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Business News

Caterpillar to launch JV with Chinese firm

Caterpillar, the world's largest construction and mining equipment manufacturer, has signed a joint venture agreement with Guangxi Yuchai Machinery, a subsidiary of China Yuchai International. The joint venture will provide remanufacturing services for all Yuchai diesel engines and components and some Caterpillar diesel products. Yuchai claims to be the largest producer of internal combustion engines in China, and will control 51% of the new venture, with Caterpillar holding the remainder. It will have registered capital of US\$20 million, pending regulatory approval.

BAIC to purchase some Saab assets

Beijing Automotive Industry Holding Corp. (BAIC) will purchase assets from General Motors' Saab unit for an undisclosed sum. China's fifth-largest car maker said the acquisition of the intellectual property rights and equipment to make the older-models 93 and 95 sedans will ultimately help it make its own cars. The purchase will provide partial financing for the sale of the remainder of Saab.

Burger King steps up pace with six more outlets in Beijing

Fast food chain Burger King is planning to open six more restaurants in Beijing by June 2010, as part of a major expansion in China. The company, which has 25 outlets in the country, officially opened its first restaurant in downtown Beijing in Joy City in the Xidan area. John Chidsey, chairman and chief executive of Burger King Holdings (BKC), said the group was aiming for fast growth, and they intended to be on a similar scale to their competitors. Considering the fact that McDonald's has slowed its expansion in China as a result of the economic downturn, Chidsey claims Burger King was in a relatively strong position as consumers look for new tastes.

BHP and Rio Tinto's merger spurs Chinese companies

BHP and Rio Tinto, two of the world's top three iron ore suppliers, have signed a binding agreement (pending government approvals) covering the operation and

management of their future production joint venture. The companies intend to complete the merger in the second half of 2010. BHP and Rio Tinto hope that the JV will boost iron ore output whilst cutting costs. Chinese companies are highly reliant on the big-three iron ore suppliers, of which Rio and BHP make up two of them. Officials working for the various interested Chinese regulators have made statements to the effect that the merger between BHP and Rio Tinto is expected to push the iron ore price higher and may be anti-competitive. The deal will need approval from the Chinese Anti-Monopoly Bureau.

China vows to promote agricultural development in 2010

The Chinese government will enhance efforts in 2010 to promote agricultural development, strengthen produce supply to the market, and expand rural demand. Measures will also be enacted to improve agricultural production capacity, and quicken steps to develop modern agriculture. The government would maintain relatively stable prices of produce next year, but plans to increase the minimum purchase prices for major grain categories. Financial and fiscal supports would be provided to farmers who start new businesses. Infrastructure construction in rural areas, including reinforcing of large and mid-sized reservoirs, irrigation facilities, improvements to the power grid, and road construction, would be stepped up. The government also underscored plans to make improvements to public services in rural areas, to improve education and medical care.

China to develop third-generation genome sequencing instrument

The Chinese Academy of Sciences and Inspur Group have started a joint project to develop a third-generation genome sequencing instrument, which might slash the cost of genome sequencing by 99 percent, it is claimed. The instrument is expected to sequence a person's genomes in an hour at a cost of about US\$1,000, compared with six

weeks, costing around US\$60,000-100,000 using the currently available second-generation instrument.

China approves firm's bid for Australian Felix

China's Yanzhou Coal Mining Co. Ltd. received official approval in late 2009, to take over Australian coal mining company Felix Resources. The deal involving AUD\$3.3 billion (US\$3 billion) in a contractual agreement reached by the two companies will be the largest of its kind between Chinese and Australian firms, to date. The company said that after the takeover of Felix, it will obtain an approved coal reserve of 1.5 billion tons in Australia. Its annual coal output in Australia is expected to exceed 10 million tons. Yanzhou Coal, headquartered in east China's Shandong Province, is listed on stock exchanges in Hong Kong, New York and Shanghai. It owns Astar Coal Mine in Australia, and mines in north China's Shanxi Province and Shandong Province.

Chery to stay away from overseas buys

Chery Automobile, China's largest indigenous car maker, claims that it intends to stay away from overseas acquisitions for the time being even though it has been approached repeatedly. Yin Tongyao also denied overseas media reports about Chery's intentions to purchase of a Fiat car plant in Sicily in an interview. Still, many other Chinese automakers have been chasing Western brands to take advantage of a global industry downturn. Beijing Automotive Industry Holding Co, the country's fifth largest automaker, has acquired some assets of General Motors' Saab unit, as discussed above, as part of a push to develop its own-brand cars. Geely Automobile Holdings group has also been named preferred bidder for Ford Motor's Volvo car business. In order to revive an overseas brand, Chery unveiled its first self-developed medium-to-high end sedan, Riich G6, which

Chery executives hoped can eventually compete with Volkswagen AG's famed Audi A6. In 2007, Chery and Chrysler LLC agreed to manufacture compact cars under the Chrysler badge for sale in the Americas, but the plan was aborted after Nissan Motor reached a similar pact with the US automaker.

Legal News

Nivea awarded RMB120,000 compensation in a trademark infringement dispute

The Beijing Second Intermediate People's Court entered a first instance judgment in a trademark dispute between the marks 'NIVEA' and 'OUMEINA.' It ordered the Defendants, Dongyang Yingzi Cosmetics Co., Ltd. and its retailers, to cease the infringement and pay RMB120,000 (approximately US\$17,544) in damages to Beiersdorf Group, a German company. Beiersdorf registered the trademark as 妮维雅 (NIVEA's Chinese version) in China in 1993. An investigation indicated that Dongyang Yingzi was using the trademark 'OUMEINA,' which is similar to 'NIVEA' when written in its Chinese version as 欧美那. The Court ruled that 'OUMEINA' was similar to 'NIVEA' when pronounced in Chinese.

Contractual Waiver and Release Provisions Bar Statutory Claims by Employees

A recent decision from Shanghai looking at the common practice of having employees sign waivers upon termination, has been welcomed by lawyers and academics alike. Guan Junming was employed as a quality inspector by an

unidentified company. On November 8 2008 Guan signed two documents. In the first document he (i) agreed to change his system of working hours from standard hours to the comprehensive hours system with effect from November 1 2008, and (ii) acknowledged that all prior salary and overtime claims had been paid by November 1 2008. The second document was an agreement terminating Guan's employment on November 22 2008. The agreement included a general waiver and release of claims, which was to become effective after Guan had been received severance pay and his outstanding salary. After the company had paid his severance pay and outstanding salary, Guan sued to recover Rmb24,000 in overtime pay, as well as additional amounts payable for severance, 13th-month salary and high-temperature subsidy. The Zhabei District People's Court in Shanghai rejected Guan's claim and ruled that waivers and releases signed by an employee barred recovery of certain statutory claims because the waivers and releases were executed in good faith without evidence of fraud, coercion or overreaching by the employer.

New Anti-Trust Concentration of Operators Assessment Rules

The Ministry of Commerce of the People's Republic of China (MOFCOM) recently published rules looking at the determination of market concentration levels for the purposes of the Anti-Monopoly Law, and associated administrative issues. The rules discuss self-assessment and communication methods with MOFCOM. They state that MOFCOM can ask relevant government departments, industry associations, operators, consumers and other units or individuals, for advice and submissions when carrying out an investigation. These rules essentially formalize the operations of the Anti-Monopoly Bureau within MOFCOM, and codify how it has essentially been operating since August 2008 when it was established.

Computers monitored for crackdown on illegal online games

China has put more than 4.65 million computers in over 81,000 Internet cafes across the country under online watch to crack down on illegal (including unapproved) online games. 219 illegal Internet games with lewd, pornographic and violent contents had been closed, and more than 87 million attempts to access illegal games and relevant websites have been blocked in recent times. China launched a series of nationwide campaigns to crack down on the spread of lewd and pornographic contents through the Internet and mobile phones in 2009. In the latest development, the Ministry of Public Security said that the ministry has closed down more than 2,300 WAP websites accessible by mobile phones, and arrested 34 people for running those websites. It has been claimed that the Ministry of Culture (in another blow to the GAPP's claims over this sector) will be setting up laws and regulations on Internet games in order to strengthen administration of the sector, and would improve censorship in 2010.

Boost to renewable energy in China

China's top legislature has adopted an amendment to the Renewable Energy Law mandating electricity grid companies to buy all power produced by renewable energy generators.

According to the amendment, the State Council's energy taskforce and the state power regulatory agency should supervise the purchases. Its aim is to support the country's fledgling renewable energy sector. Under the amendment, enterprises refusing to buy power produced by renewable energy generators will have to pay a fine equivalent to double the amount the economic loss sustained by the renewable energy company. The law requires the government to set up a special

fund for renewable energy research, finance rural clean energy projects, build independent power systems in remote areas and islands and networks to exploit renewable energy. The fund will be managed by the finance, energy and pricing sectors of the State Council (China's federal cabinet).

China allows foreigners to set up partnerships

The Chinese State Council has issued new rules that allow foreign firms to set up partnerships in Mainland China, giving foreigners another avenue to conduct business. The new regulations do not cover investment-oriented partnerships however. Except for limited partnerships, owners are not protected by limitations on their legal liabilities, unlike owners of a corporation. Under the new regulations, foreigners are allowed to directly form partnerships but mainly for non-investment purposes, such as manufacturing or consulting. For investment purposes, foreigners can set up venture capital partnerships directly under current rules, but their investment scope is limited to technology companies. The advantages of partnerships over joint ventures or wholly foreign-owned entities under the new rules include more favourable tax treatment and simpler approval processes for establishment. This is so because in a partnership, taxes are charged only on the partners' personal income, unlike in corporations, where taxes are imposed at the corporate and individual levels. The new rules also state that partnership applicants only need to apply to the local units of the State Administration of Industry and Commerce instead of the higher-level Ministry of Commerce. The local industry and commerce units, which are to approve the partnerships, do not have any experience reviewing foreign investments. But the new rules require applicants to prove their

investments comply with the Ministry's foreign investment catalogue, which lists areas where foreign investment is encouraged, restricted or prohibited. Also, the local units are required to report to the Ministry after accepting the registrations.

'Green card' to replace Beijing residence permit

Beijing's municipal government is set to replace the controversial temporary residence permit scheme with a "green card" system to improve management and monitoring of its swelling migrant population. The move is also a step towards the long-term goal to gradually phase out the household registration, or the *hukou*, system. The permit will include a computer chip containing basic personal data such as a person's job and family status, as well as property ownership information. As an incentive to register, it will give holders access to social welfare for the first time. The "green card" system would serve as a temporary mechanism to minimise the role that the *hukou* plays in control of people's lives - but the abolition of the *hukou* system is a long road, as the *hukou* system has become so entangled with and integral to the social welfare system.

China issues regulation to encourage more joint ventures

China announced a regulation to standardize and encourage the

establishment of joint venture enterprises for services. The regulation, issued by the State Council, defines those joint venture enterprises as those set up by more than two overseas investors or by an overseas investor and a Chinese investor. It covers both enterprise and individual investors. And it also applies to investors from the Hong Kong special administrative region (SAR), Macao SAR and Taiwan.

China adopts a new tort law

China's top legislature has just approved the Tort Law after four readings since 2002. The 92-provision law covers liabilities for a range of circumstances, including traffic accidents, medical accidents, work-related injuries, pollution, harm caused by third parties' pets and mental distress. It also covers infringements of personal rights, such as name, reputation, portrait and privacy. The law, is to commence operation in July. More information is available from our office.

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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