

Compliance Update

R&P Celebrates 10-Year Anniversary

Page 2

Strategies for Dealing with Legal Compliance in China

Page 3

China's New Social Credit System

Page 5

Environmental Assessment Risks for Manufacturers

Page 7

New Policies Impacting how Non-Resident Companies Employ Beijing Staff

Page 8

R&P News

Page 10



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R&P Celebrates 10-Year Anniversary

The following is an excerpt of a letter on the occasion of the 10th anniversary of R&P. The full version of the letter can be found [here](#).

On 1 April 2010, exactly 10 years ago today, we opened R&P for business. With the challenges that the world is currently facing, this is not the best time for celebrations. Still, this milestone should not go by unnoticed. We therefore would like to take a moment to look back and share our story.

Our Team

Any law firm is only as strong as its human capital. In early 2010, the founding team consisted of three lawyers, one intern, two administrators, and myself. Over the years, I have come to realize that HR is the biggest challenge for a small, ambitious law firm that is trying to compete in a growing legal market: the talent pool is limited, and the competition for talent is fierce.

Our Clients

Finding new clients and developing new business have always been a strength of R&P. Our focus on international business in China has been an excellent choice. Foreign investment remains an important cornerstone of Chinese economic policy, and foreign investors continue to need strong legal support to navigate the unfamiliar and often perplexing legal landscape.

With a Bit of Luck

It may sound as if we had it all figured out from the beginning. We certainly made some good choices, but we also had luck on our side. In 10 years, we faced no major recession – neither in China nor in any of our key markets. China has continued to be open to foreign investment, and the rise of China as a consumer market has transformed our practice and spurred much of our growth in recent years.

Our Future

We enjoyed 10 years of prosperity, but what will the next 10 years bring us? What are the prospects of a foreign-managed law firm that supports international companies in China?

We take this opportunity to thank our team for their contributions to R&P's development over the past decade. You made it happen.

We are also ever grateful to all our loyal clients and business partners for teaching us about their business and trusting us with their problems. Thank you!

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The contents of this briefing is for information purposes only, and do not constitute legal advice.

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R&P China Lawyers is a boutique Chinese law firm, providing high-end legal services to foreign businesses active in China.

R&P Legal Briefing is written to inform clients and friends of the latest developments in Chinese law and practices.



Strategies for Dealing with Legal Compliance in China

By Fabian Knopf & Maarten Roos

In a webinar for the Danish-Chinese Business Forum, Maarten Roos (Director of R&P China Lawyers) shared examples and case studies on compliance issues that foreign businesses face when doing business in China, and introduced approaches on how to deal with these challenges.

Maarten touched on a number of non-compliance issues and discussed the level of compliance for businesses in different industries, of different sizes and across locations in China. This article will touch upon a few of these.

Mooncakes and Overtime

One big question among businesspeople who have been in China for a while is whether it is even possible to be 100% compliant in China. Maarten expanded on the theme and also illustrated the dilemma with two practical examples: mooncakes and overtime. Employers who provide mooncake vouchers to their staff around the Mid-Autumn festival do not usually declare them as a benefit that is

taxable, although legally this is required. Tax authorities in China do not jump into action against such behavior.

Overtime is another matter where Chinese law is quite clear: every employee that works beyond a standard number of hours must be paid overtime pay regardless of his/her position in the company. In practice, senior executives may work more hours than stipulated in their labor contracts, and although they legally qualify for such overtime payment this is rarely paid.

Common Compliance Issues

One of the mostly widely known compliance issues for a business is an employee receiving **bribes from a supplier**. Evidence of such behavior is often hard to come by, so a

company might be hard pressed to dismiss an employee for cause. In one of the cases Maarten discussed, the company eventually found out that the car of the accused employee was owned by a supplier. The lesson is that it may pay to investigate anything that seems even slightly unusual.

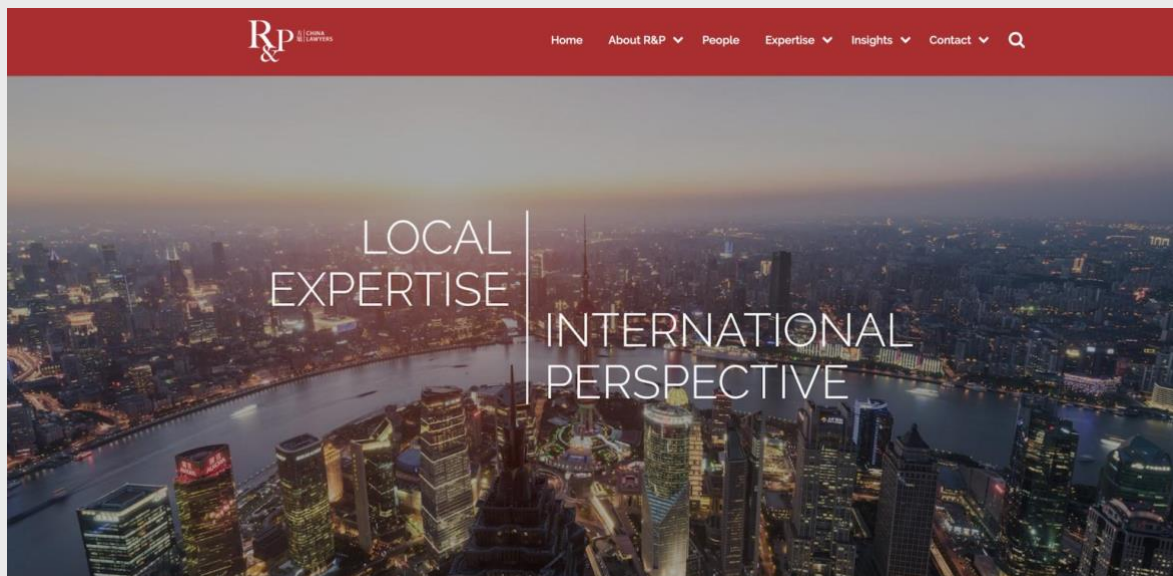
A compliance issue that used to be more common but can still become a serious matter: Underpaying **social insurance** contributions. In a recent due diligence, Maarten found that a target company only start paying social insurance for new employees after they had passed the probation period; moreover the company did not use the full salary as basis to calculate of payments. Maarten has been involved in a number of situations where companies had to pay millions of RMB in “clean-up” costs after one employee filed a complaint to the relevant authorities.

Foreign executives in China are not always aware that the Chinese **advertising** law is unusually strict. For example, using the wording “one of the leading” can lead to an external investigation and penalties, often triggered by an experienced consumer.

Companies and their executives can get into serious trouble for using the wrong HS (harmonized system) codes when they import products into China, even more so because violations can carry a prison sentence. **Customs violations** are one of the main reasons for jail-time of foreigners in China.

Members who join the board of an existing company may ask themselves what kind of liability they may face in their positions for compliance issues in their companies. Generally, **board members** are not considered to be sufficiently involved in daily business operations to be held responsible. However, in order to clear up responsibilities for Chairpersons or Executive Directors based abroad, it is advisable to clearly define responsibilities and formally (and in writing) appoint persons in charge of specific operations in the company.

This is not an exhaustive overview of compliance issues faced by foreign companies in China. If you are interested to get in touch with Maarten regarding compliance issues at your business, you can reach him at roos@rplawyers.com or get in touch with your familiar R&P contact person.



Check out our new website at www.rplawyers.com!

See page 10 for more information



China's New Social Credit System

By Maarten Roos

While some may continue to see China as a country where “anything is possible”, there is no denying that the Chinese government has been trying to create a more compliant business environment.

The initiative with the biggest impact long-term may well be the introduction of a social credit system (SCS): **every entity in China will be assigned a social credit score** to reflect its legal compliance.

Currently still consisting of a patchwork of different geographical and functional systems, one comprehensive, nation-wide system may be in place by the end of 2020. Once implemented, companies that have their house in order will benefit, while others will face stricter requirements and higher compliance risk.

What Will Impact SCS Ratings?

One of the complications for a company preparing for the corporate SCS is that the type of ratings that it is issued will depend on the company's specific nature, business scope etc. Mostly, a company is to be reviewed on standard regulatory and compliance criteria that already apply, such as whether all due taxes have been paid, whether it has all relevant licenses to operate, or whether the company has been fined for employment infringements.

However, several unconventional requirements are being set as well. For example, a company must not only take responsibility for its own behavior, but also must consider the behavior of business partners and employees. This means a

company's rating will be impacted if its supplier is on a blacklist; and poor ratings of individual shareholders will lower a subsidiary's rating. Also, a poor rating with one government department can automatically generate a poor rating with another government department.

Where does the SCS get its information? Main sources of data that are crunched for the final social credit score are self-reporting (incl. through monthly, quarterly and annual filings of various information), digital and on-site government inspections, and data collected from third parties such as platforms (e.g. Tencent and Alibaba). As self-reporting will be the most important source of information, companies should be particularly aware of the (sensitive) information they are providing as part of their filings.

What Rewards and Punishments can Companies Expect?

The comprehensive SCS system for companies is built to encourage high scores; examples of rewards are said to include lower taxes, better credit conditions, simplified approval procedures, more public procurement opportunities and decreased risk of inspections and audits.

Punishments for having a low rating include public naming and shaming, blacklisting, exclusion from preferential policies, as well as increased inspections and audits. Moreover, a low rating will not only impact the reputation of a company. Customers and suppliers may decide to stop doing business with a low-rated company to minimize the risk that this will impact its own credit score.

R&P Recommendations

Now is the best time to start preparing for implementation of the comprehensive corporate social credit system.

1. Individual companies should identify the laws, regulations and rules that apply to their business; collect information on compliance; analyze this information and rectify any non-compliance; and finally, determine an internal system to organize compliance matters in the future. This internal system should include regular audits as well as the monitoring of changes

to the SCS that may expand requirements on the company.

2. With the trustworthiness of suppliers an important component of an SCS assessment, companies should consider auditing the supply chain and conducting a limited due diligence on existing business partners. Such a due diligence should become part of any future supplier vetting process.

R&P China Lawyers is a full-service law firm with a strong compliance practice, focused on advising clients on compliance issues, conducting investigations, and dealing with government authorities. For more about our practice, and for assistance on auditing your business and preparing for the implementation of the corporate social credit system, please contact your usual contact at R&P China Lawyers.

WHAT CLIENTS ARE SAYING ABOUT R&P:



"They have a practical approach, very open-minded in coming up with ideas."

"I personally appreciate they're walking the extra mile and that you get straightforward answers instead of 'it depends'."



"R&P China Lawyers is described as 'outstanding when compared with more established and branded firms'; it 'always provides a prompt and informed answer on any topic' and has 'deep insights into the market, and good local knowledge'."

"The lawyers at R&P are very knowledgeable in many different areas of the law in China, they communicate clearly with clients and understand their challenges."



"Outstanding!"

"Quick replies; efficient; combines in depth local knowledge with a hands on attitude; not afraid to take a position; good understanding of local culture; solid legal quality."



Environmental Assessment Risks for Manufacturers

By Maarten Roos & Tony Xu

When our firm performs due diligence on Chinese manufacturing companies, one of the most important focal points is whether the company has passed all relevant environmental impact assessment.

The following is an excerpt from our article that includes information about the legal framework, environmental impact assessment requirements and declaration procedures, and our full conclusion and can be found [here](#).

Many foreign investors are unaware that after a company has been formally established in China with “manufacturing” in its business scope, an environmental assessment process will usually need to be completed before the company can start engaging in manufacturing activities. In fact, under Chinese law, **an environmental assessment must be completed for any kind of construction project, whether it involves a building structure, manufacturing process and machinery installation, as well as changes thereto (e.g. with a new production line).**

Therefore, companies that have not completed proper environmental impact assessment

procedures for all their construction or manufacturing projects (incl. both initial projects and extensions or changes to an existing project), are strongly recommended to do so without delay and before an investigation is triggered, whether by a random inspection or a third-party complaint. For companies that have completed their environmental assessment, an annual review may be considered to ensure that they remain compliant.

R&P China Lawyers is a boutique law firm focused on supporting foreign companies. We provide a full range of services to foreign investors with manufacturing facilities in China, and to international companies acquiring a Chinese manufacturing entity. For more information on our practice areas or for legal assistance, please contact Tony Xu (xujun@rplawyers.com), Maarten Roos (roos@rplawyers.com), or your usual contact at R&P.



New Policies Impacting how Non-Resident Companies Employ Beijing Staff

By Maarten Roos

- ***In Beijing, a new policy prohibits third-party HR agencies from filing social insurance in Beijing for employees of companies not registered in Beijing.***
- ***Companies with employees based in Beijing that do not have a registered entity (incl. branch) must as soon as possible find an alternative solution to file social security for their Beijing-based staff.***

Many international companies in China are based in one city, but may need to have employees based in another city. These employees will generally want social security in the place where they live and work, as this gives them crucial benefits in regard to medical care, schooling and housing. However, only locally-registered companies can make payments of social security premiums.

Establishing a branch, subsidiary or sister company is the optimal solution, but this brings additional cost and administration. Many companies have been able to avoid this by working with HR agents such as Fesco or CIIC, which are registered locally and can pay social insurance premiums (as well as housing fund contributions) even if the employee is employed by a non-resident entity.

Legally speaking this practice is a grey area, but practically it has been the accepted approach all over China for many years. Until now. Through an internal notice, HR agents in Beijing were informed last month that they would no longer be able to provide this service, i.e. for contribution of social insurance premiums in Beijing the employer of record must be a Beijing-registered entity.

Foreign-invested companies registered elsewhere that so far have used an HR agent for their Beijing employees, must immediately implement an alternative solution. The main options available are:

1. Pay social insurance premiums for Beijing employees at the location where the company is registered (i.e. outside Beijing), rather than in Beijing. However very few employees will accept this solution as it could make their life very difficult.
2. Transfer the employees to a third-party employer in Beijing, which formally employs the Beijing staff on its behalf and dispatches them to the actual employer – a PEO structure. Besides the additional cost, indirect employment means less control / management over the employee, and can lead to problems with confidentiality, non-competes, termination etc.
3. Establish a branch (or subsidiary) in Beijing and transfer the employees to such branch. Though this results in some additional costs and administration, these

can be limited through the support of a third-party law firm or corporate service provider.

Most companies are choosing the third option, though the final choice will depend on the actual circumstances of the business and – especially – the employees in Beijing. Key is to implement a solution in time, because a break in the social security of the employees in question could be hugely detrimental to their local benefits.

Meanwhile, the question remains whether other cities will see the same tightening of policies. This is difficult to predict, but based on our discussions with local departments in Shanghai, Shenzhen and Guangzhou it seems that at least for now, no changes are expected. Key point to note that as in Beijing, once a policy change is announced companies will have only a few months to find and implement a solution, and so foreign-invested companies that employ staff based outside their registered location are strongly advised to keep abreast of developments, and be ready to make a quick decision.

R&P provides legal support to international clients, and through its affiliate Acclime China provides corporate services including custodian services, treasury, payroll, accounting / tax to Chinese subsidiaries of international companies in China. For more information on how we can assist to support your structure and deal with policy changes, please contact roos@rplawyers.com or your usual contact at R&P.

Ambassador visits R&P office in Beijing



The Ambassador of the Kingdom of the Netherlands to China, Mr. Wim Geerts, and Policy Officer Trade and Economy, Mr. Jan Maas 扬马斯, visited the R&P offices in Beijing in May for a discussion on the legal and business environment for foreign companies in China.

The topics included the impact of SARS-CoV-2 on doing business in the country, the changes in enforcement of legal rights in commercial and IP disputes, and the continuing prospects market for new and existing investors.

On R&P side, Koen Naber, Ann Sophie de Meester, Fabian Knopf and Linda Ji all contributed with their perspectives, and thoroughly enjoyed the challenging topics.



R&P Welcomes Three High-Profile Lawyers

We are extremely pleased to announce that three seasoned, high-profile lawyers have recently joined R&P. Ms. Peng Qiao, Ms. Annabella Fu and Mr. Art Dicker have each built distinguished practices, and so we are very proud that they have selected R&P as the next step in their careers.

Ms. Alice Peng (Peng Qiao) is a specialist in compliance, white-collar crime, and litigation.

Alice started her career as a prosecutor in Guangdong Province, worked for leading Chinese law firms King & Wood (now KWM) and Junhe Law Offices, and then for global law firm Simmons & Simmons. She just completed 5 years at pharma giant Astra Zeneca as their Global Compliance Director. Her experience and expertise will strengthen R&P's existing service offerings to multinationals in the areas of internal and external investigations, building compliance systems, dealing with corporate crimes, and litigation in China.

Ms. Annabella Fu focuses on financial and regulatory matters in the Chinese Mainland and Hong Kong.

Annabella joins from Magic-Circle law firm Linklaters, where she was a partner based out of Beijing and Hong Kong. At R&P she will use her wealth of knowledge to support financial institutions and other multinationals on regulatory matters, M&A projects, and Joint Ventures. Dual-qualified in Hong Kong and England, her joining will also expand on R&P's capabilities to support clients for Hong Kong-related matters, including in relation to general corporate, M&A and regulatory.

Mr. Art Dicker specializes in M&A and corporate matters for US multinationals.

Art moved to China in 2007, was an attorney at US law firm Morrison & Foerster, and was Asia Pacific General Counsel for Nasdaq-listed Cadence Design Systems. Art has a JD from George Washington University and an MBA from the University of Southern California, and hosts a popular podcast discussing Chinese legal topics with legal counsels of Fortune 500 companies in China. With his experience as a US lawyer and dealing with American technology, manufacturing and consumer goods companies that operate in China, R&P will be better able to serve US investments into China through greenfield projects and acquisitions.



New Website

We are also happy to announce our new website. Here is where you can find what you are looking for:

- You can find previous and new Articles under Insights.
- Our Expertise is presented by Industry and Practice Area.
- There are introductions of our lawyers and legal professionals under People with new pictures.
- Recognition of our work can be found under About R&P > Awards.

Go to www.rplawyers.com to explore it for yourself.

WeChat

We also now have a Channel account on WeChat. Scan our WeChat QR code and follow our updates.



LinkedIn

You can also stay updated on legal developments in China by following our [Company Page on LinkedIn](#).

