高露雲律師行

Wilkinson & Grist

Solicitors & Notaries

Newsletter

SEPT 23

Newsletter
SEPT 23

Contents

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

NEW HONOURS

We are honored to be recognized as one of the **Leading International Firms** for **Intellectual Property (Copyright)**, **Intellectual Property (Patent)**, **Restructuring & Insolvency**, and **Consumer & Retail** in the 2023 China Business Law Awards which are based on nominations received from China–focused corporate counsel and legal professionals around the world.

We are pleased to be ranked once again as **Tier 1 Law Firm** for **Trade Mark Prosecution** and **Top Tier Firm** for **Trade Mark Contentious**, **Patent Contentious** and **Prosecution**, and **Copyright** in Hong Kong in this 2023 Survey – an in-focus guide from Asia IP published by Apex Asia that contains comprehensive rankings of the best IP firms and editorial depth coverage of key trademark developments across Asia.

IP RANKINGS 2023
ASIA'S BEST FIRMS FOR INTELLECTUAL PROPERTY

We are identified as **Top Tier Law Firm** for **Patents** & **Copyright/Trademarks** in Hong Kong by Asian Legal Business (ALB) in its latest issue of IP Rankings 2023. ALB drew information from firm submissions, interviews, editorial resources and market suggestions to identify and rank the top firms for intellectual property in Asia.

IP STARS from Managing IP

We have again been recognized as **Top Tier Law Firm** for **Trade Mark Prosecution**, **Trade Mark Disputes**, **Patent Prosecution**, **Patent Disputes**, **Copyright & Related Rights** in Hong Kong and **Trade Mark – Foreign Firms** in the PRC in this annual world survey which provides in depth analysis and rankings of over 1,500 IP firms and 5,000 practitioners globally in the trade mark, patent and copyright fields.

The Trademark Lawyer
GLOBAL REACH, LOCAL KNOWLEDGE

We are pleased to be featured and recognized in The Trademark Lawyer Magazine as an **Award Winning Law Firm 2023** amongst the **Top 10 Trademark Firms and IP Practices** in Hong Kong.

Congratulations

We are proud of the recognition given to our lawyers and congratulate them on their achievements.

Asia IP INFORMED ANALYSIS IP EXPERTS 2023

Mena Lo

Annie Tsoi

Andrea Fong

Mena Lo, Annie Tsoi and **Andrea Fong**, respectively Head, Partner and Consultant of our Intellectual Property Practice Group, have been named as IP Experts in the area of Trade Marks in Hong Kong.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

IP STARS from Managing IP

Mena Lo

Andrea Fong

Mena Lo, Head of our Intellectual Property Practice Group, has been awarded as Trade mark star 2023. **Andrea Fong**, Consultant of our Intellectual Property Practice Group, has been recognized as Patent star 2023 and Trade mark star 2023.

WWL

Who's Who Legal: Mainland China & Hong Kong SAR 2023

Mena Lo

Andrea Fong

Mena Lo, Head of our Intellectual Property Practice Group, has been recognized as Recommended Leader in IP - Trademarks in Hong Kong SAR. **Andrea Fong**, Consultant of our Intellectual Property Practice Group, has been ranked as Thought Leader in Mainland China & Hong Kong SAR - IP - Trademarks and Recommended Leader in IP - Trademarks.

Andrea Fong

Andrea Fong, Consultant of our Intellectual Property Practice Group, has been named as Notable Lawyer in the WIPR Insights China International Trademarks (non-contentious) Rankings 2023.

New Face

We warmly welcome the following newcomer to our firm.

Crystal Chan joined our Corporate and Commercial Practice Group as an associate in 2023. She obtained her Bachelor of Laws degree and PCLL from The University of Hong Kong. She was admitted as a solicitor in Hong Kong in November 2021, and in England and Wales in June 2023. Crystal currently works on a variety of corporate, commercial and banking matters, including regulatory compliance issues for listed companies, commercial contracts and loan transactions.

Talks & Seminars

We are pleased to be involved in, and contribute to, legal education in Hong Kong SAR, China and other regions.

Hong Kong Intellectual Property Department

Annie Tsoi, Partner, Intellectual Property Practice Group, upon invitation by the Vocation Training Council presented on "IP Registration in Mainland China 內地知識產權註冊機制" on 27 June 2023 in a seminar being part of the IP Manager Scheme PLUS organized by the Hong Kong Intellectual Property Department. Over a hundred local entrepreneurs, owners and managers of local SMEs with interest in IP trading and management attended the seminar.

About Us

W&G's Gelato Day

Our Gelato Day returned on a Friday afternoon. It was warmly welcomed as a refreshing treat for all staff of the Firm amidst the long summer months.

Conferences

Our members will be attending the following conferences and will be delighted to make arrangements in advance for meeting with clients and associates.

FICPI World Congress	London, United Kingdom, 4 – 7 October 2023
AIPPI World Congress	Istanbul, Turkey, 14 – 17 October 2023
APAA Council Meeting	Singapore, 3 – 7 November 2023
INTA Leadership Meeting	Houston, Texas, USA, 14 – 17 November 2023

Hong Kong SAR Alert

Guideline on Compliance of Anti-Money Laundering and Counter-Terrorist Financing Requirements for Licensed Money Lenders ("Guideline")

The Anti-Money Laundering and Counter Terrorist Financing (Amendment) Ordinance 2022 ("**Amendment Ordinance**") came into effect on June 1, 2023. This ordinance addresses various technical issues within the existing Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615) ("**AMLO**"). Its purpose is to align the regulatory framework with the up-to-date international standards established by the Financial Action Task Force ("**FATF**") and to rectify technical deficiencies identified in the FATF Mutual Evaluation Report 2019.

In line with the AMLO requirements, the Registrar of Money Lenders has issued the Guideline that became effective on June 1, 2023. The Guideline provides guidance to money lenders who hold a license granted or renewed under the Money Lenders Ordinance (Cap 163) and engage in money lending activities in Hong Kong. Its aim is to assist money lenders in implementing effective measures to mitigate the risks associated with money laundering and terrorist financing.

Notably, the Guideline incorporates the amendments introduced by the Amendment Ordinance, to include the adoption of the definition of "politically exposed person" ("**PEP**"), facilitation of a risk-based approach to determine the extent of customer due diligence ("**CDD**") required for former PEPs, and the support for the use of technology by clarifying that a recognized digital identification system can be utilized for CDD purposes. The Guideline also outlines the additional requirements to be met when a customer is not physically present for identification purposes.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

Hong Kong SAR

Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023

Paul Liu

Iris Chan

The Bankruptcy and Companies Legislation (Miscellaneous Amendments) Ordinance 2023 ("**Amendments Ordinance**") was enacted on 12 July 2023 and published in the Gazette on 21 July 2023.

The Amendments Ordinance introduces amendments to the Bankruptcy Ordinance (Cap 6), the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) and their subsidiary legislation, providing the legal basis for Electronic Submission System ("**ESS**") of the Official Receiver's Office ("**ORO**"), with the aim of streamlining the publication requirements of insolvency and related notices, and enhancing the quality and efficiency of ORO's services.

The Amendments Ordinance contains 5 parts and will commence its operation by parts. Insolvency practitioners are to note:-

1. Part 2 deals with amendments in Cap 6, Cap 32 and their subsidiary legislation relating to the submission of certain documents to ORO by electronic means.

2. Part 3 deals with amendments in Cap 6, Cap 32 and their subsidiary legislation to require various notices, orders or matters under the relevant provisions to be published or given by the specified means (ie, the Gazette).

3. Part 4 amends rule 99R of the Bankruptcy Rules (Cap 6A) and rule 139 of the Companies (Winding-up) Rules (Cap 32H) such that a proxy sent by electronic means to, and received by, the trustee and the relevant person within the relevant time limit is to be regarded as having been deposited in accordance with the relevant rules.

4. Part 5 introduces a new fee item to the Bankruptcy (Fees and Percentages) Order (Cap 6C) for inspection of a copy of the trustee's accounts filed under ss93(4) or (4A) of Cap 6.

Parts 1, 4 and 5 of the Amendments Ordinance came into operation on the day when the Amendments Ordinance was gazetted on 21 July 2023.

Parts 2 and 3 of the Amendments Ordinance are to commence on a day to be appointed by the Secretary for Financial Services and the Treasury by notice to be published in the Gazette. ORO will in due course announce the commencement of Parts 2 and 3, which will likely happen in 2 phases with Phase 1 expected in fourth quarter of 2023.

The introduction and implementation of the Amendments Ordinance, and those of ORO's ESS, is a welcome move for practitioners and the public alike. In line with the general and inevitable trend of electronic filing and lodgment across all spectrums in this day and age, the latest initiative will no doubt enhance the overall operational efficiency of the ORO and improve cost effectiveness for stakeholders in the long run.

Practice Direction on Bankruptcy and Winding-up Proceedings revamped

Paul Liu

Iris Chan

Practice Direction 3.1: Bankruptcy and Winding-Up Proceedings ("**PD 3.1**") was thoroughly restructured and revised on 30 June 2023, superseding its previous version dated 24 January 2017. The new PD 3.1 came into operation on 17 July 2023.

In line with the Judiciary's encouragement of the use of electronic means in various levels of Court, the new PD 3.1 introduces a clear, updated guidance on, *inter alia*, services of statutory demands and petitions by intended petitioners. The key amendments are outlined as follows.

Service of legal processes in bankruptcy and winding-up proceedings

1. To apply for leave to file a bankruptcy petition based on failure to comply with a statutory demand ("**SD**"), a petitioning creditor shall, apart from the affidavit(s) proving service of the SD, lodge with the Court a completed Checklist in the form of Appendix A to PD 3.1. In particular, the Checklist sets forth the reasonable steps to bring the SD to the debtor's attention – by personal service, electronic means (see below) or advertisement.

2. Service of SD via "Electronic Means" (emails, WhatsApp, WeChat, etc) would now be considered effective in normal circumstances under Rule 46(2) of the Bankruptcy Rules (Cap 6B) if the debtor (1) has agreed with the creditor to use Electronic Means to receive debt-related documents; or (2) has used any Electronic Means to communicate with the creditor in the past twelve months.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

3. Modes of service of a winding-up petition on (1) a Hong Kong company, (2) a registered non-Hong Kong company, (3) a non-Hong Kong company, and (4) an unregistered company are expressly provided for in the new PD 3.1 with reference to the relevant provisions in the Companies Ordinance (Cap 622).

Case management of bankruptcy and winding-up proceedings

1. A petitioner shall file the skeleton arguments, list of authorities and electronic bundles hearing bundles in electronic forms with the Court via the e-Lodgement platform and serve the same on the Official Receiver by email or delivering a USB or other storage device (see also Practice Direction 3.8 - "Electronic Bundles and Skeleton Arguments for All Applications on Company, Winding-Up and Bankruptcy Matters").

2. The relevant sections in the previous Practice Direction 3.4, in respect of case management of winding-up and bankruptcy proceedings (other than Winding-up Petitions on "just and equitable" ground), have been incorporated into the new PD 3.1.

Practitioners and stakeholders should take note that the following Practice Directions in relation to companies matters, winding-up proceedings or bankruptcy proceedings have been revised and become effective as from 17 July 2023: Practice Direction 3.4; Practice Direction 3.5; Practice Direction 3.7; and Practice Direction 3.8.

Bank's liability for payments out of a corporate customer's account upon dishonest instructions of authorized signatory

Raymond Chan

In ***PT Asuransi Tugu Pratama Indonesia TBK v Citibank NA* [2023] *HKCFA 3***, the Hong Kong Court of Final Appeal ("**CFA**") considered a bank's liability to a corporate customer for any payment out of such customer's account on the dishonest instructions of authorized signatory(ies).

Background

PT Asuransi Tugu Pratama Indonesia TBK ("**Customer**") maintained an account with Citibank NA ("**Bank**"). From 1994 to 1998, the Customer's authorized signatories fraudulently made 26 unauthorized payments from the Customer's account to their personal accounts and eventually instructed the Bank to close the account. In October 2006, the Customer wrote to the Bank alleging that the transfers were dishonestly authorized and demanded payment of their aggregate value. In 2007, the Customer brought the claim to seek reconstitution of its account.

The Judgment

The CFA held that the Customer was entitled to the aggregate amount of the unauthorized debits (apart from the first two of them).

The key issues discussed in the judgment are summarized as follows:

1. *Duty of a bank when dealing with dishonest instructions given by authorized signatories*

   There are two juridical sources for a bank's duty to make payments out of an account, namely (i) the customer's mandate which provides that payments may only be made with the customer's authority and (ii) a bank's duty as the customer's agent, including the duty to exercise reasonable skill and care (ie the *Quincecare* duty).

   The critical question is what constitutes sufficient notice of a want of actual authority, so as to require a bank to make inquiries before paying out in accordance with its mandate. The starting point is what is actually known to the bank without inquiry (or would actually be known to it if it appreciated the meaning of information it actually has). If there are features of the transaction apparent to the bank which indicate wrongdoing unless there is some special explanation, then explanation must be sought before the bank is entitled to proceed.

   In the present case, the payment of large sums from a corporate account to its signatories and officers personally is, on its face, unlikely to have been for the benefit of the company. The lower courts found that all 26 transfers were fraudulent on the part of the signatories and that by the time of the third transfer, a pattern had emerged indicating the improper character of the way the account was operated. The Bank did not challenge these findings before the CFA.

   However, the Bank failed to make the necessary inquiries. The Bank contacted the signatories only. It was held that the exchanges between the Bank and the signatories were inadequate because the Bank discussed with the people involved in the fraud, who could not be expected to give an answer in the interest of the Customer rather than themselves.

2. *Whether the Customer's claim against the Bank is time-barred*

   The Bank argued that the Customer's cause of action at the latest accrued in 1998 when the account was closed and was time-barred under the Limitation Ordinance (Cap 347). Such argument succeeded in the lower courts, which was rejected by the CFA.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

A customer has no proprietary interest in funds deposited with a banker and the obligation of the banker is to pay on the customer's demand to the customer or to the customer's order, so a cause of action in debt arises when that demand is made. In the present case, the unauthorized debits were nullities, so the balance on the Customer's account was unaffected by such unauthorized debits in law. The closure of the account did not discharge the debt represented by the reconstituted balance and for as long that debt remained outstanding, the relationship of banker and customer subsisted. The limitation period did not begin to run until 2006 when the debt was demanded. The legal proceedings in the present case began in 2007, so they were not time-barred.

3. *Whether a defence of contributory negligence is available to the Bank in the present case*

The Bank argued that the Customer's claim should be abated on account of the Customer's contributory negligence, but this was rejected by the CFA. In the present case, the Customer's claim is a claim in debt, which is not claim in respect of "damage" for the purpose of section 21(1) of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23). The liability for a debt is absolute and not dependent on negligence. Therefore, the defence of contributory negligence was not available to the Bank in the present case.

Implications

The CFA's judgment in this case may have ramifications for banks in Hong Kong in relation to their procedures for handling payment and other instructions given by authorized signatories for and on behalf of corporate customers.

According to CFA's judgment, before a bank may act in accordance with instructions given by authorized signatory(ies) in accordance with a customer's mandate, the bank should first consider whether there are any features of the transaction that indicate wrongdoing and/or lack of actual authority. Examples of such features include apparent lack of benefit for the customer, lack of commercial purpose on the face of the transaction, or conflict of interest between the customer and the signatory. If the bank is put on inquiry, adequate inquiries would have to be made, which may include seeking clarifications from directors and/or authorized persons of the customer *other than the signatory(ies) who has or have given the relevant instructions*.

This case also illustrates that, as the customer's claim against the bank for any payment made out of the account pursuant to signatory's dishonest instruction is a claim in debt, the limitation period does not start to run until the customer demands for repayment, even if the account in question has already been closed.

Raymond Chan

Secretary for Justice v IPFUND Asset Management Ltd. & Sin Chung Yin, Ronald: The exemption under the Securities and Futures Ordinance (Cap 571)

In ***Secretary for Justice v IPFUND Asset Management Ltd. & Sin Chung Yin, Ronald [2023] HKCA 925***, the Court of Appeal ("**CA**") considered the issues arising from a property-related collective investment scheme ("**CIS**") and whether the use of a shell company holding structure exempts an otherwise regulated activity from the licensing requirement under the Securities and Futures Ordinance (Cap 571) ("**Ordinance**").

Background

IPFUND Asset Management Limited and its sole director and shareholder Mr Ronald Sin Chung Yin (collectively "**Defendants**") were charged with unlicensed dealings contrary to sections 114(1)(a), (b) and 114(8) of the Ordinance. The Defendants allegedly set up and operated a CIS which pooled investors' funds into shell companies which in turn acquired commercial properties as investments. When the properties were subsequently sold, the Defendants would take a percentage of the profits with the rest shared proportionally among the investors. The Prosecution alleged that this investment structure was a CIS which falls within the definition of "securities" under the Ordinance. By arranging investors to participate in the CIS, the Defendants carried on a business in a regulated activity of dealing in securities.

In 2016, the District Court found the Defendants not guilty on all charges. It was held that although the investment scheme was a CIS, the investors' interests were in the shares of the shell companies, which were private companies whose shares were exempted from the definition of "securities" under the Ordinance. Therefore, there was no "dealing in securities" and thus the Defendants were not carrying out "regulated activities". Subsequently, the Secretary for Justice appealed to the CA on matters of law.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

The Judgment

The CA allowed the appeal and found that the Defendants had carried on a business in a regulated activity. In coming to its conclusion, the CA observed that:-

1. During the trading process of the property investment scheme, both the investors and IPFUND clearly saw the subject matter of the transaction as the interest in the property and the proportionate share of the profit but not the shares of the shell companies.

2. The shares of the shell companies would only be allotted to the investors proportional to their interest in the property investment scheme if the properties could not be resold and the shell companies needed to obtain a mortgage to keep the properties. The use of a registered shareholder to hold the allotted shares on behalf of all investors appeared to be expedient and to formally satisfy banks' requirements for approving mortgages. In cases where the properties could be resold by way of a confirmor arrangement, no shares in the shell companies would be allotted to the investors.

3. When the properties were successfully sold and the proceeds were obtained, the Profit Report issued by the staff of IPFUND to the investor did not state the profit of the shell company, but rather the expenses and proceeds of the sale of the relevant properties. The return received by investors was not a dividend or share buyback, but a profit on the sale of the properties. Therefore, the shell companies only acted as vehicles for implementing the investment plan.

4. Under company law, a company is a separate legal entity and shareholders have no legal or equitable interest in properties held by the company. It is unlikely that the investors in this case subscribed for shares in a company that is only a shell.

5. Analyzing the arrangement of the investment scheme in this case, the investors did not purchase a proportionate interest in the properties acquired. Rather, they purchased a chose in action to the profits arising from the acquisition and disposal of the property by the CIS.

Implications

The CA has clarified that when deciding whether an investment is "securities" for the purpose of the Ordinance, the Court will consider the nature of interests ultimately acquired and the purpose in making the acquisition. This case clarifies that a CIS offered under a shell holding company structure remains regulated under the Ordinance and dealing in the interest of such shell companies is a regulated activity that requires the relevant SFC licence.

China

Annie Tsoi

CNIPA clarifies circumstances qualifying suspension of trademark reviews

In June 2023, the China Intellectual Property Administration ("**CNIPA**") issued "Guidelines on circumstances qualifying suspension of review cases"《評審案件中止情形規範》("**Guidelines**"). Prior to issuance of the Guidelines, trademark reviews were suspended at CNIPA's sole discretion resulting in multiple filings and duplicated proceedings.

According to the Guidelines, CNIPA is obliged to suspend a trademark review when:-

1. the cited mark is undergoing a change of name or ownership upon completion of which the conflict of rights ceases to exist;
2. the cited mark has expired;
3. the cited mark is being withdrawn or surrendered;
4. the cited mark has been revoked, invalidated, or expired for less than one year at the time of review;
5. the decision made against the cited mark is in the course of becoming effective;
6. in opposition and invalidation cases, the prior right is dependent upon the outcome of another case which is pending at court or administrative authority;
7. in application refusal cases, the status of the cited mark is dependent upon another case pending at court or administrative authority.

Provided any of the above is clearly substantiated in light of the principle of necessity, when and by whom the action against the cited mark is initiated no longer matters.

The Guidelines further provide CNIPA with discretion to suspend a trademark review:-

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com

1. in application refusal cases, when the cited mark is undergoing invalidation whilst the bad faith of cited owner has been recognized in other cases;
2. where it is just or in the parties' interest to wait for the ruling or judgment of a similar or related case;
3. under any other circumstance that is necessary or in the interest of the rights holder.

The Guidelines aim at resolving the lack of coordination between administrative and judicial procedures, streamlining legal process, lowering costs, and ensuring timely assurance of the rights of legitimate trademark owners. With such improved clarity, brand owners are better positioned in planning and allocating resources.

New Measures in place to safeguard rights in enterprises' names

Annie Tsoi

The name of an enterprise holds immense value in establishing its goodwill. To safeguard the legitimate interests associated with naming and ensure fair competition in the market, in August 2023 the State Administration for Market Regulation (SAMR) in China issued the "Implementation Measures of the Management Rules of Enterprise Name Registration" ("**Measures**") 《企業名稱登記管理規定實施辦法》.

The Measures provide detailed implementation guidelines on the "Management Rules of Enterprise Name Registration《企業名稱登記管理規定》" promulgated by the State Council in 2021.

The Measures not only emphasize the importance of integrity and standardization in business naming but refine the existing regulations pertaining to enterprise name registration. Some notable highlights include:-

1. The use of standard Chinese characters (Article 7) for clarity in enterprise names.

2. The requirement for enterprises to indicate the nature of business, such as "Limited Company," "General Partnership" (Article 12), or "Branch Office" (Article 13) in their respective names.

3. Enhanced scrutiny for names containing "China," "Chinese," "Central," "National," or "State," which will require approval from the State Council (Article 14).

4. Prohibition of misleading wordings that falsely promote a business as the "highest" or "best," or reference major national strategic policies like the Belt and Road Initiative (Article 16).

5. Prevention of use of a name that is identical or similar to that of another business with certain influence in the same industry (Article 16).

In line with the 2021 Management Rules, applicants are to apply for registration of their enterprise names through the self-declaration system. The new Article 23 is introduced to address malicious name registrations, with offenders facing potential sanctions under Article 48. Failure to rectify any such misconduct may result in fines ranging from RMB 10,000 to RMB 100,000.

An enhanced dispute resolution mechanism is introduced under Chapter 5 in the Measures, under which enterprise name disputes can be filed with (i) the registration authority which approves the disputed name, (ii) the administrative authority on the unfair competition act arising from the disputed name, or (iii) the People's Court.

When a dispute is filed with the registration authority for determination, relevant factors (Article 41) to be considered include: -

- the main business activities of the parties in dispute;
- the distinctiveness and originality of the name involved;
- the duration of continuous use of the disputed enterprise name;
- whether the disputed enterprise name causes confusion among the relevant public;
- whether the disputed enterprise name rides on or damages the reputation of others.

Articles 40 and 45 also provide options for mediation or withdrawal of claims before a verdict is reached, thereby facilitating judicial and administrative efficiency.

The Measures, which will replace the previous version issued in 2004, are set to take effect on 1 October 2023. Upon its implementation, registration and management of enterprise names will be standardized and improved, thereby protecting the rights and interests of enterprises and promoting fair competition in the market.

Hong Kong
T: (852) 2524 6011
F: (852) 2520 2090
E: enquiry@wilgrist.com
W: www.wilgrist.com

Beijing
T: (8610) 6523 2415
F: (8610) 6523 1449
E: beijing@wilgrist.com
W: www.wilgrist.com