



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's private health insurance market reported to grow fivefold by 2020**

According to a report co-issued by the Boston Consulting Group and the Munich Re, by the year of 2020, the Chinese private health insurance market is expected to surge fivefold from 241 billion Yuan in 2015 to 1.1 trillion Yuan (167 billion USD), due to the drive from middle class and rich people to seek alternative plan of public health insurance. The report said that, the most likely potential client for holding a reimbursement insurance policy are people who are 35-55 years of age, married with children and have annual household income more than 200,000 Yuan. It is estimated that such group of people will be more than 40 million by 2020; and the richest people among them would be willing to pay 30,000 – 60,000 Yuan per year for their families for reimbursement insurance policy. The report further stresses that by 2020, the market of reimbursement insurance policy is estimated to be increased to 400 billion Yuan, which will take up to 36% of the total private health insurance market worth of 1.1 trillion Yuan; as to the rest of the 64% market thereof, it will be major disease insurance led by life insurance companies.

#### **LeEco plans 12 Billion Yuan investment in electric car**

According to the latest news, the Chinese technology giant LeEco plans a 12 billion investment (about 1.8 billion USD) to build an electric car factory in Zhejiang Province. It is said that the factory will be a part of an auto-eco park, which will cover electric car manufacturing, eco-displaying, touring and so on. The total investment for the whole project is estimated as high as 20 billion Yuan. According to the project planning, the factory will have the capacity to manufacture 400,000 per year in two year.

#### **Chinese online population exceeds 700 million**

In a statement issued by the China Internet Network Information Center (CNNIC), by the end of June, 2016, the online population in China has increased to 710 million, which is twice the total population of America. According to the CNNIC, the online population is defined as those who

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are over age six (including six) and had access to the Internet at least once in the past six months. It is also said that 92.5% of the Chinese online population are using cell phones to surf the Internet.

### **China releases three-year plan to lift Northeast provinces**

Recently, upon approval from the State Council, the National Development and Reform Commission (NDRC) issued a three-year plan to lift the economy of the northeast provinces. According to the said plan, it contains 127 important projects that will have significant impact on lifting the northeastern provinces, and those projects involves many fields, such as transportation (including railway, highway, airport and metro), energy, water conservation, industry, agriculture, urban construction and so on. According to the person in charge of the matter from the NDRC, the total investment is estimated at 1.6 trillion Yuan.

### **China's electricity consumption in July increases**

According to the NDRC, the electricity consumption in the first seven months has increased 3.6% year on year. It is analyzed that such swift increase of the electricity consumption was due to high temperature in July and the data in the same period of last year was low. With respect to power generation, in July, the water and nuclear power generation have been keeping fast increase, and the increase of thermal power generation also turned positive from negative. In the first seven months, the water, nuclear and thermal power generation have increased 13.2%, 24.5% and -1.9% respectively.

### **China Launches the First ever Quantum Satellite**

On August 16, 2016, China launched the first quantum satellite in the world at Jiuquan launch base located in Gansu Province. The successful launch of the quantum satellite marks that China has made a significant step in space science. The quantum satellite is one of the first batches of scientific satellites led by the Chinese Academy of Science, and it is expected to help development of the ability to send communications that can't be penetrated by hackers.

### **Ferrari Theme Park Expected to be open in China**

Recently, Ferrari announced that it had signed a memo with two Chinese companies with respect to establishment of a race car park in China. The said two companies are Beijing Automobile and BIAC Eternaland Property. If the agreement could be carried out, the two companies will be able to establish a Ferrari theme park in China; however, it is still unclear that where the park will be located. Currently, the sales of Ferrari in China has taken up to 5% of its global sales.

### **Xiaomi Targets Consumers' Who Can't Afford Expensive Laptop**

At the end of July, Xiaomi launched its latest laptop product. Xiaomi takes the same strategy for its new laptop products as it does for its smart phones, which is to target consumers who could not afford Apple's Macbook. There are two laptops promoted by Xiaomi, one sets price at RMB 3,499 Yuan (about \$522 USD), and the other one is RMB 4,999 Yuan. It is analyzed that the launch of the laptop product helps Xiaomi make a complete product link, which are composed of smart phones, panel computers, TV set-top box, as well as the latest laptops.

### **China Capitals Purchase European Soccer Teams**

Within one day, Buyers from China purchases three European soccer teams. Two of the team are from Britain, which are West Bromwich Albion and their rival the Wolverhampton Wanderers. Now, both teams are owned by two Shanghai owners. The former one is owned by a company called Yunyi Guokai (Shanghai) Sports Development Ltd, whereas the latter is owned by a Shanghai-based investment group Fosun International Ltd. Meanwhile, another company, Zhong Ou Sports Investment Management Co., Ltd. made a deal to purchase 99.93% of shares of AC Milan.

### **Alibaba Pictures Invests 100 million Yuan in Hangzhou Cinema Operator**

Recently, Alibaba Pictures announced that it has purchased 80% shares of Hangzhou Xing Ji, a cinema company. It is reported that Alibaba will acquire 60.94% share of Hangzhou Xing Ji which is worth of RMB 39 million Yuan, and then it will further invest 61 million Yuan, all through Tianjin Alibaba Pictures. By then, Alibaba will hold about 80% share of the Hangzhou Xing Ji. The Hangzhou Xin Ji mainli engages in operation, management of 11 Hangzhou Cinema.

### **German Firms Having Hard Time in China**

In a recent interview, the Germany's ambassador, Mr. Michael Clauss, express his concern that China has become increasingly protectionist. He said that foreign companies are feeling less welcome in China, and German companies are having hard time and some of them have chosen to invest in other regions. For instance, he mentioned that the tight control over Internet and the upcoming cyber security law may compromise "the integrity and authenticity of data flows"; and therefore, scares foreign companies away.

### **Upgraded China-ASEAN FTA Expects to Boost Trade**

Chinese Premiere, Li Keqiang, is due to visit Laos and attend a series of summits related to China and ASEAN, including a 25<sup>th</sup> anniversary of dialogue relationship between the two. It is reported that both parties will hold a series of activities, which cover fields such as politics, trade, education, youth, sports and so on. Currently, China and ASEAN have been positively pushing forward their third action plan. The relevant protocols have come into effect in this July. In the first six months this year, the trade between the parties has reached 209 billion USD. China has been keeping as the biggest trade partner of ASEAN, whereas ASEAN is the third biggest trade partner of China. China and ASEAN signed a framework agreement to establish a free trade area, which greatly boost the bilateral trade relationship. In 2013, China called for an upgraded version of the ACFTA, and both parties decided to upgrade the ACFTA in August 2014. Now, the negotiations towards the upgrade of ACFTA are expected to be completed by the end of this year, and the upgraded ACFTA is expected to have a positive impact on the bilateral trade relationship.

### **HKIAC Releases Statistics of 2015**

Recently, HKIAC released its 2015 case statistics, which records a strong growth in 2015. According to the report, the new case number hit a new high since 2010 as well as the total amount of dispute. There were 520 new cases in total filed in 2015, with 271 arbitrations, 22 mediations and 227 domain name disputes. The total sum of all arbitration disputes reached about USD \$6.2 billion. It is worth of noticing that 79% of new arbitration cases involved at least one non-Hong Kong party, and the dominant arbitration languages is English, which took up to 79% of the total cases. In addition, the top three governing laws for governing substantive contracts are Hong Kong laws, English laws and Chinese laws.

### **Three Men Arrested for Selling Refurbished iPhones**

Last September, Guangdong police received clues from informant that there are false phone manufacturing and refurbishing places in Dongguan City. Upon investigation, it is found that there were three suspicious places located in a civil community, and those places were only active at nights. All the cell phone spares were brought from Shenzhen by trucks, and then delivered nation wide by logistics after they were refurbished as new phones. While the police conducted the arrest, it was found that there were more than 40 iPhone 6 & 6s cell phones at each one of the three places. There were also a series of iPhone 5 and 4 found. It is reported that the three men arrested purchased second-handed cell phones from various channels, and then bought spares such as phone shells and hired people to refurbish them as new ones. The refurbished phones have been sold to more than 20 provinces, such as Zhejiang, Shandong, Qinghai and so on. According to the suspect's compute record, the sales amount from March to September in 2015 had reached 10 million Yuan.

### **Chinese Tourists in Japan crave Cosmetics**

Subsequent to explosive buying of electronic products, such as rice cooker, Chinese tourists in Japan have shift their interests to cosmetics. According to official statistics from the Japan government, there were about 730, 000 Chinese tourist visited Japan, without being affected by the appreciation of Yen. It is reported that as the quality improvement of the Chinese made electronic products, Chinese tourists pay less interest in the Japanese electronic products. Instead, they are more interested in Japanese cosmetics, which shows the importance of Chinese female tourists. Among the tourists visited Japan in the first half year of 2016, tourists from mainland China ranks the first place which is 3.08 million people, followed by Korean tourists (2.38 million people) and Taiwan tourists (2.16 million people).

### **China's Post-1990s Consumers Have the Highest Consumer Confidence**

According to the latest statistics issued by Nelson, the Chinese consumers' confidence index in the second quarter raised one point to 106, which shows that Chinese consumers have been positively adapted to Chinese economical new status. It is reported that 59% of the interviewees considered that the career prospect was good or excellent, which raised 3 percentage comparing to that of last year. There were also 54% of the interviewees considers the economic condition "very good". Among the various age groups of consumers, the post 1990s consumers had the highest consumer index, which was 110. According to research, the post 1990s consumers have their own standard when it comes to choose product, they pay more attention to innovation, personality as well as quality. Also, due to impact from star pursuing and Internet, the post 1990s consumers change their preference constantly. Thus, they have lower brand loyalty and reliance than those of the other age groups.

## **Legal News**

### **Intellectual Property**

#### **Beijing IP Court completes evidence preservation in Adobe/Autodesk case**

On 25 July 2016, upon request by Adobe Inc. and Autodesk Inc., the Beijing IP Court issued evidence preservation orders regarding the computers and related equipment of Beijing Ourpalm Co., Ltd., which was subject to a claim for computer software infringement. According to the two plaintiffs, the defendant copied, installed and commercially used the two plaintiffs' software without permission, and thus, the defendant had infringed their copyright. Upon acceptance of the case, the plaintiffs applied for evidence preservation within the defendant's premises. The court found that the plaintiffs' application had satisfied the legal conditions, and upon the posting of a bond, the court agreed to issue evidence preservation orders as requested – this led to the confiscation of around five hundred PCs and laptops by the court. Despite these procedures being in place for many years, it has historically been very difficult to get a court to issue such orders in intellectual property cases, even in the most clear cut infringement cases. This demonstration of the court willing to issue such orders in a copyright infringement case, is welcomed.

#### **Shanghai IP Court issues injunction for trade secret case**

On November 17, 2015, Eli Lilly & Company (Eli Lilly) filed a lawsuit in the Shanghai IP Court against a former employee known as Mr. W, claiming that Mr. W copied various items that were company trade secrets to his personal device without permission. Eli Lilly requested the court to order the Defendant to: 1) immediately and permanently delete all copied materials and 2) compensate the plaintiff for economical losses in the sum of RMB 30,000,000. Eli Lilly also applied for a pretrial injunction and posted bond of RMB500,000. The Defendant admitted that he made copies of the relevant materials, and that such materials were trade secrets, but he claimed that he had not disclosed or used the materials in any way.

The court held that Eli Lilly had provided preliminary evidence to prove that the claimed trade secrets possess the characteristics of secretive, confidential and value, as required by the PRC Law Against Unfair Competition. The Defendant did not oppose that the involved documents constituted trade secrets, and admitted what he did. Considering all factors, such as possibility of winning the case by Eli Lilly, ability to enforce the order, interests of the defendant as well as the public interest and so on (including balance of convenience essentially), the court agreed to issue the pretrial injunction.

This case has confirmed the court's ability to issue pretrial injunctions in trade secret theft cases.

#### **Exhibition sponsor found liable for patent infringement**

According to a recent judgment issued by the Beijing IP Court, an exhibition sponsor was held liable for patent infringement. In the said case, the plaintiff, Mr. Zhang, purchased products which infringed his patent from a vendor of a booth at the exhibition. Instead of directly filing suit against the vendor who actually sold the infringing product to him, he sued the property manager of the exhibition facilities, and the sponsor of the exhibition who leased the facilities and then subleased it to vendors. Upon hearing, the court did not hold the property manager of the exhibition facilities responsible, since it had fulfilled its obligations. However, it found the sponsor liable, on the ground that the sponsor failed to fulfill its obligation to check the infringing vendor's

qualifications and credentials, and therefore, effectively negligently assisted with the infringing activities.

### **Beijing High Court issues guidelines for online IPR cases**

On 13 April 2016 the Beijing People's High Court issued Trial Guidelines for Cases concerning Online IP Rights, which standardize the judicial rules applicable to network-related IP cases and provide the guidance for the issues in relation to network-related copyright, trademark and unfair competition disputes:

- Copyright - the burden of proof for copyright owners and the internet service providers is discussed, as is recognition of the nature of an internet service provider's activities, determination of "division in labor", application of conditions of infringement and exemption, reasonable use of web page screenshots as well as application of internet real-time broadcasting
- Trademarks - platform service providers' legal obligations to provide specific information as to online sellers in infringement cases, with the proviso that failure to do so, will render it primarily liable for the infringing activities
- Online acts of unfair competition - it deals with false advertising and business defamation/injurious falsehood issues, sponsored search issues and related compensation quantum issues

### **Internet, Media and Privacy**

#### **Stricter online advertising regulations enters into force in September**

A new regulation concerning online advertisements shall come into force on September 1, 2016. The new regulation, the Interim Measures on Online Advertisements, was issued by the State Administration of Industry and Commerce to regulate online advertising activities and protect consumers' rights and interests. The new regulations lists five forms of online advertisements, including but not limited to words, photos or videos advertisements containing promotional links, email advertisements as well as paid search results. Also, it requires that the online advertisements must be distinctive and marked with "advertisement", which could help consumers identify its advertising nature. For the paid search results, apart from marking with "advertisement", such results shall be distinguished from the natural search results. Online advertisements for particular goods or services, such as medical supplies, medicine, pesticides, veterinary medicine and other health products shall not be issued without prior approval. Advertisements for tobacco and prescription medicine are forbidden.

#### **China issues opinions as to cybersecurity standards**

Recently, the Cyberspace Administration of China (CAC), the General Administration of Quality Supervision, the Inspection and Quarantine of China (AQSIQ), and the Standardisation Administration of China (SAC) co-issued Several Opinions concerning Enhancement of National Cyber Security Standardisation Work (Opinions). They state that the national cybersecurity standard will be reviewed, approved and released solely by the National Information Security Standardisation Technical Committee. There will be no local standard for cybersecurity made in principle. It also provides that it will start researching and formulating standards in fields, such as key information infrastructure protection, cybersecurity review, industrial control system security, big data security, personal information protection, as well as cybersecurity information sharing and so on, based on the needs of national strategy.

### **China issues peer-to-peer financing supervision measures**

On August 24 2016, several government departments including the China Banking Regulatory Commission (CBRC), MIIT, Ministry of Public Safety etc., co-issued the Interim Measures on Management of the Peer-to-peer Lending Information Intermediary Activities. In accordance with the Measures, the CBRC and its agencies will be responsible for the supervision of the Peer-to-peer (P2P) activities. It forbids the P2P to promote or advertise financing projects in physical locations, other than electric channel, such as Internet, landline, cell phone and so on. The Measures also requires banks to escrow client's money for P2P platforms, and an individual shall not borrow money more than 200,000 Yuan from the same P2P platform. The P2P platforms will be given a period of 12 months for transition.

### **China strengthens management on medical-related TV programs**

Recently, the State Administration of Press, Publication, Radio, Film and Television (SARFT) issued a Notice to strengthen the management of medical related TV programs and medical advertisements, in order to cope with illegal sales of medicine, health products, medical service, and broadcasting of false medical advertisements on such programs. According to the said Notice, the production of medical related TV programs was to be regulated to only certain types of state media licensed entities. In addition, the Notice regulates timing and methodology of advertising of medical products, to forbid broadcasting of false medical advertisements, it strictly restricts the time and the way medical advertisements broadcast, prohibiting TV shopping advertising and other methods, which have caused consumer concern.

### **SAIC releases draft of Regulations on the Implementation of the Law on the Protection of Consumer Rights and Interests for public opinions**

On August 5, 2016, the State Administration of Industry & Commerce (SAIC) released a draft of the Regulations on the Implementation of the Law on the Protection of Consumer Rights and Interests ("the Regulations") for public opinion soliciting, in order to complement the implementation of the latest amended Law on the Protection of Consumer Rights and Interests in 2013. Issues discussed include:

- Consumers' rights and operator's obligations (Chapter 2 & 3)

In the part of the general rules of the consumers' rights and operators' obligations provided in Chapter 3, the Draft specifies some issues that are most concerned by the public, such as burden of proof of the operators, free refund in seven days, and personal information protection etc. In addition, it further provides some special rules that must be obeyed by operators in certain industries, including but not limited to, utility services (e.g. water, electricity, gas, heat, telecommunication, cable TV), passengers transportation, financial services, home decoration, express delivery, food and beverage, property services, beauty services, maintenance for vehicle and home appliance, training services, agency services, franchising and so on.

- Protection of consumers' rights and interests (Chapter 4 & 5)

The drafted Regulations provides protection for consumers' rights and interests from two aspects: administrative protection and social protection. It provides that people's government at each level shall establish a department coordinating mechanism, which may involve multiple departments, such as AIC, AQSIQ, FDA, Commerce Bureau, Price Bureau, Public Safety Bureau and so on, to protect consumers' rights and interests. It

further specifies that it shall establish a discreditable operator punishment mechanism, which is to record administrative punishment information arising from infringement of consumers' rights and interests into credit files and publish such record through Credit China and the Credit Information Disclosure System for Enterprises Nationwide. In terms of social protection, the drafted Regulations defines that consumers' organizations include consumers association, consumer committee, consumer council and so on, which are established in accordance with laws and conduct social supervision to goods or service provided by operator. It also provides responsibilities of such organizations.

- **Dispute resolution and Liabilities**

In accordance with the drafted Regulations, operators shall establish convenient and fast complaint mechanism to resolve disputes with consumers. Consumers may also resort to organizations (consumers association, consumer committee etc.) as well as relevant administrative departments for complaint and dispute resolution. In addition, the Chapter 7 Liabilities of the drafted Regulations specifies civil, administrative and even criminal liabilities for operator who violates general and special rules of consumers' rights and operator's obligations.

It is estimated that the finalized Regulations will be issued by the end of this year, once the public has provided feedback as to its contents.

## **Foreign Trade & Corporate**

### **Simplified company incorporation procedures help China's startups**

According to the SAIC, in the first six months of 2016, there has been an average of 40,000 new market entities and 14,000 new enterprises registered daily in China, due to a simplified registration process. Starting from last October, the simplified registration process has encouraged startups and boosted enterprises across China. It is reported that such registration process will be further simplified since this October by allowing entrepreneurs to obtain five key business permits (business license, tax registration certificate, organization code certificate, social insurance register and statistical registration certificate) in one, other than applying them one by one. It is reported that, 4.4 million new enterprises were registered in 2015, which is a 20-percent increase compared to 2014.

### **MOFCOM relaxes foreign investment in education, culture and finance**

According to the Deputy Minister of the Ministry of Commerce, Mr. Wang Shouwen, on a meeting held on 23 August 2016, the MOFCOM has been researching the feasibility of promoting the negative list to the national level based on the experience from the FTZ pilots. He also expressed that it is planned to further relax the restriction of foreign investment in the fields, such as education, culture, finance, manufacturing and so on. It is reported that, by the end of July 2016, there have been about 850,000 WFOEs established in China, and the actual used foreign investment has reached 1.7 trillion USD.

### **China to establish seven new FTZ pilots**

The Chinese government has decided to establish seven new FTZ pilot zones in provinces, including Liaoning, Zhejiang, Henan, Hubei, Chongqing, Sichuan and Shan'xi, which indicates that the establishment of FTZ pilots has entered into a new phase. Since the first FTZ pilot operated in Shanghai in 2013, there have been four FTZ pilots in China, which locate in Shanghai,

Guangdong, Tianjin and Fujian; and they have made great progress in many fields, such as investment, trade, finance, innovation and supervision. The experience obtained from the said pilots will be duplicated and used into the establishment of the new FTZ pilots.

### **State Council urges to stabilized foreign trade**

At the State Council executive meeting held on 16 August 2016, it was discussed that local government and departments are to carry out a series policies to stabilize foreign trade. According to the latest data from the Customs, the import and export in the first seven months is still weak. Even though the export has been increased positively in five consecutive months, the international market is still grim and complicated. Thus, the meeting required to: 1) duplicate and promote the facilitation measures adopted by the Free Trade Zone and regulate the standards at different custom areas and regions; 2) guide the financial institutions to enhance credit support to companies that have export orders and help them avoid exchange rate risk; 3) further clear operational fees and create a better business environment; 4) promote pilots of cross-border e-commerce, market procurement trade and so on.

### **MOFCOM Approves Dell – EMC Deal**

According to the latest new, the Ministry of Commerce in China has approved the purchase of EMC Corp. by Dell Inc. Upon conquering this last hurdle, this deal is estimated to be completed in September 7. The deal involves purchase amount to 60 billion USD, which is the biggest high-tech deal. The deal was first proposed last October and had obtained approval from regulators in the US and Europe months ago.

### **FOXCONN's Purchase of Sharp Approved by MOFCOM**

Foxconn announced on August 12 that the anti-trust regulator in China, MOFCOM, approved its purchase of Sharp, which means that this deal amount to 3.8 billion USD complete its last hurdle. It is reported that, as all supervision approval had obtained, Foxconn would finish this deal with Sharp as soon as possible. Foxconn announce the purchase of Sharp this March, and was planned to complete the said deal in June. However, due to the extension of reviewing, it had caused the concern that the deal might be failed.

### **SAT Releases Notices Regulating Related Party Transaction Reporting**

On June 29, 2016, the SAT released a notice on improving related-party transactions reporting and administration of transfer pricing documentation. This notice defines related party and related party transaction in details. It also specifies requirements of all the documentations submitted when they are reported. The notice will be applied to the year of 2016 and the accounting year after. It is worth of noticing that the latest notice replaces the relevant content regarding the contemporaneous documentation as well the circular 114 issued in 2008.

### **CFDA Drafts Guideline to Regulate Clinical Trial Data**

On August 24, 2016, the Chinese Food and Drug Administration released a draft of the Guideline for Handling Issues Identified in Clinical Trial Data Inspections for public opinion solicitation. The issuance of the Draft is aimed to further regulate clinical trial activities, and deal with the clinical trial data which are identified as unreal, incomplete and irregular during the inspection. In order to ensure the authenticity of the clinical trial data, the Draft lists in detail a series of punishment for falsifying clinical trial date, including but not limited to non-approval of registration application, cancelling qualification, black list, criminal investigation.

## **Insolvency**

### **Highest court orders to establish bankruptcy tribunals**

The Supreme People's Court issued a working plan on 12 August 2016 requesting the Intermediate Courts in major cities across China to establish liquidation and bankruptcy tribunals. The responsibilities of such tribunals will include: trying liquidation and bankruptcy cases, researching liquidation and bankruptcy case, guiding trial work of lower court in terms of liquidation and bankruptcy cases; coordinating liquidation and bankruptcy cases among courts, as well as management and training of bankruptcy administrators. The establishment of liquidation and bankruptcy tribunals will be carried out in two steps: the first step is to establish such tribunals at the Intermediate Courts in Beijing, Shanghai, Tianjin, Chongqing and the provincial capital cities in 11 Provinces; and then, by the end of this year, the tribunals will be established steadily in other major cities. This development shows China's increasing desire to set up specialist courts and tribunals for more efficient and expert handling by tribunal/court officers.

*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.*