

State Administration for Market Regulation releases 2021 Legislative Plan

By Joe Cash, China Policy Analyst, Beijing

-  The SAMR intends to develop a total of 67 new regulations and administrative measures to improve the business environment in China
-  The majority focus on areas such as intellectual property, anti-competition, food safety and standards setting
-  The Legislative Plan is one of the first significant Chinese legal texts to mention Xi Jinping Thought on Rule of Law

Summary

It's that time of year again: China's market regulator has released its legislative plan for 2021.¹







The State Administration for Market Regulation's (SAMR) activities impact pretty much every company trading in China, be they foreign or domestic. Its annual legislative plan in turn plays a major role in shaping China's business environment.

This year the SAMR plans on drafting six Administrative Regulations and 61 Departmental Rules & Administrative Measures, a slight increase from last year. The SAMR has stated that these new measures will improve China's business environment and strengthen the rule of law in the market.

Background

The SAMR is China's leading governmental authority for regulating market competition, monopolies, intellectual property, and drug safety, as well as a whole host of other things. The Chinese government set it up in 2018 by consolidating the Administration for Quality Supervision & Quarantine, the Food & Drink Administration, and the State Administration of Industry & Commerce under one roof. As a result, the SAMR is a behemoth whose actions impact almost every company operating in China.

The SAMR has issued a legislative work plan every year since 2019 to ensure that companies are aware of how their compliance burden might change over the year. The legislative items are divided into two categories. 'Category One' initiatives are meant to be completed within the year, with draft policies and related materials due to enter the review phase by the end of June; 'Category Two' initiatives don't have a clear deadline but are meant to be pursued nonetheless. Irrespective of category, the bulk of these initiatives cover areas including:

-  Improving the enforcement of anti-trust and anti-unfair competition legislation
-  The implementation of the Patent Law
-  Protecting trade secrets
-  Improving the safety of food products
-  Aligning differing industrial standards, certifications and accreditations
-  Geographical Indicators

¹ [Chinese] http://gkml.samr.gov.cn/nsjg/fgs/202104/t20210401_327476.html?mc_cid=c2a8e66b30&mc_eid=63258fe95e.

This year's list is notable because it is one of the government's first official proposals to refer to Xi Jinping Thought on Rule of Law, which became official Communist Party doctrine last November.² Presented as adapting Marxist theories on the rule of law and applying them within the context of China, this includes provisions designed to ensure that foreign parties trading in *and with* China follow Beijing's rules. That could become a problem for foreign companies in China if this new legal system is rolled out to the extent that scholars anticipate.


What are the six new Administrative Regulations?

No.	Initiative	Agency Responsible
1	Product Quality Law of the PRC	Quality Supervision Department & Quality Development Agency
2	Provisions on Administrative Penalties for Illegal Pricing	Price Supervision & Competition Bureau
3	Regulations of the PRC on the Administration of Industrial Product Licences	Quality Supervision Department
4	Regulations of the PRC on Certification and Accreditation	Certification Supervision Department & Accredited Testing Department
5	Regulations for the Implementation of the Drug Administration Law of the PRC	Drug Administration
6	Rules for the Implementation of the Patent Law of the PRC	Intellectual Property Administration

What are the most important new Departmental Rules & Administrative Measures?

1.) Market Access:


In terms of delivering improved market access for foreign companies in China, UK firms should focus on the following four items:


 **Revisions to the Measures for the Administration of Authorised Foreign Registration:** SAMR plans on changing the registration system for foreign-invested enterprises to align it with the *Foreign Investment Law* and the *Regulations on the Administration of Foreign Investment*. Disparities between how foreign-invested companies are listed under these three measures can cause confusion at the local level among officials considering applications from foreign investors interested in areas listed on the Negative List, according to the SAMR.

² <https://triviumchina.com/2020/11/18/say-no-to-de-grainification/>.

Revisions to the Measures for the Implementation of the Enterprise Name Registration


Management System: UK companies looking to establish a presence in China will be happy to hear that the process for registering a company name is set to become simpler. The SAMR plans to remove procedures in the current application process deemed unnecessary to reduce the ‘start-up time’ of new enterprises in China.


 **Interim Measures for the Handling of Disputes over Enterprise Names:** These new measures will be designed to address situations of what is known as ‘Name-squatting.’ Specifically, these measures cover instances where a ‘Company A’ has discovered that a rival ‘Company B’ has maliciously applied to set up an entity with a similar name to ‘Company A’ in a bid to confuse consumers.


 **New Regulations on the Administration of the Registration of Commercial Subjects:** These are new regulations designed to make it easier for wholly-foreign-owned enterprises to become registered businesses in China.

2.) Intellectual Property Protection:


The Legislative Plan contains three items that should assist UK companies protect their intellectual property in China:


 **Rules for the Implementation of the Patent Law:** Changes made to China’s Patent Law in 2020, covering the duration of pharmaceutical patents, open licencing, and the establishment of a National Priority Channel, will be implemented this year.


 **Revisions to Provisions Covering the Identification & Protection of Well-Known Trademarks:** The Patent Office plans on taking further steps to protect well known international trademarks in China. It plans on doing this by standardising the process through which local supervision and inspection departments determine what constitutes a well-known trademark.

 **Revisions to the Measures for the Registration & Administration of Collective Trademarks & Certification Marks:** The Patent Office will take steps to improve the application process to have a consumer good recognised under China’s Geographical Indicators regime.





3.) Anti-unfair Competition:

 **Revised Regulations for the Protection of Trade Secrets:** The SAMR plans to improve its definition of a trade secret and the circumstances in which trade secret theft has taken place. It will pay particular attention to addressing unfair competition in artificial intelligence, software development, and other industries where innovation or scientific research plays an important role in determining competitiveness and profitability.



 **New Provisions Prohibiting Unfair Competition on the Internet:** These new provisions will be designed to address behaviours such as deliberately creating confusion between brands or running campaigns aimed at besmirching a rival online. These provisions are particularly relevant to companies that trade in China through e-commerce platforms.

 **Revised Provisions Prohibiting Unfair Competition in Name, Packaging & Decoration:** The SAMR will take steps to prevent companies from maliciously imitating the name, advertising or packaging of another.



4.) Food Safety Regulation:

-  **Interim Measures for the Management of Food-related Product Quality & Safety:** These measures aim to improve the quality of labelling on foodstuffs sold in China. A new inspection system will be introduced to improve the accuracy of the ingredients listed on products.
-  **Revised Measures for the Administration of Business Licences for Food Providers:** The application process to obtain a 'Food Business Licence' will be simplified. Not only will the application process be shortened so that it takes less time, the number of circumstances in which a business needs to obtain a 'Food' business licence – rather than a standard business licence – will be reduced. Further measures will be introduced to improve how Food Business Licences are displayed within premises.
-  **Revised Measures Concerning the Formulation of Milk Powder:** The SAMR will take steps to improve the review process of milk products and their constituent parts.
-  **Revised Measures for the Supervision & Administration of Quality & Safety in the Marketing of Edible Agricultural Products:** These measures aim to standardise the marketing of edible agricultural products and how ingredients are listed.

5.) Pharmaceuticals & Cosmetics:

-  **Regulations Concerning the Supervision and Management of Cosmetics Manufacturing:** A 'domestic responsibility system' will be set up in which a representative of the manufacturer is registered as responsible for the safety of a given product.
-  **Revised Measures for the Administration of Medical Device Registration:** SAMR will adjust the requirements to obtain a certificate to sell a medical device in China that has been certified overseas.

6.) Standards:

-  **The Introduction of a Revised Approach to National Standards Setting:** To develop Chinese national standards so that a greater number of them align with international standards.
-  **The Introduction of a Revised Approach to International Standards Management:** Similar to the above but focussed on the monitoring of international standards.

The Significance of Xi Jinping Thought on Rule of Law

Xi Jinping Thought on Rule of Law has been on the books for some years, although it only became Party doctrine last November. While the Party has always exercised *de facto* control of state affairs, it had previously sought to create ambiguity regarding its constitutional and legal status, according to Jamie Horsley, Senior Fellow at the Paul Tsai China Centre of Yale Law School.³


That appears to be the case no longer. The Party is now instead taking steps to legalise its role in China's legal system by attaching Xi Jinping's personal banner to the country's legal system. The SAMR Legislative Work Plan is the first significant legal text to have been published since November and indicates that the Party plans on deepening its involvement in Chinese commercial law.

For sure, the insertion of Xi Jinping Thought on Rule of Law into the SAMR Legislative Plan is not the first time that the Party has sought to expand its influence over corporations and Chinese commercial law. China's *Company Law* has stipulated since 2005 that party organisations should be established in all companies. However, beyond holding an observer capacity through the formation of Party cells within companies, the Party didn't look to involve itself in commercial behaviour or law.

The fact that the text of the SAMR Legislative Work Plan states that all of its measures will be pursued in accordance with Xi Jinping Thought on Rule of Law suggests that this might be about to change.

CBBC View

Previous SAMR legislative plans have tended to improve the business environment for foreign firms in China by resolving inconsistencies in the way laws or administrative processes have been drafted and applied – particularly between the local and national levels. There is no reason why this year's plan should be any different. The inclusion of terms stipulating that the SAMR's new measures will be pursued in accordance with Xi Jinping Thought on Rule of Law is interesting, although it's unclear how it will be applied in practice.

The CBBC will continue to monitor how the SAMR legislative plan is applied over the course of the year and stands ready to assist members in understanding how it will affect their business. Members wanting to find out more should contact Joe Cash (joseph.cash@cbbc.org) or Yuan Yuan (yuan.yuan@cbbc.org) in Beijing. 

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³ https://law.yale.edu/sites/default/files/area/center/china/document/horsley_china_party-_legal_development.pdf.