



# 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 management of legal and patent matters in the Greater China Area.

As widely recognized by our clients, 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. Misunderstanding and communication costs arising out of cultural differences in legal practices between the cross-strait legal systems are avoided as well.

## **I. Law Updates**

### **1. Amendment to Anti-Unfair Competition Law to Take Effect on January 1, 2018**

On November 4, 2017, the Standing Committee of the National People's Congress of China promulgated amendments to the "Anti-Unfair Competition Law of the People's Republic of China." The amendments are the first major amendments to the Anti-Unfair Competition Law since its enactment in 1993. The main amendments to the Anti-Unfair Competition Law are as follows:

The amended Anti-Unfair Competition Law provides a clear distinction between the jurisdictions of the Anti-Unfair Competition Law and the Antitrust Law. The anti-trust behaviors governed by the Antitrust Law, including activities related to unfair monopolies, tying arrangements, and predatory pricing, are removed from the Anti-Unfair Competition Law.

The provisions related to the protection of trade secrets and prohibition of commercial bribery are revised. The amended Anti-Unfair Competition Law removes the "practical value" requirement as one of the elements of a trade secret, and prohibits former employees from infringing the trade secrets of their former employers. In addition, the amended Anti-Unfair Competition Law broadens the scope of bribery conduct, specifying "any entity or individual entrusted to handle relevant matters" as potentially subject to bribery charges.

The amended Anti-Unfair Competition Law also adds new rules regarding unfair internet-based competition. The new rules stipulate that business operators shall not use technical means to obstruct or damage the normal operation of online products or services lawfully provided by other business operators by influencing the choice of users or by other means.

The amended Anti-Unfair Competition Law raises the severity of administrative penalties for unfair competition. The upper limit of the statutory damage for the infringement of trade secrets is increased from RMB 1 million to RMB 3 million.

The amended Anti-Unfair Competition Law of the People's Republic of China (in Chinese):

<http://law.npc.gov.cn/FLFG/flfgByID.action?flfgID=37009578&zlsxid=01>



## Law Updates

## 2. NDRC Seeks Public Comments on Draft Administrative Measures for Outbound Investment

The Administrative Measures for Outbound Investment (Draft for Comments) (the “Draft”) was released on November 3, 2017 by the NDRC. The Draft was made to amend requirements previously set forth in the NDRC 2014 Administrative Measures for Approval and Recordation on Overseas Investment Projects (“Order No. 9”). Several major changes have been proposed by the Draft:

Pursuant to Order No. 9, if an overseas acquisition or bid involving a Chinese party meets the threshold, the Chinese investor was required to submit a “project information report” to the NDRC to obtain a confirmation letter. However, under the Draft, the “project information report” will no longer be required.

Under the Draft, if a project becomes subject to any approval or record-filing obligation at the national level, the local Chinese investor is now able to submit the application to the NDRC directly, without going through the provincial-level government as required by Order No. 9.

Pursuant to Order No. 9, the approval document or record-filing notice for outbound investment shall be obtained before a Chinese investor concludes any legally binding transaction document. Under the Draft, however, the NDRC's approval document or record-filing notice will no longer be a pre-condition of effectiveness for transaction documents. The approval or record-filing notice will only be required before the implementation of the project (e.g., providing financing or a guarantee for such project). Chinese investors will then be able to provide the NDRC's approval or record-filing notice as a pre-closing condition (rather than an element that serves as a pre-condition of the effectiveness of the transaction documents).

Announcement on Seeking Public Comments on the Administrative Measures for the Outbound Investment (Draft for Comment) (in Chinese):

[http://www.ndrc.gov.cn/gzdt/201711/t20171103\\_866220.html](http://www.ndrc.gov.cn/gzdt/201711/t20171103_866220.html)



Law  
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## **II. Case Updates**

### **1. Shanghai IP Court Rules that Baidu Shall Pay Dianping RMB 3.23 Million Pursuant to Anti-Unfair Competition Law**

Baidu, the most popular search engine in China, used in its Baidu Map and Baidu Zhidao applications customer reviews from Dianping.com ("Dianping") without Dianping's authorization. Shanghai Intellectual Property Court (the "Court") recently ruled that Baidu pay Dianping RMB 3.23 million, including RMB 3 million for Dianping's damages and RMB 230,000 as the reasonable costs for stopping Baidu's unfair competition act.

Pursuant to Article 2 of the Anti-Unfair Competition Law, "Business operators shall abide by the principle of voluntariness, equality, impartiality, honesty and good faith, and also adhere to public commercial moral in their business transactions." An entity's activities that infringe others' legal rights and interests, disturb the order of the economy, or violate the provisions of the Anti-Unfair Competition Law shall be considered "unfair competition."

The Court held that Baidu, by capturing and displaying large amount of Dianping's collected information, has exceeded what was necessary and has materially replaced Dianping in providing the relevant service. Such replacement was essentially unauthorized use of Dianping's work product and inevitably resulted in damages to the interests of Dianping. The Court also held that, in the age of "Big Data," consumer information is now more precious than ever before. As a result, the usage of information acquired by another business entity shall be within a relatively reasonable scope. If a business entity arbitrarily uses information collected through significant effort by other entities, such act will damage the free-market competition mechanism and, thus, shall not be encouraged. As such, the Court held that Baidu's conducts violated the generally recognized business ethics.



## Case Updates

## 2. Landmark Pollution Case: Fish Farmers v. Shanhaiguan Shipbuilding Industry Co., Ltd.

This case was selected by the Supreme People's Court as a landmark case regarding environmental resources.

The case was filed after abnormal levels of iron were found in ocean waters off the coast of Qinhuangdao, Hebei Province and the contamination endangered local fisheries and mariculture industries. The source of the contamination was determined to be polluted water with iron content, which was discharged into the ocean from a nearby shipyard operated by Shanhaiguan Shipbuilding Industry Co., Ltd. ("Shanhaiguan Shipbuilding") in the course of its shipbuilding and repair operations. The local fish farmers sued Shanhaiguan Shipbuilding for their damages as a result of the ocean water pollution. Shanhaiguan Shipbuilding claimed that there are no legal standards limiting the iron content in the ocean water and the emission of the iron-containing water shall not be considered "pollution."

Tianjin High People's Court ruled that relevant regulations did not limit the liability for environmental damages to the acts caused by discharging pollutants that exceed national standards or local standards. The wrongdoer shall be liable for damages caused by tort acts as long as their acts have resulted in environmental damages.

The court held that Shanhaiguan Shipbuilding shall pay RMB 1.38 million for the damages caused by discharging of polluted water and the resultant environmental pollution. The court decision confirms that the "pollutants" under the liability for environmental damage shall be defined as any substance that causes environmental damages. If an entity discharges a substance that is not regulated by any environmental standards but the emission of such substance actually results in damages, the entity's act shall still be considered an infringement resulting in environmental pollution.



## Case Updates



## **III. Economic Updates**

### **1. World Internet Conference Held in Wuzhen, China**

From December 3 to December 5, 2017, the 4th World Internet Conference was held in Wuzhen, Zhejiang Province, under the theme of "Developing Digital Economy for Openness and Shared Benefits—Building a Community of Common Future in Cyberspace." The event was attended by representatives of Chinese and global internet enterprises. Apple CEO Tim Cook delivered a keynote address, stating that future internet and AI technologies should be infused with privacy, security and humanity, and that Apple shares the conference's vision of developing the digital economy for openness and shared benefits. Sundar Pichai, CEO of Google, also participated in the conference's discussion on the digital economy.

### **2. Investors Optimistic about China's Pharmaceutical Companies**

With annual sales of USD 117 billion, China's pharmaceutical market has become the world second-largest, trailing just behind the United States. Approximately 800 types of new drugs are currently under development in China, up from 240 types in 2012. Of the 800 types currently in development, about 80% are currently in phase III of clinical trials. In the first half of 2017, the total amount of capital injected by investors in China's biotech start-ups reached a record USD 3 billion.

### **3. Tencent Launches its “Three 10 Billion Plan” to Build a Catalog of User-generated Content**

Tencent is stepping into the industry of user-generated content (UGC) and plans to create a content platform with its “Three 10 Billion” plan, which aims to reach 10 billion user hits, RMB 10 billion of investment in industry resources, and RMB 10 billion of funds to support UGC entrepreneurs. Tencent will provide UGC across its platforms, handing UGC creators potential exposure to the 963 million active users of WeChat. In addition, Tencent has committed to protection of UGC creators' copyrights and expects to attract UGC publishers who aspire to become internet celebrities.



## **Economic Updates**

## IV. IP Updates

### 1. Twelve Government Entities Jointly Issue Action Plan for Protection of Intellectual Property Rights Owned by Foreign-Invested Enterprises

Twelve China governmental agencies, including the Office of the National Leading Group on the Fight Against IPR Infringement and Counterfeiting, the State Intellectual Property Office ("SIPO"), and the Ministry of Commerce ("MOFCOM") have jointly issued the Action Plan for the Protection of Intellectual Property Rights Owned by Foreign-Invested Enterprises (the "Plan"). According to the Plan, the Chinese authorities will conduct a special campaign from September to December, 2017 to crack down on illegal and criminal activities that infringe intellectual property rights owned by foreign-invested enterprises, such as infringement of trade secrets, copyright trademarks and patents.

This plan is China's first nationwide campaign to protect foreign investors' intellectual property rights. Furthermore, the SIPO subsequently issued several official documents, including the Opinions on Further Strengthening the Application and Protection of Intellectual Property Rights to Support Innovation and Entrepreneurship and the Several Opinions on Strict Patent Protection. Additionally, in the first half of 2017, China handled 15,411 cases through administrative patent enforcement, an increase of 23.3% over the previous year.



IP  
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*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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