



MMLC Group – China Update

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Business News

Blackstone to launch PE fund with Shanghai

Blackstone Group has agreed to set up a US\$731 million investment fund with the newly formed government of the Pudong New Area in Shanghai, China. The structure of the Blackstone Zhonghua Development Investment Fund was not disclosed, but the fund will target investments in Shanghai and neighboring areas. The Blackstone deal represents China's willingness to use private equity to shake up the economy. China's future economy will be driven by its private enterprises. While China's largest stock exchange is located in Shanghai, the city lags behind Beijing, Tianjin, and Hong Kong as a private-equity hub.

Yanzhou Coal takeover bid accepted by Felix directors

Yanzhou Coal Mining's US\$2.95 billion takeover bid for Felix Resources was accepted by the Australian firm's directors. The deal would be the largest takeover of an Australian company by a Chinese firm to date, and will still require

approval from both the Australian Foreign Investment Review Board and Felix shareholders. However, some observers predict that increased diplomatic tensions between the two countries may complicate the approval process. Critics have also voiced concerns about rising Chinese investment in Australia's mining sector.

China Baosteel wins 35% discount on iron ore from Fortescue

Although Chinese steel mills have been holding out for as much as a 45% discount on iron ore, Baosteel Group and other mills settled for a 35% reduction in iron ore prices from Australian miner Fortescue Metals Group. The new prices will take effect in the second half of 2009. The mills will pay US\$0.94 per dry metric ton unit for fines and 100 cents per dry metric ton for lump iron ore. Fortescue and sovereign wealth fund China Investment Corp (CIC) have recently been considering an agreement wherein CIC would fund the miner's expansion to produce nearly 100 million tons of iron ore annually by 2012.

BP divests Ningbo LPG assets

British oil major BP has sold its LPG assets in the port city of Ningbo to a local trader of the fuel, the latest move by the oil giant to slim its LPG business in China. BP sold the LPG assets in its subsidiary Ningbo BP LPG Co to Oriental Petroleum (Yangtze) Ltd, the deal was closed as of Aug 21. Ningbo BP LPG Co operates a 500,000 cu m LPG terminal on Daxie Island, which is under jurisdiction of Ningbo city government. The sale of Ningbo assets, according to industry experts, is a sign that BP is continuing its strategy of slimming down its LPG business in China.

China, FMG strike deal on iron ore fines price

The China Iron and Steel Association (CISA) has reached an agreement with Anglo-Australian Fortescue Metals Group Ltd (FMG) on a 35.02-percent price cut for iron ore fines. The association had reached an agreement with FMG for July-Dec imports of Fortescue's rocket fines for 94 cents a dry metric ton unit. Under the agreement, CISA has guaranteed priority will be given to FMG to negotiate iron ore prices for 2010 if annual pricing negotiations are conducted.

Chinese airline goes bankrupt with huge debts

East Star Airlines, the debt-laden private airline based in central China's Wuhan City, officially went bankrupt after its restructuring application was rejected. The Intermediate People's Court in Wuhan City said the plan submitted by the East Star Group and ChinaEquity was unfeasible and failed to meet the conditions for a legal restructuring. ChinaEquity had promised to invest 200 million to RMB 300 million for the restructuring plan, however, it did not

specify the source of the funding and failed to provide certificates and documents, and lacked measures to protect creditors.

China CIC moving its investments into PE and hedge funds

China Investment Corp (CIC) is continuing to move its investments away from cash and putting billions into private equity (PE) and hedge funds. CIC has invested "many times" more than the US\$500 million that the fund was said to have placed in PE and hedge funds in June of this year. The fund is also looking into fund-of-fund investments. The company would invest US\$6 billion in hedge funds by the end of 2009. The fund also plans to invest in Songbird Estates, a company that controls the owner of more than half the buildings in London's Canary Wharf financial district but is saddled with US\$1.4 billion in bank loans.

China Unicom and Apple sign iPhone Deal

China Unicom announced a three-year deal with Apple to sell the company's iPhone handset in China. Sales will start in the fourth quarter of 2009. China Unicom will not share a portion of its revenue with Apple and will purchase the phones wholesale from the US company. iPhones will be sold to consumers in China at a subsidy but China Unicom executives did not elaborate on how much the subsidy would be. China Unicom is hoping the deal will give it an edge over the leading mobile services carrier, China Mobile, which has a subscriber base three times the size of Unicom's.

Coca-Cola, Pepsi on Energy Watch List

PepsiCo-Beijing, Coca-Cola-Beijing, and Beijing Benz-DaimlerChrysler are among 27 large water and energy-consuming entities included in the list, which was issued by the Beijing Development and Reform Commission, the capital's economic planning agency. The companies will be subject to monthly inspections of their environmental compliance starting at the end of the month. Coca-Cola said the company will work with officials to further reduce its climate footprint and PepsiCo also issued a similar statement.

PetroChina Unveils Plan to Increase Capacity

PetroChina said it has a US\$3.22 billion plan to boost capacity after a 7.2% year-on-year drop in first-half net profits, it will buy capacity from its parent company, China National Petroleum Corp. (CNPC), including CNPC's stake in a production-sharing contract on a gas field in Turkmenistan for US\$1.19 billion, 10 of CNPC's petrochemical refineries in China for US\$1.62 billion, and a domestic oil and gas producer for US\$412.4 million. PetroChina said that its net profit for the first six months of the year dropped to US\$7.40 billion, down from US\$7.97 billion from the same period last year due to a lower contribution from its upstream business. The company's crude oil output in the first half fell 4.8% to 417.7 million barrels, while its natural gas output rose 10.6% to 1.201 trillion cubic feet.

GM and FAW Form Joint Venture

General Motors (GM) is forming a 50-50 joint venture with China FAW Group to make light vans and trucks for the China market, Bloomberg reported. According to GM, the JV, called FAW-GM Light

Duty Commercial Vehicle, has a total investment of US\$293 million. The two companies had already signed a memorandum of understanding on the deal in November 2007 and received government approval in July. The company will manufacture vehicles at FAW factories in the northern city of Harbin and in Yunnan province.

Air China lifts Cathay Pacific Stake to 29.99pc

Air China, the world's largest airline by market capitalisation, will pay Citic Pacific HK\$6.34 billion for a 12.5 per cent stake in Cathay Pacific Airways in a bid to bolster its Hong Kong presence and fend off intensifying competition on the mainland. Swire Pacific has also agreed to buy 2 per cent of Cathay from Citic Pacific for HK\$1.01 billion. After the transactions, Air China's interest in Cathay will increase to 29.99 per cent while Swire's Cathay stake will rise to 41.97 per cent. The deals will leave Citic Pacific with a 2.98 per cent holding in Cathay.

Tengzhong-Hummer Deal May Have Been Rejected

China's Ministry of Commerce may have rejected a bid by Sichuan Tengzhong Heavy Industrial Machinery to buy the Hummer unit of US automaker General Motors. Tengzhong's application had been rejected due to a lack of clarity over the precise target of the acquisition. Other China domestic media reports suggested the application had been turned back due insufficient detail.

Large Solar Power Project Starts in Central China

Construction of a large solar power project with an investment of \$450 million was launched in Wuhan, capital of Hubei province in Central China. The

500-mW project is a joint venture of Greenway Solar-Tech (China) Co Ltd and Evergreen Solar Inc of the United States. The project is scheduled to go into production in three years with an annual product value of \$1 billion to turn out products related to solar power industry. Nasdaq-listed Evergreen Solar manufactures and markets solar power products, including solar cells, panels and systems. It finalized its agreement with Greenway Solar-Tech and the government of Wuhan on July 30.

LG Display to Build Plant in Guangzhou

The South Korean electronics giant LG Display plans to build an advanced liquid-crystal display (LCD) factory in Guangzhou to capitalize on the China's fast-growing flat-screen television market. The company signed a preliminary agreement with the Guangzhou city government to build the new plant, which is expected to be the biggest in China. The deal, which is still awaiting approval by the South Korean government and the board of Seoul-based LG Display, is estimated to cost as much as \$4 billion.

Multinationals Have Thrived in "Loose Policy Environments"

The reputation of multinational companies has been badly smeared in China by a host of bribery scandals. According to a report by Beijing-based consultancy firm the Anbound Group, of the 500,000 suspected corruption cases in China during the past decade, 64 percent involved international trade and foreign firms. Other than Anglo-Australian mining company Rio Tinto, the latest to add its name to the "black list" is United States label-maker Avery Dennison's Asia Pacific Group, which admitted its subsidiary Avery China had offered

bribes to research institutions and other officials in return for business contracts.

Shagang Becomes China's Top Private Firm

Shagang group, China's largest private steel maker, has become the country's largest private enterprise in terms of 2008 revenues. Shagang's obtained the leading stage with an operating revenue of RMB 145.22 billion in 2008, followed by PC maker Lenovo and electronics retailer Suning. Its current annual production capacity is 22.3 million tons of iron, 27.2 million tons of steel, 23.9 million tons of rolled products and 1 million tons of stainless steel plates.

Silk Street Market Evaded Taxes

Famous shopping destination Silk Street Market has denied allegations from a former manager that it didn't pay more than RMB 200 million in taxes. Ex-general manager Wang Zili has sent a letter to China central government officials claiming the Beijing market did not pay even RMB 1 in taxes from 2005 to 2007. The local government has begun to crack down on fake goods in order to rehabilitate the mall, which was facing complaints and lawsuits from world-famous brands.

Sinopec Quadruples First-half Profit

Sinopec reported first-half profits four times greater than a year earlier. Net profit for the six months ending June 30 was US\$4.87 billion, up from US\$1.1 billion for the same period last year. The gain is attributed to higher fuel prices amid China's more market-oriented fuel pricing system. Domestic fuel prices were adjusted several times during the first half.

Legal News

China Mulls Renewable Energy Development Fund

Chinese lawmakers are considering a government fund for renewable energy development, in a move to support the industry and strengthen governmental macro-economic regulation. The draft amendment to the renewable energy law was submitted to the country's top legislature, the Standing Committee of the National People's Congress for its first reading. If the draft amendment is approved, a new fund with two sources of income will be set up -- one from the special fund and one from the income deriving from surcharges on renewable energy electricity prices.

Chinese Court Jails and Fines Pirates of Windows Software

A court in eastern China has sentenced four people to prison and ordered payment of about RMB 11 million in fines for distributing pirated versions of Microsoft's Windows XP and other software. Hong Lei, said to be the chief developer of the pirated XP software, and Sun Xiansheng, who managed business promotion for Tomato Garden, the Web site that provided it, each were sentenced to three and a half years in prison. The court also fined the Chengdu Share Software Net Company, which operated Tomato Garden, more than RMB 8.7 million and confiscated nearly RMB 3 million of its revenue.

China Issues Measures for Calculating Revenue in Declarations of Business Concentration in the Finance Industry

According to the PRC Antitrust Law, business operators meeting certain thresholds must file advance business concentration notifications with the antitrust authority under the State

Council. These Measures clarify the standards for business operators in finance industries to calculate revenues in the filings. These Measures apply to banking financial institutions, securities companies, futures companies, fund management companies and insurance companies. The Measures detail the calculation methods and scope of revenue for each type of entity.

New Regulations on Merger and Acquisition of Domestic Enterprises by Foreign Investors

In order to comply with China New Antitrust Regulations, these Regulations amend and restate the old Regulations on Merger and Acquisition of Domestic Enterprises jointly issued by China relevant authorities, which took effect on September 8, 2006. These Regulations have replaced the antitrust declaration requirements and approval procedures of the Old Regulations with general references to the New Antitrust Regulations. According to these Regulations, any transaction that meets the filing triggers specified under the New Antitrust Regulations must be pre-approved by MOFCOM, and any unreported transaction cannot be implemented.

China Issues Implementing Regulations on Food Safety Law of the People's Republic of China

The Implementing Regulations on Food Safety Law of the People's Republic of China, effective on July 20, 2009, detail the requirements for food processing and distribution by food manufacturers and operators and supervision by health authorities under the Food Safety Law, which took effect on June 1, 2009. The Regulations specify the safety management responsibilities of food manufacturers and operators, and also detail recall requirements.

China Issues Administrative Regulations on Compulsory Product Certification

China General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) issued these Regulations and repealed the Administrative Regulations on Certification of Compulsory Products promulgated by the AQSIQ on December 3, 2001, with effect on May 1, 2002. The Regulations specify that the AQSIQ is the relevant authority for administration of national compulsory product certification. Products relevant to national safety, human health or safety, life or health of animals or plants, and environmental protection must be certified prior to manufacture, sale, import and use in other business activities.

Stricter Regulations on Environmental Evaluations to Be Enforced

China stricter regulations on environmental evaluations for new projects will be enforced, evaluations must be carried out before and after a project is approved, effective October 1. If the project causes a serious negative impact on the environment while it is being carried out, measures to remedy it must be reported immediately to the authorities and the project must be revised if necessary. Before being approved, the evaluation must detail the project's short and long term impact on the economy, society and the environment and also outline ways in which the impact on the environment can be diminished.

Top Legislature Passes Armed Police Law

China's top legislature passed the country's first law on the armed police, giving the force new duties and statutory

authority to respond to security emergencies. The Law on the People's Armed Police Force of the People's Republic of China mandates the mobilization of the 660,000-strong PAPF to deal with riots, disruptions, serious violent crimes, terrorist attacks and other emergencies. Armed PAPF officers will patrol China's municipalities, provincial and regional capitals during periods of unrest, and take responsibility for the security of major transport lines and important public facilities.

Companies Ordered to Pay RMB 500,000 Compensation for Registering Misleading Web Addresses

China Shanghai No.1 Intermediate People's Court has handed down its decision in a trade mark infringement and unfair competition action brought by Exxon Mobil against American Mobil International Petroleum Group and Xi'an Yanqing Technology Development Co. The Defendants had registered web addresses that included the Chinese characters for 'Mobil'. The Court held that the Defendants had infringed Exxon Mobil's registered trade mark and engaged in unfair competition. It ordered the Defendants to cease the infringing activity and pay RMB 500,000 by way of compensation.

Parallel Imports in China Are Forbidden for Goods without 3C Approval

China Changsha Intermediate People's Court held two tire dealers liable for trademark infringement for selling Japanese-made Michelin tires without authorization from the mark owner and without mandatory China Compulsory Product Certification (3C) approval. The first instance court found that the products in question were subject to the inspection and approval required by the 3C system before entering the Chinese

market and that, as a consequence of the importers' failure to obtain such approval, the tires had not been legally imported into China and should not have been sold in the Chinese market. The court also found that the defendants' sales of the tires were in violation of Chinese law. The court also noted that because the tires had not been inspected under the 3C standards.

WTO Reports on IPR Complaint Raised by the US against China

The World Trade Organisation (WTO) dispute-solving panel officially distributed to WTO members an experts' team report on the case between China and the US over China's alleged discrimination in relation to market access for foreign music, films and publications. During the expert panel's one-year-long review, China had explained to the panel the legal measures that had been introduced in relation to the importation and distribution of these products. China has appraised the expert panel's comments and regrets its decision. It will now seriously evaluate the ruling and does not rule out the possibility of an appeal.

China Trademark Applications Reach 380,000 in the First Half of 2009

In accordance with China State Administration for Industry and Commerce, applications for trademark registration nationwide in the first half of 2009 reached 380,000, up 7.7% despite the impact of the international financial crisis. By 30 June 2009, the total number of applications for trademark registration had reached 6.77 million, with 2.4 million proceeding to registration, making China the world's top trademark filing country for the seventh consecutive year. These statistics may also explain why it is taking around 2 to 3 years for an application to be examined and registered, and appeals are taking around 1 to 5 years to be dealt with by the TRAB.

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.