

WHO is WHO?

1. Introduction

While dealing with all kind of legal matters, you always have to deal with the question, whom am I talking to. As lawyer I never had any big problem with that¹. Once I had a case in which my client had been fired by the employer, who filed a request to the Court. Everyone knew the employer under the name X, but because of some basic check, I have learned to do in the Registers of the Chamber of Commerce, I found out that the real name of that legal person was Y. This knowledge gave me an extra argument in the negotiations on the terms of ending the working relationship. Basically this kind of check in the Chamber of Commerce is to make sure if the person representing a firm is allowed to do so and if there are no other possible problems like bankruptcy.

In the Netherlands this kind of basic check is very easy to do. We have one Chamber of Commerce in which every organisation with any liability has to be registered. If not registered, you will have to deal with the private persons doing business with you. Their signature and there identity are than the base for possible legal actions. So if anyone comes to you saying he/she is acting for an organisation, you can easily control this yourself with one request to the Chamber of Commerce. If you deal with a private person you can ask the local authorities to get an extract of their administration to confirm the actual address.

On basis of the address-registration/confirmation you can, if necessary start any legal procedure for and against legal and private persons. For many countries in the world this system is more or less the same. On <http://www.hrasg.ch/eng/welt-e.htm> a list of Chambers of Commerce all over the world has been published. For China, only Hong Kong is listed. How does this than work for China Mainland? A question that seems to be important with the current increase of Chinese-Foreign trade relations. Is there a way in China to see if Who is really Who?

For an answer to this question I will first make a historical reference, then I go through the Chinese Law and Regulations, as far as retrieved, after which I will check some alternatives, in the meantime pointing out some weak aspects of the currents system and come up with some conclusions.

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2. Historical point of view

China has been relatively isolated in its development of law and legal matters like the registration of legal and private persons. In Macao the Portuguese have had some influence. In Hong Kong, the English influence has put its marks on the legal system.

For the rest, China has its own tradition that is based on harmony. Conflicts have to be avoided; they can result in great discord. This is often referred to as Confucianism, a tradition that has a history of more than 2000 years. This totally different point of view also explains the current differences in the legal system, and in particular that of the registration of legal and private persons. Confrontation is still avoided and because the control of someone's identity can be seen as a confrontation, not showing your good faith, the system works differently in China.

If confrontation is avoided, there is no need for a system to backup possible problems. While in the Western World the legalists have prevailed, the Confucians did so in China. The "Enforcement of law by authority was a tacit admission that the cultivation of virtue through education has failed"². The dislike of the law or laws (also mentioned as fa), is reflected in the common expression of China: "One does not read the codes".

Of course also in China there has been some legalist influences. As anyone knows yin and yang as two opposite factors, li (used for the moral code) and fa are also seen as serving two distinct purposes making China being governed by a dual authority. "The long history of Chinese imperial culture serves as testimony to the fact that these dual sources of authority reinforced each other in support of a system that, despite crises, survived the rise and fall of successive dynasties for almost two millennia of Chinese history"³.

The majority of disputes in China have been resolved through the use of mediation. The governing structure, using only a little amount of people, didn't leave much possibility and was kept alive till the collapse of the Qing dynasty in 1912. Litigation was also avoided because of the high costs and the risk of having an essentially civil matter converted into a penal issue⁴. Because "the person of

² Legal traditions and systems: an international handbook, (A.N. Katz ed., 1986): Peoples Republic of China, R.C. DeAngelis, p. 245.

³ China Quarterly no 9 (January-March, 1962): The Role of Law in Traditional, Nationalist, and Communist China, F. Michael, p. 130.

⁴ See note 1, R.C. DeAngelis, p. 251.

greatest moral virtue is not the one with the more legitimate interests, but the one who is willing to yield more of his legitimate interests in order to restore harmony with his opponent”⁵, the need for a system to push people to Court, to fight for the legitimate interests, is nullified. The result of all that can still be found in the harsh but flexible statutory code.

The period from 1912 till 1949 can be described very briefly. From 1912 till 1916 a first attempt of reforms, following some earlier attempts in the Qing dynasty, to enforce a more modern criminal and civil code, stranded in the sudden death of Yuan, the ruler of that time. From 1916 till 1928 is mentioned as the warlord period and was dominated by militarist factions. In 1928 the Kuomintang unified the country again, but that only lasted till 1937. In this period a serious attempt to bring China’s legal system in line with Western practice was undertaken. Because of the short period, the new ideas never reached the heart of Chinese Society and the rural areas. The bits that had been enforced have been thrown out by the Communists as being part of the corrupt bourgeois culture.

In the period of 1937 till the end of the war the Japanese superiority pushed the Chinese authorities to central China. In 1947 a civil war between the Nationalists (Kuomintang) and the Communists made all the restarted efforts to come to a halt. In 1949 the Chinese Communist Party put the country (Mainland China) under a Marxist political, social and legal ruling. For thirty years no codes of substantive or procedural law have been enforced. Almost everything was considered a political act and if the Party didn’t like it, it was dealt with correspondently. The antirightist campaign that began in 1957 virtually destroyed China’s legal system⁶.

It was only in December 1982 that a new Constitution was promulgated and a start of restoring some fundamental civil rights and legal systems was made. In the last decade of the last millennium a real start of a change from rule of man to rule of law was engaged, and which reforms are still taking place, very much pushed by China entering into the WTO. All efforts are aimed to establish a good base for economical developments and many of the other laws and regulations are following. It is in this that some interesting developments can be placed.

⁵ Courts: A Comparative and Political Analysis (Chicago, 1981), M. Shapiro, p.158.

⁶ see note 1, R.C. DeAngelis, p 256.

3. General Principles of Civil Law (effective from 1987-01-01)

a. Private Persons

In article 11 of the above mentioned General Principles of Civil Law is defined that any adult has full capacity for civil conduct, starting from the age of 16 under the special circumstances. A person between 10 and 16 has limited capacity for civil conduct and children under the age of ten have no capacity for civil conduct and have to be represented by his agent ad litem.

In article 15 General Principles of Civil Law is defined that the habitual residence is regarded as the domicile. Reading this article does not show much logic. It first states that the place where someone has its residence registered is the domicile, but then it puts the habitual residence at first place. This is going to be problematic, because the Civil Procedure Law mentions in article 110 that the address of each party as well of each witness has to be clearly set when filing a bill of complaint. Unclear is therefore which address is meant and how the habitual residence can be verified for that one is the one that is not registered.

b. Legal Entities

In the General Principles of Civil Law legal entities, non private persons, are divided in five categories: Individual business (article 26), Individual Partnership (article 30), Legal Persons (article 36), Enterprises as legal person (article 41) and Institute or social organization as legal person (article 50).

Individual businesses are run by individual citizens who have been registered and approved to engage in industrial or commercial operation and they may adopt a shop name. The liability is covered by the individual's property, or the family's property if the business is run by a family (article 29).

Individual partnership is some kind of association based on an agreement, in which liability has to be set forth. Still in article 34 it is set that all partners shall bear liability. This liability is proportioned by article 35, on bases of the respective contributions to the investments or on bases of the agreement made. A partnership shall be registered with the shop's name, if any, and can conduct business within the range as approved and registered (article 33).

Legal persons have to be established in accordance with the law, possess the necessary property or funds, have its own name, organization and premises and an ability to independently bear civil liability (article 37). A legal person is represented by its legal representative, as set by law or in the articles of the association of the legal person. The domicile is the place where the main administrative office is located (article 39).

An enterprise as legal person is in fact the same as a legal person, but the enterprise is owned by the people or by a collective, but it has to be on top of that approved and registered by the competent authority (article 41). A Chinese-foreign equity joint venture or a Chinese-foreign contractual joint venture or foreign-capital enterprise, shall also qualified as a legal person if it meets the same qualifications and has been approved and registered by the administrative agency for industry and commerce. An enterprise bears liability for the operational activities of its legal representatives and other personnel (article 43). Any changes made to the enterprise (having effect on the liability) have to be registered and published (article 44). In article 49 it is stated that the legal representative may be given administrative sanctions and fined, or even be criminal prosecuted, but the liability stays with the legal person under all circumstances.

An institute or social organization as legal person can be: an independently funded official organ. Depending on the law, it will have to be registered or not (article 50).

c. Conclusion

Based on the General Principles of Civil Law only the enterprise as a legal person keeps individual liability out of legal procedures. An institute or social organization has to be considered likewise, although it is not stipulated that explicitly in the law.

All other forms of contractual parties will have individual liability in one form of the other. Some are in full extent, when the appropriate regulations of registration and approval are not followed, the signing individual bears full liability under article 11 of the General Principles of Civil Law.

It is therefore very important to not only check the registered information of the company, but also the individual information of the persons involved if you ever want to have any chance to bring someone to Court.

4. Registration of legal persons

From the previous chapter it has become clear that some legal persons have to be and some can be registered:

- individual business and their shop name
- individual partnership and the shop's name
- enterprise as a legal person, by the competent authority
- institute or social organisation as a legal person: when the law instructs so

As far as could be found at this time, mainly through searches on the Internet for English texts (http://www1.moftec.gov.cn/moftec_en/index.html), there are the following regulations which are of importance in finding out which registration is being used and how they are used:

- Regulations on the Administration of Registration of Partnership Business (1997-11-19)
- Partnership Business Law of the People's Republic of China (1997-08-01)
- Regulations of the People's Republic of China on Company Registration (1994-07-01)
- Company Law of the People's Republic of China (1994-07-01)
- Provisions on Administration of Enterprise Name Registration (1991-09-01)
- Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations (1988-07-01)
- Interim Regulations for the Registration and Administration of Enterprises in the Economic and Technological Development Zone of Shandong Province (1986-01-21)
- Regulations for the Registration and Administration of Enterprises in the Tianjin Economic and Technological Development Zone (1985-07-20)
- Provisional Regulations on the Registration of Names of Industrial and Commercial Enterprises (1985-06-15)
- Measures for the Administration of the Registration of Enterprises in the Dalian Economic and Technological Development Zone (1984-10-15)
- Regulations on the Administration of the Registration of Enterprises in the Xiamen Special Economic Zone (1984-07-14)
- Tentative Procedures for the Registration and Administration of Enterprises in the Guangzhou Economic and Technological Zone (1984-04-09)
- Detailed Rules for the Implementation of Registration and Administration of Enterprises in Shenzhen Special Economic Zone (1984-02-09)

As can be seen, the special Economic Zones have had the first regulations concerning legal persons and creating possibilities for them to act as legal person. From 1988 the first steps for a more open approach for economic activities have been realised, but it took till 1997 to give individuals a better possibility.

Private, individual business

It also becomes clear that there is no special regulation yet for the individual business to register their business, although local rules still prescribes in practice that every business needs to have approval, a license. As only certain companies have an export-license, that allows them to deal with foreign companies, it is know that Chinese entrepreneurs need to have a business-license. This also follows out the regulations as set by the Dutch Immigration Office when Chinese people want to visit the Netherlands. Those people have to show that they have enough income, and in case of a private owned business, self-employed, they have to show their business-license. From my practice as lawyer and through my personal contacts I also happen to know that many of these little companies don't have such a business-license, sometimes because they cannot get it because there business is out of the scope of the local authorities, sometimes because the requested fees are very high, but mainly because they don't care.

Individual Partnership

In 1997 it has become possible for individual Partnerships to register their company as a legal entity. In article 1 of the Partnership Business Law of the People's Republic of China it is mentioned that this law has the purpose to protect the legitimate rights and interest of partnership business and their partners, thus protecting the social and economic order. In article 5 the use of "limited" or "limited liability" in their title is forbidden, so making clear that it is a (full) unlimited liability In article 66 a fine of maximum 2000 RMB is set of the illegal use of the word "limited". Article 3 and 8 make clear that there has to be a written agreement to have an individual partnership business.

In the mentioned agreement must be stated the names and residence of the partners (article 13, sub 3). Registration can only be done after the ID-cards have been shown to the proper business registration authority (article 15). The registration results in a business license (article 17), without which it is not allowed to do business. For every subsidiary a new registration has to be established at the local business registration authority (article 18).

Partners are to be considered as fully representative, but the powers given to a partner can be influenced by the agreement (article 25). Article 31 summarizes the situations in which unanimous agreement is necessary from all partners.

Article 38 protects third parties from unauthorised actions of a partner, as long as the third party is uninformed and bona fide. Article 39 to 43 arranges the liability and the way it has to be calculated. Basically it means that if the property of the Partnership business is not enough, the partners have to pay in full and they cannot deduct any debts/credits which they have of their own business.

Any change in the partnership should be reported to the registration authority (article 2 of the Regulations on the Administration of Registration of Partnership Business, further regulations). For that purpose a new agreement has to be drafted and again all formalities have to be fulfilled (article 56 of the Partnership Business Law). It is unclear if the procedure itself can be handled through faster because it is in effect the same time of business with almost the same people... Article 19 of the regulations gives some more details, but it clearly leaves space for extra local rules. Also liquidation seems to be arranged in a more Western way as where is explicitly stipulated that the liquidation costs have to be paid first (article 61).

The Registration authority involved is the Administrative Department for Industry and Commerce. They are responsible for the whole country (article 4 of the regulations). There is also a second layer, for a more local registration, but reading the Regulations, it is a double check, so both and not one only.

Every year the organ of registration will ask to submit information for the annual checking's. It is not clear if at that point in time also a residence-check is done. Hence the registration and protection following the registration of the name of an enterprise is arranged in the Provisions of Enterprise Name Registration and to be fulfilled by the same organ as registering the companies, another possibility to check the identity of a company is available, and it prohibits the double use of the same name for a similar company.

Administrative sanctions to protect the stipulations of this law are relatively low. Amounts from 2000 till 5000 RMB are mentioned, and the worst-case scenario is that the business registration is revoked. If the actions constitute a crime, than still criminal prosecution can follow.

Companies

In the Company Law of the People's Republic of China the definition of company is made as a limited liability company or a joint stock company limited. Legal persons and enterprises as legal person seem to be regulated through this law and the regulations concerned.

The first big difference with the individual business and the individual partnership is of course the liability, which is now limited to the amount of investment made by the shareholder (article 3 of the Company Law). It has to use the words "limited liability" in its name (article 9), or "joint stock companies limited" if applicable.

Limited Liability Company

The location of the main office is the address of the company (article 10). Registration can only be done when the company meet the requirements as set in the law (article 8). In the registration of a limited liability company should be mentioned not only the legal representatives of the company but also the names of shareholders and their rights and obligations (article 22). The company itself has to keep track of the addresses of the shareholders (article 31). Branch Companies are not a legal entity (article 39 of the regulations), but will have to be registered at the place of residence of the branch and than a (local) business license will be issued (article 40 of the regulations).

The minimal registered capital should be between 100.000 RMB and 500.000 RMB, depending on the kind of business, but it can also be set higher by separate law or administrative decrees (article 23 of the Company Law).

Solely state-owned company

Beside the limited liability company, there also is the solely state-owned company (article 64). This is also a limited liability company, but than, as the word already says, fully state-owned. There seem to be no separate measures taken for the liability claims.

Joint Stock Company limited

A joint stock company limited can be set up following the requirements in article 73 and has a minimum capital of 10.000.000 RMB (article 78). This amount can, like with the limited liability company, be set higher in separate laws and administrative decrees. Article 79 defines that name and address of the company has to be set in the association charter, and also it should mention whom is/are the legal representative(s). After the conclusion of the establishment the company has

to be registered with mentioning the address of the legal representative, and the name and addresses of the members of the board of directors and of the supervisory committee. In article 17 under 6 and in article 18 under 8 of the Regulations is mentioned that documents specifying the name and residence and for the legal representative a certificate of identification have to be submitted. It is not stated what kind of documents that have to be.

In article 152 is given the requirements to fulfil for the shares to be listed. The capital here has to be minimum 50.000.000 RMB, the company has had to profitable over the last three years and has to have a clean record. In articles 206 and further some legal responsibilities are set, including administrative fines and a possible criminal prosecution. Article 214 states the responsibilities of the director, supervisor or manager when abusing their powers and can be kept liable for his actions. The fines for abusing the name of a limited liability or a joint stock company limited are being set much higher than for the abuse of the individual partnership, namely 10.000 RMB up to 100.000 RMB. Civil responsibility precedes the administrative fines and the pecuniary penalty.

Conclusion

From all of these regulations follows that shop names have to be registered to prevent others to abuse your name. Beside that the individual partnership, the limited liability company and the joint stock company limited have to be registered. All these registers are kept by the Administrative Department for Industry and Commerce. So there is one place to find confirmation. Unclear stays if the annual checks and local rules also secure the address of the people involved when dealing with individual partnership.

5. The Chinese Chambers of Commerce

Unlikely with the Dutch and other Western Chambers of Commerce, they seem to be only there for improving business possibilities of their members. They are organised per branch and they don't cover all companies for that branch. There seems to be no actual need to be member of a Chamber of Commerce.

The only exception on this rule is the Hong Kong Chamber of Commerce, which can be found on: <http://www.info.gov.hk/cr>. This Chamber of Commerce now falls under the regime of the Hong Kong Special Administrative Region, but it clearly has its old English roots.

The China Chamber of Commerce for Import and Export of Machinery and Electronic Products has a clearly documented website: <http://www.cccme.cn.net/eng/shjj.htm>). They organize companies that do have a trading permit for foreign trade. They have a mediation facility and provide all kinds of services to their members.

The China Chamber of Commerce for Import and Export of Textile has a more simplified website and on <http://www.ccct.org.cn/> some basic background information can be found. They characterize their task as: "Coordination, Guidance, Consultation and Service".

The China Chamber of Commerce for the Import and Export of Light Industrial Products & Arts Crafts has a website situated under MOFTEC (the Ministry of Foreign Trade and Economic Cooperation of China): http://www1.moftec.gov.cn/moftec_en/coc/coc_01_en.html. It again works on a voluntary base to research, safeguard, organize, participate, inform and exchange for its members.

The Chamber of Commerce Food and Agricultural Byproducts can be found on website <http://www.agriffchina.com/e-aggriffchina/index.asp> and shows the listed members per area in China. Again no full list of all companies active, only the ones listed as member.

Some other links are:

www.cccmc.org.cn, for the Chamber of Commerce for Chemical products, but the English page is not functioning.

www.chinamet.com, for the Chamber of Commerce for Machinery and Electronics, which claims to have built a tremendous database of Chinese suppliers and products of Machinery and Electronics. www.cccmhpie.org.cn/, for Medicines and Health Products, only in Chinese and the last one found: www.chinca.org/english/123/index1.htm, for the International Contractors Association. This name is giving a better description of the task and roll the different Chambers of Commerce at this moment fulfil in China: association.

China Council for the Promotion of International Trade

Beside the Chambers of Commerce there is a long existing organisation, the CCPIT and they have a very good documented website: www.ccpit.org. It lists all its major departments and their phone numbers, fax and email addresses. They act as arbitrator and therefore can be helpful in solving disputes. They help in conciliation and if necessary they can act in Sino-foreign disputes to bring a case to Court.

On their website is also to be found the Provisions on Guiding Foreign Investment Direction of February 21st, 2002. It can be found under Appendix II. Reading these provisions makes clear that the main purpose is still to protect the inner market. For obtaining a license (when necessary), the Department of Foreign Economy and Trade has to be asked (article 12 of the provisions). So this gives another option for a check on a China based company.

6. Identification of Private Persons

Any chain is as strong as the weakest link. This surely also counts for the identification of private persons in China. For the registration of certain business-types an ID-card has to be presented. Sometimes it is mentioned that documents specifying the name and residence is needed, or it is said that a certificate of identification has to be shown. A private person can get into an agreement without showing any ID-card, but they can be asked to show it. Officially all Chinese citizens from the age of 16 should have one.

Address

Article 3 of the Regulations of the People's Republic of China Concerning Resident Identity Cards states that the ID-card should include the address. The ID-card is provided by the authorities where the residence is registered (article 6 of the Regulations of the People's Republic of China Concerning Resident Identity Cards).

The first ID-card is given for the age of 16 to 25 with a validity of 10 years. The second one, for the age of 26 to 45 is given with the validity of 20 years. The last one is given with an indefinite validity (article 4 of the Regulations of the People's Republic of China Concerning Resident Identity Cards). Article 8 points out that if some items of the ID-card changes, the bearer has to apply for a replacement. There is no sanction, nor time limit to do so. Because of the fact that in the Civil Procedure law is stipulated that the habitual address is the domicile, that means it can sometimes be very hard to trace someone to have a proper conduct in Court.

Because immigration inside China is still not welcomed, lots of problems occur for the people that have gone east, to the Coast. They are not locally registered, but they have their habitual address in some big city. Their children are also not registered anymore, because their original hukou is still in the registered residence and that is the place where the children have to be registered ⁷.

Reliability of the kept records

Furthermore because of the Communist Revolution in 1949, in particular the antirightist campaign in 1957 and later also the Cultural Revolution, the old system has been abolished and not many old records have been kept. Almost everything has to be reconstructed.

⁷ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 37

What will be the reliability of the current records of the elderly people? The ID-card is based on the hukou, and is provided by the authorities where the residence is registered. The Hukou system has been enforced in 1958 with the Regulations concerning the Household Registration of the PRC ⁸.

After the first start in 1958, many changes and adaptations have been made ⁹, all to influence the migration of the people within China. From a closed system to keep the agricultural sector safe, to a system, allowing migration but not directly to the biggest cities, and with some conditions, hoping to improve the living conditions of the people migrating. The current target is to let grow the smaller cities and give the peasants a change.

The hukou registers are not centralised, although there is a full Administrative System for Birth Registration (with a National Level, a Provincial or Municipal Level, a City/County Level and a Grass-root Level), the information seems to be only being kept at the so called Grass-root Level, the Police Station (or the township government where there is no police station). If this registration is being lost, by example because of fire, there is no backup system. Showing the “hukou ben” the household register booklet can than be used to restore the local register.

Also the news was spread that this hukou-system is going to be abolished and replaced by an employment registration system ¹⁰. One month later the Vice Minister of Public Security, Bao Suixian made clear that the old hukou-system is not going to be abolished, not now, nor in the future ¹¹. The only change will be that the current difference between the country and the city type of hukou is going to disappear ¹².

The hukou is based on the registration done after the birth of a child. Needed is a birth-confirmation of the doctor or nurse assisting, mostly form the hospital, which is being given in triple. With that form, the child can be added to the hukou of the mother, and if she is registered in another hukou, most likely of the family/household she is living, than the child is added to that hukou.

⁸ The Child's Right to Birth Registration – International and Chinese Perspectives, Liu Huawen, in a paper written for the Norwegian Institute of Human Rights in Oslo, Autumn 2002, p11.

⁹ Small City, Big Solution? China's Hukou System Reform and Its Potential Impacts in DISP 151, Mark Yaolin Wang, 2002, p 24.

¹⁰ China Daily, Decades-old Residence System Being Replaced, January 11th, 2002

¹¹ South China Morning Post, Household Registration System Plays Virtual Role, Says Minister, February 26th, 2002

¹² Xinhua News Agency, China to Cut Limits on Population Mobility, February 25th, 2002

The term “relevant foster organ” is interpreted very widely. If someone is employed with a state company or a big working-unit or studying at the University, that person can be registered at the jiti-hukou of that firm or the hukou of that school. There is no separate birth-registration as we have in the Netherlands. There are no birth certificates. The only thing that can be obtained for that is a notary certificate. In the hukou is registered: the name, sex, nationality, birth date, birth place, guardian and relations, address, registration alteration, etc...

If the hukou is lost, the original birth-confirmation is to be shown, or if lucky, the local authorities have your registration still in archive and a copy can be rendered. Nor in the hukou, nor in the archives any photo is being kept. Furthermore, the money still makes it possible for obtaining the needed birth confirmation. It is possible to be registered even after many years after birth¹³, while officially only within one month after birth.

This is important because under the one-child policy, many children have never been registered. According to UNICEF data the estimated birth registration for children in China is about 90%¹⁴. They can not get registered on the normal way, so to obtain an ID-card they likely have to use other tricks: like for example using someone else’s name. It is also proven easy to falsify ID-cards¹⁵. Still now children are not registered when they are born. This happens mostly when they are born without the proper permission. Whenever you want to get a child, you need to have prior permission to do so. If a child is born, social pressure will be put on the mother and/or the parents to give the child away. If they resist that pressure, they have to cope with a fine that equals a one or two year salary¹⁶. This is mostly not possible, and therefore the parents choose not to register the child. The registration is only done after the fine is paid¹⁷.

This conflicting situation, a law to prevent an uncontrolled growth of the population and the wish to register all born children, in combination with the old facts, make that individual registration does not always have to be in order. A certain extra attention for this aspect can be very important for later possible problems.

¹³ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 38

¹⁴ The Child’s Right to Birth Registration – International and Chinese Perspectives, Liu Huawen, in a paper written for the Norwegian Institute of Human Rights in Oslo, Autumn 2002, p14

¹⁵ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 39

¹⁶ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 21

¹⁷ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 38

The (new) ID-card

Of course the ID-card should be accepted as enough prove of someone's identity. What is important in this matter is that also a totally new type of ID-card is under development. These so called second generation ID-cards have 24 genloci, DNA-information of the bearer. They already are experimenting with these new cards in Chongqing ¹⁸. Some more improvements on this ID-card are on their way: the addition of an integrated circuit and fingerprints.

Also the passport can be accepted as a legal identification. To obtain a passport, an individual has to not only show his ID-card, but also his hukou-registration ¹⁹. There are still four types of passports, but the so-called public passports, also called the foreign affairs-passports are more and more getting out of fashion. The diplomatic and the service passports are still in use and provided by the Ministry of Foreign Relations.

If wanted it is possible to check the address, if someone is still officially registered. This has to be done by local Law firms or other intermediates, because else it will be considered as an interference with internal affairs. If the ID-card provided is authentic, than that should be enough to control someone's identity. The same counts for the hukou or the passport. If the person makes clear that he changed address without notifying the proper authorities, which is common, than his address and identity can never more be checked for sure. Because the hukou has no photo on it, the hukou check is maybe not enough to establish someone's identity.

¹⁸ Shanghai Star, Genetic ID Card Debuts in China, June 27th, 2002

¹⁹ Ambtsbericht Nederlands Ministerie van Buitenlandse Zaken, China, March 2003, p. 40

7. Conclusion

After an extensive search in Chinese law and regulations, it seems to be more and more possible to objectively check Chinese background information of legal entities. Even for private persons the developments with the new ID-card and the possibility to get a passport easier, makes that the controllability of someone's identity is improving. Keeping some weak points in mind, you can be relatively safe when doing business with Chinese legal entities.

Through the central registration of all companies you can get a certainty about the validity of a company. The fact that a company is not registered does not automatically mean that the Chinese person in front of you is wrongdoing. Remember the saying: "One does not read the codes". It is not strange to ask who is the legal representative of a company and it is not strange to ask for the proper person to deal with. Even with a not officially existing, a not authorized person the negotiations can be done, as long as the final signature is being placed by the person that is fully authorized and registered as such.

Waalwijk, May 22th, 2003

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