

DEWIT
LAW OFFICE

NEWS LETTER

BEIJING REPRESENTATIVE OFFICE
JANUARY 2011

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

DEWIT LAW OFFICE



**HOT TOPIC:
PROTECT YOURSELF
AGAINST JOB HOPPERS**

**COMPENSATION FOR DELAYED
FLIGHTS AND LOST LUGGAGE**

**ALL ABOUT THE CHINESE
'AUTOMOBILE SALON':
VOLVO AND
BEIJING TRAFFIC JAM**

**NEW LEGISLATION ON
WORK-RELATED INJURY**

**CONTACT US
WWW.DEWITLAWOFFICE.BE**

BEIJING

1219 KUNTAI BUILDING,
NO.10 CHAOWAI STREET, 100020 BEIJING
+ 86-(0)10-65995388

CHENGDU

ZONGBEI INTERNATIONAL,
NO. 34 JINXIU STREET, 610000 CHENGDU
+ 86-13730871830

BRUSSELS

NO. 20 PLACE ALBERT LEEMANS,
1050 BRUSSELS
+ 32-(0)2-3409259

INFO@DEWITLAWOFFICE.CN

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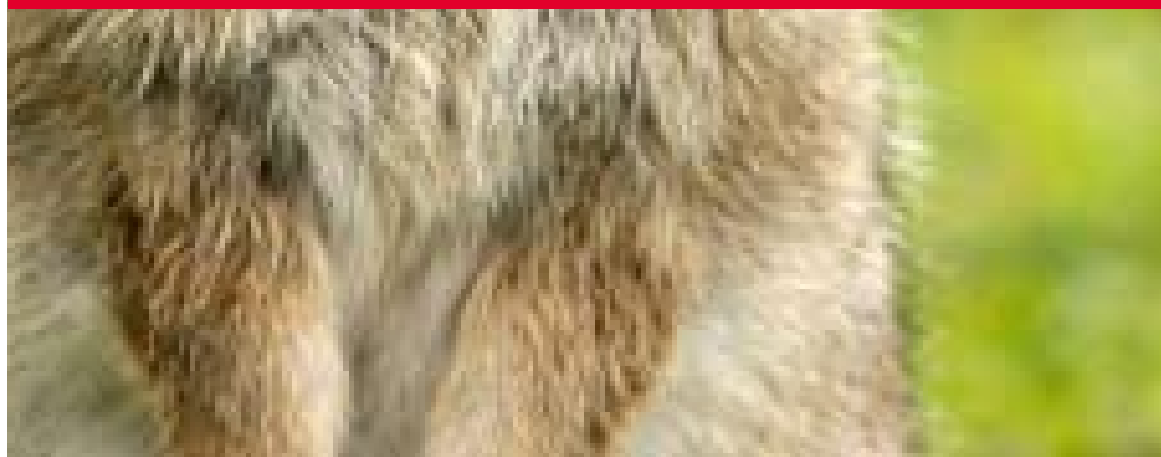
Dear Reader,

Successfully operating a business in China requires a bulletproof business plan. But how do you control something as unpredictable as human nature? Job hopping is a common phenomenon in China and adversely affects both domestic companies and foreign-invested enterprises (FIEs). FIEs, however, may be less familiar with this situation and thus be more vulnerable. This newsletter gives an overview of some options an FIE can invoke under Chinese labour law in order to be protected against the negative impact of job hopping.

While some employees may be hopping from one job to another, most Europeans living in China will soon be

hopping from the European New Year to the Chinese New Year. The 3rd of February 2011 marks the beginning of the Year of the Rabbit that 'is traditionally associated with home and family, artistic pursuits, diplomacy and peace keeping', at least so we read on the internet. We further note that '2011 is very likely to be a relatively calmer [year] than 2010 both on the world scene, as well as on a personal level' but also that 'nations will become more insular and increasingly lock down their borders to protect against the other! Luckily for you, 'shrewd and creative new business partnerships will also form to the benefit of all'... As Doris Day used to sing 'Que sera, sera – What will be, will be', so let us suffice with wishing all of you 新年快乐, 万事如意!

Bernard Dewit



HOT TOPIC : JOB HOPPING

The phenomenon of job hopping – how to protect your FIE in five steps



Job hopping is a common phenomenon that may negatively impact on your FIE's business. While the problem is inevitable to a certain extent, your FIE may learn to protect itself by using some of the simple tools described in this article. Note that the overview is not intended to be all-encompassing, but rather an encouragement for FIEs to acquire some basic reflexes when employing Chinese personnel.

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Step 1 – Find your employee

In principle an FIE may determine for itself who to employ and can accept any job hopper who comes knocking at the door. This is in contrast to Representative Offices which have to apply to a local employment service centre. In spite of this relative freedom it remains important to verify that

the candidate employee is no longer engaged under a labour contract. When you recruit an employee who is still employed by another employer, the latter is legally entitled to claim damages against your FIE and the employee; both will be jointly and severally liable.

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Step 2 – Sign your labour contract

Chinese labour law demands that the labour contract is in writing, unless the employee is working part-time only. A job hopper may find it more convenient not to sign a labour contract in order to avoid being bound by a written contract. But he or she may also do so for other reasons: if you have not concluded a written contract the day your employee starts working for you or at the latest within

one month, you will have to pay double wages to your employee. If you have not concluded the contract within one year, it will automatically be considered to be an open-ended contract even if you intended it to be fixed-term. A clever employee may thus refuse to sign the written contract and claim all advantages before hopping on. Protect yourself: send a written notification to the employee and if he or she still refuses to sign, be aware that you can terminate the cooperation without having to pay damages; you only have to pay the employee for the actual working time performed.

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Step 3 – Provide training as an incentive

Initiating your employee into your company through a training programme is a good way to get to know your employee, to maximize integration and to provide an incentive for the employee not to leave. Job hoppers, however, may take advantage of your training programme, put it on their curriculum vitae and run off to the next employer, impressing them with the skills he or she acquired through your training scheme. Therefore, make sure you include a clause in the labour contract stating that if the employee breaches the agreed time of service, he or she shall pay liquidated damages to you to compensate for your investment.

→
Step 4 – Protect your business

Confidentiality clauses can be included to protect your trade secrets and intellectual property. In case of breach, the employee may have to pay damages. Provided you have included such a confidentiality clause and your employee is a senior manager, senior technician or in another position with a confidentiality obligation, you may also include a non-competition clause in the labour contract: you can determine the scope, territory and term (which may not

exceed two years). A non-competition clause has its price of course: as an employer you have to pay financial compensation after termination of the labour contract. If the employee breaches his or her obligation, however, he or she will have to pay liquidated

While the problem of job hopping is inevitable to a certain extent, your FIE may learn to protect itself by using some simple tools. You can also take a more active approach, however. Indeed, one of the reasons your company moved to China may be that the labour force is all around and labour costs are still low. Walking the extremes of legal minimum salaries and maximum working hours, however, may trigger job hopping. The best way to avoid losing your employees is therefore to treat your employees well.

damages as stipulated in the labour contract: these should be neither too high nor too low. If damages are too high, the employee may simply refuse to work for you; if too low, he or she may convince the new employer to pay this price.

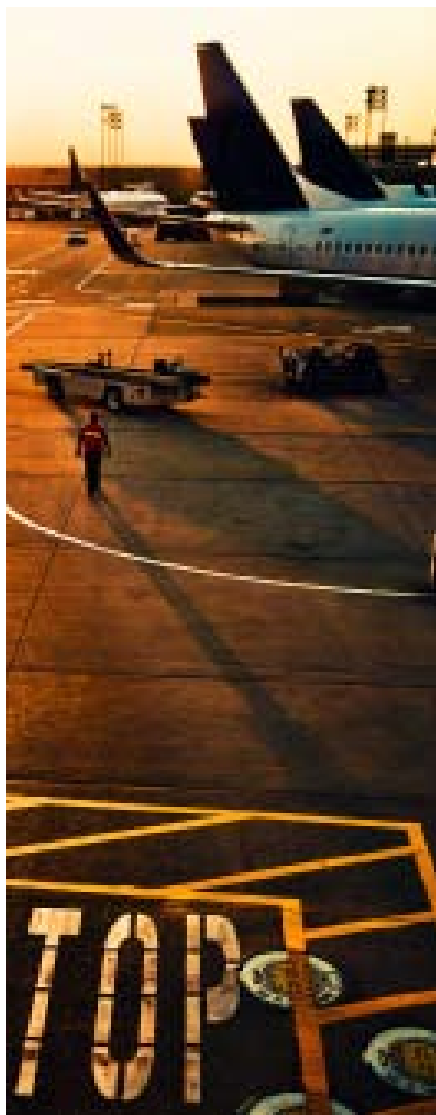
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Step 5 – When the inevitable comes...

If you cannot keep your employee from job hopping, be aware that he or she needs to follow certain rules as well. First, an employee who wishes to terminate the contract must give one month's notice to the employer. Upon termination, the employee is obliged to complete the procedures for handover of his or her work. The employee may indeed possess important information, such as customer data. As an employer holding the employee's file and social insurance documents that need to be transferred to a subsequent employer, you may exert some pressure on the employee. Make sure you get everything back to avoid being legally bound by your former employee's acts on the theory of apparent agency. Finally, it is recommended that you ask an employee who resigns to expressly confirm this in writing in order to avoid your FIE later being held responsible for having terminated the contract and being asked to pay damages for termination.



AIR CARRIER LIABILITY

on domestic & international flights



Know your passenger rights when you suffer delay or bodily injury, damage or loss on your international or domestic flight.

April 2009... Thousands of passengers were stranded at airports because of the eruption of the Icelandic volcano Eyjafjallajökull. December 2010... Heavy snowfall in Europe leads to the cancellation of numerous inbound and outbound flights. Television channels show pictures of arrival and departure halls crammed with field beds for delayed passengers. While under these particular circumstances air carriers could invoke *force majeure* to avoid liability, ordinary circumstances that lead to delay or injury/damage to passengers or their luggage may trigger your air carrier's liability and entitle you to compensation. This article provides an overview of current liability rules and limits under both international and Chinese domestic law.



1 - International flights

China is a member state of the Convention for the Unification of Certain Rules for International Carriage by Air of Montreal (Montreal Convention of 1999). This means that when you are flying between China and a country that is also a member of the treaty, you may be compensated according to international standards regardless of the airline you are flying with.

When neither the Montreal Convention of 1999 nor any of its predecessors' is applicable, the compensatory regime as provided in China's Civil Aviation Law of 1995 comes into play. Compensation limits are far less than those provided under international law, as shown in the chart below.

	Bodily injury	Passenger delay	Checked luggage	Unchecked luggage
Montreal Convention of 1999	113,100 XDR ¹ per pax ²	4,694 XDR per pax	1,131 XDR per pax	1,131 XDR per pax
Civil Aviation Law of 1995	16,600 XDR per pax		17 XDR per kg	332 XDR per pax



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2 – Domestic flights

It was not until after an aircraft crashed in northern China that the country raised the previously applicable liability limit of 6,897 SDR⁴ in case of death or bodily injury of passengers. Since 2006 the Regulations relating to the Carrier's Liability in Domestic Air Transportation determine the following liability limits:

	Bodily injury	Passenger delay	Checked luggage	Unchecked luggage
Regulations of 2006	39,406 XDR ⁵ per pax	4,694 XDR per pax	10 XDR ⁶ per kg	296 XDR ⁷ per pax

¹ For clarity's sake, we have left out the compensatory regimes of the predecessors of the Montreal Convention of 1999 that may, however, be applicable should you be flying to or from a country that is not a member of the Montreal Convention of 1999, but of its predecessors only. Compensation limits of those treaties are lower than those of the Montreal

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3 – EU Regulation 261/2004

Regulation (EU) No 261/2004 establishing common rules on compensation and assistance to passengers, merits special attention. Any passenger on a flight from the EU to China, whether operated by a European or Chinese carrier, can invoke its protective provisions in the event of being denied boarding and cancellation or long delay of flights.

Should you be **denied boarding** against your will you are entitled to compensation of 600 EUR⁸. You will then be offered the choice between reimbursement of the full cost of the ticket and – when relevant – a return flight to the first point of departure, or rerouting.

The same rules apply should your flight be **cancelled** unless the air carrier proves cancellation was caused by extraordinary circumstances that were reasonably unavoidable. The airline may also counter liability if it informed you upfront and within

Convention of 1999.

² XDR, i.e. Special Drawing Rights. On 3 January 2010, 1 XDR = 1.16 EUR.

³ Short for 'passenger'.

⁴ I.e. 70,000 CNY as converted on 3 January 2010.

⁵ I.e. 400,000 CNY as converted on 3 January 2010.



certain time limits of the cancellation. In case of **delay** you are not entitled to the above-mentioned compensation. Should the delay exceed five hours, however, you should be offered a choice between reimbursement and rerouting.

⁶ I.e. 100 CNY as converted on 3 January 2010.

⁷ I.e. 3,000 CNY as converted on 3 January 2010.

⁸ Reduced to 300 EUR if you are rerouted and your arrival time does not exceed the scheduled arrival time of the original flight by four hours.

GEELY ACQUIRES OWNERSHIP OF VOLVO CARS



Zhejiang Geely Holding Group Co. Ltd, a leading player amongst automotive manufacturers and listed among the top 500 companies of China, has acquired 100% ownership of the Volvo Car Corporation after a stock purchase agreement with Ford Motor Company. Geely chairman Li Shufu is very likely to keep his promise to expand production bases through organic growth and to consider complementary

acquisitions. Chengdu, Daqing and Shanghai are considered to be the cities in which three new plants will be built, thus not only covering the coastal region but also the central and western region with Chengdu, and the northern areas with Daqing. As stated from the beginning, Geely intends to preserve the manufacturing presence in Sweden and Belgium, while at the same time exploring business opportunities in China to meet growing Chinese demand resulting

from its position as the largest auto market. Jobs and investments at Volvo Cars Ghent (Belgium), which is currently one of Volvo's biggest assembly plants, are further being protected by a recent loan between Volvo Car Corporation and ING Belgium. Although Geely has guaranteed the existence of Volvo Cars Ghent, it indeed seems that Belgium's past experience with the closing of car plants has led to concerns and a cautious attitude.



DRIVING YOUR CAR IN CHINA

Once upon a time Belgium did have a federal government which actually managed – as the only country in the world – to conclude a special bilateral treaty with China regarding the mutual recognition of driving licences. Expatriates are generally obliged to learn by heart a pile of questions in Chinglish that will hopefully help them pass the hurdle of the theoretical exam in one sitting only. Not so for Belgians who are privileged and can convert their driving licence upon simple submission of the following documents: original Belgian driving licence, translation into Chinese, residence permit, Belgian passport and proof that they are physically fit¹. For the sum of some 155 CNY will you then be able to collect your ticket to the Chinese roads... and the Chinese traffic jams. Indeed, you would do well to think twice and consider the congested roads before leaving the subway behind for your brand-new Geely car. The most notorious

are the ring roads that encircle Tian'an Men in Beijing, often scornfully called 'the capital of the traffic jam'. In order to mitigate the horror of rush hour, the Beijing Municipal Government on 23 December 2010 published new measures intended to regulate traffic. The new rules limit the total number of cars registered in Beijing in 2011 to 240,000, only one third of the 2010 figure. In order to further reduce the number of cars in the capital, extra conditions are established for people from outside Beijing wanting to purchase a car in Beijing. Additionally, cars registered outside Beijing are not allowed entry during rush hour. On the other hand, the Beijing Municipal Government is further expanding and optimizing its subway network and other transportation systems. Hopefully the combined efforts may lead to a dissolving of the gridlock that increasingly besets the Beijing roads.



CONQUERING THE BELGIAN MARKET: AS EASY AS ABC



Antwerp Business Centre (ABC) is a centre which not only provides office-related services such as administrative and reception roles, but also offers broader activities such as marketing and sales advice which results in an added value model that distinguishes ABC from traditional business centres.

Located in Antwerp, home to the busiest container port in Europe after Rotterdam,

ABC is an interesting and easy option for Chinese investors to explore the Belgian market.

What characterizes ABC's added value is the fact that it offers a tailor-made service package adapted to the needs of your company.

For more information, contact jasmine.liu@abc.be or visit www.abc.be.



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>

