Linklaters
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# Guide to Foreign Investment in China 2026



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# About Linklaters

Linklaters is a leading global law firm, supporting clients in achieving their strategies wherever they do business. We use our expertise and resources to help clients pursue opportunities and manage risk across emerging and developed markets around the world.

Our global approach and commitment to excellence ensure the highest standards of quality and service across all our relationships. We bring discipline, teamwork and agility to help our clients navigate important business challenges successfully.

Linklaters' depth of experience in helping global organisations successfully invest in Chinese Mainland, alongside its extensive knowledge of the local market, provides an excellent foundation for this guide to foreign investment in Chinese Mainland.

Frequently, the legal framework in Chinese Mainland, and its underlying policy is intertwined with various aspects of its social and political environment, which must be carefully navigated to achieve a successful investment in Chinese Mainland.

This guide examines the key legal and regulatory considerations for foreign businesses in their evaluation of possible investment opportunities.

We hope that you find this guide useful and informative.

> "The team has solid technical and commercial knowledge as well as market perspectives. They know our businesses very well, understand where we're coming from and tailor their advice accordingly. Their analysis of pros and cons is sharp, comprehensive and intelligent, far exceeding expectations, and can effectively ensure that clients do not make mistakes and can make the best decisions."
>
> **Chambers Greater China Region** 2026, Corporate/M&A: The Elite (International Firms)



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故宫博物院

# Key Contacts

Our China practice is one of the largest among international law firms with more than 400 team members, most of whom speak Chinese, operating in an integrated team.

We specialise in M&A and strategic investment both in and out of China, private equity, capital markets, banking, projects and dispute resolution, and our clients tell us we are their "first choice when the terrain is most difficult and complex".

We have full execution capability at the most senior level in each of our China offices: Beijing, Shanghai and Hong Kong SAR, complemented by the systems and infrastructure of a global law firm with 30 offices in 20 countries.

In Chinese Mainland, we have established a joint operation office in Shanghai with Zhao Sheng Law Firm ("**Zhao Sheng**"). Linklaters Zhao Sheng brings together Linklaters' long-standing international experience advising clients on their most significant and complex transactions and Zhao Sheng's high quality Chinese law capabilities, to deliver seamless client service. In May 2019, Zhao Sheng received official approval to establish a branch in Beijing. This new branch enables Zhao Sheng to offer a full range of China law services from Beijing to meet the demands of the firm's strong client base in China's capital, and further demonstrates its long-term commitment to the China market.

**Please do not hesitate to contact any member of our China team.**

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# 01
# Introduction

The economy of the People's Republic of China (the "**PRC**") has grown rapidly since the government of Chinese Mainland began to encourage the creation of a market economy in the late 1970s. An increasingly open market and burgeoning private sector and more recently, a recovery in exports and investment in the aftermath of the Covid-19 pandemic, coupled with reforms to enable unified treatment of domestic and foreign investors and place regulation of domestic and foreign investments on an equal footing, have contributed to making Chinese Mainland an attractive proposition for foreign investors.

Since joining the World Trade Organisation (the "**WTO**") in December 2001, Chinese Mainland has sought to become integrated in the world economy and, as a result, many areas have become increasingly open to foreign investment, especially in the services sector.

The Chinese legal system has also been the subject of major reform as Chinese Mainland seeks to adapt to its changing economic circumstances. Legal reform has, to some extent, been counteractive, leading to situations where some laws are confusing or contradictory. However, recent changes have been underpinned by the desire to harmonise the legal structure and enhance predictability. This, together with the increasing recognition of commonly accepted business practices, has made the legal landscape far easier to navigate. Continued reform should see increased foreign investment, as Chinese Mainland makes further strides in its conversion to a market economy.

This guide examines the key legal and regulatory considerations for foreign businesses in their evaluation of possible investment opportunities in Chinese Mainland. Frequently, the legal framework in Chinese Mainland and its underlying policy are intertwined with various aspects of China's social and political environment, all of which must be carefully navigated to achieve a successful investment in Chinese Mainland. On 15 March 2019, the *Foreign Investment Law*[1] was passed after going through many rounds of revision and multiple readings, changing many applicable laws, rules and regulations (with some being revised substantially). The *Foreign Investment Law*, which came into effect on 1 January 2020, is a landmark piece of legislation meant to serve two aims: improving the business environment for foreign investors and ensuring that foreign-invested enterprises (the "**FIEs**") participate in the market on an equal basis as domestic enterprises. Moreover, the current *Company Law* which took effect on 1 July 2025, made substantial changes to the rules in its predecessor, in a wide range of areas including, among others, new timeline requirements for capital contribution, flexible corporate governance and strengthened shareholder rights protection. This guide, in its coverage of the *Foreign Investment Law* and *Company Law* related matters (such as capital contribution, corporate governance and shareholder protection), will also touch upon the significant changes or new rules introduced by these laws.



# 02

# Foreign Investment Environment


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First steps in assessing investment viability.

## Policies, Restrictions and Prohibitions

The first step in assessing investment viability in Chinese Mainland is to determine whether the industry in question is open to foreign investment and, if so:

- the maximum level of foreign ownership permitted;
- the type and level of government approvals required and their implications on timing and process; and
- whether any restrictions exist on the scope of activities of foreign funded enterprises as compared with domestic Chinese Mainland funded enterprises.

*The Catalogue of Encouraged Industries for Foreign Investment* (the "**Catalogue**") sets out the types of activities and industries falling within the encouraged category nationwide, thus determining which sectors are eligible for incentives for foreign investment under the specific foreign investment legislation. The Catalogue also provides, for each central and western province of China, a list specifying the additional activities and industries falling within the encouraged category in that province.

*The Special Administrative Measures (Negative List) for Foreign Investment Access* (the "**Negative List**") sets out the types of activities and industries which, respectively, are subject to restrictions on foreign investment or in which foreign investment is prohibited. The Catalogue and the Negative List together establish a detailed framework for foreign investment which reflects market access and other commitments made by the government on its accession to the WTO.

Specifically, the Negative List specifies foreign investment restrictions in terms of the controlling stake-holding, foreign shareholding ratio, nationality of legal representative and form of business.

Please refer to Appendix one for examples of industries falling within each category and the relevant restrictions.

The Catalogue and Negative List are constantly updated. The currently effective Catalogue was published on 12 December 2025 and came into effect on 1 February 2026.[2] The most recent update to the Negative List was published on 6 September 2024 and came into effect on 1 November 2024.[3] For foreign investment into the Pilot Free Trade Zones (the "**FTZs**"), an FTZ Negative List applies, which sets out the restricted and prohibited categories in all FTZs approved by the State Council (other than the Hainan Free Trade Port, which has implemented a separate negative list applicable to foreign investments in Hainan and such separate negative list has fewer restricted and prohibited categories as compared with the FTZ Negative List). The FTZ Negative List was first introduced the General Office of the State Council on 8 April 2015. The latest version of the FTZ Negative List was published jointly by National Development and Reform Commission ("**NDRC**") and the Ministry of Commerce ("**MOFCOM**") on 27 December 2021 and came into effect on 1 January 2022.[4] In general, the FTZ Negative List incorporates fewer restrictions and prohibitions compared to the Negative List. See Appendix two for a summary of the industries included in the FTZ Negative List.

In addition to the Negative List, foreign investment must comply with the *Market Access Negative List* which sets out market access restrictions applicable to both domestic and foreign investors. The latest version of the Market Access Negative List was published jointly by NDRC, MOFCOM and the State Administration for Market Regulation ("**SAMR**") on 16 April 2025.[5]

The *Foreign Investment Law* enshrines the principle that foreign investors are entitled to no less favourable treatment as compared to domestic investors, save in sectors covered by the Negative List.[6] This general principle includes a requirement for approval authorities to apply equal treatment to foreign investors and domestic investors in reviewing applications for investment approvals and clearances.[7]

In the post Covid-19 pandemic era, we have seen more policies and incentives to attract and retain foreign investment on the principle that foreign and domestic investments benefit equally. For example, in August 2020, the State Council announced additional support for foreign and domestic investment projects of more than US$100m in to-be-designated priority sectors, pledging additional efforts to provide essential services such as use of sea and land, energy consumption and environmental protection to such projects. In September 2024, MOFCOM announced an expansion of pilot programs in the healthcare industry, which lifted certain restrictions on FIEs engaged in cell and gene therapy within certain FTZs and allowed the establishment and operation of wholly foreign-owned hospitals in designated cities. In October 2024, the Ministry of Industry and Information Technology launched a pilot program allowing 100 per cent foreign ownership of internet data centres and certain value-added telecom services in China. In February 2025, the State Council approved the 2025 Action Plan for Stabilizing Foreign Investment, which outlined various key measures to attract and retain foreign investment including, among others, further expansion of market access, increasing support for reinvestment by FIEs in China, easing restrictions on the use of domestic loans by FIEs, fostering a fairer business environment, etc. In June 2025, the Ministry of Finance, the State Taxation Administration and MOFCOM jointly announced a 10% tax credit for foreign investors who made qualified investment using dividend proceeds distributed by their Chinese subsidiaries into encouraged industries in China during the period from 2025 to 2028.

Additional special incentives may apply to investors from certain jurisdictions, in accordance with various bilateral agreements between the Chinese Mainland and the government of the relevant nation or territory.

This includes the incentives available to Hong Kong SAR, Macau SAR and Taiwan investors, respectively, pursuant to the *Closer Economic Partnership Arrangement* and supplemental agreements (the "**CEPA**") entered into between Chinese Mainland and the Hong Kong SAR and the Macau SAR, and the *Economic Cooperation Framework Agreement* (the "**ECFA**") entered into between Chinese Mainland and Taiwan.

## Foreign Investor Reporting Regime

The authorities have initiated, and continue to effect, changes to the foreign investment laws and regulations of Chinese Mainland. Many years' efforts have resulted in the replacement of the long-standing MOFCOM approval regime with an information reporting regime (the "**FI Regime**").

Taking into account the changes brought about by the FI Regime, the general regulatory requirements which apply to foreign investments into Chinese Mainland (subject to other transaction-specific requirements, such as those covered in the subsequent sections of this guide) are as follows:

- for the establishment of a new entity or making changes to an existing entity's corporate form, status (non FIE to FIE and vice versa), directors, etc., foreign investors are required to file an application for registration with the local Administration for Market Regulation, which is the local bureau of SAMR;[8]
- for the establishment of or changes to an entity in a restricted industry sector, the local bureau of SAMR will also check whether the proposed investment satisfies the applicable restrictions on foreign investment set out in the Negative List for the sector, which may include ownership caps and nationality restrictions on the legal representative, etc.;
- for investment into specially regulated sectors such as banking, securities, insurance, etc., approvals and clearances from the relevant industry regulators must also be obtained; and
- in all cases, submission of foreign investment information through the Enterprise Registration System and the National Enterprise Credit Information Publicity System.

Foreign investment into the FTZs is regulated by the relevant authorities of respective FTZs in accordance with the FTZ Negative List and various FTZ administrative rules. These FTZ-specific rules aim to provide more streamlined, convenient and efficient procedures and formalities for foreign investors.

## Investment Structures

The next step for a foreign investor is to select the investment structure for its investment in Chinese Mainland. A foreign investor can:

- establish a representative office in Chinese Mainland to engage in "non-profit making business" (see page 22); or
- set up a new enterprise in Chinese Mainland (either a wholly-owned subsidiary or a joint venture); or
- acquire an already-established Chinese Mainland business or company or an interest in such entity (see pages 25 to 29).

Where a foreign investor wishes to set up a new enterprise in Chinese Mainland or to acquire an existing Chinese Mainland enterprise, such FIEs can take the form of a limited liability company (the "**LLC**"), a company limited by shares (or joint stock company, the "**JSC**"), foreign-invested partnership (the "**FIP**") or branch office of non-Chinese Mainland enterprise (see pages 17 and 18).

## Foreign Investment Authorities and Key Legislation

### Foreign Investment Authorities

Under the FI Regime, all applications and filings first need to be made on the online system administered by SAMR, as set out in the section entitled "Foreign Investor Reporting Regime" above. In addition to SAMR, the following are some of the main government authorities which are also involved in the approval, registration or filing processes concerning foreign investment:

- State Administration of Foreign Exchange ("**SAFE**"), which administers the foreign exchange control system of Chinese Mainland and whose approval is required in relation to certain transactions involving foreign currency;
- NDRC, which is responsible for the approval and filing of foreign investment projects if the project involves a fixed assets investment project set out in the NDRC Catalogue (see further the section entitled "Project Application Report" below);
- The office jointly headed up by NDRC and MOFCOM, for certain acquisitions subject to review on the grounds of national security;

- State-owned Assets Supervision and Administration Commission of the State Council ("**SASAC**") or the Ministry of Finance ("**MOF**"), where a state-owned entity is involved; and China Securities Regulatory Commission ("**CSRC**") or National Financial Regulatory Administration ("**NFRA**") for foreign investment into certain specially regulated sectors such as banking, securities, insurance, etc.

**Key Legislation**

Besides the general laws such as the *Company Law*, the key legislation regulating foreign investment in Chinese Mainland includes:

- the *Foreign Investment Law* and the *Implementing Regulations for Foreign Investment Law*, which are the basic laws regulating foreign investment into Chinese Mainland;
- the Negative List, which sets out the restricted and prohibited industrial categories for foreign investment;
- the FTZ Negative List, which applies to investments within the FTZs, and sets out the restricted and prohibited industrial categories for foreign investment into FTZs (other than the Hainan Free Trade Port, which has implemented a separate negative list);
- the Catalogue, setting out the types of activities and industries falling within each of the encouraged categories;
- the *Notice of the State Administration of Market Regulation on Implementation of the Foreign Investment Law for Proper Handling of Foreign Investment Enterprise Registration*, which sets out the registration requirement for FIEs;
- the *Measures for Reporting of Information on Foreign Investment*, which sets out the reporting regime for foreign investment;
- the *Administrative Measures on Approval and Filing for Enterprise Investment Projects*, which sets out the approval and filing requirements for investment projects;
- the *List of Investment Projects Subject to Government Approval*, which sets out the types of foreign investment projects subject to the NDRC approval and the State Council filing requirements, respectively;
- the *Provisions on the Establishment of Investment Companies by Foreign Investors*, which governs the establishment and operation of Holding Companies;
- the *PRC Administration on Registration of Resident Representative Offices of Foreign Enterprises*, which govern the establishment and operation of representative offices;
- separate rules for representative offices of foreign enterprises in specific industries, such as the *Measures on the Administration of Foreign Insurance Institutions' Representative Offices in China, Measures on the Administration of Foreign-funded Financial Institutions' Representative Offices in China, Measures on the Management of Resident Representative Offices in China of Foreign Securities Institutions, Regulations on the Administration of Foreign Law Firms' Representative Offices in China and Measures on the Administration of the Examination and Approval of Resident Representative Offices of Foreign Air Transport Enterprises*; and
- rules on foreign investment in specific industries, such as the *PRC Regulations on the Administration of Foreign-Funded Banks* and its implementing rules, which govern the establishment and operation of foreign-invested banks; and *Procedures for the Administration of Strategic Investment in Listed Companies by Foreign Investors* and *Measures on the Administration of Acquisition of Listed Companies*, the main rules regulating foreign investment in shares of A-share listed companies.

The government has additionally issued legislation such as the *Regulatory Measures on Transactions of State-owned Assets of Enterprises* (issued by SASAC and MOF) dealing with the transfer of state-owned enterprises.

Depending upon the industry, foreign investment in Chinese Mainland may be subject to industry regulators of foreign investment, for example, in the following sectors: telecom, civil aviation, mining of certain commodities, foreign trade in certain products, hospital, leasing, venture capital and auctioning.

## Foreign Exchange Control

The currency of Chinese Mainland is the Renminbi (the "**RMB**"), which is subject to foreign exchange control and is currently not freely convertible into foreign exchange. SAFE is the regulatory authority which administers all matters relating to the foreign exchange regime.[9]

SAFE-approved banks are authorised to buy and sell foreign exchange from/ to their customers, including buying and selling RMB against hard currencies, such as the US dollar, Euro, Japanese yen and Hong Kong dollar. They include both Chinese Mainland and foreign banks. Anyone in Chinese Mainland who requires RMB-forex conversion services, including FIEs, representative offices and foreign expatriates, must use one of these SAFE-approved banks.

Since the establishment of the RMB trade settlement pilot scheme in 2009, which allowed cross-border settlement in RMB for the first time, there have been significant developments in the "internationalisation" of the RMB, now globally ranked as the second-most used currency in trade finance. For example, an FIE is now able to pay RMB dividends outside of Chinese Mainland to its foreign shareholders and foreign investors can now make capital contributions to FIEs in Chinese Mainland using offshore RMB. Other restrictions apply to inbound cross-border debt.
See "*Debt Financing*" on page 23.

> "While the RMB is not freely convertible into foreign exchange, important steps have been taken in the internationalisation of the RMB."



# 03

# Choosing Your Business Vehicle


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An outline of the principal forms of business vehicle used by foreign investors investing in Chinese Mainland is set out in this section.

With the *Foreign Investment Law* coming into effect from 1 January 2020, certain previous forms of FIE (namely, wholly foreign-owned enterprises, equity joint ventures and cooperative joint ventures) have ceased to be available structures for new FIEs. FIEs established in accordance with these previous structures are required to restructure by 1 January 2025 (see page 37). New FIEs may be incorporated as limited liability companies, companies limited by shares, general or limited partnerships or any other legal form permitted by the laws of Chinese Mainland.[10]

Since 1 March 2014, FIEs are no longer required to have a minimum registered capital although a minimum registered capital may, however, still be imposed by other applicable industry-specific rules and regulations or otherwise required by the authorities. In practice, an FIE needs to have sufficient capital to satisfy the needs of its business.

To encourage technology innovation in light of the digital transformation of China's economy, on 11 January 2023 MOFCOM, together with the Ministry of Science and Technology published its intention to attract more FIEs to set up research and development (R&D) centres in Chinese Mainland, with details of the high-level incentives and support to be introduced.[11] China continued to attract more FIEs in life science, healthcare and information technology industries as showcased by more policies which lifted certain restrictions on FIEs in these industries in 2024 and 2025 (see "*Policies, Restrictions and Prohibitions*" in section 2).

## Limited Liability Companies

A foreign individual, enterprise or organisation can be a shareholder of an LLC and the liability of each investor to the LLC is limited to the amount of capital it agrees to contribute to the LLC's registered capital, whilst the LLC itself is liable for its debts to the extent of all its assets. Investors will hold equity interests in an LLC, expressed as a percentage of registered capital, rather than shares.

The highest decision-making body of an LLC is the shareholders' meeting. Certain resolutions, such as amendments to the articles of association, increase or decrease of registered capital, mergers, divisions or dissolution of the FIE, require consent from at least a two-thirds majority of voting rights of the shareholders present in the shareholders' meeting. Other decisions can be taken by a simple majority. Subject to any higher voting thresholds incorporated into the articles of association, the majority shareholder will have decision-making power provided that it holds two-thirds or more of the equity interests in the LLC. Both foreign and domestic investors may have veto rights to appoint and remove directors and management, to obtain specific company information and records, as well as with respect to certain reserved matters as stipulated in the articles of association either at board or shareholders' meeting level, subject to negotiation between the shareholders. For more information on statutory protection for shareholders, please refer to "*Shareholder Protection*" in section 6.

Under the predecessor *Company Law*, companies were allowed to determine their own contribution timelines for the registered capital, which led to issues such as companies having high subscribed capital on paper but in effect having only limited funds for their operation. The current *Company Law* and the *Provisions on Implementing the Registered Capital Registration Administration System under the Company Law of the People's Republic of China* issued by the State Council, both in effect from 1 July 2024, changed this landscape with the aim to enhance creditor protection. Under the new regime:

- for LLCs incorporated on or after 1 July 2024, shareholders must fully pay up the subscribed registered capital in accordance with the company's articles but in any event no later than five years from the company's incorporation date;[12]
- for LLCs incorporated before 1 July 2024 whose capital contribution timelines extend beyond five years after 1 July 2027 (i.e. 30 June 2032), such companies must, by 30 June 2027, adjust their contribution timelines to within five years from the date of such adjustment.[13]

Shareholders who fall foul of such requirements may result in such shareholders being held liable for damages, imposed with administrative penalties, and the relevant equity interest held by such shareholders may also be forfeited. Responsible directors may also be held liable for damages suffered by the company. [14]

Such rules not only apply to the initial capital contribution at the time the LLCs are incorporated but also apply to a subsequent capital increase. [15]

## Companies Limited by Shares

A JSC is a limited liability company whose registered capital is divided into shares. This is different from an LLC, where investors do not technically own "shares" but instead enjoy "equity interests", expressed as a percentage of the registered capital. In a JSC, certain resolutions, such as amendments to the articles of association, increase or decrease of registered capital, mergers, divisions or dissolution of the JSC, require at least a two-thirds majority of voting rights of the shareholders present at the shareholders' meeting. Other decisions can be adopted by a simple majority. Accordingly, subject to any higher voting thresholds incorporated into a JSC's articles of association, a shareholder holding two-thirds or more of the issued shares in the JSC has absolute decision-making powers. Both foreign and domestic investors may have veto rights with respect to certain reserved matters as stipulated in the articles of association either at board or shareholders' meeting level, subject to negotiation between the shareholders. Minority shareholders in a listed JSC enjoy additional protections at law, such as independent shareholder approval of related party transactions. For more information on statutory protection for shareholders, please refer to "*Shareholder Protection*" in section 6.

The JSC is also permitted to issue class shares which have different rights or restrictions attaching to them. For example, a JSC may issue shares with preferential dividend or liquidation rights, or shares with enhanced or restricted voting rights.

Under the new capital contribution regime governed by the current *Company Law* and the *Provisions on Implementing the Registered Capital Registration Administration System under the Company Law of the People's Republic of China* issued by the State Council, both in effect from 1 July 2024:

- for a JSC incorporated on or after 1 July 2024, the promoters (founding shareholders) shall fully pay up their subscribed shares before its incorporation and the other shareholders shall fully pay up their subscribed shares before they are registered as a shareholder;
- for a JSC incorporated prior to 1 July 2024, the promoters (founding shareholders) and other shareholders shall fully pay up their subscribed shares by 30 June 2027.

In addition, JSCs are able to raise finance through a stock market listing. An LLC must be converted into a JSC in order to undertake such fund-raising activities.

## Foreign-invested Partnerships

An FIP is a general or limited partnership with at least one foreign partner. Generally, the formation of an FIP only requires registration with SAMR. However, if the FIP is to engage in any project which is subject to government approval, such approval must first be obtained.

FIPs are subject to the same foreign investment industrial policies as other FIEs. FIPs cannot be formed for investment in industries where foreign investment is prohibited, or foreign ownership is limited.

FIPs generally offer more flexibility than other FIEs. Partnership interest can be transferred without the consent of the other partners as long as this is expressly provided for in the partnership agreement. An FIP also provides increased flexibility for the governance structure, with partners permitted to structure their governance arrangements in their partnership agreement with relatively few constraints. However, unlike other FIEs, liability of FIPs can be unlimited. For a general partnership, all partners will bear unlimited liability. In a limited partnership, partners can have limited liability, although there must be at least one general partner with unlimited liability. FIPs do not have a minimum capital requirement.

## Holding Companies

A foreign-invested investment company (the "**Holding Company**")[16] is usually set up specifically for the purpose of directly investing in other entities, as opposed to undertaking manufacturing or operating activities itself. There are specific qualification requirements for setting up such Holding Companies and these requirements can be onerous for both foreign and domestic investors. For example, a foreign investor must:

- have a total asset value of no less than US$400m in the preceding year and must have previously established at least one FIE and has already paid up (in aggregate) more than US$10m in registered capital; or
- have already established no less than 10 FIEs and paid up (in aggregate) more than US$30m in registered capital.[17]

A Holding Company is an investment and services company and is not permitted to engage in manufacturing operations directly.[18] Specifically, a Holding Company may engage in:

- Investments – it may invest in areas where foreign investment is permitted and in listed companies;
- Services – it may provide its mainland Chinese subsidiaries with services required for their business operations; and
- Trading – it may engage in trading activities, such as distributing products produced by its Chinese Mainland subsidiaries in domestic or foreign markets, importing products for trial sale in Chinese Mainland and appointing other Chinese Mainland entities to manufacture or process products for the domestic and overseas markets.[19]

Subject to the satisfaction of certain criteria, a Holding Company can acquire the status of "regional headquarters" ("**RHQ**"). In order to acquire RHQ status, a Holding Company is required to satisfy a number of qualification requirements which are normally provided under local rules. The specific requirements may vary in different localities and from time to time, but in general, the Holding Company would need to have a prescribed minimum paid-up capital and demonstrate that its parent has made a certain level of investment in Chinese Mainland. On obtaining the RHQ status, a Holding Company may engage in additional permitted activities such as logistics services, establishing finance companies (with the approval of NFRA), undertaking outsourcing businesses, overseas project contracting businesses and overseas investment (with MOFCOM approval).[20]

Whilst a Holding Company is restricted in its operations,[21] a Holding Company does allow for the centralised coordination of marketing, distribution, training, finance and other administrative functions in a manner which is hard to achieve where the ongoing cooperation of separate companies is required. It also allows for greater levels of debt finance than other investment options (see page 23).
On 28 December 2024, pursuant to the joint announcement issued by MOFCOM and SAFE, the previous restriction on use of domestic loans by Holding Companies for reinvestment in China was thereby removed.

As a result of SAFE removing the restriction on FIEs making equity investments with their registered capital in October 2019,[22] any foreign investor can set up an FIE as the "holding company" for holding their investments in Chinese Mainland without meeting the abovementioned criteria. However, if a foreign investor would like to acquire RHQ status for its FIE, the FIE would still need to be recognised as a Holding Company under the current regime, meaning that it would still need to meet the above criteria.

## Representative Offices

Foreign entities may first wish to test the waters in Chinese Mainland with a representative office before embarking on the expense and administrative effort of setting up an FIE. Representative offices of foreign entities are not permitted to engage in revenue-generating business activities, and can generally only engage in the following activities:

- market research, presentation and promotion of activities relating to the products or services of the foreign parent; and
- liaison activities relating to the sale of products or provision of services by the foreign parent as relating to purchases of goods or investments within Chinese Mainland.

In order to hire local personnel, a representative office must engage a local "foreign enterprise service corporation", or any other entity designated by the government. The complication for the foreign investor (apart from the cost involved) is that technically it does not directly employ any Chinese Mainland staff, and so it is reliant on the service company to effect dismissals of Chinese Mainland "employees". Direct recruitment of Chinese Mainland employees by the representative office is prohibited.

There is no minimum capital requirement for foreign investors to satisfy in order to set up a representative office.

## Branch Offices and Contractual Cooperation Management Contracts

Other means by which a foreign investor can enter the Chinese Mainland market include:

- Branch offices: Foreign investors (e.g. foreign banks and insurance companies) may establish branch offices in Chinese Mainland to engage in business activities to the extent permitted by laws and regulations. A branch office will not be recognised as a separate legal person from the foreign parent, which means that the foreign parent will be liable for all debts and liabilities incurred by the branch office in Chinese Mainland. Branch offices may conduct business in Chinese Mainland.
- Cooperation: Foreign investors who do not wish to set up a presence in Chinese Mainland may choose to cooperate with a Chinese party either through a manufacturing contract or a processing/trade arrangement. Such relationships need to be carefully managed with special consideration given to intellectual property issues and any necessary approvals.





# 04

# Setting up a New Business Vehicle


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Establishing new FIEs used to be the traditional form of foreign investment in Chinese Mainland, and is still used where conducting business through a relatively clean vehicle is important to investors. FIEs can be established either to develop a new business, or to acquire the assets of an existing Chinese Mainland business, operating these assets in the name of the new FIE.

This section outlines some of the key steps and issues involved in the establishment and financing of FIEs, which follow a relatively settled path. There are distinct procedures and requirements in the banking and other regulated industries, where the approval of foreign investment falls within the jurisdiction of the industry regulator.

## Project Application Report

The submission of a project application report is the first stage in the regulatory process for a new project if the project involves a fixed assets investment project set out in the NDRC Catalogue.[23] Approval needs to be sought from, or a filing made with, NDRC, the State Council, the provincial/local government or the relevant ministry, depending on the size and sector of the project. The NDRC rules[24] along with the NDRC Catalogue set out different approval/filing requirements for different foreign investment projects:

- for investment projects on the Negative List, either (a) NDRC approval along with, if applicable, the State Council filing or (b) provincial government approval is required depending on the investment amount; and
- for other investment projects set out in the NDRC Catalogue, (a) approval from NDRC, the provincial/local government or the relevant ministry for those specifically listed as requiring approval under Sections 1 to 10 of the NDRC Catalogue (sectors covered in such catalogue includes energy, transportation, telecommunication, infrastructure, etc. and such approval applies to both foreign and domestic investors) while (b) all other investment projects are only required to make a filing with the local NDRC.

The approving authority will undertake a substantive examination of the project and the investors, and the project's impact on the use of resources, the environment, the economy and society.

Similar procedures to those described above apply where the expansion of the production capacity of an existing project is being contemplated. Expansion of existing capacity is often an integral part of the introduction of foreign investment to an existing project in Chinese Mainland.

FIEs in financial and other services sectors are not required to obtain the above-mentioned foreign investment project approval or comply with the associated filing requirements, as foreign investment into the services sectors does not usually take the form of fixed assets investment projects. However, for FIEs in financial services sectors, prior approvals from CSRC or NFRA will be required.

## Name Reservation

All newly established FIEs are required to reserve their proposed names through the SAMR's online system before or at the time of online filing of the basic information of the new FIE. The reserved name will be retained for two months from the date on which reservation of the proposed name is completed (whilst for any regulated FIE which needs to obtain prior approvals from the competent PRC authorities before the filing with SAMR, its reserved name will be retained for one year). If the new FIE has not completed the filing with SAMR before the expiry of such period, the name reservation will lapse and the FIE will be required to re-submit its proposed name for reservation before proceeding with the filing with SAMR.

The proposed name will typically contain details such as the location, a unique trade name, industry or business characteristics and the form of business organisation. The name must be set out in the articles of association.

## Filing with SAMR

Following the replacement of the MOFCOM approval requirements with the FI Regime (see page 18), all newly-established FIEs will only be required to submit a foreign investment information report through the online system managed by SAMR, rather than obtaining the approval of MOFCOM or its relevant local counterpart. Key information required for the initial report includes:

- basic corporate information (e.g. enterprise name, place of business, total investment amount, registered capital, paid-in capital, business scope and form of investment);
- information on the investor (e.g. name, notarised and legalised certificate of incorporation/ID document, source of investment, nationality or domicile);
- information on the actual controller of the foreign investor (e.g. name, type of controller, ID number/registration number, nationality/ domicile); and
- information on the relevant investment (e.g. the capital injection or consideration amount).

If an FIE undergoes a change in certain key details, such as name, nature and business scope, registered capital and total investment, it must promptly file the change within the statutory timeframe (typically within 20 days or 30 days of the change, depending on the nature of the change).

A key change introduced by the FI Regime is that the completion of the filing is not, unlike the previous approval requirements, a condition of effectiveness of the establishment or change of particulars of the relevant FIE.

## The Business Licence and Articles of Association

As with any company established in Chinese Mainland, an FIE is required to obtain a business licence before commencing business operations, and such business licence will be issued by SAMR upon the FIE's registration. An FIE established with the appropriate business scope is required to keep its operation within the business scope, as enterprises in Chinese Mainland cannot engage in revenue-generating activities outside their business scope. When filing the application to establish an FIE under the FI Regime, (as with any other newly-incorporated company in Chinese Mainland), the key constitutional document of the FIE to be submitted is the articles of association.[25] The joint venture contract of the FIE that is a joint venture is no longer required to be submitted. Where there is more than one shareholder, it remains the case that some of the more detailed rights and obligations as between the shareholders will be set out in a joint venture contract or shareholders' agreement. For an existing FIE established prior to 1 January 2020, the provisions of the original joint venture contract and articles of association of such FIE are required to be amended and adjusted so that they are consistent with the Company Law, and such revised articles of association need to be submitted to SAMR before 1 January 2025, failing foul of which, SAMR may refuse to process any other filings or registrations submitted by such FIE.

## Formal Establishment of an FIE

The issue of a business licence by SAMR marks the formal establishment of an FIE. SAMR is the official registry for entities registered in Chinese Mainland and corporate information, such as shareholders' details, share capital and the names of directors, must be filed with SAMR.

After an FIE is registered with SAMR and obtains its business licence, it will have the status of a legal entity in Chinese Mainland and may contract on its own behalf. Since October 2016, after obtaining its business licence, an FIE would no longer need to apply for separate licences relating to enterprise code, foreign exchange, customs, statistics and tax matters since the various governmental authorities had consolidated the issue of five such licences (namely an entity's business licence, enterprise code certificate, tax registration certificate, social insurance registration certificate and statistic registration certificate) into a single unified business licence. Nevertheless, the FIEs may still need to make certain registrations/filings related to foreign exchange, customs, tax, etc. with local banks or relevant authorities, as applicable.

## Financing

### Equity Financing

Equity is still the most usual method of financing an FIE. Other than Holding Companies, whose contributions to registered capital must be made in cash[26] and unless otherwise required by law, capital contributions of FIEs may be made in the form of cash or non-cash assets such as equipment, machinery, plant, buildings, equity interests/shares, receivables, land use rights, intellectual property rights and/ or proprietary technology, provided that any such contributions must belong to the contributing investor, capable of being valued and transferred and must be free from any encumbrances.[27]

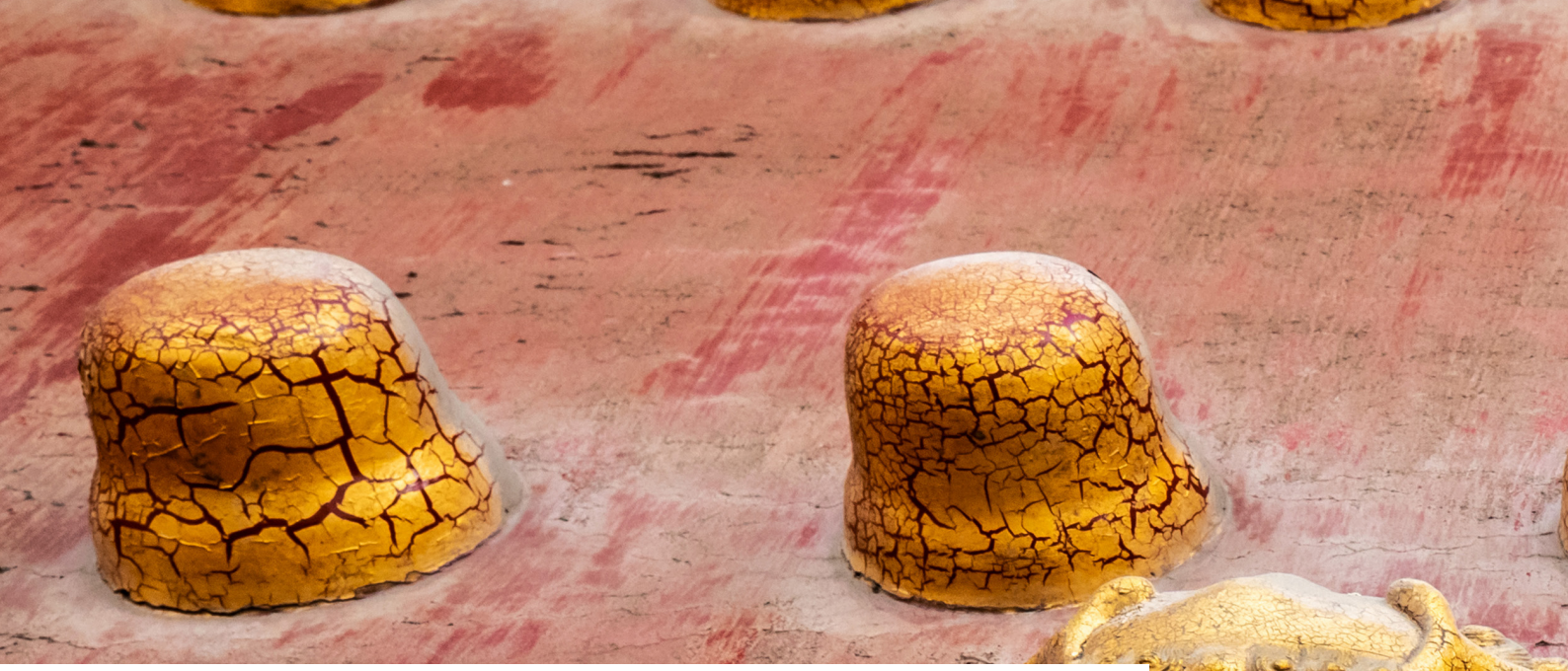
In-kind contributions are required to be valued by a valuation firm. If a state-owned enterprise is a joint venture partner and its state-owned assets are to be contributed to an FIE, such assets must be valued by a valuation firm which has obtained an official qualification to conduct asset valuations in Chinese Mainland, and the results of the valuation must be filed with the competent state-owned assets authority.

The registered capital may be contributed by the parties to the FIE either in a lump sum or in instalments, subject to the capital contribution requirements discussed in "*Limited Liability Companies*" and "*Companies Limited by Shares*" in section 3.

### Debt Financing

Traditionally, there are prescribed limits for the minimum ratios of an FIE's registered capital (share capital) to foreign debt of between 7:3 and 1:2 (in respect of Holding Companies, the minimum ratio of registered capital to debt is between 1:4 and 1:6) (the "**Traditional Regime**"). Under the Traditional Regime, the maximum permissible foreign debt quota is calculated as the gap between an FIE's total investment amount and its registered capital.

In 2017, the People's Bank of China ("**PBOC**") introduced the "all-round" cross-border financing framework under Circular 9 (the "**All-Round Regime**"), under which the foreign debt quota an FIE (excluding financial institutions and real property companies) may borrow is calculated on a risk-weighted formula as published by PBOC from time to time.[28] The Traditional Regime continues to exist alongside the All-Round Regime, and local banks usually allow an FIE to choose either the Traditional Regime or the All-Round Regime to calculate its foreign debt quota.[29] In practice, the All-Round Regime is more popular, as it typically yields a significantly higher foreign debt quota. FIEs may consider consulting with the local bank first to verify the relevant foreign debt quota. It should be noted that once chosen, the calculation method cannot be switched. Pursuant to the *Foreign Investment Law*, FIEs may also raise financing through public offering of corporate bonds.[30]



# 05

# Buying a Business in Mainland China – Mergers & Acquisitions


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As the market in Chinese Mainland continues to open up, more and more international investors are moving away from setting up FIEs solely or jointly with domestic partners, towards directly acquiring businesses from domestic owners.

This section considers some of the features of private acquisitions in Chinese Mainland and in particular some of the differences between acquisition structures in Chinese Mainland and those with which international investors may be more familiar. It is not comprehensive, and is intended merely to highlight issues.

An acquisition of an equity interest in a domestic entity will result in the entity becoming an FIE. Whether a foreign investor is acquiring an interest in an existing FIE, or an existing domestic enterprise or acquiring Chinese Mainland assets, it will need to comply with the foreign investment laws and regulations, including the *Foreign Investment Law* and the Negative List.

## Governmental Approval and Filing Requirements

In any acquisition, the approvals required for that particular industry will need to be identified both as a matter of practice and law. Before the *Foreign Investment Law*, MOFCOM was the usual approval authority for such acquisition of PRC companies or assets by a foreign purchaser. However, as mentioned in previous sections, with the *Foreign Investment Law* coming into effect from 1 January 2020, MOFCOM's approval system has been replaced by the SAMR online information reporting system and, accordingly, a foreign investment information report should be filed with the SAMR online system in relation to the acquisition of a Chinese Mainland company or assets by a foreign investor.

In some industries there may be a need for approval by an industry specific regulator. For example, in certain regulated industries, such as the financial sector (including banks, insurance companies, securities firms and fund management companies), the foreign investors may be required to meet certain investor qualifications as required by the relevant regulators such as CSRC and NFRA. In some industries, approvals may be required from several authorities. In such a case, it is not safe to assume that approval of a transaction by one authority means that every other authority will approve it.

Other approvals, filings or registrations also commonly required are from SAFE or local banks (foreign exchange issues) and State Administration of Taxation on tax registrations, as well as registration of any changes to the name, business licence and articles of association (see page 27) consequential to the acquisition. Such approvals or registrations are normally more procedural in nature, as they are obtained after substantive examination of the project by other authorities has taken place.

Some of the target's permits or licences may need to be updated or re-issued to reflect the foreign ownership of the target or the change of legal representative or responsible person (even if the target's business remains the same), requiring further involvement of regulators.

In addition, the *Foreign Investment Law* and the *Measures for the Security Review of Foreign* Investment enshrines and updates the pre-existing security review regime for foreign investment, which provides for a security review on foreign investments which impact or may impact the national security.

## Buying Shares in a Listed Mainland Chinese Company

Acquisitions of shares in listed Chinese Mainland companies are subject to the *Procedures for the Administration of Strategic Investment in Listed Companies by Foreign Investors (2024)* ("**Strategic Investor Measures**") and the *Measures for the Administration of Acquisition of Listed Companies (2025)* (the "**Takeover Code**"). The Takeover Code expressly states that foreign investors will be required to comply with the Takeover Code and any other relevant provisions relating to acquisitions of listed companies or interests in shares in listed companies in Chinese Mainland.

It is beyond the scope of this guide to cover the Strategic Investor Measures, the Takeover Code or acquisitions of shares in listed Chinese Mainland companies in detail. However, in brief:

- foreign investors are permitted to acquire certain types of shares in Chinese Mainland companies limited by shares without the need for approvals from any authority in Chinese Mainland. These are shares publicly traded on an overseas stock exchange (such as H-shares publicly traded on the Hong Kong Stock Exchange) and B-shares publicly traded on the Shanghai or Shenzhen stock exchanges;
- foreign investors are permitted to acquire A-shares in a listed company provided that they satisfy certain qualification requirements set out in the Strategic Investor Measures. The acquisition must also comply with the following requirements (among others):
  - the A-shares can only be acquired by a foreign investor through transfer by agreement, placing of new shares, tender offer or other methods prescribed by laws and regulations;[31]
  - for strategic investment by way of transfer by agreement or tender offer, the shares acquired by the foreign strategic investor cannot be less than 5% of the total number of shares of the listed company in issue;[32]
  - the acquired A-shares will be subject to a 12-month lock-up (subject to longer lock-up periods imposed by securities law and other applicable laws);[33]
  - a financial advisor, sponsor or law firm duly registered in China in accordance with securities law must be appointed to conduct due diligence and opine on compliance matters related to the strategic investment;[34]
  - the foreign strategic investor must comply with any applicable foreign shareholding limit as prescribed in the relevant laws and regulations;[35] and
  - where the strategic investment involves shareholders of state-owned shares, the relevant provisions on the administration of state-owned assets must be complied with; [36]
- Qualified Foreign Institutional Investors ("**QFIIs**") and Renminbi Qualified Foreign Institutional Investors ("**RQFIIs**"), licensed by CSRC, may acquire A-shares publicly traded on the Shanghai or Shenzhen stock exchange. Since September 2020, the QFII and RQFII schemes have been combined into a single qualified foreign investor scheme, providing broader and deeper investment opportunities;
- the launch in November 2014 of Shanghai-Hong Kong Stock Connect[37] enables investors on the Shanghai and Hong Kong stock exchanges, through their local securities brokers, to place orders to trade eligible shares listed on the stock exchanges of the two sides. A similar programme for the Shenzhen and Hong Kong stock exchanges was launched in late 2016;[38]
- subject to certain exemptions, the Takeover Code requires a party that acquires shares which would result in its shareholding (taken together with any person acting in concert with it) exceeding 30% of the issued share capital to make a mandatory offer for the remaining shares; and
- The Takeover Code also sets out the offer timetable and mechanics for offers, circumstances in which an offer may be withdrawn or revised, prohibited conduct during an offer period, detailed requirements relating to the content of takeover documents and their submission to CSRC and rules on price, payment and the disclosure of interests in shares.

- The Takeover Code also sets out the offer timetable and mechanics for offers, circumstances in which an offer may be withdrawn or revised, prohibited conduct during an offer period, detailed

## Structuring an Acquisition

### Onshore versus Offshore Transactions

Before the *Foreign Investment Law* was passed, foreign investors would tend to consider using their existing presence in Chinese Mainland (if they had one) to make further acquisitions in Chinese Mainland. This would normally simplify and shorten the acquisition process, generally being subject to less scrutiny than new investments. With the abolition of the MOFCOM foreign investment approval procedure, introduction of the Negative List and restrictions on foreign shareholding in certain industries being relaxed, foreign investors may now be more willing to invest directly in new FIEs.

If the Chinese Mainland assets or companies are held by an offshore entity and an investor acquires that offshore entity, then, except in relation to possible anti-trust and national security issues, it is not necessary to obtain any approvals from and within Chinese Mainland. However, if such acquisition results in change of the relevant Chinese Mainland company's actual controller, the relevant change needs to be reported through the foreign investment reporting system within 20 working days after such change.[39] "Actual controller" is defined as a person who is able to actually direct the conduct of the company through investment, contractual or other arrangements.

International investors often invest in Chinese Mainland through a special purpose vehicle incorporated in a jurisdiction such as Hong Kong SAR, though this may not always be feasible in the financial sector and other regulated industries (where the qualifications of the investing entity are subject to scrutiny). Tax issues will impact on the choice of jurisdiction, but investors should also consider whether approvals in the offshore jurisdiction would be required for the entity to invest in a particular sector in Chinese Mainland, as well as whether their structure facilitates a subsequent exit through the sale or listing of the offshore entity.

### Asset versus Equity Acquisitions

Equity acquisitions are currently more common than asset acquisitions in Chinese Mainland for the following reasons:

- a transfer of shares or equity interests in a Chinese Mainland company is more tax efficient than a business or asset acquisition; and
- employees of the target are not automatically transferred to the transferee of the business, which means that any employment contracts would have to be terminated and new contracts would need to be entered into with the transferee.

Transfers of equity interests to non-shareholders in a Chinese Mainland LLC, including FIEs, are generally subject to the following restrictions under the *Company Law*:

- the transferring shareholder shall notify the other existing shareholders of the number of transferring shares, transfer price, payment method, timeline etc., and the other existing shareholders have the rights of first refusal over the interests to be transferred. The shareholders who do not respond within 30 days of such notice shall be deemed to waive their rights of first refusal.[40]

Other restrictions on transfers of equity may also be negotiated and included in the company's articles of association.

### State-owned versus Private Enterprises

Most privately-owned businesses lack the scale and reach of their state-owned counterparts; however, the processes involved in investing in a private enterprise are comparatively easier than those for investing in a state-owned enterprise.

Because of concerns over the transfer of state-owned assets at an undervalue, a transaction involving equity or assets to be transferred by a state-owned entity requires approval by and filing with or notification to the competent state-owned assets authority, which may be SASAC, MOF (the latter is in charge of the administration of state-owned assets for financial institutions) or (if it is a transfer by a subsidiary of a central state-owned enterprise) the central state-owned enterprise. This procedure requires the subject matter of the transaction to be valued by a qualified Chinese Mainland valuation firm in order to ensure that the price to be paid fairly reflects the value of the assets being transferred.

The valuation process will be subject to specific requirements set out in the Interim Provisions for the *Administration of Enterprise State-owned Asset Valuation*, which are overseen by SASAC. A state-approved valuer will need to be appointed, only certain valuation methodologies may be used and the price must be no less than 90% of the valuation result unless special approval is granted.[41] The valuation result will also need to be approved by or filed with, if applicable, SASAC or its local branch.[42] The valuation requirements do not, however, apply to the purchase of shares in a listed company from a state-owned shareholder (such transactions are instead benchmarked to the average trading price of the shares), though the state-owned assets approval or filing procedures will still apply.[43] Equity or assets of state-owned financial institutions generally fall under MOF's jurisdiction. To transfer state-owned equity or assets, a transferor is generally required to conduct the transfer by way of auction or a bidding process.[44] The law of Chinese Mainland sets out certain requirements for the conduct of such process.

### Purchase Price and Payment Flows

Government authorities have historically preferred fixed price transactions involving a fixed amount of foreign currency or RMB to be paid into Chinese Mainland within a specified time. Consideration has typically been given to structuring closing mechanics and arrangements to meet government requirements and expectations. Previously, limits and restrictions applied to:

- the scope of any non-cash elements which could be used by a foreign investor to pay for its investments; and
- the period of time by which the payment of purchase price for the acquisition of equity interest in a domestic enterprise had to be completed.

Under the FI Regime, the foreign investor is entitled to pay for the purchase price in the same manner as the domestic investors as permitted by the laws of Chinese Mainland. As to the time limit for the payment of the purchase price for a non-state owned target, according to MOFCOM's response to public's queries dated 16 April 2024, foreign investor shall still adhere to the statutory time limit set out in *Regulations on Foreign Investors Merging with or Acquiring Domestic Enterprises* (《关于外国投资者并购境内企业的规定》) that the purchase price should be settled within three months after issuance of the new business licence of the target, and, in special cases, 60% of the purchase price should be paid within six months with the remainder to be paid within one year.[46]

## Other Issues

### Employees

Unless there are redundancy plans, normally no particular approval process is required in relation to the employees of the target business.

Upon transfer of a business, employees are not automatically transferred to the acquiror. Instead, the employment contracts with the original employer must be terminated and new contracts must be entered into with the acquiring entity. This would give rise to compensation issues on termination. The period of services of an employee with the original employer may need to be recognised by the acquiring entity unless severance pay is made to the employee by the original employer in respect of termination of his or her employment.[47]

The PRC law provides that a company should seek the opinion of its trade union of any of its management decisions or decisions on major issues concerning enterprise development; however, the law does not set out specific consequences for failure to do so. It is generally considered best practice that a company consults with its trade union (if any) before the transfer of a business, as communication with the local trade union to secure its cooperation (if possible) would be helpful in facilitating the employee transfer, particularly where the number of the transferring employees is not small.

### Anti-trust and Merger Control

The *Anti-Monopoly Law* (the "**AML**") introduced a comprehensive merger control regime in Chinese Mainland Since its inception in 2008, the Chinese Mainland merger control regime has evolved to become one of the world's most established competition law regimes, alongside the US and EU systems.

### Transactions covered by the AML

The AML applies to all "concentrations of undertakings". This concept includes (i) mergers of undertakings; (ii) an undertaking's acquisition of control over any other undertaking by way of acquisition of equity interests or assets; and (iii) an undertaking's acquisition of control, or decisive influence, over any other undertaking by way of contract or any other means. Joint ventures also constitute a form of concentration of undertakings and thus are also subject to SAMR's review under the AML.

### Notification thresholds and stand still requirements

According to the *Provisions of the State Council on Notification Thresholds for Concentrations of Undertakings*, concentrations of undertakings are subject to mandatory notification requirements if, in the last financial year:

- the combined aggregate worldwide turnover of all undertakings to the concentration was more than RMB 12bn and the Chinese Mainland turnover of each of at least two of the undertakings to the concentration was over RMB 0.8bn; or
- the combined aggregate Chinese Mainland turnover of all the undertakings to the concentration was more than RMB 4bn and the Chinese Mainland turnover of each of at least two undertakings to the concentration was over RMB 0.8bn.

Any concentration of undertakings that fulfils the above thresholds must be notified to SAMR and the parties must not implement the transaction until SAMR has issued its final decision to clear the concentration. An undertakings that implements a concentration before the clearance has been granted by SAMR, or fails to notify when the above thresholds are met, can be subject to a fine up to RMB 5,000,000 if the relevant transaction had no effect of eliminating or restricting competition, or a fine in an amount no more than 10% of the undertaking's turnover in the previous year if the relevant transaction had an effect of elimination or restricting competition; it may also be ordered to cease the implementation of the concentration and/or to take actions (such as the disposal of shares or assets) necessary to restore the situation to what it was prior to the concentration.

### Concentrations below the thresholds

Concentrations below the thresholds are not required to be notified to SAMR. However, if SAMR considers that a below-threshold concentration is likely to have the effect of eliminating or restricting market competition, it has power to order parties to notify or investigate the transaction.

### Notification and review procedure

For concentrations subject to mandatory notification requirements, the merger review process under the AML is divided into two phases. The initial Phase I review must be completed within 30 days after a complete notification has been filed.[49] Within this time period, SAMR will have to decide either to clear the concentration or to launch an in-depth Phase II review. If Phase II review is initiated, SAMR has another 90 days, which may be extended by a further 60 days, to issue its final decision on the case.[50] The above time periods are all measured in calendar days.

The Phase I review will commence only when SAMR decides that it has received a complete notification and informs the notifying parties in writing that it has formally accepted the notification. SAMR's recent practice is that it normally takes several weeks from the initial submission for SAMR to formally accept a simple case, but such pre-acceptance period can be longer in normal or complex cases (even up to several months). In most cases, SAMR will ask follow-up questions before formally accepting the notification, requiring the parties to submit additional data and information.

As with other merger control authorities, SAMR has a pre-notification consultation procedure. Parties to a concentration can use this procedure to consult with SAMR on issues such as whether a filing should be made. In practice, this is used much less frequently than in other jurisdictions such as the EU.

In 2014, the simplified procedure was introduced, under which eligible cases are subject to a fast-track review procedure. The criteria for the simplified procedure include where the parties have low market share, where the transaction has no nexus with Chinese Mainland, and where the transaction relates to a mere reduction of the number of controlling shareholders in a joint venture. If a simple case notification is accepted by SAMR, a brief summary of the case will be published on SAMR's website for 10 days to seek public comments. The simple case eligibility could potentially be revoked if SAMR itself or third parties bring a credible challenge (e.g. the market share data is not robust). If there are no challenges from third parties or SAMR with regard to the simple case eligibility or the substance of the case, most of the simple cases can be cleared within Phase

I. The Amendments of AML effective from 1 August 2022 introduce, in line with the practice in other mainstream jurisdictions such as the EU, a "stop-the-clock" mechanism, under which SAMR's review process may be suspended in any one of the following situations:

- parties fail to submit required information in a timely manner, without which SAMR cannot proceed with the case review;
- there are new facts with a material impact on the review and SAMR must verify the facts before being able to proceed with the review; and
- parties request a suspension of review from SAMR to allow for a further assessment of the remedies proposed.

**Substantive review**

The substantive test under the AML is whether a concentration "has or is likely to have the effect of excluding or restricting competition".[51]

Other than the substantive competition issues (for example, the parties having strong market positions in overlapping, vertically linked and/or closely related markets) arising from the proposed transaction, industry policy and/or foreign investment policy may also be a consideration in SAMR's decision to impose remedies.

**Prohibition and remedies**

If a concentration is found to "have or likely to have the effect of excluding or restricting competition," it is to be prohibited unless the parties are able to prove that the concentration provides pro-competitive effects that clearly outweigh the adverse impact, or that the concentration conforms to the requirements of social and public interest.[52]

Alternatively, either SAMR may require or notifying parties may suggest remedies (subject to SAMR's approval) to avoid the concentration being prohibited.

Protracted discussions on remedies with SAMR may risk a more time-consuming process and a Phase II or even more extended investigation, which will delay completion and cause a longer period of uncertainty for the transactions involved. As of November 2025, 67 transactions have been cleared with conditions (including either structural remedies or behavioural remedies or a mix of both) and four transactions have been prohibited (the Coca-Cola/Huiyuan deal in 2009, the P3 shipping alliance in 2014, the Huya/Douyu deal in 2021 and Yongtong/Huatai deal in 2025).

**Review statistics since the AML came into force**

Chinese Mainland is one of the key merger control jurisdictions alongside the EU and the US. In 2024, SAMR received 729 merger filings and concluded 643 of them.[53]

**National Security Review**

Certain acquisitions by foreign investors of Chinese Mainland enterprises or assets may be subject to review on the grounds of national security by an office jointly headed up by NDRC and MOFCOM:

- acquisitions of a controlling interest in a Chinese Mainland enterprise within a sensitive sector, such as important agriculture, important energy and resources, important infrastructure, manufacturing of major equipment, important transport, important cultural activities, important IT and internet, key technologies, important financial services, and other important sectors to the extent that they have a bearing on national security; or
- acquisitions of any stake in a Chinese Mainland military or military supportive enterprise, any enterprise located in the surrounding area of military facilities or any other enterprise which is of importance to national defence security.

The legislative guidance does not provide a clear definition of these areas. As a result, terms such as (major) "equipment" or (key) "technologies" could potentially be interpreted broadly (as in many other foreign investment regimes) and cover a wide range of products and services. We expect the authorities to enjoy a broad discretion in interpreting the scope of the covered sectors. It is therefore essential for foreign investors to assess the impact of China's national security review at an early stage in their deal planning.

### Restrictive Covenants

There are fewer restrictions on the type of non-compete obligations which can be imposed on Chinese Mainland entities than in other jurisdictions. However, as a matter of employment law, any restrictions on individuals must be reasonable and, under the *Labour Contract Law*, the employee must be compensated if the restrictions are to survive termination of employment.

### Taxes on Transfer of Shares

Stamp duty in Chinese Mainland is payable on the sale of shares in listed companies listed on a Chinese Mainland stock exchange at the rate of 0.05% and on the sale and purchase of equity interests, or shares, in non-listed companies at a rate of 0.05%. Stamp duty is not payable in Chinese Mainland on the transfer of shares in companies listed on an overseas stock exchange, provided that the transfer is not executed or received in Chinese Mainland.

In addition to stamp duty, liability to income tax in Chinese Mainland may also arise, depending on the structure of the transaction.

For further information on the foreign investment, antitrust, national security, employment and restrictive covenants and other issues relating to mergers and acquisitions in Chinese Mainland, please contact any member of our China team.





# 06

# Corporate Governance and Shareholder Protection


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## Board of Directors

Historically, under the previous FIE laws that governed FIEs for nearly four decades, the board of directors was the highest decision-making authority of Sino-foreign equity joint ventures (the "**EJVs**") and Sino-foreign cooperative joint ventures (the "**CJVs**"), exercising powers and functions which would normally be reserved for shareholders in other jurisdictions.[54] Those laws were subsequently repealed by the Foreign Investment Law, which became effective on 1 January 2020.

A Chinese Mainland company (including LLC and JSC) is required to establish a board of directors of at least three members[55] and there is no upper limit for the maximum number of members, save that a company (i) with a comparatively small number of shareholders, or (ii) which is comparatively small in scale, may consider having one director instead of a board of directors.[56] In case the company has at least 300 employees, unless there is already an employee representative supervisor on its board of supervisors, there should be at least one employee representative director on the board of directors, who is elected by way of employee representative meetings or other democratic process.[57]

The term of office for a director of a Chinese Mainland company must not be more than three years. The term is renewable upon re-election.[58]

## Board of Supervisors

Historically, under the predecessor *Company Law* which became outdated on 1 July 2024, Companies in Chinese Mainland were generally required to establish a supervisory board or, for LLCs with a comparatively small number of shareholders, or which are comparatively small in scale, to have one to two supervisors in lieu of a supervisory board.[59]

Under the current *Company Law* which took effect from 1 July 2024, Companies in Chinese Mainland have more flexibility towards their supervisory function as set forth below:

i. Option 1
The Company (applicable to LLCs and JSCs) could establish a supervisory board with at least three members, which shall include representatives of the shareholders and an appropriate proportion of representatives of the company's employees (not less than one-third of the total number of members on the supervisory board with the specific proportion being provided for in the company's articles of association).[60]

ii. Option 2
Companies (applicable to LLCs and JSCs) with a comparatively small number of shareholders or which are comparatively small in scale may have one supervisor in lieu of a supervisory board.[61]

iii. Option 3
Instead of having a supervisory board or a supervisor, companies (applicable to LLCs and JSCs) could establish an audit committee under the board of directors to exercise the powers and duties of supervisors.[62]

iv. Option 4
For an LLC (not applicable to JSC) which is comparatively small in scale or has comparatively small number of shareholders, upon the unanimous consent of all shareholders, it could have no supervisory board or supervisor, neither does it need to establish an audit committee.[63]

For options 1 and 2 above, directors and senior management personnel may not concurrently serve as supervisors.[64]

For options 1 to 3 above, the relevant body or person may exercise the supervisory functions and powers which include, without limitation:

- examining the company's financial affairs;
- supervising the acts of the directors and senior management in the performance of their duties to the company;
- proposing the dismissal of directors and senior management who have violated any laws, administrative regulations, the company's articles of association or shareholders' resolutions;
- proposing convening of extraordinary shareholders' meetings; and
- making proposals to shareholders' meetings.[65]

## Senior Management

> Senior management are in charge of the day–to-day operations and management of the company and have rights and functions which are specifically provided for by law. A Chinese Mainland company may have a manager (or managers) who is engaged, or dismissed, by the board of directors. The manager (or managers) is accountable to the board of directors and exercises such functions and powers as provided in the company's articles of association or as authorized by the board of directors.[66]

The manager (or managers), if not a director(s), is required to attend meetings of the board of directors as a non-voting attendee(s). [67]

## Legal Representative

The legal representative of a company holds a special position within the company and is the officer with the legal power to represent, and enter into binding obligations on behalf of, the company. A legal representative's acts, when concluding a contract, are binding on the entity, even where made beyond his or her authority, unless the counterparty knew, or should have known, that the legal representative was exceeding his or her powers when entering into the contract. A director or general manager who carries out the company's affairs can be the legal representative.[68]

## Duties and Liability of Directors, Supervisors and Senior Management

### Duties of Directors, Supervisors and Senior Management

The law of Chinese Mainland does not have a concept of "fiduciary" duties as they are generally understood in common law jurisdictions.

The duties expressly owed by directors, supervisors and senior management under the *Company Law* are the duty of loyalty and the duty of diligence. Whilst such duties were not expressly defined under the predecessor *Company Law*, under the current *Company Law* which took effect from 1 July 2024, "duty of loyalty" means the directors, supervisors and senior management shall avoid conflicts of interest and avoid taking advantage of his or her position for improper benefits and gains, and "duty of diligence" means such persons shall act in the best interest and for the benefit of the company, demonstrating the level of care customarily expected from a manager under similar circumstances.[69]

Directors, supervisors and senior management are also expressly prohibited or restricted from certain acts which may cause them to act contrary to their duties of loyalty and diligence to the company, including, without limitation, misappropriating company's assets or embezzling company's funds, using their authority to bribing others or receiving other illegal income, unauthorized disclosure of trade secrets, etc.[70]

It should be noted that a controlling shareholder or ultimate controller of a company, who hold out or act as a director or whose directions the directors are accustomed to act, may be held a de facto or shadow director, even though such person is not properly appointed as a de jure director of the company, and thereby being subject to duties and liabilities of a director of the company.[71]

### Penalties

A director, supervisor or senior manager who violates any laws, administrative regulations or the provisions of the company's articles of association during the performance of his or her duties which results in losses to the company will be held liable for damages.[72] There is, however, no clear guidance in Chinese Mainland as to how the amount of compensation will be determined.

A director, supervisor or senior manager in breach of his or her duties may be subject to civil liabilities (including requirement to pay damages, return of assets or proceeds, etc.), as well as fines and administrative or criminal punishment.

In relation to JSCs, collective responsibility may fall upon all the directors if a specific board resolution to approve a matter was passed in violation of laws, administrative regulations or the articles of association of the company, causing serious losses to the company. A director will only be released from any such liabilities if the director is proven to have expressed his opposition to the resolution when it was put to the vote, and such opposition was recorded in the minutes of the board meeting.[73] While there is no equivalent provision under the law of Chinese Mainland for LLCs, the court or an arbitration tribunal is likely to determine the allocation of liability between responsible parties using the same principles.

### Claimant

If a director or senior manager violates the laws and administrative regulations or the provisions of the articles of association in the performance of his or her duties, both the company and the shareholders are entitled to bring a claim for a breach of duty.[74]

### Directors'/Senior Management Liability Insurance

It may be possible for a director or senior manager to manage his or her risk of exposure by obtaining an indemnity from the company. In addition, a listed company's directors or senior manager may also request that the company put in place liability insurance.[75]

Directors' liability insurance in Chinese Mainland typically covers liability incurred by a director to third parties in the course of acting in the capacity of a director in respect of which the director is unable to obtain reimbursement from the company. It does not cover insider trading, bribery or any criminal offences committed by the director, or death, disease or personal injury directly or indirectly resulting from the acts of the director.

## Shareholder Protection

The *Company Law* offers a wide range of protection to shareholders of FIEs (unless otherwise stated, including both LLCs and JSCs), including, without limitation, the following:

- *Information right*: shareholders have the right to inspect important company documents such as company's articles of association, shareholder register, meeting minutes, financial reports, accounting books and vouchers, etc.;[76]
- *Actions re defective corporate resolutions*: shareholders may apply to court to vitiate, revoke or rescind shareholders' or board resolutions which are defective due to various reasons such as violation of laws, administrative rules and/or procedures set out in the articles of association of the company;[77]
- Repurchase right: shareholders of both LLCs and JSCs who vote against shareholders' resolutions approving certain significant matters (such as non-declaration of dividends for five consecutive years during which the company has continuously made a profit; transfer of major assets etc.) may request the company to repurchase their shares at a reasonable price; for LLCs, where a controlling shareholder abuses its shareholder rights and causes serious harm to the interests of the company or other shareholders, the other shareholders have the right to request the company to repurchase their shares at a reasonable price;[78]
- Right to request dividend distribution: shareholders may request to the court for dividend distribution if the board of directors has not made the distribution within six months of shareholders' resolutions approving the dividend;[79]
- Shareholder litigation: if a director or senior manager of the company or the company's wholly owned subsidiary violates the laws and administrative regulations or the provisions of the articles of association in the performance of his or her duties, the shareholders of such company (if it is an LLC) or the qualified shareholders of such company (if it is a JSC) are entitled to request the board of directors or supervisory board of the company or the company's wholly owned subsidiary (as applicable) to initiate litigation against such person, failing which, the shareholders of the company are entitled to bring a claim to the court directly;[80]and
- Compulsory winding up: shareholders holding more than 10% of the company's voting rights may petition to the court to dissolve the company where such company encounters severe management and operation difficulties which may cause substantial losses to shareholders' interests.[81]





# 07
# The Business


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## Exchange Controls and Remittance of Profits

When an FIE is established, it must register with the online system of SAFE after its business licence is issued.

Under the Regulations for the Administration of Domestic Foreign Exchange Accounts, an FIE must maintain separate foreign exchange bank accounts for current account items and capital account items. Current account items include transactions that recur in the course of international receipts and payments, and which do not have the transfer of capital as their objective, for example, revenue and expenditure from international trade in goods and services.[82] Capital account items are transactions arising from the inflow and outflow of capital, for example, direct investments, loans and securities investments.[83]

In general, current account foreign exchange can be transferred freely into and out of Chinese Mainland,[84] while capital account foreign exchange is highly restricted in its transfer into and out of Chinese Mainland and any such transfers generally require SAFE approval, though in recent years, many SAFE approval requirements have been replaced by registration requirements in SAFE's foreign exchange system as China moves towards internationalisation of the RMB and FIEs are now permitted by SAFE rules to convert designated categories of foreign exchange received into RMB to be held in accordance with their business needs under the SAFE's Notice on Reforming and Standardising the Administrative Policies on Capital Account Foreign Exchange Settlement.

Remittance of profits from Chinese Mainland out of Chinese Mainland by an FIE is not subject to the prior approval of SAFE. Tax filings and allocations to statutory funds must be completed before any profits can be distributed, however, and where the profits being remitted exceed US$50,000, an FIE will need to present the necessary supporting documents to the foreign exchange bank, including the shareholders' or board resolution approving the profit distribution and evidence of completion of the required tax filing.[85]

The same requirement, where applicable, applies also to the remittance of RMB dividends.

## Human Resources

### Foreign Employees

Foreign employees require a work permit and a residence permit if they are employed by an employer in Chinese Mainland, including the branch of a foreign company.[86] A representative office of a foreign company is not allowed to hire a foreign employee directly, while a secondment approach could be adopted, under which the foreign employee is hired by an offshore entity and seconded to the representative office as one of its representatives. In this case, the foreign employees seconded must have valid work permits and residence permits.

In addition, an employer is generally required to prove that a 'special need' exists before employing a foreign national (defined as the requirement to fill a position for which there is a temporary shortage of suitable local candidates).[87] The foreign employee must not have a criminal record, be at least 18 years old and in good health, have a valid passport or other travel document, and have the necessary professional skills required for the relevant position.[88]

The procedure for employment of a foreigner by an FIE is as follows:[89]

- the employer must create an account at the Service System for Foreigners Working in China (the "**Service System**", which could be found at https://fwp.safea.gov.cn/lhgzweb/), to the extent such employer has no account yet, and submit an application for the foreign employee via the Service System. The application must include electronic copies of the employee's reference letter issued by the previous employer, certificate of highest degree and professional qualifications, medical report (to be issued by a health centre designated or recognised by China's entry-exit inspection and quarantine administration), certificate of no criminal conviction, employment contract (or secondment letter, as the case may be), travel document (such as the information page(s) of his or her passport) and other relevant documents;
- after the appropriate documents are examined and approved online, a work permit notification will be generated online by the authority;
- the employee may print and submit the work permit notification to his or her local China embassy (or consulate) to apply for a work visa (Z visa) to enter Chinese Mainland;
- after the employee enters Chinese Mainland, he or she must undergo a medical examination at the government-designated health centre; and
- an application for a work permit together with supplementary documents, including travel

documents (such as passport and the page with entry stamp), shall be submitted via the employer's Service System account. After online and onsite verification of originals is completed, a work permit will be issued. This work permit authorises the employee to work only in the area specified in it and in the relevant residence permit.

A foreigner employed by a Chinese Mainland legal entity in Chinese Mainland is protected by employment legislation of Chinese Mainland, although his or her employment contract may not be recognised if he or she does not hold a valid work permit. A foreigner who is not directly employed by a Chinese Mainland legal entity (for example, under a secondment arrangement instead) although not subject to employment legislation of Chinese Mainland, is entitled to social security contributions by such local entity. A foreign employee must be based within the geographic area specified in his or her work permit.[90]

Once the foreign employee has commenced work, typically, his or her work permit must be inspected or renewed annually (depending on the initial term of his or her work permit). If the inspection or renewal deadline expires without application for inspection or renewal, the work permit will be immediately revoked.[91] The work permit will also be revoked if the employee's residence permit is revoked due to any violation of law of Chinese Mainland or if the employment contract is terminated.[92]

**Local Employees**

A foreign incorporated company employing Chinese Mainland nationals to engage in business in Chinese Mainland must do so through a local presence (see Section 3). Employing Chinese Mainland nationals directly will expose the foreign employer to tax residency and other compliance risks.

In contrast, FIEs may recruit and hire local employees directly. Some FIEs choose to outsource employment of Chinese Mainland nationals (via a labour dispatch arrangement) or outsource the relevant human resource functions (such as payroll and social insurance and housing fund contributions) to a local employment agency to deal more efficiently with various aspects of local employment law. As of 1 July 2013, the labour dispatch arrangement is limited to staff in temporary, ancillary or replaceable positions only and the number of dispatched staff cannot exceed 10% of a company's total workforce, although labour dispatch arrangements entered into prior to 28 December 2012 will continue in effect until expiry.

Employment contracts with local employees are subject to employment legislation of Chinese Mainland, which provides that all employers and employees must execute employment contracts defining the parties' rights and obligations, including the term, nature of the job, safety and working conditions, remuneration, discipline, and conditions for termination and breach of contract. Representative offices are subject to different rules than FIEs. All local employees hired by representative offices must be indirectly employed via a local "foreign enterprise service corporation" or any other entity designated by the government.[93] Typically, the foreign enterprise services corporation receives a management fee from the representative office for each employee as well as payment of any salary and benefits and then on-pays the employee's salary and benefits. Direct employment of nationals of Chinese Mainland by representative offices is prohibited. The restrictions on positions (i.e. labour dispatch is limited to staff in temporary, ancillary or replaceable positions only) and total numbers of dispatched staff (i.e. limiting dispatched staff to no more than 10% of the total workforce) do not apply to representative offices.

Under employment legislation of Chinese Mainland, mandatory working conditions for Chinese Mainland employees include the following:

- Minimum wage: There is a minimum wage requirement, which is determined at a municipal or provincial level.
- Employee contributions: Employers must deduct and withhold employee personal income tax, social security, housing fund and related payments from an employee's wages and are responsible for making these payments.
- Reduction of wages: Employers may reduce workers' wages only in limited circumstances provided for at law, or in the relevant employment contract and rules and policies of the employer (in certain circumstances). Employers may only delay wage payment in particular circumstances, such as during an event of force majeure or cash flow difficulties (with consent from the employees' trade union).
- Leave: An employee is entitled to statutory paid annual leave based on his or her total work life. In addition, employees may also be entitled under relevant provisions to paid leave in special circumstances such as marriage and maternity.
- Overtime: There are three working hour systems under labour laws of Chinese Mainland: (1) the standard working hour system; (2) the flexible working hour system; and (3) the comprehensive working hour system. The standard working hour system is the default working hour system applicable to employees. For an employee under the standard working hour system, the standard working week is five eight-hour days.[94] Overtime may not generally exceed one hour per day although, under special circumstances, this may be longer (but in any event no more than three hours per day and 36 hours per month). Overtime on a working day must be paid at a rate not lower than 150% of the worker's wage. Overtime on a rest day (typically weekends) must be paid at a rate not lower than 200% of the worker's wage (if time off is not given in lieu). Overtime for statutory holidays must be paid at a rate not lower than 300% of the worker's wage.[95]
- Occupational health and safety: Employers must have in place occupational health and safety programmes in the workplace, and conduct regular physical examinations for employees in hazardous occupations. Employees between the ages of 16 and 18 are also protected under special occupational health and safety measures, which include special procedures for hiring minors.

**Trade Unions**

All employees in Chinese Mainland are entitled to join a trade union. If there are 25 or more trade union members in an entity, a trade union standing committee must be established within that entity.[96] Where the number of trade union members is less than 25, the members may elect to establish a trade union standing committee, either independently or together with the trade union members employed by another entity, or elect one person as a union organiser to organise union members in carrying out activities.[97]

The powers of trade unions under the law of Chinese Mainland include the following:[98]

- to assist employees in entering into employment contracts;
- to negotiate and execute collective agreements;
- to intervene in the case of any inappropriate disciplinary actions against employees;
- to negotiate with employers on behalf of employees in the case of any violation of employees' lawful rights;
- to supervise the design and construction of employee safety and hygiene facilities;
- to participate in the mediation of labour disputes;
- to assist employers in the administration of employee benefits; and
- to collect feedback from employees and provide it to enterprises regarding non-compete regimes and their implementation. Where an enterprise enforces a non-compete regime that infringes an employee's freedom of employment and career development, the trade union may provide feedback or require the enterprise to rectify the situation.

### Pensions and Social Security

Employers and Chinese Mainland employees must participate in the social insurance system of Chinese Mainland for unemployment, old age pensions, medical treatment (including maternity care) and work-related injuries, and in the housing fund system. In respect of non-Chinese Mainland employees, domestic employers and non-Chinese Mainland employees must participate in the social insurance of Chinese Mainland comprising unemployment, old age pensions, medical treatment (including maternity care) and work-related injuries. A foreign employee employed by a foreign employer who is seconded to a branch or representative office of the employer in Chinese Mainland must also participate in social insurance, with insurance premiums being paid by the domestic entity and foreign employees.[99]

### Termination and Mass Layoff

**Termination**: An employee may be dismissed without notice only in certain circumstances, such as a serious violation of employer's rules and policies or if the employee is convicted for a criminal offence ("**Summary Dismissal**").[100]
An employee may be dismissed upon 30 days' notice or paying the employee one month's salary in lieu of notice, should the employee:[101]

- be unable to take up his or her original duties or any new duties after his or her medical treatment period for non-work-related illness or injury has run out;
- be incompetent for the position and remain incompetent even after receiving training or a transfer to another position; or
- be unable to agree with the employer, after mutual consultation, to amend the employment contract where it can no longer be performed due to major changes in the objective conditions pursuant to which the employment contract was concluded.

**Protected status:** In Chinese Mainland, except for circumstances leading to Summary Dismissal, it is illegal to dismiss an employee:[102]

- who is engaged in operations that expose him or her to occupational diseases and has not gone through a health check-up before leaving his or her position, or is suspected of having contracted an occupational disease and is undergoing diagnosis or is under medical observation;
- who is pregnant, on maternity leave or in her breast-feeding period;
- who is undergoing a medical treatment period for a disease or non-work-related injuries;
- who has been confirmed to have totally or partially lost the ability to work due to an occupational disease or work-related injuries inflicted while working for the employer;
- who has been working for the employer for a consecutive period of not less than 15 full years and is less than five years away from his or her statutory retirement age; or
- under any other circumstances provided by law or administrative regulations

**Mass layoff:** An employer may dismiss more than 20 employees (or one-tenth or more of its total workforce) after complying with the prescribed requirements and consultation and reporting procedures, if it falls into any of the following categories:[103]

- the employer is restructured pursuant to the stipulations of the Enterprise Bankruptcy Law;
- the employer encounters serious difficulties in production and operation;
- the employer undergoes a change of production or operating mode or a major technical transformation, and mass layoff are still required despite having made changes to its labour contracts; or
- there are other major changes in the objective economic circumstances under which the employment contract was concluded, rendering the employment contract unable to be performed.

In a mass layoff, an employer is required to prioritise retaining personnel who:[104]

- have entered into relatively long fixed-term labour contracts with the employer;
- have entered into labour contracts without a fixed term with the employer; or
- are the only members of their family to be employed and who provide for elderly people or minors within the family.

Where an employer hires new employees within six months after the mass layoff, it is obliged to notify the employees who were dismissed amid the mass layoff, and must give priority to such employees when re-hiring under the same conditions.

## Intellectual Property and Data Protection

Intellectual property rights are protected under PRC law via a suite of legislation, including the *Trademark Law*, the *Copyright Law* and the *Patent Law*.

Foreign investors are advised to adopt a rigorous approach towards the protection and enforcement of intellectual property rights in Chinese Mainland, and obtain a thorough understanding of local practices.

Some best practices include:

- ensuring that all registrable intellectual property rights belonging to the foreign investor are filed and maintained with the relevant authorities of Chinese Mainland, if applicable;
- incorporating the use of anti-counterfeiting technologies;
- developing and maintaining an updated corporate intellectual property protection strategy;
- participating in local industry groups relevant to the protection of intellectual property rights; and
- conducting regular training to raise employees' awareness of the importance of protecting intellectual property rights.

Not all intellectual property rights developed by an FIE's employees during employment will vest in the FIE by default, so it is important to ensure that relevant contractual arrangements are in place to address the ownership and use of intellectual property rights developed by local talent. Foreign investors should also be aware that under PRC law, employees are entitled to statutory rewards and remuneration for their patented inventions.

China has continued to develop and implement a comprehensive data protection framework, including among others, the *Cybersecurity Law*, the *Data Security Law* and the *Personal Information Protection Law*. In addition to ensuring compliance with the cross-border data transfer regime for FIE's communications with headquarters outside Chinese Mainland, FIEs must also comply with increasing sophisticated data management requirements such as transparency requirements, cybersecurity incident reporting, personal information compliance audits, data protection officers appointments, and other accountability requirements which, in the main, mirror other international markets like the EU.

FIEs in certain industry or sector such as financial services must also comply with industry specific rules. FIE is advised to closely monitor these ongoing developments to understand how the evolving regime may impact its business in China.

Regulatory sanctions for cyber and data non-compliance are increasing. Thus, comprehensive data protection reviews and data transfer mechanisms are becoming increasingly important for businesses located in Chinese Mainland. While the regulatory framework includes specific exemption scenarios that ease the compliance burden for certain cross-border data transfers, careful assessment of applicable requirements remains essential, particularly for businesses handling large volumes of personal information or various sensitive and regulated data categories.

## Real Estate

There is a fundamental distinction between "rights of ownership in land" and "rights to use land" in Chinese Mainland.

Land in Chinese Mainland is owned either by the State (state-owned land) or by rural collectives (collectively-owned land). Land in urban areas is owned by the State, while land in suburban and rural areas is generally owned by rural collectives.

The right to use land, however, can be held privately. Land use rights are divided into two main types, each with very different attributes, namely "granted land use rights" and "allocated land use rights".

An FIE may acquire land use rights in one of the following ways:

**Allocation of Land Use Rights**: Allocated land is generally only allocated to state-owned enterprises for industrial or public use, although it might be possible for land to be allocated to private enterprises in some localities. Land may be allocated to FIEs for construction in certain sectors, principally for large infrastructure projects. There are certain restrictions on the uses of allocated land. For example, a mortgage or disposal of the right to use of allocated land is subject to the approval by the land authorities.

Allocated land use rights usually do not have a term limit.

**Grant of Land Use Rights**: This involves obtaining a grant of land use rights from the State or a local land authority for a fixed term by entering into a land grant contract. Upon payment of a grant premium and completing the registration procedures, a real estate ownership certificate will be issued. The land user has to pay an annual land use charge. Granted land use rights may be mortgaged[105] and are transferable.

**Purchase from existing land users**: Granted land use rights can be purchased from existing holders of such rights. A contract for the assignment of land use rights has to be entered into to effect the assignment of rights and the transfer of land use rights registered with the local real estate registration authority. Conditions attaching to the original grant will be transferred to the assignee, except for the regulatory requirements and conditions for land investment and development set out in the original grant contract that must be complied with before the transfer. Allocated land use rights cannot generally be assigned unless converted into granted land use rights.

**Obtain from rural collectives**: Before 2019, collectively-owned land had first to be converted to state-owned land before an FIE could obtain the land use rights. However, this has been changed by the amendment of the *Land Administration Law* in 2019. Land use rights over the land owned by rural collectives can now be obtained without such conversion, subject to fulfilment of certain requirements, including having the transaction approved by more than two-thirds of the members in the villagers' meeting of the relevant rural collective or more than two-thirds of the villager representatives.

**Lease**: An FIE can also enter into a lease with a holder of granted land use rights, under which the FIE pays rent to the land use rights holder. Allocated land cannot be leased without prior approval of the relevant land authorities.

**Contribution by the Chinese Party to an FIE**: Granted land use rights can be contributed by the Chinese party to a Sino-foreign joint venture. However, it is unclear whether allocated land use rights can, in practice, be contributed to an FIE without first being converted into granted land use rights. Practices may vary from one locality to another.

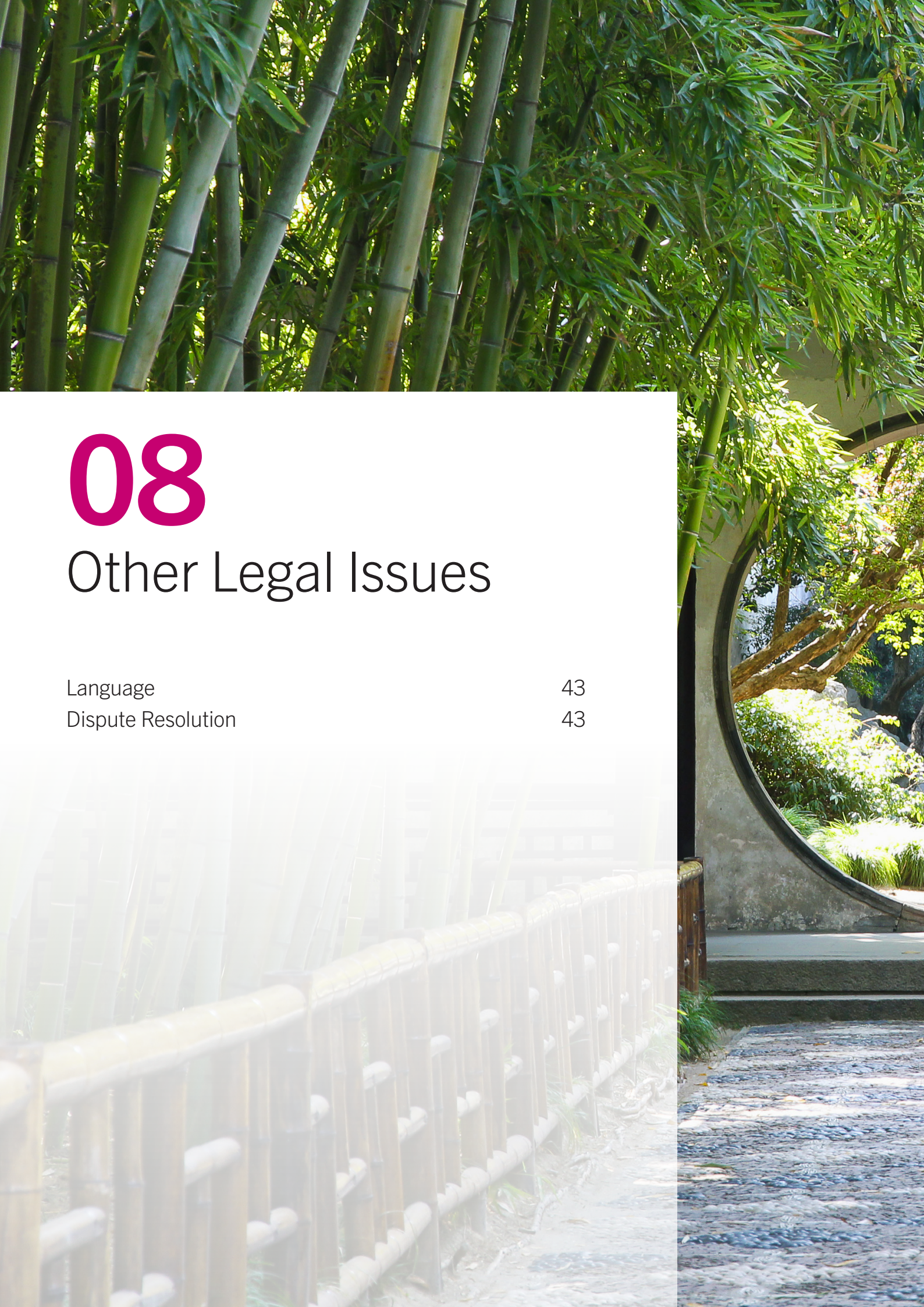
## Taxes

FIEs must pay income tax on income obtained from production, business operations and other sources. Foreign enterprises without a separate legal presence in Chinese Mainland, such as a representative office, have to pay income tax on income from production, business operations and other sources derived from inside Chinese Mainland (a cost-plus method is often used to determine the chargeable income of a representative office). The enterprise income tax (the "**EIT**") rate which is applicable in the majority of cases is 25%, while the foreign investments in the western regions and Hainan Province of China in areas covered by the Catalogue are entitled to a reduced EIT rate of 15%.

In addition to EIT, foreign investors should be aware that value-added tax is levied on a wide range of industries in Chinese Mainland, including insurance, construction, transportation, modern services, postal services, telecommunications, real estate, financial services and consumer services. Asset sales are subject to VAT while share sales are not. VAT is levied on the transfer price of the inventory or equipment, generally at the rate of 13%. VAT is also levied on the transfer price of intangible assets such as copyrights, trademarks, patents, knowhow and goodwill, land use rights and building ownership rights.

Besides the taxes mentioned above, there are a number of other taxes that may be imposed on an FIE in relation to specific transactions. Different scenarios may lead to different tax implications and specialist advice should always be sought on the tax implications of a transaction.





# 08
# Other Legal Issues


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## Language

- All contracts and agreements to be submitted to the relevant authorities for approval or review are generally required in Chinese. Usually for foreign investment transactions, documents are drafted in both Chinese and English. However, the authorities are normally reluctant to approve contracts where the English language version prevails. Accordingly, it is normal to provide that, at the very least, the English and Chinese language versions are of equal status.
- Running documents in both English and Chinese will add to the cost of any transaction and may affect timing.

## Dispute Resolution

There are three principal ways to resolve a commercial dispute:

- negotiation;
- arbitration; and
- litigation.

Whilst it is impossible to always avoid disputes, good planning is essential when considering investing in Chinese Mainland. Contract terms should be clear, with specified timelines and adequate exit strategies where appropriate. Parties should ensure that they agree how to resolve a dispute at the earliest possible stage by including specific dispute resolution clauses. Failure to do so could lead to unnecessary time and costs being exhausted in selecting a suitable process before the dispute itself is determined.

### Negotiation

Negotiation is the simplest and usually the best method of dispute resolution. As with any jurisdiction, negotiation is the least expensive process and can help maintain the working relationship of the parties involved.

The perceived uncertainty in the legal system of Chinese Mainland has meant that negotiation has traditionally been a popular choice for foreign investors. Mediation is also popular as parties are often encouraged to pursue this route before formal adjudication. A signed mediation agreement approved by a court or arbitral tribunal in Chinese Mainland is enforceable as it were a judgment of a court[106] or an arbitration award[107] and thus additional adjudicative proceedings are not necessary.

### Arbitration

Arbitration is widely employed by foreign investors due to increased certainty surrounding the process and the private nature of the hearings. Arbitration is only available if the parties include a clear and unambiguous arbitration clause or have entered into a separate arbitration agreement after the dispute arose.[108] The parties will usually need to decide between referring the dispute to a foreign arbitration commission or a Chinese arbitration institution.

Foreign investors often prefer to commence arbitration outside Chinese Mainland. As Chinese Mainland is a party to the New York Convention,[109] there is a legal basis for enforcing foreign arbitration awards.[110] Arbitral awards rendered in Hong Kong SAR, Macau SAR and Taiwan Region can also be recognised and enforced by the courts in Chinese Mainland under reciprocal arrangements and relevant regulations.[111]

The arbitral award rendered by a Chinese arbitration institution within China is final and enforceable by the courts in Chinese Mainland,[112] with only limited exceptions.[113] The China International Economic and Trade Arbitration Commission was established primarily with the intention of arbitrating foreign-related disputes, although its jurisdiction has now grown to include commercial disputes generally.[114] Other Chinese arbitration institutions, including Beijing International Arbitration Court, Shanghai International Arbitration Center, and Shenzhen Court of International Arbitration, are also active in international and foreign-related arbitrations in recent years.

**Litigation**

Provided that the parties do not submit to the exclusive jurisdiction of a particular court, litigation does not need to be limited to one court or one jurisdiction,[115] so the parties have a degree of flexibility. However, some domestic parties may insist on the exclusive jurisdiction of the courts in Chinese Mainland. If this is not the case, the parties will need to decide whether to pursue litigation through the courts in Chinese Mainland or foreign courts.

The quality and reliability of courts in Chinese Mainland differs from location to location and there are concerns that some courts may not be as an effective dispute resolution mechanism for foreign commercial disputes as arbitration (although this is less of a concern in Beijing and Shanghai). Moreover, complex commercial disputes have not typically been pursued through the courts in Chinese Mainland, which explains or evidences a reluctance on the part of foreign investors to pursue litigation through the Chinese courts. Nevertheless, Chinese Mainland remains committed to legal reform and significant progress has been made.

The advantage of referring a dispute to a court in Chinese Mainland in the first instance is that as compared with a foreign judgment, a favourable court judgment in Chinese Mainland will be easier to enforce directly against the defendant company and its assets. The legal system of Chinese Mainland is also relatively straightforward and so can result in (by international standards at least) quicker litigation and lower costs. These advantages are balanced against the concerns referred to above.

Obtaining a judgment from a foreign court in an established jurisdiction can overcome the shortcomings, perceived or real, of the courts in Chinese Mainland. However, obtaining a foreign judgment is only a feasible option where the defendant has assets outside of Chinese Mainland and it is not necessary to enforce the judgment against the defendant company in Chinese Mainland. Enforcing a foreign judgment in a Chinese Mainland court can be a time-consuming process.

Practically speaking it is only possible to enforce a foreign judgment where:[116]

- a treaty exists concerning the enforcement of judgments between Chinese Mainland and the relevant foreign jurisdiction (for example, courts in Chinese Mainland would recognise and enforce an enforceable final judgment requiring payment of money in a civil and commercial case rendered by Hong Kong SAR courts on the basis of the Mutual Arrangement on Reciprocal Recognition and Enforcement of Judgments between Chinese Mainland and Hong Kong SAR.; or
- it can be established that a judgment of a court in Chinese Mainland would be enforced in that foreign jurisdiction. The requirement of reciprocity is particularly difficult to satisfy and, because of this, few foreign judgments appear to have been enforced in Chinese Mainland, though recent legislative developments are encouraging.



# Glossary

**(Refer to the text of this guide for other defined terms not included here)**

| English abbreviation | English name | Chinese name |
|---|---|---|
| AML | Anti-Monopoly Law of the People's Republic of China | 中华人民共和国反垄断法 |
| CEPA | Closer Economic Partnership Arrangement | 内地与香港关于建立更紧密经贸关系的安排/内地与澳门关于建立更紧密经贸关系的安排 |
| CJV | Sino-foreign Cooperative Joint Venture | 中外合作经营企业 |
| CSRC | China Securities Regulatory Commission | 中国证券监督管理委员会 |
| ECFA | Economic Cooperation Framework Agreement | 海峡两岸经济合作框架协 |
| EIT | Enterprise Income Tax | 企业所得税 |
| EJV | Sino-foreign Equity Joint Venture | 中外合资经营企业 |
| FIE | Foreign-invested Enterprise | 外商投资企业 |
| FIP | Foreign-invested Partnership | 外商投资合伙企业 |
| Foreign Investment Law | Foreign Investment Law of the People's Republic of China | 中华人民共和国外商投资法 |
| FTZ | Pilot Free Trade Zone | 自由贸易试验区 |
| FTZ Negative List | Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones (2020 Version) | 自由贸易试验区外商投资准入特别管理措施(负面清单)(2020年版) |
| Holding Company | Foreign-invested Investment Company | 外商投资投资性公司 |
| Hong Kong SAR | Hong Kong Special Administrative Region of the People's Republic of China | 中华人民共和国香港特别行政区 |

| English abbreviation | English name | Chinese name |
|---|---|---|
| JSC | Joint Stock Company or Company Limited by Shares | 股份有限公司 |
| LLC | Limited Liability Company | 有限责任公司 |
| Macau SAR | Macau Special Administrative Region of the People's Republic of China | 中华人民共和国澳门特别行政区 |
| MOF | Ministry of Finance | 中华人民共和国财政部 |
| MOFCOM | Ministry of Commerce | 中华人民共和国商务部 |
| NDRC | National Development and Reform Commission | 中华人民共和国发展和改革委员会 |
| Negative List | Special Administrative Measures (Negative List) for Foreign Investment Access (2024 Version) | 外商投资准入特别管理措施（负面清单）（2024年版） |
| NFRA | National Financial Regulatory Administration | 国家金融监督管理总局 |
| PBOC | People's Bank of China | 中国人民银行 |
| PRC | People's Republic of China | 中华人民共和国 |
| RHQ | Regional Headquarters | 跨国公司地区总部 |
| RMB | Renminbi | 人民币 |
| SAFE | State Administration of Foreign Exchange | 中华人民共和国外汇管理局 |
| SAMR | State Administration for Market Regulation | 国家市场监督管理总局 |
| SASAC | State-owned Assets Supervision and Administration Commission of the State Council | 中华人民共和国国务院国有资产监督管理委员会 |
| WTO | World Trade Organisation | 世界贸易组织 |


正陽橋

# Appendix one
# Foreign Investment by Industry

The table[117] below sets out some of the industries in which foreign investment is encouraged by the Catalogue, and all of the industries in which foreign investment is restricted or prohibited by the Negative List. Potential investors should always check the latest Catalogue and Negative List. Industries that do not fall within any of the above three categories are generally deemed permitted industries.

| Industry Classification | Example Types of Industry |
|---|---|
| **Encouraged**  | There are 14 industries within the nationwide encouraged category (as outlined below), each covering a wide range of areas:<br>There are 14 industries within the nationwide encouraged category (as outlined below), each covering a wide range of areas:<br>1. Agriculture, forestry, husbandry and fishery;<br>2. Mining;<br>3. Manufacturing;<br>4. Power, heating, gas and water production and supply;<br>5. Transportation, storage and postal industries;<br>6. Wholesale and retail;<br>7. Accommodation and catering services;<br>8. Information transfer, software and technical services;<br>9. Leasing and commercial services;<br>10. Scientific research, development and products, and technical services;<br>11. Water resources, environmental and public facilities management;<br>12. Education;<br>13. Health and social service; and<br>14. Culture, tourism, sports and entertainment. |

| Industry Classification | Example Types of Industry |
|---|---|
| **Restricted**  | For foreign investment in the following industries, the Chinese joint venture partner(s) is/(are) required to have a controlling stake (i.e. no less than 51%):<br>1. New variety breeding and seed production of maize projects.<br>2. Construction and operation of nuclear power plants.<br>3. Domestic water transportation.<br>4. Public aviation enterprises with the shareholding ratio of a foreign investor and its associates not exceeding 25%.<br>5. The general aviation enterprises other than those serving the agricultural, forestry and fishery industries.<br>6. Construction and operation of civil airports where the Chinese joint venture partner(s) is/are required to have a comparative controlling stake (i.e. the collective shareholding of all the Chinese joint venture partners in the FIE being more than shareholding held by each foreign joint venture partner).<br>7. Basic telecommunications businesses opened-up pursuant to China's WTO commitments.<br>8. Radio and television ratings survey. |
| | The legal representative of an FIE in the following industries is required to be a Chinese national:<br>1. Public aviation enterprises.<br>2. General aviation enterprises. |
| | FIEs in the following industries are required to take the form of a Sino-foreign joint venture.<br>1. General aviation enterprises serving for the agricultural, forestry and fishery industries.<br>2. Market research enterprises.<br>3. Medical institutions.<br>4. Pre-school education, normal high schools and higher education institutions, with such schools or institutions being led by the Chinese joint venture partner(s), i.e. the principal or the key person-in-charge of administration being a Chinese national, and the Chinese nationals comprising not less than half of the members of the school council, board of directors or joint administrative committee. |
| | For foreign investment in the following industries, the foreign shareholding ratio is not allowed to exceed 50%:<br>1. Value-added telecommunication services opened up pursuant to China's WTO commitments (except ecommerce, domestic multi-party communication, store-and-forward and call centre). |
| | Other restrictions:<br>1. The Chinese joint venture partner(s) is/(are) required to have no less than 34% shareholding in a new variety breeding and seed production of wheat business. |

| Industry Classification | Example Types of Industry |
|---|---|
| **Prohibited**  | Foreign investment in the following industries is prohibited:<br>1. Research and development, cultivation and plantation of Chinese rare and unique precious fine varieties, as well as manufacturing of the relevant propagative materials (including excellent genes of planting, husbandry and aquaculture).<br>2. Breeding genetically modified varieties of crop seeds, livestock and poultry breeds and aquatic breeds, as well as genetically modified seed (seedling) production.<br>3. Aquatic product fishing in China and within the Chinese territorial waters.<br>4. Exploration, mining and beneficiation of rare earth, radioactive materials and tungsten.<br>5. Wholesale and retail of tobacco, cigarettes, re-dried leaf tobacco and other tobacco products.<br>6. Construction and operation of aerodrome control tower.<br>7. Postal service enterprises and domestic express mail business.<br>8. Internet news service, Internet publishing services, Internet audio-visual program service and cyber culture operation (except for music) and Internet information dissemination service (except for contents already opened up pursuant to China's WTO commitments).<br>9. Chinese law legal service (except for provision of information which has an impact on the Chinese legal environment). No foreigner can be appointed as a partner of a domestic law firm.<br>10. Social survey service.<br>11. Development and application of human stem cells, genetic diagnosis and treatment technology.<br>12. Humanities and social sciences research institutes.<br>13. Geodetic surveying, ocean mapping, mapping aerial photography, ground motion measurement, administrative boundary mapping; compilation of (i) maps of topographic nature, (ii) maps showing the administrative regions of the world, China, and at the Chinese provincial level or below; (iii) maps serving the purposes of nationwide and local teaching; and (iv) maps of 3-D nature and electronic navigation; regional geological mapping, survey of geology or earth related studies (mining right holders are not subject to this restriction when they are conducting activities within the scope of the mining right).<br>14. Compulsory education institutions and religious education institutions.<br>15. Establishment of news organisations (including but not limited to news agencies).<br>16. Operation of editing, publication and production of books, newspapers, periodicals, audio-visual products and electronic publications.<br>17. Establishment and operation of all levels of radio stations, television stations, radio and television channels and frequencies, and radio and television transmission coverage networks (including transmitters and relay stations, radio and television satellites, satellite up-stations, satellite transmission stations, microwave stations, monitoring stations, cable radio and television transmission coverage networks etc.), along with engagement in radio and television video on demand services and satellite television ground receiving facilities installation services.<br>18. Radio and television programme production and operation (including introduction of business) enterprises.<br>19. Film production companies, distribution companies and cinema companies as well as film introduction businesses.<br>20. Auction companies, cultural relics stores and State-owned cultural relics museums engaging in auction of cultural relics.<br>21. Art performing groups. |



# Appendix two
# FTZ Negative List

There are currently 11 classes of industries included in the FTZ Negative List (which will be amended from time to time), in which foreign investments are still categorised as restricted (hence subject to specific restrictions) or prohibited, including:

| Industry Classification | Example Investment Areas |
|---|---|
| **Agriculture, forestry, husbandry and fishery** | > For new variety breeding and seed production of wheat and maize industry, the Chinese joint venture partner's shareholding is required to be more than 34%.<br>> Foreign investment in the following industries is prohibited:<br>i. research and development, cultivation and plantation of Chinese rare and unique precious fine varieties, as well as manufacturing of the relevant propagative materials (including excellent genes of planting, husbandry and aquaculture); and<br>ii. breeding genetically modified varieties of crop seeds, livestock and poultry breeds and aquatic breeds, as well as genetically modified seed (seedling) production. |
| **Mining** | > Investment in exploration, mining and beneficiation of rare earth, radioactive materials and tungsten is prohibited. No foreign investor is allowed to enter rare earth mines or obtain mine geology information, ore samples and production technology without relevant permission. |
| **Electricity, heating, gas and water production and supply** | > For foreign investment in construction and operation of nuclear power plants, the Chinese joint venture partner(s) is/(are) required to have a controlling stake. |
| **Wholesale and retail** | > Foreign investment in wholesale and retail of tobacco, cigarettes, re-dried leaf tobacco and other tobacco products is prohibited. |
| **Transport, warehouse and postal service** | > For foreign investment in domestic water transport companies, the Chinese joint venture partner(s) is/(are) required to have a controlling stake.<br>> Foreign investors are prohibited from operating, or operating through disguised lease of Chinese vessels or berths, etc., China domestic waterway transport business and auxiliary businesses thereof; water transport business operators are prohibited from using foreign vessel(s) to operate domestic water transport business; however, upon approval by the Chinese Government, where there is no Chinese vessel in China which can satisfy the transportation requirements, and the port or the waters where the vessel is docked is opened to foreign vessels, the water transport business operator may use foreign vessel(s) temporarily with the term or voyage stipulated by the Chinese Government to undertake marine transport and towing between Chinese ports. |

| Industry Classification | Example Investment Areas |
|---|---|
| **Transport, warehouse and postal service** (continued) | > For foreign investment in public aviation enterprises, the Chinese joint venture partner(s) is/(are) required to have a controlling stake, and the investment ratio of a foreign investor and its associates shall not exceed 25%. The legal representative is required to be a Chinese national. Only public aviation enterprises designated by the Chinese Government are allowed to operate domestic aviation business and provide regular and ad hoc international aviation services in the capacity of the designated carrier.<br>> The legal representative of a general aviation enterprise is required to be a Chinese citizen/national; the general aviation enterprises serving the agricultural, forestry and fishery industries are required to take the form of Sino-foreign joint ventures and for other general aviation enterprises, the Chinese joint venture partner(s) is/(are) required to have a controlling stake.<br>> For foreign investment in construction and operation of civil airports, the PRC joint venture partner is required to have a relative controlling stake (i.e. the collective shareholding of all the Chinese joint venture partners in the FIE being more than the shareholding held by any of the foreign joint venture partners). On the other hand, foreign investment in construction and operation of aerodrome control tower is prohibited.<br>> Foreign investment in postal services enterprises (and operation of postal services) and domestic mail express delivery business is prohibited. |
| **Information transmission, software and information technology (IT) service** | > For telecommunications services opened up pursuant to China's WTO commitments, the foreign investment ratio for value-add telecommunications services (except for ecommerce, domestic multi-party communication, store-and-forward and call centres) is not allowed to exceed 50%; for basic telecommunications businesses, the Chinese joint venture partner(s) is/(are) is required to have a controlling stake (and the operator shall be a legally established Chinese company specialising in basic telecommunications services). The pilot scheme policies of Shanghai Pilot Free Trade Zone's original territory (28.8 square kilometres) shall be extended to all pilot FTZs.<br>> Foreign investment in Internet news services, Internet publishing services, Internet audio-visual program services, cyber culture operation (except for music) and Internet information dissemination services (except for contents opened up pursuant to China's WTO commitments) is prohibited. |
| **Leasing and business services** | > Foreign investment in Chinese legal services is prohibited (except for provision of information which has an impact on the Chinese legal environment), and a foreign investor is prohibited from being appointed as a partner of a domestic law firm. Foreign law firms may only enter China in the form of representative office, and is not allowed to employ Chinese practising lawyers, and the supporting staff employed by the representative office are not allowed to provide legal services for their clients; establishment of a representative office in China or assignment of representative(s) based in China is subject to permission by the Chinese judicial authorities.<br>> For foreign investment in radio and television ratings surveys, the PRC joint venture partner(s) is/(are) required to have a controlling stake. For foreign investment in social survey companies, the PRC joint venture partner is required to have a stake of no less than 67% and the legal representative is required to be a Chinese national. |

| Industry Classification | Example Investment Areas |
|---|---|
| **Scientific research and technology services** | > Foreign investment in the following industries is prohibited:<br>i. development and application of human stem cells, genetic diagnosis and treatment technology;<br>ii. humanities and social sciences research institutes; and<br>iii. geodetic surveying, ocean mapping, mapping aerial photography, ground motion measurement, administrative boundary mapping; compilation of: (a) maps of topographic nature; (b) maps showing the administration of the world, China, the Chinese provincial level or below; and (c) maps serving the purposes of nationwide and local teaching; and (d) maps of 3-D nature and electronic navigation; and<br>iv. regional geological mapping, survey of geology related studies (mining right holders are not subject to this restriction when they are conducting activities within the scope of the mining rights). |
| **Education** | > Pre-school, normal high school and higher education institutions are required to be led by the Chinese joint venture partner(s), i.e. the principal or the key person-in-charge of administration is required to be a Chinese national (and reside in China); with Chinese nationals comprising not less than half of the school council, board of directors or joint administrative committee). Foreign education institutions, other organisations or individuals are not allowed to establish schools or any other educational institutions whose enrolment targets are mainly Chinese nationals (excluding non-academic vocational skills training and academic vocational education institutions) without cooperation with Chinese educational institutions.<br>> Foreign investment in compulsory education institutions and religious education institutions is prohibited. |
| **Health and social activities** | > Foreign investment in medical institutions is required to take the form of a Sino-foreign joint venture. |
| **Culture, sports and entertainment** | > Foreign investment in the following industries and enterprises is prohibited:<br>i. News organisations (including but not limited to news agencies);<br>ii. operation of editing, publication and production of books, newspapers, periodicals, audio-visual products and electronic publications;<br>iii. establishment and operation of all levels of radio stations, television stations, radio and television channels and frequencies, and radio and television transmission coverage networks;<br>iv. radio and television video on demand services and satellite television ground receiving facilities installation services;<br>v. radio and television programme production and operation (including introduction of business) enterprises;<br>vi. film production companies, distribution companies and cinema companies as well as film introduction business; and<br>vii. auction companies, cultural relics stores and State-owned cultural relics museums which engage in auction of cultural relics.<br>> For artistic performance groups, the PRC joint venture partner(s) is/(are) required to have a controlling stake. |

# Footnotes

1. *The Foreign Investment Law of the People's Republic of China* (《中华人民共和国外商投资法》).
2. *Catalogue of Encouraged Industries for Foreign Investment (2025 version)* (《鼓励外商投资产业目录(2025年版)》).
3. *Special Access Management Measures on Foreign Investment (2024 version)* (《外商投资准入特别管理措施(负面清单)(2024年版)》).
4. *Special Access Management Measures on Foreign Investment in Free Trade Zones (2021 version)* (《自由贸易试验区外商投资准入特别管理措施（负面清单)(2021年版)》).
5. *Market Access Negative List (2025 version)* (《市场准入负面清单（2025年版）》).
6. Articles 4 and 28 of the *Foreign Investment Law of the People's Republic of China* (《中华人民共和国外商投资法》).
7. Ibid. Articles 28 and 30.
8. *Notice of the State Administration of Market Regulation on Implementation of the Foreign Investment Law for Proper Handling of Foreign Investment Enterprise Registration* (《市场监管总局关于贯彻落实《外商投资法》做好外商投资企业登记注册工作的通知》).
9. The principal rules for the foreign exchange control system are detailed in the *Regulations of the People's Republic of China on the Administration of Foreign Exchange* (《外汇管理条例》) which came into effect on 1 April 1996 and were subsequently amended on 14 January 1997 and 1 August 2008.
10. Article 31 of the *Foreign Investment Law of the People's Republic of China* (《中华人民共和国外商投资法》).
11. Several Measures to Encourage Foreign Investors to Set Up Research and Development Centres <关于进一步鼓励外商投资设立研发中心若干措施>, 11 January 2023.
12. Article 47 of the *Company Law* (《公司法》).
13. Provisions on Implementing the Registered Capital Registration Administration System under the Company Law of the People's Republic of China (国务院关于实施〈中华人民共和国公司法〉注册资本登记管理制度的规定).
14. Articles 49, 50, 51, 52 and 252 of the Company Law (《公司法》).
15. Ibid. Article 228.
16. Also referred to as an "investment-type company" or "a company with an investment nature".
17. Article 3 of the *Provisions on the Establishment of Investment Companies by Foreign Investors* (2015 Revision) (《关于外商投资举办投资性公司的规定》(2015修订)).
18. Ibid. Article 28.
19. Ibid. Articles 10 and 15.
20. Ibid. Article 22.
21. Ibid. Article 10.
22. Section 2 of the *Notice of the State Administration of Foreign Exchange on Further Promoting the Facilitation of Cross-border Trade and Investment* (《国家外汇管理局关于进一步促进跨境贸易投资便利化的通知》).
23. *Catalogue of Investment Projects Requiring Approval by the Government* (2016 version) (《政府核准的投资项目目录(2016年本)》).
24. *Circular of the NDRC on Implementation of the Catalogue of Investment Projects Subject to Governmental Approval* (Version 2016) (《国家发展改革委关于做好贯彻落实《政府核准的投资项目目录(2016年本)》有关外资工作的通知》)
25. Article 16 of the *Administrative Regulations of the People's Republic of China on Registration of Market Entities* (《中华人民共和国市场主体登记管理条例》).
26. Article 7 of the *Provisions on the Establishment of Investment Type Companies by Foreign Investors* (2015 Revision) (《关于外商投资举办投资性公司的规定》(2015修订)).
27. Article 48 of the *Company Law* (《公司法》), Articles 7 and 8 of the Rules of the Supreme People's Court on Several Questions relating to the Application of the Company Law (2020 Revision) (《最高人民法院关于适用《中华人民共和国 公司法》若干问题的规定(三)(2020修正)》).
28. *Circular of the People's Bank of China on Matters Concerning Macro-prudential Management on All-round Cross-border Financing* (《中国人民银行关于全口径跨境融资宏观审慎管理有关事宜的通知》).
29. A unified method of calculating the foreign debt quota will be published by PBOC and SAFE separately, according to Article 13 of Circular 9. However, as of the date of this guide, no announcement has been made in this regard.
30. Article 17 of the *Foreign Investment Law of the People's Republic of China* (《中华人民共和国外商投资法》).
31. Article 2 of the *Procedures for the Administration of Strategic Investment in Listed Companies by Foreign Investors* (《外国投资者对上市公司战略投资管理办法》).
32. Ibid. Articles 14 and 15.
33. Ibid. Article 10.
34. Ibid. Article 8.
35. Ibid. Article 5.
36. Ibid. Article 21.
37. Following from the joint announcement by the Hong Kong Securities and Futures Commission and the China Securities Regulatory Commission on 10 April 2014 and the subsequent signing of a four-party agreement on 4 September 2014 by the Stock Exchange of Hong Kong Limited, Hong Kong Securities Clearing Company Limited, wholly-owned subsidiaries of Hong Kong Exchanges and Clearing Limited, the Shanghai Stock Exchange and China Securities Depository and Clearing Corporation Limited.
38. *Several Provisions on the Program of the Mainland-Hong Kong Stock Connect* (《内地与香港股票市场交易互联互通机制若干规定》).
39. Article 3 of the *Announcement of Matters in relation to Reporting of Foreign Investment Information* (《关于外商投资信息报告有关事项的公告》)
40. Article 84 of the *Company Law* (《公司法》).
41. Article 22 of the *Interim Provisions for the Administration of Enterprise State-owned Asset Valuation* (《企业国有资产评估管理暂行办法》).
42. Ibid. Article 4.
43. Articles 6, 12, 13, 23 and 32 of the *Measures for the Supervision and Administration of State-owned Equities of Listed Companies* (《上市公司国有股权监督管理办法》).
44. Article 22 of the *Regulatory Measures on Transactions of State-owned Assets of Enterprises* (《企业国有资产交易监督管理办法》), effective from 24 June 2016.
45. MOFCOM's response at the link: 中华人民共和国商务部.
46. Article 16 of *Regulations on Foreign Investors Merging with or Acquiring Domestic Enterprises* (《 关于外国投资者并购境内企业的规定》).
47. Article 46 of the *First Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Trial of Labour Disputes* (《最高人民法院关于审理劳动争议案件适用法律问题的解释(一)》).
48. Article 39 of the *Trade Union Law* (《工会法》).
49. Article 30 of the *Anti-Monopoly Law* (《中华人民共和国反垄断法》).
50. Ibid. Article 31.
51. Ibid. Article 3.
52. Ibid. Article 34.
53. China Antitrust Law Enforcement Annual Report 2021 (《中国反垄断执法年度报告(2024)》): P020250607293554751833.pdf.
54. Article 6 of the *Sino-foreign Equity Joint Venture Law* (《中华人民共和国中外合资经营企业法》) and Article 12 of the *Sino-foreign Contractual Joint Venture Law* (《中华人民共和国中外合作经营企业法》).
55. Articles 68 and 120 of the *Company Law* (《公司法》).

56. Ibid. Articles 75 and 128.
57. Ibid. Articles 68 and 120.
58. Ibid. Articles 70 and 120.
59. Article 51 of the predecessor *Company Law*.
60. Articles 76 and 130 of the *Company Law* (《公司法》).
61. Ibid. Articles 83 and 133.
62. Ibid. Articles 69 and 121.
63. Ibid. Article 83.
64. Ibid. Articles 76 and 130.
65. Ibid. Articles 78 and 131.
66. Ibid. Articles 74 and 126.
67. Ibid.
68. Ibid. Article 10.
69. Ibid. Article 180.
70. Ibid. Article 181.
71. Ibid. Articles 180 and 192.
72. Ibid. Article 188.
73. Ibid. Article 125.
74. Ibid. Article 189.
75. Article 29 of the *Governance Guidelines for Listed Companies* (《上市公司治理准则》).
76. Articles 57 and 110 of the *Company Law* (《公司法》).
77. Ibid. Articles 25, 26 and 27.
78. Ibid. Articles 89 and 161.
79. Ibid. Article 212.
80. Ibid. Article 189.
81. Ibid. Article 231.
82. Ibid. Article 52(3).
83. Ibid. Article 52(4).
84. Article 5 of *Regulations on Administration of Foreign Exchange of the People's Republic of China* (《中华人民共和国外汇管理条例》).
85. Article 5 (1) of the *Notice on Further Improving and Adjusting Foreign Exchange Control Policies under Capital Accounts* (《关于进一步改进和调整资本项目外汇管理政策的通知》).
86. Article 8 of the *Administrative Regulations on Employment of Foreigners in the People's Republic of China* (2017 Revision) (《外国人在中国就业管理规定》(2017修订)).
87. Ibid. Article 6.
88. Ibid. Article 7.
89. Appendix 1 of the *Service Guidelines for Work Permit of Foreigners Working in Mainland China (Interim)* (《外国人来华工作许可服务指南（暂行）》).
90. Article 23 of the *Administrative Regulations on Employment of Foreigners in the People's Republic of China* (2017 Revision) (《外国人在中国就业管理规定》 (2017修订))
91. Ibid. Article 26.
92. Ibid. Article 24.
93. Article 11 of the *Provisional Regulations on Administration of Representative Office of Foreign Enterprises* (《关于管理外国企业常驻代表机构的暂行规定》).
94. Article 3 of the *Regulations on Working Time of Employees* (《关于职工工作时间的规定》).
95. Article 44 of the *Labour Law* (《中华人民共和国劳动法》).
96. Article 11 of the *Trade Union Law of the People's Republic of China* (《中华人民共和国工会法》).
97. Ibid.
98. Articles 20-29 of the *Trade Union Law of the People's Republic of China* (《中华人民共和国工会法》) and Article 20 of the *Compliance Guidelines on the Implementation of Non-Compete Clauses by Enterprises* (《企业实施竞业禁止合规指引》).
99. Article 3 of the *Interim Measures for the Participation in Social Insurance of Foreigners Employed in Mainland China* (《在中国境内就业的外国人参加社会保险暂行办法》).
100. Article 25 of the *Labour Law* (《中华人民共和国劳动法》).
101. Article 40 of the *Labour Contract Law* (《中华人民共和国劳动合同法》).
102. Ibid. Article 42.
103. Ibid. Article 41.
104. Ibid.
105. Article 48 of the *Urban Land Administrative Law of the People's Republic of China* (《中华人民共和国城市房地产管理法》).
106. Article 100 of the *Civil Procedure Law of the People's Republic of China* (《中华人民共和国民事诉讼法》).
107. Article 64 of the *Arbitration Law of the People's Republic of China* 《中华人民共和国仲裁法》).
108. Article 4 of the *Arbitration Law of the People's Republic of China* (《中华人民共和国仲裁法》).
109. New York Convention refers to the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958*.
110. Article 304 of the *Civil Procedure Law of the People's Republic of China* (《中华人民共和国民事诉讼法》).
111. The *Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the Hong Kong Special Administrative Region* (《关于内地与香港特别行政区相互执行仲裁裁决的安排》), the Arrangement Concerning Mutual Recognition and Enforcement of Arbitral Awards between *the Mainland and the Macao Special Administrative Region* (《关于内地与澳门特别行政区相互认可和执行仲裁裁决的安排》), and the *Provisions of the Supreme People's Court on Recognition and Enforcement of the Arbitral Awards of the Taiwan Region* (《最高人民法院关于认可和执行台湾地区仲裁裁决的规定》).
112. Article 290 of the *Civil Procedure Law of the People's Republic of China* (《中华人民共和国民事诉讼法》).
113. Ibid. Article 291.
114. Article 3 of *China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules (2024)* (《中国国际经济贸易仲裁委员会仲裁规则 (2024)》).
115. Article 35 of the *Civil Procedure Law of the People's Republic of China* (《中华人民共和国民事诉讼法》).
116. Ibid. Article 298.
117. This table does not take into account the special arrangements under CEPA or ECFA, the FTZ Negative List, or any other bilateral or multilateral arrangements.





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