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Tort Liability Law of the People's Republic of China
中华人民共和国侵权责任法

【Issued by】 Standing Committee of the National People's Congress

【Subject】 Tort Liability

【Promulgated on】 26th December, 2009

【Effective from】 1st July, 2010

【Source】 <http://www.npc.gov.cn>

On 26 December, 2009, the Tort Liability Law of the People's Republic of China (hereinafter referred to as "the Tort Liability Law") was adopted at the 12th Session of the Standing Committee of the 11th National People's Congress. It shall come into force on July 1, 2010.

The Tort Liability Law is formulated in order to protect civil rights and people's interests, prevent and punish infringement acts, reduce conflicts and promote social harmony and stability. It provides liabilities for a range of circumstances, including product liability, motor vehicle traffic accidents, medical accidents, environmental pollution, work-related injuries, ultra hazardous activity, harm caused by other people's pets and harm caused by object etc.

The Law provides that those who infringe "civil rights and interests" shall be subject to tort liability. The term "Civil rights and interests" include personal and property rights and interests. According to the Tort Liability Law, where the assets of an infringer are not adequate for payments for the tort liability and administrative liability or criminal liability for the same conduct, the infringer shall first assume the tort liability.

It is worthwhile to note the following stipulation of the Tort Liability Law: "Where any harm caused by a tort to a personal right or interest of another person inflicts a serious mental distress on the victim of the tort, the victim of the tort may require compensation for the infliction of mental distress (Article 22)." It is for the first time that compensation for mental harm becomes legitimate in China. However, compensation for mental harm is only applicable to tort to a personal right or interest (excluding tort to a property right or interest). Furthermore, it remains ambiguous as to how to define "serious mental distress".

In addition, according to the Tort Liability Law, if an employee of an entity causes any harm to another person in the execution of his work duty, the employer shall assume the tort liability. Where, during the period of labor dispatch, a dispatched employee causes any harm to another person in the execution of his work duty, the entity employer receiving the dispatched employee shall assume the tort liability. Additionally, the entity employer dispatching the employee, if at fault, shall assume the corresponding complementary liability.

Before the Tort Liability Law will enter into force on July 1, 2010, tort liability will still be regulated by the General Principles of the Civil Law. With the passage of the Tort Liability law, China has established a more complete civil law system. It will also further promote the codification process of China's Civil Code.

Procedural Rules for the Registration of Pledges over Exclusive Rights on Registered Trademarks

注册商标专用权质权登记程序规定

【Issued by】 The State Administration for Industry and Commerce

【Subject】 Trade Mark

【Promulgated on】 10th September, 2009

【Effective from】 1st November, 2009

【Source】 <http://www.aic.gov.cn>

In order to maximize the value of the exclusive rights on trademarks as intangible assets, the State Administration for Industry and Commerce issued the Procedural Rules for the Registration of Pledges over Exclusive Rights on Registered Trademarks (hereinafter referred to as “the Procedural Rules”) on September 10, 2009. The Procedural Rules have become effective on November 1, 2009.

According to the Procedural Rules, where a natural person, a legal person or other organization pledges its exclusive rights on a registered trademark, the pledgor shall conclude a written contract with the pledgee, and register the pledge at the trademark bureau. A pledge registration application shall be jointly submitted by the pledgee and the pledgor directly or through a trade mark agency upon entrustment. Foreigners or foreign enterprises which have no habitual residence or business premise in China must entrust an agency to file the application.

The Procedural Rules points out that the pledgor shall carry out registration for the same or similar trademarks which they have registered for the same or similar goods/services. The trademark bureau shall set up a register for pledge registration, which is kept for public reference.

The Procedural Rules also specifies the required documents for the registration as well as for the modification, extension, and cancellation of pledges over exclusive rights on registered trademarks. In accordance with the Procedural Rules, the applicants shall

submit the following documents to register the pledge over the exclusive right on registered trademark:

- Application letter signed or sealed by the applicant;
- The certificate/identification card of the pledgee and pledgor;
- The main contract and the pledge contract;
- The mandate letter;
- The copy of trademark registration certificate;
- The value assessment report of the exclusive right on the registered trademark;
- Other required documents.

If all the foresaid documents were prepared in full and completion, AIC shall issue the registration certificate of pledges over the exclusive right on the registered trademark within 5 days.

The Measures for Handling Complaints in Hospitals (Trial)

医院投诉管理办法（试行）

【Issued by】 Ministry of Health of the People's Republic of China

【Subject】 Hospital Complaint

【Promulgated on】 November 26th, 2009

【Effective from】 November 26th, 2009

【Source】 <http://www.moh.gov.cn>

In order to standardize the settlement of complaints in medical institutions and to improve the quality of medical services, the Ministry of Health of the People's Republic of China ("MOH") issued the Measures for Handling Complaints in Hospitals (Trial) (hereinafter referred to as the "the Measures") on November 26, 2009. It has taken effect on the same day.

"The complaints" mentioned in the Measures mainly refer to that patients and their families or relatives provide their opinions, suggestions or requests regarding medical treatment, medical service, medical equipment and medical environment to hospitals. The Measures are applied to all kinds of hospitals in China, including foreign-invested hospital. Other health care institutions can regard the Measures as a reference.

According to the Measures, significant information in the process of medical treatment should be credited to medical records in a timely manner. And the medical records need to be acknowledged and signed by the patient or his family.

The Measures provide that hospitals should execute a complaint management responsibility system, in combination with a medical safety management. Hospitals should set up an office to handle doctor-patient relationship issues or assign a department to assume the management of the hospital complaints.

In accordance with the Measures, hospitals should give the complainant a warm reception and handle the complaints timely and properly:

- (i) For complaint which may be related to medical security, remedial steps must be taken immediately.
- (ii) For complicated complaints, which need to be investigated and verified, a hospital must respond with its opinion and report the resolution to a complainant within five working days.
- (iii) For complicated complaints, which requires research and coordination of several departments, a hospital must respond with its opinion and report the resolution to a complainant within ten working days.

In addition, hospitals should analyze statistics of complaints regularly. Results of the complaints will be related to the assessment of medical ethics and work of the medical personnel. If hospitals do not in accordance with the Measures carry out complaints management, and therefore lead to serious group incidents, hospitals and relevant department heads should be penalized.

The purpose of the Measures is to reduce medical accidents and negligence and improve the management of hospital complaints. With the implementation of the Measures the human rights of patients shall be well protected and medical litigations shall fall significantly.

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