



# IP Protection in China's Med Tech Industry

Georgia Chiu

Delab Consulting Limited

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## Georgia Chiu

Georgia was admitted as a solicitor of the High Court of Hong Kong in 2005. She was based at Hogan Lovell's Shanghai office since then until 2017, when she transitioned to establish her own practice with Delab Consulting. She has also passed the examination to practice the mainland law in Greater Bay Area as a qualified China lawyer.

Georgia specializes in all areas of IP, both contentious and non-contentious, with a particular focus on litigation. She excels in enforcing clients' different types of IP rights against infringers and managing administrative, civil and criminal actions in China. Her extensive experience also includes a wide range of IP counseling services, such as patents, trademarks, designs, and technology advisory work. Georgia has a proven track record in handling commercial transactions, technology transfers, licensing, trade secret protection, and employment-invention remuneration issues. She has successfully advised and represented clients across various industries, including pharmaceuticals, medical devices, fashion, educational products, consumer electronics, power and automation technologies.

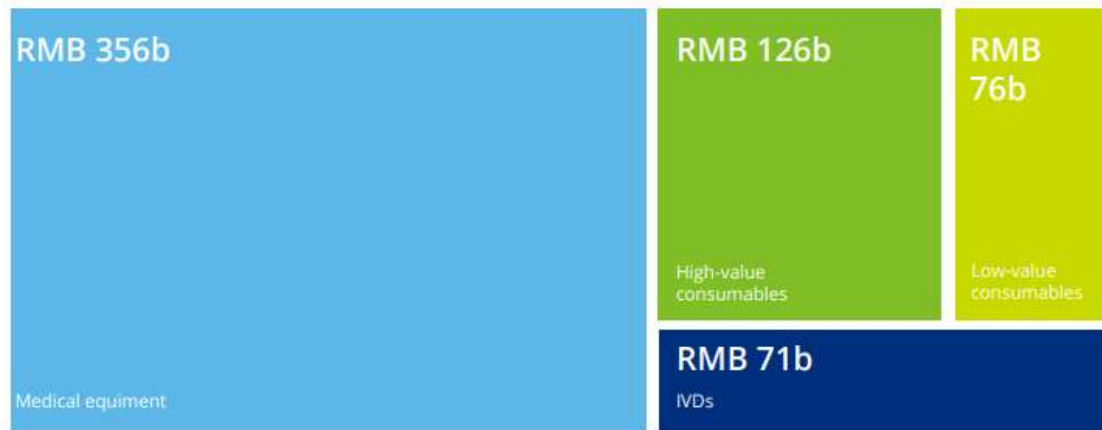
Georgia is a China Appointed Attesting Officer. She speaks English, Mandarin, Cantonese and Shanghainese.



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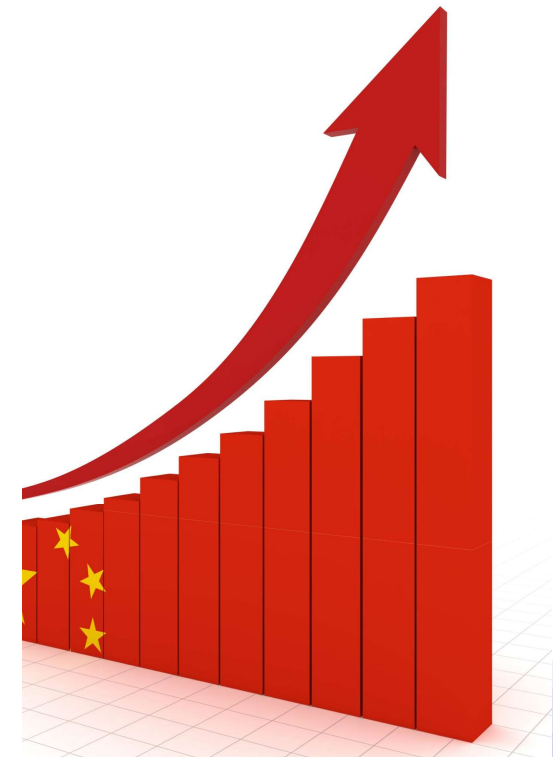
## (1) Introduction – Opportunities in China's MedTech Sector



- **Market size of medical devices in China, 2019 (RMB billions)**

Source: Deloitte

- In 2023, China's medical equipment market totaled 1.27 trillion RMB (**179 billion US**). The figure was announced by the China Association of Medical Equipment at the 2024 China Medical Equipment Conference. China's medical equipment market reaches 1.27 trillion yuan ([www.gov.cn](http://www.gov.cn))



## **(1) Introduction – Opportunities in China's MedTech Sector**

New policies open opportunities for foreign med-tech companies:

- On 5 September 2024, 5 government agencies including NHC, NMPA and the State Taxation Administration the Notice on the Zero-Tariff Policy for Medicines and Medical Devices in the Hainan Free Trade Port (关于海南自由贸易港药品、医疗器械“零关税”政策的通知), a new policy exempting import tariffs and value-added tax (VAT) on drugs and medical devices within the Boao Lecheng International Medical Tourism Pilot Zone in Hainan Province.

- On 7 September 2024, the Ministry of Commerce, the NHC and the NMPA jointly released the Notice on Carrying Out Pilot Programs to Expand the Opening-up in the Healthcare Sector (关于在医疗领域开展扩大开放试点工作的通知):

(1) foreign-invested companies are permitted to engage in the development and application of human stem cells, gene diagnostic and therapy technologies for product registration and manufacturing in four pilot free trade zones (Beijing, Shanghai, Guangdong and Hainan); and

(2) wholly foreign-owned hospitals are allowed in 9 cities including Beijing, Shanghai and Guangzhou etc.

- On 4 November 2024, the NMPA released the draft “Announcement on Further Clarifying Matters Related to the Domestic Production of Imported Medical Devices in China” (Draft for comments )

## **(2) Why IP is Important**

- IPs are valuable assets / patents / trade secrets etc
- Providing a competitive edge / revenue generation
- Attracting investments / M&A
- Safeguarding Innovations / offensive / defensive
- Facilitating collaboration / Licensing
- China considerations



### **(3) Adopting robust IP Management practices**

- IP ownership

- Employment issues – confidentiality agreement;  
assignment of IP; non-compete provision;  
employee-inventor remunerations

- R&D – innovation committee

- Contractual measures / Physical measures

- IP portfolio management

- Employee IP training

## **(4) Employee-inventor remuneration**

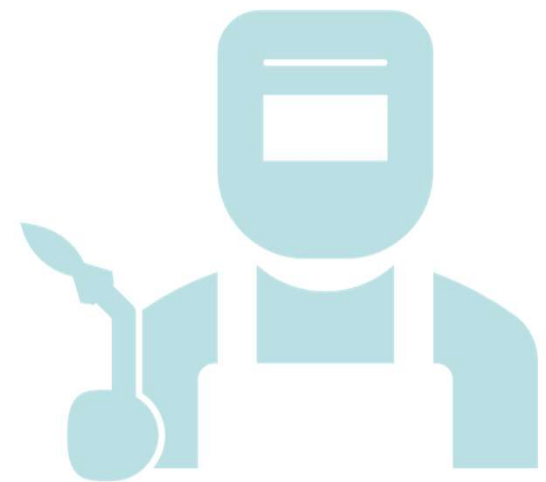
(1) A company that obtains a patent grant must provide “reward” to the employee who created it:

- in the absence of an agreement or company policy: RMB4000 per invention; and RMB1500 per utility model or design.

(2) When the patent is exploited, the company is required to give “remuneration” to the employee-inventor that reflects the economic benefits derived:

- in the absence of an agreement or company policy, the relevant provisions in the Law on Promoting the Transformation of Scientific and Technological Achievements shall apply:

- For transfer or licensing, the remuneration must not be less than 50% of the net revenue.
- For implementation and when the patented product is successfully marketed, the remuneration must not be less than 5% of the sales revenue for a period of 3-5 years.





## **(5) Types of IP Protection: Patents, Trade Secrets, Copyrights and Trademarks**

### **Patents**

**Patents protect inventions and innovations by granting exclusive rights to the patent owner for a limited time.**

### **Trade Secrets**

**Trade secrets safeguard proprietary information/know how that provide a competitive advantage to businesses.**

### **Copyrights**

**Copyrights protect literary works (user manual) and software etc, do not require registration.**

### **Trademarks**

**Trademarks protect distinctive signs and words etc that identify and distinguish goods/services from those of others.**



## (5) Types of IP Protection - Patent

### - Three types of patents:

1. Invention patents: Protects new technical solution proposed for a product, a process or the improvement; 20 years from filing date
2. Utility models: Protects new technical solutions related to a product's shape or structure, or their combination; 10 years from filing date
3. Designs: Protects new designs of the shape, the pattern, or their combination, or combination of the colour with shape or pattern, which is rich in an aesthetic appeal and is fit for industrial application; 15 years from filing date

### - Requirements for a patent

1. must be patentable subject
2. must be **new**/non-obvious/useful



## (5) Types of IP Protection - Trade Secrets

### **- What Are Trade Secrets?**

Trade secrets are confidential business/technical information that companies use to gain a competitive advantage in the market.

### **- Methods of protection**

- No registration required
- Company must implement measures to safeguard the confidentiality of their trade secrets
- Not advisable for products that can be reverse engineered



## **(6) Case Study**

### **Supreme Court case no. 1590 (2023) - Geely automobile Co v. WM Motor**

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- In 2016, 30 employees left Geely to join WM Motor.
- By 2018, Geely discovered that WM Motor had submitted 12 patents involving the inventors from these former employees.
- Geely claimed that the patents utilized the vehicle chassis application technology, and the technical details from 12 sets of chassis component drawings and digital models, which are trade secrets of Geely.
- First instance court supported Geely's claim, awarding damages of 7 millions RMB, both parties appealed the decision.
- Supreme Court ruled in favour of Geely, imposing punitive damages of 640 million RMB (twice WM's profit) on WM Motor.





# (7) Protecting Algorithms and Code

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## Copyright Protections

Copyright protections are essential for safeguarding original algorithms and source code, ensuring that developers retain their rights.

## Trade Secret Protections

Trade secret protections help maintain the confidentiality of proprietary algorithms, providing an additional layer of security for developers.

## Patent Protections

- **On 31 December 2024, CNIPA issued the Guidelines for Patent Applications for Artificial Intelligence-Related Inventions (Trial Implementation)**



## (8) Freedom to operate (FTO)

- *Importance of FTO in China*
  - Increase in patent filings and different types of patents (inventions/utility models/designs)
  - Support R&D strategy
  - Reduce infringement risks
- *Timing for conducting FTO*
  - Before R&D
  - Before product launching
- *Best Practices*
  - Engage local expertise/Chinese resources
  - Collaboration between R&D and legal team



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