



MMLC Group 

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China Update

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Legal News

Intellectual Property

China sets record for PCT Filings in 2015

In 2015, China achieved 29,846 international patent applications filed under the Patent Cooperation Treaty (PCT), which was an increase of 16.8% from the previous year. Overall, patent applications filed under the PCT worldwide hit a record of 218,000, where China maintains its position of 3rd in the world, following closely behind the United States and Japan.

Also, a report recently released showed China remains first internationally in relation to the number of trademark applications submitted. In 2015, China submitted more than 2.8 million trademark applications, and has maintained number one in the world in the number of trademark applications since 2002. From the period January to March 2016, the State Administration for Industry and Commerce has received approximately 19.1 million trademark applications, and the number of valid trademark registered in China reached 10.7 million. Therefore, China is steadily building an international reputation for itself in the intellectual property arena to be a global leader in innovation and development. China's past achievements contributing to this point include ranking 1st globally for 5 consecutive years in filed domestic patent applications and a rapid increase of trademark applications in the Madrid System, indicating their expansion overseas.

Requirements for obtaining the high and new technology enterprise status in China

Typically, innovative tax policies are used in order to encourage and support innovation and development for the benefit of a country's economy. China's high and new technology enterprise (HNTE) program offers a 15% tax rate, instead of the standard 25% rate, to qualified companies,

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such as those who specialise in high technology areas and fulfill innovation requirements contained in the Administrative Measures for Recognition of High and New Technology. Recently, the Ministry of Science and Technology (MOST), the Ministry of Finance (MOF), and the State Administration of Taxation (SAT) have released a revision, the Guokefahuo [2016] No.32, on the Administrative Measures, which show an increase of restriction over requirements in relation to intellectual property ownership.

The revised HNTE program provides that ownership of intellectual property rights shall be possessed by those enterprises that provide the core technological support for their main products and/or services, which should be gained through independent research and development activities, transfer, donation or acquisition. Therefore, the new program seeks to encourage independent innovation and research and development, which could have dire implications for foreign companies within China who may not be able to meet such requirements. Also, the revised HNTE program increases requirements in the application procedure, by requiring comprehensive documents to prove the relevant technology meets established standards, including the following materials stated in Article 12 of the HNTE:

1. registration documents in relation to legal business;
2. intellectual property related materials, such as research and development, scientific and technological accomplishments, any certifications, and any other related materials;
3. product/service technical specification, production approval and certification, and product/service quality inspection report;
4. the annual Corporate Income Tax return certificate.

In this regard, the revision of such incentives in the form of the revised HNTE program shows China is noticeably focusing more on innovation, as it has recognised innovation as a key factor in advancing its economy.

China's Supreme Court Publishes Patent Judicial Interpretation II

The Supreme Court of the People's Republic of China has recently released the *Interpretations on Certain Issues Concerning the Application of Law in the Trial of Patent Infringement Cases II*, effective as of 1 April 2016. The Interpretations II aims to cater to the increase in standard patent cases over the past few years and provide further guidance in relation to the following issues: claim construction, joint infringement, standard essential patents, injunction relief, and other issues.

One of the main highlights the Interpretations II provide is in relation to the enhancement of patent protection, which has long included issues of long periods of time waiting for the patent trial and judgments awarding low damages. Therefore, in accordance with Article 21 of the Interpretations II, contributory or joint infringement is prohibited in relation to the protection of a patentee's interests; and in accordance with Article 27, several burden of proofs in relation to damages may be shifted to the infringer, therefore involving both parties in the dispute to decide an award of damages more accurately. Furthermore, there is a further emphasis on public interests as well as the patentee's interests. For example, in accordance with Article 26, an injunction or order to cease infringement will not be awarded if public interests will be harmed, and instead the court may order the infringer to pay reasonable fees for the infringement; and Article 25 further stipulates that a user infringing on good faith may continue such acts as long as reasonable fees have been paid, so as to strike a balance between interests.

In relation to the prevention of lengthy patent infringement processes, which may include a series of litigations and an increase in costs, Article 2 outlines that the court may reject a civil action without the final administrative judgment of the decision after the Patent Reexamination Board has

announced the patent as invalid. However, this is only in relation to specific cases, namely, where the patent has been declared invalid. Therefore, the Interpretations II seek to improve the efficiency of its procedures in order to enhance the system to encourage the creation and development of patents. Finally, a major portion of the Interpretations II is dedicated to issues surrounding claim construction, including guidance given for the interpretation of errors in claims in Article 4; the use of the prosecution histories to understand issues in the claim construction in Article 6; the steps taken in method claims; and the functional limitations and exceptions in Article 8. Therefore, there is a focus on supplementing the legal system further surrounding issues over patent cases in order to encourage innovation in China, which will contribute to the success of its economy.

China's ongoing battle against copyright infringement

On April 21, 2016, The Supreme People's Court released data showing 149,238 intellectual property infringement cases were filed in 2015, where 142,077 cases were dealt with, which showed an increase of 11.49% and 11.76% respectively compared to 2014. The numbers are a reflection of the massive issue of a blatant disregard for intellectual property rights in China, an issue that has never gone away and seems like it never will. In particular, there are cases in relation to media and news, specifically the copying of stories or news. For example, Gonglushangdian, a media outlet carrying many original stories, as well as owning a website and official accounts on social media network such as Sina Weibo and WeChat with over 20,000 followers, and 30,000-100,000 story hits respectively, have a constant problem of other news outlets and social platforms copying their stories. Recent offences include:

- the reposting of 21 original stories without their permission over thousands of times by hundreds of platforms; and
- the reposting of stories without their permission and credit in WeChat, where anyone can create an official account to pass information as a media outlet.

The reposting in WeChat in particular is a massive issue for Gonglushangdian due to the huge loss of economic benefits, as each repost by different accounts can earn thousands of followers, followers that should originally belong to Gonglushangdian. However, WeChat has been working to rectify and further protect its intellectual property rights, such as in 2015 where it launched a new function where users can tag their story as original, and a repost will have the system display the original tag. Therefore, to keep China's intellectual property rights protection up to date, it is of utmost importance that the Chinese authorities keep the laws in line with new technologies.

Software copyright registrations in China

On 26 April, 2016, statistics were released to indicate China has processed over 920,000 new software copyright registrations between 2011 and 2015, which was an increase of 3.8% from the previous 5 years. Such an increase indicates an annual average increase of approximately 29% over the period, with actual physical numbers being 100,000 software copyright registration in 2011 rising to 300,000 software copyright registrations in 2015. China is fast adjusting to the rapid pace of technology, and is working hard to come out on top.

Chinese courts rule firmly on trademark infringement

Recently, the Zhejiang High Court made a decision upholding the judgment of the first instance by concluding the Chinese company, Changzhou Huawei Advanced Material Co Ltd (Huawei), had committed the crime of trademark infringement. In the case, 3M Company, formerly known as Minnesota Mining and Manufacturing Company, owns two Chinese trademark registrations in Class 17 for the trademark 3M. Under the 3M Company was a Chinese subsidiary, a licensed user

of the trademarks and a manufacturer and distributor of 3M vehicle retro-reflective marking products in China since 2004. When Huawei registered the trademark 3N in Class 19, 3M Company opposed this application, which was failed by the trademark authorities and further failed in the appeal to the Trademark Review and Adjudication Board.

Therefore, 3M Company brought a trademark infringement proceedings in the Hangzhou Intermediate Court, where Huawei sought to defend its trademark 3N (New Concept, New Technologies, New Products) but stating the trademarks in issue were not similar, and would not be confused as the trademark 3N had acquired a stable market through its own use. However, the Hangzhou Intermediate Court judged in favour of 3M Company, by stating that the trademark 3M was distinctive and well-known, as well as the fact that there might be confusion or association due to the visual similarity of the trademarks, and that the infringement was intentional due to Huawei's failure to ever promote its apparent slogan. An injunction against Huawei was ordered to cease the sale of goods under the trademark 3N, an order was made for the payment of 3M Company's legal costs, and an order was made for Huawei to pay 3M Company damages amounting to RMB 3.5 million. In its finding, the Court considered factors such as the long duration and the large scale of Huawei's infringements, as well as the considerable profit that it had made through its illegal activities. The decision was upheld by the Zhejiang High Court.

Patent infringement dispute signifies factors to be considered in relation to the era of new technologies

In a recent case, the parties involved were Jiang Lan and Guangzhou Galilio Electronic Technology Co., Ltd (Galilio). Jiang Lan is the patentee of the design patent 'handset protection cover packaging box 001'. Jiang Lan brought a lawsuit against Galilio claiming it had manufactured, sold and offered for sale on a large scale products infringing on her patent rights without any permission. Therefore, she requested orders be made to Galilio for it to cease infringement and provide compensation for economic losses and reasonable expenses amounting to RMB 200,000. However, Galilio claimed it had made, sold and released its products before Jiang Lan had applied for the patent concerned, and claimed its prior use as a defense.

In order to supplement Galilio's defence, Galilio provided the QQ space photo album on its computer, and MMS and WeChat pictures on its phone. In the consideration of the evidence submitted, the court held that such electronic evidence should be determined in accordance with the authenticity and reliability of the evidences. Therefore, considerations of the reliability of the QQ space photo album was taken into account, which was ultimately stored on the servers of Tencent and China Mobile, two popular Internet service providers in China. Therefore, it was deemed that the network systems of both companies were stable, because the uploading time of documents is automatically generated by the systems and users are not able to edit and modify such details, therefore the evidence was concluded as highly reliable. Also, the collection progress of the electronic evidence had been notarized, which indicated the form of evidence as legal. As a result, Galilio's defence of prior use was established, and there was no subsequent patent infringement. Therefore, the court was highly advanced in its approach by considering factors such as collection mode, network service providers and the stability of such systems, the possibility of data modification, and data reliability. It was an excellent example of the Chinese courts' ability to keep up with the changing times.

New generation of Chinese trademark squatters

In a case decided on January 12, 2015, China's Supreme People's Court handed down its final judgment regarding trademark squatting. The case involved the parties Castel Freres SAS (Castel), a French wine producer, and Li Dao Zhi (Li). In 1998, Castel entered the Chinese market by

joining forces with local wine producers, and in 2002, Castel used '卡斯代尔·弗雷尔股份有限公司' and its Chinese translation of its name in the trademark application for the trademark 'CASTEL'. In 2003, Castel and a Chinese wine producer jointly launched a product and marketed it as '张裕卡斯特'. However, the trademark application was refused based on the fact it was similar to the trademark '卡斯特' covering wine already registered by Li in 1998. Li proceeded to demand what was an unacceptable price for the assignment of the trademark to Castel. Therefore, a non-cancellation action was filed against Li's trademark in 2005, in which Li submitted evidence of use, including a license to his company Banti Wine as well as Banti Wine's sales invoices. As a result, the Trademark Review and Adjudication Board upheld Li's registration in 2007.

Subsequently, Li and its company Banti Wine filed a civil infringement action against Castel in 2009 for Castel's infringement against Li's trademark by selling wine products bearing a similar trademark '张裕卡斯特', though Castel ceased using the trademark post losing the appeal of its non-use cancellation action before the High People's Court in 2008, and its subsequent failure for a retrial by the Supreme People's Court. As a result, Castel rebranded its Chinese name into '卡思黛乐', and changed its name to '卡思黛乐兄弟简化股份公司'. On April 10, 2012, the Wenzhou Intermediate People's Court awarded Li an award of RMB 33.73 million in damages, based on Castel's sales revenue, which was then upheld by the Zhejiang Higher People's Court. Castel applied for a re-trial by the Supreme People's Court.

In the Supreme People's Court, it was decided to uphold the finding of infringement found at first instance, but the damages awarded were reduced significantly to RMB 500,000 due to several procedural and policy reasons. This included the fact that Li, although providing evidence showing Castel's sales revenue, still failed to provide sufficient evidence of Castel's profit rate, which was insufficient to establish Castel's profit structure, as well as failing to prove that all of Castel's sales revenue was a direct result of Li's trademark. Also, the Supreme People's Court took into account of whether any bad faith existed on the part of Castel, and held Castel was not guilty of this, taking into account factors such as the fact that Castel is the family name of Castel's founder, the fact that '卡斯特' is a common transliteration of 'Castel', and Castel's behaviour, which was shown to have no intention to mislead or confuse the public. Therefore, the Supreme People's Court has introduced new factors to consider in relation to such 'trademark squatting' cases, such as factors of bad faith, procedural evidence, and policy/good faith arguments to reduce damages to an acceptable level.

Blacklist of dishonest companies

In Beijing, it was announced by the State Administration for Industry and Commerce that pursuant to the issuance of the *Interim Measures for Blacklist of Dishonest Companies*, several actions of law violation including receiving administrative penalties in relation to unfair competition and trademark infringement will result in the companies responsible for those violations to be put on the Blacklist of Dishonest Companies. The *Interim Measures* became effective as of April 1, 2016, and clearly states the Blacklist will be displayed to the public through information publication system in order to increase punishment and deterrence. Blacklisting can lead to deregistration in certain cases.

IT and Communications

China's Tightened Control over Online Content

China is considered to have the most extensive and advanced Internet control in the world due to the government's efforts to block certain website content and monitor the Internet access of individuals, earning its strict protective measures the nickname 'The Great Firewall of China'. Recently, in order to further improve and advance China's control over the use of the Internet and its related content, the Ministry of Industry and Information Technology and the State Administration of Press, Publication, Radio, Film and Television have jointly released rules in relation to online publishing, the *Regulation for the Management of Online Publishing Services* (the 'Rules'), effective as of March 10, 2016. As a result of the rules, Apple Inc. and Walt Disney Company have been removed from the Chinese consumer market.

Under Article 3 of the Rules, online publishing shall 'abide by the Constitution and relevant laws and regulations, adhere to the direction of serving the people and socialism, adhere to the progressive direction of socialist advanced culture, carry forward the core socialist values, disseminate and accumulate all ideological, moral, scientific, technological and cultural knowledge that is beneficial to raising the quality of the nation, promoting economic development, stimulating social progress, and satisfying the popular masses' daily increasing spiritual cultural needs'. Therefore, the Rules seek to ensure China's national identity remains protected. Also, in accordance with Article 2 of the Rules, the scope of the term online publications includes the following:

1. text, pictures, maps, games, animation, audio video reading materials and other original digital works having knowledge and ideological content in literature, art, science, and other fields;
2. digital works with content that are consistent with those of already published books, newspapers, periodicals, audio, electronic publications;
3. network literature databases and others formed by selection, arrangement, and collection of the abovementioned works, and by any other method; and
4. any other category of digital work identified by the State Administration of Press, Publication, Radio, Film and Television.

The Rules provide for online publications that are encouraged under Article 46 to include materials that promote the basic principles established by the Constitution, carry forward socialist core values, emphasis on values of patriotism, collectivism, socialism, national unity, social morality, professional ethics, family virtues and personal qualities, relay national culture, contain independent intellectual property rights and excellent cultural content, and any other material that has major ideological value, scientific value or cultural artistic value.

Furthermore, the Rules specifically target foreign companies and foreign joint ventures under Article 10 of the Rules, which states that Sino-foreign cooperative ventures, Sino-foreign joint ventures and foreign business units shall not engage in online publishing services, as well as stating that any domestic network publishing activity with the abovementioned entities must apply for approval with the State Administration of Press, Publication, Radio, Film and Television. Therefore, the Rules explicitly target a foreign presence in the Chinese Internet territory, which may consequentially shut China further from the on-goings and developments taking place throughout the world, as well as shut foreign companies from one of the largest and fastest-growing markets in the world.

Finally, the Rules maintain that data should be stored on local servers within China under Article 8 (3), therefore encouraging faster connection speeds as well as a mechanism to not only bring in

further content for it to control, but to also regulate more easily the content being published online. Therefore, the Rules impose greater scrutiny and pressure on the relevant entities. In line with this, the provisions within the Rules are extremely broad and vague, which enables the relevant authorities and regulators the ability to exercise a greater jurisdiction. Therefore, how the law is implemented and enforced is important, as there can be a wide variation in what the legislation says and how it is practiced in reality. For example, under Article 24 of the Rules, it provides for the limits on online publications, including material against the basic principles in the Constitution, material spreading rumors or disturbing social order and stability, and material leaking state secrets and endangering state security. Enforcement methods include issuing a notice of warning, ordering the entity to make corrections, and an order to remove the illegal content.

As a result, Apple Inc. and Walt Disney Company has been ordered to retreat from the Chinese consumer market. The reasons for the closing down of Apple and Disney were not entirely clear due to the authorities' wide discretion to interpret the Rules as narrowly or widely as possible in relation to online content, therefore it may have been the content in one or several of Apple's many games and Disney's many movies. Although Apple has been operating in China for a number of years and has proven its capabilities in relation to handling takedown notices from the government of any unacceptable content, this time there was no such luck. As a result, Apple's shares fell 29 cents to a close of \$105.68 in late April, a decrease of 3.8% from the previous week. Therefore, the Chinese market has become increasingly difficult and hostile for foreign companies, proving that even the corporate giants of the world are not immune to China's powerful regulators.

Competition Law

Merger Control Enforcement in China

China employs a strict merger control framework to regulate and review mergers and acquisition to ensure compliance to increase growth for its economy as second largest in the world. Recently, MOFCOM published a review of its enforcement success in the first quarter of 2016. In keeping in line with the goal for greater competition, the number of cases has increased by 30.6% from 2015, which includes a clearing of 81 cases, and 61 cases under the simplified procedure. Within these numbers is an increase of reported transactions, indicating duly compliance with MOFCOM; and increase of complaints of unreported transactions, which result in harsh penalties enforced upon by MOFCOM. Therefore, China has taken a great interest and a strict outlook on the preservation and advancement of its economy, and has employed the mechanism of merger control review as one of many to achieve its purpose.

EU merger control attracted towards Chinese state-owned enterprises transactions

In the decision issued on 26 April, 2016 by the European Commission on the UK joint venture between China General Nuclear Power Corporation (CGN) and Electricite de France (EDF), it was made clear that Chinese state-owned enterprises (SOEs) acquiring businesses or entering joint ventures with other parties may trigger an application of the EU merger control regime. Therefore, in relation to the Commission's jurisdiction and competitive assessment, the Commission is likely to consider issues such as the Chinese SOEs directly involved in a transaction as well as turnover and activities of other Chinese SOEs. The Commission must clear transactions requiring a EU filing before they can be implemented, otherwise fines of up to 10% of a notifying party's global group turnover may apply, even if it is ultimately decided there are no competitive concerns. In the

EU merger control process, jurisdiction and substantive assessment are both issues to consider where the Commission's inclusion of other SOEs are crucial.

The question of whether the Commission has jurisdiction to consider the transaction takes into accounts matters such as whether the party to the transaction possesses sufficient sales or turnover in the EU. In a standard case of this kind, the parties included are the acquirer and the target, or the two parents in a joint venture case. In the recent case, jurisdiction was satisfied as the CGN possessed sufficient EU turnover on its own. Therefore, it was unnecessary to consider other SOEs. For example, in the acquisition of Pirelli Tyres by China National Tyre & Rubber Co (a subsidiary of China National Chemical Corporation (CNCC)), the Commission noted that jurisdiction was established as the turnover thresholds were met on the basis of CNCC and Pirellis' turnovers, therefore it was unnecessary to take into account on the turnovers of other Chinese SOEs. However, where the parties alone cannot meet the turnover thresholds, such as in the case of *EDF/CGN/NNB Group of Companies*, the Commission must analyse the Chinese SOE's autonomy from the Chinese state. In that case, the Commission concluded that the turnover of the SOEs controlled by the central state-owned assets supervision and administration (Central SASAC) active in the energy industry should aggregate for the purposes establishing EU jurisdiction. It is foreseeable that the Commission may widen the approach to SOEs in other sectors if necessary.

Secondly, substantive assessment of competition concerns include a standard approach taken by the Commission to take into account all Central SASAC owned SOEs, as was taken in the *EDF/CGN/NNB Group of Companies* case and the *CNRC/Pirelli* case. Therefore, the decisions indicate that a Chinese SOEs with little or no sales in the EU may still have to consider the possibility of submitting a EU filing, as the other party might have sufficient EU turnover to trigger one. The issue of a EU filing must still be considered regardless of the fact that the other party may be a non-European partner, or the joint venture agreed upon will not be conducting any activities in the EU, or a target is acquired with little or no presence in the EU. Otherwise, the EU Commission may impose fines.

Company Law

China's Supreme Court publishes draft judicial interpretation to supplement Company Law for public comments

The Supreme People's Court of the People's Republic of China has recently released the *Draft Provisions of the Supreme People's Court on Several Issues Concerning the Application of the Company Law of the People's Republic of China* for public comments by 13 May. The Draft Provisions seek to give further guidance in relation to issues surrounding the application of China's Company Law in order to improve the quality of judicial interpretation and implement the legislative intent. Mainly, the Draft Provisions seek to give guidance concerning a company shareholders' meeting, the effectiveness of the Board of Direction in the resolution of cases, the right of shareholders to remain informed and have access to relevant documents, the distribution of profits in relation to any actions, shareholders' rights to refusal in relation to ownership of shares, and finally lawsuits on behalf of shareholders. The Draft Provisions seek to provide further details and supervision surrounding the Company Law in order to assist its many users in the use of the legislation.

Whistleblowers to receive protection in China

For the first time, whistleblowers will be receiving legal protection through regulations released by the Supreme People's Procuratorate, the Ministry of Public Security, and the Ministry of Finance. The regulations provide for reports on corruption and crimes to be provided by designated personnel or information stored in password-protected computers, as well as dictating such reports to be heard through the phone or online via designated hotlines and websites. The regulations also provide for the arrest of reported officials who attempt to retaliate against whistleblowers through any violent acts, or firing or demoting the whistleblower or their family members. Also, the rules specify awards may be given in relation to the significance of the information and evidence given, with a ceiling of RMB 500,000. Such rules provide clarity on acts that are illegal, which include obscure forms of retaliation, which were previously not captured by other rules. As a result, the new regulations will form better protection for whistleblowers and will encourage China as a whole to employ principles of transparency and honesty in their every day lives.

Dispute Resolution

Recognition and enforcement of a foreign award in an international commercial arbitration

Recently, two cases, *Ye v Zeng* [2015] FCA 1192 and *Ye v Zeng (No 2)* [2015] FCA 1243 involved an application before the Australian Federal Court for the recognition and enforcement of a foreign award in an international commercial arbitration, which was made in China by the Xiamen Arbitration Commission. The respondent sought to stay enforcement, arguing that there was a lack of procedural fairness and that the matter was subject to an appeal at the seat (PRC).

The Australian court decided to approach the matter by assessing the legitimacy of the appeal. During the earlier judgment, the court noted the respondent's ability to substantiate the nature of the procedural fairness complaint; as such a complaint would be caught by Article V (2)(b) of the New York Convention, of which both countries are parties to. However, no evidence was filed. Therefore, the judge ordered the full sum as well as the associated interest to be secured in Australia pending the outcome of the appeal, stating that 'in an era of electronic commerce and fast moving funds, it is unsatisfactory to expect the courts to stand by and simply wait weeks or months for another country's courts to go about their work and protect a party that has, until set aside, a binding award entered into and awarded pursuant to the contractual undertakings of the parties'. Therefore this exemplifies Australian support for compliance with the New York Convention, as well as illustrating the fact that an appeal at the seat of arbitration may constitute an insufficient for a stay of enforcement or to set aside an award.

Time extended for bringing enforcement action on a foreign-related arbitration award

In a sales contract dispute case between Shanghai Jwell Machinery Co., Ltd (Jwell) and Retech Aktiengesellschaft (Retech), a Switzerland company, the China International Economic and Trade Arbitration Commission on September 18, 2006 rendered an arbitral award in the favour of Jwell. Subsequently, Jwell filed an application for enforcement of the award with a Swiss court. However, this failed in 2007, 2009 and 2010 to the fact that the translation of the award did not fall under s 4 (2) of the New York Convention, which essentially states that the original agreement or a duly certified copy must be supplied by Jwell to obtain the recognition and enforcement of the arbitral award.

In 2008, Jwell applied to the Shanghai No.1 Intermediate People's Court for the enforcement of the award, following a discovery of a display of their product in Retech's shop. However, Retech stated that the application had exceeded the 6 months time bar under Article 219 of the PRC Civil Procedure Law, which provided for the limitation of actions. Retech's opposition was dismissed.

On appeal, the Shanghai High People's Court held that while Shanghai's court does not possess enforcement jurisdiction over arbitral awards, the fact that Retech was not domiciled meant the time bar for the application should be calculated from the date when the court had jurisdiction over the matter, which was the date when it was discovered Retech had property in China. Therefore, while it was confirmed that Chinese courts do not generally have the power to execute foreign-related awards unless the person subjected to the enforcement is in China, it was decided that the time time-bar, which was amended to now be two years under Article 239, will not start to run until the date when it is discovered that the party subject to the enforcement award has property in China.

Business News

JD.com merger with China's largest crowdsourcing delivery platform

JD.com is set to enlarge its online-to-offline operations under a USD200 million merger between its JD Daojia delivery business and Dada Nexus, which is China's largest crowdsourcing delivery platform. The deal is set to be completed in the second quarter of 2016, and will grant JD.com 47.4% of the combined business. Analysts have estimated the total market for O2O services in China is RMB 10 trillion, which involves connecting people with a variety of local services found via mobile apps, such as travel, restaurants and home services. Therefore, this was an important step for JD.com, as O2O is viewed as a significant component of the company's e-commerce business due to its creation of higher-frequency, needs-based purchases on the mobile app, which later may bring opportunities to sell other products.

Daimler launches car-sharing service in China

Recently, German Daimler has introduced its car2go rental service in Southwest China's Chongqing municipality, which would allow users to hire for-rent cars via a mobile app, skipping through the traditional process of renting a car, such as the paperwork involved. Daimler has pronounced China as its third key market after North American and Europe, and has high hopes the car2go services will alleviate traffic congestion in many of China's big cities.

New car brand launch by Geely

Automaker Zhejiang Geely Holding Group Co. is set to introduce a new model of car later in 2016, with a code name of 'L' including a sport utility vehicle based on the Compact Modular Architecture platform developed through a joint scheme with Volvo. Although China's economic growth has slowed down considerably, Geely sales rose 22% to approximately 510,000 vehicles in 2015, and Volvo's earnings have predicted records sales in 2016. Also, China's car sales, as the world's biggest auto market, are forecast to grow approximately 6% this year. Therefore, the L-brand cars are on course to contest against foreign brands in China, including those produced by General Motors and SAIC Motor Corporation.

Increase in new business registrations in China

There is a steady increase in the number of new firms established in China, with numbers reporting 1 million new companies registered in the first quarter of 2016, which is an increase of 25.9% YoY. Included in this are businesses in the tertiary industries, which saw an increase of 27.4% to 862,000 new firms, and composed over 80% of new registrations. Also, the property sector saw 23,000 new firms in the first quarter, which was an increase of 5.3%. Therefore, China

has set about to encourage registration of new businesses in order to prevent the slowing down of its economic growth, including lifting restrictions on minimum registered capital, payment deadlines and down payment ratios.

China is a leader in M&A deals

Dealogic, a global financial data provider, has revealed China as the leader in the first quarter of 2016 in merger and acquisition deals. In the period January-March 2016, China saw a record of USD 92.2 billion of M&A deals, which comprised 30% of total M&A deals globally, with Canada coming in 2nd with 20%, and the US 3rd with 16%. Included in China's first quarter M&A deals is the massive USD 43 billion deal between China National Chemical Corp and the Swiss agricultural group Syngenta, and the USD 2 billion deal between Beijing Enterprises Group Co. and German waste management company Energy.

Significantly, the numbers from the first quarter of 2016 showed most of the deals consisting of Chinese outbound deals, with a total of 115 Chinese outbound M&A deals at an overall value of \$82.6 billion, and the majority showing a trend of targeting listed companies. This growth follows a positive trend in Chinese outbound M&A deals, with a 41% increase from 2015. It is clear China thinks outbound M&A is a long-term strategy for many Chinese companies to steer and facilitate growth to produce Chinese multinational companies, especially as such outbound M&A deals are less likely to be affected by temporary fluctuations in the Chinese economy or RMB depreciation.

The construction of an innovation zone

Recently, the State Council has approved the construction of a national innovation zone created by the Ministry of Science and Technology and the Liaoning provincial government. The first step to take after the approval is to set up an innovation zone based in two of China's top high-tech industry development zones, which includes Shenyang and Dalian. The State Council has ambitious plans for the zone to turn into an area leading in high-end equipment research, development, manufacture, and in general set the torch in innovative transformation for China. Also, there are plans for the zones to carry out research and innovation surrounding issues including scientific research projects, technology and financial advancement, talent training and recruitment, industry research coordination, and intellectual property rights protection. Additionally, there will be support given by the State Council in relation to major innovation projects and trial policies. Therefore, the building of such a platform for innovation and its subsequent implementation highlights China's forward thinking and planning in relation to keeping China relevant internationally.

World Bank and AIIB finance joint projects

The World Bank and the Asian Infrastructure Investment Bank (AIIB) has recently signed a co-financing agreement to establish the foundation for their coordination in financing joint projects later this year, including projects in sectors such as transport, water and energy all over Asia. Under the agreement, the World Bank will be expected to prepare and oversee the projects in relation to areas including procurement, environment and social safeguards. Therefore, working together will directly present opportunities for the banks to take on more worthwhile projects to address the world's multiple infrastructure needs.

China investors looking to acquire foreign brands

China's HNA Tourism Group Co. has recently agreed to a deal where it will acquire Carlson Hotels Inc., giving it access to world-renowned brands including Radisson and Park Plaza. It has

also acquired Carlson Hotels' 51.3% stake in Rezidor Hotel Group AB, which holds master licenses for Europe, Middle East and Africa, therefore putting HNA Tourism Group in a position where they can begin takeover offers for all of Rezidor. As a result of the acquisition, HNA Tourism Group and Carlson Hotels "will have increased ability to accelerate growth through investment in areas such as digital, owned assets in major gateway cities, building of Radisson Red and other new brands", as stated by one of the company's representative. The current acquisition highlights a current trend of Chinese investment in hotel properties and brands around the globe, including the 15% stake in Red Lion Hotels Corporation acquired in 2015 by HNA Tourism Group. It also highlights the trend in general of the increase in Chinese investment overseas, which resulted in a \$97 billion of deals completed in the first quarter of 2015.

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.