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C/M/S/ Bureau Francis Lefebvre

Letter from China

21th Century China will be green, determined to energise its environmental policy.

73 years

The average life expectancy in China is now 73 years, two years more than in 2001.

6,200

Shanghai's French population has tripled to 6,200 since 2003.

Source: French consulate

Event

China goes green

The creation of China's new Ministry of Environmental Protection signals a rising awareness of the environmental challenges posed by the country's phenomenal growth of the last few decades.

With leadership comes responsibility. Although China has two silver medals when it comes to energy consumption and CO2 emissions, the "world's factory" is favoured to win the gold in the race to deploy environmental initiatives. China, with its population of 1.35 billion, will have a decisive impact on climate change. Conscious of the stakes, in March the country upgraded the State Environmental Protection Agency to a ministry, while its environmental laws are now among the most assertive in the world. The energy law currently being revised will lay the foundation of the country's future green policies. The problem of enforcing environmental regulations at the local level is finally being addressed by the National People's Congress and State Council, which talk about giving the law "more muscle" and "real teeth". Behind these words lies a strong commitment, particularly in the construction sector, where all new buildings will be required to meet low-energy performance standards.There's still a long way to go however. China continues to engage in mining and oil exploration in order to secure its future energy independence. Hopefully, it already has a plan for rapidly moving away from these high-polluting energy sources. ▬

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Editorial

Sovereign wealth funds: is China the future "master of the universe"?

"We are like farmers – we want to raise our crops as best we can".
That statement by Lou Jiwei, Chairman of sovereign wealth fund China Investment Corp., was made to the world during a recent visit to the United States.
The intended message was that China is not looking to achieve world domination on the back of its trade surplus; the country just wants to invest its money wisely.
However, the size and number of sovereign funds, seen by some as the new spearheads of capitalism, continue to fuel fears. During the worldwide financial crisis, sovereign funds have demonstrated not only their stabilising influence, but also their power.
Among these, the Chinese fund, formed in 2007, is a relative minnow. Its $200 billion capital base is dwarfed by, for example, the $1,300 billion in funds controlled by the Abu Dhabi Investment Authority. Of course, China could easily increase the size of China Investment Corp. thanks to its $1,600 billion reserve.

基金

Literally "golden base"

Chinese investment funds, state-owned and private alike, will soon become leading players in international finance.

Taxation

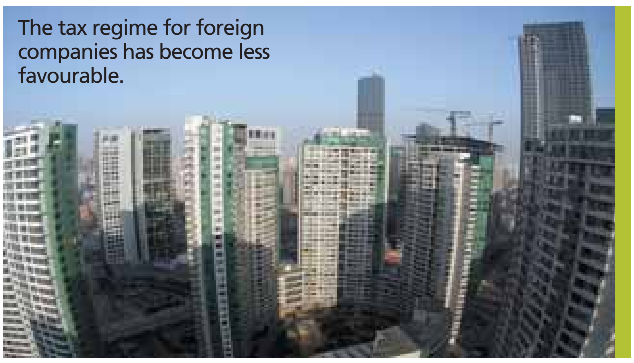
Application of a standard tax regime to foreign enterprises

The explosion of China's economic growth has triggered a roll-back of the preferential tax treatment for foreign enterprises operating in the country. A law that came into force on January 1, 2008 aligns the taxation of foreign enterprises (except those operating in certain sectors like high technology) with the standard regime.

The new law on corporate income tax came into force on January 1, 2008. The main provisions applicable to foreign enterprises are as follows:

Taxation at the standard rate of foreign enterprises whose de facto management bodies are located in China. This measure is primarily intended to discourage the establishment of Chinese-owned companies in tax havens.

Taxation of dividends paid by a Chinese company to its foreign parent. Prior to 2008, dividends paid to foreign investors were not subject to withholding tax. The new law institutes a general withholding tax rate of 20%. However, the implementation rules provide for a reduced rate of 10%.



The tax regime for foreign companies has become less favourable.

Introduction of a new, uniform income tax rate of 25%, applicable to all companies operating in China. Two preferential rates are maintained: 15% for companies operating in the high-tech sector that meet certain criteria and 20% for small-scale enterprises with low profitability.

Cancellation of tax incentives for foreign-invested enterprises. Foreign-invested production companies' exemption from income tax for two years beginning with the first year of profit generation is withdrawn, together with the 50% reduction in the normal tax liability for each of the next three years. The law also restricts the remaining tax incentives predominantly to high-tech companies and to companies operating in certain sectors like agriculture or the environment.

Transitional measures. To facilitate the switch to the new regime, the law provides for transitional preferential policies, including the progressive increase in the rate of tax paid to 25% by 2013 and the continuation to term of any two-year tax holiday followed by the three-year 50% tax reduction, where granted prior to January 2008.

Stockmarket
Flotation of Chinese companies on European stockmarkets

Chinese companies may be floated on foreign stockmarkets in two ways:
– directly, via the listing of a Chinese company's shares on the foreign stockmarket; or
– indirectly, via the listing of the shares of a foreign special purpose vehicle which holds all of a Chinese company's shares.

Both options require the authorisation of the Chinese authorities. However, the first option is less commonly used because the related authorisations are more difficult to obtain. China's 2006 Regulations for the Acquisition of Domestic Enterprises by Foreign Investors require that the establishment of the foreign company and the acquisition of the Chinese company's shares be approved beforehand by the Minister of Trade. The IPO must then be approved by the Chinese Securities Regulatory Commission. A number of filing formalities must also be completed subsequently.

Pharmaceutical industry

China tightens export controls

In 2008, China is to make a number of major decisions aimed at tightening controls over pharmaceutical exports and combating pharmaceutical counterfeiting. Below is an interview with Jerry Yuan, associate at the CMS alliance's office in Shanghai.

Jerry, you joined the Shanghai office as an associate specialising in pharmaceutical law. Tell us a bit about your background in China's administration.

Before joining CMS, I spent six years at China's State Food and Drug Administration (SFDA). I worked for three years in the legislation unit and was then transferred to another department, where I supervised legislative affairs, playing an active role in crafting the implementation provisions of the Drug Administration Act between 2001 and 2002. I was also called upon to revise many of the directives issued by the SFDA and was extensively involved in redress proceedings conducted by the SFDA's internal committee from 2000 onwards.

China is sometimes criticised for using sanitary controls to protect its market. What is your opinion?

Since 2001, China has significantly reduced its customs duties in line with its commitments to the WTO. As concerns sanitary and phytosanitary (SPS) measures, many restrictions still apply to a wide range of products, but I would not call them protectionist. They generally reflect a genuine concern for public health and it would be logical to maintain the restrictions so long as those concerns remain. Bear in mind, too, that Chinese exports, especially agricultural products, face SPS controls and technical barriers to trade (TBT) erected by countries like the United States. However, bilateral negotiations should ease this situation.

What is China doing to improve the quality of its exports?

The Drug Administration Act requires a licence to be obtained for all products for which SFDA registration is mandatory. The root of the problem is the lack of inspections. The Chinese government has been sensitised to product safety and quality concerns and is taking action to improve commercial conditions. For example, the SFDA is working on a new regulation requiring the preparation of a list of all medications authorised for export and of the companies that make them. Only medications manufactured by licensed pharmaceutical companies will be eligible for export. Another regulation currently being drawn up will extend the SFDA's supervisory power to all manufacturers of active pharmaceutical ingredients (APIs). These two regulations are expected to come into force during 2008.

Another concern is pharmaceutical counterfeiting. What is your view of the situation in China?

In recent months, a series of incidents in Panama, the United States, Japan and Europe have tarnished China's image. However, the SFDA's market regulation unit is adamant that China has fully grasped the extent of the problem. Obviously, inspections will be strengthened in the run-up to the Olympic Games. Significant regulatory changes are also expected in 2008. The Supreme People's Court should soon issue a judicial interpretation of penal provisions in the sphere of counterfeiting, with the overarching aim of facilitating legal recourse. The traceability system will also be enhanced. China has demonstrated flexibility by co-operating with foreign countries to improve the quality and safety of domestic products. For example, under the bilateral co-operation agreement signed by the United States' FDA and China's SFDA in December 2007, China has undertaken to improve pharmaceutical safety and to introduce an efficient traceability system. This includes allowing the FDA access to SFDA inspection reports and to the list of companies that do not meet Chinese standards.

Exports

Gradually opening the Chinese market

China is not just the world's factory. It is a market with 1.35 billion inhabitants and although its workings are not always easy to understand, it has been opening up to the outside world since 2001.

China is steadily removing obstacles to trade, for example by modernising its customs system and lowering tariff barriers. Between 2001 (when China was admitted to the WTO) and 2006, the average duty rate was cut from 15.3% to 9.9% and import tariffs on a range of products will continue to be reduced in the period to 2010. As the French economic mission in Beijing points out in a guide to customs clearance in China, this is a far cry from the situation 20 years ago, when each ministry had a monopoly over products in its sector. Today, the process of exporting to China has become simpler and faster. Since July 2004, import licences have been abolished and foreign enterprises have been allowed to engage in import-export activities. The sole remaining requirement is for a registration authorisation from the Ministry of Trade. In parallel, import quotas for most everyday goods have been removed.

Shanghai Port: China's trading hub

On the VAT front, refunds on export sales are normal practice in China. However, refund rates were adjusted in July 2007 (for the fifth time since 1994), officially to "alleviate tensions with trading partners". According to Marion Lespine, legal attaché at the French economic mission in Beijing, further adjustments cannot be ruled out, with the Chinese government likely to be guided primarily by the impact of the most recent adjustment and by the external trade situation. Although it is now more open than ever before, the Chinese market remains tightly controlled. Draconian measures still apply in some areas, such as agricultural products (which must be certified to be free of parasites), cosmetics and wood packaging material. ■

IN BRIEF

China: the new El Dorado of pharmaceutical companies

China's pharmaceutical market is growing by 30% a year and should be worth close to €40 billion in 2010. This will make China the world's fourth-largest pharmaceutical market, behind France, but ahead of Germany and the United Kingdom.
It is hardly surprising, therefore, that the world's leading pharmaceutical companies all have their eyes riveted on the country. Although traditional remedies still hold sway in China, allopathic medicines are gaining ground steadily among a local population with a preference for brand-name medications over generics.

China: still a magnet for investment

In 2007, foreign direct investment (FDI) in China climbed nearly 14% to $82.66 billion. This was comparable to the record high achieved in 2004, marking an improvement after a lacklustre 2006.
The question is whether the Year of the Rat will be as promising. So far, so good. Based on information from the Ministry of Trade, FDI more than doubled in January 2008 relative to January 2007, surging 109.8% to $11.2 billion.

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