

A Handy Guide to

DOING BUSINESS IN

# CHINA



A publication of

**SBA Stone Forest**

A Stone Forest Company

**中瀚石林**

新加坡石林集团子公司

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### **DISCLAIMER**

This guide is designed to provide information on doing business in China only. This information is provided with the intention that the authors do not offer any legal or other professional advice. In the case of a need for any such expertise, please consult the appropriate professional. This is not an exhaustive guide on the subject and was not created to be specific to any individual's or organisation's circumstance or needs.

Every effort has been made to make this guide as accurate as possible and it should serve only as a general guide or supporting material, not as the ultimate source of subject information.

This guide contains information that might be dated and is intended only for an informative purpose at the time of publication. The authors shall bear no liability or responsibility to any person(s) or entity regarding any loss or damage incurred, or alleged to have been incurred, directly or indirectly, by the reliance on information contained in this guide, and shall not be responsible for any errors, inaccuracies or omissions.

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# GENERAL INFORMATION

With a long history of over 5,000 years and a population of more than 1.38 billion, China is one of the world's biggest countries covering 9.6 million square kilometres of land area and 4.7 million square kilometres of territorial waters.

It exercises jurisdiction over 23 provinces including five autonomous regions, four direct-controlled municipalities (Beijing, Tianjin, Shanghai and Chongqing), and two mostly self-governing special administrative regions (Hong Kong and Macau).

China officially recognises 56 distinct ethnic groups, the largest of which is the Han people, who make up about 92% of the total population. Ethnic minorities, for example, Manchurians, Uighurs, Tibetans and Koreans, account for about 8% of the population in China. There are more than 80 living languages in China, which include Mandarin — spoken natively by 70% of the population — and various dialects such as Shanghaiese, Cantonese, and Hokkien.

## ECONOMY

China had the largest and most complex economy in the world for much of the past two thousand years, during which it has seen cycles of prosperity<sup>1</sup> and slowdowns. Since the introduction of economic reforms in 1978<sup>2</sup>, China has become one of the world's fastest growing<sup>3</sup> major economies. In 2001, China formally joined the World Trade Organization. In recent years, China has maintained its high rate of economic growth, with its gross domestic product (GDP) growing 7.3% year on year in 2014 to US\$10.3 trillion, making it the second largest economy in

the world. It is also the world's largest exporter and second largest importer of goods.

In addition, China is a member of numerous formal and informal multilateral organisations, including the WTO<sup>4</sup>, APEC<sup>5</sup>, BRICS<sup>6</sup>, the Shanghai Cooperation Organisation (SCO)<sup>7</sup>, the BCIM<sup>8</sup> and the G-20<sup>9</sup>. China is seen as a major regional power<sup>10</sup> within Asia, and considered by some to be a potential superpower<sup>11</sup>.

China is now the third most visited country in the world, welcoming both tourists and international entrepreneurs alike. Over 30 million foreigners entered China in 2014 for leisure, business or conferences. Among the world's 500 largest multinational enterprises, over 480 have business operations in China. With the development of China's Free Trade Zones, more foreign entities are entering the Chinese market. By 2015, over 490,000 foreign-invested enterprises (FIEs) had established operations in China. Inbound Foreign Direct Investment (FDI) exceeded US\$126 billion in 2016. China's outbound FDI increased rapidly in recent years, with the net investment growing from US\$6.8 billion in 2010 to US\$14 billion in 2015. FDI into the Chinese mainland maintained steady growth in 2015 despite the economic slowdown in the world's second largest economy.

Like many other Asian countries, China's foreign reserves have exceeded their optimum level in recent years. According to the State Administration of Foreign Exchange of China, its foreign reserves reached US\$3.3 trillion by the end of 2015, surpassing Japan to become the country with the highest foreign reserves in the world.

<sup>1</sup> <https://en.wikipedia.org/wiki/Prosperity>

<sup>2</sup> [https://en.wikipedia.org/wiki/Chinese\\_economic\\_reform](https://en.wikipedia.org/wiki/Chinese_economic_reform)

<sup>3</sup> [https://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_real\\_GDP\\_growth\\_rate](https://en.wikipedia.org/wiki/List_of_countries_by_real_GDP_growth_rate)

<sup>4</sup> <https://www.wto.org>

<sup>5</sup> [www.apec.org](http://www.apec.org)

<sup>6</sup> <http://infobrics.org>

<sup>7</sup> [https://en.wikipedia.org/wiki/Shanghai\\_Cooperation\\_Organisation](https://en.wikipedia.org/wiki/Shanghai_Cooperation_Organisation)

<sup>8</sup> <https://en.wikipedia.org/wiki/BCIM>

<sup>9</sup> <http://g20.org/English>

<sup>10</sup> [https://en.wikipedia.org/wiki/Regional\\_power](https://en.wikipedia.org/wiki/Regional_power)

<sup>11</sup> [https://en.wikipedia.org/wiki/Potential\\_superpowers](https://en.wikipedia.org/wiki/Potential_superpowers)

### ADMINISTRATION

With its seat of government in the capital city of Beijing, the National People's Congress is the highest organ of state power in China. The central and highest organ of state administration is the State Council, which directly oversees various subordinate People's Governments at the province, direct-controlled municipality and autonomous region levels.

The Communist Party is the sole governing party of China, while other political parties participate in the National People's Congress and the Chinese People's Political Consultative Conference. A multi-party cooperation and political consultation system is adopted under the leadership of the Communist Party.

In 2013, the Second Session of the 18th Conference of the Chinese Communist Party and the First Session of the 12th Conference of the National People's Congress reviewed and approved the new Proposal of the State Council for Institutional Reform and Functional Transformation. These reforms are expected to greatly improve administrative efficiency, accelerate improvement of the socialist market economic system and provide institutional security for building a moderately prosperous society in China.

### KEY ADMINISTRATIVE DEPARTMENTS

- (1) National Development and Reform Commission ("**NDRC**") coordinates development policy and also plays a major role in approving some restricted foreign investment projects.
- (2) The establishment of Foreign Investment Enterprises shall be approved by the Ministry of Commerce ("**MOFCOM**"), including the Articles of Association and business scope (areas where business activities are permitted).
- (3) All business entities need to maintain records of corporate documents with local branches of State Administration for Industry and Commerce ("**SAIC**"), including basic

information regarding registered capital, directors, shareholders and the constitutional documents.

- (4) State Administration of Foreign Exchange ("**SAFE**") manages and monitors foreign exchange transactions, including inward and outward remittance and payments.
- (5) Special approvals are needed for foreign investors to enter a restricted industry due to some limitations. For example, pre-approval from the State Food and Drug Administration ("**SFDA**") is needed if the investment involves pharmaceutical production.

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# BUSINESS ENTITIES



### TYPES OF BUSINESS ENTITIES

China's Company Law recognises two types of companies:

#### LIMITED LIABILITY COMPANY

There is no minimum capital contribution requirement for this type of entity. The registered capital of a limited liability company shall be the total capital contributions subscribed for by all the shareholders as registered with the registration authority. The capital may be contributed in cash, in kind or with intellectual property rights, land use rights or other non-monetary assets whose value may be assessed in financial terms and the ownership may be transferred in accordance with the law.

#### COMPANY LIMITED BY SHARES

A company limited by shares may be established either by way of promotion or by way of stock flotation. Also, it shall have no less than two and no more than 200 promoters, of whom a majority shall be domiciled within the territory of China.

Where a company limited by shares is established by way of promotion, its registered capital shall be the total share capital subscribed for by all its promoters as recorded by the company registration authority.

Where a joint stock limited company is established by way of stock flotation, its registered capital shall be the total paid-in capital as recorded by the company registration authority. Establishment by share offer is subject to the approval of China's Securities Regulatory Commission.

### FOREIGN INVESTED ENTITIES

Foreign investors are allowed to register the following types of entities:

#### COOPERATIVE JOINT VENTURE (CJV)

A CJV has the option to register as a legal person with limited liability, but it is not mandatory. The parties in a CJV have the flexibility of choosing whether to operate the enterprise as a limited

liability company or to operate as a partnership where at least one partner bears unlimited liability. If the CJV is operated as a limited liability company, a board of directors shall be set up, and if a CJV has no legal person status, a joint management committee shall be set up as the CJV's authority. The profits of a CJV are allowed to be shared by participants as specified in the joint venture contract, and not necessarily in proportion to their capital contribution. As a result, this type of venture is ideal when the foreign investor is only looking for a short-term project. After obtaining a fair or premium return on investment, the foreign investor returns the majority or full ownership of the enterprise to the Chinese partner.

A cooperative venture does not require a new business licence if it is arranged in contractual form under the auspices of an existing joint venture enterprise. There are no expiry periods or limitations on the length of the venture. The contractual terms can be renewed at any time and for any extended period, subject to the approval of the government.

Investment contributions from each party are not limited to financial capital but may also include non-financial assets such as intellectual property rights, buildings, materials or machinery. The foreign party's investment in a cooperative joint venture that has obtained the status of a Chinese legal person in accordance with the law shall generally not be less than 25% of the registered capital of the cooperative joint venture.

#### EQUITY JOINT VENTURE (EJV)

An EJV is typically a limited liability company used for long-term projects and required to be registered as a legal person. The main feature is that the profits, risks and losses of the EJV shall be shared by the parties to the venture in proportion to their respective contributions to its registered capital.

The minimum level of foreign participation in an EJV is 25% of the registered capital in general. The registered capital is not limited to financial capital, but may also encompass non-financial assets such as intellectual property rights, buildings, materials, or machinery if approved by the government.

A party to a joint venture may transfer its shares in the registered capital only with the agreement of the other party. Equity cannot be transferred or withdrawn under any scenario without the approval of the government.

There are registered capital/total investment ratio requirements that need to be observed depending on the investment size of the venture. Please refer to the Establishment Procedures section of this guide for details.

### **WHOLLY FOREIGN-OWNED ENTERPRISE (WFOE)**

A WFOE refers to a company wholly owned by one or more foreign investors. The WFOE is now a popular option for foreign businesses, as the investor may enjoy complete control over the business entity and reap the full profit from its operation. Moreover, WFOEs also provide better protection for the investor's intellectual property rights compared with other types of entities.

The operation term varies according to the nature of the enterprise; any extension of the operation term is subject to the approval of the relevant government authority. The establishment of export-oriented or high-tech WFOEs is encouraged.

A WFOE can also set up a subsidiary in mainland China, which is recognised as a Chinese domestic company.

### **COMPANY LIMITED BY SHARES WITH FOREIGN INVESTMENT (CLSFI)**

A CLSFI generally adopts the promotion method for its establishment, while share is also permitted.

A CLSFI set up by means of promotion shall have no fewer than two but no more than 200 initiators, of whom half or more shall have a domicile in China. At least one of the promoters has to be a foreign shareholder.

An EJV, CJV or WFOE may apply to convert to a CLSFI through a share flotation. Other than the requirements in the preceding paragraph, a CLSFI established by a share flotation needs at least one promoter that has a track record of being profitable

in the three consecutive years prior to the offer.

The minimum level of foreign participation in a CLSFI is 25%. A CLSFI can be listed either locally or abroad.

### **BUILD-OPERATE-TRANSFER PROJECT (BOT)**

BOT projects provide enterprises with concessions for key industrial or infrastructure projects in China, such as bridges, railways, industrial parks, power plants, airports, subways and expressways. After financing and building the project, the enterprise either immediately transfers the project to another party or continues to operate it for a number of years. When the agreed-upon equitable return on investment is achieved, the enterprise is required to transfer full ownership and control to the government. The terms, limitations, rules and regulations pertaining to BOT projects are often established on an ad hoc basis.

- The enterprise undertaking the project must take the form of a limited liability company.
- The registered capital should be at least 25% of the project's total investment.
- The projects are usually established through conditional franchise agreements that cannot exceed 30 years.

### **HOLDING COMPANY**

The number of approved holding companies in China is increasing. A holding company is an umbrella-structure arrangement that enables a foreign company to hold together its joint venture and WFOE investments in China. A holding company can either be an EJV or a WFOE. Generally, the government allows a foreign company to set up a wholly foreign-owned holding company in China if it has a good reputation, financial strength, and advanced technology, and undertakes projects that are in line with the state policies for industrial sectors.

### **FOREIGN-INVESTED PARTNERSHIP**

A foreign invested partnership may have a number

of foreign investors (either corporate or natural persons) and potentially Chinese investors. The state encourages foreign enterprises or individuals with advanced technology and management experience to establish partnerships to promote development of the related industries in the domestic market.

A general partnership consists of general partners who bear unlimited joint and several liability for the debts of the partnership. Where there are special provisions in the Partnership Enterprise Law on the forms of liability borne by general partners, those provisions shall prevail. A professional entity with specialised knowledge and skills that provides paid services to its clients may form a specialised general partnership.

A limited liability partnership consists of general partners and limited partners, with the former bearing unlimited joint and several liability for the debts of the partnership and the latter bearing liability for such debts respectively within the limits of the capital contribution for which they have subscribed.

A general partner may make capital contributions in cash or in kind, or in the form of intellectual property rights, land-use right or other property rights, or labour services. A limited partner shall not make capital contributions in the form of labour services.

### REPRESENTATIVE OFFICE (RO)

Before actually investing in China, many foreign investors choose to establish representative offices (ROs) to engage in market research and learn more about the country. An RO is optional before making an actual investment in China. It is not an independent legal entity and must confine its activities to promotion or acting as a liaison office on behalf of its head office. An RO is not allowed to generate revenue, solicit business, engage in warehousing or sign contracts with customers. It can hire local staff through approved employment agencies.

It should also engage in activities that service the head office directly.

## INCORPORATION OF BUSINESS ENTITIES

### APPROVAL AND REGISTRATION PROCEDURE

The approval of a foreign investment enterprise (FIE) in China depends on the nature of the proposed project. In 2015, the National Development and Reform Commission and Ministry of Commerce in China released the updated “Catalogue for the Guidance of Foreign Investment Industries” circular, which took effect on 10 April 2015. Under the Catalogue, foreign investment projects fall under three categories:

- Encouraged Projects
- Restricted Projects
- Prohibited Projects

Investment projects that do not fall under the above-mentioned three categories would be regarded as permitted projects. Different policies will apply to different categories of projects. Generally, it would be easier to set up an FIE within the Encouraged Projects or Permitted Projects category and the FIE could enjoy more preferential treatment from the business and tax perspectives. Otherwise, there could be restrictions on the form of investment (e.g. requirements on the amount of investment coming from the Chinese party) for some of the restricted projects.

The Ministry of Commerce (MOFCOM) and State Administration for Industry and Commerce (SAIC) have overall responsibility for approving the formation of FIEs, issuing approval certificates, and generally undertaking the examination and approval procedures. Under normal circumstances, the following documents should be submitted to support the application: Project Proposal, Letter of Intent, Feasibility Study Report, Articles of Association, Joint Venture Contract etc. However, the list of documents required for submission may vary depending on the requirements of the local authorities.

In 2015, the Organisation Code Certificate and Tax Registration Certificate were combined with the Business Licence (“New Business Licence”). The Administration of Industry and Commerce will issue the New Business Licence within 10 working days upon successful submission of the application documents. Within 30 days of the issuance of the New Business Licence, the FIE must register with the local tax authority.

## COMPARISON OF MAIN INVESTMENT VEHICLES

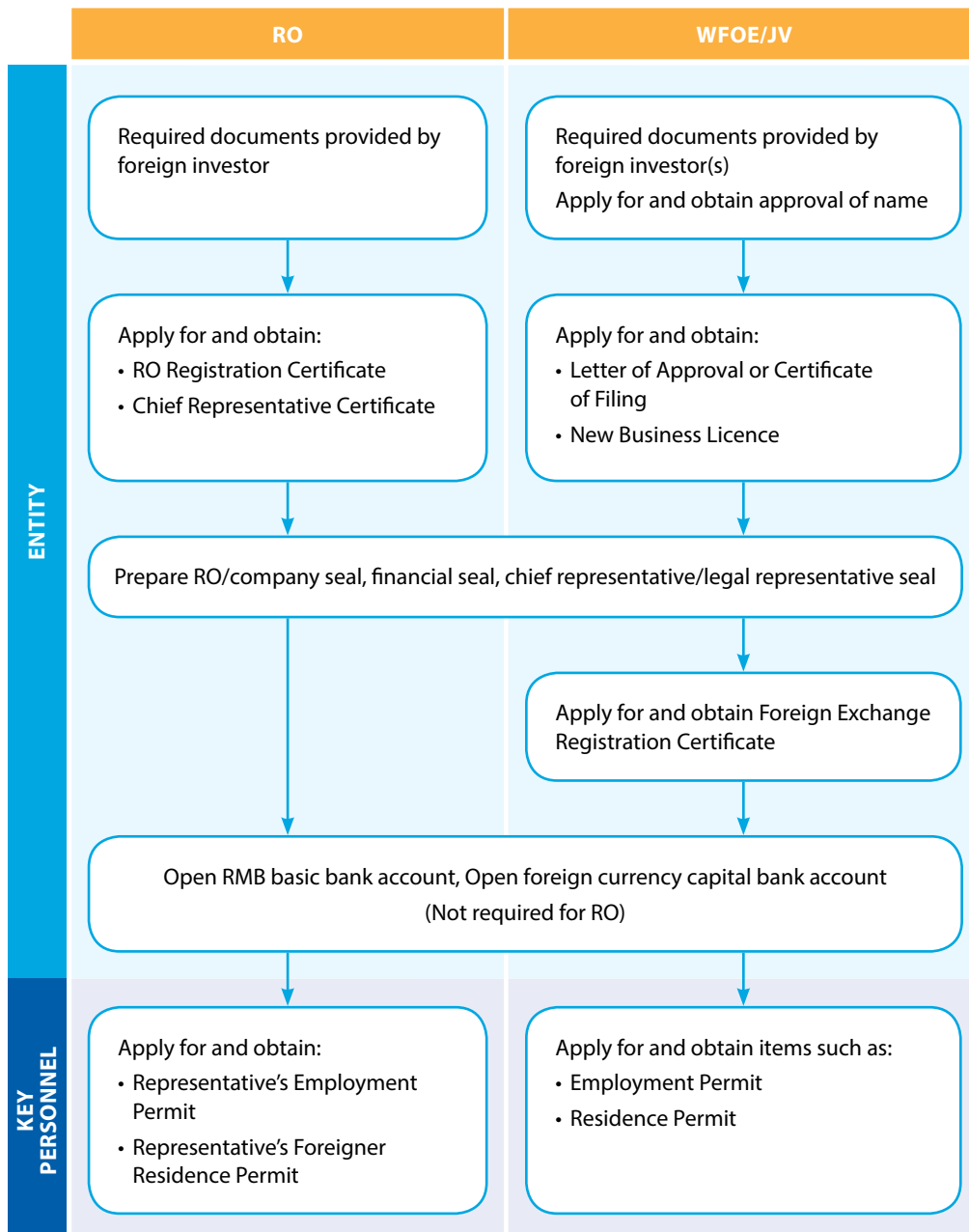
| WFOE                                                                                                                                                                                                                                                                                              | EJV                                                                                                                                                                                                                                                                                                                                     | CJV                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | RO                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Advantages</b>                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>Foreign investor has full equity control and management</li> </ul>                                                                                                                                                                                         | <ul style="list-style-type: none"> <li>Chinese partner may provide land, building, equipment as well as existing customers</li> <li>Collaboration with Chinese partners who hold a special licence in industries not open to WFOEs</li> <li>Profits and risks are clearly shared in proportion to the equity of each partner</li> </ul> | <ul style="list-style-type: none"> <li>Chinese partner may provide land, building, equipment as well as existing customers</li> <li>Collaboration with Chinese partners who hold a special licence in industries not open to WFOEs</li> <li>Flexible arrangement on form of cooperation, profit/responsibility sharing etc. according to its Joint Venture Contract</li> <li>Foreign investor is allowed to recover its capital investment upon certain agreement</li> </ul> | <ul style="list-style-type: none"> <li>Quickest way to set up</li> <li>Lower risk for purpose of initial market assessment</li> </ul>                                                                          |
| <b>Disadvantages</b>                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>Cannot set up WFOE in specific industries</li> </ul>                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>Foreign partner can only contribute up to 49% of registered capital in specific industries</li> <li>Does not have full equity control and management</li> </ul>                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>Cannot engage in direct business activities or enter into contracts</li> <li>Must engage local agent to hire local staff</li> </ul>                                     |
| <b>Equity Holding</b>                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>Foreign investor(s) contribute 100% of registered capital</li> </ul>                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>At least one foreign investor and one Chinese investor. Normally, foreign investor contributes at least 25% of registered capital</li> </ul>                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>Not applicable</li> </ul>                                                                                                                                               |
| <b>Governance</b>                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>One legal representative</li> <li>One Executive Director or Board of Directors (BOD) comprising at least three directors</li> <li>A Supervisor or Board of Supervisors shall also be appointed</li> </ul>                                                  | <ul style="list-style-type: none"> <li>One legal representative</li> <li>BOD comprising at least three directors</li> <li>A Supervisor or Board of Supervisors shall also be appointed</li> </ul>                                                                                                                                       | <ul style="list-style-type: none"> <li>One legal representative</li> <li>BOD comprising at least three directors or Joint Management Committee</li> <li>A Supervisor or Board of Supervisors shall also be appointed</li> </ul>                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>Chief Representative</li> </ul>                                                                                                                                         |
| <b>Tax</b>                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                |
| <ul style="list-style-type: none"> <li>Subject to: enterprise income tax, value added tax, individual income tax</li> <li>Enjoy tax incentives such as “Reduced Tax Rate for Qualified Advanced and New Technology Enterprises”</li> <li>Avoidance of Double Taxation Agreements apply</li> </ul> |                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <ul style="list-style-type: none"> <li>Generally, taxable on a deemed income basis, mainly for enterprise income tax, VAT and individual income tax (for details, please refer to Taxation section)</li> </ul> |

## BUSINESS ENTITIES

| WFOE                                                                                                                                                       | EJV                                                                                                                                                    | CJV | RO                                                                                                     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|-----|--------------------------------------------------------------------------------------------------------|
| <b>Reporting and Compliance</b>                                                                                                                            |                                                                                                                                                        |     |                                                                                                        |
| <ul style="list-style-type: none"> <li>Monthly/Quarterly tax filing and Annual Combined Filing</li> </ul>                                                  |                                                                                                                                                        |     | <ul style="list-style-type: none"> <li>Monthly/Quarterly tax filing and Annual Audit</li> </ul>        |
| <b>Lead Time to Establishment</b>                                                                                                                          |                                                                                                                                                        |     |                                                                                                        |
| <ul style="list-style-type: none"> <li>2 – 4 months for businesses that do not require special licences (upon submission of required documents)</li> </ul> | <ul style="list-style-type: none"> <li>3 months for businesses that do not require special licences (upon submission of required documents)</li> </ul> |     | <ul style="list-style-type: none"> <li>1 – 2 months (upon submission of required documents)</li> </ul> |

## ESTABLISHMENT PROCEDURES

This is a simplified illustration for reference purposes only.



**CAPITAL CONTRIBUTION**

China is currently implementing a “zero registered capital rule”, which means the authority will not verify a company’s capital injection at the time of registration. This allows companies to complete the business registration process without the need to actually inject any capital. However, the method of capital injection, amount and schedule still need to be specified in the company articles of association. The capital contribution scheme is used to ensure proper foreign investment goals and regulate investment behaviour. The registered capital of an FIE refers to the capital registered at the State Administration for Industry and Commerce (SAIC) for establishment of the FIE, catering to the FIE’s initial operational needs. The foreign investor may inject capital according to the capital contribution scheme, but it is very difficult for FIEs to reduce their registered capital during the operating period under existing regulations.

After the latest Amendment to PRC Company Law became effective on 1 March 2014, the shareholders can freely agree on the amount and contribution period based on the actual needs. Capital can be contributed by way of cash and equipment, such as properties, plant and equipment (PPE), intellectual properties (IP), and land-use rights. Registered capital (RC) is the total capital that should be contributed by the shareholders. However, another related concept, “total investment”, should be considered before incorporation. Both the RC and total investment (TI) of an FIE need to be stated in its Articles of Association. The upper limit for loan financing (from bank / holding company) is restricted to the difference between the TI and RC, while also being subject to the following guidelines for the debt-equity ratio.

| TI                            | Minimum RC Requirement according to the TI  |
|-------------------------------|---------------------------------------------|
| Less than US\$3 million       | 70% of TI                                   |
| US\$3–10 million              | 50% of TI and not less than US\$2.1 million |
| Over US\$10–30 million        | 40% of TI and not less than US\$5 million   |
| Over US\$30 million or higher | 1/3 of TI and not less than US\$12 million  |

The contribution of the RC must be declared through the Enterprise Credit Information Publicity System within 20 working days from the date of contribution. If the Administration of Industry and Commerce verifies that an enterprise has failed to make such a declaration, it may order the enterprise to fulfil this obligation within a definite time period.

An FIE is only permitted to repatriate profits after tax clearance has been obtained. Where FIEs are established with insufficient RC or TI, the capital increase process can take a few months to obtain the necessary approvals. Foreign investors should therefore consider carefully the expected operational funding requirement before determining the level of TI and professional advice is encouraged in this regard.

**AUDIT REQUIREMENTS**

All foreign invested enterprises must appoint a China-registered Certified Public Accountant (CPA) firm to audit their financial statements at the end of the accounting year (In China, it is on 31 December) and to issue an auditor’s report. Audits are required under the company laws, accounting regulations and income tax laws in China. Audited financial statements are also used for tax reporting purposes. Annual corporate income tax filings of non-resident entities (foreign enterprise’s representative offices) must be verified by a Certified Tax Agent (CTA) instead of a CPA firm. But provincial tax bureaus may still require submission of a CPA report for tax filing purposes. The annual financial statements should be submitted together with an auditor’s report issued by a CPA firm registered in China within four months of the end of the fiscal year. (However, local authorities may impose earlier deadlines in certain cases.)

The independent Chinese auditor appointed by a foreign invested company should be qualified and registered with the Chinese Institute of Certified Public Accountants to practise in China.

### ANNUAL COMBINED FILING

FIEs in China are required to undergo an online annual combined filing conducted by four government authorities, namely the Ministry of Finance, Ministry of Commerce, State Administration of Taxation and National Bureau of Statistics.

As part of the filing, FIEs are required to make annual statutory filings between mid-April and end-June following the end of a calendar year. Penalties will apply for non-compliance.

### DISSOLUTION AND LIQUIDATION

#### LIMITED LIABILITY COMPANY/COMPANY LIMITED BY SHARES

A company can be dissolved upon:

- (1) Meeting the liquidation conditions in its Memorandum and Articles of Association;
- (2) Approval by its shareholders;
- (3) Merger or division;
- (4) Termination by the authorities due to violation of Chinese law; or
- (5) Shareholders' petition to the people's court to dissolve the company when the business is in serious difficulties that would lead to significant losses for the shareholders

Any company that is dissolved due to (1), (2), (4), or (5) above shall be liquidated and a liquidation committee must be formed within 15 days. If the company is a limited liability company, the liquidation committee must be formed by its shareholders. For a company limited by shares, the members of the liquidation committee have to be approved at the shareholders' meeting.

In the event that no liquidation committee is formed, creditors of the company can apply to the Court to enforce the formation of the committee.

The liquidation committee is required to:

- (1) Prepare a statement of assets and liabilities;
- (2) Notify creditors;
- (3) Manage the company's business and operations during the cessation period, but only to the extent that this relates to the liquidation;
- (4) Obtain tax clearance;
- (5) Dispose of all assets and settle all liabilities;
- (6) Distribute surplus assets to shareholders after settling all liabilities; and
- (7) Represent the company to sue or to be sued.

When the liquidation committee prepares the statement of assets and liabilities, and if it is found that the company has insufficient assets to settle all its liabilities, the committee should apply to the Court for a declaration of bankruptcy.

When a bankruptcy declaration is made, the liquidation committee should hand over the liquidation affairs to the Court.

#### REPRESENTATIVE OFFICE

When a foreign enterprise applies for closure of its representative office due to the expiry of the residence period or to terminate its business operations before the expiry, the following steps have to be followed, according to the Ministry of Commerce's regulations:

- (1) Submit an application;
- (2) Settle all outstanding liabilities;
- (3) Obtain tax clearance from the tax authorities;
- (4) Notify the State Administration for Industry and Commerce;
- (5) Notify Customs; and
- (6) Notify all other relevant authorities (e.g. SAFE)

### COOPERATIVE JOINT VENTURE (CJV)

A joint venture agreement should state the expiry of the joint venture or the procedures to terminate the joint venture. A CJV can be terminated under the following circumstances:

- (1) Expiry of the agreement;
- (2) Inability of the venture to continue its business;
- (3) Failure of the joint venture parties to perform their contractual obligations under the CJV agreement, such that the joint venture is unable to continue operating;
- (4) The joint venture meeting the termination clauses as stated in the CJV agreement; or
- (5) Termination by the authorities as a result of a breach of Chinese laws.

When the CJV is terminated on condition (2) or (4), the board of directors has to submit an application for termination to the original examination and approval authorities.

If the CJV is terminated as a result of one joint venture party failing to perform its contractual obligations (condition (3)), the other joint venture party has the right to claim for losses and damages against the non-performing party. The performing party can also apply to the original examination and approval authorities to terminate the CJV.

Upon termination, a liquidation committee should be formed to administer liquidation of the CJV.

### EQUITY JOINT VENTURE (EJV)

The joint venture agreement should state the expiry of the joint venture or the procedures to terminate it. An EJV can be terminated under the following circumstances:

- (1) Expiry of the agreement;
- (2) Inability to continue its business;

- (3) Failure of the joint venture parties to perform their contractual obligations under the equity joint venture agreement, such that the joint venture is unable to continue;
- (4) Inability to continue operations due to factors outside the joint venture parties' control, such as natural disasters and wars;
- (5) Failure to achieve the objective of the EJV; or
- (6) The joint venture meeting the termination clauses as stated in the agreement.

When the EJV is terminated on condition (2), (4), (5) or (6), the board of directors has to submit an application for termination to the original examination and approval authorities.

If the EJV is terminated as a result of one joint venture party failing to perform its contractual obligations (condition (3)), the non-performing party is responsible for the losses and damages suffered by the joint venture.

Upon termination, a liquidation committee will be formed to administer liquidation matters.

### WHOLLY FOREIGN-OWNED ENTERPRISE (WFOE)

A WFOE can be terminated if one of the following conditions is met:

- (1) Upon expiry of the operating period
- (2) Decision by the foreign shareholder to dissolve or liquidate when the WFOE is unable to continue its business
- (3) Inability to continue operations due to factors outside the foreign enterprise's control such as natural disasters and wars
- (4) Bankruptcy
- (5) Operating against public interest and Chinese laws



- (6) The WFOE meeting the conditions for termination stated in the Articles of Association of the WFOE

Based on Section 70 of the Detailed Rules of the Wholly Foreign-Owned Enterprise Act, application for termination can be submitted to the original examination and approval authorities when condition (2), (3) or (4) above is met. The examination and approval authorities' approval date for this application shall be the date of termination.

Based on Section 71 of the same Act, if the termination application is based on condition (1), (2), (3) or (6), a notice (the "Termination Notice") has to be issued within 15 days from the date of termination to notify creditors. Within 15 days from the date of issue of the Termination Notice, the WFOE has to table a liquidation proposal and nominate candidates to form a liquidation committee to administer the liquidation.

### **THE ENTERPRISE BANKRUPTCY LAW**

The Enterprise Bankruptcy Law (the "EBL") was updated with effect from 1 June 2007. It was previously promulgated in 1986 in light of both international and domestic experience with the objective of ensuring a clearer legal basis for formal bankruptcy proceedings.

The EBL is applicable to companies (whether state- or privately owned) that are insolvent or at risk of becoming insolvent. Natural persons are excluded from the scope of the EBL.

The EBL defines the priority of claims on a bankrupt's assets as follows:

- (1) Secured claims;
- (2) Costs and expenses of the bankruptcy administration;
- (3) Employees' salaries, workman's compensation, superannuation, etc.;
- (4) Social insurance and taxes;
- (5) Other unsecured claims

If the bankrupt company has no remaining assets for distribution, the administrator shall apply to the Court to conclude the bankruptcy administration.

The introduction of the EBL demonstrates China's intention to bring its insolvency framework in line with international practices. It also provides a defined mechanism for foreign investors to deal with their investments under distressed situations.

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# FOREIGN EXCHANGE CONTROLS

### OVERVIEW OF FOREIGN EXCHANGE CONTROLS

#### RMB EXCHANGE RATE REFORM

The Renminbi (“RMB”) or China Yuan (“CNY”) is the official currency in mainland China, and comes in the Yuan, Jiao, and Fen denominations (1 Yuan = 10 Jiao = 100 Fen).

The People’s Bank of China is the nation’s central bank (“Central Bank”), which is responsible for formulating the exchange rates between the RMB and major foreign currencies (i.e. USD, EUR, HKD, JPY and GBP).

As part of efforts to reform the RMB exchange rate system since 2005, the Central Bank took a major step on 11 August 2015 when it adopted the middle rate that is mainly determined by the market. However, the Central Bank continues to strike a balance between ensuring stability of its currency policy and exchange rate reforms.

The State Administration of Foreign Exchange (SAFE) is the authority in charge of foreign currency exchange control in China.

#### SIMPLIFIED DOMESTIC AND OVERSEAS DIRECT INVESTMENT REGISTRATION PROCEDURE

Since 1 June 2015, SAFE has cancelled the administrative examination and approval procedures relating to foreign exchange registration approvals for domestic and overseas direct investments. Instead, SAFE empowers banks to review and handle the direct investment-related foreign exchange registration and other related activities. These include fulfilling duties such as examination, reporting statistics, as well as monitoring and record-filing of domestic and overseas direct investments within the scope of SAFE’s authorisation and under the guidance of SAFE.

After completing the domestic direct investment registration, the foreign invested enterprise (“FIE”) is allowed to open a capital account in RMB or a foreign currency to contribute its registered capital to this capital account.

#### ENFORCING DISCRETIONAL FOREIGN EXCHANGE SETTLEMENT

An FIE can remit foreign exchange capital in its capital account at its discretion from 1 June 2015. The proportion of discretionary settlement of foreign exchange capital of foreign-invested enterprises is temporarily determined as 100%. The SAFE may adjust the aforementioned proportion in due time based on the international balance of payments situation.

### REMITTANCE OF FUNDS OUT OF CHINA

SAFE regulates remittance of funds out of China under the trading and capital categories.

Major categories for remitting funds from China:

| No. | Type of Remittance                               | Category                  | Key Documents Required                                                                                                                               | Legal Compliance          |
|-----|--------------------------------------------------|---------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 1   | Purchase of goods                                | Goods (trade in nature)   | <ul style="list-style-type: none"><li>• Purchase contract</li><li>• Invoice</li><li>• Other documents supporting this purchase transaction</li></ul> | SAFE Hui Fa [2012] No. 38 |
| 2   | Service fee payable to overseas service provider | Service (trade in nature) | <ul style="list-style-type: none"><li>• Service agreement</li><li>• Invoice</li><li>• Other documents supporting this service transaction</li></ul>  | SAFE Hui Fa [2013] No. 30 |

## FOREIGN EXCHANGE CONTROLS

| No. | Type of Remittance    | Category | Key Documents Required                                                                                                         | Legal Compliance          |
|-----|-----------------------|----------|--------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 3   | Dividends and profits | Capital  | <ul style="list-style-type: none"><li>• Proof of tax payment subject to China's tax regulations</li></ul>                      | SAFE Hui Fa [2013] No. 80 |
| 4   | Foreign loans         | Capital  | <ul style="list-style-type: none"><li>• Foreign loan agreement</li><li>• Other supporting documents required by SAFE</li></ul> | SAFE Hui Fa [2013] No. 19 |

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# TAXATION

## OVERVIEW OF CHINA TAX

### TYPES OF TAXES

Generally, taxes in China are categorised as follows:

#### Taxes on turnover:

- Value added tax (VAT)
- Consumption tax (CT)
- Customs duty on exports/imports

#### Taxes on income:

- Individual income tax (IIT)
- Enterprise income tax (EIT)

#### Taxes on property and transactions:

- Urban land use tax
- Real estate tax
- Vehicle and vessel usage tax
- Stamp tax
- Land appreciation tax
- Contractual tax (Deed tax)

#### Taxes / Dues on natural resources:

- Resource tax
- Tax on the occupancy of cultivated land

#### Other taxes:

- City maintenance and construction tax
- Education surcharge

### OVERVIEW OF KEY TAX RATES

| Tax Category      | Key Taxes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Tax Rate                                                                                        |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| Taxes on Turnover | <u>VAT</u> <ul style="list-style-type: none"> <li>• Sales of goods, providing processing, repair or maintenance services in China, importing goods into China</li> <li>• Leasing services of tangible personal property</li> <li>• Transportation, postal services, basic telecommunications, construction, leasing of real property, sale of real property, or transfer of any land use rights</li> <li>• Apart from items specified above (i.e. sales of services)</li> <li>• For any cross-border taxable activity conducted by an entity or individual within the territory</li> </ul> | 17% (basic rate),<br>13% (reduced rate for specific products)<br><br>17%<br>11%<br><br>6%<br>0% |
|                   | <u>Consumption Tax</u> <ul style="list-style-type: none"> <li>• "Luxury goods" (tobacco, wines, cosmetics etc., depends on the good)</li> <li>• Resource-intensive goods</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                        | 1% – 45%                                                                                        |

## TAXATION

| Tax Category                                                                                             | Key Taxes                        | Tax Rate  |
|----------------------------------------------------------------------------------------------------------|----------------------------------|-----------|
| Taxes on Income                                                                                          | <u>Individual Income Tax</u>     |           |
|                                                                                                          | • Income on wages and salaries   | 3% – 45%  |
|                                                                                                          | • Production and business income | 5% – 35%  |
|                                                                                                          | • Others                         | 20% – 40% |
|                                                                                                          | <u>Enterprise Income Tax</u>     |           |
|                                                                                                          | • Income of resident enterprises | 25%       |
| • Lower tax rate (e.g. High Technology Enterprises)                                                      | 15%                              |           |
| • China-sourced income of foreign enterprises without establishment in China                             | 10% to 20% (withholding tax)     |           |
| • Income of foreign enterprises with establishment in China, income not connected with the establishment | 10% to 20% (withholding tax)     |           |

### ADMINISTRATION AND REGULATIONS

#### a) Tax year

The tax year is the calendar year. Tax quarters and tax months are calendar quarters and calendar months respectively.

#### b) Filing and payment

| Type of Return        | Party Responsible for Filing          | Filing and Payment Deadline                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Value Added Tax       | Taxpayer                              | a) 1, 5, 10 or 15 days' return and payment — within 5 days of end of period. Final return and discrepancy in tax amount to be settled within 15 days after the end of the following month<br>b) 1 month's or 1 quarter's return and payment — within 15 days from the end of the period<br>c) Imports — within 15 days after Customs issues the tax payment certificate<br>d) Exports — apply for a refund of tax paid on a monthly basis |
| Consumption Tax       | Taxpayer                              | a) 5, 10 or 15 days' return and payment — within 5 days from end of period. Final return and discrepancy in tax amount to be settled within 15 days after the end of the following month<br>b) 1 month's or 1 quarter's return and payment — within 15 days from the end of the period<br>c) Imports — within 15 days after Customs issues the tax payment certificate                                                                    |
| Customs Duty          | Taxpayer or agent                     | Within 15 days after the date of the issuance of Customs duty payment certificate                                                                                                                                                                                                                                                                                                                                                         |
| Enterprise Income Tax | Taxpayer                              | a) Quarterly return and payment — within 15 days after the end of each quarter<br>b) Annual return and payment — within 5 months after the end of the tax year (together with financial and accounting records)                                                                                                                                                                                                                           |
| Individual Income Tax | Withholding agent (i.e. the employer) | Within 15 days after the end of each month                                                                                                                                                                                                                                                                                                                                                                                                |

| Type of Return  | Person Responsible for Filing      | Filing and Payment Deadline                |
|-----------------|------------------------------------|--------------------------------------------|
| Withholding Tax | Withholding agent (i.e. purchaser) | Within 15 days after the end of each month |

**c) Consolidated returns**

China generally does not permit the filing of consolidated returns among group companies or companies under common control; each company must file a separate return.

**d) Statute of limitations**

The statute of limitations for assessment and collection is three years if an underpayment of tax is due to the taxpayer's inadvertent error in tax computation (e.g. incorrect application of a formula).

The period is extended to five years if the accumulated amount of underpaid tax is greater than RMB100,000. The statute of limitations period could be up to 10 years for underpayments of EIT arising from transfer pricing issues or arrangements without a bona fide business purpose. There is no statute of limitations for tax evasion.

**e) Tax authorities**

Tax legislation and policy are developed jointly by The State Administration of Taxation (SAT) and the Ministry of Finance, with the SAT and its provincial and municipal offices administering taxation policies. Each locality in China has a state tax bureau under the SAT and a local tax bureau under both the SAT and the local government. The SAT and state tax bureaus are mainly responsible for the collection and administration of taxes that create revenue for the central government or revenue that is shared between the central and local governments.

## TYPES OF TAXES

### VALUE ADDED TAX (VAT)

VAT is a national tax, with a single rate imposed regardless of the location of the VAT taxpayer. VAT is generally levied on any person engaged in the sale of goods or the provision of processing, repair or replacement services within China, as well as on the importation of goods into China.

The VAT reform pilot programme was launched in Shanghai on 1 January 2012 following the Chinese State Council's decision on 26 October 2011. The VAT reform (initially applying to the non-railway transportation and modern service sectors) has been rolled out nationwide and new sectors have been added to the scope of the reform (i.e. railway transportation and postal services have been included within the scope of the VAT reform since 1 January 2014; telecommunication services have been included since 1 June 2014).

At the opening ceremony of the National People's Congress (NPC) held on 5 March 2016, Premier Li Keqiang announced that effective from 1 May 2016, VAT would replace the current Business Tax ("BT") in all sectors, including real estate & construction, financial services & insurance, and lifestyle services (including hospitality, food and beverage, healthcare and entertainment).

The VAT reform aims to resolve the double taxation issues arising under the indirect tax system (because no VAT-like credit mechanism is allowed under the BT system, BT paid cannot be recovered by purchasers against their own BT liability, nor can VAT be recovered by purchasers who are only liable to BT) and to foster the development of modern service industries by gradually transitioning these industries from liability to BT to liability to VAT.



### a) Scope of VAT:

- Sales and imports of goods as well as the provision of processing, replacement and repair services
- Since 1 August 2013, the following services have also been subject to VAT:  
modern services, transportation services, telecommunication services and leasing of tangible goods
- Since 1 May 2016, the following services have also been subject to VAT:  
construction services, real estate, financial services & insurance, lifestyle and other services

### b) Types of VAT taxpayers:

#### General VAT taxpayers

General VAT taxpayers are those whose taxable sales value exceeds the threshold of the small-scale taxpayers. General VAT taxpayers can deduct input VAT from output VAT. Also, a general VAT taxpayer may increase the amount of potential output VAT because general VAT taxpayers are allowed to issue VAT receipts.

If the turnover of a company exceeds the threshold, it is **mandatory** to apply for the general VAT taxpayer status. However, companies below that threshold can also apply to be recognised as a general VAT taxpayer (subject to the approval of the supervising tax bureau). **Once a small-scale taxpayer is recognised as a general taxpayer, the small-scale taxpayer status no longer applies even if its sales fall below the threshold in the future.** [Note: A general taxpayer status needs to be granted by the tax authority.]

#### Small-scale VAT taxpayers

A small-scale VAT taxpayer is one that has an annual turnover that is below the threshold as indicated in the following table:

| Activity the taxpayer is engaged in                                                                                                    | Threshold (inclusive) |
|----------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| Production of goods or provision of taxable services                                                                                   | RMB500,000            |
| Principally in the production of goods or the provision of taxable services, and also engaged in the wholesaling or retailing of goods | RMB500,000            |
| Activities that exclude wholesaling or retailing of goods                                                                              | RMB800,000            |

### c) Calculation of VAT

The VAT rate for a general VAT payer is 17%, which is applicable to the provision of processing, repair or replacement services and the value of products at importation. A reduced rate of 13% applies to certain food, goods, books and utilities. Exports are generally zero-rated. The rates under the VAT reform programme are as follows: 17% for the leasing of moveable and tangible goods; 11% for the transportation sector, and postal and basic telecommunication services; and 6% for value-added telecommunication services and other modern services. Small-scale VAT payers pay VAT at a rate of 3%, but there is no input VAT credit (i.e. this is a simplified VAT calculation method).

After the VAT reform, the zero rate may be applied to R&D/design services provided to foreign entities and international transportation services, while qualifying cross-border services may be VAT-exempt. Input VAT incurred for zero-rated services may be refunded, but is unrecoverable for VAT-exempt services.

VAT incurred on the purchase or construction of fixed assets (excluding immoveable property) may be credited against output VAT. Input VAT arising from the following items, however, is not deductible against output VAT:

- The purchase of goods and services for exclusive use in non-VAT taxable, VAT-exempt projects or projects subject to a simplified VAT calculation method, welfare activities or individual consumption
- The purchase of yachts, motorcycles and motor vehicles that are subject to consumption tax and for the taxpayer's own use
- Goods and relevant services purchased that are lost in an unusual manner
- Goods and relevant services purchased and consumed or used for products or finished goods that are lost in an unusual manner
- The purchase of passenger transportation services

A VAT refund may be available in an export situation. Exports generally attract a zero rate of VAT, i.e. zero output VAT on export, along with a refund of input VAT incurred on materials purchased domestically for the export of goods. However, as the VAT refund rate ranges from 0% to 17%, many products do not enjoy a full refund of input VAT.

#### **d) Administration and regulations**

A company is required to register with the local tax authorities at the time of incorporation to have its status recognised as either a general VAT payer or small-scale VAT payer.

VAT returns are generally filed for each calendar month and must be submitted before the 15<sup>th</sup> day of the following month. A taxpayer that imports goods must pay tax within 15 days after the issuance of the tax payment certificate by the customs authorities.

### **CONSUMPTION TAX (CT)**

Consumption tax applies to the production, processing and import of prescribed non-essential and luxury as well as resource-intensive goods, such as tobacco, alcoholic drinks, cosmetics, fuel, expensive watches, disposable wooden chopsticks, yacht, golf, jewellery, car tyres, motorcycles and motor cars.

The tax is calculated based on the quantity or price of goods sold or in certain cases, a combination of both. For example, the tax rate for gasoline is RMB0.2 a litre and therefore based on the quantity. On the other hand, the tax rate for cigars is 40% of the sales price.

The proportional consumption tax rate ranges from 3% to 56% on the revenue of different types of goods. Consumption tax paid on exports is fully refundable.

### **CUSTOMS DUTY**

Import duties are levied at both general and preferential rates. The preferential rates apply to imports originating from countries or regions that have signed agreements with China containing reciprocal preferential tariff clauses, and the general tariff rates apply to imports originating from all other jurisdictions. However, if the State Council Customs Tariff Commission grants special approval, preferential tariff rates may be applied to imports that would otherwise be subject to the general rates.

To encourage foreign investment, foreign investment enterprises (FIEs) that meet certain requirements may be exempt from customs duties on the importation of machinery and equipment for self-use.

### a) Customs valuation

Import customs duty is levied based on the Cost Insurance Freight (CIF) value. Export customs duty is calculated based on the Free on Board (FOB) price of goods less export duty.

### b) Reduction and exemption

Customs duties will be reduced or payers are exempt from them under the following circumstances:

| Reduction or Exemption                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Exemption                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Goods damaged, destroyed or lost en route to the customs territory or at the time of unloading</li> <li>• Goods damaged, destroyed or lost due to force majeure after unloading but prior to release</li> <li>• Goods discovered to be already leaking, damaged or rotten at the time of the customs inspection, provided that the damage is proven to be due to reasons other than improper storage</li> <li>• Commodities covered by concluded international treaties</li> <li>• Applicable to certain areas (bonded areas, economic development zones, etc.)</li> <li>• Imported goods with special usage (scientific research and educational purposes, for disabled persons, for designated enterprises covered by the "Domestic Component Content" policy, etc.)</li> <li>• Commodities under certain special trade modes (processing trade, consignment sales, etc.)</li> </ul> | <ul style="list-style-type: none"> <li>• Consignment of goods where the estimated customs duty is less than RMB50</li> <li>• Advertising material and samples of no commercial value</li> <li>• Goods and materials that are rendered gratis by international organisations or foreign governments</li> <li>• Fuel, stores, beverages and provisions for use en route loaded on any means of transport, which are in transit across the frontier</li> <li>• Exported/imported goods that are shipped back into/out of the customs territory for justified reasons</li> <li>• Certain machinery and equipment imported for self-use purposes by FIEs under projects categorised as encouraged or restricted</li> </ul> |

### c) Temporary exemption

Customs may grant temporary exemption treatment to Temporary Import / Export Commodities. These commodities have to be reshipped out of or into the customs territory within six months. A guarantee letter or security deposit of an amount equivalent to the customs duty must be submitted to Customs.

Items that qualify for temporary exemption include trade samples, exhibits, engineering equipment, vehicles and vessels for construction, instruments and tools for installation, cinematographic and television apparatus, containers, theatrical costumes and paraphernalia.

### d) Payment of customs duty

The payer or its agent shall make a timely customs declaration and settle the customs duty within 15 days after the issuance date of the customs duty payment certificate. Late payment penalties will be imposed at 0.05% daily on the overdue customs duty.

## ENTERPRISE INCOME TAX (EIT)

Resident enterprises have to pay enterprise income tax on their worldwide income. Foreign companies with an establishment need to pay income tax connected to this establishment. Foreign companies without an establishment are subject to enterprise income tax on income derived from within China.

**a) Tax formula**

Tax liability = [Total revenue – Non-taxable revenue – Tax-exempt revenue – Deductible Costs – Deductible Expenses – Losses] x Applicable tax rate – Tax credit

- The standard tax rate is 25%. For high and new technology enterprises, the rate is 15%.
- Tax reductions are available for environmentally friendly projects.

**b) Tax registration**

Enterprises are required to register with the local tax authorities within 30 days from the date of obtaining the business licence or business registration certificate.

A non-resident enterprise that has contractual projects or provides services within the territory of China shall register with the tax authorities where the project is located within 30 days from the date of concluding the project/service contract.

**c) Tax credit**

Tax credit will be allowed on the amount of income tax actually paid (in accordance with the foreign tax laws) by the enterprise outside China, for the income derived by the enterprise outside China. However, the credit amount should not exceed the amount of China income tax payable on the foreign-sourced income. Any excess tax credit can be carried forward for a maximum period of five years.

**d) Assessment and administration**

The tax year starts on January 1 and ends on December 31.

All enterprises are required to submit provisional tax returns and advance tax payments on a monthly/quarterly basis (to be determined by the tax authorities) in RMB, within 15 days after the end of the month/quarter. An annual CIT return should be filed together with its financial and accounting reports and other relevant information (e.g. related party transactions annual return) within five months from the end of each tax year regardless of whether the enterprise is in a profit or loss position. Any deficiency shall be paid within five months from the end of each tax year and any excess payment shall be refunded.

Enterprises in a group are not allowed to pay CIT on a consolidated basis, unless approved by the State Council.

**e) Permanent establishment for non-resident enterprise**

An establishment or place is defined in the CIT regulations as an establishment or place in China engaging in production and business operations, including the following:

- Management organisations, business organisations, and representative offices
- Factories, farms and places where natural resources are exploited
- Places where contractor projects, such as construction, installation, assembly, repair and exploration are undertaken
- Other establishments or places where production and business activities are undertaken
- Business agents who regularly sign contracts, store and deliver goods, etc., on behalf of the non-Tax Resident Enterprise

## INDIVIDUAL INCOME TAX (IIT)

### a) Payment and calculation

Whether or not foreigners working in China are liable to pay IIT in China depends on several key factors:

- Expatriate's level of income
- Duration of stay
- Payment source
- Positions held by the expatriate in his host country and home country company

#### Level of income

Taxable income includes the base salary, incentive compensations such as commissions and bonuses, cash allowances and contributions to an overseas insurance scheme.

The tax rate levied on that taxable income therefore depends on its cumulated amount. China adopts a progressive taxation system where the tax rate for freelancers' incomes progresses in three levels from 20% to 40% and the tax rate for regular employees in seven levels from 3% to 45%. Tax exemptions of RMB4,800 a month for expatriates and RMB3,500 a month for locals are granted.

The following table gives an overview of IIT taxation grades for regular employees.

| Income Range (RMB)   | Tax Rate (%) | Quick Deduction (RMB)* |
|----------------------|--------------|------------------------|
| Less than 1,500      | 3            | 0                      |
| 1,500 – 4,500        | 10           | 105                    |
| Over 4,500 – 9,000   | 20           | 555                    |
| Over 9,000 – 35,000  | 25           | 1,005                  |
| Over 35,000 – 55,000 | 30           | 2,755                  |
| Over 55,000 – 80,000 | 35           | 5,505                  |
| More than 80,000     | 45           | 13,505                 |

\*Quick deduction is provided for the purpose of deriving tax liability faster.

As mentioned earlier, the monthly standard exemption for expatriates is RMB4,800. Therefore, the formula to calculate the expatriate's monthly IIT burden is:

$$[(\text{Gross Monthly Taxable Income} - \text{RMB4,800}) \times \text{Tax Rate}] - \text{Quick Deduction}$$

#### Duration of stay and payment source

Non-domiciled foreign individuals who reside in China for less than one year will be subject to tax on their China-sourced income. Non-domiciled foreign individuals who reside in China for more than one year but less than five consecutive years are subject to tax on their China-sourced income and the portion of foreign-sourced income that is paid or borne by units or individuals located in China. Non-domiciled foreign individuals who reside in China for more than five consecutive years are subject to tax, starting from the sixth year, on their worldwide income for every "one full year".

### 5-year threshold for individual income tax

Five years is an important threshold for determining expatriate IIT liability: an expatriate who is a tax resident in China for five consecutive years will have to pay PRC IIT on his global income, no matter where it was derived and by whom it was borne. This means that after five years of tax residency, an expatriate will be taxed in China on his/her worldwide income. This rule should always be kept in mind, since going over the 5-year threshold can significantly increase an expatriate's tax burden.

However, the 5-year threshold does not necessarily apply to every expatriate who would like to live in China for a prolonged period of more than 5 years. There are two possible scenarios in which IIT liability on the expatriate's world income could be avoided.

#### Scenario 1: Before the fifth year

The first scenario is that the expatriate leaves China, be it for business purposes or for visiting his home country, for more than 90 days consecutively or more than 30 days for a single trip within any given year before he/she has been a tax resident for 5 years. By doing this, the expatriate has broken tax residency and the "clock" for the 5-year threshold will be reset. For example, the expatriate can arrange to leave China for the necessary time period in the fifth year of his tax residency. Upon his return, tax residency will therefore be counted from year one again.

#### Scenario 2: After the fifth year

In the second scenario, the expatriate might have missed the deadline for leaving China for an appropriate number of days and has already been a tax resident for more than 5 years. There are now two possibilities for the expatriate:

- (1) For the sixth year, the expatriate could arrange to spend more than 90 consecutive days or more than 30 days in a single trip outside of China. This would mean that the expatriate has broken tax residency in this year. All of his China-sourced income will be subject to IIT, but not his worldwide income. However, this measure will not "reset the clock" of the 5-year threshold and has to be repeated in the seventh and all subsequent years.
- (2) If in the sixth year, the expatriate stays in China for less than 183/90 days (depending on the tax treaty between his home country and China), then tax residency is also broken. Only his/her China-sourced income borne by a China entity will be subject to IIT. Furthermore, the "clock" of the 5-year threshold will also be reset and this measure therefore does not need to be repeated every year. In other words, if the expatriate manages to travel out of China for more than half/three quarters of the sixth year, the 5-year threshold will not be applicable and upon his return, tax residency will be calculated from year one again.

#### Other taxable income (e.g. freelancer)

- Income derived in the territory of China such as from design, decoration, installation, legal, accounting, consultancy, and lecturing
- Income below RMB4,000: taxable income after deducting RMB800
- Income over RMB4,000: taxable income after deducting 20%

#### Chief Representative and Representative of Representative Office

If the expatriate is acting as the Chief Representative or Representative, his/her individual income tax liabilities may be computed on a "time apportionment" basis according to the number of days spent in China.

### b) Tax registration

Expatriates who are liable to pay individual income tax are required to register with the tax authorities within 30 days of the individual triggering the taxable event.

What is to be included in employment income?

- Wages
- Salaries
- Bonuses
- Year-end bonuses
- Dividends
- Allowances
- Subsidies
- Stock options
- Long-service awards
- Severance payments
- Personal taxes paid by employers on behalf of employees

The following fringe benefits received by expatriates are exempt from individual income tax:

- Housing, meal and laundry allowances received in a non-cash form or on a reimbursement basis
- Reimbursement of relocation expenses upon commencement or cessation of China assignment
- Per diem
- Home leave allowance — two trips per calendar year
- Allowances for language training and children's education
- Mandatory social security benefits

### c) Tax credit

Tax credit will be allowed on the amount of income tax paid by the individual outside China, for the income derived by the individual outside China. However, the credit amount shall not exceed the amount of the individual's China income tax payable on the foreign-sourced income. The excess tax credit (after setting off the individual's China income tax payable for that year) can be carried forward for a maximum period of five years.

### d) Assessment and administration

The tax year starts on January 1 and ends on December 31.

Individual income tax is assessed on a monthly basis. All Chinese citizens are allowed a monthly deduction of RMB3,500. Expatriates have been given a monthly deduction of RMB4,800 with effect from 1 September 2011. The taxable income, after the monthly deduction, will be taxed on a progressive basis at a rate ranging from 3% to 45%.

The employer is primarily responsible for withholding individual income tax from employees. The tax withheld shall be remitted to the State Treasury within 15 days after the end of each month. Otherwise, penalties will be imposed. In addition, individuals with an annual income exceeding RMB120,000 are required to keep records of income from all sources and report to the local tax authority by March 31 every year.

## URBAN LAND USE TAX

Where enterprises or individuals are using state-owned land in the cities, county sites, administrative towns or industrial and mining areas, the urban land use tax is levied.

Urban land use tax is calculated on an annual basis by multiplying the area measurement of the land actually used and the fixed quantity tax rate. The tax rate varies depending on the location of the land.

## REAL ESTATE TAX

Real estate (property) tax is levied on an annual basis and payable on an instalment basis. The local tax authorities will determine when the real estate taxes are payable.

An individual's residential real estate is currently exempt from real estate tax unless it is rented out.

### a) Who pays the real estate tax?

| Circumstance                                                                                                      | Person Responsible for Payment   |
|-------------------------------------------------------------------------------------------------------------------|----------------------------------|
| Where the real estate is being used by the owner                                                                  | Owner                            |
| Where the real estate is mortgaged                                                                                | Mortgagee                        |
| Where the owner or mortgagee does not use the real estate, or ownership of the real estate is not yet established | Custodian or user of real estate |

### b) Calculation of real estate tax

Annual real estate tax payable = Tax basis x Tax rate

| Circumstance                                          | Tax Rate   | Tax Basis                                       |
|-------------------------------------------------------|------------|-------------------------------------------------|
| Enterprises using their own real estate               | 1.2%       | 70% to 90% of the original value of real estate |
| Enterprises/individuals renting out their real estate | 12% or 4%* | Rental income                                   |
| Individuals residing in their own real estate         | 0%         | Not applicable                                  |

\* A reduced tax rate of 4% is applied to individuals renting out residential real estate.

## VEHICLE AND VESSEL USAGE TAX

Owners or managers of vehicles and vessels used within the territory of China are required to pay vehicle and vessel usage tax. Tax is assessed on net tonnage of the vessel or vehicle, or on a per unit basis.

### Assessment and administration

Vehicle and vessel usage tax is assessed on an annual basis with payment to be made together with the compulsory traffic accident liability insurance for motor vehicles.

## STAMP DUTY

Stamp duty, ranging from 0.005% (for loan agreements) to 0.1% (for leasing agreements, property insurance contracts, warehousing and storage contracts) applies to prescribed contracts, written certificates of transfer of property rights, business account books and permits. The rate on share transactions is 0.1% for shares listed on a domestic stock exchange.



## TAXATION

| Item                                                                              | Scope                                                                                                                                                                             | Tax Rate                                                        |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Purchase and sales contracts                                                      | Contracts of supply, pre-purchase, procurement, purchase for an organisation or enterprise, purchase and sale combinations and cooperation, adjustment, compensation, barter etc. | 0.03% of the purchase or sales price                            |
| Processing contracts                                                              | Processing, specific orders, renovations, repairs, printing, advertising, mapping and testing                                                                                     | 0.05% of the income from processing or other related activities |
| Engineering project reconnaissance and design contracts                           | Prospecting contracts and design contracts                                                                                                                                        | 0.05% of the fees received                                      |
| Construction and installation project contracts                                   | Construction contracts and installation contracts                                                                                                                                 | 0.03% of the contract amount                                    |
| Property leasing contracts                                                        | Contracts for the leasing of housing, vessels, aircraft, motorised vehicles, machinery, tools and equipment                                                                       | 0.1% of the leasing fee                                         |
| Commodity transportation contracts                                                | Contracts for the transport of goods by civil aircraft, rail, ship, river and road and coordinated transport contracts                                                            | 0.05% of the transport cost                                     |
| Storage and custody contracts                                                     | Storage contracts and custody contracts                                                                                                                                           | 0.1% of the storage or custody fee                              |
| Loan contracts signed between banks or other financial institutions and borrowers | Not including interbank short-term loans on which interest is calculated daily. Receipts shall be used as a contract and stamp duty shall be paid as for a contract.              | 0.005% of the amount borrowed                                   |
| Property insurance contracts                                                      | Property, liability, guarantee, and credit insurance contracts. Receipts shall be used as a contract and stamp duty shall be paid as for a contract.                              | 0.1% of the insurance premium                                   |
| Technology contracts                                                              | Technology development, transfer, consultancy and service contracts                                                                                                               | 0.03% of the stated value                                       |
| Documents of transfer of property rights                                          | Documents of transfer of property titles, copyright, exclusive right of use of trademarks, patents and proprietary technology usage rights                                        | 0.05% of the stated value                                       |
| Business books of account                                                         | Books of accounts for recording capital and capital surplus                                                                                                                       | 0.05%                                                           |
|                                                                                   | Books of accounts for others                                                                                                                                                      | RMB5 per book                                                   |
| Documentation of rights and licences                                              | Property ownership certificates, industrial and commercial business licences, trademark registration certificates, patent certificates and land use certificates                  | RMB5 per document                                               |

## LAND APPRECIATION TAX (LAT)

Gains on the sale of real property, net of development costs, are subject to the LAT. LAT applies to all types of land, construction and immovable property, including commercial, industrial and residential sites. The current regulations provide for a deduction of qualifying financing expenses, related taxes, and administration and selling expenses, with prescribed caps in different situations. A super deduction equal to 20% of the combined property development and land purchase cost is available to real estate development companies. LAT is charged in four bands ranging from 30% to 60%, depending on the percentage of gain realised.

### a) Calculation of LAT

Land appreciation tax is calculated on the value added gained by the entities or individuals through the assignment of the State-owned land use rights, buildings and other facilities attached to the land.

$$\text{Value added gained} = \text{Income derived (cash and/or other assets)} - \text{Deductible items}$$

$$\text{Land appreciation tax payable} = \text{Value added gained} \times \text{Applicable tax rate} - \text{Quick calculation deduction}$$

Deductible items will include:

- Cost of obtaining land use rights
- Cost of developing the land, including construction costs
- Marketing expenses, management expenses and financial expenses
- Taxes and dues relating to the transfer of State-owned land use rights, buildings and other facilities attached to the land
- The assessed price for the transfer of old buildings
- Other deductions specified by the Ministry of Finance

### b) Exemptions

Taxpayers are exempt from land appreciation tax under the following circumstances:

- The value added amount of the ordinary residential buildings constructed and sold by the taxpayer for civil use is less than 20% of the deductible items.
- The land is compulsorily acquired by the State due to State- or municipal-planned construction requirements.
- Subject to the approval of the tax authorities, an individual is transferring his/her ordinary residential property due to a change of employment.
- The taxpayer had used the property as his/her primary residence for at least five years.

### c) Tax rates

| Value Added Amount                                                           | Tax Rate | Quick Calculation Deduction |
|------------------------------------------------------------------------------|----------|-----------------------------|
| Value added amount < 50% of deductible items                                 | 30%      | Not applicable              |
| Value added amount > 50% of deductible items but < 100% of deductible items  | 40%      | Deductible amount x 5%      |
| Value added amount > 100% of deductible items but < 200% of deductible items | 50%      | Deductible amount x 15%     |
| Value added amount > 200% of deductible items                                | 60%      | Deductible amount x 35%     |

### CONTRACTUAL TAX (DEED TAX)

Where land use rights or building ownership rights are transferred within China, the transferee enterprises or individuals have the obligation to pay deed tax. The transfer of land or building ownership rights refers to:

- The grant of State-owned land use rights
- The transfer of land use rights, including sale, gift or exchange
- Buying and selling of buildings
- A gift of buildings
- The exchange of buildings

#### a) Tax rates

The deed tax ranges from 3% to 5%, and the actual rates will be determined by the provincial or local governments.

#### b) Payment

The obligation of the transferee to pay deed tax arises on the date when the contract for the land or building ownership transfer is signed or when the documents for the ownership transfer are obtained.

The transferee is required to file the deed tax return with the local tax authorities within 10 days from the date of the obligation to pay deed tax. The local tax authorities will set the time limit on when the tax must be paid. Any late payment will incur a penalty of 0.05% per day on the overdue amount.

### RESOURCE TAX

The resource (natural resources) tax is levied on enterprises and individuals engaged in the exploitation of mineral products or the production of salt within the territory of China and waters under the country's jurisdiction. A nationwide reform of the resource tax was launched in 2011, changing the tax basis from volume to selling price for certain categories of taxable resources, e.g., crude oil, natural gas and coal. For most other taxable resources, the tax is still calculated based on the volume of products sold or self-used, at revised tax rates. The resource tax is payable to the local authorities at the place of production or exploitation.

**a) Taxable products and tax rates**

| Product                           | Tax Rate                              |
|-----------------------------------|---------------------------------------|
| Crude oil                         | 5% – 10% of sales volume              |
| Natural gas                       | 5% – 10% of sales volume              |
| Coal                              | RMB0.30 – 5 per tonne                 |
| Other non-metallic mineral ores   | RMB0.50 – 20 per tonne or cubic metre |
| Ferrous metallic mineral ores     | RMB2 – 30 per tonne                   |
| Non-ferrous metallic mineral ores | RMB0.40 – 30 per tonne                |
| Liquid salt                       | RMB2 – 10 per tonne                   |
| Solid salt                        | RMB10 – 60 per tonne                  |

**b) Assessment and administration**

Payment shall be made to the local tax authorities where the taxable product is mined or produced. The local tax authorities shall determine the time limit for payment as follows:

| Basis Period | Filing and Payment Deadline                                                                                                                                                                                                                           |
|--------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 day        | <ul style="list-style-type: none"> <li>Provisional payment within 5 days of the end of the period; and</li> <li>Final return and any discrepancy in the tax amount should be settled within 10 days from the start of the following month.</li> </ul> |
| 3 days       |                                                                                                                                                                                                                                                       |
| 5 days       |                                                                                                                                                                                                                                                       |
| 10 days      |                                                                                                                                                                                                                                                       |
| 15 days      |                                                                                                                                                                                                                                                       |
| 1 month      | Within 10 days after the end of the period                                                                                                                                                                                                            |

**CITY MAINTENANCE AND CONSTRUCTION TAX AND NATIONAL EDUCATION SURCHARGE**

The city maintenance and construction tax and national education surcharge apply to entities and individuals that are subject to VAT or consumption tax. The national education surcharge is levied at a flat rate of 3%, while the rates for city maintenance and construction tax depend on the location of the taxpayer or withholding agent: 7% for a location in a city, 5% for a county and town area, and 1% in other locations.

**LOCAL EDUCATION SURCHARGE**

The local education surcharge, whose collection mechanism is almost the same as that of the national education surcharge, may apply at the discretion of the local government. However, after the Ministry of Finance issued a notice in 2010 to urge all local governments to impose the local education surcharge at a flat rate of 2%, with a view to unifying the application of the surcharge across the country, the 2% rate has been applied in all provinces throughout China.

**WITHHOLDING TAXES****a) Dividends**

A 10% withholding tax on dividends paid to a non-resident company has been in effect since 2008.

Previously, dividends paid by a Chinese company with at least 25% of foreign participation were exempt. It should be noted, however, that dividends paid out of pre-2008 earnings continue to be exempt from withholding tax. The 10% withholding tax may be reduced under an applicable tax treaty.

### **b) Interest**

Interest is generally subject to a 10% withholding tax unless the rate is reduced under a tax treaty. Interest from certain loans made to the Chinese government or resident enterprises is exempt.

### **c) Royalties**

The withholding tax rate on royalties and fees arising from the licensing of trademarks, copyrights and know-how and related technical service fees is generally 10%. Royalties are generally subject to a 6% VAT, except for payments made in connection with the use of technology, where an exemption may be granted.

### **d) Wage tax/social security contributions**

The employer must withhold individual income tax on behalf of the employee and remit the deducted amount to the tax authorities.

The employer must contribute approximately 20% of basic payroll to the state-administered retirement scheme. The employer must also contribute to a medical insurance fund, maternity insurance, unemployment insurance and work-related injury insurance. The total employer contribution may be up to about 40% of the employee's base monthly salary, although the rates can vary across the country. The employee is required to contribute a certain percentage of his/her monthly salary to the above-mentioned funds, subject to a threshold set by the local authorities.

Foreign individuals legally working in China (including both locally hired individuals and those seconded from abroad to work in China) are required to participate in the same social security scheme as described above, unless an exemption is provided under an applicable bilateral social security totalisation agreement. However, enforcement may vary in different cities.

## **ANTI-AVOIDANCE PROVISIONS**

The anti-avoidance provisions have been included in the corporate income tax (CIT) law and apply to taxpayers who entered into tax avoidance arrangements. These provisions are listed below:

- Transfer pricing rules;
- Controlled foreign corporations (CFC) rules;
- Thin capitalisation; and
- General anti-avoidance provision

The tax authorities are permitted to make reasonable adjustments within 10 years from the tax year once the transaction occurred. Also, once the taxpayers are required to pay additional tax for the above-mentioned adjustments, interest will be levied on the additional tax payable.

## **TRANSFER PRICING**

The CIT laws provide a basis for the tax authorities to make special adjustments for transfer pricing. The related parties are required to comply with the arm's length principle in all inter-company businesses.

### Definition of Related Parties

A related party is defined as an entity with a 25% direct or indirect ownership and significant control over the taxpayer's senior management, purchases, sales, production and intangibles and technologies required for the business. A multi-layer calculation for indirect shareholdings also applies.

China has adopted the following five methods to decide the arm's length transfer pricing amount.

| Method                               | Description                                                                                                                                                                                                        |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Comparable uncontrolled price method | This method compares the prices of property transferred in transactions between associated companies and prices of property transferred in transactions between independent companies under comparable conditions. |
| Resale price method                  | This approach is based on the price that associated companies use when reselling products to independent companies.                                                                                                |
| Cost-plus method                     | It is based on the costs incurred by companies in the transfer of property to an associated buyer.                                                                                                                 |
| Profits split method                 | The profits split method means an enterprise and its related parties should allocate their profits based on the consolidated profit that they contributed in related transactions.                                 |
| Transactional net margin method      | This method determines profits based on the net profits gained from the non-affiliated transactions with the same or similar business.                                                                             |

Other methods that are not mentioned above and comply with the arm's length principle can also be adopted to determine the transfer pricing amount.

### TP Documentation

Contemporaneous documentation rules apply to companies unless:

- The purchase and sales amount of the related party is less than RMB200 million and the annual amount with other related party transactions is less than RMB40 million;
- The associated transactions belong to the scope of execution advance pricing arrangements;
- The foreign shareholdings in the companies are no more than 50% and transactions only occurred in those companies with domestic related parties (excluding Hong Kong, Taiwan and Macau).

### Advance Pricing Arrangements (APA)

An APA is an arrangement where companies negotiate and reach an agreement with tax authorities in terms of the transfer pricing methods to be applied to their related party transactions.

There are rules on advance pricing arrangements. In order to avoid any tax adjustments by the tax authorities, taxpayers may conclude an agreement with the tax authority in advance. The APA will be valid for three to five years. Normally, the APA can be divided into six phases: pre-filing meeting stage, formal application stage, examination and evaluation stage, negotiation stage, signing of contract and monitoring and execution stage.

### CONTROLLED FOREIGN CORPORATIONS (CFC) RULES

A Chinese shareholder may be taxed currently on its proportionate share of undistributed profits of CFCs located in certain low tax jurisdictions where there are no valid business reasons for the decision not to distribute the profits. A CFC is defined as a non-Chinese company controlled by China tax residents (both companies and individuals,

each of which must hold a 10% or greater proportion of voting shares and jointly own 50% or more of the shares) through direct or indirect share ownership. To be a CFC, the company must be incorporated in a country or region where the effective tax rate is 50% of the EIT rate (i.e.12.5%) or less than China's statutory EIT rate.

A Chinese resident enterprise is required to file reporting forms on overseas investments, along with its quarterly and annual tax returns.

A company can avoid application of the CFC rules if:

- The CFC is located in a "white list" country (Australia, Canada, France, Germany, India, Italy, Japan, New Zealand, Norway, South Africa, the UK and the US);
- The CFC's income is derived mainly from active business activities; or
- The annual profit of the CFC is lower than RMB5 million.

### **THIN CAPITALISATION**

Thin capitalisation means taxpayers are not allowed to deduct excessive interest expenses in terms of debt financing from a related party. The Ministry of Finance and SAT regulated the specific debt-equity ratios as follows:

- Financial institutions: 5:1
- In other cases: 2:1

The exceeding part of interest expense and regulated threshold are non-deductible in the current tax periods. Otherwise, if the company can provide supporting documents to demonstrate that debt investments are operated based on the arm's length principle or the effective tax rate is no more than the interest rate that domestic related companies received, then the interest is deductible.

### **GENERAL ANTI-AVOIDANCE PROVISIONS**

China's general anti-avoidance rule (GAAR) states that the tax authority is allowed to make reasonable taxable profits adjustments when companies have a primary intention to reduce, defer or avoid tax revenue or taxable income.

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# MANPOWER



### CHINA LABOUR CONTRACT LAW

China's new labour contract law has been in effect since 2008. A labour contract defines the rights, interests and obligations of employers and employees. The law states that a labour contract shall be concluded where a labour relationship is to be established. In addition, conclusion and modification of a labour contract shall follow the principles of equality, voluntary participation and unanimity through consultation, and shall not conflict with Chinese laws, administrative rules and regulations. A labour contract, once concluded in accordance with the law, shall also possess legal binding force.

The employment contract is required by the law to be concluded within 30 days after the employee starts work at the company. Otherwise, the company would face a labour dispute risk and be ordered to pay the employee twice his or her salary for 1 month as compensation if found to be in violation of the law.

### CONCLUSION OF LABOUR CONTRACTS IN CHINA

#### KEY COMPONENTS OF A "VALID" EMPLOYMENT CONTRACT

- Name, domicile and legal representative or employer's main person in charge
- Name, residential address and number of the resident ID card or other valid identity document of the worker
- Terms of the labour contract
- Scope of work and place of work
- Working hours, rest and leave
- Labour compensation
- Social insurance
- Labour protection, working conditions and protection against occupational hazards
- Other issues required by laws and regulations to be included in the labour contract

#### IMPLEMENTING THE EMPLOYMENT CONTRACT

Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts that expire upon completion of a certain job.

In the event that no written employment contract was concluded when the employment relationship was established, a written employment contract shall be concluded within one month from the employee's first day of work.

If an employer fails to conclude a written employment contract with an employee within one year from the employee's first day of work, the employer and employee shall be deemed to have concluded an open-ended employment contract.

If the contract is bilingual, the Chinese version shall prevail. The signature on the contract should be in Chinese.

## TYPES OF EMPLOYMENT CONTRACTS

### Fixed-term

An employment contract with a predetermined ending date as agreed upon by both the employer and employee.

### Open-ended

An employment contract with no predetermined ending date as agreed upon by both the employer and employee.

### Specific Work

An employment contract that expires upon the completion of a specific task as opposed to a specific length of time.

## PROBATIONARY PERIODS

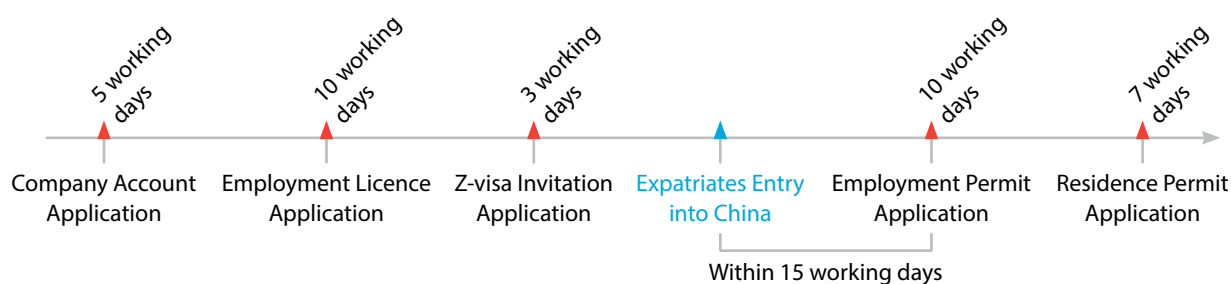
| Contract Length                      | Probation Period     |
|--------------------------------------|----------------------|
| Contract term < 3 months             | No probation         |
| 3 months ≤ Contract term < 1 year    | Probation ≤ 1 month  |
| 1 year ≤ Contract term < 3 years     | Probation ≤ 2 months |
| 3 years ≤ Contract term ≤ Open-ended | Probation ≤ 6 months |

- Employers may stipulate a probation period for any employee.
- An employer may stipulate only one probation period for the same employee.
- No probation period may be specified in an employment contract with a term that expires upon completion of a certain job or an employment contract with a term of less than three months.
- According to the law, the wages of an employee on probation may not be less than the statutory minimum wage in the place where the employer is located and not less than 80% of the wage upon confirmation that is agreed in the employment contract.

## HIRING EXPATRIATE STAFF IN CHINA

For expatriate staff members to legally work in China, the company is required to apply for the employment permit and residence permit on their behalf. It is required to acquire the employment permit before concluding any labour contracts for work in China.

The whole process, from application of the company account to application of the expatriate employee's residence permit, usually takes about two months, as shown below:



However, the detailed application requirements and timelines may differ according to the local requirements of each city's authorities.

The general requirements for expatriate employees working in China are as follows:

- Male and female expatriates should be no less than 18 years of age and no more than 60 and 55 years of age respectively;
- Good health status;
- Have relevant working experiences;
- Have relevant qualifications;
- No criminal records

Foreign nationals can also enter China for temporary business purposes with the visas below.

### **F VISA**

The F Visa, also known as the business visa, was used previously by foreign nationals coming to China on business but not employed by a Chinese entity. However, new regulations have limited the scope of this type of visa to non-commercial purposes only, such as cultural exchanges, visits and inspections. Therefore, it is no longer appropriate for business except within its limited range of permitted activities.

### **M VISA**

New regulations have introduced a new visa for business travellers called the M Visa. This is applicable to foreigners coming to the country for business and trade purposes lasting no more than six months (180 days). Like the previous F Visa, M Visas are most suitable for foreigners who will:

- Spend less than six months in China during any calendar year
- Frequently enter and leave China
- Not hold a formal senior position at an entity based in China
- Not be paid by a company incorporated in China

M Visas can be renewed after six months at the discretion of the immigration bureau, with the risk of rejection rising as the foreigner continuously resides in China for a longer period of time.

## **HIRING LOCAL STAFF IN CHINA**

The process of hiring employees in China will usually follow the mandatory procedures below:

- Conclude labour contract with staff member
- Process new employment registration and apply for employment permit from the labour bureau

- Contribute to staff social benefits
- Process monthly salary payment before the agreed payday
- File individual income tax every month

## SOCIAL BENEFITS IN CHINA

Employers are required by law to contribute both the company's and individual's components of social benefits for local staff. Social benefits in China include:

- Pension
- Medical
- Maternity
- Unemployment
- Work-related injury
- Housing fund

The social benefit contribution rates and contribution base are different in different Chinese cities. For example, the social benefit contribution base and rates in Beijing and Shanghai are as follows:

|                                                              | Beijing                                                            | Shanghai                                                           |
|--------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------|
| <b>Social Benefit Contribution Base (new employees)</b>      | Full Month Gross Salary for the first working month in the company | Full Month Gross Salary for the first working month in the company |
| <b>Social Benefit Contribution Base (existing employees)</b> | Employee's Average Monthly Salary the previous year                | Employee's Average Monthly Salary the previous year                |
| Maximum base in year 2016                                    | RMB21,258                                                          | RMB17,817                                                          |
| Minimum base in year 2016                                    | RMB2,834                                                           | RMB3,563                                                           |
| Employer's Contributions                                     | Beijing                                                            | Shanghai                                                           |
| Pension                                                      | 19%                                                                | 20%                                                                |
| Medical Insurance                                            | 10%                                                                | 10%                                                                |
| Unemployment Insurance                                       | 0.8%                                                               | 1%                                                                 |
| Injury Insurance                                             | 0.5% – 2%                                                          | 0.2% – 1.9%                                                        |
| Pregnancy Insurance                                          | 0.8%                                                               | 1%                                                                 |
| Housing Fund                                                 | 12%                                                                | 7%                                                                 |
| Employee's Contributions                                     | Beijing                                                            | Shanghai                                                           |
| Pension                                                      | 8%                                                                 | 8%                                                                 |
| Medical Insurance                                            | 2% + RMB3*                                                         | 2%                                                                 |
| Unemployment Insurance                                       | 0.2%                                                               | 0.5%                                                               |
| Housing Fund                                                 | 12%                                                                | 7%                                                                 |

\* Some cities allow employees to purchase supplementary critical illness insurance at a very low price every month. E.g. employees in Beijing can pay an extra RMB3 every month for this insurance.

The contribution base amount is the employees' average monthly wage including all types of gross income such as basic salary, overtime pay, allowance, bonus and any other salary pay items of each employee in the previous year. This is subject to a cap of three times the citizens' average monthly salary in the city the previous year and the minimum base is defined as 60% of citizens' average monthly salary in the city.

Employees will enjoy social insurance benefits under the following circumstances in accordance with the law:

- Retirement;
- Unemployment;
- Illness;
- Child bearing
- Disability caused by work-related injury or occupational disease;

The conditions and standards for employees to enjoy social insurance benefits shall be stipulated by laws, rules and regulations.

## WORKING HOURS IN CHINA

There are three types of working hours in China:

- Standard working hours  
The employees shall work 8 hours a day and 40 hours a week on average. If they work beyond these standard durations, the overtime (OT) rates below shall apply:

|                       |                                  |
|-----------------------|----------------------------------|
| OT on working days    | 150% of regular salary / OT hour |
| OT on weekends        | 200% of regular salary / OT hour |
| OT on public holidays | 300% of regular salary / OT hour |

- Flexible working hours
- Integrated working hours

### Similarities and Differences between Flexible and Integrated Working Hours

| Non-standard Working Hours | Similarities                                                                                                                                                                                                                                                                    | Differences                                                                                                                                                                                                               |
|----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Flexible working hours     | <ul style="list-style-type: none"> <li>• The company is required to apply for non-standard working hours from the labour bureau.</li> <li>• After approval of non-standard working hours, it is not required to pay salary for overtime on weekends or working days.</li> </ul> | Applicable positions: <ul style="list-style-type: none"> <li>• Sales</li> <li>• Senior management staff</li> <li>• Drivers</li> <li>• Other positions that require the employee to leave the office frequently</li> </ul> |
| Integrated working hours   | <ul style="list-style-type: none"> <li>• However, it is still required to pay salary for overtime on public holidays in some cities.</li> </ul>                                                                                                                                 | Applicable for industries with peak and off-peak seasons, such as: <ul style="list-style-type: none"> <li>• Catering</li> <li>• Logistics</li> </ul>                                                                      |

Employers are encouraged to plan the type of working hours for their employees according to the roles and responsibilities so that staff costs can be managed efficiently.

## PUBLIC HOLIDAYS AND LEAVE

The employer shall arrange holidays for employees in accordance with the law as follows:

| Name of Public Holiday | Date (2017)     | Days |
|------------------------|-----------------|------|
| New Year               | January 1       | 1    |
| Chinese New Year       | January 28 – 30 | 3    |
| Qing Ming Day          | April 4         | 1    |
| Labour Day (May Day)   | May 1           | 1    |
| Dragon Boat Festival   | May 30          | 1    |
| National Day           | October 1 – 3   | 3    |
| Mid-Autumn Festival    | October 4       | 1    |

Employees who have worked continuously for one year or more shall be entitled to annual leave with full pay. The details are shown in the table below.

| Work Period (Years)               | Annual Leave (Days) |
|-----------------------------------|---------------------|
| $1 \leq \text{Work period} < 10$  | 5                   |
| $10 \leq \text{Work period} < 20$ | 10                  |
| $\text{Work period} \geq 20$      | 15                  |

Beyond the minimum annual leave entitlement required by the law, the company may consider providing additional annual leave days to staff according to their employment seniority in the company. For example, the company may provide an additional day of annual leave for each subsequent year of service up to a maximum number of extra days.

## TERMINATION

From a legal perspective, termination of employees in China can be more difficult than expected, especially under the comparatively stringent regulations on terminating employment contracts after 2008. Employers should follow the steps below to ensure compliance with all relevant statutes:

|        |                                                                                                                                                                                                                                                                                          |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Step 1 | Determine whether the termination is an early termination or not. If the employer chooses to terminate the employee prior to expiration of a fixed-term contract, this is considered “early termination” and certain additional requirements apply.                                      |
| Step 2 | In the case of early termination, the employer should attempt to reach an agreement with the employee on the termination date, severance payment and any other necessary details. This is often the safer option even if there are grounds for unilateral termination.                   |
| Step 3 | If the employer and employee are unable to come to a termination agreement, consider whether there are grounds to support immediate termination for cause or a 30-day notice period for termination without cause, keeping in mind the statutory obstacles to such forms of termination. |

## MANPOWER

If the termination is initiated by the employer, regardless of whether there is a mutual agreement between both parties, the employee is legally entitled to the mandatory minimum severance pay. The severance pay amount is computed according to the number of years of service with the employer as follows:

**D** = Employee's duration (in years) of service with the company

**S** = Employee's average salary of the preceding 12 months before termination

**Severance Pay = D\*S**

D < 6 months : the severance pay is deemed as 0.5 month salary

6 months ≤ D ≤ 12 months : the severance pay is deemed as 1 month salary

*Note: The severance payment ceiling amount for monthly salary is 3 times the local citizen's yearly average salary of the preceding year.*

## LABOUR DISPUTES

When there is a labour dispute between the employer and its employees, the parties concerned may apply for mediation or arbitration, take legal proceedings according to the law, or seek a settlement through consultation.

A well-written staff handbook is a good HR management tool to regulate employees' code of conduct and state required discipline standards clearly, which can greatly support the employer's position during a labour dispute.

## LEGAL RESPONSIBILITY

If the employer's actions and internal policies relating to HR management are found to be non-compliant with laws, rules and regulations, the labour bureau may issue the company a warning letter and order rectifications to be made. If any harm has been caused to employees as a result of the non-compliance, the company shall be liable to provide compensation.

If the employer is found to have extended working hours of employees in violation of Chinese labour law, the labour bureau and other related administrative departments may also issue it a warning letter, order rectifications to be made, and possibly impose a fine.

The government may also order the employer to remunerate/compensate employees or make up for any financial losses they suffered if the company violated employees' legitimate rights and interests in any of the following ways:

- The employer deducts wages or delays payment of wages to employees without any valid reason.
- The employer refuses to pay employees overtime payment.
- The employer pays employees wages below the local minimum wage standard.
- The employer fails to provide employees with severance pay in accordance with labour contract law after termination of labour contracts.

According to the law, the employer shall bear responsibility for compensation if the execution of any invalid contracts is attributed to the company and resulted in damages to employees.

In addition, an employer that revokes labour contracts or purposely delays the execution of labour contracts in violation of the conditions specified in labour contract law may be ordered by the labour bureau and other related administrative departments to make corrections, and shall bear the responsibility of providing compensation if this resulted in damages to employees.

Employers who recruit employees whose labour contracts have not yet been terminated by the previous employer shall assume joint responsibility for compensation if the original employer of the employee suffered economic losses as a result.

Employers who fail to pay social insurance premiums without any valid reason may be ordered by the labour bureau and other related administrative departments to make payment within a fixed period of time. If the company still fails to make the payment after the time limit, an additional arrears payment may be imposed.

Employees who terminate labour contracts in violation of the conditions specified in labour contract law or violate confidentiality terms agreed upon in the labour contracts and consequently cause the employer to suffer economic losses shall be liable to provide compensation in accordance with the law.

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# ACCOUNTING

## ACCOUNTING REGULATIONS AND STANDARDS

A unified accounting system was implemented for business enterprises with effect from 2002. Further regulations were implemented for financial institutions in 2002 and small enterprises in 2005. The Ministry of Finance has supplemented these regulations by the issuance of specific accounting standards designed to converge with International Financial Reporting Standards (IFRS) and accounting interpretations. Collectively, the regulations, standards, and interpretations are referred to as China GAAP.

The accounting regulations and standards required for non-listed companies are as follows:

- Accounting Standards for Business Enterprises (original and first revised versions effective from 1 July 1993 and 1 Jan 2007 respectively, latest version has been effective since 23 July 2014)
- Accounting Regulations for Business Enterprises (effective 1 Jan 2001)
- Accounting Regulations for Financial Institutions (effective 1 Jan 2002)
- Accounting Regulations for Small Enterprises (effective 1 Jan 2005)
- Basic Standard (effective 1 July 1993)
- Post-balance Sheet Date Events (effective 1 Jan 1998, revised in 2003)
- Cash Flow Statement (effective 1 Jan 1998, first revision in 2001, further revised in 2006)
- Changes in Accounting Policies, Accounting Estimates and Correction of Accounting Errors (effective 1 Jan 1999, revised in 2001)
- Investments (effective 1 Jan 1999, revised in 2001)
- Debt Restructuring (effective 1 Jan 1999, revised in 2001)
- Contingencies (effective 1 July 2000, revised in Jan 2007)
- Non-monetary Transactions (effective 1 Jan 2000, revised in 2001)
- Leases (effective 1 Jan 2001)
- Borrowing Costs (effective 1 Jan 2001, revised in Jan 2007)
- Fixed Assets (effective 1 Jan 2001, revised in Jan 2007)
- Inventories (effective 1 Jan 2001, revised in Jan 2007)

### NEW ACCOUNTING STANDARDS

In February 2006, a basic standard and 38 new accounting standards were issued, supplemented by another 33 implementation notes and 4 interpretation notes. These standards and interpretation notes ("New GAAP") took effect on 1 January 2007 and are compulsory for public listed companies, centrally managed state-owned enterprises, financial institutions, security investment funds and fund management companies. All large and medium-sized entities are required to adopt the New GAAP. Other companies, including foreign investment enterprises, are encouraged to adopt the New GAAP, but have the option to continue using the accounting regulations and standards mentioned in the preceding section.

The New GAAP underwent major reforms in July 2014, including revision of the basic standard and 5 accounting standards, as well as the addition of 3 new accounting standards.

These latest changes are shown in bold below:

| No.      | Standard                                              | No.       | Standard                                                                     |
|----------|-------------------------------------------------------|-----------|------------------------------------------------------------------------------|
| <b>1</b> | <b>Basic Standard (revised in 2014)</b>               | 22        | Financial Instruments: Recognition and Measurement                           |
| <b>2</b> | <b>Long Term Equity Investments (revised in 2014)</b> | 23        | Transfer of Financial Assets                                                 |
| 3        | Investment Properties                                 | 24        | Hedging                                                                      |
| 4        | Property, Plant and Equipment                         | 25        | Insurance Contracts                                                          |
| 5        | Biological Assets                                     | 26        | Reinsurance Contracts                                                        |
| 6        | Intangible Assets                                     | 27        | Extraction of Oil and Natural Gas                                            |
| 7        | Exchange of Mon-monetary Assets                       | 28        | Changes in Accounting Policies and Estimates and Correction of Errors        |
| 8        | Impairment of Assets                                  | 29        | Events after the Balance Sheet Date                                          |
| <b>9</b> | <b>Employee Benefits (revised in 2014)</b>            | <b>30</b> | <b>Presentation of Financial Statements (revised in 2014)</b>                |
| 10       | Enterprise Pension Funds                              | 31        | Cash Flow Statements                                                         |
| 11       | Share-based Payments                                  | 32        | Interim Financial Reporting                                                  |
| 12       | Debt Restructuring                                    | <b>33</b> | <b>Consolidated Financial Statements (revised in 2014)</b>                   |
| 13       | Contingencies                                         | 34        | Earnings per Share                                                           |
| 14       | Revenue                                               | 35        | Segment Reporting                                                            |
| 15       | Construction Contracts                                | 36        | Related Party Disclosures                                                    |
| 16       | Government Grants                                     | <b>37</b> | <b>Financial Instruments: Presentation and Disclosures (revised in 2014)</b> |
| 17       | Borrowing Costs                                       | 38        | First-time Adoption of Accounting Standards for Business Enterprises         |
| 18       | Income Tax                                            | <b>39</b> | <b>Fair Value Measurements (newly added in 2014)</b>                         |
| 19       | Foreign Currency Translations                         | <b>40</b> | <b>Joint Venture Arrangements (newly added in 2014)</b>                      |
| 20       | Business Combinations                                 | <b>41</b> | <b>Disclosure of Interests in Other Entities (newly added in 2014)</b>       |
| 21       | Leasing                                               |           |                                                                              |

Since adoption of the New GAAP, the differences between IFRS and accounting standards in China have reduced significantly.

### ACCOUNTING STANDARDS FOR SMALL AND MEDIUM-SIZED ENTERPRISES

The new accounting standards for small and medium-sized enterprises (SMEs) implemented in January 2013 replaced the old accounting regulations implemented in 2005. They present a simplified accounting framework for SMEs in order to reduce compliance costs and allow growing enterprises to focus on internal control and business strategy.

These accounting standards are not applicable for the following:

- Small enterprises whose stocks or bonds are listed publicly in the market for trading
- Financial institutions or other small enterprises that provide services of a financial nature
- Parent company and subsidiaries of a group

Additional regulations have been issued to establish the criteria for qualification as a small enterprise. The criteria are based on headcounts, revenues and total asset values of businesses in different industries:

| Business                            | Headcount      | Revenue (RMB million) | Total Asset Value (RMB million) |
|-------------------------------------|----------------|-----------------------|---------------------------------|
| Industrial                          | <300           | <20                   | Not Applicable                  |
| Construction                        | Not Applicable | <60                   | <50                             |
| Wholesale                           | <20            | <50                   | Not Applicable                  |
| Retail                              | <50            | <5                    | Not Applicable                  |
| Transportation                      | <300           | <30                   | Not Applicable                  |
| Storage                             | <100           | <10                   | Not Applicable                  |
| Postal                              | <300           | <20                   | Not Applicable                  |
| Hotel and Food                      | <100           | <20                   | Not Applicable                  |
| Catering                            | <100           | <20                   | Not Applicable                  |
| Information Transmission            | <100           | <10                   | Not Applicable                  |
| Software and Information Technology | <100           | <10                   | Not Applicable                  |
| Real Estate Development             | Not Applicable | <10                   | <50                             |
| Property Management                 | <300           | <10                   | Not Applicable                  |
| Leasing and Service                 | <100           | Not Applicable        | <80                             |
| Others                              | <100           | Not Applicable        | Not Applicable                  |

The following are some major features or requirements when applying accounting standards for small enterprises compared with accounting standards for larger businesses:

- Only the balance sheet and income statements need to be presented. Cash flow statements and the statement of changes in equity are optional.

- For notes to the accounts, only significant accounting policies, accounting estimates and transactions for the financial period need to be disclosed.
- In accounting for tax, the tax payable method is adopted.
- Actual cost is used in accounting for inventory, while the retail and standard cost methods are permitted under accounting standards for larger businesses.
- Borrowing costs for specific purposes can be capitalised upon incurrence of a debt and need not be in line with the incurrence of capital expenditure.

In the event that the SME is expected to breach the criteria for qualification in the near future, it would be advisable to adopt the full China GAAP rather than the simplified version for SMEs to avoid the risk of non-compliance.

## PRC ADMINISTRATIVE MEASURES FOR INVOICES

The present Administrative Measures of the People's Republic of China for Invoices ("Measures") were adopted by the State Council on 12 December 1993 and revised on 20 December 2010. The Implementation Rules for Invoice Management Measures of the People's Republic of China were promulgated by State Administration of Taxation on 28 December 1993 and revised on 27 December 2014. All entities and individuals that print, purchase, issue, obtain, keep, and cancel invoices within the territory of the People's Republic of China must observe these Measures.

With implementation of the VAT (value added tax) reform on 1 May 2016, VAT has replaced BT (business tax) in all sectors. The administrative procedures for purchasing and upgrading VAT invoices are explained next.

### TYPES OF VAT INVOICES

There are two types of VAT invoices in China — the Normal VAT invoice and Special VAT invoice. Normal VAT invoices are applicable for general and small-scale VAT taxpayers. Only a company with a general VAT taxpayer certificate may obtain Special VAT invoices and use them for VAT deduction purposes. In this article, we will mainly cover the administrative procedures for the Special VAT invoice.

### SPECIAL VAT INVOICE PURCHASING AND UPGRADING PROCEDURES

#### Who can purchase Special VAT invoices?

Only general VAT taxpayers can purchase Special VAT invoices and the company first has to register the general VAT taxpayer through the online tax service website (<https://www.tax.sh.gov.cn/xbwt/bsdt/preindex.jsp>).

The company should obtain the tax bureau's approval within 5 business days after the bureau validates the submitted registration.

For general VAT taxpayers, the qualification criteria are:

- (1) Annual service revenues equal or exceed RMB5 million; or
- (2) Annual sales revenues equal or exceed RMB800,000

**How to purchase Special VAT invoices?**

Before purchasing Special VAT invoices, a newly certified general VAT taxpayer needs to attend mandatory training at the tax bureau on how to issue such invoices, and then buy a tax machine, a tax card and an invoice purchase book from the tax bureau. After these have been done, the company may purchase Special VAT invoices from the tax bureau.

**Upgrading the Special VAT invoice version**Special VAT invoice version upgrading rules

The upper limit amount of the original VAT invoice is RMB9,999.99 per invoice (excluding output VAT amount). And the issuance quantity is limited to 50 VAT invoices per month. The company can only issue RMB500,000 worth of invoices per month. Normally, if a company's monthly revenue total is more than RMB500,000, the company may apply to increase the limit of its Special VAT invoice. And the different limits of Special VAT invoices are listed as follows:

- RMB9,999.99 (Original Version 10K)
- RMB99,999.99 (Version 100K)
- RMB999,999.99 (Version 1M)
- RMB9,999,999.99 (Version 10M)
- RMB99,999,999.99 (Version 100M)

The company may upgrade the limit of the Special VAT invoice as follows:

|        |                                                                                                                                         |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------|
| Step 1 | Submit upgrading application through online tax service website                                                                         |
| Step 2 | Company required to prepare additional supporting documentation such as contracts that are compliant with the tax bureau's requirements |
| Step 3 | Obtain approvals for Special VAT invoice upgrade from the tax bureau within 5 business days                                             |
| Step 4 | Bring tax machine to the tax bureau for it to be upgraded                                                                               |
| Step 5 | Issue Special VAT invoice using the upgraded version                                                                                    |

The company can manually submit the application to the tax bureau if the online tax submission is unsuccessful.

**Upgrading the Special VAT invoice quantity**

The company can upgrade the Special VAT invoice quantity during the month to meet special business needs. Before applying for the new quantity of Special VAT invoices, the company should complete filing of the VAT return before the 15th day of the following month. Then, the company can proceed to apply for the quantity upgrade online.

### Procedures to temporarily or permanently upgrade the Special VAT invoice quantity

#### Temporary quantity upgrade

The company must exhaust all Special VAT invoices and complete the current month's tax filing before applying for new invoice quantities.

|        |                                                                                                      |
|--------|------------------------------------------------------------------------------------------------------|
| Step 1 | Verify issued Special VAT invoice online                                                             |
| Step2  | Submit temporary quantity upgrade application online                                                 |
| Step 3 | Obtain approvals for Special VAT invoice quantity upgrade from the tax bureau within 5 business days |
| Step 4 | Purchase Special VAT invoices within the temporary approved amount limit during the current month    |

#### Permanent quantity upgrade

|        |                                                                                                      |
|--------|------------------------------------------------------------------------------------------------------|
| Step 1 | Verify issued Special VAT invoice online                                                             |
| Step2  | Submit permanent quantity upgrade application online                                                 |
| Step 3 | Obtain approvals for Special VAT invoice quantity upgrade from the tax bureau within 5 business days |
| Step 4 | Purchase Special VAT invoices within the new amount limitation                                       |

### Ongoing Special VAT invoice purchases

The company can purchase Special VAT invoices during the month within the upper limit amount and quantity when it runs out of such invoices. After month-end closing, the company can only purchase new Special VAT invoices after filing the previous month's VAT return before the 15<sup>th</sup> day of the current month. The following documents must be submitted whenever the company purchases new Special VAT invoices:

- Golden tax card (金税盘)
- Invoice purchase book
- Purchase order with Company Seal
- Tax staff certificate (办税员证)
- Tax person's ID card

In some cities in China, the company can apply for and order Special VAT invoices online and receive them by courier from the tax bureau.

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# **INTELLECTUAL PROPERTY RIGHTS (IPR) IN CHINA**



### CATEGORIES OF IPR

An intellectual property right (“IPR”) in China is a term referring to a brand, invention, design or other kind of creation that a person or business has legal rights over. Almost all businesses own some form of IPR, which could be a business asset.

Some of the most common forms of IPR in China are as follows:

- Copyright protects written or published works such as books, songs, films, web content and artistic works.
- Patents include patents for inventions, patents for utility models and patents for designs. This protects commercial inventions, such as a new business product or process and designs, such as drawings or computer models.
- Trademarks protect signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

### IPR LEGAL SYSTEM IN CHINA

| Categories of IPR | Administrative Department                 | Relevant Laws and Regulations                                                                                                                             | Relevant Rules                                                                                                                                                                                                                                                                                                                                                              | Treaties and Reciprocal Agreements                                                                                                                                                                                           |
|-------------------|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Copyright         | National Copyright Administration         | <ul style="list-style-type: none"> <li>• Copyright Law (Revised in 2010)</li> <li>• The Copyright Implementation Regulations (Revised in 2013)</li> </ul> | <ul style="list-style-type: none"> <li>• National Copyright Administration is the authority responsible for the administration and enforcement of copyright and related issues in China.</li> </ul>                                                                                                                                                                         | The Berne Convention — Each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals.                                                                 |
| Patent            | State Intellectual Property Office (SIPO) | <ul style="list-style-type: none"> <li>• Patent Law (Revised in 2008)</li> <li>• The Patent Implementation Regulations (Revised in 2010)</li> </ul>       | <ul style="list-style-type: none"> <li>• Invention patents give protection for a maximum of 20 years, while utility model and design patents give protection for a maximum of 10 years.</li> <li>• ‘First to file’ principle, i.e. if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.</li> </ul> | The Paris Convention — Any person from a signatory state can apply for a patent or trademark in any other signatory state, and would be given the same enforcement rights and status as a national of that country would be. |

| Categories of IPR | Administrative Department                                       | Relevant Laws and Regulations                                                                                                                                    | Relevant Rules                                                                                                                                                                                                                                                                                                                                        | Treaties and Reciprocal Agreements                                                                                                                                                                                                                        |
|-------------------|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Trademark         | State Administration for Industry and Commerce Trademark Office | <ul style="list-style-type: none"> <li>• Trademark Law (Revised in 2013)</li> <li>• Implementation Regulations of the Trademark Law (Revised in 2014)</li> </ul> | <ul style="list-style-type: none"> <li>• Registration by foreign businesses under the Madrid Protocol takes about 18 months, while a direct registration using the Chinese domestic system will usually take 2-4 years.</li> <li>• A trademark is valid for 10 years, after which it may be renewed indefinitely for every 10-year period.</li> </ul> | <ul style="list-style-type: none"> <li>• The Paris Convention</li> <li>• The Madrid Protocol — this is a central system for obtaining a 'bundle' of national trademark registrations in different jurisdictions, through a single application.</li> </ul> |

## REGISTRATION OF IPRs IN CHINA

### COPYRIGHT

Registration of copyright is not compulsory in order to receive copyright protection, though seeking redress for any violations can be difficult without prior registration.

### PATENT

Foreign enterprises can appoint an agent authorised by the State Intellectual Property Office (SIPO) to handle their patent applications.

### TRADEMARK

Foreign enterprises can appoint an authorised trademark agent to handle their applications for trademark registration.

## HOW TO PROTECT IPRs IN CHINA

The protection of IPRs is overseen by the State Intellectual Property Office (SIPO) in China, which also handles disputes on IPRs. Disputes over trademarks are handled by the Trademark Office or the Trademark Review and Adjudication Board under the State Administration for Industry and Commerce.

Infringement of IPRs can be resolved through mediation for the parties involved. If mediation fails, then the infringement can be dealt with by way of legal proceedings or administrative procedures.

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# LISTING IN CHINA AND SINGAPORE

## LISTING IN CHINA

Mainland China has two stock exchanges that are located in Shanghai (“SSE”, opened in December 1990) and Shenzhen (“SZSE”, opened in July 1991). Both exchanges are governed by the China Securities Regulatory Commission (“CSRC”).

### MAINBOARD AND SME BOARD

The Mainboard is designed for big companies that intend to raise large amounts of public funds. Separately, the Small and Medium Enterprise Board (“SME Board”) adopts the same listing requirements as the Mainboard, while targeting small and medium-sized companies.

### SECOND BOARD

In 2009, the Growth Enterprise Board (“Second Board”) was launched in the Shenzhen Stock Exchange. It serves as a new direct financing platform for innovative companies.

### NEW THIRD BOARD

Launched in 2006, the National Equities Exchange and Quotations (“NEEQ”) system, also known as the New Third Board, serves as China’s “over the counter” (“OTC”) market. Trading takes place on an OTC basis, which means transactions happen directly between participants rather than via an exchange. Compared with the Mainboard and Second Board, it attracts many start-ups.

## REQUIREMENTS AND PROCEDURES FOR DIFFERENT MARKETS IN CHINA

|                               | Mainboard & SME Board                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Second Board                                                                                                                                                                                                                                                                                                                                                                                                                                                           | New Third Board                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Listing venues</b>         | Mainboard (SSE & SZSE)<br>SME Board (SZSE)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | SZSE                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | NEEQ                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Listing qualification</b>  | Securities issued to the public                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Securities issued to the public                                                                                                                                                                                                                                                                                                                                                                                                                                        | Non-listed company approved by CSRC                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Number of shareholders</b> | ≤ 200                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | ≤ 200                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | No restrictions                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Track record</b>           | 3 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 3 years                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 2 years                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Total share capital</b>    | The market capitalisation is no less than RMB50 million                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | The market capitalisation is no less than RMB30 million                                                                                                                                                                                                                                                                                                                                                                                                                | No restrictions                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Quantitative criteria</b>  | <ul style="list-style-type: none"> <li>Positive net profit and cumulative profits for the last 3 fiscal years exceeding RMB30 million;</li> <li>Cumulative cash flows for the last 3 fiscal years derived from operations exceeding RMB50 million or cumulative revenue for the last 3 fiscal years exceeding RMB300 million;</li> <li>Pre-listing capital is no less than RMB30 million;</li> <li>Company did not suffer any unrecovered losses at the end of its most recent fiscal period; and</li> <li>The proportion of its intangible assets (deducting land use right, water farming right, mining right and other rights) as at the end of its most recent fiscal period does not exceed 20% of net assets.</li> </ul> | <ul style="list-style-type: none"> <li>Has generated profits for the latest 2 consecutive years, with a cumulative revenue of not less than RMB10million, or operating income for the immediate preceding year no less than RMB50million and the annual growth rate of revenue for the latest 2 years is no less than 30%;</li> <li>The net profit for the latest fiscal period is no less than RMB20million; and</li> <li>There are no unrecovered losses.</li> </ul> | <ul style="list-style-type: none"> <li>Has the ability to make profits continuously</li> <li>Joint stock company applying for a listing on NEEQ is not subject to restrictions on the nature of ownership of a shareholder;</li> <li>If it is a limited liability company, it must be fully transformed into a joint stock company by converting the shares at the original net book value of assets.</li> </ul> |

### LISTING IN SINGAPORE

Companies may be attracted to list on the Singapore Exchange (“SGX”) for various reasons. SGX is recognised as a wealth management hub, with the largest institutional investor base in Asia and more than US\$2.4 trillion of assets under management. SGX is also the most international exchange, with close to 40% of listed companies from countries outside Singapore.

Companies may choose to list either on the SGX Mainboard or Catalist if they meet the respective admission criteria. The Mainboard caters to established companies. To qualify for listing on the Mainboard, a company must have an operating track record and meet either one of the two profit tests or the market capitalisation test. Besides these quantitative criteria, there are also qualitative requirements such as appointing directors with appropriate experience in managing the business, and appointing at least two independent non-executive directors who are resident in Singapore.

On the other hand, the Catalist caters to fast-growing companies. While there are no minimum quantitative admission criteria, a company seeking admission on the Catalist must engage an approved sponsor who will assess whether it is suitable for listing. The qualitative requirements for the Mainboard mentioned earlier also apply to listing on the Catalist.

Companies may take about six to nine months to prepare for submission of the listing application. After submission, the application and review process typically takes about eight to 10 weeks. However, listing on the Catalist generally takes a shorter period of time.

Whether the company chooses to list on the Mainboard or the Catalist, it will need the help of various professionals, such as an issue manager for the Mainboard or a sponsor for the Catalist, and legal advisors. Reporting accountants and independent auditors are also engaged to audit the accounts of the company as presented in the accountants’ report and highlight any weaknesses in the internal controls of the company. Some companies also engage public relations consultants to assist in increasing investor awareness of the company.

Listing on the Mainboard is generally more costly than listing on the Catalist in terms of the Initial Listing Fee and Annual Listing Fee. However, companies listed on the Catalist must additionally retain a continuing sponsor and pay an annual sponsorship fee for as long as they are listed.

For information or enquiries on our Corporate Advisory services, please visit: [www.SBASF.com](http://www.SBASF.com)

### YOUR TRUSTED BUSINESS ADVISOR IN CHINA

Established in 2001, SBA Stone Forest (SBASF) is a corporate advisory and public accounting group headquartered in Shanghai with offices in Beijing, Suzhou, Shenzhen, Chengdu and Hangzhou. We help foreign businesses set up in China and thereafter navigate its regulatory and business environment.

Discerning international businesses appreciate our Singapore heritage as it epitomises excellence, integrity and trust. We share the same systems, high standards, international best practices and service culture of our Singapore parent, the Stone Forest group.

Together with our partner-owned public accounting practice, we offer intimate local knowledge and one-stop, hassle-free solutions for business assurance, accounting & advisory, payroll & HR advisory, tax compliance and advisory, risk management, corporate advisory and eDiscovery.

We are also well-positioned to help Chinese enterprises internationalise, given our Singapore parentage in a top financial and business hub in Asia, and our membership in the Allinial Global international network.

Please visit [www.SBASF.com](http://www.SBASF.com) and [www.StoneForest.com.sg](http://www.StoneForest.com.sg) for more information.

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