



浦瑞律师事务所
CENLAW & PARTNERS

NEWSLETTER

February 2010

SHANGHAI . CHINA

Preface

Cooperation News

CANADA

GERMANY

HONG KONG

ARGENTINA

Legal Express from China

International Trade & Foreign Investment

- SAIC Implements Rules On Establishment Of Partnerships By Foreign Enterprises Or Individuals
- SAIC Promulgates Foreign-Invested Partnership Registration Rules
- Government Further Encourages Key Enterprises Engaging In Exporting Cultural Products
- GAPP To Investigate Foreign Investment For Unlawfully Releasing & Running Online Games

Intellectual Property Right

- Supreme Court Adjusts Jurisdiction Standards For IPR Civil Cases

Finance & Taxation

- Provisions On Index Futures Investors Eligibility System Officially Issued
- CBRC Officially Releases “Interim Measures For The Administration Of Individual Loans”
- CIRC Increases Requirements For Qualifications Of Senior Officers Of Insurance Companies
- SAT Regulates Tax Administration For Permanent Representative Offices Of Foreign Enterprises
- Non-Resident Corporate Income Tax Collection Administration Measures Released
- SAT Clarifies Application Of Taxation Agreements
- Hunan Takes Series Of Measures To Encourage Development Of Equity Investment Enterprises

Labor & Employment

- MOFCOM Issues Additional Rules On Qualification For Sending Seafarers Abroad
- Employment And Personnel Dispute Arbitration Organization Rules Issued

Legal Comments

- Operational Introduction for Establishing a Partnership by Foreign Enterprises or Individuals
- Five Key Points of the New Implementation Rules of the Patent Law



Add: SuiteA-B,4/F,Crystal Century Tower,No.567

Weihai Road,Jing'an District,Shanghai,200041

Tel: 86 21-6288 6799

Fax: 86 21-6288 6825

URL: www.cenlaw.com

Preface

Two of traditional Chinese festivals fall in February of 2010: the Spring Festival and the Lantern Festival, which are moments when Chinese people celebrate the conclusion of the previous year and the commencement of a new year with their family members.

Reuniting, thanksgiving and blessing are the themes of the two festivals.

CENLAW is also here to express our gratitude towards clients and cooperation partners from all around the world in the recent one year.

While China is celebrating the Spring Festival, worldwide conflicts and disputes relating to Chinese exporters are, nevertheless, increasing. Chinese clients continually reflect to us the anti-dumping and anti-subsidy investigations and other trade disputes they meet in foreign trade activities.

We highly appreciate the numerous and prompt information and advice provided by our cooperation partners in their jurisdictions, which enables us to help clients in making right decisions and adopting appropriate measures.

Communication, understanding and cooperation are the best ways to solve these disputes.

CENLAW hopes to make certain contribution in the above aspects through effective joint work with our cooperation partners in this year.

The Administrative Measures on the Establishment of Partnership Enterprises by Foreign Enterprises or Individuals in China came into force as of March 2010. This important regulation, with more clarified operation procedures, provides an alternative structure for investment in China by foreign enterprises or individuals and will promote foreign investment in China.

CENLAW is looking forward to assisting more foreign investors in starting business in China under this structure.

Cooperation News

Canada

In early February of 2010, CENLAW successfully assisted a Chinese customer in acquiring a real estate in Canada.

In February of 2010, CENLAW assisted a Canadian law firm in providing attesting document for the trade agreement of a Chinese enterprise engaged in import & export business.

Germany

In February of 2010, CENLAW represented a German company in initiating litigations against two Chinese exporters of chemical materials. According to the German company, the chemical materials it purchased from the two Chinese exporters failed to meet the quality requirements as provided in the sales and purchase agreement.

Hong Kong

In January of 2010, CENLAW represented a Hong Kong company in responding to an arbitration case filed in China by a Chinese purchaser which concluded a sales and purchase agreement with the Hong Kong company.

Argentina

In February 2010, Argentina opened an anti-dumping investigation on imports of suits and jackets from China. One of our clients was involved in such investigation. Contacts were made with Argentina law firms who in return, offered CENLAW large amounts of information on anti-dumping measures in Argentina. Our client made, at its discretion, a proper decision depending on CENLAW's advice and the information provided by Argentina attorneys.

International Trade & Foreign Investment

SAIC Implements Rules On Establishment Of Partnerships By Foreign Enterprises Or Individuals

The State Administration for Industry and Commerce (SAIC) has released a notice on the relevant issues with respect to the implementation of the *"Administrative Measures on the Establishment of Partnerships by Foreign Enterprises or Individuals"*. The Notice requires that all local industry and commerce administrations shall, in accordance with the requirements of the Administrative Measures, earnestly fulfil their responsibilities, regulate their administrative activities and provide convenient and efficient registration services for foreign-invested Partnerships: 1. All the local industry and commerce administrations shall effectively ensure the regulation of registration procedures and the consistency in examination standards strictly in accordance with the procedural requirements on the registration administration of foreign-invested Partnerships and regulatory requirements on the relevant documents to be submitted as provided in the Administrative Measures and the Provisions; regulate examination and approval procedures, industrial policy instructions and pre-requisite approval documents. 2. All the local industry and commerce administrations shall strictly confront the foreign investment-related industrial policy of the State and refuse any registration application for the establishment of Partnerships by foreign enterprises or individuals engaged in foreign-invested projects prohibited by the State. 3. All the local industry and commerce administrations shall strengthen their registration administration of foreign-invested Partnerships with investment as their primary service and reduce the investment risks.

SAIC Promulgates Foreign-Invested Partnership Registration Rules

The State Administration for Industry and Commerce (SAIC) has promulgated the *"Provisions on the Administration of Foreign-Invested Partnership Registration"* (the Provisions) which will take effect on 1 March 2010. The Provisions consist of 9 chapters covering the rules on the registration of foreign-invested partnerships, alteration of the registration, deregistration, registration of such partnerships' divisions, annual inspection and licensing. A foreign-invested partnership is a partnership formed in China between two or more foreign enterprises or individuals or between foreign enterprises or individuals and Chinese natural persons, legal persons or other organizations.

Government Further Encourages Key Enterprises Engaging In Exporting Cultural Products

The MOCOM, MOF, PBC, SAC, SAT, SAFE and four other departments have recently issued jointly the Guiding Opinions on Further Promoting the Works concerning Key Enterprises for the Export of the National Culture and Project Catalogue. The Guiding Opinions put forward several primary missions in four aspects including the cultivation of cultural trade brands, the reinforcement of the construction of marketing ability, the enhancement of the level in utilization of modern high-tech and the active development of new types of business. The Guiding Opinions require key enterprises and those enterprises which undertake key projects to report timely the status of culture import and export, and put forward some safeguard measures in 11 aspects including the intensification of fund support, the implementation of tax preferential policies, the provision of financial support, the enhancement of the level of export facilitation, the reinforcement of the construction of international marketing networks, the establishment and improvement of cultural trade intermediary organizations, the support to enterprises' investment abroad, the support to technical innovation, the reinforcement of the construction of information platforms, the establishment of commendation and reward mechanisms and the reinforcement of organizations and leadership.

GAPP To Investigate Foreign Investment For Unlawfully Releasing & Running Online Games

Sun Shoushan, the deputy director of the General Administration of Press and Publication, has recently said at the China Game Industry Annual Conference that where a new version or a new expansion is incorporated in an online game which has gone through the advance or import examination and approval of the GAPP, or the operating unit of an online game is changed, the advance or import examination and approval formalities must be transacted again, or else, such online game shall be banned as an illegal publication. The GAPP shall take severe measures to investigate and punish foreign investment's involvement in the publication and operation of online games. All imported and domestic online games must go through strict examination and approval formalities; an applicant will be allowed to operate an online game on the internet only if it has "one licence and three numbers", i.e. the internet publication licence which covers the business scope of operating online games, copyright authentication number, examination and approval number, and online game publication number.

Intellectual Property Right

Supreme Court Adjusts Jurisdiction Standards For IPR Civil Cases

The Supreme People's Court has recently issued the Notice of the Supreme People's Court on Adjusting the Standards for Jurisdiction of Local People's Courts at ALL Levels over IPR Civil Cases of First Instance, to adjust the standards for jurisdiction of courts at different levels over IPR Civil Cases. The Notice clarifies that a Higher People's Court shall have jurisdiction over IPR civil cases of first instance whose subject matter amounts to more than 0.2 billion Yuan and IPR civil cases of first instance whose subject matter amounts to more than 0.1 billion Yuan, which has a party whose place of domicile is not in such court's jurisdiction or which are foreign-related or Hong Kong, Macau or Taiwan-related. An Intermediate People's Court shall have jurisdiction over IPR civil cases below the abovementioned standards other than those which should be designated by the Supreme People's Court to be governed by Basic People's Courts which have jurisdiction over general IPR Civil Cases. The Notice also determines the maximum standards for the IPR Civil Cases of first instance to be governed by Basic People's Courts which have jurisdiction over general IPR Civil Cases.

Finance & Taxation

Provisions On Index Futures Investors Eligibility System Officially Issued

The China Securities Regulatory Commission (CSRC) has officially issued the *Provisions on Establishing a System for the Eligibility of Shares Index Futures Investors (Trial)* after its completion of soliciting opinions on the same in January. By adopting the solicited opinions, the CSRC revised the Provisions mainly in the following aspects: 1. specifying that the accumulative time of mock trading shall be 10 trading days; 2. clarifying that futures companies and securities companies engaging in intermediary services shall, in their own business place, go through the procedures for opening of index futures accounts for investors, i.e. the account must be opened at the counter and be prohibited from being opened off the site; 3. confirming that the People's Bank of China Credit Reference Centres serve as the issuing authorities of individual credit reports, etc.

CBRC Officially Releases “Interim Measures For The Administration Of Individual Loans”

After soliciting opinions in October 2009, the China Banking Regulatory Commission (CBRC) has officially issued the “Interim Measures for the Administration of Individual Loans”. Pursuant to the Measures, individual loans refer to the loans in Chinese or foreign currencies which are issued by a lender to qualified individuals for personal consumption, production and business purposes. These Measures require the implementation of loan interviews and a signing face-to-face system. As for low-risk individual pledge loans issued through electronic banking channels, the lender may not conduct a loan interview, but shall take effective measures to determine the true identity of the borrower.

CIRC Increases Requirements For Qualifications Of Senior Officers Of Insurance Companies

The China Insurance Regulatory Commission (CIRC) has announced the amended “*Provisions on Administering the Qualifications Required for the Positions of Director, Supervisor and Senior Executive of Insurance Companies*” which will come into force on 1 April of this year. According to the amendments, a general manager of an insurance company must have at least 8 years' experience in the financial sector or 10 years' experience in the business sector; (2) it is also required that a general manager of an insurance company or insurance organization must have experience in the insurance industry, financial industry, financial regulatory works or management in medium to large enterprises; and (3) the number of events that a nominated senior officer of an insurance company is not qualified for has been increased to 12.

SAT Regulates Tax Administration For Permanent Representative Offices Of Foreign Enterprises

The SAT has recently published the Interim Measures for the Tax Administration for Permanent Representative Offices of Foreign Enterprises which shall take effect as of 1 January 2010. Permanent representative offices of foreign enterprises referred to in these Measures mean the permanent representative offices of foreign enterprises (including Hong Kong, Macau and Taiwan enterprises) and other organizations that are established in China in accordance with the relevant provisions of the State Council and upon the registration at the industrial and commercial administrative departments or the approval of the relevant departments. These Measures provide expressly that a representative office shall apply, according to the law, for the payment of enterprise income tax for the income attributable to itself, and apply for the payment of business tax and value added tax for its taxable income. A representative office shall, within 30 days from the date on which it obtains the certificate for industrial and commercial registration (or the approval of the relevant departments), apply for tax registration with the relevant materials at the tax authority of its location. The verified profit margin of a representative office shall be no less than 15%. Where a representative office's taxes is collected upon verification, if such representative office is able to establish and improve its accounting books and compute accurately its taxable income and the amount of its taxable earning and report the same to the tax authority for archiving, its taxes may be collected upon its faithful report.

Non-Resident Corporate Income Tax Collection Administration Measures Released

The State Administration of Taxation (SAT) has released the “*Measures on the Administration of Approval and Collection of Non-resident Corporate Income Tax*”. Under the Measures, non-resident enterprises shall set up their account books in accordance with the Law on the Administration of Tax Collection and relevant laws and regulations, record and settle their accounts in accordance with legal

and valid invoices, and shall, in accordance with the principle of corresponding to its actual functions performed with the assumed risks, accurately calculate their taxable income, and report and pay the corporate income tax for their actual situation. With regard to non-resident enterprises providing labour services for customers in China, if the entire service is provided within China, the revenue in full shall be subject to corporate income tax in China. If the service is provided both inside and outside China, then the revenue shall be divided for services provided inside China and outside China and the revenue derived inside China shall be subject to corporate income tax.

SAT Clarifies Application Of Taxation Agreements

The State Administration of Taxation (SAT) has recently issued a notice to clarify the practical issues in its earlier instrument, Guoshuihan (2009) No. 507, which provides that technical services for the right to use know-how fall within the scope of transfer of technology and that the income from such services falls within the scope of royalties as defined in the taxation agreements. The Notice specifies the events to which Guoshuihan (2009) No. 507 does not apply and the application of the clauses on royalties under the taxation agreements to income from services provided by permanent organizations. The Notice also specifies the time limit for the application of Guoshuihan (2009) No. 507 in relation to technology transfer and service contracts

Hunan Takes Series Of Measures To Encourage Development Of Equity Investment Enterprises

The People's Government of Hunan Province has recently published the Several Opinions of the People's Government of Hunan Province on Further Accelerating the Development of the Capital Market, planning to motivate more high-quality enterprises to enter into the capital market and to take many measures to encourage the development of equity investment enterprises. The Opinions point out that the provincial government shall encourage foreign and domestic investors to register in Hunan for the establishment of equity investment enterprises and equity investment management enterprises; with regard to equity investment enterprises with actual difficulties, their self-used office buildings which are newly bought or built shall be exempt from building taxes upon declaration in accordance with the procedures; all kinds of equity investment enterprises shall be encouraged to invest in Hunan, and where a venture capital investment enterprise invests in an unlisted small and medium hi-tech enterprise more than two years beforehand by way of equity investment, such venture capital investment enterprise's taxable income for the year in which its period of equity holding reaches two years shall be deducted in accordance with 70% of its amount of investment. Where a growing enterprise that is emphatically invested in by an equity investment management enterprise meets the conditions for listing, such enterprise shall be subject to active recommendation for listing.

Labor & Employment

MOFCOM Issues Additional Rules On Qualification For Sending Seafarers Abroad

The Ministry of Commerce has announced additional rules on the *"Provisions on the Administration of Qualification for Cooperative Overseas Labouring Services in the Area of Sending Seafarers Abroad"* (Decree of Ministry of Commerce of the People's Republic of China No. 15 / 2005). The additional rules, which will take effect on 1 March 2010, provide that: (1) a Hong Kong or Macau service provider who intends to incorporate a solely invested, jointly invested or cooperative international ship management

company in China is no longer required to apply for the qualification as foreign-invested employment agent or employment agent in applying for the qualification for cooperative overseas labouring services in the area of sending seafarers abroad; and (2) a Hong Kong or Macau service provider who incorporates an international ship management company in China and possesses the qualification for cooperative overseas labouring services in the area of sending seafarers abroad may only send mainland seafarers on the ships which are owned by Hong Kong or Macau owners or the ships which are registered in Hong Kong or Macau.

Employment And Personnel Dispute Arbitration Organization Rules Issued

It is reported that the Ministry of Human Resources and Social Security has issued the "*Employment and Personnel Dispute Arbitration Organization Rules*" which govern the selection, appointment, pre-commencement training and management of arbitrators for employment disputes, and provide that the offices under the employment and personnel dispute arbitration committees shall have the duty of undertaking the daily operations of such committees. The Rules also impose duties on such committees to supervise arbitration case management and acts of their arbitrators and regulate the performance of arbitrators and case recorders.

Legal Comments

Operational Introduction for Establishing a Partnership by Foreign Enterprises or Individuals

-----Analysis of Measures for the Administration of the Establishment of Partnerships in China by Foreign Enterprises or Individuals

By Paul Huang

On November 25, 2010, Premier Wen Jiabao signed the No. 567 State Council Order, and released *the Measures for the Administration of the Establishment of Partnerships in China by Foreign Enterprises or Individuals* (hereafter “the Measures”), which shall take effect as of March 1, 2010. The Measures for the Administration was formulated in accordance with the *Law of the People’s Republic of China on Partnership Enterprises* (hereinafter “the Law on Partnership Enterprises”) as a complementary law. The issue and enforcement of the Measures provide more definite operational regulations and the forms of enterprises for foreign enterprises and individuals to establish partnership in China.

I. The Method to Establish Partnership Enterprises

(i) Methods----Establishment or by Transfer of Shares

Two or more foreign enterprises or individuals or a foreign enterprise or individual along with a Chinese natural person, legal person or other organizations are permitted to establish partner enterprises. Foreign enterprises and individuals may also be partners by participation the partnership or acquiring the shares of property within the territory of China.

(ii) Foreign Enterprises and Individuals have the Qualification to be Partners of the Enterprises Established in China

As provided by the Law on Partnership Enterprises, legal person, natural person and other organizations can be partners of partnership enterprises. As for foreign investors, the Measures, however, provide that only enterprises and individuals are permitted to join in a partnership in China, excluding non-enterprise legal persons and other organizations.

(iii) The Methods of Capital Contribution

A foreign enterprise or individual may make capital contribution in cash, tangible goods, land use rights, intellectual property, or other proprietary rights, and the form of service is also allowed. The currency for capital contribution shall be freely convertible foreign currency or RMB acquiring in accordance with law.

(iv) Registration Forms

For the application for registration for the establishment of the partnership, according to Article 15 of the Law on Partnership Enterprises, the registration application, partnership agreement, the identification documents of the partners, etc., shall be submitted to the enterprise registration authority. For the applicants with completed application materials, which are in compliance with the statutory forms, registration shall be conducted on the spot by the enterprise registration authority if possible and the license for business shall also be issued. The enterprise registration authority shall make its decision to grant registration or not to grant registration within 20 days of the receipt of the documents for establishment registration.

As for the enterprises or individuals who join the partnership enterprises by participation the partnership or acquiring the shares of property, application of registration for change shall be made to the registration authority within 15 days from the date of admission to the partnership.

II. The Superiority to Establish Partnership Enterprises for Foreign Enterprises and Individuals Comparing to Other Types of Enterprises

(i) Simpler and Faster Procedure

There is no requirement for acquiring the approval of Commerce Department, and the foreign enterprises and individuals may directly apply for establishment registration of partnership enterprises to the enterprises registration authority within the territory of China.

Conform to Law of the People's Republic of China on Foreign-Capital Enterprises and the Law of the People's Republic of China on Chinese-Foreign Joint Ventures, to establish foreign-capital enterprises or joint ventures, the examination and approval of Commerce Department or the authorized bodies by State Council beforehand are required, and the relevant departments and authorities shall make a decision on approval or disapproval within 90 days from the date of application. The foreign enterprises and individuals, therefore, saved 90 days in establishing partnership enterprises in comparison to foreign-capital enterprises and joint ventures.

According to the Law on Partnership Enterprises, for the applicants with completed application materials, which are in compliance with the statutory forms, registration shall be conducted on the spot by the enterprise registration authority if possible and the license for business shall also be issued, or the decision for registration or not shall be made within 20 day from the date of application.

(ii) The Flexibility of the Forms of Capital Contribution

The Law on Partnership Enterprises stipulates that, partners may make capital contribution in cash, tangible goods, intellectual property, use rights of land or other proprietary rights etc., and the form of service is also allowed. However, the form of service can not be used for the capital contribution of foreign investment enterprises and joint ventures.

III. The Caution for Foreign Enterprises and Individuals in Establishing Partnership Enterprise in China

Although there is no requirement for acquiring the approval of Commerce Department in advance when establishing partnership enterprises by foreign enterprises and individuals in China, if the scope of business covers items restricted by law or administrative decrees, it shall be subject to approval according to law, and the document of approval should be submitted when the applications for establishment and registration are filed.

Meanwhile, as there is no requirement for acquiring the approval of Commerce Department in advance, it is the industry and commerce administrative authorities who are actually in charge of the examination and approval. Therefore, an announcement for the compliance of the industrial policies on foreign investments shall also be submitted to the industry and commerce administrative authorities when

applying for registration of establishment.

As for the situation under which, any other disputes for establishment of partnership enterprises mainly for investment by foreign enterprises or individuals may arise, Article 14 of the Measures provide, if other laws make other provisions with respect to the establishment of partnership enterprises mainly for investment by foreign enterprises and individuals, those provisions shall govern.

The partners of ordinary partnership enterprises are capable of unlimited responsibility for the debts caused during the operation process. Attention should be reminded to the higher risk in contrast to limited companies. If the foreign enterprises and individuals prefer to be limited partners for limited partnership in China, the capital contribution can only be made in cash, tangible goods, land use rights intellectual property, or other proprietary rights (the form of service is not allowed), and execution of the partnership affairs and external representation of the partnership enterprise are not permitted

Five Key Points of the New Implementation Rules of the Patent Law

By Kingward Gan and Susan Zheng

The General Office of the State Council released on January 18, 2010 the Decisions of the State Council on Revising the Implementing Rules of the Patent Law of the People's Republic of China (Decisions), which shall take effect as of February 1, 2010.

Hereby list the five key points, to which attention should be drawn.

The Detailed Regulations of the Procedure and Subject Matters to be Kept Secret for applying patents in foreign countries

As provided by the Patent Law of PRC, where any Chinese entity or individual intends to file an application in a foreign country for a patent for invention-creation made in the country, it he or she should go through the secrecy examination executed by the patent administrative department of the State Council in advance. The Decisions further define the subjects to be kept secret. The Decisions further define the invention or utility model made in the country mentioned in the Patent Law as the substantial contents of the technology solutions for the invention or utility model was made within the territory of China, and the specific procedure for applying for the secrecy examination is also provided. Under the Decisions, the applicants who file applications in foreign countries or to the international institute overseas directly should make requirement to the patent administrative department of the State Council beforehand, and the detailed technology solutions are demanded. As for those intending to file application in foreign countries after making application to the patent administrative department of the State Council, requirements should be made to the administrative department of the State Council before the application is filed abroad.

The Clearer Definition for the Invention Based on Genetic Resources

The Patent Law says, for an invention based on genetic resources, the applicant shall state the direct source and the original source of the genetic resources in the application documents. According to the Convention on Biological Diversity, the Decisions define Genetic Resources as genetic material of human plants, animals or microorganism of actual or potential value. Meanwhile, considering the invention, which make no use of the hereditary functions of biological resources, should not carry out the obligation of stating the original source of the genetic resources, the invention based on genetic resources is defined as inventions utilizing the hereditary functions of genetic resources. In addition, the Decisions also regulate the applicant should disclose the source of the genetic resources by stating in the patent request.

The Patent Right Evaluation System and the Time Period for the Evaluation

The Patent Law changed the utility model patent search report system for the evaluation report system for utility model and design patents. It establishes that patentee and other stakeholders could request

patent right evaluation reports from the State Council's patent administration department to serve as evidence in patent right trials and settlements of relevant disputes. To make access to patent right evaluation reports easier, the Decisions contain specific stipulations for the format of requests for the reports by the applicants and the time limit within which the patent administration department of the State Council should produce the reports. To obtain a patent right evaluation report, the applicant should submit a letter of request for the report with the patent number. The report is to be provided by the State Council's patent administration department within two months after receiving the letter of request.

The Developed Compulsory License for the Need of Public Health

In keeping with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of the WTO and provisions of relevant international agreements, the Patent Law adds new types of compulsory license and establishes their scope of application. To ensure successful implementation of relevant regulations of the Patent Law, the Decisions define "not fully exploited patents" as "the method or scale of the exploitation of the patents by the patentee or the licensee could not satisfy domestic need for the patented products or processes". To make the compulsory license system compatible with the need to cope with public health crises, the Decisions, in accordance with the WTO's Protocol Amending the TRIPS Agreement, define "patented pharmaceuticals" as "any patented product or product directly obtained according to patented processes in the medical and pharmaceutical field to address public health issues, including patented active ingredients needed in the production of the product and diagnostic supplies necessary for the application of the product". The Protocol Amending the TRIPS Agreement contains detailed conditions and procedures on compulsory license of pharmaceutical patents. To harmonize the compulsory licensing of pharmaceutical patents of China with international agreements, the Decisions stipulate that "Decisions by the patent administration department of the State Council to grant compulsory licenses according to Article 50 of the Patent Law should, except for cases of reservations, conform to provisions on compulsory licensing to address public health issues in relevant international agreements which China is a signatory of or a party to".

New Stipulations for the Improvement of the Patent Development

To encourage innovation and promote patent development, the Decisions also include other systems and measures in the following three areas:

- 1) Fewer charging items. To lessen the burden of parties involved, the Decisions remove four charging items including application maintenance fee, termination procedure request fee, compulsory license request fee and compulsory license exploitation fee.
- 2) Fewer restrictions on the right of priority. According to the Decisions, errors in and omissions of one or two items among the application date, application number and the name of the original handling agency in the earlier application, which are redressed within the designated time limit, do not prejudice against its right of priority; where foreign priority of a design patent is claimed, the lack of a brief explanation of the design in the earlier application which is redressed by the submission of legally compliant brief explanation of the design in the following application, do not prejudice against its right of priority.
- 3) Improved rewards and remuneration system for service inventions. To allow for greater room for entities that are granted patent rights and service inventors and designers to agree on rewards and

remunerations for service inventions and designs, the Decisions stipulate that the entities that are granted patent rights could work out, with inventors and designers, the means and amount of incentives and remunerations as established by Article 16 of the Patent law, through negotiation or the entity's own rules and regulations formulated in compliance with the law. The Decisions go on to stipulate that, to further encourage innovation, in cases where parties involved have an absence of agreement or rules and regulations for service invention and design incentives and remunerations, the statutory standard for incentives and remunerations shall apply. The scope of application of the statutory standard has also been expanded from state owned enterprises and public institutions to all entities. At the same time, the Decisions also raise the statutory incentives standard for service inventors and designers.

This Newsletter has been prepared for CLIENTS and COOPERATION PARTNERS of CENLAW&PARTNERS . Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this Newsletter should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this Newsletter, please contact:

Paul Huang

Partner of CENLAW

Add: Suite A-B of 4th Floor, Crystal Century Tower,

No.567 Weihai Road, Shanghai 200041 PRC

Tel: (86 21)6288 6989

MP: +86 138 1841 6222

Fax: (86 21)6288 6825

Email: paul@cenlaw.com