KING&WOOD MALLESONS
金杜律师事务所

A GUIDE TO DOING BUSINESS IN THE PEOPLE'S REPUBLIC OF CHINA

2013

China remains an attractive location for international companies despite the recent slowdown in foreign direct investment in the country.

Foreign investors intending to do business in the People's Republic of China will face a challenging and complex environment, filled with a plethora of legal, cultural and political issues – which, in some respects, will differ considerably to the framework within which they are accustomed to operating in their home market. They should seek professional guidance and advice from the outset, and at each stage from market entry through to operating the business in China.

Key legal issues to be considered by foreign investors include:

- restrictions on permitted areas and levels of foreign investment
- determination of the appropriate investment vehicle
- complex central and local regulatory environments and investment approval processes
- restrictive foreign exchange controls
- labour law requirements including employment permits for expatriates (and exemptions), social insurance, protection for special classes of employees and an employee termination regime which may differ from what they are used to in their own jurisdictions
- issues regarding enforceability of Chinese and foreign court judgments and arbitral awards.

This document provides a general outline of the major legal issues relevant to doing business in the People's Republic of China as at January 2013. It is not intended to provide legal advice.

Prospective investors should always obtain specific and detailed professional advice about any proposed business activity in the People's Republic of China.

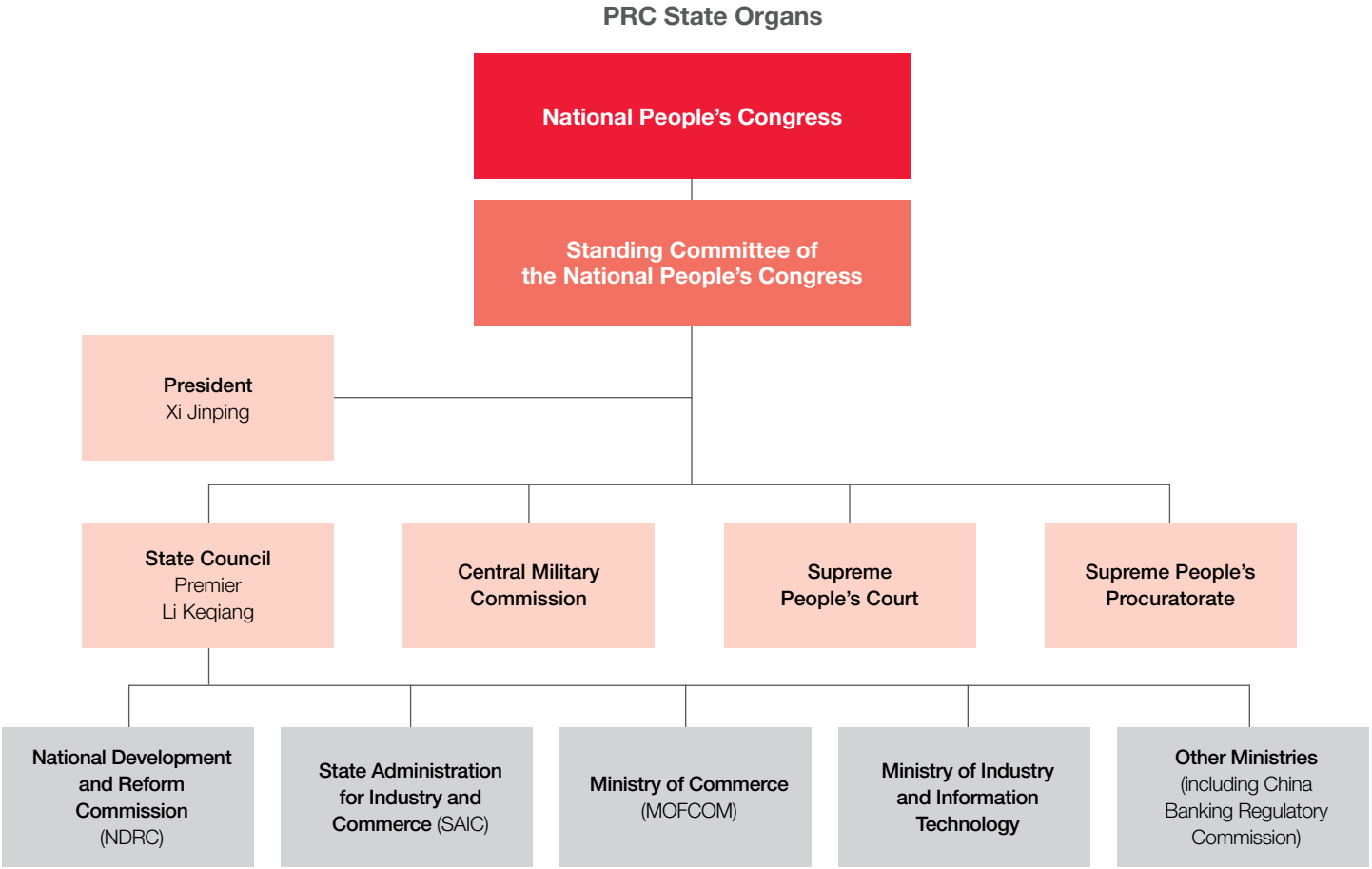
King & Wood Mallesons and SJ Berwin will join forces on 1 November 2013 in a world first combination, confirming our position as a leading global law firm.

China's political, legal and investment environment

China's foreign investment system is governed and enforced by a unique combination of central and local governmental authorities, rules and regulations.

Political system

The People's Republic of China (PRC or China) was established on 1 October 1949. The National People's Congress (NPC) is the highest authority of state power. Its powers are exercised in practice by a Standing Committee when the NPC is not in session. The State Council is the organ accountable to the NPC and is supported by various ministries, commissions and agencies, as set out below.



Legal system

Legislative powers

The NPC and its Standing Committee exercise legislative power at the national level. In addition, the State Council is authorised to adopt administrative regulations and measures in accordance with the Constitution and national laws.

The NPC and the Standing Committee are charged with supervising the enforcement of the Constitution. The latter is also responsible for interpreting the Constitution and annulling lower level legislation that conflicts with the Constitution or national laws.

China has a system of provincial and municipal government. The People's Congress in each province and municipality may also make local regulations, provided they do not contravene the Constitution or national laws.

Judiciary

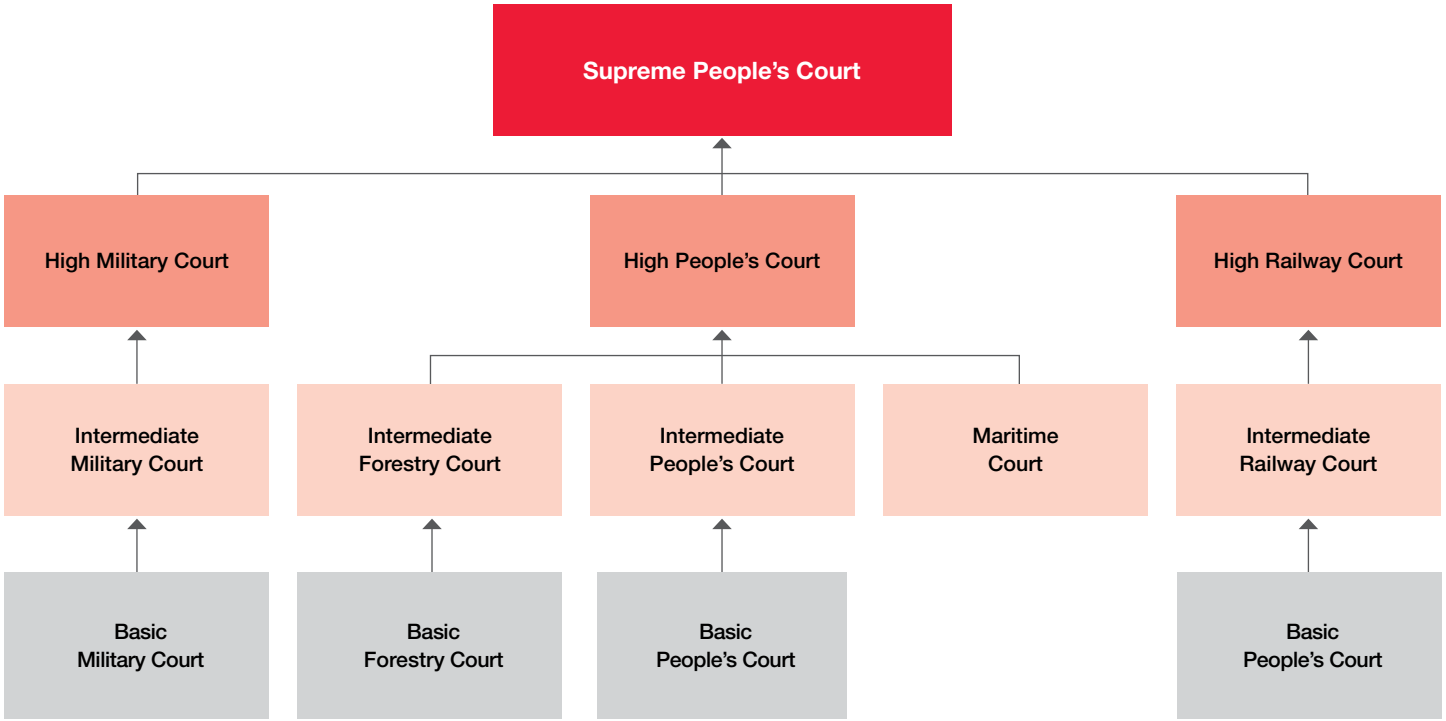
The People's Courts are the judicial organs of the state. The judiciary in practice exercises its powers independently and in accordance with the law.

The Supreme People's Court is the highest court in China. It is accountable to the NPC and its Standing Committee for its performance and the action of lower courts. Under China's constitutional structure, courts are subject to the supervision of the respective People's Congress (e.g. provincial, municipal, county) and do not exercise the power to determine the validity of laws and regulations in the PRC.

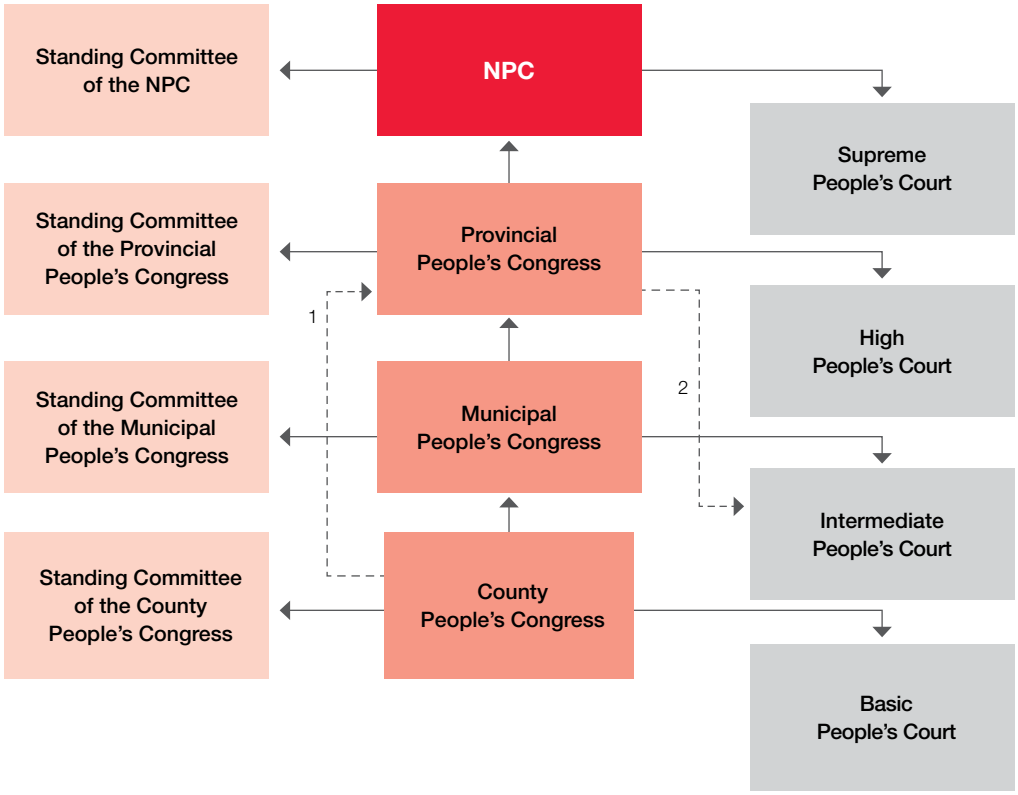
The internal court structure comprises a judicial committee and tribunals – the No. 1 Criminal Tribunal, the No. 2 Criminal Tribunal, the Civil Tribunal, the Economic Tribunal, the Administrative Tribunal, the Complaint and Appeal Tribunal and the Communication and Transportation Tribunal. The Supreme Court also supervises the local people's courts.

There are also special courts, including those that deal with maritime and military issues.

The Chinese Court System



Supervisory relationship between the People's Congress and the People's Courts



[1] In an area where there is no Municipal People's Congress, the County People's Congress is supervised by the Provincial People's Congress.
[2] In an area where there is no High People's Court, the Intermediate People's Court is directly supervised by the Provincial People's Congress.

Foreign investment environment

China's foreign investment system has evolved considerably in recent years, with many reforms stemming from the country's accession to the World Trade Organisation (WTO) in 2001.

Investment framework

The Foreign Investment Industrial Guidance Catalogue (2011) (Investment Catalogue) provides policy guidance to foreign investors and sets out categories of "encouraged", "restricted" and "prohibited" industries and activities for foreign investment. Any industry or commercial activity not included in the Investment Catalogue is deemed to be in the "permitted" category. Foreign investors should consult the Investment Catalogue before entering the Chinese market as this will determine the permitted scope of investment and likelihood of obtaining any tax or other investment incentives.

In addition, the Guiding Manual (2008) sets out the requirements and procedures for foreign investment entering the commercial sector.

PRC legislation

The Basic Rules governing foreign invested commercial enterprises are set out in the Commercial Foreign Investment Enterprise Measures. The measures establish the permitted business modes, qualifications and requirements for foreign investors, geographic restrictions, commodity restrictions and a timetable for gradual relaxation of these restrictions.

The PRC Central Government has implemented WTO commitments and other arrangements under several Closer Economic Partnership Arrangements with Hong Kong and Macao. To comply with these commitments and arrangements, the State Council, the Ministry of Commerce of the People's Republic of China (MOFCOM) and the State Administration of Industry and Commerce (SAIC) have promulgated a series of rules to relax certain restrictions on foreign investments.

Specific rules and regulations have been promulgated to address specific modes of conducting businesses including by direct distribution, e-commerce and mass media. The distribution of some sensitive commodities which are strictly regulated, including books and other print media, is also governed by specific rules.

Chinese regulators

In China, every investment project requires specific government approval. The main ministerial departments that foreign businesses will encounter when planning to invest in China are the NDRC, MOFCOM, SAIC, the State Administration of Foreign Exchange (SAFE) and the General Administration of Customs (Customs). In addition, special industrial ministries including the China Banking Regulatory Commission, the China Securities Regulatory Commission, the China Tourism Administration and the Ministry of Communications are also responsible for granting pre-approval for foreign investment projects in their respective industries.

National Development and Reform Commission

The NDRC is the macroeconomic management authority under the State Council and has broad planning and administrative powers. The NDRC (or, if applicable, its local counterparts) is responsible for granting permission for foreign investment projects.

The relevant approval authority (national or local DRC) is determined by the total investment amount and the categorisation of the investment, under the Investment Catalogue. Generally, projects with a total investment of USD100m may require national level approval (i.e. the process may be more complicated and require more time).

Ministry of Commerce

Once NDRC permission has been obtained, a foreign investor is required to obtain MOFCOM approval. MOFCOM is the ultimate approval authority for foreign direct investment. MOFCOM is responsible for formulating policies on foreign trade, export and import regulations, foreign direct investments, consumer protection, market competition and for negotiating bilateral and multilateral trade agreements. Although MOFCOM regulates both domestic and foreign investors in China, it has a more significant role in approving and regulating foreign investments.

MOFCOM has delegated its authority to approve foreign investments to its local level counterparts, known as Bureaus of Commerce (BOCs). As with the NDRC, the approving authority (national or local) is determined by the total investment amount and its categorisation under the Investment Catalogue.

FIEs falling within encouraged sectors (regardless of investment amount) which were previously approved at the central MOFCOM level can now be approved by MOFCOM counterparts at the provincial level, vice-provincial city level, or national economic development zone level. It is important to note that the usual threshold of USD100m total investment does not apply to encouraged sector projects.

Accordingly, the basic policy is that encouraged projects can be approved locally except for some specific exceptions such as central government reliant projects or FIEs governed by specific rules or industrial policies.

FIEs originally approved by MOFCOM are allowed to have subsequent commercial changes approved by MOFCOM's local counterparts, except for capital increases which require NDRC approvals or share transfers which result in a transfer of a controlling interest to the foreign shareholder.

The delegation of authority will simplify and speed up the approval process for foreign investors. In addition, existing FIEs will now be able to bypass central MOFCOM approval for operational actions such as capital increases.

Foreign investors should note that MOFCOM and other approvals still remain in place under specific circumstances. Foreign investors will need to carefully check which approvals at which level will be required in order to have a valid establishment in the PRC.

State Administration for Industry and Commerce

Once NDRC and MOFCOM approvals have been obtained, a foreign investor will be required to register the investment with SAIC. SAIC is responsible for regulating domestic day-to-day commercial activities. All commercial entities in China must register with SAIC and submit re-registration documents to the local SAIC offices as required by law. SAIC is also the authority responsible for coordinating work with state industrial authorities in overseeing company compliance with Chinese regulations.

State Administration of Foreign Exchange

SAFE regulates the flow of foreign exchange in China and all foreign exchange expenditure and outward remittances. In practice, SAFE performs a supervisory role in relation to foreign exchange transactions conducted by foreign invested enterprises. Accordingly, a foreign investor is required to register with SAFE as part of the establishment process to facilitate future foreign exchanges (e.g. remittance of profits to offshore shareholders).

General Administration of Customs

Customs administers the importation of goods into or the exportation of goods from the PRC. Customs offices collect customs duty and import taxes (including VAT and consumption tax) for goods imported into China. Where a foreign investment involves the importation and/or exportation of goods, special approvals or licences may need to be obtained.

Foreign investment approval process

Each investment project by a foreign investor requires government approval by a number of regulators including the NDRC (or a local DRC), MOFCOM (or a local BOC) and other regulatory bodies including authorities for environmental protection, production and labour.

The foreign investment approval process is as follows:

Approval of the project proposal
Preliminary approval of the project is obtained from the NDRC or the DRC based on a project's application report.

Appraisal of the assets
In the case of EJVs and CJVs (see following section for more details), if State-owned assets are part of the capital that the Chinese party is to contribute to a joint venture, the value of the assets must be formally appraised.

Registration of the business name (pre-approval)
The proposed name of the FIE must be registered with SAIC or its local agency.

Issuance of the Approval Certificate
The articles of association, signed joint venture contract (for EJVs and CJVs) and other supporting documents must be submitted to MOFCOM or a BOC for approval. The signed articles of association is a vital document for a WFOE that must be submitted for approval. The authorities may order amendments to the contract or articles of association if the terms contradict Chinese law or policies. Upon approval, the authority will issue a certificate to validate and authorise the establishment of the FIE.

Registration of the business licence
The FIE must then be registered with SAIC within 30 days upon receipt of the approval certificate. The date on which SAIC issues a business licence is the official date of establishment of the FIE.

Other registrations
Following the official establishment of the FIE, additional registrations are required with a number of government authorities, including the tax, customs, labour, statistics, financial and foreign exchange authorities.

There may be variations for specific industries and approval authorities.

Forms of foreign investment

The factors to consider when selecting the appropriate investment include the level of management control, profit sharing, transferability of shares, tax benefits and the risk or liability exposures.

There are a number of different investment vehicles open to foreign investors in the PRC.

Foreign-Invested Enterprises

The most common form of foreign investment in China is the foreign-invested enterprise (FIE), which is established wholly or partly within China. The types of FIE include Wholly Foreign-Owned Enterprises (WFOEs), ventures established with local Chinese parties in the form of Equity Joint Ventures (EJVs) or Cooperative Joint Ventures (CJVs) and foreign invested companies/joint stock companies limited by shares.

The establishment of all types of FIEs require review and approval by the relevant regulatory authorities including the NDRC and MOFCOM.

Wholly Foreign-Owned Enterprises

A WFOE is an enterprise established in China by one or more foreign investors without any Chinese investment. WFOEs are generally established as limited liability companies, although in theory other liability structures are permitted subject to approval.

The key advantage of a WFOE is that the foreign investor has full management and board control of the company. Other advantages include quicker establishment procedures, better protection of intellectual property and easier liquidation procedures. However, the investor will have to build its own market share and may not be legally permitted to operate in certain sectors due to the absence of a Chinese partner.

Some sectors, including telecommunications and life insurance, still restrict the establishment of WFOEs. However the number of restricted industries has decreased (e.g. foreign investment in wholesale, retail and distribution enterprises). Foreign parties are now permitted to set up wholly owned entities, known as foreign-invested commercial enterprises (FICEs), which may act as a retailer, wholesaler or commission agent and engage in franchising activities.

Equity Joint Ventures

An equity joint venture (EJV) is a company with joint PRC and foreign ownership that is incorporated with limited liability, registered in China and established for a specific purpose. The shareholders have joint management of the company and profits and losses are distributed in proportion with the capital contribution of each party.

Investors interested in this form of investment vehicle should be aware that the lowest registered capital is RMB30,000. The initial contribution should be at least 20% of the registered capital, with the remaining capital to be paid within two years. These are minimum requirements, which may be set at higher amounts by different municipalities. Generally, at least 30% of the registered capital must be in the form of cash.

An EJV, established as a limited liability company, has some advantages as an investment vehicle including limited liability, free transferability and the fact that an EJV is allowed to operate in more sectors (e.g. insurance, telecommunications, transport, education, construction) than other investment models. An EJV also enables the investor to leverage on existing useful connections, market share, distribution networks and financial arrangements, through the Chinese partner.

However, EJVs may present difficulties with finding a suitable local partner, liquidating investments and protecting intellectual property. Other disadvantages include the limited term, no flow through taxation and higher establishment requirements.

During the term of an EJV, parties may not withdraw their capital contributions or transfer or assign their interests in the EJV without prior government approval. If a party wishes to assign its EJV equity, the other party or parties have a right of first refusal. If an EJV is liquidated, its assets or the proceeds from their sale are distributed to the parties in proportion to their equity interest in the EJV.

Cooperative Joint Ventures

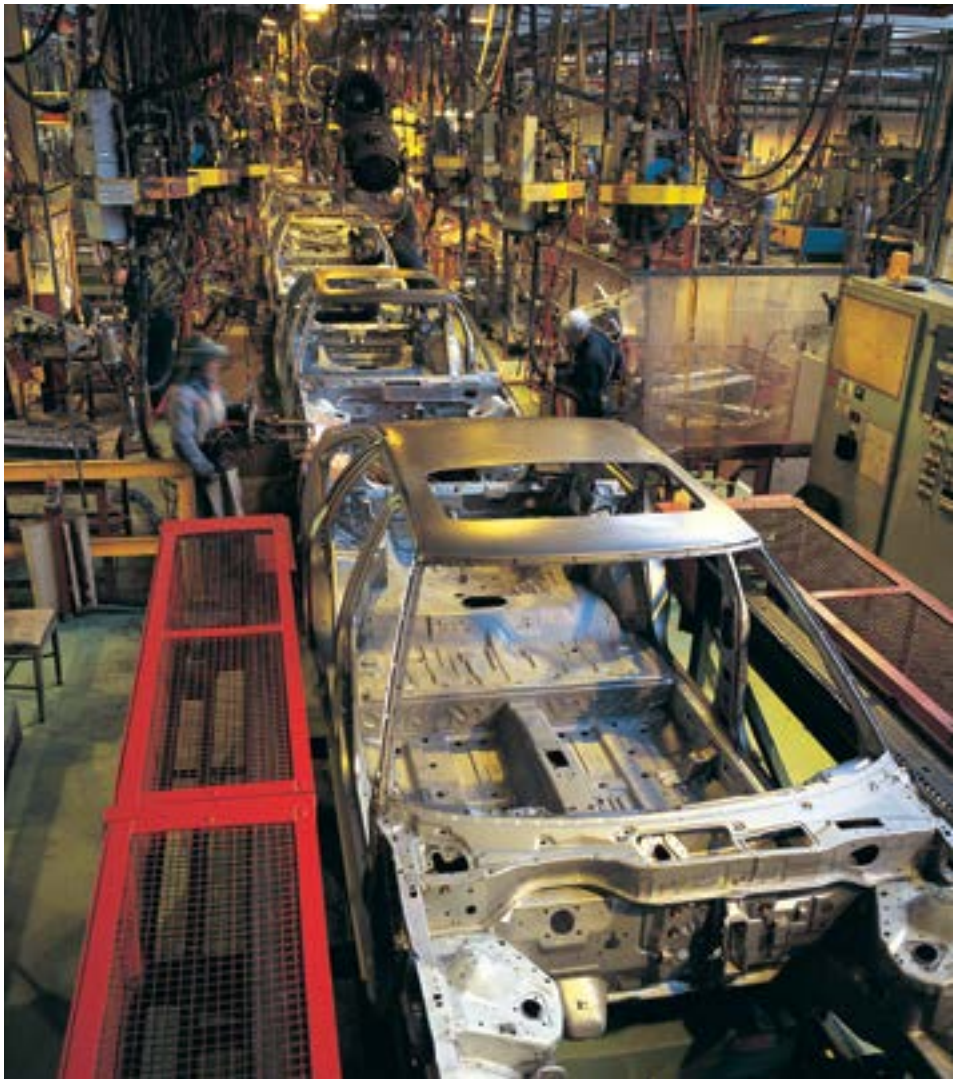
Compared to an EJV, a cooperative joint venture (CJV) offers more flexibility for the parties in terms of what a party may contribute to the registered capital, distribution of profits and liability, and return of investment, which may be agreed in the joint venture document. CJVs have typically been the preferred investment vehicle for joint construction and management of hotels, commercial complexes, infrastructure and mining projects.

A CJV is normally used for specific types of projects involving hotels or real estate – where the foreign partners effectively earn out, while the Chinese partner owns the assets at the end of the project – or projects in which a partner is unable to actually contribute assets to the joint venture but could allow the joint venture to use the assets for the project. The EJV is generally the preferred investment vehicle in China, as the authorities are more familiar with this vehicle than the CJV.

A CJV may be structured either as a non-incorporated entity or as a limited liability company (the latter tends to be the most common form of CJV). The advantages of establishing a non-incorporated entity include the freedom to tailor the arrangement pursuant to the terms of an agreement and lower establishment thresholds.

However a non-incorporated entity will not be a separate legal person under PRC law and parties may remain jointly and severally liable for each other's default. Investors concerned about these risks should adopt a limited liability company, which limits liability and allows transferability of shares in the venture.

The key constitutional documents of a CJV are the joint venture agreement and the articles of association, which are required by law to contain certain provisions. The obligations of the parties to a CJV are detailed in these documents. Unlike an EJV, the profits of a CJV need not be divided in proportion to each party's interests in the CJV. Instead they are distributed in accordance with the terms of the parties' joint venture agreement.



Like investors in EJVs, investors in CJVs are subject to restrictions on the transfer of their equity interests and the withdrawal of registered capital during the term of the joint venture agreement. However, subject to governmental approvals and limitations, a foreign investor may be able to recover its full capital contribution during the joint venture term. At the end of the term, the fixed assets of the CJV are usually transferred to the PRC party without consideration.

In comparison to an EJV, the CJV has greater flexibility in terms of the form of capital contribution, management and profit distribution models. The three major differences between an EJV and a CJV are:

- **The form of contribution by investors.** The parties to an EJV may contribute assets in cash or in-kind, for example buildings, factory premises, equipment or other materials, industrial property, proprietary technology or the right to the use of a site appraised at an appropriate price, as investments in the EJV. In contrast, the parties to a CJV may contribute investments or cooperation conditions (there is no definition of a "cooperation condition" under Chinese law) in cash, in-kind, land use rights, industrial property rights, proprietary technology or other property rights. The cooperation conditions are contributed as property of the CJV but do not count towards the registered capital of the CJV in its business licence.
- **Profit distribution and risks and losses allocation.** The parties to an EJV must share the profits and allocate the risks and losses in proportion to their capital contributions, whereas the parties to a CJV share the profits, risks and losses in accordance with a contractual agreement, which may afford them more flexibility.
- **Early recovery of foreign investment.** CJVs afford more flexibility than EJVs in that the joint contract may provide for the foreign party to recover its investment before the end of the term, provided that the parties agree in the contract that all fixed assets will be owned by the Chinese party without charge upon the expiration of the CJV.

Joint Stock Companies (or Companies Limited by Shares)

A joint stock company, or a company limited by shares, is established by investors usually for the purpose of listing on foreign or Chinese stock exchanges. The share capital comprises equal value shares, contributed by both Chinese and foreign investors.

An investor should consider this investment vehicle if emphasis is placed on capital raising, free transferability of shares and the limited liability of the shareholders. On the other hand, the disadvantages of this investment vehicle include the high establishment requirements – where the lowest registered capital for a company limited by shares is RMB5,000,000 – and no flow through taxation.

This form of investment vehicle requires an initial contribution of at least 20% of the registered capital, with the remaining capital to be paid in two years. For an investment company, the repayment period is extended to five years. These are merely minimum requirements, which may be set at higher amounts by different municipalities or provinces. Generally, at least 30% of the registered capital must be in the form of cash. Before the registered capital is fully paid, the joint stock company cannot issue shares to others.

Key FIE considerations

When considering using a FIE to invest in China, potential investors should be aware of the following issues:

Capitalisation

Chinese foreign investment law does not recognise the concept of authorised or issued capital.

Rather, FIEs have:

- "registered capital", being the total amount of capital contributed by the shareholder(s) and registered with the Chinese authorities. It represents the FIE's equity and, in the case of a limited liability FIE, the limit of the shareholders' liability; and
- a "total investment amount", being the aggregate of the registered capital and the company's permitted foreign currency borrowings.

In principle, the foreign party in either an EJV or CJV is required to hold at least 25% of the company's registered capital. However, holding a lower share may also be permitted. A FIE in which the foreign party has an equity share of less than 25% is still required to be established in accordance with existing procedures, although it will not be eligible for any preferential policies which would otherwise be available to FIEs.

Subject to certain limitations and verification procedures, the registered capital contributions may be made by FIE investors as cash, tangible or intangible property (for example, equipment or intellectual property rights) and land and buildings (by the Chinese party). In a CJV, the parties can also contribute so-called "cooperative conditions", being quantified assistance or rights provided to the CJV.

FIE capital contributions can be made in a single payment or in instalments. One-off capital contribution must be made within six months of the date of establishment of the FIE. Instalment contributions must generally be paid up within two years of the date of establishment of the FIE, with the first instalment required to be paid within three months of the date of establishment of the FIE.

Scope of operations

A FIE's activities are restricted to those explicitly approved by the relevant approval authority and detailed in the registered "scope of business". Therefore (in most circumstances) it is not possible to include in a FIE's business scope a sweeping, catch-all phrase permitting the company to engage in "all other legally permitted activities", as may be the case in other jurisdictions. Accordingly, a FIE's proposed activities must have a wide enough description to include all anticipated activities of the FIE, while at the same time, be narrow enough to avoid rejection by the approval authorities.

FIEs may not sell products manufactured by third parties, including parent or affiliated companies. This would include a restriction on importing products manufactured by the foreign investor outside of the PRC for sale in China. There are two notable exceptions to this restriction:

- foreign-invested entities with express permission to distribute third party products in China; and
- qualified foreign-invested investment companies which distribute products in China imported from overseas parent companies or affiliates.

Term of operation

FIEs are typically approved for a fixed term of operation, with the most common term being 50 years. However there have been instances of FIEs being approved with unstipulated terms. Upon expiry, the term may be extended with the consent of all parties and the approval of the authorities.

FIEs in certain business sectors are subject to a limit on their term of operation. For example, those carrying out retail or wholesale operations will generally not have a term of more than 30 years.

Management organisation

The board of directors is the EJV's and limited liability CJV's highest authority. The directors do not need to be Chinese nationals or even PRC residents.

While a WFOE is required to have a board of directors or an executive director, the highest authority is the general meeting of shareholders. WFOEs are also required to appoint a company supervisor or supervisory committee which, in addition to a supervisory role, has powers of investigation and may even take action against directors or senior management whom it believes are acting against the interests of the WFOE. The appointment of a company supervisor or supervisory committee in EJVs or CJVs has not yet become a generally accepted practice as local approval authorities still differ in their interpretation and application of the Company Law of the PRC.

Construction and installation projects

All construction and installation projects by foreign contractors must be operated by foreign-invested construction companies which are required to comply with the same licensing regime as Chinese-owned construction companies.

Representative offices

The representative office can offer a useful alternative to FIE vehicles for some foreign investors, although recent regulatory changes are reducing their utility.

According to PRC law, a representative office is an office for liaison purposes only and is not entitled to carry out direct business activities.

A representative office is generally established by investors who are interested in:

- entering the Chinese market quickly as a prelude to direct investment;
- establishing a centralised presence to coordinate product sales and distribution; or
- establishing a local presence due to legal or practical restrictions for establishing full-operations in China.

The benefits of a representative office include the ability to monitor the Chinese market closely prior to making a sizeable investment, to support export activities, to exercise quality control over Chinese suppliers and to establish a presence in China in a sector which is prohibited or highly restricted (e.g. telecommunications, insurance and transport).

Investors need to be aware that a representative office is not a separate legal entity and the parent company is liable for the actions and obligations of the representative office (e.g. lease fees and employees' salaries). A representative office can neither carry out direct business activities in the PRC nor enter into contracts with other entities on behalf of the parent company. Instead, a representative office is only permitted to carry out, on behalf of its head office, indirect and generally non-revenue generating activities such as business liaison, product exhibition, market research and technology exchange. Foreign companies without a registered representative office (or other legal entity) are not permitted to engage in these activities in China. Recent regulatory changes have imposed additional compliance obligations on representative offices which investors should take into account when considering investing in China using a representative office.

Branches of foreign enterprises

Foreign companies in certain industries, for example commercial banking and oil exploration, are permitted to set up a branch in China. Other foreign companies are generally not permitted to set up branches in China.

A branch of a foreign company is similar in nature to a representative office. However, a branch of a foreign company is permitted to engage in direct business activities. The branch does not have the status of a Chinese legal person. Accordingly, the foreign company will be liable for the liabilities of its branches in China.

Subcontracted business

Subject to restrictions in particular areas under PRC laws, foreign companies are generally permitted to manage and operate all or part of the business of a domestic enterprise or a FIE as a subcontractor.

Foreign exchange controls and FIE funding

Foreign exchange controls involve highly regulated processes that must be complied with on establishment of a PRC presence and on an ongoing basis.

Exchange controls

The RMB, the official currency of China, is not a freely convertible currency. Limits are imposed on the amount of currency which may be carried in or out of the PRC.

In China, the RMB may be obtained by foreigners from authorised currency exchanges and banks. A limited amount of the RMB so acquired can be converted into foreign currency when leaving the PRC.

The foreign exchange rate system is regulated using a "controlled float regime" – based on market demand – which is managed by SAFE. As part of continued currency reforms, the Chinese government relaxed these controls and increased the currency's freedom to fluctuate with market forces. Currently, the RMB is permitted to increase or decrease by 1% from the currency's daily central parity rate.

While current account foreign exchange receipts and disbursements are, to a large extent, unrestricted, capital account foreign exchange receipts and payments are still subject to strict control. Businesses, including FIEs, are able to buy and sell foreign currency for trade and non-trade current account receipts and payments through designated banks.

Policies and regulations

The major policies and regulations governing foreign exchange controls on FIEs are as follows:

1. **Opening of a foreign currency account**

   FIEs should ascertain and confirm whether the banks with which they have established foreign currency accounts have the necessary foreign currency transaction capabilities.

   The Government will primarily control the inflow and outflow of the FIEs' foreign currency transactions related to the current account, the use and settlement of foreign currencies related to the capital account and the deposit and loans denominated in foreign currencies.

2. **Application for a foreign exchange registration certificate**

   Within 30 days of the issue of a business licence, the FIE is required to apply for a Foreign Exchange Registration Certificate from the local Administration of Foreign Exchange.

3. **Audit of the foreign exchange transactions (annually)**

   The FIE must conduct an audit on the use of the foreign exchange and release a report on an annual basis.

   The audit reports will be used by the State or local Administration of Foreign Exchange as justification for the renewal of the FIE's foreign exchange certificate.

FIE funding

On 21 September 2012, MOFCOM published the *Interim Provisions for Equity Contributions to Foreign-Invested Enterprises* (the New Rules), which took effect on 22 October 2012. The New Rules established the approval and registration requirements and procedures for equity contributions involving FIEs.

Scope of application

The New Rules permit a foreign or domestic investor (Investor) to establish a FIE or increase the registered capital of an existing FIE or non-FIE (Investee Enterprise) with equity that the Investor holds in another PRC company (Equity Enterprise).

The New Rules can be used for:

- establishing newly incorporated FIEs;
- transforming domestic enterprises into FIEs through a capital increase; or
- modifying a FIE's equity structure through a capital increase.

The Equity Enterprise may be either a limited liability company or a company limited by shares. It may also be either a FIE or a non-FIE. However, the business scope for the Investee Enterprise, Equity Enterprise and its direct or indirect subsidiaries must comply with the requirements of the relevant foreign investment guidelines, such as the *Catalogue of Industries for Guiding Foreign Investment* (2011 revision). If the Equity Enterprise's activities fall under the prohibited categories, it may consider divesting the business (by transferring the prohibited assets and activities) before contributing its equity to a foreign invested Investee Enterprise.

Equity excluded from capital contributions

Equity cannot be used for capital contributions in the following situations:

- the Equity Enterprise's registered capital has not been fully paid-up;
- the equity is subject to a pledge;
- the equity has been legally frozen;
- the Equity Enterprise's articles of association (or a contract) prohibits a transfer of its equity interest;
- the Equity Enterprise has not participated in or failed to pass its annual inspection in the preceding year;
- the Equity Enterprise is a real estate company, FIE investment holding company, or FIE venture capital company; or
- administrative approval for the transfer of the equity is required by any law, regulation or administrative decision and the approval has not been obtained.

Equity valuation

The New Rules require a legally established domestic appraisal institution in the PRC to firstly appraise the equity that is to be contributed. The equity price and the contribution value must be negotiated and determined based on the appraised value. The contribution value cannot exceed the appraised value. However, it is unclear whether the equity price can exceed the appraised value – this was not permitted under the May 2011 draft *Administrative Measures for Using Equity Interest to Contribute Capital to FIEs* issued prior to the formal promulgation of the New Rules.

In addition, the Company Law requirement is that at least 30% of a company's capital contribution must be made in cash. Therefore the aggregate of the contribution value of the contributed equity together with any other non-cash capital contribution of the Investee Enterprise cannot exceed 70% of its entire registered capital.

Approvals

An investment involving an equity capital contribution must seek approval from MOFCOM (or its local counterparts) on a variety of issues, which include:

- equity contributions to the Investee Enterprise;
- changes to the Equity Enterprise's shareholder structure;
- a new approval certificate for the Investee Enterprise; and
- changes to the Investee Enterprise's business licence and other registration updates.

Foreign shareholders advancing loans to a FIE

There are restrictions with regards to the amount, interest rate, repayment period or repayment form (i.e. cash, shares, etc). The following criteria are applicable for foreign shareholder loans to an EJV:

1. Amount

Generally, the aggregate amount of foreign loans to an EJV (Aggregate Foreign Loan) must not exceed the difference between its total investment and the registered capital approved by the relevant authority. Aggregate Foreign Loans include medium-term and long-term foreign loans with a term of more than one year and short-term foreign loans with a term of less than one year. However, there are special rules and regulations for foreign loans advanced to the following FIEs:

- **Investment holding companies:** An investment holding company is an entity engaged in foreign direct investment through the form of a WFOE or an EJV. If the registered capital of this form of company is USD30m or more, the Aggregate Foreign Loan may not exceed four times its registered capital. However, if the registered capital is USD100m or more, the Aggregate Foreign Loan may not exceed six times the registered capital of the entity.
- **Leasing companies:** The Aggregate Foreign Loan to leasing companies must not exceed ten times its net assets.

- **Real estate companies:** Recent SAFE rules established that the foreign loan registration and foreign loan settlement procedures are not applicable to real estate FIEs, implying that real estate FIEs will not be able to borrow foreign loans.
- **EJVs with foreign share ratio of less than 25%:** These EJVs may borrow foreign shareholder funds, subject to SAFE's approval and provided that the foreign loans do not exceed an amount equivalent to 50% of their net assets, or exceed the amount of foreign earnings that financial year.
- **Foreign-invested companies limited by shares:** SAFE will register the foreign loans, subject to the difference between the approved total investment value and the approved registered capital. If a total investment value is not specified on the FIE's approval certificate, SAFE may reject the request to register any foreign loans.

2. Interest rates

According to the *SAFE Circular on Perfecting the Administration of Foreign Exchange Under Capital Account Item*, the interest rate for foreign loans must not, generally, be higher than that of the same kind of loans which may be obtained on international financial markets. If this is the case, SAFE may reject their registration.

3. Repayment period and form

There are no specific requirements regarding the repayment period, which is normally negotiated between the borrower and the lender. The borrower may repay the loan in cash, for example by using its own foreign exchange, or foreign exchange purchased with RMB.

Public listing

An initial public offering (IPO) in China involves the issuance of stocks to public investors by a joint stock company limited by shares and incorporated in China. The process requires a limited liability company to first be converted into a joint stock company limited by shares and approved by China's securities supervisory body, the China Securities Regulatory Commission (CSRC). The listing can take place either at the Shanghai Stock Exchange or at the Shenzhen Stock Exchange.

The stocks of the listed companies are traded on three boards, namely the main board, SME Board and ChiNext, each of which has different listing requirements.

The shares of China's listed companies traded domestically are divided into RMB-denominated A-shares and USD or HKD-denominated B shares. A-shares represent the largest class of Chinese shares. Currently only mainland Chinese nationals and selected foreign institutional investors, commonly referred to as QFIIs, are permitted to subscribe for new shares issued in an IPO and trade in A-shares.

A major obstacle hindering the public listing of a major multinational company's Chinese subsidiary is the independence requirement under the Chinese listing rules. In many circumstances, Chinese subsidiaries of multinational companies rely heavily on their overseas parent companies in areas such as technology, know-how, trademark, supply chain, or sales channels. This reliance by Chinese subsidiaries on overseas parent companies makes it difficult to prove that the Chinese entities are independent from their parent companies. However, foreign financial investors, such as private equity funds, generally do not face this issue in a domestic IPO.

Even though the trading of A-shares by foreign investors is restricted, Chinese laws permit companies with foreign shareholders to be listed through an IPO. Pre-IPO foreign shareholders, like their Chinese counterparts, may sell their shares after the statutory lock-up period. In 2001, the CSRC and the NDRC released *Some Opinions Pertaining to Foreign Investment in Listed Companies*. These regulations stipulated listing requirements for foreign-invested companies in China, including approvals by the NDRC for the restructuring of a limited liability company into a joint stock company and compliance with the *Foreign Investment Industrial Guidance Catalogue*.

Foreign invested companies are generally subject to virtually the same listing requirements as Chinese-owned companies. The number of IPOs by foreign-invested companies (including Hong Kong-invested and Taiwan-invested companies) is still relatively small, compared to the total number of listed companies. However, these offerings are expected to grow in the future.

Overseas IPOs

Listing in China is favoured by many Chinese companies due to the significantly higher P/E ratios in China's domestic markets. However, the prolonged domestic IPO approval process, which can take several years due to a waitlist of more than eight hundred IPO applications, coupled with stringent listing requirements and the benefits of overseas listings, such as the raising of a company's international profile, have made overseas listings an attractive option for Chinese companies.

Direct overseas listing

A company incorporated in China may directly issue and list shares on international stock markets. These kinds of IPOs require the company to meet not only the listing requirements of the listing location, but also overseas listing requirements enacted by the CSRC. Shares of Chinese companies traded in Hong Kong, New York Stock Exchange and Singapore are colloquially called "H-shares", "N-shares" and "S-shares".

In the past, it was difficult for non-state owned Chinese companies to meet the requirements of, and to gain the approval from, the CSRC. With a few exceptions, virtually all companies that were incorporated in China and traded in Hong Kong or New York were China's state-owned companies with strong government support.

The CSRC released the *Guidelines on Application Documents and Approval Procedures for Issuance and Listing of Shares Overseas by Joint Stock Companies* in late 2012, in an effort to reduce the long waiting list for domestic IPOs. These guidelines took effect on 1 January 2013. The new guidelines abolish the profitability, assets and capital requirements (which had prevented many overseas IPO applications) and simplify the application and approval procedures. It is expected that Chinese non-stated owned enterprises and SMEs will benefit from the simplified procedures and lower IPO requirements.

Indirect overseas IPO

Indirect IPOs are usually undertaken by non-state owned companies as they do not require CSRC approval and are generally considered a more efficient approach to fund raising. A company must undertake a series of restructuring processes in order to conduct an indirect overseas IPO. During the process, the Chinese operating entity becomes a wholly-owned subsidiary of an offshore holding company, often called a "special purpose vehicle", or SPV. The issuer under the IPO will be the offshore SPV rather than the Chinese entity.

In an indirect overseas IPO, the *Regulation on Foreign Investors Acquiring Domestic Enterprises or Circular 10*, (promulgated by MOFCOM and other regulatory authorities) and the *Circular on Relevant Issues concerning the Foreign Exchange Administration of Residents in China Engaging in Financing and in Round-tripping Investment via Overseas Special Purpose Vehicle, or Circular 75* (promulgated by SAFE) are the two common regulations that a company must address in its restructuring exercise. Due to a variety of factors which may have different effects on different companies (including, for example, shareholding structure), it is imperative for a company to establish a customised fund raising structure that complies with *Circular 10, Circular 75* and other regulations related to overseas listing and capital-raising.

Under *Circular 10*, Chinese nationals and residents are required to obtain approvals from MOFCOM to transfer equity interests in a PRC company (originally controlled by Chinese nationals) – to an offshore SPV controlled by Chinese nationals. In addition, *Circular 75* requires Chinese residents intending to set up SPVs for the purpose of raising capital overseas to complete a foreign exchange registration.

To date, it appears that MOFCOM approvals have not been granted since the promulgation of *Circular 10* and the registration process through *Circular 75* has been relatively difficult. Furthermore, companies that have been successfully listed overseas are either foreign-invested companies, which were incorporated prior to the promulgation of *Circular 10*, or companies that have adopted a contractual-control approach. In the latter case, the offshore SPV and the listed company do not nominally own any equity interests in the Chinese operating entity, but instead exercise control through contractual arrangements. They are thus not subject to the relevant provisions of *Circular 10, or Circular 75*.

Capital raising by funds – Private Equity

The limited partnership and the foreign invested venture capital enterprises (FIVCE) are generally the most common options for foreign investors interested in raising or investing in a private equity (PE) fund in China.

Limited Partnerships

The limited partnership is the most typical structure used by international PE firms to raise private equity funds in China. Generally the foreign sponsors will set up a FIE to serve as the general partner (GP) and raise funds from domestic investors, who will be categorised as limited partners (LPs). At times, the foreign PE firms will set up a separate FIE to serve as the fund manager, in order to isolate the risks, as well as to distinguish the interests received by the GP and the management fees received by the fund manager. Due to the absence of consistent, overarching national legislation, the approval for a FIE to serve as the GP of a domestic limited partnership fund will be determined differently by different governmental authorities in different provinces. In practice, most of the PE funds with FIE GP status are normally set up at the Shanghai, Beijing, Tianjin and Suzhou Industrial Parks.

According to a response of the NDRC to the Shanghai DRC, PE funds with FIE GP status are not treated the same as RMB funds, although all LPs are domestic investors. As a result, international PE firms have considered, as one of the alternative structures, the establishment of a FIE (e.g. WFOE) by a foreign PE firm. This FIE (i.e. fund manager) will then manage the fund that is established by the domestic GP and LPs.

The GP is usually made up of domestic individuals or companies, trusted by the foreign PE firm. Through this, the fund remains and enjoys the status of an RMB-fund, while the FIE is delegated with the authority and power of the GP through a limited partnership agreement and receive both the management fees and carried interests.

The promulgation of the *Administrative Measures for the Establishment of Partnership Enterprises by Foreign Entities or Individuals in China* allowed foreign investors to invest in a limited partnership directly in the form of a foreign invested partnership (FIP). A FIP fund, which is primarily involved in investments, must be registered with the local counterpart of the Administration for Industry and Commerce (AIC) at the provincial level. However, there are very few FIPs which have been successfully registered.

To date, only the pilot funds in Shanghai (i.e. Qualified Foreign Limited Partner Funds) as well as selected funds which have obtained special approvals from the government in certain provinces have been successfully registered. In addition, portfolio investments related to the FIP funds are normally regulated as foreign investments and subject to MOFCOM's approval and industrial restrictions. These regulations have unfortunately caused FIP funds to be less competitive in domestic markets, compared to the domestic PE funds.

Foreign Invested Venture Capital Enterprises

A FIVCE is another form of private equity funding vehicle which can be utilised by foreign investors, pursuant to the *Administration Rules on Foreign Invested Venture Capital Enterprises*. A FIVCE must be established solely by foreign investors, or jointly by foreign investors and domestic investors – in the form of either a non-legal person FIVCE, or in the form of a corporation FIVCE. The formation of a FIVCE is required to be approved by MOFCOM or its local counterpart at the provincial level (dependent on the total investment amount).

The principal businesses of a FIVCE are equity investments into, and venture management services for, unlisted high and new technology enterprises. A FIVCE must have a qualified "indispensable investor" that meets certain requirements (including investment experience and scale of assets under management). In general, compared to LPs, FIVCEs are not preferred investment vehicles.

Financing from banks

Financing can be obtained by FIEs from domestic and foreign banks in both local and foreign currencies, subject to regulatory restrictions.

Inter-company borrowings not permitted

Unlike in other jurisdictions, direct inter-company borrowings between two local entities, including FIEs, are not permitted in China. However, since the penalty is minor (as charging interest is illegal and the interest liable to be confiscated), local entities still carry out inter-company borrowings when needed. Multinational corporations normally manage inter-company loans via an entrustment loan structure through an intermediary bank.

Loan purpose

The Chinese banking regulator requires Chinese banks (including foreign banks registered in China) to closely monitor and verify the utilisation of loan proceeds by borrowers. This is to ensure that the loan proceeds are used strictly in compliance with the laws, regulations and loan agreement purposes, such as for the genuine working capital needs of the borrower, or for approved fixed assets investment. Loans obtained from banks are not allowed to be used in any fixed asset investment which has not been duly approved by a competent regulator, equity investment (save for acquisition loans – see "RMB acquisition loans" below), securities investment, or industry sectors that are prohibited by national policies to be financed by bank loans.

Interest rates

Interest rates for bank loans denominated in RMB are regulated in China. Banks are required to determine the interest rates for any RMB loans with reference to the official rates published by China's central bank, the People's Bank of China. The interest rate cannot be lower than 70% of the official rate.

However, regulators do not set similar limits on interest rates for foreign currency loans, which may be priced against inter-bank market rates in leading financial centres, such as the LIBOR.

Foreign currency loans

Types of foreign currency loans include:

1. Onshore foreign currency loans

Foreign currency loans are available from onshore banks but are generally not permitted to be converted into RMB. That means borrowers can only use these loans for offshore purposes, for example, for the purchase of raw materials or machinery from sellers outside China where payment obligations are denominated in foreign currency.

2. Cross-border foreign exchange loans

Local entities, including FIEs, may also borrow from offshore banks and other entities (such as foreign shareholders) under China's exchange control regulations. Foreign currency loans borrowed by FIEs from foreign entities are classified as "foreign debts" and borrowers must adhere to strict foreign exchange control procedures, which apply equally regardless of whether the lenders are banks or foreign shareholders of the FIEs.

Foreign debt – borrowing capacity

The amount of foreign debt that a FIE can borrow should not exceed its "Borrowing Gap", which is the difference between the FIE's total investment and its registered capital. The Borrowing Gap represents the maximum amount that a FIE can borrow from foreign entities (including its foreign shareholders) to finance its operations. SAFE will not register a foreign debt loan agreement if the amount of the loan exceeds the balance of the FIE's Borrowing Gap after having taken into account the amount of the FIE's existing short-term foreign debt and accumulated medium-to long-term debt.

Short-term debts are loans with a tenor of no more than one year and medium to long-term debts are loans with a tenor of more than one year. The FIE's Borrowing Gap can be refreshed once its short-term foreign debt is repaid, but the same arrangement does not apply to medium to long-term foreign debts.

Foreign debt – formalities

In addition, when a FIE borrows foreign debt, it is required to go through some SAFE formalities, which include the following major steps:

- register the foreign debt with the local branch of SAFE within 15 days of the date of the foreign debt loan agreement; among other things, the purpose of the loan should be expressly stated in the loan agreement and registered with SAFE;
- open a designated foreign debt account with a bank in China for receiving loan proceeds and for making foreign debt payments;
- apply to the local SAFE to verify each of the interest payments and principal repayments, no later than five days before the proposed payment date; and
- file each of the drawdowns, interest payments and principal repayments with the local SAFE, within five days after the date on which each action has taken place.

RMB loans

Depending on the loan's purposes, local entities may borrow working capital or fixed assets RMB loans from onshore banks.

When applying for a loan from a bank, a FIE is required to submit relevant documents – such as the production budget, purchase contract, investment plan and relevant governmental approvals – to evidently demonstrate the genuine need for the loan. The approval for the loan is generally dependent on the creditworthiness of the borrower, the availability of funds and the security package that may be offered to the bank to enhance the credit. Banks in China will usually require security such as a guarantee from the foreign shareholder, a mortgage over real properties and/or a pledge over cash deposits.

Entrusted payments

In accordance with the requirements of the banking regulator, banks in China will usually be required to adopt an "entrusted payment" approach for loan utilisation. On the instructions of the borrower, the banks will make payments directly to the contracted counterparty of the borrower without depositing the loan to the account of the borrower. This approach is used to prevent the borrower from using the loan for purposes other than those which have been specifically provided for in the loan agreement.

RMB acquisition loans

In December 2008, the PRC banking regulator lifted the prohibition against Chinese banks extending loans for M&A transactions. As a result, foreign investors can now potentially benefit by using their Chinese subsidiaries as acquisition vehicles.

Under the new rule, an onshore borrower may borrow up to a maximum of 50% of the total purchase price of an acquisition in the form of an RMB acquisition loan with a maximum term of five years. Acquisition loans may be extended either to the acquirers or to special purpose vehicles that are incorporated in China and wholly owned by the acquirers.

Although most of the leading banks in China have obtained a licence to extend acquisition loans, to date acquisition loans are still a relatively new product in China as the M&A market is not developed and banks are not sophisticated enough to service this market. Only a few banks are fully engaged in this business and these banks have strict requirements for the borrowers, as well as for the acquisition transactions. This results in acquisition loans being both costly and time-consuming.

RMB foreign debt

Recently, FIEs have been allowed to borrow offshore RMB from offshore lenders, subject to substantially the same procedure as borrowing other foreign debt. This offers another source of funds to FIEs which may be cheaper than onshore RMB loans.

Taxation

Foreign investors are subject to special taxation rules in China.

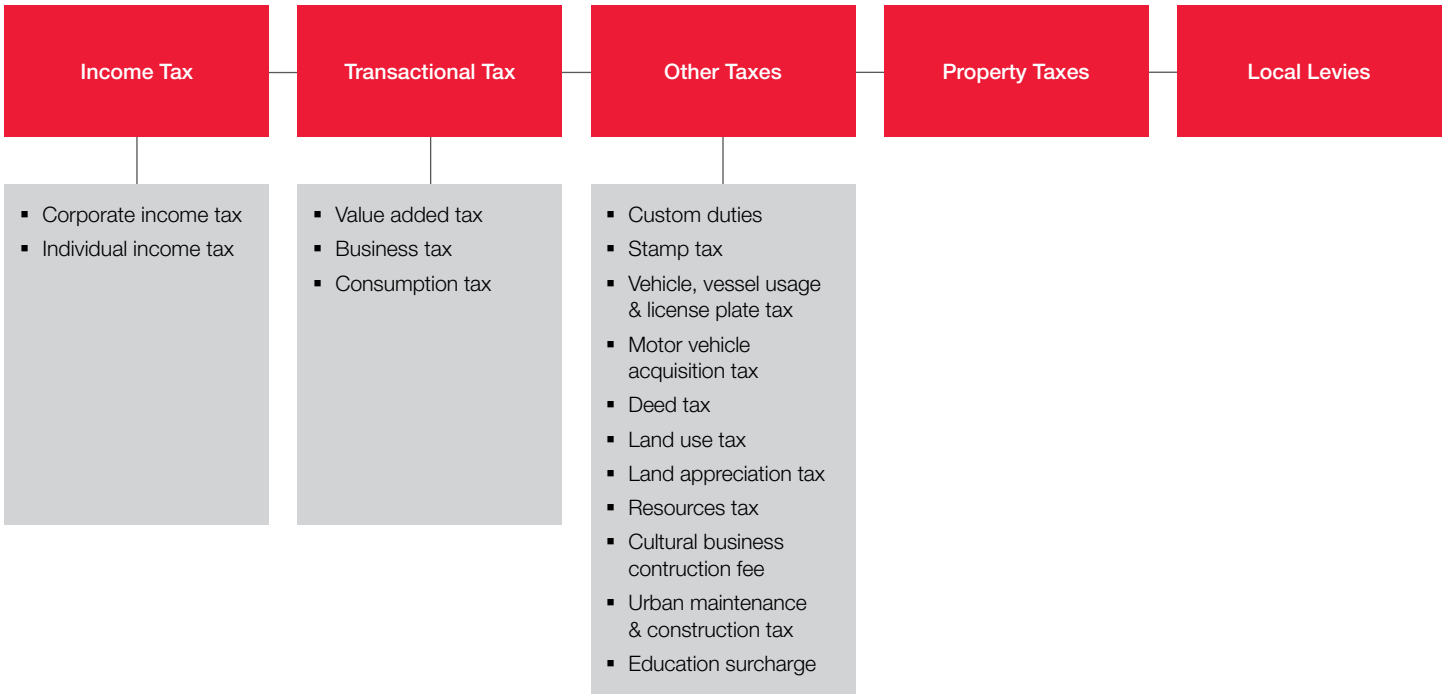
General

The Chinese authorities responsible for the development and implementation of taxation legislation include:

- NPC: enacts China's tax laws.
- State Council: promulgates supplementary and provisional regulations.
- Ministry of Finance (MOF): formulates economic policy and develops tax legislation.
- State Administration of Taxation (SAT): interprets and applies tax laws and regulations through the publication of Tax Circulars.

In addition, some local tax regulations and rules may be formulated by the provincial level People's Congresses and their Standing Committees, the People's Congresses of minority nationality autonomous prefectures and the provincial level People's Governments.

Summary of Chinese taxes



Types of taxes

Corporate income tax

The Corporate Income Tax Law (CIT Law) replaced the Foreign Enterprise Income Tax (FEIT Law) (which was applicable to FIEs and foreign enterprises) and the Enterprise Income Tax Law (which was applicable to domestic enterprises). The CIT Law was promulgated in March 2007 and came into effect on 1 January 2008.

Since 1 January 2008, the corporate income tax rate for both domestic enterprises and FIEs has been unified at 25%. In addition, companies which were entitled to a reduced tax rate under the FEIT Law were transitioned to a full 25% corporate income tax rate over a five year transitional period.

Under the CIT Law, tax incentives are available to enterprises, including FIEs, which meet certain qualification criteria. Reasonable expenses that are relevant to the income actually incurred and obtained by enterprises, including costs, fees, tax payments, losses and other fees may be deducted from the taxable income. Certain reductions or exemptions are available to enterprises that use resources in compliance with national policies or are active in certain sectors including forestry, agriculture, fisheries, energy and water conservation projects, environmental protection and infrastructure.

Under the CIT Law and its implementation measures, there is a flat 10% withholding tax rate for dividends, interest, royalties, rentals, capital gains or other income derived by non-resident enterprises from sources in China. The withholding tax rate on dividend remittance may be reduced or even exempted under tax treaties between China and the investor's country of tax residence.

Individual income tax

Individuals who are domiciled in China (i.e. habitually reside in China due to family or business relationships or as registered households with personal residence records) or who are not domiciled in China but have resided in China for one year or more are required to pay income tax in China on their worldwide income. Individuals who are not domiciled in China and have resided in China for less than one year are subject to individual income tax in China on their China-sourced income. Income from employment is taxed at progressive rates that range from 3% to 45%. A standard rate of 20% for other income applies with certain reduction and additional levies as an exception.

The following income may be exempt from income tax levied on expatriates:

- an exempt portion of employment income;
- housing, where it is paid for by employers;
- home-leave travel expenses;
- relocation or moving costs;
- children's education costs in China;
- overseas mandatory insurance payments which are made by the employer for the employee's social security in accordance with the employee's home jurisdiction. However, the employer must not make duplicate deduction/claims for corporate tax purposes and prior approval must be obtained from the tax authorities;
- reimbursement for laundry costs and meals;
- reimbursement of business-related expenses;
- automobiles provided by employers for business related use; and
- income exempt from tax as determined or approved by MOF.

Value Added Tax

Value added tax (VAT) is levied on the supply of goods and the provision of repair, replacement and processing services in China as well as on the importation of goods into China. VAT is borne by the final consumer as the tax is charged at each stage of the production or provision of goods and services, with each supplier receiving credit for the relevant VAT paid.

VAT is usually accounted for on a quarterly or monthly basis. If input VAT exceeds output VAT in an accounting period, the excess may be carried forward to offset the output VAT in future accounting periods. Since 2009, input VAT credits have been available for VAT paid in the purchase of fixed assets nationwide. However, goods or services which are purchased for the production of non-taxable and exempted goods, or for employee welfare purposes, are not eligible for VAT credits.

The current standard rate for VAT is 17%. Certain products (including basic foodstuffs and agricultural products) attract VAT at 13% or may even be exempt from VAT. Certain small scale businesses, defined by the authorities, are subject to a lower VAT rate at 3%, but are not eligible for VAT credits. Exports are generally free of VAT. Enterprises may apply for a tax refund in relation to the purchase or manufacture of exported goods on which VAT has previously been paid. However, VAT obtained from goods which are purchased and used for export may not be fully refunded.

Business tax

Entities and individuals who provide services (except processing, replacement or repair services), or who transfer intangible assets or immovable property in China, are subject to business tax. Business tax applies if either the service provider, or the service recipient, is in China. Services subject to business tax include transportation, construction, finance and insurance, post and telecommunications, cultural activities and sports, entertainment businesses and services. The general business tax rate is 5%. However for industries such as transportation and construction, the business tax rate may be reduced to 3%. On the other hand, entertainment services may be subject to business tax up to 20%. Business tax is usually taxed on gross income unless otherwise provided. There is no credit mechanism for business tax and thus may lead to double taxation.

VAT and Business tax reforms

The PRC government commenced a reform process to eliminate double taxation issues arising from business tax for transportation and modern services (including R&D and technical services, IT services, cultural creative services, logistics auxiliary services, authentication consulting services and tangible property leasing services). The reforms are expected to extend to all service sectors throughout the country in the next few years.

MOF and SAT issued detailed implementation rules (i.e. *Circulars 110 and 111*) for a VAT reform pilot program in November 2011 – following its launch by the State Council in Shanghai.

The new system provided for three VAT rates:

- 17% (general leasing and mortgaging services);
- 11% (transportation services); and
- 6% (other modern services).

Fees for certain services are exempted from VAT or attract a 0% VAT rate.

Implementation of the reforms, which commenced in Shanghai on 1 January 2012, was further extended to eight provinces/municipalities (Beijing, Tianjin, Jiangsu Province, Anhui Province, Zhejiang Province (including Ningbo), Fujian Province (including Xiamen), Hubei Province and Guangdong Province (including Shenzhen)) by the end of 2012. The government is in the process of extending the reforms nationwide, across all service sectors.

Consumption tax

In addition to VAT, consumption taxes are levied on the production, processing and importation of certain luxury goods. The tax rates vary from 1% to 45% for different categories of goods.

Parties liable for payment of consumption tax include all enterprises, units, household businesses and other individuals engaged in the production or importation of taxable consumer goods within the territory of the PRC and sales of taxable consumer goods, as determined by the State Council. Taxable consumer goods exported by taxpayers are exempted from consumption tax, unless the taxable consumer goods are restricted by the State from exportation.

Items which are subject to consumption tax include tobacco, alcoholic drinks and alcohol, cosmetics, firecrackers and fireworks, refined oil (such as petrol and diesel), motor vehicle tyres, motorcycles, motor cars, golf equipment and golf balls, luxury watches, yachts, wooden once-off chopsticks and wooden floorboards.

Other taxes

There are many other taxes applicable to various business or investment activities in China (depending on the business scope and operation activities), including customs duties, stamp tax, vehicle and vessel usage and licence plate tax, motor vehicle acquisition tax, deed tax, land use tax, land appreciation tax, resources tax, real estate taxes, urban maintenance and construction tax, education surcharges and local levies.

Customs duty and import taxes

The PRC General Administration of Customs (Customs) administers the importation of goods into, and the exportation of goods from, the PRC. Import duties and taxes (including VAT and consumption tax) are payable on goods imported into China.

In compliance with WTO requirements, import duties have decreased to an average rate of 9.8% at the end of 2012. Goods imported from countries which have reciprocal preferential tariff agreements are subject to preferential rates. Countries which have signed free trade agreements with China, such as Hong Kong SAR, Korea or the Association of Southeast Asian Nations (ASEAN) may be taxed under preferential tariffs for certain types of goods.

While still subject to the approval of the customs authorities, the import of raw materials into China to produce goods for export purposes is not subject to customs duty and import taxes.

Currently Customs manages and supervises 11 types of special areas. Goods that are delivered from overseas into Bonded Zones, Bonded Logistics Parks, Comprehensive Bonded Zones and Bonded Port Zones are not subject to any customs duties and import taxes. Goods that are delivered from outside these areas (but within the territory of China) into these areas will be regarded as exports and subject to the relevant export duties and taxes.

In practice, there are many different types of licences, quotas and permits (required for goods to be imported into China, or exported out of China) which are issued by different government authorities (e.g. automatic import licences).

Export duties apply to a few commodities, including certain scarce minerals. However, there may be considerable disparities in the imposition of trade import or export tariffs, depending on China's relations with specific countries.

Export control

China administers and measures the importation and exportation of dual-use items and technologies, to comply with its international treaties/conventions obligations, as well as to protect the national security and public interest. MOFCOM works hand-in-hand with Customs to control the importation and exportation of these dual-use items and technologies by formulating control lists and by promulgating regulations and licences. All dual-use items and technologies included in the control list (which are exported, imported, transited, transferred or forwarded in whatever means) are subject to import or export licences which relate to dual-use items and technologies.

Employment

China's employment regulations contain unique provisions that address social insurance contributions, the role of trade unions, workplace injury compensation and non-competition clauses that vary from common international practices.

General employment issues

The key Chinese labour law issues that need to be considered at the outset include:

- foreigners who enter China for employment purposes must hold valid employment visas, work permits and residence permits, unless exempted;
- employers are required to make social insurance contributions to government-run funds on behalf of their employees (also known as "social welfare" or "mandatory benefits");
- termination of employment can only be exercised under specific statutory grounds;
- trade unions must be notified in the event of cancelation of employment contracts;
- employers may include non-compete clauses in employment contracts (to protect intellectual property or trade secrets) under which employers are required to pay monthly financial compensation to the employee/s in question following termination of the employment contract; and
- work injury insurance policies are currently province-specific and may not be applicable nation-wide.

Employment visas and residence permits

Foreign visitors can generally travel freely across China with the appropriate visas. However, visits to certain remote cities or special locations, such as Tibet or Inner Mongolia, may require supplementary authorisations from the Public Security Bureau.

Foreigners working in China must possess a valid employment visa. There are primarily two types of visas for business and employment in China, known as F visas (short stay business visas) and Z visas (working visas). Applications for these visas may be submitted at Chinese embassies and consulates.

Foreign employees are also required to apply for work permits from the local Labour Bureau and residence permits from the Public Security Bureau. These applications must be supported by evidence of sponsorship from the employing organisations in China. Work and residence permits are usually valid for one to five years and may be renewed for an unspecified number of times.

Foreigners may be exempted from requiring work permits and/or employment permits if they meet any of the following conditions:

- foreign professional technical and managerial personnel employed directly by the Chinese government, or those with senior technical titles or credentials of special skills recognised by professional authorities or China's Bureau of Foreign Expert Affairs;
- foreigners employed under agreements or accords entered into by the Chinese government with foreign governments or international organisations for the implementation of Sino-foreign projects of cooperation and exchange;
- chief representatives and representatives of the permanent offices of foreign enterprises in China;
- foreign workers with special skills in offshore petroleum operations; and
- foreign entertainers, such as musicians.

The Shanghai Labour Bureau has eased the application process for work permits by establishing an option for employers of foreign employees seconded from overseas parent companies to apply for a work permit using either a despatch letter or an employment contract.

Social insurance contributions

On 28 October 2010, the NPC adopted the Social Insurance Law, which came into effect on 1 July 2011.

Social insurance payments are mandatory contributions which are made by both employers and employees (whose contribution the employer is responsible for withholding each month) to government-run funds. There are five social security funds to which employers are required to contribute to for all employees:

- pension funds;
- unemployment funds;
- medical funds;
- occupational injury funds; and
- maternity funds.

In addition, there is also a mandatory housing fund to which employers are required to contribute for Chinese employees. Employees are required to contribute only to the pension, medical and unemployment funds.

Social insurance contribution rates are stipulated by local governments and may vary significantly depending on the city in which these contributions are being made.

The amounts of contributions which are required to be made by employers and employees is summarised in the following table:

Social Security Fund Contributions		
Fund	**Employer contribution (% of employee's monthly salary)**	**Employee contribution (% of employee's monthly salary)**
Pension	10-22%	8%
Unemployment	0.2-2%	0.1-1%
Medical	7-12%	2%
Occupational injury	0.4-3%	n/a
Maternity	0-1%	n/a
Housing	7-13%	Normally matched with employer

It was clarified by the Chinese government in 2011 in its promulgation of the Social Insurance Law that foreigners (including those employed by companies registered outside of China, but working in China) are included in the social welfare system at the same rate as Chinese citizens (other than in the case of housing funds), but implementation varies region by region.

Foreigners from countries with a bilateral agreement on social insurance cooperation can make contributions according to those agreements. To date, only Germany and South Korea have signed bilateral social insurance agreements with China. Recent discussions have been initiated regarding potential bilateral social insurance agreements with several countries including France, Belgium and Japan.

Employers who engage foreigners must process social insurance registrations for foreigners recruited and employed within 30 days of the date of processing of their employment permits.

A foreigner is able to receive a full pension if contributions have been made for 15 years or more on a cumulative basis and the foreigner has reached retirement age. On written application of the closing of the pension account, the proceeds can be paid in a lump-sum to the foreigner. However, applying for and receiving the proceeds is known to be a complex and drawn out process.

Grounds for dismissal under labour law

An employer and an employee may cancel an employment contract if they mutually agree to do so. An employee may terminate the employment contract on 30 days' notice to the employer. During probation periods, an employee may terminate the employment contract on 3 days' advance notice to the employer.

However, under the Labour Contract Law an employer may immediately cancel an employment contract if:

- during the probation period, it is determined that the employee does not meet the recruitment conditions;
- the employee seriously violates the rules of the employer;
- the employee causes any severe damage to the employer as a result of seriously neglecting duties or seeking private benefits;
- the employee simultaneously works for another employer, severely affecting the employee's work performance at the employer or if the employee refuses to improve work performance following the employer's notification to do so;
- the employee is found to have deceived, coerced or taken advantage of the employer in concluding the original or amended employment contact; or
- the employee is pursued for criminal liability.

The Labour Contract Law stipulates that, in the following circumstances the employer may also cancel the employment contract if the employer provides the employee with 30 days' advance written notice or following payment by the employer to the employee of an extra month's wages:

- the employee is sick or is injured from a non-work-related cause and the employee is unable to return to the employee's original position after the expiration of a prescribed period of medical treatment or is unable to assume any other role offered by the employer;
- the employee is incompetent in his role and continues to be so following training or change of his role by the employer; or

- the employment contract is no longer able to be complied with in its current form and no agreement on its amendment is reached following negotiations between the employer and the employee when the objective circumstances, on which the employment contract was based, have changed considerably.

Employers are permitted to lay-off employees who, for economic reasons, become redundant. This economic redundancy can only be initiated if prescribed numbers and circumstances are met. Economic redundancy is the lay-off of 20 employees or more (inclusive) or 10% of the total number of the employer's workforce for one of the following reasons:

- the employer is undergoing bankruptcy proceedings in accordance with PRC Enterprise Bankruptcy Law (economic compensation is required);
- the employer encounters serious difficulties in its production and business operations;
- redundancy is necessary even after restructuring to align with the adjustment of the employer's business operations or important technological innovations; or
- a material objective economic situation on which the employment contract was based has changed considerably and the employer is no longer able to perform the employment contract.

In conducting an economic redundancy dismissal, the employer is required to consult with all employees, their representatives or union (if any) no less than 30 days in advance of its implementation and report the proposed redundancy to the local labour authority.

Termination of employment contracts

Depending on the existence of a union or the status of the employee, termination of an employment contract in China can be quite complex.

If the company has a union, the union must be notified before the employer can terminate the employee's employment contract. The labour union is entitled to respond. If the labour union disagrees with the termination, the employer must consider the labour union's disagreement and provide it with written notification of how it will respond. Disagreements between the employer and union are settled by negotiation.

Where an employer unilaterally terminates an employment contract of a unionised employee, it must give the trade union advance notice of the reasons for the termination. If the employer violates laws, administrative regulations or the labour contract, the trade union has the right to demand that the employer rectify the matter. The employer must consider the trade union's claim and notify the trade union in writing as to the outcome of its handling of the matter.

In summary, the procedure for terminating an employment contract is as follows:

- **step 1:** The employee violates the rules of the employer.
- **step 2:** The employer obtains and keeps related evidence of the violation.
- **step 3:** The employer decides whether the violation is serious by referring to internal rules, the employment contract and company regulations.
- **step 4:** The employer notifies the labour union (if any).
- **step 5:** The employer notifies the employee of the decision to terminate the employment contract.

Employers are also prohibited from terminating the employment of employees who have been exposed to occupational disease hazards before being checked by medical staff. Employers may not dismiss or lay off injured workers during their period of medical care, those who are unable to work due to occupational illness or injury, those who are pregnant, ill, or nursing and those who have consecutively worked for the employer for at least 15 years and are within five years of retirement unless they are proven to fall within specific provisions of Labour Contract Law.

Consultation with unions on termination of employment contracts

It is mandatory for employers with more than 20 employees to establish a trade union. However, the absence of a trade union is not an excuse for not giving notice to a third party mediator. In the absence of a trade union within the employer entity, the employer may either inform the General Trade Union, which represents all companies, or seek a meeting with representatives of the affected employee.

Non-competition clauses

A non-competition clause limits the ability of employees to compete with their former employers. The intended purpose of a non-competition clause is to protect the intellectual property and trade secrets of the company.

An employer may include a non-competition clause in an employment contract pursuant to which the employer is obliged to make monthly financial compensations to the employee after the contract is terminated. Local implementation rules and judicial interpretation in various regions will determine the validity of a non-competition clause which does not make provision for compensation.

The pre-conditions to non-competition provisions stipulate that only senior management, senior technicians and other key personnel who are under confidentiality obligations are bound by the provisions.

The scope, geographic area and terms of competition restriction must be agreed by the employer and employee, consistent with provisions of law and regulation. Agreement could include the nature of the new employment, type of competitors, monthly salaries or compensation that needs to be paid by the employer to the employee, including the duration of the payments.

In Shenzhen, the employer is expected to pay not less than 50% of the employee's previous salary, whereas in Shanghai the employer is expected to pay 20-50% of the employee's last salary. These payments are given in the form of "financial compensation" to restrict employees from working with competitors.

The employee, as part of the confidentiality obligation, would be restricted from seeking employment by competitors of the employer for a maximum period of two years. If the employee breaches the non-competition clause, the employee would be required to pay an agreed penalty to his or her previous employer.

Work related injuries

An employee is held to be suffering from work-related injuries if:

- the employee is injured in an accident in the workplace during working hours;
- the employee is injured in an accident while engaging in preparatory or winding-up work related to the employee's work before or after working hours in the workplace;
- the employee is injured by violence or in any other accident in connection with the performance of the employee's duties during working hours in the workplace;
- the employee suffers from an occupational disease;
- during a work-related travel, the employee is injured in connection with work or the employee's whereabouts become unknown after an accident;
- the employee is injured in a traffic accident for which the employee is not principally responsible or in a city rail transit, passenger ferry and train accident while going to or returning from work; or
- other circumstances (specified in laws and administrative regulations) exist in which it is determined that the employee suffers a work-related injury.

Additionally, an employee is deemed as having a work-related injury if the employee:

- dies immediately or within 48 hours after emergency treatment for a disease suddenly arising during working hours in the workplace;
- is injured in an act to protect national interests or public interests such as emergency rescue and disaster relief; or
- is injured and disabled in war or on duty while in military service and has obtained a revolutionary injured and disabled soldier certificate and suffers from a relapse of the old injury while being employed by the employer.

However, an employee is not be deemed to have a work-related injury if the employee:

- is injured or dies as a result of the commission of crime or the violation of public security administration;
- is injured or dies as a result of intoxication; or
- inflicts harm on himself or commits suicide.

Foreign employers need to be aware that a majority of medical insurances in China are currently province-specific i.e. injuries that occur, or that are treated, at a location different from that stipulated in the policies, may not be covered. However, the government is in the process of revising these province-specific policies to be applicable or effective nationwide.

Employment with representative offices

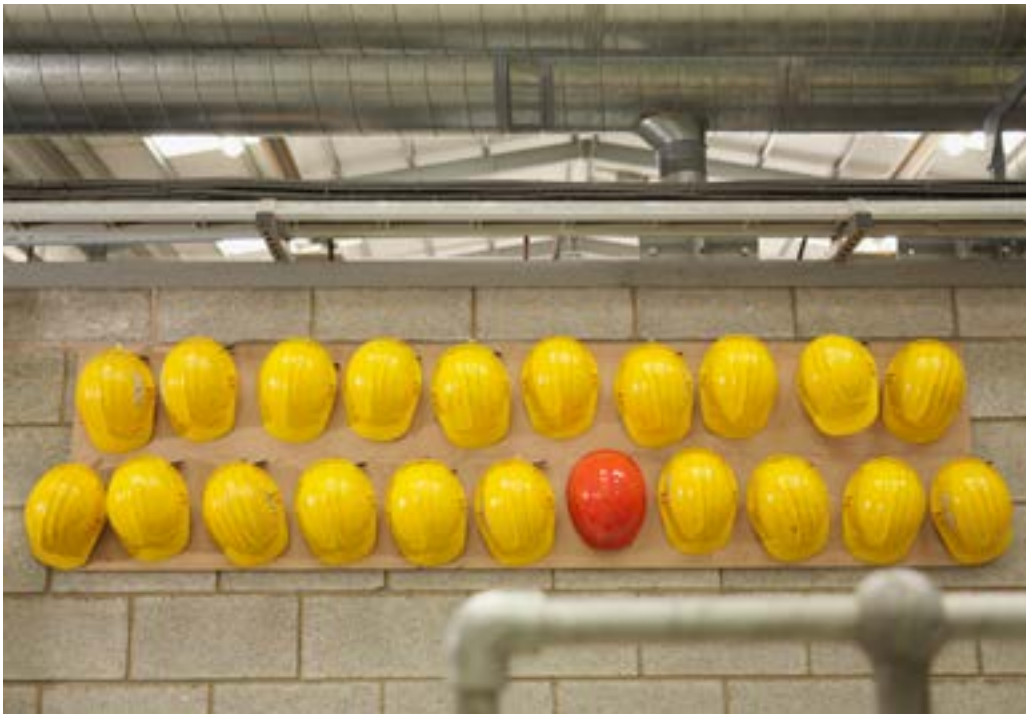
Representative offices in China are statutorily required to only engage Chinese employees through human resource agencies. Although there is no regulatory restriction on the employment period for Chinese employees in representative offices, human resource agencies, as the legal employers, usually engage employees with a fixed term of employment.

If the representative office wishes to engage foreign employees, the foreign employees need to be employed by the parent overseas company and despatched to work for the representative offices as representatives. The number of foreign employees which may be so engaged by the representative office is limited to four persons. Representative offices in some industries (such as law firms and securities companies) may be subject to specified regulations.

Withholding individual income tax

Individual income tax is required to be withheld by employers from employees' salaries or wages and paid to the taxation authorities on a monthly basis. An annual individual income tax declaration is required to be submitted to the taxation authorities within three months of the end of the previous calendar year.

See section four (Taxation) for more information on individual income tax.



Intellectual property

Foreign investors should implement an intellectual property protection strategy as part of foreign investment in China.

General

China recognises intellectual property rights and has in place the Patent Law, the Trademark Law, the Copyright Law and subsequent measures to protect and enforce these rights. In order to receive protection under this legislation, patents, trademarks and copyrighted works must be registered with relevant authorities. As the system operates on a first-come, first-served basis, the consideration of intellectual property issues at an early stage is crucial for brand and trademark protection.

Patents & designs

The Patent Law governs not only patents for inventions, but also unique utility models and designs. Patents may not be granted for scientific discoveries, rules and methods for thought processes, methods of diagnosing or treating diseases, substances obtained by means of nuclear transformation or animal and plant varieties.

The protection term for inventions is 20 years from the date of filing the patent application. Additionally, the protection period for utility designs and models is ten years.

The registration of patents is governed by the State Intellectual Property Office, which is controlled by the State Council. Registration is governed on a priority basis.

Trademarks

Registered trademarks include trademarks, service marks, collective marks and certification marks that have been approved and registered with the Trademark Office of the State Administration for Industry and Commerce.

Trademarks must be distinctive and will not qualify for registration if they are generic in nature, lack distinctive features, or have direct reference to the physical characteristics of the goods the trademarks represent.

A registered trademark is valid for a term of ten years from the date the registration is approved. A registration may be renewed for an additional ten year period by filing a renewal application within six months of the trademark's expiration. If registration of the same trademark has been filed in a foreign country, documents concerning its examination overseas must be submitted when applying for registration in China. The registration and administration of trademarks is governed by the Trademark Office of the State Administration for Industry and Commerce. Registration is also governed on a priority basis.

Copyright

China is a signatory to both the Berne Convention and the Universal Copyright Convention, the two main multilateral copyright conventions. In order to protect the rights and interests of copyright holders of foreign works, the PRC issued the *Regulations on Implementation of International Copyright Treaties* in September 1992.

Copyrights protect the rights of publication, authorship, alteration, integrity, reproduction, distribution, rental, exhibition, performance, showing, broadcast, communication of information on networks, making of cinematographic work, adaptation, translation and compilation. The rights of authorship, alteration and integrity have an unlimited duration.

All other rights are protected for a term of the life of the author plus 50 years (ending on 31 December) after the author's death.

The Copyright Law protects works, published or unpublished, of Chinese citizens, legal entities and organisations, as well as those of foreign nationals or stateless persons. Foreign nationals are not required to appoint an agent to apply for copyright protection.

The National Copyright Administration, which is controlled by the State Council, is responsible for the nationwide administration of copyrights. In each province, autonomous region and municipality under the central government, Copyright Administration Departments of the People's Government administer copyrights in their administrative regions respectively.

Copyright material may be registered with the National Copyright Administration. Registration may be helpful evidence of an ownership right in a copyrighted work, but it is not a precondition to copyright enforcement.

Software

Software may also be registered with the National Copyright Administration. Registration, however, requires the filing of source code. Many foreign companies do not register their software in China as the risk of leakage is considered greater than the benefit of registration.

Domain name

Domain names are registered in China on a first-to-file basis.

Dispute resolution

There are a variety of dispute settlement forums which investors can gain access to in China.

Commercial disputes

Alternative forums for resolving commercial disputes include:

- the People's Courts in cities and townships;
- arbitration institutions, such as the China Economic and Trade Arbitration Commission (CIETAC), the Beijing Arbitration Commission (BAC) in Beijing and the Shanghai Arbitration Commission (SAC) in Shanghai;
- the Hong Kong International Arbitration Centre (HKIAC);
- ad hoc tribunals in Hong Kong for Sino-foreign joint venture disputes; and
- offshore arbitration centres.

The direct coordination between the government and stakeholders (e.g. creditors, media) has instrumentally assisted with the enforcement of contracts and the resolution of business conflicts in China. According to the 2013 World Bank 'Doing Business' Survey, China was ranked 19th out of 185 world economies for "ease of enforcing commercial contracts".

Commercial arbitration

Arbitration is often the preferred dispute resolution mechanism for foreign related disputes in China, as unlike court judgments, arbitration awards rendered in China are enforceable in more than 140 countries pursuant to the New York Convention.

There are more than 200 arbitration institutions throughout China. In places like Shanghai and South China, arbitration is more complicated, given the number of arbitration institutions in these regions.

Clear dispute resolution clauses are the key to successful determination of a contractual dispute. Accordingly, it is advisable to seek local counsel's advice when including dispute resolution clauses in commercial contracts.

Labour arbitration

The Labour Arbitration Commission has a nearly exclusive mandate to resolve disputes related to Chinese employment contracts. The decisions from the Labour Arbitration Commission are generally open for appeal, based on the merits of the case, to the People's Courts. However, there are exceptions.

This avenue for appeal differs from the decisions made by foreign-related commercial arbitrations, which are generally limited to review for procedural defects and potential public policy violations.

Amendments to the Civil Procedure Law

China's legislature recently passed amendments to the Civil Procedure Law which provided more clarity to the rules of evidence and civil litigation procedures. The amendments established a more rigorous decision-making process for the People's Courts and made judgments and rulings more accessible to the general public. The amendments also expanded the previous scope of interlocutory relief (e.g. property preservation, evidence preservation) to include an expansive list of interim injunctions (e.g. order for specific performance) for civil litigants.

Administrative enforcement and review

Investors should be aware that the state and/or local AIC (China's market regulator) bureaus have the power to impose administrative penalties and to enforce regulations against market misconduct (e.g. production and sale of fake and substandard products and engagement in unlicenced business).

There may be other agencies with authority to provide input for administrative and judicial reviews, or appeal, before the People's Courts.

Examples include the review of a decision by a city administrative department which refused to register a land transfer to a *bona fide* purchaser.

Investment treaty protection

China is party to many international bilateral investment treaties. Foreign investors may consider utilising these channels to resolve any commercial disputes.

Criminal investigation and prosecution

Disputes that involve serious breaches of civil, administrative or criminal law may be reported to either the Public Security Bureau or to the administrative agencies (e.g. SAIC). These “economic crimes”, depending on the merits of the case and the available evidence, are then referred to the People’s Procuratorate (i.e. prosecutors) for possible trial at the People’s Courts.

As an example, a machinery importer who understates the invoice value of a large consignment – with the expressed or implied intention to avoid paying customs duties – might be investigated by Customs and be prosecuted by the People’s Procuratorate.

Anti-bribery and corruption

China's anti-bribery legislation criminalises both the bribery of government officials and the offering of bribes to employees of private enterprises or institutions.

General

The Criminal Law of the PRC prohibits the offering, giving or receiving of bribes by both individuals and legal persons in China.

Chinese authorities responsible for anti-corruption measures include:

- Anti-Corruption Bureau affiliated with the People's Procuratorate;
- Ministry of Public Security and Public Security Bureaus;
- AIC; and
- Central Commission for Discipline Inspection

Many successful prosecutions of cases of criminal bribery have resulted from investigations made by SAIC.

The PRC legal framework crimilalises two categories of bribery which differ depending on the identity of the person receiving the bribe – "official bribery" (offering bribes to State officials or functionaries) and "commercial bribery" (offering bribes to employees of private enterprises or institutions). The criteria and penalties for each type differ.

Official bribery

Official bribery is governed by the PRC Criminal Law which provides that persons who:

- give money or property to a government official for the purpose of securing an illegitimate benefit are guilty of offering a bribe.
- in economic activity, violate state regulations by giving a relatively large amount of money or property to a government official or rebates or service charges of various descriptions are regarded as guilty of offering bribes.

"Officials" are defined as "employees of state organisations who perform public service".

The PRC Criminal Law stipulates further that no entity may either offer bribes for the purpose of securing illegitimate benefits or give rebates or service charges to government officials in violation of PRC law. Accordingly, any party that offers money or property to government officials for the purpose of securing an illegitimate benefit commits an offence of bribery.

On 12 December 2012 the Supreme People's Court and the Supreme People's Procuratorate jointly released an update to the *Interpretation on Certain Issues Concerning the Application of Law in the Handling of the Criminal Cases of Offering Bribes* (the Interpretation). The Interpretation specifies the application of relevant provisions of the Criminal Law for official bribery, specifically describing the criteria for various thresholds. It notes that giving bribes of more than RMB10,000 to state functionaries will lead to criminal prosecution and giving bribes of more than RMB200,000

will be deemed to be "serious", resulting in more serious punishment. A bribe of less than RMB200,000 can still be deemed to be "serious" in some circumstances, for example if given to a state functionary in certain government agencies and where the bribe "seriously harms" the public interest or endangers lives or property.

The Interpretation provides further that illegal property interests obtained through bribery must be returned to the victim. For example, this would apply where property developers bribe government officials to obtain land illegally and in violation of the rights of current occupants. Other benefits obtained improperly, such as licences and certifications, must be handled according to "applicable regulations," which in many cases allow for licences or certifications to be cancelled if they had been obtained through bribery.

However, the Interpretation does not offer any specific guidance on the 2011 amendments to the PRC Criminal Law that criminalised bribes to non-Chinese government officials.

Penalties for official bribery include criminal detention for the least serious cases and life imprisonment in the most serious cases. Where an entity is found to be guilty of bribery, in addition to the imposition of fines and confiscation of illegal income, the entity's managing personnel or other employees who are directly responsible for the offence may be subject to penalties which range from criminal detention to life imprisonment.

While China is not currently a signatory to the OECD Anti-Bribery Convention, it has recently amended its Criminal Law to prohibit the bribery of foreign public officials.

Commercial bribery

Commercial bribery generally involves the bribing of "personnel of state organisations not engaged in public services" or "working personnel of private companies or enterprises". The PRC Criminal Law provides that bribery occurs where these personnel:

- take advantage of their positions to procure benefits for third parties in exchange for money or property with substantial value;
- accept kickbacks or commissions in the course of commercial dealing in violation of relevant regulations; or
- give government officials money or property of substantial value, and/or offer kickbacks or commissions to officials in the course of commercial dealings in violation of relevant regulations.

Commercial bribery is also governed by administrative provisions including the PRC Anti-Unfair Competition Law and associated regulations. Under the Anti-Unfair Competition Law, commercial bribery constitutes a business counterpart or its employees offering money or property (except for promotional gifts of nominal value) or adopting "other means" to purchase or sell products. "Property" includes both cash and disguised kickbacks (such as those structured as commission and sponsorship). "Other means" refers to benefits such as subsidised travel or entertainment.

The threshold for an amount or value to be considered a bribe differs depending on whether individuals or corporate entities are involved. Potential penalties include heavy fines and criminal detention.

Entities convicted of commercial bribery are liable for the damage caused to their competitors. The injured party is able to claim these in an action before a PRC court.

Extra-territorial reach of legislation

Foreigners who conduct business in China need to be aware of the extra-territorial reach of the anti-bribery and corruption legislation of their home country. For example, the Australian *Criminal Code Amendment (Bribery of Foreign Public Officials) Act 1999 (Cth)* includes extra-territorial obligations not to give, cause, offer or promise to bribe a foreign public official.

Glossary

The following terms have been defined in this guide and are set out below for ease of reference.

Term	Meaning
AIC	Administration for Industry and Commerce
BOC	Bureau of Commerce
CIT Law	Corporate Income Tax Law
CJV	Cooperative joint venture
CSRC	China Securities Regulatory Commission
Customs	The People's Republic of China General Administration of Customs
DE	Domestic enterprise
DRC	Development and Reform Commission
EJV	Equity joint venture
FIP	Foreign invested partnership
FDI	Foreign direct investment
FICE	Foreign invested commercial enterprises
FIE	Foreign investment enterprise
FIVCE	Foreign invested venture capital enterprise
FEIT Law	Foreign Enterprise Income Tax Law
GP	General partner
HKD	Hong Kong Dollar, the lawful currency of Hong Kong Special Administrative Region of the PRC
Investment Catalogue	Foreign Investment Industrial Guidance Catalogue (2011)
LP	Limited partner

Term	Meaning
MOF	Ministry of Finance
MOFCOM	Ministry of Commerce
NDRC	National Development Reform Commission
NPC	National People's Congress
PE	Private equity
PRC/China	People's Republic of China
RMB	Renminbi, the lawful currency of the PRC
SAIC	State Administration of Industry and Commerce
SAFE	State Administration of Foreign Exchange
SAT	State Administration of Taxation
Standing Committee	Standing Committee of the National People's Congress
USD	United States Dollar, the lawful currency of the United States of America
VAT	Value added tax
WFOE	Wholly foreign-owned enterprise
WTO	World Trade Organisation

Contacts

For further information including other partners you could contact, partner profiles and location of our offices, please see our website: www.kwm.com

Managing Partner, Stuart Fuller
T +852 3443 1162
stuart.fuller@hk.kwm.com

Beijing, Ping Xu
T +86 10 5878 5012
xuping@cn.kwm.com

Shanghai, Harry Du
T +86 10 5878 5021
harry.du@cn.kwm.com

Shanghai, Mark Schaub
T +86 21 2412 6000
mark.schaub@cn.kwm.com

Shanghai, Martyn Huckerby
T +86 21 2308 7628
martyn.huckerby@cn.kwm.com

Shanghai, Xiaohong Zhao
T +86 21 2308 6030
zhaoxiaohong@cn.kwm.com

Hong Kong, Hayden Flinn
T +852 3443 1113
hayden.flinn@hk.kwm.com

London, Robert Hanley
T +44 20 7496 1700
robert.hanley@uk.kwm.com

Sydney, Evie Bruce
T + 61 2 9296 2106
evie.bruce@au.kwm.com

Sydney, Scott Gardiner
T +61 2 9296 2158
scott.gardiner@au.kwm.com

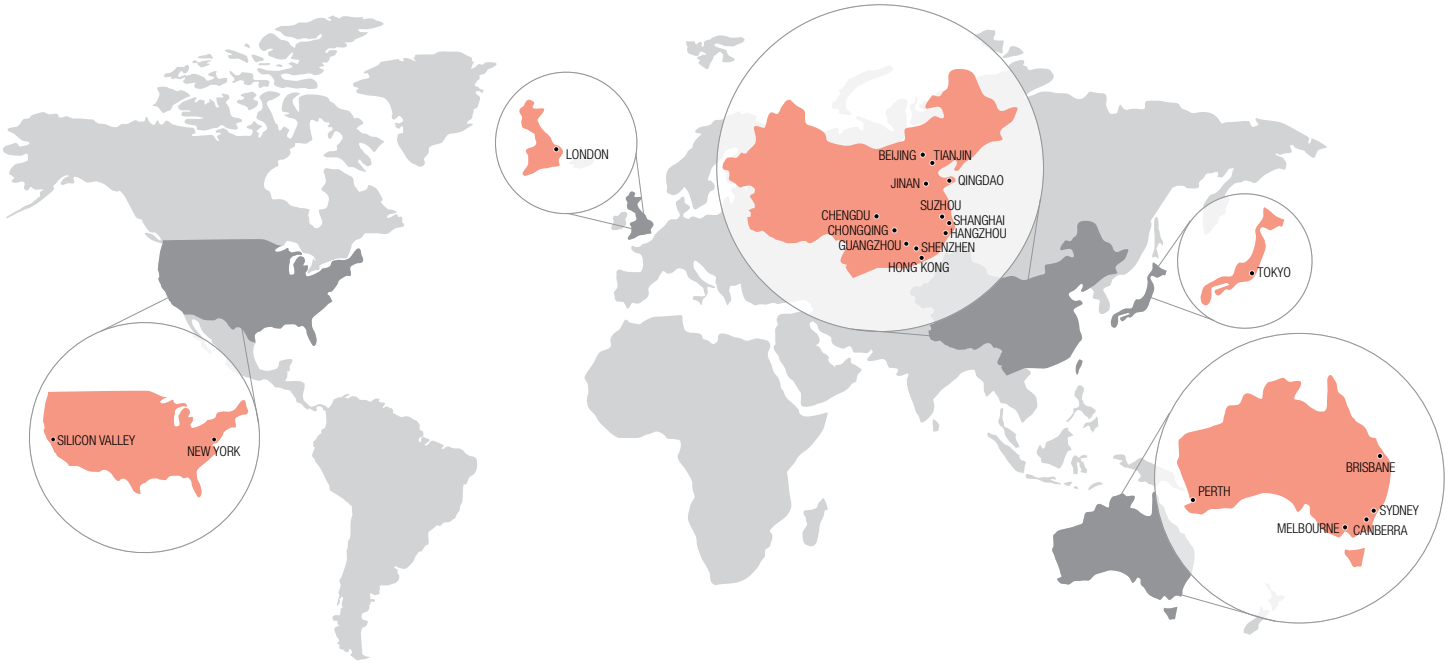
Melbourne, David Olsson
T +61 3 9643 4330
david.olsson@au.kwm.com

Melbourne, Louis Chiam
T +61 3 9643 4086
louis.chiam@au.kwm.com

Perth, Nigel Hunt
T +61 8 9269 7080
nigel.hunt@au.kwm.com

Brisbane, Robert Jackson
T +61 7 3244 8067
robert.jackson@au.kwm.com

Canberra, David Briggs
T +61 2 6217 6056
david.briggs@au.kwm.com



China and Hong Kong

Beijing
40th Floor, Tower A
Fortune Plaza
7 Dongsanhuan Zhonglu
Chaoyang
Beijing 100020, PRC
T +86 10 5878 5588

Beijing
20th Floor, East Tower
World Financial Center
1 Dongsanhuan Zhonglu
Chaoyang
Beijing, 100020, PRC
T +86 10 5878 5588

Shanghai
17th Floor, One ICC, Shanghai ICC
999 Middle Huai Hai Road
Xuhui District
Shanghai, 200031, PRC
T +86 21 2412 6000

Shenzhen
28th Floor, Landmark
4028 Jintian Road
Futian District
Shenzhen, 518026, PRC
T +86 755 2216 3333

Chengdu
22nd Floor, Unit G, City Tower
86 Section One, Renmin Nanlu
Chengdu, Sichuan
610016, PRC
T +86 28 8620 3818

Guangzhou
55th Floor
International Finance Center
5 Zhujiang Xilu
Zhujiang New Town, Guangzhou
Guangdong, 510623, PRC
T +86 20 3819 1000

Chongqing
1112 Metropolitan Tower
68 Zourong Road
Chongqing
400010, PRC
T +86 23 6371 5199

Hangzhou
12th Floor, D Region
Euro America Center
18 Jiaogong Road
Hangzhou
Zhejiang, 310012, PRC
T +86 571 5671 8000

Tianjin
3101-3105 Central Plaza
188 Jiefang Beilu
Heping District
Tianjin, 300042, PRC
T +86 22 5887 8700

Suzhou
601 Century Financial Tower
1 Su Hua Road
Suzhou Industrial Park
Suzhou, Jiangsu, 215021, PRC
T +86 512 6292 7100

Qingdao
10th Floor, Hisense Building
17 Donghai Xilu
Qingdao
Shandong, 266071, PRC
T +86 532 8579 0008

Jinan
4th Floor, International Business Center
6 Liyang Avenue
Jinan
Shandong, 250002, PRC
T +86 531 8901 9600

Hong Kong
13/F Gloucester Tower
The Landmark
15 Queen's Road Central
Central
Hong Kong
T +852 3443 1000

Hong Kong
9/F Hutchison House
10 Harcourt Road
Central
Hong Kong
T +852 3443 8300

Australia

Sydney
Level 61, Governor Phillip Tower
1 Farrer Place
NSW 2000
T +61 2 9296 2000

Melbourne
Level 50, Bourke Place
600 Bourke Street
VIC 3000
T +61 3 9643 4000

Perth
Level 10, Central Park
152 St Georges Terrace
WA 6000
T +61 8 9269 7000

Brisbane
Level 33, Waterfront Place
1 Eagle Street
QLD 4000
T +61 7 3244 8000

Canberra
Level 5, NICTA Building
7 London Circuit
ACT 2600
T +61 2 6217 6000

United States of America, United Kingdom and Japan

New York
42nd Floor
444 Madison Avenue
New York, NY 10022
United States of America
T +1 212 319 4755

Silicon Valley
5 Palo Alto Square
Suite 220
3000 El Camino Real
Palo Alto, CA 94306
United States of America
T +1 650 858 1285

London
3rd Floor
10 Old Broad Street
London
EC2N 1DW
United Kingdom
T +44 20 7496 1700

Tokyo
4th Floor
11-28 Sogo Nagata-Cho Building
Nagato-Cho 1 Chome
Chiyoda-ku, Tokyo, 100-0014
Japan
T +81 3 3508 5599

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For publications enquiries please contact:

Julia Quinn, Head of Corporate Affairs
T +612 9296 3352
julia.quinn@au.kwm.com

Elle Quinn, Communications Manager
T +61 2 9296 3730
elle.quinn@au.kwm.com

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