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Decision of the Standing Committee of the National People's Congress on Authorizing the State Council to Temporarily Adjust the Administrative Approval Items under the Relevant Laws in China's (Shanghai) Pilot Free Trade Zone

全国人民代表大会常务委员会关于授权国务院在中国（上海）自由贸易试验区暂时调整有关法律规定的行政审批的决定

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【Issued by】	the Standing Committee of the National People's Congress
【Subject】	Free Trade Zone
【Promulgated on】	August 30, 2013
【Effective from】	October 1, 2013
【Source】	<a href="http://www.npc.gov.cn">www.npc.gov.cn</a>

The State Council will temporarily adjust various administrative examination and approval items stipulated in three laws with respect to wholly foreign-owned enterprises (“WFOE”), Chinese-foreign equity joint ventures (“EJV”) and Chinese-foreign cooperative joint ventures (“CJV”) in the pilot free trade zone in Shanghai by abandoning the requirement of a prior approval in favour of a record management system. The adjustments will be in effect as of October 1, 2013 in the Shanghai Waigaoqiao Free Trade Zone, the Waigaoqiao Logistics Free Trade Zone, the Yangshan Free Trade Port Area and the Pudong Airport Comprehensive Free Trade Zone (which together make up the Shanghai pilot free trade zone) for a pilot duration of 3 years. A subsequent amendment of the relevant laws is envisaged if the adjustments prove feasible in practice, otherwise the previous approval system will be reinstated.

The following provisions will be adjusted:

- I. Law of the People's Republic of China on Wholly Foreign-Owned Enterprises (promulgated on April 12, 1986, amended on October 31, 2000)*

Obligation to undergo examination and approval by the competent authorities in case of the establishment, a division, a merger or another material alteration of a WFOE; obligation to seek prior approval for an extension of the business term of a WFOE (articles 6, 10 and 20, respectively).

- II. Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (promulgated on July 8, 1979, amended on March 15, 2001)*

Obligation to submit agreements, contracts and articles of association of an EJV to the competent authorities for examination and approval; obligation to request prior approval for an extension of the business term or a termination of an EJV due to severe losses or force majeure (articles 3, 13 and 14, respectively).

III. *Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures (promulgated on April 13, 1988, amended on October 31, 2000)*

Obligation to submit agreements, contracts, articles of association and other relevant documents for examination and approval by the authorities in case of the establishment of a CJV or in case of major amendments to those documents; obligation to report the transfer of rights and obligations of a party to a CJV; obligation to seek prior approval for an assignment of the management of an CJV to a third party and for an extension of the business term (articles 5, 7, 10, 12(2) and 24, respectively).

Decision of the Standing Committee of the National People's Congress on Revising the Trademark Law of the People's Republic of China (2013)  
全国人大常委会关于修改《中华人民共和国商标法》的决定(2013)

【Issued by】	the Standing Committee of the National People's Congress
【Subject】	Trademark Law
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【Effective from】	May 1, 2014
【Source】	<a href="http://www.npc.gov.cn">www.npc.gov.cn</a>

On August 30, 2013, the Standing Committee of the National People's Congress promulgated *the Decision of the Standing Committee of the National People's Congress on Revising the Trademark Law of the People's Republic of China (2013)* (“*the Decision*”), which shall be effective on May 1, 2014. The Decision, aiming at guaranteeing a fair market for trademark holders, will help implement China’s intellectual property strategy and play an effective role in the trademark system. Detailed amendments to the Trademark Law as prescribed in the Decision are as follows:

I. Trademark infringements are subject to higher compensation

Considering the high costs of safeguarding the interests of victims in trademark infringement cases, the new Trademark Law adds rules on punitive damages. In serious cases of malicious infringement upon the right to exclusive use of a registered trademark, the amount of compensation may be as high as three times the rights-holders’ losses incurred as a result of the infringement, the proceeds obtained by the infringer or the license fee to which the use of the trademark would have been subject.

The new Trademark Law also raises the compensation ceiling for a trademark infringement from RMB 500,000 to 3,000,000, which is intended to strengthen the protection of the rights-holders’ trademark rights.

II. Protection system for well-known trademarks is clarified

While China enacted comprehensive provisions on trademark protection in 2001 in order to meet the obligations of the Paris Convention, the protection of well-known trademarks has been poorly regulated. As a result, the use of well-known trademarks by Chinese companies to promote their own product sales has been a widespread phenomenon. In order to regulate the protection system for well-known trademarks, the revised Trademark Law states that the recognition of well-known trademarks shall be conducted by the competent authorities on a case-by-case basis, only at the request of a trademark holder in a trademark case.

Furthermore, the use of “well-known trademark”-wording on products, product packaging, vessels, as well as in advertising, exhibitions or other promotional activities is forbidden and subject to a fine of up to RMB 100,000 for each violation. The competent local administration authority may order a rectification.

III. The Decision sets time limits for trademark examination procedures

The 2001 Trademark Law did not stipulate the specific time limits for the relevant authorities to conduct the trademark examination, making the review period last 30 months on average. In the new law, it is stipulated:

1. The initial review period of the Trademark Office for a trademark application shall be no more than 9 months, while the examination shall be finished within 12 months if any objection is raised.
2. Time limits for the Trademark Review and Adjudication Board’s re-examination of the Trademark Office’s decisions on rejection of applications or refusal of publication are 9 months, and 12 months for in case of a review a negative decision of the Trademark Office in an opposition case. In special circumstances, the period can be extended by 3-6 months upon the approval of the State Administration for Industry and Commerce.
3. Similar rules have been enacted on the publication of trademark invalidation and trademark cancellation.

IV. More efficient opposition system for trademark registration

Under the current Trademark Law, anyone can oppose a preliminary approved trademark while trademark applications can be time-consuming as the decisions may be reviewed several times. The revised Trademark Law simplifies the opposition procedure: the Trademark Office may make a final decision directly upon investigation and verification. Moreover, only prior right holders and relevant interested parties are allowed to file oppositions based on the infringement of prior rights – a limitation which is intended to curb the number of bad-faith trademark oppositions in the future.

V. The new law prevents malicious registrations of trademarks

Rush-registration will be prohibited in the future. Anyone who has contractual, business or other relationships with the prior user of a trademark and is fully aware of the existence of the trademark shall not rush-register such trademark. An action of using others' registered trademarks or well-known trademarks as a trade name of a company, which may mislead the consumers, shall be identified as unfair competition and the Anti-unfair Competition Law shall apply.

VI. Trademark agencies will face fines and bear a bad credit record if they violate the new law

Trademark agencies shall abide by the principle of good faith and the new law, and have a confidentiality obligation with regard to the business secrets obtained in the agency activities. A trademark agency shall refuse to act on behalf of a client if it is aware of a malicious registration or an infringement on the others' trademark rights by the client. A trademark agency violating the new Trademark Law may be fined up to RMB 100,000 for each violation while the violation is recorded in a credit file system. In serious cases, the business of the agency may be suspended.

VII. Moreover, sound can be registered as a trademark in the future, and an electronic application procedure is added, which will make the application procedure more convenient.

Provisions on Foreign Exchange Administration of Overseas Securities Investment by Qualified Domestic Institutional Investors

合格境内机构投资者境外证券投资外汇管理规定

【Issued by】	the State Administration of Foreign Exchange
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【Source】	<a href="http://www.safe.gov.cn">www.safe.gov.cn</a>

*The Provisions on Foreign Exchange Administration of Overseas Securities Investment by Qualified Domestic Institutional Investors (the "Provisions")* were released by The State Administration of Foreign Exchange ("SAFE") on August 21, 2013. With the purpose of simplifying the relevant foreign exchange administration procedures, the Provisions merge and integrate the foreign exchange administration policies for qualified domestic institutional investors.

Compared to the *Notice of the State Administration of Foreign Exchange on the Relevant Issues concerning the Foreign Exchange Administration of the Overseas Securities Investment Made by Fund Management Companies and Securities Companies* (released by SAFE on September 29, 2009, effective as of the date of release, abolished by the captioned Provisions), the Provisions bring the following changes:

- I. The Provisions define a Qualified Domestic Institutional Investor (“QDII”) as a domestic institution that conducts overseas securities investment upon the approval or permission of relevant authorities, including but not limited to commercial banks, security companies, fund management companies, insurance institutions and trust companies.
- II. As stipulated in the Provisions, a QDII may conduct inbound and outbound transfers of overseas investment funds in RMB or other foreign currencies through a custodian, i.e. a domestic foreign exchange custody account or an RMB custody account. QDIIs may remit back their overseas investment funds and proceeds in RMB or foreign currencies; the investment currency is no longer restricted to USD, HKD, EUR, YEN and GBP, with the aim of expanding the sources of overseas securities investment funds of QDIIs.
- III. The Provisions cancel the examination and approval requirement for foreign exchange settlement and purchase. QDIIs may settle, purchase or transfer foreign currencies via a domestic commercial banks with the necessary the investment quota approval issued by SAFE.
- IV. Quota management requirements are reserved: the Provisions emphasize that the net outflow amount (including foreign currencies and RMB) for overseas securities investment made by a QDII shall not exceed the approved investment quota. Such quota shall not be transferred or resold, and SAFE has the right to adjust or reduce the quota if a QDII fails to effectively use the quota within 2 years upon the acquisition of such quota.
- V. Electronic information technology shall be used to strengthen the statistical monitoring of cross-border fund inflow and outflow in order to prevent the risk of cross-border capital outflow.

A QDII shall file its basic information or any alteration with the relevant local Administration of Foreign Exchange within the specified time upon approval of the investment quota, while a custodian shall submit the details of the inward and outward remittance of funds of a QDII to the relevant Administration of Foreign Exchange through the designated system. Both the QDII and the custodian shall perform a declaration of the balance of payments in accordance with the relevant provisions.

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