



里格律师事务所
A&Z LAW FIRM

A&Z Monthly Newsletter
December 2021

Passion - Professionalism - Collaboration

Dear Friends,

This is a monthly newsletter focusing on legal matters in China, and related issues that shape the general business environment for foreign companies operating in China.

Should you have any comments or questions, please do not hesitate to contact Ms. Anna Lukina, BD & Marketing Director at alukina@a-zlf.com.cn visit the [A&Z website](#).

Sincerely,
The Editors



Legal Updates

A&Z Past Events

NPC Standing Committee Seeks Comments on Draft Revision to Company Law

On December 20, the 32nd session of the 13th Standing Committee of the National People's Congress ("NPC") has recently deliberated on the Company Law of the People's Republic of China (Draft Revision) (the "Draft Revision"), the full texts of

December 7, Shanghai

which have been published on December 24 to solicit public comments by January 22, 2022.

The Draft Revision, consisting of 260 articles in 15 chapters, adds or revises around 70 articles on the basis of the existing Company Law, which comprises 218 articles in 13 chapters. The main revisions involve the following aspects: setting up a special chapter as "Special Provisions of State-funded Companies", which expanding the scope of application from wholly state-owned limited liability companies to wholly state-owned and state-controlled limited liability companies and joint stock limited companies; setting up a new chapter on company registration to clarify the matters and procedures of company establishment registration, change registration and deregistration; adding the stipulation that a small company may not have a board of directors, a joint stock limited company may have one or two directors, and a limited liability company may have one director or manager; adding the stipulation that directors and senior managers who intentionally or negligently cause damage to others when performing their duties shall undertake jointly and severally liable with the company.

SAMR Seeks Comments on Measures for the Identification of Illegal Gains in Cases of Administrative Penalties Imposed by Market Regulatory Authorities

On December 6, the State Administration for Market Regulation ("SAMR") published the Measures for the Identification of Illegal Gains in Cases of Administrative Penalties Imposed by Market Regulatory Authorities (Draft for Comments) (the "Draft for Comments") for public comments by January 5, 2022.

The Draft for Comments mainly clarifies the following matters: (1) the relevant definitions of illegal gains and basic methods of calculating illegal gains; (2) the deduction circumstances in calculating illegal gains; and (3) how to cope with situations where it is difficult to accurately calculate illegal gains. Among them, the Draft for Comments takes into account the protection of the rights of the parties concerned and the needs of law enforcement practice, by enumerating in Article 5 the necessary expenses for deduction and specifying the burden of proof for the parties concerned. Considering the severity of the violation and the degree of harm, Article 6 provides for exceptions where the deduction is not allowed. While Articles 7 and 8 clarify the principle of tax and fee deduction and the calculation of the amount that the parties have already refunded in accordance with the law.

CNIPA Issues Criteria for Judging Ordinary Trademark Violations

On December 15, the China National Intellectual Property Administration ("CNIPA") issued the Criteria for Judging Ordinary Trademark Violations (the "Standards") for implementation from January 1, 2022.

The Standards systematically sort out and summarize good experiences and practices in trademark management, focus on the prominent issues that generally exist in the course of law enforcement, provide targeted guidelines for trademark law enforcement authorities, and offer market entities with the trademark management rules with high transparency and



The French-speaking history society, which explores the historical and cultural links between France and Shanghai, held a cultural exchange event in our conference room on the 6th floor of the Okura Garden Hotel (formerly known as the Cercle Sportif Français). The speaker Mr. Nicolas Grévat, shared the historical and cultural links between France and Shanghai with the attendees. Through supporting this cultural exchange event, A&Z wishes to strengthen the ties for the cooperation between Europe and China.

December 13, Shanghai



Ms. Sophie An, the Principal Partner of A&Z Law Firm, was invited to participate in the Tokushima People's exchange event, and delivered a speech on the theme of "Interpretation of Japanese-invested enterprises' compliance cases in the new development stage". In addition to a general introduction of China's new development stage, Ms. An talked about the latest policies, laws and regulations, focusing on the analysis of commercial bribery, personal information protection and other issues illustrated with specific

foreseeability. The Standards, consisting of 35 articles, set forth detailed provisions on nine types of illegal behaviors that disrupt the order of trademark management as identified in the existing laws, regulations and departmental rules, namely, failure to use a registered trademark when it must be used, use of any mark that cannot be used as trademark, use of the words "well-known trademark" in a commercial activity, trademark licensee's failure to indicate its name and the origin of goods as required by law, change of the registered trademark, registrant's name, and address or other registration items without permission, use of an unregistered trademark as a registered one, failure to perform management obligations in collective trademark and certification trademark and trademark printing management obligations, and malicious application for trademark registration.

CTC of the State Council Announces 2022 Tariff Adjustment Plan

On December 15, the Customs Tariff Commission ("CTC") of the State Council has recently issued the Circular on the 2022 Tariff Adjustment Plan (the "Circular").

According to the Circular, starting from January 1, 2022, China will implement provisional tariff rates lower than the most-favored-nation tariff rates on 954 commodities. The adjustments proposed in the Circular are mainly based on the following considerations: (1) implementing zero tariffs on radium chloride injection, the new anti-cancer drug, to reduce the economic burden of the patients; (2) reducing import tariffs on some consumer goods, including some high-quality aquatic products such as salmon, to meet the people's needs for a better life, and create a sound atmosphere for the Beijing Winter Olympics; (3) implementing zero tariffs on oil paintings and other artworks that have been produced for more than 100 years, to meet the needs of cultural consumption; (4) reducing import tariffs on gasoline particulate filters that can improve vehicle fuel efficiency and reduce exhaust emissions to raise environmental quality; (5) reducing import tariffs on key components such as high-purity graphite accessories to help optimize and upgrade the manufacturing industry; (6) reducing the import tariffs on resource products that are in short supply domestically, such as pyrite and pure potassium chloride.

MEE Issues the Administrative Measures for the Statutory Disclosure of Enterprises' Environmental Information

On December 21, the Ministry of Ecology and Environment ("MEE") issued the Administrative Measures for the Statutory Disclosure of Enterprises' Environmental Information (the "Measures") for implementation from February 8, 2022.

The Measures clarify the subjects of disclosure and the contents to be disclosed, time limit of disclosure, supervision as well as other basic contents regarding the statutory disclosure of enterprises' environmental information. Disclosure subjects focus on enterprises with great environmental impact and high public concern, such as key pollutant-discharging enterprises, enterprises that are subject to mandatory review for cleaner production, listed companies and bond issuing enterprises that meet the prescribed conditions, etc. Among others, the Measures require enterprises to prepare their annual report on statutory

compliance cases.

December 14, Dalian

Ms. Kan Xian, the Director of the Dalian Office of A&Z Law Firm, was invited to participate in a webinar sponsored by the Japan External Trade Organization (JETRO) Dalian Office. She delivered a one-hour speech on the theme of "The Influence of Personal Information Protection Law on Enterprise Labor and Personnel Management and Countermeasures". Ms. Xian introduced some common situations in enterprise labor and personnel management to which China's Personal Information Protection Law may be applicable. She also introduced the background and key contents of the Personal Information Protection Law, including sensitive personal information, cross-border provision of personal information.

December 13, Shanghai



Mr. Andrew Zhang, Senior Partner at A&Z, participated in an online event co-organized by Israel Chamber of Commerce in China, Changan Automobile and ViaMeshi. Mr. Zhang's discussed the future of automotive business in China, which is currently the largest market for the industry in the world. The event continued with several presentations of innovative solutions brought by Chinese and Israeli automotive companies.

December 21, Shanghai

A&Z Law Firm, Tokyo Chamber

disclosure of environmental information and the report on statutory disclosure of provisional environmental information pursuant to the Guidelines for the Form of the Statutory Disclosure of Enterprises' Environmental Information and upload such reports within the respective time limit through the system for statutory disclosure of enterprises' environmental information. According to the Measures, the annual report on statutory disclosure of environmental information for an enterprise shall include eight contents, such as "the basic information on the enterprise, including the basic information on its production and its ecological and environmental protection effort". When disclosing their annual environmental information, listed companies and bond issuing enterprises shall provide other relevant information specified in the Measures, in addition to the aforesaid information.

MIIT Proposes to Regulate Reporting and Sharing of Information about Data Security Risks in Industrial and Information Fields

On December 22, in order to strengthen the acquisition, analysis and assessment of the information related to data security risks in the industrial and information fields, the Ministry of Industry and Information Technology ("MIIT") released the Guidelines for Reporting and Sharing of Information on Data Security Risks in the Industrial and Information Fields (for Trial Implementation) (Draft for Comments) (the "Draft for Comments") to solicit public opinions by January 22, 2022.

According to the Draft for Comments, data security risk information refers to the data security risks obtained through detection, evaluation, information collection, authorization monitoring and other means, including but not limited to data leakage, data tampering, data abuse, illegal transmission, illegal access, abnormal traffic and so on. Under the Draft for Comments, entities required to report risks directly to the MIIT should submit information about data security risks directly to the MIIT (the Cybersecurity Management Bureau), and other risk reporting entities should submit the relevant data security risk information in industry, telecommunications and Internet to the local industrial and information authorities or the local communications authorities.

NDRC Issues the Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021)

On December 27, the National Development and Reform Commission ("NDRC") and the Ministry of Commerce issued the Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021) and Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (Edition 2021). There are only left 31 articles in the national version and 27 articles in the free trade zone version, and the free trade zone version has fully liberalized the manufacturing industry. The 2021 negative list of foreign investment access will be implemented on January 1st, 2022.

Let's look at some of the main changes. First, further deepen the opening of manufacturing industry. In the field of automobile manufacturing, the restrictions on the ratio of foreign shares in passenger car manufacturing and the restrictions that the same

of Commerce and Industry, as well as Japan Chamber of Commerce and Industry jointly held a webinar on China's economic and legal developments. The speakers included Mr. Yasuo Onishi, Special Researcher of the Japan Science and Technology Agency and Consultant of A&Z Law Firm, as well as Ms. Sophie An, the Principal Partner of A&Z Law Firm, to deliver speeches. Based on his rich experience in China's economic research, Mr. Yasuo Onishi explained the current economic situation and future trends in China under the theme "China's current economic situation and prospects". Ms. An's speech focused on the Data Security Law and Personal Information Protection Law, which were formally implemented in China this year. Indeed, Ms. An compared the information security legal systems of Japan and the European Union with China, and analyzed some practical examples of Japanese-invested enterprises' business activities in China and shared some compliance countermeasures.

**A&Z team wishes you a happy
Holiday Season and a
prosperous New Year 2022!**



foreign company can set up two or less joint ventures in China to produce similar vehicle products are abolished. In the field of radio and television equipment manufacturing, the restrictions on foreign-invested ground receiving facilities for satellite television broadcasting and the production of key components will be abolished. Second, the Pilot Free Trade Zone explores the relaxation of service industry access. In the field of market research, except for the radio and television listening and viewing survey, which must be controlled by the Chinese side, the restrictions on foreign investment access will be abolished. In the field of social investigation, foreign investors are allowed to invest in social investigation, but the Chinese share ratio is not less than 67%, and the legal representative should have Chinese nationality. The third is to improve the accuracy of the negative list of foreign investment access. In the description of the negative list, add "If a domestic enterprise engaged in the business in the field of investment prohibited by the negative list of foreign investment access issues shares overseas and is listed and traded, it shall be subject to the examination and approval of the relevant state authorities, and foreign investors shall not participate in the business management of the enterprise, and their shareholding ratio shall be implemented with reference to the relevant provisions on the domestic securities investment management of foreign investors". The fourth is to optimize the negative list management of foreign investment access. According to the Implementation Regulations for the Foreign Investment Law, "Foreign-invested enterprises investing in China shall comply with the relevant provisions of the negative list for foreign investment access" is added to the description of the negative list.

About A&Z Law Firm

A&Z is a leading Chinese law firm, which employs over 50 experts composed of a team of professionals comprising attorneys, legal assistants, Japanese translators, client managers, and business specialists across 5 offices in 11 legal practices. Having been active in Shanghai since 2004, A&Z's presence was expanded through the establishment of offices in Beijing, Dalian, Wuhan, and Tokyo. A&Z focuses on advising multi-national groups, major corporations, banks, and SMEs on various legal issues relevant to their business endeavors.

A&Z's practices include Foreign Investment, Overseas Investment, Competition and Antitrust, Intellectual Property, M&A and Corporate Restructuring, Labour and Social Security, Dispute Resolution, Compliance and CSR, Finance and Capital Markets, Customs Logistics and Maritime Commerce, and Environment, Health and Safety (EHS).

Industry News

Sinopharm: R&D on vaccine against new variants has begun

China Daily, December 7

JD shows consumer demand for imported fruits, fresh produce rising

China Daily, December 8

China to create 1 mln innovative SMEs by 2025

Xinhua, December 17

In clean energy race, China may have a lot

China to build financial centre in western region by 2025, central bank says

Reuters, December 24

China ranks 2nd as home to over 300 unicorn companies: report

Xinhua, December 25

How, why, where of digital yuan

Xinhua, December 26

Rising automation power China aims to be a world robot champion by 2025

more scope for rooftop solar than US

SCMP, December 20

**China to roll out policies to help exporters
amid economic headwinds**

Reuters, December 23

SCMP, December 29

**Renewable energy program exceeding growth
and innovation expectations**

China Daily, December 31

The information contained in this Newsletter is for reference on matters of interest only, and is not intended to be comprehensive. Although we try to ensure accuracy, please note that the application and impact of laws can vary based on contextual and circumstantial variables. Before taking any action, please ensure that you obtain professional advice specific to your circumstances.

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