

China RoHS

An Updated Roadmap to Achieving Compliance and Assessing Risks

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What's in it for me?

- **What?** Obligations under new Chinese legislation (“China RoHS”) impacting the electronics industry.
- **When?** Currently (mainly) labeling and information requirements only (phase 1); substance ban in the near future (phase 2).
- **For whom?** Manufacturers and importers of “Electronic Information Products” into China.
- **Exemptions?** Several - carefully assess your position under China RoHS.
- **Different from EU RoHS?** Yes. Although largely copied from EU RoHS, there are major differences.

Section 1

Background

Background Information

- ★ *Measures for the Administration of the Control of Pollution by Electronic Information Product* (“China RoHS”)

- ★ Promulgated on February 28, 2006

- ★ By the Ministry of Information Industry (“MII”) and a host of other agencies

- ★ Modeled after EU RoHS(?):

- ★ six EU RoHS substances (Pb, Cd, Cr-VI, Hg, PBBs, PBDEs)

- ★ discretion to include other hazardous substances

- ★ Applies in two phases:

- ★ **Phase 1** - March 1, 2007: requirements for labeling, packaging, design, manufacturing and sale

- ★ **Phase 2** – upcoming (date unknown): substance ban

Note on Legal Background in China

- ★ Legal text in China RoHS and various other legal documents
 - ★ EIP list, upcoming EIP Catalog, Standards, etc.
- ★ Various guidance documents
 - ★ FAQ documents, General rule on EPUP, etc.
- ★ No official translations available

- ★ Chinese legal system is different from those in the U.S./EU:
 - ★ Deliberately broad/vague wording, allowing the authorities to determine the scope of law
 - ★ Enforcement risks unclear
 - ★ Chinese officials and court system difficult to approach
- ★ Government interpretations equally important as the letter of the law
 - ★ FAQ documents contain “regulations” that are not explicit in China RoHS text itself

Section 2

Is your product an EIP subject to China RoHS?

What is an EIP?

- ★ Definition of Electronic Information Product (Article 3 China RoHS Law)
 - ★ Product (including components and accessories) produced using electronic information technology, *including* the following categories:
 - ★ electronic radar products, electronic communication products, broadcast & television products, computer products, household electronic products, electronic measurement and instrument products, electronic products for special use, electronic component products, electronic application products, electronic material and accessories
- ★ EIP list
 - ★ Lists over 1,800 EIPs
 - ★ Originally thought to be merely representative; General FAQ now explains that EIP list is all inclusive (General FAQs, Q27)
 - ★ According to General FAQs, Q27, if your EIP is not in the EIP list, it is not subject to China RoHS

EIP vs. EEE

- ★ EIP list includes components and accessories – they are subject to China RoHS
- ★ Scope of EIP list is somewhat different from scope of EU RoHS
 - ★ China RoHS does not include, among other things, white goods (refrigerators, washing machines) (General FAQs, Q13)
 - ★ China RoHS does include, among other things, medical equipment, monitoring and control instruments, radar equipment, blank CDs/DVDs, et cetera
 - ★ And does also include batteries (listed in EIP list)

Which EIPs are Subject to China RoHS?

- ★ EIPs manufactured on or after March 1, 2007 (General FAQs, Q32)
- ★ EIPs for sale in People's Republic of China
 - ★ Hong Kong, Taiwan and Macau are not PRC
 - ★ Does include “*special equipment products used in electronic industry*” (General FAQs, Q20), but exemption for sales within one legal entity (General FAQs, Q46)
- ★ Products not subject to China RoHS
 - ★ EIPs manufactured prior to March 1, 2007
 - ★ EIPs to be exported outside of China
 - ★ EIP components imported into or manufactured in China for assembly into finished EIP that will be (re-)exported outside of China
 - ★ Exempt products (arms, automotive, others)

Section 3

If your product is an EIP subject to China RoHS, it must comply with the following (labeling) requirements

Complying with China RoHS – Phase I

- ★ Effective March 1, 2007, all EIPs subject to China RoHS must comply with labeling requirements
 - ★ 2 labeling requirements:
 - ★ Recyclability marking (may require EPUP, hazardous/toxic substances information disclosure, and date imprint)
 - ★ Packaging material disclosure
 - ★ But no hazardous substances ban (yet)
- ★ Additional requirements on packaging, design, manufacturing and sale of EIPs

Labeling Requirement 1: Recyclability Marking

- ★ Green logo
 - ★ Arrows means that it should be recycled
 - ★ “e” means that the six substances are either
 - ★ not contained in the product; or
 - ★ at levels not exceeding the MCVs
 - ★ So “e” means that the product is “environmental friendly”
- ★ Orange logo
 - ★ One or more of the six substances is/are present above the MCVs
 - ★ Numeral indicates Environmental Protection Use Period (“EPUP”)
- ★ Guidance is provided on color, placement



**Haz. substances
not present, or
present at or
below the MCVs**



**Contains
haz. substances
above MCVs**

Recyclability Marking – Cont'd

- ★ Exemption for components sold for manufacturing purposes
 - ★ Labeling not required
 - ★ Supplier must provide information required for customer (manufacturing of finished goods) to comply with labeling requirement
 - ★ Rationale: prevent double labeling – only finished goods to be labeled
 - ★ Note! If component is sold stand-alone for end use (not for manufacturing purposes), labeling is required

Orange Logo:

Environmental Protection Use Period



- ★ EPUP definition
 - ★ Term during which toxic and hazardous substances contained in EIPs will not leak out or mutate causing environmental pollution or become hazardous to human health (under normal conditions of use)
- ★ Required in case of orange logo only (one or more hazardous substances present above MCVs)
- ★ No government examination/approval required
- ★ MII encourages trade associations to develop their own EPUP standard and file such standard with MII to establish record
 - ★ Practical point: shortest time period for any component in a piece of equipment will prevail over longer periods and become the EPUP for the finished product (but batteries may be excluded)
- ★ Draft General Rule available

Orange Logo:

Hazardous/Toxic Substances Information Disclosure

- ★ Name, content, location, and recyclability of parts containing hazardous/toxic substances (in excess of MCVs) must be disclosed to consumers in product manual
 - ★ No specific concentrations required
 - ★ “X” – substance is present above MCVs
 - ★ “O” – substance not present or is at or below MCVs
 - ★ In Chinese

Component Name	Hazardous Substances or Elements					
	Lead (Pb)	Mercury (Hg)	Cadmium (Cd)	Chromium VI Compounds (Cr ⁶⁺)	Polybrominated Biphenyls (PBB)	Polybrominated Diphenyl Ethers (PBDE)
2N2222A	X	O	O	O	O	O
Enclosure, Top	X	O	O	O	O	X
Main Chassis	O	O	O	X	O	O

Orange Logo: Date Imprint

- ★ Not explicitly required under China RoHS
- ★ But required under Standards FAQs for EIPs bearing the orange logo (hazardous substances present above MCVs; Standards FAQs, Q21)
- ★ Necessary to determine starting date of EPUP
 - ★ Also necessary to determine whether subject to China RoHS at all?
Why not on green logo EIPs?
- ★ May go on the packaging
- ★ Format: Year, Year-Week, Year-Month, Year-Month-Date or the like, or in the serial number or bar code

Labeling Requirement 2: Packaging Materials Disclosure

- ★ Disclosure of materials used in packaging of any EIP
- ★ Label to be placed in a noticeable position and should not obstruct the product
- ★ **GB 18455-2001 Standard** – provides for the type, name, dimensions and colors of all packaging materials that can be reused and recycled



Section 4

Is your EIP also listed in the China RoHS Catalog (when it's published)?

Is the EIP Listed in the Catalog?

- ★ EIPs listed in the Catalog are also subject to
 - ★ Hazardous substances restrictions
 - ★ CCC and labeling requirements
- ★ What is the Catalog?
 - ★ Another list of EIPs (Catalog ≠ EIP list)
 - ★ Provides the universe of EIPs to which the substances restrictions apply
 - ★ Provides effective date for each listed EIP
- ★ Catalog to be expanded gradually over time

Section 5

If your EIP is listed in the Catalog, it must comply with the following substance restrictions and certification requirements

Catalog: Substance Restrictions

- ★ EU RoHS six substances
- ★ Maximum concentration values in MCVs Standard
- ★ To be assessed by Testing Methods Standard

- ★ MCVs: distinction between materials used:
 - ★ EIP A: general homogeneous materials (similar to EU RoHS)
 - ★ EIP B: metallic coating of each part in EIP (no intentional addition)
 - ★ EIP C: small parts that cannot be further disassembled (generally equal or less to 4mm³) (part as a whole)
- ★ Impacts on testing and measuring compliance

Catalog: Certification

- ★ Products listed in the Catalog are subject to compulsory state certification, and must be labeled accordingly
 - ★ Must obtain China Compulsory Certification (“CCC Certification”) before allowed into the Chinese market
- ★ CCC Certification:
 - ★ Existing system used for product safety certification
 - ★ Products to be tested by government-approved Chinese labs affiliated with China National Certification and Accreditation Administration (CNCA)
 - ★ Testing of components acceptable – no need to submit final product to destructive testing

Sanctions for Non-Compliance

- ★ Fines
- ★ Withdrawal of operating licenses
- ★ Shutting down of production or distribution facilities
- ★ Criminal liabilities in serious cases

Recent Developments

- Three new Chinese centers established for EIP testing/certification, training and consultation, standards development, energy conservation and recycling promotion:
 - RoHS Technology Development Center at the China Electronic Standardization Institute (CESI)
 - RoHS Testing Center at the China Electronic Product Reliability and Environmental Testing Research Institute (CEPREI)
 - CTTL Environmental Protection Center at the China Academy of Telecommunication Research (CATR)
- China Electronic News report in late June estimated 30% of producers in China have taken no action to comply; approx. 60-70 major manufacturers in strict compliance

Section 6

Final Thoughts

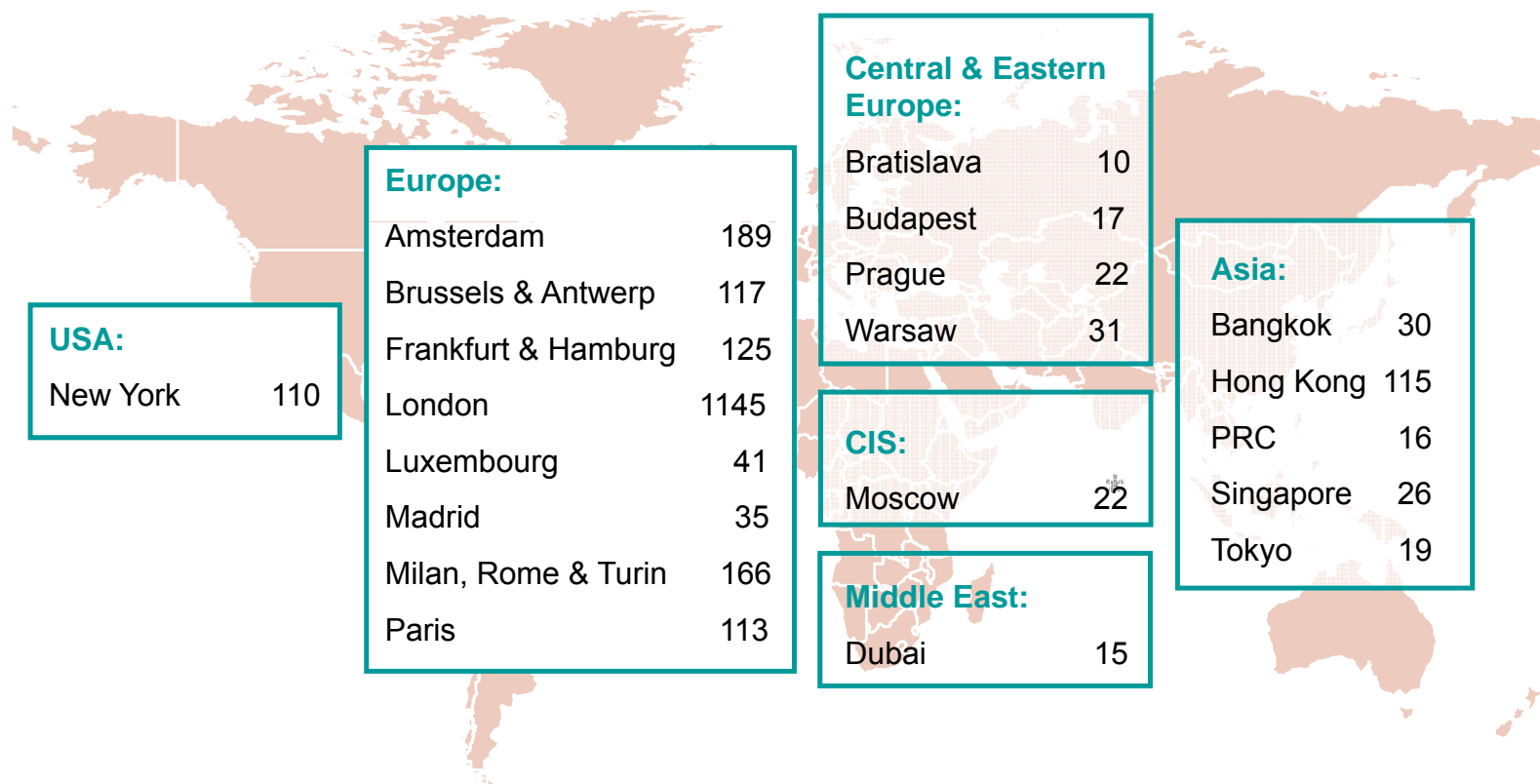
Final Thoughts

- ★ Know the law; monitor regulatory developments for new requirements
- ★ Anticipate impacts/risks to your business
 - ★ Develop and implement compliance strategy
 - ★ Identify internal compliance/performance requirements; conduct compliance “gap analysis”
 - ★ Regularly reassess your compliance strategy!
- ★ Confirm supply chain readiness
 - ★ Assess and, where possible, renegotiate contracts with suppliers, customers and distributors
 - ★ Tighten certificates of compliance, materials declarations to include new environmental requirements
- ★ Continued due diligence and compliance improvements critical
- ★ If necessary, ask for help

Thank You

Questions?

Allen & Overy's International Presence



by number of lawyers

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Annex - Key Legislative and Other Documents

- ★ China RoHS (final)
- ★ EIP list (final)
- ★ EIP Catalog (upcoming)
- ★ Standards
 - ★ Labeling Requirements Standards (final)
 - ★ Maximum Concentration Values (MCVs) Standards (final)
 - ★ Testing Methods Standards (final)
 - ★ 2001 Packaging Standards (final; legal basis outside China RoHS)
 - ★ More Standards to be expected
- ★ Frequently Asked Questions Documents by MII
 - ★ General FAQs (version February 26, 2007)
 - ★ Standards FAQs (version February 26, 2007)
- ★ General Rule on EPUP (draft)
- ★ Circular 441 (final)