



## CHINA LEGAL BRIEFING 101

W E N G E R & V I E L I B E I J I N G O F F I C E

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### 1. National

#### Interpretation of the Supreme People's Court on Several Issues Concerning the Application of the Law in the Trial of Technology Contract Disputes

最高人民法院关于审理技术合同纠纷案件适用法律若干问题的解释

【Issued By】 Supreme People's Court

【Subject】 Contract Law

【Promulgated on】 December 16<sup>th</sup> 2004

【Effective From】 January 1<sup>st</sup> 2005

【Source】 <http://www.court.gov.cn/>

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- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

The Interpretation is issued for the purpose of correctly trying technology contract disputes in accordance with relevant provisions of such laws as the P.R.C. Contract Law, Patent Law, Civil Procedure Law, etc., while taking into account trial practice.

This Interpretation clarifies procedures for the adjudication of technology contract disputes. The Interpretation comprises: (1) General technology contracts, (2) Technology development contracts, (3) Technology transfer contracts, (4) Technology consultancy contracts and technical service contracts, (5) Procedural issues concerning the trial of technology contract disputes, and (6) Miscellaneous provisions.

The term of "technological achievement" is expressly defined in the Interpretation as a technological solution relating to a product, process, materials or the improvement accomplished through the utilization of scientific and technological knowledge, information and experience, and includes patent, patent applications, technological secrets, computer software, integrated circuit layout designs, new plant varieties, etc.

The Interpretation provides that once a technology contract that infringes upon the technological secret of another is confirmed as invalid, a party that obtained such technological secret in good faith may continue to use the same within the scope existing at the time it obtained such technological secret. It also refines the definition of "technical secrets" to conform to the provision of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) concerning "protection of undisclosed information" (trade secrets).

### **Temporary Measures on Management of Product Oil Market**

成品油市场管理暂行办法

**【 Issued By 】** Ministry of Commerce

**【 Subject 】** Management of Oil Market

**【 Promulgated on 】** December 2<sup>nd</sup> 2004

**【 Effective From 】** January 1<sup>st</sup> 2005

**【 Source 】** <http://www.mofcom.gov.cn/>

The Measures are formulated with a view to strengthening the supervision and administration of the oil products market, to regulating the operational activities of the oil products business and to safeguarding the order of the oil products market.

The Measures cover seven parts, namely (1) General Provisions, (2) Application for Operation Permits for Oil Products and the Acceptance for Handling Thereof, (3) Procedures and Time Limits for Examination for Oil Prod-

ucts Operation, (4) Issuance and Modification of Approval Certificates for Oil Products Operation, (5) Supervision and Administration, (6) Legal Liability, and (7) Supplementary Provisions.

According to the Measures, any enterprise applying to engage in the wholesale operation of oil products has to submit its application to the Provincial Government Commerce Authority of the place where such enterprise is located. The Provincial Government Commerce Authority will, after examination, submit its preliminary opinion and the application materials to the Ministry of Commerce, which will finally decide whether or not to grant the wholesale operation permit for oil product. The Measures also specify the requirements for enterprises to engage in the wholesale operation, the storage operation and the retail operation of oil products.

### **Interpretation of the Supreme People's Court on Several Issues Concerning the Specific Application of the Law When Handling Criminal Cases Involving the Infringement of Intellectual Property Rights**

最高人民法院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释

**【Issued By】** Supreme People's Court

**【Subject】** Criminal Law Concerning IPRs

**【Promulgated on】** December 8<sup>th</sup> 2004

**【Effective From】** December 22<sup>nd</sup> 2004

**【Source】** <http://www.court.gov.cn/>

The Interpretation is believed to be a supplementary to the Criminal Law of People's Republic of China regarding the infringement of intellectual property rights and supposed to be capable of effectively resolving and punishing criminal cases involving the infringement of intellectual property rights. The Interpretation clarifies and particularly expands the scope of potential prosecution for infringement of intellectual property rights. The thresholds for criminal prosecution of infringement of intellectual property rights, which are defined in terms of the value of the infringing products or illegal gains from the infringement, have been greatly lowered by the Interpretation.

For instance in the Interpretation concerned, the use of a trademark identical to a registered trademark on the same type of goods without the permission from the owner of the registered trademark should fall under the "serious circumstances" specified in Article 213 of the Criminal Law and will result in a conviction for the crime of passing off a registered trademark, if the illegal turnover is not less than 50,000 RMB. On the other hand, in

order to be criminally prosecuted in the past, the illegal turnover has to be not less than 100,000 RMB pursuant to the repealed "Interpretation on Applicable Laws to the Trial of Criminal Cases of Illegal Publications". Besides, the thresholds for criminal prosecution of infringement of copyright rights have also been reduced in the Article 5 of the Interpretation concerned.

Article 12 of the Interpretation further details the measures of calculating the amount of "illegal turnover" in the course of infringing against the IPRs. Moreover, Article 15 of the Interpretation elaborates that if a work unit commits any of the acts specified in Article 213 to 219 of the Criminal Law, the punishment assessed for a conviction shall be three times that for a commensurate criminal offence committed by an individual.

In the event of a conflict between the interpretation and previously issued judicial interpretations concerning the crime of intellectual property right infringement, such judicial interpretations shall cease to apply upon the implementation of the interpretation.

### **Several Rules on Reinforcement of Protection of Interests of Public Shareholders**

关于加强社会公众股股东权益保护的若干规定

**【 Issued By 】** China Securities Regulatory Commission

**【 Subject 】** Securities

**【 Promulgated on 】** December 7<sup>th</sup> 2004

**【 Effective From 】** December 7<sup>th</sup> 2004

**【 Source 】** <http://www.csrc.gov.cn/>

The Rules are enacted in order to safeguard the lawful interests and rights of investors. It contains several main amendments to the draft regulations. First, the Rules stress that the system of separate voting for public shareholders is a transitional measure pending the resolution of fundamental problems in China's Securities markets involving different categories of shares. Second, the Rules require that listed companies announce the convening of shareholders' meetings within three days of the shareholding registration day. Third, the Rules stipulate that when announcing resolutions passed at the shareholders' meetings, listed companies should disclose the total number of public shareholders attending and voting, the total number of shares they hold, and their aggregate voting results. In addition, the listed companies must disclose the identities of the ten largest public shareholders who attend and vote, as well as their votes cast, pursuant to Sub-section 1 of the Part 1 of the Rules. Fourth, listed companies which do not distribute profits during the three most recent years are barred from

issuing new shares or convertible bonds to the public or placing shares with existing shareholders.

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