



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's services sector grows at fastest pace in three years**

China's service activity expanded at its quickest pace in more than three years in December 2017. The General Services Business Activity Index rose to 53.9 in December, up from 51.9 in the previous month and the highest reading since August 2014. A number above 50 indicates an expansion in activity. The services sector includes finance, real estate services, marketing, transportation and retailing.

### **Google eyes Chinese e-sports market with investment in Chushou**

Alphabet Inc's Google joined as a new investor of the Chinese live-stream mobile game platform Chushou and brings the startup's total funding to US\$120 million. Founded in 2015, Chushou is an online e-sports platform where users can live stream their mobile phone games. The service has roughly 8 million streamers and 250,000 live streams a day. Google will help the Chinese firm expand its services to target more overseas viewers.

### **China removes 1,400 baby formula products from shelves**

A safety overhaul of China's notorious baby-formula industry removed about 1,400 products from store shelves, in the first week of 2018. The regulations, effective on 1 January 2018, require factories making formula to register those products with the Food and Drug Administration (FDA) and pass safety inspections. Factories are limited to working with three brands, and those brands can make only three different products each. Products not certified by the FDA were banned from sale.

BEIJING

With support offices in Brisbane

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

### **Companies reinvesting profits can get tax break**

China continues to welcome foreign investment through a temporary exemption of the withholding tax on profits that are reinvested in the country. The move will help retain foreign investment and stabilize cross-border capital flows. The measure aims to encourage sustainable and long-term foreign investment in China and improve the quality of the business environment for foreign companies. China levies its withholding tax at a rate of 10 percent on foreign firms' earnings. However, that withholding tax can be exempted if that profit is put into qualified direct equity investments, including stocks.

### **The Free Trade Agreement between China and Georgia comes into effect**

The Free Trade Agreement Between the Government of the People's Republic of China And the Government of Georgia signed in May 2017 commenced operation on 1 January 2018. According to the agreement, both sides eliminate the tariffs on most products of trade in services, make high-quality commitment in opening market to each other's numerous service departments and improve the rules on the IPR, environmental protection, e-commerce and competition.

### **WeChat poised to become China's official electronic ID system**

WeChat, the popular mobile application from Tencent Holdings, is set to become more indispensable in the daily lives of many Chinese consumers under a project that turns it into an official electronic personal identification system. On 25 December 2017, the government of Guangzhou, started in the city's Nansha district a pilot program that creates a virtual ID card, which serves the same purpose as the traditional state-issued ID cards, through the WeChat accounts of registered users. The program will be extended to the whole of Guangdong province and further across China from January 2018. The program was co-developed by the research institute of the Ministry of Public Security and Tencent's WeChat team, and supported by various banks and several other government departments. It is expected to help deter online identity theft, as facial recognition technology is used to verify applicants before their virtual ID cards get authorised.

### **Asahi to sell its stake in China's Tsingtao for US\$941 million**

Asahi Group Holdings Ltd. agreed to place its stake in Tsingtao Brewery Co. back into Chinese hands, selling its holding to conglomerate Fosun Group and the local brewer for about US\$941 million. Asahi is selling its 20 percent holding in China's third-largest brewer for HK\$27.22 a share. Fosun will pay about US\$847 million for an 18 percent stake while Tsingtao will pay approximately US\$94 million for the rest. The Tsingtao deal marks the biggest investment in food and beverage for Fosun.

### **Walmart, JD.com, IBM, Tsinghua set up blockchain food safety alliance**

Retailers Wal-Mart Stores Inc. and JD.com Inc. and technology gurus IBM Corp. and Tsinghua University have kicked off a collaboration to track food information and enhance food safety in China using blockchain technology. The four have established the Blockchain Food Safety Alliance, which allows companies to share information that is then stored by blockchain - encouraging accountability and giving suppliers, regulators and consumers greater insight and transparency into how food is handled from the farm to the table.

### **Google launching artificial intelligence research center in China**

Google is opening an artificial intelligence (AI) research center in China to target the country's local talent. The research center will be the first of its kind in Asia, and will comprise a small team operating out of its existing office in Beijing.

### **China's manufacturing grows at fastest pace in four months**

China's manufacturing activity expanded at its fastest pace in four months in December 2017, underpinned by solid growth in new orders that also led companies to buy more supplies. The General Manufacturing Purchasing Managers' Index (PMI) rose to 51.5 in December 2017, up from 50.8 in November. The December figure was the highest reading since August.

### **China stops production of 553 vehicle models over fuel use**

From 1 January 2018, China ended the production of 553 passenger-car models that don't meet fuel-consumption limits amid efforts by the nation to curb pollution. China has been cracking down on chronic pollution in the past year through measures including curbs to steel supply, restricting coal usage, and a plan to phase out vehicles powered by fossil fuels.

### **China's Geely adds to global convoy with US\$3 billion Volvo truck stake**

Zhejiang Geely Holding Group Co., which owns Volvo Cars, said it had reached an agreement with Cevian Capital to acquire the investment firm's entire 8.2% equity stake and 15.6% voting rights in Volvo AB, making it one of the largest shareholders in the company. The move marks a further step by Geely - by far China's most-acquisitive auto maker - to become a global player. In May 2017, Geely agreed to buy a 51% stake in British sports-car brand Lotus and a 49.9% stake in struggling Malaysian car maker Proton Holdings Bhd. that gave it a foothold in Southeast Asia.

### **Volkswagen's Spanish unit to sell electric cars in China under new name**

Seat SA, the Spanish subsidiary of Volkswagen AG, will sell its China-made electric cars under a different brand name in China. The official establishment of Volkswagen's third joint venture in China - announced on 22 December - came more than a year after the German carmaker and Anhui Jianghuai Automobile (JAC) signed a memorandum of understanding in September 2016. The Anhui province-based venture will engage in auto production, sales and exports, as well as offer used-car trading and other transportation services. China started issuing permits that allow companies to enter the auto market, as long as they exclusively produce electric cars in 2015.

### **Tencent, JD back Chinese online retailer in battle with Alibaba**

Tencent Holdings Ltd. and JD.com Inc. will buy a slice of one of China's largest online retailers for US\$863 million, forging an alliance to take on Alibaba in e-commerce and digital payments. The deal comes with a business cooperation pact that includes setting aside real estate for Vipshop on JD's site and Tencent's digital wallet, a thriving and integral part of the WeChat messaging service used by close to a billion people.

## **Legal News**

### **Intellectual Property**

#### **Results of 2017 annual online piracy crackdown campaign announced**

The results of the 2017 annual online piracy crackdown campaign, called the “Sword Net Action”, were recently published - 1,655 infringing websites were taken down, 274,800 infringing links were deleted, 1.51 million of infringing works were confiscated, and 37 cases were transferred for criminal investigation. Some major enforcement cases of the crackdown campaign are highlighted below.

- Large scale online piracy of digital library system uncovered - The Beijing cultural market administrative law enforcement team shut down a local company offering a “foreign digital library system” to the public, containing over 30,000 pirated works including a large range of full-version professional journals, and imposed an administrative fine of RMB400,000 RMB (US\$62,000).
- Illegal online video-on-demand service shut down - Following a complaint by the Motion Picture Association of America, the Beijing copyright department shut down a company offering a virtual reality APP providing, inter alia, international blockbusters such as Fast and Furious 7, Doomsday etc. on demand and imposed a fine of RMB30,000 (US\$5,000). The case was the first case in China to involve VR technology to spread pirated audio-visual works.
- Criminal online film piracy case - Following complaints by IP owners, the public security department of Tianjin conducted an investigation into the “Ji Ji” online cinema. The infringing scheme involved renting a server to run the online cinema, offering no less than 70,000 films and television shows. The operators of the online cinema were convicted on the count of infringing copyright and sentenced with imprisonment of 42 months and a fine of RMB400,000 (US\$61,000).
- Criminal enforcement of online game copyright infringements. Following complaints by right holders, the Copyright Department of Enshi Prefecture in Hubei Province conducted a joint investigation with the public security department into an online game copyright infringement case, regarding a set of illegal plug-ins sold for online games. The infringers were sentenced with imprisonment ranging from 18 to 36 months, with a 2-year probation period imposed on some infringers.
- Software piracy case - Following complaints by right holders, the copyright departments of Foshan, Guangdong Province, and Loudi, Hunan Province, investigated a software piracy case, regarding a scheme whereby 44 sets of specialised engineering software programs as well as 100 sets of other pirated software programs. A fine of RMB60,000 (US\$9,500) were imposed.

#### **China secures IP protection for 2022 Winter Olympics logos and emblems**

The Committee of the Beijing 2022 Winter Olympic Games announced on 15 December 2017 that it had filed trademark applications for registration of the Beijing 2022 Winter Olympic and Paralympic emblems in China and overseas. The emblems have also been registered as special symbols in China by the Beijing Committee. Further, the National Copyright Administration of China started specific actions to protect the copyright of the emblems.

### **China announces set up of a squatter blacklist database to curb trademark squatters**

China Trademark Office (CTO) recently announced to establish and maintain a database to blacklist bad faith or squatter trademark applicants. It is unclear for now though what the criteria for inclusion in the database is, or whether this database would be open for public inspection. Nonetheless, the establishment of the database signals the CTO's resolve in tackling the escalating problem of bad faith applications and will go some way to alleviating the brand owners' burden of proving bad faith. Currently, it's hard for foreign business to succeed even in cases where the bad faith appears blatant - the success rate is only about 30%.

### **Shenzhen sets up finance, IP protection courts**

Shenzhen set up a financial court and an intellectual property (IP) court in the Qianhai Shenzhen-Hong Kong Modern Service Industry Cooperation Zone on 26 December 2017. The IP court is empowered by the Supreme People's Court to deal with IP cases under the jurisdiction of Shenzhen Intermediate People's Court. The financial court will handle financial cases other than those falling under the jurisdiction of community courts, and appeals. The move addresses the large and growing number of financial and IP cases in Shenzhen, a front-runner in the country in terms of finance and technological innovation.

### **Shenzhen reviews the new draft Regulations on Shenzhen Special Economic Zone National Independent Innovation Demonstration Zone**

On 16 October 2017, the Regulations on Shenzhen Special Economic Zone National Independent Innovation Demonstration Zone was proposed for a second review in the meeting of the Standing Committee of the Shenzhen Municipal People's Congress. This version of Regulations breaks through the limitation that only a legal person may apply for fiscal subsidies, and expands the principal of application to responsible person in charge of a scientific research team. In addition, it also sets forth that a unit that has committed any IP infringement and the responsible person of the corresponding project shall not apply for fiscal subsidy within five years. The Regulations encourage scientific researchers to directly hold stock shares through intellectual property rights and stipulate that when participating in a company through intellectual properties or establishing a company, universities/colleges, scientific research institutes and researchers may handle formalities for registration of their stock share ownership or institution of said company, and may separately hold stock shares independently.

### **Every China TRAB trademark appeal decision published online**

The trademark appeal decision publish system was initially completed and run for trial on 15 December 2017, and 1573 copies of decisions issued by the Trademark Review and Adjudication Board (TRAB) was published automatically. The system was formally put into operation on 28 December 2017. According to the TRAB, all the decisions (except for those not disclosed in accordance with relevant regulations) will be automatically published for public supervision.

### **Beijing High Court releases new jurisdiction rules for civil IP cases**

The Beijing High Court released the Provisions on the Adjustment of the Courts' Jurisdiction over Civil IP Cases on 2 November 2017. The Provisions outline the jurisdiction of the Beijing High Court, the Beijing IP Court and the lower-level Beijing courts.

Under the new Provisions, the Beijing High Court has jurisdiction over:

- first-instance civil IP cases concerning amounts of 1) RMB200 million or more where all of the parties concerned are domiciled in Beijing, and 2) RMB100 million or more where one party is domiciled outside Beijing or there is a foreign, Hong Kong, Macanese or Taiwanese element;
- appeals filed against a first-instance civil IP judgment or verdict rendered by the Beijing IP Court;
- retrials filed against a civil IP judgment, verdict or reconciliation agreement that was rendered by the Beijing IP Court and has come into effect, except where the party concerned has filed for a retrial before the Beijing IP Court;
- other first-instance civil IP cases of great significance in Beijing.

The Beijing IP Court has jurisdiction over:

- First-instance civil IP cases involving patents, new plant varieties, integrated circuit layout designs, technological secrets, computer software, monopolies or the recognition of well-known trademark status, where the amount concerned is worth less than 1) RMB200 million and all of the parties concerned are domiciled in Beijing, and 2) RMB100 million and one party is domiciled outside Beijing or there is a foreign, Hong Kong, Macanese or Taiwanese element;
- first-instance civil IP cases involving copyright, trademarks, technology contracts, unfair competition or franchise contracts, where the amount concerned is between 1) RMB100 million and RMB200 million and all of the parties concerned are domiciled in Beijing, 2) RMB50 million and RMB100 million and one party is domiciled outside Beijing or there is a foreign, Hong Kong, Macanese or Taiwanese element;
- appeals filed against a first-instance civil IP judgment or verdict rendered by a lower-level court;
- retrials filed against a civil IP judgment, verdict or reconciliation agreement that was rendered by a lower-level court and has come into effect, except where the party concerned has filed for a retrial before the lower-level courts;
- other first-instance civil IP cases of great significance in Beijing, which are not otherwise provided for by the above bullets.

The lower-level courts have jurisdiction over:

- First-instance civil IP cases involving copyright, trademarks, technology contracts, unfair competition or franchise contracts, where the amount concerned is less than RMB100 million and all of the parties concerned are domiciled in Beijing, and 2) RMB50 million and one party is domiciled outside Beijing or there is a foreign, Hong Kong, Macanese or Taiwanese element.

### **Beijing High Court recognizes unregistered trademark rights**

In the case of *Guangzhou Kugou Networks Co, Ltd. (Kugou) v. Shantou Lifeng Electric Appliances Co., Ltd. (Lifeng)*, the Beijing High Court granted full protection to an unregistered trademark in a dispute against the owner of a later registration for the mark. Kugou was established in 2004 and offers a music streaming and download service in China, under the mark KUGOU. Lifeng filed a trademark application for registration of KUGOU in Chinese Characters and English in relation to the services in class 41 with the CTO in 2009, and this application was registered in 2011. Kugou filed an invalidation action against Lifeng's registration with the TRAB in 2014. The TRAB held in Kugou's favor under both Article 13.2 and Article 32 of the Trademark Law 2001, finding that "KUGOU in Chinese characters" is a well-known trademark for providing online music service (not for downloading), and the registration of Lifeng's mark for entertainment, providing karaoke

services, etc. was likely to cause confusion, and KugGou had been using “KUGOU in Chinese characters” as its trade name before the filing of Lifeng’s mark, and had attained reputation in the online music industry. Lifeng appealed to the Beijing IP Court, which confirmed the invalidation of Lifeng’s mark with respect to “arrangement and organization of concerts, program production, providing karaoke services; night club and entertainment” but maintained the registration for “fitness club, mobile library, training; book publishing; modeling for artists.” Both parties appealed the IP Court’s decision to the Beijing High Court, which confirmed the invalidation of all of Lifeng’s designated services, under both Articles 13.1 and 31. The High Court held that, in assessing likelihood of confusion under Article 13.1, the court should consider the extent of the prior mark’s reputation, the level of similarity of the goods/services, and the level of similarity between the marks. The higher the reputation of the prior mark, the lower the similarity of the marks and goods/services that is required.

### **EU General Court backs Apple in “Mi Pad” dispute with Xiaomi**

The EU General Court backed Apple in a trademark dispute with Chinese electronics company Xiaomi over “Mi Pad” on 5 December 2017. Xiaomi, which is the fifth largest mobile phone company in China, with revenues of US\$15 billion, filed the application with the European Union Intellectual Property Office (EUIPO) in April 2014, for registration of “Mi Pad” in relation to electronic devices in classes 9 and 38. Apple filed an opposition in August 2014, claiming the application was confusingly similar to its ‘iPad’ mark. The EUIPO found that there was a significant degree of similarity between the signs at issue and accordingly upheld Apple’s opposition in 2015. Xiaomi filed an appeal, which was rejected by the First Board of Appeal of the EUIPO in September 2016. Xiaomi then appealed to the General Court, which concluded that the signs at issue display a high degree of similarity owing to the fact that iPad is entirely reproduced in Mi Pad, and the marks are phonetically similar to the English-speaking part of the relevant public, with an “average” degree of similarity to non-English speakers, and the applicant has not shown that the Board of Appeal erred in any way whatsoever by considering that there was a likelihood of confusion between the marks at issue.

### **China tops patent, trademark and design filings in 2016**

Worldwide filings for patents, trademarks and industrial designs reached record heights in 2016 amid soaring demand in China, which received more patent applications than the combined total of applications received by the United States, Japan, the Republic of Korea and the European Patent Office. Innovators around the world filed 3.1 million patent applications in 2016, up 8.3 per cent for a seventh straight yearly increase. China accounted for 98 per cent of total growth, receiving about 236,600 of the nearly 240,600 additional patent filings. Trademark applications jumped by 16.4 per cent to about seven million, and worldwide industrial design applications grew by 10.4 per cent to almost one million – both also driven by growth in China.

### **Beijing IP Court concluded the first domestic patent infringement case regarding graphical user interface design**

The Plaintiffs, Beijing Qihu Technology and Qizhi Software (Beijing) Co., Ltd. filed a design patent named “A computer with a graphical user interface” on 5 September 2014, and the design was registered on 5 November 2014. The Plaintiffs found the software “Jiangmin Optimization Expert” developed by the Respondent, Beijing Jiangmin Xinke Technology Co., Ltd. contained a graphical user interface that was similar to their design patent, and sued the Respondent against its infringement.

Beijing IP Court accepted this case on 3 May 2016 and held a hearing on 21 September 2016. The Court considered that the product shown in the patent devices was a “computer” which had a limited effect on the scope of protection of the rights of the patent involve, however, the accused infringement referred to the Respondent’s supply of the alleged infringing “software” which was beyond the scope of the design product and accordingly, the alleged infringing “software” was not similar to the design product “computer”, even if the user interfaces for both were identical or similar. Therefore, the Plaintiffs’ claim on the Respondent’s direct infringement was not established. Further, the Court concluded that although the Plaintiffs claimed the users would probably sell or offer to sell computers with pre-installed software at issue, they failed to submit the evidence showing this fact. Users only downloaded the software to computers, but not manufactured, sold or offered to sell computers. So no direct infringement existed in this case. Even if the software was an intermediary of the infringing product, the Respondent’s supply of software did not constitute “contributory infringement”, so such a claim was not supported by the Court.

On 25 December 2017, the IP Court issued a decision and rejected all Plaintiffs’ claims and requests. Whether the Plaintiffs appealed to the Beijing High Court is not yet known.

### **A trademark containing “Y:2” was determined as similar to Adidas’s “Y-3” by Beijing IP Court**

On 7 November 2016, Adidas filed an invalidation action against the trademark “Y:2 by YiSHiON” registered by Guo Donglin, a Chinese person on 28 March 2016, based on its prior registration of famous “Y-3” trademark. The invalidation action was rejected by the TRAB, on the grounds that 1) “Y:2” included in the Trademark at issue was not similar to “Y-3” in terms of constituting elements and pronunciation, and the overall appearance of the two trademarks was different; 2) even if considering the reputation of the Y-3 trademark in relation to shoes, as shown in the evidence file by Adidas, the Trademark at issue was not an imitation of Y-3 and there was not public confusion.

Adidas appealed to the Beijing IP Court, which concluded that 1) “Y:2” was the distinctive element of the Trademark at issue, and the cited Y-3 trademark has obtained certain reputation, through Adidas’ long-term use. The two trademarks constituted similar trademark, in terms of constituting elements, manifestation, pronunciation, especially overall appearance; 2) partial goods covered by Trademark at issue, “clothing, trousers, layettes, swimsuits, shoes, hats” were identical with / similar to the goods covered by the cited registration, “clothing, shoes, hats”, however, the other goods covered by Trademark at issue, “hosiery, gloves, belts, neckties” did not constitute similar goods; 3) the evidence filed by Adidas was not enough to show that its Y-3 had become a well-know trademark before filing of the Trademark at issue. Based on the above, the Court withdrew the original decision issued by the TRAB and ordered the TRAB to re-issue a correct one.

At present, the third party, Guo has filed an appeal.

### **Co-existence of trademarks “BING and design” and “BING” in relation to non-similar goods does not cause relevant public’ confusion**

Microsoft’s application for extensive protection of its trademark “BING and design” was rejected by the CTO and TRAB, due to the prior registration of the trademark “BING”. Microsoft appealed to the Beijing IP Court. The Court found that the goods “couplers [data processing equipment]” covered by the cited registration was cancelled, and the remaining goods “cables, electric; copper wire, insulated; cable glands” were not similar to various software covered by the Trademark at

issue, in terms of function, usage, producer, sales channel and consumer. Microsoft's claim that the cited registration would no longer constitute the obstacle to registration of Trademark at issue was established and upheld by the Court. During the TRAB procedures, the cited registration had not been canceled, so it was proper for the TRAB to make the decision at issue, based on the status of the cited registration then. However, considering the decision on cancellation of the cited registration submitted by Microsoft to the Court was sufficient to affect the conclusion of this case, the Court decided to withdraw the decision at issue, but the litigation fee was borne by Microsoft. The IP Court decision was issued in December 2017, and whether any parties appealed to the Beijing High Court is not yet known.

### **The period for trademark examination to be reduced to 6 months**

The Vice Director of the State Administration for Industry and Commerce, Liu Junchen stated in a forum on 22 December 2017 that the period for trademark examination was reduced from the statutory 9 months to 8 months and would be further reduced to 6 months next year. According to Liu, there are totally 17 million trademark registrations in China, and in the first 11 months in 2017, 5.11 million trademark applications were filed.

### **Competition**

#### **MOFCOM conditionally cleared the ASE/SPIL acquisition**

On 24 November 2017, the Ministry of Commerce of the People's Republic of China (MOFCOM) conditionally cleared the proposed acquisition of Siliconware Precision Industries Co., Ltd. (SPIL) by Advanced Semiconductor Engineering Inc. (ASE). Due to MOFCOM's concerns that the proposed deal may have the impact of eliminating or restricting competition in the market for original equipment manufacturer services for semiconductor assembly and testing, the parties were required to operate independently, for 24 months post-merger, in relation to management, finance, personnel, pricing, sales, production capacity, and procurement. The parties had to withdraw and refile the notification, such that MOFCOM's conditional approval was eventually obtained 15 months after the notification was initially submitted to MOFCOM. The "hold-separate" remedy was first accepted by MOFCOM in 2011 in its conditional approval of Seagate's acquisition of Samsung's hard disk business.

### **Tax**

#### **China issued new guidance on the withholding tax deferral incentive for foreign investors**

On 21 December 2017, the Ministry of Finance (MOF), the State Administration of Taxation (SAT), the National Development and Reform Committee (NDRC) and the Ministry of Commerce (MOFCOM) jointly issued a new circular (Caishui [2017] No. 88), formally setting out detailed guidance on the withholding tax deferral incentive for foreign investors, which applies to qualified reinvestment occurring after 1 January 2017. In general, after 1 January 2017, if foreign investors directly reinvest their profits distributed by China resident enterprises to some Encouraged Industries under the Catalogue for the Guidance of Foreign Investment Industries and the Catalogue of Priority Industries for Foreign Investment in the Central-Western Region and meet certain prescribed conditions, then the 10% withholding income tax on the distributed profits may be deferred until the foreign investors' disposal of such reinvestment in China. The specific explanations are summarized as following:

- Profit distributed by China-resident enterprises refer to equity investment return, mainly dividends and corporate bonuses that have been declared and distributed to the foreign investors by a China-resident enterprise based on their retained earnings on book.
- Qualified direct reinvestments include: 1) increase in or conversion to paid-in-capital or capital reserve of domestic resident enterprises; 2) set-up of new residential enterprises in China; 3) acquisition of equity in Chinese domestic resident enterprises from unrelated parties and 4) investment in other ways stipulated by the MOF and SAT.
- Where cash dividends are directly reinvested by the foreign investors, such cash dividends should be directly transferred from the account of the Chinese enterprise distributing the dividend to the account of the investee Chinese enterprise or to the account of the equity transferor.
- Where the dividends to be reinvested are in-kind contributions, such as tangible assets and securities, the ownership of such in-kind contributions should be directly transferred from the Chinese enterprise distributing the dividend to the investee Chinese enterprise or the equity transferor.

## **Commercial / Trading**

### **China issues its second Draft E-Commerce Law**

On 7 November 2017, the Standing Committee of the National People's Congress published the second draft of the E-commerce Law. The highlights of the Draft are summarized as following:

- Scope - the Draft has a wide scope of application, and extends to all "e-commerce operators" in China, which is a new concept encompassing: 1) operators exploiting their own websites, 2) e-commerce platform operators, and 3) e-commerce operators who listed their web shops on e-commerce platforms.
- AIC registration and taxation - most e-commerce operators (except vendors of home-grown agricultural products and arts and crafts) must be registered and licensed by the Administration for Industry and Commerce (AIC). And all e-commerce operators (including the individual web shop on e-commerce platforms) will have to pay taxes on their e-commerce revenue.
- False advertising - it is forbidden to fabricate false transaction information, write and post fake user reviews or delete genuine user reviews, unless they are defamatory or otherwise forbidden. Moreover, sponsored listings should be clearly marked as such.
- Intellectual Property - e-commerce platform operators must provide takedown procedures, allowing IP owners to request the takedown of infringing links or even the closure of the web shop, if the IP owner can provide prima facie evidence of infringement. Platforms that do not take appropriate measures will be jointly liable for the increase in damages caused by the prolonged IPR infringement. However, IP owners who erroneously request the takedown of genuine links or web shops will also have to indemnify any good faith web shops selling genuine articles.
- E-commerce platform abuses - e-commerce platform operators shall not take advantage of the service agreement, transaction rules or other means to impose unreasonable restrictions or transaction conditions on the transactions of operators on platform or the price of such transactions, or collect unreasonable fees against operators on platform.

This Draft would only need to go through the third review before it is passed into law. However, there is no statutory time limit on when the third review would happen.

## **AQSIQ streamlines inspection and quarantine formalities for higher Customs clearance efficiency**

On 24 October 2017, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued the Announcement on Streamlining Inspection and Quarantine Formalities to Enhance Customs Clearance Efficiency, commencing operation on 1 November 2017. The Announcement states that an inspection applicant, while handling formalities for applying for customs inspection and quarantine, is required to provide the assurance of conformity issued by the consigner of outbound goods or the consignee of inbound goods. The assurance of conformity should cover the commitment of observing laws, guarantee for conformity, responsibilities for quality safety, and voluntary measures to recall products in question when problems in connection with products arise. Further, the Announcement clearly specifies that goods imported into China for the first time and imported goods required to have inspection and quarantine certificates should undergo tests for the inspection and quarantine purposes on the spot and/or in the laboratories in accordance with applicable provisions.

## **Arbitration**

### **China's supreme court issues significant new guidance on arbitration**

The PRC Supreme People's Court (SPC) released two new judicial interpretations on arbitration, the Provisions of Issues on Reporting of Judicial Review of Arbitration Cases, and the Provisions of Several Issues concerning the Trial of Judicial Review of Arbitration Cases, on 26 December 2017, and both commenced operation on 1 January 2018. The notable changes include:

- Applying the “reporting procedure” to purely domestic arbitrations - including any decision to invalidate an arbitration agreement, to set aside an award or to refuse to enforce an arbitral award. All such decisions must first be approved by a higher people's court, before it is effective.
- Opening the door to party participation in the “reporting procedure” - if the higher court finds that the relevant facts are not clear, it “can question” the parties or require the lower court to conduct further fact finding. The parties may therefore have an opportunity to participate in the reporting procedure by way of answering the court's enquiries on the facts.
- Clarifying the choice of an applicable law of an arbitration agreement - if the parties intend to choose a particular law to govern the validity of a foreign-related arbitration agreement, they should do so expressly. If the parties do not choose the applicable law of a foreign-related arbitration agreement, the court will apply either the law at the place of the arbitration institution, or the law at the seat of the 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.*