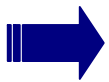


Welcome to the October 2009 edition of Pragma's China Newsletter, prepared by Jesa



News from Jesa



by Saro Capozzoli
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Unemployment rate, together with other economic figures, is the 2009 nightmare of global economies. China, like any other country, is coping with it and is trying to boost as much as possible job creation.

Considering that China has roughly 6.11 million fresh graduates from June, and a dwindling number of jobs, the central Government has to deal with a large amount of concerned graduates.

In order to face this situation effectively, the central Government is encouraging the million graduates to become employed "in flexible way" by opening their own business if necessary. New graduates are taking advantage of governmental monetary incentive – up to RMB 50.000 loan – to start their own business. Shanghai Government also allows in same case the payment of the registered capital by installments. Hangzhou Province offers between RMB 50.000 to RMB 200.000 for start up business.

The flexible employment approach has a big potential in China with the development of the economy, will also boost the modern service industry and create new jobs. Since the beginning of 2009, provincial governments, business corporations, HR companies and universities have been jointly working in the attempt of remedying supply and demand concerns in the labour market.

Graduates employment is encouraged through internship programs and post-graduate training classes.

For instance, the Shanghai Government Human Resource and Social Security Bureau and Randstad – the world's second-largest recruitment and HR company – have launched an internship program that aims to help both China-based employers and China's young graduates. The internship experience allows the young people to build soft skills and communication skills. Moreover in a moment of economic downturn, when companies start freezing employment activities, the government is giving some minor corporate incentives to those business that hire interns. Other Government, such as Tianjing and Guangzhou are launching internship programs similar to Shanghai's one. Guangdong Province, for instance, has created a student internship program to recruit 315.000 graduates and signed an agreement with 48 enterprises to hire interns.

The Shanghai Maritime University together with the Shanghai Zhenhua Heavy Industry Co., Ltd has signed an agreement on setting-up "post bachelor" courses that allow students to study for one year with a salary. This has been decided in the attempt to boost talent for high tech industry and promote employment rate among university students. The one year course cover mechanical engineering and equipment manufacture and according to Zhengua, 20% of the students in the class will be eliminated because of their scores, while the rest will be employed directly by the company.

Above described actions stimulated by the Government lead the country to an unemployment rate in urban area at 4.3% that is stable for some time. The Minister Yin Weimin has also announced that the country has created 7.57 million new jobs from the beginning of 2009, around 84% of its annual goal. The Central Government will invest also more money to ensure a stable and constant job creation in the country.

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What is Jesa?



Pragma's and Jesa's logos in Shanghai

Jesa is a service company headquartered in Shanghai specialising in facilitating start-up of new industrial productions while providing reliable management and control solutions. We operate 4 main branches in China and a foreign office in Ulaan Baatar (Mongolia).

Since 1998, Jesa has built a team of 70 specialized employees in addition to 25 save technicians following "in loco" projects. Commercial relationships are exclusive and strictly confidential, ensuring the highest expertise on every single commercial and technical issue.

Jesa is a leader in managing manufacturing processes and eliminating any industrial and regulatory problems while helping our clients financial resources and time.

Jesa is currently expanding its services providing support to those companies seeking to develop distribution network and retail system in China as well as in Mongolia.

We also perform HR audit and investment analysis (trouble-shooting analysis) to verify performances in support to companies already established in China, and we provide tax and accounting consultancy.

The banking system in China

The banking system in China has undergone deep changes in the last two decades. The reform started in 1994, and the Commercial Banking Law took effect in July 1995. As a result, local banks are now more similar to the banks worldwide. Still, there are some differences as the Chinese banking system is controlled by the State and it is extensively regulated.

There are two Supervisory Bodies. The People's Bank of China (PBOC) is the central bank that implements the monetary policy in the country. The PBOC keeps running the clearing and settlement systems and manages official foreign exchange and gold reserves. It supervises the State Administration of Foreign Exchange (SAFE) that is in charge of the foreign-exchange regulations.

Since April 2003, China Banking Regulatory Commission (CBRC) is fully operative in order to take over the supervisory role of the PBOC. The main purpose of that reform has been to improve the regulation and supervision responsibilities of the financial system leaving to the PBOC the task to focus on the macro economy and currency policy.

Among the Domestic Key Players there are four state-owned commercial banks, the so called "Big Four" that are the Bank of China, the China Construction Bank, the Industrial and Commercial Bank of China and the Agricultural Bank of China.

- The Industrial & Commerce Bank of China (ICBC) is the largest bank in China by total assets, total employees and total customers. It is the major lender to customers based in the urban and industrial areas.
- The Bank of China (BOC) specializes in foreign-exchange transactions and trade related finance. It is the Chinese bank with the most important network abroad.
- The China Construction Bank (CCB) specializes in medium and long-term financing for long term specialized projects, such as infrastructure projects and urban housing development.
- The Agriculture Bank of China (ABC) specializes in providing financing to China's agricultural sector and offers wholesale and retail banking services in the agricultural areas of the country.

In 1994, three new "Policy Banks" were established: the Agricultural Development Bank of China (ADBC), China Development Bank (CDB), and the Export-Import Bank of China (Chexim). The objective was to take over the government-directed spending functions of the four state-owned commercial banks. These banks are responsible for assisting the projects that are receiving investments from the State and for financing the trade development

There are also the Small Commercial Banks, in addition to the big four state-owned commercial banks. The largest ones in this group include the Bank of Communications, China Everbright Bank, CITIC Industrial Bank, Hua Xia Bank, Guangdong Development Bank, China Minsheng Bank (the only private bank), China Merchants Bank, Shenzhen Development Bank, Shanghai Pudong Development Bank. These banks have a more flexible structure and they can adjust quicker to the market needs than the big four.

The entry of China into the WTO in December 2001 and the subsequent liberalization, has offered to the Foreign Banks the opportunity to enter into the Chinese market. As at June 2009, there are 33 foreign banks with a subsidiary incorporated in China. The number of branches of foreign banks is 103. Finally, there are 234 representatives' offices of foreign banks. At the moment and with restrictions depending on the type of their status, the foreign banks may provide foreign and local currencies services to all kind of clients.

There are three Italian Banks with a branch in Shanghai: Unicredit Banca di Roma, Intesa SanPaolo (both of them with the local currency Renminbi license) and Monte Paschi di Siena (without said license).

As far as the banking services are concerned, PBOC has introduced in the last two decades many new regulations to encouraged banks to diversify their services and to increase their support to the private sector and individual consumers.

One important step of the reform has been the decision of PBOC to start decontrolling the interest rates for the local currency RMB. The aim to this reorganization is to have interest rates that are driven by the market forces i.e. supply and demand. As a result, at present there are 34 categories of interest rates in respect of the 114 in 1996. PBOC still is fixing the grids of the interest rates on the deposits accounts and the lending transactions. The full liberalization of interest rates is expected to take much longer, considering the scale of this reform.

This reform implies also the liberalization of the interest rates of the foreign currencies. The process is going ahead as PBOC as already unified the foreign currencies interest rates policies for both Chinese and foreign banks in China and the local or foreign companies.

It is worth mentioning that the RMB is not freely convertible on the international Forex markets but may be exchanged in China and in accordance with the relevant regulations. There are in place plans to start using RMB in cross-border trade with some countries and to issue RMB denominated bonds in Hong Kong. These developments prove the willingness of China to make its currency more international but, it will take years before reaching the full convertibility.

A tremendous boost has occurred in the Credit and Debit cards business during the last few years. By the end of the first quarter of 2009, about 1.89 billion bank cards have been issued in China. Of these cards 1.74 billion were debit cards, while the rest 150.5 million were credit cards. At the beginning of 2009, China had approximately 1.84 million POS machines and 167,500 ATM. About 1.18 million merchants in China accept banking cards. China's state-owned commercial banks may issue a dual-currency card, allowing cardholders to purchase goods within China in RMB and overseas in US dollars. One major obstacle to an even wider diffusion of the credit cards and consumers' lending is the lack of a national credit data monitoring system to provide credit information for banks to evaluate individual loan applicants. In fact, in 2002, the Shanghai Information Office and the PBOC branch established the first personal credit data organization involving 15 commercial banks. The PBOC is currently evaluating the feasibility of establishing a nationwide Credit Bureau.

The domestic electronic payment system works well and allows making transfers in RMB in a swift way all over the country. Unlike many other countries, cheques are not spread and are not commonly used to make payments.

In the past years Chinese banks have introduced advanced banking products such as e-banking and cash management services aimed to offer to their corporate customers the best tools to compete in the domestic and international arenas.

It is vital to remind that the Chinese banking system is still broadly regulated and all the relevant banking services and procedures are still subject to many regulations issued by different bodies. The easiest way to bear in mind this aspect is to consider that **"all transactions and procedures are forbidden if not authorized"**. In fact, there are many rules but they are very clear and transparent and it is crucial to follow them all the time.

Finally, it is essential that the foreign investor is aware of the financial environment in China especially at the beginning of the investment process. It is much better to plan the different steps knowing how the relevant regulations work in order to avoid delays and waste of resources at a later stage.

How to register a trademark in China

(with the contribution of Emanuela Verecchia, attorney at De Simone & Partners)

Trademark registration in China is based on the principle of the "first-to-file". Therefore, the first person/entity who files the application will acquire the right to registration. The registration procedure usually takes 2-3 years and the protection will take effects only from the date in which the trademark has been registered and not from the filing date. For this reason, it is suggested to start with the filing procedure well in advance the official beginning of commercial activity. The consequences of not having registered the trademark can vary from the impossibility to sell the products in the Chinese market to the borderline case of being forced to purchase one's own trademark, which has been illegally registered by someone else.

Applicant can follow two possible ways of registering a trademark in China:

- 1) International Registration with World Intellectual Property Organization (WIPO) in Geneva;
- 2) National Registration with the Chinese Trademark Office (SIPO) in Beijing.

The decision as to the best protection strategy to be adopted shall be carefully evaluated with a qualified Intellectual Property Professional on a case by case basis. For all foreign firms and citizens not registered in China that are willing to file a trademark application directly with the Chinese Trademark Office, it is mandatory to appoint a representative. The applicant should also provide a translation of his/her name and address into Chinese characters. If the company wants to rely on a local agent for the trademark registration, it is strongly recommended to assess all credentials and professional titles of the agent because starting 2001, the professional access to this profession in China is not longer regulated or subjected to any examination. This means that anyone in China can be a *trademark agent* (even with no titles or training) just by having a limited liability company and a license released by the Chinese Authorities. Keep in mind that the trademark protection in China is not extended to Hong Kong and Macao. Also Taiwan and Singapore are an independent jurisdictions. For all these territories it is necessary to seek protection separately. Here below the main steps for the trademark registration. Before filing a trademark application, it is strongly recommended to assess whether any identical or confusingly similar trademarks already exist in China for the goods or services of interest.

Secondly, the trademark has to comply with all legal requirements of the Chinese regulations. For instance, it is forbidden to register a trademark whose meaning in Chinese is either purely descriptive or offensive and discriminative. Once an application has been submitted, it is important to monitor the market in order to minimize risks of having a third party registering any similar or identical trademarks. The watch service is provided at worldwide level through special IP-related databases. Finally, when the registration has been completed, it is mandatory to use the trademark within 3 years otherwise your trademark stop being an enforceable title towards third parties. Therefore it is recommended to keep evidence of use. The registration is valid for 10 years and renewable for other ten years each time.

Transliterations into Chinese characters.

One of the strategic factors when entering the Chinese Market is registering and using also a Chinese transliteration of a trademark, because this helps the Chinese consumers to more easily remember and familiarise with a foreign brand.

There are three ways of transliterating a trademark into Chinese characters:

- 1) simply seeking the assonance with the original name, independently on its meaning (i.e. *Armani* is called *AMaNi*, *Ferrari*: *FaLaLi*, *Louis Vuitton*: *LuYi WeiDeng*);
- 2) to take into account the semantic core of the original brand, independently on the phonetic similarity (i.e. *Volkswagen*, which in German means “*the car of the people*” in China is known as *DaZhong*, Great Mass; *Apple* is called “*PingGuo*”, which in Mandarin means “apple”)
- 2) the best way of transliterating a name into Chinese is combining the phonetic similarity with a pleasant and appropriate meaning (i.e. *Coca-Cola* is called in Chinese “*Kekou KeLe*”, which means “*delicious for the mouth*”, *Carrefour* is *Jialefu=Happy and Rich Home*, *IKEA* is “*YiJia*=comfortable home).

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