

Legal news

HIGHLIGHTS

Requirements to obtain WEEE disposal license:

- 1) Sound facilities for WEEE disposal
- 2) Plans for WEEE which cannot be fully disposed of
- 3) Appropriate equipment for WEEE disposal
- 4) Specialized personnel

Labeling obligations: indicate products' toxic substances and recovery/disposal methods

Information management system and monitoring system: Disposing Enterprises shall report regularly to the department of environmental protection

Tax benefits: preferential tax treatment for Disposing Enterprises in relation to WEEE disposal activities

RELEVANT RELATED LEGISLATION

Current:

- Promoting Clean Production Law
- Law on the Prevention and Control of Environmental Pollution by Solid Waste
- Measures for the Control of Environmental Pollution by Electronic Waste
- China RoHS

Expected:

- Catalogue of Waste Electric and Electronic Products for Disposal
- Policies and Measures for WEEE Recovery and Disposal
- Measures for the Administration of Recovered Electric and Electronic Products Sold After Repair

China WEEE Regulations

The Regulations on the Administration of the Recovery and Disposal Of Waste Electrical and Electronic Products (WEEE Regulations), promulgated on 25 February 2009 and effective as of January 1, 2011, aims at establishing a system for the disposal and recovery of waste electric and electrical products, both China-made and imported, together with a set of penalties for infringers which range from fines up to RMB500,000 to revocation of relevant operational licenses and to the shut down of the infringing enterprise. The State Council's department of environmental protection has a primary role in the coordination and enforcement of the WEEE Regulations, and coordinates with the departments of comprehensive utilization of resources and of industry and information technology.

In particular, the WEEE Regulations, which is in fact a complement to China's Restrictions on Hazardous Substances (RoHS Regulations) implemented in 2006, set forth a unified regime which applies to all activities of:

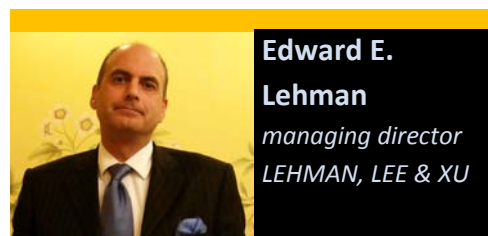
- Disassembling waste electric and electronic products;
- Extracting substances from such products to be used as raw materials or fuels;
- Reducing the quantity of existing waste electric and electronic products by means of modifying their physical properties or chemical composition, and reducing or eliminating their hazardous substances;
- Collecting such treated products and disposing of them in landfills.

The activities of product repair/refurbishment and the re-utilization of such products as second-hand goods are expressly excluded from the range of the WEEE Regulations.

In addition to establishing a licensing system for enterprises involved in said activities, the WEEE Regulations set forth labeling obligations on manufacturers, according to which information such as relevant toxic or hazardous substances and methods for recovery/disposal has to be indicated on the products or their instruction manuals.

A Catalogue listing the specific products subject to the Regulations will be issued by the government in the future, and a dedicated governmental fund will be established to be used as allowance for activities of recovery and disposal of electric and electronic products. Manufacturers of electric and electronic products, consignees and their agents are required to pay some fees which will go directly into the fund.

The China's WEEE Regulations are enacted in an attempt to comply with western standards by adopting a similar system to the EU WEEE's one, but it seems there is still a lot of work to better regulate the system. The actual level of implementation and enforcement of this law remains an open question.



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Dear Readers,

Lehman, Lee & Xu welcomes you all to its monthly China Green Report, a brief insight into the environmental Chinese investment and legal climate.

The legal section of our March 09 issue focuses entirely on China's new WEEE Regulations to which we feel businesses will have to pay particular attention.

To know more about China, feel free to contact us.

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Progress

China to take binding emissions targets?

The Chinese economist Hu Angang, a direct advisor of Hu Jintao, released groundbreaking declarations recently that China would be ready to take binding emissions caps after 2012.

However, Hu suggests that the UN replace the current “Developed Countries Vs Developing Countries” with a more comprehensive and diversified classification based on a new tool – Human Development Index (HDI) – which takes into account the stage of human development of the countries and divides them into four categories. Under the new HDI system, emissions cuts are calculated not only with regard to development stage, but considering also factors like total emissions, average emissions per head and historical responsibilities, and then further divided into binding and voluntary, and would apply to a group of around 70 countries.

China would take voluntary commitment within 2010 and then binding commitment after 2012, with the aim to have its emissions peak by 2020 and then reduce to 1990 levels by 2030, and to half of 1990 levels by 2050.

Hu Angang believes that the current emissions targets are unfairly allocated to a small amount of countries. The HDI will allow a more rational and equal share of responsibilities, and would also provide an incentive for the currently bound countries to better serve the common aim of combating climate change.

Waste management enforcement has potential to breathe new life into the Yangtze

The Ministry of Environmental Protection (MEP), aimed at improving water quality by reducing waste output, has begun the process of reviewing and analyzing the pollution of the Yangtze River water. This will be the first large-scale operation of its kind taken on by the MEP since it replaced the State Environmental Protection Administration in 2008.

The MEP will also be surveying the ten tributaries of the Yangtze, checking that all factories are discharging waste material with a permit and that their discharge rates are in compliance with permit limits.

The investigation will entail determining the state of pollution for each body of water as well as its capacity to handle pollution. The Ministry will then sample the amount of wastewater generated and released by surrounding corporations and sewage treatment facilities.

After gathering this information, the MEP will be able to determine both if the enterprises are operating within the parameters of their permits, as well as conclude whether the bodies of water can withstand the current level of pollution.

The challenge of this endeavor will be to accurately survey the discharge of the enterprises bordering the rivers, as many of the surrounding provinces are home to high polluting textile and printing companies.

The Ministry has vowed to severely punish those that are dumping illegally or over the legal limit. If it does in fact follow through in carrying out a tough investigation and follow through with that threat then there is strong potential for improved water quality for the Yangtze and its tributaries.

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China going energy-efficient

By implementing technologies that are readily available on the market today, as well as investing in those not yet deployed, China has the capability to drastically reduce its overall effects on the environment by decreasing its demand for coal and its greenhouse gas emissions.

China has steadily increased its carbon efficiency over the past 15 years and has the potential to cut its reliance on coal in half by 2030 by increasing investment in cleaner energy alternatives, such as nuclear, hydroelectric, wind, and solar power.

The EcoBlock concept, developed by Harrison Fraker, a former Dean at UC Berkeley, aims to make the mass production of green buildings a practical reality. Chinese cities are currently filled with inefficient apartment blocks, while “green” designs are available in limited quantity to the wealthy individuals and businesses that can afford them.

Fraker has entered into discussion with several Chinese cities to build an EcoBlock. The EcoBlock is a net-zero water and energy and nearly net-zero waste community, with only 17% of waste requiring removal. It does this by utilizing new technology, such as the Anaerobic Digester to recycle waste.

Investing in energy efficiency is four to six percent cheaper than investing in new power plants. The major difficulty in the process, however, is the lack of initial funding. Developers have yet to see substantial government subsidies. However, the Clean Development Mechanism (CDM) can help in this sense, as energy efficiency projects may qualify as CDM bringing in additional funding for the project developers.

Investment

No drop in China's CERs floor price

The Ministry of Science and Technology's officer Lu Xuedu, who is also an alternate member of the UN CDM Executive Board, has recently announced that the NDRC will not lower the CERs floor price, which remains €8,00 for basic types of CDM projects such as large-scale hydro projects, while for other projects such as wind power the price is higher.

China has received a great deal of pressure from the Annex 1 community to lower its CERs floor price in consideration of the sharp fall in prices on the secondary market. Even if such a decision would negatively influence the amount of foreign investment in the CDM area in China, the government does not intend to move away from its position and will not grant approval to projects whose CERs price is lower than the floor price.

sCERs prices have dropped considerably from the €25,00 of July '08 to below €8,00 in February '09, and have recently made up to around €10,50. Some analysts are predicting that CERs prices will bounce back to €18,00-21,00 through 2012.

