



China Updates

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In response to our clients' needs for up-to-date information on the evolving legal and business environment in China, Lee and Li presents our monthly China Updates to assist our clients in understanding the latest legal and economic trends of China.

Lee and Li has provided legal services across the Greater China Area (Mainland China and Taiwan) longer than any other firm. In addition to decades of rich experience in legal services covering all disciplines, we have established the Greater China Strategic Alliance (L&L-Leaven, Attorneys-at-Law in Shanghai and Lee and Li - Leaven IPR Agency Ltd. in Beijing), providing our clients with the benefits of efficient and professional managing of legal and patent matters in the Greater China Area.

It is widely recognized by our clients that Lee and Li's integrated legal perspective and unparalleled expertise in cross-strait services significantly reduce the time and effort that many companies expend seeking trustworthy Chinese lawyers.

I. Law Updates

1. Draft Interim Administrative Regulations for Private Equity Funds Released for Public Comment

In recent years, the private equity funds market in China has experienced rapid growth. Much of this growth has occurred without a cohesive regulatory structure regarding private equity funds. On August 30, 2017, the Legislative Affairs Office of the State Council announced the draft Interim Administrative Regulations for Private Equity Funds (the "Draft for Comment"). The Draft for Comment consists of 11 chapters and a total of 58 articles. The Draft for Comment stipulates the duties of private equity fund managers and custodians, regulations on fund-raising, investment operations, information disclosure, self-supervision, and legal liabilities from operation of a private equity fund. The purposes of the Draft for Comment are to elevate the regulatory level and to unify the laws and regulations on the supervision and administration of private equity funds.

The current regulatory scheme regarding private equity funds consists of multiple laws and regulations, which include the Law of the People's Republic of China on Securities Investment Fund, the Interim Measures for the Supervision and Administration of Private Equity Funds, and a variety of self-governance rules promulgated by the Asset Management Association of China (“中国证券投资基金业协会”). With the future enactment of the finalized Administrative Regulations for Private Equity Funds it is expected that inconsistencies and conflicts which exist among the various rules and regulations related to private equity funds will be resolved.

- The Interim Administrative Regulations for Private Equity Funds (Draft for comments) (in Chinese):
<http://zqyj.chinalaw.gov.cn/readmore?id=2061&listType=1>
- Introduction of the Interim Administrative Regulations for Private Equity Funds (Draft for comments) (in Chinese)
<http://zqyj.chinalaw.gov.cn/draftExplain?DraftID=2061>



Law Updates

2. MOHRSS Releases Guiding Opinions on the Mechanism for Adjusting and Determining Work-related Injury Insurance Benefits

On July 28, 2017, the Ministry of Human Resources and Social Security (MOHRSS) of the People's Republic of China released the Guiding Opinions on the Mechanism for Adjusting and Determining Work-related Injury Insurance Benefits (the "Guiding Opinions"). The Guiding Opinions provides the rules for adjusting and determining certain work-related injury insurance benefits under the Regulations on Work-Related Injury Insurance ("Regulations").

The Regulations provides a total of 13 work-related injury insurance benefits. The Guiding Opinions stipulates the general requirements for determining one-off disability employment benefits and one-off work-related injury medical benefits. According to the Guiding Opinions, when the governments of provinces (including autonomous regions and municipalities) are to establish the standards, they shall take into account a variety of factors, such as degree of disability, category of disease, age of the beneficiary, etc., in order to facilitate the stable employment of injured workers.

In addition, due to lack of scientific mechanism of adjusting and determining the disability benefits, the bereavement benefits for dependents of the deceased employees, and the caring costs, the standard of each province (including autonomous regions and municipalities) vary. The Guiding Opinions therefore seeks to provide clear rules for determining and adjusting the foregoing three benefits.

- Guiding Opinions on the Mechanism for Adjusting and Determining Work-related Injury Insurance Benefits (in Chinese) are available at:

http://www.mohrss.gov.cn/gkml/xxgk/201708/t20170818_275938.html



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II. Case Updates

1. First Infringement Case Against Alibaba Cloud, an Online Service Provider

According to media reports, an unknown party accessed and copied the code of an online game owned by Locojoy Technology Co., Ltd. ("Locojoy") without authorization. The infringer then utilized the cloud service provided by Alibaba Cloud ("Alibaba Cloud") and operated the infringing online game through Alibaba Cloud. Locojoy asked Alibaba Cloud to remove the infringing game but received no response. Locojoy then filed a civil action with the court, demanding Alibaba Cloud to terminate the cloud service and pay damages of RMB 1,000,000.

Article 36 of the Tort Law of the People's Republic of China provides that, "Where an internet user engages in tortious conduct through internet services, the injured party shall have the right to request the internet service provider to take necessary action such as deleting content, screening, terminating links, etc. Where an internet service provider fails to take necessary action in response to such request, it shall be jointly and severally liable with the internet user (i.e. the infringer) with regard to the injury or damage suffered."

People's Court of Beijing Shijingshan District (the "Court") found that Alibaba Cloud failed to take any corresponding measures, and such failure exacerbated damages to Locojoy. As such, the Court held that Alibaba Cloud had infringed Locojoy's right and ordered Alibaba Cloud to pay a compensation of approximately RMB 260,000 to Locojoy.



Case Updates

2. In Precedent-setting Case, Chinese Court Recognizes and Enforces a U.S. Commercial Monetary Judgment

On June 30, 2017, the Intermediate People's Court of Wuhan City (the "Court") rendered a ruling that recognizes and enforces a judgment rendered by the Superior Court of California, County of Los Angeles.

This represents the first case in which a Chinese court recognizes and enforces a U.S. commercial monetary judgment. In July, 2015, the Superior Court of California, County of Los Angeles ruled in favor of the plaintiff in a share transfer dispute. Because the defendants own properties in Wuhan City, China, the plaintiff then filed an application with the Court for the recognition and enforcement of the judgment rendered by the Superior Court of California, County of Los Angeles.

According to the Civil Procedure Law of China, Chinese courts may recognize and enforce foreign judgments pursuant to international treaties concluded or acceded to by China or in accordance with the principle of reciprocity. However, there exists no such international treaty between China and U.S. regarding recognition and enforcement of each other's judicial judgments. Moreover, China's courts follow a principle of de facto reciprocity; if there existed precedent of a foreign court that recognized and enforced a Chinese court's decision, then China would recognize the existence of reciprocity between the two countries. The Court's ruling regarding the existence of reciprocity between China and U.S. is based on a judicial precedent rendered by a California court in 2009, in which case the U.S. court recognized and enforced a commercial monetary decision rendered by the Superior People's Court of Hubei.



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III. Economic Updates

1. Bitcoin trading in China brought to a halt, but experts anticipate no impact on development of block chain technologies

On September 4, 2017, seven financial regulators in China, led by China's Central Bank, jointly called for a ban on initial coin offering (ICO). All three major bitcoin trading platforms on September 30 announced stoppage of trading of virtual assets and terminated all exchanging of digital assets into Renminbi after October 31.

Experts, however, indicated that the halt of bitcoin platform trading is not in conflict with the development of block chain technologies in China. The block chain technology used in finance is known to effectively prevent data tampering, resulting in the reduction of transaction costs and risks to investors. Thus, ongoing illegal activities such as pyramid schemes, illegal fundraising and other financial crimes committed through virtual-asset trading platforms must be controlled to allow development of a healthy finance and technology environment necessary to gain full benefit of the security advantages offered by block chain technologies.

2. China's Central Bank Tightens Control over Mobile Payment Market

According to iResearch Global, the transaction volume of Chinese mobile payments reached USD 5.5 trillion in 2016, nearly 50 times the size of the US mobile-payment market. To help manage this rising industry, the Central Bank of China declared that, effective June 30, 2018, all third-party payment agencies conducting online payment transactions involving bank accounts shall use a centralized payment clearing platform (Wanglian Platform) to process all online payments and transfers.



**Economic
Updates**

3. China's Insurance Industry Rushes into Exploding Elder-Care Market

China's booming elder-care market is expected to reach 5 trillion RMB by 2025. Reflecting a new surge of investment in this industry, some of China's largest insurance companies have invested billions of RMB in at least 28 major elder-care communities. One such investor, Taikang Insurance Group, has invested 2.5 billion RMB in Wuhan. In addition, Taikang recently announced investments of 3 billion RMB in world-class elder-care and medical facilities in Chengdu.



**Economic
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IV. IP Updates

1. China Releases Draft of New Drug-Patent Linkage System

The China Food and Drug Administration (CFDA) has followed the U.S. Food and Drug Administration (USFDA) by introducing a drug-patent linkage system (the “Patent Linkage System”). On May 12, 2017, CFDA released the draft “Relevant Policies on Encouraging Innovation in Drug and Medical Devices and Protecting the Rights and Interests of Innovators (“Draft”).

The Patent Linkage System provides a link between a brand name drug and its patent status disclosure, and also provides information on the status of the approval process of generic drugs and whether such a generic drug infringes the patent of the brand name drug. The Patent Linkage System grants the applicant of a generic drug a certain period in which to clarify infringement issues on the brand name drug's patent, thereby allowing the administration to make its decision on whether to approve such generic drug based on the applicant's clarification of the patent issues. The primary purpose of the Patent Linkage System is to protect the investment in R&D made by the owner of the brand name drug. In addition, the patent status disclosure permits the developers of generic drugs to know the patent status of the brand name drugs and plan their new-product development accordingly. The improved clarification of patent validity can help avoid infringements.

The Draft provides two approaches for patentees to intervene in the drug approval process:

Under the first approach, when an applicant of a generic drug has notified the CFDA and the patentee of the corresponding brand name drug that the generic drug involves the patentee's patent, and the applicant has made a non-infringement statement, the corresponding patentee needs to file a lawsuit and inform the CFDA within 20 days after the notification in order to stop the approval process of the generic drug.



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In the meantime, an Approval Waiting Period no longer than 24 months may be set at the discretion of the CDFA.

Under the second approach, when an applicant of a generic drug does not declare any involved patent, if the patentee of a potentially-corresponding brand name drug believes that his or her patent is infringed by the generic drug, files a lawsuit and timely informs the CDFA, an Approval Waiting Period may be set by the CDFA according to the status of the lawsuit. It is worth noting that the Draft does not provide a 24 month limitation to the length of the Approval Waiting Period that the CDFA may set under the foregoing circumstance.

Through the above-mentioned approaches, the Draft not only encourages applicants of generic drugs to disclose existence of relevant patent, but also grants the CDFA authority to take measures to prevent abuse of the Patent Linkage System by patentees.



IP Updates

The China Updates content on Chinese law and regulations is meant to provide an overview of the latest legal developments in China. Due to the generality of this overview, the information contained herein may not be applicable in all situations and should not be acted on or relied upon without specific legal advice. For more information or advice on specific legal issues, please contact Lee and Li directly. Our contact information is provided below.

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