



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 to allow foreign firms to issue shares as part of drive to open capital markets

The People's Bank of China is considering allowing foreign companies to issue shares on the mainland as part of its drive to reform the convertibility of the yuan and open up China's capital market. Beijing will press ahead with reforms to allow individuals to invest in overseas capital markets directly, according to the central bank's 2015 annual report released on 21 June. The scheme is an upgrade of the qualified domestic institutional investor, or QDII program launched a decade ago that allowed individual investors access to overseas markets through certain fund management institutions and banks.

JD sees online grocery growth

JD.com Inc, a leading e-commerce platform in China, declared on 20 June that it would take ownership of Yihaodian, an online marketplace run by Wal-Mart Stores Inc, which in return, will hold a 5 percent stake in the Chinese online major. JD's partnership with Wal-Mart will arm it with more ammunition to take on Alibaba Group Holding Ltd, giving the Beijing-based company wider access to online groceries and more resources to expand in eastern China. As part of a strategic partnership deal, the Chinese branch of Sam's Club will open a store on JD's platform, which is backed by Tencent Holdings Ltd. The two will also link up their supply chains and share delivery services.

Suning officially announces takeover of Inter Milan

China's retail giant Suning Commerce Group has announced the takeover of the top European football club, Inter Milan. Suning's subsidiary, Suning Sports Group, signed the deal worth US\$306 million in Nanjing, Jiangsu province, on June 6, sealing the acquisition of a 68.55

BEIJING

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

percent stake from Inter Milan's majority shareholder International Sports Capital. It's the highest profile takeover so far of a European team by a Chinese firm.

China's ZTE granted extended reprieve in US export violation case

ZTE, China's largest-listed telecommunications equipment manufacturer, has been given another reprieve from United States export restrictions over its alleged violation of longstanding trade sanctions on Iran. The company was notified that the Bureau of Industry and Security of the US Department of Commerce granted an extension to its temporary general license through August 30. The bureau on March 7 slapped Shenzhen-based ZTE with export restrictions, which required its American suppliers of components and other products to apply for a license to ship those items to the company. On March 24, the bureau amended that decision by granting ZTE a temporary general license from those restrictions until June 30.

Chongqing likely to be included in third batch of FTZs

Southwest China's Chongqing municipality is expected to be chosen in the third batch of free trade zones (FTZs). It has completed related procedures and the result will be announced at a proper time. China has four pilot free trade zones for now. In August 2013, China established the first pilot FTZ in Shanghai. In April 2016, three more FTZs were established in the southern province of Guangdong; the Tianjin municipality in the north and another in the southeastern province of Fujian.

China approves seven new IPOs

IPO applications by seven companies have passed review, according to a statement issued by China Securities Regulatory Commission (CSRC). The total capital raised by the seven is expected to be no more than RMB 8.8 billion yuan (US\$135 million). Of the companies, two will be listed on the Shanghai Stock Exchange, two on Shenzhen's small and medium enterprise board, and the rest on the NASDAQ-style ChiNext. The companies include Bank of Jiangsu, Haiqi Group and Jihong Group.

China to maintain growth in entertainment and media industries

China's entertainment and media (E&M) revenue will amount to US\$258 billion by 2020 with a compound annual growth rate (CAGR) of 8.9 percent, markedly higher than the world average of 4.4 percent, as predicted by PWC. Internet advertising, cinema and video games are projected to see CAGRs of 13.9 percent, 18.9 percent and 7.4 percent respectively over the 2015-2020 period.

China's homegrown Uber raises US\$600 from top insurer

Private car services operator Didi Chuxing Technology Co. said it has received about US\$ 600 million in new funding from China's top life insurer, which joined Apple as the latest major backer of the firm often called China's homegrown Uber. The state-owned China Life Insurance Co. made the investment using US\$ 300 million in cash and a long-term lending commitment of RMB2 billion (US\$303 million).

Chinese fund buys Italian robotics-maker Gimatic

European-Asian equity fund Agic Capital has agreed to buy Gimatic, an Italian supplier of robotic end-of-arm tools valued at 100 to 150 million euros (US\$112-169 million). Agic Capital, which focuses on European industrial technical investment, was founded last year by Henry Cai, a former Deutsche Bank senior executive. Gimatic, founded in 1985, is an Italian supplier of robotic end-of-arm tools. The company has seen its annual sales grow by more than 20 percent over the past three years, with four fifths of its business coming from Europe. Asia, although accounting for less than a tenth of sales, is seen as the market with the biggest potential.

China retail sales up 10% in May

China's retail sales of consumer goods grew 10 percent year on year in May, compared with the 10.1-percent growth for April. In the first five months, retail sales were up 10.2 percent year on year. Urban consumers accounted for the lion's share of the increase though rural consumer spending climbed faster than their urban peers. Online sales in the first five months rose 27.7 percent year on year.

China creates more development zones to foster innovation

The Chinese government said on 8 June that it will accelerate building two more national-level development zones to encourage innovation, as the country seeks to foster new engines for growth. The government approved the establishment of the two "national innovation demonstration zones" in Fujian province and Anhui province, respectively. The decision was made after similar zones, including Beijing's Zhongguancun, and Shanghai's Zhangjiang high tech zone, have played experimental and pioneering role in the nation

Haier acquires GE Appliances

Haier Group, China's biggest maker of household appliances, has signed closing documents for the company's acquisition of General Electric (GE)'s home appliance business. The announcement follows the previously announced memorandum of understanding between Haier Group and GE to cooperate globally and pursue joint growth projects in areas including advanced manufacturing, healthcare and the Industrial Internet.

Schneider to invest in more Chinese high-tech SMEs

French electric equipment and automation company Schneider Electric SA will invest in more small and medium-sized high-tech companies in China through a specialized investment fund, and provide training and learning materials to up to 100 vocational schools this year, to help it gain more quality technologies from selected Chinese enterprises, as well as enhance the company's ability to diversify its business. With revenue of US\$30.6 billion in its 2015 fiscal year, Schneider has 160,000 employees in more than 100 countries and regions.

BAIC to be Benz's top partner

BAIC Motor Corp Ltd has become the biggest partner of Daimler's Mercedes-Benz brand in China. That's after a share restructuring of the German manufacturing base in eastern China. The ownership change follows BAIC's acquisition on 20 June of more than 35 percent of the

shares in Fujian-based FJMotor, holding company of Fujian Benz Automotive Industry Co Ltd. BAIC plans to turn Fujian Benz into a manufacturing base for multipurpose vehicles and passenger cars by expanding the product portfolios from the current sedan and SUV range.

Legal News

Intellectual Property

Court orders Chinese version of ‘The Voice’ to use a different name

Shanghai-based Star China Media was the leading producer of the first four seasons of The Voice of China, which has been a huge success on the mainland. But its collaboration with Talpa Media, the Dutch production company that owns the format of the show, ended in January when the legal agreement between them expired. Talpa subsequently signed a contract with another Chinese production company, Zhejiang Tangde, to produce seasons five to eight. Undeterred, Star China Media started auditions in November for a show that it had planned to call 2016 The Voice of China, which is due to air in July.

The Beijing IP Court ruled on 20 June that, based on Zhejiang Tangde’s application, Star China Media must “immediately cease using the name The Voice of China in all publicity, promotions, auditions and advertisements for its singing competition talent show”. The court ruled there was a possibility Star China would infringe a registered trademark and that the high similarity between the names 2016 The Voice of China and The Voice of China was likely “to cause confusion and misunderstanding among the public”, amounting to unfair competition. It said once 2016 The Voice of China was broadcast, it would be “disseminated and spread on a relatively large scale,” which may “constitute an infringement to Tangde’s exclusive licence, make it more expensive and more difficult for Tangde to safeguard its legal rights or even make it hard for the company to exert its rights in the authorised period”.

Control Risks with Warning Letters to infringer's distributors

Recently the Supreme Court published a decision on an unfair competition/commercial defamation action filed by Shuanghuan (a now-defunct Chinese automobile maker) against Honda, as part of the protracted legal feud lasting around 12 years initially out of Honda's design patent infringement allegation against Shuanghuan. In the judgment, Honda was found by the court to be liable for damages of RMB 16 million (about US\$ 2.46 million) for having improperly issued warning letters.

Honda owns Chinese design patent No. 01319523.9, and believes that the car manufactured and sold by Shuanghuan under the brand "LAIBAOS-RV" infringes this patent. Honda issued multiple warning letters to Shuanghuan and more than 10 Shuanghuan dealers, alleging that sales of Shuanghuan's cars would be infringing its patent. The letters to dealers was focused on the dealers' act of sales. The court finds that Honda's warning letters to Shuanghuan is proper but its warning letters to Shuanghuan's dealers, are improper and constitute unfair competition,

primarily. According to the decision, sellers, importers or users usually have a weaker cognitive competence on whether infringement exists, so the IP owner assumes a higher obligation to disclose more details in warning letters to the sellers, importers or users. Honda's warning letters to the dealers failed to meet this higher obligation. The warning letters did not disclose the specific comparison and analysis why Honda saw infringement or the lawsuits filed by both parties, which information could have helped the dealers better determine whether it should stop the alleged act.

Learning from the court's reasoning, to avoid the risk of being held liable for unfair competition, the IP owner may choose to include more detailed information in warning letters, specifically the following:

- the exact registration number and title of the IP right believed to have been infringed;
- the exact model number or name of the infringing goods;
- analysis why the IP owner sees infringement, where the extent of elaboration can be quite flexible but should include a minimum level of comparison of the IP right and the infringing goods;
- whether there are ongoing legal actions between the IP owner and the manufacturer, whether there has been any ruling or decision from a government authority and if yes whether such ruling or decision has become effective or the losing party still has a right to appeal.

Supreme People's Court links damages to trademark fame in "very positive" Michelin decision

French tire manufacturer Michelin filed a suit for trademark infringement and unfair competition in the Chongqing Fifth People's Court in March 2011 after discovering that its formerly licensed distributor Sentaída had been using a number of marks that were allegedly confusingly similar to its own. In addition to its Roman character marks MICHELIN and its renowned Bibendum mascot (otherwise known as the Michelin Man), the company's phonetic name MI QI LIN in Chinese characters ("米其林") is also widely recognised in China. Sentaída had begun marketing products under the marks SEN QI LIN and CENCHELYN and had registered the "www.cenchelyn.com" domain name. Moreover, Li Daowei, a local Chongqing tire dealer, was selling Sentaída tires using Michelin's "米其林" trademark.

The Chongqing Fifth People's Court and, at second instance, the Chongqing High People's Court found that one of Sentaída's trademarks was similar to Michelin's and ordered it to pay Rmb10,000 in damages. The courts additionally found that Li Daowei's use of "米其林" constituted trademark infringement and awarded Michelin RMB50,000 in damages. However, they rejected the claim of similarity between another of Sentaída's trademarks and the MICHELIN mark. This led to the French company's eventual appeal to the Supreme People's Court, which in March this year repealed the lower courts' judgments and raised the amount of damages to RMB500,000 - the maximum amount of discretionary compensation allowed under China's 2001 Trademark Law, which was the applicable legislation in this particular case.

The Supreme Court has ruled that the fame of an infringed trademark should come into consideration when determining damages, with lower courts expected to follow suit. The

decision looks to be a positive one for brand owners seeking higher damages in cases where it seems likely that flagrant copying has taken place.

Jaguar Land Rover switches strategy in fight against alleged copycat after design cancellations

Jaguar Land Rover has revealed it is suing Chinese automaker Jiangling Motors (JLM) on the basis of copyright infringement and unfair competition after both companies' design patents were invalidated by Chinese authorities. Jaguar Land Rover was suing JLM for allegedly copying the British firm's Range Rover Evoque when creating its Landwind X7 SUV. After Jaguar Land Rover had launched an earlier designs lawsuit against JLM, China's re-examination board ruled in April that a patent related to the Evoque was invalid, noting that the automaker had failed to file its application before the car model was displayed or unveiled to public. In May, the board also ruled that JLM's patent was invalid, with the decision asserting that Landwind X7 SUV strongly resembled the Evoque SUV.

Qualcomm sues Alibaba-backed Meizu for patent infringement in Beijing IP Court

Qualcomm Inc, American multinational semiconductor company, has announced that it has filed a patent suit against Alibaba-backed Chinese tech start-up Meizu in the Beijing Intellectual Property Court. In its complaint, Qualcomm has alleged that Meizu has been using its technology without obtaining proper license. The complaint seeks rulings that the terms of a patent license proffered by Qualcomm to Meizu abide by the Anti-Monopoly Law of China, as well as the semiconductor manufacturer's fair, logical and unbiased licensing obligations. At the same time, the complaint also requests a ruling that the patent license terms offered should form the basis for a patent license with Meizu. In fact, Meizu has been using Qualcomm's fundamental technologies patented in China in mobile devices, including 3G (WCDMA and CDMA2000) and 4G (LTE) wireless communications standards. The Qualcomm has extensively negotiated with Meizu to sign a patent license agreement compatible with the rectification plan submitted by the company to the National Development and Reform Commission (NDRC) of China in 2015, but the Chinese start-up was unwilling to comply.

Court applies Article 63.2 of Trademark Law in determining damages for trademark infringement

Chindex International Inc, a premier healthcare company in Asia, providing healthcare services in China and Mongolia through a chain of hospitals operating under the name 'United Family' discovered that Beibei He Mei Jia (HMJ) hospital was using its trademarks HE MEI JIA in Chinese characters on its website and in its business operations without authorisation. Chindex filed a civil litigation against HMJ before the Chongqing First Intermediate Court on the ground of trademark infringement, requesting compensation of Rmb3.02 million and a public apology. During the court proceedings, Chindex simultaneously filed two applications with the court to obtain HMJ's tax payment records, balance sheets and bank account records for the past two years (pursuant to Article 63.2 of the Trademark Law 2013) and to preserve such evidence. On 17 December 17 2015, the court ordered HMJ to immediately stop using Chindex's registered trademarks and indemnify Chindex RMB1 million for its financial loss and RMB100,000 to cover its reasonable costs.

China issues opinions on stepping up IP protection in foreign trade

The State Council of China recently issued opinions to promote the development of foreign trade on 9 May 2016. The opinions put forward 14 measures in five aspects, and requires to support innovative services, build own brands, strengthen import and two-way investment and IP protection. According to the opinions, the protection of intellectual property in foreign trade will be stepped up. The opinions underscore the need for continued campaign for cracking down on infringement and counterfeit goods in foreign trade, and support the enterprises to protect their trademark and patent rights.

SIPO released regulations to promote Patent Law enforcement

On 5 May 2016, the State Intellectual Property Office (SIPO) issued three regulations to promote China's patent law enforcement, which were Guide of Determining Patent Tort, Evident Rule on Patent Administrative Enforcement, and Guide on Patent Disputes Administration Mediation. According to the registrations, local intellectual property offices should play a positive role in helping to bring about a mediation agreement between the two parties on basis of pursuant to the law and voluntary. In case of failure to reach a mediation agreement, the department should issue a notice on mediation termination and then drop this case. If the two parties choose the mediation, the department should conclude the case within two months. If the case is of great complexity and time costly, mediation period must be solved within three months.

Crocs v Jinjiang Jinsike Footwear (JSK) - one of the leading IP cases of 2015 selected by the SPC

The dispute between Crocs and JSK began in 2007 when the latter was sued for imitating the popular design of Crocs-brand clogs, which involved elements of decoration and product shape. JSK was also accused of using Crocs' Chinese trademark (KA LUO CHI 卡骆驰) for its whole business get-up, including on its websites, in advertisements and PR releases, in cartoon images and store decorations. The court found in favour of Crocs, notably recognising that the distinctive holes that the company used on its products were a "unique decoration" and that their use by JSK could cause customer confusion. JSK was ordered to pay RMB630,000 in compensation to Crocs, to make public apologies in the media, and to change the design of its products. The verdict in the case indicates that the Chinese courts are prepared to look beyond the scope of the Anti-Unfair Competition Law to protect product shape (China's law against 'passing off' has typically only protected packaging and decorative features on products).

Competition

MOFCOM lifts merger control conditions on 2012 Walmart acquisition

On 8 June 2016, MOFCOM released its decision to lift the conditions it had imposed on Walmart's acquisition of 33.6% of the shares in Newheight Holdings in its 2012 decision. MOFCOM's reasoning was as follows: First, MOFCOM found that Walmart had been in full compliance with the remedies imposed in the 2012 decision. Second, new policies since 2014 have liberalized certain VATS markets, and it would have seemed somewhat incongruous to have contrived to apply restrictions that effectively denied Walmart the benefit of the

liberalization. Third, MOFCOM found that Yihaodian's market position had not grown as fast as the overall market. MOFCOM's decision to lift the remedies imposed in this case did not come as a surprise. In the past few months, MOFCOM issued a number of decisions where it has lifted remedies from past conditional merger clearance decisions, or agreed to change them to the parties' benefit, such as Google/Motorola Mobility, Western Digital/Hitachi Storage and Seagate/Samsung Hard Disk.

Environment

Chinese environmental protection agency loses landmark case proving dereliction of duty

Chinese prosecutors have successfully sued a county environmental agency for inadequately punishing a sewage firm that produced dye without appropriate safeguards, the first such public interest case against a government department. According to the Supreme People's Procuratorate, prosecutors had successfully proved that the environmental protection department in eastern Shandong province had committed "illegal acts" in its dealings with the Qingshun Chemical Technology Company. The case was described by the Supreme People's Procuratorate at the time as China's first "administrative public interest litigation case" after the National People's Congress had earlier authorised prosecutors to file such lawsuits in a pilot programme.

Customs

GAC issues new tariff classification rulings

As two more classification ruling announcements respectively took effect on 15 May and 1 June 2016, the General Administration of Customs (GAC) seems to accelerate its pace in issuing administrative rulings on the tariff classification matters. Since 3 June 2015, the GAC has rendered its classification rulings covering 11 mechanical and electrical products, 2 chemical products and 1 surgical product. Further, the GAC has authorized each Customs Classification Sub-Center located in Shanghai, Guangzhou, Tianjin and Dalian to render classification rulings to those products falling under their own jurisdiction. The ruling, once rendered by the CCC and announced by the GAC, will have the legal effect countrywide.

FDI

China tables further streamlined outbound investment rules

Both the Ministry of Commerce (MOFCOM) and the National Development and Reform Commission (NDRC) jointly released the Draft NDRC Decision on Revising the Administrative Measures on Approval and Record-filing of Outbound Investment Projects on 13 April 2016 for public comments by 13 May. The Draft aims to reduce deal uncertainty and facilitate the ability of Chinese enterprises to bring overseas investment transactions to successful completion in a timely manner, particularly in the context of a competitive bid. The key elements of the Draft are listed below.

- Changes to "Road Pass" Regime – No longer is the NDRC required to consider whether the proposed deal is in line with the State's overseas

investment policies. It also recharacterizes the road pass document issued by the NDRC from a “confirmation letter” to an “acceptance receipt” and requires the NDRC to issue such acceptance receipt within seven working days after receiving the application.

- Streamlining Approval of Certain Overseas Investment Transactions - The Draft contemplates elimination of the role of the State Council, which would mean that NDRC approval is sufficient even for overseas investment transactions involving both investment of USD2 billion or more and investment into a sensitive country, region or industry.
- Removal of Requirement for Opinion from Provincial Counterpart of NDRC - Applications for this approval from local enterprises must still be submitted to the NDRC via its relevant provincial counterpart, but the NDRC’s provincial counterpart can directly forward the application to the NDRC for its approval without having to formulate its own view on the transaction.
- Letter of Intent from Financiers No Longer Required – The Draft contemplates removal of the Measures’ requirement that the pre-closing applications for approval from/filing-for-the-record with the NDRC or its provincial counterpart in respect of an overseas investment transaction be accompanied by a letter of intent from a bank containing key financing terms for the project, if the transaction is subject to bank financing.

Entertainment & Media

China eases cross-border film and media regulations

On 18 May 2016, China’s media regulator, the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), issued the Decision on the Amendment of Certain Rules amending five of its rules. This was part of a broader government-wide effort to reform and simplify China's complex and sprawling system of administrative approvals across all fields. As one of the most heavily regulated and restricted sectors to foreign investment, any changes in this area, however small, are likely to be closely followed by media industry players looking for an opportunity to enter the market. Three key amendments are summarized below.

- Negatives and workprints for Sino-foreign co-produced films shot in China can now be processed or post-produced overseas without any special SAPPRFT approvals. Further, producers of Sino-foreign co-produced films will no longer need to report in their applications to SAPPRFT for initial project approval where the processing and post-production of their film negatives or workprints will take place.
- Film exhibition events in China co-hosted with foreign countries are encouraged, and the door is open to a potentially wide range of work units in China to host them, subject to SAPPRFT approval.
- Censorship of Chinese domestic TV series that involve foreigners in their creation has been decentralized and delegated to provincial-level SAPPRFT, putting such series on an equal footing with Chinese domestic TV series without foreign involvement.

Internet

China issues new Internet search terms after Baidu probe

China's Internet regulator has issued new rules for online search and advertising, about six weeks after it opened an investigation into Chinese search giant Baidu Inc. practice. The Cyberspace Administration of China announce on 26 June that search companies must provide "objective, fair and authoritative results" that should not harm the rights and interests of the nation, the public and other legal organizations. The rules also encourage service to identify and label paid advertisements clearly distinguishing them from regular search results and to limit the number of paid ads on each page.

Civil Procedure

Civil code guideline submitted to top legislature

China is on its way to getting a civil code as a draft of rules stipulating the code's basic principles was submitted to the country's top legislature for first reading on 27 June. The National People's Congress (NPC) Standing Committee will consider the draft general rules at its bi-monthly session, which runs until 2 July. The civil code, a collection of laws designed to cover private law, will be implemented once the legislation is complete. The code is important in modernizing state governance and safeguarding people's interests.

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.