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Intellectual Property in China

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Introduction

Although patents, trade secrets, trademarks and copyrights are “intangible” by definition and as other “unperceivable assets” as data and know-how, they all lack entirely of any “physical substance” in the digital era they are probably the most valuable assets.

In terms of volume and value of intellectual property, the past two centuries were of an unprecedented growth in human history and undeniably led by the Western countries. However, recently new players particularly Asian countries, are responsible for more and more scientific research and inventions, which were once the almost exclusive domain of the Western world. In this landscape and in the past two decades, China played a pivotal role.

Unsurprisingly the pace of improvements, modifications and amendments to the Chinese legal system, followed the rising speed of China in terms of volume and range including the part pertaining to the intellectual property rights, which are crucial to economic and social development.

Considering the acquired relevance of China in nowadays hyper-connected world and its global economy, we examined the legal system of Intellectual property, the peculiarities of different IP rights, the available tools of protection, also providing some practical comments deriving from the knowledge acquired during our 15-years-long practice in the People’s Republic of China assisting foreign companies during their operations, business and investments.

Regarding the specific intellectual property laws and regulations, over the past 40 years, the system underwent a multitude of changes, one leap at the time beginning from the “Open Door” policy to the systemic and structural reforms implemented in order to enter the WTO. It is, therefore, important to understand the recent past and the present of the Chinese intellectual property legal framework.

Most recently the amendments as promulgated between March and April 2019, marked a new spring of intellectual property rights in China. In this context main pieces of legislation pertaining to intellectual property such as Anti-unfair Competition Law, Trademark Law, were further reformed piece by piece, at the same time major reform such as the Foreign Investment Law which encompasses several aspects of the foreign investment within China including protection of their

IP rights, was promulgated. The next year, the long-awaited approval of the newly drafted Patent law is expected to close the circle.

In order to provide a clear understanding of the system and first-hand insight to commercial operators venturing in China, we analysed the constantly evolving legal framework to better guide them in navigate and exploit it the most. In particular, the following pages are focused on foreign operators in China and on the specific developments of the related IP regulation, but providing also domestic applicable framework as a comparison.

This book examines key factors involving administration, exploitation and protection of different intellectual property rights in China, highlighting their scope of application, limits, practical issues, difficulties but also reform and improvements of the related system.

Finally, although there is still a clear disparity in the recognition and protection of intellectual property rights between metropolis and remote and rural areas, the possibilities are far more positive if compared to the past.

Contrary to what is perceived in the West, it seems that following many internal reforms, China is showing great adaptability, even assuming for some limited aspects a leading role worldwide in terms of intellectual property protection. In registering a sensibly positive trend if compared to intellectual property protection in the past decade, further improvements are more than plausible, innovative approach is foreseeable. We are looking forward to witnessing such changes.

We also would like to express our gratitude to our Senior Associate Mr. Filippo Sticconi for his great contribution and effort in assisting us during redaction and editing of the present text, as well as to the entire GWA team, lawyers and consultants that contributed to the revision of the same.

March 2020

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Abbreviations

CJV	Contractual Joint Venture Enterprise
CNIPA	China National Intellectual Property Administration
Copyright law	The Copyright Law of People's Republic of China
EJV	Equity Joint Venture Enterprise
FIE	Foreign Invested Enterprise
FIL	Foreign Investment Law
ISPs	Internet Service Providers
JVs	Joint Venture Enterprise(s)
Madrid Agreement	The Madrid Agreement Concerning the International Registration of Marks
NAC	National Administration of Copyright
NCL	Nice International Classification of Goods and Services
NPC	National People's Congress
NPCSC	National People's Congress Standing Committee
NSPs	Network Service Providers
Paris Convention	Paris Convention for the Protection of Industrial Property
Patent law	The Patent Law of People's Republic of China
PRC	People's Republic of China
SPC	Supreme People's Court
SPP	Supreme People's Procuratorate
The Madrid Protocol	The Madrid Agreement Protocol
Trademark Implementing Regulations	The Trademark Law of People's Republic of China Implementing Regulations

Trademark law

The Trademark Law of People's Republic
of China

WFOE

Wholly Foreign Enterprise

WIPO

World Intellectual Property Organization

WTO

World Trade Organization