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New Developments in China's Collection and Disposal of Waste Electric and Electronic Products (WEEE) Regulations

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Following a number of years of policy review and legislative drafting work, China's State Council promulgated on February 25, 2009, the *Administrative Regulations on the Collection and Disposal of Waste Electric and Electronic Products*

(《废弃电器电子产品回收处理管理条例》; the "WEEE Regulations"), in order to implement the provisions of the Law on the Promotion of Clean Production and the Law on the Prevention and Control of Environmental Pollution by Solid Waste. The WEEE Regulations, which will come into effect on January 1, 2011, complement the Administrative Measures on the Control of Pollution Caused by Electronic Information Products (《电子信息产品污染控制管理办法》; often referred to as "China RoHS"), which were promulgated on February 28, 2006, and came into effect on March 1, 2007 (see Morrison & Foerster's 2006 [China Law Bulletin](#)). They are modeled, to some extent, on the European Union Directive on Waste Electrical and Electronic Equipment (the "European Directive") (see Morrison & Foerster's legal updates on the [European Directive](#)).

After a number of years of uncertainty, following China's first announcement of its intention to regulate the recovery and disposal of waste electric and electronic products ("EEE"), promulgation of the WEEE Regulations provides a framework for the new system, which will come into effect in less than two years' time.

Some key features include:

- The PRC government will establish a centralized system for recovery and disposal of EEE.
- In order to maintain the centralized system, EEE manufacturers and import consignees, as well as their respective agents, will be required to contribute to a WEEE Disposal Fund (the "Fund").

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The mechanics of the Fund and the eventual level of contributions required will be determined in accordance with implementing rules to be promulgated by the Ministry of Finance (the “MOF”) after consultation with the Ministry of Environmental Protection (the “MEP”), the National Development and Reform Commission (the “NDRC”), and the Ministry of Industry and Information Technology (the “MIIT”), as well as EEE manufacturers and other industry participants.

- Manufacturers of EEE are required to adopt plans and designs that facilitate recycling and non hazardous disposal and the use of non-toxic (or low toxicity) materials that can easily be recovered for reutilization.
- Manufacturers and import consignees of EEE, as well as their respective agents, are required to provide information regarding the concentration of toxic and hazardous substances contained in the EEE and the methods of collection and disposal of discarded EEE. Such information should be displayed on the relevant product itself or contained in the user manual for the product. Failure to make such disclosure may result in a penalty of up to RMB 50,000.
- The WEEE Regulations also provide for a new system through which qualified enterprises can apply for permits to operate recovery and disposal businesses for waste EEE.
- EEE manufacturers are “encouraged” to undertake collection of waste EEE of their manufacture, or to entrust their distributors, their service agents, or other enterprises in the business of collection of waste EEE to do so. The WEEE Regulations also provide that those engaged in collection operations should implement multiple channels for collection in order to provide efficient and convenient service to EEE users.
- The WEEE Regulations state that recovered EEE resold after collection and refurbishment (“Refurbished EEE”) must meet PRC health and other mandatory standards and be clearly labeled as “used goods.”

In some respects, these requirements will be familiar to organisations working under the European regime. However, it will be noted that the regimes differ in several key aspects. In particular, under the European Directive enterprises are responsible for establishment of their own recovery and disposal schemes (or for sub-contracting such work to commercial producer compliance schemes) and government does not generally provide centralized systems of the type envisaged under the WEEE Regulations. Moreover, while the WEEE Regulations follow the same ‘producer pays’ principle as the European Directive, under the WEEE Regulations, such payment will generally be by means of an indirect government levy rather than direct payment of the actual costs of processing and disposal (or a sub-contractor’s fees).

A number of critical issues have yet to be addressed. For example:

- The WEEE Regulations do not provide the scope of products to which the WEEE Regulations will apply. The WEEE Regulations do state that they will only apply only to products listed in a catalog to be issued by the NDRC, MEP, and MIIT (the “Catalog”). The Catalog, however, has yet to be provided and, if the delays associated with the similar catalog pertaining to China RoHS are a guide, it could be some time before the final version of the Catalog is gazetted. In the meantime, the MEP has issued draft Technical Specifications for Processing Waste Electrical and Electronic Products for public comment (“MEP Draft Standards”). The MEP Draft Standards provide technical standards for the disposal of a range of electrical and electronic products, including computer products, telecommunications products, audio and video products, radio and television products, household appliances, measurement monitoring products, electric tools, and wires and cables. Although the MEP Draft Standards were issued under prior legislation (and do not therefore expressly refer to the WEEE Regulations) they may nonetheless provide some clue as to the eventual scope of the WEEE Regulations.
- Several critical matters concerning the Fund also remain open for the MOF to determine, subject to the approval of the State Council, including what entities are required contribute to the Fund, and how contribution amounts will be determined. For example, the WEEE Regulations

do not state whether those companies that institute their own recovery and disposal program (to the extent that is allowed) will still be required to contribute to the Fund. At present, MOF has not proposed any procedure or timeline for consultation with industry participants concerning the details surrounding the Fund.

- Although both manufacturers and resellers are required to participate under the WEEE Regulations, it is unclear whether manufacturers will be able to implement recovery and recycling programs that cover products distributed by their resellers.
- It is currently unclear what percentage of a product will need to be reused in order to apply as a Refurbished EEE.
- The WEEE Regulations state that the government will formulate regional plans for disposal of EEE. This could mean that multiple regional plans (and, likewise, standards) for disposal will be utilized.
- It is unclear whether the labeling requirement under the WEEE Regulations will be the same as required under the RoHS.