

# China Legal Briefing\*295

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## **I. Regulations of the Monetary Policy Committee of the People's Bank of China**

On January 13, 2024, the amendment of the *Regulations of the Monetary Policy Committee of the People's Bank of China* (the "**Regulations**") was published and immediately took effect. In this publication, we will introduce some key changes of the Regulations.

### **● Adjustment of the composition and personnel of the Monetary Policy Committee**

The Monetary Policy Committee is comprised of the following units and personnel: Governor of the People's Bank of China; 1 Deputy Secretary General of the State Council; 1 Deputy Director of the National Development and Reform Commission; 1 Vice Minister of the Ministry of Finance; 2 Vice Governors of the People's Bank of China; Director General of the State Financial Supervision and Administration; Chairman of the China Securities Regulatory Commission; Director General of the National Bureau of Statistics; Director General of the State Administration of Foreign Exchange; Chairman of the China Banking Association; and 3 expert members. Adjustments to the constituent units and personnel of the Monetary Policy Committee are decided by the State Council.

### **● Members of the Monetary Policy Committee and their appointment.**

Members of the Monetary Policy Committee include ex officio members and nominated members. The Governor of the People's Bank of China, the Director General of the State Administration of Financial Supervision and Regulation, the Chairman of the China Securities Regulatory Commission and the Director General of the State Administration of Foreign Exchange are ex-officio members. Other members are

nominated by the People's Bank of China or by its relevant departments by reporting to the State Council for appointment.

- **Conditions and tenure of members of the Monetary Policy Committee**

Members of the Monetary Policy Committee shall meet the following conditions: (i) Generally under 65 years of age and of the nationality of the People's Republic of China; (ii) Fair and honest, devoted to their duties, and having no record of violation of law or discipline; (iii) Having professional knowledge and practical experience in macroeconomics and finance, and familiar with relevant laws, regulations and policies.

In addition to the previously mentioned criteria, expert members of the Monetary Policy Committee shall meet the following conditions: (i) Having senior professional and technical titles, having been engaged in economic and financial work for more than 10 years, and having a high academic level; (ii) Being a non-State civil servant and shall not serve in any profit-making organization.

The term of the President of the China Banking Association, who also acts as a member of the Monetary Policy Committee, is generally no more than five years. The term of the expert members is no more than three years for one term, and the maximum term is generally no more than two terms.

- **Conclusion**

The amendment of the Regulations aims to improve the efficiency of advisory deliberations, to adjust the constituent units and personnel of the Monetary Policy Committee and to clarify the categories of members and their appointments. It could be estimated that after the amendment, strengthening Communist Party of China's guidance and market communication will be the focus.

## **II. Implementation Rules of the Patent Law of the People's Republic of China**

Following the amendment of the Patent Law in 2020, the China National Intellectual Property Administration (CNIPA) started the drafting of the Implementation Rules. After three years of consultation and modification, on December 21, 2023, the State Council issued a decision to amend the Implementation Rules of the Patent Law of the People's Republic of China. The final version of the amended Implementation Rules (the "Implementation Rules") came into force on January 20, 2024.

The Implementation Rules contain the following main changes:

- The Implementation Rules seek to enforce in practice the principle of honesty and credit introduced by the Patent Law. Applicants are now required to "file all kinds of patent applications based on real invention and creation activities, and shall not make false statements" (Article 11). Furthermore, "the patentee shall not make a statement of open license by means of providing false materials or concealing facts, or obtain a reduction or waiver of the annual patent fee during the period of implementation of the open license" (Article 88). Article 100 further stipulates administrative liability for violation of the above provisions, authorizing the department in charge of patent enforcement to issue warnings or impose fines on applicants of "irregular" patent applications.

- The system of delayed examination of invention patent applications is recognized in the Implementation Rules. Article 56 of the Implementation Rules makes it clear that "the applicant may request delayed examination of the patent application." At this point, the delayed examination system has been clearly stipulated in the Enforcement Rules. This reform helps to better protect the rights of the patent applicant and allows them to decide the most suitable time to

file a request for substantive examination for their invention patent applications.

- The priority system has been improved and the applicant has been given certain procedural flexibility. The Implementation Rules clarify that the accompanying drawings in an invention or utility model patent application can be used as the basis for the priority of a design patent application. After a priority request is filed under a design patent applicant based on the prior patent application for invention or utility model, the prior patent application for invention or utility model will not automatically be "deemed withdrawn", and the applicant can add or correct the priority request within a specified period of time after filing the priority request.

- The Implementation Rules include new special provisions on international applications for designs, aligning with the Hague Agreement Concerning the International Registration of Industrial Designs (1999 version, the "Hague Agreement"). According to the amendments, an international application for a design is to be treated as an application for a design patent filed with the Patent Administration Department under the State Council. The Implementing Rules also outline specific requirements regarding priority, novelty grace period, divisional application, a brief description of the main points of the design, and formalities for the change of rights, ensuring consistency with the Hague Agreement. Implementation Rules set out the rules for the examination of designs filed through the Hague Agreement in a special chapter (Chapter XII).

### **Conclusion**

The above amendments to the Implementing Rules could have significant implications for foreign companies in China. The correction of irregular patent applications, and the improved priority system and procedural flexibility offered by the amendments shall provide foreign

companies with additional options when filing patent applications in China, streamlining the application process and aligning it more closely with international standards. We will keep monitoring its implementation status in China and keep our readers updated.

### **III. Regulations of the State Council on the Criteria for Reporting Concentrations of Operators (Revised in 2023)**

On 26th January 2024, the State Council announced the “Regulations of the State Council on the Notification Standards for Concentrations of Operators (2024 Revision)” (the “Regulations”). The Regulations were reviewed and approved by the State Council on 29th December 2023 and were implemented on 26th January 2024.

- **Raise of the turnover standard**

The Regulations maintain the original criterion of using the concentration party's turnover to determine whether a declaration is required. Such declaration has to be made in advance to the Antimonopoly Enforcement Agency under the State Council before a concentration is implemented.

However, the original turnover standard has been significantly increased. If an operator's concentration meets such criteria and exceeds the mentioned turnover standard, the operator shall make a declaration:

Participating consolidated operators' global total turnover standard for the previous fiscal year has been raised from exceeding 100 billion RMB to exceeding 120 billion RMB;

The standard for the total turnover within China for all participating consolidated operators for the previous fiscal year has been raised from exceeding 20 billion RMB to exceeding 40 billion RMB;

The turnover standard within China for at least two operators among all participating consolidated operators for the previous fiscal year has

been raised from each exceeding 400 million RMB to each exceeding 800 million RMB.

The increase in turnover threshold under the new Regulations is expected to exclude some transactions involving small and medium-sized enterprises which will result in a reduction of the institutional transaction costs thereof, and to save the resources of the review authorities and therefore will be beneficial for the Chinese authorities.

- **Transactions that do not meet the reporting standards but may have the effect of eliminating or restricting competition may also be required to declare**

If the concentration of enterprises does not meet the reporting threshold set by the State Council, but there is evidence that the concentration of enterprises may eliminate or restrict competition, Article 4 of the Regulations stipulates that the Antimonopoly Enforcement Agency under the State Council can still require the enterprises to submit a declaration. The authorities are granted the power to impose a declaration on companies, even if the legal requirements for a declaration, such as the party's yearly turnover, are not met.

There are other additional guidelines like the “Antimonopoly Guidelines in the Field of Platform Economy” and the “Antimonopoly Guidelines in the Field of APIs”, which were issued and implemented in 2021. They provide guidance on how to identify situations in which a concentration of operators does not meet the reporting criteria but may have the effect of excluding or restricting competition. However, these guidelines only apply to certain industries such as the Platform Economy and to Pharmaceutical Ingredients. In other areas, there are no limitations and the authorities have considerable discretion to determine a possible restriction of competition and thus demand a declaration.

Therefore, when implementing investments, mergers, acquisitions, or other transactions, it is crucial to evaluate whether the transaction could limit competition, particularly in industries with high market concentration and few operators. This assessment should be conducted even if the relevant enterprises do not meet the turnover declaration threshold. The aim is to ensure compliance and to enhance certainty of and success in a certain transaction.

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