

OH-EBASHI | HANLING CHINA LEGAL NEWSLETTER

Legal Updates

Release of the Rules on Security Certification of Overseas Processing of Personal Information Ver. 2.0

On 26 December 2022, the National Information Security Standardization Technical Committee (TC260) released the Rules on Security Certification of Overseas Processing of Personal Information Ver. 2.0 (the “Rules on Certification”) as one applicable standard mentioned by the Notice of the Implementation of Protection Certification of Personal Information (the “Notice”) which is issued on 18 November 2022.

The Rules on Certification will be the basic standards for the certifying authority to conduct the security certifications on the overseas processing of personal information. The Rules on Certification expressly set out the principles that the processors have to follow when conducting an overseas processing of personal information, the requirement for the protection of personal information to be provided by the overseas receiver of the personal information and the interests and rights of the information subjects.

For more information about the Rules on Certification, please check TC260’s official homepage (<https://www.tc260.org.cn/front/postDetail.html?id=20221216161852>).

The Second Review Draft of the Amendment to the Company Law

The Standing Committee of the National People's Congress released the Second Review Draft of the Amendment to the Company Law (the “Second Review Draft”) on 30 December 2022 to further collect public comments.

The Second Review Draft has remained the main body

of the First Review Draft but also made some alterations to it. For example, limited liability company is allowed to choose not to establish a board of supervisors or supervisor at all even such company does not establish an audit committee (in the First Review Draft, only limited liability company establishing an audit committee can choose to completely omit the supervisor). In the First Review Draft, it granted very broad powers to the board of directors by saying that the board of directors can exercise the powers except for those have been reserved to the shareholders’ meeting. However, the Second Review Draft abandoned such an open-end style approach by resuming the non-exhausting list of powers like the current Company Law.

In addition to the foregoing, the Second Review Draft also hardened the requirements for setting up an audit committee in company limited by shares. In the First Review Draft, company limited by shares is allowed to set up an audit committee to monitor the accounting matters of the company and more than half of the members of such audit committee shall be non-executive directors. The Second Review Draft requires that more than half of the members of the audit committee shall be “independent director” and at least one independent director shall be accounting professional. With respect to the condition of “independent director”, the Second Review Draft requires that in order to be eligible to be an independent director, such a director shall not take other position in the company other than the director and shall not hold any relationship with the company that may “possibly affect the directors’ independent and fair judgement”.

In China, amendment to important laws like Company Law requires three-time review before its enactment (the

final amendment will be adopted after the third time review). Therefore, the Second Review Draft is generally believed to be very close to the final amendment.

The Amendment to the Civil Procedure Law

The Standing Committee of the National People's Congress released the Draft of Amendment to the Civil Procedure Law on 30 December 2022 to collect public comments.

Major points of this amendment include further clarification on the application of “collusive lawsuit”, enlargement of the applicable scope of disqualification to judge assistant and judicial technical staff, clarification of the rules on judicial technical staff’s engagement to the litigation procedure, adjustment to the submission of appeal and further clarification of rules on the recognition and enforcement of foreign judgement.

The Amendment to the Unfair Competition Law

The State Administration of Market Regulation (SAMR) released the amendment to the Unfair Competition Law on 22 November 2022.

The Unfair Competition Law has been relatively frequently amended in recent years (amended in 2017 and 2019) to catch up with the fast changing market conditions. Major points of this amendment include the establishment of unfair competition behaviors with respect to the area of digital economy, further clarification of the scope of the “confusion behaviors”, set more detailed provisions regarding the “false propaganda”, new mechanism on the protection of business secrets and new prohibition on the abuse of advantage market position.

Guideline on the Use of Absolute Terms in Commercial Advertisement

In China, according to the Advertisement Law, advertiser is not allowed to use absolute terms like “the

best”, “national level” and “No.1” in its commercial advertisement. Although the principle itself is clear but many problems that frequently arise during the enforcement of such regulation such like how to determines whether a term amounts to an absolute term and if there could be any exception to such regulation remain unclear.

On 7 December 2022, the State Administration of Market Regulation (SAMR) released the draft of the Guideline on the Legal Enforcement of Absolute Terms in Commercial Advertisement (the “Guideline”) to collect public comments. The Guideline is aimed to further clarify problems regarding the enforcement of the regulation on absolute terms.

According to the Guideline, absolute terms that are not referred to particular product or service may not be deemed as unlawful. Advertisers are allowed to use absolute terms if such terms are used to simply express the advertiser’s business philosophy or the goal that the advertiser is pursuing. And even absolute terms are referred to particular product or service, under certain circumstance, such use of absolute terms could also be allowed. For example, if such a term is used in the comparison between the products and services of same advertiser, or if such a term is used to express the “best method of application”, “best timing” or “best duration”, or if the trademark contains absolute terms.

Also, the Guideline states that administrative sanctions shall not be imposed if the violation was minor considering the elements like method of publication, duration, numbers of readers and results. However, such an “minor violation exemption” is not applicable if such absolute terms are used to state the curability, validity or effect in advertising products like drugs, medical devices and healthy foods or state the return rate in advertising financial and investment products.

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