



MMLC Group – China Update

October 2009

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Business News

Alibaba seeks controlling stake in HiChina

China's Alibaba.com Limited is to pay 540 million yuan (\$79.06 million) for a controlling stake in China Civilink (Cayman), which operates in China as HiChina Web Solutions.

According to the purchase agreement, Alibaba will acquire HiChina for cash in two phases. The first phase will see Alibaba acquire 85 percent of HiChina for a cash consideration of 435.42 million yuan (\$63.75 million). The additional 14.67 percent retained by the founders of HiChina could be sold to Alibaba for an additional 104.56 million yuan (\$15.31 million) dependent upon HiChina reaching certain performance targets, according to the agreement terms.

HiChina, founded in 1996, is devoted to providing comprehensive Internet infrastructure services to enterprises, covering domain and hosting services, enterprise e-mail systems, website building and e-commerce consultation.

The deal is the largest-yet investment by Alibaba, a global leader in business-to-business e-commerce. It was founded in 1999 in east China's Hangzhou City.

Alibaba will get the large customer base, new applications, automated "do it yourself" website construction technology and management and operating team of HiChina, according to the terms of the agreement.

The investment is expected to be completed by the end of 2009. HiChina will keep its brand and independent operation. HiChina's products and services will be part of Alibaba.com's Information Technology Business Unit, which is focused on small businesses. The investment will make the most of the advantages of Alibaba and HiChina in their own fields and provide more comprehensive and better products and services to China's small businesses.

Battery maker tops annual 'rich list'

Wang Chuanfu, the founder of Chinese battery and electric car maker BYD, has become Chinese mainland's richest person thanks to US billionaire investor Warren Buffett, according to a list published recent.

Wang, 43, leapt 102 places to top the Hurun Rich List after his fortune increased more than five-fold to \$5.1 billion. Wang's 27.8 percent

stake in BYD "hit the big time" after Buffett paid \$230 million for a 10 percent stake in the company last September.

Zhang Yin, the woman who founded paper-recycling company Nine Dragons Paper and the mainland's richest person in 2006, was in second place.

China appeals WTO ruling on books, audio-visual products

China lodged an appeal over a World Trade Organization (WTO) panel ruling which said its regulations on the import and distribution of books and audio-visual products are not in compliance with world trade rules.

The WTO's seven-member Appellate Body will now have two to three months to reinvestigate the US-China dispute, and it can uphold, modify or reverse the panel ruling, which was issued last month.

The United States brought the case to the global trade watchdog in April, 2007, saying that China was not providing enough access for imports of publications and audio-visual products. The case involves publications such as books and newspapers, audio and video products including CDs, DVDs and games, and music downloading services.

A WTO expert panel issued its ruling on August 12, largely upholding the US allegations, and it called on China to revise its import regulations so as to bring them in line with WTO rules and China's obligations in the organization.

The Chinese Commerce Ministry had expressed that China has always fulfilled its obligations on market access for publications and the channels for foreign publications, films and audio-visual products entering Chinese market are extremely open.

China cuts gasoline, diesel prices

The National Development and Reform Commission (NDRC) announced that China will lower gasoline and diesel prices by 190 yuan (\$27.8) per tonne.

The benchmark price of gasoline will be 6,620 yuan a tonne, and for diesel 5,880 yuan a tonne, according to

the NDRC. The retail price of gasoline will drop by 0.14 yuan per liter and that of diesel will decrease by 0.16 yuan per liter.

It is the eighth fuel price adjustment since the country adopted a new fuel pricing mechanism, which took effect on January 1 and the first reduction of fuel prices in two months. Under the pricing mechanism, the NDRC will consider changing the benchmark retail prices of oil products when the international crude price changes more than 4 percent over 22 straight working days.

The average crude price of Brent, Dubai and Cinto has declined to 71.52 U.S. dollars a barrel, down 5.02 percent since the previous fuel price adjustment, according to the Shanghai-based CBI (China) Co., Ltd., a leading service provider in Chinese commodity markets.

Order cancellations unlikely to weigh on anchor chain maker

The anchor chains made every year by Jiangsu-based Asian Star Anchor Chain would easily stretch 3,500 kilometres, or all the way from Shanghai to Urumqi. About seven of every 10 vessels of 10,000 tonnes or above sailing across the globe are equipped with a pair of anchor chains produced by Asian Star.

Just like thousands of other companies in the shipbuilding industry, the fate of Asian Star is closely tied with that of the mainland's struggling shipyards. The ripple effect may take two to three years to reach the equipment manufacturers but there is little doubt it will arrive.

When the mainland shipbuilding industry started to take off in the late 1990s, ship equipment suppliers also experienced substantial growth. The mainland ship ancillary industry pocketed 32.8 billion yuan (HK\$37.2 billion) in sales last year, up 80 per cent from a year earlier.

Asian Star's production lines are still operating at full strength with three shifts a day. Without some cancelled orders, they would not be able to finish all the work scheduled for the year even operating at maximum capacity. Shipyards would be more badly affected by the industry downturn. But the company had already seen a change in market sentiment when negotiating new orders with shipyards. The South Korean shipyards, for example, used to sign the contracts before going into the details of technology specifications. But now, even when Asian Star have gone through the technical agreement, the contract is shelved at the last minute."

With about 70 per cent of its 2.5 billion yuan in sales last year coming from the shipbuilding industry and the remainder from the ocean engineering industry, the company would increase its engineering work to mitigate the negative impact of the shipping industry downturn. The firm also planned to boost orders at its ship-repair dockyard, which had been neglected because of robust demand from the shipyards

Zhongnan Heavy Industries, a pipe fitting manufacturer based in Jiangjin, also reduce reliance on the shipbuilding industry.

Zhongnan Heavy, which had more than 500 billion yuan of sales last year, had increased the proportion of revenue from the oil piping business to almost 40 per cent this year, equivalent to the contribution from shipbuilding.

CSRC approves Hebei Steel merger plan

The China Securities Regulatory Commission (CSRC) days ago approved the merger of Tangshan Iron & Steel Co with Handan Iron & Steel and Chengde Xinxin Vanadium & Titanium Co, paving the way for Hebei Iron and Steel Group (Hebei Steel), their parent, to become the country's second largest steelmaker.

The three arms, Handan Iron & Steel Ltd, Tangshan Iron & Steel Co, and Chengde Xinxin Vanadium & Titanium Co, all announced that their shares have been suspended from trading starting Sept 17 and that it would resume only after the regulatory review result is publicized.

As early as December 2008, Hebei Steel unveiled its overall listing scheme, under which Tangshan Iron & Steel would become its only listed arm engaged in the pillar iron and steel business, after absorbing the other two listed arms through a share swap. After the consolidation, the crude steel production of Tangshan Iron & Steel would touch 21.2 million tons, up 86.4 percent from the current 11.4 million tons, while Hebei Steel will have a total capacity of 330 million tons annually, ranking second in China and the fourth in the world.

Hebei Steel also injected the assets of Xuansteel and Wuyang Steel into the listed Tangshan Iron & Steel one year after the three arms' consolidation. Xuansteel and Wuyang Steel are two high-quality subsidiaries of Hebei Steel, mainly producing steel plates and long steel products.

In the share swap, each Handan Iron & Steel share, price at 4.10 yuan, can be exchanged for 0.775 Tangshan Iron & Steel share, and each Chengde Xinxin Vanadium & Titanium share, priced at 5.76 yuan, for 1.089 Tangshan Iron & Steel shares, priced at 5.29 yuan.

The new firm will have an aggregate market value of about \$4 billion. The consolidation could bulk up China's bargaining power in negotiations with the three global mining giants, Vale, BHP Billiton and Rio Tinto.

China is the world's largest producer and consumer of steel driven by its manufacturing sector, construction and automobile industries. But despite the size of the industry, China's steel firms are disadvantaged in annual international iron ore negotiations due to its low industry concentration.

The central government has long wanted to consolidate the fragmented sector into a few big players, hoping the top five steel groups will likely account for 45 percent of the country's total capacity next year from 28.6 percent at present. It had already started the

initial moves last year itself with 17 mergers and acquisitions.

Foreign firms encouraged to participate in large jet program

China government recently expressed that they encourages and welcomes foreign companies to participate in its large jet program.

Safran, a French high-tech company with a leading position in aerospace, defense and security, is one of the competitive bidders for the large jet program which China approved in February 2007.

The Chinese government encourages and welcomes foreign companies, including Safran, to participate in China's large jet and other civilian aircraft programs to achieve mutual-beneficial and win-win results.

The Commercial Aircraft Corporation of China (COMAC), a major entity of the large jet program, was inaugurated in 2008 in China's financial hub Shanghai to independently produce the country's jumbo passenger aircraft. COMAC displayed a scale model of its jetliner C919, the country's first home-grown large commercial airliner, at an international air show which opened on Wednesday in Beijing. The maiden flight of C919 was planned for late 2014, with delivery expected by 2016.

COMAC has sent requests for proposal to over 100 potential suppliers, both domestic and international, and has been in touch with several engine suppliers. Only the United States, Europe, and Russia are able to produce large passenger aircraft with more than 150 seats. Airbus and Boeing are in the dominant position in the world market.

Regulator urges banks to focus on risk management

Worried that the rapid credit growth this year might aggravate risks for the banking sector, China's top banking watchdog reiterated that domestic lenders should enhance their risk management capacity and adhere to regulatory requirements.

With bank loans growing rapidly, all kinds of risks are rising in the banking industry. Chinese banks

advanced 8.15 trillion yuan (\$1.19 trillion) in new loans in the first eight months, far higher than the 4.91 trillion yuan (\$719 billion) it extended during the same period last year, sparking wide concerns of rising default risks at banks and asset bubbles in the capital market.

The ongoing global financial crisis has triggered a worldwide reflection on overhauling the financial supervision system, which includes revising and improving rules on capital adequacy, provision, leverage ratio, liquidity, as well as corporate governance and compensation system. Chinese banking industry should strengthen their compliance management and get prepared to follow up the upcoming changes among the global financial institutions.

In face of the explosive lending growth this year, CBRC has been urging banks to stick to the regulatory requirement for capital adequacy and be vigilant on signs of rising bad loans.

The regulator has announced plans to implement stricter capital requirements for lenders, forcing them to deduct holdings of subordinated bonds issued by other banks from their supplementary capital over the next few years.

Many Chinese banks have promised to slow down lending in the second half. With new loans reaching 410.4 billion yuan in August, the flood of lending has been eased so far. However, the nation's top "monetary policy" as the economy is at a critical phase of recovery. With the effective help of the massive bank lending in the first half, the nation's economic growth has rebounded to 7.9 percent in the second quarter after dipping to 6.1 percent in the first three months of the year.

Water quality improvement still major task for China

China is still facing an arduous mission to improve water quality as 30 percent of the country's major river drainage areas had not

met the state required standard by the end of 2008. According to a report on the prevention and control of water pollution in 2008 released recently, water quality of 80 out of the 115 key river drainage areas under surveillance, including Haihe River, the Three Gorges Reservoir Area, Chaohu Lake and the Yellow River, have attained the state standard.

The prevention and control of pollution in these rivers had basically reached the goal for 2008. Ammonia nitrogen pollution was a major issue in several key rivers, and attributed water pollution to lack of investment for waste water disposal projects and low sewage treatment rate in urban districts.

Statistics from the ministry show that the government invested 5 billion yuan (\$731.92 million) respectively in 2007 and 2008 to clean up four major rivers and three lakes. Another 7 billion yuan was spent in 2008 on building sewage treatment plants in cities, counties and townships.

China raises limit on foreign investment in stocks

China has raised the limit on purchases of local shares by foreign investors by 25 percent to \$1 billion. The quota for share purchases by so-called qualified foreign institutional investors used to be \$800 million

China's two main stock markets in Shanghai and Shenzhen restrict foreign participation. Overseas companies are barred from listing on them, and foreign investors can only buy limited quantities of yuan-denominated "A shares" through designated "qualified foreign institutional investors".

The State Administration of Foreign Exchange, which oversees foreign exchange policies and dealings, also said that by the end of August, it had approved 76 qualified foreign institutional investors with investment quotas totaling \$15.3 billion.

Saab eyes China business following GM sale

Car manufacturer Saab plans to reach an agreement with Beijing Automotive Industry Holding (BAIC) to gain access to the Chinese market following the Swedish firm's imminent sale by General Motors. Prospective buyer Koenigsegg Automotive aims to reach a deal with BAIC within weeks to expand its

market inside China. Saab expressed that while Saab only sold 900 cars in China last year, it hoped to increase sales to 100,000 by 2012 and Beijing Automotive is an opportunity for us to establish ourselves in the Chinese market with their experience.

Koenigsegg, which is leading the purchase of Saab from GM, is working through the "final pieces" of a transaction. Saab plans to use Beijing Automotive's sales network to sell its sedans and station wagons in China. Saab will also share technology with the Chinese manufacturer, which will become a minority shareholder.

Legal News

China launches anti-dumping probe into US chicken products

China started anti-dumping and anti-subsidy investigations into chicken products imported from the United States by the end of last month.

The ministry commerce had carefully evaluated applications from domestic chicken producers, and found grounds for investigation. They believe that this case meets the legal conditions and has decided to conduct an investigation of unfair trade practices like dumping and subsidizing of US chicken products, besides, the case had been requested by Chinese chicken producers.

The United States is the largest chicken products exporter to China, comprising 90 percent of the 407,000 tones of chicken China imported in the first half of 2009. The US poultry industry had used the threat of the Chinese investigation, and curbs on wing and feet imports, to lobby for an end to a Congressional prohibition against the US Department of Agriculture moving ahead on certifying Chinese plants for exporting cooked poultry to the US.

China has already brought a WTO case against the ban. Days later, US lawmakers agreed to remove the ban from the USDA funding bill, but restated that poultry processed in China must live up to US sanitary conditions before being shipped.

The case joins a number of anti-dumping cases being conducted by both sides, including a Chinese investigation of US-made silicon steel and US investigations of a number of Chinese steel products.

New policy to Assist SMEs

China's State Council, the Cabinet, issued a document to strengthen support for the development of the country's small- and medium-sized enterprises (SMEs).

The government will deepen reforms in the country's monopoly industries, lower the market access threshold for the SMEs and create a more open and

fair competition environment for SMEs, said the document.

According to the document, the government will optimize its procurement mechanism, raising its purchase proportion of commodities, engineering and services from the SMEs. The government will grant a one-year reprieve on social security fund to the SMEs in operational difficulty amid the global financial crisis, in a bid to reduce financial burdens and protect the interests of the SMEs.

It will expand channels for the SMEs to raise capital by encouraging banks to lend more money to the SMEs, stepping up policy making efforts to guide private capital to tap into the country's financial system. And the government will increase tax breaks to small firms with an annual taxable income below 30,000 yuan (\$4392.40) from January 1 to December 31 of 2010.

According to the document, the government will also encourage the SMEs to improve their technological innovation capacities, enhance product quality, and promote development in energy conservation and clean production.

A review of pharmaceutical marks

As in most other jurisdictions, in China pharmaceutical companies must navigate a dual system of registration and approval of their trademarks and the commercial names of their products. The following is relevant legal issue about it:

Legal framework:

Like all other trademarks in China, pharmaceutical marks are governed by the *Trademark Law* and the *Regulations for Implementation of the Trademark Law*.

However, due to the nature of pharmaceutical products, pharmaceutical trademarks are also governed by the following laws and regulations, among others:

- *the Drug Administration Law;*
- *the Regulations for Implementation of the Drug Administration Law;*
- *the Regulations on Administrative Protection for Pharmaceuticals;*
- *the Provisions for Drug Advertisement Examination;*
- *the Provisions for Drug Registration; and*
- *the Rules for Management of Labels and Direction of Use for Pharmaceuticals.*

Compulsory registration:

Article 6 of the Trademark Law states that “as for any of such goods, as prescribed by the state, that must bear a registered trademark, a trademark registration must be applied for. Where no trademark registration has been granted, such goods cannot be marketed”.

The 1984 Drug Administration Law explicitly stipulated that no drug could be sold without trademark registration, except for Chinese traditional medicinal herbs or decoctions. However, the 2001 Drug Administration Law removed this requirement. The only restriction to use now comes from Article 27 of the Rules for Management of Labels and Direction of Use for Pharmaceuticals promulgated by the State Food and Drug Administration (SFDA). This provision prohibits the use of unregistered trademarks or other drug names in the directions and labels of pharmaceuticals without explicit approval from the SFDA.

Substantive examination:

Pharmaceutical trademarks are subject to the same rules and procedures of examination by the Trademark Office as other trademarks.

Absolute grounds for refusal:

Article 11 of the Trademark Law provides that, like other trademarks, pharmaceutical trademarks cannot “only refer to the generic name, design or model number of the goods concerned”, or “only and directly indicate the quality, principal raw materials, function, use, weight, quantity or other features of the goods”. The generic names of pharmaceutical goods include the drug names listed in the Pharmacopoeia of the People’s Republic of China.

Relative grounds for refusal:

During the substantive examination of the trademark application, the examiner will search the Trademark

Office database to determine whether any identical or similar trademark was filed or registered in relation to the same or similar goods prior to the filing date of the application under examination. If a prior mark is found, the new application shall be refused. The applicant will then have 15 days upon receipt of the notification to appeal to the Trademark Review and Adjudication Board (TRAB). A pharmaceutical trademark is assessed for similarity in the same way as other marks, by comparing factors such as:

- appearance;
- pronunciation;
- meaning; and
- other aspects of such word or device, or their combination.

With regard to the similarity of any designated goods, the Trademark Office relies mainly on the Classification of Goods and Services to ascertain whether the goods fall into the same subclass or subclasses, using cross-similarity notes. In contrast, the TRAB will normally adopt a more flexible and comprehensive approach to determine whether trademarks, as well as the designated goods, are similar – taking into consideration, among other things:

- the relevant market;
- the function of the products;
- the main raw material used in making the products;
- the relevant sale channels and venues; and
- the average consumers of the products.

Pharmaceutical marks v commercial drug names:

In China, drugs are generally classified under their generic or commercial name – the use of both requires approval from the SFDA. Commercial drug names occupy a unique position in that they are considered as quasitrademarks, somewhere between the generic name and the trademark of the drug. To use a pharmaceutical trademark as the commercial drug name, the pharmaceutical company must obtain approval from the SFDA to adopt such trademark as the commercial name of the drug. A major problem emerging in China’s pharmaceutical market is the use of

multiple names for the same drug. The situation arises, for example, when a drug company adds new, inactive component(s) to a drug, gives the drug a new commercial name and then sells the drug at a higher price. To solve this problem, the SFDA issued the Notification of Further Standardizing Pharmaceutical Product Names in 2006. The notification requires that the same drug manufactured by the same drug producer, with the same active ingredients but using a different dose or specification, use the same commercial name. In addition, under the notification the commercial name should comply with the following principles:

- It shall be composed of Chinese characters only, without any device, Latin letter, number, symbol or other sign;
- It shall not use any word that is banned under the Trademark Law;
- It shall not:
 - indicate or exaggerate the drug's effect;
 - mention the part of body to be treated;
 - directly state the dose, quality, material, function, use or other features of the drug;
 - directly mention the intended users;
 - indicate the pharmacology, anatomy, physiology, pathology or therapeutics involved;
 - consist of or incorporate the Chinese translation of the international nonproprietary name or its stem;
 - consist of or incorporate any element that is phonetically or visually similar to the generic name of the drug;
 - be the nickname or previous name of the drug;
 - be identical or similar to product names used by others; or
 - be a person's name, geographical name or name of the company producing the drug, or other words with certain meanings.

Further, the law prohibits the use of:

- the commercial drug name alone in advertising; or
- the word mark, without approval from the SFDA, as the commercial drug name.

In light of the applicable law, the commercial name of the drug may be in a weaker position if it is not also registered as a trademark. However, according to Article 31 of the Trademark Law, if the commercial name has been used and promoted for a long time and has acquired a certain reputation, it may be protectable as an "unregistered trademark with prior

use and reputation". Moreover, according to Article 5(2) of the Anti-unfair Competition Law, the name may also be protected as a "unique name of a famous commodity", where the commercial name of such drug may also be cited as a prior right against:

- existing trademark applications during opposition proceedings; or
- existing trademark registrations during cancellation proceedings.

For further information on trademark and pharmaceuticals matters, please do not hesitate to contact us.

Cost of Expatriate Secondments Could Increase from Tax Policy Shift

It has been a common practice for many multinational companies ("MNCs") to assign personnel from headquarters or other offshore group companies to take senior positions within their subsidiaries in China under secondment arrangements. In most cases, expatriates will continue to be employed and paid by the offshore entity. Such secondment arrangements allow the expatriates to keep their offshore social insurance benefits (e.g., a 401k plan in the United States). Because no local employment contract is signed, the MNCs can also potentially avoid the application of employee friendly employment regulations to their expatriates in China. Moreover, it has been a general consensus among tax practitioners and also a common practice of the tax authorities, that if the expatriates work for and are controlled by the PRC affiliate only while working in China, and the offshore entity gets reimbursed on a cost basis without any mark-up, secondment arrangements should not attract any PRC tax except individual income tax on the expatriates' salary income.

Recently, some local tax bureaus have launched special tax audit programs targeting MNCs (especially in the manufacturing and service sectors) that second expatriates to work in their PRC affiliates. The program is to focus on completing audits over the coming two months. Based on no-name discussions with local tax

officials in Shanghai and Beijing and work with our contacts on the same, the local tax authorities hold the opinion that all secondments of expatriates to China will create a Permanent Establishment (“PE”) for the offshore employers, and the offshore employers should pay enterprise income tax (“EIT”) on a deemed profit basis (the deemed profit rate is between 20% - 40%). The EIT rate is 25%. Furthermore, if the offshore employers are deemed to be providing services in China, 5% business tax (“BT”) would also apply. This will effectively add a tax burden ranging from 10% to 15% of the payroll costs of expatriates. There is also a risk that taxes will be imposed retroactively.

If the PRC tax authorities follow-through on these audits, this could represent a massive shift in the way expatriates can be assigned to operations in China. Depending on how this develops, MNCs may need to adjust their existing secondment arrangements as well in order to manage the tax burden going forward. The tax authorities are on questionable legal grounds if they assert that a properly-structured secondment actually creates a PE, and further that if a PE is created, there is actual income attributable to that PE. Nonetheless, if the PRC tax authorities continue to impose EIT and BT on all reimbursement payments, MNCs may need to consider having the PRC affiliates pay the seconded expatriates directly to avoid the risk of these taxes applying.

China to require disclosure of genetic resources in patent applications

From October 1, 2009, China’s Patent Law require disclosure of the origin of any genetic resources used in an invention for which patent protection is sought in China. With the entry into force of these changes to its Patent Law, China joins a growing number of countries that impose similar requirements on patent applicants. Companies in the chemical and biotechnological industries should take steps to ensure that their sourcing and research and development operations are aware of these developments and have policies in place to ensure compliance.

For innovative companies in the chemical and biotechnological industries, much of the source material they use in product development comes from

nature, often from foreign countries. Chemicals obtained from plants and genetic material harvested from microbes often provide unusual properties, and many chemical and biotechnology companies seek to design products that take advantage of these properties. But companies that search for such source material in foreign countries should take heed: if the source material was obtained from any of an increasing number of countries, such practices may endanger patents covering inventions related to the source material.

These consequences come about because more and more countries are requiring patent applicants to disclose the origin of genetic resources or traditional knowledge used in the development of their inventions. These laws, commonly referred to as Disclosure of Origin (DOO) laws, may also impose penalties for failure to comply, up to and including imprisonment.

This movement toward the enactment of DOO laws was prompted by the Convention on Biological Diversity (CBD). Adopted in 1992, the CBD is a broad treaty focused generally on fostering conservation and sustainable use of biological diversity, but it also recognizes that national intellectual property policies can impact whether biological diversity is sustainably used. For example, CBD Article 15 provides that countries have sovereign rights over their natural resources, including genetic resources found within their borders, and that access to such resources is to be granted under mutually agreed terms and subject to the prior informed consent of the country providing the resources. One goal of these provisions is to ensure that the providing country obtains some of the benefits, including commercial benefits, from products developed using resources obtained within its borders. As a step toward achieving this goal, the Bonn Guidelines were issued in 2002 by the Secretariat of the CBD. The Bonn Guidelines encouraged countries to require disclosure of the origin of genetic resources and traditional knowledge in patent applications as a means to encourage compliance with the CBD.

Following the lead of the Bonn Guidelines, at least 15 countries have enacted DOO laws and several more countries are in the process of developing them. Countries with DOO laws currently in force include the Andean Community (which includes Bolivia, Colombia, Ecuador and Peru), Belgium, Brazil, Costa Rica, Denmark, Egypt, India, Norway, South Africa, Sweden, Switzerland and, as of October 1, 2009, China. New Zealand and Turkey are also in the process of developing DOO laws.

The disclosure requirements in national DOO laws, and penalties for failure to comply, vary widely. At the lenient end of the spectrum is Sweden, whose law states that patent applicants should, but are not required to, provide information on the geographical origin of the material, but that failure to comply will not affect the examination of applications or the validity of an issued patent. At the strict end of the spectrum, India requires disclosure of the source and geographical origin of biological material used in the invention, and provides that it is a criminal act, punishable by imprisonment, to apply for IP rights in any country for an invention based on a biological resource originating in India without prior approval from India's National Biodiversity Authority. More commonly, however, national laws require disclosure of the source or origin of the materials, and failure to comply may result in invalidity or unenforceability of the patent at issue (see, e.g., South Africa).

Because of the wide variety in the requirements of DOO laws, and the ever-increasing number of countries that have enacted them, it is becoming more important for companies who engage in sourcing of materials from foreign countries to institute a biodiversity IP compliance program. Such a program would include policies to ensure compliance with these laws at all levels of the organization, from prospectors in the field to researchers to IP management professionals, as well as a system to keep abreast of developments in this area.

New Practice for Trade Mark Assignment Recordals in China

The practice for assignment recordals in China has changed. The old practice of the China Trade Mark Office (CTMO) regarding trade mark assignment recordals was that once an assignment had been completed, the recorded trade mark agent would automatically be changed to the agent of the assignee in respect of the related mark(s), for example, the agent who instructed the assignment recordal before the CTMO would become the agent on record for the related mark(s).

If an assignment is completed prior to the publication date of the assigned mark(s), the recorded trade mark agent will still automatically be changed to the assignee's agent. However, if the assignment is completed after the publication date of the assigned mark or relates to a registered mark(s), the recorded trade mark agent will not be changed and will remain as the existing agent on record. If the assignee's agent wants to be recorded as the agent on record for marks published after the date of the assignment, or for registered marks, they will need to file a change of agency application separately with the CTMO.

The CTMO has not issued any official documents/communication to explain the above changes formally, but it would appear that they have already been implemented. There will be cost implications. Currently, the official fee for recording a change of agent for each mark is about US\$73. If there is a big assignment project, the costs could be very high. The client will be compelled to pay the costs if they wish their preferred agent to be responsible for the assigned marks.

This update is aimed at keeping our clients informed of developments in Greater China. Whilst every care has been taken to ensure the accuracy of this update, it should not be relied upon before individual advice is obtained. The MMLC Group is an international legal and corporate advisory group.



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