



MMLC Group – China Update

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Business News

China to invest billions on key technology R&D

A working meeting of the State Council (akin to China's cabinet) endorsed the proposed government investment of 62.8 billion yuan (9.2 billion U.S. dollars) into eleven national research programs by the end of 2010 to achieve breakthroughs in key technology development. The meeting adopted a plan on stimulating the country's biological technology development in areas such as medicine, agriculture, energy, manufacturing and environmental protection. Although no details of the plan were immediately released, China will support modern bio-industry enterprises, particularly those with strong research and development capabilities and international competitiveness, according to the meeting. Companies, universities and research institutes will be encouraged to develop technologies with their own intellectual property rights. International cooperation has also been encouraged.

Motorola and China Mobile sign \$310m deal

Motorola announced that it has signed a one-year US\$310 million deal with China Mobile to provide telecommunications products and services. China Mobile will use Motorola's products to develop infrastructure for existing second-generation (2G) networks using GSM, GPRS and EDGE technologies. Additional equipment and services are intended to smooth the transition between 2G and 3G networks. China Mobile's 3G network will be based on the homegrown TD-SCDMA standard.

FDI fell 23% in April

Foreign direct investment (FDI) into China fell 23% year-on-year in April, 2009. It was the seventh consecutive month of declining foreign investment, and a sharper fall than the 9.5% drop recorded in March. However, the April figure was recorded off a high base set last year. Total FDI was US\$5.892 billion; FDI for the first four months of the year was US\$27.669 billion, down 21% year-on-year. Indeed, we have noticed a slow down in FDI and foreign M&A at the

SME levels, most likely due to tightened budgets and focusing on home markets. Interestingly, enquiries into potential M&A targets and establishing of facilities in China, have grown in recent weeks, particularly in relation to agriculture, biotechnology and life sciences and pharmaceuticals.

Beijing encourages outbound investment

In a clear change of tack, Chinese government officials are once again encouraging Chinese firms to invest overseas. The Ministry of Commerce said in a statement on its website that overseas investments are now attractive and investment costs are falling. The State Administration of Foreign Exchange, one of the institutions charged with approving overseas investments, announced on the same day that it will ease its approval process and expand foreign exchange reserves available for investment abroad. The National Social Security Fund, China's national pension fund, now said it is seeking cabinet approval for billions of dollars in planned investments in foreign private equity funds. With the RMB having appreciated against the US dollar and most major currencies over the last few years, and various entities going through restructuring, many foreign assets appear to look relatively inexpensive.

GM to export China-built cars to US

It is reported that GM plans to begin exports of vehicles made in China to the United States within two years, ramping up sales to more than 50,000 by 2014. The main focus would be on exporting small cars similar to the Chevrolet Spark. If true, GM could end up becoming the first automaker to begin exporting to the US from China: previously announced plans by Chinese manufacturers to crack the US market have so far fizzled.

Beijing approves petroleum reserves expansion

Beijing has approved construction for a second phase of strategic petroleum reserves, and is planning additional stimulus funding for renewable energy. The second phase of construction is part of China's effort to build stockpiles to cover 90 days of net imports, a standard set by the Organization for Economic Cooperation and Development. It is believed the second phase will have a capacity of approximately 170 million barrels. The plan to introduce stimulus measures for the renewable energy sector remains under discussion and will only later be submitted to the National Development and Reform Commission and State Council for approval.

Concerns behind China's real estate market revival

China's seemingly healthy real-estate market recovery is being eclipsed by the increasing number of returned property. While many big cities like Xi'an and Nanjing are all witnessing the same phenomenon, Beijing seems to be taking the heaviest toll with some projects' ratio of returned property as high as over 30 percent. False mortgages filed by developers are behind the trend: property developers use their employees or relatives' identities to buy properties, and then return the property for sale when the market recovers. By doing so, developers can not only obtain capital, but create false prosperity in the property market. A stream of court cases involving unscrupulous developers is lining up before the courts, including a recent case in Beijing, which saw the developer sentenced to imprisonment. Despite these horror stories, genuine property transactions are on the climb, particularly in the second hand market, where prices are easier to justify.

GM to sell Hummer to Chinese company

A day after filing for bankruptcy, General Motors released a statement that it had reached a memorandum of understanding with Sichuan Tengzhong Heavy Industrial Machinery Co for the sale of its Hummer division, whilst Tengzhong will also enter into a long-term contract assembly and key component and material supply agreement with GM. Tengzhong said it will retain Hummer's senior management and operational team and did not intend on making any changes to way that Hummer is currently operating. Under the deal, which is subject to regulatory review and is expected to close in the third quarter, Tengzhong will assume Hummer's existing dealer agreements.

Chinese investors take stake in NBA basketball team

A Chinese investment group is set to become a minority owner of the Cleveland Cavaliers, the well known US professional basketball franchise which includes LeBron James within its line-up. The deal, which requires approval from the NBA's board of governors, as well as the usual Chinese government approvals, could see the investment group acquire up to 15% of the operating company that owns the team and its sporting arena. The group includes Huang Jianhua, a Chinese businessman who brokered a number of sponsorship deals with US sports franchises.

BOA sells CCB shares for \$7.3b

Bank of America (BOA) has sold one-third of its stake in China Construction Bank (CCB) for US\$7.3 billion. The shares, which amounted to about a 5.7% stake in the Chinese lender, were sold to a consortium of Asian investors comprised of Temasek Holdings, Singapore's sovereign wealth fund, China Life Insurance and private equity firm Hopu Investment Management. China Life Insurance took the largest portion

of the shares. Temasek increased its existing 5.7% stake in CCB; Hopu is a new investor. The shares were sold at US\$0.54, representing a 14% discount from CCB that day's closing price. BOA needs the funds to meet the US\$34 billion in new capital requirements mandated by the US government as part of its plan to shore up the banking system. The remainder of BOA's shares in CCB is locked until 2011.

Hong Kong property prices forecast to see double-digit gains

Hong Kong's property market may be entering better times, with two big investment banks talking up prospects for real estate prices. Goldman Sachs upgraded the sector to "attractive" from "neutral", citing an improving outlook for prices and stabilisation of the commercial real estate market. Macquarie said housing prices were expected to increase 15 to 20 per cent this year on the back of limited supply, strong local demand and a growing number of mainland buyers - a turnaround from a previous forecast for a 15 per cent decline. The property market has been heating up since the beginning of the year.

Legal News

The Top 10 IP cases in China in 2008 Published by Supreme People's Court

China's Supreme Court has recently issued its top ten list of IP cases for 2008. These are selected on the basis of size of claims, complications, satisfaction of the parties, and the novelty involved. They are as follows:

- Civil cases concerning IP rights (seven cases)

1. *Porsche AG v Beijing TechArt Automotive Sale & Service Co, Ltd*, an appeal case of infringement of copyright and related rights
2. *Wang Zixiu v Nanning Art Theatre*, an appeal case of copyright infringement
3. *The Riz Hotel Ltd v Shanghai Huangpu Rits Club*, an appeal case of infringement of the exclusive rights to use trade mark
4. *Zhenglong Food Co, Ltd of Henan Province v Sichuan Baijia Food Co, Ltd, Silin Department Store Co, Ltd of Henan Province*, an appeal case of infringement of the exclusive right to use a trade mark
5. *Jiangsu Baite I/E Trading Co, Ltd, Kongbaite Carpet Co, Ltd of Huainan City of Jiangsu Province v Xu Zanyou*, an appeal cases over the compensation for damages relating to intellectual property rights
6. *Hefei Xinqiang Seed Technology Co, Ltd v Anhui Chuangfu Seed Industry Co, Ltd*, a case of infringement of the right to new varieties developed in the course of employment
7. *Hangzhou Dukuai Network Media Co, Ltd v Wang Linyang*, an appeal case of infringement involving Internet domain name

- Administrative cases concerning IP

rights (one cases)

8. *Jining Atmospheric Boiler Factory v Patent Re-examination Board of the State Intellectual Property Office*, Third party Shu Xuezhong, a review case of disputes over the invalidity of an invention patent

- Criminal cases concerning IP rights (two cases)

9. *Xiapu County Huafeng Machinery Co, Ltd v Zeng Fengxi*, a case on passing off of registered trade marks
10. *Xu Chufeng v Jiang Haiyu*, a copyright infringement case

SAIC issues new rules on recognition of well-known trademarks

Pursuant to Trademark Law and Regulations on Recognition and Protection of Well-Known Trademarks, Working Rules on Recognition of Well-Known Trademarks (the "Rules") were issued by the SAIC (China's Trademarks Office) to set out the legal procedures and measures in connection with recognition of well-known trademarks. The Rules provide that the Trademark Office and the local counterparts of SAIC are responsible for ensuring the completeness and truthfulness of the application materials, and the Trademark Review and Adjudication Board is responsible for accepting, compiling and making an initial review of an application for recognition of a well-known trademark. A Well-Known Trademark Recognition Committee formed by high officials of these two authorities will then conduct further review and examination. Finally, the Working Committee of the Chief of SAIC will make the final decision on whether the application is successful.

China to allow foreign institutions to provide consumer loans

Beijing has issued draft rules allowing non-deposit taking foreign institutions to offer consumer loans on the mainland. Foreign and domestic institutions with minimum total assets of US\$12 billion held over 2008 will be allowed to create financing companies that provide consumer loans for purchasing appliances and other goods, according to draft rules posted on the China Banking Regulatory Commission's web site. Companies must have at least five years experience in providing consumer loans and have been profitable for the past two years, in order to be permitted to carry out these activities. Whilst state-owned banks have already lent billions to domestic corporations and other state-owned entities, stimulating consumer spending remains a priority.

MOFCOM targets US in steel anti-dumping case

The Ministry of Commerce (MOFCOM) said it had opened an anti-dumping investigation into US steel imports. The announcement came after seven US steelmakers and the United Steelworkers Union brought an anti-dumping suit against China in April, 2009. MOFCOM said the new case would determine whether US and Russian firms had sold a specialized kind of flat-rolled steel used in electrical transformers below market value. Wuhan Iron and Steel and Baoshan Iron and Steel, claim that American firms AK Steel Holding and Allegheny Technologies, and unnamed Russian firms, had put Chinese firms at a competitive disadvantage in the Chinese market due to the dumping.

Chinese academic wins court fight over website closed by censors

A Chinese academic has successfully sued an Internet company for closing his website after he posted articles on subjects including

corruption and environmental issues. This is the first successful case in China of a netizen or Internet user suing their Internet service provider for blocked access and associated damage. It is expected to encourage other users to protect their rights by court action and net censors to make decisions more responsibly. The academic now plans to sue the authorities who ordered the Internet service provider to act, but predicts his case most likely, will not be accepted by a court for “technical reasons”. Although on paper, it is certainly possible to sue government departments in China and to appeal administrative decisions, such actions are rarely successful in most Chinese courts – indeed, it would take a courageous judge with early retirement aspirations to find against a major government department.

HK to issue new Copyright (Amendment) Bill 2009

Section 119B(1) of the Copyright Ordinance 2007, which is not yet in force, creates a new criminal offence applicable to four types of printed work: books, newspapers, magazines and periodicals. However, the new Copyright (Amendment) Bill 2009 sets down certain circumstances in which Section 119B(1) does not apply – they are as follows:

- for magazines, periodicals (excluding academic journals) and newspapers, where the production or distribution involves no more than 500 A4-size pages of infringing copies of copyright works within any 14-day period. There is a prescribed formula for calculating the number of such pages;
- for books and academic journals, where the production or distribution involves no more than a total value of HK\$6,000 of qualifying copies of copyright works within any 180-day period. There are detailed provisions on how to calculate the value of qualifying copies;

- where the distribution of an infringing copy is made through a wire or wireless network to which access is restricted by authentication or identification procedures; and
- where the infringing copy is embodied in a document that is distributed to an email address or fax number.

Major copyright owners have expressed concern with the new Section 119B(1),

with further amendments being likely prior to it becoming law.

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.