



MMLC Group 

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China Update

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Business News

World Bank member launches public-private partnership with Chinese city

World Bank member International Finance Corporation (IFC) signed an MOU with central China's Yichang city for a public-private partnership (PPP) to boost the city's economy and provide essential public services. The partnership will focus on projects such as healthcare, transportation, the environment and sanitation. Under the terms of the MOU, Yichang and IFC will collaborate to identify suitable private sector partners, structure projects, and carry out capacity-building activities.

The PPP has become an important tool to help governments worldwide facing fiscal challenges to draw on the strengths of the private sector and drive economic growth. China has encouraged PPP as a means to attract private investment for public projects amid downward economic pressure. China's insurance regulator decided to allow insurance companies to invest in PPP programs.

China's postal bank reveals 11% jump in profit ahead of IPO

Postal Savings Bank of China Co., the lender preparing for a share offer that may raise USD 8 billion, reported an 11 percent increase in first-quarter profit as it pared back provisions for bad loans. Net income was RMB 12.5 billion (USD 1.9 billion) in the three months to 31 March, prelisting documents filed to Hong Kong's stock exchange showed. Earnings for 2015 rose 7 percent to RMB 34.9 billion. The lender's nonperforming loan ratio stood at 0.81 percent as of 31 March -- or less than half the official figure for the industry as a whole.

The bank will be the final major Chinese commercial lender to be listed, and its IPO could be the world's biggest this year.

BEIJING

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Partners and Associates in the MMLC Group are admitted to practice law in China, Australia and Europe (UK)

China's State-owned tourism giants merge

China International Travel Service (CITS) is no longer under its supervision as it has merged with another State-owned travel company. Approved by the State Council, CITS is now a wholly-owned subsidiary of the China National Travel Service (HK). China National Travel Service (HK) Group is a leading travel group engaging in tourism, industrial investment, real estate development and logistics.

China will invest USD 2.8 billion in South Africa economic zone

A group of Chinese investors will invest more than RMB 40 billion rand (USD 2.8 billion) in an energy and metals-related industrial park in South Africa, giving a boost to the country's government as it seeks to grow the manufacturing industry and ease unemployment. The consortium, led by Hong Kong Mining Exchange Co., Ltd. will develop and manage the park, which will house plants to process minerals including chrome, manganese, coking coal and lime and is expected to create almost 21,000 jobs. The park will be located inside a new Special Economic Zone in the north of Limpopo, a largely rural province.

Baidu considered bid for paramount studio stake

Baidu Inc. considered participating in a bid for a stake in Viacom Inc.'s Paramount Pictures, though it's not currently in negotiations. The search engine giant had contemplated working with DMG Entertainment & Media Co., a Chinese-American company that has co-produced films such as "Iron Man 3" and is seeking a larger role in Hollywood. The effort ended in late May when it became clear that Viacom's controlling shareholders, the Redstone family, opposed the sale. Viacom's attempts to sell a minority stake in the studio have been complicated by the power struggle at the media company. Dalian Wanda Group Co., Ltd. is in talks to buy 49 percent of Paramount, citing unnamed sources, though Sumner Redstone and his family reiterated their opposition to such a deal. A Wanda transaction would value Paramount at USD 8 billion to USD 10 billion.

Nike's China sales have gone Gold Since 2008 Beijing Olympics

Nike Inc.'s sales growth in Greater China outpaced those of Adidas AG and local rivals Li Ning Co., Ltd. and Anta Sports Products Ltd. since the 2008 Beijing Olympics. Nike's China revenues were USD 3.79 billion in its most-recent fiscal year, a 117 percent increase from six years earlier. By comparison, Anta's sales rose 107 percent and Adidas's grew 103 percent from 2009 to 2015, while domestic revenue of Li Ning, founded by a former Chinese gymnast who lit the torch at the Beijing games, declined 9 percent in dollar terms in the period.

China becomes second-largest investor in foreign property

Chinese investors pumped USD 17 billion into overseas property investment during the first five months, becoming the world's second-largest source of outbound property investment. Outbound Investment continued its rapid growth in China, the total outbound investment from January to May this year has accounted for the 65.6 percent of the total investment of 2015. The US remained the most attractive destination for Chinese investors thanks to strong dollar appreciation, more than six out of 10 Chinese investments (62.3 percent) totaling USD 10.6 billion went to the United States over the first five months of the year. Hotel investment was a

hot asset class, receiving USD 7.1 billion in cross-border Chinese capital during the first five months of 2016 and accounting for a 42 percent share by type of property investment.

Chinese Group to Buy Caesars' Games Unit for USD 4.4 Billion

Shanghai Giant Network Technology Co. agreed to buy Caesars Entertainment Corp.'s online casino-style games unit Playtika Ltd. for USD 4.4 billion, in a bet on the rising popularity of mobile play. The consortium includes Yunfeng Capital, the private equity company founded by Alibaba Group Holding Ltd. Chairman Jack Ma, China Oceanwide Holdings Group Co., China Minsheng Trust Co., and Hony Capital Fund. Playtika will remain independently run from its headquarters in Herzliya, Israel. The deal, subject to regulatory approvals, is expected to be completed in the third or fourth quarter of 2016.

The all-cash deal gives the Chinese buyers a foothold in a fast-growing segment of the gaming industry, as users turn to mobile applications over PC- and console-based systems. The Playtika platform isn't traditional gambling since its virtual currency cannot be exchanged for real money, an approach that will remain under the new ownership. Organized gambling is illegal in China with the exception of licensed casinos in Macau. Despite the legal issues in China, these Chinese investors are more comfortable playing the long game. Online gaming, eventually, should be massive after the various regulatory hurdles are worked out even if it takes a significant number of years.

Regulator says underwriter failed duty to examine Xintai's books sufficiently

China's securities regulator issued an administrative penalty and levied heavy fines against mid-sized brokerage Industrial Securities Co, for negligence of its duties in relation to its client Dandong Xintai Electric Co on 29 July, the first company to be delisted because of IPO fraud. China Securities Regulatory Commission said the IPO underwriter of Xintai - Industrial Securities did not examine the information about the flotation sufficiently. Based on the Securities Law and related regulations, Industrial Securities' sponsorship will be confiscated and it will be fined RMB 24.6 million. Sponsor representatives Lan Xiang and Wu Wenxiang from Industrial Securities would be fined RMB 300,000 each, and they would be banned for 10 years each from the securities industry.

Recent China development outbound investment in Renminbi

Due to the recent strong desire to convert Renminbi ("RMB") funds into foreign currency and remit foreign currency amounts outside of China ("China" or the "PRC", which excludes Hong Kong, Macau and Taiwan for purposes of this discussion), the State Administration of Foreign Exchange of China ("SAFE") and the Chinese banks have slowed down the process for foreign currency conversions. In practice, after PRC investors obtain required regulatory approvals from, or complete filings with, the National Development and Reform Commission and the Ministry of Commerce or their respective provincial counterparts ("Regulatory Approvals"), their conversion and remittance of outbound investment capital may be subject to a further scrutiny of the competent branch of SAFE and Chinese banks which handle such conversions and remittances. As a result, remittances of foreign currency amounts overseas for purposes of outbound investments have taken longer than before. Given the foregoing issue, some PRC investors have begun to directly remit funds in RMB to an account opened with an offshore bank and held by an entity that they incorporated outside of China or the target

company of a Chinese outbound investment. Consequently, the foreign bank will convert RMB amounts into foreign currency in order for Chinese investors to close their outbound transactions.

Key points to note are as follows:

- In order to use RMB amounts for outbound investments, a Chinese investor is required to be a non-financial enterprise.
- If a Chinese investor determines to utilize RMB funds to invest outside China, it is required to expressly include this approach into the application documents when applying for the Regulatory Approvals.
- When a PRC investor applies with a China-based bank to remit an RMB amount out of China for its outbound investment, it must have obtained the Regulatory Approvals.
- The offshore bank to which the RMB amount will be remitted must be actually engaged in the RMB clearing/settlement business.
- Outbound investment in RMB may increase Chinese investors' costs due to a higher offshore RMB exchange rate compared with the onshore RMB exchange rate.

China opens door to foreign private equity funds

The China Securities Regulatory Commission said in a statement on 29 June that foreign-owned enterprises and joint-venture private-equity funds will be able to establish presence, raise funds and invest in China's capital market. The CSRC said the policy relaxation was a result of the recent US-China Strategic and Economic Dialogue and China-UK Economic and Financial Dialogue.

The approved foreign private-equity funds will provide asset-management services to domestic investors and mustn't involve the movement of cross-border capital, according to the statement.

New guidelines will smooth path for firms and foreign investors looking to open Hong Kong bank accounts

The Hong Kong Monetary Authority will roll out guidelines in the coming weeks to help companies rebuffed while trying to open accounts at banks under pressure from anti-fraud regulations and new compliance requirements. The authority would join forces with InvestHK, the government-led business promoter, to help overseas firms gain access to Hong Kong banks.

Chinese Internet Company LeEco Acquires Vizio for USD 2 Billion

LeEco Global Ltd. agreed to acquire Vizio Inc. for USD 2 billion as the Chinese technology conglomerate expands further in the U.S.. LeEco, affiliated with publicly-traded Leshi Internet Information & Technology Corp., will acquire all Vizio's hardware and software operations, technology and intellectual property.

Vizio, a maker of inexpensive flat-screen TVs, will continue to operate at its Irvine, California headquarters. The hardware and software business will be operated as a wholly-owned subsidiary of LeEco, while the Vizio data business, Inscape Data Services, will be spun off and operate as a separate, privately owned company.

Apple remains top brand of China Mobile subscribers

Apple Inc. remains the most popular smartphone brand in China, despite its recent poor performance in its second-largest market.

In May, about 15 percent of China Mobile's subscribers are using iPhones, which amounts to about 120 million users. Domestic brands Xiaomi Corp. and Huawei Technologies Co., Ltd. rank alongside Samsung Electronics Co., Ltd. as the second-most popular brands, with each company accounting for 9 percent of subscribers. When it comes to the fastest-growing handset makers, smaller local rival Vivo Mobile Communication Technology Co Ltd. prevailed thanks to its sprawling offline-retail channels in small cities. About 14 percent of China Mobile subscribers registered in the first five months of this year are using Vivo's handsets.

China's auto industry moves to protect cyber security

China has established an automotive cyber security committee to ensure the safe running of intelligent, connected and electric cars. Cyber safety has become crucial in the automotive sector as cars are becoming intelligent and interconnected, many automakers have partnered with internet companies to intensify cyber security.

Legal News

Intellectual Property

Guangzhou IP court issued its first preliminary injunction for a patent case

On 22 June 2016, Guangzhou IP Court issued its first Preliminary Injunction on patent infringement case since its establishment in December 2014, ordering Guangzhou Wentan Trading Co., Ltd. (hereafter referred as “respondent”) to stop making, selling, offering for sales 9 models of lipstick product and ordering Guangzhou Beiningfei Co., Ltd. (hereafter referred as “respondent”) to stop making 9 models of lipstick based on the petition filed by Christian Louboutin. This is the first preliminary injunction issued by Guangzhou IP Court for a patent infringement case. Such remedies are notoriously difficult to get in many courts in China.

Background

Christian Louboutin (hereafter referred as “claimant”) is the patentee of the series of design patents with title “Cosmetic cover”, “Cosmetic container” etc. but the patented products have not been put into market in China. The claimant discovered that the respondents made, sold and offered for sales 9 models of lipstick products identical or similar to the design patents of the claimant. The claimant filed a petition for preliminary injunction before Guangzhou IP Court.

Issues

After hearing, Guangzhou IP Court considered the case from the following six aspects:

- Is the patent valid? Is the patent strong (stable)?
- Does the respondents’ act constitute infringement?
- If the preliminary injunction is not issued, will it cause irreparable damage to the claimant?
- If the preliminary injunction is issued, will damage caused to the respondent smaller or equal to the damage to the claimant if preliminary injunction is not issued?
- Will the preliminary injunction be harmful to public interest?
- Is the bond provided by the claimant valid and appropriate?

Reasoning

The Court found that:

- Validity and stability of patent are the basis of petition of preliminary injunction. The patent is currently valid and it is relatively stable;
- In the examination of petition for preliminary injunction, it is necessary to assess the likelihood of infringement. It is decided that 9 models of the lipstick product falls within the scope of protection of the patent;
- When assessing the irreparable damage to the claimant, the court should take into consideration damage to the reputation of the claimant, infringer’s ability to pay for the damage, the possibility of calculating the damages etc. In this case, the respondent fails to prove that it manages to sufficiently pay for the damage based on its property status. Not issuing preliminary injunction will cause permanent loss of market share and shorten the life

cycle of the patented product. Therefore, there exists urgency of stopping the infringement and it will cause irreparable damage if preliminary injunction is not issued;

- Evaluation of both sides' interest should be considered. In this case, damage caused to claimant if preliminary injunction is not issued is apparently greater than the loss caused to the respondent if preliminary injunction is issued;
- In terms of public interest, since the product in this case is a cosmetic product, preliminary injunction will not be harmful to public interest;
- When filing the petition of the preliminary injunction, the claimant should provide bond for damage caused to the respondent if the preliminary injunction is issued wrongfully. Considering the argument of both sides on the amount of bond, high likelihood of obtaining favorable judgment, low possibility of issuing wrongful injunction and the fact that three patents related to one product, the amount of bond is decided.

Decision

In conclusion, the Court issued preliminary injunction, ordering Guangzhou Wentan Trading Co., Ltd. to stop making, selling, offering for sale 9 models of lipstick product and ordering Guangzhou Beiningfei Co., Ltd. to stop making 9 models of lipstick.

Prior marks whose owner deceased will not block subsequent trademarks

Recent decisions made by Beijing Intellectual Property Court and Beijing Higher People's Court have found that trademarks where the owner is deceased do not block subsequent marks. The decisions stem from a trademark administrative lawsuit - Beijing Exotropy Technology Co., Ltd. ("Exotropy") vs. the China Trademark Review and Adjudication Board (TRAB).

Background

Exotropy filed a trademark application for "ET & Device" (Application No. 13397364) on 21 October 2013 before CTO, covering the goods "computer software, etc." in Class 9; On 9 October 2014, the trademark "ET & Device" was refused for registration in light of a prior similar mark "YITAI in Chinese characters, ET & Device" Registration No. 7085701, owned by Guangzhou Zhilin Market Development Co., Ltd. ("Zhilin"). Due to unsatisfied with CTO's refusal, Exotropy filed a review on refusal before TRAB. On June 12, 2015, TRAB sustained the CTO's refusal on grounds that the two marks were similar. Then Exotropy appealed to Beijing Intellectual Property Court, this time submitting an official record proving the owner of the Cited Mark had been terminated and deregistered as of 18 August 2010.

Judgments and Reasoning

- First Instance: Beijing Intellectual Property Court ruled that because Zhilin no longer existed, and because the cited mark had not been in use for an extended period of time, it should not constitute any obstacle to the applicant's mark. So the court overturned the TRAB's decision and remanded the case for re-examination.

TRAB then appealed to Beijing Higher People's Court, arguing that while Zhilin no longer existed, the cited mark was still valid and should block the applicant's mark. The TRAB further maintained that the official record confirming termination of Zhilin had not been presented during TRAB's hearing stage and should not be entered into evidence.

- Second Instance: Beijing Higher People’s Court upheld the judgment of the first instance, based on the following points: (1) The court decided to accept the evidence proving termination of Zhilin to avoid unnecessary repetition of proceedings, and to finally settle the case; (2) As the owner of the cited mark no longer existed, the cited mark has lost its value in terms of distinguishing the origin of goods. Therefore, the cited mark shall not hinder the registration of the applicant’s mark.

Points need be noted

- Zhilin terminated in 2010, so the influence of the trademark should have lapsed over time. But had Zhilin, in this case, been terminated only recently – for example, less than a year – and the cited mark had been steadily used prior to termination, that mark may not be so easily disregarded. The key point to be determined is whether a cited mark has been out of the public eye long enough to avoid confusion between it and a subsequent mark.
- In this case, the original mark had not been assigned or transferred to anyone else. Had it been, the court’s judgment would most likely have been different, even if the assignment records had not been completed.

New Balance unsuccessfully challenges trade mark infringement claim in China but walks away with a significantly reduced liability

The international sportswear brand New Balance has unsuccessfully challenged a finding of trade mark infringement with respect to a Chinese language equivalent for NEW BALANCE. However, New Balance was able to reduce the amount payable as a result of its infringement by 95%.

In February 2016, Chinese businessman Zhou Yuelen successfully sued New Balance Shoe Inc. and its Chinese subsidiary, Xinbailun Co, Ltd. (collectively, New Balance) for infringement of his registered Chinese trade mark “新平衡” which is a combination of the Chinese direct translation of the word “New” and the Chinese phonetic transliteration of the word “Balance”. The Court ordered that New Balance stop using the mark and that it pay Zhou half of its profits during the period of infringement. As a result, Zhou was awarded approximately 98 million yuan (AUD 20 million) in damages and costs.

New Balance subsequently appealed the first instance decision and although unsuccessful in the substantive appeal, the amount payable by New Balance has been significantly decreased to 5 million yuan (about AUD 1 million.). Although the reduced damages award would have been a welcome relief to New Balance, the fact that it was still found liable is an important lesson to non-Chinese companies about the risks of doing business in China.

Huawei sues Samsung for millions

Huawei Technologies Co., Ltd. has filed lawsuits against Samsung Electronics Co., Ltd. over alleged patent infringements, demanding compensation as high as 80 million yuan (USD 11.95 million). The dispute comes as the Chinese tech company emerges as the world’s third largest smartphone vendor, and highlights that patent conflicts are intensifying amid slowing global demand for handsets. According to a local media report, the dispute involves 16 types of handsets from Samsung, which Huawei argues infringe its patents in telecommunication technologies.

China has approved its first sound trademark

China has seen the highest number of trademark registrations in the world in the last 13 years, and the country's first "sound" trademark - the signature tune of China Radio International has been approved as a sound trademark.

China's top legislature revised the Trademark Law to allow sound to be registered as a trademark in 2013. The administration has received 450 applications for sound trademarks as of the end of January, since starting to accept such applications in May 2014.

SIPO & EPO decide to renew MOU on patent classification

SIPO and the European Patent Office (EPO) decided to renew the MOU on beefing up patent classification cooperation for another 6 years. According to the MOU, SIPO would classify all invention patent applications in technology field via CPC since January this year, and share the relevant classification data with EPO. EPO continues to provide specific CPC classification training for SIPO. Both SIPO and EPO would hold regular work group meeting to discuss topics on quality assurance, information technology and training exchange.

Under the original MOU, SIPO has tried to classify 470,000 newly published patent documents via CPC classification.

Judicial Practice of Use Condition Feature in China

China's Supreme Court released the top 10 landmark IP cases and 50 illustrative IP cases of Year 2015 in April this year, a patent infringement case involving Huawei as the petitioner and ZTE and Alibaba as the respondents (2015 Min-Shen-Zi No. 2720) further clarifies the application of the use condition feature. Based on this, further in combination with Article 9 of the Patent Judicial Interpretations (II) which took effect on 1 April 2016 and a precedent case involving Shimano as the petitioner and SunRun as the respondent (2012 Min-Ti-Zi No. 1), the judicial practice of the use condition feature in China can be summarized as follows:

- A use condition feature refers to a technical feature used for describing the background or condition for carrying out the invention.
- A use condition feature recited in a claim is an essential feature, which limits the patent scope. As to the most reasonable, common and popular operating environment and mode for carrying out a patent method, even if not recited as a feature in a claim, it shall be considered in determining patent infringement of the method patent.
- If an accused infringing solution can be applied only in the use condition recited by a product claim, it shall be found that the accused infringing solution reads on the use condition feature recited by the claim, without requiring the use condition feature to be actually applied in the accused infringing solution.
- If an accused infringing solution cannot be applied in the use condition feature limited by a claim, or an accused infringing solution can be applied in both the use condition recited by a product claim and other use conditions, it shall be found that the accused infringing solution doesn't fall within the patent scope.

Competition

Hantao v. Baidu - 'scraping' third-party information as unfair competition

On 26 May 2016, the People’s Court in Shanghai’s Pudong New Area handed down its judgment in *Hantao v. Baidu*, in which Baidu was sued for inappropriately using information uploaded on *dianping.com*, a Hantao-owned website and app. The court decided in favor of the plaintiff, and laid out a possible analytical framework for assessing unfair competition aspects in the production, collection and use of information in the Internet space.

Beside ordering Baidu to remove the images and user comments from its site, the court ordered the search engine to pay Dianping over RMB 3 million yuan in damage. Shanghai Hantao Information Consulting, which owns Dianping, said Baidu’s use of the two since 2012 caused lost web traffic and income.

Misleading online promotion of genuine goods is considered unfair competition

The Changsha Intermediate People’s Court (“Changsha Court”) applied Article 2 of the Anti-unfair Competition Law and found that an online vendor selling genuine Avène products while claiming its platform to be the official Avène website committed an act of unfair competition.

Background

Pierre Fabre Dermo-Cosmetique (“Pierre Fabre”) owns the registered trademarks “Click here to view image.” and “Click here to view image” in China designating products “cosmetics, soap, shampoo, mineral or hot spring spray for beauty use”.

In 2014, Pierre Fabre found an online mall pretending to be “Avène’s Official Website in China” or “Avène’s Online Mall in China,” and using Pierre Fabre’s advertising materials. Avène then instructed its agent notarized the webpage contents of the online mall and made a notarized purchase at the online mall on September 1, 2014. The notarisation procedure revealed a company named Changsha Hui Ji E-commerce Co., Ltd. (Changsha Hui Ji).

Pierre Fabre initiated a civil lawsuit against Changsha Hui Ji before the Changsha Court on the ground of trademark infringement and unfair competition, requesting cease of infringement, indemnification for damages caused and a public apology. Changsha Hui Ji argued that the Eau Thermale Avène products offered for sale in its online mall came from a legitimate source; therefore, the use of Pierre Fabre’s trademark and advertising materials was fair and did not constitute infringement nor unfair competition.

Reasoning

The Court reasoned that although the defendant’s website offered genuine products, its use of the plaintiff’s trademarks, pictures, and advertising materials of relevant products should have been confined to a necessary and reasonable extent. The Court further stated that the defendant’s prominent use of Pierre Fabre’s registered trademarks and its self-identification as “Avène’s Official Website in China,” or “Avène’s Online Mall in China,” combined with pictures and advertising materials identical with the plaintiff’s website content, were likely to mislead the relevant public to misconstrue that its online mall was operated or licensed by Pierre Fabre, thus giving the defendant unfair competition advantages. The defendant was found in violation of business ethics and principles of good faith outlined in Article 2 of the Anti-unfair Competition Law.

Decision

On October 28, 2015, the Changsha Court rendered a judgment upholding Pierre Fabre's unfair competition claim and ordered Changsha Hui Ji to:

- Cease all acts of unfair competition immediately;
- Pay RMB 40,000 to Pierre Fabre in compensation for its economic loss.

Comments:

This case serves as a point of reference to establishing the boundary between fair and unfair use of trademarks. It was listed as one of the 50 exemplary IP cases of 2015 by the Supreme People's Court.

Increase in Vertical Price Restraint Enforcement in China

In recent months, Chinese anti-monopoly enforcement actions scrutinizing and penalizing pricing-related issues have noticeably increased. A growing number of foreign companies in consumer facing industries have received significant penalties for setting pricing restrictions - usually minimum resale prices on contractual counterparties down the supply chain. A particular target of the enforcement authorities has been the automotive industry, which has been the subject of numerous regulatory actions, but cases in this area are not limited to that sector; the authorities have also taken action in the liquor and healthcare industries.

The most recent development is that on 15 April 2016, the Shanghai Pricing Bureau imposed a fine of USD 340,000 on South Korean tire company Hankook. See Shanghai Price Bureau Administrative Penalty Decision (Shanghai Hankook Tires), Case No. 2520160001 (12 April 2016). The decision found that Hankook established minimum resale price restraints through its agreements with its distributors, under which Hankook had implemented minimum price lists, "market norm" security deposits, and warning letters when distributors offered prices below the minimum. This penalty was just one in a series of administrative decisions penalizing vertical price restraints in the automotive industry in the last 18 months. To date, Chinese anti-monopoly law enforcement authorities (the "AMEAs;" including National Development and Reform Commission, the State Administration of Industry and Commerce, and the Ministry of Commerce) have imposed fines totaling more than RMB 2 billion (approximately USD 300 million) on major automakers and spare-parts suppliers; five out of seven actions are related to vertical price restraints. (See Liu Weiyan, Anti-Monopoly Guidelines for the Auto Industry Targets Resale Price Maintenance and Presumptive Exemptions Remain Difficult, National Business Daily (25 April 2016).)

In addition, on the legislative front, during 23 March to 12 April 2016, China's National Development and Reform Commission ("NDRC"), a ministry-level agency under the State Council (national executive) solely responsible for pricing-related anti-monopoly enforcement, released the Draft Anti-Monopoly Guidelines for the Automotive Industry (the "Draft Guidelines") for public comment. As China's first industry-specific anti-monopoly guideline, the Draft Guidelines aims to provide further clarifications regarding vertical price restraints in the automotive industry.

Both the Draft Guidelines and recent ramp-up in enforcement activities signal the Chinese government's proactive ongoing efforts to target and deter vertical monopolistic activities, especially in the automotive industry.

Foreign Investment

Door opens for removal of stake caps for carmakers

China is allowing foreign auto-parts makers to conduct research and production in the country without partnering with local companies in a trial move experts believe may signal the imminent removal of investment restrictions on international carmakers.

The nation promulgated an industrial policy in 1994 that demands foreign automakers and spare-parts producers who want to localize production in China must establish joint ventures, in which their stake must not exceed 50 percent. The State Council said on 19 July that makers of auto electronic systems and batteries for new-energy vehicles in the free trade zones of Shanghai, Tianjin, Guangdong and Fujian are exempt from the policy, and revisions will be made based on this latest move.

Implementation of policy allowing complete foreign ownership in E-Commerce operations nationwide in China

The Ministry of Industry and Information Technology Issues the First Value-Added Telecom Services License to an E-Commerce Wholly Foreign Owned Enterprise. The following certain practical issues should be noted:

1. Which types of FIEs should apply for a VAT Services License for carrying out e-commerce operations?

FIEs meeting any of the following conditions in relation to e-commerce business defined above should apply for or renew their VAT Services Licenses to include the E-Commerce Business Scope.

- FIEs intending to start their e-commerce business;
 - FIEs already conducting e-commerce business, which is in the form of either (i) only providing an online platform for third-party sellers (such as taobao.com), or (ii) selling its own traded goods online and also providing an online platform for third-party sellers (such as amazon.com), yet not having obtained a VAT Services License; or
 - FIEs already conducting e-commerce business and having already obtained a VAT Services License, but the telecom service type on such current VAT Services License does not include the wording “online data processing and transaction processing business (operational e-commerce business).”
2. What examination and approval procedures will an e-commerce FIE go through when applying for or renewing a VAT Services License for online data processing and transaction processing business (operational e-commerce business)?

Based on the Telecom Provisions, an FIE engaging in e-commerce business should go through the following key steps when applying for or renewing a VAT Services License.

- submit required application documents to MIIT (for cross-province services) or its provincial counterparts (for single-province services) for obtaining the *Opinion Letter on*

Approval through Examination on Foreign-Invested Operation of Telecom Services (Opinion Letter);

- submit required application documents along with the Opinion Letter to the Ministry of Commerce and its local counterparts (for cross-province services) or its provincial counterparts (for single-province services) for obtaining a new Approval Certificate (“*Pi Zhun Zheng Shu*” in Mandarin); and
- submit the new Approval Certificate to MIIT for obtaining a new VAT Services License.

3. Another noteworthy issue: registered capital

The registered capital of an FIE engaging in VAT Services (including e-commerce operations), as one of the licensing requirements, is still subject to the Telecom Provisions. Those require such FIE (including a WFOE) to maintain a registered capital of at least RMB 10 million (for cross-province services) or at least RMB 1 million (for single-province services). FIEs must still meet the requirements on registered capital stipulated in the Telecom Provisions when applying for or renewing their VAT Services License.

China will allow wholly-owned foreign steel plants in four free trade zones

China will allow foreign companies to set up wholly-owned steel manufacturing units in four pilot free trade zones in the municipalities of Shanghai and Tianjin, as well as Guangdong and Fujian provinces, as part of a policy relaxation designed to attract foreign investment in various industries. Foreign firms will no longer be subject to various qualification requirements and stake control restrictions when investing in China’s steel industry, according to a circular by the State Council posted on the central government’s website.

China relaxes visa rules for Guangdong free trade zone

The Ministry of Public Security has promised a series of favorable policies for skilled foreign workers in the pilot free trade zone in South China’s Guangdong province. Among the 16 measures are simplified permanent residence application procedures and fast-track approvals for skilled foreign workers in the zone, support for foreign students’ start-ups, accelerated visas and residency application channels for overseas Chinese and lower thresholds for investors in the zone to apply for permanent residency, according to a ministry statement released on 18 July 2016. The measures will take effect on 1 August.

Environment

Cautious welcome for amendment to China’s wildlife protection law

Chinese government announced a long awaited amendment to a wildlife protection law on 1 July but animal rights activists expressed disappointment that the law still treats native animals as a resource to be commercially exploited.

Animal rights activists said the amendment had made some progress in deleting a controversial phrase in earlier drafts that the law’s purpose was to “regulate the use of wildlife

resources”. Tiger bones and rhino horns are banned for use in traditional medicine by a separate State Council directive, but bear bile farms using caged live animals are considered legal under the amendment.

Customs

China amends customs inspection regulations

China unveiled a decision to amend regulations on customs inspections in response to greater need for convenient customs clearance. The amendment includes measures to facilitate inspections, optimize inspection procedures and punish violations, according to the decision by the State Council posted on the official website of the Chinese government.

The amendment showed that customs authorities have the right to collect goods from industry associations, government organs and companies, as well as information on foreign trade activities from associations. Authorities can set the focus of an inspection based on a company’s credit and risk level. The amendment raised the penalty amount for violations discovered during the inspection. The decision also restricted the conditions of inspection without prior notice to certain emergency situations, such as highly suspicious targets, and when goods and related documents could be transferred, hidden or destroyed. The amendment will become effective on 1 October, 2016.

Investment

China adopts law regulating asset appraisals

China’s top legislature on 1 July adopted a law on asset appraisal, the first law governing the country’s asset appraisal industry since it emerged three decades ago. The law, which started to be drafted in 2006, was adopted after a fourth reading at a bi-monthly session of the National People’s Congress (NPC) Standing Committee. It will take effect on 1 December, 2016.

China used to have an administrative regulation on state-owned asset evaluation, which was promulgated by the State Council in 1991. The new law allows certified appraisers who have passed national exams, as well as those who have expertise and hands-on experience in asset evaluation, to practice asset appraisal. Foreign nationals cannot become certified appraisers in China by sitting the exams, but they still can provide asset appraisal services in China. The law does not prohibit foreign institutions from practicing asset appraisal in China, but when foreign institutions provide appraisal services in fields pertinent to China’s economic security, authorities should conduct necessary reviews.

Entertainment & Media

China eases cross-border film and media regulations

On 18 May, 2016, China’s media regulator, the State Administration of Press, Publication, Radio, Film and Television (“SAPPRFT”), issued a decision (the Decision on the Amendment of Certain Rules (“Decision“)) amending five of its rules. This was part of a broader government-wide effort to reform and simplify China’s complex and sprawling system of

administrative approvals across all fields. Three amendments included in the Decision in particular will have an impact on those involved in cross-border film and media activities.

Movie negatives

Negatives and workprints for Sino-foreign co-produced films shot in China can now be processed or post-produced overseas without any special SAPPFRFT approvals. Furthermore, producers of Sino-foreign co-produced films will no longer need to report in their applications to SAPPFRFT for initial project approval where the processing and post-production of their film negatives or workprints will take place.

Film exhibitions

Film exhibition events in China co-hosted with foreign countries are encouraged, and the door is open to a potentially wide range of work units in China to host them, subject to SAPPFRFT approval.

Participation by foreigners in domestic TV series

Censorship of Chinese domestic TV series that involve foreigners in their creation has been decentralized and delegated to provincial-level SAPPFRFT, putting such series on an equal footing with Chinese domestic TV series without foreign involvement.

Exceptions to this provincial-level delegation apply. Censorship will still be at the central level for a Chinese domestic TV series if:

- it is produced by production entities who, according to regulations, record file directly with Central SAPPFRFT (the production entities of departments directly under the Central Committee of the Communist Party of China or of centrally governed state-owned enterprises);
- a provincial-level authority submits it to the central-level authority for censorship, or;
- the series raises social controversy or the series ought be censored at the central level in the public interest.

Internet

Second reading of china's draft of Cybersecurity Law

On 27 June 2016, the Standing Committee of the National People's Congress of the People's Republic of China held a second reading of the draft Cybersecurity Law (the "second draft"). The law is aimed at strengthening the protection and security of key information infrastructure and important data in China. The first draft of the Cybersecurity Law was published for comment almost a year ago, but the National People's Congress has not published the full second draft of the Cybersecurity Law to date.

According to the website of the National People's Congress, the second draft of the Cybersecurity Law stipulates that the State will adopt priority protection over key information infrastructure that would seriously jeopardize national security and the public interest if data was damaged or leaked. The second draft also reiterates the requirement that key information infrastructure operators should store, within the territory of China, personal information and other important business data collected and produced during operations. If it is necessary to

transfer such information and data to overseas individuals or organizations for business requirements, a security assessment should be conducted. The second draft has a new provision requiring that information collected by competent government authorities during their protection of key information infrastructure be used only for the protection of network security. The second draft additionally states that big data applications must anonymize personal information, and that the State will support research on protecting data and promoting security. Network operators will be required to comply with social morals and business ethics, and will be subject to governmental and public supervision. In addition, network operators will be required to preserve web logs for at least six months, and cooperate with the supervision and inspection of competent government authorities.

This update is aimed at keeping our clients and partners informed as to the latest legal and business developments in the Greater China region. Whilst every care has been taken to ensure the accuracy of the information contained in this update, it should not be relied upon for any purpose prior to formal legal advice being obtained.