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Laws and Regulations Updates

I. Regulations on Determination and Protection of Well-Known Trademarks

On 3 July 2014, the State Administration for Industry & Commerce promulgated an amended version of the Regulations on Determination and Protection of Well-Known Trademarks (the "Regulations"), which will formally come into effect in August of this year. The original version of the Regulations on Determination and Protection of Well-Known Trademarks (the "Original Regulations"), which was promulgated on 17 April 2003, will be abolished concurrently.

Since its promulgation in 2003, the Original Regulations have played a very important role in establishing a system and setting out rules and procedures for the protection of well-known trademarks. It has also served as an authoritative source for industrial and commerce departments on the determination and protection of well-known trademarks. Still, there are some issues which were left unresolved, such as the over-standardized determination procedure, the determination criteria not being specific enough and a lack of clarity in the division of tasks.

A resolution regarding the amendment of the Trademark Law was examined and

passed during the 4th session of the Standing Committee of the 12th National People's Congress on 30 August 2013. The new Trademark Law once again recognizes the system for the protection of well-known trademarks. It also clarifies the concept of well-known trademarks and further explains the principles on the determination of well-known trademarks. The State Administration for Industry & Commerce amends the Original Regulations in accordance with the requirements under the new Trademark Law to tackle some existing issues that need to be resolved in real practice.

The Regulations comprise 21 articles after the amendment. First, it sets out the basis of legislation, the definition of well-known trademarks and the principle for determination. Second, it has a starting point of taking into consideration the viewpoint of parties asking for protection of well-known trademarks and provides express regulations on the submission of determination and protection requests in different kinds of cases and states the requirement on evidential materials therein. The Regulations also contain provisions regarding the standardization of the procedure for both handling cases of well-known trademarks and the determination criteria. It also includes details on enhancement of daily protection of well-known trademarks and the applicability of the record of well-known trademarks under protection.

According to the Regulations, “well-known trademarks are trademarks which are widely known to the relevant public in the PRC. The relevant public includes consumers of specific goods or services marked by the trademarks in use, other operators producing the said products or offering services as well as the sellers and relevant officers involved in the distribution channels”. In comparison to the Original Regulations, the amendment brings out the legal nature of cases and making it easier

for the parties concerned to understand what evidence is required. It also clearly defines the responsibilities of the parties concerned, as well as the industrial and commercial departments. It also sets out regulations for the handling of relevant issues in cases concerning well-known trademarks.

II. Measures on the Administration of Acquisition by Non-Listed Public Companies and Measures on the Administration of Material Asset Restructurings of Non-Listed Public Companies

In order to perfect the multi-level capital market, enhance the function of service provision to small and medium enterprises by capital market and improve the market environment for merger and restructuring, the China Securities Regulatory Commission promulgated the Measures on the Administration of Acquisition by Non-Listed Public Companies (the “Acquisition Measures”) and the Measures on the Administration of Material Asset Restructuring of Non-Listed Public Companies (the “Restructuring Measures”) on 23 June 2014.

The Acquisition Measures and the Restructuring Measures put emphasis on a regulatory mechanism based on the principle of shareholder governance and marketization. Driven by marketization, the mechanism further loosens control and strengthens supervision on the course of and after a transaction. The structure of this mechanism is different from the merger and restructuring system for stock market and listed companies.

The Acquisition Measures consist of 6 chapters and 47 articles. It is divided into general provisions, disclosure of interest, disclosure on change of right of control,

take-over offer, supervisory measures and legal responsibility, as well as supplementary provisions. The Restructuring Measures consist of 5 chapters and 41 articles. It is divided into general provisions, information management on material asset restructuring, procedure on material asset restructuring, supervision, control and legal responsibility, as well as supplementary provisions.

In order to facilitate the development of the merger and restructuring market, the two Measures have taken an explorative and innovative approach under the principles of simplicity and convenience, transparency, high efficiency and cost reduction. For example: (1) no mandatory general offer system will be imposed on non-listed public companies; (2) suitably loosen the requirements on the price of voluntary offer and payment method and give more options to the offeror; (3) expand the payment methods for material asset restructuring. Apart from the issuing of shares, other payment methods such as preference shares and convertible bonds can also be used; (4) fully utilize the function of the market and allow the parties involved in a transaction to negotiate the price on their own; (5) largely simplify the variety of reports for equity change. While a report on disclosure of acquisition is required when there is a change on the right of control, only a report on disclosure of equity change is required for other equity changes; (6) reduce the declaration documents required and submission of evaluation report and profit prediction report are not compulsory; (7) simplify the procedure of material asset restructuring in which shares are issued for the purchase of assets; (8) shorten the examination period etc.

The summary is only intended to provide an outline of certain recent developments in the PRC and is not intended to be relied upon or taken as legal advice provided by Sit, Fung, Kwong & Shum or Hong Kong Sit, Fung, Kwong & Shum Xi'an Representative Office. If you have any enquiry, please

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Please note that amendments have been made to the Personal Data (Privacy) Ordinance in Hong Kong in regard to the use of individuals' personal data for direct marketing purposes. We have been using your personal data (and in particular your name and address) to send to you our regular electronic news as well as information about the legal services that our firm is able to provide to its clients. We hope that you find these communications and information useful and of value and we would like to continue to send them to you if you agree. If you no longer wish to receive our communications, please email us at sfks@sfks.com.hk. If you have any queries, or you would like to update your contact details, please also email us at sfks@sfks.com.hk.