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China Update

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Business News

China's rustbelt shows signs of economic recovery

China's northeastern region is showing signs of economic recovery since the traditional heavy industries lost shine, figures released at the annual provincial sessions show. By seeking new growth engines in services, high-tech manufacturing and other sectors, the economy of Jilin province expanded 6.9 percent last year, exceeding the national average for the first time since 2014. Technology was a major engine driving the economy, contributing 53.6 percent of the growth. A three-year plan that began last year to establish and develop emerging industries helped achieve 7.7 percent growth in those industries, such as high-speed train manufacturing and satellite operations.

China promises more market access for foreign players

The State Council unveiled a long list of policy guidelines on 17 January, promising wider market access for foreign investors. According to the guidelines, China would lower market barriers for overseas financial firms and make it easier for foreign investors to invest in the manufacturing and energy sectors. It also urged local authorities to give equal treatment to foreign businesses in areas like licensing and government procurement. Overseas businesses would also be encourage to launch initial public offerings and sell bonds in China. In addition, foreign firms would get a 30 per cent discount on land use costs.

SAFE acts to ward off financial speculation

The State Administration of Foreign Exchange (SAFE) recently required the existing rule on information reporting regarding the purpose of foreign exchange purchases be implemented in a much stricter way, to intensify pressure on capital outflows and contracting foreign exchange reserves. Those who exchange foreign currencies are now required to give more detailed proof of their planned activities falling into such approved categories as tourist travel, education,

business travel, visiting relatives, medical treatment, imports of goods, buying non-investment insurance products and consultation services.

China and Switzerland agreed to upgrade the free trade agreement

China and Switzerland agreed on 16 January to upgrade their free trade agreement, amid both countries' calls for opposition to protectionism. Both sides signed 10 documents to boost cooperation in areas including free trade, clean energy, sports, customs and intellectual property. The China-Switzerland FTA, which waived most tariffs on goods, became effective in July 2014. Talks began in 2011, and the two sides sealed the deal in July 2013. Switzerland is the first continental European country to conclude and implement a free trade agreement with China.

China issues first certificates for overseas NGOs

The Chinese government has issued registration certificates for over 30 offices of NGOs from Hong Kong, Taiwan and a number of foreign countries. 20 NGOs from outside the Chinese mainland, such as the World Economic Forum and the Paulson Institute, were granted certificates for their Beijing offices. They are among the first batch of NGOs to secure such certificates from the overseas NGO management office of the Beijing Municipal Public Security Bureau, since a new law on overseas NGOs took effect this year.

China gives 'hedge fund brother No.1' 5 1/2 years in prison

China sentenced former hedge fund manager Xu Xiang to five-and-a-half years imprisonment for market manipulation, in one of the most high-profile cases following the 2015 market rout. Xu, known as "hedge fund brother No. 1" for his winning record in the stock market, was charged with colluding to manipulate share prices in an operation from 2010 to 2015. Wang Wei, another defendant that Xu collaborated with, was sentenced to three years in jail while Zhu Yong, a third, was given two years with a three-year reprieve on the same charges. The Qingdao court fined the three a combined RMB12.05 billion (US$1.76 billion), the largest ever in China for individual economic crimes, with 11 billion yuan of it imposed on Xu alone. The three used an accumulated RMB40 billion to manipulate the shares and illegally pocketed about RMB7 billion.

China tightens Great Firewall by declaring unauthorised VPN services illegal

China's Ministry of Industry and Information Technology released a notice on 22 January that it has launched a 14-month nationwide campaign to crack down on unauthorised internet connections, including virtual private networks (VPN) services. According to the notice, all special cable and VPN services on the mainland needed to obtain prior government approval – a move making most VPN service providers in the country of 730 million internet users illegal, and the "clean up" of the nation's internet connections would start immediately and run until 31 March 2018. On 24 January, the Ministry posted a statement and clarified that the crackdown would not affect multinationals that had obtained governmental approval to use cables or other means of cross-border connectivity.

China orders registration of App stores

The Cyberspace Administration of China published a notice on 13 January that it ordered the registration of app stores across the country, to ensure that it is clear who takes responsibility if apps, or app stores, are found to engage in illegal practices. The Cyberspace Administration requires that its offices across China should ensure that records are kept on the app stores, starting 16 January.

Legal News

Intellectual Property

China amended the Trademark Examination and Trial Standards

On 4 January 2017, the China Trademark Office (CTO) and Trademark Review and Adjudication Board (TRAB) issued the amended Trademark Examination and Trial Standards (Standards), to match the latest Trademark Law. The main amendments are listed below.

- Examination of a Sound Trademark - The new Standards define the sound trademark as a trademark consisting of the sound itself which is used for distinguishing the source of goods or services. A sound mark may be constituted by a piece of music, the sound of nature, human or animals, or their mixture. Where an application is filed for registering a sound trademark, it shall be stated in the application. A sound sample that meets the prescribed requirements shall be submitted – the sound sample should be a proper .wav or .mp3 file stored in a CD-ROM.
- Examination Opinion issued by the CTO - The new Standards clarify that the Examination Opinion is issued when the CTO considers a trademark registration application violates relevant provisions of the Trademark Law, but there is a possibility that the application consists with exception situations. For one trademark registration application, the Examination Opinion can be issued by the CTO to the applicant only once.
- Application of Article 50 of the Trademark Law - Article 50 stipulates that where a registered trademark has been cancelled, invalidated or has not been renewed upon expiration, the CTO shall not approve any application for the registration of a trademark that is identical with or similar to the said trademark for a period of one year from the date of cancellation, invalidation, or the date of expiration. The Standards reiterate the legislative purpose of Article 50, and also clarify that Article 50 is not applied, if a registration mark is canceled due to 3 years of non-use, and when the registration application is re-filed by the original registrant. Since the new Trademark Law commenced operation on 1 May 2014, we have seen a few applications were rejected based on Article 50.
- Related Party's Filing in Bad Faith - The Standards clarify that the "contractual or business relationship" referred to in Paragraph 2 of Article 15 include trading relationship; commissioned processing; joining relationship (trademark licensing); investment; sponsorship; joint; business investigation, consultation relationship;

advertising agency, and "other relationship" referred to in the provisions above include kinship and affiliate. The Standards also list the typical evidence that may show the existence of the contractual, business or other relationship, including: contracts, letters, transaction documents, and procurement information which may show the agreement and business, corporate payroll, labor contracts, social insurance, medical insurance materials, and household registration certificate.

Australian PENFOLDS wine business wins trademark dispute in China

Li Daozhi, a Chinese person filed an application (Application No.5662026) to register the "Ben Fu" mark (PENFOLDS in Chinese characters) in relation to various goods, including wines, in class 33 on 16 October 2006. This application was registered on 28 July 2009, and the registered trademark was assigned to Li Chen, a Hispanic Chinese, on 20 November 2010. South Corp Brands Pty Ltd (South Corp Brands), a company located in Australia filed a non-use cancellation action against the "Ben Fu" trademark with the CTO and the action was preliminarily accepted by the CTO on 3 September 2012. Li Chen submitted the evidence of use of its registered trademark "Ben Fu" within the required period of time. However, the CTO determined that the evidence of use filed by Li Chen was invalid and canceled the "Ben Fu" trademark No.5662026 on 24 December 2013.

Dissatisfied with the decision issued by the CTO, Li Chen filed an appeal with the TRAB and also filed some evidence of use, especially including 1) a Trademark License Contract signed by Li Chen and Zefeng Company on 23 July 2012, referring to that Zefeng Company was consented to produce and sell wines from 23 July 2012 to 23 July 2014; and 2) a notarized invoice of RMB50,000 issued by Kunming Xiatu Trading Co., Ltd. (Xiatu Company) to Zefeng Company for sale of 996 bottles of "Ben Fu" wines. The TRAB considered that the evidence above could effectively prove the licensee's commercial use of the trademark in relation to the designated goods. The authenticity of the evidence above was recognized by the TRAB, since not sufficient opposite evidence was filed by South Corp Brands. The TRAB maintained the trademark based on the above.

South Corp Brands appealed to Beijing IP Court. Through trial, Beijing IP Court withdrew the decision issued by the TRAB, on the grounds that the evidence listed above was insufficient to prove the use of the trademark at issue in relation to the designated goods within the designated period under the Trademark Law. Specially, 1) no royalty was referred to in the Trademark License Contract, and no evidence showing the special commercial relationship between Li Chen and Zefeng Company was filed, which was inconsistent with common sense and business practices; 2) Li Chen first set up a trademark license with Xiatu Company, and then Xiatu Company issued an invoice of RMB50,000 to Zefeng Company on the day when the trademark license contract was signed by Li Chen and Zefeng Company. It was not established that an invoice was issued before sale of the goods, so it was unacceptable that real sales existed between the parties; and 3) both Xiatu Company and Zefeng Company were the licensees of the trademark at issue, so the purchase and sale relationship between them could not be regarded as real use of the trademark during commercial circulation.

Li Chen appealed to Beijing High People's Court. During the second instance, Li Chen claimed that Zefeng Company processed and produce the products from him based on friends' trust and there was real license between them, but denied that he signed the Trademark License Contract with Zefeng Company. The High Court found that Li Chen made different statements during the TRAB and court procedures, regarding the same Trademark License

Contract, which violated the principle of good faith, and that only his statement during the TRAB procedures was accepted. It could not be determined that the trademark at issue had the function of distinguishing the source of the goods, through the evidence alone, namely, such use of the trademark at issue could not constitute real commercial use. Some other self-made evidence was not accepted by the court, either. In the absence of evidence to the contrary, the court considered that the goods shown in the sale invoices submitted by Li Chen were actually provided by South Corp Brands. Relevant public would believe that the wines under the trademark at issue were provided by South Corp Brands, since both South Corp Brands' registered trademark and the trademark at issue co-existed in relation to the same goods, and the "Ben Fu" trademark was labeled on the wine bottle provided by South Corp Brands. Based on the above, the High Court issued the final decision on 15 December 2016 and rejected Li Chen's appeal.

China considers establishing IP appeal court

China's Supreme People's Court published the Opinion of the Supreme People's Court on Fully Exerting the Function of the Trial Function and Practically Strengthening the Judicial Protection of Property Rights on 29 November 2016, referring to that it will speed up the establishment of detached tribunal and discuss setting up IP appeal court. The Opinion also notes that Supreme Court will actively involve in the amendment the relevant laws and improve damage compensation system for IP infringement.

Clarification of "use within original scope" clause in trademark law protects prior use against infringement

On 18 October 2001, Yunyan District Qihang English Training School of Guiyang City filed an application to register the trademark QIHANG SCHOOL in Chinese characters and Pinyin in Class 41 for "educational services". The school granted a license for the exclusive use of the trademark to Beijing Zhongchuang Dongfang Education Technology Co., Ltd (Zhongchuang). Zhongchuang discovered that two other schools – Beijing Haidian District Sailing Test Training School and Beijing Sailing Century Technology Development Co., Ltd. had been using the mark SAILING POSTGRADUATE ENTRANCE EXAM in Chinese characters on their shared website. The mark had been used on all promotional materials, business cards and textbooks, as well as in franchising operations. Zhongchuang brought an action against the sailing school and the sailing company for trademark infringement based on similarity to its licensed mark. In response, the sailing school and the sailing company submitted that they had been respectively established in 1998 and 2003, and that between 1998 and 2001 the sailing school had authored various textbooks on the postgraduate entrance exam, published by China Renmin University Press. The sailing school and sailing company argued that their use of the mark did not constitute infringement as this was their reputable business and trade name, and had been registered and used before the filing date of the plaintiff's mark, which was finally supported by both Beijing Haidian District People's Court and Beijing IP Court, under Paragraph 3 of Article 59 of the Trademark Law. This case demonstrates that evidence of establishment and prior use of a business and trade name is sufficient against claims of similarity.

Chinese invention patent applications rank first in world for 6 consecutive years

By the end of December 2016, China had received a total of 1.34 million invention patent applications in 2016, a year-on-year increase of 21.5 percent, making it the third country in the

world to claim this achievement. The first two countries are the U.S. and Japan. Statistics show that SIPO granted 404,000 invention patents in 2016, of which 302,000 were for domestic inventions, up 14.5 percent. Huawei took the lead in the number of invention patent applications, while State Grid ranked first in the number of invention patents granted.

China plans introduction of oral hearings for trademark review cases

On 22 January 2017, the State Administration of Industry and Commerce (SAIC) released a draft of Measures for Oral Hearing of Trademark Review Cases for public opinion solicitation. The proposed Measures provide that the oral hearing may be initiated upon the concerned parties' request or determined by the TRAB on the basis of the case's circumstance. The TRAB will have the right to decide whether to allow the oral hearing and notify the concern parties of its decision in written. In case of allowing the oral hearing, the concerned parties shall submit a written reply within 7 days after the receipt of the said decision above. The oral hearing will include following steps:

- Organization of a collegiate bench, which is composed of three or more person in odd number;
- Confirmation the concerned parties' identification;
- Investigation, including clarifying the major issues of the dispute, stating review requests and responding by the concerned parties;
- Presentation of all the evidence and cross-examination thereof by the concerned parties;
- Witness testifying and inquiry (if any);
- Final statement by the concerned parties.

The whole process will be recorded in written, and such record will be confirmed and signed by the concerned parties after the hearing. It can be seen that the oral hearing procedures are quite similar to those in a court trial.

Beijing IP Court heavily fines company for resisting evidence preservation order

The Beijing IP Court recently made a decision fining the defendant in a patent infringement suit RMB 1 million (US$ 144K) for failure to comply with the court's order to turn in its financial records and samples of the accused product. The amount is the upper limit of fines a court may impose in a civil action as provided in the PRC Civil Procedures Law for such an offense. Based on evidence collected in a trade show held in Beijing, the plaintiff, Qingdao Ke Ni Le Mechanical Equipment Co., Ltd., the owner of a utility model patent called "transmission device of planetary concrete mixers, filed an infringement suit with the Beijing IP Court, against Qingdao Di Kai Mechanical Equipment Co., Ltd. Based on the plaintiff's application, the court issued the initial order to the defendant to turn in its financial records and samples of the accused product. When the judge served the defendants onsite, the defendant refused to submit the requested records or samples. The judge then asked the defendant to turn in the materials within 3 days. The defendant's employees stated that they are clear with the court's request but refused to sign the court official conversation transcripts. Two months later, in a pre-trial court session, the judge again asked the defendant to turn in the requested materials within 3 days, but the defendant still did not comply. In the subsequent trial hearing, the defendant still refused to comply. The IP Court's decision is an obvious signal that it now takes its evidence preservation order seriously.

Competition

First court ruling on a private antitrust litigation sets a high standard and burden of proof

In one of the most notable decisions at the end of 2016, the Beijing High Court rejected an appeal in China's first follow-on private action in Junwei Tian v. Beijing Carrefour Shuangjing Store and Abbott Shanghai. In August 2013, the National Development and Reform Commission (NDRC) fined Abbott and certain other suppliers of infant formula for entering into resale price maintenance (RPM) agreements with distributors and retailers. Relying on the NDRC's decision, the plaintiff claimed that Abbott and Carrefour had engaged in illicit conduct which resulted in him paying a higher price for his tin of infant formula. The plaintiff sought damages of around RMB10, a symbolic amount but which he claimed represented the overcharge he had paid. The Beijing IP Court dismissed the plaintiff's claim at first instance in December 2015, citing lack of evidence to support both the existence of, and loss caused by, the alleged anti-competitive agreement. The Beijing High Court's ruling confirms the judgment of the IP Court and is instructive for the following two main reasons: 1) it is the first published judgment in China involving a follow-on private action; 2) it sets a high burden for plaintiffs to discharge even in circumstances where a Chinese agency has already found an antitrust infringement in separate administrative proceedings.

MOFCOM fines company for failure to file foreign-to-foreign transaction in China

On 4 January 2017, China's Ministry of Commerce (MOFCOM) published its decision to fine Canon Inc. for failure to notify its acquisition of Toshiba Medical Systems Corporation (TMSC), a Japanese company active in the medical equipment sector, under the Anti-Monopoly Law. Canon acquired TMSC from Toshiba Corporation by way of a 100% share acquisition. The transaction was structured in two steps: 1) Canon paying the entire consideration for TMSC to Toshiba without acquiring any voting rights; and 2) Canon acquiring 100% of TMSC. MOFCOM considered that while both steps were closely related and essential for Canon to complete its acquisition of TMSC, therefore Canon should have notified the transaction to it before completion of step one. Failure to do so meant that Canon had implemented at least parts of the transaction (step one) before obtaining MOFCOM clearance. This infringed the Anti-Monopoly Law, which prohibits parties from taking steps to implement a transaction pending MOFCOM approval. MOFCOM fined Canon RMB 300,000 (US$ 43,000) for its failure to notify even though the transaction raised no competition concerns. This is the first foreign-to-foreign transaction that has attracted a MOFCOM penalty for failure to notify. It demonstrates MOFCOM's determination to clamp down on transaction structures deliberately designed to avoid or defer merger filings.

NDRC issues assesses antitrust penalty against Medtronic

The National Development and Reform Council (NDRC) issued an antitrust penalty against Medtronic, a world-famous medical equipment manufacturer on 8 December 2016. Medtronic (Shanghai) Management Co., Ltd was assessed a penalty of RMB118 million for its limitation on resale prices, amounting to about 4% of its 2015 sales volume of the product involved. This case was China's first antitrust case involving medical equipment. The NDRC Antitrust Division notes that medicine is of vital importance to people's livelihoods, and that illegal monopolies render market mechanisms useless and price competition insufficient, since every dime added to costs is likely to be passed on to the consumer.

Foreign Investment

China releases guidelines for foreign private investment registration

The Asset Management Association of China released guidelines for foreign asset managers to launch private investment funds through Chinese subsidiaries on 5 January. The Registration Instruction for Wholly Foreign-owned and Foreign-based Joint Venture Private Equity Investment Fund Managers details procedures and documents required for foreign asset management companies to obtain private fund management licenses in China. The guidelines stipulate that foreign-invested private equity managers (FIPE managers) are subject to a number of additional requirements beyond compliance with regulations applicable to Chinese domestic fund managers. These additional requirements include:

- Investment Process - FIPE managers must ensure that their China and domestic business are separate systems, and investment decisions should be made independent of offshore systems or institutions.
- Investment Practitioners - All parties including the legal representative, managing partner, general or vice managers, investment directors, compliance and risk management directors and other senior executives of FIPE managers must be fully qualified to fund practices in China.
- Corporate Structures - FIPE managers are required to report various information on their corporate structures, including information about their subsidiaries, branches and affiliates located in China and other overseas affiliates that might significantly impact their investment business.

China issues guidelines to attract foreign investment

On 17 January 2017, the State Council released the Circular on Several Measures on Expanding the Opening to and Active Use of Foreign Investment. The guidelines set out the blueprint for China's policies on attracting foreign investment in the upcoming years. According to the guidelines, China will focus on liberalisation of the following sectors to foreign investment:

- financial sectors, such as banks, securities companies, fund management companies, futures companies, insurance firms and insurance agencies;
- accounting and auditing services, architecture design and credit-rating services;
- manufacturing sectors, such as manufacturing of rail transportation equipment and motorcycles, edible fats and oils processing and production of fuel ethanol;
- unconventional oil and gas production, such as development of shale deposits and shale gas; and
- for Sino-foreign cooperative projects of oil and gas exploration, the current approval regime will be replaced by a record-filing system.

Internet

Draft of E-Commerce Law published for comment in China

The Standing Committee of the National People's Congress of China published a full draft of the E-commerce Law (Draft) in December 2016 for public comments. The main provisions of the Draft are outlined as below.

- The Draft applies to e-commerce activities within China or e-commerce activities involving either domestic enterprises that operate an e-commerce business or customers located in China.
- The Draft provides specific protections for "personal information" of e-commerce users, defined as information which can be used, separately or in combination with other information, to identify a specific user.
- Enterprises operating an e-commerce business, which include e-commerce third-party platforms and e-commerce operators, are required to (1) follow the principles of legitimacy, rightfulness and necessity, (2) publish their rules on the collection, processing and use of personal information in advance and (3) obtain the consent of their users to those rules.
- The Draft prohibits e-commerce enterprises from forcing users to consent to their collection, processing and use of personal information by threatening to cease the provision of services.
- The processing and use of personal information by e-commerce enterprises must comply with the enterprise's published rules on processing as agreed upon with its users.
- Before they may exchange and share data and information related to e-commerce, e-commerce enterprises are first required to irreversibly de-personalize the data and information in such a way that it can no longer be used to identify a specific individual (or an associated computer terminal).
- Upon expiration of a statutory or agreed-upon retention period, an e-commerce enterprise is required to cease its processing and use of relevant personal information, or delete or destroy such information.

Draft legislation to affect China cloud services market access

The Ministry of Industry and Information Technology (MIIT), issued a draft Circular on Regulating Business Activities in the Cloud Services Market for public comment on 25 November 2016. The stated aims of the draft Circular are to improve the cloud services market environment and further regulate business activities in this sector. In addition to introducing a number of minimum service requirements that cloud operators must observe, the draft Circular is of particular interest to the industry due to the rules it sets out for market participation by foreign technology companies, including through cooperation with license holders in China. The keypoints are listed below.

- Licensing Requirements for Providing Cloud Services – Cloud services refer to the IRC services subcategory under the category of Internet data centre services, a Category One ValueAdded Telecommunications Services under the 2015 Catalogue. Cloud service business operators within the PRC must strictly comply with the requirements with respect to funding, personnel, venues, and facilities under the various laws applicable to VATS, and are subject to passing technical assessments and

obtaining VATS licenses.

- VATS Licensing for Entities with Overseas Investment - Overseas investors investing in and operating cloud services business within the PRC must apply to establish a foreign-invested telecommunications enterprise which has been issued a corresponding VATS operating permit.
- Collaboration between Cloud Service Providers and Other Partners - Cloud services operators engaging in technical collaborations with relevant organizations have an affirmative duty to report the details of their cloud services collaboration in writing to the telecommunications administrative authority.

Arbitration

China extends access to offshore arbitration

On 30 December 2016, the Supreme People's Court (SPC) issued the Opinion on the Provision of Judicial Safeguards for the Construction of Pilot Free Trade Zones which sets out guidelines for courts handling cases involving pilot free trade zones, with an emphasis on reform and innovation. The Opinion mainly states the following:

- If two wholly foreign owned enterprises (WFOE) that are registered within a pilot free trade zone enter into an agreement to submit disputes to arbitration seated outside mainland China, the courts should not hold such arbitration agreement as invalid merely on the ground that the dispute concerned is not foreign-related.
- If a party opposes the recognition or enforcement of an arbitration award rendered in a foreign-seated arbitration merely on the ground that there is no foreign-related element, the courts shall not uphold the objection if (a) at least one of the parties to the arbitration dispute is a foreign invested company registered within a pilot free trade zone; (b) the parties entered into an arbitration agreement submitting disputes to arbitration seated outside mainland China; (c) the opposing party was the claimant who initiated the foreign-seated arbitration in the first place, or the opposing party was the respondent who participated in the foreign-seated arbitration without challenging the validity of the arbitration clause throughout the arbitration.
- An arbitration agreement between two companies registered within the pilot free trade zones, which provides for arbitration in a specified location in mainland China pursuant to specified arbitration rules and by specified arbitrators may be held valid. If a court is minded to rule such an arbitration agreement as invalid, it should report its intended decision to a higher court for further review. If the higher court holds the same view, it should report its intended decision to the SPC.
- Arbitration administered by non-Chinese arbitration institutions in China is allowed, if all parties to the arbitration are companies registered within a pilot free trade zone.

The Opinion clearly signals that the SPC is gradually adopting a more relaxed and liberalised approach to arbitration, albeit within the limit of statutory constraints.

China court refuses ICC arbitration award under public policy exception

In respect to the dispute concerned a joint venture contract between a Chinese entity, Taizhou Haopu Investment Co., Ltd. and a Swedish entity, Wicor Holding AG, enforcement of the International Chamber of Commerce (ICC) arbitration award was denied by the Taizhou Intermediate People's Court of Jiangsu Province to avoid violating the "societal public

interest" of the PRC on 2 June 2016. This is the second case recently where the Chinese Court has relied on the public policy exception under Article 7 of the Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong SAR to refuse to enforce a foreign arbitral award.

In 2011, Wicor commenced an ICC arbitration against Taizhou Investment in Hong Kong. The ICC Tribunal issued final arbitration award dated 18 July 2014, with an addendum dated 27 November 2014. Wicor then applied for enforcement of the Award before Taizhou Court. Taizhou Investment argued that the Arbitration Agreement has already been recognised as invalid 19 months prior to the Award, the ICC Tribunal ignored that decision and held the Arbitration Agreement was valid, which violated the judicial sovereignty of the PRC. As a result, enforcement of the Award in Taizhou Court will be contrary to the public policy of the PRC.

Commercial parties should accordingly ensure that they consider the validity of the arbitration clause under Chinese Law before the contract is signed.