MMLC Group

北京铭辉达知识产权代理有限公司

China Update

Lawyers and Consultants

BEIJING
709, Tower W3
The Towers
No.1 East Chang An Avenue
Dongcheng District 100738
Beijing, China
北京东城区东长安街 1 号东方广场东方经贸城
西三办公楼 709 室, 邮编 100738
writer's p: +86 10 8515 1091
f: +86 10 8515 1089
w: mmlcgroup.com

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Business News

People's Bank of China cuts interest rates

China's central bank cut interest rates on 25 August and said it would inject liquidity into the banking sector, in a move to stimulate the slowing economy and stem a slide in share prices that has rattled global investors. The bank said on its website after the market close that it had reduced its benchmark one-year lending rate by 25 basis points to 4.6 per cent with immediate effect. The bank also cut the benchmark one-year savings rate. The move came after the Shanghai Composite fell another 7.6 per cent — a day after falling 8.5 per cent.

Macau arrest 17 people suspected of China UnionPay scam

Macau police have arrested 17 people in a raid on five pawnshops thought to be using China UnionPay point-of-sale terminals to illegally get cash out of the mainland. The raid comes amid efforts by the mainland to curb illegal money flows and clamp down on underground banks as the falling stock market and uncertainty in the global economy fuel concerns over capital flight. The joint effort, by the police, central bank and the State Administration of Foreign Exchange has discovered 66 underground banks handling assets of about RMB430 billion and arrested more than 160 suspects.

China gives pension funds access to stock market

On 23 August, China allowed pension funds managed by local governments to invest in the stock market for the first time, potentially channeling hundreds of billions of yuan into the country's struggling equity market. Pension funds will be able to invest up to 30 percent of their net assets in the country's stocks, equity funds and balanced funds, according to rules published on the State Council's website. According to the new rules, pension funds can also invest in convertible bonds, money-market instruments, asset-backed securities, index futures and bond futures in China, as well as the country's major infrastructure projects. Previously, the pension funds could only invest in bank deposits and treasuries.

Fiscal, tax system reform essential in China's medium-term plan

Fiscal and tax reform, one of six reforms reviewed by China's Central Leading Group for Deepening Overall Reform at its latest meeting, is likely to top the agenda in the next five years. Fiscal and tax system reform will be vitally important for the 13th Five-year Plan (2016-2020), which is high on the agenda of October's plenary session of the Communist Party of China Central Committee. Tax reform will focus on the introduction of property tax, adjustment of consumption tax and renovations of individual income tax, and the theme for the tax reform is to "cut indirect taxes" like consumption tax and "add direct ones". The leading group adopted six plans covering fiscal and tax, as well as State-owned enterprises, finance, judiciary, people's livelihood and party building.

SOE profits nosedive

The profits of China's state-owned enterprises (SOEs) nosedived in July, with the pace of decline picking up dramatically from the first six months of the year. Their profits declined 2.3 percent year on year in the Jan.-July period to RMB1.4 trillion (US$221.2 billion, while the drop was just 0.1 percent in the first six months. Profits of SOEs directly administered by the central government tumbled 4.5 percent from January to July to about RMB1 trillion, while those administered by local governments saw a 3.6-percent profit increase. Non-ferrous metal, steel and coal companies suffered big losses.

Angel investors join sports sector funding race

Venture capital firms are moving into the sports industry as the market grows, fueled by China's wealthy middle class. Angel investment company ZhenFund, which was founded in 2011 and is based Beijing, has taken a stake in FitTime, a mobile app focusing on personal fitness. The company has also invested in Feel, another mobile fitness app, Beastbikes, a cycling app, and Cikers, an online club for soccer fans. Investment in the China's sports industry was worth RMB320 billion (US$51.6 billion) in 2013.

China FDI up 5.2% in July year-on-year on M&A

Foreign investment into China rose 5.2 percent in July compared to the previous year, largely on the back of mergers and acquisitions by overseas firms. Overall foreign direct investment (FDI), which excludes financial sectors, was US$8.22 billion in July, and US$76.63 billion in the first seven months of the year, a 7.9 percent increase. The proportion of M&A activity in FDI rose to 18.2 percent in the January-July period, it added, up from 4.6 percent in the same seven months a year ago. MMLC has been directly involved in FDI during this time, worth over US$1 billion.

Property investment rules eased

China has eased property investment rules for foreign individuals and institutions across the country, enabling qualified foreign institutional and individual investors to buy more properties on the Chinese mainland. The announcement, issued by the Ministry of Commerce, said that foreign institutional investors are exempt from registration fees when taking out domestic and foreign loans for property and settling foreign exchange transactions. Foreign individuals and companies are now allowed to buy as many properties as they wish, but they are still subject to local housing purchase limits, such as that in Shanghai, where people without a Shanghai household registration are allowed to buy only one property. Previously, foreign residents were allowed to buy no more than one property on the mainland and had to first have worked in China for a year.

Coca-Cola to invest US$4b in China over three years

Global beverages giant the Coca-Cola Co plans to invest US$4 billion over the next three years in China. Coca-Cola has invested US$9 billion in China since 1979. The 50,000-square-meter plant, costing US$56 million, will become its key production facility in northern China with a total capacity of 250 million unit cases annually, from nine production lines for sparkling and still beverages.

Macy's takes Tmall route to expand into China

Macy's Inc, the iconic United States mid-range department store chain, is to debut in China later this year by opening a store on the country's leading e-commerce platform, Tmall. The company has formed a joint venture with Hong Kong-based Fung Retailing Ltd to handle its first foray into China. Macy's China Ltd, to be based in the special administrative region, will be 65 percent owned by the US firm and 35 percent owned by Fung Retailing. It will sell on Tmall Global, owned by Alibaba Group Holding Ltd, which connects overseas branded retailers to Chinese consumers and already offers a strong number of quality foreign brands.

China's securities regulator vows to punish share dumpers

China's securities regulator on 22 August reiterated that it will investigate and "severely punish" major shareholders who sold shares despite a six-month ban. Starting 8 July, the government banned major shareholders, corporate executives and directors who hold more than 5 percent of a company's shares from selling stakes in listed companies for six months. The China Securities Regulatory Commission is looking into 52 alleged cases of this ruling being flouted. The commission will also investigate allegations of insider trading and other market manipulation activity.

China to regulate online equity financing platforms

China's securities regulator will soon begin inspecting online equity financing platforms to address risks brought by illegal activities and help the platforms better serve the real economy. The China Securities Regulatory Commission (CSRC) will oversee several kinds of online platform, including equity-based crowdfunding, which allows investors to receive a stake in a company funded by pooling money from many people via the Internet. The inspection aims to discover and correct illegal activities, minimize risks and lead platforms to perform better in serving the real economy. The inspection will focus on several aspects, including whether the online fund raisers have promoted themselves publicly, whether the accumulated number of equity holders has exceeded 200, and whether the raisers have collected private equity funds in the name of equity-based crowdfunding.

Lenovo follows Xiaomi in setting up India smartphone manufacturing unit

Lenovo Group Ltd said on 18 August it was establishing a smartphone assembly unit in India, becoming the biggest Chinese company so far to respond to Prime Minister Narendra Modi's campaign to turn the country into a manufacturing powerhouse. Partnering with contract manufacturer Flex, previously known as Flextronics, Lenovo said in a statement it is working on a new assembly line in the southern Indian city of Chennai. Using imported parts, it will have an annual production capacity of 6 million smartphones and employ 1,500 people. Production of its MotoE range of smartphones has already begun, it added. China's Xiaomi this month said it was joining forces with Taiwan-based tech giant Foxconn to start assembling phones in India.

Alibaba, Tencent invest in Internet-TV startup

China's Internet giants Alibaba and Tencent on 13 August announced they would invest in a China Media Capital (CMC) Internet-TV startup. Whaley Technology, which was founded by CMC chairman Li Ruigang in April, now has four partners -- CMC, Alibaba, Tencent and China National Radio. China National Radio is the holder of an Internet-TV license. CMC is China's leading media and entertainment investment fund. Established in 2010, CMC's prominent partners include China Development Bank, one of the nation's largest financial institutions.

Tencent Q2 profits surge 27 pct on online game, advertising growth

Chinese Internet giant Tencent Holdings reported on 12 August that a 27 percent year on year jump in profits for the second quarter of 2015 as revenues from online games and advertising recorded robust growth. The company reaped RMB7.39 billion (about US$1.2 billion) of profits, up 7 percent from the first quarter. Revenues rose 19 percent year on year to RMB23.43 billion in the second quarter, bringing the total income for the first half of 2015 to RMB45.83 billion.

Tax exempt car models released in government list

The Chinese government issued the latest list of car models eligible for tax reductions and exemptions on 21 August. On the list are 565 energy-saving models, of which 301 are passenger cars. There are also 1,734 new-energy vehicles, of which only 13 are passenger vehicles while commercial ones account for 98 percent of the total. The moves are expected to boost sales in new-energy vehicles.

China to let cash-starved farmers use land and property as collateral for loans

China will launch a pilot program allowing farmers to use their land and property as collateral for loans. The move is aimed at deepening monetary reform and stepping up financial support for farmers. China's farm sector employs almost a third of its 1.4 billion people, but its share of gross domestic product has declined over the years and productivity on the country's tiny farms are low.

New 15-million-ton petrochemical project approved at Liaodong Bay

Liaoning provincial government recently approved a brand new petrochemical project at the province's Liaodong Bay. The project, owned by China North Industries Group Corporation (CNIGC), includes oil refinery of 15 million tons per year and ethylene refinery of one million tons per year. Thanks to China's recently simplified system, this project did not need the authorization from the National Development and Reform Commission to launch, but only from Liaoning's subordinate unit. The project would break the ground in early 2016.

Shunfeng set to pay US$57.8m for stake in Suniva

Shunfeng International Clean Energy Ltd, the Hong Kong-based solar company controlled by billionaire Zheng Jianming, agreed to acquire a majority share of United States-based solar manufacturer Suniva for US$57.8 million. Shunfeng intends to integrate Suniva's high-efficiency products into its own and expand into the US market. The company, which will own 64 percent of Suniva, has been expanding production capacity as it seeks to become the world's biggest renewable energy provider, including the portfolio of companies owned by its parent, Asia Pacific Resources Development Investment Ltd.

RMB9.4 trillion pledged to fight water, air pollution

The Chinese government is accelerating investment in environmental protection, with the total investment into the protection of water, air and soil soon totaling RMB9.4 trillion (US$1.37 trillion). According to the Action Plan for Preventing and Controlling Water Pollution published in April this year, China's Ministry of Environmental Protection is focusing on combating water pollution. An estimated RMB2 trillion will go into enhanced monitoring of drinking water sources and the control of poisonous contaminants as suggested by a water pollution prevention and control action plan which is being formulated. A total of RMB26.45 billion (US$41 billion) will be invested in water pollution treatment in China's 18 provinces.

25,164 environmental violations seen in China

China has imposed punishment in 25,164 environmental violation cases in the first half of 2015, with 9,325 companies having their doors sealed. Violators were fined more than RMB230 million (US$37.6 million), and 740 cases of suspected environmental crime have been transferred to the police for criminal investigations. Since the Environmental Protection Law took effect this year, environmental authorities have closed down companies, limited or suspended on production, and detained wrong-doers.

Legal News

Intellectual Property

Trademark use within OEM context constitutes use

The Trademark Review and Adjudication Board (TRAB) has recognized in a recent case that trademark use within the original equipment manufacturer (OEM) context constitutes effective use within the meaning of the Trademark Law.

On 11 October 2012, Seven·Seven Co., Ltd. filed with the China Trademark Office (CTO) an application for the cancellation of the trademark MIRRO Registration No.684783, registered by SEB for various gods in Class 21, based on alleged non-use for three consecutive years. The period covered was October 11 2009 to October 10 2012. SEB submitted evidence of use of the mark via OEM activities in China during the relevant period. On 10 December 2013, the CTO ruled that the adduced evidence was insufficient and cancelled the mark. On 10 January 2014, SEB appealed to the TRAB for review on the grounds that use of a trademark in OEM activities complies with the definition of "use" set forth in the Trademark Law and should be recognised as valid use to defend against an application for cancellation based on non-use. To prove that point, SEB submitted complete sets of documents produced during the OEM procedure, from orders placed to goods received, and actively participated in the evidence disclosure procedure. The TRAB overturned the CTO's decision. The TRAB specified that even if OEM products do not enter the market in mainland China, if use of a trademark in the OEM process were not recognised as trademark use under the Trademark Law, this would limit the development of the OEM industry and go against the policy of expanding foreign trade.

This case confirms that trademark use in OEM activities is not excluded from "trademark use" within the meaning of the Trademark Law. As long as the evidence of use forms a complete evidence chain, OEM activities can maintain a registered trademark.

Patent applications received by China increase

In the first half of this year, the trademark and patent filings have a fast year-on-year growth. The increase of invention patent applications is 20.9% higher than the same period of last year, and trademark applications is 27.3%. The utility model has the biggest increase among three kinds of applications. The grants for invention, utility model and design applications all increased over the same period of last year. The proportion of service inventions remained stable which is respectively over 80% and 90% for domestic in-ventions filings and domestic invention grants.

Apple loses China patent case, separate suit against Apple continues

Apple took Shanghai-based Zhizhen Internet Technology and China's State Intellectual Property Office to Beijing First Intermediate Court to seek a ruling that Zhizhen's patent rights to a speech recognition technology were invalid. However, the court decided in Zhizhen's favor on 7 July 2015. Zhizhen sued the Apple in 2012 for intellectual property rights infringement, saying Apple's Siri used on devices including the iPhone violated Zhizhen's own voice system patents. The court decision referred to above would clear the way for the Zhizhen to continue its own case against Apple for infringing intellectual property rights. After the verdict, Apple said it intended to take the case to the Beijing Higher People's Court.

Michael Jordan to take trademark case to China's highest court

Michael Jordan, the former Chicago Bulls star filed an invalidation action with the TRAB against the trademark "□□(Jordan in Chinese) QIAODAN (Jordan in Pin Yin) and design" Registration No.1745721 owned by Qiaodan Sports in 2012, saying the sportswear firm located in southern Fujian province had built its business around his Chinese name without his permission which would cause unhealthy influences and public confusion. However, this action was rejected by the TRAB on 14 April 2014. The TRAB held that the trademark in dispute did not constitute "unhealthy influences" referred to in Paragraph 1 (8) of Article 10 of the Trademark Law 2001 on he basis that (i)Even if Qiaodan Sports owned almost 200 trademarks, but most of these were defensive registrations for the main marks, so it did not constitute a squatter; (ii) The trademark in dispute had a close connection with Qiaodan Sports through extensive use, so the accumulative reputation and relevant interests should be owned by the actual user; (iii) Although some acts of Qiaodan Sports were indeed improper, it was difficult to regard these improper acts as sufficient basis of cancellation of the trademark in dispute; and (iv) Therefore, the registration of the trademark in dispute was not "acquired by fraud or any other unfair means" referred to in Paragraph 1 of Article 41 of the Trademark Law either.

Michael Jordan appealed to the Beijing Municipal No.1 Intermediate Court and filed a large amount of evidence showing his reputation in Mainland China and Qiaodan Sport's bad faith in filing of the trademark in dispute. However, the evidence was not accepted by the Intermediate Court, since the evidence was neither related to the application of Paragraph 1 (8) of Article 10 and Paragraph 1 of Article 41 of Trademark Law to this case, nor the basis on which the TRAB decision was made (it is noted that such reasoning is inconsistent with the High Court's recent decisions on what evidence the Intermediate Court should consider in an appeal case). So the Intermediate Court ruled in favour of Qiaodan Sport over the trademark dispute.

This ruling was recently upheld by the Beijing Municipal High People's Court. On 18 June 2015, the High Court issued the final decision that "unhealthy influences" referred to in Paragraph 1 (8) of Article 10 of the Trademark Law did not contain the possible confusion caused by use of a mark. It was not suitable to conclude "unhealthy influences", if registration of a mark only damaged specific civil rights (such as name right and portrait right), since the Trademark Law stipulated additional remedy and according procedures on this. Further, "the registration of a trademark was acquired by fraud or any other unfair means" under Paragraph 1 of Article 41 of the Trademark Law mainly referred to the invalidity of "means" but not "purpose". Whether the actual use of the trademark in dispute would cause public confusion was not considered, when Paragraph 1 of Article 41 was applied.

It is reported that Jordan will now attempt to take the case to China's top court, the Supreme Court. We note that the Supreme Court rarely accepts appeal cases involving trademark matters, and to date, no appellant has been successful even if they have been able to get their case on to the Supreme Court review list. This could well be a case that is makes the list and leads to a victory for Michael Jordan.

China increases its PCT applications

According to the Patent Cooperation Treaty (PCT) Yearly Review 2015 recently issued by WIPO, two of the top three applicants were located in China. With 3,442 applications published, Huawei Technologies Co. Ltd. of China became the top PCT applicant. It also became the third company to have had more than 3,000 applications published in the space of one year. Qualcomm Inc. of the US and ZTE Co. of China ranked second and third, respectively. Both companies overtook Panasonic Co., the top 2013 filer, which moved down three places. For the first time, over 10% of the top 50 PCT applicants were from China. Among the top 50 companies, the majority were from Japan (19), followed by the US (15) and China (6). The number of Chinese applicants ranking among the top 50 doubled between 2013 and 2014.

China holds 2,790 geographical indications as of June 2015

According to the statistics released recently by the Chinese Trademark Office, as of the end of June 2015, China had 2,790 cumulative geographical indications (GIs) registered as trademarks, among which 83 were owned by foreign entities. The data showed that the top three foreign countries by number of registered GIs in China were France (33), Italy (18), and the US (14); as for domestic GIs, the leading Chinese provinces with most registered GIs were Shandong (399), Fujian (258), Hubei (214), Chongqing (198), and Jiangsu (188). We note the MMLC has been assisting the Republic of Georgia in securing a large number of wine GIs, with many due to register later this year.

Privacy

Amended Chinese Advertising Law provides new tool to protect privacy

On 24 April 2015, China amended its Advertising Law for the first time since its initial promulgation in 1994. The amended Advertising Law will take effect on 1 September 2015. In the absence of a comprehensive data protection law in China, the Amended Law introduces certain provisions addressing data and privacy issues, in addition to existing data privacy rules which are scattered in various laws and regulations.

- No advertisement may, among other things, compromise personal or property safety, or divulge private personal information. Any advertiser violating the rule will be subject to an order to stop advertisements and a monetary penalty ranging from RMB200,000 to RMB1,000,000 (approximately US$32,000 to $161,000). The advertiser’s business license may even be revoked if it commits a serious violation of this rule.
- Without the recipients’ consent or request, no entity or individual may send advertisements to their residences or vehicles, or send them advertisements by electronic means. Advertisements sent by electronic means must explicitly state the sender’s true identity and contact details, and provide recipients with unsubscribe facilities. Any advertiser violating the rule will be subject to a cease-and-desist order and a monetary penalty ranging from RMB5,000 to RMB30,000 (approximately US$800 to $4,800).
- Pop-up advertisements must contain clearly-indicated “close” signs to ensure that the user may close the advertisement by just “one click”. Any advertiser violating the rule will be subject to a rectification order and a monetary penalty ranging from RMB5,000 to RMB30,000 (approximately US$800 to $4,800).

Environment

Air pollution law in line for legislators' approval

China's legislative body is reviewing the third draft of the Air Pollution Control Law, which tightens controls on emissions from vehicles and vessels and is expected to be passed soon. In the first and second drafts of the law, there were stipulations that local governments had the right to impose restrictions on vehicle use due to severe air pollution, and release the details of the restrictions including the zones affected after hearing suggestions from experts and the public. But the third draft has removed that stipulation, amid concerns that it would affect social order and after many residents had expressed their concerns and disagreements. In addition, the third draft has added several stipulations including setting up national standards on fuel quality and requiring petroleum refining enterprises to follow the standards in their production to reduce the emission of air pollutants.

Arbitration

China-Africa Joint Arbitration Centre created

Establishing South Africa on the international arbitration stage, the Arbitration Foundation of Southern Africa (AFSA) has announced the creation of the China-Africa Joint Arbitration Centre (CAJAC). CAJAC, which will operate from South Africa and China, is the result of an agreement between AFSA, Africa ADR (AFSA's external arm), the Association of Arbitrators and the Shanghai International Trade Arbitration Centre. The CAJAC is supported by the China Law Society and the Beijing Consensus signatories and will be the authorised China - Africa Arbitration and Mediation Institute.