

DEWIT
LAW OFFICE

NEWS LETTER

BEIJING REPRESENTATIVE OFFICE
ISSUE 4

FROM THE HEART OF EUROPE
TO THE HEART OF CHINA
A RELIABLE CONSULTANT AT YOUR SIDE

DEWIT LAW OFFICE



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ARBITRATION, ALTERNATIVE
TO CHINESE COURTS

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**NEWS FROM CHINA
AND BELGIUM**

**1971-2011: 40 YEARS OF
SINO-BELGIAN COOPERATION**



Dear Reader,

To Spring

*Again the wood and long with-drawing vale,
In many a tint of tender green are dressed,
Where the young leaves unfolding scarce conceal
Beneath their early shade the half-formed nest
Of finch or woodlark; and the primrose pale,
And lavish cowslip, wildly scattered round,
Give their sweet spirits to the sighing gale.
Ah! Season of delight, could aught be found
To soothe awhile the tortured bosom's pain,
Of sorrow's rankling shaft to cure the wound,
And bring life's first delusions once again,
'Twere surely met in thee! Thy prospect fair,
Thy sounds of harmony, thy balmy air,
Have power to cure all sadness, but despair.*

Charlotte Smiths

Spring is upon us and joy is in the air... With the coming of spring 2011, we have also entered the 40th anniversary year of Sino-Belgian diplomatic relations. Over the past 40 years the connections between China and Belgium have developed and matured, covering not only political but also economic aspects of cooperation. Through its bureau in Beijing, Dewit Law Office has been a privileged witness to the deepening of this evolving relationship, being directly involved in and assisting with the activities of its European clients in China. One of the most noticeable trends over the past few years in Sino-Belgian commercial disputes, is the use of arbitration, offering a neutral alternative to Chinese courts and tribunals. Mindful of the saying 'look before you leap', this month's edition of our newsletter provides you with an introduction to the main features, advantages and disadvantages of arbitration in an international context involving a Chinese business partner.

Best regards,
Bernard Dewit



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VIA DEWITLAWCHINA

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DEWIT LAW OFFICE - CHINA



HOT TOPIC : ARBITRATION, THE ALTERNATIVE TO CHINESE COURTS

Composition of the
arbitration tribunal



Arbitration, known as a form of alternative dispute resolution (ADR), is a legal technique aimed at resolving disputes outside the public court system. It is a kind of private judging whereby a neutral third party or a panel of three neutral persons, not necessarily with a legal background, decide on the dispute. Tracing back the origins of arbitration, the biblical story of Moses appointing private judges to hear and resolve disputes seems to be one of the earliest references. In Ancient Rome it was an advanced procedure often relied on in the context of the flourishing maritime trade along the Mediterranean. But also in the East, during the Chinese Han Dynasty (260 BCE – 220 CE), a system called 'San Lao' (三老) was known, whereby three respected elderly men were appointed to compose a tribunal to solve disputes between ordinary citizens.

Arbitration developed rapidly in the second half of the 20th century with the 1958 New York Convention on the recognition and enforcement of foreign arbitral awards as a major benchmark. Today arbitration comes in many forms: domestic and international, ad

hoc and institutional, general and sectoral, etc. Autonomy of the parties to arbitration, speedier and less costly proceedings (although not per se), protection of privacy, finality of the arbitral award and its enforceability are advantages that have boosted the popularity of arbitration, especially in international trade dispute resolution.

Arbitration Law of the People's Republic of China

The currently applicable arbitration law of China entered into force in 1995. We briefly discuss its main features.



Arbitration agreement

All stands or falls by the existence of a properly drafted arbitration clause. Without such agreement a case cannot be withdrawn from the public court system. To be valid, an arbitration agreement should be in writing

and can be concluded either before or after the dispute arises. It is independent from the other clauses of a contract in the sense that its existence does not depend on the validity of the remainder of the contract.

An arbitration clause should contain the following: express intention to apply for arbitration, scope of arbitration, and arbitration commission chosen. It is important to clearly identify the arbitration institution to avoid confusion, especially when referring to arbitration in a city which has more than one arbitration organization.



What can go to arbitration

Not all disputes can freely be submitted to private judges. According to Chinese arbitration law, contractual disputes as well as disputes involving property rights between citizens with equal status, legal persons and other economic organizations can be submitted to arbitration. However, disputes arising from marriage, adoption, guardianship, raising children and inheritance, as well as disputes that have to be settled by administrative authorities according to law, are excluded.



Composition of the arbitration tribunal

The arbitration tribunal can be composed of one or three arbitrators.

If three arbitrators constitute the tribunal, each party shall appoint one arbitrator or entrust the chairman of the commission to

appoint one. The parties shall jointly select or entrust the chairman of the arbitration commission to appoint the presiding arbitrator.

Where there is a sole arbitrator, he or she shall be jointly appointed by the parties or by the chairman of the arbitration commission.

CIETAC, China International Economic and Trade Arbitration Commission

CIETAC is one of the key permanent international arbitration commissions in the world, established in 1956 under the umbrella of the China Council for the Promotion of International Trade (CCPIT). However, over time it has evolved into a non-governmental organization. CIETAC is headquartered in Beijing and has four sub-commissions located in Chongqing, Shanghai, Shenzhen and Tianjin. CIETAC has a long history and ample

"Any dispute arising from or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties." - Model arbitration clause of CIETAC-

experience dealing with disputes involving foreign elements. Additionally CIETAC has a list of foreign arbitrators who may be appointed by the parties or by CIETAC itself. Note that

the parties should agree on the language of the arbitration, barring which the proceedings will be conducted in Chinese, the official language of the Arbitration Commission.

CIETAC also provides the possibility of applying for summary proceedings:

- (1) Unless otherwise agreed by the parties, summary procedure applies to cases where the disputed amount does not exceed 500,000 RMB, or to any case in which the amount in dispute exceeds 500,000 RMB, yet one party applies for arbitration under this summary procedure and the other agrees in writing. Where no monetary claim is specified or the amount in dispute is not clear, CIETAC shall determine whether or not to apply the summary procedure;
- (2) The case will be heard by a sole arbitrator;
- (3) Time limits are shorter and proceedings more flexible and according to the manner the arbitral tribunal considers appropriate. The case can even be examined on the basis of the written materials and evidence submitted by the parties alone.

Note that labour law disputes are regulated by the Law of the People's Republic of China on Labour Dispute Mediation and Arbitration. In contrast, the Belgian Judicial Code expressly declares null and void an arbitration agreement, concluded before a dispute arises, that should otherwise be subject to the jurisdiction of the labour courts and tribunals.



CHOP TILL YOU DROP: NEW RULES IN FORCE



Example of a special stamp on an invoice

People doing business in China are familiar with the concept of 'chopping'. While in Europe your company may be bound upon signing a document but this may not suffice in China. Only documents that are 'chopped', or stamped, with the right seal are authoritative. Therefore, when applying for establishment in China, one of the most important steps to take is to have your company's seals carved by one of the agencies designated by the Public Security Bureau which is also the appropriate registration authority. There are various kinds of seals: the company 'chop', the financial 'chop', the 'chop' for the legal representative, the contract 'chop', the invoice 'chop', etc.. If a document is 'chopped' with the official seal of your company, it is legally effective and binding upon your company, even in case of improper use. It is therefore important to properly protect your seals and avoid any abuse by third parties to the detriment of your company's interests.

On 1 February 2011 the Measures of the People's Republic of China on the Administration of Invoices of the State Council entered into force, directly impacting on the use of seals in China. As of that date, all taxation invoices must be 'chopped' with a special invoice stamp rather than a financial one. Failure to be in compliance with the new regulation may lead to fines of up to 10,000 RMB. The stamp should be carved by the agencies approved by the PSB and should fully comply with the requirements 'size and appearance as specified under the regulation. The old seal can be used until 31 December 2011; invoices issued and 'chopped' prior to the promulgation of this new regulation will remain valid and operational.

Avoid your goods being blocked at Chinese customs and apply for CCC in time

Many of you may recognize the symbol 'CCC', short for China Compulsory Certification, from daily life. 'CCC' is a compulsory safety mark for products that are destined to be sold on the Chinese market. The current system took effect on 1 May 2002 thereby integrating the two old systems, 'CCIB' (safety mark, introduced in 1989 and required for products in 47 categories) and 'CCEE' (also known as the 'Great Wall' mark', for electrical commodities in seven product categories). Currently applicable is the Regulation on China Compulsory Certification, dividing into 23 categories the 175 different products it covers³, such as electrical wires and cables, welding machines, motor vehicles and safety parts, household and similar electrical appliances, latex products, medical devices, toy products, etc. The system is administered by the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) and Certification and Accreditation Administration (CNCA). The China Quality Certification Centre (CQC) has been assigned to process CCC applications and to define additional products that need CCC. Normally the application will take 60 to 90 days, during which the following steps shall be conducted:

CHINA COMPULSORY CERTIFICATION, YOUR ENTRANCE TICKET TO THE CHINESE MARKET



1. Submission of application together with all required documents;
2. Testing, conducted by a CNCA-designated test laboratory in China;
3. Factory inspection conducted by CQC-representatives;
4. Evaluation of the results;
5. Approval or disapproval and re-testing;
6. Annual factory inspection.

For more information, contact Mrs Valeria Tagnotti of Quality Partnerships LLC: info@quality-partnerships.cn.

³ Updated from time to time



NUMBER OF THE MONTH

8,4%

According to Aon Hewitt, average salaries in all major industries in China increased by 8.4 per cent in 2010, this is 2.6 per cent more than in 2009. Aon Hewitt predicted that 2011 could even reach 9.1 per cent. The big increase is caused by governmental support for protecting workers' rights,

important in avoiding social conflicts, and for promoting domestic consumption and rebalancing the country's economy. The increase, however, squeezes the profit margins of companies in general and in small and medium sized companies in particular. More and more companies are therefore considering relocation to the

interior and western provinces where labour costs are still not that high. Additionally, the local governments in those cities welcome companies in order to develop the local economy, providing a whole range of preferential incentives together with those provided under the "Go-west policy".

NEWS

National People's Congress and Chinese Political Consultative Conference

Two important conferences, commonly referred to as liang hui (), were held in March. The highlight of this year's two conferences was the approval of the 12th Five-Year Plan, addressing such issues as compulsory education, social insurance system, public housing policy and other concerns related to citizens' daily life. Detailed practical schemes are expected to be made public and to be executed soon.

Upcoming business for your agenda

The 3rd China Overseas Investment Fair (COIFAIR) will be held in Beijing on 8 and 9 November 2011. COIFAIR is organized to benefit both Chinese and foreign investors, providing a platform with interesting projects and a chance to communicate face-to-face with possible future business partners. Flexible participation models will be made available and include an expo, forums and promotion seminars, B2B meetings, etc.

Don't miss this event and subscribe in time.

→
For detailed information, please visit:
www.coifair.org.

Chinese investments in new five-star hotel in Brussels

By February 2013 the 'Sodehotel La Woluwe' will be transformed into a new five-star luxury hotel. Baptized 'Tangla Hotel', the business will open its doors to welcome guests to Brussels. The former Sabena hotel was bought by the Chinese holding HNA in 2007, considering its excellent location directly across from the Chinese Embassy and relatively close to the heart of the European Union, home of many leading multinationals. HNA is investing 39 million EUR to expand the new hotel up to 181 rooms with luxury facilities and four restaurants for no fewer than 1,000 people, as well as seminar rooms for some 800 participants. A focus will be a huge ballroom equipped with 200 metres of LED lights with crystal filaments attached to the ceiling.



Belgian wins international golf tournament in China

On 24 April 2011, golf player Nicolas Colsaerts won the Volvo China Open Golf Tournament in Chengdu. The man from Brussels managed to play all 18 holes totaling 24 under. Colsaerts made six birdies in a 6-under 66 to total 264 and beat the old mark by five strokes. Pablo Martin of Spain, Peter Lawrie of Ireland, Sören Kjeldsen of Denmark and Danny Lee of New Zealand were second.

Colsaerts' victory makes him only the second Belgian to win on the European Tour, after Philippe Toussaint's victory at the Benson & Hedges International back in 1974. The first prize in the Volvo China Open brings Colsaerts 350,000 EUR



1971-2011 40 YEARS OF SINO-BELGIAN COOPERATION

It wasn't until the Europalia China Arts Festival in 2009-2010 that Belgians really starting taking an interest in China. Over a five-month period, Europalia unravelled the mysteries of China through events, exhibitions, conferences, films, etc. - all held at the heart of Belgium. Through the centuries, art and culture have always been ways of crossing borders through their delicate communication channels to the heart, rather than the brain. It is therefore not surprising that on 18 February 2011 the Belgian pianist Jean-Francois Maljean played a jazz piano solo in celebration of the 40th anniversary of Sino-Belgian diplomatic relations in the National Centre

for Performing Arts. Maljean's subtle blend of European classical music and American popular jazz, inspired by both Chinese traditional and popular music easily bridges the two countries' different cultures as evidenced by people singing along with Maljean's interpretation of two well-known Chinese songs.

2011 marks the 40th anniversary of diplomatic relations between Belgium and China. An important scheduled event is the major trade delegation to China led by Crown Prince Philippe in October 2011 to further enhance economic cooperation between the two countries.

But the cooperation between Belgium and China covers a broader area than that of art and culture alone. Over the past few years in particular, China and Belgium have maintained frequent high-level exchanges. Belgium has actively promoted the development of China-EU relations since it took the rotating presidency of the European Union in July 2010. Hosting the

8th ASEM and the 13th EU-China Summit, Belgium has further been involved in continuous communication and coordination with China. As Premier Wen emphasized during his visit to Brussels in October last year, China and Belgium will make joint efforts to revitalize the bilateral relations between the two countries by enhancing multi-level exchanges and by making concrete plans for cooperation. Based on the principle of equality and mutual benefit, such common areas of interest will be considered: high-end manufacturing, biological technology, new materials and agricultural products processing, etc.

With 2011 marking the 40th anniversary of diplomatic relations between Belgium and China, many more events are scheduled to take place this year. A highlight will be the major trade delegation to China led by Crown Prince Philippe in October 2011, following previous successful missions in 2004 and 2007.



YOUR CHINA EXPERIENCE-OUR JOB

Our philosophy...

...To facilitate your China experience

As an experienced law firm with an in-depth knowledge of both Chinese and European law, we understand your concerns and aim to provide assistance of the highest quality. In order to achieve our goals, we believe in...

- Providing high-quality language assistance
- Providing legal services at European standards
- Bridging the gap between Chinese and European culture
- Protecting your intellectual property
- Offering in-depth analysis of your potential business partner(s)
- Maintaining a stable and trustworthy Chinese and European network
- Guaranteeing a follow-up service during your absence
- Ensuring a double presence within both Europe and China, thereby providing 24 hour, round-the-clock assistance.

Our competitive advantages...

...To suit all your needs

Specializing in SMEs, we also provide additional services to meet all your needs:

- Offering special fees for SMEs
- Proposing services in English, French, Dutch or Chinese
- Providing one-stop services for:
Translation and interpretation
Location and relocation
Human resources
Tax and accountancy
Social security
Investment
etc.

Our services...

...To offer expert legal advice

In cooperation with our Chinese partners, our services consist of:

- Analysing the feasibility of your project
- Contacting and negotiating directly with local administrations
- Contacting and negotiating directly with your business partner(s)
- Offering assistance with your business setup: J/V, FIE, RO
- Ensuring optimal use of local incentives
- Drafting and reviewing your legal documents:
Articles of association
Commercial and labour contracts
Confidentiality agreements
etc.
- Offering alternative dispute resolutions (arbitration/mediation)
- Assisting in litigation



DEWIT LAW OFFICE CHINA

Dewit Law Office is the first Belgian law firm to have obtained a license to open a Representative Office in Beijing. The main strength of Dewit Law Office is its line-up of multilingual, multicultural and multidisciplinary team members.

Dewit Law office is the founding partner of Tian Ping Law Firms, with offices in Brussels and Antwerp, and is a member of SILFA, the Staubach International Lawfirm Alliance, a network and alliance among renowned, independent mid-sized law firms throughout Europe and in the United Arab Emirates



TIAN PING 天平
LAW FIRMS Antwerp - Brussels

SILFA
Staubach International Lawfirm Alliance

Who are we ?

Established in 1945, Dewit Law Office has always maintained a close relationship with its clients. A team of thirteen lawyers and four secretaries, supported by a small group of additional external staff, process a number of cases dealing with a variety of issues from all domestic judicial districts. DLO has permanent correspondents based in East-Asia and a network of correspondents throughout the European Union.

Bernard Dewit's interest in China and 27 year-long involvement in Chinese business, have helped him to gain the necessary experience to both understand and facilitate Chinese investments in Europe and vice versa. Having forged close ties with Chinese law firms in Beijing, Shanghai, Chengdu and Hong Kong, Dewit Law Office is the first Belgian law firm to have obtained a license to open a Representative Office in Beijing, with a branch in Chengdu to cover Western China.

Thanks to our presence in both the heart of Europe and in the heart of China, we are able to provide 24 hour, round-the-clock support to our clients.

The main strength of Dewit Law Office is its line-up of multilingual, multicultural and multidisciplinary team members. Cases can be processed in French, Dutch, English and Chinese.

Where are we ?

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USEFUL LINKS

Diplomatic Instances

Chinese Embassy in Belgium
<http://www.chinaembassy-org.be>
Belgian Embassy in Beijing
<http://www.diplomatie.be/beijing>
Consulate General of Belgium in Shanghai
<http://www.diplomatie.be/shanghai>
Consulate General of Belgium in Guangzhou
<http://www.diplomatie.be/guangzhou>
Consulate General of Belgium in Hong Kong and Macau
<http://www.diplomatie.be/hongkong>

Export and Investment Services

Federal Public Service Foreign Affairs, Foreign Trade and Development Cooperation
<http://www.diplomatie.belgium.be>
Brussels Export
<http://www.brussels-export.be>

Wallonia Export and Foreign Investment Agency (AWEX)

<http://www.wallonia-export.be>

Flanders Investment and Trade (FIT)

<http://www.investinflanderstrade.com>

China Council for the Promotion of International Trade (CCPIT)

<http://english.ccpit.org>

Chamber of Commerce

Belgian-Chinese Chamber of Commerce (BCECC)

<http://www.bcecc.be>

European Chamber of Commerce in China (EUCCC)

<http://www.europeanchamber.com.cn>

Legislative Information

Supreme Court of PRC

<http://www.court.gov.cn/qwfb/>

China international Economic and Trade Arbitration Commission (CIETAC)

<http://www.cietac.org>

China and EU Reach

<http://www.reach24h.com>

http://echa.europa.eu/home_en.asp

Law Firms

Tian Ping Law Firms

<http://tianpinglaw.com>

Staubach International Lawfirm Association (SILFA)

<http://www.staubach-alliance.com>

Touristic Information

Belgium

Wallonia and Brussels tourist office

<http://www.wallonie-tourisme.be>

Flanders tourist office

<http://www.visitflanders.com>

China

China International Travel Service

<http://www.cits.cn>

