

# W&B Legal Newsletter

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## Spotlights

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Watson & Band Case selected as a “Typical Case of Strengthened Judicial Protection for IP Rights heard by Courts in Zhejiang Province”

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### Corporate & Commercial

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### Data & Network Security

CAC Issues Newly Revised Administrative Provisions on the Information Services Provided through Official Accounts of Internet Users

### Finance and Securities

CSRC Regulates Management of Convertible Bonds to Protect Legitimate Rights and Interests of Investors

# INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 pro-fessionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

## Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Zhengzhou, Chengdu, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

## Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department re-sponsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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## Disclaimer

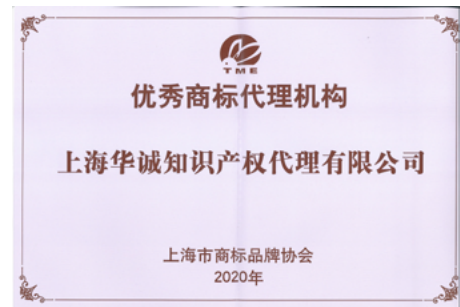
- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by National Intellectual Property Administration of China (CNIPA), Trademark Office of CNIPA, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

## Watson & Band Honored as an “Outstanding Trademark Agency for the Year 2020” by Shanghai Trademark Association

Recently Shanghai Trademark Association announced the final winners of its awards “Outstanding Trademark Agencies”, “Outstanding Trademark Agents” and “Outstanding Trademark Cases” for the year 2020.

After candidate submissions, documents review, online voting and expert panel assessment, Watson & Band Intellectual Property Agent Ltd. was honored “Outstanding Trademark Agency of the Year”; our trademark agent, Ms. Hao Ji, was honored “Outstanding Trademark Agent of the Year”. Meanwhile, the “Dottie DOTTIE LH and figure” trademark invalidation case was selected as an “Outstanding Trademark Case of the Year”.

After being honored “Outstanding Trademark Agency for the Year 2020” by China Trademark Association, this is another great success for Watson & Band in the trademark practice area.



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## Watson & Band Case selected as a “Typical Case of Strengthened Judicial Protection for IP Rights heard by Courts in Zhejiang Province”

On January 19, Zhejiang Higher People’s Court published the “2020 Typical Case of Strengthened Judicial Protection for IP Rights heard by Courts in Zhejiang Province”. The trademark cross-class enforcement action that Watson & Band’s Partner Joe Liu and his team represented for the World Trade Center Association was selected among these cases. Where the trial judgment basically supported our claims, the appellate court Zhejiang Higher People’s Court corrected the application of law and supported our claim for damages in the full amount of 3 million RMB.

For details of the case you may visit:

[http://www.watsonband.com/en/cmsDetail\\_en.htm?item.id=b24afd73ca7d4b419b0b767e3b5a9c43](http://www.watsonband.com/en/cmsDetail_en.htm?item.id=b24afd73ca7d4b419b0b767e3b5a9c43)

# Latest Legal Developments

## SPC Issues an Official Reply to the Issues concerning the Scope of Application of New Judicial Interpretation on Private Lending

The Supreme People's Court ("SPC") recently issued the *Official Reply to the Issues concerning the Scope of Application of New Judicial Interpretation on Private Lending* (the "Reply"), with effect from January 1, 2021.

The *Reply* clarifies that, after seeking comments from financial regulatory authorities, new judicial interpretation on private lending shall not apply to disputes arising from the engagement in relevant financial business by seven types of local financial organizations regulated by local financial regulatory authorities, namely, small loan companies, financing guarantee companies, regional equity markets, pawnbrokers, financial leasing companies, commercial factoring companies, and local asset management companies, and they are considered as financial institutions established upon the approval of the financial regulatory authorities.



(Source: Supreme People's Court)

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## Revised Law on Administrative Penalties Adopted to Regulate Delegation of Power to Impose Administrative Penalties to Townships and Sub-districts

The *Law of the People's Republic of China on Administrative Penalties (Revised in 2021)* (the "Law"), deliberated at the 25th Session of the Standing Committee of the 13th National People's Congress ("NPC"), was recently issued, with effect from July 15, 2021.

The *Law* consists of eight chapters, including types and creation of administrative penalties, organs imposing administrative penalties, jurisdiction and application of administrative penalties, decisions on administrative penalty, enforcement of administrative penalties, and legal liability. Among others, the *Law* requires that the decision of a province, an autonomous region or a municipality directly under the Central Government on delegating the power to impose administrative penalties to its townships and sub-districts shall be announced; people's governments of the townships and sub-district offices that take over the power to impose administrative penalties shall improve their law enforcement capabilities, and impose administrative penalties in accordance with the prescribed scope and legal procedures. The *Law* also specifies that, unlawful gains refer to the money obtained from the implementation of illegal acts, unless otherwise stipulated by laws, administrative regulations and departmental rules; if illegal acts involve citizens' life and health security or financial security and cause harmful consequences, the time limit for the pursuit of liability will be extended to five years; and the imposition of administrative penalties by administrative organs shall be subject to social supervision.

(Source: [www.npc.gov.cn](http://www.npc.gov.cn))



## SPP Issues Provisions on Handling of Cybercrime Cases by People's Procuratorates

On January 25, the Supreme People's Procuratorate ("SPP") issued the *Provisions on the Handling of Cybercrime Cases by the People's Procuratorates* (the "Provisions") for implementation as of the date of issuance.

The *Provisions* contain 65 articles divided into seven chapters, including general provisions, guided collection of evidence and case review, review of electronic data, and attendance in court in support of public prosecutions. The *Provisions* have four main characteristics as follows: firstly, regulating the handling of cybercrime cases in accordance with criminal litigation procedures; secondly, stressing the normative requirements for the collection, extraction and review of electronic data; thirdly, focusing on the integration of case handling and technology; fourthly, highlighting the coordination and cooperation in case handling. Among others, the *Provisions* set up a special chapter to enumerate the common forms of electronic data, sort out the methods of collecting evidence, and refine the examination points of different forms of electronic data. Meanwhile, according to the cross-region characteristics of cybercrime, a special chapter has been set up to prescribe the coordination and cooperation in case handling, with detailed provisions made in four aspects such as personnel deployment, information exchange, collection of evidence on behalf of local case handling departments and assistance in obtaining evidence, which give full play to the advantages of prosecutorial integration to form a joint combat force.

(Source: Supreme People's Procuratorate)

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## State Council Issues Revised Administrative Provisions on the Registration of Enterprise Names

The State Council recently issued the *Administrative Provisions on the Registration of Enterprise Names (Revised in 2020)* (the “*Provisions*”), with effect from March 1, 2021.

The *Provisions* mainly touch upon the contents in four aspects. The first is establishing a self-declaration system for enterprise names and clarifying specific requirements. An applicant shall undertake to bear legal liability in accordance with the law for its infringement upon the legitimate rights and interests of others due to the similarity between its enterprise name and the names of other enterprises. The second is perfecting the basic specifications for enterprise names. The prohibitive requirements on enterprise names are refined, and the registration rules for names of foreign-invested enterprises, enterprise branches, and enterprise groups are clarified. The third is establishing a mechanism for settling disputes over enterprise names. Where an enterprise deems that other enterprise names infringe upon the legitimate rights and interests of its enterprise name, it may file a lawsuit with the people’s court or request the enterprise registration authority that has handled the registration for the enterprises suspected of infringement to deal with the matter. The fourth is strengthening the in-process and ex-post regulation. When handling the enterprise registration, where an enterprise registration authority discovers that the name of an enterprise fails to meet the provisions, it shall refuse the registration for the enterprise and explain the reasons therefor in writing; where it discovers that the registered enterprise name fails to meet the *provisions*, it shall make corrections in a timely manner.



(Source: [www.gov.cn](http://www.gov.cn))

## CAC Issues Newly Revised Administrative Provisions on the Information Services Provided through Official Accounts of Internet Users

The Cyberspace Administration of China (“CAC”) recently revised and issued the *Administrative Provisions on the Information Services Provided through Official Accounts of Internet Users* (the “Provisions”), with effect from February 22, 2021.

The *Provisions*, consisting of 23 articles, are divided into five chapters, namely general provisions, platforms for the information services provided through official accounts, official account producers and operators, supervision and administration, and supplementary provisions. Among others, the Provisions require that platforms for the information services provided through official accounts shall perform their responsibilities, establish systems such as those for the hierarchical or classified management of official accounts, ecological governance, copyright protection, and credit evaluation, and improve administrative measures such as official account registration certification, qualification review, and publicity of official account registrants. The *Provisions* also propose that official account producers and operators shall fulfill their responsibilities as users, establish and improve content and account security review mechanisms, make more efforts to control the orientation, authenticity, and legality of the content, manage and operate accounts in accordance with laws and regulations, and attract the public to follow, subscribe and share official accounts with high-quality information and content, and shall not engage in illegal activities such as malicious registration of accounts, fabrication of false information, or trading of accounts.

(Source: Cyberspace Administration of China)





## CSRC Regulates Management of Convertible Bonds to Protect Legitimate Rights and Interests of Investors

The China Securities Regulatory Commission (“CSRC”) recently formulated and issued the *Administrative Measures for Convertible Corporate Bonds* (the “*Measures*”), with effect from January 31, 2021.

The *Measures*, consisting of 23 articles, cover the content including transaction transfer, information disclosure, share conversion, redemption, resale, entrusted management, regulatory punishment, and rules connection. Among others, the *Measures* require that within the duration of convertible bonds, an issuer shall continuously pay attention to whether the redemption conditions are met; if the redemption conditions are expected to be met, it should promptly disclose them and fully alert the market to the risks five trading days before the redemption conditions are met. Meanwhile, the *Measures* have perfected the scope of temporarily disclosed events, mainly including seven types of circumstances such as the adjustment or amendment to the conversion price, the cumulative shares converted reaching 10% of the company’s shares, and the total amount of shares not converted being less than CNY30 million. The *Measures* also propose establishing an entrusted management system for convertible bonds and clarify that the trustee of convertible bonds shall perform the duties of entrusted management in accordance with the Administrative Measures for the Issuance and Trading of Corporate Bonds and the agreement on the entrusted management of convertible bonds.

(Source: China Securities Regulatory Commission)



## CSRC Strengthens Regulation of Private Investment Funds

On January 11, the China Securities Regulatory Commission (“CSRC”) promulgated the *Several Provisions on Strengthening the Regulation of Private Investment Funds* (the “*Regulations*”) for implementation as of the date of promulgation.

The *Provisions* form the “ten must not” prohibitive requirements for private fund managers and practitioners. The main content is as follows: the first is to standardize the name and operation scope of private fund managers, and separate the old rules from the new ones. The second is to optimize the regulation of conglomerate private fund managers to encourage the good ones and restrict the bad ones. The third is to reiterate that private funds should privately raise funds from qualified investors. The fourth is to clarify the property investment requirements for private funds. The fifth is to strengthen the regulatory requirements for subjects such as private fund managers and practitioners, and standardize the development of related party transactions. The sixth is to clarify legal liability and arrangements of the transition period. Among others, according to the requirements of the *Provisions*, private fund managers should focus on the main business of investment management, and may carry out fund raising, investment management, consulting services, and provide management consulting services for invested companies, by focusing on private fund management, but may not engage in other business in conflict with or unrelated to private fund management.

(Source: China Securities Regulatory Commission)

## CSRC Seeks Comments on Revising Provisions on Banning Access to Securities Market

The China Securities Regulatory Commission (“CSRC”) recently drafted the *Provisions on Banning the Access to the Securities Market (Draft for Comment)* (the “*Draft for Comment*”) for public comments. The solicitation for comments has ended by this date.

Main revisions of the *Draft for Comment* are as follows: Firstly, further specifying the types of market access prohibition; secondly, further specifying the banning rules for trading; thirdly, further specifying the objects whose access to the market is banned and circumstances under which the banning applies. Among others, the *Draft for Comment* divides the banning of market access into two types, namely, “prohibition from engaging in securities business or securities service business, or serving as directors, supervisors or senior executives of the securities issuer” and the trading access prohibition. The former type is banning measures following the current Provisions, while the latter is the newly added measures. On this basis, the law enforcement organs may choose to apply the matching type of access prohibition separately or in combination according to the identity and responsibility of the relevant responsible person, the type of illegal act, the social harm of the illegal act, and the severity of illegal circumstances.

(Source: China Securities Regulatory Commission)



## SSE Issues "Self-Check Form" of Common Issues for SSE STAR Market Applications

Recently, the Shanghai Stock Exchange (the “SSE”) issued the *Business Guide to the Review of Applications for Offering and Listing on the SSE STAR Market No.2 - Self-Check Form of Common Issues Required for Information Disclosure and Verification* (the “*Self-Check Form*”).

Based mostly on relevant review standards and Q&A published for the SSE STAR Market as well as the problems identified in the application review process, the Self-Check Form sorts through, sums up and streamlines the common issues and weak areas in information disclosure and verification as found in the application documents submitted by issuers or intermediaries. The *Self-Check Form* mainly covers two parts: first, issues relating to the qualification conditions for offering and listing on the SSE STAR Market, such as horizontal competition with material adverse effect, material violations, business sustainability, R&D investment etc.; and second, common issues required for information disclosure and verification, such as verification of customers and suppliers, selection of comparable companies in the same industry and other common IPO application issues, as well as specific issues summed up from the practice of reviewing applications for the SSE STAR Market, such as alerts to material matters, cooperative R&D etc.

(Source: Shanghai Securities Exchange)