

**LET'S BREAK WHAT WE JUST BUILT -**  
**THE POLITICAL AND SOCIAL CLIMATE FOR CHINESE**  
**INVESTMENT IN POLAND**

A lawyer sharing his views with the broader public is a mixed blessing at any time of the year. When a lawyer adopts his work – which he's not allowed to discuss to any level of detail anyway – as a springboard for broader remarks about social trends and the public sphere, we come dangerously close to a bar room soliloquy, with the night wearing on and the bottom of the punch bowl in sight – the stuff of New Year's parties in their terminal stages. Thus warned, please bear with me.

Even from my modest vantage point of a lawyer at a Warsaw law firm coordinating the work of its Chinese Desk, I have had occasion to observe that occasional diplomatic tensions between China and the European Union tend to, indirectly yet measurably, influence the business climate as regards Chinese investment in Poland. The climate as such is certainly there, if only due to the fact that – due to reasons which I hope to elaborate upon in future editions of this newsletter – a Chinese investor who sets up as much as a shelf company in Poland benefits from improved ease of access to other European Union markets, such as Germany right next door (which, as the recent statistics show, seems to have emerged from its economic downturn). Some of our political leaders, however, have been less than single-minded in fostering it.

A classic, if somewhat dated case in point is provided by the Polish visit of the Tibetan government in exile in December 2008 and its meetings with President Nicolas Sarkozy of France (who was also in the country at the moment) and with our own ex-dissident and ex-president Lech Walesa. These events have been broadly covered by the European press, as has the displeasure expressed by the Chinese government. Events such as this form part of a pattern; Polish notables have been as vocal as any of their European Union counterparts in criticising China over its internal issues. In the spring of 2008, Poland's Prime Minister Donald Tusk was among the first international leaders to announce that he will boycott the opening of the Olympic Games in Beijing; as the Japan Times commented at the time, it's not whether or not Poland is a global power (I hasten to add that it isn't), it's a question of face for the Chinese organisers of a sporting event. Over the subsequent months, we couldn't help but see that some of our Chinese contacts have taken note of Tusk's gesture, and that they were less than pleased.

In a lesser known development, the same Prime Minister Tusk did go to Beijing a mere two months after shunning the Beijing Olympics, with a delegation of Polish businesspeople and officials in tow. This time, as I understand, the talk was of trade, and the tone was technocratic; no lofty appeals were to be heard. His Chinese hosts could be forgiven for thinking that, perhaps, the Poles ought to make up their minds.

Back in December 2008, the Chinese displeasure centred on President Sarkozy. The French ambassador to Beijing was duly summoned by his hosts to receive their complaint. Forgive me for stating the obvious, but the very fact that France posts a diplomat of such high rank to Beijing makes one wonder about French determination go bare-knuckles with China over imponderables. Readers of this newsletter will recall that, not so long ago, a major business dispute in China (turning on issues of industrial property, but not only) featured Danone as a key protagonist. The case of Carrefour, meanwhile, has been a study in how foreign companies in China are adapting their operations in light of the new antimonopoly law.

At the time, some of us here at GESSEL were wondering how long it will take for Chinese and French officials to put this altercation behind them and to get back to business. As the recent high-level French delegation to China (with sale of Airbus airliners and all – although Chinese engineers will probably be tempted to retrofit them with a better jet engine of their own) demonstrates, we were right as to the inevitability of such rapprochement – it was a question of “when”, not “if”.

My belief, rooted partly in my own experiences growing up in 1980s Poland, is in bilateral cooperation. Where I come from, complex internal issues are living memory, as are foreign attempts to somehow shape them. A stock exchange in Warsaw with a capitalisation which – even in these relatively lean years – tends to exceed that of Vienna, an economy with a positive growth rate even in 2009 (as the only one among the EU member states), and foreign companies – Chinese ones included – bidding for a piece of the long overdue highway construction boom... These Polish successes came about not because of the preaching or boycotts of presidents or prime ministers, but because farsighted leaders at less visible levels of government and business persevered in the complex and unsung work of engagement at least since the 1980s.

This, of course, would be a bad time for Poland to rest on its laurels (or, indeed, to risk offending prospective investors). The Warsaw Stock Exchange, while robust (to witness only the success of the IPO by WGPW S.A., its operator), is not immune to occasional nervousness – of the sort, for example, generated by the recent talk of tampering with the national retirement scheme

so as to reduce today's budget deficit at the expense of future retirees (of course, another way to generate cash flow would be to accelerate privatisation of state assets – sale of shares in PKO BP, Poland's largest retail bank, now held by the State Treasury promises to be a major event in 2011). As for transport infrastructure projects, while public procurement lawyers continue to rack up long hours, the road and rail networks are barely improving; deals involving railway and highway contractors (such as the intense competition for PNI) are expected to generate a considerable volume of equity transactions in the coming years, especially as the European Union aid programme (from which many of the ongoing projects are financed) moves to its next phase and funding becomes harder to come by... Again, some of the points noted above should make for a fitting backdrop to some of the comments of a more legal nature which we hope to share with you in future editions.

Poland was one of the first countries to recognise the People's Republic of China in 1949, a gesture which, in subtle ways, continues to resonate even today. At the same time – as Changlin Ma, Economic and Commercial Counsellor at the Chinese Embassy in Warsaw remarked in comments carried by the International Herald Tribune last autumn – while members of the Polish business community do have an interest in business relations with China, this good will is impeded through lack of understanding for Chinese sensitivities.

My modest wish for the coming year would be that the leaders of Poland (and other European Union countries) are slightly more focused in their dealings with the Chinese government and business spheres – that they muster the discipline not to mix business and politics more than they have to. As matters stand, we in the EU are working with China, China is working with us and, generally, both parties seem happy with this cooperation. Accordingly, it would only be common sense if we stopped petulantly treading on each other's toes. A New Year's resolution, perhaps? As for the last of that punch, please let me drink it to your health in a new, better 2011.

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