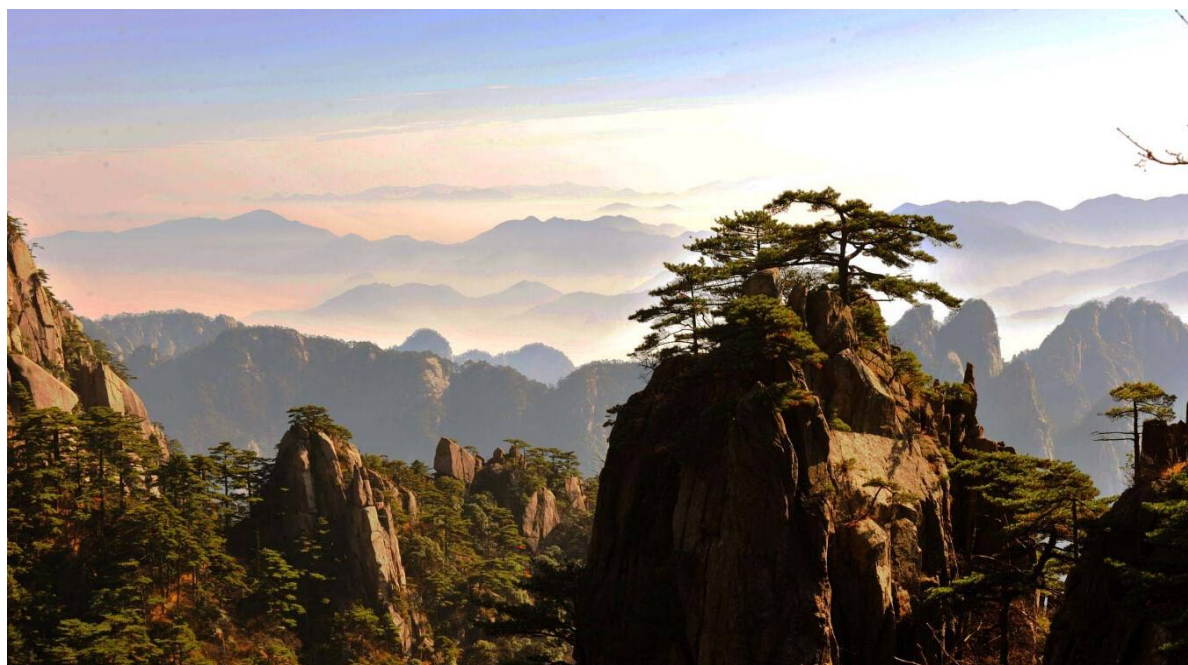


China Legal Briefing*272

29 May 2019



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1. Trademark Law was Revised to crack Down Bad Faith Applications

On April 23, 2019, the Standing Committee of the National People's Congress passed a decision to amend the Trademark Law (“Decision”). The Decision will become effective on November 1, 2019. It will focus on the two following issues:

Rejection of bad-faith trademark filings and registrations: The Decision stipulates that a bad faith application for trademark registration for a purpose other than the use of the trademark will be rejected during the application procedure. Other than that, for a preliminarily approved and published trademark, any person who believes that the trademark violates Trademark Law may file an opposition with the Trademark Office within three months from the date of publication. Moreover, if a trademark violates law or its registration was acquired by fraud or any other illicit means the Trademark Office can cancel it.

Increase of the punishment of bad faith trademark filings and registrations: According to article 63 of Trademark Law, the maximum compensation is three times the amount calculated on the basis of either the actual losses of the right holder, or the benefits acquired by the infringer or a reasonable multiple of the royalties for serious infringement committed in bad faith. The Decision will change the top limit to five times the calculated amount.

2. China to amend Anti-Unfair Competition Law to enhance Trade Secret Protection

On April 23, 2019, the Standing Committee of the National People's Congress adopted a decision to amend the Anti-Unfair Competition Law. The new Anti-Unfair Competition Law will come into effect on November 1, 2019. There are three main changes regarding trade secret protection under the New Anti-Unfair Competition Law.

Extension of the scope of persons subject to a duty of confidentiality:

According to article 9 of old Anti-unfair Competition Law, only business operators had the obligation to protect the trade secrets. The new Anti-Unfair Competition

Law extends the scope of persons who are compelled to confidentiality to natural persons and unincorporated organizations. Thus, any individual or organization conducting infringement of trade secret will be punished by law.

Higher damages:

Serious intentional trade secret infringements are now punishable with one to five times the amount of damages determined by the right holder's actual loss or by benefits acquired by the infringer. The statutory damages and fines for trade secret infringement will be increased to an amount of RMB 5 million.

Rule on the distribution of the burden proof:

In civil proceedings, the defendant will have to prove the disputed trade secrets are not protected by this law. The rightful holder of trade secrets only has to provide preliminary evidence asserted information is a potential trade secret and has been infringed. The new rule on the distribution of the burden of proof accommodates the bearer of the trade secret.

3. Individual Income Tax Policies for Non-Resident Individuals

On March 14, 2019, the Ministry of Finance and the State Administration of Taxation jointly published a new Announcement on the Criteria for Determining the Residence Time of Individuals without Domicile in China ("Announcement 34"). The Announcement 34 will be applied retroactively from January 1, 2019.

Pursuant to Announcement 34, an individual without a domicile in China will have to pay individual income tax on his/her global income in a calendar year if (a) he/she resides in China for 183 days or more in a tax year, and (b) if he/she has not left China for more than 30 days in six consecutive calendar years.

In other words, if an individual without a domicile in China has stayed in China for less than 183 days or has left China for more than 30 days in a single trip within one calendar year, the calculation of the "six consecutive calendar years" needs to start over again.

According to Announcement 34, the counting for the “six consecutive calendar years” only starts from January 1, 2019. This means that individuals without a domicile in China will not be required to pay individual income tax on his/her global income until 2025.

4. Further Opening Up of the Banking and Insurance Industries for Foreign Investments

On May 1, 2019, the official website of the China Banking & Insurance Regulatory Commission published news, stipulating that China will introduce the following twelve new regulations to further open up the banking and insurance industries:

- (1) In accordance with the principle of equal treatment for domestic and foreign investments, the upper limit of the shareholding ratio of a single Chinese-funded bank and a single foreign-funded bank will be adapted to the level of a Chinese-funded commercial bank;
- (2) Total assets requirement of 10 billion U.S. dollars for establishment of a foreign-funded corporate bank in China as well as total assets requirement of 20 billion U.S. dollars for establishment of a foreign-funded branch in China will be abolished;
- (3) Total assets requirement of 1 billion U.S. dollars of overseas financial institutions investing in a trust company will be abolished;
- (4) Foreign financial institutions will be allowed to participate in foreign-invested insurance companies in China;
- (5) Operating time requirement of 30 years or more and total assets requirement of 200 million US dollars or more to run an insurance brokerage business as a foreign insurance brokerage company in China will be abolished;
- (6) Requirement, that the only or major shareholders of the Chinese party must be a financial institution will be abolished;

- (7) Overseas financial institutions will be encouraged to conduct various types of cooperation in equity, business and technology with banking and insurance institutions controlled by private capital;
- (8) Foreign insurance group companies will be allowed to invest and set up an insurance institution in China;
- (9) Domestic foreign-invested insurance group companies will be allowed to initiate the establishment of insurance institutions with reference to the qualification requirements of Chinese-funded insurance group companies;
- (10) In accordance with the principle of equal treatment of domestic and foreign investment, the access policies for Chinese and foreign financial institutions on investments in the establishment of consumer finance companies will be relaxed;
- (11) Approval for foreign-funded banks to start RMB business will be abolished and foreign-funded banks are allowed to operate RMB business once established ;
- (12) Foreign-funded banks will be allowed to operate a “collection and payment agency” business.

According to the regulations, equal opportunities for entering the banking and insurance industries in China by direct investment will be offered to foreign investors. Furthermore, the way for potential mergers and acquisition of domestic financial companies will be cleared. Whether and when such new rules will be implemented is not certain. We will inform you here about the latest developments.

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