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Legal News

Corporate

China Unveils New Rules for Foreign Investment

China State Council released new regulations on overseas investment, promising good business conditions but restricting funds to environmentally unsound projects. According to the new regulations, China still welcomes foreign investment in high-tech industries, services sectors, energy-saving and environmental protection, but polluting and energy-gorging or projects in industries running at overcapacity are not wanted. In fact, the new rules are not radically different from the latest editions of the Foreign Investment Guidance Catalogue, although they do reinforce the role of the Ministry of Environment and its bureaus in reviewing projects involving foreign investment.

New Rule on Insurance Investment Coming Soon

China will soon release detailed regulations on property investment for insurers. The rule will forbid insurers to invest in residential housing, to invest directly in commercial property or to be involved in the development stage of property projects. The new Insurance Law that took effect last October allows insurance companies to invest in property, and

insurers have been eagerly awaiting specific rules ever since. Many insurance companies, such as China Life and Ping An, have established cooperation with property developers.

CIRC Prohibits Units from Buying Individual Insurance Products for Their Employees

PICC Life Insurance Company Limited filed a request with the CIRC as to “Whether or Not Units Can Buy Individual Insurance Products For Their Employees” – the CIRC has recently issued a reply. The CIRC mentioned that Article 6 of the Notice of China Insurance Regulatory Commission on Regulating the Business Operation of Personal Insurance stipulates that units are prohibited from buying individual insurance products for their employees, and confirmed that the new Insurance Law does not affect this provision, such that it is still very much in force. Some inhouse counsel had felt that the new Insurance Law had removed this prohibition, but this issue has now been cleared up by the CIRC.

Intellectual Property

Court Tells Silk Street to Get Rid of its Fakes

The Silk Street Market is selling itself as wanting to drive out counterfeit name-brand goods, terminating a lease on an area of the emporium that had been used to sell fake designer goods. However, not surprisingly, the Beijing Chaoyang district court said it had told managers at the market that they should try harder to eradicate the wholesale and retail sale of counterfeit goods by tenant stallholders, as all know that this is its main business. Brand owners have grown frustrated over the years, by the market's regular claims of wanting to "cooperate" in the crack down on counterfeits, only to find that the market managers often end up simply issuing weak warnings to suspect shop owners, and essentially turning a blind eye to the activities in their market. We note that it continues to feature high on tourists priorities, and that 90% of the customers buying the counterfeits are foreigners – in a recent discussion with a person close to the Silk Market, we asked him when the Silk Market will stop allowing fakes to be sold – the reply was "When the foreign customers stop wanting the fakes to be sold."

New Intellectual Property Legislation and Regulations 2010

On February 26, 2010, the National People's Congress passed the second amendment to the Copyright Law. Only two articles of the Copyright Law have been amended, with the changes taking effect from April 1, 2010. Per the new regulations, copyright owners must not act in breach of the Constitution and other laws, or in conflict with the public interest, in exercising their copyrights. There is potential for this amendment to cause problems for copyright owners in enforcing their rights, in particular given the dichotomy between certain provisions in the Constitution and the PRC Anti-Monopoly Law, regarding consumer care and acts that reduce competition in a market. It is vital that copyright owners take a more holistic view of the regulatory landscape prior to looking to enforce their rights against infringers, or executing licensing arrangements.

China Practical Effects of Patent Law Interpretation

The Chinese Supreme People's Court has published a draft of its interpretation of the Patent Law for comment in June 2009. Having digested numerous comments from patent experts, academics and professionals in China and overseas, it issued Interpretation Concerning the Application of Laws in the Trial of Patent Rights Infringement Disputes. The new interpretation clarifies how the courts will define the scope of protection based on patent claims. On a first reading, it seems to promote a more limited interpretation of claims, and is aimed at giving more protection to the public interests, as compared to what you might see in the US or Europe. It will be interesting to see how the courts apply this interpretation.

Tax and Customs

New Circular on Taxation of Non-resident Enterprises

The State Administration of Taxation has issued a new circular on assessing the taxation of non-resident enterprises. Circular 19/2010 outlines the methods to be used in assessing the tax on such enterprises' China-sourced income. This method statement is largely consistent with that used for representative offices under Circular 18/2010 and is a further indication that the authorities consider the poor tax scrutiny of non-resident enterprises with China-sourced income to be a critical issue for 2010 and beyond. Our discussions with the SAT officials, has indicated that those entities which come forward with undeclared China sourced income will be treated leniently and may well escape penalties. Early communication with the SAT is recommended if you may have an issue.

China to Introduce Resource Tax at "Proper" Time

China will introduce resource tax at a "proper" time to promote energy saving and environmental protection. The government would stick to the proactive fiscal policy this year, and will not introduce the new tax this year - the government has said that rather than

looking at new taxes, it is currently more focused on expanding investment in agriculture, education, science, medical care, social security, affordable housing, energy conservation and emission reduction.

Further Clarification on Enterprise Income Tax

On February 20 2010 the China State Administration of Taxation issued a further clarification of certain aspects of the Enterprise Income Tax Law in Circular 79/2010, which addresses common problem areas in the operation of the law. The key clarification is income from equity transfers refers to the consideration from the transfer, less the original cost incurred to obtain the equity – further, undistributed profits cannot be deducted from the transfer price for tax purposes. Given that China has become a hotbed for M&A activity, it is not surprising that the tax officials and other departments, are issuing more and more M&A focused regulations, notices and interpretations, in order to remove some of the ambiguity appearing in some of the older regulations.

Guangdong Launches Anti-smuggling Law

Guangdong is introducing legislation to combat rampant smuggling, which reports more than half of the country's smuggling cases each year. The new anti-smuggling regulation, the country's first at the provincial level, will help law enforcement officials combat smuggling in a more standardized manner. The new regulation outlines departmental duties, an anti-smuggling assessment and accountability system, whistleblower rewards and protection, as well as grassroots participation. All entities involved in trade in or out of Guangdong, will need to understand this new law and its implications for trade management.

Four Departments jointly Clarify Tax Rules for Purchase of Equipment by R&D Centers

The China Ministry of Commerce, State Administration of Taxation, General Admission of Customs and the Ministry of Finance jointly issued a circular (Shangzifa [2010] No. 93, "Circular 93") to clarify procedures for the examination and approval of tax exemptions and refunds for purchase of equipment in China made by foreign-invested R&D centers. The clarification has been welcomed, given many centers would prefer to purchase locally made equipment for costs reasons, whereas in the past, most centers imported equipment and received tax benefits under an older regulation.

Luxury Garment Smuggling Cases Busted

Eight suspects have been arrested on charges of smuggling RMB 102 million garments of international luxury brands into the Chinese mainland, the Customs of Hangzhou city, east China's Zhejiang province. The suspects smuggled and sold 24,000 garments of about 70 international brands, including luxury LV, Prada, D&G and Gucci, with a value of 102 million yuan. The smuggling suspects were accused of evading RMB 25.65 million in taxes and court proceedings against them have started.

Dispute Resolution

Controversial Compensation Law on Detainees Approved

The national legislature approved amendments to the State Compensation Law, which includes a controversial clause suggesting that police departments need not pay compensation to suspects detained for up to 37 days, even if they are later not charged with any crime. The Standing Committee of the National People's Congress also passed amendments to the country's law on protecting state secrets to encompass the roles that Web operators and service providers are expected to play, when national secrets are leaked. Given the recent Stern Hu/Rion Tinto case, it is now clear that the authorities are willing to aggressively pursue claims of national secret theft, no matter whether a major foreign entity is involved or not. It is vital that foreign companies doing business in China, set up controls and provide training to minimize the risks of allegations being raised or theft/use occurring. MMLC has assisted many MNCs in this process – feel free to contact us for more information.

China's New Tort Law Expands Company Liabilities and Adds Punitive Damages for Unsafe and Defective Products.

The new PRC Tort Liability Law, which was finally passed in December 2009 after four

revisions over several years, covers a range of topics that have increasingly captured Chinese and international headlines, including product and medical liability, IP, labor law, environmental pollution, motor vehicle accidents, and hazardous work. The new law is to take effect on 1 July 2010, and already plaintiff lawyers are talking of a major jump in consumer enquiries regarding product claims under this new law. It is thought that the new law will enable consumers to have better chances in gaining compensation from a number of parties involved in the supply of a faulty product, not just the manufacturer or in some cases, the direct supplier.

Health

Six Officials Punished in Drug Agency Controversy

A fresh wave of corruption scandals had hit the State Food and Drug Administration, with five senior officials detained and one suspended for allegedly taking bribes from pharmaceutical companies. The case, involves bribes of around RMB 1.5 million. The paper quoted unidentified sources as saying the probe into the administration was "still continuing", suggesting more arrests were possible in the days ahead.

Regulations Issued to Tighten Supervision of Food Additives

China's top food safety authority issued new regulations, setting more stringent requirements on the use and the approval of food additives. The Ministry of Health's "Regulations of New Food Additives," published on its website, set six new restrictions on the use of food additives. The new regulations forbid the use of food additives to mislead consumers about the content and quality of food or to fake food content. Using food additives to disguise decaying and bad quality food is also forbidden.

Business News

Auto

GM China Sales up 68% in March

General Motors sold 230,048 vehicles in China in March, up 68% year-on-year. The sales numbers, in comparison with total US sales of 188,011 vehicles, helped to make China the automaker's largest market so far this year. First-quarter sales in China rose 71% to 623,546 units, while sales in the US grew 16% to 475,253 units. A weak first quarter in 2009 helps to explain the year-on-year increase. Notably, however, the new sales numbers are strong despite the raising of the purchase tax on cars with engine displacements of up to 1.6 liters to 7.5% at the beginning of this year.

Dongfeng Eyes Bigger Market Share as First-quarter Sales Jump 78pc

Dongfeng Motor Group, the mainland's third-largest vehicle maker, hopes to increase its domestic market share to 11 per cent this year from 10.5 per cent last year and expects to be cautious about overseas acquisitions. The Hubei-based company said it planned to achieve above industry average sales growth this year. Its market share fell from 10.8 per cent in 2008 because of lagging sales growth in commercial vehicles, such as buses and trucks, which were badly affected by the economic slowdown. It had a share of 10.1 per cent in 2007.

Toyota Allegedly Sells Uncertified Auto Parts to China

Over 1,700 kinds of uncertified auto parts have been found in two Toyota stores in Yiwu City, east China's Zhejiang Province. The parts were found on March 18 in the warehouses of two dealerships belonging to FAW Toyota Motor Sales Co Ltd, a Sino-Japanese joint venture. The spare parts did not have qualification certificates and inspection reports. Under Chinese law, goods without the certification are not legitimate and may not be sold in the market.

Volkswagen Hikes China Investments by 1.6b Euros

Volkswagen AG, Europe's biggest automaker, will build two plants in China as part of a 1.6 billion euro expansion plan to capture growth in the world's most dynamic auto market. The German carmaker, which operates in China through two joint ventures, reiterated its long-term goal to sell 2 million vehicles a year in the world's biggest car market. China is on track to overtake Germany as the group's largest single market this year.

Telecoms, Media and Technology

Alibaba Receives Small Loans License

Alibaba Group, parent of B2B giant Alibaba.com, has been issued a license to provide small business loans to mainland companies. It is the first e-commerce enterprise in China with a license to provide microfinance loans to small business. More details regarding the new lending license would be released at a later date. The Hangzhou-based company also announced that it will invest US\$732 million over the next five years to upgrade and expand overseas operations of Alipay, China's largest online-payment service.

Tencent to Buy 10% Stake in Russia's Digital Sky

Shenzhen-based Tencent Holdings (China's largest and most popular instant messaging company) is set to purchase a 10% stake in Russian investment firm Digital Sky Technologies (DST) for US\$300 million. DST has stakes in several of Russia's leading internet firms including Mail.ru, as well as a 10% stake in Facebook. Famous for its "QQ" instant messaging service, Tencent's deal with DST will be its biggest investment outside China as it looks to expand its online gaming business beyond domestic borders.

CNNIC: ".Zhongguo" Domain Name Approved

The China Internet Network Information Center (CNNIC) announced that the top-level Chinese domain name ".zhongguo" (written in pinyin) has been approved by the board of the Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit body that oversees Internet addresses. Domain names with the suffix ".zhongguo" in both simplified and traditional Chinese characters are ready for use. People can now

visit Shanghai World Expo's website expo2010.cn by inputting in Chinese shanghaishibohui.zhongguo (pinyin) into their web browsers.

China Eases Procurement Policy

China has softened its stance on government procurement by allowing foreign companies to bid for technology contracts. Any company whose products conformed with Chinese laws, regulations and China's technology policy can bid for government contracts under rules on "indigenous innovation." The move highlights an easing of tensions between China and its trading partners, and the lack of thought and consultation that went into drafting of the so called "indigenous innovation" rules.

China to Invest RMB 150b in Fiber Optics

China will invest over RMB 150 billion in the next three years to construct the fiber optic broadband network, and newly added broadband users will reach 50 million by that time, according to the Ministry of Industry and Information Technology (MIIT). Together with six other ministries and commissions, the MIIT also released guidelines to promote the development of broadband. The guidelines target 80 million fiber broadband portals by 2011.

China's Media Industry Grows 16.3% in 2009

China's media industry output grew 16.3 percent year-on-year to RMB 491 billion in 2009, with operating revenue from newspaper advertisements increasing 8 percent to RMB 37 billion despite the global economic downturn. A stable economic growth, especially in the fast development of sectors including property, automobiles and electronic products, was the main reason for the growth of China's media industry. In 2010, total output of China's media industry is expected to grow 14.5 percent year-on-year to RMB 562 billion.

JR Central Head Blasts China on Rail Safety, Technology Theft

Yoshiyuki Kasai, the Chairman of Japan Central Railway, accused China of stealing foreign technology and ignoring safety

precautions. Under Kasai, JR Central has declined to bid on rail contracts in China due to fears of having its technology taken by Chinese competitors. Meanwhile France's Alstom has complained that Chinese companies compete for overseas contracts with foreign technology. Kasai also criticized China for operating Japanese-designed trains in the country close to their maximum safe speeds.

Property and Finance

March New Loans at \$75b

China's banks issued US\$75 billion in new loans in March, down from US\$102 billion the previous month, as the government took further steps to slow credit growth. However, the March figure puts total new loans for the first quarter at US\$380 billion compared to the government's target of US\$330 billion for the January-March period.

Galaxy Concludes Macau Casino Financing Plan

Galaxy Entertainment Group has concluded its financing plan for its US\$1.82 billion flagship casino resort in Macau. The company had come under some scrutiny after it missed its end-2009 deadline for announcing its financing plan for Galaxy Macau. One of six companies licensed to operate casinos in Macau. The casino operator said it has secured a six-year US\$1.1 billion loan from a consortium of Asian banks.

China's Real Estate Boom

China's booming economy is inflating real estate prices in the country. Prices for existing homes in Beijing rose 60% last year. They're now more than 20 times the average salary for a resident of the city. It's gotten so bad that many urban Chinese think of themselves as "house slaves"; slaves to their high mortgage payments. The central government has raised the required down-payment for people to buy their second homes from the existing 40 percent to 50 percent, as the latest measure to curb soaring property prices and prevent growing financial risks.

China Records First Monthly Trade Deficit in 6 Years

China recorded a trade deficit of US\$7.24 billion in March, marking the first monthly deficit in six years. The March deficit was due to a drop in the export of

labor intensive products, a jump in import volumes and rising commodity prices. China exported US\$112.11 billion of goods and services in March, up 24.3% from the year before while imports rose 66% to US\$119.35 billion. Analysts believe that the deficit will be a temporary one with exports expected to pick up over the coming months.

Banks Must Submit Risk Report by June-CBRC

China Banking Regulatory Commission (CBRC) Chairman Liu Mingkang said commercial lenders must reassess their risk exposure and submit reports by end-June. Inspectors will visit banks to check on the reports. The CBRC has repeatedly called for mainland banks to be more cautious in issuing new loans as fears of asset bubbles continue to grow.

Vanke May Increase 5-year Loan by \$200m

Property developer China Vanke is planning to increase a US\$300 million five-year loan by up to US\$200 million, citing sources familiar with the situation. The loan, organized by Bank of China, will be used for working capital and debt refinancing, and the sources said it would pay about 285 basis points above the London interbank rate. While the company's shares closed up at the end of last week on expectations of higher first-quarter revenue, concerns remain over the potential impact of growing asset bubbles in the mainland property market.

Private Equity Fund Plan Could Offer New Gateway for Foreign Investors

The Trial Plan for the Participation of Foreign Investment in Renminbi Equity Investment Funds was approved by the Shanghai government on March 15 2010. This development will be fully publicized in April 2010 and will initially be implemented in the Pudong New Area. The trial plan will open a gateway for the conversion of foreign exchange into renminbi, which has been a major factor in preventing foreign general partners and limited partners from becoming involved in the renminbi private equity fund industry.

Standard Chartered to Expand China Markets Team 40%

Standard Chartered Plc may expand its global markets team in China by 40 percent by 2012, as the nation opens its financial markets to attract foreign investors. The UK bank, which makes most of its profit in emerging markets, will increase its fixed-income, currency and commodity operation's headcount to 140 by 2012 from about 100 now. Bank of Communications Ltd and DBS Group Holdings Ltd are also planning to enlarge currency and fixed-income teams, anticipating China will accelerate market development as the global financial crisis eases.

Agriculture

More Funds Pledged for Drought-ravaged Farming Sector

The central government has pledged more funds to support agriculture amid worsening weather this year. The State Council decided to earmark more cash to farmers to help corn and rice production, particularly in the drought-stricken southwestern provinces and the cold northern regions, where production was expected to falter. Among the pledges are a special subsidy of RMB 150 per hectare for 3.53 million hectares of winter wheat in 11 producing regions that are growing poorly.

Wall St Backed Chinese Dairy Firm Collapses

Chinese dairy products maker Taizina, which counts Goldman Sachs and Morgan Stanley among its investors and Citigroup among its lenders, has collapsed, leaving RMB 3 billion. Morgan Stanley, Goldman and private equity firm Actis Capital had paid \$73 million for a 31 percent stake in the company in 2007, with Morgan Stanley providing \$18 million, Goldman \$15 million and Actis Capital \$40 million.

Resources

China, Argentine Soybean Oil Spat Continues

China has stopped approving import permits for soybean oil originating from Argentina and some domestic companies are canceling orders as the spat between the two trading partners grows. The moves come following Argentina's launch of an antidumping investigation on Chinese goods such as

textiles and steel pipes, precipitating Beijing's decision to take full control over soybean imports from provincial authorities since the beginning of April.

CISA Calls for Boycott of Major Iron Ore Suppliers

The China Iron and Steel Association (CISA) has asked steel companies and traders with import licenses to boycott iron ore from Vale, Rio Tinto and BHP Billiton to protest a "monopoly in the iron ore market". CISA Director Shan Shanghua asked that mills and traders boycott the miners for two months after the April 1 deadline for iron ore price negotiations between Chinese mills and foreign suppliers passed without an agreement. China has been seeking price discounts within the current annual pricing framework, but suppliers have been pushing for changes that would include market-based pricing mechanisms.

Retail

China's Retail Sales up 17.9% in Q1

China's retail sales increased by 17.9 percent in the first quarter over the same period last year, and totaled US\$533 billion, the National Bureau of Statistics (NBS) announced. March retail sales rose 18 percent year on year to RMB 1.13 trillion yuan. The central government has raised the required downpayment for Chinese people to buy their second homes from the existing 40 percent to 50 percent, as the latest measure to curb soaring property prices and prevent growing financial risks.

KFC in Dispute over Discount Coupons

Usually bustling KFC restaurants in Nanjing, capital city of eastern China's Jiangsu Province, were quiet with only a few customers, as disputes over the fast food chain's suspension of discount-coupons continued into the second day. Angry customers laid siege to scores of KFC restaurants across China after the restaurant chain declared discount coupons the

consumers had tried to use, were actually counterfeit and invalid. KFC China said that it would report the dispute to the police and assist authorities in any investigations deemed necessary.

Liquor Maker Shuijingfang Sees Net Profit Up 2% in 2009

Sichuan Shuijingfang Company Ltd, one of the country's leading white spirit producers, reported a small increase in its 2009 net profit despite strong revenue growth. The company's business revenue jumped 42 percent year-on-year to RMB 1.67 billion. Earnings per share increased 3.13 percent to RMB 0.66, the company said in its annual report filed to the Shanghai Stock Exchange. The company attributed

its slow profit growth to shrinking demand due to the economic downturn and fierce competition from domestic liquor producers. But the distiller showed confidence in profit growth this year.

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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