

China Increases Standards of Reward for Transformation of Scientific and Technological Achievements

The newly revised *Law on Promoting the Transformation of Scientific and Technological Achievements of PRC* (“**Law**”) was adopted by Standing Committee of the National People’s Congress on August 29, 2015. The Law will become effective on October 1, 2015. It is worth mentioning that the Law respects any agreement on rewarding researchers who make important contributions to the completion and transformation of scientific and technological achievements and further provides default reward standards which are applicable in the event of no prior mutually agreed reward standards (however, they are the minimum standards applicable to state-owned R&D institutions and universities). Details are as below:

Items	Law	Old law
Reward Standards	1. Transfer / License: no less than 50% of the net revenue of transfer or license; 2. Investment: no less than 50% of the shares or capital contribution invested by scientific and technological achievements; 3. Self-implementation or implementation by cooperation with others: no less than 5% of operating profits for the	1. Transfer: no less than 20% of the net revenue; 2. Enterprise limited by shares: certain number of shares or certain percentage of capital contribution as provided by statutes; 3. Self-implementation or implementation by cooperation with others: no less than 5% of newly-added retained profits for the

科技成果转化法提高奖励和报酬标准

2015年8月29日，全国人大常委会通过了新修订的《中华人民共和国促进科技成果转化法》（“《科技成果转化法》”）。《科技成果转化法》将于2015年10月1日起施行。值得一提的是，《科技成果转化法》在对完成、转化职务科技成果作出重要贡献的人员给予奖励和报酬的问题上，采用约定优先原则；并进一步明确了在未约定的情况下授奖的默认标准（国有研究开发机构、高等院校的规定或与科研人员的约定不得低于此标准）。具体体现为：

事项	新法	旧法
授奖标准	1. 转让、许可他人实施：不低于转让或许可净收入的50%； 2. 作价投资：不低于在投资中形成的股份或出资比例50%； 3. 自行或与他人合作实施：不低于成功投产后连续3至5年营业利润的5%。	1. 转让实施：不低于转让净收入的20%； 2. 股份制企业：按国家规定折算的股份或出资比例； 3. 自行或与他人合作实施：不低于成功投产后连续3至5年新增留利的5%。

因此，科技成果完成单位应充分利用新的《科技成果转化法》下的约定优先原则，通过规章制度或与科研人员的约定明确授奖标准，以避免今后在产生相关纠纷时，因无规定或约定而不得不遵循新的《科技成果转化法》的授奖标准。

	consecutive 3 to 5 years upon successful production.	consecutive 3 to 5 years upon successful production.	<p>我们注意到，全国人大于2015年3月2日发布的《中华人民共和国促进科技成果转化法修正案（草案）》规定，对科研人员的授奖标准适用于依照《中华人民共和国专利法》及其实施细则对取得专利权的职务发明创造的发明人和设计人给予的报酬，然而此条并未最终写入《科技成果转化法》。现行中国法</p> <p>下对职务发明和职务科技成果有不同的定义，虽然二者对“职务”的解释基本一致，均指“为执行本单位的任务或主要利用本单位的物质技术条件所完成的（发明创造或科技成果）”；但对“发明创造”和“科技成果”的解释却完全不同，前者是指发明、实用新型和外观设计，而后者是指通过科学研究与技术开发所产生的具有实用价值的成果。但在实践中两者如何进行区分或适用仍有待观察。</p>
<p>Therefore, it is advisable for R&D institutions, universities and enterprises to confirm their own reward standards by formulating internal rules and policies or reaching written agreements with their researchers with an aim to avoid a situation that they may have to follow the abovementioned default standards due to no prior policies or agreements.</p> <p>We noticed that the draft of Law announced by the National People’s Congress on March 2, 2015 ever provided that the reward standards shall apply to the rewards given to the inventors and designers of patented work-related inventions under the <i>Patent Law of PRC</i> and its implementation rules; however, such contents were removed finally. The “work-related invention” and “work-related scientific and technological achievement” have different definitions under current Chinese laws but the line between the two concepts is relatively vague. It remains to be seen how to differentiate between them and apply the different reward standards in practice.</p>			