

GARRIGUES

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NEWSLETTER

LEGAL INSIGHTS ON
THE CHINESE LAWS



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中华人民共和国主席令第77号 | 中华人民共和国反不正当竞争法/
Order of the President of the People's Republic of China No. 77 | Anti-Unfair Competition Law of the People's Republic of China

01/01/2018

It is the first amendment to the Anti-Unfair Competition Law since it was implemented in 1993.

It aims to improve and supplement the regulatory of some rising and existing unfair competition behaviours and remove several duplications currently stipulated by legislations in other fields such like trademark, anti-monopoly and advertisement.

The main amendments are as follows:

- i. The criteria to determine confusing behaviours is further clarified

It stipulates that the key criterion to constitute "confusion" is to cause people to mistake the operator's products for others' products or believe certain relations existing between the operator and other business entities.

Additionally, in order to adapt to the new trend of the development of Internet, it clearly prohibits the unauthorized use of others' domain name, website name, website etc. which has influence to certain extent.

- ii. The scope of commercial bribery is redefined

Firstly, it removes the transaction counterparty from the scope of the bribery-recipients which indicates that theoretically, giving money or goods directly to the transaction counterparty will no longer be regarded as commercial bribery, provided the monetary benefits have been truthfully recorded in the account books.

Secondly, it includes two types of third parties into the scope of the bribery-recipients, i.e. (i) any entity or individual entrusted by the counterparty in a transaction to handle relevant affairs and (ii) any entity or individual that is to take advantage of powers or influence to interfere with transaction.

- iii. The rules regarding unfair competition activities over the Internet are newly introduced

Apart from the adjustments in clauses of confusing behaviour and false commercial promotion, to adapt to the development of the Internet, it specifically addresss a new article to forbid the use of technological method to interfere with or damage the legitimate network products or services legally provided by other business operators by affecting users' choice or otherwise.

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- iv. The intensity of penalty for unfair competition actions is further enhanced

For example, the upper limit for the commercial bribery has been lifted from RMB 200,000 to RMB 3,000,000 and the starting point for the penalty of false commercial promotion has been increased from RMB 10,000 to RMB 200,000.

中华人民共和国主席令第74号 | 中华人民共和国中小企业促进法/
Order of the President of the People's Republic of China No.74 | Law of the People's Republic of China on the Promotion of Small and Medium-sized Enterprises

01/01/2018

It is the first amendment to the Promotion of Small and Medium-sized Enterprises Law since it was implemented in 2003.

It aims to reduce the burden of operation cost, improve the environment for development, support the innovation and protect the lawful interests and rights of the small and medium-sized enterprises ("SMEs").

Main highlights are shown as below:

- i. It promulgates several fiscal and tax policies to eliminate the hinderness during the growth of SMEs. For example, it clearly stipulates that the special funds for the development of SMEs shall be mainly applied to support the construction of the public service systems and financing service systems for SMEs. Furthermore, it admits several current tax preferential policies and raises the level of them up to the law.
- ii. It improves relevant measures to promote the financing for SMEs. For example, in order to encourage the financial institutions to enhance the support to SMEs, it urges banking regulation institution of the State Council to formulate differentiated regulatory policies to reasonably increase the tolerance to non-performing loans provided to the SMEs. It also requires the local governments to establish a policy-oriented credit guarantee system for SMEs and encourage guarantee institutions to provide credit guarantees for the financing of SMEs.

Apart from the above highlights, it introduces two new chapters regarding the "protection of interests and rights" as well as "supervision and inspection". Furthermore, it supplements several rules regarding the entrepreneurship, innovation, market development and service measures.

OTHER LAWS AND REGULATIONS

1. 全国人民代表大会常务委员会关于修改《中华人民共和国招标投标法》、《中华人民共和国计量法》的决定
Decision of the Standing Committee of the National People's Congress on Amending the Bid Invitation and Bidding Law of the People's Republic of China and the Metrology Law of the People's Republic of China
2. 中华人民共和国标准化法
Standardization Law of the People's Republic of China
3. 全国人民代表大会常务委员会关于修改《中华人民共和国会计法》等十一部法律的决定
Decision of the Standing Committee of the National People's Congress on Amending Eleven Laws Including the Accounting Law of the People's Republic of China
4. 中华人民共和国刑法修正案（十）
Amendment X to the Criminal Law of the People's Republic of China
5. 国务院关于修改部分行政法规的决定
Decision of the State Council on Revising Certain Administrative Regulations
6. 企业境外投资管理办法
Administrative Measures for the Outbound Investment of Enterprises
7. 出口食品生产企业备案管理规定
Administrative Provisions for the Record-filing of Exported Food Manufacturers
8. 国家食品药品监督管理总局关于修改部分规章的决定
Decision of the China Food and Drug Administration on Revising Some Rules
9. 关于境外投资者以分配利润直接投资暂不征收预提所得税政策问题的通知
Circular on Policy of Temporarily Not Imposing Income Taxation on Distributed Profits Directly Used for Investment by Overseas Investors
10. 关于发布《民营企业境外投资经营行为规范》的通知
Circular on Issuing the Regulations on Outbound Investment and Business Activities of Private Enterprises
11. 人力资源社会保障部关于第五批宣布失效和废止文件的通知
Circular of the Ministry of Human Resources and Social Security on Announcing the Invalidation and Abolishment of the Fifth Batch of Documents
12. 关于印发《关于对对外经济合作领域严重失信主体开展联合惩戒的合作备忘录》的通知
Circular on Memorandum of Cooperation on Taking Joint Disciplinary Actions against Subjects with Serious Dishonesty in the Foreign Economic Cooperation Field
13. 工商总局关于落实“证照分离”改革举措促进企业登记监管统一规范的指导意见
Guiding Opinions of the State Administration for Industry and Commerce on Implementing Reform Initiatives for the Separation of Business Licenses from Operating Permits to Promote the Unified and Standardized Regulation of Enterprise Registration

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