce Authorities should properly handle the relationship between “credit constraints” and administrative penalties. Listing an enterprise on the “List of Enterprises with Abnormal Business Operation” or the “List of Enterprises in Series Violation of Law” in the enterprise credit information database is a type of credit constraint. In the event of a violation of laws or regulations, in addition to imposing credit constraints, the Industry and Commerce Authorities should also impose administrative penalties in accordance with the relevant laws or regulations

### Administration and Security of Enterprise Data

The Industry and Commerce Authorities should timely update in the enterprise credit information database the enterprise information collected from the annual reports submitted by the enterprises, information voluntarily submitted by the enterprises, and other information published by other governmental authorities. In addition, the Circular provides that public information of enterprises should be protected from illegal modifications and access.

- Circular on Issues concerning the Implementation of the Interim Regulations on the Public Disclosure of Enterprise Information
- 《关于贯彻落实〈企业信息公示暂行条例〉有关问题的通知》
- Issuing authority: State Administration for Industry and Commerce
- Date of issuance: Sept. 2, 2014 / Effective date: Sept. 2, 2014

## 2. SAIC Seeks Comments on the Proposed Measures for Penalizing Activities of Infringing Consumer Rights and Interests

国家工商总局就《侵害消费者权益行为处罚办法》公开征求意见（09/05/2014）

On Sept. 5, 2014, the State Administration for Industry and Commerce (the **SAIC**) released for public comments the proposed draft *Measures for Penalizing Activities of Infringing Consumer Rights and Interests (Draft for Comment)* (the **Draft**). The public comment period ended Oct. 4, 2014.

The Draft provides practical measures to protect consumers with the following points and definitions:

### Return and Replacement of Purchased Goods

If a consumer purchases goods that do not meet quality requirements from a business operator, the consumer may return the goods or require the business operator to replace or repair the goods in accordance with the relevant regulations and rules of the country, or the agreement between the consumer and the business operator.

In the absence of such regulations and rules or agreement, the consumer may return the goods within seven days after receipt of the goods. If the conditions required for statutory rescission of a contract are still met seven days after receipt of the goods, the consumer may still return the goods in a timely manner, and if the said conditions are not met, the consumer may require the business operator to replace or repair the goods.

### Obligations of Business Operators

Business operators are obliged to:

- > ensure that the goods or services provided are in compliance with quality requirements;

- > ensure that true, comprehensive and accurate information concerning the goods and services are provided to consumers;
- > satisfy the legitimate demands of consumers regarding repairing, remanufacturing, replacement, return of goods, make-up for quantity shortage, refund of payment for foods and services, or compensation for losses promptly in accordance with the laws or agreement between the parties concerned;
- > accept the return of goods by consumers without cause if such goods are sold via the Internet, television or phone, by mail order or otherwise in accordance with laws; and
- > issue evidence of purchase vouchers to consumers.

#### Definition of Fraud

According to the *Law of the People's Republic of China on the Protection of Consumer Rights and Interests* (the **Consumer Protection Law**), if business operators commit fraud, consumers are entitled to claim compensation for losses, the amount of which would be three times the price that the consumers have paid for the commodities purchased or services received. Pursuant to the Draft, a business operator should be deemed to have committed fraud if it conducts the following activities:

- > selling unqualified goods or services which could endanger personal security and property safety;
- > selling fake products as genuine ones; shoddy products as quality ones, and substandard products as qualified ones;
- > selling products not allowed for production and sale according to relevant laws or decrees of the country;
- > selling expired or spoiled goods;
- > providing consumers with untrue, incomplete or inaccurate information concerning its goods or services, or misleading consumers by any other false or misleading marketing means;
- > defrauding payments for goods or services from consumers without providing the goods or services at all or as pre-agreed;
- > failure to provide goods or services using true names or marks;
- > selling goods that infringe the trademark rights of others;
- > selling goods that forge or make fraudulent in using others' names, packaging or trade dress;
- > with respect to business operators engaging in decoration or construction services, deliberately damaging the parts and components or materials, using parts and components or materials that fail to comply with national quality standards or the relevant agreements, replacing parts and components that do not need to be replaced, engaging in shoddy work, charging additional fees or otherwise, which cause the loss of consumers; and
- > with respect to business operators engaging in intermediary services for real estate and others, providing false information, or otherwise committing fraud or malicious collusion, which infringe on consumer rights and interests.

## Conclusion

The Draft proposes to further enforce the Consumer Protection Law and protect consumer rights.

- *Measures for Penalizing Activities of Infringing Consumer Rights and Interests (Draft for Comment)*
- 《侵害消费者权益行为处罚办法（征求意见稿）》
- Issuing authority: State Administration for Industry and Commerce
- Date of issuance: Sept. 5, 2014 / Public Comment Deadline: Oct. 4, 2014

### 3. China Announces the Interim Measures on the Public Disclosure of Information of Seriously Dishonest Enterprises Regarding Statistics Compilation

国家统计局颁布《统计上严重失信企业信息公示暂行办法》(11/27/2014)

On Nov. 27, 2014, the National Bureau of Statistics issued the *Interim Measures on the Public Disclosure of Information of Seriously Dishonest Enterprises Regarding Statistics Compilation* (the **Interim Measures**). The Interim Measures are aimed to form effective mechanisms requiring enterprises to report authentic statistics, improving the quality of statistics, and enhancing the credibility of government statistics.

Key points of the Interim Measures include:

- > **Definition of Seriously Dishonest Enterprises Regarding Statistics Compilation.** The Interim Measures provide that the “Seriously Dishonest Enterprises Regarding Statistics Compilation” (the **SDEs**) are enterprises who conduct any of the following activities during statistics surveys: (a) intentional fabrication of statistical data; (b) false reporting or concealing of statistical data with a significantly high amount or frequency; and (c) other serious violations of related statistics laws which would be subject to administrative penalties.
- > **Public Disclosure of SDE Information.** In addition to punishing SDEs through written warnings and penalties set forth under the PRC Statistics Law, the National Bureau of Statistics would publish for a period of one year information regarding a SDE, including its name, domicile, legal representative or person-in-charge, activities of violation, and the related punishments, on the China Statistics Information website. If the enterprises have corrected their violations earnestly, and upon application of such enterprises and verification by the statistics authority, the above published information can be removed from the website earlier (but not less than six months).
- > **Other Consequences of Being Regarded as SDEs.** The Interim Measures further provide that the information of SDEs will also be incorporated into the credit information systems of other governmental authorities such as administration for industry and commerce (the **AIC**), which may affect the financing, government subsidies and AIC administration and registration of such enterprises.

It is important to note, however, that the Interim Measures include mostly broad policy principles. Further guidance and detailed implementing rules remain to be drafted and issued by the relevant statistics authorities.

- *Interim Measures on the Public Disclosure of Information of Seriously Dishonest Enterprises regarding Statistics Compilation*
- 《统计上严重失信企业信息公示暂行办法》
- Issuing authority: National Bureau of Statistics
- Date of issuance: Nov. 27, 2014 / Effective date: Jan. 1, 2015

## Foreign Direct Investment

### 4. State Council Announces the Decision Concerning the Interim Adjustment of Implementation of Relevant Administrative Regulations and Rules as Approved by State Council Regarding the Special Administrative Measure on Market Entry In China (Shanghai) Free Trade Pilot Zone

国务院发布《关于在中国（上海）自由贸易试验区内暂时调整实施有关行政法规和经国务院批准的部门规章规定的准入特别管理措施的决定》（09/04/2014）

On Sept. 4, 2014, the State Council released the *Decision Concerning the Interim Adjustment of Implementation of Relevant Administrative Regulations and Rules as Approved by State Council Regarding the Special Administrative Measure on Market Entry In China (Shanghai) Free Trade Pilot Zone* (the **Decision**), which became effective on the same day.

#### More Opportunities for Foreign Investment in Shanghai Free Trade Zone

For further development of the Shanghai Free Trade Zone (the **FTZ**), the Decision eases and even eliminates the qualification, shareholding, and relevant market-entry related requirements on the foreign investment within FTZ as specified under several administrative regulations and ministerial rules approved by the State Council.

Among the 27 adjustments introduced by the Decision, 10 are related to the services industry (excluding real estate) while the other 17 are in connection with manufacture, real estate and mining industries. Note the adjustments are interim adjustments, meaning that authorities, at their discretion, may cancel such adjustments from time to time in accordance with the practical experience gained from the implementation in the FTZ. Several important adjustments are summarized in the table below:

Industry	Prior to Adjustments	After Adjustments
Marine Cargo	Foreign investors are permitted to operate international marine cargo loading and unloading business, international marine container and container yard business, but are required to form equity joint venture or contractual joint venture with Chinese partners to do this business (collectively, the <b>Sino-Foreign Joint Venture</b> ).	Foreign investors may operate international marine cargo loading and unloading business, international marine container and container yard business through a <u>wholly foreign owned enterprise</u> (the <b>WFOE</b> ).
International Shipping	Foreign investors are only allowed to operate an international shipping agency business through a Sino-Foreign Joint Venture, with the foreign shareholding capped at 49 percent.	Foreign investors may operate an international shipping agency business only through a Sino-Foreign Joint Venture, but the foreign shareholding is changed to be <u>capped at 51 percent</u> .



Industry	Prior to Adjustments	After Adjustments
Certification	<ul style="list-style-type: none"> <li>Foreign investors of a foreign invested certification institution must (a) have been recognized in their home country or region, and (b) have been in the certification business for more than three years.</li> <li>Foreign invested commodity import and export certification enterprise falls within the “restricted” category under the <i>Foreign Investment Industry Guidance Catalogue</i>, 2011 version (the <b>Catalogue</b>).</li> </ul>	The restriction on foreign invested commodity import and export certification enterprise is <u>removed</u> , and the qualification requirements on foreign investors of foreign invested certification enterprise are also <u>removed</u> .
Sale Wholesale	Either specialized salt companies or entities designated by governmental authorities may conduct salt wholesale.	<u>A WFOE is permitted to operate salt wholesale, but within the FTZ only.</u>
Aviation	Foreign investors may invest through (a) formation of a Sino-Foreign Joint Venture; (b) purchase of shares of Chinese aviation enterprise; and (c) other methods as approved.	Foreign investors are permitted to engage in sales agency activities for air transportation <u>through a WFOE</u> .
Real Estate	Restrictions apply for foreign investors to invest in a real estate agency and brokerage business.	The restrictions on real estate agency and brokerage business for foreign investment are removed.
Natural Resources	Foreign investors are encouraged to invest in the development and application of new technology for enhancing crude oil recovery and other relevant new technology, but have to form a Sino-Foreign Joint Venture to conduct this business.	Foreign investors may invest in the development and application of new technology for enhancing crude oil recovery and other relevant new technology <u>through a WFOE</u> .
Natural Resources	Foreign investors are encouraged to invest in the development and application of new technology for petroleum exploration and development such as geophysical prospecting, drilling, logging, and borehole operation, but have to conduct this business through a Sino-Foreign Joint Venture.	Foreign investors may invest in the development and application of new technology for petroleum exploration and development <u>through a WFOE</u> .
Manufacturing - Tea	Foreign investors are prohibited from processing green tea with Chinese traditional techniques and other special teas.	Foreign investors may process green tea with Chinese traditional techniques <u>through a Sino-Foreign Joint Venture, with the Chinese party being the controlling shareholder.</u>

Industry	Prior to Adjustments	After Adjustments
Manufacturing - Automotive	Foreign investors are encouraged to invest in R&D and manufacture of automotive electronic bus network technology and automotive electronic power steering system controllers, but have to conduct this business through an equity joint venture.	Foreign investors may invest in R&D and manufacture of automotive electronic bus network technology and automotive electronic power steering system controllers <u>through a WFOE</u> .
Manufacturing - Aero-engine	Foreign investors are encouraged to invest in the design, manufacture and repair of aero-engines and its spare components, and auxiliary power units, but have to form Sino-Foreign Joint Venture to do this business.	Foreign investors may invest in the design, manufacture and repair of aero-engines and its spare components, and auxiliary power units <u>through a WFOE</u> .
Manufacturing - Motorcycle	Foreign investors may invest in the manufacture of motorcycles through an equity joint venture where the Chinese partner's shareholding must be no less than 50 percent.	Foreign investors may invest in the manufacture of motorcycles, <u>with the engine displacement of no more than 250ml</u> , through a WFOE.
Manufacturing - Motorcycle	With respect to the manufacture of key spare components of motorcycles with high engine displacement (>250ml), foreign investors are encouraged to invest in the motorcycle electronic fuel injection technology, but have to conduct this business through a Sino-Foreign Joint Venture.	Foreign investors may invest in the manufacture of key spare components of motorcycles with high engine displacement (>250ml) and motorcycle electronic fuel injection technology <u>through a WFOE</u> .

**Conclusion**

The Decision creates more opportunities for foreign investment in the FTZ.

- *Decision Concerning the Interim Adjustment of Implementation of Relevant Administrative Regulations and Rules as Approved by State Council Regarding the Special Administrative Measure on Market Entry In China (Shanghai) Free Trade Pilot Zone*
- 《关于在中国（上海）自由贸易试验区内暂时调整实施有关行政法规和经国务院批准的部门规章规定的准入特别管理措施的决定》
- *Issuing authority: the State Council*
- *Date of issuance: Sept. 4, 2014 / Effective date: Sept. 4, 2014*

**5. China Seeks Comments on the Draft Revision of the Foreign Investment Industry Guidance Catalogue**

中国政府就《外商投资产业指导目录》修订版公开征求意见稿（11/04/2014）

On Nov. 4, 2014, the National Development and Reform Commission (the **NDRC**) released for public comments the proposed draft of revised *Foreign Investment Industrial Guidance Catalogue* (the **Draft**). The public comment period ended Dec. 3, 2014.

**Background**

In 1995, China published the first Foreign Investment Industry Guidance Catalogue (the **Catalogue**) to provide guidelines on market access and industrial policies for foreign investments. Since 1995, the Catalogue has been revised five times to conform with China’s commitments under its Protocol of Accession to the World Trade Organization (**WTO**) and to reflect China’s continued economic and social development. The currently effective Catalogue was promulgated by the NDRC and the Ministry of Commerce in 2011 (the **2011 Catalogue**).

According to the Catalogue, specific industries are categorized as “encouraged,” “restricted,” or “prohibited” for foreign investment. Any industry not listed in the Catalogue, in the absence of other PRC regulations and rules to the contrary, is considered to be “permitted” for foreign investments. Foreign investors may invest in the industrial areas under the “encouraged”, “permitted” and “restricted” categories; however, as a general rule, foreign-invested projects under the “restricted” category may be subject to a higher level of scrutiny and stricter administrative formalities and restrictions. Foreign investors are banned from investing in “prohibited” industries.

**Changes Proposed by the Draft**

Compared to the 2011 Catalogue, the Draft involves changes to a variety of industries including, among others, farming, forestry, animal husbandry, fishery, mining, manufacturing, power, heat, gas and water production, and supply industries. The Draft reduces the items under the “restricted” category from 79 to 35. The requirement in the 2011 Catalogue regarding structuring the foreign investment as joint ventures with Chinese partners (i.e., Sino-foreign equity joint venture and Sino-foreign cooperative joint venture; collectively, the **Sino-Foreign Joint Ventures**) is also eliminated for certain industries. On the other hand, the Draft also imposes stricter control over several industries such as manufacturing of automobiles and motorcycles.

The below table sets forth certain significant changes introduced by the Draft:

<b>Industries</b>	<b>2011 Catalogue</b>	<b>Draft</b>
<b>Commercial Service</b>		
Legal consultancy	“Restricted”	<ul style="list-style-type: none"> <li>• “Prohibited” – With respect to “legal consultancy on Chinese laws”</li> <li>• “Permitted” – With respect to other legal consultancy</li> </ul>
<b>Cultural, Sports and Leisure</b>		
Operation of performance venues	“Encouraged” (Chinese party should hold a controlling interest)	“Encouraged” – Requirement on controlling interest being held by Chinese party is eliminated.
Operation of amusement venues	“Restricted”(limited to Sino-Foreign Joint Ventures)	“Permitted”
Cinema chain companies	“Prohibited”	“Permitted”
Operation of golf courses and villas		



<b>Industries</b>	<b>2011 Catalogue</b>	<b>Draft</b>
<b>Education</b>		
Institutes of higher learning	“Encouraged” (limited to Sino-Foreign Joint Ventures)	“Restricted” (limited to Sino-foreign cooperative joint venture which should be led by Chinese party)
<b>Utilities</b>		
Construction and operation of ultra-supercritical power stations with single unit power of 600,000 kw	“Permitted”	“Encouraged”
Construction and operation of power grids	“Restricted” (Chinese party should hold a controlling interest)	“Encouraged” (Chinese party should hold a controlling interest)
<b>Financial Industry</b>		
Banks	“Restricted”	“Restricted” – In addition, (i) a single foreign financial institution’s shareholding interest in a Chinese commercial bank should be capped at 20 percent (or for multiple foreign institutions, 25 percent); and (ii) the foreign financial institution who invests in the rural commercial banks must be banking-related foreign financial institutions.
Finance companies, trust companies and money brokers	“Restricted”	“Permitted”
<b>Manufacturing</b>		
<i>Beverage Manufacturing:</i> production of yellow wine, and selected high-quality white wine	“Restricted” (Chinese party should hold a controlling interest)	“Permitted”
<i>Beverage Manufacturing:</i> processing of green teas and specialty teas using traditional Chinese processes (famous tea, fermented dark tea, among others.)	“Prohibited”	“Permitted”
<i>Chemical Raw Material and Chemical Product Manufacturing:</i> production of certain selected products such as soda ash and caustic soda, photosensitive materials, benzidine, etc.	“Restricted”	“Permitted”

<b>Industries</b>	<b>2011 Catalogue</b>	<b>Draft</b>
<u>Chemical Fiber Manufacturing:</u> (a) production of chemical fibers from conventional chipspinning; and (b) production of viscose fibers	“Restricted”	“Permitted”
<u>Medicine Manufacturing:</u> production of certain selected medicine products such as (i) vaccines included in the state immunization programme; (ii) chloramphenicol, penicillin G, jiemycin, gentamycin, etc; (iii) blood products.	“Restricted”	“Permitted”
<u>Electric Machinery and Apparatus Manufacturing:</u> manufacture of vented (direct emission of acid mist) lead acid batteries, mercury-containing silver oxide button batteries, mercury-containing alkaline zinc manganese button batteries, pasted zinc manganese batteries and nickel cadmium batteries	“Prohibited”	“Permitted”
<u>Whole Automobiles, Special Automobiles and Motorcycles Manufacturing</u>	“Permitted”	“Restricted”, and (a) Chinese shareholding ≥ 50 percent; and (b) for a single foreign investor, no more than two joint ventures for manufacturing of same type of whole automobiles (not applicable if the foreign investor and its Chinese partner jointly merge or acquire other domestic manufacturing enterprises).
<b>Real Property Industry</b>		
Development of large tracts of land	“Restricted” (limited to Sino-Foreign Joint Ventures).	“Permitted”
Construction and operation of high-end hotels, high-end office buildings and international conference centers	“Restricted”	“Permitted”
Real property secondary market trading and real property intermediaries or brokerages		

Industries	2011 Catalogue	Draft
<b>Wholesale and Retail</b>		
Direct sale, mail order, and online sale	“Restricted”	“Permitted”
Distribution of audio and video products (excluding motion pictures)	“Restricted” (limited to Sino-foreign cooperative joint ventures)	“Permitted”

- *Draft Revision of the Foreign Investment Industrial Guidance Catalogue*
- 《外商投资产业指导目录（修订版公开征求意见稿）》
- *Issuing authority: National Development and Reform Commission, the Ministry of Commerce and other authorities*
- *Date of issuance: Nov. 4, 2014/Public Comment Deadline: Dec. 3, 2014*

## Tax

### 6. State Administration of Taxation Re-issues the Announcement on Exemption of Value-added Tax for Taxable Cross-border Service

国家税务总局重新发布关于跨境应税服务增值税免税的公告（08/27/2014）

On Aug. 27, 2014, the State Administration of Taxation re-issued the *Announcement of Administrative Regulations (Trial) on Exemption of Value-Added Tax for Taxable Cross-border Service under Business Tax Transforming to Value-Added Tax Pilot Program* (the **Regulations**), which came into effect Oct. 1, 2014.

The Regulations provide the policies and procedures for claiming exemption from value-added tax (VAT) for exported services outside of China. Also the Regulations repeal its 2013 version (the **2013 Version**) and expand the VAT exemptions to more service categories.

#### Categories of VAT Exemptions

Primarily, there are three types of exported services that are entitled to VAT exemptions:

1. Services provided to overseas entities, including, among others, telecommunication services, cultural and creative services and IT services;
2. Services the subject matter of which takes place outside of China, including, among others, postal services, leasing of tangible movable property, R&D (*e.g.*, engineering and exploration service for project or mineral resources located outside of China); and
3. Transportation services.

In addition, the Regulations carve out the following from the scope of services eligible for VAT exemptions:

- > Certification, verification and consulting services provided in relation to goods or immovable property located in China; and
- > Energy management services where the object of energy management contract is located in China

Other than the above two items, other certification, verification and consulting services, and energy management services are eligible for VAT exemption.

#### Comparison with 2013 Version

Compared to the 2013 Version, the key changes of the Regulations are summarized as follows:

- > The VAT exemptions are made available to postal and courier services in connection to commodities exported out of China;
- > The Regulations clarify that where the taxpayer is eligible for both zero rate treatment and VAT exemption for R&D, design and international transportation services, such taxpayer may choose VAT exemptions and waive the zero rate treatment; and

- > As background knowledge, both the 2013 Version and the Regulations provide that the VAT exemptions are not applicable to any income for exported services that is not paid from outside of China. The Regulations add that if the service recipient's China affiliate pays the price through its treasury centers or cash pool to the domestic service provider, the VAT exemptions are available.

Lastly, please note the Regulations also apply to exported services provided prior to Oct. 1, 2014.

- *Announcement of Administrative Regulations (Trial) on Exemption of Value-added Tax for Taxable Cross-border Service under Business Tax Transforming to Value-added Tax Pilot Program*
- 《营业税改征增值税跨境应税服务增值税免税管理办法（试行）的公告》
- *Issuing authority: the State Administration of Taxation*
- *Date of issuance: Aug. 27, 2014 / Effective date: Oct. 1, 2014*

## Intellectual Property

### 7. Supreme People's Court Solicits Public Comments on Provisions on Several Issues Concerning the Trial of Administrative Cases Involving the Granting and Determination of Trademark Rights (Draft for Comments)

最高人民法院就《关于审理商标授权确权行政案件若干问题的规定（征求意见稿）》公开征求意见 (10/14/2014)

On Oct. 14, 2014, the Supreme People's Court released for public comments the proposed draft *Provisions on Several Issues Concerning the Trial of Administrative Cases Involving the Granting and Determination of Trademark Rights (Draft for Comments)* (the **Draft Provisions**). The public comment period ended Nov. 15, 2014.

The Draft Provisions aim to clarify and unify the trial standards for administrative cases involving the granting and determination of trademark rights. Key developments of the Draft Provisions include:

#### Legal Consequences of Large-Scale Preemptive Registrations

The Draft Provisions contain a specific provision applicable to the situation where an applicant makes large-scale preemptive registrations. Under the Draft Provisions, the Trademark Review and Adjudication Board (the **Trademark Board**) and the court may reject trademark applications or hold registration invalid if it determines that an applicant has no true intention to use the mark, makes large-scale applications for registration of trademarks that are identical with or similar to existing popular marks, or makes large-scale trademark applications without justifiable reasons. Currently there are no specific provisions in the PRC Trademark Law (the **Trademark Law**) targeting large-scale preemptive registrations.

#### Clarification of "Adverse Effects"

The current Trademark Law prohibits the use of marks having "adverse effects"; however, the term "adverse effects" is not defined. The Draft Provisions propose to define "adverse effects" as the passive and negative influence that the signs or other elements of the trademarks may have on the social interests or public order regarding the politics, economy, culture, religion and ethnic groups of China.

Further, the Draft Provisions specify two types of marks that should be deemed to have "adverse effects": (1) marks which are names of public figures without the approval of such public figures; (2) marks that are names of deceased people without the approval of the heirs of such deceased.

#### Measurement Standards for Infringement to Well-known Trademarks

To protect well-known marks, the Trademark Law prohibits the registration of marks that are copies, imitations or translations of well-known marks in the following two circumstances:

1. *For same or similar goods:* if the marks are likely to "lead to confusion."
2. *For difference or dissimilar goods:* if the marks will "mislead the public" and if the well-known marks are registered in China.

The Draft Provisions specify that in determining whether a mark may "lead to confusion" in the first circumstance, the following factors should be taken into account: (1) the degree of similarity of the two



marks; (2) the degree of similarity of the goods; (3) the significance and awareness of the well-known mark; and (4) the degree of relevant public attention.

In determining whether a mark will “mislead the public,” the following factors should be taken into account: (1) the significance and awareness of the well-known mark; (2) the degree of similarity between the marks; (3) the commodities on which the two trademarks are used; (4) the acknowledgement degree of the target customers of the applicant mark towards the well-known mark; and (5) the degree of the mark being used for other markets.

### Conclusion

The Draft Provisions clarify a few concepts under the Trademark Law and provide more detailed trial standards for administrative cases involving the granting and determination of trademark rights.

- *Provisions of the Supreme People's Court on Several Issues concerning the Trial of Administrative Cases Involving the Granting and Determination of Trademark Rights (Draft for Comments)*

- 《最高人民法院关于审理商标授权确权行政案件若干问题的规定（征求意见稿）》

- Issuing authority: Supreme People's Court

- Date of issuance: Oct. 14, 2014 / Public Comment Deadline: Nov.15, 2014

## 8. Supreme People's Court Announces the Provisions on Jurisdiction in Cases of the Beijing, Shanghai and Guangzhou Intellectual Property Courts

最高人民法院出台《关于北京、上海、广州知识产权法院案件管辖的规定》（10/31/2014）

On Oct. 31, 2014, the Supreme People's Court released the *Provisions on Jurisdiction in Cases of the Beijing, Shanghai and Guangzhou Intellectual Property Courts* (the **Provisions**) to further define the jurisdiction of intellectual property courts in accordance with the *Decision on the Establishment of Intellectual Property Courts in Beijing, Shanghai and Guangzhou* released by the Standing Committee of the National People's Congress Aug. 31, 2014.

Key contents of the Provisions are summarized below:

### First-Trial Jurisdiction of Intellectual Property Courts

The Beijing, Shanghai and Guangzhou intellectual property courts (each, an **IP Court**) should have jurisdiction as first trial courts over the following cases within the jurisdictions in the municipalities where they are located:

- 1) civil and administrative cases involving patents, new varieties of plants, layout designs of integrated circuits, technical secrets and computer software;
- 2) administrative cases in which a legal action was brought in respect of administrative actions involving copyrights, trademarks, unfair competition and others rendered by a State Council department or a local people's governments at the county level or above; and
- 3) civil cases involving the recognition of well-known trademarks.

### Cross-Regional Jurisdiction

Unlike the Beijing and Shanghai IP Courts of which the scope of jurisdiction is only within the municipalities where they are located, the Guangzhou IP Court has cross-regional jurisdiction in the whole Guangdong Province over cases specified in items 1) and 3) above.

### Jurisdiction Changes to Other Courts

The intermediate people's courts of Beijing Municipality and Shanghai Municipality and the Guangzhou Municipal Intermediate People's Court will cease to accept civil and administrative intellectual property cases. Other intermediate people's courts in Guangdong Province and basic-level people's courts in Beijing Municipality, Shanghai Municipality and Guangdong Province will cease to accept the intellectual property cases as specified in items 1) and 3) above.

### Exclusive Jurisdiction of Beijing IP Court over Certain Administrative Cases

Beijing IP Court has the first trial jurisdiction over the following administrative cases regarding granting or confirming of intellectual property rights:

- > those in which a party is dissatisfied over the ruling or decision granting or confirming an intellectual property right such as a patent, trademark, new variety of a plant or integrated circuit layout design rendered by a State Council department;
- > those in which a party is dissatisfied over the decision for a compulsory license for a patent, new variety of a plant or integrated circuit layout design or a ruling on the compulsory license royalty or remuneration therefor rendered by a State Council department; and
- > those in which a party is dissatisfied with another administrative act involving the granting or confirmation of an intellectual property right rendered by a State Council department.

### Jurisdiction over Appeals

Where a party appeals a civil or administrative judgment or ruling at first trial involving intellectual property such as copyrights, trademarks, technology contracts, or unfair competition rendered by a basic-level people's court in a municipality where an IP Court is located, such appeal should be heard by the IP Court.

Where a party appeals a judgment or ruling at first instance rendered by an IP Court, or applies in accordance with the law for reconsideration to the court at the next higher level, the intellectual property division of the higher people's court of the place where the IP Court is located should hear the same.

### Conclusion

The Provisions call for a change of jurisdiction over intellectual property cases.

- *Provisions of the Supreme People's Court on Jurisdiction in Cases of the Beijing, Shanghai and Guangzhou Intellectual Property Courts*

- 《最高人民法院关于北京、上海、广州知识产权法院案件管辖的规定》

- *Issuing authority: Supreme People's Court*

- *Date of issuance: Oct. 31, 2014 / Effective date: Nov. 3, 2014*

## Food and Drugs

### 9. CFDA Seeks Comments on Revised Draft of the Measures on the Administration of the Standards of Medical Devices

国家食药监管总局就修订《医疗器械标准管理办法》公开征求意见（10/24/2014）

On Oct. 24, 2014, the China Food and Drug Administration (the **CFDA**) released for public comments the proposed draft of the revised *Measures on the Administration of the Standards of Medical Devices (Draft for Comment)* (the **Draft**). The public comment period ended Nov. 15, 2014.

Compared with the last version of the *Measures on the Administration of the Standards of Medical Devices* promulgated in 2002 (the **2002 Measures**), the Draft proposes the following significant changes:

#### Classification of the Standards of Medical Devices

Under the 2002 Measures, there are three standards of medical devices – national standards, industry standards and standards of registered devices. Standards of registered devices refer to those standards created by the manufacturers and verified by the competent food and drug authorities. The Draft proposes to abolish the standards of registered devices and to divide national standards and industry standards into mandatory standards and recommended standards according to their natures.

Note that under the *Regulations on the Supervision and Administration over Medical Devices* (the **Regulations**), which became effective June 1, 2014, medical devices should comply with mandatory national standards or, in the absence of mandatory national standards, mandatory industry standards. The revisions proposed by the Draft are consistent with the above provision of the Regulations.

#### Role of Medical Device Standardization Administration Center

The Draft provides that a Management Institution of Medical Device Standardization established and entrusted by the CFDA (*i.e.*, the Medical Device Standardization Administration Center established in 2010) should be the authority in charge of: (i) providing supporting work for the standardization of medical devices; (ii) organizing and coordinating the formulation and revision of medical device standards; (iii) organizing the research efforts for the standards system of medical devices and proposing plans and policies for the standardization of medical device; (v) providing guidance to the Medical Devices Standardization Technical Committee; and (iv) other administration matters concerning medical device standards.

The Medical Device Standardization Administration Center is currently managing 22 Medical Devices Standardization Technical Committees, which cover different areas of medical devices and are responsible for formulating and revising of the standards of different medical devices.

#### Procedures regarding Formulation and Revision of Medical Device Standards

The Draft also proposes detailed procedures concerning the formulation and revision of medical device standards, including the following stages: initiation, drafting, solicitation of public comments, review, approval for release and re-examination. According to the Draft, any organization or individual can propose to initiate a standard for medical devices through the corresponding Medical Devices Standardization Technical Committee.

- *Measures on the Administration of the Standards of Medical Devices (Draft for Comment)*
- 《医疗器械标准管理办法（修订草案征求意见稿）》
- Issuing authority: China Food and Drug Administration
- Date of issuance: Oct. 24, 2014/Public Comment Deadline: Nov. 15, 2014

## 10. MOC and NDRC Release the Trial Measures for the Operation and Administration of Catering Industry

商务部及发改委印发《餐饮业经营管理办法（试行）》（9/22/2014）

On Sept. 22, 2014, the Ministry of Commerce (the **MOC**) and National Development and Reform Commission (the **NDRC**) jointly released the *Measures for the Operation and Administration of the Catering Industry (for Trial Implementation)* (the **Measures**), which took effect Nov. 1, 2014.

According to the Measures:

- catering operators are prohibited from setting the lowest consumption amount;
- catering operators are prohibited from selling any food that fails to meet the national compulsory standards for product quality and food safety;
- catering operators should price its food and services in accordance with relevant provisions of the pricing department under the State Council;
- when carrying out promotional activities, a catering operator needs to expressly show the consumers the content of its promotions, including reason for the promotion, method, rules, period, eligible products and limitations;
- catering operators should establish an emergency response mechanism. In case of an emergency, a catering operator should immediately launch its emergency response procedure and timely report the case and handling results to the relevant government department;
- if a catering operator violates the Measures, the commerce department may request the relevant competent monitoring departments (such as pricing department) to impose fines on such operator according to relevant laws, regulations or rules. In the absence of applicable provisions, the commerce department may order the operators to correct their misdoings within a prescribed time limit and, (a) if there are illegal gains, impose a fine of less than three times such illegal gains (in no event exceeding RMB 30,000); or (b) if there are no illegal gains, impose a fine of less than RMB 10,000.

### Conclusion

The purpose of the Measures is to regulate the operation of catering services, guide the development of the catering industry, and protect rights of consumers and business operators.

- *Measures for the Operation and Administration of the Catering Industry (for Trial Implementation)*
- 《餐饮业经营管理办法（试行）》
- Issuing authority: Ministry of Commerce and National Development and Reform Commission
- Date of issuance: Sept. 22, 2014/Date of effective: Nov. 1, 2014

## Outbound Investment

### 11. Ministry of Commerce Announces the Measures for Administration of Outbound Investment

商务部发布《境外投资管理办法》(09/06/2014)

On Sept. 6, 2014, the Ministry of Commerce (the **MOC**) released the *Measures for the Administration of Outbound Investment* (the **Measures**), which became effective Oct. 6, 2014, replacing the earlier version released by the MOC in 2009 (the **2009 Version**).

Compared with the 2009 Version, the Measures introduce several changes to the approval and filing procedures for outbound investments by Chinese enterprises and filing requirements for re-investment of an overseas enterprise invested by Chinese enterprises.

#### Simplified Approval Requirements

The Measures specify that the MOC and its provincial departments should carry out record-filing administration or approval administration depending on the different circumstances of overseas investments. Overseas investments involving “sensitive countries and regions” or “sensitive industries” are subject to approval, and overseas investments under other circumstances are only subject to record-filing requirements.

“Sensitive countries and regions” refer to (i) countries or regions that do not have diplomatic relations with China; and/or (ii) countries or regions under the United Nations’ sanctions. When necessary, the MOC may separately announce the list of countries and regions for approval administration under the Measures.

“Sensitive industries” refer to (i) industries involving export of restricted products and technologies, and/or (ii) industries affecting the interests of at least one country or region.

#### Shortened Filing Timeline

The Measures provide that the MOC and its provincial departments should issue the Certificate of Outbound Investment (the voucher for Chinese enterprises being filed or approved for outbound investments) for those outbound investments subject to record-filing within three days upon receipt of a standard Filing Form provided that the following conditions should be met before issuance of such certificate: (1) the Filing Form is true, complete and meets the statutory form; and (2) the proposed outbound investments will not (a) harm the sovereignty and security of China and public interests, or violate Chinese laws or regulations; (b) damage the relation between China and a relevant country (region); (c) violate the international treaty or convention concluded with other countries by China; or (d) engage in exporting of products or technologies which are forbidden to be exported out of China.

#### New Provisions on Overseas Re-investment

The Measures propose a new provision relating to overseas re-investment. It provides that the overseas re-investment of an overseas enterprise, invested in by a Chinese enterprise, should be reported to MOC or its provincial departments after the overseas legal procedures (such as legal formalities for establishing an overseas entity) are completed.

### **Conclusion**

The changes provided by the Measures will facilitate outbound investment projects by eliminating approval requirements in most circumstances and improving the efficiency of the filing procedures.

- *Measures for Administration of Overseas Investment*
- 《境外投资管理办法》
- *Issuing authority: the Ministry of Commerce*
- *Date of issuance: Sept. 6, 2014 / Effective date: Oct. 6, 2014*



## Mergers & Acquisitions

### 12. Four Agencies Jointly Release the Notice Concerning Parallel Administrative Approval Work on Mergers, Acquisitions and Restructurings of Public Companies

工业和信息化部、证监会、发展改革委、商务部联合发布《上市公司并购重组行政许可并联审批工作方案的通知》（10/24/2014）

On Oct. 24, 2014, the Ministry of Industry and Information Technology, China Securities Regulatory Commission (**CSRC**), National Development and Reform Commission (**NDRC**) and Ministry of Commerce (**MOFCOM**) jointly issued the *Notice Concerning Parallel Administrative Approval Work on Mergers and Restructurings of Public Companies* (the **Notice**). The Notice is aimed at streamlining the administrative approval procedures for the mergers, acquisitions and restructurings of public companies.

#### Parallel Approvals

The Notice states that the following governmental approvals will no longer be required to be obtained prior to CSRC's approval for any merger, acquisition or restructuring of public companies: (a) NDRC's approval or registration of overseas investment carried out by the public company, (b) MOFCOM's approval for strategic investment by foreign investors, and (c) MOFCOM's merger control approval. That is, each of these approvals will be independent from one another and the approval process can proceed in parallel with CSRC's approval. This change will shorten the timeline for the completion of a merger, acquisition or restructuring of public companies and improve the efficiency of the approval process.

The Notice explicitly states that a public company may not close any merger, acquisition or restructuring project until it obtains approvals from all relevant authorities. Further, the public company is required to indicate in its publicly available proposed restructuring report all of the required governmental approvals for the transaction and describe the risks for the failure to obtain such approvals.

#### Disclosure Requirements

During CSRC's review of the proposed transaction, if another authority grants its approval with respect to the transaction, the public company is required to make a public disclosure that such approval has been obtained.

If the public company obtains CSRC's approval but the other required governmental approvals are still pending, the public company must publicly disclose the CSRC's approval and status of the other approvals, including a disclosure of the risks associated with the failure to obtain necessary approvals.

#### Conclusion

This Notice will shorten the timeline for the completion of the mergers, acquisitions and restructurings of public companies and benefit the development of the Chinese capital market.

- *Notice Concerning Parallel Administrative Approval Work on Merger, Acquisition and Restructuring of Public Company*

《上市公司并购重组行政许可并联审批工作方案的通知》

- *Issuing authority: Ministry of Industry and Information Technology, China Securities Regulatory Commission, National Development and Reform Commission and Ministry of Commerce*

- *Date of issuance: Oct. 24, 2014 / Effective date: Oct. 24, 2014*

## Miscellaneous

### 13. Standing Committee of the NPC Solicits Public Comments on the Modifications of the Advertising Law (Draft for Comments)

全国人大常委会就修订《广告法》公开征求意见 (08/31/2014)

On Aug. 31, 2014, the *Advertising Law of the People's Republic of China (Draft Revision)* (the **Draft**) was released for comments. The Draft proposed certain revisions to the currently effective Advertising Law of the People's Republic of China (the **1995 Law**), which regulates the activities of advertisers, and holds advertisers responsible for the truthfulness of the contents of advertisements. The main changes introduced by the Draft are summarized below.

#### Heightened Regulation on the Relevant Parties to an Advertisement

- > The Draft explicitly provides that advertisers are responsible for the truthfulness of their advertisements.
- > The Draft provides that persons recommending or endorsing goods or services in advertisements are required to make such recommendations or endorsements based on facts, and such goods or services should have been used or accepted by themselves.
- > The Draft proposes to add special provisions regarding the protection of minors. For example, the Draft prohibits advertising activities within elementary and secondary schools and kindergartens.
- > The Draft defines the advertisement management responsibilities of administrators of public places, telecommunication service operators and Internet information service providers.

In the meantime, advertisement business registration is cancelled and the conditions and authority for registration of advertisement release are further defined according to the requirements of the *Administrative Licensing Law*.

#### Elements of False Advertising

Under the Draft, the following circumstances constitute false advertising:

- > the advertised goods or services do not exist;
- > the information regarding the advertised goods—such as the performance, functions, place of production, composition and producer—or the information regarding the advertised services—such as the content, form, quality and price—as well as promises made in connection with the goods or services are not consistent with actual conditions, materially affecting purchasing behavior;
- > fabricated, forged or unverifiable information such as scientific achievement, statistical data, survey results and quotations is used as supporting materials;
- > the effect of using the advertised goods or services is fabricated.

#### Revamped Penalty Provisions

The Draft revamped the penalty provisions of the 1995 Law to provide clearer calculations of penalties for key violations and heavier fines. Under the Draft, the punishment of offenders with more than three serious violations within two years or other serious circumstances is increased as well.

Under the Draft, if a person recommending or endorsing products or services in an advertisement knows or should have known that the advertisement is false advertising, the competent industry and commerce authority should confiscate his or her illegal gains and impose a fine of no less than one time and no more than two times of the illegal gains. Such person is also jointly and severally liable for any damages incurred by consumers.

- *Advertising Law of the PRC (Draft Revision for Comments)*
- 《广告法（修订草案）》公开征求意见
- *Issuing authority: Standing Committee of the National People's Congress*
- *Date of issuance: Aug. 31, 2014*

#### 14. Supreme People's Court Issues Regulations Relating to Tort Cases Involving the Use of Information Network

最高法院明确审理利用信息网络侵害人身权益民事纠纷案件适用法律若干问题

On Aug. 21, 2014, the Supreme People's Court issued the Provisions on *Several Issues Concerning the Application of Law in the Adjudication of Civil Dispute Cases Involving the Use of Information Networks to Commit Tort* (the **Provisions**), which became effective Oct. 10, 2014.

The Provisions aim to clarify the application of laws to tort cases involving the use of the Internet to infringe on personal rights such as right of name, right of reputation, right of honor, right of portrait and right of privacy (**Internet Torts**). The Provisions address liabilities for illegal deletion of posts, online "water army" and other grey Internet industries. The Provisions specify that a person who alters, deletes, shields or removes a link to online third party information for the purpose of preventing others from accessing such information will be deemed to have committed a tortious act. The Provisions also provide that if an agreement under which a network user or provider of network services commit an Internet Tort agree with the tort victim to delete, shield and link break to online information for a fee, such agreement is invalid.

The Provisions also provide increased protection to the plaintiff, clarifying that any reasonable expenses incurred by the plaintiff in connection with the efforts to stop an Internet Tort may be recovered from the tortfeasor. If the damages to the plaintiff or the profits obtained by the tortfeasor are unable to be determined, the court may determine the amount of compensation at an amount less than CNY500,000.

- *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in Trial of Civil Dispute Cases Regarding Infringement of Personal Rights via Information Networks*
- 最高人民法院关于审理利用信息网络侵害人身权益民事纠纷案件适用法律若干问题的规定
- *Issuing authority: Supreme People's Court*
- *Date of issuance: Aug. 21, 2014/ Effective Date: Oct. 10, 2014*

## 15. NPC Standing Committee Revises Administrative Procedure Law of PRC

全国人大常委会修改《中华人民共和国行政诉讼法》(11/01/2014)

On Nov. 1, 2014, the Standing Committee of the National People's Congress (NPC) passed the amendment to the *Administrative Procedure Law of the People's Republic of China* (the **Revised Law**), which will take effect May 1, 2015. The Revised Law includes significant changes to the 1989 Administrative Procedure Law (the **1989 Version**), with an aim to expand and protect the people's rights to sue the government. The significant changes are summarized below.

- > **Expanded Scope of Actionable Cases.** The 1989 Version provides that a person has the right to sue a government agency if the agency committed a "specific administrative act" that injures such person. The requirement that the act be a "specific administrative act" has, in practice, often been used by courts to throw out cases. The Revised Law eliminated this requirement.
- > **Increased Protection for the Rights of Action.**
  - The Revised Law expands the scope of actionable administrative acts to include, for example, the abuse of administrative power to eliminate or restrict competition, illegal fundraising or apportioning expenses, the failure to pay for the basic cost of living allowances or social insurance benefits, and the violation of agreements on compensation for land and housing subject to eminent domain.
  - The Revised Law requires people's courts to place a case on their dockets if the complaints satisfy the conditions of an actionable case and requires the people's courts to make this determination within seven days upon receipt of the complaint. If a complaint does not meet the conditions for an actionable case, the court is required to issue a decision stating its rationale for the refusal to place the case on its docket. A plaintiff may bring a case against a people's court at higher level court if the people's court fails to fulfill its obligations stated above.
- > **Appearance of the Defendant Agency's Responsible Person in Court.** The Revised Law requires that the responsible persons of the defendant agencies appear in court or designate staff to appear in court. Failure to appear in court may result in the court's issuing a judicial recommendation to the defendant agency superior to punish the responsible persons at the defendant agency.
- > **Enhanced Enforceability.** The Revised Law enhances the enforceability of a court judgment, ruling or mediation document binding on the defendant agency by empowering the people's court of first instance to adopt the following enforcement measures:
  - notifying the relevant bank to transfer the sum from the account of the defendant agency;
  - imposing a fine of RMB 50 to 100 per day on the responsible person of the defendant agency for any delay in performance;
  - publishing an announcement regarding the defendant agency's refusal to perform the order, ruling or mediation document;
  - submitting a judicial recommendation to the supervisory agency or to the agency superior to the defendant agency; and

- imposing detention on the person-in-charge and the persons directly responsible for the defendant agency.

The Revised Law also includes provisions to further clarify the jurisdiction of administrative cases, improve evidence rules and establish summary procedures for administrative cases.

### Conclusion

The Revised Law provides increased protection to citizens, legal persons and other organizations to sue the government.

- *Administrative Procedure Law of the People's Republic of China (Revised in 2014)*
- 《中华人民共和国行政诉讼法》（2014 年修订）
- *Issuing Authority: Standing Committee of the National People's Congress*
- *Date of Issuance: Nov. 1, 2014 / Effective Date: May 1, 2015*

## 16. China Solicits Public Comments on Proposed Administrative Rules for Telecommunication Short Message Services

工业和信息化部就《通信短信息服务管理规定（征求意见稿）》公开征求意见 (11/03/2014)

On Nov. 3, 2014, the Ministry of Industry and Information Technology (MIIT) released the draft Administrative Rules for Telecommunication Short Message Services (the Draft Rules) for public comments. The public comment period ended Dec. 5, 2014.

Under the Draft Rules, “short messages” include text, data, voice and images received by mobile phones, fixed phones and other communication terminals, including messages sent on social media platforms. The Draft Rules provide that operators of short message services (SMS) must obtain a telecommunications licence to engage in SMS. Basic telecommunications service operators may not provide network or service access used for SMS providers’ business operations without a license. The Draft Rules aim to set up a regulatory scheme for general short messages, commercial short messages and public service short messages, and provide the policy basis for a spam message management system. Key points of the Draft Rules are summarized below:

- > **Prohibition of Sharing and Selling of Telephone Numbers.** The Draft Rules prohibit any individual or organization from selling, sharing or exchanging others’ telephone numbers collected by any means. Sending messages to such numbers is also prohibited.
- > **Management of Commercial Messages.** Under the Draft Rules, all organizations and individuals are prohibited from sending commercial messages without the receivers’ prior consent, and senders should stop sending messages upon the receivers’ requests. The Draft Rules require that when senders solicit users’ general consent to receive short messages, they must inform users on the content, scope and expiration dates of the messages that will be sent and offer free and convenient ways for people to reject commercial messages.
- > **Management of Public Service Messages.** To send public service messages, relevant agencies above the provincial level should provide relevant information such as the message contents to the telecommunications administrative authority. The telecommunications administrative authority shall coordinate with SMS operators to send such public service messages once it determines that such messages should be categorized as public service messages.

- > **Establishment of Complaint and Reporting Handling Mechanism.** The SMS operators should establish a mechanism to handle user complaints. In addition, MIIT will launch a center to deal with user reports related to SMS.

- *Administrative Rules for Telecommunication Short Message Services (Draft for Review)*  
- 《通信短信息服务管理规定（征求意见稿）》  
- *Issuing Authority: the Ministry of Industry and Information Technology*  
- *Date of Issuance: Nov. 3, 2014 / Effective Date: N/A*

## 17. CIETAC Amends Arbitration Rules

中国国际经济贸易仲裁委员会修改《中国国际经济贸易仲裁委员会仲裁规则》（11/04/2014）

On Nov. 4, 2014, China International Economic and Trade Arbitration Commission (**CIETAC**) unveiled new arbitration rules (the **2015 Rules**), which came into effect Jan. 1, 2015. The 2015 Rules bring CIETAC rules closer in line with international arbitration practices and includes special rules for arbitration under the CIETAC Hong Kong branch.

### Primary Changes

The primary changes to the currently effective 2012 rules (the **2012 Rules**) are as follows:

- > *Arbitration Court:* Under the 2012 Rules, the Arbitration Secretariat is responsible for the administration of arbitration cases. The 2015 Rules provide instead that the Arbitration Court will take over the functions of the Arbitration Secretariat.
- > *Emergency Arbitrator Relief:* The 2015 Rules include the emergency arbitrator relief procedures, allowing parties to apply for emergency and interim relief by an emergency arbitrator prior to the formation of an arbitration tribunal.
- > *Multiple Contracts/Joinder/Consolidation:* Increasingly, one transaction may involve multiple contracts all of which are connected with each other. The 2015 Rules allows parties to bring disputes arising out of multiple contracts to a single arbitration if the relevant contracts (1) consist of a master contract and its ancillary contracts, or are between the same parties and in the same legal relationship, (2) stem from the same transaction or the same series of transactions, and (3) contain the same or compatible arbitration terms. CIETAC, based on the 2015 Rules, may join in the third party to the arbitration if such third party is prima facie bound by the arbitration terms. In addition to the above, under certain circumstance, CIETAC may consolidate arbitrations without the consent of the parties.
- > *Threshold for Summary Procedure:* The 2015 Rules increase the threshold for summary procedure to RMB 5 million (roughly \$809,690).

### CIETAC Hong Kong Arbitration

The CIETAC Hong Kong branch was set up in 2012 to hear cases in Hong Kong. The 2015 Rules include special provisions relating to arbitrations under the CIETAC Hong Kong branch, including the following:

- > The venue of arbitration will be Hong Kong, unless the parties otherwise agreed;
- > Hong Kong laws will be applicable to the arbitration;



- > The parties may appoint arbitrators who are not on the CIETAC's panel;
- > The arbitration awards issued under the CIETAC Hong Kong branch are Hong Kong arbitration awards;
- > The emergency arbitrator relief is also available to the CIETAC Hong Kong branch.

### Conclusion

The 2015 Rules introduce new mechanisms, such as emergency arbitrator relief, and keeps CIETAC closer in line with international arbitration practices.

- *Arbitration Rules for China International Economic and Trade Arbitration Commission*
- 《中国国际经济贸易仲裁委员会仲裁规则》
- *Issuing authority: China International Economic and Trade Arbitration Commission*
- *Date of issuance: Nov. 4, 2014 / Effective date: Jan. 1, 2015*

### 18. Four Agencies Issued Documents to Encourage Operation of For-Profit Elderly Care Institutions

#### 四部门出文鼓励营利性养老机构运营

On Nov. 1 and 24, 2014, the State Ministry of Finance and National Development and Reform Commission and the Ministry of Commerce and Ministry of Civil Affairs issued the *Notice Concerning Reduction or Exemption of Administrative Fees for Elderly Nursing Houses and Medical Institutions* (the **Notice**) and the *Announcement Relating to the Encouragement of Foreign Investors to Establish For-Profit Elderly Care Institutions to Engage in Elderly Care Services in China* (the **Announcement**) respectively. The Announcement becomes effective upon release and the Notice became effective Jan. 1, 2015.

#### The Notice

The Notice provides that (i) the administrative fees incurred in the course of the construction and establishment of non-profit elderly nursing houses and medical institutions (the **Set Up Fees**) will be full exempted, and (ii) the Set Up Fees for for-profit elderly nursing houses and medical institutions will be reduced by 50 percent.

The Set Up Fees include:

- > The land reclamation fee, idle land fee, cultivated land reclamation fee, and land registration fee charged by PRC Land of Resource Department;
- > The property registration fee and termite protection fee charged by Ministry of Housing and Urban-Rural Development;
- > The construction fee for restructuring the air defense basement charged by Air Defense Department; and
- > Other fees charged by various authorities.

The Notice further requires relevant authorities to publish details of the reduction and exemption of the administrative fees in connection with elderly nursing houses and medical institutions.

### The Announcement

The Announcement encourages foreign investors to establish for-profit elderly care institutions. Specifically, foreign investors are encouraged to:

- > Establish for-profit elderly care institutions in China on their own or jointly with Chinese companies, enterprises and other economic organizations; and
- > Participate in the enterprise reform of public elderly care institutions specialized in the provision of for-profit services to the public, paying attention to issues including the protection of employee rights and maintenance and appreciation of state-owned asset value.

Furthermore, under the Announcement, Foreign-invested for-profit elderly care institutions will enjoy the same preferential tax policies and reduction or exemption of administrative fees (including but not limited to the Set Up Fees) enjoyed by domestic-invested and for-profit elderly care institutions.

### Conclusion

The Notice and the Announcement show that China is promoting the development of elderly care industry and is opening up the social service industry.

- *Notice Concerning Reduction or Exemption of Administrative Fee for Elder Nursing House and Medical Institution*
- 《关于减免养老和医疗机构行政事业性收费有关问题的通知》
- *Issuing authority: State Ministry of Finance and National Development and Reform Commission*
- *Date of issuance: Nov. 11, 2014 / Effective date: Jan. 1, 2015*
- *Announcement Encouraging Foreign Investors to Establish For-profit Elderly Care Institutions in China*
- 《关于外商投资设立营利性养老机构有关事项的公告》
- *Issuing authority: The Ministry of Commerce and Ministry of Civil Affairs*
- *Date of issuance: November 24, 2014 / Effective date: November 24, 2014*

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			<b>West Palm Beach</b> 561.650.7900

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