



Newsletter

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January 10, 2023

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Update

Chinese and Philippines Customs Sign AEO Mutual Recognition Arrangement to Reduce Trade Costs

On January 4, 2023, the Customs of China and the Philippine signed the Arrangement on Mutual Recognition of Authorized Economic Operator (“AEO”).

China Customs became the first AEO mutual recognition partner of Philippine Customs. After the signing of the AEO mutual recognition arrangement, the export goods of AEO enterprises in both China and the Philippines will enjoy four facilitation measures such as lower inspection rate, priority inspection, designated customs liaison service, and priority customs clearance after international trade interruption and resumption. The clearance time is expected to be significantly reduced, and the costs of ports, insurance and logistics will also be reduced accordingly.

Ministry of Commerce Intends to Revise the Export Prohibition and Restriction Technology Catalogue

On December 30, 2022, Ministry of Commerce published the *Notice of Public Consultation on Revising the Export Prohibition and Restriction Technology Catalogue* (“Notice”).

The Notice clarifies that the revision intends to delete 32 technical items, modify 36 items, and add 7 items. The revised Catalogue contains 139 items, including 24 items prohibited from exporting and 115 items restricted from exporting. The revision substantially cuts down on the Catalogue, and also refine the control points of some technical items to strengthen international technical cooperation.

CNIPA Intends to Issue a Template and Guidelines for Patent Contracts

On January 3, 2023, China National Intellectual Property Administration (“CNIPA”) published the *Notice of Public Comments on Patent Right Assignment, Patent Implementation License Contract Template and Guidelines of Signing* (“Notice”).

The revised template of patent right transfer contract and patent implementation license contract have 16 clauses each, mainly focusing on the necessary clauses, refining the key clauses and expanding the relevant content as optional clauses. In addition, the signing guidelines also add explanations to each clause of the contract template and remind the parties to pay attention to the relevant clauses.

Measures on Administration of Auto Finance Companies Is Soliciting for Public Comments

On December 29, 2022, the China Banking and Insurance Regulatory Commission (“CBIRC”) issued the *Notice to Solicit for Public Comments on Measures on Administration of Auto Finance Companies (Draft for Solicitation of Comments)* (“Draft”). The main revisions are as follows: strengthening risk-based supervision; adapting to the market demand for high-quality development of the automobile industry; strengthening corporate governance and internal control; implementing open policy. The Draft eliminates equity investment business, and also sets higher requirements for funders, strengthens shareholders’ support for auto finance companies, appropriately expands the scope of shareholders’ deposits and cancels the regulations on the term of fixed deposits. In addition, the Draft increases risk management requirements, adds liquidity risk supervisory indicators, and improves major emergency reporting, on-site inspections, extended investigations and tripartite talks.

CBIRC Intends to Regulate Classification of Trust Business

China Banking and Insurance Regulatory Commission (“CBIRC”) drafted the *Notice on Matters Relating to the Classification of Trust Business of Regulated Trust Companies* (“Notice”) and solicited public comments on December 30, 2022.

The Notice emphasizes the positioning of trustees of trust companies. According to the essence of various trust services, the trust business is divided into three categories: (1) asset management trusts; (2) asset service trusts; and (3) public welfare/charity trusts. The Notice subdivides trust business sub-items under

each major category of business, regulates definition, boundary, service content and prohibited items of each business. In addition, the Notice clarified the responsibility subject and work requirements of the classified work.

CBIRC Releases Measures to Enhance Protection of Consumer's Rights

On December 30, 2022, China Banking and Insurance Regulatory Commission (“CBIRC”) released the *Measures for the Protection of Consumer's Rights and Interests in Banking and Insurance Institutions* (“Measures”), which will come into effect on March 1, 2023.

The Measures consists of 8 chapters and 57 articles. The Measures made provisions on the overall objectives, scope of institutions, responsibilities and obligations, institutions subject to the supervision and working principles. The Measures stressed efforts to improve the systems and mechanisms for the protection of consumer's rights and interests, regulate the operations of banking and insurance institutions to protect the eight basic rights of consumers, and strengthen the supervision and administration of the industry. It also specified the duties of the CBIRC and its dispatched offices, the various banking and insurance industrial associations, and the industrial dispute mediation organizations, with provisions concerning the regulatory measures and penalties, the scope of application, the rights of interpretation, and the implementation period of the Measures.

CNIPA Amends Interim Measures for Examination of Partial Design Patents

On January 5, 2023, China National Intellectual Property Administration (“CNIPA”) issued *Notice on Interim Measures for Examination Related to the Implementation of the Revised Patent Law* (“Measures”).

The Measures consists of 12 articles and clarifies national priority examination business of partial design and appearance design. The Measures provides that if the design patent applicant claims national priority and the prior application is a design patent application, the design patent application can be filed on the same subject matter; if the prior application is an invention or utility model patent application, the design patent application can be filed on the same subject matter as the design shown in the accompanying drawings; if the design patent applicant claims national priority, the prior application is deemed to be withdrawn from the date of filing of the latter application, except that the design patent applicant claims the invention or utility model patent application as the basis for national priority.

CAAC Issued Measures on Management of Temporary Storage of Dangerous Goods in Air Transport

On January 5, 2023, Civil Aviation Administration of China (“CAAC”) Issued *Measures on the Management of Temporary Storage of Dangerous Goods in Air Transportation* (“Measures”).

The Measures consists of six chapters and 41 articles, which are applicable to carriers and ground service agents to carry out the temporary storage of dangerous goods air transport activities. The Measures stipulates the basic requirements of the temporary storage of dangerous goods air transport and clarifies that except for the carriers that have obtained Dangerous Goods Air Transport Permit, other carriers shall

not carry out temporary storage of dangerous goods in air transport.

Article(s)

The Reciprocity Requirements for Recognition and Enforcement of Foreign Judgments in Chinese Law

by Eric Wang

The purpose of this Article is to sort out the reciprocal recognition in Chinese law on the recognition and enforcement of foreign judgments, and provide the latest progress in judicial practice on such requirement.

1. Legislation of the Reciprocal Recognition

It is stipulated in Article 289 of *the Civil Procedure Law of the People's Republic of China* (Revised in 2021) ("*the Civil Procedure Law*"), the people's court, after reviewing the application or request for recognition and enforcement of a legally effective judgment or ruling made by a foreign court in accordance with the international treaties concluded or acceded to by the People's Republic of China, or in accordance with the principle of reciprocity, determines that it does not violate the basic principles of the laws of the People's Republic of China or national sovereignty, safety and social public interests, a ruling shall be made to recognize its effectiveness. If the enforcement is needed, an order of enforcement shall be issued, which shall be implemented in accordance with the relevant provisions of *the Civil Procedure Law*. Those who violate the basic principles of the laws of the People's Republic of China or the state sovereignty, security, social and public interests shall not be recognized and enforced. Article 542 of *the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (Revised in 2022)* ("*the Judicial Interpretation*") further provides that, when a party applies to an intermediate people's court of the People's Republic of China that has jurisdiction to recognize and enforce a legally effective judgment or ruling made by a foreign court, if the country where the court is located and the People's Republic of China have not concluded or jointly acceded to an international treaty, and if there is no reciprocal relationship, a ruling shall be issued to reject the application, except that it is a legally effective divorce judgment made by a foreign court.

On July 7, 2015, the Supreme Court of China issued *Several Opinions on People's Courts Providing of Judicial Services and Guarantees for the Construction of the Belt and Road* ("*Opinions*"). The *Opinions* points out that China can give preferential treatment to countries along the "the Belt and Road" that have not concluded a treaty with China after understanding that they have the intention of reciprocity.

In 2017, the Nanning Declaration adopted by the Second China ASEAN Justice Forum directly proposed a new practice direction of presumption of reciprocity, namely, "if the other country does not have a precedent of refusing to recognize and implement its own civil and commercial judgments on the grounds of reciprocity, it can be presumed that there is a reciprocal relationship with the other country within the scope allowed by its domestic law". The above statement marks the shift from factual reciprocity to presumed reciprocity, which is in line with the new requirements of softening the review standard of reciprocity requirement in the new era.

2. Latest Judicial Standards for the Reciprocal Recognition

On January 24, 2022, the International Commercial Court of the Supreme People's Court of the PRC officially released the *Minutes of the Symposium on Foreign related Commercial Maritime Justice of the National Courts* (the "Minutes"). According to Article 44 of the Minutes, the people's court may recognize the existence of a reciprocal relationship when hearing a case that applies for recognition and enforcement of a judgment or ruling of a foreign court in any of the following circumstances:

- a) According to the laws of the country where the court is located, the civil and commercial judgments made by the people's court of China can be recognized and enforced by the courts of that country;
- b) China has reached a mutually beneficial understanding or consensus with the country where the court is located;
- c) The country where the court is located has made a reciprocal commitment to China through diplomatic channels or China has made a reciprocal commitment to the country where the court is located through diplomatic channels, and there is no evidence to prove that the country where the court is located has refused to recognize and implement the judgments and rulings made by the people's court of China on the ground that there is no reciprocal relationship.

The people's court shall examine and determine whether there is a reciprocal relationship on a case-by-case basis. The above provisions mark a significant change in judicial practice from factual reciprocity to legal reciprocity.

3. Reviewing System for the Reciprocal Recognition

The Minutes provides a detailed reviewing system for the reciprocity, that is, the people's court shall, before making a ruling, submit its proposed opinions to the Higher People's Court under its jurisdiction for review in case of review based on the principle of reciprocity; If the Higher People's Court agrees with the proposed opinions, it shall submit its review opinion to the Supreme People's Court for further review. A ruling can be made only after the Supreme People's Court made a reply. We understand that this reviewing system is designed to ensure the accuracy and uniformity of the recognition of reciprocal relations.

4. Highlights of the Reciprocity Recognition in Latest Cases

Case 1: Fujian Huadong Shipyard v. Singapore Offshore Oil Tanker Company, Xihe Company and Xinbo Company

Case number: Xiamen Maritime Court (2020) Min 72 Min Chu No. 334 Civil Ruling

Judgment time: August 18, 2021

Key points of judgment: When the people's court reviews the application for recognition of foreign bankruptcy judgment, it shall apply the provisions of Paragraph 2 of Article 5 of the *Enterprise Bankruptcy Law of the PRC*. When conducting reciprocal review according to the above provisions, it can adopt the double reciprocal recognition standard that factual reciprocity is the first and presumed reciprocity is the supplement, and take the recognition and implementation of the bankruptcy judgment of the two countries as the factual basis for the reciprocal recognition, and it cannot be expanded to the civil and commercial judgment. If the parties fail to provide the recognition and enforcement of the bankruptcy

judgment of the two countries, the people's court shall find out on its own authority, and shall not determine that there is or no reciprocal relationship existing between the two countries only on the ground that the parties cannot provide the evidence. This case is the first time that a Chinese court has applied *the Enterprise Bankruptcy Law* to recognize a Singapore judicial administrator.

Case 2: SPAR Shipping Co., Ltd. v. Grand China Logistics Holding (Group) Co., Ltd. to apply for recognition of foreign court judgments

Case number: Shanghai Maritime Court (2018) Hu 72 Xie Wai Zhu No. 1 Civil Ruling

Judgment time: March 17, 2022

Key points of the judgment: The determination of the reciprocal relationship does not require the relevant foreign court to recognize and implement the civil and commercial judgments of the people's courts in advance. If the civil and commercial judgments made by the people's court can be recognized and enforced by the court of the foreign country according to the laws of the country where the foreign court made the judgments, it can be recognized that China has a reciprocal relationship with the country to recognize and enforce civil and commercial judgments.

This case is the first time that the Chinese court has recognized the commercial judgment of the British court. This case is also the first case in which a foreign court judgment was reviewed and recognized after the release of the Minutes, which is of typical and exemplary significance for understanding and applying the relevant provisions of the Minutes.

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