

Circular about the Relevant Issues on Strengthening the Administration of Intellectual Property Asset Assessment

Full text

Article 1 If an entity having the intellectual property meets any of the circumstances as follows, it shall implement the asset assessment:

- (1) In the light of Article 27 of the Company Law, where the intellectual property is contributed for establishing a limited liability company or joint stock company;
- (2) Where the intellectual property is pledged, there is no reference price in the market and the pledgee requires the assessment;
- (3) Where an administrative entity auctions off, transfers or replaces the intellectual property;
- (4) Where a public institution implements the restructuring, merger, split-up, liquidation, investment, transfer, replacement or auction, which involves the intellectual property;
- (5) Where a state-owned enterprise implements the restructuring, merger, split-up, liquidation, investment, transfer, replacement, auction or debt repayment which involves the intellectual property;
- (6) Where a state-owned enterprise purchases or obtains by replacement the intellectual property of non-state-owned entity, or accepts the capital contributions of non-state-owned entity in the form of intellectual property;
- (7) Where a state-owned enterprise approves the foreign company, enterprise or other economic organizations or individuals to use its intellectual property, and there is no reference price in the market;
- (8) Where the people's court, the arbitral body or the party requires the assessment when the lawsuit value of the intellectual property involved is determined; or
- (9) Other matters prescribed by the laws and administrative regulations, for which the asset assessment is needed.

Where a non-state-owned enterprise implements the merger, split-up, liquidation, investment, transfer, replacement, debt repayment or any other economic act refers to the intellectual property, the asset assessment may be implemented by referring to the state-owned enterprises.

Article 2 An asset assessment institution established based on approval of the department of public finance shall be entrusted for the intellectual property assessment. An asset assessment institution shall implement the intellectual property assessment strictly according to the relevant rules and standards for asset assessment, and shall take into account the peculiarities of the intellectual property and scientifically and objectively analyze the feasibility and rationality of the anticipatory proceeds of the intellectual property during the course of assessment.

When carrying out the intellectual property assessment, an asset assessment institution may employ the experts in the aspects of patent, trademark, copyright and etc. to assist in the work, but the legal liabilities of the asset assessment institution and its certified asset assessors can not thus be mitigated

or exempted.

Article 3 The Ministry of Finance and the State Intellectual Property Office will jointly organize the professional trainings on intellectual property assessment, implement the examination and issue the certificates of training, establish and strictly enforce the system of continuous education and training examination, for ensuring the quality of trainings and continuously enhancing the professional intellectual property assessment capacity and level of certified asset assessors and other professionals.

Article 4 China Appraisal Society shall strengthen the industrial self-discipline and the professional guidance, may establish a database of intellectual property assessment experts and other relevant professional committees, establish and improve the intellectual property database, and create a necessary platform for intellectual property assessment, so as to enhance the practicing quality of asset assessment, industrial credibility and influences.

An asset assessment institution shall insist on the principles of independence, objectiveness and fairness, and shall not undertake the business of intellectual property assessment by overestimating or underestimating the intellectual property, giving "kickbacks", maliciously forcing down the price or any other unjustifiable means so as to cater to the entrusting party.

Supervision and examination on the practicing quality of asset assessment institutions that engage in the business of intellectual property assessment shall be regularly organized by the Ministry of Finance and the State Intellectual Property Office.

Article 5 Any of entities or individuals may not intervene in the business of intellectual property assessment or the assessment conclusion illegally.

Article 6 In case a state-owned entity having the intellectual property or an asset assessment institution engaging in the business of intellectual property assessment violates the aforesaid provisions, it shall be punished in accordance with the relevant provisions of the State.

If there is any former relevant provision conflicting with the provisions in this Notice, the latter shall prevail after this Notice is promulgated