FEBRUARY/MARCH 2009

China Insights

A PUBLICATION OF BENESCH FRIEDLANDER COPLAN & ARONOFF LLP

The "New" Labor Contract Law – After One Year

On June 29, 2007, the Standing Committee of the Tenth National People's Congress promulgated the *Labor Contract Law* (LCL) which became effective on January 1, 2008. The LCL required, among other things, that most full-time employees in China be covered by written employment contracts containing a number of provisions not previously required by law. The scope of the LCL's coverage, as well as the increased benefits to employees, was unprecedented under Chinese labor law.

During the months leading up to its promulgation and for the year following the effective date of the LCL, there has been widespread debate about the interpretation and application of this new law. Many domestic and foreign employers have expressed concern that the LCL would "overprotect" employees and raise the cost of labor in China, which would, in turn, make China less attractive to foreign investors (a concern which is heightened as the result of the current worldwide economic downturn).

So now, little more than a year after its January 1, 2008, effective date, it is appropriate to look at the LCL and determine what more (or less) we know about its interpretation and implementation. Note that the focus of this article is not to summarize or explain the terms of the LCL. Such a summary and explanation can be found in the October/November 2007 issue of *China Insights*.

Supplementary Regulations to the LCL

The central government and certain local governments have issued various regulations purporting to interpret and clarify the LCL, including the *Implementation Rules on Labor Contract Law* (the Implementation Rules), the *Guiding Opinions about Several Issues Regarding the Application of Labor Dispute Mediation and Arbitration Law and Labor Contract Law* (the Guangdong Opinions), and the *Provisions for Promoting Harmonious Labor Relationships in the Special Economic Zone of Shenzhen Municipality* (the Shenzhen Provisions).

A. The Implementation Rules

Among these interpretive and clarifying regulations, the Implementation Rules had been the most highly anticipated, both because of the critical need to flesh out much needed details in the LCL and because of their "official" status and nationwide effect. Unfortunately, the Implementation Rules were not issued by the State Council until September 18, 2008, (becoming effective upon issuance) so many employers were left to guess about a number of important points in order to have complying employment contracts and employment practices in place on January 1, 2008, or risk noncompliance and wait for additional guidance.

The Implementation Rules clarified that:

- Non-fixed term employment contracts are not permanent. (Note that a non-fixed term employment agreement is one that is not for a specified number of years (i.e., it is for an indefinite period). The general rule under the LCL is that, under ordinary circumstances, an employee must be extended the right to enter into a non-fixed term employment agreement after the earlier of the expiration of two fixed-term agreements, or the completion of 10 consecutive years of employment with the employer. However, such agreements, even if they are not for a specified term, can be terminated under 14 circumstances, including "for cause" situations such as when an employee materially breaches his or her employer's rules and regulations, commits a serious dereliction of duty, engages in graft, causes substantial damage to the employer, or is incompetent and remains incompetent after training or adjustment of positions.
- There is a one-month grace period for an employer to conclude a written labor agreement with its worker from the date on which the employee starts

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Attorneys at Law

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work. If an employer has not concluded a written labor contract with a worker within one month, the employer must pay the employee twice his/her salary commencing on the first day after the end of the one-month period and continue doing so until the earlier of the date on which a belated written employment agreement is entered into or the expiration of 11 months. If a belated written employment agreement has not been concluded within one year from the start of work, the employer will be deemed to have concluded a non-fixed term employment agreement with the employee, effective after the last day of the one-year period following the date on which the employee started work with the employer, and the employer must promptly conclude this non-fixed term agreement in writing.

- An employer has the right to terminate the employment relationship without paying severance pay by giving written notice to its worker, if the failure to conclude a written employment agreement occurs within one month from the date on which the employee started work with the employer, and such failure is caused by the worker.
- The consecutive 10-year period referred to in the LCL after which a non-fixed term employment agreement must be offered should be counted from the date on which the employee started working for the employer and include the time worked prior to the effective date of the LCL.
- The basis for calculating severance pay (which is set forth in the LCL) is the prior 12 months' average monthly salary paid to the employee, including monetary income such as hourly or piecework wages, bonuses, allowances and subsidies, or calculated at the local minimum salary rate if applying the local minimum salary rate results in a higher amount than the employer's method of calculation.

B. The Guangdong Opinions

Guangdong Province is one of the most labor-intensive manufacturing areas in China. The surge of labor dispute cases right after the effective date of the LCL, combined with the lack of guidance as to how to apply the new LCL due to the late publishing of the Implementation Rules, brought great pressure on, and created a difficult situation for, the labor arbitration tribunals and the courts in Guangdong Province. The High People's Court of Guangdong Province and the Labor Dispute Arbitration Commission of Guangdong Province decided to deal with this problematic situation by issuing the Guangdong Opinions on June 23, 2008, which took effect on July 7, 2008. Although the Guangdong Opinions are binding only in Guangdong Province, they offer guidance that may well be influential in other jurisdictions.

The Guangdong Opinions provide that:

- In calculating the time period (normally 45 days, maximum 60 days under special circumstance) within which an award in an employment dispute must be rendered, the waiting period after which a claim is filed will not be included. This ruling significantly relieved the pressure on the arbitration authorities, allowing them more time to render decisions.
- Certain changes in the structure or governance of the employer entity (including a change of the company's name) do not entitle employees to demand economic compensation as a prerequisite to signing a new employment agreement with the reorganized or renamed employer. The Guangdong Opinions state that any change of company name, legal representative, principal or investor has no effect on the fulfillment of the original employment agreement or employment relationship, and that employees are not entitled to be compensated in such situations. Some employees had been taking the position that such changes constituted a termination of the labor relationship with the employer, entitling them to compensation and/or a new employment agreement.
- An employee's obligation under a noncompetition provision of an employment agreement is subject to the payment by the employer of the noncompetition compensation provided in the agreement. If the employer fails to pay such compensation following demand by the employee and the employee then resigns his/her job, the noncompetition provision will have no further restrictive force or effect on the employee.
- Where there is no written agreement to show whether the salary includes overtime pay, but the employer has convincing evidence to support the position that the salary paid includes both normal working-hour salary and overtime pay, the employer's position will generally be accepted. In calculating overtime pay, if the employment agreement expressly excludes any bonus, allowance and subsidy payments from normal working-hour salary, then the normal working-hour salary will not be deemed to include bonus, allowance and subsidy payments, provided that the amount paid is not less than the locally mandated minimum wage.

C. The Shenzhen Provisions

The Shenzhen Provisions were promulgated by the Standing Committee of Shenzhen People's Congress on September 23, 2008, and took effect on November 1, 2008. Although the Shenzhen Provisions are binding only

in the municipality of Shenzhen (which is located in Guangdong Province), they offer guidance that may well be influential in other jurisdictions. They are the first provisions promoting a "harmonious labor relationship" at the municipal level.

The Shenzhen Provisions stipulate that:

- An employer must guarantee its employees at least one consecutive 24-hour day off each week.
- The monetary penalty for an employee who violates his/her employer's internal rules may not exceed 30% of his/her current month's salary and the same violation may not be punished repeatedly.
- An extension of the term of a fixed-term employment agreement which is longer than six months will be deemed a renewal of the agreement.
- The period of working for the same employer will be deemed to be continuous if the employer signs a new employment agreement with a terminated employee within six months after the termination of the prior employment agreement (to counteract the practice of depriving employees seniority for various purposes by imposing a series of agreements separated by relatively short periods of nonemployment).
- A request for collective negotiation for salary adjustments, contract amendments or changes of working conditions must be replied to within 10 days of the date the request is made in writing by either the employer or the employees.
- Employers who violate the Shenzhen Provisions cannot enjoy certain privileges granted by the municipal government for five years.

The Effect of the LCL and its Supplementary Regulations

While the LCL left a number of questions unanswered, the subsequent supplementary regulations published by central, provincial and local governments make the LCL more understandable in a number of respects. Read together, they have had a significant practical impact on the cost of labor, negotiation procedure between employers and employees, and HR management strategy.

- The extent to which the cost of labor definitely increased as a result of the implementation of the LCL and the supplemental regulations is an open question. In the first quarter of 2008, some labor-intensive manufacturing companies in southern China closed down or moved significant parts of their manufacturing operations to Vietnam or other neighboring countries with cheaper labor. The media has generally attributed this to the implementation of the LCL, however, the LCL does not increase the labor cost to any great extent if an enterprise had been in compliance with pre-LCL labor laws. It may be that increased costs and migration to lower-cost countries has resulted from the threat of stricter enforcement of newly enhanced penalties for violation of labor laws (including nonpayment or underpayment of mandatory social benefits and insurance and paying less than the minimum wage).
- The LCL and the Implementation Rules require that material matters that have a direct bearing on the immediate interests of employees must be determined through consultation with the labor union or employee representatives and should be conducted on a basis of equality. Time will tell the extent to which this will change the role or influence of labor union or employee representatives in China.

The Implementation Rules emphasize the importance of keeping a register of employees. This means that if the HR department of a company fails to include each employee's name, gender, ID number, registered permanent residence and current residential address, contact details, method of employment, time of commencement of employment, employment contract term, etc. in the register, the labor administration authority may impose a fine of RMB2,000 to RMB20,000 on the employer if it fails to rectify the violation within a specified period.

Some Issues Need Further Clarification/Resolution

Although the supplementary regulations clarify some unclear provisions of the LCL and provide some detailed guidance on how to implement the LCL, further clarification is needed to deal with a number of issues, including the following:

- The meanings of terms such as "material breach," "substantial damage" and "incompetent" relating to the circumstances under which an employee may be terminated for cause are neither defined in the LCL nor in the supplementary regulations. Until such terms are defined, the best practice for employers is to define these terms in their employment agreements and/or employee handbooks, and to carefully document employees' performance in writing.
- Although the Implementation Rules clarified that time worked prior to the implementation of the LCL must be counted when calculating an employee's total consecutive period of employment, the term "consecutive period" remains undefined.
- The LCL and the Implementation Rules do not define what constitutes an "employee," so there are unsettled questions as to whether the LCL covers, among others, workers having reached retirement age, part-time students and foreigners without working permits.

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Conclusion

Although additional supplementary regulations will certainly be forthcoming, perhaps the biggest question about the LCL is the manner in which various arbitration tribunals, courts and other governmental agencies will enforce them. Because employees who believe that an employer has not complied with the LCL have much to gain, it is not at all surprising that there has been a surge of employee claims, and a growing backlog of disputes requiring resolution. If those responsible for enforcing the LCL do so on a reasonable and consistent basis, the LCL may produce a level playing field among domestic and foreign-owned employers, while providing a living wage to employees and increased economic and social stability. The current global economic downturn may provide an interesting and challenging environment to test whether such reasonable and consistent enforcement will take place.

However, employers, particularly foreign-owned employers, are faced with additional considerations in terms of compliance with the LCL. In addition to the obvious desirability of complying with China's laws and avoiding the imposition of financial and other penalties, many foreign companies' financing documents and other agreements contain representations, warranties and covenants assuring third parties of historical and ongoing compliance with laws, including employment laws. Indeed, many companies' own ethics policies (as well as those of their customers) require compliance with such laws. Noncompliance becomes a highly problematic alternative whether the consequences of such noncompliance trip a bank loan covenant, result in labor unrest or surface during the due diligence phase of an acquisition/disposition or financing transaction.

We will keep watching and reporting further developments to you.

For more information, please contact Leo Pan at lpan@beneschlaw.com or (86-21) 3222 0388, or Allan Goldner at agoldner@beneschlaw.com or (216) 363-4623.

Taxation of Foreign Representative Offices in China

Introduction

A foreign representative office (FRO) is one of the most common forms of foreign business presence in the People's Republic of China. However, an FRO is not a separate legal entity, and there are limitations on the business activities that an FRO may carry on. For example, an FRO's function is to serve as a liaison office and, generally, it cannot carry out any revenue generating activities; it cannot directly hire local employees; and hiring must be through a local foreign company service company.

Despite certain disadvantages, compared to other forms of foreign investment (e.g., joint ventures or wholly foreign-owned enterprises [WFOEs]), an FRO enjoys certain advantages. For example, there is no registered capital contribution requirement and it generally takes much less time to set up. Except for certain types of regulated industries such as banking, insurance and law, setting up an FRO only requires registration with the local branch of the State Administration of Industry and Commerce (SAIC). The simplicity and speed of establishing an FRO are the main reasons for its popularity. For a business that is new to China, setting up an FRO will allow it to explore the market and identify customers in order to help management determine whether a more intensive investment commitment is warranted.

With that being said, taxation of an FRO is much more complicated than its formation. This article attempts to explain some of those complexities and to provide some practical guidance; however, this article is not intended to (and does not) constitute tax advice.

Types of FROs in China

There are three types of FROs in China:

A. FROs established by accounting firms, auditing firms, law firms, tax advisory firms or other companies that provide consulting services in China (Type A FROs).

   Type A FROs are regarded as extended arms of their overseas headquarters. The businesses engaged in by Type A FROs are not different from those engaged in by a legal entity such as a WFOE in China, though the scope of business activities in which Type A FROs may engage may be limited somewhat.

B. FROs established by advertising agencies, travel agencies, trading companies, manufacturing and distribution businesses, transportation and logistics companies and banking and other financial institutions (Type B FROs).

   Type B FROs generally carry out business at the request of their headquarters. They cannot enter into contracts or agreements with their customers, and the income derived from their activities is generally collected by, and attributed to, their foreign headquarters. Type B FROs generally engage in marketing, promotion and liaison activities.

For tax purposes, the activities engaged in by Type B FROs can be further classified into two groups: taxable activities and nontaxable activities. Taxable activities include acting as an agent for the overseas company or providing services such as computer or software support to headquarters or customers. Nontaxable activities include promoting the company's products, including conducting market research, providing marketing information, contacting local businesses and providing other similar liaison services. If a Type B FRO engages in both taxable and nontaxable activities, all of its income will be taxable if one of the following scenarios applies:

(i) the FRO cannot provide valid contracts or other evidence to distinguish between its taxable and nontaxable activities;
(ii) the FRO and headquarter company provide customer service jointly in China, and the FRO is not able to distinguish taxable and nontaxable activities; or
(iii) the FRO has other income arising out of its ordinary business.

C. FROs of foreign governments or non-profit organizations in China (Type C FROs)

A Type C FRO is generally exempt from taxation. To obtain tax exempt status, a Type C FRO must obtain a certificate of tax exemption status from the relevant tax authorities in its home country. If such certification is accredited by the applicable local Chinese tax authority, such representative offices will be exempt from taxation in China.

Taxation on FROs

Whether an FRO will be taxed in China depends on the provisions of the applicable tax treaty (if any) between China and the FRO's home country.

Taxation on FROs is based on the concept of "permanent establishment." Under the tax treaty between the U.S. and China (the U.S.-China Treaty), for example, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partially carried on. Unless it is excluded specifically by the treaty, an FRO is a permanent establishment and, therefore, subject to taxation. In 1993, China's State of Administration of Tax (the SAT) confirmed the approach set forth in the U.S.-China Treaty, though certain legal scholars argued that the SAT went beyond the, U.S.-China Treaty's parameters in its interpretation.

China's history of taxation of FROs has gone through three stages. The first stage was prior to 1996, the second stage was from 1996 to 2003 and the third (and current) stage began in 2003. During the first stage, all FROs were tax-exempt. During the second stage, the SAT reversed the assumption that all FROs are tax-exempt. The SAT issued Circular 165 (in 1996) and Circular 28 (in 2003) clarifying the tax status of FROs. It was during this stage that China set up a systematic approach to deal with FRO taxation. During the third stage, a safe assumption is that an FRO is taxable unless it can prove otherwise. Since 2003, local tax authorities have revoked certain FROs' tax-exempt status and notified them of their obligation to pay. However, given their historical tax-exempt status, some FROs ignored the notices. These FROs should consider determining their tax status by applying Circular 28 and meeting with local tax authorities to confirm their status and remit unpaid taxes, if applicable, to avoid nonpayment consequences.

Since 2003, every newly established FRO is required to register with the local tax bureau and complete an application form as to its tax or tax-exempt status and applicable tax calculation methods within 30 days of its registration with the local branch of SAIC.

Tax Methods

If an FRO constitutes a permanent establishment in the PRC, it is generally subject to the enterprise income tax, business tax, value added tax, consumption tax and customs duties, as well as stamp duties. Among them, the two most common taxes generally applicable to FROs are the enterprise income tax and the business tax.

There are three methods used to calculate the applicable income tax and business tax on FROs: Actual Revenue and Expense Method, Cost-Plus Method and Deemed Income Method.

For purpose of this article the business tax rate is assumed to be 5%, although the actual tax rate varies between 3% and 20% depending on the industry. For example, the rate for the transportation and construction industries is 3%, while the rate for the banking, travel, logistics and advertising industries is 5%.

1. Actual Revenue and Expense Method

The Actual Revenue and Expense Method is applicable to Type A FROs. Under this method, an FRO must report its revenues and expenses for the tax period, supported by relevant contracts and expense vouchers and receipts. Unless otherwise agreed by the relevant tax authorities, the year-end accounts of the FRO must be audited by a China certified public accountant and the accountant's report must be filed with the tax authorities.

A. Determining Revenue

Historically, any revenue sourced from China (i.e., income from production or business operations by the FRO in China) is deemed to be revenue of the FRO. For service providers, if the service was provided in China, then the revenue would be considered as being sourced from China. In addition, if an FRO and its headquarters jointly serve the same client, the revenue generated by the headquarters must be included in the

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revenue of the FRO, even if the income is not reflected in the accounting records of the FRO. In a recent development, the SAT has now mandated that, effective as of January 1, 2009, business tax liability will be based on the location (inside or outside of China) of the party providing or receiving the service, not on the location where the service is provided.

B. Determining Expenses

Expenses related to the revenues referred to above may be deducted to determine the amount of taxable income. The following expense can be deducted:

(1) Wages and salaries, bonuses, allowances, overtime pay, social insurance funds and housing funds paid to employees working for the FRO; however, premiums paid for commercial insurance are not deductible;
(2) Education fees up to 2.5% of an employee's salary;
(3) Telecommunication fees, travel expenses, commuting expenses to or from China and other ordinary course expenses;
(4) Rent paid for office space and equipment;
(5) Depreciation of fixed assets such as office equipment and office furniture;
(6) Qualified charitable donations, up to 12% of annual profit;
(7) Only 60% of entertainment expenses may be deducted and the total amount may not exceed 5% of the FRO's income for the year; and
(8) Advertising fees may be deducted up to 15% of the FRO's income for the year.

In addition, administrative expenses incurred by a head office to support the business or activities of an FRO in China may be deducted from the FRO's revenues. To do so, the head office must specify the expense that have been allocated to the FRO, the allocation methods and the basis for the allocation. If the relevant tax bureau determines that the allocation is reasonable, the amount can be deducted.

2. Cost-Plus Method

The Cost-Plus Method applies to most FROs in China. FROs engaging in commodity-trading activities, contract or agency-based advertising work or service activities must use the Cost-Plus Method to determine the taxable income.

Under the Cost-Plus Method, revenues are generally deemed to be 117.65% of the office's expense for the tax period. This percentage is calculated using the following formula:

Revenue=Expense in the current period/1-[deemed profits of 10% + business tax of 5%].

3. Deemed Income Method

If an FRO can supply data concerning its revenues but (i) has difficulty in providing detailed information on its actual expenses in the PRC or (ii) the PRC tax authorities find, for one reason or another, that the expense information is incomplete and, as a result, the FRO cannot correctly calculate its taxable income, then, by agreement between the tax authorities and the FRO, the Deemed Income Method of calculating taxable income may be applied. Under the Deemed Income Method, revenues are subject to a 5% business tax and income is deemed, generally, to be 10% of revenues, and the deemed income is then subject to enterprise income tax at the rate of 25%.

Implication for the Chief Representative and Other Representatives

As a general rule, a non-Chinese passport holder is not subject to Chinese individual income tax if such person's stay in China within a calendar year does not exceed 90 days (for a non-treaty country) and 183 days (for a tax treaty country, such as the U.S.). However, the chief representative and any other registered representative of an FRO in China is not entitled to this exemption and, accordingly, is subject to Chinese individual income tax from the first day he or she commences work in China. For example, if a representative worked in China for 60 days, and his salary is based on income sourced in China, then the representative should pay the applicable income withholding tax monthly. For salary earned outside of China, the representative does not need to pay income tax. Even if a representative or chief representative does not work in China within a calendar year, then filings should still be made monthly to the local authorities; however, there should be no tax liability. The amount of the chief representative's salary and other compensation that should be considered as the expense of the FRO bears directly on the amount of the FRO's tax obligation.

Consequence of Noncompliance

FROs are required to file tax reports quarterly. If taxes are not paid on time, the tax bureau can impose a penalty of up to five times the amount due. Moreover, if the relevant tax authorities determine that an FRO has failed to pay the correct amount of tax, they may seek recovery at any time within three years of the underpayment. If, however, the nonpayment is due to tax evasion, then there is no statute of limitations on the liability.

Conclusion

Although setting up an FRO is relatively easy, properly calculating and reporting taxes of an FRO is not. Foreigners serving as the chief representative or the representative of an FRO should be mindful about their individual income tax obligations in China. Engaging an international tax adviser is highly recommended.

For more information on this topic, please contact Yanping Wang at (216) 363-4664 in the U.S., (011-8621) 3222-0388 in China, or ywang@beneschlaw.com.

Notes from Shanghai

Peter Shelton, daughter Abigail, wife Julie and son Ford at Tiananmen Square

The publication of our current issue of *China Insights* happens to coincide with the six-month anniversary of my family's relocation to Shanghai from Cleveland, and it closely follows the Chinese New Year. The "Year of the Ox" began on January 26, so—*Xin Nian Kuai Le* (Happy New Year)! The past half year has been a great experience for all four of us, as well as for me professionally—filled with many wonderful experiences, as well as the normal challenges that come with relocating to a foreign country. But the "positives" of living in China (the rich culture and history, Shanghai's dynamic growth and energy, and the warmth and generosity of so many new friends) far outweigh the negatives (such as the never-ending crowds and traffic, and our inability to find certain foods and other products we're accustomed to).

There have been many highlights for the family. We have all made new friends, both Chinese as well as fellow *lao wai* (foreigners) from many lands. Abigail and Ford's classmates at the Shanghai Community International School hale from China, Korea, Japan, the United States, Denmark and Sweden (among other places). Our apartment building neighbors are predominantly *lao wai* from the U.S. and Europe, but we step outside our building onto a bustling street filled with local merchants and street vendors selling dumplings, produce, seafood and poultry.

All four of us are learning, or at least beginning to learn, Mandarin (China's national language). Julie gets the high marks on speaking Mandarin—but both Abigail and Ford are learning to write, as well as speak, Chinese. During a trip to Beijing in November, we visited a number of significant landmarks, including the Great Wall, Tiananmen Square and the Forbidden City. Further afield, we visited Kyoto, Japan, in October.

We have also enjoyed exploring Shanghai and its environs. The city of 17 million holds many attractions. It's an international business center with some of the world's tallest skyscrapers, as well as historic temples and gardens and winding, tree-lined streets and warrens of connecting lanes in the districts that surround our home. At the onset of the Chinese New Year, we witnessed a spectacular display of fireworks from the roof of our apartment building.

From a professional perspective, being in our Shanghai office—alongside colleagues Yanping Wang, Leo Pan and Kay Zhao—has been a rewarding chance to work with and on behalf of our many clients with interests in China, and also to help to continue expanding our network of other professionals and service providers with whom we frequently collaborate and make referrals. My time here in Shanghai has also afforded me the opportunity to more closely monitor the "pulse" of the Chinese economy and the climate for investment by our U.S.-based clients.

As readers of *China Insights* (most of whom have a strong interest in the business and legal environment in China) already know, China's economy—like that of the U.S. and much of the rest of the world—has slowed markedly in recent months. Much of the slowdown here is a result of the conspicuous drop-off in demand for Chinese-made products in the U.S. as a result of the U.S. recession. However, a number of significant policy reforms in China over the last several years (e.g., the appreciation of the currency, the yuan, against the U.S. dollar starting in 2005, the Enterprise Income Tax law (see the October/November 2007 and February/March 2008 issues of *China Insights*) and the Labor Contract Law (as discussed in this issue of *China Insights*), as well as changes to the country's value-added tax [VAT] refund policy) have increased the cost of doing business in China, particularly for export-driven businesses, leading to business closures and job layoffs, particularly in Guangdong Province. Nonetheless, while the Chinese economy won't see the kind of double-digit expansion it has enjoyed in recent years, economic forecasters are still predicting growth of 6% to 8% in 2009, and the Chinese government is expected to continue to use the fiscal and monetary tools at its disposal to reach the high end of that range.

All of us in the China Group—both in our Shanghai and U.S. offices—will continue to monitor and report on legal and business developments affecting our clients and their economic interests in China.

If you have questions about doing business in China, please contact me at (216) 363-4169 (U.S.), (86) 139-1754-4251 (China) or pshelton@beneschlaw.com; or contact any of my China Group colleagues. We'd be glad to answer questions and help you achieve your business objectives here. *Gong Xi Fa Cai* (Best wishes for a prosperous New Year)!

Peter K. Shelton

Events

The Risks of Doing Business in China

Allan Goldner and **Will Kohn** will be the featured speakers at this Cleveland Foreign Credit Group program.

February 12, 2009 | Cleveland, OH

Legal and Business Aspects of Doing Business in China

Allan Goldner will be presenting to the Ohio Foreign Commerce Association.

March 2, 2009 | Cleveland, OH

How We Work With Clients

We help U.S. companies as they: (1) establish China-related strategic alliances and joint ventures for manufacturing and distribution; (2) establish wholly owned manufacturing or other business operations in China; (3) acquire the shares or assets of China-based companies; (4) deal with governmental and operationally related legal issues in China; (5) source components or products from China and deal with related logistics issues; and (6) develop U.S.-based solutions to competition from China.

We also help Chinese companies with respect to U.S. legal and business considerations as they: (1) establish U.S.-related strategic alliances and joint ventures for manufacturing and distribution; (2) establish subsidiaries and other business operations in the U.S.; and (3) acquire the shares or assets of U.S. companies.

We help clients as they structure, negotiate and document China-related transactions; and consult with clients with respect to capital structure, operating control, governance, due diligence and other issues.

In the area of intellectual property, we are experienced in working with our China-based colleagues and government officials to maximize the protection of our clients' valuable patents, trademarks, know-how, trade secrets and other intellectual property rights.

Our established network of highly competent, experienced and reliable U.S. and China-based service providers (including Chinese licensed lawyers with whom we work when our clients' needs require) enables us to help produce complete China business/legal solutions. Together we provide U.S., China and other international legal, tax, governmental relations, import/export, construction, operational and other solutions for our clients in a cost-effective manner.

Pass this copy of *China Insights* on to a colleague, or e-mail ehighley@beneschlaw.com to add someone to the mailing list.

For more information, contact any member of our China Group:

Allan Goldner, *Co-Chair* | (216) 363-4623
agoldner@beneschlaw.com

Peter K. Shelton, *Co-Chair*
(86) 139-1754-4251 | (216) 363-4169
pshelton@beneschlaw.com

Steven M. Auvil | (216) 363-4686
sauvil@beneschlaw.com

Joseph N. Gross | (216) 363-4163
jgross@beneschlaw.com

Douglas E. Haas | (216) 363-4602
dhaas@beneschlaw.com

William I. Kohn | (216) 363-4182
wkohn@beneschlaw.com

Robert A. Marchant | (216) 363-4489
rmarchant@beneschlaw.com

Megan L. Mehalko | (216) 363-4487
mmehalko@beneschlaw.com

Leo Pan | (86) 139-1754-4172
lpan@beneschlaw.com

Bradford J. Sandler | (302) 442-7007
bsandler@beneschlaw.com

Bryan A. Schwartz | (216) 363-4420
bschwartz@beneschlaw.com

Robert M. Spira | (216) 363-4413
rspira@beneschlaw.com

Yanping Wang | (216) 363-4664
(86) 139-1754-4176
ywang@beneschlaw.com

Thomas C. Washbush | (614) 223-9317
twashbush@beneschlaw.com

Kay Zhao | (86) 139-1708-2514
kzhao@beneschlaw.com

Cleveland
200 Public Square, Suite 2300
Cleveland, OH 44114-2378
Phone: (216) 363-4500
Fax: (216) 363-4588

Columbus
41 South High Street, Suite 2600
Columbus, OH 43215-6150
Phone: (614) 223-9300
Fax: (614) 223-9330

Philadelphia
One Liberty Place
1650 Market Street, 36th Floor
Philadelphia, PA 19103-7301
Phone: (267) 207-2947
Fax: (267) 207-2949

Shanghai
Kerry Centre, Suite 1802
1515 W. Nanjing Road
Shanghai, P.R. China 200040
Phone: (86) 21-3222-0388
Fax: (86) 21-5298-5955

Wilmington
222 Delaware Avenue, Suite 801
Wilmington, DE 19801-1611
Phone: (302) 442-7010
Fax: (302) 442-7012

www.beneschlaw.com

BENESCH
Attorneys at Law