

# W&B Legal Newsletter

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## Spotlights

### THE LATEST FROM WATSON & BAND

Watson & Band Again Listed among Class-A Administrators for Enterprise Bankruptcy Cases Published by Shanghai Higher Court; Partner Xiaosu Zhu Selected into First Batch Individual Bankruptcy Administrators.

### LATEST LEGAL DEVELOPMENTS

SPC Solicits Comments on the Interpretation on the Part on Contract under the Civil Code

### INTELLECTUAL PROPERTY

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### NETWORK SECURITY AND DATA PROTECTION

Two Authorities Launch the Implementation of Personal Information Protection Certification  
CAC Revises Administrative Provisions on Internet Follow-up Comment Services

## INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 400 pro-fessionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

### Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Zhengzhou, Chengdu, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

### Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department re-sponsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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## Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

## **Watson & Band Again Listed among Class-A Administrators for Enterprise Bankruptcy Cases Published by Shanghai Higher Court; Partner Xiaosu Zhu Selected into First Batch Individual Bankruptcy Administrators**

Recently, the Shanghai Higher People's Court and the Shanghai Municipal Justice Bureau jointly released the *2022 Shanghai Higher People's Court's Name List of Enterprise Bankruptcy Administrators*. The name list was officially effected on November 28, 2022. Watson & Band, with our long-term excellent practice, outstanding performance and good reputation within the bankruptcy area, was again listed on the said name list. This is another success and recognition for Watson & Band after we were selected into the first-batch bankruptcy administrators by Shanghai Higher Court in 2007 and later into the Class-A bankruptcy administrators in 2014. Meanwhile, Watson & Band's partner Xiaosu Zhu was honorably selected into the name list of first-batch individual bankruptcy administrators.

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## **Watson & Band's Family Law and Wealth Management Department Selected into the Brand Guide of Boutique Marriage and Family Law Services and the Database of Boutique Institutions**

Recently, at the launch event for the *Brand Guide of Boutique Marriage and Family Law Services* and the public welfare project for marriage and family law services, China's first *Brand Development Report on Marriage and Family Law Services* was officially launched.

Watson & Band's Family Law and Wealth Management Department was honorably selected into the said *Brand Guide of Boutique Marriage and Family Law Services* and also into the database of boutique service institutions. Meanwhile, Watson & Band's senior associate, Ms. Yan Wu was honored in the database of boutique lawyers and awarded as a "Pioneer Lawyer" within the said area.

## SPC Seeks Comments on the Judicial Interpretation on Anti-monopoly Civil Litigation

On November 21, the Supreme People's Court (SPC) drew up the *Provisions on Several Issues Concerning the Application of Law in the Hearing of Civil Monopoly Dispute Cases (Draft for Public Comment)* (the “Draft for Comment”) for public comments. Solicitation for comments has come to a close by now.

The *Draft for Comment* has laid down more comprehensive and detailed provisions on anti-monopoly civil litigation from procedural to substantive rules, with regard to procedural provisions, definition of the relevant market, monopoly agreements, abuse of dominance, and civil liability. Based on the provisions of the revised Anti-Monopoly Law and the developments in new formats of business such as the digital economy, the *Draft for Comment* focuses on new additions relating to criteria on anti-monopoly substantive review and the regulation of internet platform behavior. According to the *Draft for Comment*, in analyzing and defining the relevant commodity market involving the Internet platform, people's courts may, according to factors such as the characteristics of the alleged monopolistic behavior, specific circumstances that have or may have the effect of excluding or restricting competition, and the type of an internet platform, choose to define the relevant commodity market based on a specific internet platform as a whole or based on the commodities on the side of the Internet platform that are most related to the alleged monopolistic behavior.

(Source: Supreme People's Court of China)

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## SPC Issues Provisions on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases

On November 15, the Supreme People's Court (SPC) issued the *Provisions on Several Issues Concerning the Jurisdiction of Foreign-related Civil and Commercial Cases* (the “Provisions”), with effect on January 1, 2023.

According to the *Provisions*, grassroots courts have jurisdiction over foreign-related civil and commercial cases of first instance, unless otherwise stipulated by laws and judicial interpretations. It is also clarified that the intermediate courts have jurisdiction over foreign-related civil and commercial cases involving high amount in dispute, complicated cases, or cases filed by many persons as the litigant, and other foreign-related civil and commercial cases that have significant influence in their jurisdiction. The *Provisions* adopt the model in which jurisdiction criteria on the value of subject matter are grouped by region into two tiers. The intermediate courts in Beijing, Tianjin, Shanghai, Jiangsu, Zhejiang, Fujian, Shandong, Guangdong, and Chongqing have jurisdiction over the foreign-related civil and commercial cases with the value of subject matter of CNY40 million or higher; and cases with the value of subject matter of CNY20 million or higher are included in the second tier. The *Provisions* also clarify that, the high courts have jurisdiction over first-instance foreign-related civil and commercial cases in which the value of subject matter of litigation is CNY5 billion or higher or other cases that have significant influence in the jurisdiction.

(Source: Supreme People's Court of China)

## SPC Solicits Comments on the Interpretation on the Part on Contract under the Civil Code

On November 7, the Supreme People's Court (SPC) issued the Interpretation on the Application of the General Provisions of the *Contract Part of the Civil Code of the People's Republic of China (Draft for Comment)* (the "*Draft for Comment*") to solicit public opinions. Said solicitation has come to a close by now.

The Draft for Comment consists of 73 articles in nine parts, covering general provisions, conclusion of contracts, effect of contracts, performance of contracts, preservation of contracts, modification and assignment of contracts, termination of rights and obligations under a contract, default liability, and supplementary provisions. Among others, regarding the compensation scope for the negligence in conclusion of a contract, the Draft for Comment specifies that where a party engages in consultation with malicious intention under the guise of concluding a contract or conducts any other acts seriously violating the principle of good faith, and the other party claims compensation for its loss caused by loss of other opportunities to conclude contract, the claim shall be upheld by the people's court, provided that the reasonable expenses made by the other party for obtaining such opportunities shall be deducted.

(Source: Supreme People's Court of China)





## CNIPA Seeks Comments on Draft Revision of the Guidelines for Patent Examination Once Again

On November 1, the China National Intellectual Property Administration (CNIPA) released the *Draft Revision of the Guidelines for Patent Examination (Second Draft for Comment)* (the “*Draft for Comment*”) to solicit public opinions. Said solicitation has come to a close by now.

The *Draft for Comment* presents the revisions in a comparison table. The revisions involve the part regarding preliminary examination, the part regarding the substantive examination, examination of the international application entering the national phase, reexamination and examination of invalidation request, the patent application and handling, and other aspects. Around 50 specific revisions are made, covering the handling of the request related to the publication preparation, the revisions regarding the contact person and representative, revisions regarding the supplement of the application documents by citing the prior application documents, revisions regarding addition or correction of priority claim. Among others, the *Draft for Comment* adds Article 6.7.5 on the principle of honesty and integrity, detailing the constraints on the violation of such principle in the course of handling legal procedures.

(Source: China National Intellectual Property Administration)



## Three Authorities Tighten Management of Deep Synthesis of Internet Information Services

On December 12, the Cyberspace Administration of China (CAC) and two other authorities jointly issued *the Administrative Provisions on Deep Synthesis of Internet Information Services* (the “Provisions”), with effect on January 10, 2023.

The *Provisions* emphasize that, deep synthesis service providers, as the primary entities responsible for the information security, should not use deep synthesis services to engage in activities prohibited by laws and administrative regulations. The *Provisions* require that deep synthesis service providers should establish and improve management systems and technical support measure, formulate public management rules and platform conventions, authenticate real identity information of users, strengthen the management of deep synthesis content, and establish and improve the mechanisms for dispelling rumors and for responses to appeals, complaints and reporting. The *Provisions* make it clear that deep synthesis service providers should add marks that do not affect users’ usage to deep synthesis information content generated or edited using their services. If a provider provides services that generate or significantly change information content such as intelligent dialogue, synthesized human voice, human face generation, and immersive realistic scenes, it shall add prominent marks to avoid public confusion or misidentification.

(Source: Cyberspace Administration of China)

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## NISSTC Seeks Comments on Industrial Internet Enterprise Cyber Security

On December 2, the National Information Security Standardization Technical Committee (NISSTC) issued a circular to solicit public comments on the *Industrial Internet Enterprise Cyber Security Part 4: Protection Requirements of Data (Draft for Comment)* (the “Draft”), and the cut-off date for receiving comments is January 30, 2023.

The purpose of the *Draft* is to standardize the data security protection of various types of enterprises in the industrial Internet, and specify the security protection process, protection requirements and security management requirements for different levels of industrial Internet data. According to the *Draft*, the data involved in the collection of industrial Internet data includes R&D test data and other R&D design data, and in the collection process, desensitization and other technical measures should be adopted based on the actual situation. In the collection of production control data such as control information, working conditions, and system logs, the real-time data and data availability requirements should be met, and the data collection must have minimal impact on the production control systems.

(Source: China National Information Security Standardization Technical Committee)



## Two Authorities Launch the Implementation of Personal Information Protection Certification

On November 21, the State Administration for Market Regulation (SAMR) and the Cyberspace Administration of China (CAC) jointly issued the *Rules for the Implementation of Personal Information Protection Certification* (the “Rules”), and simultaneously issued an announcement to clarify relevant matters.

The announcement states that, the SAMR and CAC will implement personal information protection certification, to encourage personal information processors to improve their personal information protection capabilities through certification. Certification bodies engaged in personal information protection certification shall firstly obtain approval for carrying out relevant certification activities and implement certification in accordance with the Rules. The *Rules* clarify the basic principles and requirements for the certification of processing activities carried out by personal information processors, such as personal information collection, storage, use, processing, transmission, provision, disclosure, deletion, and cross-border processing. According to the *Rules*, the model of personal information protection certification combines the technical verification, on-site audits, and post-certification supervision. A three-year certificate shall be issued after certification.

(Source: China State Administration for Market Regulation)

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## CAC Revises Administrative Provisions on Internet Follow-up Comment Services

On November 17, the Cyberspace Administration of China (CAC) published the newly revised *Administrative Provisions on Internet Follow-up Comment Services* (the “Provisions”), with effect from December 15, 2022.

The *Provisions* clarify follow-up comment service providers’ responsibilities for managing follow-up comments, and the relevant requirements to be met by follow-up comment service users and public account producers and operators. According to the *Provisions*, the follow-up comment service providers shall conduct standardized management of the follow-up comment service users and public account producers and operators in compliance with the user service agreement. The *Provisions* require public account producers and operators to enhance the review of the information and content in the follow-up comments, timely discover any unlawful act and indecent information in the comments and take necessary measures. The *Provisions* stress that public account producers and operators may apply to the follow-up comment service providers for administration authority in follow-up comment section as per the user service agreement. Follow-up comment service providers may reasonably grant the administration authority and provide relevant technical support upon conducting credit assessment of the public account producers and operators based on their administration status.

(Source: Cyberspace Administration of China)

## MOHRSS Works with Other Authorities to Strengthen Consultation and Mediation Efforts in Labor and Personnel Disputes

On November 16, nine authorities including the Ministry of Human Resources and Social Security (MOHRSS) issued the *Opinions on Further Strengthening the Consultation and Mediation Efforts in Labor and Personnel Disputes* (the “*Opinions*”).

The *Opinions* require employers to establish a sound communication and dialogue mechanism, keep open the channels for employees to express their demands and coordinate interests, and establish and improve internal systems for response to complaints and consultation, to respond to employees’ consultation demands in a timely manner; trade unions and enterprise representative organizations should help employees and employers to conduct consultations in dispute resolution. The *Opinions* state that, a trade union organization should take the initiative to guide employees to sign settlement agreements with employers, promote the performance of settlement agreements, and take the initiative to guide the request for mediation; and the effectiveness of settlement agreements in arbitration and litigation activities is also clarified. In addition, the *Opinions* establish and improve the linkage system for labor and personnel dispute mediation and people’s mediation, administrative mediation, and judicial mediation, require enterprises to generally establish labor dispute mediation committees, and promote the establishment of mediation centers and trade union legal service workstations in labor and personnel dispute arbitration courts at the city and county levels, where conditions permit; and strengthen the connection between mediation, arbitration and litigation, and enhance the execution of mediation agreements.

(Source: China Ministry of Human Resources and Social Security)



## GAC Publishes Identification Standards for Standardized Declaration of Tax-related Elements for Advanced Customs-Certified Enterprises

On November 22, the General Administration of Customs (GAC) published the *Identification Standards for Standardized Declaration of Tax-related Elements under the Standards for Advanced Customs-Certified Enterprises* (the “Standards”).

The *Standards* specify that the customs will identify whether the declaration of tax-related elements by an enterprise applying for becoming an advanced customs-certified enterprise is standardized based on the following circumstances: (1) where the customs finds that the enterprise has no circumstance of “having an irregularity upon identification” in the items under the *Standards*, and the enterprise will be deemed as qualifying the *standards* for declaration of tax-related elements; (2) where the customs finds that the enterprise has any circumstance of “having an irregularity upon identification” in the items under the *Standards*, which is identified according to the standards of tax underpayment, the relevant indicator will be deemed as unqualified; however, if the enterprise does not cause any tax underpayment, or the tax in shortage in less than CNY100,000 cumulatively, relevant indicator will be deemed as qualified; (3) where the customs finds that the enterprise has any circumstance of “having an irregularity upon identification” in the items under the *Standards*, which is identified outside the *standards* of tax underpayment, relevant indicator will be deemed as unqualified.

(Source: China General Administration of Customs)

