

China TIPS

泰乐信律师事务所

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Taylor Wessing opens Beijing Office as its second one in China

Having received its license from the PRC Ministry of Justice to open a representative office in Beijing, Taylor Wessing will move its preparatory office to its official premises, from which it will operate as of September 2008.

The Beijing office is the 13th in Taylor Wessing's global network and the second in China. The new office will be located at the Prosper Center in Beijing's Central Business District.

Taylor Wessing, one of the first European players in the region, has been operating an office in Shanghai since 1996. The Beijing office will further add to the firm's China competence in Munich, Frankfurt, Hamburg, London and Paris.



M.-Florian Ranft, heading the firm's international China Group, will manage the development of the new office which will focus, among others, on FDI, M&A, private equity, restructuring, financing and real estate.

Christoph Hezel will lead the team of Chinese and foreign lawyers designed to serve the in- and outbound business. Commenting on the launch of the Beijing office M.-Florian Ranft said:

"The Beijing office - complementing our existing Shanghai practice - will enable us to better serve our international clients throughout China who are requesting more and more existing expertise on site. Our Chinese clients will find a team helping them with their investment into Europe or with their listing at any of the European stock exchanges be it at the DAX, Euronext or the London Stock Exchange."

Less Clarity on Foreign Investment Enterprise Liquidation?

On January 15, 2008, the *Liquidation Procedures for Foreign Investment Enterprises* of 1996 have been abolished. The *PRC Company Law*, *PRC Law on Equity Joint Ventures*, *PRC Law on Contractual Joint Ventures*, *PRC Law on Wholly Foreign Owned Enterprises* and their respective *Implementing Regulations* contain - at least partially deviating - liquidation related procedures and terminology.

On March 31, 2008, the State Administration for Industry and Commerce (SAIC) issued an internal *Working Paper of the Foreign Investment Department on Major Tasks for 2008*. In this working paper, SAIC suggests the drafting of rules on the liquidation and de-registration of foreign investment enterprises jointly with other departments. However, such rules have not yet been passed. The Ministry of Commerce (MOFCOM) unilaterally tried to clarify some matters in the *Guiding Opinions of the General Office of MOFCOM on Legally Handling Dissolution and Liquidation of Foreign Investment Enterprises* on May 5, 2008. Certain additional rules can be found in the *Provisions of the Supreme People's Court (SPC) on Some Issues Regarding the Application of the PRC Company Law* dated May 12, 2008. However, by its nature this interpretation aims at clarifying how the People's Courts shall rule regarding – disputed – liquidation and dissolution cases; it generally does not address cases of voluntary liquidation without the involvement of a Peo-

ple's Court. How a voluntary liquidation of a foreign investment enterprise initiated by its investor shall be conducted, is now to a certain degree unclear. Foreign investors need to be prepared that, until further rules have been issued, any liquidation to be conducted needs close prior coordination with all involved authorities. This may prove to be more difficult if the liquidation takes place outside one of the major economic areas where the authorities may be less experienced.

Labor Contract Law Update

A first official draft of the *Implementing Regulations of the PRC Labour Contract Law* (Draft) comprising of 45 articles has recently been published by the Legislative Affairs Office of the State Council to solicit public comments. Supplementing the *PRC Labor Contract Law* which came into force on January 1, 2008, the Draft tries to clarify certain implementation issues. The Draft has triggered numerous comments from lobbying organizations like e.g. the European Chamber of Commerce. Given the substantial legislative controversies during the promulgation of the *PRC Labor Contract Law*, it would not be surprising to still see significant changes to the Draft before its final promulgation.

Building Register Book

To implement the *PRC Property Law*, the Ministry of Housing and

Urban-Rural Development has promulgated the *Interim Measures on Administration of Building Registration Books* on May 6, 2008, after the promulgation of the *Building Registration Measures* by its predecessor, the Ministry of Construction, on February 15, 2008. The *Building Registration Measures* will be effective as of July 1, 2008. Based on the new rules, each basic unit (e.g. building or premises with specific boundaries) of a building shall be recorded in a locally administered "Building Register Book" (BRB) with a unique serial number. Recorded information includes:

- building serial number, location and structure of the building, size, planned purpose
- nature, duration and way of having obtained the underlying land use right; land plot number, land use right certificate number
- owner, pre-registration of ownership transfer
- encumbrances (e.g. mortgages including on buildings under construction; easements)
- registered objections (in case of alleged but disputed errors in the BRB)

Most of the information contained in the BRB shall be available to the interested public. In line with the *PRC Property Law*, the content of the BRB shall prevail over e.g. a deviating building ownership certificate, unless an error in the BRB can be proven. In case of any real estate transactions, a strongly recommended prior examination of the BRB is expected to become a standard procedure in the future.

High and New Technology Enterprises

In April 2008, the Ministry of Science and Technology (MST), Ministry of Finance (MOF) and the State Administration of Taxation (SAT) jointly promulgated the *Measures on the Recognition of High and New Technology Enterprises* (Measures) which took effect on January 1, 2008.

The Measures provide that MST, MOF and SAT and their respective provincial level counterparts are the competent authorities to jointly administer the recognition of high and new technology enterprises (HNTE) and related work.

Based on the *PRC Corporate Income Tax Law*, a preferential corporate income tax rate of 15% may apply to an HNTE.

Attached to the Measures are the *Fields of High and New Technology Eligible for Primary Support of the State*, which list technologies eligible for recognition as HNTE. This list includes technologies such as IT, biotechnology, energy, resources, etc.

Technology Imports and Exports

On June 2, 2008 the Ministry of Commerce (MOFCOM) issued the draft *Measures on the Administration of Prohibited or Restricted Technology Imports* (Import Measures) and the draft *Measures on the Administration of Technology Import and Export Contract Registration* (Registration Measures) for soliciting of public comments.

A positive change under the Registration Measures would be that commerce bureaus of provincial level would be empowered to examine and approve the import of restricted technologies, which is up to now handled by MOFCOM on national level.

Similarly, under the Registration Measures, the regional commerce bureaus would be in charge of the registration of technology import contracts outside the scope of certain catalogues.

Import of Mechanical and Electrical Products

On April 7, 2008, the MOFCOM, General Administration of Customs, and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) jointly promulgated the

- *Measures on Import of Mechanical and Electrical Products* (MEP)
- *Measures on Implementing Automatic License for Import of MEP*
- *Measures on Administration of Import of Important Used MEP*
- *Catalogue of Import of Important Used MEP*

The above measures are effective since May 1, 2008. Import of MEP can fall under the prohibited, restricted or permitted category and will be correspondingly subject to different requirements.

Questions or comments?

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Tips & Dates

*Dr. Sven-Michael Werner and Dr. Martin Rothermel – **Legal and Liability Issues with Chinese Suppliers** organized by Management Circle*

25 and 26 June 2008 - Munich

■
*Ralph Koppitz – **Joint Venture vs. Wholly Foreign Owned Enterprise in China** organized by Bucerius Law School*

July 30, 2008 - Suzhou

■
***Olympic Games** – Prepare for travel and transport restrictions throughout all venue cities of the games*

August 8 to 20, 2008

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***Paralympic Games** – Prepare for travel and transport restrictions throughout all venue cities of the games*

September 6 to 17, 2008

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PRC Visa Restrictions Continue to Apply

All PRC visa applications continue to be reviewed more strictly than in the past. 180-day and multiple entry business visa are likely not to be granted for the time being. Visa extensions may also face difficulties.

Disclaimer

The contents of this newsletter are general information on the respective subject matter only and cannot be treated as a complete description or a substitute specific advice.

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