



MMLC Group 

北京铭辉达知识产权代理有限公司

## *China Update*

*Lawyers and Consultants*

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### **Business News**

#### **China to further boost private investment**

The State Council will further ease access restrictions on private investment, encouraging participation in sectors such as medical services, elder care, education, culture and sports, and encourage investment funds dominated by private capital and operating under market mechanisms, according to a statement released on 22 February. There will be more financing channels in the equity and bond markets and collateral financing, enabling companies to use their intellectual property rights and rights to earnings as collateral to secure financing.

#### **ODI in Australia soars by 56%**

China's outbound direct investment into Australia surged 56.1 percent year-on-year to US\$3.68 billion in 2016, exceeding the growth rate of the country's overall ODI. The investment mainly flowed into sectors including real estate, leasing and commercial services and transportation. Trade between the two countries amounted to US\$103.52 billion) in 2016, up 0.9 percent on a year-on-year basis.

#### **Regulator relaxes rules on stock index futures**

China's securities regulator has relaxed the trading rules for stock index futures, signaling a gradual exit by the regulator from the harsh restrictions imposed during the market rout in 2015. The measures include lowering trading fees and raising the maximum daily trading cap at 10 contracts to 20 per investor. The minimum margin requirement for trading on the CSI 300 and SSE 50 index futures was also reduced from 40 percent to 20 percent of the contract value.

BEIJING

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

### **China launches anti-dumping probe against Indian chemical imports**

The Ministry of Commerce said on 13 February that it had started anti-dumping and countervailing duties investigations into Indian imports of Ortho Chloro Para Nitro Aniline, a type of dye intermediate. The ministry had received requests from domestic producers, who accused Indian manufacturers of dumping the product on the Chinese market and called for an inquiry, and it would investigate whether Indian firms were subsidized by the Indian government and if they had sold the product at an artificially low price in China. The investigations are expected to conclude before 13 February 2018.

### **China regulator approves first trust IPO in more than two decades**

China's securities regulator approved the nation's first initial public offering by a trust company in more than two decades. Shandong International Trust Co., established in 1987, won approval from the China Securities Regulatory Commission to sell as many as US\$676.5 million shares in a Hong Kong IPO, one of its shareholders, Luxin Venture Capital. The most recent listings from a Chinese trust company were in 1994, when Shaanxi International Trust Co. and Anxin Trust Co. sold shares in the domestic market.

### **China launches world's largest oil exploration sea platform**

China has put into service what it claims is the world's largest and deepest-operating offshore oil exploration platform, the Bluewhale I. The rig has a total deck area about the size of a soccer field with a sophisticated drilling system that can reach the seabed at a depth of 3,658 metres and bore a further 15,240 metres into the earth's crust. The Bluewhale I is designed specifically for the South China Sea, where untapped oil reserves can lay buried 3,000 metres and more below sea level. The rig cost more than US\$700 million.

### **Top 10 cities with most fiscal revenue**

China has 14 cities whose local fiscal revenue exceeded RMB100 billion (US\$14.54 billion) in 2016. The fiscal revenue of Shanghai totaled RMB640.61 billion in 2016, taking the lead among all cities around China. Beijing followed Shanghai, posting RMB508.13 billion. The top 10 cities with most fiscal revenue are listed as following: Shanghai, Beijing, Shenzhen, Tianjin, Suzhou, Chongqing, Hangzhou, Guangzhou, Wuhan, and Chengdu.

### **China overtakes US as Germany's top trade partner**

China overtook the United States and France as Germany's most important trading partner in 2016. Trading volumes between Germany and China amounted to US\$180 billion last year. Germany mainly exports mechanical and electrical products, transport equipment, and chemical products to China. It imports machinery, textiles, furniture and toys from China.

### **Changan Ford opens fifth factory in China**

The first Ford Focus rolled off a production line in Northeast China's Heilongjiang province on 22 February. The factory has an annual production capacity of 200,000 and is Changan Ford' fifth in China. The new Ford Focus was launched in 2015 and last year sales of the vehicle neared 220,000 in China. The other four factories of Changan Ford have a combined production capacity of 1.4 million.

### **Chinese banks lend more to agriculture, small firms**

Chinese banks strengthened financial support for agriculture, small-and-micro enterprises and affordable housing projects. Outstanding agriculture-related loans stood at RMB28.2 trillion (US\$4.1 trillion) at the end of 2016, up 7.1 percent year on year. Outstanding loans to small-and-micro firms hit RMB26.7 trillion, up 13.8 percent.

### **China's central bank leads charge to shine regulatory light on the risky business of shadow banking**

China is considering casting a huge new regulatory net over the country's vast shadow banking sector. The central bank has spearheaded the drafting of new regulations to tame China's RMB60 trillion "asset management" industry. The rules would bring the various kinds of asset management products and investment schemes -offered by all kinds of financial -institutions under the one regulatory umbrella.

### **Lenovo, SAP join forces on cloud initiative in mainland China**

Lenovo Group is looking to advance its data centre business in China through a major cloud computing initiative with Germany's SAP, the world's largest supplier of business management software. The two companies are to jointly announce on 22 February an agreement to deliver in the first half of this year a new cloud service for large Chinese companies on the mainland that use SAP's Hana database technology.

## **Legal News**

### **Intellectual Property**

#### **The Chinese common name of smurfs is found similar to a smurf image**

The Beijing Higher People's Court recently issued its final decision finding a later trademark application for "Lan Jing Ling" in Chinese characters (the Opposed Mark), the common name of smurfs in China, similar to a prior trademark registration for a smurf image (the Cited Mark) owned by Studio Peyo SA. In the Higher Court's judgement, the Court emphasized the importance of "distinctiveness" and "reputation" of the relevant trademarks when deciding similarities. The Court found that the Cited Mark had acquired a certain degree of reputation amongst the Chinese public before the application date of the Opposed Mark. The registration of the Opposed Mark in relation to identical or similar goods was thought to be likely to mislead the relevant public to believe the goods offered under the two trademarks are from the same provider or the providers are associated, which will cause confusion as to source of the products. The similarity of goods was not the core dispute for this case, but the marks themselves.

## **China's trademark registration applications hit 3.691 million in 2016**

China handled 3.691 million trademark registration applications in 2016, securing its place as the world's largest for 15 consecutive years. Trademark registration applications increased by 28.4% in 2016, compared with 26.9% in 2015. Among all the applications, 3.001 million were filed online, representing 81.3% of the total. By the end of 2016, valid trademark registrations amounted to 12.376 million.

## **China issues the 13th five-year plan on the national IP developments**

The State Council issued 13th Five-year Plan (2016-2020) on the National Intellectual Property Protection and Utilization on 17 March, setting out set ten anticipatory quantity index, such as China's invention patent ownership will increase from 6.3 per 10,000 people in 2015 to 12, and the export volume of intellectual property royalties will increase to 10 billion USD, by the year of 2020. The State Council also has issued its Market Supervision Plan in the 13th Five Year Period, which said that China will strengthen competition law enforcement and severely combat IPR infringement and manufacture and sales of counterfeit and shoddy commodities, so as to purify market environment. In parallel, the National Copyright Administration of China (NCCA) issued its 13th Five-year Plan on Copyright, which sets out 26 key tasks covering four approaches, that is, to improve legal system, administrative system, service system and foreign affairs system. Law revision, software legalization, training and publicity among others are taken as key tasks.

## **China published a draft amendments to the patent examination guidelines**

In late 2016, the Chinese State Intellectual Property Office (SIPO) published an official notice which included a draft of proposed amendments to the Patent Examination Guidelines utilized by patent examiners. The proposed amendments to the Guidelines significantly revise the rules relating to software and business method patents, which will likely make it easier to obtain software and business method patents in China.

- Software and business methods are patentable. Claims related to business methods that contain both business rules and methods and technical characteristics, shall not be excluded from the possibilities of obtaining patent rights by Article 25 of the Patent Law.
- Apparatus claims directed to software may contain both program components as well as hardware components.

## **International brands seeing more success in China's IP Courts**

The Beijing Intellectual Property Court has confirmed high demand and increased success, particularly amongst international users. This will be noted with interest by many global brands, particularly those who have previously litigated in China, such as Lego, Moncler, Michael Jordan and Apple. The annual number of Trademark Review and Adjudication Board (TRAB) appeals has increased significantly since the inception of the IP Court with a total of 4,108 rulings being made in 2015. 766 were reversals of the TRAB decisions and almost half of these rulings related to parties from outside of China, including Hong Kong, Macau and Taiwan. These figures show a higher success rate than in previous years for Non-Residents in relation to reversals of TRAB decisions. Between 2011 and 2015, 19.72% of cases brought by non-resident parties concluded with a successful reversal of the TRAB decision.

## **First revision of China's Anti-Unfair Competition Law aims to protect online interests**

The Anti-Unfair Competition law's first revision since its promulgation 24 years ago was submitted to the Standing Committee of the National People's Congress 22 February. The amendment clarifies the definition of acts that are deemed as unfair, and adds provisions regarding online offenses, stating "companies shall not engage in any activities online that may, through technical means, affect users' choices or interfere with the normal operation of other firms." The change also introduces supplementary provisions and improves existing requirements regarding commercial bribery and the protection of trade secrets. According to the draft amendment, companies will be prohibited from affecting internet-based products or services legitimately provided by other companies by 1) insert hyperlinks to divert users away from them, 2) misleading, deceiving, or forcing users to change, close or uninstall them, 3) interfering or tampering with their normal operation, or 4) deliberately causing compatibility issues with them.

## **Tax**

### **Law on environmental protection tax to take effect from 2018**

On 25 December 2016, the PRC Law on Environmental Protection Tax was adopted by the Standing Committee of the National People's Congress and issued for implementation as of 1 January 2018. The Law states that environmental protection tax shall be levied in lieu of pollutant discharge. According to the Law, environmental protection tax shall be enterprises, public institutions, and other manufacturers and business operators directly discharging pollutants into the environment and pollutants subject to the environmental protection tax shall include air pollutants, water pollutants, solid waste, and noise. The Law also stipulates that where the concentration value of taxable air pollutants or water pollutants discharged by a taxpayer is 30% lower than the State and local pollutant discharge standard, the environmental protection tax shall be levied at its 75% rate, and where the said concentration is 50% lower, the environmental protection tax shall be levied at its 50% rate.

### **Chinese legislature keeps corporate tax rate unchanged at 25 per cent**

The National People's Congress left the corporate tax rate unchanged in amending the corporate income tax law on 24 February, ignoring calls by leading entrepreneurs to reduce the burden on businesses and make the nation more competitive in the global marketplace. Instead, the legislature raised how much companies could deduct for charitable giving.

## **Internet / E-Commerce**

### **Chinese government releases draft rules to implement Cyber Security Law**

The Cyber Security Law was adopted in November 2016 and will become effective on 1 June 2017. It stipulates that any network products and services provided to the operators of Critical Information Infrastructure must pass cyber security review, if such network products and services could impact national security. On 4 February 2017, the Cyberspace Administration of China (CAC) released the draft Security Review Measures for Network Products and Services for public comment. The period of solicitation for public comments ended on 3 March 2017. The draft Measures broaden the scope of cyber security review to cover any

important network products and services used in information systems in connection with national security and public interests. Below are the significant amendments.

- Network products and services failing to pass the cyber security review are not allowed to be procured by party and government departments and operators of important industries.
- CAC, together with other authorities, will form a Cyber Security Review Committee, which will be in charge of the overall administration of the security review.
- The focus of the cyber security review is to ensure that network products and services are “secure and controllable”.
- The cyber security review can be initiated (i) at the request of the state’s concerned departments or any national industry association, (ii) based on the voices of market entities, or (iii) in response to a company’s application.
- Once the cyber security review is initiated, an authorized third-party institution will evaluate the products and services first. The Expert Panel will make an overall assessment based on the third-party organizations’ evaluation results. The Cyber Security Review Committee will make a decision based on the Expert Panel’s assessment report.

### **China publishes draft E-commerce Law**

The National People’s Congress of China released an official draft E-commerce Law on 27 December 2016 for public comments, and comments were submitted until 26 January 2017. Based on the draft Law, the scope of the E-commerce Law encompasses both domestic e-commerce and cross border e-commerce, and sets specific obligations for both platforms and e-commerce operators. The draft Law particularly focus on the following:

- Real name registration - Person engaged in e-commerce activities should provide their genuine identity and valid contact information. An e-commerce third party platform shall examine and register business operator’s information and process to a regular update.
- Privacy - The Draft encourages the exchange and sharing of data and information to ensure the orderly information flow and reasonable use. It also requires that e-commerce entity should take appropriate safeguards to protect user’s personal information.
- Termination of services - Where an e-commerce business operator intends to terminate its e-commerce activities, it shall announce the relevant information at a conspicuous position of its homepage at least 60 days in advance, and take necessary measures to safeguard the rights and interests of consumers. For the third party platforms, this deadline is 90 days.
- Contract relationships - Parties to a contract are presumed to possess the appropriate capacity for civil conduct and express their genuine intent, unless there is evidence to the contrary. The e-contract shall be deemed to have been validly entered into when information on commodities and services released by an e-commerce business entity complies with the terms of an offer and the consumer submits the order.
- Electronic payment - If an online payment service provider violates any related statutory requirements for financial information security management, the service provider will be liable for the corresponding losses.
- IP Protection - IP rights owners can report to the platform IP abuses by e-commerce operators; platform shall then take unspecified protective measures and meanwhile inform the operator which can reply; upon a declaration of non-infringement by the operator, the platform shall promptly terminate the measures taken.

- Personal Information - E-operators must ensure personal information security for consumers. In the case of leakage, loss or damage of personal information, the e-commerce entity must immediately take remedial measures, promptly notify the users and submit a report to the relevant authorities.

## **Litigation/Arbitration**

### **China issues judicial opinions on foreign arbitration in pilot free trade zones**

The Supreme People's Court (SPC) recently published its Opinions on Providing Judicial Support for Developing Pilot Free Trade Zones. The Opinions mention several areas that should be improved at court level to support the development of PFTZs, including labor protection, consumer rights protection, intellectual property rights protection, financial leasing and ecommerce. One of the most relevant topics refers to liberalizing, to some extent, disputes to be submitted to foreign arbitration institutions and ad-hoc arbitration in the PFTZs. According to the Opinions, two wholly foreign-owned enterprises (WFOEs) registered in the PFTZs can agree to submit their disputes to foreign-seated arbitration, and the sole argument that these disputes lack foreign-related factors cannot invalidate their arbitration agreement. An arbitration agreement between two PFTZ-registered enterprises, made in an ad-hoc arbitration in a specific location in the Mainland China (excluding Taiwan and the special administrative regions of Hong Kong and Macau), under specific arbitration rules by specific arbitrators, can be recognized as valid.

### **PRC court recognizes a foreign judgment based on principle of reciprocity**

On 9 December 2016, the Nanjing Intermediate People's Court handed down a decision recognizing and enforcing a civil judgment made by the Singapore High Court based on the principle of reciprocity. This is a landmark development and is the first time that a Chinese court has recognized and enforced a Singapore commercial judgment. More significantly, this is the first time that a Chinese court has recognized and enforced a foreign court judgment based on the principle of reciprocity in the absence of a bilateral treaty for mutual recognition and enforcement of judgments. In the case, a Swiss company (Swissco) had a dispute over a sales agreement with a Nanjing based company (Nanjing Company). The parties resolved the dispute by entering into a settlement agreement which provided that all disputes be submitted to the Singapore High Court. However, the Nanjing Company failed to comply with the settlement agreement. Swissco commenced action before the Singapore High Court resulting in a judgment issued by the Singapore High Court in October 2015 against the Nanjing Company. Swissco then applied to the Jiangsu Court to recognize and enforce the Singapore judgment.

*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.*