

# China Legal Briefing\*306

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## **I. SPC and SPP to Address Several Issues on the Application of Law in the Handling of Criminal IP Infringement Cases**

On April 23, 2025, the Supreme People's Court and the Supreme People's Procuratorate jointly issued Interpretation of the Supreme People's Court and the Supreme People's Procuratorate of Several Issues Concerning the Application of Law in the Handling of Criminal Cases Involving Infringements upon Intellectual Property Rights ("**the Interpretation**"), which became effective on April 26, 2025.

The Interpretation consolidates and revises the existing judicial guidance on criminal intellectual property infringement. This brief summarizes key aspects of the Interpretation relevant for legal practitioners and businesses.

- **Enhanced Clarity for Trademark Counterfeiting Standards**

Articles 1–3 of the Interpretation clarify the core definitions of “same type of goods or services”, “trademark identical with a registered trademark”, and standards for determining “serious” or “especially serious” circumstances under Article 213 of the PRC Criminal Law. Trademark counterfeiting is now classified as a “serious” offense if the illegal proceeds reach RMB 30,000 or the amount of illegal operation reaches RMB 50,000. Circumstances are deemed “especially serious” if the monetary amounts involved reach ten times these thresholds.

- **Refined Criteria for Identifying “knowing” Sales of Counterfeits**

Articles 4–5 of the Interpretation outline key criteria for determining whether a seller “knowingly” sold counterfeit goods under Article 214 of the PRC Criminal Law. Scenarios implying such knowledge include selling goods with noticeably altered trademarks, having prior administrative or criminal penalties for similar offenses, or purchasing goods at a significant deviation from market prices without justification. For such offenses, illegal proceeds of RMB 30,000 are considered “relatively

large," and a sales amount of RMB 50,000 constitutes "serious circumstances". Violations involving amounts ten times greater these thresholds are considered "huge amount or especially serious."

- **Strengthened Enforcement Against Patents and Label Counterfeiting**

According to Articles 6-10 of the Interpretation, the unauthorized production and forgery of a registered trademark labels or the relevant sale thereof is a "serious" offense once the quantity reaches 10,000 pieces, or the illegal proceeds exceed RMB 20,000, or the amount of illegal operation hits RMB 30,000. For infringements involving two or more registered trademarks, these thresholds are lowered to 5,000 labels, illegal proceeds of RMB 10,000, or an amount of illegal operation of RMB 20,000.

Separately, patent counterfeiting is classified as "serious" if the illegal proceeds reach RMB 100,000, the amount of illegal operation reaches RMB 200,000, or the direct economic loss to the patent owner is RMB 300,000 or more. In cases involving repeat offenses (within two years) or the counterfeiting of two or more patents, the monetary requirement for a "serious" classification is lowered to illegal proceeds of RMB 50,000 or an amount of illegal operation of RMB 100,000.

- **Copyright Infringement in the Digital Age**

Articles 11–15 of the Interpretation provide that criminal liability for illegal distribution or online dissemination is triggered when the illegal proceeds reach RMB 30,000 or the amount of illegal operation reaches RMB 50,000. Alternatively, criminal liability also arises when there has been more than 500 physical copies distributed, or the online dissemination has obtained 10,000 downloads or 100,000 clicks. Providers who assist infringement by supplying technical means or

services to circumvent digital protections face liability at similar thresholds.

- **Trade Secret Protection Strengthened**

Article 16 of the Interpretation expands the definition of “theft” to include unauthorized access via “electronic intrusion”, acknowledging the digital nature of modern corporate espionage. Under Article 17 of the Interpretation, a trade secret infringement constitutes a “serious” offense if it results in economic losses or illegal proceeds of RMB 300,000 or more. Circumstances are deemed “especially serious” when the monetary amount involved reach ten times the threshold for a “serious” offense.

- **Procedural Safeguards and Confidentiality Obligations**

Article 21 of the Interpretation mandates protective measures for trade secrets and other confidential information presented in criminal proceedings. It also imposes criminal liability for the unauthorized disclosure or misuse of such protected information by any party involved in the proceedings.

- **Expanded Liability for Accomplices and Aggravated Circumstances**

Article 22 of the Interpretation broadens criminal liability to accomplices who knowingly facilitate IP crimes by providing significant resources, funding, technical support, or other substantial assistance. Furthermore, Article 23 of the Interpretation identifies aggravating factors that warrant heavier penalties, such as infringing during a public emergency or refusing to surrender illegal gains.

- **Conclusion**

The Interpretation refines China’s criminal IP enforcement framework, aiming to establish clearer and stricter standards to deter infringement

effectively. Practitioners and enterprises are advised to enhance their IP compliance, evidence collection practices and internal controls to mitigate these heightened liability risks.

Nonetheless, concerns remain regarding the practical challenges of consistent judicial enforcement, particularly in local courts and cross-border contexts. Continued observation and analysis will be critical in evaluating the Interpretation's long-term effectiveness.

## **II. Three Departments Issue Negative List for Market Access (2025 Edition)**

On April 24, 2025, the National Development and Reform Commission, the Ministry of Commerce, and the State Administration for Market Regulation jointly released *the Negative List for Market Access (2025 Edition)* (the “**Negative List**”). Compared with the previous version, the new Negative List reduces the number of restricted items from 117 to 106 (a decrease of 11 items), while eliminating 17 national-level specific management measures and 16 local-level management measures under these items.

*The Negative List for Market Access* is an institutional framework that consolidates industries, sectors, and business activities in China that are either prohibited or require government approval for investment and operation. Outside this Negative List, all market entities are theoretically and legally entitled to equal access. In this publication, we'll briefly introduce you to the key contents of the Negative List.

- **National Treatment**

The Negative List introduces multiple optimizations by refining the "nationwide unified list" management requirements and the implementation rules for market access. The aim is to clarify that both domestic and foreign market entities operating in China are uniformly

subject to its provisions, which is in line with the principles set out under the PRC Foreign Investment Law.

- **Market Entry**

The Negative List reduces entry barriers by removing certain national-level restrictions. For instance, it changes the regulatory approach for seal engraving businesses from a licensing system to a filing system. It also partially relaxes some national-level measures, such as eliminating approval requirements for the establishment of television production units and the trial operations of new telecom services, while maintaining necessary oversight in these sectors through streamlined procedures. Additionally, it abolishes several local-level restrictions, including those on ship design and manufacturing, as well as alcohol production and sales, aligning them with nationally unified entry standards.

- **Key Sectors**

The Negative List further standardizes market access in key sectors. For example, it incorporates regulatory measures for emerging industries such as the issuance of operational permits for civil unmanned aircraft (excluding micro drones).

- **Still Prohibited or Restricted Sectors for Foreign Investments in *the Negative List for Market Access***

Prohibited Sectors (foreign investment is not permitted under any circumstance): news gathering and dissemination; radio and television broadcasting; internet news services; unmanned aerial vehicle operations; drama, film, and radio/television program production; strategic mineral (e.g., uranium) mining; aquatic product fishing.

Restricted Sectors (foreign investment are permitted with conditions): agricultural seed industry; domestic waterway transport; education; healthcare; telecommunications.

- **Conclusion**

*The Negative List for Market Access* was firstly issued in 2018. After four revisions in 2019, 2020, 2022, and 2025, the number of restricted items has been reduced from 151 in the 2018 version to the current 106—a reduction of approximately 30%. This has significantly eased restrictions across numerous industries, reflecting China’s efforts to invigorate markets through deregulation. However, it’s worth noting that *the Negative List for Market Access* discussed in this publication is applicable to both domestic and foreign invested entities. Thus, for foreign invested enterprises, in addition to the Negative List here, they should also comply with *the Special Administrative Measures (Negative List) for the Access of Foreign Investment (2024)*.

### **III. Four Departments Arrange for the Action to Facilitate Cross-Border Financial Services in Shanghai**

In March 2025, four Departments in Shanghai jointly issued a new set of cross-border financial opening policy (the “Policy”), consisting of 18 initiatives aimed at facilitating outbound business activities. These policies cover a wide range of areas including fund centralization, risk management, financing access, insurance support, and infrastructure development. They reflect not only the implementation of China’s broader strategy to build a strong financial system and stabilize foreign investment, but also Shanghai’s ambition to strengthen its role as a global financial hub. This article analyses key developments from a foreign investment legal perspective and provides commentary on potential practical challenges.

- **Optimized Cross-Border Settlement and Treasury Centralization**

The Policy framework significantly expands the flexibility for multinational enterprises (MNEs) to conduct cross-border fund transfers and centralized treasury operations. Companies are encouraged to

establish regional treasury centers in Shanghai, leveraging integrated RMB and foreign currency cash pools and Free Trade Accounts (FTAs). Banks are also instructed to streamline due diligence processes, reducing operational compliance burdens for the companies. These reforms are expected to improve liquidity efficiency and reduce foreign exchange costs, thereby enhancing the headquarters function of foreign-invested enterprises in China.

- **Strengthened Foreign Exchange Risk Management and Broader RMB Internationalization**

Financial institutions are encouraged to offer tailored foreign exchange hedging products, with the government providing subsidies and guarantees to reduce the cost burden on SMEs. Parallel efforts are being made to promote the use of RMB in cross-border settlements, supported by improved RMB account services. These measures aim to enhance corporate resilience to exchange rate volatility and to increase the acceptance of RMB in international transactions. For foreign companies operating in a volatile global financial environment, this offers both risk mitigation tools and long-term currency flexibility.

- **Expanded Cross-Border Financing Options and Operational Flexibility**

The policy package facilitates various cross-border financing structures, including syndicated loans, refinancing arrangements, and centralized intra-group lending through finance companies. It also encourages the application of digital financing platforms in supply chain and green finance scenarios. Regulatory procedures for registering and approving foreign debt are further simplified. These changes provide foreign-invested enterprises with more flexible and diversified funding channels to support overseas expansion, project finance, and working capital management.



- **Broadened Insurance Support for Outbound Business**

On the insurance front, companies are encouraged to utilize cross-border insurance products such as overseas investment risk coverage and international health plans. Regulatory support is also extended to Belt and Road-related projects through enhanced reinsurance cooperation. However, uncertainties remain concerning governing law, dispute resolution, and claims settlement procedures under cross-border insurance contracts. Foreign businesses are advised to conduct jurisdiction-specific legal assessments when designing risk allocation strategies.

- **Digital Infrastructure and Financial Platform Development**

The Policy highlights efforts to develop Shanghai's platforms for international reinsurance, financial asset trading, and investment facilitation. It also promotes streamlined approval procedures under QDLP and similar regimes. Digital tools such as "One-Stop Single Window" and the "Maritime-Trade Data Chain" are prioritized to support cross-border customs, financing, and compliance reporting. These innovations are expected to significantly enhance operational efficiency, regulatory transparency, and the ability of foreign-invested enterprises to integrate domestic and overseas resources.

- **Conclusion and Observations**

Shanghai's latest cross-border financial reforms represent a meaningful step forward in deepening financial liberalization and optimizing the regulatory environment for global capital flows. Nonetheless, foreign-invested enterprises and their legal advisors should be mindful of below two key practical issues:

**Limited Geographic Applicability:** Many policies are currently confined to specific zones such as the Free Trade Zone and Lingang New Area.

**Persistent Cross-Border Data Compliance Barriers:** Although the policies promote data sharing and digital infrastructure, enterprises continue to face stringent compliance obligations in transferring customer or transaction-related data across borders—particularly when interacting with jurisdictions that maintain strict data localization rules, such as the EU and parts of Southeast Asia.

It is also worth noting that, in practice, the implementation of many liberalization measures continues to encounter considerable difficulties, primarily due to the increasingly stringent foreign exchange control regime. This has been a consistent observation based on our experience with clients in Shanghai.

Going forward, foreign investors should closely monitor implementation rules and regulatory interpretations, proactively engage in policy consultation, and design compliance frameworks that align with both Chinese and international legal standards.

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