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## **Business News**

### **BMW Expands Investment in China**

BMW and its Chinese partner Brilliance Auto Group have decided to build a new plant with an investment of at least RMB 5 billion in China to expand production capacity in the world's largest auto market. The German carmaker signed an agreement with Brilliance Auto Group, agreeing to raise the annual output of their joint-venture, the joint venture will start building the new plant in the Shenyang Economy and Technology Development Zone in 2010, eyeing an annual production capacity of 100,000 units before 2017.

### **China Shanghai First to Offer Social Net to Expatriates**

Shanghai has become the first mainland city to extend its social security network to foreign residents. The move means expatriates living and working in the city can receive coverage equal to that for locals over sick pay and bills for workplace injuries - so long as they pay

into the system. Overseas Chinese and people from Taiwan, Hong Kong or Macau are also eligible to be covered by the scheme. Workers from overseas will also qualify for the city's pension when they reach retirement age - 55 for women, 60 for men - if they have been making payments for a "specified period". However, the notice did not indicate how many years' payments would be necessary to qualify.

### **China Planning New Plane Factory**

China has unveiled plans to build an assembly line for its homegrown C919 jetliners in Shanghai, the latest step in the country's ambitions to become a leader in world aviation. The state's Commercial Aircraft of China company (Comac) announced the showcase project following a signing ceremony with officials of Shanghai's Pudong district, where the factory will be located. Construction of the factory is to begin soon, with capacity to

reach 20 C919s and 50 ARJ 21-series regional jets by 2016.

### **China Receives 94m Overseas Tourists in Jan-Sept, Down 3.45%**

China received 93.94 million overseas tourists in the first three quarters of the year, down 3.45 percent from that of the corresponding period of 2008. Compared with the decline in the number of overseas tourists, Chinese people made 1.43 billion domestic tours and 35 million overseas visits during the period, up 9.4 percent and 1.9 percent respectively.

### **China Sets up State-owned Cartoon Conglomerate**

China established a state-owned cartoon conglomerate, a performing arts group and a big cultural communication company. The joint-stock venture, China Animation Group Corporation, has developed from two market-oriented companies affiliated with the Ministry of Culture. Two other state cultural giants, China Oriental Performing Arts Co Ltd and China Cultural Communication Group Corporation were also set up.

### **Chinese Cities Grappling with Natural Gas Shortage**

The municipal government of Hangzhou, in east China's Zhejiang Province, stopped all natural gas supplies to entertainment businesses over a recent weekend to guarantee supplies to the city's 410,000 households. The city government also cut gas supplies to hotels, office buildings and shopping malls by 20 percent. Chinese cities are grappling with shortages of natural gas triggered by the unusually early winter weather.

### **China Accepts the GI Application for Scotch Whisky**

General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued a notice to declare the formal acceptance for the geographic indication

application for the Scotch whisky, which was applied for by the Scotch Whisky Association by referring to the Provisions on the Protection of Geographic Indication Products, in accordance to the Memorandum of Understanding signed on September 5, 2005 and with the recommendation by the British Department for Environment, Food and Rural Affairs (DEFRA), and is going to offer protection according to Chinese related laws and regulations.

### **Margin Trading Likely to Start from Next Year**

Chinese securities firms are expected to get a clear indication from the market regulator soon on when it would allow margin trading after completing the test runs of the trading networks. The 11 securities firms, selected by the China Securities Regulatory Commission a year ago for the margin trading experiment, are fully equipped to start the new business under which investors borrow money to buy securities or borrow securities to sell. Although the regulator has not given any official confirmation, analysts said market conditions for the new business have matured and it is likely to be launched next year.

### **China Orders Microsoft to Halt Some Windows Sales**

In the ruling issued by Beijing No 1 Intermediate People's Court, Microsoft was ordered to stop sales of products that used Chinese character fonts which it concluded were designed by Zhongyi Electronics Ltd. The products targeted were the Chinese versions of the Microsoft operating systems Windows 98, 2000, 2003 and Windows XP. This ruling may signal a new challenge for international and domestic software makers struggling with piracy in China, as local Chinese companies seem to be increasingly willing to litigate to protect their rights.

### **Sinopec's Fujian Plant Up, Running**

China's largest refiner Sinopec Group officially started commercial operation of the country's first joint venture integrated oil refining and petrochemical complex, which is expected to help meet the growing domestic need for fuels and chemical products. The facility, located in Quanzhou, Fujian province, has a total investment of around RMB 40 billion, and is jointly owned and operated by Sinopec, US oil major Exxon Mobil and Saudi Aramco, the national oil company of Saudi Arabia.

### **Tax Take from Automobile Industry Surges in China**

Tax take from the automobile industry has surged in the first 10 months this year as auto production and sales were booming in the world's largest market. The China State Administration of Taxation said value added tax (VAT) paid by the transportation equipment manufacturing industry grew 28.8 percent to RMB 88.6 billion during the period, and business income tax revenue was RMB 30.7 billion, up 29.6 percent. Meanwhile, automobile acquisition tax revenue increased 6.3 percent to RMB 91.2 billion.

### **IKEA to Launch Two Shopping Centers in China**

The Inter IKEA Center Group (IICG) unveiled two "Super Regional Shopping Center" projects located respectively in Daxing District in Beijing and Wuxi in eastern Jiangsu province. In the shopping centers, IKEA stores will be one of its main attractions, which, together with tenants in fashion, food, home electronics and entertainment, will create a strong and unique shopping center concept, said Ding Hui, managing director of Inter IKEA Center China.

### **China Steps up Control on Cross-border Hot Money Flow**

China has tightened settlement and sale of foreign exchange by individuals to curb non-normal cross-border capital inflow, according to a statement of the State Administration of Foreign Exchange (SAFE). Banks should deny, review or report to foreign exchange regulators, individual purchases or settlements of foreign exchange suspicious of splitting up one deal into several smaller ones to dodge limits on the size of exchange transfer by one person, which is understood to be one of the channels for hot money inflow.

### **Toyota Expects China Sales to Rise 14% in 2010**

Toyota Motor, Japan's biggest carmaker, expects China sales to rise 14% next year as it rolls out new models in the country. Sales may climb to about 800,000 vehicles in 2010. Toyota plans to introduce a revamped Crown sedan in China at the end of this year with a Camry hybrid and new Prius hybrid coming in 2010. Toyota feels that its refocused strategy, under which it will offer more models with smaller engines, will help fight off the competitors after the company trailed the market this year. Toyota's China sales for 2009 are expected to grow 19% year-on-year compared with industry-wide increase of 38% for the first 10 months of the year.

### **Deadlines for VAT Deduction Vouchers Clarified**

China's State Administration of Taxation (SAT) has released a circular explaining the deadlines of tax deductions for VAT deduction vouchers effective January 1, 2010. According to the circular, taxpayers who are given special VAT receipts after January 1, 2010 for invoices for roads and inland river freight forwarding and invoices for motor vehicles must apply for authentication within 180 days of the date of

issuance of the invoices. Taxpayers must also apply to tax authorities for VAT deductions during the prescribed period within the following month after receiving the certificates.

### **China Tells Enterprises to be Prepared for Upcoming FTA**

China has told its enterprises to be prepared for competitions while the establishment of the Free Trade Area between the country and the Association of Southeast Asian Nations (ASEAN) is only a month ahead. The upcoming FTA, scheduled to be established on Jan 1, allows zero-tariff on 90 percent of products traded between China and the ASEAN. The establishment of the FTA will create massive business opportunities for Chinese enterprises as it will provide an access to the ASEAN market with 600 million population.

## **Legal News**

### **Banking Regulator Warns banks on Capital Requirements**

The China Banking Regulatory Commission (CBRC) has issued a fresh warning to China domestic banks to comply with capital adequacy requirements or face possible sanctions. The announcement followed a warning by the OECD that China must slow credit growth to avoid asset bubbles in real estate and equities. The CBRC has already created a sanctions regime for banks that overextend their lending, but the sanctions have rarely been enforced. The CBRC also reduced the amount of subordinated bonds that banks can apply toward their capital requirements. China Construction Bank said the CBRC is considering imposing yet stricter capital requirements next year.

### **Beijing Authorities Issue Decisions on Key Employment Issues**

Representatives from the Beijing High Court and the Beijing Municipal Labour Dispute Arbitration Committee jointly announced several clarifications on key employment issues. Although the comments are not binding on local arbitration committees and courts, they are likely to be followed. The minutes of the meeting state that in order to enforce a post-termination non-compete restriction, an employer must pay a minimum of 20% of the salary that the employee earned before termination. The representatives also discussed the burden of proof in overtime disputes.

### **Foreign-Invested Equity Investment Management Enterprises in Shanghai**

The government of Shanghai Pudong New Area promulgated the Pilot Measures for the Establishment of Foreign-Invested Equity Investment Management Enterprises in Pudong New Area of Shanghai. The measures provide guidance on the registration and incorporation of equity

investment management companies in Pudong New Area to be established by foreign equity investment capital, including private equity investment and venture capital.

### **China Shanghai Fosun Pharma Rises on Acquisition Deal**

Shanghai Fosun Pharmaceuticals (Group) Co, or Fosun Pharma, rises slightly at the Shanghai Stock Exchange after it announced to have bought stake in the Nasdaq-listed Chindex International Inc. A Hong Kong-based subsidiary of Fosun Pharma, a leading Chinese pharmaceutical company, paid \$22 million for 11.18 percent stake in Chindex International Inc, a US-based medical services and instruments provider. Fosun Pharma mainly focuses on research, development, production and distribution of pharmaceutical products in China.

### **China Enterprise State-Owned Assets Law**

The Enterprise State-Owned Assets Law was adopted on October 28, 2008 and came into effect on May 1 2009. The law, which was deliberated over for more than a decade, is China's first legislation on state-owned assets. Before it was promulgated, the Interim Regulations on Supervision and Administration of Enterprise State-Owned Assets, a set of administrative regulations promulgated by the State Council in 2003, were the main regulations governing state-owned assets. The promulgation of the law filled the gap in state-level legislation and formalized the mandatory administration and regulation of state-owned assets in China.

### **China New Measures to Restrict Advertisement Content and Airtime**

The State Administration of Radio, Film and Television of the PRC (SARFT) has promulgated the Measures for Administration of the Broadcast of Radio and Television Commercials aimed at regulating commercial airtime and content. The measures set maximum advertising allotments per hour of

programming during both on- and off-peak times, require a minimum number of public service announcements during peak times, and set out the maximum number and airtime of commercial breaks permitted during a TV series. The new measures also prohibit TV and radio advertisements for certain products. The measures will come into effect on 1 January 2010.

### **Taiwan - Proposed Amendments to the Patent Law**

As of November 2009, the proposed amendments to Taiwan's Patent Act are pending the final review and approval of the Executive Yuan. These amendments are expected to proceed to the Congress for further deliberation in 2010. The amendments are aimed at making indirect infringers more responsible for their actions and liabilities - if they sell, provide products, or "induce, encourage, or incite" other enterprises to perform infringing activities, they will be liable for contributory or indirect patent infringement.

### **Shanghai Court Strikes Down Liquidated Damages Provision in Confidentiality Claim**

In a case relating to a breach of confidentiality decided in October 2008, the Changning District People's Court in effect confirmed that the Employment Contract Law supersedes conflicting local Shanghai employment contract regulations. The ruling resulted from a lawsuit filed by Joyo Information Technology Co Ltd against a former employee. The employee signed an employment contract and a confidentiality agreement with Joyo, which provided for liquidated damages of up to Rmb100, 000 for breach of the agreement. After the employee's resignation in August 2008, Joyo discovered that the employee was operating a competing website and therefore sued him for liquidated damages based on breaches of the confidentiality obligations in the confidentiality agreement. The court held

that as the Employment Contract Law does not authorize liquidated damages for breach of confidentiality obligations, it could not enforce the liquidated damages clause in the confidentiality agreement.

### **China State Administration of Taxation Issues Rules on Employee Benefits**

The China State Administration of Taxation has issued three statements that affect the taxation of employee benefits. On September 4 2009 the administration issued rules indicating that employees may receive up to 70% of employer-provided transportation allowances free of personal income tax, provided that local governments have not issued guidelines setting forth applicable standards. On August 24, 2009 the administration issued a circular to clarify the personal income tax treatment of proceeds received from employee stock incentive plans. And employees may pay more in personal income tax on 13th-month salaries as a result of a circular issued on August 17 2009.

### **Copyright Payments for Media Broadcasts Introduced in China**

China's State Council has issued Order on trial measures for payments to copyright owners to broadcast of audio-recorded products via radio or television effective January 1, 2010. These measures apply to circumstances where radio and television stations broadcast audio material without prior approval by the copyright owners. The order clarifies that radio and TV stations may remit payments to copyright owners through copyright ownership organizations or collective organizations that administer such rights based on an agreed amount or an amount according to the prescribed payment range and method set out in the measures.

### **China Seeks Public Feedback on Foreign Investment Dispute Cases**

China's Supreme People's Court has released the Regulations of the Supreme People's Court on Several Issues Regarding Hearing Foreign Investment Enterprise Dispute Cases for public feedback. The document relates to issues regarding investments, the violation of provisions of conditions for collaboration, and contract disputes for share transfers in foreign investment enterprises. Public feedback will be accepted until December 8 through letters or via the internet.

### **Tycoon's Detention Casts Cloud over Future of Airline**

Li Zeyuan, the de facto majority owner of Shenzhen Airlines, has been detained for economic crimes, raising questions over the future of the mainland's largest privately owned carrier. Li Zeyuan's detention came as a surprise to the airline's employees and people in the mainland's aviation industry. His last public appearance was on September 30, when he attended a party to celebrate the 15th anniversary of the airline's inaugural flight. In a brief statement, Shenzhen Airlines - 25 per cent of which is owned by Air China, the mainland's largest carrier - said Li's detention would not affect its operations, as it took active measures to ensure operations would remain normal with the co-operation of certain government departments.

*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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