



INTERNATIONAL BAR ASSOCIATION®
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IBA China Working Group



From the Co-Chairs

China appears to have brought the deadly coronavirus under control. The country where the deadly disease originated is now regarded as safe to start rebuilding the economy and live and work under the 'new normal'.

This newsletter is our first newsletter post-lockdown, our second of the year 2020 and of the decade.

Since the last newsletter, the IBA-CWG hosted a webinar on 21 May 2020 on *Pandemics and force majeure – the must have contractual elements and how to effectively rely upon them or secure relieve in manufacture and supply obligations*. This webinar was organised by the International Bar Association (IBA) China Working Group (CWG), with the support of the IBA Asia Pacific Forum and IBA International Commerce and Distribution Committee. Our speakers were:

- Christopher Blake (Hahn Loeser & Parks, Cleveland; Co-Chair, IBA International Commerce and Distribution Committee);
- Hui (Harrison) Jia (DeHeng Law Offices, Beijing);
- David Liu (Duan & Duan, Shanghai); and
- Dirk Schwenn (Schomerus & Partner, Hamburg; Senior Vice Chair, IBA International Commerce and Distribution Committee).

We discussed whether supply agreements and distribution agreements remain valid during a pandemic crisis and tips to re-negotiate with your Asian suppliers key terms. The webinar had over 700 registrants and a huge turnout from all over the world. David and I were very pleased with the webinar and are planning with our IBA-CWG members the next one very soon – please stay tuned!

Our goal, in this edition, is to remind the readers that, while China has successfully dealt with Covid-19, the effect of the virus is far-reaching not only lives of people but also economy of each country the world. However, it is now time to re-open and use our energy to re-build.

We have an exceptionally brilliant set of articles in this newsletter – informative, relevant, diverse and well-written. The IBA-CWG is very thankful to all the contributors for their hard work, time and contribution, and we believe that it is very important to recognise them. Please allow us to give you a preview of the articles. We have a dozen of articles from writers from Brazil, China, India and Indonesia.

The article *Opportunities for global service providers in China's 'new infrastructure' push* from Dentons focuses on China's efforts toward the development of the 'new infrastructure' with investments focusing on different technology segments.

Zhong Lun Law Firm wrote a very timely article on *Identifying flexible staffing employment relationships in China* analysing cases which ruled on the issue of whether an employment relationship exists between a rider and the internet platform enterprise.

Hogan Lovells' *Predicting the unpredictable: Covid-19 and its impact on the energy industry* discusses how force majeure operates in energy-related agreements.

From Chile, we have an article from Carey entitled *Covid-19: a catalyst for tech advances in the legal sector* reminding legal practitioners around the world to invest in legal technologies in order to protect legal practitioners, provide access to justice and improve legal services during the Covid-19 pandemic.

Soemadipradja & Taher in its article *Indonesia implements fast track licensing for pharmaceutical and medical device sector during Covid-19 pandemic* informs us how the Covid-19 pandemic provided business opportunities for China in the Indonesian pharmaceutical and medical device sector.

Issues relating to misrepresentation and fraud in the consumer goods sector by King & Wood Mallesons re-examines consumer rights' issues particularly relating to misrepresentation and fraud in the sale of consumer goods.

Another consumer related article is *Practical measures to combat the grey market goods under Chinese law* by Beijing Yingke Law Firm. This article gives brand owners ideas on how to prevent their goods from becoming grey market goods and protect their brands in the Chinese jurisdiction. Deacons, in its *Article SAFE's new measures on optimising administration of foreign exchange to support foreign-related businesses* discusses China's State Administration of Foreign Exchange Circular aiming to simplify the procedures for handling foreign exchange businesses and optimise foreign exchange business services.

We also have three articles relating to legal proceedings and arbitration.

Baker McKenzie FenXun, in its article *PRC courts increasingly willing to convert enforcement into bankruptcy proceedings* tells us about the Supreme People's Court of China's eight unprecedented and exemplary cases on bankruptcy proceedings, showcasing how the PRC courts have assisted insolvent enterprises through debt restructuring and composition proceedings. Fangda Partners' article entitled *China's growing acceptance towards the recognition and enforcement of foreign judgments: an exercise in reciprocity* talks about a fresh development in Chinese judicial practice of increasingly recognising foreign judgments, which is a positive sign for all those in business with Chinese companies. Another article on enforcement of judgment is Carey Olsen's *Enforcement of PRC judgments in the British Virgin Islands establishes an important precedent*, informing us that the British Virgin Islands Court has, for the first time, recognised and enforced judgments delivered by the Court of the People's Republic of China. For arbitration, we have an article from Allbright Law Offices entitled *Doing arbitration in mainland China: things you need to know* providing us with practical tips a foreign party needs to know when participating in arbitration in China.

Juris Corp, Mumbai's article *Opportunistic takeovers: revisions to India's FDI* discusses India's Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2020. This Amendment has brought about additional compliances and matters to be considered prior to investing in Indian companies. This is particularly relevant to China because it shares a land border with India. Another welcome article is Lex Advisers' *China's contribution to foreign direct investment in Nepal* letting us know about China's increase FDI in Nepal. Finally, Beijing DeHeng Law Offices wrote on a very controversial issue involving the three-time Olympic swimming champion from China in its article *The Sun Yang doping arbitration case: a commentary from the perspective of due process of administrative law*.

We hope that you will enjoy and learn from the above articles.

We also want to reiterate that in spite of the restrictions due to Covid-19, the IBA-CWG remains strong and committed to its mandate to all the members of the IBA including our CWG members. We try our very best to provide you with relevant webinars and activities to assist all members of the IBA during this extraordinary time.

Thank you and good luck to all of us!

Caroline Berube and David Liu
Co-Chairs, IBA China Working Group

From the Editor

I am happy to report that we have received overwhelming responses from our members this time. As you may see, we have 15 articles in this edition, covering various aspects of law. The quality of discussion is high and there are articles on cutting edge issues. I hope you enjoy this edition.

Again, may I express appreciation to all authors as you have spent a lot of time in preparing these outstanding articles. Congratulations! Of course, we must thank all the editorial team of IBA as they have done an excellent job.

We are moving to publishing the newsletters on a bi-monthly basis. I personally encourage you to consider submitting articles to us. An announcement will be made when we are approaching the deadline of next edition. If you are interested, please let me know your topics first.

Dominic Hui
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Articles

Issues relating to misrepresentation and fraud in the consumer goods sector

Jin Xiao, Yue Dai and Tianren Li

Whilst the emergence and rapid spread of the Covid-19 pandemic has had a significant negative impact on the market of consumer goods within the People's Republic of China (PRC), the short-term economic decline could also give rise to a strong rebound in purchasing...[read more](#).

Opportunities for global service providers in China's 'new infrastructure' push

Joey Li

During recent meetings, Chinese policymakers have been mulling over providing greater support for 'new infrastructure'. This article will first explain why 'new infrastructure' push will bring opportunities for global service providers...[read more](#).

Identifying flexible staffing employment relationships in China

David Wang, April Yan and Enya Yang

In recent years, with the transformation and development of economic structures and the continued emergence of new economic forms, employment patterns of Chinese enterprises have become even more diverse and flexible...[read more](#).

SAFE's new measures on optimising administration of foreign exchange to support foreign-related businesses

Myles Seto and Lynn Lin

On 10 April 2020, China's State Administration of Foreign Exchange (SAFE) released the Circular on Optimising Administration of Foreign Exchange to Support the Development of Foreign-related Businesses ('Circular'). Its measures came into effect that day, except for Measure 3 which will become effective on 1 June 2020...[read more](#).

Practical measures to combat the grey market goods under Chinese law

Lotus Wu

As companies establish their global supply chain and distribution channels, an increasing number of global market control issues occur to brand owners. Brand owners create different pricing policies to correspond with complex regulatory requirements and different marketing costs in different jurisdictions, so the prices of some products may vary in different countries...[read more](#).

PRC courts increasingly willing to convert enforcement into bankruptcy proceedings

Haifeng Li

In a demonstration of active participation in combating the economic fallout of Covid-19, on 31 March 2020, the Supreme People's Court of China published eight exemplary cases of bankruptcy proceedings. The cases showcase how PRC courts have contributed to the survival or revival of insolvent enterprises by administering or supervising debt restructuring...[read more](#).

Enforcement of PRC judgments in the British Virgin Islands establishes an important precedent

Jeremy Lightfoot and Yang Yang

The British Virgin Islands (BVI) Court has for the first time recognised and enforced judgments delivered by the Court of the People's Republic of China (PRC). It is a significant development in light of the established practice of Chinese individuals and entities using BVI corporate entities as asset holding vehicles...[read more](#).

Predicting the unpredictable: Covid-19 and its impact on the energy industry

James Wan, Andrew McGinty, Zoe Dong and Amy Wei

On 30 January 2020, the World Health Organization declared Covid-19 to be a public health emergency of international concern. On the same day, the China Council for the Promotion of International Trade announced that it would issue 'force majeure certificates' to affected Chinese companies to help minimise economic losses arising from the outbreak...[read more](#).

China's growing acceptance towards the recognition and enforcement of foreign judgments: an exercise in reciprocity

Melody Wang and Brian Lin

As the Covid-19 pandemic continues to intensify and affect businesses around the world, we are likely to see an increase in the amount of disputes initiated by foreign companies against Chinese entities...[read more](#).

Covid-19: a catalyst for tech advances in the legal sector

Diego Peralta, Ignacio Tornero and Patricio Laporta

Much has been said about the need to accelerate the development, transformation, implementation and availability available of new technologies within the legal sector. As Dr Richard Susskind has insisted, there is an urgent need for lawyers and countries to increase the innovation in the legal profession, in order to solve problems such as the access to justice...[read more](#).

Doing arbitration in mainland China: things you need to know

Lyndon Lin

China's development has presented tremendous opportunities to foreign investors in recent decades. The Belt and Road Initiative attracts entrepreneurs from around the world to participate in making commercial deals and cross-border transactions with Chinese partners...[read more](#).

Indonesia implements fast track licensing for pharmaceutical and medical device sector during Covid-19 pandemic

Rahmat Soemadipradja and Aurora Aldwita Mariel

With the world facing uncertainty caused by the Covid-19 pandemic, there has been a significant spike in demand for pharmaceutical products and medical devices as countries rush to contain and mitigate the effects of the virus...[read more](#).

Opportunistic takeovers: revisions to India's FDI

Avikshit Moral and Aditi Joshi

The outbreak of the Covid-19 pandemic has affected businesses and economies the world over. This has adversely effected the valuation of companies resulting in opportunistic takeovers/acquisitions...[read more](#).

China's contribution to foreign direct investment in Nepal

Mamata Paudel

It goes without saying that for an underdeveloped country such as Nepal, foreign direct investment plays a predominant role as a catalyst in economic development, modernisation, income growth and employment generation...[read more](#).

The Sun Yang doping arbitration case: a commentary from the perspective of due process of administrative law

Peng Xianwei and Wu Yanan

On 28 February 2020, the Court of Arbitration for Sport issued arbitration award in the Sun Yang doping (performance-enhancing drugs) case, which rapidly triggered a series of extensive discussions by Chinese experts and scholars from a variety of perspectives...[read more](#).

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