Journal of the European Union Chamber of Commerce in China

EURObiz

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HUMAN CAPITAL

LEAN CONVERSION
Managing the human side of change

SPEAKING THEIR LANGUAGE
How to communicate with China's Generation Y

IF YOU BUILD IT, THEY WILL COME
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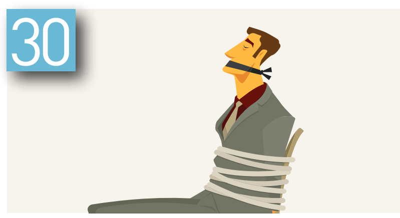

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HR (REALLY) MATTERS

Jörg Wuttke
President of The European Union Chamber of Commerce in China

With China facing economic headwinds that are unlikely to dissipate any time soon, 2016 has seen the growth rate of domestic investment by private Chinese enterprises decelerate rapidly. As a result of both market forces and ongoing restrictions, EU investment into China is also roughly half of what it was last year: in short, while European business is not leaving China, it is preparing for new challenges.

Under these new conditions, characterised by slower growth, it is extremely important that European business manages its HR issues adeptly. While rising labour costs was the number-two challenge reported in the European Chamber's *Business Confidence Survey 2016* (BCS), it is likely we will see this change as companies are forced to lay off employees and become increasingly reluctant to take on new hires. At the same time, China's talent shortage and high staff turnover—listed as major concerns by 26 and 12 per cent of BCS respondents respectively—will also decline in importance.

In continent-sized China there will be hot spots—regions with solid growth like Shanghai, Hangzhou and Guangdong Province—which may still face difficulties attracting enough of the right kind of talent. However, in many other parts of the country staff will be happy to just have a solid employer. So while we will continue to face HR challenges, in most regions they will be different from those of the recent past.

In the 13^{th} Five-year Plan and the Made in China 2025 initiative, the Chinese Government has stated its admirable goal of establishing a more innovative economy. In order to do so companies need to build the best teams with motivated, educated and experienced professionals. So it is in the face of much more challenging conditions, particularly in North China, that European business will need to devise ways of holding on to the talent that it needs to successfully navigate this transitional period.

With China's working-age population already shrinking, raising the country's retirement age above 55 for women and 60 for men would go some way to addressing this problem. The Chinese Government should also allow business more flexibility concerning whom they hire – there is currently a long-standing visa restriction in place on foreign managers above 60 years of age. These individuals are highly experienced and can help to maneuver China-based European businesses through the economic downturn – something they have witnessed more than once in Europe. Opening up access to this rich talent pool would therefore be beneficial to China's economy.

Shanghai has already taken leadership on HR in China: first, with a move to a market-driven evaluation and allocation of innovative talent for the development of the Shanghai Technology Innovation Centre; second, with the announcement in late August that expatriate workers above the age of 60 will be made eligible for work visas. The European Chamber commends these common-sense changes. Hopefully other cities and regions that want to compete with Shanghai in the race to foster innovation and the development of new industries, will follow its lead and these reforms will be rolled out nationwide and soon.

Burdensome costs faced by businesses that can discourage them from taking on new hires also need to be addressed. In recognition of this, Premier Li Keqiang stated earlier this year that a corporate tax cut will be enacted in order to reduce companies' costs during this period of slower economic growth. Unfortunately, in other areas this burden might actually be set to increase. Changes to the funding and use of the Disabled Persons' Employment Security Fund may lead to a disproportionate increase in costs for companies. This is especially the case for SMEs and those in high-tech and services industries which generally offer a higher average salary. While European business strongly supports the full integration of persons with disabilities into the workforce, this legislation fails to address the actual root of the problem. It would be preferable to implement a broader strategy to support people with disabilities, while introducing caps or manpower thresholds below which it would not be applied. A thoughtful legislative review and further dialogue to find solutions are needed.

Ultimately, China's competitive advantage cannot be found in its size. Nor can it be found in the state's tendency to amalgamate companies into mammoth SOEs. It is the entrepreneurial spirit of the average Chinese citizen that distinguishes this country's potential from many others. The Chinese Government is therefore best advised to leverage this HR advantage with the introduction of better vocational education schemes, more practical curricula in science and education more broadly, better language training programmes and by simply establishing an open Internet through which its citizens can fully engage with the international world of learning. Doing so will help this great nation to fulfill its potential. As always, European business is ready and able to be part of this future success story.

LEAN CONVERSION

Managing the human side of change

With the days of China being a low-cost country long over, its manufacturing is at risk of being squeezed between innovation leaders on the one side and low-cost competitors on the other. China is also facing rapidly rising labour costs, making steep productivity increases a question of survival. There is much discussion about state-sponsored initiatives toward automation and digitalisation of production but this requires a foundation in terms of operational excellence, which in most industries is simply not a given. A back-to-basics approach should be embraced, say **Dr Laurenz Awater** and **Grant Yang** of **INNOVA Management Institute** (**Shanghai**), focussing on exploiting the benefits of a lean enterprise, a vast potential that is still untapped by many manufacturing companies.

Generally speaking, the introduction of lean concepts and tools initially leads to impressive results as they are extremely effective if applied professionally. Initial successes often prove to be difficult (or hard) to sustain, however. Experience shows that to achieve sustainability a lean culture needs to be developed, a culture in which organisational members constantly engage in continuous improvements to processes and work practices.

A lean conversion is a change initiative of transformational magnitude and, as such, doomed to fail if the cultural dimension of change is not addressed. You cannot build a lean culture by copying the Toyota way, corporate cultures are unique. What *is* possible is to embrace lean values and lean principles and gradually re-build and adapt your culture and align people in your organisation around those values and principles, without throwing overboard what is highly valuable and time-tested about your existing culture.

A lean culture can only flourish within the wider context of an environment that encourages and facilitates empowerment—encompassing self-empowerment—and this is exactly what international experts miss most about workplace culture in China. To change, workplace culture leadership practices have to be re-learnt. New behaviours, which can be the complete opposite of existing ones, have to become habits. This requires a dramatic shift in mind-set and in many cases completely new ways of thinking. Leaders have to re-think what leadership actually means and re-define their role in a process-driven enterprise with high levels of decentralisation of decision-making authority. They have to re-think what drives employee motivation, what performance actually is and, ultimately, how to define and reward it.

> "Culture and leadership are two sides of the same coin – one cannot understand one without the other."
>
> —Edgar Schein

Of greatest importance for the development of a lean culture is the interaction between lean leaders—production supervisors, production managers, or shift leaders—and operators. The most capable of Chinese leaders tend to be highly directive, task-focused, result-driven and action-orientated, while still having to learn how to engage, enable and empower. What is needed is a fundamental shift in the relationship between leaders and followers – from the expectation of blind followership to greater team orientation. Today, the dynamics of the interaction between leaders and followers on the shop floor are merely transactional, shaped by the dynamics of the carrot-and-stick approach, by reward and punishment, resulting in a lack of initiative, decreased motivation and poor learning. Without leaders becoming strongly team-orientated and acquiring more sophisticated communication and influencing skills the potential for creative solutions cannot be adequately tapped and the quality of ideas for process improvements—a key indicator for the lasting success of your lean conversion—is likely to remain low.

A lean organisation is a learning organisation that calls for the implementation of the team concept and the development of transformational leaders at all levels. A milestone can be reached by developing leaders who are exhibiting a coaching style of leadership, have a passion for developing others and understand that empowering individuals and teams is essential to bring about the results they are expected to deliver.

On a daily basis, leaders involved in manufacturing experience that the traditional way of leading people—the autocratic command-and-control style of leadership—is no longer accepted nor effective, especially where the younger generation is concerned. Many leaders are open-minded enough to re-think their approaches but are still far from having adopted transformational leadership practices.

A lean conversion must begin with the people, with identifying, developing and empowering lean leaders, and by training them how to bring other staffers on board. A lean culture constitutes a new way of thinking and working and takes years to perfect. Reinforcement of the new ways of thinking and working is essential, a constant emphasis on *how* we think and *why*, *how* we do things and *why*, to gradually shift attitudes and mind sets and avoid staff falling back into old habits and routines. That is why enterprises that have successfully built a lean culture are relentless about training and coaching staff and place an equally strong emphasis on people, purpose and processes.

Resistance to a lean conversion typically comes from mid-level management – generally supposed to be the engine for change implementation. In order to deal with resistance in an appropriate way one has to understand its root causes: in China it results mainly from a fear of diminished status, power and influence (due to a reduction in the number of subordinates, for example) and the fear of losing face: that is, Chinese managers might be anxious that if the lean conversion shows positive results, it would be indicative of them having previously done a poor job.

Top management has to communicate the need for change, create a sense of urgency, describe lean transformation as the way towards achieving

excellence—as a way of moving from good to great—and develop a commonly shared vision of a desirable future – for example, by creating and working in a world-class factory that *everybody* has reason to be proud of. Senior managers should engage in coaching-style change conversations to overcome anxieties, instil positive thinking and create energy around inspiring goals. These coaching conversations can prove to be instrumental in helping mid-level managers realise that proactively embracing and co-creating change is the best strategy for coming out on top and creating additional value for the organisation. Last but not least, mid-level managers should be reassured that qualifying themselves as lean leaders is a smart step in their career and that their contributions will be acknowledged and rewarded.

It is important to systematically build up change readiness to give the lean conversion a smooth start. Senior management should have a roadmap at hand for rolling out the lean conversion while planning for the corporate culture change. Gradually shifting thinking and behavioural patterns, re-defining and clarifying roles and responsibilities, and aligning the organisation at all levels—from top- to mid-level management and the shop floor—around lean thinking and lean habits means to embark on a longer journey of change, which must be guided by a long-term philosophy, a clear vision and unwavering dedication. The most common mistake is that great emphasis is placed upon the introduction of lean concepts and tools in operational processes but less so on people development and little emphasis on culture change. While such strategies work well with incremental changes, for a change initiative of transformational dimensions they are a recipe for failure. Eb

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GOING LOCAL

Developing Chinese leaders in European companies: a key for talent engagement and sustainable business development in China

Strong economic growth for the last 35 years coupled with a low level of unemployment (around four per cent in 2015 according to China's national statistics[1])—especially for managers and executives—is increasing the pressure on European companies operating in China. They need not only attract but also increasingly to engage with and retain talented locals. **Eric Tarchoune**, Founder and Managing Director of **Dragonfly Group**, explains the benefits of implementing a talent localisation strategy and some of the generational, gender and cultural challenges that are commonly encountered along the way.

[1] Ministry of Human Resources and Social Security

Joint research on leadership carried out by Dragonfly Group and Ipsos shows that foreign companies operating in China need to adopt a leadership culture at all levels of their organisation. Doing so will facilitate individual and group contributions towards the success of the organisation as a whole in an ever more competitive market. It will also help to strengthen talent engagement, a key tool for retaining people.

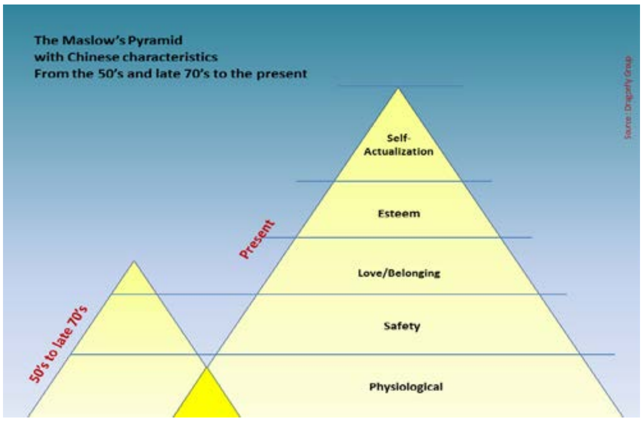
What are the main drivers of people engagement, and thus retention, within European companies operating in China? Cross-generational and dedicated retention/engagement strategies that integrate the following components will help corporations to reduce employee turnover:

- Instilling employees with a sense of pride (clarity on what is expected from the employees) and security (lower excessive pressure with stress-reducing initiatives).
- A clear employer promise (a fair compensation

and benefits strategy and an adequate leadership structure, mixing locals and foreigners).

- Creating an empowering organisational culture where a caring and collaborative work environment will make people feel at ease to contribute their best to the company.

Examining the phrases 'generation mix', 'gender differences' and 'global exposure' in a Chinese context will help you to define successful leadership traits within your China operations. Understanding them will help you to adjust your leadership style to drive local teams.



The generation mix

In China, the workplace is populated by three generations: post-1949, post-80's (*balinghou*), and post-90's (*jiulinghou*), each with its own distinctive background, outlook, and approach to work and life (see chart).

China's *balinghou* and *jiulinghou* consist of approximately 200 million young people born between 1980 and 1995. They are described as individualistic, confident and rebellious, innovative and open-minded. They possess a high sense of empowerment, being single children having been surrounded by and receiving all the attention of their parents and two sets of grandparents.

They hope that they will achieve the 'Chinese dream' – that they will have great jobs and increased wealth.

There are, however, a few differences between *balinghou* and *jiulinghou*. In a nutshell, *balinghou* tend to be idealistic, worried about their jobs and are trendsetters, while *jiulinghou* are more individualistic, entrepreneurial and trend followers.

Gender differences

In post-1949 China, women were supposed to "hold up half of the sky". From the experience and perspective of several foreign business leaders we have met and interviewed over the years, Chinese women do play an increasingly crucial role in the growth and stability of many foreign companies in China. From more 'traditional' back-office positions (finance, HR, legal, PR), they are found more frequently in sales and marketing, purchasing and supply chain, operations and general management.

This change is explained in a few ways: women show strong commitment, a sense of loyalty linked to a longer-term focus, a high level of autonomy, multitasking abilities and stability (especially for women aged over 35 with a child); they also tend to appreciate a job with responsibilities and an enjoyable working environment.

Leaders in foreign companies in China should be preparing for a gender balance in the meeting room. Improved communication and coordination with female heads, and an understanding of and adjustment to the female leadership style will bring stability, and increase corporate agility and the bottom line of many companies.

But while foreign companies in China are already experiencing new workplace trends, they are also facing some specific issues.

Global exposure

A lack of global exposure of Mainland Chinese—though declining due to increasing overseas studies and sojourns that fuel complex thinking and creativity, according to academic research (Insead, SMU)—means that their growth within European companies is hindered. This perennial glass ceiling feeds a trend for individuals joining some of the 40 million Chinese companies, most of them private firms—90 of which have already made the Fortune 500—who are battling European companies for the same scarce resource: talent.

Hierarchy

Yet a decidedly hierarchical local leadership style and an entrenched relationship-orientated corporate culture may still serve to limit the flow of talented global individuals joining the ranks of local companies and subsequently staying on. As the impact of these companies is increasingly being felt globally, their modus operandi and leadership style are set to become more sophisticated over time and talent retention will consequently gradually improve.

Are foreign companies doomed to see increasing numbers of their key talent exiting soon?

Perhaps not yet, but some danger looms... We have seen that a dedicated generational and gender approach could be one of the answers to retaining talent. Developing local role models equipped with a global mindset that will lead the change within the organisation and fill higher positions (C-suite) is also paramount.

Soft Power

Another retention strategy frequently overlooked is 'soft power' – the cultural influence of a country on other people. Let's take Europe as an example. She still has a rather positive image in China and numerous local Chinese are learning European languages and/or are interested in European culture. Have decision-makers within European organisations ever considered the attractiveness of their own respective culture in the choices made by potential candidates, and subsequently deployed initiatives to benefit from it? Language and culture can play a role in attracting people to companies. Several Chinese people have confided in us that they are pleased to work, or work again, within European companies as they enjoy the 'European way' of working – a high productivity level coupled with time to relax and refresh before starting off again. Nevertheless, in numerous cases they are leaving due to leadership and managerial issues, a lack of opportunities and so on, and are joining other foreign or local corporations. It seems that this 'soft power à la European' is not yet being fully utilised as additional leverage to attract and retain local talent.

Integrating women and different generations under the same corporate roof, nurturing talent and providing them with global business exposure through developmental plans (training, coaching, job rotations), implementing innovative business practices (soft power, flexitime) and a leadership culture at all levels are some of the key success factors for European companies operating in China.

Founder and Managing Director of ***Dragonfly Group****, an HR consultancy delivering innovative talent acquisition and development in Greater China,* ***Eric Tarchoune*** *has lived in China since 1993. He previously held several management positions in China for European industrial companies.*

His areas of expertise include human resources (executive search and recruitment, assessment, coaching, leadership and talent development) and intercultural management for companies operating in China.

A sinologist by training (INALCO), Eric has degrees in human resources management (CNAM), in international business management (ESG business school) and is currently enrolled in an Executive Master in Innovation Leadership with the Polytechnic University of Hong Kong (PolyU).

FALLING SHORT

Draft amendments to the PRC Employment Contract Law

On 29th June, 2007, the Standing Committee of the National People's Congress (SCNPC) promulgated the Employment Contract Law (ECL). It represented a major milestone in the development and modernisation of China's labour regulatory environment. However, the ECL is commonly viewed as being too biased towards employees. Some of its provisions—its limitations on employers' ability to unilaterally terminate employee contracts and its requirements for statutory severance pay, for example—are seen by many to be overly protective of employees, increasing financial and compliance burdens on employers and dampening demand in the labour market in the long run. **Sherry Gong** and **Chengcheng Wu** of **Hogan Lovells International LLP** say that the 2012 amendment to the ECL did not effectively tackle these problems, and that the 2015 draft amendments do not appear to go far enough either.

With the aim of levelling the playing field for employers, countless appeals have been made over the years to the Chinese Government to revamp labour legislation. Despite the weight of protest, almost a decade has passed since the ECL was promulgated and only one amendment (*Amendment*) has been issued by the SCNPC, in December 2012. Unfortunately, the *Amendment* did not address the more heavily debated issues in the ECL, but instead focused on the qualifications for labour dispatch. The legislation was aimed at countering the proliferation of dispatch arrangements employed by some employers as a way of limiting their responsibilities by avoiding establishing a direct employment relationship with employees.

New draft regulations, however, appeared in 2015, in the form of the *Draft Certain Regulations on Employment Contract Law* (*Draft*). These were released on the Internet in an unremarkable way and of uncertain provenance, though allegedly circulated by the key employment regulator, the Ministry of Human Resources and Social Security Bureau (MOHRSS). However, despite its inauspicious appearance, the *Draft* has still sparked heated discussion among domestic and foreign enterprises.

It is uncertain whether the *Draft* will ever come into effect, and even if it does it will be further down the road, given that the SCNPC's legislative working plan for 2016 does not include an amendment to the ECL. Nevertheless, studying the draft is helpful, as it may to some extent convey the current leading ideas and mind-set among legislators. In this article, we highlight amendments in the *Draft* that touch on critical issues in the ECL and that we think may have significant implications for labour practice in Mainland China.

Vague definition of 'employer'

The current ECL defines 'employer' as enterprises, individual economic organisations, private non-enterprise entities, or other organisations within the territory of the People's Republic of China (China). However, it fails to provide a negative list for employers – for instance, it does not exclude enterprises established outside of China from the definition of 'employer'. Without this exclusion, there is some confusion as to how the law treats a foreign company without a presence in China that hires Chinese nationals under labour contracts governed by the law of their home jurisdiction or as independent contractors – this is something we sometimes see foreign companies do, in practice. Although we think foreign companies are less likely be regarded as an 'employer' under the ECL, it is not clear whether it is a safe way for foreign companies to avoid their employer liabilities, and also whether this is fair to Chinese nationals.

Partially in response to this concern, the *Draft*, for the first time, excludes the following entities from the definition of 'employer': 1) a representative office of a foreign enterprise in China; 2) a foreign embassy or consulate; 3) a representative office of an international organisation in China; 4) family; and 5) individual entrepreneurs.

Under the *Draft*, companies yet to be established are required to conclude a written agreement with their employees before it is duly incorporated, and subsequently sign written employment contracts after its official establishment. Most significantly, the service period of employees would be recognised retrospectively from the first agreement. Under this rationale, the company to be established might well be regarded as an 'employer' in China.

Still an uphill battle to terminate employment contracts

Unilateral termination by employers is complicated under the ECL. Termination 'at will' is not allowed. If an employer wishes to unilaterally terminate an employment relationship prior to its natural expiration, it must have either statutory grounds or obtain the consent of the employee. When exercising a unilateral termination right in certain circumstances, the employer must notify the employee of its intention 30 days in advance or provide one month's salary in lieu of notice. In most circumstances, the employer should pay severance to the employee, which is calculated based on his/her years of service. Even so, employers still face a substantial risk that they will be deemed to have wrongfully terminated the contract, in which case it would be required to pay *double* the amount of the statutory severance entitlement. Even worse, the company could be ordered to reinstate the employment relationship, with all the awkwardness that *that* might entail. The most common advice received from outside legal counsels is that the employer should choose termination by mutual agreement to mitigate the risk of wrongful termination. As a result, employers have to stump up higher severance to buy out the contract.

By contrast, the termination process initiated by employees is known to be substantially smoother and more flexible: they only need only to serve 30 days prior notice, or a mere three-day notice period if they are still within their probation period.

Unfortunately, the *Draft* does not address this issue directly. It only suggests that, when calculating severance for years of service before 2008, employers can also use the cap of the monthly salary, that is, the amount equivalent to three times the monthly average salary of the local employees in the previous calendar year published by the local government. This proposed amendment may reduce the employers' economic burden related to severance to a certain degree.

Concluding open-ended employment contracts

Under the ECL, employment contracts may have a fixed term with a natural expiration date. In practice, employers often want to keep their employees longer than this

termination date and will renew/enter into subsequent contracts with its employees. However, by law, upon commencement of the second subsequent contract, the employment relationship becomes open-ended, unless otherwise agreed by the employee or some other exception applies.

Many employers dislike this provision and adopt various methods to avoid entering into contracts that would trigger open-ended employment. For example, an employer may try to break continuity by utilising a service company or affiliated company to sign the employment contract with its employee, or by terminating its first employment contract and concluding a second employment contract after an interval of a few months. Some local authorities, like the High Court of Beijing and the Beijing Labour Arbitration Committee, unequivocally prohibit employers from arrangements that are apparently designed to avoid the conclusion of subsequent contracts.

Addressing these issues, the *Draft* provides explicitly that four circumstances could be regarded as concluding a subsequent contract, including: 1) if the first contract extends upon its expiration (with exceptions); 2) if the second contract is concluded within six months from the expiration or termination of the first contract; 3) if the contract was concluded with an affiliated company; and 4) if the contract was concluded with a new entity after the former employer is deregistered and where there are no substantial changes to the business, the employee's working place and his/her responsibilities.

While these rules tend to support eventual open-ended employment for continuously employed employees, they do appear to provide more firm guidance as to how long, for example, an employment relationship needs to be cut off for a contract not to be viewed as subsequent, adding welcome clarity. But the *Draft* does not address the basic consternation expressed by employers who disfavour open-ended contracts due to the difficulties associated with terminating employee contracts in general and open-ended employment relationships in particular.

Conclusion

Much like the ECL, the *Draft* raises as many questions as it answers, and in the field of labour few questions are easily resolved and the perfect balance of interests is hard to achieve. We expect that rather than bringing an end to the current discussion the *Draft* will merely provoke the beginning of another, and it appears the government also takes this view. During a press conference in February 2016, the minister of the MOHRSS stated that they had analysed the *Draft* and were currently studying the new problems encountered by employers, such as high corporate employment costs. We would expect that the current ECL will be revised or redrafted in the near future (though not in 2016), which will hopefully encourage greater employment and smoother employer-employee relationships in China.

Hogan Lovells *is a global legal practice with over 2,800 lawyers in more than 40 offices including three offices in Greater China, five offices in the rest of Asia and 17 offices in Europe. The Beijing, Shanghai and Hong Kong offices provide a full range of services covering antitrust/competition law, intellectual property, media and technology, banking and finance, corporate and contracts, dispute resolution, government and regulatory, projects, engineering and construction, real estate, and restructuring and insolvency.*

THE PITFALLS OF EMPLOYEE-CREATED IP

Preventing unnecessary losses from R&D activities in China

In recent years, increasing numbers of European companies have moved research and development (R&D) activities to China. For some, their China R&D is focused on innovations specifically for the Chinese or Asian markets; others have moved global R&D units to China in order to draw on its talent pool and through a desire to diversify their global research community. **Oliver Lutze**, Principal of **Spruson & Ferguson**, has been an active member of the European Chamber for many years. He has contributed to the European Chamber's IPR Working Group activities relating to China R&D IP matters since 2007, and served as chair of the working group in Shanghai from 2010 to 2013. Drawing on his in-house experience as former IP Head at Bayer (China) and his current role, Lutze highlights some of the pitfalls to be aware of when starting R&D activities in China.

Pitfall #1: Insufficient IP awareness and training of staff

China's business environment is fast paced – it demands that companies hit the ground running and continuously adapt their business activities. Latecomers are often at a disadvantage to early-entrants, which has led to many companies creating R&D functions, and even whole R&D centres, within extremely short time frames, with scientists being hired in large numbers at the establishment phase and under time constraints. Often, such teams are under pressure to quickly produce output in a newly established facility, and local IP support is either lacking or there appears simply no time to utilise it. This can lead to a loss of valuable inventions, as they are not being patented. Additionally, many newly-hired scientists are local hires or returning scientists from the US who often lack profound knowledge of Chinese patent laws.

For example, unlike the US, in China it is not possible to disclose an invention in any kind of publication first and *then* file an invention patent application: the IP is lost for most countries through a lack of patentability caused by the act of publication. Many scientists also do not have sufficient awareness of the need to obtain a high-quality invention patent filing before an invention can be published or disclosed to clients without a confidentiality agreement in place.

In order to capture inventions from a new R&D unit the following appears to be a must: 1) the training of scientists by a patent counsel who can talk on their level; 2) the establishment of a documentation and evaluation system for invention reports; 3) the review of employment agreements so that they include provisions on confidentiality obligations, incentives and IP ownership clauses (employees must also be trained on this); and 4) access to an IP counsel during the drafting of patents to ensure that IP meets local and international filing requirements.

Finally, management needs to continuously highlight the importance of know-how and IP protection for a sustainable innovative business and make it a prominent goal for R&D employees to focus on and to report any IP creations.

Pitfall #2: Mistakes through non-compliance with the Chinese Patent Law

Reporting inventions to an overseas headquarters for drafting and filing outside China is one of the biggest mistakes that results in the loss of IP in China. While the overseas IP counsel will be experienced in drafting and filing advanced patents which fulfil international standards, such procedure violates statutes of the Chinese Patent Law. All inventions completed in China must either undergo a confidentiality examination by the Chinese patent office (SIPO) before being filed outside China, or be filed in the Chinese patent office first. If this provision is not complied with, all resulting patents in China based on this invention will be invalid. There is no way to correct this mistake. To avoid this problem, it is necessary to request a confidentiality examination with a full Chinese language description of the invention (a two-week procedure), or file a patent application with the Chinese patent office first. This patent application can then be filed as an international patent application (PCT system) using English text.

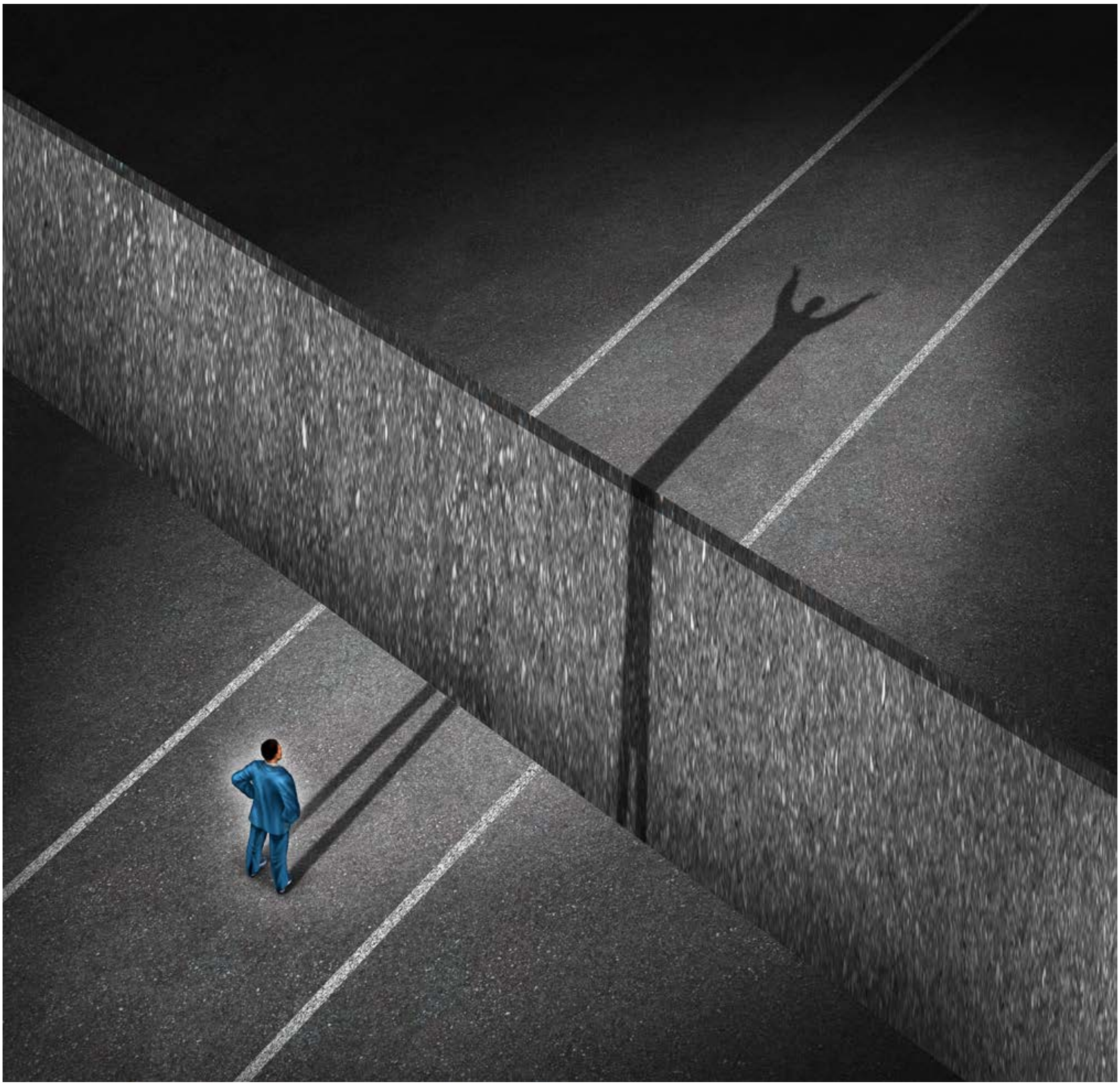
Pitfall #3: Potential disputes with employees over ownership of IP or over payable benefits after ownership transfers to the employer

Ownership of copyrights and patents in China requires special attention. Except for complex exemptions and limitations, and in the absence of provisions in the employment contract, a copyright is generally owned by the employee as author (Article 11, Copyright Law) and not the employer. Exemptions from this generally unfavourable principle include copyrightable works that meet the criteria of special works created in the course of employment (Article 16, Copyright Law). These include copyrightable work products created while using materials and technical means of the employer and which are created under the responsibility of the employer. Such special works are automatically owned by the employer and include, for example, computer software, engineering or product design drawings. Nevertheless it is highly recommended to clearly define the ownership of work products to be fully retained by the employer in the work contract.

Inventions that can be patented are owned automatically without any assignment by the employer, if they are service inventions. The criteria for a service invention are usually met for inventions created during the employment and under guidance of the employer. However, inventions not meeting the criteria are by law owned by the employee as non-service inventions.

The ownership of inventions can be usually clarified and disputes are rare. However, a topic that has been discussed in the European Chamber's IPR Working Group in recent years concerns the lack of clarity of the laws and regulations with regard to inventors' rights after ownership transfer to the employer.

China requires the employer to pay rewards and remuneration if a patent is granted and the invention is commercially used. According to the Patent Law, statutory terms that apply for invention patents include, for instance, monetary payments of a patent grant of CNY 3,000 and a two per cent share of the profits of a commercialised product making use of the invention. These statutory terms are under discussion for significant increases (e.g. a sharp jump to a five per cent share of profits) according to a pending draft for a national regulation on service inventions. The unclear scope of the statutory terms and the current law development regarding increased payment amounts may not fit many industry sectors, meaning there is a need for a way out of the statutory system.



Fortunately, the law allows companies to enter into individual agreements with inventors on reward and remuneration matters or to establish legally-enacted company policies for inventor remuneration. The latter may be preferred, as finalising individual agreements after each invention may be a huge burden to employers. These policies may also give employers an opportunity to define all details that are otherwise unclear in current legal practice, e.g. payments to former employees and sharing of payments among several co-inventors.

While Chinese government officials and judges have indicated to European Chamber members on several occasions that such agreements and policies should prevail in any dispute with an employee, there remains a major problem. Any agreement or policy may be challenged as 'unreasonable' by the employee, especially if the concepts vary strongly from the statutory terms. Employers are therefore in open waters when drafting remuneration policies as it involves risk. Nevertheless, it is strongly advisable to define the amount of benefits to employee-inventors, and for all company practices, through an official company policy or other agreements rather than relying on unshaped practice using the statutory terms of the law. Otherwise unpleasant disputes in the courts may ensue. Eb

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SPEAKING THEIR LANGUAGE

How to communicate with China's Generation Y

Talent management is a perpetual challenge for employers, and one which seems to become more challenging with each new generation that breaks through to the job market. Today's younger generation in some respects demand more of their employers than is demanded of them. **Charles Shen**, Executive Vice President, **Weber Shandwick China**, says that in order to harness the power of this exceptionally talented but occasionally unpredictable workforce, employers need first to understand where they are coming from.

China's employment landscape offers a particular challenge that is arguably unique to the country: its Generation Y workforce.

Generation Y, the group born after 1980, reportedly represent nearly half of China's total labour market, making it imperative for us to understand the factors that motivate them. In order to get your message through to this new generation, which is already integrated into the workforce, you will need to learn to speak their language.

The way they think, consume and live are vastly different from earlier generations. What makes the post-90s generation in particular stand out from the others is their use of technology and the way they behave. They dislike a rigid corporate structure, they want fast progression. On this last point they can be a little impulsive at times.

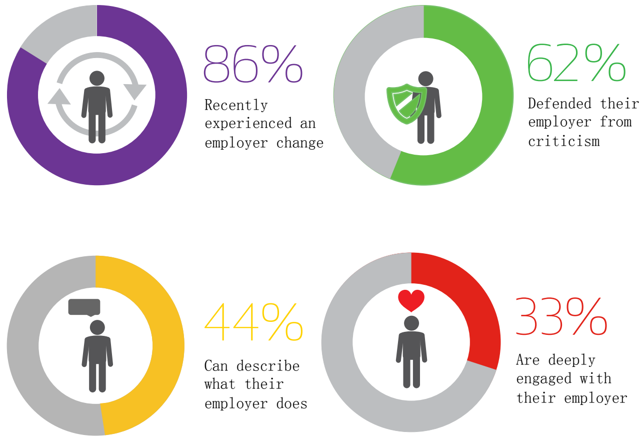
In order to explain their relative impatience through the prism of China's development it could be posited that the post-90s behave this way because they have only known a country that has boomed in a very short period of time. Therefore they expect their personal success to be just as quick and prolific. But many papers produced in the United States and beyond show that this way of thinking also extends to those born in the 1980s. In other words, it doesn't matter where you are as an employer, it is crucial to adapt to prevailing trends.

Companies like Google and Apple have demonstrated that it is possible to attract and retain the best brains by having a culture that encourages innovation and fun. The benefits often quoted include being able to work with the best in the business, a company that has a purpose, a company that is lively, the opportunity to receive comprehensive training and little micromanaging from the bosses.

In order to succeed in China a company must be equipped with an excited and passionate workforce. Demand for talent is strong, so if a firm can foster a high degree of loyalty in this competitive market place, that will speak volumes.

However, a 2014 survey by Weber Shandwick and KRC Research suggests that not enough employers do a good job of communicating with their staff. *Employees Rising: Seizing the Opportunity in Employee Activism*, a survey of 2,300 employees worldwide—including China—found that there is deep unrest in the workforce.

In China, 86 per cent of surveyed employees had recently experienced an employer change and 62 per cent had defended their employer from criticism. However, only 44 per cent could describe what their employer does and only 33 per cent were deeply engaged with their employer. Given the sizeable proportion of Generation Y in China's workforce it is likely they were among those polled.



If this issue of disengagement remains unresolved, the status quo of this communication disconnect will only continue. This will do companies no good, because employees will not be incentivised to stay with them for long. After investing so much time and effort nurturing these individuals, surely it is in our best interests to work together with them to advance the firm while looking after their personal career development.

We need to motivate the younger members of our teams to become engaged and inspired because of the significant role they will play in shaping the future. They are technologically savvy and quick learners, possessing the necessary skills to innovate. Moreover, an employee who is motivated is more productive and more likely to speak up for the company when someone puts it down.

This means managers need to do more than send mass emails to staff or organise town hall sessions, they should also establish private and confidential channels to foster open feedback.

However, while these organised get-togethers and formal platforms are important, perhaps more so are the simple acts that take place in the office – the gestures that show an individual's opinions are valued, that there is trust.

After all, good word of mouth is something money cannot buy.

Charles Shen *is Executive Vice President at* ***Weber Shandwick*** *in China. He has over 30 years of experience in the country's public relations industry, counselling globally-recognised brands on corporate branding, employee engagement and crisis management. Charles previously worked at Intel, Microsoft and China Hewlett-Packard.*

FIND YOUR PURPOSE

How to lead in a changing world

In today's changing world, CEOs are under more pressure to transform, adapt and align organisations to succeed or, increasingly, just to survive. With so many business-critical issues demanding CEOs' attention, should they also be expected to take responsibility for the development and deployment of a corporate talent strategy? **Laurie O'Donnell** of **Cornerstone Beijing**, says that, actually, they expect it of themselves.

In PwC's 2016 *Global CEO Survey*, over 1,400 executives were interviewed from 83 countries and a wide range of sectors. Leading organisations in a changing world was cited as a key challenge, as well as the speed of this change. Determining future talent requirements and people strategies was also reported as a business critical issue. Rapid changes in technology, and the rate of change, as well as global political events and economic shifts also featured high on the list.

Less expected was the issue of 'corporate purpose' – what a company stands for, what products it makes, and how it treats the environment and its employees. It is clear that CEOs have come to realise that employees are looking to work for organisations and leaders that they admire and/or believe in or trust.

Of course, many senior leaders profess to a deep-rooted commitment to their people, but there is a danger if employees see and experience a disparity between such claims and what happens in practice—how employees are *really* treated—that a company's reputation will suffer irreperable damage. This disconnect is bound to create repercussions in engagement and retention, and is an incubator for cynicism.

Walking the talk

How do leaders who make statements about leading with purpose demonstrate this value?

Denise Morrison, CEO of the Campbell Soup Company, since 2011, says that one of the first things she had to do was to add the value of courage to the core values of the company. "I encouraged people to take bolder moves and bigger risks – all with the highest integrity." A decisive move that, she says, created a "very aspirational value for us."

Employees had to be trained to make decisions more quickly, which, based on who needed to be informed and how many people need to be involved, was a challenge for many. Morrison also changed the management of talent from measuring activity to setting objectives and measuring an individual's performance based upon their contribution to the organisation as a whole.

> *"'Purpose' isn't selling more products and services – that's a goal of every business. 'Purpose' is the compass that guides your business and serves as a filter to make decisions. It inspires employees to drive your company's performance and it strengthens your connection with consumers and their values."*
>
> —Denise Morrison, CEO, Campbell Soup Company

Performance with purpose

Indra Nooyi, CEO of Pepsico, has led this organisation of over 185,000 employees in 200 countries since 2006. When she was first appointed, she held town hall meetings with the employees. Few people said that their focus was their pay cheque – they wanted to build a life not just secure an income. They spoke about consumers being more conscious of health and wellness.

> *"'Purpose' is not about giving money away for social responsibility. It's about fundamentally changing how to make money in order to deliver performance – to help ensure that PepsiCo is a 'good' company where young people want to work."*
>
> —Indra Nooyi, CEO, Pepsico

Exemplary leaders have differing styles, approaches and missions, but they all share the knowledge that the people strategy is inseparable from the business. It could be argued that the opinions of 185,000 people (the employee base of PepsiCo worldwide), is a window into what the wider public may be thinking. When asked if she would accept lower profit margins to follow her values and "do the right thing", Nooyi answered that, "'Purpose' does not hurt margins. 'Purpose' is how you drive transformation." She acknowledged that if the company had not tackled its environmental issues (especially with water) then PepsiCo would have lost their licences in many countries. Recognising that there are consequences when changing a company culture she agreed the process of change can hurt the profitability in the short term. "Transformations sometimes hit your margins or top line because things don't always go in a straight line. But if you think in terms of the life span of the company, these are just small blips," she says.

These messages of purpose stated by Nooyi and Morrison have set the direction of these companies. Their actions have given credibility to their message. The courageous changes that both have made to their respective company product lines address not only consumers' concerns but also deliver a message to their global workforce, something that is particularly important in terms of future employees.

The future workforce

Millennials (born from 1980 to 1995), as well as Generation Z (those following millennials), make up a growing portion of the workforce. This demographic shift will see Millennials making up to 50 per cent of the workforce by 2020. Their goals and motivations are very different from the previous generations. They are looking for tangible things like a comfortable lifestyle, but also the intangible – a chance to achieve something of value and a feeling of connection and purpose.

The world is changing and it is a deeply challenging time to lead. But it is this very challenge that has opened the door for CEOs who can articulate purpose and drive new opportunities. Eb

The competition for qualified leaders is fierce, and the best candidates could be across town or across the globe. ***Cornerstone*** *Executive Search consultants know the terrain and we have 66 offices worldwide—across industries as well as geographies (7 offices in China and 19 offices across Asia and 66 offices globally)—and we have the know-how to help clients identify, recruit and retain top leaders. Search is what we do: we know the business, and we take the time to know your business. More about our award winning executive search service at www.cornerstone-group.com*

IF YOU BUILD IT, THEY WILL COME

Attracting talent in the China market

The fight for talent in China is becoming more intense, and it is no longer about who can offer the biggest package. **Stephen Burke**, Vice President, HR, at **The LEGO Group**, says that smart companies will the ones that build a strong corporate culture based on dignity and respect, and live the ideals that they espouse.

The topic of talent attraction can be approached from three different angles. First, there are aspects of a workplace that that will be attractive for young employees irrespective of their nationality and background. All young talent reacts positively when treated with respect and dignity, and young Chinese talent is no different. This is a basic trait that transcends both cultural and organisational boundaries.

Second, there is a 'quid pro quo' aspect to attracting talent that needs to be incorporated in the mind-set of a company. This also goes beyond cultural boundaries and leads us to a third aspect of maintaining an honest, deep-rooted culture that will be attractive for young talent – companies should not fall into the trap of overselling their corporate culture and risk attracting talent under false premises. In the end, it is not about attracting talent as much as it is retaining and developing it in a way that benefits the company and the talent (the quid pro quo).

Why invest in talent attraction?

Every company should ask themselves this question. A well-known statement from a renowned company goes as follows:

"We get fantastic results with ordinary people because of our excellent processes. Our competitors often get mediocre results using fantastic, clever people to salvage poor processes."

The essence of this statement is that it is of the utmost importance that you know how to deploy your talent to the advantage of the company and for the development of the individual. So when attracting talent it is important that you know what capabilities you will need in the future and how you intend to build them through your build-buy-borrow plan.

A strong company culture where all employees are treated with respect and are encouraged to share their opinions, and with a focus on diversity, is increasingly desirable among those seeking employment in China. Many even prioritise a company's values and culture above monetary incentives.

Setting the tone of your company culture starts the first time you interview a potential candidate. In the past, interviews had the flavour of an interrogation where the objective was to find flaws in the candidate's personality. Today, a job interview is a two-way conversation where the candidate is asking just as many questions as the recruiter. Openness and trust play a major role in getting employees off to a good start in the company and ensuring they understand the basics of what culture they are buying into.

Workplace environment and new ways of working

There is a basic statement in psychology that "context can change behaviour". The workplace environment and the *ways* of working are therefore important factors for young talent in China.

A company should always be very conscious of how and why they design their workplace. Employees are subject to environmental influence as much as they themselves influence the environment. This is why creating an environment that increases learning opportunities is so important and a key part of organisational development.

Many companies are introducing an entirely new way of working, where the traditional, physical concept of 'a department' has dissolved, which encourages cross-organisational collaboration and knowledge sharing. It results in more holistic thinking, and, ultimately, better decisions being made.

How to develop talent

The key to talent attraction and retention is having a strong concept of how you will develop your talent, for example, the 70:20:10 approach. This emphasises that 70 per cent of an employee's development will derive from on-the-job experiences; 20 per cent from coaching, mentoring and networking; and 10 per cent from classroom training. It is also important that talent is exposed to challenges that stretch their abilities and builds on a company's existing competencies while they are mentored by a senior leader.

While this may seem obvious to some, many companies do not have a very clear talent development concept, often just presenting their young talent with a catalogue of courses or MBA's to choose from. This approach will benefit neither the employee nor the company and can result in the talent misunderstanding what is necessary in order to grow, and the company squandering good potential.

Understanding the difference between performance and potential

Many young, talented individuals may not yet be performing at their maximum level but have the potential to grow. A company should have a clear definition of what potential they are looking for, and it should be communicated to all employees and evaluated every year. There is no use in employing smart people if they are not using their intelligence for the good of the company.

Evaluation of employees' potential should be carried out every year, with their leader gathering input from relevant stakeholders. There should be a structured process with qualified tools, and leaders should be trained in the process, especially how to give feedback in order to ensure that it is received in the spirit of learning and that there is respect for the employee.

Summary

There can be no short cuts in attracting the right talent. Ultimately, you will only get value if you know how you will develop your talent, you practice the values that you espouse and truly believe in the quid pro quo principle of talent development. The Chinese market is very quickly getting up to speed with the rest of the world with regard to how a good workplace is evaluated. The new generation prioritises differently to the previous one: salary is no longer the number one priority – the work environment and work/life balance is also very high on the list. Eb

*The **LEGO Group** is a privately held, family-owned company with headquarters in Billund (Denmark), and main offices in Enfield (USA), London, Shanghai and Singapore. Founded in 1932 by Ole Kirk Kristiansen, and based on the iconic LEGO® brick, it is one of the world's leading manufacturers of play materials.*

Guided by the company spirit: "Only the best is good enough", the company is committed to the development of children and aims to inspire and develop the builders of tomorrow through creative play and learning. LEGO products are sold worldwide.

CORPORATE DISSOLUTION

Is prior consent required before terminating labour contracts?

In the face of China's increasingly strong economic headwinds, some businesses are having to revise their strategies in order to ensure profitable growth. This may involve reducing investments or moving the business to other parts of Asia or NAFTA while dissolving the business in China accordingly – 41 per cent of companies reported in the Chamber's *Business Confidence Survey 2016* that they are now re-evaluating their China operations and planning to cut costs, including through headcount. **Peter Zeng**, Senior Partner, and **Mireia Paulo**, Business Development Manager, **A&Z Law Firm**, anaylse the Chinese law to see if companies are obliged to obtain their employees' prior consent before proceeding to close their operations.

Two cases, two different results

On the afternoon of 5th February, 2015, Citizen Precision Guangzhou Ltd, an important watch-parts factory of the world-famous Japanese wristwatch maker Citizen, suddenly announced its early liquidation and the termination of labour contracts with all employees. Citizen said that abrupt notice was given in the interests of employee safety – prior notice would, it said, have affected workers' emotions and, consequently, production. However, the explanation was not deemed acceptable by its employees and the case consequently drew wider attention and led to a great deal of controversy.

By contrast, in the case of the announcement of the dissolution of Philips Consumer Luminaires Manufacturing Co Ltd (Philips), a subsidiary of Philips in Shenzhen, on 31st May, 2016, employees' response was somewhat calmer – some stated that the company had begun to prepare the dissolution two months in advance. Among other things, the company's management filed records with the local authorities and the street office, or sub-district office/agency,[1] in order to commence preliminary work for the dissolution. In other words, employees were already aware of Philips' decision to some degree before the formal announcement was made.

So, while the two companies' different approaches led to quite different outcomes, is it actually necessary to give prior notice to, or to obtain consent from, employees when a company decides to dissolve?

Interpreting the law

> There is no need to give advance notice to, or get the consent of, employees if the labour contract is terminated because of the dissolution of the company.

According to paragraph 5 of Article 44 of the PRC Labour Contract Law, dissolution of a company is a legal premise for terminating labour contracts. Hence, as long as the company is dissolved in accordance with Chinese law, it retains the lawful right to terminate labour contracts with its employees. Moreover, in China there is no regulation that requires the company to give prior notice to, or obtain the consent of, its employees before labour contract termination. Therefore, in cases when a company's board of shareholders has made a valid resolution of dissolution and obtained consent from the examination and approval authority for foreign investment,[2] the dissolution is deemed to be entirely legitimate.

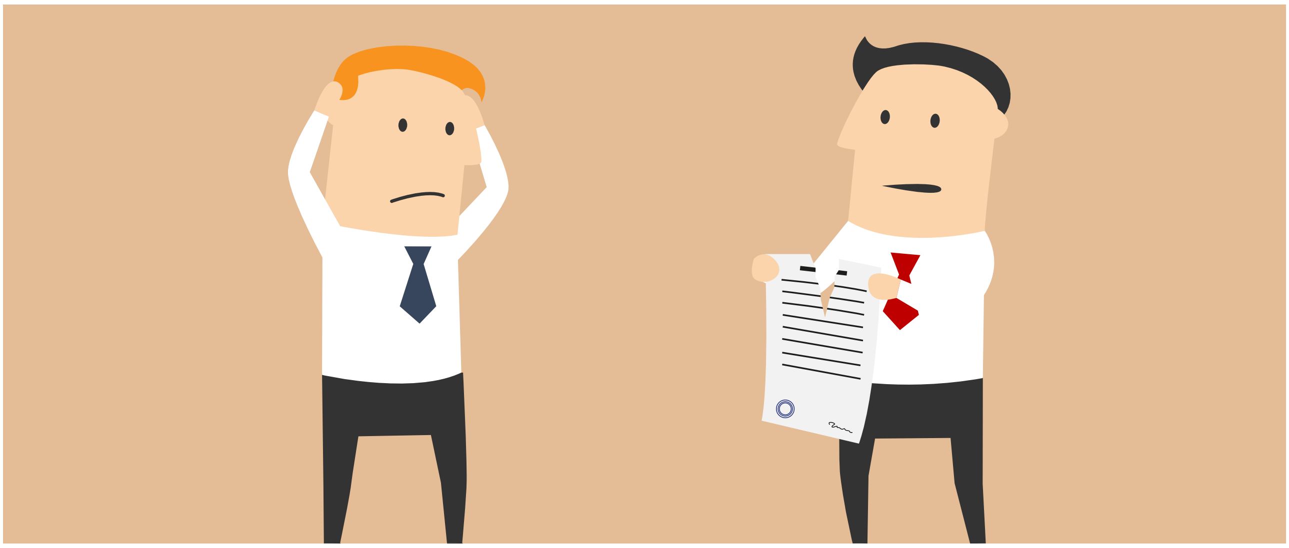
Shanghai has witnessed several recent labour disputes due to company dissolution. By examining these cases it is evident that courts widely hold the belief that it is lawful for companies to terminate labour contracts in accordance with the valid resolution of a corporate closure. In case of any disputes arising therefrom, the court shall examine the formal essentials of such dissolution resolution. Taking a foreign-invested limited liability company as an example: first, the shareholders or the board of shareholders need to make a resolution with regard to dissolving the company; then, the resolution shall be sanctioned by the examination and approval authority for foreign investment before the formal dissolution of the company. After receiving approval, the company can unilaterally terminate labour contracts without its employees' consent.

> There are some principle provisions on conducting democratic procedures, such as discussion and consultation with the employees, before passing a resolution for company dissolution. However, there is no decision on whether the dissolution resolution would become invalid if it never actually goes through a democratic procedure. So far, at least in the practices of foreign-invested enterprises (FIEs), it is very unlikely for such a resolution to be held invalid if the resolution has already been approved by the competent authority.

It is not explicitly stipulated in Article 4 of the PRC Labour Contract Law that it is necessary to go through a democratic procedure when a company plans to dissolve. However, there is a saving clause in this article, i.e. "... which have a direct impact on employees' immediate rights and interests or other material matters". Since company dissolution implies the termination of labour contracts, it is obviously vital to employees' rights and

[1] A street office or sub-district office/agency (街道办事处) is an administrative agency of a municipal district government or of a city government that has no sub-districts in Mainland China.

[2] The authority for foreign investment differs depending on the company's location. Usually, it refers to a Commission of Commerce (商务委员会) or a Bureau of Commerce (商务局). However, in some economic development zones, they are referred to as an 'administrative committee' (开发区管理委员会) of the specific development zone e.g., the Administrative Committee of Xi'an Hi-tech Industries Development Zone (西安高新技术产业开发区管理委员会).



interests. So in that sense, when a company plans to dissolve, it should comply with this particular article in the Labour Contract Law. In other words, it should follow the stipulated democratic procedures before making the resolution of dissolution. Similarly, paragraph 3 of Article 18 of the PRC Company Law also requires that: "When making a decision on company restructuring or any important issue related to its business operations, or formulating any important rule or regulation, a company shall take into account the opinions of its labour union, and the opinions and proposals of its employees through the employee representatives' assembly or otherwise."

Yet, it should be noted that both the aforementioned articles are concerned with the resolution of company dissolution, not with the termination of labour contracts. Furthermore, it is not stipulated that a resolution would be rendered invalid if a democratic procedure is not followed.

For this reason, while in theory there is a risk that dissolution resolutions that do not follow democratic procedures might be deemed void, thus far there is no such legal precedent. In fact, there are very limited cases regarding employees' objections to the termination of labour contracts when the company has been dissolved.

Should you be concerned?

Nevertheless, under the current management system for FIEs, as long as the examination and approval authority have already sanctioned the resolution of dissolution, the labour dispute arbitration and court are not likely to overrule such administrative action. Therefore, there is no need for FIEs to worry unnecessarily about this matter. Even if it is mandatory to follow democratic procedures before a formal dissolution, it is not actually stipulated that a company and its employees must reach consensus through consultation – in short, companies (with the exception of state-owned enterprises) still have the final say.

It is important to note that the Ministry of Commerce issued the *Interim Measures for the Record-filing Administration for the Incorporation and Change of Foreign-invested Enterprises* (*Draft for Comments*) on 3rd September, 2016. The *Draft for Comments* stipulates that FIEs that are not subject to special administrative measures on access, as prescribed by the State, and do not need to go through formalities for examination and approval, but can complete formalities for incorporation and change simply by filing a record instead. This means that the aforementioned risk with regard to the validity of company dissolution resolution would be further reduced. Eb

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KNOW YOUR OBLIGATIONS

China's Disabled Persons' Employment Security Fund: when should an enterprise pay?

China protects disabled persons' right to work and adopts a mandatory system of pro rata hiring of these citizens. According to the PRC Disabled Persons Security Law,[1] which became effective on 1st July, 2008, enterprises are obliged to hire disabled persons as a specified ratio of their total staff. **Jeanette Yu**, Counsel at **CMS**, breaks down the law and outlines the obligations that companies operating in China must fulfil.

[1] Chinese text on http://www.gov.cn/jrzg/2008-04/24/content_953439.htm

Historically, a considerable number of enterprises in China have neither hired disabled employees nor made contributions to the Disabled Persons' Employment Security Fund (Fund).[2] In order to strengthen implementation of the PRC Disabled Persons Security Law, on 9th September, 2015, the Ministry of Finance, the State Tax Bureau and the China Disabled Persons Federation jointly issued the *Methods on Levying, Use and Management of Disabled Persons' Employment Security Fund* (*Methods*). The *Methods* stipulate that all enterprises in China must make contributions to the Fund if they do not hire a sufficient number of disabled persons.

Statutory requirements of hiring disabled persons

The term 'disabled persons' refers to those who hold a PRC Disabled Person's Certificate, which indicates that the holder has visual impairments, hearing disabilities, speech disabilities, physical handicaps, intelligence disabilities, mental disabilities or multiple disabilities, and to those persons holding a PRC Disabled Army Person's Certificate (Grade 1 to Grade 8). Enterprises that employ disabled persons must sign an employment contract with them for a term of at least one year, pay a salary of no less than the minimum monthly salary of employees as announced by the local government, and pay social insurance and housing fund contributions in accordance with the law. Disabled persons holding a PRC Disabled Person's Certificate of Grade 1 or Grade 2 or a PRC Disabled Army Person's Certificate of Grade 1 to Grade 3 are counted as two disabled persons. Disabled persons hired by an enterprise at locations other than its registered address will also be counted towards its overall obligations.

As required by the *Rules of Employment of Disabled Persons*,[3] which became effective on 1st May, 2007, the total number of disabled persons hired by an enterprise should be no less than 1.5 per cent of its total staff, with the exact proportion applicable being subject to the decision of the local provincial government where the enterprise is located. In the majority of locations the proportion required is no less than 1.5 per cent, such as in Jiangsu, Zhejiang and Guangdong provinces. In other locations, the proportion is higher. For example, in Shanghai, the proportion is no less than 1.6 per cent,[4] and in Beijing it is no less than 1.7 per cent.[5]

[2] The Report of the Inspection Group on Implementing Laws of the Standing Committee of the National People's Congress about Implementation of the PRC Disabled Person Protection Law, 30th August, 2012.

[3] Chinese text on http://www.scio.gov.cn/xwfbh/xwbfbh/wqfbh/2015/20150803/xgbd33188/Document/1443212/1443212.htm

[4] Measures for Decentralized Arrangements on Employment of Disabled Persons in Shanghai, 20th December, 2010.

[5] Methods on Levying, Use and Management of Disabled Persons' Employment Security Fund of Beijing, 1st January, 2016.

Contributions to the fund

According to the *Methods*, if an enterprise does not hire disabled persons in the ratio required by the local government, it will be obliged to pay contributions to the Fund, with the number of disabled persons which *have* been hired being taken into consideration. Fund contributions are calculated as follows:

Payable amount = (number of total staff employed in the previous year x rate required by the local government – number of hired disabled persons) x average annual salary of the enterprise's employees in the previous year

While the *Measures* stipulate that the calculation should be based on the average annual salary of an enterprise's employees, which should be calculated on the basis of the total payroll of all staff, in many locations this provision has historically not been strictly implemented in practice.

For example, in Shanghai, up until this year, the calculation for contributions to the Fund is still based on social insurance contributions of the employees paid in the previous year rather than the actual average annual salary of the employees in the previous year. This means that currently, for an employee whose annual salary is higher than the threshold of three times the average annual salary of employees as announced by the Shanghai government, when concluding the contribution amount the threshold will apply.

As another example of how the calculation varies across different jurisdictions, in Nanjing the fund contribution amount for 2015, which is levied in 2016, is calculated using the average 2013 annual salary of employees of non-privately-owned companies located in the city.[6]

In both of these examples, the basis for calculating contributions is lower than the standard as required by the *Measures*. It is still unclear whether the respective local governments will adjust the calculation criteria in the future in order to comply with the provisions of the *Measures*. However, if the local governments decide to do so the costs for enterprises will increase considerably, especially those enterprises whose employees earn salaries higher than the national average.

Exemptions

According to PRC law,[7] small and micro businesses, which have 20 employees or less, are exempt from paying to the Fund for three years after they have been established if they do not hire a sufficient number of disabled persons.

[6] Announcement of Nanjing City on Levy of Disabled Persons' Employment Security Fund of 2016 issued by the Nanjing Local Tax Bureau, 22nd July, 2016.

[7] Notice of the Ministry of Finance and the State Administration of Taxation on Exemption of Relevant Government Fund for small and micro businesses, 23rd December, 2014, (Cai Sui [2014] No. 122).

In some locations, such as Beijing,[8] any enterprise that incurs direct and serious economic losses due to force majeure or other unexpected crises may, upon the approval of the district Finance Bureau, delay the payment for a certain period of time and benefit from a reduction in the amount payable, or even be exempted from paying into the Fund altogether.

Liabilities for breach of law

Although Fund contributions must be levied by the competent local tax bureau on a monthly basis, in practice in most locations, contributions are usually paid in a lump sum once a year. According to the *Measures*, enterprises have a duty to declare to the competent local tax bureau every year their status regarding the hiring of disabled persons. If an enterprise fails to make this declaration within the prescribed time limit it will be deemed as not having hired any disabled employees. In practice, such declarations are made to the competent disabled persons' employment service institute such as the local Disabled Persons' Federation at the district level.

The competent local tax bureau is entitled to inspect enterprises. If an enterprise neither hires disabled persons nor pays contributions to the Fund, the competent administrative authority may issue a warning and ask for rectification within a specified time. If an enterprise still fails to pay contributions to the Fund as required, in addition to outstanding payments, the enterprise may be required to pay late payment fees at the rate of 0.5 per cent for every day that payment is delayed.[9] Eb

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CMS advises clients in the areas of corporate and M&A, distribution and commercial, employment, banking and finance, insurance, competition, real estate and construction, IP, dispute resolution as well as tax and customs. CMS has been active in China for several decades.

[8] Article 15 of the Methods on Levying, Use and Management of Disabled Persons' Employment Security Fund of Beijing, 1st January, 2016.

[9] Article 27 of the *Rules of Employment of Disabled Persons*, 1st May 2007.

DEALING WITH PARTNERS AND EMPLOYEES

Manufacturing Non-disclosure Agreements in China

In this article, the **China IPR SME Helpdesk** return to the topic of protecting IP when seeking Chinese manufacturers as partners. They address what it takes to design a non-use, non-disclosure and non-circumvention (NNN) agreement that can pose enough of a credible threat to dissuade contract violations. The first part of this article appeared in the March/April issue of *EURObiz*.

Defining protected information: keeping everyone on the same page

Non-use, non-disclosure and non-circumvention (NNN) agreements should clearly define which rights are being disclosed or licensed, their nature and their scope. Clear mechanisms for identifying and marking, accounting for and maintaining secrecy for this information—or indications of who will bear these responsibilities, what general types of information should be considered confidential, or processes for retroactively marking material as confidential—should be included. If desired, additional clauses can also outline what types of information will not be considered confidential. Naturally, before this information can be identified, an SME should first understand just what its trade secrets are. Conducting an IP assessment and audit can identify key IP that has otherwise been taken for granted or not fully appreciated by the SME and can assign it a value. This makes calculating contract damages much easier.

While the contract is in force these rules should be strictly followed. Over the course of the contract, additional IP may be generated as a result of the work of employees or independent innovations on the part of the manufacturer. These agreements can also include clauses which dictate that all such IP belongs to the SME, thereby avoiding future disputes. Note, however, that China places restrictions on the export of some technology, meaning that agreements automatically granting new IP to the SME could be struck down in court.

Validity, monitoring, and termination: building in safeguards

With IP clearly identified, the next step is protecting it. Language allowing regular monitoring of the manufacturer's activities by SMEs can prevent unauthorised use of the licensed rights. These clauses usually identify the parties who will have permission to use the licensed rights, as well as the security procedures that are in place to prevent unauthorised use or misuse of the IP assets. Assignment or transfer clauses prevent your IPR from being transferred to third parties without your permission. For example, clauses can be included to restrict and prohibit the contract from being assigned and transferred without your express written authorisation, and you may add a further clause to bind all successive transferees and assignees to your agreement.

It is also necessary to specify when and under what conditions the agreement will terminate, e.g., upon the liquidation or dissolution of one party. Agreements without clear explanations of when they terminate can be considered terminable at will. In the case of trade secrets, it is key to clarify that manufacturers will be bound by the agreement and liable for damages by nature of their accession to the agreement, independent of whether the trade secrets lose their trade secret status. That is to say, it should be clear that Chinese manufacturers are bound by your contract because they signed the contract, not just because your IP is protected. This is an added layer of protection which ensures that even if manufacturers manage to wiggle around non-disclosure clauses, they will still be restricted from capitalising on an SME's IP. Hand-in-hand with termination clauses are clauses addressing challenges to validity. These clauses are key for ensuring that even if one or more of the licensed rights in the licence agreement expires, the validity of the entire agreement and the licence granted within that agreement may not be challenged.

SMEs should seek professional legal advice when drafting clauses related to termination of agreements and non-competition, as excessive non-competition periods can be struck down by Chinese courts.

Dispute resolution: tailoring your tools for China

Including dispute resolution mechanisms in agreements signed early on with manufacturers may seem to be rude or an expression of mistrust, but in truth are an indispensable part of any NNN agreement and are included in such agreements by any responsible lawyer. Clarifying dispute resolution can prevent bad blood by creating a mutually agreeable framework for working through issues which crop up. More importantly, crafting dispute resolution clauses that are effective in dealing with Chinese manufacturers in Chinese jurisdictions can give China's judiciary all it needs to ensure contract compliance.

Effective dispute resolution mechanisms for NNN agreements with Chinese manufacturers are built on three pillars:

1. Official adoption of Chinese as the language for the NNN agreement.
2. Identification of Chinese authorities as the only acceptable judicial authorities for deciding cases related to infringement of the contracts.
3. Language which favours liquidated damages.

The Chinese-language version of your NNN agreement should be adopted as the official version of the agreement and the version that will be used to resolve any disputes. Though it may seem counterintuitive, this stipulation can greatly augment IP protection. As long as the version is prepared by trustworthy legal counsel with adequate Chinese skills, it can be relied on to accurately reflect the SME's wishes. An English translation of the contract should be provided to the SME to ensure that the contract is acceptable. The greatest value of writing contracts in Chinese is that doing so creates tighter obligations on the Chinese manufacturer. With a Chinese-language contract, the manufacturer cannot argue that wording was unclear or deceptive. Furthermore, with a Chinese-language contract, Chinese courts will not have a chance to use their own translators (and their concomitant, widely varying grasp of English) to misrepresent the contract.

Additionally, contracts must stipulate that disputes will be resolved within China. Chinese courts do not respect foreign decisions and will likely not hear cases for contracts which state that the only acceptable jurisdiction for dispute resolution is somewhere in Europe. Making contracts governed by Chinese law and enforceable only in Chinese courts is critical for getting their attention. Besides, most manufacturers simply will not have enough assets outside of China to allow SMEs to recoup their losses. SMEs using Chinese courts in first-tier cities in particular will likely be pleasantly surprised by the speed and efficacy of the Chinese legal system in governing affairs regarding foreign corporations, particularly if they make use of specialised courts such as Beijing's IP court.

Finally, contracts should call for court decisions and

liquidated damages.

Damages and injunctions in Chinese law

Damages and injunctions are a key part of ensuring that NNN agreements have the legal force needed to ensure compliance. Unlike common law or some other legal systems, Chinese courts do not disfavour liquidated damages. Contract damages are common in China and including them in your NNN will ensure that manufacturers face a very real threat of heavy fines. Manufacturers will also face the reality of seizure and auctioning of their equipment or freezing of their assets should they fail to pay these fines. For these reasons, liquidated damages are very effective in China. Immediately putting a figure on the damages to be paid can also avoid hassles related to calculating damages for IP infringement in Chinese courts, which can be a tricky process.

An alternative to liquidated damages is arbitration, which can often be a quick and cost-effective means of settling disputes. If possible, contracts should stipulate the means of arbitrating disputes ahead of time to ensure that the process is as smooth as possible.

Contract provisions to avoid

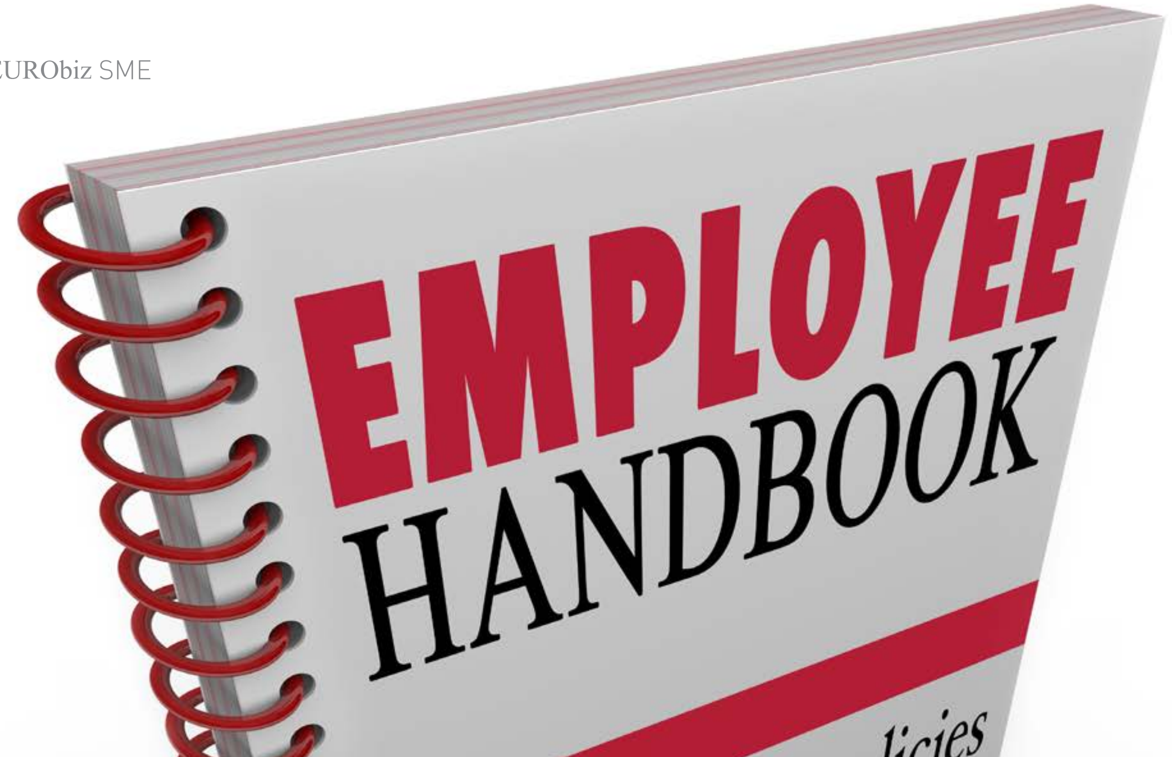
A contract may be void in whole or in part if it contains any provisions in contravention of Chinese law or administrative regulations. Set forth below are examples of IP provisions which SMEs should avoid in China, particularly in technology and employment contracts, because they may well be in contravention of Chinese law. When dealing with manufacturers, some provisions to avoid include those that:

- prohibit a licensee from making improvements to the licensed technology and using the improvements;
- restrain a licensee from obtaining from other parties' technology similar to, or competing with, the licensed technology; and
- prohibit a licensee from challenging the validity of the IPR of the licensed technology or from attaching additional conditions to such a challenge.

*The **China IPR SME Helpdesk** supports small and medium sized enterprises (SMEs) from European Union (EU) member states to protect and enforce their Intellectual Property Rights (IPR) in or relating to China, Hong Kong, Macao and Taiwan, through the provision of free information and services. The Helpdesk provides jargon-free, first-line, confidential advice on intellectual property and related issues, along with training events, materials and online resources. Individual SMEs and SME intermediaries can submit their IPR queries via email (question@china-iprhelpdesk.eu) and gain access to a panel of experts, in order to receive free and confidential first-line advice within 3 working days.*

The China IPR SME Helpdesk is co-funded by the European Union. To learn more about the China IPR SME Helpdesk and any aspect of intellectual property rights in China, please visit our online portal at http://www.ipr-hub.eu/.

CHINA IPR SME HELPDESK



STRICTLY BY THE BOOK

Preparing a practical employee handbook in China

Understanding how to effectively manage a local team and make HR rules clear from the beginning is important for companies operating in China. Having a well-structured and practical employee handbook can be very helpful in this respect. It is a valuable document to have in managing everyday employment situations between employees and employers, and an important source of information and evidence when handling cases of labour disputes.

The **EU SME Centre** recently published a practical new guide, *Preparing an Employee Handbook in China*, which explains in detail the essential elements that should be included and gives examples on how to make accurate social insurance calculations. Below they provide an overview of what your standard employee handbook should contain.

General behaviour

Rules about the general behaviour of employees should be included, covering discipline, company property and disciplinary punishment. Regulations on discipline at work cannot be included in the employment contract, but can be included in the employee handbook. Forbidden behaviour such as harassment or discrimination should be clarified in this section.

Standards for recruitment procedures

Detailed recruitment procedures and standards should be elaborated in the employee handbook. First, it should provide guidelines for both parties (employer and candidate/employee) about the overall recruitment procedure and requirements; and second, it may serve as the basis for additional labour-related procedures. A definition of 'unqualified' should also be incorporated into the employee handbook, which depends on the position and business scope, and must to be defined on a case-by-case basis.

Workplace security

This section should clarify the rules concerning workplace security and general safety, safe production, fire prevention and accident handling, depending on the type of industry.

Working hours and overtime

Under current Chinese employment laws and regulations, there are three types of working hour systems – standard, comprehensive and non-fixed. The employee handbook should clarify the type of working hour system that is followed by the company. In addition, it should also include details of employees' entitlement to overtime payments for work exceeding statutory working hours, however, it should be noted that the calculation varies under the different working hour systems.

Holidays and leave

This section should provide an introduction to the public holidays in China, rules on paid annual leave and other types of leave, and internal approval procedures for leave application.

Remuneration standards

Under current Chinese labour-related laws and regulations, an employer assumes the liability to pay employees' salaries and overtime payments for work performed and must contribute to the statutory social insurance fund. From the employees' point of view, they want to be correctly paid for the work performed, receive bonus pay and other kinds of benefits where applicable and, at the same time, they want to structure their salary package in a legal way to optimise their individual income tax burden.

Staff performance assessment procedures

Elaborates the procedures in areas including legal termination by an employer, salary and position adjustment, performance assessment standards and signed/agreed performance assessments. Staff performance assessments are one of the most important functions in HR management and therefore need to be incorporated into the employee handbook.

Confidentiality and non-compete

This should include information on the scope of confidential information, employees that will be subject to confidentiality, the consequences of breaching a confidentiality agreement and a brief introduction on non-compete terms.

In accordance with China's New Employment Contract Law, an employer can stipulate in the employment contract that the employee should keep confidential the information of the employer such as commercial secrets and intellectual property. Furthermore, the employer can state that employees with a confidential liability must abide by the non-compete obligations.

Termination

Since the New Employment Contract Law was enforced in 2008, it is not easy for an employer to unilaterally terminate an employment contract before its expiration. In accordance with Chinese regulations, there are 14 legal reasons under which an employer can unilaterally terminate an employment contract; otherwise, it will be deemed an illegal termination. It is therefore very important to provide greater details on these legal reasons in the employee handbook in order to apply them in a broad way.

Labour union

This covers information on the All-China Federation of Trade Unions (ACFTU), formation of a labour union, rights and responsibilities of a labour union, labour union fees and company obligations for setting up a labour union.

For more detailed information on each element mentioned above and China's social insurance regulations, purchase the EU SME Centre's guide, *Preparing an Employee Handbook in China*, available on the website.

The **EU SME Centre** *in Beijing provides a comprehensive range of hands-on support services to European small and medium-sized enterprises (SMEs), getting them ready to do business in China.*

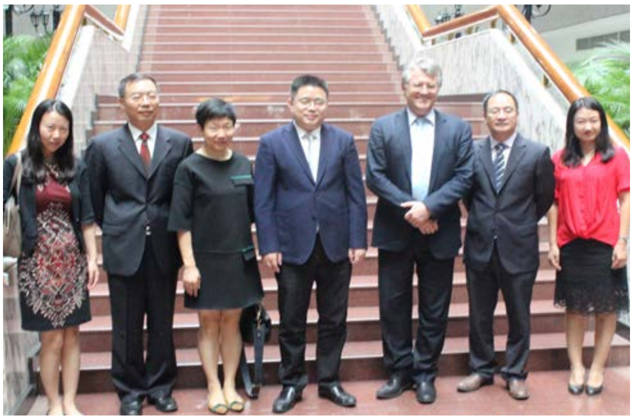
Our team of experts provides advice and support in four areas – business development, law, standards and conformity and human resources. Collaborating with external experts worldwide, the Centre converts valuable knowledge and experience into practical business tools and services easily accessible online. From first-line advice to in-depth technical solutions, we offer services through the Knowledge *Centre, the Advice Centre, the Training Centre, the SME Advocacy Platform and Hot-Desks.*

The Centre is funded by the European Union and implemented by a consortium of six partners - the China-Britain Business Council, the Benelux Chamber of Commerce, the China-Italy Chamber of Commerce, the French Chamber of Commerce in China, the EUROCHAMBRES, and the European Union Chamber of Commerce in China.

To learn more about the Centre, visit website www.eusmecentre.org.cn

EUROPEAN CHAMBER LOBBYING HIGHLIGHTS

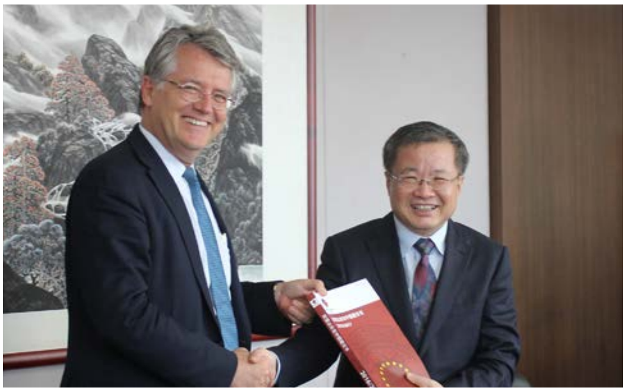
Chamber Meets the SAT's Chief Economist



European Chamber President Jörg Wuttke and members of the Finance and Taxation Working Group met with Mr Ren Rongfa, Chief Economist of the State Administration of Taxation (SAT), on 12th September. President Wuttke briefed Mr Ren on the state of two-way trade between China and the EU as well as the sharp downturn in EU investment into China. He expressed the hope that China will be more open to investment from foreign-invested enterprises.

Working group members raised additional issues and concerns regarding recent data collection by the government. Mr Ren responded by explaining the purpose of the campaign as well as how the data is used and protected. As the meeting concluded, President Wuttke presented the Chamber's *Position Paper 2016/2017* to Mr Ren.

High-level Chamber Delegation Visits SCLAO



On 2nd September, President Jörg Wuttke led a delegation of nine representatives from various working groups to meet Vice Minister Gan Zangchun of the State Council Legislative Affairs Office (SCLAO). Vice Minister Gan reflected on the strong relationship between the SCLAO and the Chamber, which dates back to 2002. He said the SCLAO welcomes all comments, including critical ones from the public, that are of benefit to the development of the rule of law in China. President Wuttke briefly introduced the key findings in this year's *Position Paper* to Vice Minister Gan. He outlined the need for reciprocity in bilateral investment relations as well as the benefits that will result from successfully concluding negotiations for the EU-China Comprehensive Agreement on Investment. Working group representatives raised issues related to a range of industries and voiced their concerns and recommendations. After officials from relevant departments in attendance responded to their questions, Vice Minister Gan acknowledged that the SCLAO can learn from European businesses and commended the Chamber for its strong lobbying work.

Sharing Views on Innovation with the Shanghai DRC

A European Chamber delegation, led by the Vice Chair of the Research and Development (R&D) Working Group and including members from the ICT, chemicals, pharmaceuticals and consumer goods industries, met with four deputy directors from Shanghai's Development and Reform Commission (DRC) and the Shanghai Academy of Social Sciences on 3rd August. The purpose of the meeting was to discuss issues related to the Shanghai Innovation Centre Initiative and areas where Shanghai can continue to improve as a location for R&D. The Chamber acknowledged the Shanghai Government's efforts to promote an open and innovative environment, and offered various recommendations regarding the importance of the free mobility of talent; sharing of information between foreign companies, government and domestic start-ups; allowing foreign companies to participate in policy-making processes; improving access to government-funded projects; and improving the soft environment in terms of the legal system, IP protection, education and Internet speeds. An agreement was reached to carry the dialogue forward.

Chamber Expresses Foreign NGO Management Law Concerns to the Ministry of Public Security

To address members' concerns regarding the implementation of the Management Law of Foreign Non-Governmental Organisations (NGOs) within Mainland China, on 21st July the Chamber met with Deputy Director of the Ministry of Public Security's (MPS's) Bureau of Foreign NGO Management, Hao Yunhong. Maggie Xie, General Manager of the Chamber's Beijing Chapter, raised members' questions regarding the timetable for implementation, the process of registration of representative offices and filing requirements for temporary activities. DDG Hao stated that the ultimate purpose of the law is to better serve foreign NGOs and safeguard their legitimate rights and interests. According to DDG Hao, his department is working on guidelines for the implementation of the law as well as a catalogue of professional supervisory authorities, and that they will release these documents shortly so NGOs can prepare for the implementation of the law. The Chamber is

seeking continuous communication with the MPS on this topic and hopes to organise events and meetings at which Chamber members can meet with MPS representatives.

Exclusive Dialogue with NDRC on the Fair Competition Review System

On 25th July, more than fifty Chamber members attended an exclusive dialogue hosted by Beijing Chapter General Manager Maggie Xie with Ms Li Qing, Deputy Director General of the Bureau of Price Supervision and Anti-Monopoly, National Development and Reform Commission (NDRC). The discussion focused on the *Opinions on Establishing the Fair Competition Review System in the Development of a Market System* (*Opinions*) that has been issued by the State Council. DDG Li outlined the process that went into the drafting of the *Opinions* and analysed the impact of China's fair competition review system, and the role of administrative authorities in particular. After her presentation, DDG Li answered questions from attendees regarding the implementation of the *Opinions*, the relationship between the *Opinions* and the Anti-monopoly Law, as well as other practical challenges faced by some member companies. She thanked the European business community for following up on the document and looked forward to more communication with member companies.

CONSOLIDATING YOUR POSITION

The launch of the Chamber's *Position Paper 2016/2017*

On 1st September, the European Chamber launched our *European Business in China Position Paper 2015/2016*, in advance of the G20 summit in Hangzhou. This year's paper evaluates the ramifications of the 13th Five-Year Plan (13FYP) for European business. It also appraises the China Manufacturing 2025 initiative, a plan that seeks to comprehensively upgrade China's manufacturing industry, the key themes of which are echoed throughout the 13FYP. The *Executive Position Paper* aims to distil the essence of the 21 vertical and 11 horizontal papers, to provide macro-level commentary and policy recommendations to China's policy-makers as to how the country can continue its impressive economic growth in the spirit of the Third Plenum's *Decision*. It also highlights how recommitting to reform will enable China to transition to a more sustainable growth model, as aspired to in the 13FYP.

The 13th Five-Year Plan (13FYP)

Having reviewed the *13th Five-Year Plan (2016–2020)* (*13FYP*), the European Chamber has two questions:

1. Will the Chinese leadership live up to its commitments to allow market forces to play the decisive role in the economy?

2. Will European business be given more room to participate in and contribute to China's next stage of economic development?

Any response other than a firm 'yes' to either question would be detrimental to China's economy.

An increasingly strong role for the government in developing industries by directing capital into sectors that central planners have established as priorities will not allow China to realise its full economic potential.

While government undoubtedly has an important role to play in supporting basic research and establishing a mature regulatory framework, it is private businesses and investors that should be developing new technologies – they have the clearest understanding of their own industries and make decisions in response to market forces. Open markets and more private investment—with the efficiencies and increased capacity for innovation that they bring—are essential if China is to fulfil its promise and avoid getting stuck in the middle-income trap.

With growth rates of investment in China by privately-owned enterprises (POEs) having declined from 10.1 per cent in 2015, to 2.8 per cent during the first half of 2016,[1] providing POEs with better market access would certainly help to alleviate some of the country's immediate economic challenges while restoring some investor confidence. And as China will be the primary benefactor of further domestic market opening, doing so is very much in its own interests.

Follow Through on Reforms to Date

It is not yet clear how the state-centric focus of the 13FYP and the China Manufacturing 2025 (CM2025) initiative fit with the overall reform agenda that was announced at the Third Plenum – the *Decision* seeks to reduce the role of government in the economy, not expand it. While there has been some progress,[2] the fact that most of the *Decision* is yet to be implemented is highly disappointing, especially as many Chinese officials and businesspeople were initially encouraged by its content, viewing it as a genuine statement of intent. Following through on this reform plan would enable China to make the changes to its economic model that are now necessary.

The publication in the Party's official newspaper in May 2016, of an interview with an unnamed 'authoritative person' on the state of China's economy—whose views are believed to align with those of President Xi Jinping and his senior economic advisors—indicates that there are senior officials who clearly understand the challenges that China currently faces.[3] However, actions speak louder than words. As reforms that expand market access for private business, including European business, are clearly part of the solution, deferring actions until after the 19th Party Congress in late 2017 is unnecessary and would result in significant costs.

An Unequal Investment Landscape

There have already been enormous investment flows from China into Europe in 2016. This is welcomed for the jobs and economic growth that it creates. However, due to the clear lack of reciprocity in market access, it also serves to highlight the many areas where European business is prohibited, or at best restricted, from making similar investments in China. This unbalanced situation is not politically sustainable and for its own benefit China should begin reciprocating by opening up and allowing European business to contribute more to its economy. As China needs the EU as much as the EU needs China, it is expected.

This is why concluding a robust EU-China Comprehensive Agreement on Investment (CAI) that includes an ambitious market-opening component is so important for ensuring that EU-China economic relations reach their full potential – it must allow for full reciprocity. The European Chamber therefore hopes that negotiations for the CAI will be concluded before it publishes its annual position paper in 2017.

Conclusion

European business continues to hear reform commitments aimed at affording FIEs more market access, as well as statements attesting to their importance to the Chinese economy.[4] As welcome as these are, they have been heard before: it is hoped that the importance of pairing words with actions will now be recognised.

With global economic growth remaining fragile, both China and the EU will suffer if China does not reach its full potential. In the interests of mutual prosperity, European business wants China to succeed. The European Chamber can therefore only continue to advocate for the necessary market-orientated reforms to be pushed through, without delay. Eb

To download the Position Paper 2016/2017 *go to www.europeanchamber.com.cn/en/publications-position-paper*

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1 *The National Economy Ran Smoothly and Made Progress During the First Half*, National Bureau of Statistics, 15th July, 2016, viewed 22nd July, 2016, <http://www.stats.gov.cn/tjsj/zxfb/201607/t20160715_1377652.html>

2 The European Chamber's *Position Paper 2015-2016* contained a 'reality check' of the *Decision*. Working groups awarded green lights to indicate reform successes (10%), amber lights to indicate partial progress (66%) and red lights where little or no reform progress, or even deterioration, had been observed (24%).

3 Gong, Wen, Xu, Zhifeng and Wu, Qiuyu, *Asking About Big Trends in the Opening Quarter: Authoritative Person Discusses the Current Chinese Economy, People's Daily,* 9th May, 2016, viewed 11th May, 2016, <http://politics.people.com.cn/n1/2016/0509/c1001-28333725.html>

SEIZE THE DAY

Why China's economic transformation presents an opportunity for European companies

The relative slowdown of China's economy, its huge overcapacity issues and the ongoing uncertainty over the execution of its reform agenda has generated growing pessimism in Europe: many in the business and political community now see the 'glass' as half empty. The recent widespread media coverage of China's tremendous M&A appetite for European champions has added fuel to these growing concerns: why would Chinese companies redeploy capital overseas if it wasn't to access our know-how? While these are understandable concerns, for **Charles-Edouard Bouée**, CEO of **Roland Berger**, it is time for European companies to look at China for what it is: one of the largest 'glasses' in the world that is at the tipping point of an unprecedented economic transformation.

When meeting European business and political leaders in both Europe and China, one can sense a growing pessimism when it comes to doing business in China. As reported in the *Business Confidence Survey 2016*, conducted jointly by the European Chamber and Roland Berger, 56 per cent of respondents consider that doing business in China has become more difficult in the past few years, and a staggering 70 per cent do not feel more welcome than ten years ago.

This pessimism is fuelled by legitimate concerns. China has not yet succeeded in addressing many of its structural issues, overcapacity being the most blatant example. Meanwhile, the recent acquisitions of Kuka and Syngenta, to name only two, has shed light on China's gigantic M&A appetite, generating growing concerns about technology transfer and the fate of jobs in Europe. This is taking place against the backdrop of the other numerous concerns European companies have in their home markets: Brexit merely confirmed just how unpredictable the world is.

But one should not lose sight of the fact that China is just about to enter what will probably be the most significant economic transformation in its history. This will generate uncertainty, but it will also generate opportunities for those willing to seize them, and notably European companies

Whether the glass is half full or half empty, it is huge and keeps growing

While there is still much debate on whether China will manage to reach and sustain its target of 6.5 per cent per annum GDP growth, the maths is quite simple: by maintaining a growth rate of roughly six per cent per annum, China will add the equivalent of one India to the map every three years, in absolute GDP terms. There simply is not, nor will there ever be, another China.

China cannot fill the glass on its own

China's economic model is transitioning from 'Made in China' to 'Made by China'. The new model will be more modern with cutting-edge manufacturing facilities, and will be realised through a combination of Chinese capital and Chinese innovation with a strong emphasis on production equipment and software. But while China has tremendous human, financial and technological resources, it is highly unlikely that it will be able to achieve this transition and reach the goals set by the 13th Five-Year Plan within the allotted timeframe by relying purely on 'indigenous innovation'. While overseas M&A can help to accelerate the transition, China has yet to demonstrate it can fully integrate these acquisitions and reap all the associated benefits. This leaves tremendous room for foreign companies to support China as it moves from a low-cost, manufacturing- and export-based economy to a high quality, innovative and service-orientated one.

European companies are well positioned

Europe has multiple champions and SMEs with cutting-edge technology in many of the industries prioritised by the China Manufacturing 2025 plan, including robotics, advanced numerical-control tools and high-performance equipment. While some may perceive the threat of technology transfer, this initiative could increase access to China's huge market where there is great demand for high-end European products.

Environmental issues are still often perceived as an economic burden. Instead, they should be seen as an opportunity. For example, there is still potential for further cooperation between Europe and China in smart cities, water and waste management, and industrial energy efficiency. These are all areas where Europe excels, and while many of our international champions are already present in the Chinese market, there is still tremendous room for development of our SMEs that are renowned for their know-how and innovation in this sector.

A shift towards a more market-driven model

If China wants to succeed in its transformation, it must drive the reforms that are necessary for building the right ecosystem.

Innovation will be the cornerstone of China's transformation, but it is very difficult to grow innovation in an overly restrictive environment: genuine solutions usually do not emerge in systems dominated by state planning. What is required is a shift towards a more market-driven model, including reducing entry barriers for start-ups and foreign players as well as improving intellectual property protection. Nevertheless, the importance and power of the government and state-owned enterprises in the transformation of the Chinese economy should not be underestimated: neither US nor European recipes will work here.

There is no doubt that China will increasingly rely on home-grown technology and innovation, as is already the case in telecommunications, mobile devices, online services and solar energy. If European companies want to get their fair share of the Chinese transformation, while protecting their home markets and keeping their competitive edge, they have no other choice than to keep innovating and to actively seize opportunities in China.

By creating an innovation-friendly and market-driven business environment, China could create its own ecosystem for innovation and be able to attract more diversified and professional talent, while benefitting more widely from home-grown and imported technology. This will form the basis for the success of China's transformation and, as a consequence, for the success of the Western world, too. Eb

***Roland Berger**, founded in 1967, is one of the world's leading strategy consultancies. With 50 offices in 36 countries and over 2,400 employees, the company has successful operations in all major international markets. The strategy consultancy is an independent partnership exclusively owned by about 220 Partners.*

The Chinese market is a key pillar of Roland Berger's international expansion. Since our first project in China in 1983, the consultancy has grown rapidly: The five Chinese offices (Shanghai, Beijing, Hong Kong, Taipei and Guangzhou) now have over 300 consultants dedicated to working extensively with both leading Chinese and international companies.

COME THE (4TH INDUSTRIAL) REVOLUTION

TIC Bodies to Boost China Manufacturing 2025

A wave of technology-driven change promises to trigger a new industrial revolution that will serve as a critical engine for the radical transformation of the manufacturing industry. China has dubbed this revolution China Manufacturing 2025, and testing, inspection and certification (TIC) bodies have an important role to play in the process.

This strategic move calls for a big leap in innovation-driven development, which raises a number of questions: What problems does the manufacturing industry currently face? What measures could be taken to solve these problems? And what role can a TIC body play? **Millicent Xu** of **TÜV Rheinland** answers these questions and more.

Made in China: Big, but not powerful

Professor Jay Lee, Distinguished Professor at University of Cincinnati and Founding Director of the National Science Foundation's Industry/University Cooperative Research Centre's programme on Intelligent Maintenance Systems (IMS) and an Industry 4.0 expert, has spoken out on the problems and possible solutions arising from the China Manufacturing 2025 initiative from the inspection and certification perspective. China's manufacturing industry, he says, still has significant gaps compared to international standards.

First, key technologies and parts are still dependent on imports. China has made efforts to develop and manufacture packaged equipment, but continues to depend on technologies and parts from other countries. For example, China is manufacturing high-speed railways, but some key components are purchased abroad, such as computer numeric control (CNC) machine tools, robots, electric motors and sensors.

Second, Chinese manufacturers lack systematic quality management. The country focuses on assembly and sectionalised manufacture, and most parts and products serve other countries that must comply with the purchasers' quality management systems. A sound data collection and quality management system for testing and certification is precisely what is lacking.

Third, products made in China are not yet strong enough to uphold the brand effect of 'winning through quality'. Manufacturers encounter difficulties in securing long-term orders overseas due to their dependency on assembly, sectionalised manufacture and low prices. As customers find product quality, equipment security and life-cycle services increasingly important, sound, long-term data collection and quality monitoring systems are proving to be crucial.

Meeting international standards, although a necessity, is only the first step for China Manufacturing 2025. Manufacturers will need to quickly determine customers' intrinsic demands and find innovative ways to become technological visionaries rather than pursuing the designs and technologies of advanced enterprises. As Professor Lee explains, China's manufacturers lack the confidence to innovate but instead have the tendency to follow in the footsteps of foreign technologies. In fact, as long as there is a sound quality system and inspection platform for the assessment of product safety performance and quality, these 'original' products will be in line with market demand.

TIC bodies to provide solutions

Professor Lee believes that professional TIC bodies are required to facilitate the healthy development of manufacturers helping 'Made in China' products meet and surpass international standards to go global.

First, 'Made in China' products should be inspected by an impartial and authoritative TIC body. Every country is unique in its standard requirements. For example, it takes half to a full day to inspect and test some machines inside China, but two to four days if they are to be exported to Japan, due to additional testing requirements. In this regard, an international inspection company with rich experience could help Chinese enterprises fully understand the product standards of various countries and help them achieve the recognised certification needed to ensure smooth entry into the global market.

An authoritative inspection and certification (IC) body boasts good quality management and production systematisation, which are precisely the weak points of China's manufacturing industry. An impartial IC body not only provides inspection and certification for products, but also service systems and one-stop solutions and service platforms that allow manufacturers to use big data and networking to stay informed about all product conditions, making full life-cycle servicing possible.

It is not enough to simply meet standard requirements, because the intrinsic demands of customers often far exceed national standards. Under such circumstances, it is not advisable for an enterprise to change its IC standards and requirements based on the customer. It should come into a strategic alliance with its IC body and use the latter's test method and system to analyse products and customer demands as a means of solving product defects and maintaining upgrades and improvements, thereby meeting customer and market demands.

Professor Lee raises the concept of 'worry-free manufacturing'. In the traditional manufacturing system, there are numerous factors that cannot be quantified or controlled by decision makers. These uncertain factors exist in both the manufacturing and application processes. The concept means that unseen problems can be solved via function safety and intelligent manufacturing to achieve true production automation. During the process, an IC body may provide effective support in controlling uncertain factors and converting variants into constants.

A large number of sensors and controllers are used in worry-free manufacturing, during which function and information safety are particularly important. Professor Lee believes that manufacturers' critical technical data and trade and state secrets could be at risk thanks to the rise of big data and the Internet of Things. This could prove to be a significant issue, given the need to share data while using artificial intelligence and the Internet of Things. For example, APPs on mobile phones only function well when the user's location is shared. Thus, mobile APP use is associated with personal information, and big data and the Internet of Things involve trade secrets.

How does one protect manufacturers' information and state secrets when applying big data and the Internet of Things? A professional IC body can monitor and control the risks, says Professor Lee. Such IC bodies can increase the public safety of networks to a reasonable level and thereby protect business and state secrets based on manufacturers' safety requirements. Moreover, IC bodies can help manufacturers establish standards for combining their products with big data and the Internet of Things, and practice inspection as needed on their own. For example, a private car can be programmed to conduct a self-inspection one minute before its engine starts, one minute after it stops or during another specified period, during which the operational data on the car parts can be collected, analysed and used to ensure its functional safety. Eb

TÜV Rheinland*, an independent third-party testing, inspection and certification body with an international reputation, actively implements the 'All Quality Matters in China' platform. It has created a communication framework built on quality that allows Chinese manufacturers to jointly explore product quality improvement methods, build up international competitive advantages and promote the China Manufacturing 2025 revolution.*

SECURING A HEALTHY FUTURE

Promoting Integrated Innovation in Healthcare

China's healthcare industry is experiencing fast track growth: the value of its pharmaceutical market alone is expected to exceed RMB 2.2 trillion within the next three years.[1] As China's economic development continues, the affordability of disease treatment and the public's health awareness are increasing. **Fay Zhang**, Associate Communications Manager at **Sanofi**, explains how, as one of the first multinational pharmaceutical companies to enter the China market, they have adopted a diversified strategy for growth that is closely connected to people's daily health.

1 Healthcare Industry Update, PwC, March 2015, <http://www.pwccn.com/home/chi/pharma_internet_reborn_mar2015_chi.html>

As a leading global healthcare company, Sanofi has always made addressing patients' needs its priority. To support the changing healthcare market in China, Sanofi is actively developing and promoting a diverse range of innovations – from high-quality products to innovative business models to digital platforms. "Innovation is the cornerstone of Sanofi's sustainable growth in China," says Dr Jean-Luc Lowinski, Senior Vice President of Sanofi Asia and President of Sanofi China.

For example, Sanofi recently signed a strategic cooperation framework agreement with Ali Health to share resources and join forces in multiple healthcare areas in June, to support the development and growth of the healthcare market together, and explore innovative breakthroughs in health management.

"Innovation is the main pathway to a diversified healthcare future and the industry's strong development," says Dr Lowinski. "By adopting an integrated innovation strategy, Sanofi is focused on developing more effective products, improving the quality of services, and building new businesses that will truly benefit patients and successfully meet the growing, diverse and multi-tiered medical needs of China's healthcare professionals, general public and patients."

Integrated Innovative Products: Addressing Market Trends and Patient Needs

The Chinese public is faced with many new health challenges. While the Chinese economy continues to grow, the rate of urbanisation is accelerating and the population is ageing. As a result, there has been a surge in cases of chronic disease across China. Sanofi is a healthcare company focused on addressing patients' needs, and is dedicated to meeting public healthcare demand with its diversified high-quality product portfolio in oncology and chronic diseases such as cardiovascular disease, diabetes and central nervous system diseases.

Between 2014 and 2020, Sanofi plans to launch up to 18 products globally. One new product will reach the market every six months from 2016 to 2018. Six core products in key medical areas—including cardiovascular disease, diabetes, infectious diseases and immunology—are expected to have great market potential. In China, Sanofi is promoting stronger collaboration across departments to accelerate the introduction of these high-quality products to the market. Sanofi China will continue to enrich its diversified innovative product portfolio. About 10 new products can be expected to be listed in China in the next five years.

Innovative Business Model: Innovate from the Inside Out, with Professionalism at its Core

Uncertainties regarding the need for healthcare services, regional monopolies and information availability have led to many problems in China.

In light of the rapidly changing industry landscape, the growing healthcare needs of China's people and Sanofi's own development capability, the company is actively expanding and transforming its business model. It has initiated a range of innovative programmes. "With this business model, which is more innovative and efficient than ever, Sanofi aims to help establish an effective and balanced medical resource allocation system, build a harmonious patient-doctor relationship and improve the service level of healthcare professionals in China," says Dr Lowinski.

In 2011, Sanofi established the Primary Care Business Unit (PCBU), becoming the first multinational healthcare company to enter China's massive county market with a separate division. Sanofi is also planning to increase its investment in community hospitals, and launched the Healthy Community project to enhance general practitioners' healthcare knowledge.

Patients' disease management capability is critical to the success of any treatment. In order to improve diabetes patients' adherence and disease management capability, Sanofi initiated the innovative TRIO programme. It brings together doctors, nurses and patients to provide systematic management to outpatients. It empowers nurses to play a bigger role in diabetes management and is helping improve patients' disease awareness, adherence and health management level through systematic and scientific patient management approaches such as disease education, disease information and follow-up consultation.

Integrated Digital Innovation: Facilitate Multidirectional Communication and Meet Diverse Needs

In recent years, the Internet has substantially impacted various social and economic sectors. Pharmaceutical companies and healthcare service providers, which were seen as "the last bastion holding out against the web-based economy," are actively embracing the latest Internet trends and making positive changes.[2]

Sanofi also views digital innovation through Internet platforms as an integral part of its diversified innovation strategy: "We are now actively exploring Internet technologies and engaging in external collaboration to build innovative digital engagement platforms, and facilitate and promote more effective and multidirectional communication between patients and healthcare professionals," says Dr Lowinski.

Sanofi has launched an innovative client management platform called Centrix. It provides valuable tailor-made content for healthcare professionals through high-quality and professional interactions. It has also helped Sanofi improve its internal efficiency through a scientific team management approach, while better meeting healthcare workers' increasing need for professional knowledge.

To support the massive number of healthcare professionals in China, Sanofi established a strategic collaboration with Healthway via CONCEPT, the first mobile medical platform focusing on the county market. It covers the three key areas of patient education, tiered diagnosis and treatment, and disease management. Through Internet-based technologies, this platform serves as a powerful tool to facilitate real-time, patient-doctor communication and follow-up consultation in order to improve the level of patients' disease management. Eb

***Sanofi**, a global healthcare leader, discovers, develops and distributes therapeutic solutions focused on patients' needs. Sanofi is organised into five global business units: Diabetes and Cardiovascular, General Medicines and Emerging Markets, Sanofi Genzyme, Sanofi Pasteur and Merial. Sanofi is listed in Paris (EURONEXT: SAN) and in New York (NYSE: SNY).*

[2] *2015 China Healthcare Blue Paper*, China National Pharmaceutical Industry Information Center

EUROPEAN CHAMBER EVENTS GALLERY

BEIJING CHAPTER

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3

Exclusive Dialogue with NDRC: Fair Competition Review System (1)
On 25th July, the Chamber hosted Li Qing, Deputy Director General, Bureau of Price Supervision and Anti-Monopoly, NDRC, to discuss the impact of the China's fair competition review system with members.

European Business in China – Position Paper 2016/2017 Launch (2)
The Beijing Chapter held the official launch of the *Position Paper 2016/2017* on 1st September.

China's New Normal and G20: Challenges and Opportunities for Business (3)
On 6th September, the Chamber held a post-G20 debrief seminar.

NANJING CHAPTER

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Position Paper Presentation to Jinling Customs (1)
On 6th September, Nanjing Board Chairman Bernhard Weber presented Mr Fan Qinyang, Director General of Jinling Customs with the *Position Paper 2016/2017* and agreed to sign a MoU, to establish a regular communication and cooperation mechanism.

Position Paper Presentation to Jiangsu Department of Human Resources and Social Security (2)
On 7th September, Nanjing Board Chairman Bernhard Weber presented the *Position Paper 2016/2017* to Mr Zhu Congming, Deputy Director-General of Jiangsu Department of Human Resources and Social Security.

SHANGHAI CHAPTER

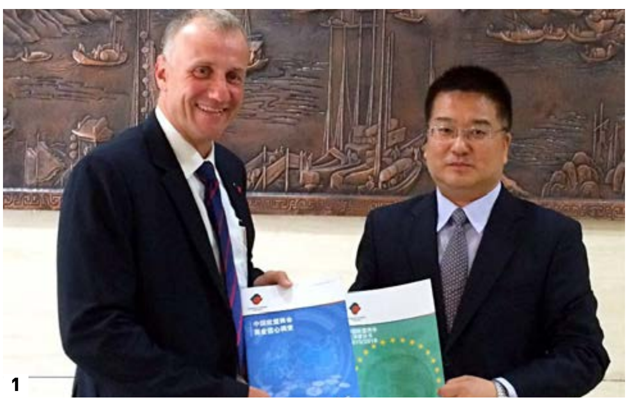
M&A Conference 2016: Where is M&A in China heading? (1)
On 20th July, the European Chamber hosted our annual M&A Conference. We would like to thank our sponsor Hill & Associates, for their commitment.

China 360° E-Marketing Conference (2)
On 25th August, the European Chamber organised the China 360° E-Marketing Conference, which looked at contemporary digital marketing trends.

SME Forum: Rising to the China Challenge with Smarter Growth (3)
The Annual SME Conference: *Rising to the China Challenge with Smarter Growth*, took place on 30th August. Conference participants learned about the challenges faced by European SMEs and discussed new approaches to these challenges.

Position Paper Launch Event (4)
The *Position Paper 2016/2017* was launched in Shanghai on 1st September to prominent international and domestic media, and members.

TIANJIN CHAPTER



Chamber publications presented to Director General of Tianjin Foreign Affairs Office (1)
On 11th August, Tianjin Chapter Chairman Dr Christoph Schrempp met officials from the Tianjin Foreign Affairs Office and the Tianjin People's Association for Friendship with foreign countries, and presented the *Business Confidence Survey 2016* and the *Tianjin Position Paper 2015/2016*.

Business Confidence 2016 Survey Launch and Mid-year Cocktail Reception (2)
The Tianjin Chapter launched the 12th edition of the *Business Confidence Survey* on 24th August. Local findings were reported in addition to general nationwide survey results. As usual, the BCS launch event attracted a crowd of participants from member companies, officials and universities.

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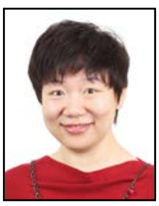
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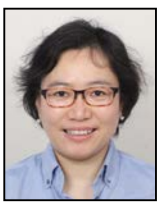
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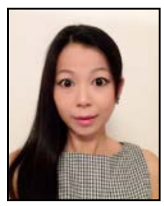
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ONE-YEAR MASTER'S PROGRAM FOCUSED ON EUROPEAN AND CHINESE BUSINESS

Together with the University of Zurich (UZH), Newhuadu Business School Switzerland (NBSS) have launched a joint one-year program: Master of Advanced Studies (MAS) in European and Chinese Business Management (MAS-ECBM).

The program will integrate the essence of business management with both Chinese and European culture. This one-year program is divided into three stages (in-class learning, multinational corporation internship and dissertation writing). All courses will be taught in English by renowned professors and lecturers from both the University of Zurich and the Newhuadu Business School Switzerland. Teaching methods include lectures, case studies, business simulation and group projects. Not only will students earn a master's degree in business and management officially accredited by the Chinese Education Ministry after completing one-year of study, but will also receive a social network and start-up investment fund from the NBS Start-up Community.

In addition to the excellent opportunity to intern for a multinational corporation, students may also enjoy the unique advantage offered by NBS. Its 'NBS entrepreneur community' will equip students with strong connections and financial support. The MAS-ECBM program offers need- and merit-based financial aid to encourage and foster culture and business communications between China and Europe with a focus on global business leadership, entrepreneurship and innovation.

Who will qualify as a candidate?

1. The applicant should have a bachelor degree or above, with no restriction of majors.
2. The applicant should have an undergraduate GPA of 3.0 or above (with 4.0 as the maximum score).
3. ELTS 6.5 or above; TOEFL (IBT) 93 or above.
4. The applicant should have relevant business management and innovation achievements.

Other information

- Tuition Fee: 30,000 Swiss francs
- Duration: one year
- Tuition language: English

For more application information, please visit http://www.ecbm.uzh.ch/en.html

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The 31 members of the European Chamber's Advisory Council are particularly active in representing and advising the Chamber, and make an enhanced contribution to the Chamber’s funding.

SANOFI 生命之托 希望之诺
Protect Life, Inspire Hope

A Global Healthcare Leader, Focused on Patients' Needs

- 5 global business units as Diabetes and Cardiovascular, General Medicines and Emerging Markets, Sanofi Genzyme, Sanofi Pasteur and Merial
- **37.1 billion** euros revenues in[1] 2015
- **110,000** employees present in more than 100 countries[1]
- 5th **largest** pharmaceutical company worldwide[2]
- Focusing on **6 key launches** in major therapeutic areas[3]
- **280** access to care programs in more than **80 countries**[4]

1. Document de Référence 2015
2. IMS Data
3. Six products: Toujeo®, Praluent®, Dengvaxia®, sarilumab, Lixilan and dupilumab
4. CSR Brochure 2015