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CHINA LAW REPORTER

中国法律报道

*REPORTING ON DEVELOPMENTS IN THE FOUR LEGAL SYSTEMS OF
GREATER CHINA*

This edition of the China Law Reporter contains an article on China's new Labor Contract Law. This new law requires employers to enter into written contracts with employees and modifies the conditions and requirements for both fixed-term and open-ended labor contracts. In part, the new Labor contract law seems to be aimed at preventing, or dissipating, "mass incidents" related to labor disputes. According to a recent interview with the chairman of the Law Committee of the National People's Congress, the number of labor disputes—usually concerning unpaid wages—increased 13.5 times between 1995 and 2006. In the same interview, it was reported that more than 60% of employers in China sign short-term contracts with employees, and then terminate the employees upon the expiration of a probation period. The new Labor Contract Law takes effect as, according to China's Ministry of Labor and Social Security, the Chinese government is trying to have 90% of the Chinese its workforce under the protection of formal labor contracts by the end of 2007.

This edition of the China Law Reporter also contains some of the presentations made during the China-related programming at the Spring Meeting. The China-related programming followed a potential foreign investment in a hypothetical Chinese company, and reviewed how recent changes to Chinese law, including, for example, the mergers and acquisitions regulations, affect foreign investments. These presentations provide an effective overview of certain recent developments in Chinese law.

Speaking of "hot topics," the China Committee is sponsoring two programs at the upcoming ABA Annual Meeting in San Francisco. The first program, "Hot Topics in Doing Business in China: 2007" will take place at 2:00pm on Sunday, August 12 in the Moscone Center West, 2nd Floor, Room 2011. This program will review developments in Chinese law since the 2006 Annual Meeting, and how such developments affect foreign investors. Speaker will touch on changes to China's environmental regulations, intellectual property rights regime, tax laws, mergers and acquisitions regulations, and other related topics.

Co-Chairs Message, continued

The China Committee is also co-sponsoring a program, with ABA-Asia, on Saturday, August 11 at 9:30am Golden Gate Hall C1, B2 Level, San Francisco Marriott. This program, “U.S.-China Dialogue on Rule of Law Foundations for Global Product Safety and Health” will focus on “rule of law” fundamentals such as transparency, accountability, accessibility to the legal system and even application of the laws, in the context of growing concern over food and product safety.

We also note that the ABA Task Force on International Trade in Legal Services will be hosting the Second Annual Asian Summit on Legal Services for Bar Leaders on Friday, August 10, from 3:00-5:00 pm at the Westin St. Francis Hotel, Elizabethan Room D, Second Floor, during the ABA Annual Meeting in San Francisco. For the second year in a row, the Summit will offer a unique opportunity for leaders of the profession from Asian countries and the United States to discuss issues of mutual interest related to transnational law practice.

If you're going to be at the Annual Meeting, we encourage you to attend these programs. More information about the Annual Meeting can be found at <http://www.abanet.org/intlaw/annual07/home.html>.

Looking ahead to the Fall Meeting in London, the China Committee will be sponsoring two programs. The first program is “They Came, They Saw, They Bought: Outbound Investments by Chinese, Indian, Russian Companies,” and is co-sponsored by the Section's Russia/Eurasia Committee, Asia/Pacific Committee, and International Investment and Development Committee. This program will review investments by ‘national champion’ Chinese, Indian, and Russian companies in the U.S. and Europe, and the reaction in the U.S. and Europe to such activity. The second program is “Comparing the US and EU Approaches to China's WTO Compliance” and is co-sponsored by the Section's International Trade Committee and Europe Committee. This program will compare and contrast efforts by the U.S. government and EU members to ensure China's compliance with its WTO commitments. We encourage you to come to London for what will be a great Fall Meeting. More information about the Fall Meeting can be found at <http://www.abanet.org/intlaw/fall07/home.html>.

There are many opportunities to become involved with the China Committee. The Committee's steering group is made up of the Committee's leadership is open to all interested members, including those who want to become Committee leaders. The steering group will meet on a periodic basis—via teleconference—during the upcoming ABA year (starting mid-August 2007), and is a good avenue to become active in the Committee. You could also write articles for the China Law Reporter or participate in the drafting of the Committee's 2007 Year-in-Review. An upcoming edition of the Section's International Law News will focus on Asia, and will We're also looking to expand our programming menu during the next year. We are developing teleconferences on China's revised franchising regulations (in conjunction with the Section's International Commercial Transactions Committee) and on China's new tax code (in conjunction with the Section's International

Tax Committee). But we'd like to do more. Contact Mike Burke, China Committee Co-Chair, at mburke@williamsmullen.com if you would like to join the Committee's steering group.

Amy L. Sommers, Esq. and Michael E. Burke, Esq.,
Co-Chairs, China Committee

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RECENT DEVELOPMENTS

China's New Labor Contract Law

By Ronald C. Brown *

A. Introduction: Context

China has issued its long-anticipated and much-discussed Employment Contract Law, effective January 1, 2008.

Process: Transparent and Participatory

Since its first draft was released in March, 2006 the process of its consideration, and the subsequent two drafts, was marked by transparency and wide-based participation. Not only the usual Chinese experts and officials took part, but also foreign entities from around the world, including U.S. business representatives, such as the U.S. Chamber of Commerce and the U.S. China Business Council. Also, nearly 200,000 comments came from the public, largely from workers.

Modifications of Early Drafts

Numerous provisions were introduced and vigorously debated. Some European and American businesses and associations were immediately alarmed at what they felt were the serious challenges to costs and profitability that were presented by the provisions of the early drafts. This precipitated a response by some that foreigners were intruding too deeply into China's internal affairs. It even, for the first time, caused an American union, the Steelworkers, to come out in support of the new law, in that it was intended to further workers' rights. Exchanges on the drafts continued and after the Standing Committee's consideration of the final draft, the new law was issued on June 29, 2007.

New Employment Contract Law: Many Bullets Were Ducked

The new law eliminated, re-drafted, or re-formulated many of the more controversial provisions. These modifications, for many, have accommodated the early concerns raised by the business communities. To be sure, the law imposes new and greater liabilities on employers, grants some new rights and protections for workers, places

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some hard-to-miss enforcement requirements on the government, grants increased self-help remedies to the labor unions and the workers, and authorizes actions against negligent government enforcers of the new labor law. It moves the prior 1994 labor contract law provisions into a posture more compatible with China's other new laws covering bankruptcy, mergers and acquisitions. While China may absorb some "hits" on its economic development and "competitive advantage" by improving labor law provisions, as always, "the proof is the pudding" – will enforcement be meaningful ... this time? IF enforcement works well and provides fairer competition, it can not only boost the rights of workers, but also "level the playing field" for the "good citizen-and-law-abiding" U.S. companies operating in China.

B. Scope and Substance of Employment Contract Law: Highlights

Formation and Content: Tightening the Relationship

Many existing statutory provisions continued, but clarifications and new sanctions were added. For example, all employment contracts must be written (Art. 10); and, if not concluded and signed within 30 days, the employer must pay double wages for the period of the violation. Shortened *probationary time limits* were established, depending on the length of the contract, with maximum periods of one month for contracts between three months and one year; two months for contracts one to three years; six months for contracts three years or more or open-ended (Art. 19). *Three types of contract* were prescribed – fixed term, open-ended term, and project contracts (Arts. 12-15). Workers employed for more than 10 years may be entitled to an open-ended contract (Art. 14(1)); and *workers whose second consecutive term expires will be entitled to have an open-ended contract, if they so demand* (Art. 14(3), as will workers without a written contract after one year (Art. 14). Protection of *confidential information* on trade secrets and intellectual property is authorized and a competition restriction may also be included, though limited to certain senior management and technical personnel (Art. 23). The limit on competition requires post-employment compensation, paid in monthly installments, and is limited to two years. *Liquidated damage provisions* are permitted for violations by those personnel (Arts. 23-24), but for no other reason (Art. 25), except to recoup certain professional technical training costs (Art. 22).

Lastly, different practices of *employer misconduct* in the formation of employment contracts are specifically highlighted and prohibited. There is a long list of "don'ts". Article 26 invalidates an employment contract secured by a contractual party's deception, coercion or taking advantage of the worker's difficulties; an employer cannot refuse to give a written contract (Art. 11). Furthermore, an employer cannot keep a worker's ID card, require a security paid by a worker (Art. 9); employers, placement or accepting unit, cannot require a fee to be paid by the worker (Art. 60); the employer cannot "disguise" overtime (Article 31); and most worker liquidated damage provisions are prohibited (Art. 25). Also prohibited are acts of violence, threats, or unlawful restriction of personal freedom to compel a worker to work (Art. 38).

Performance Provisions

There are only six provisions in this chapter, some old, some new. Article 30 reiterates the employer's obligation to *pay wages on time* and in full, with possible further damages if not (Art. 85). Interestingly, Article 30 allows the unpaid worker, "in accordance with the law", to apply to the court for an order to pay; presumably, this "labor dispute" would still need to be preceded by labor arbitration (see discussion below). Article 31 provides that an employer *may not compel overtime*, a clearer mandate than the prior law's right to negotiate same; again, if enforced, this worker's "right" could provide an obstacle to termination for exercising it under Article 39. Finally, without breaching their employment contracts, workers may withhold their services rather than performing certain dangerous operations (Art. 32).

Mergers and acquisitions, a growing phenomenon in China and under new legislation, are addressed by Articles 34 and 33, respectively, which clarify the continuing validity of incumbent workers' employment contracts, absent a proper termination or amendment of the workers' employment contracts.

Termination and Ending Employment Contracts

The 15 provisions of Chapter 4 clarify and create some new rights and obligations.

Workers may terminate their employment contracts by mutual agreement (Art. 36) or by providing 30 days notice (or 3 days notice if during probation, Art. 37). Workers also can terminate if the employer fails to provide contracted labor conditions, labor protection, full and timely compensation, social security premiums, employer rules in compliance with laws, employment contracts formed free of coercion and deception, or for a reason otherwise specified by law (Article 38).

If the employer uses violence, threats, or unlawful restriction of personal freedom in compelling a worker to work or in requiring performance of certain dangerous operations, workers may terminate their contract (without notice) (Art. 38). Perhaps this could have some relevance in the types of recent cases where the Chinese Government has "cracked down" on employers found to be using involuntary labor in some brick factories. Provisions of the employment contract law would make a covered employer liable for damages and could impose administrative and criminal penalties (Art. 88).

Under this law, an *employment contract "ends"* upon its expiration, death of worker, employer bankruptcy, business closure or liquidation, or its business license is taken away (Art. 44).

The *employer may terminate workers* for the same reasons as existed under prior law (without having any obligation for severance pay); failed probation, material breach of employer's rules or regulations, serious dereliction of duty or graft causing

substantial damage to the employer, and criminal liability (Art. 39(1-3) and (6)). The *new employment contract law adds two additional grounds* (which also do not require severance pay): (1) continuing an employment relationship with another employer (after primary employer's request to rectify) which materially affects the completion of the worker's tasks; and (2) worker uses deception, coercion, or takes advantage of the employer's difficulties to conclude or amend an employment contract (Art. 39(4) and (5)).

The employer may also terminate a worker (1) unable to perform original or arranged work, following the medical treatment period for illness or a non-work-related injury or (2) incompetent, even after training or adjustment, or (3) if work is rendered unperformable by a major change in circumstances in underlying premises (Art. 40). In these cases, severance pay is due (Art. 46).

Layoffs of a certain size must be explained by an employer and are permitted only under specified circumstances. A reduction in force of at least 20 workers or if fewer than 20, then by 10 percent of the workforce is permitted if necessitated by one of following four justifications: (1) restructuring pursuant to Bankruptcy Law; (2) serious difficulties in production and/or business operations; (3) changes in production, innovation, business method, and after amendment of employment contracts; or (4) major change in the objective economic circumstances relied upon making the contracts unperformable (Art. 41). The provision also grants *priority retention rights to workers* with relatively long fixed term or open-ended contracts or *to a worker* who is a family's sole employed member and there is an elderly person or minor needing to be cared for. Dismissed workers are provided *preferential hiring* if the employer re-hires within six months.

Provisions protecting workers from termination are expanded from three to five provisions. The original three are (1) lost or partially lost capacity to work due to occupational disease or a work-related injury attributable to the employer; (2) during medical treatment period for illness or a non-work-related injury; or (3) during pregnancy or lactation period. The *new law added two provisions*: (4) workers exposed to occupational disease hazards before pre-departure health check-up or are suspected of having contracted an occupational disease and are under medical diagnosis or observation; and (5) workers with employer for at least 15 years and are less than five years from retirement (Art. 42). Likewise, an *expired* employment contract cannot be *ended* for those workers protected by Article 42 (except for lost or diminished capacity to work, Art, 42(2)) and will be extended until the circumstances described therein have ceased.

Severance Compensation and Unlawful Termination

Article 46 stipulates the *employer must pay severance pay to the worker terminated under Articles 38, 40, or 41; and, under Article 44 where the contract ends due to a bankruptcy or closure under Article 44 (4) or (5); and, in cases of expiration of a fixed-term contract, unless the worker refuses to renew even though the employer*

offered same or better conditions as contained in the current contract (Art. 44(1)). Some employers view this as a Hobson's choice, as either a new fixed or open contract must be given or severance paid.

The *computation for payment of severance was adjusted* in the employment contract law, greatly reducing the separation costs projected from earlier drafts of the law, particularly for senior management employees. Article 47 provides the original law's formula of one month's wage for each year of service, but the computation is now capped at 12 months' wages in all cases, and is limited where it exceeds three times the average wage of all employees in the municipality where the employee works (Art. 47). The main concern for employers relates to the higher-paid workers.

Article 48 provides that in cases of *unlawful termination or ending* of an employment contract, if the worker does not demand reinstatement or if it is not possible, then the worker shall be paid *damages at twice the rate of severance* provided in Article 47 (Art. 87).

C. Special Provisions

Collective Contracts

Obligations and procedures under the new law follow the 1994 Labor Law, subsequent State Council regulations, and the ACFTU's 2006 *Trial Regulation on the Work of Enterprise Trade Unions* provisions calling for "consultation", "negotiation", etc. (for full discussion see Brown, Ronald C., China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining?, 16 *Duke J. Comp. & Int'l Law* 35 (2006)). Of particular interest to employers is Article 51 that states *where there is no union, the employer shall conclude a collective contract with an employee representative under the guidance of higher level unions*. A newly developed feature is the shifting emphasis from enterprise-level negotiations to *industry-wide* or *area collective contracts* in industries such as construction, mining, catering services, etc. within areas below the county level (Art. 53). Article 54 stipulates that these contracts are binding on employers and workers in the industry or in the area in the locality concerned.

Placement

Early drafts dealing with the "dispatch" worker issue were very controversial. The new law, which appears to reduce employers' wide use of "agency" workers from staffing firms, reached accommodation on the issues as follows. *Staffing firms* now must be established under the Company Law, are liable as an "employer", must have fixed term contracts of not less than two years with its workers, and must pay minimum wage compensation when there is no work assignment for the worker (Articles 57 and 58). The placement must be based on "actual" requirements of the job position and the parties may not conclude several short-term placement agreements to cover a continuous term of labor use (Art. 59). Therefore, these

temporary assignments should be limited to temporary, auxiliary or substitute openings and wages paid must be equal with the regular workers at the accepting unit (Art. 63). Additionally, the staffing firm is prohibited from “pocketing” any of the compensation paid by the accepting unit for the workers or from charging fees from the workers placed (Art. 60). Finally, these temporary workers are accorded the right to join the labor union of either the staffing firm or the accepting unit (Art. 64).

Obligations of the accepting unit also include implementing state labor standards, working conditions and labor protection; paying overtime, performance bonuses and normal wage adjustments; and providing training necessary for the job position (Art. 62). Termination is to be done by the staffing firm (Art. 65) and accepting units are prohibited from setting up their own staffing firms (Art. 67).

Part-Time Labor

Part-time workers are limited to an “average” of not more than four hours per day or 24 hours per week for the “same” employer (Art. 68); but if there is a second employer, the subsequently concluded contract cannot prejudice the performance of the first (Art. 69). Wages are usually paid on an hourly basis and must meet local minimum wage standards (Art. 72). The contract may be oral and terminable “at-will”; there is no requirement for severance pay, and there cannot be a probationary period (Articles 69-71). Some questions may remain regarding use of student “workers” not as “regular” workers, but as interns or participants in work-study programs where per MOLSS interpretation they fall outside the 1994 Labor Law, sub-minimal compensation is often paid, as in the recent *McDonald’s* and *KFC* cases.

D. Administration: Monitoring Inspections

The administration and monitoring provisions add few, if any, changes. The authority of the inspectors is emphasized stating they have the authority to review employment contracts and conduct on-the-spot inspections of the work premises (Art. 75). Workers whose rights are infringed have the right to “request” government action or to apply for arbitration or sue in court, as may be permitted by law (Art. 77). Labor unions are permitted to complain about violations, file for arbitration (Art. 56) and assist workers if they arbitrate or go to court (Art. 78).

E. Legal Liability

These 15 articles set forth *remedies and damages for violations* of the aforesaid obligations. For example, failure to provide a written employment contract in the first year requires the employer to pay twice the wages for the period in violation (Art. 82); failure to pay owed compensation can render the employer liable for damages at 50-100 percent of the amount owed (Art. 85); or if an employer unlawfully terminates or ends a contract, it must pay damages to the worker at twice the rate of severance pay due (Art. 87).

Other miscellaneous provisions include employer liability for (1) “raiding” another worker who is still employed (Art. 91) and (2) *violation of the employment contract law by an “individual” who is an employer’s “contractor”* (jointly and severally liable, Art. 94). Lastly, there is a provision for *sanctions against the government-labor-contract-enforcers* (including the labor agency, other offices, or “a member of its working personnel”) who act negligently or fail to perform their duties and cause harm to a worker or the employer (Art. 95). *Transition from employment contracts existing at the time of implementation* of this new law are dealt with in Article 97, with employers retaining some residual liabilities.

F. Analysis/Observations

Some themes and questions emerge.

Workers’ rights have been improved in the wording of the law, including as against employer misconduct and failure to pay wages. Provisions on probationary periods, types of contracts (including placement contracts), protection of confidential information and post-employment competition were added to clarify the formation and content of employment contracts. Some new protections from termination were added for workers possibly exposed to occupational disease hazards and those close to retirement. Part-time workers remained largely at the employer’s discretion, though entitled to minimum labor standards.

Employers’ obligations were increased for severance pay, though for a lesser amount than proposed in earlier drafts. Employers also are “encouraged” to offer open-ended contracts or pay severance. The law addressed the emerging impacts caused by mergers, acquisitions and layoffs, seeking to find some balance between employer and worker needs. *Some employer rights* were provided; for example, training costs can now be recouped by the employer allowing for damages and fixed term of service.

How has the role of the labor union been affected? On the one hand it lost its right proposed in the earlier drafts to veto employer rules, but it did gain the statutory wording that seeks to provide enhanced emphasis on its dominant role as the representative of the workers in collective negotiations, in arbitration and in the policing and enforcing of this new law. Some will observe that there is nothing new in this rhetoric and that this law brings little change to labor relations, arguing, for example, that Wal-Mart and others took little risk when they embraced the labor union. Still, there are some interesting provisions that would challenge this somewhat cynical approach. For example, the law now grants unions, by statute in Article 53, the right to move its emphasis from enterprise-level negotiating to industry and area-wide negotiation; and Article 56 does explicitly state that the union may take a labor dispute to arbitration or the court and otherwise act as an advocate in termination cases (Art. 43) and other disputes. Now, even American unions are engaging China’s unions to see if they can support the further development of the unions’ role as protector of workers’ rights.

How this law may affect labor arbitration is another area of interest. As stated, Article 56 (even in the 1994 Labor Law) grants the right to the *union itself* to take a case to labor arbitration *and court*. This is in addition to its usual more passive role as reiterated in Article 78 that provides for union *support* when a worker brings arbitration.

However, labor arbitration in China, since at least the 1994 Labor Law, has first required a “labor dispute”, followed by arbitration - *before* access to the court is granted. Article 85 appears to confirm that approach, yet Article 30 states that in disputes over payment of *wages* the worker “*in accordance with the law*” may apply to the court for an order to pay. Whether this application to the court in Article 56 is a right to directly proceed to court or whether the worker, to be “in accordance with the law”, must first proceed with labor arbitration is unclear, yet unlikely, based on prior case experience (*see* discussion in Brown, Ronald C., China's Employment Discrimination Laws During Economic Transition, 19 *Columbia J. Asian Law* 361, 408-410 (2006)).

G. Conclusion

Following the compromises produced from prior drafts, the new employment contract law, if meaningfully enforced, should make workers feel more secure and employers less displeased with their new obligations. China’s labor reforms appear to have found that “harmony” that retains the competitive advantages in labor which draw Western investment and yet still allow for China’s continued economic growth.

Still there will be the inevitable need for clarification, regulations and amendments to eliminate new mischief, and – above all – increased and consistent enforcement of the new law. In final observation, the Employment Contract Law should force the discussion of future labor law reforms in China to a new and higher level, carrying with it the processes of *transparency* and *wide participation* that took place in its drafting.

This article has been written and contributed by Ronald C. Brown, Esq., Professor of Law at the University of Hawaii Richardson School of Law and also currently a foreign advisor to the graduate law programs at Beijing University Law School. Professor Brown can be reached at ronaldc@hawaii.edu or at (808) 956-6549.

ITEMS OF INTEREST

ABA International Law Section Spring Meeting

At the Spring Meeting of the International Law Section held in Washington D.C. in May of 2007, the China Committee held an integrated series of three programs (collectively called “The China F1: Negotiating the Turns and Straight-Aways in Chinese Legal Development”) based on the same hypothetical. The first session focused on recent changes to China’s mergers and acquisitions regulations, the revised Bankruptcy Law and ethics issues related to doing business in China. The second session focused on recent changes to China’s real estate and environmental regulations. The third session focused on recent changes in China’s labor and employment regulations. The panelists at the first session were Adam Li, Jun He Law Offices, Shanghai, China, David Tiang, GE Consumer & Industrial, Shanghai, China, Daniel Roules Squire Sanders & Dempsey LLP, Shanghai, China, and Amy Sommers, Squire Sanders & Dempsey LLP, Shanghai, China; at the second session were Tad Ferris, Holland & Knight, Washington, DC, Amy Sommers, Squire Sanders & Dempsey LLP, Shanghai, China, Yingying Wang, Fangda Law Firm, Shanghai, China and Robert Wrobel, Executive Vice President and Chief Legal Officer, Alpharma, Inc.; and at the third session were Adam Li, Jun He Law Offices, Shanghai, China, Jianjun Ma Jun He Law Offices, Shanghai, China and Wang Weiwen, General Counsel, International Paper. The presentations were exceptional, and we would like to take this opportunity to express our gratitude to all of the panelists. We also want to congratulate Amy Sommers and Michael Burke as Co-Chairs of the China Committee for their fine collective efforts and thank them for their hard work to make it happen.

Summary of Selected New Laws and Regulations

Contributed by Jun He Law Firm (君合律师事务所)*

New Enterprise Income Tax Law: Key Changes and Uncertainties Ahead

On March 16, 2007, the National People’s Congress passed the *Enterprise Income Tax Law* (the “New Tax Law”), which will become effective from January 1, 2008. As the New Tax Law only provides fundamental principles in respect of the enterprise income tax (“EIT”), the implementation rules of the New Tax Law is also being prepared by the General State Administration of Tax and the Ministry of Finance in parallel. A draft of the implementation rules has already been completed and is currently subject to opinions

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and comments. It is expected that such implementation rules will be issued by the end of 2007 and become effective at the same time when the New Tax Law becomes effective.

The New Tax Law aims to create a fair competitive environment among all enterprises and solve the problem of different tax treatment and tax burden between the domestic enterprises (“DE”) and foreign investment enterprises (“FIE”), rather than to attract direct foreign investment by providing tax preferential treatment for FIEs. Based on the said principle, the New Tax Law has consolidated the two separate tax regimes respectively under the *PRC Foreign Investment Enterprise and Foreign Enterprise Law* (1991) for FIEs and foreign companies and the *Tentative Measures of Enterprise Income Tax* (1993) for DEs as well as the relevant regulations and rules (collectively as “Existing Law”). Various changes have been made to the existing tax regime, including unification of the EIT rate, unification of the deduction methods and standards, and unification of the tax preferential treatment policies, etc. The new EIT regime will not only provide incentives to the development of companies engaging in advanced technology, environmental protection and charitable sectors but also help to foster a legal taxation environment for fair competition among DE and FIE.

The following are the major changes made by the EIT Law to the existing EIT regime:

I. Outbound Investment

For domestic enterprises which have been enjoying tax preference for FIEs by using the tactic of transferring their funds abroad and then investing them back to China (“Return Investment”), bloomed in China in recent few years, the following new rules will have substantial impact on their investment strategy in the future.

(A) Effective Management Institute

The Existing Law classifies taxpayers based on the nature of the enterprises, such as DE, FIE, state-owned enterprise, collectively-owned enterprise, etc. However, the New Tax Law introduces new concepts of “Tax Resident Enterprise” (“TRE”) and “Non-Tax Resident Enterprise” (“Non-TRE”). The two types of enterprises have different tax burdens, that is, TREs have a general tax payment obligation and have to pay tax on all income earned by it on worldwide basis, including income from sources both inside and outside the territory of China; whereas for Non-TREs, its tax payment obligation is rather limited and it only has to pay tax based on income earned by it from sources inside the territory of China.

Under the New Tax Law, “effective management institute” is one of the most important factors for determining whether an enterprise shall be deemed as a TRE or Non-TRE. Enterprises will be deemed as TREs if it is (i) established in the PRC, regardless of whether its “effective management institute” is located within the PRC; or (ii) established in accordance with laws of foreign jurisdictions but has an “effective management institute” inside China. Non-TREs are enterprises established in accordance with laws of foreign jurisdictions and their effective management institutes are not within China but

they are either established a presence in China or have China source income without any presence in China. However, the New Tax Law has not provided the definition of the “effective management institute”.

It is unclear as to whether special purpose vehicles established in Cayman, English Virgin Islands or other foreign jurisdictions for Return Investment will be considered as TREs since most of their businesses are actually operated within China.

(B) Foreign Tax Credit

Following the practice of the Existing Law, the New Tax Law also allows TREs to claim a credit for foreign income tax paid on foreign source income provided that the amount of the paid foreign tax to be credited should not exceed the amount of Chinese tax payable by the TREs on the foreign source income. Unused foreign tax credit may be carried forward for five years.

(C) Anti- Avoidance

The New Tax Law has adopted the rules of controlled foreign enterprise (“CFE rule”) as guidance for tax anti-avoidance, this means that TREs may be taxed on the portion of undistributed profits retained in foreign enterprises owned or controlled by such TREs without any valid commercial reason. Such rule will probably have significant effect on the overseas investment strategy and tax planning of such investment by Chinese enterprises or individuals. However, details for the implementation of such rules will still be subject to the stipulations in the implementation rules and circulars to be issued by the relevant authorities.

(D) Withholding Tax

The New Tax Law stated that the withholding tax rate with respect to dividends, interests, royalties and other types of income derived by Non-TREs within China shall be 20%. Under the existing tax regime, foreign investors are exempt from any withholding tax for dividends they receive from FIEs invested by them and can enjoy a preferential tax rate at 10% for interest, rental, royalty and other income earned by them in China. The New Tax Law has not specified the preferential treatment with respect to withholding tax that Non-TREs may enjoy but still provides the possibility of withholding tax reduction or exemption of Non-TREs’ China source income. Whether the tax preferential treatment will be granted and the details of such policies, will depend on the implementation rules and circulars of relevant authorities.

II. Tax Incentive Measures

The New Tax Law has unified the preferential income tax policies by granting industry-based tax incentives to encourage development of the industries favored by the State, and keeping the region-based tax incentives to assist development of the regions supported by the State, which are a material change to the existing tax incentive policies. Generally

speaking, the preferential tax rate for production-oriented and export-oriented FIEs, tax refund for re-investment by FIEs and regional tax incentives will be gradually cancelled after the transitional period as stipulated in the New Tax Law and replaced by the new tax incentive measures. The tax incentive measures under the New Tax Law mainly include the following:

(A) Industry-based Incentives

The New Tax Law placed focus on incentive measures on industries and projects receiving priority support from the State, such as industries of agriculture, utilities, environmental protection, energy and water conservation, high technology, etc, and specifically includes:

1. Small low-profit enterprises;
2. High-tech enterprises;
3. Enterprises investing in environmental protection;
4. Enterprises investing in agriculture, forestry, animal husbandry, fisheries and infrastructure construction;
5. Venture capital; and
6. Welfare enterprises and enterprises supporting disadvantaged groups.

(B) Regional Incentives

The regional tax incentives granted to enterprises prior to the issuance of the New Tax Law will still be applicable during the 5-year transitional period. The industrial incentives stipulated under the New Tax Law will not be subject to any regional restriction and will be applicable to all qualified enterprises regardless of the place of their establishment. The New Tax Law also provides that the autonomous region may enjoy the reduction or exemption of the local portion of the EIT.

(C) Transitional Measures

The New Tax Law has developed some transitional measures for old enterprises approved to be established before the promulgation of the New Tax Law which are enjoying preferential tax treatment under the Existing Law. According to the New Tax Law, the said enterprises are entitled to increase the income tax rate on a gradual basis within 5 years after the effective date of the New Tax Law. Old enterprises that are entitled to enjoy regular tax reduction and exemption treatment within a specific period may continue to enjoy the tax incentives during the remaining specified time limit. It is likely that the implementation rules of the New Tax Law will specifically provide guidelines as to how to deal with the transitional period of different types of enterprises which are enjoying various kinds of tax incentives under the Existing Law. It is also expected that some unclear matters in the New Tax Law will be clarified in the implementation rules. For example, whether enterprises established after the promulgation of the New Tax Law but before it becomes effective (i.e., from March 16, 2007 to January 1, 2008) will be entitled to any tax preferential treatment; and with

respect to a FIE, whether the date of approval of establishment refers to the date of granting of its foreign investment certificate or the date of issuance of the business license.

(D) Incentive Measures

Other than granting certain tax exemption or reduction, the New Tax Law also provides the following tax incentive measures:

1. Super Deduction of R&D expenses for new technology, new products, new craftsmanship, etc;
2. Reduction of taxable amount at a certain percentage of investment amount for venture capital business engaged in state encouraged industries;
3. Investment credit on qualifying expenditures on plant and machinery for environmental protection, energy and water conservation and production safety;
4. Short tax depreciation life or accelerated depreciation for particular types of fixed assets due to advancement of technology; and
5. Reduction allowance on income generated from manufacturing of products consistent with national industrial policy by using comprehensive resources.

III. Anti-Avoidance

The Existing Law only simply provides that the transactions between associated enterprises should be charged at reasonable price, otherwise the tax authorities are entitled to make adjustments without any specific rules. With reference to international practice, the New Tax Law has devoted an entire chapter of “Special Tax Adjustment” to specify various adjustment measures that the tax authorities may take against tax avoidance including measures against transfer pricing, CFE Rule (as discussed in the above Section I (C)), “thin-capitalization rule”, etc. Such changes reveal that guarding against and preventing tax avoidance has become an increasingly important task of the Chinese tax authorities and more attention should be paid in this regard.

(A) General Anti-Avoidance Rules

Similar to the Existing Law, the New Tax Law has established the principle of “independent transaction” between the associated enterprises, namely, if an enterprise engages in a transaction or other arrangement without reasonable business purpose with its associated companies that reduces taxable income, the tax authorities may make adjustments on the taxable amount. Further, the New Tax Law provides that the costs and expenses incurred during the joint development or joint purchase of intangible assets, or joint provision or receiving of services between associated enterprises shall be allocated between such enterprises based on the principle of “independent transaction”. The New Tax Law also states that the advancing tax arrangement can be made by the associated companies.

(B) Thin Capitalization Rule

The “thin capitalization rule” is introduced for the first time which means that interest expense will not be deductible to the extent it relates to debt that exceeds a specific related party debt-to-equity ratio.

It is expected that the detailed rules for tax anti-avoidance, such as rules for filing of transfer pricing documents, CFE Rule and thin capitalization rule will be issued by relevant authorities, and it may, as always, take some time for the new rules to be applied in practice.

IV. Summary

It is believed that the implementation of the New Tax Law will have a profound long-term impact on the Chinese economy and business operation of enterprises in China. With the implementation of the New Tax Law, it is foreseeable that new tax laws, regulations or rules will be promulgated or issued with respect to the reform of other types of taxes, such as value-added tax, individual tax, income tax for partnership, etc, in China in the future.

New PRC Property Law

After 13 years of extensive and heated discussion, the Property Law of the People’s Republic of China (the “**New Property Law**”)¹ was adopted at the 5th Session of the Tenth National People's Congress on March 16, 2007.

The New Property Law is a fundamental civil law regulating property relationship and the civil relationships generated from the attribution and utilization of real property and personal property. Including 247 articles in total, the New Property Law consists of five parts:

1. General Provisions;
2. Rights of Ownership;
3. Usufructuary Rights;
4. Security Interests; and
5. Rights of Possession.

The New Property Law will take effect as of October 1, 2007.

Until the New Property Law comes into force on October 1, 2007, the existing legislation will continue in effect, comprising the General Principles of Civil Law, the Land Administration Law, the Urban Real Estate Administration Law, the Law on Rural Land

¹ The New Property Law is “wuquan fa” (物权法) in Chinese, meaning literally “Law of the Rights in Things”. This literal meaning hints at the scope of the new law, which is wider than simply laws on “property”

Contracting and the Security Law, each of which is a part of the “property right” legal system. The New Property Law consolidates and updates the previous “property right” legal system and creates some new provisions while revising existing legal provisions. This introduction of new provisions and the revision of the existing legal provisions have attracted extensive attention and may in the future trigger many disputes. The New Property Law will be introduced part by part as follows:

1. General Provisions

The General Provisions of the New Property Law contain the following sections:

1. the fundamental principles of the New Property Law;
2. rules for the creation, change, transfer or termination of property rights; and
3. protection of property rights.

(i) Fundamental Principles

The key principle which underlies much of the New Property Law is equal protection for property rights whether owned by the state, by collectives and by private individuals and equal rules for changes of property right. It provides that “the property right of the state, collective, individual or any other right holder shall be under the protection of law, and no entity or individual may infringe upon it.” The new law for first time sets the rules for the attribution and use of property and the rules for the protection of the property rights of all right holders. The New Property Law also defines the scope of the types of property which may be possessed by the right holder (chattel, real property and other property which can now legally constitute the subject of a property right).

(ii) New Rules for the Creation, Change, Transfer or Termination of Property Rights

The New Property Law contains a chapter dedicated to provisions concerning “the creation, change, transfer and termination of property rights”. The key innovation in this chapter is a uniform real property registration system. The current system frequently requires that registration of different types of property right be registered on separate registers (with Beijing, Shanghai and Guangzhou as the exceptions to this where uniform registers have already been adopted). Article 10 of the New Property Law reads: “the State applies a uniform real property registration system. The scope, organ and measures of uniform registration shall be stipulated by the relevant laws and administrative regulations.” Article 246 reads: “Before any law or administrative regulation provides the scope, organ and measures for uniform registration of realties, a local regulation may provide rules for the relevant matters according to the relevant provisions in this Law.”

Under the new system, the creation, change, transfer or termination of a property right is not effective unless registration has been made at the relevant registry. Registration in the land register is conclusive evidence of ownership, subject to two important protections:

1. the right for a party to apply for a correction of mistakes on the register. If a mistake on the register causes damage to a party, that party has the right to claim for damages against the registry; and
2. the right for a party to claim for damages against any person who submits false documents in order to obtain an entry on the register and to receive compensation from the registry that accepted the false documents.

It has been said of the present registration regime that the cost of registration is too high and there are too many different fees. Article 22 of the New Property Law now provides that: “Real property registration fees shall be collected on each piece, and may not be collected according to the size, volume or on the basis of certain proportion of the value of the real property. The specific charging rates shall be jointly determined by the relevant departments under the State Council and the pricing administration authority.” It is widely expected that after the New Property Law takes effect, the cost for the registration of real property will be lowered and the effectiveness of the registration regime will increase.

(iii) Protection of Property Rights

The following rights of claim are available to an aggrieved party under the new regime:

1. Claim for recognition of right;
2. Claim for return of the original property;
3. Claim to eliminate or mitigate danger/damage to property;
4. Claim to repair, rebuild, exchange or restore property to its original condition; and
5. Claim for damages due to injury to property.

2. Rights of Ownership

The part of “Ownership” in the New Property Law mainly provides the attribution of property. This part firstly provides three kinds of ownerships, then the partitioned ownership of building, contiguous relationship and common ownership, finally special provisions on the acquisition of ownership including the system of obtaining property right in good faith. The most controversial questions in this part are the “3-Kinds Ownerships” and the partitioned ownership of buildings.

The focus of the issue of taxonomy of ownerships is whether the New Property Law shall provide only one kind of New Property Law or divide ownership into State ownership, collective ownership and individual ownership. At last, despite of the strong objections from some specialists and scholars, the New Property Law divides ownership into State ownership, collective ownership and individual ownership and expressly provides the scope of State properties, the exercise of State ownership and the strengthening of the protection of State property. To prevent the drain of State properties, based on the principle of equal protection, the New Property Law strengthens the protection of the State properties in 5 respects: (i) it provides that “The properties that shall be owned by the state as prescribed by law shall be owned by the State, namely, by all the people”, and

for the purpose of preventing the drain of State properties due to indefinite attribution, it also provides what properties are State properties; (ii) it provides that “any real property or chattel exclusively owned by the State as prescribed by law, no entity or individual may acquire its ownership.”; (iii) it provides that “the properties owned by the State shall be under the protection of law, and no entity or individual may encroach, plunder, privately distribute, hold back or destroy them.” ; (iv) for the purpose of preventing the drain of the properties of the State-owned enterprises, it provides that “any entity or individual violating the provisions on the management of state-owned assets and causing losses of state-owned assets in the process of enterprise restructuring, merger, division or affiliated transactions by way of transferring at a low price, conspiring to distribute them secretly, providing guarantee with them without authorization or any other way shall be held legally liable according to law.” (v) for the purpose of settling the problems in the supervision and regulation of state properties, it provides that “if the institutions and their staff that perform the duties of managing and supervising state-owned assets cause any loss of state-owned assets by the misuse of authority or neglect of duty, such institutions and their staff shall be held legally liable according to law. In addition, the New Property Law provides the principle for the protection of the collective and individual properties.

The issue regarding the owners' partitioned ownership of building is one of the issues which catch the most attention of the general public. Since more and more people own houses in residential quarters, the owners' partitioned ownership of building becomes one of the most important rights in the private real property. For the purpose of protecting the interests of owners of houses, the New Property Law expressly provides that an owner shall have ownership over the exclusive parts within the buildings such as the residential houses or the houses used for business purposes, and shall have common ownership and the right of common management over the common parts other than the exclusive parts such as elevators, other public facilities and public green land. The New Property Law also contains provisions on the attribution of the garages and the parking place in residential quarters, the function of the owners' committee and the relationship between the owners and property management institutions. Article 73 of the New Property Law, which expressly provides that the “Definite Common Elements” includes green land, road, public area, public facilities and the houses used for the property management, reads: “the roads within the building zone shall be commonly owned by the owners, except the public roads of cities or towns. The green lands within the building area shall be commonly owned by all the owners, except the public green lands of cities or towns or those which are expressly ascribed to individuals. The other public places, common facilities and houses used for real property services within the building zone shall be commonly owned by all the owners.” Article 74 of the New Property Law which gives detail provisions on the garages and parking place which fall into the “Indefinite Common Elements,” reads: “The parking places and garages that are within the building area and planned for parking cars shall be used to satisfy, above all else, the needs of the owners. The ownership of the parking places and garages shall be determined by the parties involved by way of selling, donation or leasing, etc. The parking places occupying the roads or other fields commonly owned by all owners shall be commonly owned by all the owners.” The fundamental principle is that the attribution of the common areas shall be determined based on the usage planning, i.e., the attribution of the area which have

been planned as garage or parking place shall be determined by means of sale, donation or lease or otherwise, therefore, such common area becomes a proprietary area. If the road or other area which has been planned as the common area of the owners has been used as parking place, such road or area shall fall into common area of the owners. The problems on the attribution of the garage and parking place which occur before the New Property Law takes effect shall be settled in accordance with the general legal principles or the then legal provisions or agreements. The New Property Law shall not be applicable to such problems.

3. Usufructuary Rights

The part of the New Property Law dealing with “Usufructuary Rights” concerns the use of properties. The usufructuary rights provided for by the New Property Law include:

1. Right to the Contracted Management of Land;
2. Construction Land Use Right;
3. Right to Use House Sites and Easement.

The issue of the construction land use right is likely to attract the most attention. The construction land use right provided in the New Property Law mainly involves the air right and the renewal of the construction land use right.

Although not categorizing “air right” as a separate property right, the New Property Law for the first time recognizes that air right is a kind of property right attached to the construction land use right. Article 136 of the New Property Law reads: “construction land use right may be established separately on the surface of or above or under the land. The newly-established right to use construction land shall not damage the usufructuary right that has already been established.” According to the provisions of the New Property Law, at the time when the holder of a construction land use right obtains the construction land use right, the space scope of the construction land use right is definite. The holder of the construction land use right enjoys right of the over-ground space and underground space within the planned scope. Therefore, the scope of the air right of the holder of the construction land use right is determined by the planning. For example, if Company A is permitted to construct a multi-floor buildings, the company may obtain the construction land use right within the scope of 10 meters underground to 70 meters over-ground; if Company B is permitted to construct an underground market building, the company may obtain the construction land use right within the scope from 20 to 40 meters underground.

The renewal of the term of construction land use right is an issue which was a major concern and a hot topic in the drafting of the New Property Law. Article 149 of the New Property Law reads: “The term of construction land use right for residential houses shall be automatically renewed upon expiration. The term of construction land use right for non-residential houses shall be renewed according to legal provisions. Where there are provisions about the ownership of houses and other realties on the aforesaid land, such provisions shall prevail; if there are no such provisions or the provisions are not explicit, the ownership shall be determined according to the provisions in the laws and

administrative regulations.” The fundamental principle is that the term of residential building and the non-residential building shall be different from each other. The term of the construction land use right for a residential building shall be automatically renewed, and there is not need to submit a renewal application. The renewal of the term of the construction land use right for non-residential buildings, especially industrial and commercial construction land, requires renewal application, which means that the government may approve or not approve such renewal application. The New Property Law does not provide whether the right holders shall pay additional land use right grant fee for the renewal of the term of the land use right.

4. Security Interests

The part of the “Property rights for Security” of the New Property Law amends, supplements, and updates the Security Law. The fundamental provisions of this part include the general principles, mortgage, pledge and lien. The provisions in the part of “Property Rights for Security” of the New Property Law further improves the system of the property right for security, extend the scope of collaterals, revise the rules for the realization of the property rights for security. The important updates in this part are the provision of floating charge system, the provision that a mortgagee is permitted to enter into an agreement with the mortgagor with respect to the method of realization of the mortgage, and the provision that the shares of a fund and receivables may be pledged.

The floating charge of chattels means that a mortgagor may grant a floating charge over manufacturing equipment, raw materials, half-finished products, products and other chattels which such mortgagor has owned or will own in future. When the relevant obligor fails to perform obligations, the mortgagee has priority right to realize the mortgage against the mortgagor’s then existing properties at the time of the realization of the mortgage. The existing Security Law of China does not recognize the floating charge system, but requires that the scope of the collaterals must be definite at the time of the conclusion of the mortgage contract, which is fixed mortgage. Article 181 of the New Property Law reads: “through written agreement between the parties concerned, an enterprise, individual industrial and commercial household or agricultural production operator may mortgage the manufacturing facilities, raw materials, half-finished products and products it has already owned or is going to own, and when the obligor fails to pay its/his due debts or any cause for realization of mortgage as agreed by the parties concerned occurs, the obligee shall be entitled to seek preferred payments from the chattels that exist when the party concerned realizes the mortgage.” The new law therefore establishes a floating charge system under Chinese law for the first time.

The provisions on the realization of the mortgage include the cause for the realization of the mortgage, the method of the realization of mortgage, the term of the mortgage. The provisions on these three matters in the existing Security Law of China are not all the same as those in the New Property Law. Firstly, for the cause for the realization of a mortgage, the existing Security Law of China provides that only if an obligor fails to perform his obligations, the obligee may realize the mortgage. Article 179 of the New Property Law reads: “when the obligor fails to pay due debts or any cause for realization

of the mortgage as agreed by the parties concerned occurs, the obligee may realize the relevant mortgage.” In the New Property Law, the cause for the realization agreed by the parties involved is added to the existing cause for the realization of the mortgage. The existing Security Law provides two method of realization of mortgage, i.e., through agreement or litigation. According to the existing Security Law, if the parties involved fail to reach an agreement, the mortgagee can only file an action with a competent court, which means that the mortgagee shall first win the litigation, and then apply to the relevant court for an enforcement of the judgment. Article 195 of the New Property Law provides: “In case the mortgagee and the mortgagor fail to conclude an agreement with respect to the method of realization of mortgage, the mortgagee may request the people's court to auction or sell off the property under mortgage.” That is to say, if the parties involved fail to enter into an agreement with respect to the method of the realization of the mortgage, the mortgagee may directly request the competent court to auction or sell the mortgaged property upon the mortgagee's production of preliminary proof that the mortgage and the principal creditor's right exist. We can foresee that after the New Property Law takes effect, the cost for the mortgagee's realizing the mortgage will be significantly reduced. The existing judicial interpretations provide that the term of realization of mortgage shall be within 2 years after the litigation period of the principal creditor's right expires. Article 202 of the New Property Law reads: “mortgagee shall realize the mortgage within the litigation period for the principal creditor's rights, otherwise, such mortgage will not be protected by the people's court.” Such provisions in the New Property Law will better protect the right and interest of mortgagees.

5. Rights of Possession

The last part of the New Property Law is “Possession”. For the purpose of maintaining the social order and the legal right and interest of the people, this part mainly contains the provisions on the protection of a possessor and the tort obligation of the untitled possessor.

6. Summary

There is no doubt that the New Property is and will remain a milestone in China's legal development. It is the first of its kind to recognize the equal status of private property as compared with that of the State, and has provided the principle of equal protection to individual property. It has also clarified many of the unresolved issues relating to property in the process of China's economic development, such as the automatic extension of land use right for residential buildings, air right for construction, etc. It has also expanded the system for registration of property rights, and notably for the first time has recognized security interest in floating assets.

However, like the previous civil laws, the promulgation of the New Property Law is a result of compromise of political disagreements. This has arguably resulted in many defects in the New Property Law and has left many details and operational provisions to future laws or regulations. For example, the New Property Law does not contain provisions on the specific differences between the exclusive part and the common area of

a building, and has left uncertainty for the extension of land use right for industrial and commercial use. In addition, the specific method of the realization of the mortgage on real property needs further clarification, so is the procedure for the proper function of floating charge.

For further in depth discussion, see also related articles:

Nelson, Stephen, *The PRC Enterprise Income Tax Law and Its Impact on Foreign Investments*, ABA China Law Reporter, Volume 3, Issue 3, May 2007

Peng, Helen H.C., and Shen, David Y., *Property Law Lays Legal Foundation for Protection of Property in China*, ABA China Law Reporter, Volume 3, Issue 3, May 2007

Selected Recent English Language Books on Chinese Law

Mergers and Acquisitions in China, 2d edition, by Stamford Law Corporation, Sweet & Maxwell Asia, 2007, 390 p. ISBN: 9789810585167

http://www.smlawpub.com.hk/products/prod_spec.asp?ProdId=2003&cvalue=a25a54a125a54

From the Publisher: “Since the publication of the first edition of *Mergers and Acquisitions in China* in early 2006, significant developments have taken place. The more notable ones include the introduction of the Provisions on Mergers and Acquisitions of Domestic Enterprise by Foreign Investors, the Individual Foreign Exchange Administration Method and the Measures for the Administration of the Takeover of Listed Companies. There has also been an update on the reciprocal enforcement of judgments between Hong Kong and the PRC.”

Contents:

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- Mergers and Acquisitions of Listed Companies
- Mergers and Acquisitions of State-Owned Enterprises
- Civil Litigation
- Arbitration and Alternative Dispute Resolution

Thinking with Cases: Specialist Knowledge in Chinese Cultural History, edited by Charlotte Furth, Judith T. Zeitlin and Ping-chen Hsiung, University of Hawai'i Press, 2007, 331 p. ISBN 978-0-8248-3049-6

http://www.uhpress.hawaii.edu/cart/shopcore/?db_name=uhpess&page=shop/flypage&product_id=4750&category_id=b3e6237d1b1b3b8594488ed1c40d0dfb&PHPSESSID=779f17c136c4f141668d621fd4913f38

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- Confucian "Case Learning": The Genre of Xue'an Writings

Writing and Law in Late Imperial China: Crime, Conflict, and Judgment, Edited by Robert E. Hegel and Katherine Carlitz, University of Washington Press, 2007, 352 p. ISBN: 9780295986913

<http://www.washington.edu/uwpress/search/books/HEGWRC.html>

From the Publisher: “In this fascinating, multidisciplinary volume, scholars of Chinese history, law, literature, and religions explore the intersections of legal practice with writing in many different social contexts. They consider the overlapping concerns of legal culture and the arts of crafting persuasive texts in a range of documents including crime reports, legislation, novels, prayers, and law suits. Their focus is the late Ming and Qing periods (c. 1550-1911); their documents range from complaints filed at the local level by commoners, through various texts produced by the well-to-do, to the legal opinions penned by China's emperors. *Writing and Law in Late Imperial China* explores works of crime-case fiction, judicial handbooks for magistrates and legal secretaries, popular attitudes toward clergy and merchants as reflected in legal complaints, and the belief in a parallel, otherworldly judicial system that supports earthly justice.”

Selected English Language Legal Articles

China in Transition: Environmental Challenges in the Far East (symposium), 8 Vermont Journal of Environmental Law 145 (Spring 2007). Contains the following articles:

- Introduction: Snapshots of the State of China's Environmental Regulatory System, Tseming Yang (2006-2007)
- Starbucks in the Forbidden City: Reflections on the Challenges and Opportunities for a U.S.-Chinese Partnership on Environmental Law & Policy, N. Bruce Duthu (2006-2007)
- Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms, Wang Canfa (2006-2007)
- The Role of Law in Environmental Protection in China: Recent Developments, Alex Wang (2006-2007)
- Issues Related to the Implementation of China's Energy Law: Analysis of the Energy Conservation Law and the Renewable Energy Law as Examples, Wang Mingyuan (2006-2007)
- Public Interest Environmental Litigation in China: Lessons Learned from the U.S. Experience, Patti Goldman (2006-2007)
- Promoting and Strengthening Public Participation in China's Environmental Impact Assessment Process: Comparing China's EIA Law and U.S. NEPA, Jesse L. Moorman and Zhang Ge (2006-2007)
- Protection of Peasants' Environmental Rights During Social Transition: Rural Regions in Guangdong Province, Li Zhiping (2006-2007)
- Symposium 2007 Transcript: China in Transition: Environmental Challenges in the Far East, VJEL (2006-2007)
- Volume 8, Issue 2, April 2007 (complete book), VJEL (2006-2007)

Submitted by Kara Phillips, Collection Development Librarian/Associate Director, Seattle University Law Library. Kara Phillips can be reached at: phillips@seattleu.edu.

Other Legal Articles of Interest

Brown, Ronald C., China's Collective Contract Provisions: Can Collective Negotiations Embody Collective Bargaining? 16 *Duke J. Comp. & Int'l Law* 35 (2006).

Brown, Ronald C., China's Employment Discrimination Laws During Economic Transition, 19 *Columbia J. Asian Law* 361 (2006).

China Program Announcements

International seminar on the interpretation and application of the CISG with emphasis on litigation and arbitration in China, October 13-14, 2007, Wuhan University School of Law, Wuhan, P.R.C.

The Wuhan University Institute of International Law, the Pace Law School Institute of International Commercial Law, and the China Society of Private International Law have organized this high-level seminar on the interpretation and application of the Convention on Contracts for the International Sale of Goods (“CISG”) with emphasis on litigation and arbitration in China. Speakers and participants include members of the CISG Advisory Council, leading Chinese academics, and representatives of Chinese courts and arbitration institutions. Sponsoring organizations include UNCITRAL, PLI, three of the leading Chinese arbitration institutions, the ABA Section of International Law, the ABA Section of Litigation, segments of three other Bar Associations, and the International Association of Contract and Commercial Managers.

For information on the program, financial sponsorship opportunities, and registration contact Prof. Albert Kritzer at akritzer@law.pace.edu.

Bridging the Culture Gap--A Practical Seminar for Foreign and Chinese Attorneys

Hughes-Castell and Peking University Law School, in cooperation with the China Committee, are co-organizing an event entitled Bridging the Culture Gap--A Practical Seminar for Foreign and Chinese Attorneys. The purpose of this event is to discuss doing business in China while working against a backdrop of cultural differences. Topics include: advice/insights/anecdotes about working in China; negotiation techniques; differences in contract drafting; closing deals, relating to and communicating with clients and other attorneys; understanding differences in business etiquette; etc. This will then be followed by a panel discussion and a short Q&A session. The seminar is practical in nature rather than academic. This program will be held in Chaoyang district of Beijing on September 6, 2007 at 6pm.

For more information about this program, contact Janis J. Chang, Esq. at janisjchang@gmail.com.

Asian Summit on Legal Services For Bar Leaders

On Friday, August 10, from 3:00-5:00 pm at the Westin St. Francis Hotel, Elizabethan Room D, Second Floor, during the ABA Annual Meeting in San Francisco. For the second year in a row, the Summit will offer a unique opportunity for leaders of the profession from Asian countries and the United States to discuss issues of mutual interest related to transnational law practice.

With the continuing cooperation of the ABA Section of International Law's Transnational Legal Practice Committee, we are inviting representatives from the bars and law societies of many Asian countries, as well as U.S. national and state bar leaders (in particular, we will invite those from U.S. states we believe have current or potential interests in transnational legal practice regulatory issues, especially related to Asia).

The proposed agenda for the meeting is:

- *Discussion of major U.S., Asian country, GATS developments, and future MJP prospects;
- *Discussion of barriers to Asian countries faced by U.S. lawyers;
- *Discussion of barriers to the U.S. faced by lawyers from various Asian countries;
- *Discussion of prospects for reciprocal disciplinary and bilateral mutual recognition agreements for the legal profession;
- *Future areas of cooperation.

The Asian Summit will present an inter-active, roundtable exchange of Asian and U.S. perspectives on these current legal services issues. As an invitee, we welcome your discussion at the Summit on some or all of these issues. We hope to stimulate discussion among the larger group of participants and gain a greater understanding of how we can cooperate in the future to advance transnational legal practice in Asia and the U.S.

Please let us know at your earliest opportunity whether you will be able to attend and participate in this important meeting by sending a [RSVP to Ms. Kristi Gaines at \[gainesk@staff.abanet.org\]\(mailto:gainesk@staff.abanet.org\)](#). If you have any questions or would like additional information, please don't hesitate to contact Ms. Gaines via email or by phone at 202-662 1763.

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China Law

Reporter

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About the China Law Reporter

The *China Law Reporter* is a publication of the China Committee of the Section of International Law of the American Bar Association. Editors are Qiang Bjornbak, Esq., of the Law Offices of Qiang Bjornbak in Los Angeles, California and Vice Chair of the China Committee (qbjornba@yahoo.com), Paul B. Edelberg, Esq., Counsel to Murtha Cullina LLP in its Stamford, Connecticut office (pedelberg@murthalaw.com), Cameron J. Smith, a law student at Northern Illinois University (cjsmith82@gmail.com) and Russell K.L. Leu, Esq., Of Counsel to the law firm Taft, Stettinius & Hollister LLP (leu@taftlaw.com). Contributions of articles and other items for the *China Law Reporter* are welcome. Please submit to all of the editors simultaneously.

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