



MMLC Group 

北京铭辉达知识产权代理有限公司

China Update

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Business News

China fines shipping firms US\$63 million for price collusion

China fined eight shipping lines RMB407 million (US\$63 million) in total after finding them responsible for price collusion in the transportation of vehicles and heavy machinery. Japan's Nippon Yusen KK, Mitsui OSK lines, Kawasaki Kisen Kaisha and Eastern Car Liner Ltd., Korea's Eukor Car Carriers Inc., Norway's Wallenius Wilhelmsen Logistics AS, Chile's Cia. Sud Americana de Vapores SA and its shipping line were the eight indicted after a year-long investigation, and these companies acknowledged wrongdoing, the National Development and Reform Commission (NDRC) said in a statement on 28 December 2015.

VAT reform to go across all industries in 2016

China's value-added tax (VAT) reforms will be implemented across all industries in 2016, and China will replace business tax with VAT in the remaining four industries -- finance, construction, property and consumer services. A pilot scheme on business tax-to-VAT was tested in 2012 and gradually been expanded to industries including transportation, telecommunication and postal service. One objective of VAT reform is to alleviate the corporate tax burden. VAT can encourage firms to outsource more services rather than adopting a do-it-all business model, promoting the development of the service sector and the upgrading of manufacturing industries.

Chinese securities regulator to hand over IPO vetting duties to stock exchanges

The Chinese government has backed a reform plan for the mainland China's securities market aimed at making it easier for companies to go public. The China Securities Regulatory Commission will no longer manage the process for initial public offerings. Instead, the stock exchanges in Shanghai and Shenzhen will vet applicants and grant approval. The government

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

will also let the market decide on the price range for share issues, minimising the commission's role in the process.

China says AIIB up and running early in the new year

The China-backed Asian Infrastructure Investment Bank (AIIB) has been formally established and is expected to be operational early 2016. The bank's establishment came after 17 funding members of the AIIB, which account for just over 50 percent of its share capital, ratified an agreement on the bank. The bank will initially focus on financing projects in power, transportation, and urban infrastructure in Asia.

Airbus gets US\$2.27 Billion China Southern Airline plane order

China Southern Airlines Co., Asia's biggest carrier by fleet size, announced an order to purchase 10 Airbus Group SE wide-body aircraft to meet the growing demand for travel in the world's most populous country. The order for 10 A330-300 aircraft is valued at \$2.27 billion at list prices. The planes, which are for delivery between 2017 and 2019, will help increase the airline's capacity by 4 percent.

China to double onshore Yuan's trading hours from January 2016

China will double the yuan's onshore trading hours from January as it prepares for the currency's addition to the IMF's reserves basket in October 2016. Trading will be extended to 11:30 p.m. Beijing time starting Jan. 4. The currency's spot rate at 4:30 p.m., the current closing time, will still be considered the day's last price. It will allow more foreign institutions with significant yuan trading volumes to participate in the onshore foreign-exchange market.

China's M&A set to hit new heights in 2016

China Inc's outbound acquisitions spree in 2015 helped push Asia-Pacific's annual deal value past US\$1 trillion for the first time, with 2016 set for a bigger splurge still as Chinese firms buy even more assets abroad to sidestep slowing domestic growth. Asia-Pacific M&A totaled US\$1.2 trillion so far this year, up 46 percent from last year, as China rediscovered an appetite for outbound deals after 2014's 20 percent drop. With private companies like Fosun International Ltd in the vanguard, Chinese firms spent a record US\$102 billion so far in 2015.

China's record M&A boom in Korea furthers Xi's new economy dream

Companies in China are buying their South Korean counterparts at a record pace, tapping into one of the world's most innovative countries to accelerate President Xi Jinping's push for an economy led by technology and consumer services. Chinese investments in Korean companies soared 119 percent this year to US\$1.9 billion, led by deals in the insurance, technology, health-care and cosmetics industries.

Alibaba to invest US\$1.25 billion in Chinese online food delivery service

Alibaba Group Holding Ltd has agreed to invest US\$1.25 billion in Chinese online food delivery service Ele.me. Alibaba will obtain a 27.7 percent stake in Ele.me, becoming its biggest shareholder. Ele.me, which roughly translates as 'Hungry Now?', is part of a trend in

China for what is known as online-to-offline (O2O) services. These include taxi hailing and restaurant review apps that link smartphone users with offline businesses.

Alibaba stepping up rural presence

Alibaba Group Holding Ltd said on 23 December 2015 that it would continue to make more investments to boost its presence in rural areas. The company, which announced a RMB10 billion (US\$1.54 billion) rural investment plan, is considering more steps to improve the living conditions of farmers. Alibaba launched its first “Stocking for China’s Lunar New Year Festival” program at an e-commerce summit in Yan’an. The program enables farmers to sell their agriculture products in cities through the Alibaba platforms.

Chinese lawmakers to consider registration-based stock listing reform

Chinese lawmakers will deliberate on a registration-based stock listing, proposed by the State Council during the legislative session which began on 21 December in Beijing. If approved, the State Council will be able to change the listing system on the Shanghai and Shenzhen bourses from approval-based to registration-based any time within the next two years, easing funding difficulties for companies. The new system means the bourses will take over IPO approval, and clear the backlog of companies on the waiting list.

China’ electronics, IT manufacturing industry grows fast

The added value of China’s electronics and IT manufacturing industry rose by 10.8 percent year on year from January to November in 2015, according to the Ministry of Industry and Information Technology. The statistics only covered the enterprises whose annual business revenue each exceeds RMB20 million (US\$3.09 million). The growth rate was 4.7 percentage points higher than the average level of the country’s entire industrial sector in the period.

Mainland, HK approve first funds for mutual recognition

Securities regulators in the Chinese mainland and Hong Kong approved the first batch of cross-border mutual funds on 18 December, marking further liberalization of the Chinese capital market. Four mainland and three Hong Kong funds gained the regulatory green light to sell their investment products to investors in each other’s markets. The mutual recognition of funds between the mainland and Hong Kong will allow foreign investors to gain greater access to the Chinese stock and bond markets, while enabling foreign asset management firms to tap into the growing wealth held by mainland investors.

ChemChina said to improve Syngenta bid in two-stage takeover

China National Chemical Corp. improved its offer to buy Syngenta AG, proposing a complex two-stage takeover that would mark the biggest-ever acquisition by a Chinese company. ChemChina, as the state-owned company is known, offered to purchase 70 percent of Syngenta now, with an option to acquire the remaining 30 percent of the company at a later date. Basel-based Syngenta, the world’s largest pesticide maker, will hold a board meeting before the end of the year to vote on the deal. While talks are advanced, no agreement has been reached and there’s no guarantee a deal will be completed.

PBOC announces full yuan convertibility for Guangdong, Tianjin and Fujian, but with conditions attached

The People's Bank of China announced on 11 December that the yuan would be freely convertible for corporations registered in three Chinese free-trade zones in Guangdong, Tianjin and Fujian - albeit with conditions attached that have some analysts criticising the move as not going far enough. The key change comes at a time when the yuan has touched four-year lows. The onshore yuan ended down 175 basis points on 11 December, or 6.4553 against the dollar, while the offshore yuan touched 6.5322. The central bank attached two key qualifications for the opening: corporations should not be engaged in certain sensitive industries on a government "negative list", and the convertibility will be subject to an annual limit of US\$10 million.

State Council gives nod to COSCO, China Shipping merger

The State Council has given the go-ahead for China's two largest shipping conglomerates to merge, continuing a trend in the industry to trim down state-owned enterprises. The China Ocean Shipping Co. (COSCO Group) and China Shipping Group Co. have been working on a deal since August 2015. The listed subsidiaries of the two firms are expected to make separate statements on their next step on 11 December.

China exports decline for fifth month, import slump moderates

China's exports fell for a fifth month while a slump in imports moderated, as policy makers seek to spur domestic spending amid tepid global demand. Overseas shipments dropped 6.8 percent in November in dollar terms from a year earlier. That compared to the median forecast of a 5 percent decline and the 6.9 percent fall in October. Imports declined for a record 13th straight month, dropping 8.7 percent in dollar terms versus an 18.8 percent slump in October, leaving a trade surplus of US\$54.1 billion.

McDonald's supplier OSI China trial concludes in Shanghai

A Shanghai court concluded a trial of OSI Group LLC, the U.S. meat supplier that sells to McDonald's Corp. but got ditched by Yum! Brands Inc. in China for allegedly selling out-of-date products. No schedule for a verdict on the two China units of the Aurora, Illinois-based has been announced. The trial comes more than a year after a Chinese TV channel report that alleged Husi workers were repackaging and selling expired chicken and beef.

China extends overseas tourists tax refund program to six more destinations

China decided on 29 December to include another six destinations in its tax rebate program for overseas visitors to boost inbound tourism and consumption. Foreign tourists visiting Liaoning, Anhui, Fujian and Sichuan provinces, Tianjin municipality and Xiamen city can enjoy value-added tax refunds on their purchases in specific shops starting from 1 January 2016. The minimum purchase for a value-added tax refund is RMB500 (US\$77.1) in any one store in a day. The refund is valid when the purchase is made within 90 days before departure and the products remain unused upon departure.

M&S puts stamp on Beijing

Marks & Spencer Plc, the British clothing and food retailer, opened its first flagship store in Beijing on 18 December as part of its strategy to increase its presence in large cities in China. The 131-year-old high street retailer has 10 outlets in China. The new 1,500 square meter store located at The Place, in the heart of Beijing's shopping district, has features of a premium boutique shopping environment, including womenswear, menswear, lingerie and kidswear and a food hall. The food hall stocks more than 1,200 types of imported food and wines. The retailer also has an online presence on Tmall.com and JD.com.

China Telecom head detained by country's antigraft regulator

China Communist Party's top anticorruption, the Central Commission for Discipline Inspection, detained the chairman of China Telecom Corp., Chang Xiaobing, in the latest in a spate of moves against executives at many of the country's top state-owned companies. Mr. Chang was detained on suspicion of "severe disciplinary violations" which is normally a euphemism for graft. Chang assumed the top post at China Telecom in August.

Qihoo to be taken private for \$9.3 billion including debt

Qihoo 360 Technology Co., a developer of security software for mobile phones, agreed to be taken private for US\$9.3 billion including debt, six months after first getting a non-binding offer. An investor group including Ping An Insurance (Group) Co. and Sequoia Capital China is offering US\$77 per American depository share in a deal first proposed in June. That's a premium of 16.6 percent to the company's closing price on June 16 with the deal expected to close in the first half of 2016.

Google set for return to mainland

Google Inc will offer online search services via a facility it has set up in the Shanghai Free Trade Zone after its return to the Chinese mainland. It planned to return to the Chinese mainland "very soon" after it has registered Pengji — a firm dealing with online search and e-mail — in the zone at the end of December 2014. Google was in talks with Chinese government officials and handset makers about launching a new Android app store in China's mainland market.

In a first, China prosecutors sue environmental department

Prosecutors in eastern China have filed a lawsuit against a county-level environmental protection department, accusing it of "failing to fulfil its regulatory duties" in its supervision of a local sewage firm, which marked the first time prosecutors had sued a government department in a public interest case. The suit comes after China's leadership has vowed to crack down on severe levels of air, water and soil pollution, including the heavy smog that often blankets major cities, following decades of unbridled economic growth.

First ever red alert in effect in Beijing

Schools in Beijing were closed and outdoor construction halted as the Chinese capital's first ever pollution "red alert" came into effect. The alert, the highest possible warning level, was issued on 7 December and lasted until midday on 10 December. Limits were placed on car use

and some factories were ordered to stop operations. It is the first time China has declared a red alert under the four-tier alert system, which was adopted a little over two years ago, although pollution levels were far from the city's worst.

China to halt new coal mine approvals amid pollution fight

China will suspend the approval of new mines starting in 2016 and will cut coal's share of its energy consumption to 62.6 percent next year, from 64.4 percent now. It's the first time the government has suspended the approval of new coal mines. This month China suspended price adjustments for fuel as a way to curb automobile exhaust and it has pledged to peak carbon emissions around 2030, by which time it aims to derive 20 percent of the energy it uses from clean sources.

Legal News

Intellectual Property

China NAC and WIPO sign MOU as to copyright

The National Copyright Administration of China (NAC) and World Intellectual Property Office (WIPO) signed the Memorandum of Understanding on Further Strengthening Bilateral Cooperation between NAC and WIPO in Shanghai on 1 December 2015. According to the MOU, both sides will build on the current communication and cooperation to enhance copyright publicity and personnel training, to promote high-level and peer-to-peer exchanges, paving the way for future cooperation.

Landmark case for counterfeit goods infringement in China

Moncler, known for its iconic down jackets, discovered in 2013 that Beijing Nuoyakate Garment Co., Ltd. (Nuoyakate) was manufacturing and selling down jackets with counterfeit Moncler logos, and that Nuoyakate also tried to register several fake trademarks and domain names in China and other countries. In December 2014, Moncler brought an action against Nuoyakate for trademark infringement and unfair competition. The newly established Beijing Intellectual Property Court ruled recently in favour of Moncler and awarded the maximum statutory damage of RMB3 million (US\$480,000) under China's new Trademark Law, a significant increase from the previous maximum statutory damages of RMB500,000 (US\$80,000). This decision comes at a time when China is trying to shake off its reputation as a haven for widespread pirated and counterfeit goods. It demonstrates that China is taking a much firmer approach towards enforcing stricter sanctions under the new Trademark Law.

Draft fourth amendment to the Chinese Patent Law for the State Council's review

On 2 December 2015, the Legal Affairs Office of the State Council published a new draft of the fourth amendment to the Chinese patent law which was sent to the State Council to review,

for solicitation of public comments. The solicitation period ends on 1 January 2016. Compared with the last draft which was published on 1 April 2015, this version includes some additional contents.

- “Design” means any new design of the shape or pattern, or their combination or the combination of the color with shape or pattern, of a product as a whole or a portion thereof, which design creates an aesthetic feeling and is fit for industrial application. This change allows partial design, i.e. design for a portion of a product which has not been possible so far.
- The term of design patent is proposed to extend to 15 years in order to meet the relevant requirements in the Hague Agreement.
- Repeated infringement or group infringement, i.e. infringement conducted by a multiple parties, is regarded as willful infringement which disrupts market order. The administrative authorities, i.e. local IP offices have the power to handle such cases. For such willful infringement acts, in addition to order the infringer to stop its infringing act, local IP offices have the power to confiscate the infringing products and parts, tools, molds or equipment specially used for making such products or performing infringing methods.
- For repeated infringement acts, local IP offices have the power to impose a fine up to five times the illegal amount of sales, if the illegal amount of sales is no less than RMB50,000. If there is no illegal amount of sales or if the illegal amount of sales is less than RMB50,000, a fine of no more than RMB250,000 may be imposed.
- For willful infringement acts, a court may increase the damages up to three times of the damages calculated using one of prescribed methods, i.e. the actual loss of the patentee.
- If a party knows relevant products are raw materials, intermediate materials, parts or equipment specially used to exploit a patent but still, without the authorization of the patentee and for production or business purposes, provides such a product to another party who conducts the patent infringing acts, the party and the infringer shall be held jointly liable.

China vows better copyright protection for music industry

On 1 December, the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT) has released a statement aiming to improve standard operations in track registration, copyright authentication and paid use of music products before 2020. The statement also asked music labels to participate in setting industry standards and expressed the determination to improve the environment for copyright protection, by making actions, such as adding more articles on piracy in copyright law and establishing a system to allow the public to report wrongdoing regarding unauthorized publication and online sharing of music.

Watson Enterprises Limited vs. TRAB – distinctiveness of a trademark

On 7 February 2012, Watson Enterprises Limited (Watson) filed an application with the CTO to register the mark “特色汇” (Te Se Hui, Te Se means characteristics, Hui means collection) in relation to the services in class 35, including business management assistance and franchise management. This application was rejected by the CTO on 6 December, and by the TRAB on 23 December 2013 due to lack of distinctiveness and insufficient evidence showing the mark’s reputation obtained through use and its sole corresponding relation with Watson.

Watson appealed to the Beijing No.1 Intermediate People's Court. The Intermediate Court found that the “特色汇” mark that was used in relation to advertising would easily be understood by relevant public as a descriptive term regarding the characteristics of services, so it lacked of distinctiveness, and the evidence filed by Watson was not enough to prove the distinctiveness and identifiableness of the mark obtained through use. The Intermediate Court maintained the decision issued by the TRAB.

Watson appealed to the Beijing Higher People's Court on the grounds that 1) the mark was originally created by Watson, and it had sole corresponding relation with Watson, since it was not a fixed phrase in Chinese but a combination of 3 characters “特”, “色” and “汇” by Watson; and 2) the mark had great reputation and influence through Watson's extensive use, and its distinctiveness was further enhanced and easily identified by consumers.

The Higher Court did not accept any evidence filed by Watson during the second trial, as all the evidence was hard copy which authenticity could not be verified by the court. The Higher Court considered that the mark was constituted by pure Chinese characters in which both “特色” and “汇” were commonly used words, and the mark, a combination of “特色” and “汇”, lacked of distinctiveness on the whole, so it could not be identified by relevant public as a trademark which was used to distinguish the source of goods and services. Although Watson filed some evidence of use, it shows that Watson usually used “TREAT-特色汇”, “百佳 TREAT-特色汇” and “特色汇(TREAT)” which was not able to prove the distinctiveness of the mark through use. The Higher Court made a final decision on 19 October 2015 that Watson's appeal shall be rejected and the original decision shall be maintained.

Kapu Nuo Company (purchaser of Ruize Wa Team) vs. TRAB – prior use

The trademark at issue, “KAPORAL5JEANS and design” No.5631348 was filed by Pan Limin, a Chinese person on 26 September 2006, and designated to use in relation to clothes in class 25. Ruize Wa Team (acquired by Kapu Nuo) and Laurent Amy Rand filed an opposition against the application with the CTO but the opposition was rejected.

The TRAB made a decision on 28 October 2013, referring to that “the registration certificates for KAPORAL series marks filed with the TRAB could only showing its registration. The claim of copyright could not be established, since the copyright registration certificate did not show the devices of works, and if the opposed mark was substantially similar to the works could not be identified. The claim of actual use and reputation in China could not be established, since most of the evidence was in foreign language without translation and exact time, and the China market bills were self-made and inadmissible. The evidence filed with the TRAB could not prove Pan's bad faith, either.” Based on this, the TRAB decided to approve the trademark application.

The Intermediate Court found that the existing evidence could not prove the copyright in the trademark device owned by Ruize Wa Team and Laurent, and was not enough to prove the use of the un-registered device mark in relation to designated goods in China before the filing of the opposed mark and certain influence obtained therefrom, and was not enough to prove Pan's filing in bad faith, either. So the Intermediate Court maintained the TRAB's decision.

Kapu Nuo Company appealed to the Higher Court, on the grounds that 1) the opposed mark infringed its prior copyright; 2) the opposed mark was similar to its trademarks No.5291141

and No.5291136 that had been registered in relation to similar goods; and 3) the opposed mark was filed in bad faith.

The Higher Court found that the registration date showing in the copyright registration certificate was later than the trademark application date and opposition filing date, so this claim was not supported. Further, Kapu Nuo's claim of similarity of the opposed marks and its prior registrations was not within the scope of review of the court, since this was not claimed during the TRAB procedures and the first trial. And Kapu Nuo's claim that the trademark application was filed in bad faith was not supported. The Higher Court issued a final decision and rejected the appeal on 19 October 2015.

Puma Europe vs. TRAB – similarity of trademarks

Puma Europe filed an application with WIPO on 26 November 2011, to register its "WINCELL and design" mark in relation to clothes, shoes and hats in class 25, based on its basis registration in Germany. On 23 February 2012, it applied to the CTO for extensive protection of its "WINCELL and design" mark through WIPO. The CTO rejected this application on 20 August 2012, on the grounds that 1) the mark is similar to the registered marks "WIND" No.1190722, "wind" No.633486 and "细胞 cell and design"; and 2) the "WINCELL" mark is only constituted by the contents which directly indicate the function of goods.

Puma appealed to the TRAB on the grounds that 1) the mark included in trademark application is not similar to the three cited registrations; 2) there are several registered marks containing WIND; and 3) the mark was originally created and distinctive, and is not constituted by the contents which directly indicate the function of goods.

The TRAB found that WINDCELL completed contains the cited registrations "WIND", "wind" and "cell". The pronunciations and overall appearances are similar. The use of the marks in relation to similar goods would cause confusion, so the marks constituted similarity. According to the principle of case-by-case, registrations of other trademarks are different with this case, so could not be the absolute ground on which trademark application should be approved. The TRAB rejected the appeal on 3 March 2014.

Puma appealed to the Intermediate Court and filed new evidence, including a roster of dealers, a product brochure in Chinese and introduction materials in English. Puma indicated during the hearing in the first trial that it did not object the similarity of goods.

The Intermediate Court supported the similarity between the mark included in trademark application and Cited Registrations 1 and 2, but did not support the similarity between the mark included in trademark application and Cited Registrations 3, since Cited Registration 3 contains "cell" as well as Chinese characters "细胞" (cell in Chinese) that could be identified. Puma's other claims were not supported by the Intermediate Court. The Intermediate made a decision referring to "although the fact regarding if the mark was similar to Cited Registration 3 was not correct, the conclusion was correct, so the decision should be maintained."

Puma appealed to the Higher Court on the grounds that 1) the mark included in trademark application was not similar to Cited Registrations 1, 2 and 3; 2) the mark included in trademark application was well-designed by it and there was no confusion during actual use; and 3) the evidence filed by it could prove the goods marked with "WINCELL and design"

had been sold in the Chinese market without confusion. The Higher Court maintained all the conclusions of the Intermediate Court on 19 October 2015.

Anti-monopoly

Chinese antitrust authorities continue targeting trade associations

On 8 December 2015, the State Administration for Industry and Commerce (SAIC), one of China's three antitrust authorities, published a decision of its local office in Guangdong holding a trade association in breach of the Anti-Monopoly Law (AML). The trade association was found to have organized a "collective boycott" for its members, and thus engaged in a form of cartel-like conduct prohibited by the AML. The Guangzhou Panyu Animation Association (GAGA), the members of the trade association, was found to put in place an agreement whereby its signing members committed to exclusively participate in exhibitions and shows organized by GAGA, and not attend any local exhibitions or shows organized by third parties other than GAGA, unless approved by GAGA. SAIC's Guangdong office ordered GAGA to pay a fine of RMB 100,000. This decision serves as a reminder to foreign businesses alike to exercise particular care when getting involved in collective/industry-wide events, whether organized by trade associations or otherwise.

Chinese pharma company fined for refusal to supply downstream competitors

On 22 December 2015, the SAIC published the decision of its local branch in Chongqing against pharma company Chongqing Qingyang Pharmaceutical Co., Ltd. (Qingyang) for refusal to deal in breach of the AML. The antitrust enforcement action started in September 2013, when Qingyang entered into a five-year distribution arrangement with Xiangbaihe, a pharmaceuticals distributor. The agreement was to take effect from December 2013 when Xiangbaihe would become Qingyang's exclusive distributor in China. The agreement also stipulated that, during a "buffer period" from October to December 2013, Qingyang would not supply any allopurinol active pharmaceutical ingredients (API) to third parties without Xiangbaihe's approval. As a result, Qingyang ramped up its own production of allopurinol drugs, increasing its market share to close to 60%. In a decision issued on 22 December 2015, the Chongqing AIC held that Qingyang had committed an abuse of dominance by way of "refusing to deal", and imposed a fine of approximately RMB440,000 on Qingyang.

MOFCOM clears Nokia's acquisition of Alcatel-Lucent with behavioural remedies

On 19 October 2015, The Ministry of Commerce (MOFCOM) conditionally cleared Nokia Oyi's acquisition of Alcatel-Lucent with four behavioural remedies focusing on maintaining fair licensing of standard-essential patents. MOFCOM found that the deal would not trigger anti-competitive effects in the following relevant product markets: 1) the radio access network market; 2) the core network systems market; 3) the network infrastructure service market, although it could obstruct or limit competition in the ICT standard-essential patent licensing market. MOFCOM noted that Nokia would increase its holdings in 2G, 3G and 4G standard-essential patents and strengthen its concentration in the ICT standard-essential patent licensing market following conclusion of the deal. Downstream competition would in turn be distorted – and consumers' interests would be threatened – if Nokia refused to license, charged overly high royalties or displayed any other anti-competitive behaviour. MOFCOM accordingly imposed four behavioural remedies on Nokia with the aim of ensuring fair licensing of standard-essential patents:

- On a reciprocal basis, Nokia must commit not to use injunctions to prevent enforcements of fair, reasonable and non-discriminatory (FRAND) encumbered standard-essential patents, unless the potential licensees are unwilling to sign FRAND licensing agreements and follow the terms.
- If Nokia transfers its standard-essential patents to a third party, it must inform Chinese licensees, as well as Chinese companies that are actively engaged in licensing talks, of the transfer details.
- Nokia may transfer its standard-essential patents to a new owner only if the new owner accepts Nokia's existing FRAND commitments.
- MOFCOM has the right to monitor the implementation of Nokia's commitments. Nokia must report to MOFCOM on the implementation of the conditions within 45 days of the end of each calendar year. The reporting obligation will be observed for five years, until October 18 2020.

This case illustrates MOFCOM's new approach to evaluating the competitive effects of M&A deals involving the transfer of standard-essential patents.

Tax

China Customs Tariff Commission issues amendments to Customs Tariff in 2016

On 4 December 2015, the Customs Tariff Commission of State Council issued Announcement [2015] No. 23, announcing its amendments to the Customs tariff in 2016. The Amendments adjust, at the 8-digit HS Code level, the import tariff rates for 787 tariff items, export tariff rates for 250 tariff items, and add another 9 tariff items into the PRC Tariff Schedule. Among them, the import tariff rates for 27 kinds of environmental products, such as waste incinerators and wind power generator sets, are lowered to 5%. Also, the import tariff rates for certain consumer or luxury products are substantially lowered. For example, the import tariff rates for diapers and napkins, sunglasses, suitcases of leather surface, and coats of wool or fur, respectively drop from 7.5% (MFN) to 2% (Interim), from 20% to 6%, from 15% to 10% and from 25% to 13%. At the exportation, the tariff rates for 31 kinds of products are lowered or exempted. The Amendments will take effect as from 1 January 2016.

Employment

Draft Implementation Regulations on Work Safety Law issued

In response to the frequent and often disastrous work-related accidents, the PRC State Administration of Work Safety published the draft Regulations on the Implementation of the PRC Work Safety Law on 11 September 2015, to solicit the public opinions. The Draft Regulations provide for more specific work safety requirements on companies in order to prevent work safety accidents. The "person in charge" at each company is required to report the company's work safety conditions at a shareholders' meeting and to the employee representatives' congress on an annual basis, and shall accept their supervision. Companies are required to:

- where the workforce exceeds 100 persons: establish a work-safety department and appoint at least 2 full-time work safety specialists or work safety specialists representing no less than 1% of their total workforce (whichever is greater); or where

the number of workforce is less than 100 persons: appoint at least 1 full time work-safety specialist; and

- have at least 1 certified safety engineer, the number of which shall be no less than 20% of the number of work- safety specialists.

The Draft Regulations give more detailed guidance relating to the screening and elimination of such hidden risks by companies, pursuant to which companies must:

- set up the rules on screening and elimination of hidden risks, implement remedial actions and contingency plans and eliminate the identified hidden risks in a timely manner;
- analyse and assess major hidden risks of work safety accidents according to the standards formulated by the State Administration of Work Safety;
- evaluate the remediation actions taken in respect of major hidden risks and produce a report, either by the in-house work safety specialist or external work safety service agency, after such major hidden risks have been remediated; and
- report to the Administration of Work Safety on the remediation actions.

Under the Draft Regulations, companies failing to comply with the above requirements will be subject to a fine up to RMB30,000, and their direct person-in-charge or other direct responsible person may also subject to a fine in the amount of RMB10,000 or less.

Environment

Chinese court accepts NGO lawsuit against Volkswagen China

A Chinese court in Tianjin accepted its lawsuit against Volkswagen China, accusing it of worsening air pollution and breaking product quality laws. China changed environmental laws earlier 2015 to make it easier for NGOs to sue suspected polluters, and the legal action comes after VW admitted to faking emissions tests overseas. This is the third NGO lawsuit successfully filed to mainland courts since January 2015. More than 1,900 made it to the mainland market through the Tianjin-registered importer. Beijing has pressed it to recall the vehicles, but no penalty has been imposed so far.

Privacy

Draft law puts information security at center stage

Discussion of a new comprehensive cybersecurity law is accelerating in China, to address security problems originating at home and abroad and to improve the Internet space overall. Calls for stronger cybersecurity laws in China have been amplified since Edward Snowden revealed the US government's secret spying program two years ago. In June, the draft law was submitted to the Standing Committee of the National People's Congress for discussion. It was later published online to solicit public opinion. The draft requires telecommunications and infrastructure departments to build an emergency system to deal with online attacks. It also highlighted information protection.

Company Law

China relaxes registered capital requirements for foreign invested enterprises

MOFCOM issued a decree introducing substantial changes to the current Chinese foreign investment regime on 28 October 2015. The decree primarily focuses on “foreign-invested enterprises” and includes the lifting of certain registered capital requirements and investment scale limitations. As a consequence, foreign investors now enjoy greater flexibility in structuring capitalisations and equity investments in China. Companies should check how the changes affect their business in China. The new decree is primarily based on China’s “Company Law” and amends 29 administrative rules and normative documents concerning registered capital requirements, capital contribution installments, and Chinese holding company structures, among other things.

- The minimum registered capital requirements for foreign-owned enterprises in a number of industries in China have been abolished. Foreign-invested venture capital firms, freight forwarding agency enterprises, commercial enterprises which operate retail shops, financial leasing companies and logistics enterprises no longer have minimum registered capital requirements. Minimum registered capital requirements and minimum foreign shareholding ratios for companies limited by shares have been cancelled altogether.
- Foreign-invested Chinese holding companies can now be established as a limited liability company or a company limited by shares, while a capital verification report is no longer a prerequisite for incorporation. The Decision annuls minimum registered capital requirements and limitations on the duration of full capital contributions for foreign-invested Chinese holding companies.
- Foreign-invested enterprises are allowed to make equity investments with an accumulated size exceeding 70% of their own registered capital. Foreign-invested enterprises are now allowed to carry out domestic reinvestments irrespective of their capital contribution status and total size of assets.

Arbitration

PRC court recognizes and enforces foreign arbitration award made between two Chinese entities

The Shanghai No.1 Intermediate People’s Court recently recognised and enforced an arbitration award, even though the arbitration took place in Singapore between two PRC-incorporated companies. This ruling could potentially increase the likelihood that PRC entities will be permitted to arbitrate their disputes outside the PRC, when there are relevant “foreign elements”. The Court acknowledged that the following factors suggested that the contract was not a typical “foreign-related” contract:

- both parties were incorporated in the PRC; and
- the relevant equipment was delivered in the PRC and was (at the time) held in the PRC.

However, on closer examination, the Court concluded that there was a “foreign element” in this case, due to “other circumstances”:

- The parties were both WFOEs that had been incorporated in the Shanghai Waigaoqiao Bonded Zone, which had formed part of the Shanghai FTZ since 2013.
- The Seller had procured the equipment from abroad and then stored it under bond in the Shanghai FTZ before transferring it out of the tariff-free zone and delivering it to the Buyer.

The Court concluded that the above factors constituted “other circumstances” which were sufficient to render the legal relationship between the parties as “foreign-related”. On this basis, it held that the arbitration agreement was valid and proceeded to recognise and enforce the award. The Decision will therefore be of particular interest to foreign parties operating in the PRC through PRC entities, and who are interested in or who have agreed to offshore arbitration.

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.