



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. 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. Personal Information Security Specification to take effect on May 1, 2018

On December 29, 2017, the Standardization Administration of China enacted the Information Technology - Personal Information Security Specification ("Specification") slated to take effect on May 1, 2018. The Specification requires that the collection, storage, use, sharing, transfer, and disclosure of personal information should follow certain principles and security requirements, which apply to personal information processing activities in all types of organizations. The Specification's major principles include:

- (1) The requirement of explicit consent: The data subject shall make a written statement or a positive consenting action in order to explicitly authorize the specific processing of his/her personal information. No processing of the personal information shall be allowed without explicit consent from a data subject.
- (2) The necessity for collecting personal information requirement: The personal information collected by the personal information controller must be directly related to the purpose of the collection and must be necessary to achieve the purpose of the collection.
- (3) Strengthen the individual right to control personal information. The data subject has the right to withdraw consent, remove the account, or obtain a copy of his or her personal information.
- (4) The requirement of regulating the organization and management of personal information controllers: personal information controllers should assign responsible departments and personnel; establish a system of personal information security impact assessment; develop appropriate data security capabilities; manage and train personnel; and audit the effectiveness of the privacy policies, related procedures, and security measures.

Personal Information Security Specification (in Chinese)

<https://www.tc260.org.cn/upload/2018-01-24/1516799764389090333.pdf>



Law Updates

2. The “Provisions of the Supreme People's Court on Several Issues concerning People's Courts Handling the Enforcement Case of Arbitral Award” shall take effect on March 1, 2018.

On March 1, 2018, the “Provisions of the Supreme People's Court on Several Issues concerning People's Courts Handling the Enforcement Case of Arbitral Awards” (“Provisions of Enforcement”) took effect. The Provisions of Enforcement are procedures governing cases in which the People's Court handles the applications for the enforcement of arbitral award, the revocation of arbitral award, and the refusal to enforce arbitral award. Its significant provisions include:

- (1) Jurisdictions of certain enforcement cases are delegated from the Intermediate People's Courts to the Basic People's Courts: Article 2 of the Provisions of Enforcement provides that the application to enforcement of an arbitral award shall be within the jurisdiction of the Intermediate People's Court. Article 2 authorizes the Intermediate People's Court to delegate the Basic People's Court to exercise jurisdiction under certain conditions when approved by the Higher People's Court.
- (2) A party not involved in the case is entitled to apply for the refusal to enforce arbitral award:
Articles 9 and 18 of the Provisions of Enforcement provide that when a party of the arbitration case maliciously applies for arbitration, or when a false arbitration occurs, in which the rights and interests of a party not involved in the case are violated, such party is entitled to file an application for the refusal to enforce arbitral award.



Law Updates

(3) The clarification and handlings of unclear enforcement content:

According to Article 463 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, the subject matter of an effective legal instrument to be enforced by the People's Court shall be specific and clear. Article 3 of the Provisions of Enforcement enumerates several conditions in which the arbitral award is "unclear," and stipulates that the People's Court should first clarify the unclear content of the arbitral award with the arbitration tribunal. If the People's Court is still unable to clarify the contents thereof, it may consider rejecting the enforcement application.

“Provisions of the Supreme People's Court on Several Issues concerning People's Courts Handling the Enforcement Case of Arbitral Award” (in Chinese)

<http://www.chinacourt.org/law/detail/2018/02/id/149760.shtml>



Law Updates

II. Case Updates

Taiwanese-owned Company, Sakura sued a Suzhou company for trademark infringement and unfair competition

This case is one of the model cases released by the Supreme People's Court ("SPC") in the first volume of model cases concerning legal protection for enterprises' properties and interests.

Sakura Bath & Kitchen Products (China) Co., Ltd ("Sakura China", and known in Mandarin as "Yinghua") is a Chinese subsidiary of Taiwan Sakura Co., a well-known Taiwanese manufacturer of water heaters, extractor hoods, and other bath and kitchen appliances. The defendant established Suzhou Yinghua Technology Development Co., Ltd.; Suzhou Yinghua Zhongshan Branch; and Zhongshan Yinghua Bath & Kitchen Products Co., Ltd. (jointly "Suzhou Yinghua"), and engaged in the manufacture and sales of kitchen appliances and water heaters, and conducted other businesses similar to those of Sakura China. Suzhou Yinghua operated under the corporate name Yinghua, and used advertising terms and trademarks similar to those of Sakura China, causing confusion and misrecognition by the public.

According to Article 58 the Trademark Law of the People's Republic of China, "Where a party uses a well-known registered trademark, as an enterprise name and cause confusion to the public, such business practice would constitute unfair competition, and the infringer shall be subject to the Anti-Unfair Competition Law of the People's Republic of China."



Case Updates

Jiangsu Province Higher People's Court held that Suzhou Yinghua was fully aware of the existence of Sakura China's registered trademark of "Yinghua" and the business goodwill attached thereto; however, Suzhou Yinghua still registered its corporate name, the core identifier differentiating itself from other business entities, as Yinghua. Suzhou Yinghua's such act violated the principles of good faith and business ethics, infringes Sakura China's legal rights and interests, and thus constitutes unfair competition. The Supreme People's Court commented that this case fully embodies the judicial view on severe punishment for repeated malicious infringements, and represents great significance for the protection of intellectual property rights and good business environment.



Case Updates

III. Economic Updates

1. China plans to launch Chinese depository receipts to encourage the return of technology enterprises listed overseas to the A-share market

In the past, China imposed strict regulations over the listing on its stock market, which causes Chinese technology firms face many regulatory obstacles during their initial listings on Chinese exchange. Recently, however, the Chinese government has sought to address this issue by lifting regulatory obstacles.

Yan Qingmin, vice chairman of the China Securities Regulatory Commission, commented that China will soon launch the China Depository Receipt (“CDR”). The CDR is a type of equity certificate issued by a Chinese bank that represents a pool of foreign equity deposited into local Chinese banks. The certificates enable Chinese companies listed overseas to return to the Chinese market. Reportedly, eight companies, including Alibaba and Tencent, are the first group of enterprises selected to discuss the issuance of CDRs with the agency. However, it is still unclear whether the China Securities Regulatory Authority will allow all companies listed overseas to issue CDRs, or whether the authority will impose similar restrictions on the issuance of CDRs with those applicable to an IPO.



Economic Updates

2. China facial recognition technology firms possess a strong advantage

Facial recognition technology has been widely adopted in China. Facial recognition technology industry is expected to see rapid growth in China with the support from a plan promulgated by the State Council in 2018, which suggests that China is expected to become the world's leader in artificial intelligence research and application by 2030; and the financial support from the venture capital fund of the Chinese government for domestic start-up companies would become stronger.

Chinese technology firm, SenseTime Co. has been known for developing innovative facial recognition technology. Although it has been in operation for only 3 years, SenseTime has built relationships with more than 400 large-scale corporate partners, including Xiaomi, Huawei, and Jingdong. Moreover, the Chinese Ministry of Public Security has adopted SenseTime's facial recognition technology in security monitoring. SenseTime launched a series C financing at the end of last year and announced investments from Qualcomm and Alibaba. It is expected to raise US\$500 million, which would set a record high for AI Unicorn financing. SenseTime's valuation is reported to have already exceeded US\$2 billion. An IPO is being considered.

Face++, a facial recognition technology platform owned by a Chinese company, Megvii Technology Inc., has raised US\$460 million in a round of investment led by a government fund. Prior to the latest round of investment, Face++ was valued at RMB 10 billion (approximately US\$1.5 billion).



**Economic
Updates**

IV. IP Updates

Summary of “Suggestions on Strengthening Reform and Innovation in the Field of Intellectual Property Litigation”

The State Council Information Office (“SCIO”) of the People’s Republic of China and the General Office of the Central Committee issued “Suggestions on Strengthening Reform and Innovation in the Field of Intellectual Property Litigation” (“Suggestions”) on February 27, 2018 and asked relevant departments to implement the reforms as suggested. The main fields of reform identified by the Suggestions include improving the system of intellectual property litigation, strengthening the framework of IP-related court systems, and improving the selection of intellectual property trial teams.

The main reform objectives of improving the system of intellectual property litigation include: establishing evidence rules which conform to the characteristics of intellectual property cases, establishing a compensation system for infringement damage that embodies the value of intellectual property rights, and promoting reform of judgment methods that reflects the fundamental rules of intellectual property litigation.

For strengthening the framework of IP-related court systems, the Suggestions define three key categories of reform: establishing a robust judicial system that is designed specifically for protection of intellectual property rights, exploring the mechanism for hearing cross-regional intellectual property cases in different places, and guarantee the staffing and funding of intellectual property courts.

For improving the selection of intellectual property trial personnel, the Suggestions identify two key areas for improvement: raising standards for the training and selection of intellectual property trial personnel and strengthening the building of technical investigator teams.



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.

Bo-Sen Von / Sam Lai / Sharon Wang (PRC Counsel)
Lee and Li, Attorneys-at-Law

Hsinchu Office
7F, 201 Tun Hua N. Road
Taipei 10508, Taiwan

Taipei Office
5F, 1 Industry E. 2nd Rd
Hsinchu Science Park, 30075, Taiwan

Tel: 886-3-5799911 ext. 211/213/212

Fax: 886-3-5797880

E-mail: bosenvon@leeandli.com/samchlai@leeandli.com

sharonwang@leeandli.com