

DEWIT
LAW OFFICE

NEWS LETTER

BEIJING REPRESENTATIVE OFFICE
DECEMBER 2010

FROM THE HEART OF EUROPE
TO THE HEART OF CHINA
A RELIABLE CONSULTANT AT YOUR SIDE

DEWIT LAW OFFICE

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**HOT TOPIC:
REACH CHINA**

**HAS THE REPRESENTATIVE
OFFICE LOST ITS CHARMES ?**

**EU LEGISLATION:
REACH AND CLP**

**LEGAL NEWS IN CHINA
AND BELGIUM**

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Dear Reader,

Dewit Law Office Beijing Representative Office is proud to present the first edition of its newsletter. We strongly believe in the value that our newsletter adds to the wide range of material already on the market. The information that we provide covers the latest legislative changes in both China and Belgium. Although focused on business, it is not restricted as such. Our principal objective is to highlight all legal issues that businessmen in China encounter, both professionally and personally.

We have found it both a challenge and a pleasure to compose this first newsletter, and aim to provide you with practical, up-to-date legal news. We therefore sincerely hope that you enjoy reading the following pages and that you find the information useful for your daily life in China.

Kind regards,

Bernard Dewit



HOT TOPIC : REACH CHINA

On 19th January 2010, the Ministry of Environmental Protection of China (MEP) launched its final version of the Environmental Management of New Chemical Substances program, commonly referred to as 'China REACH'. Like its European equivalent 'EU REACH' (No 1907/2006), the 'China REACH' program focuses on the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH). Since the European Union launched its REACH regulation, the issue of improving protection of human health and the environment from the risks of chemicals, while at the same time enhancing the competitiveness of the chemicals industry, has been much publicized. Consequently, a number of nations have taken steps to deal with the issue at hand.

China implemented China REACH as from 15th October 2010. The measures have a direct impact on foreign companies importing into or manufacturing in China; as such, the program will doubtlessly have a global impact. Given the broad scope of this new law, it is important to verify whether or not your company falls under China REACH, in order to avoid liability for non-observance. China REACH has, in fact, been in existence since 15th October 2003. However, the

revised version, which is implemented as from mid October takes the original rules a step further by stipulating certain cumbersome notification, registration and tracking control obligations which are expected to be met by the companies concerned. Despite the rapid growth of exporting chemicals from Europe to China, there seems to be little awareness in Europe of these new rules.

→ We therefore sum up the key points for you:
1 China REACH defines 'new substances' as those not listed in the IECSC, the Inventory of Existing Chemical Substances produced or imported in China.

2 Only a registered Chinese entity will be able to notify new chemicals for registration, and only eco-toxicological data from a small list of pre-approved labs in China will be accepted;

3 Joint notification is only available to Chinese companies;

4 The government recently released a guiding document, providing a transitional period for bringing registration of new chemical substances in line with the new China REACH measures.

→ From a legal point of view, the following issues should be emphasized:

1 Concerns have been raised with regard to

the protection of confidential information. If a foreign company has no representative within the People's Republic of China, it will be obliged to appoint a registered Chinese entity to file the notification. This intervention implies that foreign companies may have to provide their agent with confidential information. The same applies to

the obligatory intervention of Chinese laboratories. Taking into account the lack of protection of property rights in China, it is of utmost importance that a well-drafted contract is drawn-up.

China implemented China REACH as from 15th October 2010. The proposal will outline new measures, many of which will have a direct impact on foreign companies importing into or manufacturing in China; as such, the program will doubtlessly have a global impact. Given the broad scope of these new laws, it is important to verify whether or not your company falls under China REACH

2 Failure to abide by these measures may result in the company being fined. Whilst the severity of the fine may not be hugely significant, other measures, such as the withdrawal of the registration certificate, may have a more detrimental effect, to the extent that it may become impossible for the said company to continue importing and/or manufacturing in the future. Since foreign companies are required to engage the services of a registered Chinese entity, the issue of responsibility, liability and recourse should be well considered before entering into any negotiations.

If you have any further questions on this subject, please do not hesitate to contact us at one of the addresses listed on the front page of this newsletter.

MORE ON EU REACH

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The European Chemicals Agency (ECHA) is urging companies to provide an accurate assessment of the size of their establishment when claiming SME status. Failure to do so may result in an administrative fine being imposed by the ECHA.

Some concerns as to unqualified 'Only Representatives' (OR) have been raised. EU downstream users, who purchase goods from non-EU companies which fail to comply with the EU REACH regulation, are worried about

the qualifications of the 'OR's' and the legal implications this may have for them.

→ For more details <http://echa.europa.eu/>



OVERVIEW OF CLP

CLP stands for Classification, Labelling and Packaging of Substances and Mixtures. As defined in EU Regulation No. 1272/2008 of 16 December 2008, CLP refers to the implementation of the UN-developed Global Harmonized System (GHS) in Europe.

Using globally harmonized criteria, GHS aims to ensure that international standards are met for the protection of health, safety and the environment.

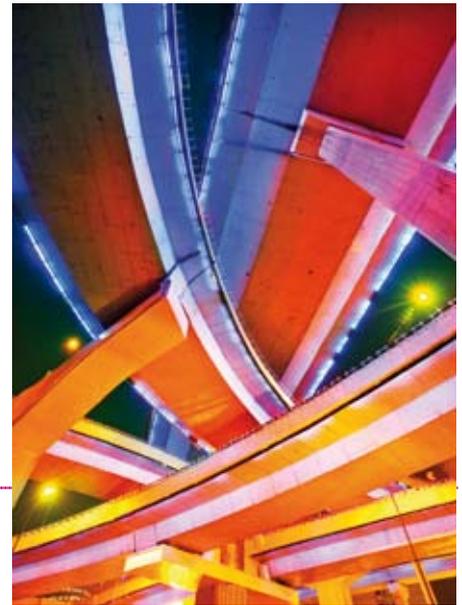
Specifications:

- Whilst REACH focuses on the material safety data, CLP covers labelling requirements.
- Under the CLP Regulation, there is no tonnage threshold for classification and labelling.

CLP entered into force on 20 January 2009.

Further important dates regarding CLP in Europe are listed below:

- 1st December 2010: Obligation to apply CLP to substances.
- 1st June 2015: Obligation to apply CLP to mixtures.



NEWS IN CHINA

Appointment of Xi Jinping

On the last day of the 17th annual meeting of the Chinese Communist Party (CCP), Xi Jinping, China's current vice-president, has been appointed vice-chairman of the Central Military Commission (CMC), which oversees the People's Liberation Army. At present party, state and military power are united and held by Hu Jintao. With the assignment of military power to Xi Jinping who already is vice-president of the nation, this new coming man is expected to unite all three powers in his hand by 2013 when Hu Jintao retires. Xi Jinping has been successful in his fight against corruption in Shanghai and Fujian and is known for his straight vision. Even though it is suggested that Xi Jinping was not Hu Jintao's first choice, China's top leaders show no sign of factionalism within their ranks: in the current socio-economic landscape of China, the leaders indeed remain vigilant to appear as one stable and united party.

10 years Go West Initiative

This year, the national 'Go West Initiative' celebrates its ten year anniversary. The Chinese government set up the program in 2000 in order to help promote the development of more remote provinces in central and western China. Cities like Chengdu have profited enormously from governmental support and are now real up-and-coming places, attracting interest from an increasing numbers of foreign investors. The second Go West Policy will soon be published by the Central Government and will cover the next ten years. It is expected that the government will continue to enhance its current investment incentives by means of a favorable land and fiscal tax as well as a new financial policy.

Chongqing and Chengdu : alternatives to coastal cities

On 7th October 2010, the American magazine Forbes praised Chongqing and Chengdu in its list of fastest growing cities worldwide. Both cities are located in interior China and have become an important alternative to the coastal megacities that suffer from congestion, high prices and class disparities.

AWEX opens investment desk in Wuhan

The Wallonia Export and Foreign Investment Agency (AWEX) has recently opened an investment desk in Wuhan, capital of Hubei Province. AWEX is the department of the Walloon Region in charge of the promotion of foreign trade and foreign investments. For more information please contact Mr Wang Haichen, hwang@investinwallonia.be





Tension between the US and China at the G20 Summit

In spite of the positive and constructive tone at the friendly meeting between Barack Obama and Hu Jintao prior to the opening of the **G20 summit**, tensions between the US and China have again risen to the surface at the 5th international meeting in Seoul. The US President emphasized the importance of market-driven currencies, pointing a finger at China by criticizing the artificially low value of the yuan which, he said, has led

to unfair competition against the US and massive trade surpluses. The President of China, however, reiterated the position taken by Premier Wen Jiabao in his speech at the EU-China Summit in Brussels of October 2010: China cannot be blamed for problems caused by western countries and cannot be pressured in its exchange currency policy. After announcement of the American Central Bank's decision to inject 600 billion into the country's economy, other nations in addition to China have criticized the US policy.

The US on the other hand justifies the decision by claiming that it aims to revive the US economy and that this cannot therefore be considered as a measure to weaken the dollar against the yuan. The course of the G20, established to achieve a balanced financial market by stimulating cooperation between advanced and emerging economies, has shown that there is little love in times of cholera.

CURRENT TOP LEADERS OF THE PRC

President
HU Jintao



Vice-president
XI Jinping



Premier
WEN Jiabao



Vice-Premiers

LI Keqiang
HUI Liangyu
ZHANG Dejiang
WANG Qishan

Secretary-general MA Kai

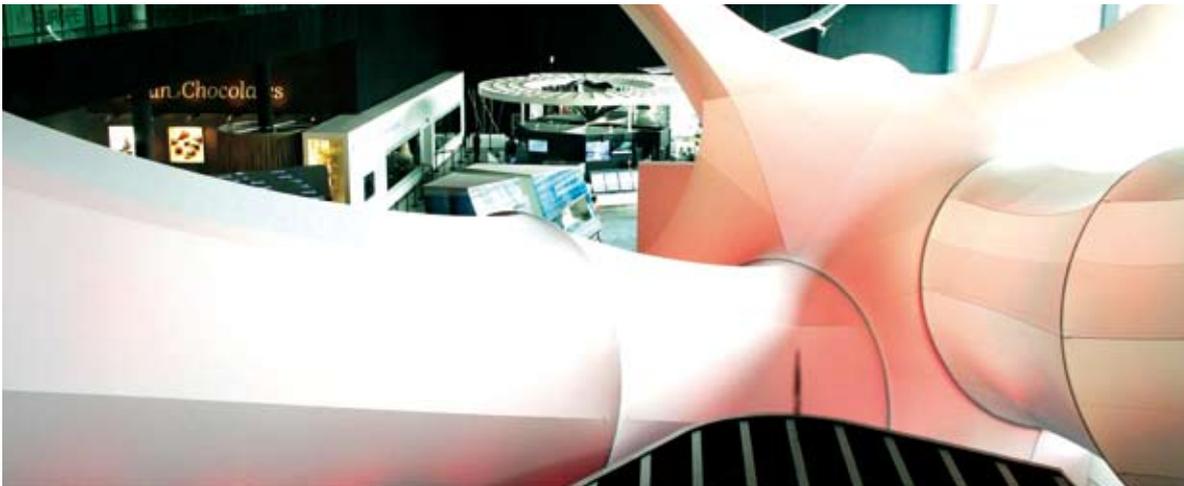
Core Ministries and Commissions

- LI Liguo, Minister of Civil Affairs (MCA)
- CHEN Deming, Minister of Commerce (MOFCOM)
- ZHOU Shengxian, Minister of Environmental Protection (MEP)
- YANG Jiechi, Minister of Foreign Affairs (MOFA)
- XIE Xuren, Minister of Finance (MOF)
- LI Yizhong, Minister of Industry and Information Technology (MIIT)

- WU Aiyong, Minister of Justice (MOJ)
- WAN Gang, Minister of Science and Technology (MOST)
- LI Shenglin, Minister of Transport (MOT)
- LIU Mingkang, Chairman of the China Banking and Regulatory Commission (CBRC)
- WU Dingfu, Chairman of the China Insurance Regulatory Commission (CIRC)
- SHANG Fulin, Chairman of the China Securities Regulatory Commission (CSRC)
- ZHANG Ping, Director of the National Development and Reform Commission (NDRC)
- ZHOU Xiaochuan, Governor of the People's Bank of China (PBOC)
- HU Xiaolian, Administrator, State Administration of Foreign Exchange (SAFE)



NEWS IN BELGIUM



The Brussels Business Base

Last spring, Invest in Brussels established a special start-up program designed to offer assistance to Chinese companies in Belgium. The Brussels Business Base, also known as 3B, is located next to the Solvay Research & Technology Centre, which also houses incubator and support facilities for companies active in the chemical, plastics and pharmaceutical industries. In order to support Chinese companies investing in the region, 3B proposes favorable conditions with regard to office accommodation, IT equipment, managerial assistance and infrastructure.

Double tax treaty

On 6th April 2010, the Belgian tax authorities confirmed their position on the matter of exemption of income tax relating to a Belgian national residing in a country with which it has a tax treaty agreement. Such a treaty has existed between Belgium and China since an agreement was made on 18th April 1985, later amended by the Additional Protocol of 27th November 1996. On 7th October 2009, Belgium and China signed a new treaty and protocol on the avoidance of double taxation. However, the double tax treaties state that individuals can only benefit from these conditions if they are able to prove that they qualify for tax exemption. In the latest letter written by the tax authorities, a distinction is made between double tax treaties stating that the individual's income (i) 'may be taxed', (ii) 'is taxed', and (iii) 'is actually taxed'. Whatever situation is applicable, it is important to know that the exemption is granted with progression only, meaning that the remainder of the income will be taxed at the tax rate that would have applied if no exemption had been made.

The Belgian Pavilion: a success story at the 2010 Shanghai Expo

Evaluating its six months' presence at the Shanghai Expo, Belgium can look back on a fruitful and successful experience. The Pavilion was a commercial success thanks to the delicious chocolates and fine diamonds. Furthermore, the Pavilion itself has recently been sold to a Qingdao company thus delivering on its original promise of being a sustainable project. According to Mr Leo Delcroix, Commissioner General of the Belgian Commissionership Expo Shanghai 2010, what is more important than the positive financial balance is the promotion and branding of Belgium, heart of Europe, with its ideal investment climate and its world-renowned universities. As the theme of the Pavilion, 'Movement and Interaction' perfectly reflected the Belgian spirit: constantly looking for new challenges and innovation, and simultaneously being an active player at both the European and international levels. For more information please visit www.shanghai2010.be



HAS THE REPRESENTATIVE OFFICE LOST ITS CHARMS?

What's in a name? Short introduction to the Representative Office

A Representative Office, commonly abbreviated to 'RO', is the most inexpensive way for a foreign company to establish a presence in China: there is no capital requirement for an RO, meaning that the budget will mainly cover lease of office space, salaries and day-to-day office requirements such as stationery. With little financial input, an RO may build a bridge between China and the foreign company's home country, serving clients in two nations. The chief advantage of an RO is that it allows a foreign company to explore business opportunities in China while at the same time assisting to build and develop a professional network. Bearing in mind the concerns businesses have when investing in a country they are unfamiliar with, establishing an RO can be a wise choice when it comes to getting acquainted with China without the need for full involvement. An RO, however, also has disadvantages: it may serve only as a liaison office and is therefore not permitted to engage directly in profit-making business, to issue invoices in its own name or to receive any income other than financial support from its foreign headquarters.

Legislative changes of 2010 – Ice Age of the Representative Office?

In the past, setting up an RO was one of the most popular ways of establishing a business presence in China. However, having noted that in reality ROs were often used to engage illegally in money-making activities, the central government introduced legislative changes in 2010. As they are somewhat cumbersome, these changes may mark the beginning of the decline of the RO.

On 4 January 2010, the State Administration for Industry and Commerce (SAIC) and the Ministry of Public Security (MPS) jointly promulgated the Notice on Further Reinforcing the Administration on the Registration of Resident Representative Offices of Foreign Enterprises, increasing control over ROs by providing a set of new rules on their administration:

- **Profile of the head office... Henceforth:** the head office must have existed for a minimum of two years; the creditworthiness of the head office must be proven by a certificate issued by a financial institution.
- **Profile of the RO... Henceforth:** validity is limited to one year, implying a need to renew the registration certificate on an annual basis; the number of representatives is restricted to four, including the chief representative. Further hurdles to be taken into account by potential investors are the fact that an RO can only lease office space in certain qualified office buildings, and that employment of local staff must be processed through a registered HR agent such as FESCO (Foreign Enterprise Human Resources Service Company).

On 20 February 2010 the State Administration of Taxation promulgated the Notice on Issuing the Interim Measures for the Administration of Tax Collection against the Permanent Representative Offices of Foreign Enterprises. This Notice increases fiscal control over ROs, expressly providing that:

- **an RO must register with** the competent tax authorities within 30 days of obtaining its registration certificate, including submission of a substantial number of supporting documents;
- **an RO must pay** corporate income tax based

on its actual income, as well as business tax and value added tax calculated on its taxable income;

- **should an RO fail** to accurately calculate its taxable income, the tax authorities may turn to either of the following two methods depending on the case: converting appropriation expenditures into income; verifying the taxable amount of income by total income.

Whichever method is chosen, the appraised and specified profit rate of an RO shall be no less than 15%; i.e. an increase of 5% compared with the previous assumed profit margin of ROs.

Alternatives to the Representative Office

The above-mentioned legislative initiatives have introduced serious hurdles, reducing the attractiveness of the RO to a large extent. Potential investors may therefore consider one of the other investment vehicles that exist under Chinese law.

Known to most foreign companies considering investment in China are the wholly foreign-owned enterprise (WFOE) and the foreign-invested commercial enterprise (FICE). In addition to these, foreign companies may choose to create one of the two joint venture types (JV): the cooperative or the equity joint venture. Less familiar are the so-called partnership enterprises (PEs). Indeed, SAIC's Administrative Measures for the Establishment of Partnership Enterprises within China by Foreign Enterprises or Individuals entered into force only on 1 March 2010. These measures were specifically promulgated to facilitate investment activities within China by foreign enterprises or individuals, and to expand foreign economic cooperation and exchange of advanced technologies and management experience, in order to promote the development of a modern service industry as well as other industries.

Different rules apply to the establishment of the above-mentioned investment vehicles. The eventual choice for one or the other depends on factors such as the scope of business to be conducted within China, the capital available, willingness to cooperate with a Chinese partner, etc.



YOUR CHINA EXPERIENCE-OUR JOB

Our philosophy...

...To facilitate your China experience

As an experienced law firm with an in-depth knowledge of both Chinese and European law, we understand your concerns and aim to provide assistance of the highest quality. In order to achieve our goals, we believe in...

- Providing high-quality language assistance
- Providing legal services at European standards
- Bridging the gap between Chinese and European culture
- Protecting your intellectual property
- Offering in-depth analysis of your potential business partner(s)
- Maintaining a stable and trustworthy Chinese and European network
- Guaranteeing a follow-up service during your absence
- Ensuring a double presence within both Europe and China, thereby providing 24 hour, round-the-clock assistance.

Our competitive advantages...

...To suit all your needs

Specializing in SMEs, we also provide additional services to meet all your needs:

- Offering special fees for SMEs
- Proposing services in English, French, Dutch or Chinese
- Providing one-stop services for:
 - Translation and interpretation
 - Location and relocation
 - Human resources
 - Tax and accountancy
 - Social security
 - Investment
 - etc.

Our services...

...To offer expert legal advice

In cooperation with our Chinese partners, our services consist of:

- Analysing the feasibility of your project
- Contacting and negotiating directly with local administrations
- Contacting and negotiating directly with your business partner(s)
- Offering assistance with your business setup: J/V, FIE, RO
- Ensuring optimal use of local incentives
- Drafting and reviewing your legal documents:
 - Articles of association
 - Commercial and labour contracts
 - Confidentiality agreements
 - etc.
- Offering alternative dispute resolutions (arbitration/mediation)
- Assisting in litigation



DEWIT LAW OFFICE CHINA

Who are we ?

Established in 1945, Dewit Law Office has always maintained a close relationship with its clients. A team of thirteen lawyers and four secretaries, supported by a small group of additional external staff, process a number of cases dealing with a variety of issues from all domestic judicial districts. DLO has permanent correspondents based in East-Asia and a network of correspondents throughout the European Union.

Bernard Dewit's interest in China and 27 year-long involvement in Chinese business, have helped him to gain the necessary experience to both understand and facilitate Chinese investments in Europe and vice versa. Having forged close ties with Chinese law firms in Beijing, Shanghai, Chengdu and Hong Kong, Dewit Law Office is the first Belgian law firm to have obtained a license to open a Representative Office in Beijing, with a branch in Chengdu to cover Western China. Thanks to our presence in both the heart of Europe and in the heart of China, we are able to provide 24 hour, round-the-clock support to our clients. The main strength of Dewit Law Office is its line-up of multilingual, multicultural and multidisciplinary team members. Cases can be processed in French, Dutch, English and Chinese.

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Dewit Law office is the founding partner of Tian Ping Law Firms, with offices in Brussels and Antwerp, and is a member of SILFA, the Staubach International Lawfirm Alliance, a network and alliance among renowned, independent mid-sized law firms throughout Europe and in the United Arab Emirates

Our team at your service



TIAN PING 天平
LAW FIRMS Antwerp - Brussels

SILFA
Staubach International Lawfirm Association

Belgium



Mr. Bernard Dewit
Senior Partner
Brussels



Ms. Nastassja Van Gucht
Junior Associate
Brussels

China



Mrs. Fien Van Parys
Senior Associate/Chief Representative
Beijing/Chengdu



Ms. Hu Xiaoyun
Legal Assistant
Beijing

USEFUL LINKS

Diplomatic Instances

Chinese Embassy in Belgium
<http://www.chinaembassy-org.be>
Belgian Embassy in Beijing
<http://www.diplomatie.be/beijing>
Consulate General of Belgium in Shanghai
<http://www.diplomatie.be/shanghai>
Consulate General of Belgium in Guangzhou
<http://www.diplomatie.be/guangzhou>
Consulate General of Belgium in Hong Kong and Macau
<http://www.diplomatie.be/hongkong>

Export and Investment Services

Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation
<http://www.diplomatie.belgium.be>
Brussels Export
<http://www.brussels-export.be>

Wallonia Export and Foreign Investment Agency (AWEX)
<http://www.wallonia-export.be>
Flanders Investment and Trade (FIT)
<http://www.investinflanderstrade.com>
China Council for the Promotion of International Trade (CCPIT)
<http://english.ccpit.org>

Chamber of Commerce

Belgian-Chinese Chamber of Commerce (BCECC)
<http://www.bcecc.be>

Legislative Information

Supreme Court of PRC
<http://www.court.gov.cn/qwfb/>
China international Economic and Trade Arbitration Commission (CIETAC)
<http://www.cietac.org>

China and EU Reach

<http://www.reach24h.com>
http://echa.europa.eu/home_en.asp

Law Firms

Tian Ping Law Firms
<http://tianpinglaw.com>
Staubach International Lawfirm Association (SILFA)
<http://www.staubach-alliance.com>

Touristic Information

Belgium
Wallonia and Brussels tourist office
<http://www.wallonie-tourisme.be>
Flanders tourist office
<http://www.visitflanders.com>

China

China International Travel Service
<http://www.cits.cn>

