

## 01 Knowledge of Trademark in Public Shall be Considered when Cognizing Well-known Trademark

### 驰名商标的认定将考虑公众的知晓程度

The SAIC issued the *SAIC Detailed Rules of Recognizing Well-known Trademark* on April 21, 2009, which became effective on the date of its promulgation (“**Detailed Rules**”). The Detailed Rules stipulates that such factors as the knowledge of the trademark in the relevant sector of the public and the continuous use of the trademark must be taken into account when cognizing a well-known trademark. However, it is unnecessary to meet all of the aforementioned factors for cognizing a well-known trademark. Any unit or individual is eligible to provide feedbacks and opinions to the Trademark Office and the Trademark Review and Adjudication Board during the examination for cognizance of well-known trademark.

2009年4月21日，国家工商总局出台《国家工商总局驰名商标认定工作细则》（“《细则》”），自颁布之日起施行。《细则》规定认定驰名商标应当考虑相关公众对该商标的知晓程度、该商标使用的持续时间等因素。认定驰名商标无须以满足全部上述条件为前提。驰名商标认定审查期间，任何单位、个人均可向商标局、商标评审委员会反映情况，提出意见。

Besides, the Supreme People's Court released on April 26, 2009 the *Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Cases of Civil Disputes over the Protection of Well-known Trademarks* (“**Interpretations**”), which became effective as of May 1, 2009. The Interpretations echo the position of the Detailed Rules on cognizing a well-known trademark and clarify that the court will consider the level of fame of a trademark by examining various elements, including the continuous use of the mark before its registration in China, the market share, the market reputation, and so forth.

最高人民法院日前公布了《关于审理涉及驰名商标保护的民事纠纷案件应用法律若干问题的解释》（“《解释》”），自2009年5月1日起施行。该解释支持了《细则》的立场，规定法院在认定驰名商标时将综合考虑多种因素，包括商标注册前的持续使用情况、商标的市场份额、市场声誉等等。

For a mark which enjoys a high degree of recognition nationwide, the burden of proof regarding the level of fame of the mark is further decreased.

对于在中国境内广为知晓的商标，认定驰名时原告的举证责任可以进一步减轻。

## 02 New Insurance Law Specifies Qualifications of Insurance Firms' Shareholders and Enables Insurance Companies to Invest in Real Estate

新保险法明确保险公司股东资格条件并将允许保险公司投资不动产

The Chinese legislators approved the amended *Insurance Law* on February 28, 2009, which will come into force as of October 1, 2009.

2月28日，中国颁布了新修订的《保险法》，该法将自2009年10月1日起正式实施。

The new *Insurance Law* specifies the qualifications of major shareholders and senior managers of the insurance firms. The major shareholder of an insurance firm must have a sound credit standing, and must not have any significant unlawful records within the latest three years. It must also own the constant earning abilities and a net asset of no less than RMB 200 million. Besides, if the professional qualifications of the directors, supervisors or senior managers of any financial institutions are cancelled by the finance regulatory authorities as the result of their illegal or un-disciplinary activities, these individuals shall not be allowed to undertake the equivalent positions in an insurance firm within 5 years upon such cancellation.

《保险法》对保险公司主要股东、高管的资格条件进行了明确规定。保险公司的主要股东应具有持续盈利能力，信誉良好，最近三年内无重大违法违规记录，且净资产不低于人民币2亿元。同时，因违法行为或者违纪行为被金融监督管理机构取消任职资格的金融机构的董事、监事、高级管理人员，自被取消任职资格之日起五年内不得担任保险公司的上述职位。

The new *Insurance Law* also expands the investment channel for insurance companies to immovable properties (including real estate and infrastructure).

新法亦扩大了保险公司的投资范围，包括不动产（主要指房地产和基础设施）。

One key theme of the amended *Insurance Law* is the greater protection of the rights and interests of policyholders and the insured. For example, if an insurer has been aware at the time of concluding the relevant insurance contract that the applicant did not make full and accurate disclosure, it may not rely on such grounds to terminate the contract.

新法突出了保护投保人和被保险人的权益。例如规定保险人在合同订立时已经知道投保人未如实告知的情况的，保险人不得解除合同。

### 03 New Postal Law to be Implemented as of October 1, 2009

#### 新《邮政法》将自 2009 年 10 月 1 日起正式实施

The Chinese legislators adopted the amendment to the *Postal Law* recently, which will become effective as of October 1, 2009.

日前中国通过了新修订的《邮政法》，于 2009 年 10 月 1 日起正式生效。

The law allows only China Post -- the industry regulator and pricing authority -- to deliver letters and documents posted within China. Foreign investors are not permitted to invest in the domestic courier service for letters. However, such amendment would not affect the development of foreign-invested postal business operations, nor did it breach China's WTO commitments. In addition, the legitimate operations of foreign-invested courier companies in China will continue to be protected by Chinese law.

按照新法，只有中国邮政（亦是邮政行业的监管机构和定价机构）有权经营国内信件寄递业务。外商不得投资经营信件的国内快递业务。但是该规定并不会影响外商投资邮递行业的发展，也不违反中国的 WTO 承诺。此外，外资快递公司将继续得到中国法律的保护。

For private data protection purpose, new stipulations included an article forbidding all organizations and individuals from opening, hiding, damaging or discarding others' letters, instead of just preventing postal workers from doing so.

出于保护个人隐私信息的考虑，新法禁止任何单位和个人私自开拆、隐匿、毁弃他人邮件，而不只是禁止邮政人员如此行事。

## 04 Administration Measures on Overseas Investment Facilitates Chinese Enterprises'

### Outward Investment

#### 《境外投资管理办法》为中国企业对外投资提供便利

On March 16, 2009, the Chinese Ministry of Commerce (MOFCOM) published the *Administration Measures on Overseas Investment* (“Measures”), which came into effect as of May 1, 2009.

2009年3月16日，国务院商务部颁布了《境外投资管理办法》（“《办法》”），自2009年5月1日起施行。

The Measures generally make the overseas investment approval process quicker, clearer and (for smaller investments) easier to comply with. Most enterprises seeking outbound investment would obtain the Enterprise Overseas Investment Certificate within 3 working days upon submission of an application.

总体而言，《办法》使境外投资审批程序更加快捷、透明，小型投资将更加容易获得审批。绝大部分境外投资企业只需递交一张申请表，即可在3个工作日内获得《企业境外投资证书》。

For example, in accordance with the new Measures, MOFCOM only reserves such approval authority for certain types of major overseas investment projects and for those to be invested in countries having no diplomatic relation with China. Other overseas investments by local enterprises shall remain with competent provincial commerce authority for approval.

例如，根据《办法》，商务部只保留对部分大型境外投资项目及到与中国未建立外交关系的国家投资的项目的审批权。地方企业开展的其他境外投资应报省级商务部门审批。

Looking at the Measures together with various other recent amendments to PRC laws and regulations (including the issuance of the *Guidelines on the Risk Management of M&A Loans of Commercial Banks* by the Chinese Banking Regulatory Commission which make it easier for Chinese companies to borrow to fund their overseas investments), it is perceived that China is gradually relieving the regulatory restrictions to encourage Chinese companies to “go global”.

从《办法》以及最近中国法律的修改（包括中国银监会颁布的《商业银行并购贷款风险管理指引》，该规则缓解了中国企业境外并购融资难的问题）可以看到，中国正在放松监管，鼓励中国企业“走出去”。

## 05 New Interpretations on the Contract Law to Confront Financial Crisis

### 《合同法司法解释（二）》出台以应对金融危机

Recently, the Supreme People's Court issued *the Interpretations on Certain Issues Concerning the Application of the Contract Law of the People's Republic of China (Part Two)*, which came into force as of May 13, 2009. It is deemed as an effective judicial measure of the Supreme People's Court to confront the financial crisis and facilitate the steady economic development.

日前最高人民法院起草颁布了《关于适用〈中华人民共和国合同法〉若干问题的解释(二)》，该司法解释自 2009 年 5 月 13 日起施行。这被誉为是最高人民法院为应对金融危机、保障经济平稳发展提供司法服务的重大举措。

The Interpretations regulate the intentional breach of the party responsible for handling approval or registration formalities for the concluded contract. Failure to handle or delay in handling such formalities, which results in nullification of the contract, is deemed “other conducts which violate the principle of good faith” and the party that commits such conduct shall be liable for damages.

按照司法解释，负有办理批准或者登记手续的一方当事人故意不去或者拖延办理批准或者登记手续，致使合同不能生效，将被列为“其他违背诚实信用的行为”，承担缔约过失责任。

The Interpretations provide for the principle of “change of circumstances”. If performance of the contract would become obviously unfair to a party or may frustrate the purpose of the contract because of a material change of circumstances, such party may apply for adaptation or termination of the contract. The Interpretations strictly differentiate “change of circumstances” from normal market risks and ask for prudent application of the principle. Any case that should be adjudicated by the principle of “change of circumstances” needs to be scrutinized on a case-by-case basis and is subject to examination and approval by the Superior People's Court.

司法解释规定了“情势变更”原则。如果由于社会环境发生重大变化，继续履行合同将对一方当事人明显不公平，或者不能实现合同目的的，当事人可以请求变更或解除合同。司法解释要求严格区分变更的情势与正常的市场风险之间的区别，审慎适用情势变更原则。对必须适用情势变更原则进行裁判的个案，要层报高级人民法院审查批准。

As to validity of the contract, the Interpretations provide that a contract will be ruled null and void only if statutory conditions prescribed in China Contract Law is strictly satisfied. In general, the policy remains tending to recognize the validity of the contract, supporting performance of the contract, and nurturing the economy.

在合同的效力方面，司法解释严格适用合同无效的法定条件，积极促成合同的有效，支持合同的履行，促进经济的活跃。

## 06 CSRC Issued Administrative Measures for IPO and Listing on the Second Board

### 中国证监会发布《首次公开发行股票并在创业板上市管理暂行办法》

On March 31, 2009, the China Securities Regulatory Commission (the "CSRC") issued *the Administrative Measures for Initial Public Offerings and Listing on the Second Board* (the "Measures"), which came into force as of May 1, 2009.

2009年3月31日，中国证券监督管理委员会（“中国证监会”）颁布了首次公开发行股票并在创业板上市管理暂行办法（“《办法》”），自2009年5月1日起施行。

The requirements for enterprises seeking to list on the Second Board are substantially reduced as compared to those required for the main board. Nevertheless, in light of considerations to control risk and given the fact that the capital markets and the investment community in China are still underdeveloped, enterprises still need to meet certain criteria in order to be qualified for an Initial Public Offering (“IPO”) on the Second Board, such as minimum profit, minimum net asset requirement, minimum total share capital, one prominent principal business, consecutive profit gaining ability and so forth.

创业板对发行人的要求与主板相比宽松许多。然而，为了降低风险，且考虑到中国的资本市场与投资环境尚不发达，欲在创业板首次公开发行股票的企业仍需要满足一定的条件。比如最低盈利要求、最低净资产要求、发行后最低股本总额要求、主要经营一种业务、具备持续盈利能力等等。

The CSRC shall carry out ratification on the stock IPO as made by an issuer and such ratification shall not constitute any material judgment or guaranty on the value of stock investment or on the proceeds to be generated by investors. Where a stock is issued according to law, any investment risk as incurred from any change of the issuer's business or proceeds shall be borne by the relevant investors themselves.

中国证监会对发行人首次公开发行股票的核准，不表明其对该股票的投资价值或者对投资者的收益作出实质性判断或者保证。股票依法发行后，因发行人经营与收益的变化引致的投资风险，由投资者自行负责。

The establishment of the Second Board will undoubtedly be a favorable event for domestic small and medium sized enterprises lacking access to capital.

呼之欲出的创业板对于国内缺乏融资渠道的中小企业来说无疑是一个重大利好。

## 07 SAIC Intends to Release New Provisions to Prohibit Monopoly Agreements

### 工商总局拟颁布新规禁止垄断协议

China's State Administration for Industry & Commerce (“SAIC”) released on April 27, 2009 *the Relevant Provisions for Prohibiting Monopoly Agreements* and *the Relevant Provisions for Prohibiting Abuse of Dominant Positions* (Drafts for Comment) for public comments.

国家工商行政管理总局 (“国家工商总局”) 2009 年 4 月 27 日发布《关于禁止垄断协议行为的有关规定》和《关于禁止滥用市场支配地位行为的有关规定》(征求意见稿), 广泛征求意见。

Under *the Relevant Provisions for Prohibiting Monopoly Agreements* (Draft for Comment), competitive operators are prohibited from reaching monopoly agreements to restrict the production or sales volumes of the commodities, restrict the procurement or development of new technologies and equipments, boycott the trades and etc.

《关于禁止垄断协议行为的有关规定》(征求意见稿) 拟禁止具有竞争关系的经营者达成垄断协议, 限制商品的生产数量或者销售数量、限制购买新技术、新设备或者限制开发新技术、新产品、联合抵制交易等。

Besides, *the Relevant Provisions for Prohibiting Abuse of Dominant Positions* (Draft for Comment) stipulated that operators with dominant positions must not cut, restrict or suspend the current transactions, or refuse new transactions with the relevant parties without any reasonable ground.

而《关于禁止滥用市场支配地位行为的有关规定》(征求意见稿) 则指出, 具有市场支配地位的经营者不得在没有正当理由的情况下削减、限定或中断与交易相对人的现有交易, 或者拒绝与交易相对人从事新的交易。

The public-input process was scheduled to conclude on May 31, 2009.

该意见征求过程于 2009 年 5 月 31 日结束。