



# 2011 TRENDS

*Blakes*  
CANADIAN LAWYERS

CHINA

## ANTICIPATED WAGE INCREASES

Beginning in 1953, the Chinese government has released a "Five-Year Plan" approximately every five years. Each Five-Year Plan is a high-level policy document that sets out the priorities of the government for the following five-year period. Next year, China will release its 12<sup>th</sup> Five-Year Plan.

The 12<sup>th</sup> Five Year Plan will not become an official document until it is approved by the National People's Congress in March 2011. In the meantime, a framework for the plan was discussed and approved at a meeting of the Central Committee of the Chinese Communist Party in October 2010. Although the Framework is not a government document, it provides an indication of the likely content of the final plan.

Among its various stated priorities, the framework provides that China needs to stimulate demand and consumption in its domestic market and needs to find ways to improve the distribution of wealth among its population. Based on these priorities, there is speculation that China will be taking measures to improve the wages of its massive labour force in the coming years. According to certain Chinese media sources, the raise in wages for the lowest wage earners in the labour force is expected to be particularly dramatic.

From a legal perspective, there is already some evidence that China is preparing legislation to mandate higher wages for the labour force. A draft piece of legislation entitled the *Wage Regulation* is currently under review and consideration by the authorities. This regulation will require, among other things, that each Chinese province formally set the minimum wage in their jurisdiction. Certain wages will also be subject to mandatory annual increases tied to increases in the consumer price index for the applicable province. Wages in companies that are deemed to be in a monopoly shall be reported to and approved by designated government authorities and shall be released to the public. Finally, certain measures will be put in place to provide employees with additional protection to ensure they receive payment of the wages to which they are entitled.

The *Wage Regulation* will likely come into force sometime this year. Between now and then, additional content may be added to the regulation. Depending on the content of the final regulation, it may be a key piece of legislation by which the government seeks to achieve certain of the objectives set out in the 12th Five Year Plan.

## NEW REPRESENTATIVE OFFICE REGULATIONS

The Chinese authorities have recently released new legislation tightening the regulation of foreign representative offices. In January 2010, the authorities released the *Notice of the State Administration of Industry and Commerce and the Ministry of Public Security on Further Strengthening the Administration of Registration of Permanent Representative Offices of Foreign Enterprises*, and in November 2010, the State Council released the *Regulation on the Registration and Administration of Resident Representative Offices of Foreign Enterprises* (together, the regulations).

Between the two regulations, there are several new requirements for foreign representative offices, including:

- A foreign company seeking to establish a representative office will need to demonstrate that it has existed for at least two years prior to the date of application. There was previously no such requirement, and indeed it is possible to set up corporate vehicles in China without the need to demonstrate that the shareholder has existed for a certain period of time.
- Representative offices will be limited to four representatives, including one chief representative.
- There are new filing obligations imposed on representative offices, including new annual filing requirements and filing requirements in the event of certain changes to the operations of the representative office or its foreign company.

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The purpose of the regulations is ostensibly to reduce the misuse or abuse of the representative office structure. Some observers have also speculated that the Chinese authorities wish to promote corporations as the preferred entry vehicle for foreign investors and reduce the use of representative offices. If so, the release of the Regulations may also prompt an increased focus on strictly enforcing the laws with respect to foreign representative offices. In any event, companies with an existing representative office or intending to establish a new representative office should ensure they are compliant with the new requirements.

### FOREIGN-INVESTED PARTNERSHIPS

The concept of a partnership is relatively well established in China's legal system. It was only in early 2010, however, that legislation came into force permitting Chinese partnerships to be formed with foreign partners.

The two most common forms of Chinese partnerships are referred to as general partnerships and limited partnerships. These partnerships embody many of the same characteristics as general and limited partnerships in Canada. As in Canada, Chinese partnerships do not have the status of a "legal person" and cannot enter into contracts on their own behalf. In general partnerships, the partners have unlimited liability for the debts of the partnership and may allocate management responsibilities among the partners in the partnership agreement. In limited partnerships, general partners have unlimited liability and limited partners have limited liability for the debts of the partnership. Limited partners are not permitted to act on behalf of the partnership without losing their limited liability status.

Unlike in Canada, the establishment of a Chinese partnership involves an initial review and approval process similar to Chinese corporate vehicles. The recent foreign-invested partnerships legislation suggests a less rigorous process of review than that applied for corporate vehicles, but it has yet to be seen how this will apply in practice. The structure and operation of the partnership is formalized in a partnership agreement, and partnerships must be registered in order to commence operations.

In time, Chinese partnerships with foreign partners may become a more familiar business structure in China. At present, however, there are still many uncertainties in the legislation that will need to be clarified by administrative practice. It is expected that most foreign investors will continue to use limited liability companies as the preferred vehicle for entering the Chinese market.