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ALERT

China Life Sciences

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China FDA's Pharmaceutical Regulations Ready for Public Comments

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The China Food and Drug Administration (CFDA) published its proposed amendment of the Drug Administration Law (DAL) and the Drug Registration Rules (DRR) for public comments. This Alert summarizes the key changes.

DAL Amendment

The proposed DAL amendment is moderate and does not entail structural changes. It adds six new articles, revises nine articles, and deletes two existing articles. The changes are consistent with the following principles previously announced in the central government's policy.

1. The Marketing Authorization Holder (MAH) system will be fully implemented nationwide. Drug approvals will be issued to drug manufacturers and R&D organizations. MAHs will be responsible for the liabilities related to pre-clinical research, clinical studies, manufacturing, distribution and adverse events reporting. Foreign MAHs will need to appoint a domestic agent, who can perform the same responsibilities as domestic MAHs and be jointly liable with the foreign MAHs.

2. GMP and GSP compliance will not be verified through a separate certification process, but will be enforced through periodic and for-cause inspections.

3. Clinical trial authorizations (CTA) will be deemed issued if no rejection or deficiency notice was issued within 60 days from the date of acceptance. Clinical study sites will be qualified by record-filing; no certification by the CFDA and the National Health and Family Planning Commission will be required.

4. Active pharmaceutical ingredients and drug excipients will not go through a separate approval process. They will be reviewed and approved as part of the new drug authorization (NDA) process.

It is worth noting that the CFDA plans to impose personal liabilities on individuals who breach the various compliance obligations. For example, executives and responsible staff of companies that forged clinical study data will be debarred for 10 years. Individuals who are found guilty of drug safety issues will not be permitted to engage in drug R&D, manufacturing, distribution, import and export. Last but not least, executives and responsible staff of MAHs, manufacturers, distributors and healthcare institutions will be liable for fines ranging from 30-100% of their annual income if their employers violate the law deliberately or the act of non-compliance causes highly negative impact.

DRR Amendment

The CFDA announced an amendment of the DRR in August 2016 (See our Alert dated August 2, 2016). The 2017 amendment is different from the 2016 amendment in the following key areas.

1. The 2017 amendment explicitly acknowledges the admissibility of foreign clinical study data in new drug applications. Also, foreign applicants can start multi-center studies in China from Phase 1 (except if the study drug is a prophylactic biologic). Mandatory pre-CTA submission consultation meetings with the Center for Drug

Evaluation (CDE), annual progress updates by sponsors and clinical study inspections are risk-management tools for the CFDA to closely monitor clinical studies.

2. The 2017 amendment reintroduced the statutory time limits for reviews and approvals. The proposed time limits are substantially reduced from the existing statutory time limits. For example, the review timeline for CTA will be reduced from 90 working days to 60 working days. The review timeline for NDA will be reduced from 150 working days to 120 working days.

3. The 2017 amendment eliminated the new drug monitoring period for domestically manufactured new drugs. Patent linkage and regulatory data protection will be available for both domestic and foreign NDA applicants, but details of these two exclusivity protection mechanisms have not been fully defined in the 2017 amendment.

The 2017 amendment also acknowledges post-CTA and post-NDA changes and differentiates the administration of significant and non-significant changes. Significant post-CTA changes include changes in clinical study protocols that may affect study subject safety or changes that will apparently affect drug safety, efficacy, and quality evaluation. Significant post-NDA changes refer to changes that will very likely result in significant impact on drug safety, efficacy and quality control, and the absence of negative impact must be verified through systematic research. Significant post-CTA changes must be reviewed and confirmed by the CDE by the statutory time limit before their implementation. Significant post-NDA changes must be approved by the CFDA through a supplementary application before their implementation. Non-significant changes can be implemented by study sponsors or MAHs immediately and can be filed for record with the CDE.

Pharmaceutical companies are advised to carefully review the proposed amendments, and submit their comments by the deadlines (October 30, 2017 for the DAL amendment; November 25, 2017 for the DRR amendment). These amendments, once implemented, will provide a more innovation-conducive environment for pharmaceutical companies, and will also be more aligned with international regulatory practices.

If you would like to discuss the foregoing or any other related matter, please contact Katherine Wang or your usual Ropes & Gray advisor.