



Newsletter

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October 21, 2022

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Update

SAMR Regulates the Discretion of Market Regulators to Impose Administrative Penalties: No penalty for minor violations

On October 8, 2022, the State Administration for Market Regulation (“SAMR”) issued “the *Guidelines on Regulating the Discretion of Market Regulators to Impose Administrative Penalties*”, which came into force immediately. Meantime, the SAMR No.244 (2019) document was abolished, and the original Guidelines were revised by the new legal document.

The Guidelines are applicable to the new Administrative Penalty Law and its amendment, and mainly

modified the contents of the original Guidelines that are inconsistent with the new law, which guarantee the correct implementation of laws, regulations and rules. With a total of 20 articles, the Guidelines refined the requirements in relation to the discretion of the market supervision department to impose administrative punishments, mainly adjusting the rules for the exercise of discretion to waive penalties for minor violations and others. The Guidelines clarified that market regulators may decide not to impose administrative penalties on those who violate law for the first time with minor harmful consequences and can make correction in a timely manner. The Guidelines also added the circumstances that should be subject to heavier administrative penalties: the individuals or entities who act against the emergency response measures amid pandemic or similar emergencies shall be punished severely in accordance with the law.

The State Tobacco Monopoly Administration Issued a Document to Strengthen the Supervision of Electronic Cigarettes

“Notice by the State Tobacco Monopoly Administration of Matters Concerning Strengthening the Supervision of Electronic Cigarettes” was released on September 29, 2022.

The Notice clarified that the entities on electronic cigarette market shall carry out production and business activities in accordance with the law: from October 1, 2022, the entities engaged in the productions and operations of e-cigarettes or vapes shall obtain a tobacco monopoly license. The operation of e-cigarettes or vapes business shall comply with the requirements of *“Law of China on Tobacco Monopoly”*, *“Measures for the Administration of electronic cigarettes”* and other applicable regulations. The Notice also emphasized that electronic cigarette transactions should be conducted on the official transaction management platform.

SAMR Releases Interim Rules governing Quality Safety of Food-related Products

On October 8, 2022, the State Administration for Market Regulation (“SAMR”) released the *“Interim Measures for the Supervision and Administration of Quality Safety of Food-related Products”*, which will come into force on March 1, 2023.

With 39 articles in five chapters, the Measures are applicable to the production and sales of food-related products in China, as well as the supervision and administration of those activities. The rule focuses on implementing the most stringent standards, and the strictest supervision and administration, and imposing the severest penalties and the most serious accountability. The Measures strengthened administration of the whole production process of food-related products covering production, sales, storage, packaging and other key process, and clarified the responsibilities of producers and sellers as the “first responsible persons”, and the territorial supervision responsibility of market supervisors, imposing higher requirements on enterprises and supervisors. Producers are required to staff quality safety supervisors and quality safety officers. The measures also include provisions on the labeling of food-related products, prohibiting production, sales and use of food-related products that do not meet food safety standards or use additives beyond scope and limit.

MIIT Prepares to Issue Guidelines on Building of Standards System for ICV Industry

On September 16, 2022, the Ministry of Industry and Information Technology (“MIIT”) released “Soliciting Public Opinion for the *Guidelines on Construction of a Standards System for the Internet of Vehicles Industry* (Intelligent Connected Vehicles) (2022 Edition) (Exposure Draft)”.

The Guidelines express that the authority prepares to formulate and revise more than 100 standards related to ICVs, covering standards such as combined driver-assistance system, key systems for automatic driving, basic functions and operating systems of network connectivity, high-performance computing chips and data applications, as well as functional safety, expected functional safety, network safety and data safety, in order to meet the standardization needs of ICV technology, industrial development and government management.

CSRC Revises Measures for the Administration of Futures Exchanges

The China Securities Regulatory Commission (“CSRC”) recently released the revised Measures for “the *Administration of Futures Exchanges* (Exposure Draft)” to solicit public opinions from September 16 to October 16, 2022, in order to effectively implement “the *Futures and Derivatives Law*”.

To improve the applicable systems regulations, the Measures add provisions on the listing of varieties of futures, clarify the regulatory responsibilities of futures exchanges for programmed trading, and strengthen management of actual control relationship by clarifying the definition, and requiring futures exchanges to refine the specific situations, procedures and requirements for the determination of the relationship. Market maker systems are applicable to futures trading and futures exchanges shall implement corresponding regulations. It also regulates cross-border cooperation of futures exchanges, and details contents related to futures trading information.

The Ministry of Finance, State Taxation Administration and the Ministry of Science and Technology Announced on Increasing Efforts for Pre-tax Deduction to Support Scientific and Technological Innovation

On September 22, 2022, the Ministry of Finance, State Taxation Administration and the Ministry of Science and Technology released the Announcement on Increasing Efforts for Pre-tax Deduction to Support Scientific and Technological Innovation (“Announcement”). The Announcement provides further tax incentives for high-tech enterprises. The policy allows enterprises qualified as high-tech enterprises in the fourth quarter in 2022 to deduct the full amount of equipment and appliances purchased in this quarter on a one-off basis plus a weighted deduction before tax, and any shortfall may be carried forward to future years. In addition, for enterprises used to enjoy a weighted R&D expenses pre-tax deduction ratio of 75%, the ratio is raised to 100% for the last quarter in 2022.

Shenzhen Released the Several Measures of Shenzhen Municipality on Promoting the High-quality Development of the Intelligent Connected Vehicle Industry (Exposure Draft) for Public Comments

On 11th October, 2022, the Development and Reform Commission of Shenzhen Municipality released the

Several Measures of Shenzhen Municipality on Promoting the High-quality Development of the Intelligent Connected Vehicle Industry (Exposure Draft) (“Draft”) and announced the Draft is subject to public comments till 10th November. The Draft proposed to support the Intelligent Connected Vehicle Industry (“ICV Industry”) from four perspectives including R&D rewarding up to 200 million CNY, industry synergies promotion such as funding for upstream and downstream companies, application scenario exploration support such as discount on road test fees, and optimizing the supporting environment for industrial development such as funding for industry exhibitions and the development of industrial standard.

SAMR Released a Batch of National Standards Including Data Security, Social Security, Environment Protection and Others

On October 14, 2022, the World Standards Day, the Standardization Administration of the State Administration for Market Regulation (“SAMR”) released a batch of important national standards including General safety requirements for smart household appliances, Guidelines for Personal Information Security Engineering, a series of Public safety biometric identification standards, and Green evaluation criteria for kitchen and bathroom hardware products, etc., which serves the ideas of “A common vision for a better world” and “Standardization in the Digital Age”. In addition, several national standards have been issued in areas such as modern agriculture, petrochemicals, machinery industry, aerospace, science and technology, and rehabilitation of people with disabilities.

Article(s)

Recent Developments in China’s Notarization and Authentication Requirements for Extraterritorial Evidence

by *Eric Wang*

Brief Overview

The purpose of this article is to provide updated information on the recent legislative and judicial practices of the notarization and/or authentication requirements on extraterritorial evidence in Chinese law, and to provide guidance on the preparation of evidence for foreign parties and attorneys involved in civil litigation cases in China.

Notarization and/or Authentication Requirements on Extraterritorial Evidence Relaxed

On December 25, 2019, the Supreme People’s Court of the People’s Republic of China (the “PRC”) promulgated the *Several Provisions of the Supreme People’s Court on Evidence in Civil Litigation* (the “New Rules of Evidence”). The New Rules of Evidence was effective on May 1, 2020. Compared with its previous counterpart promulgated by the Supreme People’s Court and implemented on April 1, 2002 (the “Original Rules of Evidence”), the New Rules of Evidence has dramatic changes in the notarization and authentication requirements on extraterritorial evidence.

It is generally required in Article 11 of the Original Rules of Evidence that if the evidence provided to the court was formed outside the territory of PRC, it shall be certified by the notary office of the country

where it is located and authenticated by the embassy or consulate general of the PRC in that country, or it shall go through the proof procedures stipulated in the relevant treaties concluded between China and the country where the evidence is originated.

Article 16 of the New Rules of Evidence changed the above general requirement by: (1) removing such general stipulation that all the extraterritorial evidence must be notarized and authenticated; (2) narrowing down the scope of the extraterritorial evidence that shall be notarized and authenticated and further simplifying the proof procedures as follows: i) public documentary extraterritorial evidence only needs undergoing the notarization procedure, and the authentication proof by embassy or consulate of the PRC is not required; ii) identity-related extraterritorial evidence shall both be notarized and authenticated. That is to say, for extraterritorial evidence other than the above two categories, no notarization and/or authentication proof are required.

The New Rules of Evidence has greatly reduced the different and even erroneous understandings of the notarization and/or authentication proof requirements for extraterritorial evidence that existed under the Original Rules of Evidences, and it further unified and clarified the proof standards for extraterritorial evidence. It is conducive to reducing the economic and time costs of parties involved in foreign related civil litigations in China, and can greatly improve the efficiency of the litigation procedures. However, it is a little pity that the New Rules of Evidence has no stipulations as to the definition or specific scope of the public documentary extraterritorial evidence and identity-related extraterritorial evidence, thus it causes confusion and uncertainty to distinguish the categories of extraterritorial evidence in judicial practice and to determine its proof requirements, particularly the identification of Public Documentary Extraterritorial Evidence.

Scope of Public Documentary Extraterritorial Evidence was Clarified and Notarization Requirement was further Relaxed

In order to solve the above problems existing in judicial practice and unify the standards of determining the public documentary evidence, the Supreme Court promulgated a *Meeting Minutes of the National Courts Symposium on Foreign-related Commercial and Maritime Trials* (“Minutes”) in December 31, 2021. The Minutes enumerated some categories of public documentary extraterritorial evidence typical in civil related litigations in China, which include i) judgments, rulings made by foreign courts; ii) documents issued by foreign administrative agencies; iii) commercial registrations issued by foreign public agencies; iv) proof documents, such as birth and death certificates, marital status certificates etc., foreign appraisal agencies documents issued by private institutions are excluded.

The Minutes further provided that if the authenticity of the public documentary extraterritorial evidence could be verified through the Internet or the parties to the case have no objection to its authenticity, the notarization proof requirement can be waived. This is considered a further relaxation of the notarization requirement on documentary extraterrestrial evidence in judicial practice, provided that its authenticity can be verified.

Some Understanding of Identity-related Extraterritorial Evidence and its Notarization and Authentication Requirements

The New Rules of Evidence still retains the notarization and authentication requirements for identity-related extraterritorial evidence and does not provide any exceptions. This requirement is derived from Article 271 of *the Civil Procedure Law of the PRC* which stipulates that “*foreigners, stateless persons, foreign enterprises and organizations who do not have a domicile within the territory of the People’s Republic of China entrust a lawyer of the People’s Republic of China or other persons to represent them in litigation, and the power of attorney sent or entrusted from outside the territory of the People’s Republic of China shall be valid only after it has been certified by a notary public office of the country where it is located and certified by the embassy or consulate of the People’s Republic of China in that country, or after performing the certification procedures stipulated in the relevant treaties concluded between the People’s Republic of China and the country in which it is located*”.

In judicial practice, in addition to the power of attorney, the extraterritorial evidence related to the identity that needs to be notarized and authenticated usually includes: i) the company registration certificate of the foreign party involved in the case; ii) the identity certificate of the legal representative of the foreign party; iii) the complaint signed by the foreign party (some local courts in China do not accept a complaint signed by the entrusted lawyer, even if the power of attorney expressly states that the entrusted lawyer has the right to sign the complaint). According to the aforementioned meeting Minutes, a commercial registration issued by foreign public agencies is a public documentary extraterritorial evidence, and only needs to be notarized. However, the principal identity of the plaintiff or defendant still needs to be notarized and authenticated.

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