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Doing business in China

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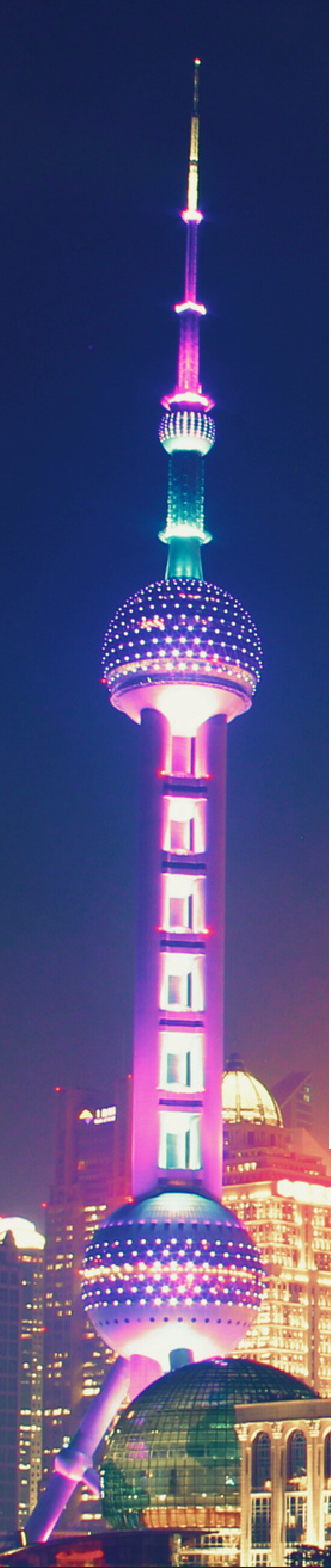

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About China

China officially the People's Republic of China ("PRC"), is a country in East Asia. It is the world's most populous country, with a population exceeding 1.4 billion, slightly ahead of India. China, a $17.73 trillion economy growing at 7 percent annually, is a never-before-seen force reshaping our global economy. Over the past 40 years, the Chinese government has at times opened the door wide for foreign companies to participate in its domestic economic growth. Doing business in China can be both challenging and rewarding, depending on the goals and approach of the company.

Understanding Cultural Diversity: Navigating the business landscape across various regions in China is vital to operate in distinct jurisdictions. Despite having the same national tax regulations, these rules can be interpreted and implemented in markedly different ways by local authorities in Beijing and Shanghai, for instance.

Learning from Local Competition: China's market environment stands apart from many other global economies due to its distinct purchasing patterns, making the initial foray potentially challenging. The emerging generation of Chinese consumers is discerning, highly educated, and more affluent. Recognizing this, many leading global companies have seized the opportunity presented by this demographic shift.

Digital Strategy: Establishing a robust digital presence is of paramount importance for businesses seeking to engage with the Chinese market. Chinese luxury consumers, for example, tend to make online purchases.

The need for a local presence:

In light of the most recent regulatory developments, a trusted local presence has become crucial for coping with local requirements. From initial tax filing to ad hoc applications with local customs officers or overseas bank transfers, it is becoming increasingly necessary for "FIEs" to identify a trusted professional that will act in good faith as their chosen local representative.

Favourable population:

One of the attractive aspects of conducting business in China stems from the rapidly growing population of middle-class consumers. The size of the Chinese middle-class, which currently stands at 300 million people, surpasses that of any other Asian region. This will result in a greater pool of consumers with increased purchasing power and a wealth of experience.

Technological advancement:

China is embarking on a fresh era of retail, characterized by increased digitalization and a stronger emphasis on catering to consumer preferences, all while striving to enhance the shopping experience. In the last decade, China has risen to become the globe's foremost e-commerce.

Business environment in China

Foreign Investment:

With the explicit aim of attracting know-how, high-technology, advanced services, and outstanding talent, the Chinese government is actively widening the potential for foreign inward investment. For example, the Foreign Investment Law. gives more flexibility to Foreign Invested Enterprises ("FIEs") setting up a company.

Exclusion of Trade barriers:

The Chinese government is increasing the number of Free Trade Zones ("FTZs)") and extending the boundaries of existing Economic Development Zones ("EDZs"). "FTZs" and "EDZs" are two of China's major approaches to being proactive in removing tariff.

Legal System

The new Foreign Investment Law regime It has been over 40 years since China promulgated its first law on "FDI", the Sino-foreign Equity Joint Venture Enterprise Law, from which China has gradually established a complicated but comprehensive legal framework for foreign investment.

Maintanance of records

National Treatment

National treatment “FIL” replaces the case-by-case investment approval system with a system consisting of national treatment in conjunction with a ‘negative list’ for foreign investment. Under this system, except as required under the negative list, the competent “PRC” authorities are to treat foreign investors with at least the same degree of accommodation as Chinese investors.

Relaxed and efficient foreign investment administration system

The case-by-case foreign investment approval requirement for “FIEs” has been replaced with an online reporting requirement with the Ministry of Commerce, greatly simplifying the administration of foreign investment. With this, most foreign-invested companies can directly apply for company establishment registration or other corporate changes, including equity transactions, by filing with the State Administration of Market Regulation (”SAMR”) or its local counterparts.

In the spirit of new Foreign Investment Law, which aims to grant consistent national treatment to all “FIEs” in China and also create a fair environment for both Chinese and foreign companies.

Simple Tax Regime

China's current tax framework was put in place after the tax reforms of 1994 to meet the needs of its socialist market economy. Since the beginning of the 21st century.

Personal Income tax:

A tax on personal income earned by individuals. The rate is a progressive tax with the following brackets:

- For monthly taxable income up to 3,000 yuan: 3%
- For monthly taxable income between 3,000 yuan and 12,000 yuan: 10%
- For monthly taxable income between 12,000 yuan and 25,000 yuan: 20%
- For monthly taxable income between 25,000 yuan and 35,000 yuan: 25%
- For monthly taxable income between 35,000 yuan and 55,000 yuan: 30%
- For monthly taxable income between 55,000 yuan and 80,000 yuan: 35%
- For monthly taxable income over 80,000 yuan: 45%

Corporate income tax:

Tax resident enterprises ("TREs") are subject to corporate income tax on their worldwide income. In general, a company is regarded as a "TRE" in China if it is incorporated in China or effectively managed in China. Non-"TREs" are taxed on their China sourced income only. However, if the non-TRE has an establishment in China, non-China source income effectively connected with the China establishment is also taxed.

The standard corporate tax rate is 25%, but the tax rate could be reduced to 15% for qualified enterprises which are engaged in industries encouraged by the China government.

Value Added Tax "(VAT)":

'VAT" is levied during the sale of goods, imports, service provision, and sales of intangible assets and immovable properties. There are two types of "VAT" payers:

- General VAT payers (0%, 6%, 9%, 13%): Enterprises whose sales revenue during a business period of not more than 12 months or four quarters exceeds RMB 5 million or those who have a sound accounting system. For general "VAT" taxpayers, input "VAT" can be credited against their output "VAT".

Excise tax:

A tax on specific goods, such as tobacco products, alcohol, and gasoline. The rate varies depending on the product. Tobacco has 40% to 45% tax rate whereas Alcoholic beverages has 10% to 50% tax rate.

Property tax:

A tax imposed on the owners, users or custodians of houses and buildings at the rate at either 1.2% of the original value with certain deduction or 12% of the rental value.

Land tax:

In China, land tax is imposed on the use or ownership of land by individuals or entities and may vary depending on the location, type, and purpose of the land.

Business tax:

It applies to the provision of services (excluding processing services and repair and replacement services), the transfer of intangible properties and the sale of real estate properties in China.

Non-Resident tax:

In China, non-residents are subject to progressive rates depending on the type of income they receive.

For individuals who are not tax residents of China, the following tax rates apply:

- For monthly taxable income between 300,000 yuan and 500,000 yuan: 30%
- For monthly taxable income between 500,001 yuan and above: 35%.

Incorporation of a company in China

Corporate establishment / registration / incorporation in China for foreign enterprises is usually possible via three main company types. These are the so-called Wholly Foreign-Owned Enterprises (“WFOEs”), Joint Ventures (“JVs”) and Representative Offices (“ROs”). Each investment form has its own merits and drawbacks and the right choice for you will depend on your organization's goals and strategy for China market access.

Wholly Foreign Owned Enterprises:

Widely accepted as the most popular entity for doing business in China, “WFOEs” are investment vehicles entirely owned by foreign (i.e. not Chinese) natural and legal persons. “WFOEs” are limited liability companies (“LLCs”) with shareholders held liable for the company’s debts or liabilities only up to the registered capital under the “PRC’s” new Foreign Investment Law.

What is the minimum investment required to set up a "WFOE?"

Different industries have different registered capital requirements (equity and investment) for "WFOEs" but since the Company Law update in 2014, minimum registered capital indications have been abolished, with there being no minimum investment to set up a "WFOE" provided that activities do not involve a regulated industry (i.e. securities, insurance or banking).

Different types of "WFOEs" are required for different business activities. With a "WFOE" the investor will be able to:
Employ local staff directly and ensure their social insurance and housing fund contributions.

- Independently determine and oversee your group strategy for China without a Chinese partner.
- Issue invoices with "VAT" available for deduction and receive payments in RMB/ foreign currency.
- Legally cover your China office premises, activities and operations with the business license required by the Chinese authorities.

Joint Ventures

There are two main types of JVs available in China: Equity Joint Ventures (“EJVs”) and Cooperative Joint Ventures (“CJVs”).

- An “EJV” is an independent legal entity with limited liability. Profit and risk sharing in an “EJV” are proportionate to the equity of each partner in the “EJV”.
- A “CJV’s” profits are allocated according to the terms of the cooperative venture contract rather than the proportion of their input in the registered capital, which offers greater structural flexibility over an “EJV”.

What is the minimum investment required to set up a “JV”?

There is no minimum investment requirement for Chinese partners in a “JV” project. Before, China’s “EJV” Law required that the foreign party contributes no less than 25% of the registered capital, but this requirement has been removed by the New Foreign Investment Law in force since 1 January 2020. So, currently, there is no minimum investment requirement for Foreign-Chinese partners in a “JV” project with the exception of certain industries that are restricted for foreign investment

Representative Offices

An "RO" is established by a foreign company to represent in activities like market research, "PR" and visits to local clients and/or suppliers. Since it is not an independent legal entity, it cannot participate in any direct commercial activities generating revenue or profits and it can only be set up by foreign entities with a minimum of two years of existence in the relevant jurisdiction.

There are no registered capital requirements for an "RO" but local expenses need to be handled via overseas remittance from the foreign company. Set-up costs and timeframe are usually lower than those for a WFOE however de-registration processes are just as complex and time-consuming.

Permitted activities include business development, establishing partners, rendering advice, preparation of market studies, and general collection of information and liaising with authorities and business partners. Foreign employees can be hired as chief representatives and general representatives of the local office whereas Chinese employees cannot hold any direct labour relationship with the "RO".

Sector specific opportunities in China

There are opportunities for doing business in a wide range of industries in China. In this section, the China-Britain Business Council ("CBBC") profiles a selection of those offering the most potential.

Automobiles, automotive parts and autonomous driving:

International brands now make up 61% of vehicles sold in China, with the country accounting for over a third of Audi, Volkswagen and General Motors' global sales.

Accompanying this is a pivot towards new energy vehicles ("NEVs") within the Chinese automotive market.

Transportation:

In 2023, new ship orders worldwide came from China and looking ahead, the country will move further into the “LNG”/ “LPG” carrier, special engineering vessel, passenger ship, and luxury cruise ship industries, while also focusing on new technology such as intelligent ships and those that provide greater energy efficiency. At the same time, within the aircraft industry, the number of airports in China is predicted to approximately double by 2035.

Healthcare provision:

At 5.7%, China spends a smaller proportion of its GDP on healthcare than many of the world’s other major economies (9.6% in the “UK”, 10.9% in Japan, and 7.6% in South Korea), meaning there is room for growth going forward.

Semiconductors, chips and sensors:

China purchased an estimated 60.5% of the world’s semiconductors in 2023 – a level of demand driven by a focus on 5G, the Internet of Things, “AI”, and autonomous vehicles and “NEVs” – up from 42.8% a decade earlier.

Fintech:

With a focus on banking, investment, asset management, insurance and internet finance, China’s fintech sector benefits from fewer regulations than those in other countries.

Shanghai as the top choice for regional "HQS" and Financial Firms.

In recent years, by continuously advancing institutional reform, expanding its opening-up and introducing supportive policies, Shanghai has developed a vibrant headquarters economy, building enormous momentum for Shanghai's 'Five-Centre'.

As of the end of 2023, Shanghai had attracted a total of
- 720 "MNC" "RHQs" including:
- 116 Asia-Pacific/global "HQs"
- 461 "R&D" centres

International financial centre with comprehensive factor markets

In 2023, Shanghai kept its rank in fourth place among worldwide financial hubs according to the Global Financial Centers Index 26 ("GFCI 26") released by Z/Yen, an independent British think-tank.

The further opening of Shanghai's financial markets

The scope of the financial opening up in Shanghai has continuously expanded, with a number of innovative financial products having been launched, such as Shanghai-London Stock Connect, Shanghai.

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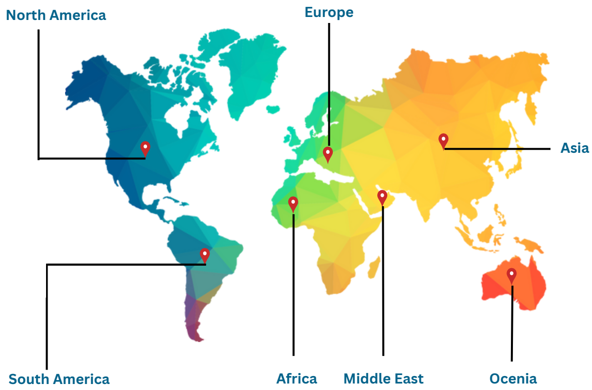

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