



CHEMICAL INDUSTRY UPDATE

Squire, Sanders & Dempsey L.L.P.

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Putting Words to Armageddon

The severe fourth-quarter drops in chemical demand are variously described in the press and on blogs as “falling off a cliff,” “nosedive” and “the bottom falling out.” But how do you describe it in your regulatory filings – say, for example, an upcoming Form 10-K?

To help in this endeavor, we reviewed recent earnings warnings, earnings releases and Form 10-Qs to find examples of how chemical companies are describing this very difficult environment. We have gathered descriptions from a number of companies to give you an overview of how the industry is describing what it is up against. You can view these examples [here](#).

Enjoy.

[Carolyn Buller](#), Chair, Global Chemicals Practice

Anticipating and Resolving Shareholder Concerns in the Global Credit Crisis

Investors’ anxiety over the severe drop in demand in the chemical industry means public companies should prepare for more aggressive investor attention to financial performance, executive compensation and corporate governance. In their article “[Back to Basics: Stay Focused on Business, Listen to Shareholders](#),” partner Thomas R. McGuigan and senior attorney Melissa A. Plotsky from Squire Sanders’ West Palm Beach office describe how corporate leaders who reach out to shareholders by anticipating their needs and engaging them are much more likely to come through the crisis with their company-shareholder relationships intact.

Topics include executive compensation in light of the US Treasury Department’s Troubled Assets Relief Program (TARP), managing the director election process, effectively structuring communications with shareholders, and how directors can find an appropriate balance between spending time and energy on compliance with corporate governance requirements and providing guidance and strategy on the business of the company.

Published in *Miami Daily Business Review*, November 17, 2008.

Reducing the Work Force in China

Amidst severe industry downturns, companies have considered reducing employee numbers. Here is an overview of the current state of the law in China for such a reduction.

In China, reduction in staff numbers is now governed by the Labor Contract Law (LCL), effective January 1, 2008, which provides added protection for employees. Under the law, individual employees may be dismissed only on the basis of one or more specified events or circumstances expressly set forth in the law; in other words, one cannot dismiss an employee “at will.”

However, in instances in which, due to specified circumstances, an employer intends to reduce its work force by 20 or more workers, or by fewer than 20 workers but by more than 10 percent of the existing work force, the employer must first refer and explain its intentions to the workers’ trade union or to all the workers at least 30 days in advance, and take their views into account (Art. 41 LCL). The employer is also required to file details of the plan with the local labor bureau.

The law applies in the following circumstances:

- (i) Restructuring carried out pursuant to the provisions of the Enterprise Bankruptcy Law;
- (ii) Serious difficulties in production or business operations;
- (iii) When the enterprise switches production, introduces major technological innovations or adjusts its operational mode and, after modifying its labor contracts, still needs to reduce its work force; or
- (iv) When other major changes in the objective economic circumstances upon which the conclusion of the labor contracts was based render the labor contracts non-executable.

An employer is legally required to examine the opinions of the trade union and to notify the trade union in writing as to the outcome of its handling of the dismissals.

In the event of such a work force reduction, the employer must give priority to retaining the following personnel:

- (i) Those who have concluded fixed-term labor contracts with the employer for relatively long periods;
- (ii) Those who have concluded open-ended labor contracts with the employer; or
- (iii) Those who are the only breadwinner in their families and whose families have a senior citizen or a minor as a dependent (Art. 41 LCL).

If the employer hires again within six months, it must notify the formerly dismissed personnel and give them priority in hiring, provided the conditions are the same (Art. 41 LCL).

Under the LCL, severance payments must be paid on the basis of time served (Art. 47 LCL). However, if a labor contract existing on the implementation date of the LCL (January 1, 2008) is dissolved or terminated after that date, and economic compensation is payable, the number of years for which the economic compensation is payable will be counted from the implementation date of the law. This includes situations in which the employer dissolves the labor contract in accordance with Article 41 of the law.¹

Employees are paid financial compensation based upon the number of years worked for the employer, at the rate of one month's wages for each full year worked. Any period of not less than six months but not more than a year is counted as a year. The financial compensation payable to an employee for a period of less than six months is one-half of his or her monthly wage or salary. If the monthly wage or salary of an employee is higher than three times the average monthly wage or salary of employees in the local area for the preceding year as published by the local people's government in the employer's location, the rate at which financial compensation is to be paid will be capped at three times the average monthly wages of employees in that city.

¹ Beijing Labor Bureau confirms that if a nonfixed-term employment contract is terminated by the employer, the employer shall pay economic compensation on the basis of the full period of service by the employee.

Also, the maximum period of financial compensation cannot exceed 12 years (Art. 47 LCL). The term “monthly wage” refers to the employee’s average monthly wage for the 12 months prior to the dissolution or termination of the labor contract. If the working time of the employee is less than 12 months, the average wages shall be calculated based on the actual work time.

If an employer dissolves or terminates a labor contract in violation of the provisions of the law, it is liable to pay damages to the employee at twice the rate of the financial compensation provided for in Article 47 of the law (Art. 87 LCL).

It is imperative that any employers contemplating work force reductions take heed of the strict provisions of the LCL and its implementing regulations.

For more information, please contact [Daniel F. Roules](#), +86.21.6103.6309.

2009 Roundtable for General Counsel in the Chemical Industry

This third annual invitation-only event will be held on April 23 and 24 in Washington DC. General counsel will gather to hear government officials from the new administration speak on key issues including environmental and labor policies and discuss how the new regulatory environment will affect the industry.

For more information, please contact [John Nisky](#), +1.216.479.8531.

The contents of this newsletter are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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