

Mind over money

Better protection of IPR in China translates into more VC funding

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Venture capital investment in China is on the rise. The increase is due to both the country's hunger to develop new technologies and to improvements in its intellectual property rights (IPR) enforcement mechanisms. Over the last two decades, China has created an infrastructure to protect IPR, which enhances its own development while helping the country meet its international commitments.

In the West, VC investment in emerging technologies is often driven by the value of IPR. However, many Western investors are concerned that IP and intangible assets are not sufficiently protected in China. That perception has deterred some Western VC firms from investing in riskier projects in China.

External pressures and the country's own economic objectives have brought China's IPR regime closer to that of developed nations. Since joining the World Trade Organization (WTO) in 2001, China has amended its IPR laws and regulations in compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement specifies strong minimum standards for the enforcement of laws protecting copyrights, patents and trade secrets.

China's adherence to these regulations better align its IPR infrastructure with that of other WTO countries. More IPR infringement cases are now brought before the courts (many of which now have specialised IP divisions) or handled through China's administrative procedures, and IPR owners can recover damages from infringers.

This evolution in the protection of IPR has reassured VC investors wishing to invest in China's technologies. For VC investors, intellectual property owned

by or licensed to a high-tech target, like a biotech or pharmaceutical venture, could be the most important asset. Moreover, the IP of an investment target can enhance and safeguard revenue for the investor through the protection of patents and trade secrets, licensing agreements and joint-venture partnerships.

Welcome mat

Beijing is not only encouraging the increase in VC funding through better protection of IPR, but is also actively soliciting investment through preferential policies. In a speech on November 3, 2009, Premier Wen Jiabao said it is critical to choose emerging industries for strategic investment using three criteria: potential investment target sectors should be stable and promise market demand; they should provide economic and technical benefits; and they should offer an opportunity for developmental synergies. Wen identified seven such industries in China: new energy, new material, life science, biotechnology, information networking, ocean and space development, and geological prospecting technologies. IPR is very important in each of these industries.

In response to Wen's speech, the NDRC and the Ministry of Finance jointly announced a development plan for emerging industries that will use the state government to leverage the funds of local governments and non-governmental funds. All three entities may establish a joint VC fund to be managed by a professional management company in which the state fund shall not have more than 20 percent and the non-governmental funds shall not have less than 60 percent.

Wen's speech and the NDRC's plan have attracted much interest from non-



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Chinese and domestic funds. Some funds outside mainland China (including those from Hong Kong, Taiwan and Macao) are actively planning to establish joint venture funds with local governments. Although structuring a national-level fund brings more difficulties than structuring multi-regional funds, efforts are nevertheless progressing.

As a result of these measures, VC funding in China has been increasing rapidly. In 2009, VC funds made nearly 300 renminbi-denominated investments in China, valued at €1.05 billion. Following interim measures for establishing investment funds in Beijing that went into effect January 1, 2010, global private equity (PE) giant Carlyle Group said it will join with China's largest non-state-owned conglomerate, Fosun Group, to launch a €74.9 million yuan-denominated private equity fund.

According to Zero2IPO, 13 of 24 VC/PE investments in China during January 2010 were in the emerging areas of infor-

mation technology, biotech/health and clean technology, areas in which IPR protection is a significant concern. In the IT sector, e-commerce was the hottest. For example, 360buy.com, a B2C website, received €56.2 million as the largest investment deal in January, with the total investment by Tiger Fund expected to double by year-end. It has become the largest financing deal in China's internet sector since the global financial crisis began.

Venture capitalists want to maximise returns and minimise risks. When performing due diligence, they include an analysis of the technology, assessment of market and financial risks, as well as an evaluation of the IPR of the target. The economic value of any IP must be carefully weighed, and protection of the IP assets for any target in China is essential. Any measures the Chinese government can take to ensure that precious IPR is protected will go far in seeing VC investments continue to rise. ■

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