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Business News

China cuts Administrative Fees

China will scrap 253 types of administrative fees on enterprises charged by provincial-level governments from February 1, 2012. The cancellation was announced by the Ministry of Finance (MOF) and the National Development and Reform Commission in a joint circular on the MOF website. The move is expected to reduce enterprises' financial burdens by 10 billion yuan (US\$ 1.59 billion) annually, and should further improve the nation's business environment.

Chinese Manufacturing Index Climbs

China's official Purchasing Managers Index rose to 50.3 in December from 49.0 in November in 2011, as the approach of the Christmas and Chinese New Year holidays helped to boost manufacturing activity. The data published by the National Bureau of Statistics, was higher than the median analyst forecast of 49.0.

Legal News

Intellectual Property

New Supreme Court Interpretation for Online IP Infringement

The Supreme People's Court is drafting a judicial interpretation to better protect intellectual property rights from online infringement. The interpretation is expected to be released in January or February. In a recent lawsuit against Taobao, China Friendship Publishing Company requested compensation of 224,000 yuan (US\$36,000) after finding that an online bookstore registered on Taobao was selling pirated versions of books published by Friendship. The Beijing Second Intermediate court, however, only approved a 2,000-yuan penalty. It is hoped that the new interpretation will put greater legal obligations on online shopping mall managers, clarify how damages are to be assessed in online infringement actions, clarify fair use provisions, and limit defences based on ignorance, as was raised in the Taobao case.

Aigo successfully sues Toshiba for Patent Infringement in Xian

Recently, a Xian court in Shanxi province ruled that Toshiba had illegally used the “USB Plus” technology developed by Aigo and ordered that Toshiba should pay 200,000 yuan (US\$ 32,000) in compensation to the Chinese company. The court also banned the sale in China, of two types of Toshiba computers using the technology owned by Aigo. Although the damages awarded in this case, were not significant, the ban on sales of computers using this technology is of grave concern for Toshiba and could cost the company, millions. It is expected that Toshiba will appeal the decision in this case to the Xian High Court.

Trademark Registrants Need to Prove ‘actual use’?

The Trademark Law 2001 does not require commercial use of a registered trademark by the registrant (or use controlled by the registrant, such as licensed use) as a condition for commencing trademark infringement proceedings against an infringer. However, some well publicized (and controversial) cases and judicial opinions are placing an ever-greater onus on trademark registrants to prove actual use of their own trademark, either in order to prove 'actual confusion' (an essential element of a trademark infringement action) or as a prerequisite for damages claims. Of course, China has obligations under the Paris Convention and TRIPS, to protect well known trademarks in China, that have not been used in China (and China’s Law Against Unfair Competition, seems to provide such protection) – therefore, this apparent trend may well be limited to the particular facts of each particular case pending analysis and guidance from the Supreme Court or State Administration of Industry and Commerce.

AMSC and Sinovel Arbitration Kicks Off

The Beijing Arbitration Commission started hearing testimony on January 9, in a trade

secret/technology civil case which includes some major compensation claims – a claim by AMSC for around US\$85 million, and a counterclaim from Sinovel of around US\$65 million. Dejan Karabasevic, a former AMSC employee, has already been imprisoned in Austria for intellectual property theft. Karabasevic has admitted to colluding with Sinovel to stealing important intellectual property related to AMSC’s wind turbine control systems. Sinovel’s international business has been significantly affected by this ongoing dispute. In late November, it was reported that Mainstream Renewable Power of Ireland halted its 1 gigawatt (roughly US\$1 billion) wind turbine framework agreement with Sinovel, as a direct result of these allegations. Further details of this case, are available from our office.

Pirates hijacking mobile phone game market

Peter Vesterbacka, whose company Rovio makes the immensely popular game Angry Birds, says that console games are "dying", but games on smartphones and tablet computers also face a crisis in China – IP pirates. The latest statistics by IIMEDIA Marketing Consultation Group show that China had a domestic mobile Internet market worth 10.8 billion yuan (US\$1.7 billion) in the third quarter of this year, and the mobile games industry contributed 10.3 percent of the figure. But it also noted that only 1.4 percent of the mobile games used in China are legally licensed versions. Greater enforcement in this area is vital and has been an apparent void over the last 12 months.

Tax

New Environmental Tax

The Ministry of Finance (MOF) has approved an environmental tax and officials are now allowing the proposal to undergo

scientific debate and evaluation. The tax will be levied on carbon dioxide, sulfur dioxide, wastewater and solid waste, discharges. The petroleum and petro-chemical industries that consume high amounts of energy will be the main targets. The MOF is preparing to evaluate the proposal with the State Administration of Taxation and the Ministry of Environmental Protection. In a statement issued on October 20, the State Council officially declared that it is actively promoting reform and research on environmental taxation, as well as developing a national emissions trading market. Beijing recorded one of its highest ever air pollution days, on 10 January 2012.

Property Tax may be Expanded in 2012

The government summed up lessons learned from the trials in Shanghai and Chongqing at the end of 2011 in various statements to the press, and mapped out an expansion plan, but added that conditions were not yet ripe for applying property taxes across the entire country. The government will likely extend the property tax to more first- and second-tier cities in 2012, restrictions on home purchases will be phased out when the property tax applies to most parts of the country. China introduced the property tax trials in Shanghai and Chongqing at the beginning of 2011 as part of its efforts to curb skyrocketing home prices and contain asset bubbles – the measures have largely been seen as being very successful in avoiding a housing crisis in these major real estate focused cities.

Corporate Finance

New rules for VC, PE to limit illegal fundraising

China has issued its first national regulations for equity investment in unlisted companies in a move to crack down on grey-area fund-raising in the domestic venture capital (VC) and private equity (PE) sectors. The five-part regulation "signals equity investment

in China has started to be institutionalized", according to a statement by the National Development and Reform Commission (NDRC).

New Investor Protection Bureau

Earlier this week, the Chinese government announced that it had established a new Investor Protection Bureau to better protect minority investors in China's capital markets. The Bureau will be responsible for drafting and reviewing laws and regulations that protect investors and help establish an education and service system for investors. The CSRC has acknowledged that despite a rising number of institutional investors, China's capital market is still dominated by individual investors, who often lack professional knowledge, as well as timely access to market sensitive information. China ranks third, behind the USA and Japan, in terms of capital market valuations.

Foreign Investment

China opens more sectors to foreign investors – New Foreign Investment Guidance Catalogue

China will open more sectors to foreign investors, encouraging investment in strategic emerging industries. The National Development and Reform Commission and the Ministry of Commerce jointly issued the new guidelines/Foreign Investment Guidance Catalogue to encourage more foreign investment into energy-saving and environmentally-friendly technologies, new-generation information technology, biotechnology, high-end equipment manufacturing, alternative energy, advanced materials, and alternative-fuel cars. The new catalogue takes effect from January 30, 2012, and are available from our office.

Ministry predicts new surge in ODI

Outbound direct investment (ODI) for 2011-15 is expected to register double-digit

annual growth to reach US\$560 billion, matching the nation's foreign direct investment (FDI). The government will accelerate promoting "overseas investment" during the 12th Five-Year Plan (2011-15) period. The government will guide and encourage local companies to enhance cooperation and invest abroad in manufacturing, energy, culture and engineering. And China will also promote investment in the service sector, including finance, architecture, tourism, education and telecoms.

Dispute Resolution

New international arbitration center established in Guangzhou

The management committee of the Guangzhou Nansha Development Zone and Guangzhou Arbitration Commission, Hong Kong International Arbitration Centre, and the Arbitration Centre of Macau World Trade Center, recently signed the "Establishment of Nansha International Arbitration Centre Cooperation Framework Agreement" in Guangzhou and jointly announced the establishment of the "Nansha International Arbitration Center". This new center is aimed at providing a local arbitration center for Nansha related dispute resolution – arbitration will occur under the well recognized and understood, arbitration rules of the Hong Kong International Arbitration Centre, and the proceedings can be conducted in a number of different languages, as agreed by the parties. Nansha is part of Guangzhou City, and a vibrant area for foreign investment.

International Trade

2012 Catalogue Of Goods Subject To Export Licensing

The Ministry of Commerce (MOFCOM) issued the *2012 Catalogue Of Goods Subject To Export Licensing Management By Categories* on January 5, 2012. The goods

subject to export licensing management include certain crops, metals, livestock produce, and auto-part – 49 categories in total. Exporters and their customers, should examine the new list as it does contain variations from the 2011 list, which has now been repealed.

Imported Photographic Papers' Anti-Dumping Investigation Period Extended

The Ministry of Commerce (MOFCOM) has extended the period of the anti-dumping investigation into photographic paper products imported from the European Union, United States and Japan, for three months, according to its Announcement [2011] No.88 issued on 23 December 2011. MOFCOM opened the investigation on 23 December 2010 and made the decision to extend the period of investigation as the case is relatively special and complex. The deadline for conclusion of the investigation period is 23 March 2012.

First white paper on foreign trade issued

The Chinese government has said that it will issue a white paper on foreign trade to introduce its efforts in promoting economic and trade cooperation with other countries over the past thirty years. The document, entitled "China's Foreign Trade", will be the country's first white paper on foreign trade. It will be released by the Information Office of the State Council in 2012, and should provide some clues as to possible changes in macro-economic policy regarding foreign trade.

Standards

Davinci "challenge" Shanghai AIC

In December, the Shanghai AIC issued a decision, fining Davinci House Furniture Co., Ltd. (hereinafter referred to as Davinci company) RMB1.33 million (around

US\$214,500) for making and selling furniture products that did not measure up to the relevant standards issued by the National Standards Bureau. A large number of furniture products were also seized and destroyed by the AIC. This case shows that China's product quality police are becoming more aggressive in relation to carrying out investigations and enforcement of China's standards.

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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