

DEWIT  
LAW OFFICE

# NEWS LETTER

BEIJING REPRESENTATIVE OFFICE  
ISSUE 6

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

DEWIT LAW OFFICE



ROYAL MISSION TO CHINA  
- JOIN OUR SEMINARS IN  
BEIJING AND GUANGZHOU

2011: 40 YEARS OF  
SINO-BELGIAN COOPERATION  
BEIJING AND GUANGZHOU

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Dear Reader,

Over the past few months officials in both Belgium and China have been working hard preparing the Trade Mission that will be headed by HRH Prince Filip. From October 21st to October 28th, some 400 business people will travel to Beijing, Chongqing and Guangzhou to explore business opportunities in China.

Dewit Law Office will, of course, be joining the mission and is delighted to invite you to two seminars it will give in Beijing and Guangzhou. There is more about these on the next page. Whether or not you are participating in the Trade Mission, Dewit

Law Office has been compiling new articles of interest to you when doing business with or in China.

Some of you may be importing goods from China and as such be affected by the United Nations Convention on Contracts for the International Sale of Goods. Abbreviated as CISG, this treaty

offers a uniform international sales law covering the obligations and rights of both buyer and seller.

While CISG is used to avoid complex questions about the law applicable to the cooperation between you and your Chinese business partner, it does not cover all situations. In such cases, reference to International Private Law may be necessary. Our newsletter briefly introduces the Chinese solution to conflicts of law.

In a next article, we explain the success of Hong Kong as a location for establishing a company when doing business in China.

Finally, we explain to those of you moving to China how to take your pet with you.

Best regards,  
Bernard Dewit

# HOT TOPIC : ROYAL MISSION TO CHINA

Join our seminars in Beijing and Guangzhou



China's economy is developing at tremendous pace and taking on spectacular proportions through which it is marking out its position in the

international market. Ever since the start of diplomatic relations 40 years ago, China and

Belgium have been important trade partners. One year after the Shanghai Expo 2010, where the Belgian pavilion was among the most successful, a Trade Mission is being organized for October 21st and 28th this year. Headed by HRH Prince Filip, participants in the mission will travel to Beijing, Chongqing and Guangzhou.

While all Belgian companies can rely on the high profile of the Mission to ease the start-up or further development of commercial projects in or with China, special focus will be on transport and logistics, clean-tech, life sciences and healthcare, construction and infrastructure, as well as ICT.

**"Belgian companies can depend on the high profile of the Royal Mission to ease the start-up or further development of commercial projects in or with China."**

During the mission, many events will be organized jointly by the Belgian Foreign Trade Agency in cooperation with the regional export organizations Flanders Investment & Trade (FIT), Agence Wallone à l'Exportation et aux Investissements Etrangers (AWEX) and Brussels Export.

Besides networking and matchmaking events, a broad range of seminars will be organized. Dewit Law Office is proud to present two of these occasions.

→  
**In Beijing, Monday 24 October 2011 (AM)**

- Topic: What makes my foreign Chinese business a success?
- Venue Address: Shangri-La, China World Hotel Summit Wing, 1 Jianguomenwai Avenue, Beijing

See the attached flyer for more details about the lecturers and topics.



**In Guangzhou, Thursday 27 October (PM)**

- Topic: Efficient Logistics in Europe, The Belgian Business Proposal
- Venue Address: Grand Hyatt Hotel, 12 Zhujiang West Road, Pearl River New City, Tianhe District, Guangzhou

Note the dates in your diary and send an e-mail to [f.vanparys@dewitlawoffice.cn](mailto:f.vanparys@dewitlawoffice.cn) if you would like to register or would like more information.



# CONVENTION ON THE INTERNATIONAL SALE OF GOODS (CISG)

The Convention on Contracts for the International Sale of Goods (also known as 'CISG') was adopted on the 11 April 1980 by the United Nations. With international trade and business growing steadily since the CISG was first adopted, the importance of the convention also been increasing. At present, no fewer than 76 countries are member states to the treaty, with Turkey and Dominican Republic the most recent members. The CISG will enter into force in Benin in August next year. The CISG has applied to China and Belgium since January 1988 and November 1997 respectively.

## Aim:

Drawn up under the auspices of the United Nations, the CISG has an international character and aims to promote a uniform set of rules that can be applied worldwide, regardless of the background of the parties involved in a contract for the international sale of goods.

The convention governs the formation of the contract (i.e. when the acceptance of an offer becomes effective). It further provides clear rules about the obligations and rights of both seller and buyer, arising from the contract for the international sale of goods. As such it deals with issues as:

- On the seller's side: delivery of the goods and

handing over of documents; conformity of the goods and third-party claims;

- On the buyer's side: payment of price; taking of delivery;
- Remedies for (anticipatory) breach of contract by either party; damages; interest; effects of avoidance, etc.

However, the CISG does not deal with the validity of a contract or the effect on the property in the goods sold.

## Application:

In accordance with Article 1 CISG, the convention applies to contracts of sale of goods between parties whose places of business are in different states and:

- (a) Those states are contracting states of CISG; or
- (b) When the rules of international private law lead to the application of the law of such a

contracting state.

In cases involving a contract of sale of goods concluded between a party in China and another in Belgium, the CISG can be applicable based on option

- (a) above. However, when acceding to the treaty, China explicitly declared itself not bound by option (b).

## Scope:

Although the convention applies to the international sale of goods, some movables are

expressly excluded from its scope, namely sales:

- (a) of goods bought for personal, family or household use, unless the seller, at any time before or on conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;
- (b) by auction;
- (c) on execution or otherwise by authority of law;
- (d) of stocks, shares, investment securities, negotiable instruments or money;
- (e) of ships, vessels, hovercraft or aircraft.

## Conclusion:

The UN Convention on Contracts for the International Sale of Goods is a useful document that provides clear guidance and allows predictability regarding the respective rights and obligations of both parties of a contract for the international sale of goods. Its main asset is its uniform application worldwide, regardless of the legal system of the parties' home countries. The CISG may also prove a useful and fair alternative that favours neither party by moving away from the national law of either one. The CISG indeed provides international business players with a careful balance between the interests of buyer and seller.

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.

"To provide a modern, uniform and fair regime for contracts for the international sale of goods"

Purpose of the CISG

## INTRODUCTION TO CHINA'S INTERNATIONAL PRIVATE LAW

Convention on Contracts for the Contrary to what its name seems to imply, 'international private law' is

not a piece of international legislation. It is a country's national law applicable to an international situation that may occur. An

example of such an international situation is the case of a Frenchman hitting an English tourist when on a business trip in Germany. The international private law will determine which country's law will be applicable, which courts will be competent, and how other countries may recognize and execute the judgment.

When business and interpersonal relations go beyond borders, knowing the applicable law and competent courts can be a complex issue. This article provides you some useful explanations and advice.

Belgium's Code on international private law entered into force in 2004 and covers questions related to natural persons, marriage

and union, descent and adoption, maintenance payments and succession. It further deals with goods, obligations, legal persons, insolvency and trusts.

So far China has no uniform code on international private law. However, many such provisions are scattered over various national laws:

- **General Principles of the civil law (1986), Chapter VIII : Application of law in civil relations with foreigners:**

→ Deals with priority of international treaties, capacity, ownership of immovables,

parties to a contract and choice of law, infringing acts, marriage, maintenance payments in case of divorce, and succession;

- **Civil procedure law (1991), Part IV: Special provisions for procedure of civil actions involving foreigners:**

→ Contains general principles and further deals with jurisdiction, service and period, custody of property, arbitration and judicial assistance;

- **Law on the application of law for foreign-related civil relations (2010):**

→ Covers civil subjects, marriage and family, inheritance, real right, creditor's rights, and intellectual property rights; These, as well as the notices of the Supreme People's Court on international private law, may have an impact on the international situation you are involved in when doing business with, or working and living in China.



# UNRAVELLING HONG KONG'S MYSTERIES

Hong Kong became a colony of the British Empire after the latter defeated China during the first Opium War (1839-1842). It was returned to China only in 1997 under the principle 'one country, two systems'. As so-called 'special administrative region' (SAR), Hong Kong's political system is indeed distinct from that of mainland China and maintains many features from the common law system.

Hong Kong has become an attractive destination for business, not only for foreign investors using the SAR as a transit stop for investment in mainland China, but also for investors from mainland China itself. The SAR offers high-quality banking services, qualified corporate secretarial services, a stable investment environment, well-educated employees and attractive tax policies. It therefore comes as no surprise to see that

**All you need to know for a pleasant visit and stay in China as an expat'**

many investors, either MNOs or SMEs have established headquarters in Hong Kong to explore the market in the Asia-Pacific region or even worldwide.

This article provides a brief introduction to the corporate and taxation law of Hong Kong.

## Corporate law

Main advantages:

- Fast establishment: it takes around one week to complete the process;
- Cheap establishment: the registered capital may be as low as one (1) HKD;
- Practical establishment: it suffices to be registered at a legal address without having the need to lease office space; at the same time, no other employees are required besides a so-called company secretary, a position that can be filled by your company's accountant.

## Main corporate types

- Company (public or private company; limited or unlimited company; HK company or overseas company);
  - Sole proprietorship;
  - Partnership.
- Most favoured by foreign investors is the private limited liability company (by shares). A sole proprietorship implies a business run by one person having unlimited liability as to all debts professionally incurred. Partnerships are commonly established in order to share

benefits gained from business conducted and owned by more than one investor. These can be either a general partnership or a limited partnership.

## Taxation law

While 'charming' is a word not often associated with taxation, Hong Kong's policy would form a nice candidate for this description. The profit tax rate for corporations is 16.5% and as low as 15% for unincorporated businesses, a preferential 5% withholding tax rate applies to the repatriation of profits, and a number of taxes known in other territories do not apply to Hong Kong (e.g. capital gains tax, value-added tax, goods and services tax or sales tax, estate tax and domestic withholding taxes on dividends/interest/royalties).

Both China and Belgium have concluded favourable double tax arrangement/treaties with Hong Kong SAR. However, aware of the use and abuse of Hong Kong for evading or avoiding tax, China's State Administration of Taxation (SAT) has taken measures aimed at restricting the use of Hong Kong without conducting actual business there. According to Article 2 of the Corporate Tax Law an offshore company may be considered a PRC tax resident in accordance with the principle of place of effective management. Moreover, Article 94 of the Implementation Measures for Special Tax Adjustments formulates the legal basis for denying double tax treaty benefits for special purpose vehicles (SPV) lacking economic substance.

# HOW TO TAKE YOUR PET TO CHINA

As clearly explained in Jared Diamond's bestseller *Guns, Germs and Steel*, people started domesticating animals thousands of years ago. Animals domesticated for food or work are called 'livestock', while those domesticated for home companionship can be referred to as 'pets'. Anno 2011, people keep all kinds of pets. Cats, dogs, rabbits, birds, turtles and fish are quite common. Tigers, snakes and monkeys are less likely to qualify as 'domesticated', but are nevertheless sometimes 'tamed' and kept as

pets.

Those of you moving to China may wish to take their pets along as part of the family. The answer to the question of whether this is possible, is positive... at least insofar as your friend is a dog or a cat. In accordance with the Law on the Entry and Exit of Animal and Plant Quarantine, dogs and cats are indeed the only pets allowed entry provided the following procedure is followed. Before transporting your pet to China, you should prepare two certificates: i.e. a health guarantee certificate and a rabies vaccination certification, issued by the competent authorities in your home country. An official translation to Chinese authorized and legalized by the Chinese Embassy or Consulate of your home country is required. Upon arrival in China, you will be asked to fill out the 'Quarantine declaration form on entry' and to declare your pet when going through Customs. Bear in mind that each passenger is allowed to carry one pet

only. For a period of 30 days your pet will be quarantined and if no problems occur a 'Quarantine Certificate' will be issued for your pet, after which you can take your pet to its new home. To enter your city, however, you still need to apply for a licence for your pet: after obtaining approval from the Security Administration Division of the local Public Security Bureau you can register your pet, together with two colour photos of it, at the same PSB and receive the required licence to enter the city.

While the above describes the national law, every city may have slightly different rules. It is therefore recommended that you make all necessary inquiries at your local police station or PSB. Additionally, take care to apply for a local health certificate and a local rabies vaccination when you plan to travel through China with your pet, either by plane or train. These can be obtained at the local quarantine governmental department of the Chinese city of departure.



# NEWS FROM CHINA

## 3<sup>rd</sup> China Overseas Investment Fair

On 8 and 9 November the China Industrial Overseas Development & Planning Association and China Development will jointly host the 3<sup>rd</sup> China Overseas Investment Fair. Approved by China's National Development and Reform Commission, COIFAIR offers a variety of investment opportunities and projects to promote bilateral and multilateral cooperation in international investment, to attract investment and financing for building an outbound investment cooperation platform in China. COIFAIR brings together Chinese as well as foreign companies, financial institutions, governmental agencies, international organizations, research institutions and non-profit organizations.

This year's edition provides a special focus on key industries such as advanced manufacturing and technology, (new) energy and energy conservation, finance, mining, infrastructure and real estate, agriculture, environment protection and modern services.

The forum's venue is the China World Trade Center in Beijing. For more information, please visit COIFAIR's official website: <http://www.coifair.org>.

## Interim Measures for Participation in the Social Insurance System by Foreigners Working within the Territory of China

As set out in Dewit Law Office's previous newsletter, a new Social Insurance Law entered into force on 1 July. Whereas the application of this law to foreigners working in China remained vague, a discussion draft holding detailed measures was released on 10 June and transformed into the Interim Measures for Participation in the Social Insurance System by Foreigners Employed in China. These measures enter into force on 15 October 2011, directly affecting all foreign employees and their employers other than those nationals coming from countries China has concluded a treaty on social security with (at time of release: Germany and South Korea).

### Who will be affected:

The system applies to foreign nationals (including those from Taiwan, Hong Kong and Macau) working in Mainland China, either with a work permit, foreign expert certificate or foreign journalist ID card. The system not only applies to those foreigners directly employed by a Chinese company but also to those who have been outsourced to work in China by their foreign headquarters.

As such, foreigners working for branches or representative offices are also covered by the law and measures.

### What will be covered:

The system consists of five categories where social security insurance is mandatory: basic pension fund, basic medical insurance, work-related injury insurance, unemployment insurance and maternity insurance.

### Practical organization – signing up:

Social insurance agencies will issue a nationwide social insurance number and card to those foreigners who fall under the social security system. Both employee and employer have to make contributions to the insurance fund.

### Practical organization – signing out:

If a foreign employee leaves China before turning 60, he or she can choose between either of the following options:

- Individual account put on hold until the time the employee returns to continue his/her employment in China;
- One-off payment of the balance of the basic pension fund (employee paid part only) in the individual account, following a written application of termination.

If a foreign employee wants to take up his/her basic pension benefits after having left China, he/she is required to provide proof of existence on a yearly basis, and whenever the Ministry of Human Resources and Social Security (MOHRSS) deems necessary. This obligation does not apply to the foreigner taking up his or her pension benefits while residing in China.

### Conclusion:

While the system provides protection for foreigners working in China, it also raises the question of how to avoid double social security fees for those foreigners who are mandatorily subject to their home country's system already. Further, a lot will depend on the way the local competent authorities will put this law and its measures in place... It remains a story to be continued...

## New Chinese tax rates and limits

The newly revised Law on Individual Income Tax came into effect on 1 September 2011. It entitles local staff to a fixed monthly deduction of 3,500 CNY (compared with 2,500 CNY before), while foreign expatriates remain entitled to a monthly deduction of 4,800 CNY. Tax rates have been adapted as well: while before entry into force of the revised IIT law China applied a progressive scale of nine (9) tax rates from 5% to 45%, the system has now been simplified to apply a scale of seven (7) different rates from 3% to 45%. The



system has been designed to impose higher tax rates on people with higher incomes (e.g. before the amendment, a 25% rate applied on monthly taxable incomes above 20,000 CNY, while the same rate is applicable now as from incomes above 9,000 CNY. On the contrary it favours poor people by including monthly incomes up to 4,500 CNY in the 10% tax scale, while before only incomes up to 2,000 CNY could benefit from this 10% rate.

## M&A of domestic companies by foreign investors

*On 1 September 2011, Announcement No. 35 "Provisions of the Ministry of Commerce on the Implementation of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors" also came into effect. This announcement concerns the review of M&A activities in light of the Chinese nation's security.*

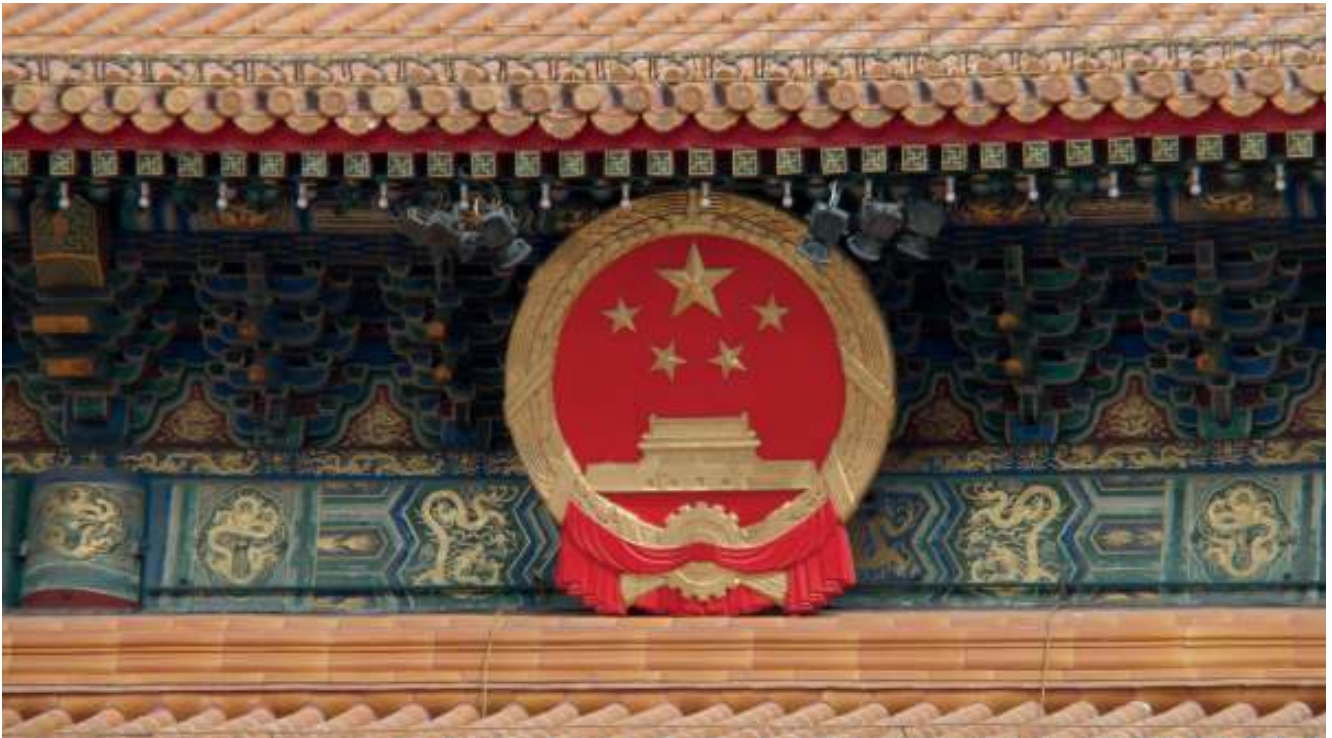
Whether the M&A activity falls under the scope of the security reviews or not depends on the actual contents of commercial activities as well as its impact on national security. According to the announcement, foreign investors applying for M&A of a domestic company should apply for security review at the same time,

failing which their application for M&A will be suspended. The application for security review shall include but be not limited to providing a basic introduction as to the business activities, detailed description of the impact on the nation's security, etc.

## Academic Ranking of World Universities – 2011

According to the Academic Ranking of World Universities – 2011, both Belgian and Chinese universities have obtained good results. Ghent University is the only Belgian university in the Top 100. The Catholic University of Leuven, as well as Louvain, came next followed by the University Libre Bruxelles. The universities of Antwerp and Liège were ranked between 200 and 300, while the Vrije University Brussel was listed between 400 and 500.

As regards Chinese universities, the University of Science and Technology of China and Zhejiang University obtained rankings between 200 and 300. The China Agricultural University, Huazhong University of Science and Technology, Shandong University, Sichuan University and Sun Yatsen University were placed between 300 and 400. More than 10 other Chinese universities obtained rankings between 400 and 500.



# 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



## 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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W: [WWW.DEWITLAWOFFICE.BE](http://WWW.DEWITLAWOFFICE.BE)

## 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](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>

