

Newsletter

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Baker McKenzie releases 2018 Healthcare Sector Forecast

Baker McKenzie is pleased to announce the release of our 2018 Healthcare Sector Forecast ("**Healthcare Forecast**") on 8 January 2018. The Healthcare Forecast is the latest in a series of industry-focused white papers following the launch of our [2018 Global Transactions Forecast](#).

The Healthcare Forecast predicts a rebound in healthcare M&A deal activity in 2018, following a slowdown in 2017 as a result of uncertainty over Brexit, the US presidential election, and the US tax reform signed on 22 December 2017. Activities that are predicted to accelerate include pharmaceutical companies shedding non-core assets while pursuing smaller bolt-on acquisitions, as well as licensing deals to gain access to the next wave of game-changing treatments in areas such as immuno-oncology, cardiovascular disease, and diabetes.

The Healthcare Forecast also makes predictions of healthcare M&A and IPOs across various jurisdictions in 2018.

A copy of the Healthcare Forecast may be downloaded [here](#).

CPTPP negotiations concluded, controversial intellectual property provisions remain suspended

Following public statements made by U.S. President Donald Trump that the U.S. will withdraw from the Trans-Pacific Partnership ("**TPP**"), the eleven remaining signatory states of the TPP (comprising Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) ("**TPP 11**") nevertheless proceeded to negotiate a new trade agreement which incorporated many of the original articles of the TPP. This new trade agreement, known as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership ("**CPTPP**"), was finalized on 23 January 2018.

On 11 November 2017, an issued Ministerial Statement confirmed, *inter alia*, that the "core elements" of the CPTPP have been agreed upon. It also confirmed that a list of twenty original TPP Articles, as shown in Annex II of the Ministerial Statement, will be suspended. This has since grown to a list of twenty two as of 23 January 2018. Notably, twelve out of twenty two of these Articles, as listed below, relate to intellectual property rights:

- National Treatment - Last two sentences of Art 18.8 Footnote 4
- Patentable Subject Matter - Arts 18.37.2 and 18.37.4
- Patent Term Adjustment for Unreasonable Granting Authority Delays - Art 18.46
- Patent Term Adjustment for Unreasonable Curtailment – Art 18.48



- Protection of Undisclosed Test or Other Data- Art 18.50
- Biologics - Art 18.51
- Term of Protection for Copyright and Related Rights - Art 18.63
- Technological Protection Measures - Art 18.68
- Rights Management Information - Art 18.69
- Protection of Encrypted Program-Carrying Satellite and Cable Signals - Art 18.79
- Legal Remedies and Safe Harbours - Art 18.82 and Annexes 18-E and 18-F
- Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices - Annex 26A - Article 3 on Procedural Fairness

(collectively, the "**IP Articles**")

The finalization of the CPTPP with the IP Articles suspended is a welcome development, and a step in the right direction. The IP Articles were among the most heavily negotiated provisions in the TPP, and were viewed as conferring overly-broad protections to rights holders against the interests of developing countries. For example, the IP Articles which related to patentable subject matter, patent term adjustments, and the protection of clinical test data would, if passed, have had the effect of significantly raising healthcare costs in certain signatory countries.

That said, the suspension of the IP Articles does not equate to their complete removal, and signatory countries may nevertheless continue to adopt and implement them at a later time. Furthermore, even though CPTPP negotiations have concluded and signatory countries are currently working towards signature by early March 2018, the full text of the CPTPP has not been made public, and the true impact of the CPTPP on healthcare remains to be seen.

Until then, healthcare businesses whose products and services rely strongly on patent protection and clinical test data would be well-advised to monitor CPTPP developments closely.

The Ministerial Statement released on 11 November 2017 may be found [here](#).

An official government press release on the conclusion of CPTPP negotiations on 23 January 2018 may be found [here](#). More information may also be found in a news report [here](#).

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