



MMLC Group 

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China Update

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3 January 2017

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Business News

Seven new FTZs to open around China

China will replicate its success in seven new free trade zones (FTZ). The third batch of FTZs is now waiting for final approval from the government. Though some provinces still need to further develop their plans, some FTZs are expected to be opened as early as January in 2017. Unlike the former four FTZs, the third batch is located in inland areas of China, with the primary aim of better implementing national strategies, including the Belt and Road Initiative. The new zones also look to copy China's existing FTZs. Once the third batch of FTZs is opened, there will be 11 FTZs across the nation. They will serve as platforms to try out new economic plans, and will widen the range of FTZ experiences.

Retail sales growth strongest in a year

China's retail sales growth picked up to 10.8 percent year-on-year in November, the highest this year. This shows the economy may be stabilizing. The retail sales growth is the highest since December 2015. In the same month, industrial output rose by 6.2 percent year-on-year, up from 6.1 percent in October. Urban fixed-asset investment growth was 8.3 percent in the first 11 months, unchanged from the January-October period, while private investment growth increased by 3.1 percent in the first 11 months, up from 2.9 percent in the first 10 months.

China's service sector index expands to 16-month high

China's services sector expanded at its quickest rate in 16 months in November. PMI (Purchasing Managers' Index) hit 53.1 in November, up from 52.4 in October. The expansion was due to increased new projects and orders, with job creation posting the fastest rate in one-and-a-half years. The trend corresponds with official indicators released by the National Bureau of Statistics, which showed China's non-manufacturing activity expanded to 54.7 in

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

November from 54 in October. Meanwhile, optimism over future growth prospects moderated to a 13-month low at service companies largely due to relatively subdued market conditions.

Australia, China agree to open aviation market

Australian and Chinese governments have settled arrangement to open aviation market between the two countries. The new arrangements will remove all capacity restrictions between them, allowing Australian tourism businesses to take advantage of the largest and fastest growing consumer market in the world. Meanwhile, it also liberalized traffic rights and code share arrangements, which will enable Australian and Chinese airlines to service destinations between and beyond both countries, and will allow them to take full advantage of their cooperative arrangements with their commercial alliance partners.

Internet company LeEco starts construction of car plant in Zhejiang

Chinese Internet Company LeEco launched construction of its car plant in Zhejiang province. The project is designed to have an annual production capacity of 400,000 cars and will cost the company 20 billion Yuan (\$2.87 billion). The first phase of the plant covers 133 hectares and will involve an investment of 11 billion Yuan. The factory will produce LeSee-brand electric cars which will compete against premium car brands, 90 percent of work will be finished by robots, and employees will have intelligent wearable devices to ease their work.

'Two potential buyers' for McDonald's China

Since entering the Chinese mainland in 1990, McDonald's now operates more than 2,200 stores in the mainland. After McDonald announced to introduce strategic investors to its China franchise, many Chinese enterprises, including Beijing Tourism Group and Sanpower Group, have shown their interest in making an investment. Meanwhile, McDonald's plans to sell its stores in the Chinese mainland and Hong Kong, with a reported transaction value of \$2 billion, and State-owned CITIC Group Corp and US-based private equity firm Carlyle Group LP could be the potential purchaser of McDonald's Corp.

New five-year plan brings hope to China's west

Chinese Premier Li Keqiang said recently that western regions, including Chongqing, Sichuan, Guizhou, Yunnan, Tibet, Shaanxi, Gansu, Ningxia, Xinjiang, Inner Mongolia, Guangxi and Qinghai, would be transformed and upgraded further during the 13th Five-Year (2016-2020) Plan period. China plans to promote sustainable and healthy development and boost the confidence of overseas investors by pushing forward supply-side structural reform, moderately expand demand, boost innovation, continue to implement the west development strategy, and strengthen coordination between it and other major strategies such as the Belt and Road Initiative and development of the Yangtze River Economic Belt.

China to Cut Solar, Wind Power Prices as Project Costs Fall

In order to reflect declines in construction costs, China will cut tariffs paid to solar farms by as much as 19 percent in 2017 from this year's levels and by as much as 15 percent for wind mills in 2018 from current prices. The changes will help reduce subsidies paid to new photovoltaic and wind power projects by about 6 billion Yuan (\$863 million) annually. The move comes as average solar panel prices have tumbled about 30 percent this year, resulting in

a lowering of the bids that solar developers offer to build projects. China will also encourage local authorities to continue making use of auctions to select renewable energy developers, in order to further lower power prices.

President Xi Open to Growth in China Falling Below 6.5%

President Xi Jinping told in a meeting that China doesn't need to meet the objective if doing so creates too much risk as the \$11 trillion economy would remain stable with slower growth as long as employment stays firm. Below-target growth would be in line with analyst projections that the expansion will keep decelerating in coming years from an estimated pace of 6.7 percent in 2016. The slowdown coincides with the nation's broad shift from an export-led economy to services, which accounted for more than half of growth last year for the first time, and domestic consumption. The shift signals that leaders see systemic risk as great enough to warrant re-evaluating key goals and may be less inclined to add to fiscal and monetary stimulus.

China's e-commerce transaction value to exceed 38 trillion Yuan by 2020

China said it aims to expand e-commerce transactions to more than 38 trillion Yuan (5.5 trillion U.S. dollars) by 2020, up from 21.8 trillion in 2015. By 2020, China's online population will pass 1 billion, growing by 7.8 percent a year from 2015. Information industry revenue is expected to grow by an average of 8.9 percent each year from 2015 to hit 26.2 trillion Yuan by 2020. By then 90 percent of villages in poverty will be covered by internet services, 12 percentage points more than that in 2015. Online retail sales will more than doubled from 3.9 trillion Yuan recorded in 2015 to 10 trillion Yuan by 2020.

VIPKid has raised \$125 million and signed up 50,000 kids to study online

In China, there are hundreds of millions of kids whose parents are willing to pay up if they can get high-quality education. And in the U.S. and Canada, teachers are often underpaid. VIPKid, a three-year-old company aiming to give Chinese kids the kind of education American children receive in top U.S. schools, started with 200 teachers and has grown to 5,000, now working with 50,000 children aged five to 12 with predominantly North American instructors to study English, math, science and other subjects. Classes take place online, typically for two or three 25-minute sessions each week. Next year, it anticipates expanding to 25,000 teachers and 200,000 children.

China's first test zone for self-driving cars opens

China's first experimentation zone for self-driving cars, jointly established by French car maker Renault, its Sino-French joint venture Dongfeng Renault Automotive Company and Wuhan Caidian Ecological Development Group, has opened in Wuhan. An electric autonomous driving car by Renault will operate on a 2-km-long lakeside road. Visitors will be allowed to test and experience the autonomous vehicle in the zone. Under a memorandum of understanding signed between the three parties, Renault provides construction standards for demonstration sites and vehicles equipped with autonomous driving technology, while Dongfeng Renault is responsible for vehicle maintenance and technical support.

Face-recognition startup raises \$100m

Megvii Inc, a Chinese developer providing face-scanning systems to Ant Financial, which operates the dominant payments service on Alibaba Group Holding Ltd's online shopping platforms, has raised at least \$100 million from investors, including Foxconn Technology Group and CCB International Holdings Ltd. Megvii confirmed the raised funds is to improve facial recognition technology, especially in the financial industry, smart cities and robotics while declining to comment on the specific amount. Megvii also has attracted funding from Qiming Venture Partners and Sinovation Ventures, the incubator founded by Google's former China head.

More FTA deals in 2017

China plans to seal free trade agreements with 40 percent of the countries and regions along the Belt and Road Initiative in 2017. The nation will accelerate the pace of FTA negotiations with Sri Lanka, Maldives and Pakistan next year. In the meantime, China also launched feasibility studies on FTAs with Canada, Papua New Guinea and Fiji, as well as starting research on upgrading existing free trade deals with New Zealand, Chile and Peru. The talks of the Regional Comprehensive Economic Partnership, a regional free trade pact between 16 economies including Australia, India and the Association of Southeast Asian Nations, will also speed up.

Legal News

Intellectual Property

TRAB Plans to gradually Publish All Its Decisions

To improve transparency of its practice and convenience for the public, China's Trademark Review and Adjudication Board recently began to randomly publish some of its decisions on a monthly basis, with the long-term goal of gradually publishing more and eventually all of its decisions. As a start, it published 30 of its decisions in December 2016. This move is long awaited and expected to unify the examination standard among its own examiners, give the public more insight of its practice, and help curb malicious trademark registrations.

Michael Jordan Wins Trademark Case in China's Top Court

The case started in 2012 when Jordan first petitioned the Trademark Appraisal Committee to revoke Qiaodan Sportswear's marks. Jordan sued the trademark office at a Beijing court after it decided to uphold the marks; he then appealed to the Beijing Higher People's Court after the lower court sided with the trademark office and lost again. Jordan then appealed to the Supreme Court last year. Recently, the Supreme People's Court ruled that Chinese manufacturer Qiaodan Sportswear Co.'s registered trademark in Chinese characters violated Jordan's prior rights and should be revoked. The court agreed that by registering a trademark that's widely perceived to be the Chinese name of Jordan, Qiaodan Sportswear was intentionally free riding on the American basketball player's reputation to sell products. While the dust settles on the trademark case, dispute over Jordan's name in China is not over as a separate case over Jordan's naming rights has been pending at a Shanghai court since a 2013 hearing.

First Preliminary Injunction Granted by China IP Court to Christian Louboutin

Guangzhou IP Court granted a preliminary injunction to French designer brand Christian Louboutin per its request. This is the first preliminary injunction issued by Guangzhou IP court and also the first preliminary injunction issued in regards to patent infringement since the establishments of specialized IP courts in China since late 2014. While Chinese courts had always been cautious in issuing preliminary injunctions before litigations are instituted, it is believed that this injunction from Guangzhou IP Court will herald stronger protection for IP rights in China.

Exxon Mobil Was Awarded CNY 4.5 million as Damages in Trademark Infringement Case due to the Recognition of Well-known Trademark

Exxon Mobil is the owner of "Mobil" trademark in Chinese/English regarding to fertilizer chemical and pesticide in classes 1 and 5, and lubricating oil product in class 4. It was alleged that Beinongguoxin as defendant has been using a mark including Chinese version of "Mobil" on its pesticide product since 2004. Beinongguoxin's allegedly infringing product / promoting material were determined by Beijing IP Court as identical / similar to the registered trademark of Exxon Mobil in class 1 and class 5. Although Exxon Mobil failed to provide use evidence of the trademarks in classes 1 and 5 over the past three years according to Article 64 of the *PRC Trademark Law* in order to claim damages, it succeeded to prove its trademarks in class 4 had become a well-known trademark. Therefore, Beijing IP Court issued a judgment in favor

of Exxon Mobil, determining that Beinongguoxin had infringed the exclusive trademark right of Exxon Mobil and ordered the defendant to pay damages of CNY 4.5 million (USD 652,000) and reasonable litigation cost of CNY 35,000 (USD 5,700).

YKK Wins Trademark Battle in China

In January 2006, YKK Joint- Stock filed a trademark opposition application against the “YKK” trademark application of Li Bo Company specializing in manufacturing and distribution of automobile parts. On December 16, 2009, CTO made verdict ruling that although the YKK trademark of YKK Joint- Stock registered on “zipper” products has high reputation, the products on which trademarks certified to be used were quite different in function and use. Through the subsequent trademark opposition rehear and administrative proceedings, Trademark Review and Adjudication Board, Beijing No.1 Intermediate People’s Court and Beijing High People’ s Court all affirmed the original verdict of the trademark registration, YKK then appealed to the Supreme People’s Court for rehearing. The Supreme Court held that it is difficult to judge if interior decorations of vehicles and zippers are similar or of the same category, however the evidences provided by YKK Joint-Stock showed that zippers can be used as vehicle’ s interior decoration and zippers and vehicle’s interior decorations are the upstream and downstream products. As YKK is a fabricated word and is conspicuous and based on the facts that “YKK” trademark on zippers products already have high reputation and zippers and interior decorations of vehicles are the upstream and downstream products, they are confirmed to have high relevance. Therefore, based on the fact YKK trademark on zipper products is well-known, it can be protected for “interior decorations of vehicles”.

China fines firms for using BMW-like trademark

Zhou Leqin registered Deguo Baoma Group (Int'l) Holdings Limited, which translates as German BMW Group (Int'l) Holdings Limited, in China in 2008. With the company, Zhou then bought and registered the trademark "BMN", with a logo similar to BMW's, it added. Fashion firm Chuangjia then used the trademark on products including clothes, shoes and bags, changing the logo over the years to more closely resemble BMW's. Automaker BMW accused them infringed BMW's trademarks registered in China by taking advantage of its reputation. A court in Shanghai ordered the two Chinese firms and the founder of one of them to pay automaker BMW 3 million Yuan (\$431,617.41) for registering trademarks similar to that of the German firm. The ruling is the latest win for a large foreign firm in China, a sign that courts are taking trademark infringement more seriously in a country dogged with fakes of everything from clothing brands to entire shops.

High Court explains material similarity in copyright infringement

In 1992 Zhe Chen, a romance fiction author, wrote a script titled Plum Blossom Sear. In 2012 Zheng Yu completed a script for 20 episodes of a television drama series titled The Palace 3: The Lost Daughter. The script was published under the author's name in 2014 and two versions of the series were filmed. Chen brought an action against the first section of the Palace: The Lost Daughter script, claiming that it constituted infringement of copyright of her Plum Blossom Sear script, despite differences in characters and plot. The Beijing Number 3 Intermediate People's Court found that the defendant's adaptation constituted copyright infringement, and the Beijing High People's Court upheld this decision. The court's decision explained the methodology and criteria for finding 'material similarity' between literary works,

and instructed on how to differentiate an idea from an expression in terms of plot selection, advancement and structure.

Record High RMB 50 Million Compensation Decided by Beijing Intellectual Property Court

Beijing Intellectual Property Court decided that the defendant, Hengbao Co., Ltd, immediately cease its infringement acts in connection with the No. ZL200510105502.1 invention patent of “a physical authentication method and an electronic device” owned by the plaintiff, Beijing Watchdata Co., Ltd. and that the defendant compensate the plaintiff for an economic loss of RMB 49 million and pay to the plaintiff reasonable litigation expenses of RMB 1 million. In reviewing whether the claim for a compensation for attorney fees is reasonable or not, the Court confirmed for the first time the review principles of “necessity of agency, difficulty of the case and actual efforts given by the lawyer”. This is also the first time that the court calculated attorney fees based on hourly rates in its judgment.

Bridgestone wins design rights lawsuit against Triangle Tyre in China

Japanese tire manufacturer Bridgestone Corporation has received a favorable ruling from China's Supreme People's Court in a lawsuit alleging infringement of the company's tire tread design rights against Chinese tire manufacturer Triangle Tyre which had been manufacturing and selling tires in China using a tread pattern for studless winter tires for which Bridgestone holds exclusive design rights.

Four arrested for online counterfeit cigarette sales

Police in southern China's Guangxi Zhuang Autonomous Region seized 77,000 cigarettes worth 133,500 Yuan (\$19,348) and had arrested four suspects for selling counterfeit cigarettes via online payment platforms or messaging apps such QQ, Alipay and WeChat. It is reported that the seized cigarettes were bought from a man surnamed Zhang in eastern China's Fujian Province.

Tax

China to levy taxes to fight pollution

China's top legislature passed a law that will levy specific environmental protection taxes on industry for the first time from January 1, 2018. Under the new law, companies will pay taxes ranging from 350 to 11,200 Yuan per month for noise, according to their decibel level. The new law also set rates of 1.2 Yuan on stipulated quantities of air pollutants, 1.4 Yuan on water pollutants and a range of 5 to 1,000 Yuan for each ton of solid waste. Carbon dioxide is not included in the levying list. The law only targets enterprises and public institutions that discharge listed pollutants directly into the environment. Punishments for evasion or fraud are not specified, but offenders will be held liable in line with the law on administration of taxation and the environmental law.

China to simplify VAT rates

The VAT system was rolled out nationwide in May, in place of business tax, after successful pilots. By the end of October, 96.5 billion Yuan (\$14 billion) had been saved by businesses.

Taking into account other tax reductions, the government expects a total of 500 billion Yuan to be saved this year. It is reported that China will simplify VAT rates in the future to ease company tax burdens. The current tax system has too many tiers and may confuse policy implementation and impede fair competition, and the new tax rates will be easier to follow.

Banking & Finance

China Tightens Anti-Money Laundering Regulations for Banks

The People's Bank of China will require financial institutions to report any cross-border transfers of 200,000 Yuan (\$28,800) or more starting July 1 this year. It is said its Anti-Money Laundering Monitoring and Analysis Center also must be notified of any domestic cash deposits, withdrawals or transfers of 50,000 Yuan or more or when banks have reason to believe that smaller transactions may be suspicious. That requirement has been brought down from the existing 200,000 Yuan limit and may be adjusted if needed. The new rules are intended to prevent money laundering and terrorism financing. Regulators say they want more timely cross-border transaction data on individuals to track risks arising from increasing cross-border transfers.

Antitrust

China Slaps GM with \$29 Million Fine Amid Growing Tensions

China slapped a \$29 million fine on General Motors Co. for antitrust violations. The largest U.S. automaker is accused of setting minimum prices on some models in its SAIC General Motors joint venture. This is the first time China has fined GM, the second-largest foreign carmaker in China by sales. Shares of SAIC Motor Corp. fell 1.2 percent to 23.17 Yuan in Shanghai, before the penalty was announced. GM's retail sales in China rose 8.5 percent this year through November to 3.44 million vehicles, trailing only Volkswagen among foreign automakers. Its German rival boosted deliveries 12 percent to 3.59 million units.

China's SAIC fines Tetra Pak RMB667.7m for abuse of dominance

The PRC's State Administration for Industry and Commerce (SAIC) found Tetra Pak International SA abused its dominance in the ways of tying and bundling, restriction of trade and loyalty discounts after four years of investigation. The SAIC has ordered a fine of RMB667.7M (approx. 90.7m) which represented 7% of Tetra Pak's PRC turnover in 2011 and Tetra Pak has announced that it does not intend to appeal the decision. This is one of the most high profile cases tackled under the AML. Driven by the SAIC, the decision has been hotly anticipated throughout the investigation process and represents a key piece of PRC jurisprudence in relation to the abuses involved, such as loyalty discounts.

Employment

New Foreigners' Work Permit System for China

On 27 September 2016, the China State Administration of Foreign Experts Affairs issued documents called the Pilot Implementation Plan of the Work Permit System for Foreigners in China. It plans to combine the old "Alien Employment Permit" and "Foreign Expert

Certificate” to one named “Foreigner’s Work Permit”. The New Work Permit System divides foreigners who work in China into three categories of foreign talents, foreign specialties and normal foreigners in order to implement a principle of “encouraging high-end talents, controlling foreigners with ordinary quality and limiting low-quality foreigners” by using two methods such as “standard conformity method” and “integral method”.

Arbitration

Developments on enforcement of arbitral awards

The Deputy Head of the Supreme People’s Court (SPC) Fourth Civil Division recently revealed that the SPC is considering applying a reporting system for the enforcement of international arbitration awards to domestic arbitration awards. If implemented, this move will unify the standards for judicial review of domestic awards and help reduce incorrect lower court decisions on enforcement of arbitral awards. This development is in line with China’s recent trends and will enhance its reputation as an arbitration-friendly jurisdiction.

Foreign Investment

Abolishing some foreign investment regulations

In November this year, the Ministry of Commerce issued Order [2016] No. 2 abolishing the following regulations on foreign investment: *Administration Measures for Foreign Investments in Commercial Fields and all supplementary provisions*; *Interim Regulations for the Establishment of Foreign-Invested Convention- and Exhibition-Oriented Companies and supplementary provisions*; and *Measures for the Administration of Liquor Circulation*. The record filing procedure at state level for liquor circulation is abolished, although at provincial level, the liquor wholesale and retail permit is still required.

China Plans to Revise the Foreign Investment Catalogue

On 7 December 2016, the National Development and Reform Commission and the Ministry of Commerce jointly released the latest revised draft of the Foreign Investment Industrial Guidance Catalogue (Draft Catalogue) soliciting public comments. The deadline to submit comments is 6 January 2017. The main changes in the Draft Catalogue relates to its structure grouping industries as encouraged and negative list, and clarifies that foreign investors are not allowed to set up a foreign-invested partnership in any restricted industry where restrictions on foreign equity ratio exist. Meanwhile, it cuts the number of sectors on several restricted and prohibited lists from 93 to 62, and opening up markets such as railway equipment and vehicle batteries. In addition, there is no change to the controversial stake cap applied to foreign automakers in its latest Draft Catalogue.

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.