

W&B Legal Newsletter

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INTRODUCTION

Watson & Band has flourished into a full-service law firm with more than 250 professionals around China. We provide the highest quality services for our clients and enjoy a nationwide reputation as one of the most prominent law firms in China. This excellence and breadth has made us the firm of choice for many world's leading companies and financial institutions as they seek sophisticated legal service. Based on its commitment of quality service, Watson & Band has retained a team of professionals to provide diversified service to its clients, which has won it the honor of China's Best Law Firm and Top-tier IPR Team.

Watson & Band Law Offices

Established in 1995, Watson & Band is one of the oldest law firms in China that provide foreign-related legal services. Headquartered in Shanghai, Watson & Band maintains multiple branches or offices in Beijing, Hong Kong, Harbin, Lanzhou, Yantai, Guangzhou, Chicago and Tokyo.

For over decades our team members have collaborated to stay on top of IP and corporate issues, helping clients improve operations, reduce costs, limit risks, enforce rights and achieve common business goals. For these reasons, the firm and its professionals are consistently recognized in client and peer-reviewed industry awards and rankings as being among the best.

These superb services derive from a spirit of dedication that has brought Watson & Band the honor of being listed among "China's Best Law Firms". In past years our firm has received numerous awards from third-party ranking agencies such as "Top 10 IP Law Firm", "Recommended Law Firm". "China's Most Dynamic Law Firm" and "Premier IP Law Firm". Watson & Band Law Offices has also been named a "Key Shanghai Enterprise in Special Services Trades (Legal Services)" by the Shanghai Municipal Commission of Commerce and the Shanghai Judicial Bureau.

Watson & Band Intellectual Property Agent Ltd.

Headquartered in Shanghai, W&B Agent Ltd. operates branch offices in Beijing and Lanzhou. Our patent agency services cover various technical fields such as chemistry, biology, medicine, mechanics, electronics, communication, optics and physics, as well as design patent, IP searches, patent validity analysis, infringement analysis, requests for patent invalidation declaration, litigation and patent consultation, etc. We have established a patent agency service department responsible for special clients. Agents from various technical divisions all have rich experience and are able to work with several languages.

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Disclaimer

- ◆ This Newsletter provides case brief only instead of formal legal opinion regarding any specific case.
- ◆ This Newsletter selects and summarizes official announcements, news and other public documents released by State Intellectual Property Office, China Trademark Office, National Copyright Administration of China and other official institutions.
- ◆ This Newsletter has cited the source of the aforementioned official announcements, news and other public documents.

Watson & Band Hosts its First Forum and International Summit on Artificial Intelligence Law and Intellectual Property Rights Protection

2018 World Artificial Intelligence Conference (WAIC): The International Summit on Artificial Intelligence Law and Intellectual Property Rights Protection was jointly hosted by Watson & Band Law Offices, Watson & Band Intellectual Property Agent Ltd. and Shanghai West Bund Development (Group) Co., Ltd. on the afternoon of September 17th, 2018 at Shanghai Hanghui Mansion. The conference was co-organized by Watson & Band's Data Law Research Center and LCOUNCIL, and it enjoyed full support from multiple institutions. The summit was launched by the first Watson & Band Forum as a "blockbuster event" with a view towards paving the way for innovation by enhancing communication among different parties, exploring IPR management models in the digital era, and better promoting the spread and application of innovation achievements so as to protect and use IPR in a more effective manner. The summit was attended by leaders in relevant government bureaus, academics, well-known scholars and senior executives of leading enterprises in relevant industries etc., who joined together with senior partners and patent attorneys from Watson & Band in actively exploring new legal frontiers in the digital era.

Watson & Band Partner Xiaosu Zhu Attends and Addresses the 2018 Corporate Law Practitioners Summit

Xiaosu Zhu, partner of Watson & Band, attended the 2018 Corporate Law Practitioners Summit at the Renaissance Shanghai Putuo Hotel on the afternoon of September 2nd, 2018 and delivered a keynote speech entitled "Shareholder Delay in Fulfilling Liquidation Obligations within a Business Cycle" at a session entitled "Business Operations and Dispute Resolution". Hosted by the China Corporate Law Association (CCA) and co-organized by institutions such as Watson & Band Law Offices, the summit was attended by nearly 500 legal practitioners from top corporations in various industries with different personalities, styles, professional experiences and contributions that reflect the burdens and benefits commonly experienced by legal practitioners. All of these people came together at the summit to probe the commercial expectations of corporate lawyers and share challenges in the profession of corporate law. The summit provided a platform for law practitioners to identify benign legal services, to learn to apply technological innovation to the legal profession and to explore the links between business and law.

Watson & Band IP Team Visits and Talks with Gansu Provincial Intellectual Property Office

On September 3rd, Watson & Band's Senior Founding Partner, Shenmin Xu, headed Watson & Band's IP team, visited and talked with Gansu Provincial Intellectual Property Office (hereinafter the "Gansu IPO"). The team comprises Watson & Band's Managing Partner, Jean Yang; General Manager of Watson & Band IP Agent Ltd., Hua Xiao and Vice General Managers of the same, Yingcong Xu, Liming Zhang and Guohua Tang; and General Manager of Gansu Branch Office of Watson & Band IP Agent Ltd., Wei Cui. Director of the Gansu IPO, Xiaoli Zhu and Deputy Director of the same, Jiantao Zhang, and Director of Lanzhou Representative Office of the Gansu IPO, Hong Shi, received and had a meeting with Watson & Band's IP team.

Watson & Band's team first introduced its latest developments and reported the recent work done at its Gansu Branch Office to the Gansu IPO. The parties also discuss about the various services that the Gansu Branch Office can provide for the local enterprises. Specifically, the services include patent applications, training programs, enforcement actions and IP standardized management. Meanwhile, Watson & Band is also capable of providing individualized services for specific patents or trademarks, taking into account the circumstances of the local enterprises or industries.

The Gansu IPO highly recognized the recent performance of Watson & Band's Gansu Branch Office and encouraged Watson & Band to keep up the good work and provide IP services with higher quality and efficiency to the local enterprises.

Criminal Procedure Law (Draft Amendment) (Second Draft for Review) Issued for Public Comment

The Criminal Procedure Law of the People's Republic of China (Draft Amendment) (Second Draft for Review) (the "Second Draft for Review") has recently been published on the official website of the National People's Congress ("NPC") for public consultation by October 4th, 2018.

According to the Second Draft for Review, duty lawyers are required to provide "legal assistance" instead of the previous "defense services" and the services of "representation for appeal" and "accusation" are removed. It is also set out in relevant articles the requirements that procuratorates shall seek opinions from duty lawyers in the case examination and prosecution and that the duty lawyer is required to witness a criminal suspect' signing of a statement of confession to plead guilty and accept the punishment. As to proposals made by the procuratorate for sentencing the Second Draft for Comment introduces revisions in two aspects. First, where a criminal suspect pleads guilty and accepts the punishment, the procuratorate shall make a sentencing proposal. Second, where the court consider after trials that the proposed sentencing is obviously improper, or the accused or the defense lawyer raises an objection to the proposed sentencing, the procuratorate may adjust its proposal for sentence. Furthermore, the Second Draft for Review revises the applicable scope of default trials to cover "cases involving crimes of corruption and bribery, and serious cases that involve the crime of jeopardizing the national security or the crime of terrorist activities subject to immediate trial upon approval of the Supreme People's Procuratorate ("SPP)".

(Source: <http://www.npc.gov.cn>)

China's First-ever Law on Prevention and Control of Soil Pollution Unveiled and to Take Effect Next Year

The Law of the People's Republic of China on Prevention and Control of Soil Pollution (the "Law on Prevention and Control of Soil Pollution") has recently been adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress and will be implemented as of January 1st, 2019.

Major contents of the Law on Prevention and Control of Soil Pollution touch upon the following eight aspects:

- (1) specifying the principle of putting prevention first and prioritizing protection in the prevention and control of soil pollution;
- (2) providing basic systems regarding the planning for the prevention and control of soil pollution, risk management and control standards for soil pollution, and the general survey and monitoring of soil pollution status;
- (3) introducing the catalog of poisonous and harmful substances to soil and the list of enterprises under close supervision;
- (4) launching the category-based management system for farming land and corresponding requirements on risk management and control and restoration;
- (5) specifying the catalog system for risk management and control and restoration for the soil pollution to construction land;
- (6) stating that China will adopt economic policies and preferential measures that are favorable to the prevention and control of soil pollution;
- (7) defining local governments' subject responsibilities for the safe land use and supervisory and administrative responsibilities of departments of ecology and environment and other related departments;
- (8) setting out the legal liability for practices in violation of this law in different situations.

(Source: <http://www.npc.gov.cn>)

Amendment to the Individual Income Tax Law Approved and New Taxation Threshold to Take Effect from October 1

The Decision on Amending the Law of the People's Republic of China on Individual Income Tax (the "Decision") has recently been adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress and will be implemented as of January 1st, 2019.

The Decision explicitly states that, with respect to the comprehensive income obtained by a resident individual, including the wage and salary income, labor remuneration, author's remuneration, and royalties, the taxable income shall be the balance of the gross income received in a tax year minus the CNY60,000 quota, special deductions, special additional deductions, and other deductions specified under the law. In addition, the Decision notes that for labor remuneration, author's remuneration and royalties, the taxable income shall be the balance of the amount received minus 20% thereof as the cost, and that for the author's remuneration, the taxable income in essence shall be reduced to 70 percent of the said balance. According to the Decision, during the period between October 1st, 2018 and December 31st, 2018, for the wage and salary income received by a taxpayer, the taxable income shall be the remainder after deducting the CNY5,000 quota, special deductions, and other deductions under the law, from the monthly income.

(Source: <http://www.npc.gov.cn>)

PRC E-commerce Law Passed to Emphasize E-commerce Platforms' Responsibility

The E-commerce Law of the People's Republic of China (hereinafter referred to as "the E-commerce Law") was recently adopted at the Fifth Session of the Standing Committee of the 13th National People's Congress. It is scheduled to go into effect on January 1st, 2019.

The adopted E-commerce Law added another clause to Article 18 that was not present in previous drafts. The clause will require e-commerce operators to observe applicable provisions of the PRC Advertising Law when mailing advertisements to consumers. Additionally, with respect to the legal liability of e-commerce operators, Article 83 provides that where an operator of an e-commerce platform violates Article 38 by not taking necessary measures against practices of operators on its platform that impair the lawful rights and interests of consumers, or by failing to fulfill its obligation to examine the qualifications of operators on its platform, or by failing to fulfill its obligation to ensure security for consumers, the market regulation authorities shall order it to remedy its violation and may impose a fine of more than CNY50,000 but less than CNY500,000. Where the case is serious, it shall order the operator to suspend its business operations and may impose a fine of more than CNY500,000 but less than CNY2 million. Certain textual changes have also been made to the law.

(Source: www.npc.gov.cn)



CSRC Seeks Public Comments on the Amendment to the Company Law

The China Securities Regulatory Commission (“CSRC”) has recently drafted and issued the Amendment to the Company Law of the People’s Republic of China (Draft for Comment) (the “Draft for Comment”) to seek opinions from all walks of life by October 5th, 2018.

The Draft for Comment introduces revisions to articles relating to the buyback of shares in the current Company Law, including:

- (1) broadening circumstances for buying back shares;
- (2) improving the decision-making procedures for the buyback of shares; and
- (3) establishing the stock shares system.

The Draft for Comment clearly states that, where a company implements the employee stock ownership plan or the employee stock incentive plan, or a listed company buys back its shares for equity conversion, in response to the issuance of convertible bonds and warrants, or a listed company has to buy back its shares to protect the company’s credit standing and its shareholders’ rights and interests, it is allowed to buy back up to 10 percent of all shares it has offered, in accordance with rules of its articles of association or the authorization granted at the general meeting of shareholders, if this buyback is approved at the meeting of the board of directors by half of all present directors who shall represent above two thirds of all directors in the board.

(Source: <http://www.chinalaw.gov.cn>)

SAT Clarifies the Implementation of the EIT Policy on Deductions with Respect to Equipment and Appliances

The State Administration of Taxation (“SAT”) has recently issued the Announcement on Issues Concerning the Implementation of the Enterprise Income Tax Policy on Deductions with Respect to Equipment and Appliances (the “Announcement”).

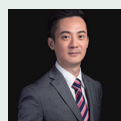
The Announcement expressly states that, for equipment and appliances bought by enterprises during the period between January 1st, 2018 and December 31st, 2020, the costs are allowed to be counted into the “costs and expenses of the current period” on a lump-sum basis and be

deducted when the taxable income is calculated, provided that the unit value does not exceed CNY5 million; such equipment and appliances will no longer be depreciated on a yearly basis. According to the Announcement, costs of fixed assets could be deducted before tax on a lump-sum basis in the year of the next month after such fixed assets are put into use. Where an enterprise opts to enjoy the lump-sum pre-tax deduction policy, the assets may be treated differently for the tax purpose and for the accounting purpose. Moreover, the Announcement notes that, an enterprise may, according to its accounting needs for production and operation, select at its discretion to enjoy the lump-sum pre-tax deduction policy. If this enterprise does not opt to enjoy the lump-sum pre-tax deduction policy, it cannot change its mind in future years. Furthermore, the Announcement also clarifies the administrative requirements regarding enterprises’ entitlement to the lump-sum pre-tax deduction policy and on the tax treatment of fixed assets with unit value above CNY5 million.

(Source: State Administration of Taxation)



If you are interested in learning more legal information concerning compliance management in China, or if you have any query in that respect, please feel free to contact us. More W&B compliance lawyers will be ready to address your concerns.



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Two Million Yuan in Compensation Awarded in China's First Big Data Product Unfair Competition Case

On August 16th, 2018, the Hangzhou Internet Court issued a public decision online in the unfair competition dispute Taobao (China) Software Co., Ltd ("Taobao") vs. Anhui Meijing Information Technology Co., Ltd ("Meijing") concerning a retail e-commerce data platform entitled "Business Advisor" (the "Disputed Data Product"). The court held that Meijing committed unfair competition and ordered it to cease its infringement and to compensate Taobao Two Million RMB for its economic losses and reasonable enforcement expenses.

In its review and determination of whether Taobao committed improper acts to impair the information security of Internet users in the process of acquiring the Disputed Data Product, and whether Taobao had a legitimate interest in the Disputed Data Product, the Hangzhou Internet Court clarified the following adjudication standards: (1) the rules and standards governing the collection and tracking of Internet user behavior by Internet operators; (2) the method for seeking an Internet user's approval for the use of personal information by an Internet operator; (3) the boundary between Internet user information rights and original Internet data rights; (4) the legal nature and ownership of rights in big data products.

(Source: China IP Magazine)

SAMR Restrictions Punished two Natural Gas Companies for Vertical Price Restriction

Recently the State Administration for Market Regulation ("SAMR") issued two administrative penalty decisions against two branches of Petro China Co., Ltd including the Natural Gas Branch of the Daqing Oilfield and the Daqing Branch of the Natural Gas Distribution Company. According to the administrative penalty decisions, these two companies executed and performed a monopoly agreement to restrict the minimum price for resold GNC natural gas with 13 downstream CNG operators in the Harbin, Qiqihaer and Daqing areas, which acts violated Article 14 of the Anti-monopoly Law for "seriously eliminating or restricting competition in the natural gas market and damaging the legitimate interests of end users and consumers". The two companies were assessed administrative fines of RMB 38,760,000 and RMB

45,300,000, respectively, for a total of RMB 84,060,000.

Some unique features of this administrative punishment include: (1) Type of monopoly: The two companies were punished for vertical price restrictions, which is a first-time sanction for the natural gas industry; (2) Targeting: The two companies being sanctioned are owned by Petro China, which is significant because municipal gas companies have been complaining about selective enforcement by the regulatory authorities; and (3) Enforcement process: This case was first recorded at the NDRC and later forwarded to SAMR, which demonstrates the unification of responsibility for anti-monopoly enforcement in SAMR; (4) The penalty ratio was not particularly low, and the amount of the fine was record-breaking.

(Source: Natural Gas and Law)

iQIYI Wins First Instance of Unfair Competition Case Against Page View Cheater

On August 24th, 2018, the Shanghai Xuhui District People's Court (the "Xuhui Court") issued its decision in the first instance unfair competition case Beijing iQIYI Technology Co., Ltd ("iQIYI") vs. Hangzhou Feiyi S&T Co., Ltd. et al., awarding RMB 500,000 compensation to iQIYI.

The Xuhui Court held that the three defendants collaborated with each other to implement technical means to disturb and damage the page view (PV) data of the website www.iqiyi.com operated by iQIYI, which acts violated commonly recognized business ethics and damaged the legitimate rights and interests of both iQIYI and consumers, thereby constituting unfair competition. In consideration of the elimination of most fake page views by iQIYI through technical means and the effect on the operating expenses of the defendants, the Xuhui Court awarded RMB 500,000 in compensation for iQIYI's economic losses, as well as the publication of a statement of apology on Legal Daily (except for gutter) to eliminate any negative influence.

(Source: Shanghai Xuhui District People's Court)



Six Authorities Release Joint Notice to Intensify the Basic Administration of the Online Live Broadcast Industry

Six authorities, including the Office of National Work Team of Attacking Pornography and Illegal Publications, Ministry of Industry and Information Technology, Ministry of Public Security, Ministry of Culture and Tourism; National Radio and Television Administration and Cyberspace Administration of China, have recently distributed the Circular on Tightening the Administration of Online Live Broadcast Services (the “Circular”), requiring the relevant authorized around the country to further strengthen the administration of permit and recordation of online live broadcast service, tighten the basic administration of online live broadcast service, establish comprehensive and long-term regulatory mechanism and intensify the work of clearing up the violating online live broadcast service in stock.

The Circular specifies, for the first time, respective duties of online live broadcast service providers, network access service providers and application stores, during the industry regulation, aiming to prompt relevant internet-based enterprises to fulfill their subject responsibilities. Further, the Circular notes that an online live broadcast service provider shall go through formalities with the competent telecommunications authority to file a record as the internet content provider (ICP); and it is required to respectively apply to each relevant department for a permit, if it engages in the telecommunications business, and livestream business for internet news information, online performance, and online visual-audio programs, and go through formalities with the local public security organ with jurisdiction to file a record in accordance with relevant provisions, within 30 days once the live broadcast services have been rolled out on the internet. Furthermore, the Circular calls for efforts to implement the user’s real name system, intensify administration of online anchors, establish the blacklist system for online anchors, optimize the system of watching and censoring livestreamed content for regulatory purposes, and improve measures to better respond to harmful content.

(Source: <http://www.shdf.gov.cn/>)

Administrative Provisions on Programs for Minors Issued for Public Consultation

Programs must be strictly reviewed before broadcast to curb harmful tendencies.

The State Administration of Radio and Television recently issued the Notice on Measures for Improving the Broadcasting of Summer Internet Audiovisual Programs. The Notice requires relevant departments to organize experts to conduct rigorous evaluations of topics such as concepts, values, ideological orientation and game design for “idol” developing programs and public auditions for singers and other talent. At the same time, measures must be put into place to curb the excessive entertainment value of programs that promote degenerate values such as money worship, hedonism, overnight success and instant gratification.

In the Notice, the State Administration of Radio and Television requires all provincial radio and television administrative departments to guide audiovisual websites in their respective jurisdictions in their creation of summer programs. It urged audiovisual websites to intensify their control over the program orientation and content, and to continuously monitor and remedy vulgar and harmful programs. The Notice emphasized that strict measures must be taken to prevent undesirable content from harming the physical and mental health of young people.

The Notice specifically pointed out that “idol” developing programs and public audition programs for the identification of performing talent and competitions need to retain experts to conduct rigorous evaluations of concepts, values, ideological orientation and game design to ensure appropriate program orientation and content. Measures should be taken to resolutely curb excessive entertainment value in the promotion of harmful tendencies such as money worship and overnight success, and the industry should strive to create a healthy and clean Internet audio-visual environment during students’ summer vacation.

(Source: The State Administration of Radio and Television)

MOFCOM Seeks Opinions on the Administrative Measures on the Recognition of China’s Time-honored Brands

The Ministry of Commerce (“MOFCOM”) has recently drafted and issued the Administrative Measures on the Recognition of China’s Time-honored Brands (Draft for Comment) (the “Draft for Comment”) to invite comments from the public by October 9th, 2018.

The Draft for Comment states that, an enterprise established within the territory of China in accordance with the law to carry out business activities may apply for being recognized as a time-honored brand in China. The MOFCOM will award time-honored brands and publish a list of newly granted China’s time-honored brands, every three years. According to the Draft for Comment, a brand must fulfill three requirements, such as “being created in

1956 or earlier” if it is recognized as a time-honored one. Also, an enterprise applying for a China’s time-honored brand shall satisfy four conditions, including “holding the ownership of or the right to use a representative registered trademark”. Furthermore, the Draft for Comment provides that, if an enterprise holding a China’s time-honored brand falls under any of two circumstances, such as “it is brought by the relevant department into the list of enterprises with serious violations and dishonest behaviors”, the provincial-level competent commerce authority at the place where this enterprise is located or the stakeholder may advise the MOFCOM to stop its right to use the China’s time-honored brand concerned for one year.

(Source: <http://www.chinalaw.gov.cn>)

SPC Releases Provisions on the Trial of Cases by the Internet Court

The Supreme People's Court ("SPC") has recently issued the Provisions on Several Issues Concerning the Trial of Cases by the Internet Court (the "Provisions"), effective from September 7th, 2018.

The Provisions comprising of 23 articles, make clear on the scope of cases falling under the jurisdiction of the internet court, the appeal mechanism, and requirements on the development of the litigation platform, and clearly specify online litigation rules in respect of identity confirmation, case filing, responses to lawsuits, production of evidence, court trials, service, signatures, and documentation. According to the Provisions, the internet court hears a case online, which means the litigation processes, including the case acceptance, service, mediation, exchange of evidence, pre-trial preparations, court trials, and sentencing, shall be processed and completed online in general. Moreover, the Provisions note that, certain types of internet-related cases that should be accepted by grassroots people's courts, within the jurisdiction of the city where the internet court is located, will fall under the jurisdiction of the internet court. These internet-related cases include cases involving disputes over online shopping and service contracts, disputes over internet finance lending or small-amount lending contracts, or disputes over internet copyright ownership and tort in this regard.

(Source: SPC)

SPC Calls for Lawfully and Properly Trying Private Lending Case

The Supreme People's Court ("SPC") has recently distributed the Circular on Lawfully and Properly Trying Private Lending Cases (the "Circular").

The Circular expressly states that where the people's court reasonably suspects any violations or crimes, and the agent ad litem is unable to explain relevant case facts, the people's court shall summon the litigant to appear in person before the court and respond to questions raised about relevant case facts. Further, the Circular states that, where the private lending itself involves any violation or crime, the people's court shall rule to dismiss the lawsuit and refer clues and materials of the suspected crime to the public security organ or to the procuratorial organ. Where a criminal ruling establishes that the lender has committed a crime, such as the crime of fraud by laying loan traps, the people's court shall promptly correct the effective ruling that has been rendered to take the problematic behavior as an ordinary dispute over private lending, through the trial supervision procedures. Moreover, the Circular emphasizes that fees in different forms, such as "interest", "default penalties", "service fees", "brokerage fees", "deposits" and "late payment fees", shall not be upheld under the law, as long as they surpass either directly or in a disguised manner the statutory upper limit on the interest rate.

(Source: SPC)

SPC's Judicial Interpretations on the Insurance Law (IV) Clarify Issues Concerning the Application of the Insurance Law to Property Insurance

The Supreme People's Court ("SPC") has recently issued the Interpretations on Issues Concerning the Application of the Insurance Law of the People's Republic of China (IV) (the "Interpretations"), with effect from September 1st, 2018.

The Interpretations provide clarity in four aspects. The first is clarifying the transfer of the subject matter insured, such as the issue as to which party shall bear the insurance liability during the gap when the subject matter insured is transferred. The second is clarifying the rights and obligations of parties to the insurance contract. For example, it is made clear that if increased risks are covered by the insurance contract that the insurer foresees or should foresee when the insurance contract is concluded, the situation does not constitute a significant increase in the degree of risks. The third is clarifying the issue of insurance subrogation. For example, it is expressly stated that where the applicant and the insured are not the same person, the insurer may exercise the subrogation right against the applicant. The fourth is clarifying issues relating to liability insurance, such as the insurer's insurance liability when the compensation liability due by the insured party against the third party has been confirmed by an effective ruling which has entered enforcement procedures.

(Source: SPC)