

# China Legal Briefing\* 261

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## **1. Licensing System for Foreigners to Work in China**

To attract more innovative talents from around the world, the State Council decided to combine the former “Entry Employment Permit for Foreigners” and “Work Permit for Foreign Experts” and implement the “Work Permit for Foreigners”. In order to implement this policy, in September 2016, a pilot project was launched by the State Administration of Foreign Experts Affairs in Beijing, Tianjin, Hebei Province, Shanghai, An’hui Province, Shandong Province, and Guangdong Province. The pilot projects were carried out from October 2016 to March 2017. Starting from 1 April 2017, the system of “Work Permit for Foreigners” was implemented in China nationwide.

The new system categorises foreigners working in China to 3 different types: top talents are dealt as category A; experts are dealt as category B; and ordinary foreigners are dealt as category C. The new system privileges foreign top talents who will enjoy relaxed policies. Top talents categorized in the group A may apply for their work permit by online process without submitting paper materials. In particular, top talents may provide a “guarantee” only, instead of a notarized certificate in respect of their “criminal record”.

The top talents who already entered China may apply for the work permit within the territory of China and the application procedure shall only need 5 working days.

To implement the new policy, a unified working management system will be in use nationwide. Applicants may submit their file online, and check the status of the application in real time. The system shall ensure transparency of information.

## **2. Supreme Court Rules regarding the Protection of Trademarks**

Rules of the Supreme People's Court on Issues Relating to the Hearing of Administrative Cases Involving Granting or Affirming Trademark Rights (“Rules”) came into force on 1 March 2017. The purpose of the Rules is providing enhanced protection for trademarks.

### **A. Forestall registration by agents**

Article 15 of the Trademark Law of the PRC forbids agents or representatives to forestall the registration of the entrusting party’s trademark or register the unregistered trademarks used by another person based on his relationship (contractual, business or other relationships) with such person. However, it was

seen in the past that agents sometimes acted on behalf of relatives to forestall such trademarks. The Rules now provide that if an applicant has a specific relationship with the agent, Article 15 of the Trademark Law shall apply.

#### **B. Prior right to name**

The Rules provide circumstances in which an applicant may claim the infringement of his/her right of name:

- a. If the relevant public believe is that the trademark indicates the natural person in question; and
- b. such believe results in the fact that the commodities marked with the trademark are authorized by the natural person or have a certain connection with the natural person.

The Rules also grant protection to specific names in practice such as pen name, stage name, etc.

#### **C. Copyrights on Characters in movies, TV shows and the likes**

The Copyright Law of the PRC does not provide full protection for characters of movies, TV shows, screen plays etc. which caused inconsistent application standards. The Rules now provide the protection for such characters under certain circumstances.

### **3. Supervision Procedures for State Compensation and the Right to Appeal**

According to the State Compensation Law of the PRC, there are three ways to supervise the decisions made by the compensation commission: a. appeal of the applicant or the authority liable for compensation; b. internal supervision; c. supervision of the prosecutor.

In practice, however, issues in respect of the supervision procedure were constantly observed, such as the variation of standards in case filing and handling of different or delays of appealed cases that were often put off for years.

The Supreme Court has addressed some issues in its Interpretation Rules

### **A. Claimant for appeal**

The State Compensation Law does not provide a regulation about the party entitled to appeal in the event that the claimant passes away or the referring authority liable for compensation is revoked. According to the Supreme Court's Interpretation, the successors of the claimant or the new authority taking over the functions of the revoked authority shall be entitled to appeal.

### **B. Supervision procedure to be suspended**

The State Compensation Law requires that any supervision procedure shall be carried out continuously, once the procedure is launched. The Supreme Court's Interpretation, however, provides that, under specific circumstances, supervision procedures may temporarily be suspended. Such circumstances include instances when the claimant passed away, or lost capacity to conduct legal acts without having appointed an agent, or the referring authority eventually liable for compensation is revoked. In such events, the court shall qualify the entitlement of appeal first, e.g. provide the successors or agents with the right to declare whether they are willing to attend the state compensation cases.

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