

# Letter from China



The law which was adopted on August 30th, 2007, encourages competition on the Chinese market.

## 80 million

The latest estimate of the size of China's middle class, which constitutes an increase of 15 million since 2005.

Source: Chine Nouvelle.

## 10,000 million

The number of Chinese companies with a presence in other countries (160) around the world. North America and Asia are the top two destinations.

Source: Chinese Ministry of Trade

## Competition

### China builds its anti-monopoly arsenal

After 13 years of discussions, China finally adopted, on August 30th, 2007, its first anti-monopoly law, which strengthens control on foreign investments.

The law, which will enter into effect on August 1st, 2008, aims to promote equitable competition in the Chinese marketplace by controlling monopolistic behaviour in and outside China, by both Chinese and foreign companies. Currently, only major acquisitions of Chinese companies by foreign companies are subject to prior approval by the Ministry of Commerce. The new law introduces two new entities which function is to implement and enforce the law: an Anti-monopoly Commission and an Anti-monopoly Authority. The new law outlaws "ententes", the abuse of dominant market position, concentrations as well as the abuse of power by administrative authorities with the goal or effect of excluding or restraining competition on the Chinese market. It does allow for exceptions, notably in the area of intellectual property and agriculture. The most controversial provision of the new law is the obligation to inform the implementation authority of all acquisitions and mergers beyond a certain threshold. This obligation raises fears of China's strengthening protectionist measures. Offenders risk fines that can amount to up to 10% of their annual revenue. As part of its control of concentrations, the Authority can order the sale of a company's shares and/or assets or the transfer of one of its activities.



#### In brief

**New law on employment contracts:**  
how will it affect foreign-invested enterprises?

**Art market:**  
a breath of fresh air from Asia

**Foreign politics:**  
Chinese-style "soft power"

## Editorial



### A move towards "economic patriotism"?

Although the Western press has recently been talking about an increase in Chinese protectionism, the situation is not so clear-cut. Since the country opened up to the world in 1979, Chinese law has gone through various phases. The market gradually opened up over a period of 20 years, with China's admission to the World Trade Organization in 2001 accelerating the process. For two years now, China has seemingly taken a step backwards in some sectors (real estate, exchange controls, monopoly control) which has been interpreted as an increase in economic patriotism. However, a closer look shows that what seems to be protectionism really has other motivations: the fight against real estate speculation, the control of currency imports by individuals, the adoption of an anti-monopoly law similar to those in the West, etc. And as to the supposedly patriotic reaction of the Chinese nationals it is simply - and equally inoffensive - a counterpart to the boycotts in the West. As things stand, it seems there is nothing to be concerned about.

# 合同

### Hetong: contract

It is often uttered tersely that Chinese don't respect contracts. It is a fact that Chinese perceive contracts as the seal of a contractual relationship which can evolve and goes beyond the strict application of the contractual stipulations.

## News

### The Right to Work

## Employment contract law will come into effect on January 1st, 2008



After nearly two years of debate, the law on employment contracts, promulgated on June 29th, 2007, will enter into effect on January 1st, 2008. Overall, this new law strengthens the rights of the workers and tends to favour open-ended employment contracts.

Details on the implementation rules for the new law on employment contracts are expected to be announced by the end of this year. Below is a description of the major changes compared to the current practice.

#### **1. Written employment contracts**

In China, many working arrangements are established without any written contract. In such situations, it is difficult for courts and arbitration committees to determine the existence of a work relationship as well as the commencement date of the employment (which is essential for the calculation of unpaid salaries and termination severance). The new law establishes that the employer and the employee must enter into a formal written agreement within a month of the commencement of employment. If no contract is signed during the first year of employment, the employee shall be deemed to have entered into an open-ended employment contract.

#### **2. Fixed-term employment contracts**

The new law requires that at the end of a fixed-term contract, the employer pay the employee a termination severance, which shall be calculated according to the

duration of the employment (usually, one month's salary for each year of employment). The employee will also have the right to ask for the conversion of his employment contract into an open-ended employment contract if a fixed-term contract is renewed for two consecutive fixed-terms.

#### **3. Compensation for termination of an employment contract**

The new law formalises the current practice by specifying that in the event of a termination of an employment contract for cause, the amount of severance shall be equal to one month's salary for each year of employment, with a ceiling of 12 months' salary. The law specifies, however, that the compensation shall not exceed three times the average monthly salary for a similar position in the same city.

#### **4. Non-competition clause**

The maximum duration of a non-competition clause entering into effect upon to the termination of an employment contract will be limited to two years (whereas under current practice a maximum duration of three years is allowed). The new law requires monthly financial compensation, but does not provide for a minimum amount.

#### **5. Probation period**

The current employment law provides for a maximum probation period of six months for employment contracts with open term or a fixed term exceeding 3 years. The new law reduces this period to one month for contracts with a term between three months and one year, and two months for contracts with a term between one and three years. The termination of the contract by the employer during the probation period must now be properly motivated.



*The main goal of the new law on employment contracts is to strengthen the rights of employees.*

### **Company rules and regulations**

Company rules and internal regulations are key documents for every enterprise. They allow listing certain behaviours which are considered unacceptable within the company and may lead to dismissal of an employee for serious fault. They can also detail essential health and safety rules, as well as the rights and benefits granted by the enterprise to employees that have not been spelled out in individual employment contracts. The new law requires discussion with all employees or a committee of employees and consultation with union representatives prior to the adoption of company rules and regulations. The implementation rules should specify the conditions of this consultation procedure.

# Letter from China

## Portrait

### Art market

## A breath of fresh air from Asia



Artcurial, the leading French auction house, is pioneering on the Chinese art market by establishing a joint venture, Artcurial China, with a major private media group, Sun Media. In the following interview, Nicolas Orlofski, president of Artcurial, talks about the beginning of this new adventure.



partner.

### **Why China?**

China is the first emerging country to have shown such major growth in the art sector – although we are also starting to see Iranian, Turkish and Syrian artists – the distinctive feature being that the Chinese artists behind this growth are not necessarily those who are well-known in the West and vice-versa, although there are, of course, some crossovers. We are expecting China to be fairly protectionist, even more so than the United States.

**How does this still-faltering market work? It's true that fee arrangements are less structured than on the international scene. But as the art market becomes increasingly global, China will become a major auction venue – along with New York, Paris and Hong Kong – within five years from now. For the moment,**

the problems we are encountering are mainly political and structural. Culture and art are two fields where the authorities remain very cautious.

The structuring of our implementation in China has been subject to long discussions. In our opinion, it's neither possible nor desirable to establish a wholly foreign funded company, without a Chinese

While there are already fairly strong local auction houses in Beijing and Shanghai, no Western house has opened a capitalistic project. As far as we know, we are the first auction house to take the leap by establishing this joint venture.

### **Why did you choose Bruno Wu as your partner?**

Bruno Wu is a famous entrepreneur who, with his wife Yang Lan, is the head of Sun Media, one of the biggest private media groups in China. Considering the special characteristics of the Chinese market, we needed a partner of that calibre.

### **What are Artcurial goals in China?**

We are going to duplicate what has made us a success in France. Like the Hôtel Dassault in Paris, Artcurial China will have, in addition to its auction activities,

a bookstore, a gallery, conferences and exhibitions in a space dedicated to art. It will be located in the heart of the French concession in Shanghai and will open by the end of this year. Our first auction, scheduled for mid-January 2008, will include modern and contemporary paintings as well as jewellery, watches and wines. In the long run, our goal is to hold between 20 and 30 auctions per year in Shanghai as well as in Beijing, starting from 2008 or '09.

### **How are you expecting the Chinese collectors' behaviour to change in the future?**

The number of buyers will increase, with two distinct categories: the first, fairly small (around one hundred people), will consist of international buyers who are present on all the major global markets. Then there will be a second group of clients, which will really explode in size – several tens of millions of people who will buy mainly in China or Hong Kong.

### **Artcurial, the leading auction house in France**

Artcurial made its name by auctioning paintings and is now the leading auction house in France. It also has a bookstore and gallery and holds cultural events in the Hôtel Dassault on the Champs Élysées. In 2006, the group further widened its horizons by founding Arqana, the European leader in horse auctions, with the Aga Khan



# Letter from China

## Business

### Foreign policy

## Chinese-style “soft power”

**“Soft power” is a fashionable concept, and China is not the only one to use it, often trumpeting it to reassure the world and its neighbours about its intentions. But what exactly is Chinese-style “soft power”?**

When Zhu Liqun, Director of the Chinese Centre of European Studies, is asked to describe China's attitude towards international relationships, she replies what characterises China's relations with the other countries is “soft power”. This term, which has been invented by the American Joseph Nye in 1990, remains however fairly vague and its most precise description is not a real definition: it is everything that is not “hard power,” or recourse to force. Soft power is power based on culture, ideology, economy, etc. but this definition is wide enough to encompass almost anything. China, like other countries, is developing its own vision of the concept.

### A guarantee of peace

First of all, Chinese “soft power” is based on China's desire to reassure the world about its intentions and to show that in becoming one of the world's major powers it is ready to peacefully integrate into the international community. Zhu Liqun puts it this way: “China does not send a universal message to other countries, but maintains that its economic and social development is a positive factor for peace.” From this point of view, as Wu Jianmin, President of China Foreign Affairs University, says, “soft power becomes an obligation for the Middle Kingdom”.

But the Chinese authorities have developed a wider concept based on the soft power principle, which they call “soft making”, an “idea that is still being developed”, according to Zhu Liqun. It covers both “soft power” in foreign politics and “harmonious development” in domestic politics. These two concepts, based on the economy and the famous “win-win” principle, allow China to master tensions with its neighbours and domestic social tensions at the same time. Soft making has, of course, a commercial goal: to open up a peaceful China to high technology. Wu Jianmin says that French manufacturers have a role to play in creating joint ventures with their Chinese counterparts that would allow them to benefit from the huge market and China to acquire know-how that is indispensable to its future growth. The message is clear: “The opportunities for the French in China are huge!”



### China: the world's largest solar energy market

China has become the largest market in the world for solar energy. Photovoltaic captors currently supply 150 million Chinese people, while the number of solar water heaters is the highest in the world. The 2008 Olympic Games will provide a showcase for the country: all the streetlights around the stadiums will run on solar energy.



### Surprise drop in VAT reimbursements

On July 1<sup>st</sup>, 2007, foreign subsidiaries in China heard surprising tax news: unrecovered value-added tax on exports rose from 4 to 8 points (on a rate of 17%) on average. This represents a big loss in earnings for export companies, which are reimbursed part of the VAT that they are required to invoice on exports. Officially, the goal of this measure is to counter the risk of overheating by limiting exports. But the tax administration does not intend to stop there: next year, the recovery of VAT could be abandoned for a number of products.

IN BRIEF

Tune in to Emmanuel MÉRIL every Saturday at 6pm on the China Hebdo (China Today) show on BFM (rebroadcast on Sunday at 7am).

### CONTACT

Emmanuel MÉRIL  
emmanuel.meril@cms-bfl.com

Jonathan Selvadouray  
jonathan.selvadouray@shanghai.cmslegal.com

Shanghai office  
00 86 21 62 89 63 63, shanghai@cms-bfl.com

Letter from China • Newsletter published by CMS Bureau Francis Lefebvre • 1-3, villa Émile-Bergerat, 92522 Neuilly-sur-Seine Cedex • Tel.: +33 (0)147385500 • www.cms-bfl.com • Editorial director: Florence Jouffroy • Editor-in-chief: Emmanuel MÉRIL • Editorial design: • Tel.: +33 (0)1 42044329 • www.entrecor.com • Photos: DR, Getty, Photo.com • ISSN: 1770-0019.

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