



Newsletter

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September 30, 2024

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Update

The Interpretation of the Tort Liability Section of the Civil Code Came into Effect

On September 26, 2024, the Supreme People’s Court, in response to new situations and issues encountered in judicial practice, released the “*Interpretation (I) of the Supreme People’s Court on the Application of the Tort Liability Section of the Civil Code*” (the “Interpretation”), which came into effect on September 27, 2024.

The interpretation clarifies the tort liability for illegally removing a ward from guardianship, specifies the responsibilities of guardians, and provides substantive and procedural rules for liability in cases of incitement, assistance, and the responsibilities of educational institutions. It also defines the scope of liability for employers and the form of tort liability in labor dispatch relationships, clarifies the relevant

rules for the application of motor vehicle traffic accident liability, and specifies that damages caused to a product itself by a defective product fall under product liability compensation. Furthermore, it stipulates that the exemption clause does not apply when dangerous animals, such as prohibited breeds of fierce dogs, cause harm. The interpretation also clarifies the substantive and procedural rules for liability arising from objects thrown or falling from high places.

Decision of the Standing Committee of the National People's Congress on Amending the PRC Statistics Law

On September 13, 2024, the 11th Session of the Standing Committee of the 14th National People's Congress has decided to amend the PRC Statistics Law. The focus of this amendment to the Statistics Law is on statistical supervision, preventing and punishing statistical falsification, and statistical information sharing. The law has been supplemented and improved through the addition of three new articles and the amendment of twenty-one articles.

Shanghai Issues 50 Proposals to Accelerate High-Level Opening and High-Quality Development in Lingang Financial Sector

On September 6, 2024, the website of the Shanghai Local Financial Supervision Administration published the *Notice on Issuing the Implementation Plan for Further Accelerating High-Level Opening and High-Quality Development in the Financial Sector of the China (Shanghai) Pilot Free Trade Zone Lingang New Area* (the "Implementation Plan").

The Implementation Plan includes 50 measures across six areas, proposing increased financial system innovation, the creation of a financial risk stress testing zone, and the steady and prudent promotion of easing restrictions on non-resident acquisition loans. It also aims to advance the establishment of special purpose vehicles (SPVs) by financial leasing companies in the Lingang New Area and allow them to share external debt quotas, conduct pilot programs for cross-border digital identity certification and electronic recognition, and support qualified enterprises in the area to accelerate the construction of a national cross-border digital trust service platform.

The 2024 Edition of China's Negative List for Foreign Investment Access Removes All Access Restrictions to Manufacturing Sector

On September 8, 2024, the National Development and Reform Commission (NDRC) and the Ministry of Commerce issued the No. 23 Order, releasing the full text of the *Special Administrative Measures for Foreign Investment Access (Negative List) (2024 Edition)*, which will take effect on November 1, 2024.

The new Negative List for foreign investment access has been reduced from 31 measures to 29. Two items were removed: "Publication printing must be controlled by Chinese parties" and "Prohibition of investment in the application of traditional Chinese medicine processing techniques such as steaming, frying, roasting, calcining, and the production of proprietary Chinese medicine products with confidential formulas." The manufacturing sector has now achieved "zero restrictions" on foreign investment access.

Regarding the expansion of service sector openness, an NDRC official stated that innovative approaches will be developed to further relax foreign investment access in the service sector, while continuing to optimize foreign investment promotion policies. The revision of the encouraged foreign investment industries catalog is under study, with plans to add more service sector entries.

Three Authorities to Expand Pilot Programs on Biotech and Foreign-owned Hospital

On September 7, 2024, the website of the Ministry of Commerce released the *Circular of the Ministry of Commerce, the National Health Commission and the National Medical Products Administration on Expanding Pilot Programs in Healthcare* (the “Circular”).

The Circular clarifies that in the biotechnology field, foreign-invested enterprises are allowed to engage in the development and application of human stem cell, gene diagnosis, and treatment technologies in the China (Beijing) Pilot Free Trade Zone, the China (Shanghai) Pilot Free Trade Zone, the China (Guangdong) Pilot Free Trade Zone, and the Hainan Free Trade Port. All products that are registered, marketed, and approved for production can be used nationwide. Regarding wholly foreign-owned hospitals, it is proposed to allow the establishment of such hospitals in Beijing, Tianjin, Shanghai, Nanjing, Suzhou, Fuzhou, Guangzhou, Shenzhen, and across the entire island of Hainan.

China Plans to Issue the Standard Text of the Patent Agency Entrustment Contract

On September 24, 2024, the website of the China National Intellectual Property Administration (CNIPA) announced the *Notice on Soliciting Public Opinions on the Standard Text of the Patent Agency Entrustment Contract (Draft for Comments)*, with the feedback deadline set for October 11.

The Standard Text contains 12 clauses, including a preface, entrusted matters, rights and obligations of Party A, rights and obligations of Party B, confidentiality obligations, work deadlines, fees, mutual understandings of both parties, liability for breach of contract, other agreed matters, dispute resolution methods, the contract’s term and termination, as well as the contract’s effectiveness, changes, and termination. Additionally, CNIPA has released a supplementary guide for signing the model contract, which explains the purpose and requirements of the model contract, the significance of setting relevant clauses, and key points to be noted when using the clauses.

Shanghai Standing Committee of the Municipal People’s Congress Amends Regulations on Optimizing Business Environment in Shanghai

On September 29, the Shanghai Municipal People’s Congress website published the *Decision of the Standing Committee of the Shanghai Municipal People’s Congress on Amending the Regulations on Optimizing Business Environment in Shanghai* (the “Decision”), which will take effect on November 1.

The Decision consists of twenty-one articles, further refining requirements for fair competition review, improving the labor dispute resolution mechanism, strengthening public services to promote international trade, regulating administrative inspection behaviors, and clarifying that local laws, regulations, normative documents, and specific policy measures involving the economic activities of enterprises and other business entities should undergo fair competition review. It also promotes the reform of consolidating

annual corporate reports, strengthens the formulation and clearance of policies related to enterprises, improves the labor dispute resolution mechanism, and advances high-level reforms to align with the World Bank's evaluation system, among other initiatives.

State Council Executive Meeting Decides to Submit the Law against Unfair Competition (Draft Revisions) to the Top Legislature for Deliberation

A State Council executive meeting was held on September 29, 2024. The meeting made arrangements to accelerate the implementation of 102 key projects listed in the country's 14th Five-Year Plan (2021-2025). It also discussed work to promote the construction of an inclusive child care services system, heard a report on progress in building up China's strength in intellectual property rights (IPRs), and discussed the Law on Science and Technology Popularization (Draft Revisions), and the Law against Unfair Competition (Draft Revisions).

The meeting noted that protection of IPRs is protection of innovation, stressing that efforts should be made to accelerate the implementation of major tasks in building up China's strength in IPRs, strengthen the role of IPRs in supporting the breakthrough of key and core technologies, carry out patent conversion and application actions, implement the project for the construction of IPR protection systems, and provide strong support for self-reliance in science and technology and high-quality development. The meeting discussed and approved the Law on Science and Technology Popularization (Draft Revisions), and the Law against Unfair Competition (Draft Revisions), which will be submitted to the Standing Committee of the National People's Congress for deliberation.

Article(s)

A Legal Comparison of Mergers and Acquisitions in Renewable Energy and Traditional Energy

by Rachel Chen

As global emphasis on sustainable development intensifies, mergers and acquisitions (M&A) between renewable energy (such as wind and solar) and traditional energy (such as oil and gas) are increasingly prevalent. In response to climate change challenges, governments worldwide have implemented policies that support renewable energy development while tightening regulations on traditional energy sectors. This article compares the legal frameworks, requirements, and challenges inherent in the M&A processes of these two sectors, highlighting their impact on market dynamics.

I. Legal Framework Comparison

(1) Traditional Energy

The traditional energy sector is subject to stringent legal regulations, primarily encompassing environmental protection laws, resource development laws, and antitrust laws. These laws aim to prevent environmental pollution, ensure the rational use of resources, and protect public interests. For instance, many countries mandate an Environmental Impact Assessment (EIA) before the exploration and development of traditional energy resources. A notable example is the U.S. Gulf of Mexico oil drilling

projects, which require extensive EIAs to assess potential environmental impacts before any drilling can commence. Additionally, strict enforcement of antitrust laws serves to maintain market competition and prevent monopolies. The merger of Exxon and Mobil in the late 1990s, for instance, faced scrutiny from regulators to ensure it would not create a monopoly in the oil market.

(2) Renewable Energy

In contrast, the legal policies governing renewable energy tend to promote development. Governments typically support renewable projects through subsidies, tax incentives, and green financing. For example, the U.S. government offers the Investment Tax Credit (ITC), which allows investors to deduct a significant percentage of their investment in solar energy systems from their federal taxes. Additionally, many European countries have established Renewable Energy Standards (RES) to promote the use of renewables. Germany's feed-in tariff system has successfully driven investment in solar and wind energy by guaranteeing fixed payments for renewable energy producers. However, the legal landscape for renewables is evolving, particularly with the implementation of carbon emission policies and the effects of international climate agreements like the Paris Agreement, which may have significant implications for project financing structures and operational models.

II. Legal Requirements in the M&A Process

(1) Due Diligence

In M&A transactions involving traditional energy, due diligence usually focuses on the legality of resources, environmental compliance, and market entry barriers. Laws such as the Clean Water Act and the National Environmental Policy Act require companies to carefully evaluate environmental impacts and potential legal liabilities prior to a merger. A relevant case is the proposed merger between two coal companies, which faced significant scrutiny under these laws due to potential water contamination risks. In renewable energy transactions, due diligence must assess technology maturity, policy stability, and the compliance of partners. For instance, a solar project acquisition might require an assessment of the technology's efficiency and the stability of government incentives, such as those provided by the ITC.

(2) Compliance Review

Compliance review in traditional energy M&A is more complex, especially regarding antitrust and environmental assessments. Laws like the Antitrust Act scrutinize large merger transactions to ensure they do not reduce market competition. For example, the merger between Duke Energy and Progress Energy in 2012 required extensive regulatory approval to address potential market dominance concerns in the Southeast U.S. Conversely, renewable energy M&A must evaluate risks associated with policy changes, particularly concerning subsidies and market access. For example, the sudden reduction of solar subsidies in some states can impact the valuation of solar companies, necessitating that acquirers pay close attention to the sustainability of these policies.

III. Risk Management and Legal Challenges

(1) Risks in Traditional Energy M&A

Market fluctuations, legal disputes (such as environmental lawsuits), and political risks are common challenges in traditional energy M&A. Given that the traditional energy market is significantly influenced

by international oil price volatility, companies must assess the potential impact of market dynamics on M&A transactions. For instance, the 2020 drop in oil prices due to the COVID-19 pandemic led to a wave of bankruptcies and M&A activities in the oil sector. Moreover, the increasing number of lawsuits from environmental organizations concerning traditional energy projects means that companies must adequately prepare to mitigate potential legal liabilities. The legal battles faced by companies like BP following the Deepwater Horizon oil spill exemplify the risks associated with environmental compliance.

(2) Risks in Renewable Energy M&A

Renewable energy companies face notable legal risks, including policy uncertainty (such as changes in subsidy policies), rapid technological advancements, and fluctuations in market acceptance. Frequent policy adjustments, like those seen in the U.K. regarding solar feed-in tariffs, may create uncertainties regarding investment returns, making companies more cautious in their M&A decision-making. Additionally, the swift pace of technological advancements can lead to concerns about obsolescence, which affects valuations in M&A transactions.

IV. Conclusion

There are significant differences in the legal challenges and frameworks faced in M&A processes between renewable and traditional energy sectors. Traditional energy must navigate more complex legal regulations, while renewable energy benefits from policy incentives but also contends with a rapidly changing market environment. As the renewable energy market continues to evolve, relevant legal policies will further transform, and companies should closely monitor these developments to better address challenges and seize opportunities.

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