



MMLC Group 

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China Update

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Business News

China Securities Regulatory Commission greenlights seven IPOs

The China Securities Regulatory Commission (CSRC) newly approved IPO applications of seven companies during 19-23 May. The seven companies will raise no more than RMB 2.3 billion (about US\$335 million). Four companies will be listed on Shanghai Stock Exchange, two on the Shenzhen Stock Exchange's Small and Medium-sized Enterprise Board and one on the ChiNext, China's NASDAQ-style board.

China, EU start 13th round of BIT negotiations

The 13th round of China-EU bilateral investment treaty (BIT) negotiations lasted five days from 15 May in Beijing. Both sides strived for positive headway. China-EU BIT negotiations are one of the most important trade and economic negotiations in which China is currently participating.

China handles 168,000 cases of financial crime in 2016

Chinese police closed 168,000 cases of financial crime and recovered RMB 35.6 billion (US\$5.2 billion) last year. Credit card crime has surged in China, with more than 63,000 cases filed in 2016, accounting for one third of all financial crime.

China's outbound direct investment falls 70.8% in April

China's non-financial outbound direct investment (ODI) dropped 70.8% year-on-year to US\$5.83 billion in April, and in the first four months of this year, China's non-financial ODI declined 56.1% year-on-year to US\$26.37 billion, as shown by Ministry of Commerce data.

BEIJING

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

Beijing eases previous ban on flats sold on commercial land

The Beijing city government has lifted a ban prohibiting local property agencies from marketing and selling previously-owned apartments built on land zoned for commercial or office use. The Housing and Urban-rural Development Commission issued a statement on 23 May referring to that apartments purchased before March 26 can be listed and sold via local property agencies. The policy is an apparent softening of restrictions imposed in March which blocked the sale of new apartments built on plots that were originally acquired as commercial or office land.

US, China accelerate beef talks and deal possible by early June

Talks on restarting US beef exports to China are moving fast and final details should be in place by early June, according to the US Department of Agriculture. As part of a trade deal, US ranchers are set to face tests over the use of growth-promoting drugs to raise cattle destined for export to China and to log the animals' movements. The two sides are negotiating to meet a deadline, set under a broader trade deal, for shipments to begin by mid-July.

Regulators fine Tencent over unlicensed news broadcasts

The State Administration of Press, Publication, Radio, Film and Television released a statement on 25 May saying that it would punish Tencent Holdings Ltd. for making and broadcasting political and societal news programs without a permit, as well as for showing what it deemed to be "vulgar" videos. According to the Regulations on the Administration of Internet Audiovisual Program Services issued in 2007, an organization must hold a broadcast permit or internet news service permit in order to provide political and societal new services. It also forbids internet services to allow individuals to upload news videos or audio programs.

Bona sets up cross-border film fund with Hollywood's CAA

On 23 May, Chinese film company Bona Film and Hollywood management firm Creative Artists Agency announced the establishment of a US\$150 million fund to invest into cross-border film projects, the first of which will be World War II drama, Midway. Bona Film has contributed US \$80 million to the initial phase of the fund. Creative Artists Agency has recently formed a joint venture with Chinese media and entertainment fund CMC Partners.

China releases rules for due diligence on non-resident financial accounts

On 19 May, Chinese authorities publicized detailed rules for financial institutions to conduct due diligence procedures on non-resident accounts in an effort to counter cross-border tax evasion. Starting 1 July, Chinese financial institutions will carry out due diligence on deposit accounts, escrow accounts, stock or bond right interests of institutional investors. The information will be collected for exchange with tax authorities of other countries to detect tax evasion practices using offshore accounts.

New home rental laws place focus on tenants' rights

China is endeavoring to make renting a more agreeable option in the prohibitively expensive home market with the release of new draft housing rental regulations, placing a greater emphasis on tenants' rights. Aiming to give equal priority to housing purchases and rentals, the Ministry of Housing and Urban-Rural Development is rolling out nationwide laws to clarify the obligations and protect the rights of tenants, prohibiting landlords from arbitrarily evicting their tenants, and issuing fines to proprietors who raise rents contrary to prior agreements. China's home ownership

rate ranks among the top in the world, with over 90% of the population living in owner-occupied housing.

China plans to promote government information integration

The State Council issued a circular approving plan to integrate and share government information as part of government function reform, to better serve people and business entities. The plan will set up a nationwide platform to integrate government information resources that can be shared among all-level governments, enterprises and citizens. The integrated information system among State Council departments should be connected with the national data sharing and exchange platform before June 2018, an initial step in information sharing between central and local governments.

China ramps up fight against Internet, telecoms fraud

The Ministry of Public Security has been ramping up efforts to combat telecoms and internet fraud, with the creation of 32 provincial and 206 city-level anti-fraud centers. Chinese police solved 83,000 cases of telecom and internet fraud in 2016, up 49.6% year-on-year. Losses caused by digital fraud in 2016 fell by 10.9% from the year before, and 1.55 million bank transfers to fraudulent accounts worth 5 billion yuan were stopped.

Baidu enforcing real-name registration

Baidu has begun requesting users to register with a real name and ID when using cloud disks and posting on the platforms forums and blogs. The real name system is being put in place to comply with national internet security laws that go into effect starting 1 June. Users of forums and cloud services that do not register with a phone number linked to an ID will be barred from certain functions.

Legal News

Intellectual Property

Tencent, LG Electronics and Time Warner revealed as owners of the fastest-growing trademark portfolios

As per the newly revealed data, the top ten corporate trademark applicants in 2016 are listed as following:

- Top 1 - Tencent Holdings (around 4,100 marks)
- Top 2 - LG Electronics (3,600)
- Top 3 - Time Warner Inc (3,500)
- Top 4 - Johnson & Johnson (3,200)
- Top 5 - L'Oreal (3,100)
- Top 6 - Coppel (2,800)
- Top 7 - Merck & Co (2,700)
- Top 8 - Unilever (2,500)
- Top 9 - Novartis (2,200)
- Top 10 - LeEco (2,200)

Across the top 50 corporate filers, US-based businesses led the way (with 17 making the list). Germany was in second spot with eight, followed by China and South Korea (both with six). As to where brands are most active, it comes as no surprise that China (3.7m applications), followed by the US (around 414,000 applications), leads the ranking of offices that received the most applications.

IP issues for the produce industry in China

At the recent 2nd Fresh Produce Forum China, held in Hangzhou on 23-25 May, a panel discussion was held where one of the topics was intellectual property issues in China and their relevance to the produce industry. This is a topic of increasing importance for both domestic and foreign companies seeking to ensure the security of their proprietary plant varieties, especially as more and more foreign companies have started to invest and grow their produce in China. The main focus of the discussion was on plant variety rights and their importance for protecting the IP rights of growers developing new varieties for domestic and international markets. Below are some good reference for companies during the discussion.

- The PVR application should be filed as soon as the product is developed and before it is sold in China.
- It is important to establish contracts with reliable local growers with good security measures in place, since it can take as long as five years from filing to registration.
- Plant variety registration must be obtained within six years to ensure protection by this route.
- While plant variety registration and trademarks are two valuable tools for companies to protect their investments, they should also be supported by best practices for trade secrecy and working with reliable partners.

CFDA proposes patent linkage mechanism and terms for data exclusivity for public comments

On 12 May, CFDA issued on its official website a draft regulations entitled Relevant Policies for Encouraging Innovations on Drugs and Medical Devices and Protecting Innovators' Rights and Interests for the public's comments for the public comments before the deadline 10 June. According to the draft Policies, CFDA would formally adopt a formal patent linkage mechanism and provide for the terms of data exclusivity in different scenarios.

Under the proposed patent linkage mechanism, the applicant for a drug registration should submit a declaration on involved rights he knows or should know. If the applicant intends to challenge an involved patent, he should declare that his drug does not infringe that patent and notify the owner of that patent within 20 days after filing the registration application. If the patent owner believes that this patent is infringed, he should file an infringement suit with the court within 20 days after receiving the registration applicant's notice, and also notify CFDA of the suit. CFDA, after receiving the court's acceptance document of the suit, may set an Approval Waiting Period not longer than 24 months, but it will not stop the technical review of the registration application. If the registration applicant successfully invalidates the involved patent, he will be given 18 months of data exclusivity.

The proposed terms of data exclusivity are as following:

- 6 years for an innovative drug;
- 10 years for an innovative drug that is also an orphan drug or pediatric drug;
- 3 years for an improvement drug that is also an orphan drug or pediatric drug;
- 10 years for an innovative therapeutic biologic;

- 18 months if a generic applicant invalidates a linked patent or if the drug is the first domestic generic drug based on an originator that has been marketed abroad.

Alibaba filed lawsuit against illicit liquor seller on Taobao e-commerce platform

Alibaba Group sued a liquor seller on its Taobao platform, accusing the merchant of dealing in products that violated another company's trademarks. The lawsuit seeks RMB123,000 in damages from the seller for violation of its service agreement, and damage to Alibaba's own reputation. A court in Shanghai previously found the defendant had violated a trademark held by Yibin Wuliangye Group Co. Ltd., maker of the famous Wuliangye brand liquor.

TRAB oral hearing started in May

The State Administration for Industry and Commerce of China issued Measures for Oral Hearing for Trademark Review Cases by Trademark Review and Adjudication Board (TRAB) on 4 May 2017. According to the Measures, the oral hearing focuses on cross-examination of evidence and debate. During the oral hearing, the relevant parties are able to review the other party's evidence and make arguments as to the evidence's authenticity, relevancy, legitimacy and strength. The relevant parties can also bring witnesses to the oral hearing upon the approval of TRAB. Accordingly, where the copy of evidence received from TRAB is suspicious, the parties will have a chance to verify the same in detail during the oral hearing. The TRAB will have a full discretion on whether or not to hold an oral hearing for a specific case.

Supreme Court released new guidelines on IPR protection

China's Supreme Court recently released new guidelines regarding the judicial protection of intellectual property rights which will be implemented during the 13th Five-Year Plan from 2016-2020. This is the first time that the Supreme Court released such IPR guidelines since the court accepted and heard the first legal case concerning a patent dispute in 1985. During 1985-2016, the court dealt with more than 792,000 civil cases involving IPR. The Supreme Court has stressed the importance of "hearing IPR cases of various types in a fair and efficient way" and "establishing an effective mechanism to ensure the correct implementation of laws", and urged the introduction of punitive compensation regulations into the Copyright Law, Patent Law, Anti-unfair Competition Law, and to increase the amount of statutory compensation for infringements of IPRs.

Beijing Higher Court rejected WANCHAI FERRY trademark filed in bad-faith

On 25 May 2010, Zhengzhou Tangming Trading Co., Ltd. applied to register the trademarks WANCHAI FERRY in Chinese characters and in pinyin, in relation to the goods in classes 3, 21 and 39. In May 2011, General Mills Asia filed oppositions, based on its trademark WANCHAI FERRY (in Chinese) in relation to dumplings, meat pies and flour products in Class 30 registered early on 7 August 2002 in China. Both CTO and the TRAB held that the goods and services covered by the opposed marks were different from those covered by the cited mark in terms of functions, uses and target consumers, and the evidence was insufficient to prove that the cited mark was well-known before the filing date of the opposed marks.

Beijing No.1 Intermediate Court considered that the evidence submitted by General Mills Asia proved that the cited mark had been used on dumplings in China since 1998, and the products bearing the cited mark enjoyed a leading position in respect of sales, market share and ranking. The cited mark was well known by the relevant public before the application date of the opposed marks, and the cited mark was recognized as a well-known trademark for dumplings. Thus, the opposed marks copied and imitated the cited mark, since the term "Wanchai Ferry" was contained.

Although the goods and services covered by the opposed marks in Classes 3, 21 and 39 were not similar to the dumplings designated by the cited mark, the relevant public for such good and services overlapped. The use of the opposed marks was likely to mislead the relevant public to associate the opposed marks with the cited mark and misconstrue the origin of goods and service. The opposed marks would weaken the distinctiveness of the cited mark, take advantage of the market reputation of the cited mark and harm the legal interest of General Mills Asia, constituting the circumstances set out in Paragraph 2 of Article 13 of the Trademark Law. Accordingly, the Intermediate Court ruled in favor of General Mills Asia, ordering the TRAB to reissue its decisions in May 2016.

The Intermediate Court's decision was finally supported by the Beijing Higher Court in October 2016. The Beijing Higher Court affirmed that the evidence was sufficient to prove the well-known status of the cited mark and found that in light of the fact that Tangming used to be an authorized agent of the Wanchai Ferry brand, it had hardly acted in good faith when applying to register the opposed marks.

Internet / Privacy

Cybersecurity Law commences operation in China

On 1 June 2017, the new Cybersecurity Law commenced operation in China, aiming to protect the state against cybersecurity attacks and protect the rights and interests of citizens from cybersecurity attacks and the misuse of personal information. The new Law applies to critical information infrastructure operators, network operators and providers of network products and services, and respectively imposes the following mandatory obligations on them:

- Critical information infrastructure operators are required to implement standards and procedures to ensure data security, establish high level corporate oversight over internal security management systems and operating rules, place responsibility on individuals to oversee security management systems and operating rules, communicate security management systems and operating rules to the entire workforce within an organization, conduct periodic audits to ensure security management systems are properly implemented and operating rules followed, and establish a mechanism for reporting violations to the relevant authorities.
- Network operators are required to keep users' personal information confidential, establish systems to protect that information, require users to provide true identity information when signing service agreements relating to network access, domain registration, fixed line and mobile services and instant messaging, formulate contingency plans to deal with cybersecurity incidents and deal with system bugs, viruses, network attacks and network intrusions, and formulate contingency plans to deal with cybersecurity incidents and deal with system bugs, viruses, network attacks and network intrusions.
- Providers of network products and services are required to ensure their products and services do not contain malicious programs, take remedial action where defects and vulnerabilities are found and then report them to users and the relevant authorities, provide security maintenance for their products and services irrespective of the contract term agreed with customers, inform users and obtain their consent where products or services are used to collect information about the user, and obtain a security certification from the relevant authorities for the sale or use of key network equipment and specialized cybersecurity products.

Penalties for violating the Cybersecurity Law typically include 1) a warning, an order to correct the violation, confiscation of illegal proceeds and/or a fine of no more than RMB 1 million; 2)

personal fines of no more than RMB 100,000 for directly responsible persons; and 3) in particularly serious circumstances, suspensions or shutdowns of offending websites and businesses, including revocations of operating permits and business licenses.

A draft data control rule issued for public comments

On 11 April 2017, a draft Measures on Security Assessment with respect to the Export of Personal Information and Important Data were issued by the State Internet Information Office for public comments. Under the draft rules, companies that export data will have to undergo regular self-assessments of their security controls on data and in the following circumstances may have to be assessed by the authorities:

- the data involves (one-off or cumulatively) personal information of 500,000 or more people;
- the size of data is more than 1,000GB;
- the data concerns nuclear facilities, chemistry biology, national defense, public health, large-scale project activities, marine environment and sensitive geographic information data;
- network security data relating to critical information infrastructures, including system vulnerabilities, security defense and other network security data;
- the providing operator is a critical information infrastructure operator; or
- other circumstances that may affect national security and social public interests.

China issues Interpretations on Criminal Offenses Involving Infringement of Citizens' Personal Information

On 9 May 2017, the Supreme Court and the Supreme Procuratorate joint issued the Interpretations on Several Issues concerning the Application of Law in the Handling of Criminal Cases Involving Infringement of Citizens' Personal Information which offer a clarification of the scope of criminal sanctions for breaches involving personal information. The Interpretations provide much needed definitions to several key terms of Article 253 of the PRC Criminal Law. "Personal information" is defined to cover two types of information recorded through electronic or other means namely: i) any information that can be used alone or in combination with other information, to identify a natural person; and ii) any information reflecting the special characteristics of the activities of a natural person. The Interpretations also clarify that "disclosure of personal information" punishable by Article 256 of the Criminal Law refers to acts of providing personal information to others without the consent of the data subjects. Further, Article 9 of the Interpretations imposes new obligations on network service providers. Any network service provider who fails to manage the security of information networks as provided by law and relevant administrative regulations and refuses to make corrections as ordered by regulatory authorities causing serious breaches of personal information shall be sentenced to criminal detention or fixed-term imprisonment of no more than three years, concurrently or separately sentenced to a fine pursuant to Article 286 of the Criminal Law. The Interpretations came into force on 1 June 2017

Medical

China issued amendments to supervision rules on medical equipment

On 19 May, the State Council promulgated the Amendments to the Regulations on the Supervision and Administration of Medical Devices, which commenced operation immediately. The Amendments clarify issues related to device distributors' liabilities of selling non-conforming products, the use of large medical equipment, and revocation of clinical study site certification. The key changes proposed in the Amendments are summarized as follows:

- Device distributors can be exempted from penalties of selling non-conforming products if they fulfill the inspection obligations under the regulations and can identify the source of such devices.
- Medical institutions can conduct clinical studies if they complete record-filing with the local authorities. The criteria will be promulgated and announced by the CFDA and National Health and Family Planning Commission.
- Authorities can supervise the deployment of large medical equipment which is defined as any large medical equipment that involves complicated technology, huge investment, high operating costs and huge impacts on medical costs, subject to catalogue management.

Litigation/Arbitration

CIETAC launches first public-private partnership arbitration center in China

On 16 May, the China International Economic and Trade Arbitration Commission (CIETAC) launched the CIETAC Public-Private Partnership (PPP) Arbitration Centre, to encourage arbitration for disputes arising out of public-private partnerships, including those which may arise from the One Belt One Road project. The creation of the PPP Arbitration Centre would help guarantee cooperation between the government and social capital, whilst protecting the interests of both investors and other citizens, and also represent an expansion by CIETAC to PPP dispute resolution.

Civil Law

China introduces General Provisions of Civil Law

China has recently promulgated the General Provisions of Civil Law, which will commence operation on 1 October 2017, as its first step to formulate the Code of Civil Law. The key regulatory developments under the General Provisions are summarized below.

- Protection of personal information - an individual's personal information is a separate civil right protected by law. Personal information may only be obtained and used in accordance with the law and information security of the collected information must be safeguarded.
- Ultra vires acts of legal representatives - a company must assume the legal consequences of civil acts by a legal representative in its name; limitations as to the legal representative's scope of responsibilities in the company's articles of association or the highest authority of the company will not amount to a defense against a bona fide counterparty.
- Statute of limitation for civil rights claims - the statute of limitation for civil right claims (such as contract claims, tort claims, etc.) is extended to three years.
- Deadlines to revoke a civil act - where it is on the ground of significant misunderstanding, within three months from when the relevant party becomes aware, or ought to have become aware, of the misunderstanding; where the civil act was taken under threat, within one year from when the threat ceased; and in any event, within five years from the date such civil act is taken.

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.