



DOING BUSINESS IN CHINA

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Foreword

This guide has been prepared by Wan Hui Da Law Firm, an independent member of Alliance of Business Lawyers. It has been designed to answer many of the questions foreign businesses and entrepreneurs have when making their first venture into the Chinese market. Wan Hui Da Law Firm, which comprises Wan Hui Da Law Firm and Wan Hui Da IP Agency, is one of the leading Intellectual Property (“IP”) professional service providers in China with offices in Beijing, Hong Kong, Shanghai, Guangzhou, Shenzhen, Tianjin, Suzhou, Ningbo, and Taizhou. Wan Hui Da Law Firm focuses on providing legal services to its clients all over the world in connection with IP, commercial, and corporate legal matters.

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1. China: Country Profile

China, officially named and established as the People's Republic of China on October 1, 1949, is one of the world's most ancient civilizations and has a recorded history dating back nearly 4,000 years. It is located in eastern Asia on the western Pacific rim.

China is a vast land, covering an area of 9.6 million km²; encompassing 18,000 kilometers of coastline; and containing 23 provinces, 5 autonomous regions, 4 municipalities, and 2 special administrative regions, Hong Kong and Macau.

Beijing, the capital of China, is one of the most populous cities in the world. Other global cities in China include Shanghai, Hong Kong, Macau, Tianjin, Guangzhou, and Hangzhou.

1.1. Population

As a unified nation consisting of 56 different ethnic groups, China has a population of over 1.381 billion, with the Han people accounting for more than 90% of the country's population.

1.2. Language

The official language of China is standard Chinese.

1.3. Currency

The official unit of currency in mainland China is the Renminbi. In Hong Kong and Macau, the units of currency are the Hong Kong dollar and Macau pataca, respectively.

1.4. Legal System

China's legal system covers laws in 7 categories at 3 different levels. The 7 categories of law are Constitutional and Constitution-related; civil and commercial; administrative; economic; social; criminal; and lawsuit and non-lawsuit procedures. The 3 different levels are state laws, administrative regulations, and local statutes.

Different from the mainland of China, Hong Kong and Macau have their own legal systems based on the Basic Law of the Hong Kong Special Administrative Region and the Basic Law of the Macao Special Administrative Region, respectively.



2. Economy and Investment

2.1. Economic Climate

Since the introduction of economic reforms in 1978, especially after joining the World Trade Organization (WTO) in 2001, China has become one of the world's fastest growing major economies. It is the world's second largest economy by gross domestic product (GDP) and retains the largest foreign exchange reserves in the world.

China is a global hub for manufacturing and is the largest manufacturing economy and largest exporter of goods worldwide. In addition, China has the world's fastest growing consumer market and is the second largest importer of goods. China's main imports are mechanical and electrical products and high-tech goods.

China is the world's largest recipient of inward foreign direct investment, with its contribution to direct overseas investment among the top 10 globally.

In addition to the Hong Kong Stock Exchange, there are 2 securities markets on the Chinese mainland, the Shanghai Stock Exchange and the Shenzhen Stock Exchange. Both were established in 1990 and have served over 100 million domestic and overseas traders.

In 2015, 106 Chinese enterprises were recognized in the Fortune Global 500. The same year, Forbes reported that 5 of the world's 10 largest public companies were Chinese, including the largest bank by total assets, the Industrial and Commercial Bank of China.

2.2. Investment Opportunities

As the world's most attractive target market, there are tremendous business opportunities for foreign investors in China. The Catalogue for the Guidance of Industries for Foreign Investment, enacted by the Chinese government, developed

12 industrial categories and 349 subcategories that encourage foreign investment. Please see the organization's website at http://www.fdi.gov.cn/1800000121_39_4830_0_7.html for more detailed information.

The Ministry of Commerce of the People's Republic of China is the government body in charge of foreign investment. Please visit the Ministry's website for information about foreign investment projects, guidance, and more at <http://www.mofcom.gov.cn/>.

Other relevant Internet resources for foreign investors include:

- Ministry of Commerce Public Services Investment Project Information Database: http://project.fdi.gov.cn/1800000091_10000108_8.html
- Statistics on FDI in China website: http://www.fdi.gov.cn/1800000121_10000161_8.html



3. Conducting Business in China

3.1. Business Entities

The following options are available for foreign investors to set up a business entity in China.

3.1.1. Partnership

Foreign investors can set up a partnership with other foreign investors, Chinese legal entities, and/or individuals. They can also choose to join an existing partnership in China. Registration with the Administration of Industry and Commerce (AIC) is required for setting up or joining a partnership.

Foreign investors setting up or joining a partnership in China are mainly overseen by the Partnership Enterprise Law, Measures for Registration and

Administration of Partnership Enterprises, and Measures for Administration of Foreign Entities or Individuals Setting Up Partnership Enterprises in China.

There are two types of partnerships in China:

- i. General Partnership: All partners are general partners who take unlimited joint and partial liability for the debts of the partnership; and
- ii. Limited Partnership: Partners are both general and limited, among whom the general partners take unlimited joint and partial liability for the partnership's debts. Conversely, the limited partners' liability is limited only to the capital subscribed by that partner.





3.1.2. Corporations

Corporations are the most widely used business entity for foreign investors in China. Chinese Company Law adopts modern corporation theories and structures that are accepted globally. A corporation is a legal person separate from its investors, and an investor's liability to the corporation's debts is limited within the capital subscribed by that investor. Different from setting up a partnership in China, before registering with the AIC, approval of the Chinese government is required for setting up a foreign invested corporation in China.

Foreign investors can choose to set up a corporation with one or more Chinese entities, namely to set up a joint venture company or a corporation wholly owned by one or more foreigner investors.

- i. If the foreign and Chinese investors intend to co-manage the corporation and share its profit and risk based on the proportion of their capital contribution, they may choose to set up a Sino-China Equity Joint Venture company in accordance with the Sino-China Equity Joint Venture Law and Regulations for Implementation of the Sino-China Equity Joint Venture Law.
- ii. If the investors want more flexibility in agreeing on issues pertaining to their cooperative style, risk and profit sharing, and corporate management structure, they may establish a Sino-China Cooperative Joint Venture company. It is governed by Sino-China Cooperative Joint Venture Law and the Rules for Implementation of the Sino-China Cooperative Joint Venture Law.
- iii. Wholly owned foreign-invested enterprises are mainly governed by the Foreign Capital Enterprise Law and the Rules for Implementation of the Foreign Capital Enterprise Law.

3.1.3. Other forms

In addition to setting up a partnership or corporation, foreign investors can also do business in China by means of establishing a special contract relationship with the local government or project owner. These include:

- i. Sino-foreign cooperation on development of resources. This form of cooperation is mainly used in oil prospecting, developing, and production. In this cooperation, the foreign party provides technology or financing as the cooperation condition and share the profit and risk of the project with the Chinese party.
- ii. BOT(Build-Operate-Transfer). Foreign investor(s) may enter into a contract with the local project owner (the local government or entity) to undertake the construction, operation, maintenance of an industrial project, or an infrastructure project for an agreed period of time, during which the foreign investor may recover its investment, collect the operation and maintenance fees, and transfer the project back to the project owner upon expiration of the agreed period.



3.2. Setting Up a Business

The following steps must be followed in order for foreign investors to set up a partnership or corporation in China:

- i. applying for pre-approval of the proposed name with the local AIC;
- ii. seeking pre-approval from the relevant government authorities overseeing the proposed business scope of a partnership or corporation requiring special approval pursuant to the applicable law or regulations;
- iii. for a corporation, after fulfilling steps (i) and (ii) if applicable, seeking approval from the Ministry of Foreign Trade and Economic Cooperation, or the relevant local or state government office authorized by the State Council, to obtain a certificate of approval; and
- iv. filing all the required documents with the AIC for registration. Once the registration is successfully completed, a business license will be issued to the partnership/corporation to commence its business operations in China.

3.3. Capital Requirements

The minimum registration capital requirements were removed from the Company Law of China in 2014. Since then, foreign and domestic investors setting up businesses in China are not subject to any limitation on the registration capital, except for some special industries such as those relating to commercial banks, insurance, securities, trust, construction, tourism, shipments, and so forth, which are still subject to the respective minimum registration capital requirement pursuant to relevant laws and regulations.

In addition, the Company Law also removed the provisions relating to the proportion and payment deadline of the capital subscribed by the investors. Instead, the investors must follow the relevant provisions in the shareholder/partnership agreement and the corporation's articles of association to pay their subscribed capital.

3.4. Branches of Foreign Companies

A branch of a foreign company in China is not regarded as a legal person. The foreign company must designate a representative or agent to take charge of the branch and must provide appropriate funds to finance the branch's operation in China. The branch must file its company name, the name of its chief representative, its business scope, location, and operation period as well as the registered name and address of the foreign company for registration with the AIC.

A branch of a foreign company in China may not perform any profitmaking activity. Its activities are limited to market research, exhibition, and promotion in connection with the products or services of the foreign company, liaising activities in connection with product sales, service provisions, domestic purchasing, and investments. The foreign company is liable for all activities and debts of its branch in China.



4. Taxation

4.1. Circulation Tax

- i. Value Added Tax (VAT): VAT applies to corporations and individuals that sell goods, provide processing or repairing services, or import goods into China. The general tax rate is 17%. A special rate of 13% will apply for taxpayers selling or importing a) food grain, edible vegetable oil and fresh milk; b) running water, heating, air conditioning, hot water, gas and coal products for household use; c) books, newspapers and magazines; d) feed, chemical fertilizer, pesticides, agricultural machinery and plastic covering film for farming; e) other products stipulated by the State Council from time to time. For taxpayers who are considered small-sized taxpayers by the tax authorities in charge, a rate of 3% will apply.

- ii. Business Tax: This tax applies to corporations and individuals that provide services, transfer intangible assets, or sell property assets. Tax rates for different industries/activities are as follows:

Industry/Activity	Tax Rate
Transportation	3%
Construction	3%
Banking and Insurance	5%
Post and Telecommunication	3%
Cultural and Sports Industry	3%
Entertainment	5%-20%
Service	5%
Transferring Intangible Assets	5%
Selling Real Estates	5%



- iii. City Maintenance and Construction Tax: This tax applies to all taxpayers of Excise Duty, VAT, and Business Taxes. The tax is calculated based on the sum of these 3 taxes. Tax rates of 7%, 5%, and 1% are provided for taxpayers in cities, counties, towns, and other areas, respectively.
- iv. Education Surcharge: Similar to the City Maintenance and Construction Tax, the Education Surcharge applies to taxpayers of Excise Duty, VAT, and Business Taxes and is calculated based on the sum of these 3 taxes. The tax rate is 3%.

4.2. Income Tax

- i. Corporation Income Tax: All resident corporations in China are required to pay this tax for all of its overseas and domestic income, while non-resident corporations only need to pay Corporation Income Tax for income derived from China or relating to its unit or premise within China. The tax rate is 25% for resident corporations and 20% for non-resident corporations.
- ii. Individual Income Tax: Residents or non-residents who have stayed in China for at least 1 year must pay Individual Income Tax for all of their overseas and domestic income; non-residents who do not stay in China, or have stayed in China for less than 1 year, must pay Individual Income Tax for income derived from China. For salary income, the Individual Income Tax is calculated based on progressive tax rates in excess of specific amounts. For other individual incomes, a fixed tax rate of 20% is assigned.



4.3. Other Taxes

- i. Excise Duty: Corporations and individuals producing, selling, or imposing consumer goods in China must pay Excise Duty. Consumer goods include tobacco, alcohol products, cosmetics, jewelry and luxury watches, fireworks, product oil, automobile tires, motorcycles, cars, golf balls and clubs, yachts, wooden disposable chopsticks, and real wood floorings. The tax rate varies for different types of consumer goods.
- ii. Urban Land Use Tax: This tax applies to corporations and individuals using urban land for their business. The tax is calculated based on the actual area of the land being used. The applicable tax rate (ranging from RMB30 - 0.6 per square meter) depends on the location of the land in question.
- iii. Stamp Duty: This duty applies to corporations and individuals setting up contracts or who are being granted with certain certificates, licenses, etc. The amount is usually nominal. For example, for contracts related to property transfer, product selling/purchase, manufacturing, construction survey/design, transportation and for capital account books, the Stamp Duty is 0.05% of the contract/capital amount.
- iv. Vehicle and Vessel Tax: This tax applies to corporations and individuals who own or manage a vehicle or vessel. The tax rate varies for different kinds of vehicles and vessels.
- v. Property Tax: Owners of real estate must pay this tax, but it does not apply to real estate owned by individuals for non-business operation purposes. The tax rate is 1.5% per year if calculated based on the original value of the property after deducting 10% to 30%, or 15% per year if calculated based on the rental income.
- vi. Tariffs: China Customs will charge tariffs on imported and exported goods. Different tariff rates are provided for imported goods based on specific treaties, conventions, or agreements entered into between China and the relevant countries.
- vii. Tonnage Tax: This tax applies to vessels entering a port in China. The tax amount depends on the tonnage of the vessel and the length of time it will stay in China.
- viii. Tax on Occupation of Cultivated Land: This tax is levied on corporations and individuals occupying cultivated land for non-agricultural construction purposes. The tax amount per varies based on the local per capita area of cultivated farmland, ranging from RMB5 to RMB50.
- ix. Tax for Real Estate Transferring: This tax is levied on corporations and individuals that are the transferred parties in a real estate transaction. The tax is calculated based on the price of the real estate. The tax rate range is 3% to 5%.

x. Vehicle and Vessel Purchase Tax: This tax is levied on corporations and individuals that purchase or obtain a vehicle or vessel for its private use. The tax rate will be 10% of the taxable vehicle/vessel price.

xi. Land Value Increment Tax: The tax is levied on a corporation or individual that transfers real estate to others. The calculation formulas are:
Land Value Increment tax = Land Value Increment * tax rate.
Land Value Increment = Income of real estate transfer – Deduction Items.

(Deduction Items include the amount paid for the land use rights, costs and fees incurred for land development, costs and fees of the newly constructed building and its supporting facilities—or the evaluated price of the old building—and tax paid for the real estate transfer.)

Four levels of ultra-progressive tax rates are applied, ranging from 30% to 60%:

- a) For a Land Value Increment below 50% of the Deduction Items, the tax rate is 30%;
- b) For a Land Value Increment over 50% but below 100% of the Deduction Items, the tax rate is 40%;
- c) For a Land Value Increment over 100% but below 200% of the Deduction Items, the tax rate is 50%;
- d) For a Land Value Increment over 200% of the Deduction Items, the tax rate is 60%.

xii. Resource Tax: Corporations or individuals that exploit specified minerals or produce salt in China, either on land or in Chinese waters, must pay this tax.

It is calculated based on production or sales volume of the minerals or salt.

The tax rate varies for different kinds of minerals or salt.

4.4. Withholding Taxes

i. VAT, Business Tax, City Maintenance and Construction Tax and Education Surcharge: If a non-resident providing services in China does not have an operating unit in China, its withhold agent in China must withhold and pay the tax for it. If the said non-resident does not have a withhold agent in China, the buyer is the withhold agent.

ii. Corporation Income Tax: For the non-resident corporation that does not have an operating unit in China, or its income derived from China is not directly related to its operating unit or premise in China, the payer of this tax is the withhold agent.

iii. Individual Income Tax: The payer of the income is the withhold agent of this tax. For an employee's salary, the employer is the withhold agent.



5. Employment and Social Security

5.1. Work and Residence Permits

5.1.1. Conditions for non-residents working in China

Non-residents working in China must:

- i. be healthy and above 18 years old;
- ii. have the skills and relevant experience corresponding to the proposed work;
- iii. have no criminal record;
- iv. have a confirmed employer; and
- v. hold a valid passport or other equivalent travel certificate.

5.1.2. Procedures for non-residents working in China

- i. The employer will apply the work permit for the non-resident whom it decides to employ.
- ii. The non-resident will apply for an occupation visa with the relevant embassy or consulate after obtaining the work permit and notice of visa application.
- iii. The employer must apply for a certificate of work for the non-resident employee within 15 days after his/her entry into China. The certificate of work is only valid in the territory specified therein, and will become invalid upon expiration or termination of the employment contract. The certificate of work will be submitted to the government for examination on a yearly basis.
- iv. The non-resident must apply for the residence certificate with the local Police Office within 30 days after his/her entry into China.



5.2. Hiring Local Employees

Employers hiring employees, whether residents or non-residents, must comply with the Labor Law, Labor Contract Law, and other relevant regulations and local rules. The following are some of the basic requirements of labor law legislation in China.

- i. It is prohibited to hire any person younger than 16 years old.
- ii. The normal working time shall be no more than 8 hours per day and 44 hours per week; 150% of the corresponding salary shall be paid for overtime work on working days, 200% for weekends, and 300% for public holidays.
- iii. The employment contract shall be in written form, termination of which is subject to certain restrictions provided in the Labor Contract Law.
- iv. The salary paid to employees shall not be lower than the local minimum wage standard.
- v. Employment disputes will first try to be resolved at the local Labor Arbitration Commission before entering into litigation procedure.



5.3. Termination of Employment

Employees who wish to terminate their employment need to provide 30-day prior written notice to the employer. For employers, unilateral termination of employment is subject to a certain restrictions.

- 5.3.1. The employer can instigate termination in the event of the employee's unsatisfactory work during the probation period or due to serious misconduct including violations to the employer's internal rules, breach of his/her duties, or for criminal activity.
- 5.3.2. The employer can terminate employment by providing a 30-day prior written notice, or pay 1 month's salary in lieu of the 30-day period to the employee if:
 - i. the employee is unable to conduct his/her work due to illness or a non-work-related injury after the provided medical period, or is unable to perform new work subsequently assigned to him/her;
 - ii. the employee is not competent in his/her work and remains incompetent after training or adjustment of his position; or
 - iii. the employment contract becomes unenforceable due to significant changes to objective work situations, and the parties cannot achieve agreement on changing the original employment contract.

5.3.3. The employer will pay economic compensation to the employee when terminating the contract as described, or when the employment contract is not renewed upon expiration. The compensation will be the employee's average monthly salary over the past 12 months (capped by 3 times the local average salary), multiplying the number of years that he/she has worked for the employer (capped by 12 years).

5.3.4. The employer may not terminate employment during an employee's medical disability, pregnancy, maternity, or nursing period as provided by law. Wrongful termination will result in payment of a penalty to the employee amounting to twice the economic compensation.

5.4. Social Security System

Employees in China are compulsorily required to participate in contributing to basic endowment insurance, basic medical insurance, employment injury insurance, unemployment insurance, and maternity insurance. Employers must bear the required proportion of the total amount of the said insurance fees per Social Security law.





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