enabling new business

China

Legal Provisions

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In collaboration with S-GE Network Partner: SBA Stone Forest Corporate Advisory

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GENERAL REMARKS

The laws in China have always been complicated and it may be particularly difficult for foreign investors to understand the language differences and constant changes in government policies. In recent years, the Chinese government has opened up more of the economy to foreign investors by relaxing qualifications for them. The government has been revising its ‘negative list’ of industries where foreign investors are restricted or prohibited. Some restrictions that have been lifted are caps on foreign ownership of banks and ownership limits on brokerages and insurance companies. This encouraging move towards economic reform presents an excellent opportunity for investors to kick-start their investment plans in one of the world’s biggest markets.

CURRENCY REGULATIONS

OVERVIEW OF FOREIGN EXCHANGE CONTROLS

RMB EXCHANGE RATE REFORM

The Renminbi (“RMB”) is the official currency in mainland areas of the People’s Republic of China, and comes in the Yuan (元), Jiao (角), and Fen (分) 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 revoked 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 authorization and under the guidance of SAFE.

After completing the domestic direct investment registration, the foreign invested company 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

A foreign invested company can settle foreign exchange capital in its capital account at its discretion since 1 June 2015. The proportion of discretionary settlement of foreign exchange capital of foreign invested companies is temporarily determined as 100%. 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.

Options for remitting funds from China:

No.	Type of Remittance	Category	Documents Required	Legal Compliance
1	Service fee to overseas service provider	Service trading	• Service agreement • Invoice • Other documents supporting this service transaction	SAFE Hui Fa [2013] No. 30
2	Goods trading	Goods trading	• Goods trading agreement • Invoice • Other documents supporting this goods transaction	SAFE Hui Fa [2012] No. 38
3	Dividends and profits	Capital	• Proof of tax payment subject to China's tax regulations	SAFE Hui Fa [2013] No. 80
4	Foreign loans	Capital	• Foreign loan agreement • Other supporting documents required by SAFE	SAFE Hui Fa [2013] No. 19

TAXES

OVERVIEW OF CHINA TAX

TYPES OF TAXES

Generally, taxes in China are categorized as follows:

Taxes on turnover or revenue:

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

Taxes on income:

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

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 SOME IMPORTANT TAX RATES

Tax Category		Important Taxes	Tax Rate (%)
Taxes on Income	Individual Income Tax (IIT)	Comprehensive Income: • Wage and salary income • Income from labor remuneration • Income from author's remuneration • Income from royalties	3 - 45 (7 progressive tax rates in total)
		Income from business operation	5 - 35 (5 progressive tax rates in total)
		Income from interest, dividends Income derived from leasing of property Income derived from transfer of property Occasional income	20
	Enterprise Income Tax (EIT)	Income of resident enterprises	25
		Lower tax rate (e.g. High Technology Enterprises)	15
		China-sourced income of foreign enterprises without establishment in China	20 withholding tax (10 would be adopted in practice)
		Income of foreign enterprises with establishment in China, income not connected with the establishment	20 withholding tax (10 would be adopted in practice)
Taxes on Turnover	VAT	Sales of general goods, providing processing, repair or maintenance services in China, importing goods into China	13
		Leasing services of tangible personal property	10
		Agricultural products for manufacturing or consigned processing of goods	9
		Sales of goods with lower tax rates such as agricultural products, tap water, books and fodder	6
		Transportation service, postal services, basic telecommunications service, construction service, leasing of immovable properties, sale of real property, or transfer of any land use rights	6
		Telecommunication value-added service, financial services, modern services (research and development and technical services, information technology services, cultural creativity services, logistics ancillary services, attestation consulting services, radio, film and television services, commercial supporting services and other modern services), lifestyle services, sales of intangible assets of technologies, trademarks, copyrights, goodwill, use rights of natural resources (excluding land use right) and other equity intangible assets	6
		Exportation of goods and cross-border taxable supply of services and intangible assets as prescribed by the state council	0
	Consumption Tax	Tobacco, Liquor and Alcohol, Cosmetics, Precious Jewelry and Precious Jade and Gem, Firecrackers and Fireworks, Production Oil, Automobile Tires, Motorcycles, Compact Cars, Golf Balls and Golf Equipment, Luxury Watches, Yacht, Disposable Wooden Chopsticks, Solid Wood Flooring, Batteries, Coatings.	1 - 45

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	Person Responsible for Filing	Filing & Payment Deadline
Individual Income Tax (for Comprehensive Income)	Withholding agent (i.e. the employer)	Withholding agent withholds IIT within 15 days after the end of each month in advance, and the taxpayer is required to conduct the annual IIT filing between 1 March and 30 June the following year
Enterprise Income Tax	Enterprises and foreign enterprises with establishments in China	* Quarterly return and payment - within 15 days after the end of each quarter * Annual return and payment - within 5 months after the end of the tax year (together with financial and accounting records)
Withholding Tax	Withholding agent	Within 15 days after the end of each month
Value Added Tax	Taxpayer	* 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 of the following month * 1 month's or 1 quarter's return and payment - within 15 days from the end of the period * Imports - within 15 days after customs issues the tax payment certificate * Exports - apply for a refund of tax paid on a monthly basis
Consumption Tax	Taxpayer	* 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 * 1 month's or 1 quarter's return and payment - within 15 days from the end of the period * Imports - within 15 days after customs issues the tax payment certificate
Customs Duty	Taxpayer or agent	Within 15 days after the issuance date of the customs duty payment certificate

c) Consolidated returns

China generally does not permit the filing of consolidated returns; 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 RMB 100,000. The statute of limitations period could be up to 10 years for underpayments of enterprise income tax arising from transfer pricing issues or arrangements without a bona fide business purpose. There is no statute of limitations for tax evasion.

TYPES OF TAXES

VALUE ADDED TAX (VAT)

Businesses should note that China started a massive VAT reform in 2019 for areas such as VAT rate and VAT calculation, and thus should keep track of the latest VAT updates.

VAT is a national tax, with a single rate imposed regardless of the location of the VAT taxpayer. Chinese 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.

a) Scope of VAT

Sales and imports of goods, provision of processing, replacement and repair services as well as other services.

b) Types of VAT taxpayers

General taxpayers

General taxpayers are those whose taxable sales value exceeds the threshold of small-scale taxpayers. General taxpayers can deduct input VAT from output VAT, which can lead to significant cost savings. Also, being registered as a general VAT payer may increase the amount of potential output VAT due to the fact that general 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

The annual taxable sales revenue threshold of a small-scale VAT payer shall be less than or equal to RMB 5 million.

Small-scale VAT payers who are able to provide sound and accurate accounting and tax-related information can register with appointed tax authorities to apply for the general taxpayer status.

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).

Under 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 immovable 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

The export refund rate is adjusted to 13% for the export of goods and cross-border VAT taxable activities that were originally subject to the VAT rate and export refund rate of 16%. The export refund rate is adjusted to 9% for the export of goods and cross-border VAT taxable activities that were originally subject to the VAT rate and export refund rate of 10%.

c) 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 15th 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, yachts, 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 RMB 0.2 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 invested companies 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 conditions:

Reduction or Exemption	Exemption
• Goods damaged, destroyed or lost en route to the customs territory or at the time of unloading • Goods damaged, destroyed or lost due to force majeure after unloading but prior to release • 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 • Commodities covered by concluded international treaties • Applicable to certain areas (bonded areas, economic development zones, etc.) • Imported goods with special usage (scientific research and educational purposes, for disabled persons, for designated enterprises covered by the "Domestic Component Content" policy, etc.) • Commodities under certain special trade modes (processing trade, consignment sales, etc.)	• Consignment of goods where the estimated customs duty is less than RMB50 • Advertising material and samples of no commercial value • Goods and materials that are rendered gratis by international organisations or foreign governments • Fuel, stores, beverages and provisions for use en route loaded on any means of transport, which are in transit across the frontier • Exported/imported goods that are shipped back into/out of the customs territory for justified reasons • Certain machinery and equipment imported for self-use purposes by foreign invested companies under projects categorised as 'encouraged' or 'restricted'

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 EIT 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 EIT on income derived from within China.

a) Tax calculation

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

- The standard tax rate is 25%. For high and new technology enterprises, the rate is 15%.
- Withholding tax rates vary depending on the country. In most cases, the rate is 10% (e.g. Germany), but in some countries, it might be different.
- 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 1 January and ends on 31 December.

All companies 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 EIT 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.

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

INDIVIDUAL INCOME TAX (IIT)

a) Payment and calculation

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

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

<u>Expatriate’s level of income</u>

Expatriate income, including the base salary, incentive compensation such as commissions and bonuses, cash allowances and contributions to an overseas insurance scheme, should be subject to China IIT under the comprehensive income category, if these incomes are related to a China job assignment.

The tax rate levied on that comprehensive income therefore depends on its cumulated amount. China adopts a progressive taxation system in seven levels from 3% to 45%. Since 1st October 2018, the standard deduction on comprehensive income is RMB 60, 000 on an annual basis for all tax residents, which means the standard deduction is RMB 5,000 per month.

Furthermore, for each level of the progressive taxation system, an additional quick deduction amount will be deducted from this level of taxable income.

The following table gives an overview of IIT taxation grades for expatriates' comprehensive income.

Income Range (RMB)	Tax Rate (%)	Quick Deduction (RMB)
<3,000	3	0
3,000 - 12,000	10	210
Over 12,000 - 25,000	20	1,410
Over 25,000 - 35,000	25	2,660
Over 35,000 - 55,000	30	4,410
Over 55,000 - 80,000	35	7,160
>80,000	45	15,160

As mentioned earlier, the monthly standard deduction for expatriates is RMB 5,000 per month. Therefore, the following formula is used to calculate the expatriate's monthly IIT burden:

[(Gross Monthly Taxable Income – RMB 5,000) x Tax Rate] – Quick Deduction

<u>Duration of stay and payment source</u>

Previously, 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".

According to the new IIT law, non-domiciled foreign individuals who stay in China for 183 days or more within a calendar year will be deemed as a China resident and subject to China IIT on relevant income worldwide.

According to the new six-year rule for expatriates that took effect in 2019, the overseas incomes (such as capital gain on property transfer, dividend income derived from overseas entity, etc.) of expatriates who stay in China for not more than six years may be exempted from China IIT if they complete tax registration with the relevant tax bureau department.

<u>Income sources of directors', supervisors' and senior executives' remuneration</u>

If the expatriate assumes the role of a director, supervisor or any other senior executive position in a domestic resident enterprise, and receives director fees, supervisor fees, wages, salaries or other similar remuneration (including bonuses and stock option incentives), such income is deemed to be sourced from China regardless of where the expatriate fulfils his duty. This applies to income paid directly or borne by the domestic resident enterprise.

The senior executives refer to senior management, general and deputy (general) managers, chief engineers of all functions, directors and other similar management.

Individuals without residence in China may receive wages and salaries for work in a China-based entity related to an overseas employer. If the overseas employer pays the wages and salaries for such work in whole or in part, such individuals must either declare to the Chinese tax authority that they will pay IIT directly or the China-based entity will pay it on their behalf.

The China-based entity is required to report relevant information to the tax authority in charge within 15 days after the end of the month when the relevant income is paid. These include work arrangements made by the China-based entity and related overseas employer for individuals without residence in China, the payment status of relevant wages and salaries borne by the related overseas party, as well as the individual's contact information.

b) Tax registration

Expatriates who are liable to pay IIT are required to register with the relevant tax authority. The tax authority will allocate a unique taxpayer identification number for the expatriate's monthly IIT filing purpose.

What must be included in employment income?

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

According to the prevailing IIT regulations, the following fringe benefits received by expatriates are exempt from individual income tax until the end of 2021, if certain conditions are met and approval (where required) is given based on the tax bureau's requirements below:

- 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
- Home leave allowance - two trips per calendar year
- Allowances for language training and children's education
- Mandatory social security benefits

Expatriates should provide the employer with valid invoices and other relevant supporting documents and the employer should retain them for the purpose of IIT exemption. Otherwise, the allowances mentioned earlier should be combined with the base salary and subject to IIT accordingly.

c) Tax credit

Tax credit will be allowed on income tax paid by the individual (Chinese and resident taxpayers) outside China for income derived by the individual outside China. However, the credit amount shall not exceed the individual's China income tax that would have been payable on the foreign-sourced income. The excess tax credit (after offsetting 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 1 January and ends on 31 December.

IIT for comprehensive income will now be calculated on an annual rather than monthly basis for tax residents according to the new IIT law.

However, withholding agents will continue to withhold tax and file the tax returns in advance on a monthly basis.

All taxpayers are allowed a monthly deduction of RMB 5,000 with effect from 1st October 2018. 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, a late payment fee/penalties will be imposed.

In addition, individuals are required to keep records of income from all sources and report these annually to the local tax authority by 30 June every year if they are in any of the following circumstances:

1. The taxpayer receives general income in more than two places, and the balance of the annual general income minus special deductions exceeds RMB 60,000;
2. The taxpayer has one or more income sources for personal services, author's remuneration and royalties, and the balance of the annual general income minus special deductions exceeds RMB 60,000;
3. The amount of tax paid in advance during the tax year is lower than the amount of tax payable;
4. The taxpayer applies for a tax refund; or
5. The taxpayer was originally a non-resident individual but subsequently meets resident individual conditions due to extension of the residence duration to 183 days or more within a calendar year. If the resident taxpayer is expected to leave China without returning in the same year of departure, he/she must make a final tax settlement before leaving the country.

URBAN LAND USE TAX

Urban land use tax is levied on enterprises or individuals using state-owned land in cities, county sites, administrative towns or industrial and mining areas. It is calculated on an annual basis by multiplying the actual land area used by the quota tax rate, which varies depending on the land's location.

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
Real estate is used by the owner to earn rental income.	Owner
Real estate is mortgaged.	Mortgagee
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% applies 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.

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, motorized vehicles, machinery, tools and equipment	0.1% of the leasing fee

Item	Scope	Tax Rate
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 Books of accounts for others	0.05% RMB 5 per book
Documentation of rights and licences	Property ownership certificates, industrial and commercial business licenses, trademark registration certificates, patent certificates and land use certificates	RMB 5 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

LAT 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.

Value added gained = Income derived (cash and/or other assets) - Deductible items

Land appreciation tax payable = Value added gained x Applicable tax rate - Quick calculation deduction

Deductible items 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 use rights 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 use 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 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	RMB 0.30 – 5 per tonne
Other non-metallic mineral ores	RMB 0.50 – 20 per tonne or cubic metre
Ferrous metallic mineral ores	RMB 2 – 30 per tonne
Non-ferrous metallic mineral ores	RMB 0.40 – 30 per tonne
Liquid salt	RMB 2 – 10 per tonne
Solid salt	RMB 10 – 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:

<table>
<tr><th>Basis Period</th><th>Filing & Payment Deadline</th></tr>
<tr><td>1 day</td><td rowspan="5">* Provisional payment within 5 days of the end of the period;
and
* Final return and any discrepancy in the tax amount should be settled within 10 days from the start of the following month.</td></tr>
<tr><td>3 days</td></tr>
<tr><td>5 days</td></tr>
<tr><td>10 days</td></tr>
<tr><td>15 days</td></tr>
<tr><td>1 month</td><td>Within 10 days after the end of the period</td></tr>
</table>

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 rate for the local education surcharge, whose collection mechanism is almost the same as that of the national education surcharge, may be applied 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 application of the surcharge across the country, many provinces have applied the 2% rate.

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 relevant 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.

SETTING UP COMPANIES

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 contribution 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 it as an unincorporated entity under which partners bear 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 CJV 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 CJV 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 CJV.

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 parties. 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 fulfilled depending on the investment size of the venture. Please refer to the Establishment Procedures section of this article 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.

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 promoters, 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 potential 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 and not an independent legal entity. The RO activities are confined 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 'Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones' was promulgated by National Development and Reform Commission and Ministry of Commerce and has been in effect since 30 July 2019, applicable to the Free Trade Zones in China, such as Shanghai, Guangdong, Tianjin and Fujian.

. It lists restricted and prohibited projects, which were listed previously in the past 'Catalogue for the Guidance of Foreign Investment Industries'.

Foreign investors shall notr invest in any field prohibited by the Negative List. For any field restricted by the Negative List, foreign investors shall fulfil the requirements provided in the Negative List.

The State Administration for Market Regulation (SAMR) has overall responsibility for approving the formation of FIEs and issuing business licences. Under normal circumstances, the following documents should be submitted to support the application: Articles of Association, Joint Venture Contract etc. However, the list of documents required for submission may vary depending on the location and type of operation.

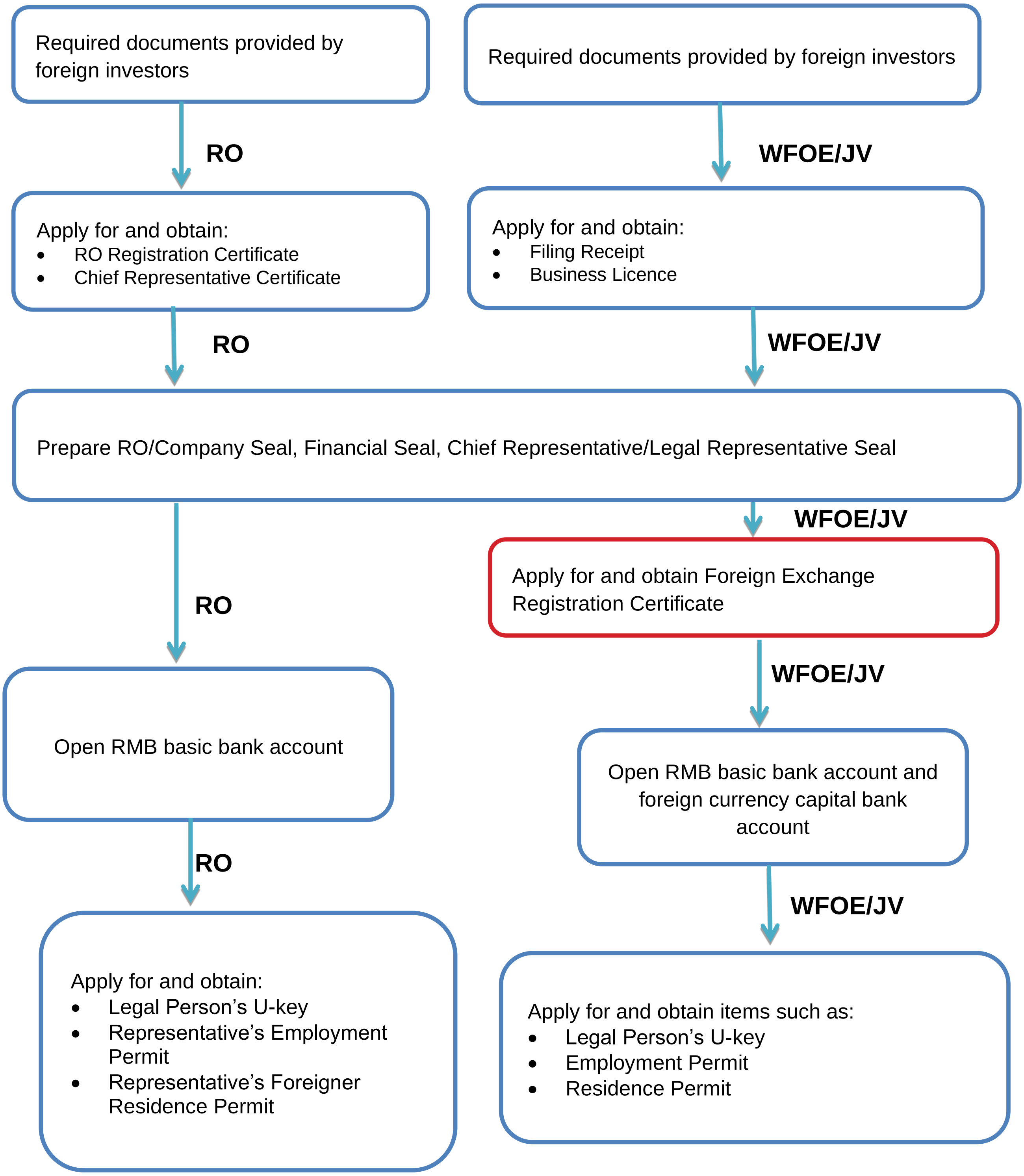
In 2015, the Organisation Code Certificate and Tax Registration Certificate were combined with the Business Licence ('New Business Licence'). The SAMR will issue the New Business Licence within 10 working days upon successful submission of the application documents. Within 30 days of the issuance of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

COMPARISON OF MAIN INVESTMENT VEHICLES

	FIE with Limited Liability	RO
Advantages	* Profits and risks are clearly shared in proportion to the equity of each partner	* Lower risk with initial market testing
Disadvantages	* Cannot set up WFOE in specific industries * Foreign partner can only contribute up to 49% of registered capital in specific industries	* Cannot engage in direct business activities or enter into contracts * Must engage local agent to hire local staff
Governance	* One Executive Director or Board of Directors (BOD) comprising at least three directors * A Supervisor or Supervisory Board shall also be appointed	* Chief Representative
Tax	* Subject to: company income tax, value-added tax, individual income tax * Enjoy tax incentives such as 'Reduced Tax Rate for Qualified Advanced and New Technology Enterprises' * Avoidance of Double Taxation Agreements apply	* Taxation based on a deemed income basis, mainly for company income tax, VAT and individual income tax (for details, please refer to Taxation section)
Reporting & Compliance	* Monthly Report, Quarterly Report, Annual Audit and Annual Inspection	* Monthly Report, Quarterly Report and Annual Audit
Lead Time to Establishment	* 2–3 months (upon submission of required documents)	* 1–2 months (upon submission of required documents)

ESTABLISHMENT PROCEDURES

This is a simplified version for reference purposes only.



CAPITAL CONTRIBUTION

China is currently implementing a “zero registered capital rule”, where the authority will not require verification of 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’s Articles of Association. The capital contribution scheme is used to ensure proper foreign investment goals and regulate investment behaviour. The registered capital of a foreign invested company refers to the capital registered at SAMR for establishment of the foreign invested company, catering to the foreign invested company’s initial operational needs. The foreign investor may inject capital according to the capital contribution scheme, increase its registered capital or subject to the authority’s approval, also reduce its registered capital during the operating period under existing regulations.

After the latest amendment to the PRC Company Law became effective on 1 March 2014, the foreign investor can freely agree on the capital 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’ (TI), should be considered before incorporation. Both the RC and TI of a foreign invested company 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.

Total Investment (TI)	Minimum Registered Capital requirement according to the Total Investment
Less than USD 3 million	70% of TI
USD 3 - 10 million	50% of TI and not less than USD 2.1 million
Over USD10 million - 30 million	40% of TI and not less than USD 5 million
Over USD 30 million	1/3 of TI and not less than USD 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 SAMR verifies that a company has failed to make such a declaration, it may order the company to fulfil this obligation within a definite time period.

A foreign invested company is only permitted to repatriate profits after tax clearance has been obtained. Where foreign invested companies 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 advisable in this regard.

ENTRY CONDITIONS, WORK PERMITS, RESIDENCE PERMITS, LABOUR LAW

MANDATORY PROCEDURES FOR HIRING 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
- Register staff social benefits information
- Process monthly salary payment before the agreed payday
- File individual income tax return every month with special deduction items
- Contribute to staff social benefit

SOCIAL BENEFITS IN CHINA

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

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

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

	Beijing	**Shanghai**
Social benefit contribution base (new employees)	Full month gross salary for the first working month in the company	Full month gross salary for the first working month in the company
Social benefit contribution base (existing employees)	Employee's average salary the previous year	Employee's average salary the previous year
Maximum base in year 2019	RMB 27,786	RMB 24,633
Minimum base in year 2019	RMB 5,557	RMB 4,279
Employer's Contributions		
Pension	16%	16%
Medical Insurance	10%	9.5%
Unemployment Insurance	0.8%	0.5%
Injury Insurance	0.2–1.9%	0.2–1.9%
Pregnancy Insurance	0.8%	1%
Housing Fund	12%	5-7%
Employee's Contributions		
Pension	8%	8%
Medical Insurance	2%	2%
Unemployment Insurance	0.2%	0.5%
Housing Fund	12%	5–7%

The contribution base amount is the employees' average monthly salary including all types of income such as basic salary before tax, 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 salary in the city the previous year and the minimum base is defined as 60% of citizens' average salary in the city.

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

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

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

HIRING EXPATRIATE STAFF IN CHINA

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

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

- Is older than 18 years of age;
- Has good health status;
- Has no criminal record;
- Has relevant working experiences (at least 2 years);
- Has relevant educational background; and
- Has relevant qualifications

According to the expatriate staff's qualification and experience, the work permit will be categorised as Class A, Class B or Class C. It will score by annual salary level, education, working experience, age, Mandarin proficiency and other aspects. Class A is for expert talent, while Class B is for normal expatriate professionals required by various industries in China. Class C is for temporary staff or non-professionals whose approved headcount is strictly controlled.

The whole process, from application of the company account to application of the expatriate employee's residence permit, usually takes about two months. However, the detailed application requirements and timelines may differ according to the local requirements of each city's authorities.

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.

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.

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.

According to the Labour Contract Law of the People's Republic of China, a written labour contract shall be concluded for the establishment of a labour relationship. Where a written labour contract is not concluded simultaneously with the establishment of a labour relationship, a written labour contract shall be concluded within one month from the date of commencement 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 original version in Chinese 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

- An employer may stipulate only one probation period for any given 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 less than 80% of the wage upon confirmation that is agreed on in the employment contract.

TERMINATION

In practice, termination of employees in China can be more difficult than expected, especially under the comparatively stringent regulations on terminating employment contracts since 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 the first 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 negotiate an agreement with the employee, including 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.

WORKING HOURS IN CHINA

There are three types of working hours in China:

- Standard working hours

  The employees shall work for no more than eight hours a day and no more than 40 hours a week on average. If they work beyond these standard durations, the 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

Arrangements for both flexible working hours and integrated working hours require approval from the government. These two types of working hours allow the company to arrange non-standard working hours according to business needs with less OT payment cost.

PUBLIC HOLIDAYS AND LEAVE

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

Name of Public Holiday	Date	Days
New Year	1st January	1
Chinese New Year (Spring Festival) (Chinese Lunar Calendar)	From Lunar New Year's Eve to the 2nd Day of the Lunar New Year	3
Qing Ming Day (Chinese Lunar Calendar)	The 5th Day of the 4th Lunar Month	1
Labour Day (May Day)	1st May	1
Dragon Boat Festival (Chinese Lunar Calendar)	The 5th Day of the 5th Lunar Month	1
Mid-Autumn Festival (Chinese Lunar Calendar)	The 15th Day of the 8th Lunar Month	1
National Day	From 1st October to 3rd October	3
	Total	**11**

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)
$1 \le$ Work period < 10	5
$10 \le$ Work period < 20	10
Work period ≥ 20	15

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.

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 it to make corrections. 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 it to make corrections, 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 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 that recruit employees whose labour contracts with their previous employer have not yet been terminated shall assume joint responsibility for compensation if the previous employer suffered economic losses as a result.

Employers that fail to pay social insurance premiums without 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 demanded.

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.

INTELLECTUAL PROPERTY RIGHTS IN CHINA

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-protected 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 & Regulations	Relevant Rules	Treaties & Reciprocal Agreements
Copyright	National Copyright Administration	* Copyright Law (Revised in 2013) * The Copyright Implementation Regulations (Revised in 2013)	* National Copyright Administration is the authority responsible for the administration and enforcement of copyright and related issues in China.	* 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)	* Patent Law (Revised in 2010)	* Invention patents give protection for a maximum of 20 years, while utility model and design patents give protection for a maximum of 10 years. * '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.	* 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.
Trademark	SAMR Trademark Office	* Trademark Law (Revised in 2013) * Implementation Regulations of the Trademark Law (Revised in 2014)	* Registration by foreign businesses under the Madrid Protocol takes about 18 months, while a direct registration using the Chinese domestic system will usually take two to four years. * A trademark is valid for 10 years, after which it may be renewed indefinitely for every 10-year period.	* The Paris Convention * The Madrid Protocol—this is a central system for obtaining a 'bundle' of national trademark registrations in different jurisdictions, through a single application.

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 SAMR.

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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We strongly advise Swiss companies to seek professional advice when actively looking to implement suggestions made within this guide.

This guide will be updated in 2021 accordingly.

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