## Monday, October 1, 2012
## 9:00 AM - 10:30 AM

# 600 – Practical Considerations for Establishing a Successful Business in China

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# Faculty Biographies

**Andrea Charters**

Andrea L. Charters is a vice president and associate general counsel at Rosetta Stone, Inc., the leading language learning software-as-a-service provider. Her practice focuses on enterprise-driven legal work for international business operations in China, Korea, Japan and the United Kingdom and on U.S. securities law.

Ms. Charters was an adjunct professor at Washington University School of Law in St. Louis, where she taught international business transactions and trade, and is a frequent speaker on international business, data protection, intellectual property and securities law topics.

She is an honors graduate of Yale University and Harvard Law School.

**Audrey Chen**

Audrey Chen is a partner of Jun He Law Offices. Ms. Chen joined Jun He and practices in the Beijing office. Ms. Chen specializes in foreign investment, banking and financing, M&A and general corporate work.

Ms. Chen has previously worked in the New York office of Jones Day Reavis & Pogue where she advised clients on investment projects in China as well as on international business transactions.

Ms. Chen has extensive experience in energy, mining, automobile, retail, real estate, technology and IP projects. She has advised on various aspects of, and negotiated complicated legal documents in connection with, such projects. She has also assisted many domestic and international clients from different industries in IPOs, venture capital financing and acquisitions. Ms. Chen's clients include many major domestic corporations and Fortune 500 companies.

Ms. Chen received a BA from Beijing Shifan University, the LLM from Renmin University of China, and the LLM University of California at Berkeley, School of Law (Boalt Hall).

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*General Counsel, VP of HR, and Corporate Secretary*
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# A Practical Approach for FDI and M&A in China

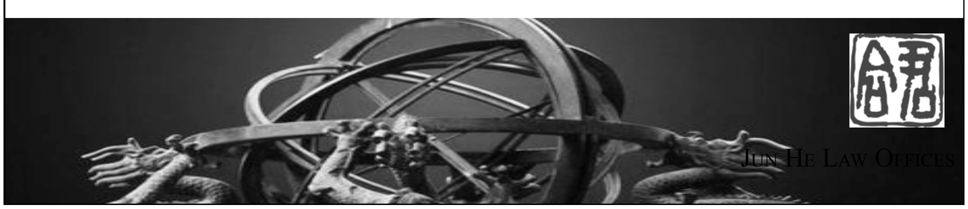
**Audrey Chen**

**Beijing, China**
**JUN HE**

**ACC 2012**

# Jun He

- Established in 1989, the first partnership law firm in China
- Offices: Beijing, Shanghai, Dalian, Shenzhen, Haikou, Hong Kong, Silicon Valley and New York
- " Best Chinese Law Firm of the Year" awarded by Asia Legal Business
- "The Best Law Firm in China" awarded by Chamber's Global



## Overview

I. Central Government Policies and Directions

II. Key Issues in FDI and M&A to China

III. Recent Updated Legislations and the Impact to FDI and M&A

IV. The Practical Approach for Foreign Investment and M&A in China

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## I. Central Government Policies and Directions

- Being Selective to Foreign Investment
- Key Industries Control (NDRC role)
- Decentralization of the Approval Authorities

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# II. Key Issues in Foreign Direct Investment and M&A

- Restrictions of Foreign Investment
- Business Structures commonly used by the investors
- The Approvals/License from Chinese Government Authorities (SAIC, NDRC, MOFCOM, SAFE, TAX, etc)
- Other Issues to be Considered

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**➢ Restrictions of Foreign Investment**

- "Foreign Investment Catalogue" -categories of foreign investment
  - Encouraged
  - Permitted
  - Restricted
  - Prohibited

## ➢ Business Structures – entities commonly used by foreign investors

- Joint ventures – equity joint venture (EJV), co-operative joint venture (CJV)
- Wholly foreign owned enterprise (WFOE)
- Holding company
- Representative office of foreign company

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## ➢ Business Structures-the process of setting up a CJV in China

Letter of intent → Name pre-registration → JVC/AOA preparation → Project application approval from NDRC → JV establishment approval from MOC → Related Permits before-set up → Business license issued by SAIC → Various post-set up formalities → Related Permits and Approvals

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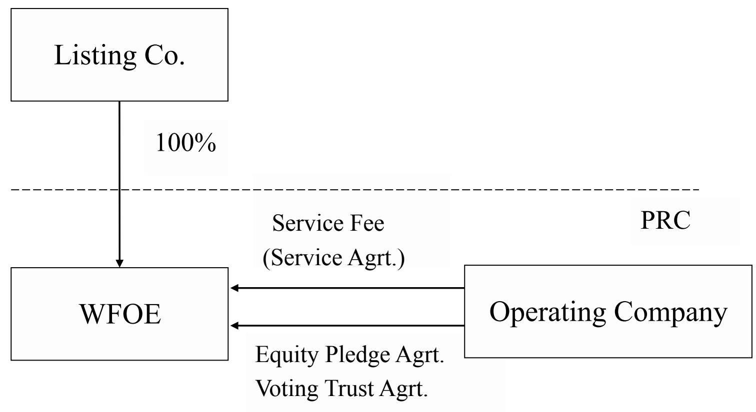
- **Structure used by VIE Arrangement**

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# III. Updated Legislations for Foreign Investment and M&A

- Foreign Investment in Central-Western China
- Favorable Policies in Certain Industries
- Taxation of Representative Offices of International Companies
- SAIC’s Rules on Foreign Invested Partnerships
- Developments on Merger Control
- National Security Review issued by State Council March 2011

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## ➢ Developments on Merger Control Law and MOFCOM Practice

- Legislation Development
  - M&A Rules
  - Anti-Monopoly Law
  - Regulations of the State Council on the Thresholds of Filing of Concentration of Business Operators
  - Guidelines on Submission of Filing Documents and the Application Form
  - Guidelines for Anti-Monopoly Review/Anti-Monopoly Review Flow Chart
- MOFCOM's Recent Merger Control Practice

## ➢ National Security Review

- Effective from March 6, 2011
- Scope and Contents
- Mechanism and Procedures
- Comments/Concerns

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## IV. The Practical Approach for Foreign Investment and M&A in China

- Fully understand the background, reasoning and expectation of such change
- Possible investment structures change/alternatives
- Conduct feasibility study and understand associated legal risks
- Pay close attention to the rapidly change regulatory regime
- Work out feasible strategies with the advisors in compliance with the legal regime

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# Thank You !

## *Audrey Chen*

- *Joined the firm in 1993*
- *LL.M., University of California at Berkeley, School of Law (Boalt Hall)*
- *Admitted in China and U.S (New York and California)*
- *International Who’ s Who of M&A Lawyer*
- *Asia Leading Attorney by Asia Legal Business*

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# Doing Business in… multi-jurisdictional guide 2012: Q&A

# China

# Audrey Chen, Jun He Law Offices

## Legal system

**1.**

**What is the legal system (civil law, common law or a mixture of both)?**

The People's Republic of China (PRC or China) has a civil law system, consisting of statutes, administrative rules and regulations. In addition, the Supreme Court of China issues judicial interpretations which the lower courts must follow in adjudicating cases. The lower courts do not have to follow the rulings of higher courts, although in practice they usually do.

## Foreign investment

**2.**

**Are there any restrictions on foreign investment (including authorisations required by central or local government)?**

Foreign investment is regulated by various laws and regulations, and is classified into four categories:

- **Encouraged.** This category includes:
    - drink production;
    - agricultural machinery manufacture;
    - the development and manufacture of software products.
- **Restricted.** Investment in restricted sectors is subject to various limitations and approval requirements and includes:
    - the highway passenger transportation service;
    - legal services;
    - banking services.
- **Prohibited.** Certain businesses are not open to foreign investment, including:
    - elementary education;
    - post offices;
    - TV and radio stations.
- **Permitted.** Investments that do not fall into any of the other three categories are generally permitted.

**3.**

**Are there any exchange control or currency regulations?**

There are various exchange control and currency regulations in China. A foreign investor in a foreign investment enterprise (FIE) in China (in which foreign investment accounts for at least 25% of the registered capital) is legally entitled to convert after-tax dividends derived from the FIE into foreign currency and remit it overseas in accordance with these regulations.

**4.**

**What grants or incentives are available to investors?**

China offers certain incentives to FIEs, mainly tax reductions and exemptions. An FIE engaging in business in the encouraged category (*see Question 2*) can be exempt from tariff **[**tax?** JH: Tariff refers to the custom duties. ]** when importing equipment for their own use. Also, various incentives may be available to foreign investors based on local practices at provincial or municipal levels.

## Business vehicles

**5.**

**What is the most common form of business vehicle used by foreign companies in your jurisdiction, and what are the main applicable formalities, rights, restrictions and liabilities?**

Sino-foreign joint ventures (JVs) are the most common form of business entity, although wholly foreign-owned enterprises (WFOEs) have become increasingly popular recently. Equity JVs are more popular than co-operative JVs.

### Registration formalities

A JV must be approved by and registered with the Chinese government. It usually takes a couple of months to complete the approval and registration procedures.

### Share capital

The statutory minimum registered capital is CNY30,000 (as at 1 November 2011, US$1 was about CNY6.3) for a Chinese company, and CNY100,000 or its equivalent in hard currency for a company with a single shareholder. Higher capitalisation is required to invest in certain regulated business sectors, such as financial leasing and telecommunications. There is no maximum requirement for the registered capital.

### Non-cash consideration

Capital contribution can be in non-cash consideration, such as industrial property rights, equipment and land use rights.

### Rights attaching to shares

**Restrictions on rights attaching to shares.** A JV's shareholder:

- Has rights to dividends from the JV's shares.
- Has pre-emption rights.
- Assumes the JV's losses in proportion to its equity ratio in the JV.

Exceptions can be agreed by the parties to a co-operative JV by contract.

 

**Automatic rights attaching to shares.**

Automatic rights attached to shares include, among other things:

- The right to receive a shares certificate.
- The right to register its name on the list of shareholders of the company.
- The right to transfer shares in accordance with relevant laws and the articles of association of the company.
- The right to attend and vote at any shareholders' meeting.
- The right to receive dividends.
- The right to review and examine the articles of association, minutes of shareholders' meeting, minutes of board meeting, minutes of board of supervisors and financial & accounting report..
- The right to receive the remaining property of the company once the company has been liquidated.

### Foreign shareholders

There are restrictions and special shareholder requirements for foreign investment in certain businesses (*see Question 2*).

### Management structure

The board of directors (board) is the highest authority of a JV. The general manager is its top executive and is normally nominated by the shareholders and appointed by the board. The general manager is in charge of the JV's daily management.

### Management restrictions

There are no specific restrictions on foreign managers.

### Directors' and officers' liability

Directors assume fiduciary duties and must not act against the JV's interests.

### Parent company liability

A shareholder's liability is limited to its contribution to the JV's registered capital. However, in certain cases, the corporate veil can be pierced. For example, if a shareholder causes damage to the JV's creditors, it can be liable jointly and severally with the JV for the JV's debts.

### Reporting requirements

A JV must have its financial books audited every year by a qualified accounting firm, and undergo annual inspections conducted by the relevant government authorities (for example, tax and customs authorities). The cost of these inspections is minimal.

## Employment

### Laws, contracts and permits

**6.**

 

**What are the main laws regulating employment relationships?**

The PRC Labour Law 1995, the PRC Labour Contract Law 2007, and various administrative regulations regulate (at central and local levels), among other things:

- The formation and termination of employment contracts.
- Labour standards.
- Overtime pay.
- Maternity leave.

These laws apply to foreign employees working in China, if these employees are directly employed by the Chinese entity, but do not usually apply to Chinese employees working abroad if relevant employment contracts are signed between the employees and a foreign company under foreign law.
The employment contracts between a Chinese company and its employees must be governed by Chinese law, regardless of the choice of law in the employment contract.

### Contract requirements

**7.**

**Is a written contract of employment required, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?**

A written employment contract is required **[**must it be in any particular language, e.g Chinese?** JH: no requirement on particular language, but should be understandable between the parties.]**. Terms not identified in an employment contract can be incorporated in, for example, provisions of employee handbooks and collective labour contracts, as well as the PRC laws.

**8.**

**Do foreign employees require work permits and/or residency permits?**

Both work permits and residency permits are required for foreign employees. Work permits should be applied for with the labour bureau and a residency permit with the local police. The process (not including the application for the work visa, which depends on the time frame set out by the Chinese embassy) usually takes two or three weeks. The cost of the permits is nominal.

### Termination and redundancy

**9.**

**Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?**

At least one-third of an FIE's supervision committee must be employee representatives. The committee supervises:

- The company's operation and financial conditions.
- Directors' and senior managers' fiduciary duties.

The FIE's trade union must be consulted if the employer intends to implement mass layoffs (*see Question 11*) as a result of operational difficulties. The FIE must seek the trade union's opinion when adopting important rules or considering restructuring.

 

### Agreements/implied terms

**10.**

**How is the termination of individual employment contracts regulated?**

An employer cannot terminate an employment contract except for justified reasons specified in the PRC Labour Law and PRC Labour Contract Law. These include:

- The employee's serious violation of the employer's code of conduct.
- The employee's incompetence.
- The employee's poor health status.
- Major changes to the objective circumstances under which the employment contract was concluded.

If an employer intends to terminate an employment contract with proper ground, except under certain circumstances that justify immediate termination, it must provide the employee with:

- Written notice 30 days before the dismissal, or payment in lieu of such notice.
- Severance pay.

Where an employer is to terminate the employment contract laterally, the employer must inform the trade union (if any) of the reasons in advance and consider its opinions.

For unjustified dismissals, the employee can submit the dispute to a labour dispute arbitration committee for arbitration, and either party can bring a court action if the arbitration award is not acceptable to it. Remedies for unjustified dismissal include reinstatement of employment or compensation equivalent to twice the amount of the statutory severance payment.

**11.**

**Are redundancies and mass layoffs regulated?**

The employer must explain the mass layoff plan and the reasons for it to the company's trade union or all the employees of the company 30 days in advance and hear their opinions. They must also report the layoff plan to the relevant labour authority.

## Tax

### Taxes on employment

**12.**

**In relation to employees, what constitutes tax residency in your jurisdiction?**

Individuals who have their domicile in China or live in China continuously for one full calendar year are tax resident. A foreign national living in China is considered to be resident for one full calendar year if he leaves China for no more than either:

- 30 days for one single trip.
- 90 days for multiple trips during that year.

 

**13.**

**What income tax or social security contributions must be paid during the employment relationship?**

**Tax resident employees**

A tax resident employee must pay China individual income tax on his worldwide income. However, an expatriate who has stayed in China continuously for between one and five years can be exempt from payment of individual income tax in China in respect of his non-China source income that is paid by overseas entities or individuals.

For salary income received from employment, the individual income tax payable is calculated at nine progressive rates between 5% and 45%, depending on the employee's taxable income. For income received from independent services, the individual income tax rate is 20%, 30% or 40% depending on the service fee income received each time. The individual income tax rate on royalty, interest, dividends, rental and capital gains income is 20%.

Social security contributions must typically be paid by both employees and employers, except as indicated below, and include:

- Pension.
- Medical insurance.
- Work-related injury insurance (paid by employers only).
- Unemployment insurance (paid by employers only).
- Maternity insurance.
- Housing fund.

However, only a few cities allow expatriates to participate in the social security programme.

**Non-tax resident employees**

Non-tax resident employees only pay PRC individual income tax on their PRC source income. The rates are the same as for tax resident employees, subject to any applicable bilateral tax treaty (*see above*, *Tax resident employees*).

If a non-tax resident employee has been in China for 90 days or less (or 183 days for tax residents of countries which have a bilateral tax treaty with China) in a calendar year, he is not required to pay China individual income tax on his China source income that is paid or borne by an overseas employer.

**Employers**

Employers must make social security contributions for their employees (*see above, Tax resident employees*).

**Business vehicles**

**14.**

**What constitutes tax residency in relation to business vehicles?**

Chinese resident enterprises include:

- All business entities established in China.
- Business entities established outside China but with their effective places of management in China.

**15.**

**What are the main taxes that potentially apply to a tax resident business vehicle (including rates)?**

The main taxes applied to a tax resident business vehicle are as follows.

**Corporate income tax**

A PRC tax resident business vehicle must pay corporate income tax on its worldwide profits. The standard rate is 25%, unless a reduced rate or special exemptions or deductions apply.

**Value added tax (VAT)**

VAT is payable on the following activities in China, usually at 17%:

- Sale of goods.
- Provision of processing, repair and replacement services.
- Import of goods into China.

**Business tax (BT)**

BT is payable on the following activities in China, usually at 5%:

- Sale of intangible assets.
- Transfer of immovable properties.
- Provision of services.

**Land appreciation tax (LAT)**

LAT is imposed on the appreciated value of the real properties (including land use rights and buildings) in case of the transfer of real property in China at progressive rates between 30% and 60%, depending on the appreciated value as compared with the allowable deductions.

**Stamp duty**

Stamp duty is imposed on various dutiable contracts, the enterprises' accounting books, certificates and licences, as well as evidence of title transfer. Share/equity transfer agreements are subject to stamp duty as they fall within the category of evidence of title transfer. A 0.05% stamp duty is imposed on transfer of equity interest (shares) in Chinese companies. Both the seller and buyer are liable for this stamp duty, and each of them must pay 0.05% stamp duty for each original equity transfer agreement or duplicate copy used as an original.

**16.**

**How are the activities of non-tax resident business vehicles taxed?**

Non-tax resident business vehicles are subject to withholding tax at 10% on interest, rental income, royalties or other passive income received from China, unless the applicable bilateral tax treaties reduce the withholding tax to a lower rate.

 

Non-tax resident business vehicles might also have to pay BT, stamp duty and other Chinese taxes under the relevant Chinese tax laws and regulations.

### Dividends, interest and IP royalties

**17.**

**How are the following taxed:**

- **Dividends paid to foreign corporate shareholders?**
- **Dividends received from foreign companies?**
- **Interest paid to foreign corporate shareholders?**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders?**

#### Dividends paid

Dividends paid to the foreign corporate shareholder are subject to a withholding tax at 10%, which can be reduced based on the relevant bilateral tax treaty.

#### Dividends received

Dividends received from abroad are subject to either:

- China corporate income tax, if received by Chinese tax resident enterprises.
- China individual income tax, if received by Chinese tax resident individuals.

Income taxes already paid outside China in respect of these dividends can be used towards income taxes payable in China.

#### Interest paid

Interest paid to foreign corporate shareholders is subject to withholding tax at 10%, which can be reduced based on the relevant bilateral tax treaty.

#### IP royalties paid

IP royalties paid to foreign corporate shareholders are subject to withholding tax at 10%, which can be reduced based on the relevant bilateral tax treaty.

### Groups, affiliates and related parties

**18.**

**Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?**

A business cannot deduct interest paid to related parties exceeding the permitted related party debt-to-equity ratio (*Article 46, PRC Corporate Income Tax Law*). The permitted debt-to-equity ratio is:

- 5:1 for financial enterprises.
- 2:1 for other enterprises.

**19.**

**Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?**

The profit of a foreign subsidiary does not need to be imputed to a China tax resident parent company. However, if the foreign subsidiary of a China tax resident is established in a country where taxation is lower than in China, and the profits of this foreign subsidiary are not distributed (or are partially distributed) without reasonable operation needs, the portion of the profits attributable to the China tax resident are imputed to the income of the China tax resident.

Dividends obtained by a China tax resident from its foreign subsidiary are taxable in China.

**20.**

**Are there any transfer pricing rules?**

For transactions between a company and its related parties, if the transaction is not on an arm's-length basis (which decreases the taxable revenue or income) the Chinese tax authority can make reasonable adjustments.

### Customs duties

**21.**

**How are imports and exports taxed?**

Import VAT is payable (usually at 17%) for imported goods and customs duty rates depending on the goods involved. Export of products is generally exempt from VAT. In addition, Chinese taxpayers might be refunded a certain percentage of the input VAT they have paid their Chinese suppliers regarding the exported products.
The export of a few types of goods is subject to customs tariff at various rates depending on the goods involved.

### Double tax treaties

**22.**

**Is there a wide network of double tax treaties?**

China has signed double tax treaties with more than 80 countries, including the United States, France, Germany and the UK.

## Competition

**23.**

**Are restrictive agreements and practices regulated by competition law?**

Any competing entities are prohibited from reaching any of the following monopoly agreements with each other. Among other things **[**do the first two bullet points only apply to commodities or all products?**JH: These two bullet points apply to all products.]**:

- Fixing or changing the price of commodities.
- Restricting the production quantity or sales volume of commodities.
- Dividing the sales market or the raw material procurement market.

 

- Restricting the purchase of new technology or new facilities or the development of new technology or new products.
- Conducting boycott transactions.

Entities are also prohibited from reaching any of the following monopoly agreements with their trading parties, among other things:

- Fixing the price of commodities for resale to a third party;
- Restricting the minimum price of commodities for resale to a third party.

**24.**

**Is unilateral (or single-firm) conduct regulated by competition law?**

Entities with a dominant market position are prohibited from committing any of the following abuses of their dominant position:

- Selling products at unfairly high prices or buying products at unfairly low prices.
- Selling products at prices below cost without any justifiable cause.
- Refusing to trade with a trading party without any justifiable cause.
- Restricting their trading party so that it may conduct deals exclusively with themselves or with the designated business operators without any justifiable cause.
- Implementing tie-in sales or imposing other unreasonable trading conditions at the time of trading without any justifiable cause.
- Applying discriminatory treatments on trading prices or other trading conditions to their trading parties with equal standing without any justifiable cause.

Other forms of abuse of a dominant position are determined by the Anti-monopoly Law Enforcement Agency.

**25.**

**Are mergers and acquisitions subject to merger control?**

Any mergers and acquisitions which are deemed as a "concentration of business operators" will be subject to merger control. Concentrations of business operators are mergers or takeovers, whether voluntary or by the acquisition of shares, or through the exertion of influence (for example, through contract).

Combinations are subject to merger control if either the:

- Aggregate global turnover in the previous fiscal year of all the entities to the concentration exceeds CNY10 billion, of which at least two business operators each has a turnover of more than CNY400 million in China
- Aggregate turnover in China in the previous fiscal year of all the entities to the concentration exceeds CNY2 billion, of which at least two business operators each has a turnover of more than CNY400 million in China.

 

Foreign-to-foreign acquisitions are subject to the Chinese merger control laws as long as they constitute a "concentration of business operators". There are no foreign exemptions.

## Intellectual property

**26.**

**What are the main IP rights capable of protection?**

### Patents

**Nature of right.** Patents include:

- Invention patent.
- Utility model patent.
- Design patent.

To be patentable, an invention or utility model must be novel, inventive and practically applicable. A design must have distinctive features which are easy to recognise and not conflict with other prior and existing legal rights of other persons. The patent owner has the exclusive right to use the invention and prevent others from using it without his consent.

**Protection.** Patent applications for registration must be made to the State Intellectual Property Office (SIPO).

**Enforcement.** The SIPO and the court are responsible for enforcing patent rights and can impose the following penalties:

- Fines.
- Confiscation of illegal proceeds.
- Injunctions.
- Damages.

The infringer can also be criminally liable for serious violations, for example, if the illegal turnover is more than CNY200,000.

**Length of protection.** The length of protection is 20 years for invention patents and ten years for utility model patents and design patents. These periods are not renewable.

### Trade marks

**Nature of right.** To register as a trade mark, a sign must:

- Have distinctive, easily recognisable features.
- Not conflict with other persons' prior and existing legal rights.

The owner of a registered trade mark can use the mark exclusively and prevent others from using the mark without his consent.

**Protection.** Applications for trade mark registration must be filed with the Trademark Office of the State Administration for Industry and Commerce (SAIC). Unregistered marks are not protected unless they are well known.

**Enforcement.** The SAIC and the court are responsible for enforcing trade mark rights. The liabilities and remedies are similar to those for patents (*see above, Patents*).

**Length of protection.** Trade marks are continuously protected, subject to renewal every ten years.

### Registered designs

Registered designs can be protected through patent law (*see above*, *Patents*).

### Unregistered designs

Unregistered designs can be protected under copyright law (*see below*, *Copyright*).

### Copyright

**Nature of right.** Copyright applies to intellectual creations in literary, artistic and scientific domains, provided they are capable of being reproduced in a certain tangible form. The owner of a copyright has the same rights as those of trade marks and registered designs (*see above*, *Trade marks* and *Registered designs*).
**Protection.** Copyrights are automatically protected upon the work's creation.
**Enforcement.** The General Administration of Press and Publication and the court are responsible for enforcing copyrights. The liabilities and remedies are similar to those for patents (*see above, Patents*).
**Length of protection.** Protection lasts for:

- The life of the author plus 50 years, for copyrights owned by a natural person.
- 50 years from first publication, or from creation if unpublished, for copyrights owned by a legal entity.

### Confidential information

**Nature of right.** Commercial secrets can be protected in China. It refers to technical or business information which has the following characteristics:

- Not known to the public.
- Can bring practical economic benefits to the right holder.
- Is protected under confidential measures taken by the right holder.

**Enforcement.** Commercial secrets are protected under civil, criminal, company, employment and competition law. Civil, company and employment law allows right holders to sue for damages. The criminal law can apply to serious infringements of commercial secrets.

Anti-unfair competition law prohibits the unauthorised use and disclosure of commercial secrets. A person who violates the provisions under the anti-unfair competition law can be imposed with a government fine of up to CNY200,000, must return the information back to the right holder and destroy any products which may disclose the commercial secrets. The right holder may report to the administration of industry and commerce for infringement of commercial secrets under the anti-unfair competition law.
**Length of protection.** The right is protected for as long as the information remains confidential.

## Marketing agreements

**27.**

**Are marketing agreements regulated?**

There are no specific laws regulating agency and distribution. However, franchises are regulated in China by the Measures for the Administration of Commercial Franchises 2007, issued by the State Council. A franchiser must have established at least two direct sales outlets after engaging in the business for more than a year in China.

## E-commerce

**28.**

**Are there any laws regulating e-commerce (such as electronic signatures and distance selling)?**

The Electronic Signature Law 2005 regulates, among other things:

- The scope of electronic signatures.
- The requirements for effective electronic signatures.
- The storage and transmission of data.
- Certification services in connection with electronic signatures.

## Data protection

**29.**

**Are there any data protection laws?**

There is no specific data protection law.

## Product liability

**30.**

**Are there any laws regulating product liability and product safety?**

The Product Quality Law 1993 regulates the:

- Quality of products.
- Obligations and liabilities of manufacturers and sellers.

For product defects, the seller must indemnify consumers against losses on request. The seller can seek recourse from the manufacturer if the manufacturer is responsible for the defects.

If a business entity finds that its goods or services have a serious defect that might cause personal injury or asset damage, it must immediately:

- Make a report to the authorities.
- Inform the public.
- Adopt measures to prevent injury and damage.

The Food Safety Law 2009 regulates the:

- Quality of food.
- Obligations and liabilities of food manufacturers and sellers.

For food safety accidents, the relevant party must deal with the accident immediately and report to competent governmental authorities.

## Tables

**For this year's edition, we are including comparative tables across all jurisdictions in the guide, on the following subjects:**

- **Work/residency permits.**

- **Merger control.**

**Please use a brief style when completing the tables below.**

| Jurisdiction | Work permit/residency permit requirements for foreign employees |
|---|---|
| | Both work permits and residency permits are required for foreign employees. Work permits should be applied for with the labour bureau and a residency permit with the local police. The process (not including the application for the work visa, which depends on the time frame set out by the Chinese embassy) usually takes two or three weeks. The cost of the permits is nominal. |

| Jurisdiction | What foreign-to-foreign transactions are subject to merger control? |
|---|---|
| | Combinations are subject to merger control if either the:<br>• Aggregate global turnover in the previous fiscal year of all the entities to the concentration exceeds CNY10 billion, of which at least two business operators each has a turnover of more than CNY400 million in China<br>• Aggregate turnover in China in the previous fiscal year of all the entities to the concentration exceeds CNY2 billion, of which at least two business operators each has a turnover of more than CNY400 million in China. |

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**Qualified.** New York, United States; California, United States; China

**Areas of practice:** Foreign investment; M&A; competition; general corporate work.

**Recent transactions**

- Representing major US manufacturing clients on direct investment into China by establishing joint venture companies and wholly owned subsidiaries.
- Representing Chalco's merger control filing with MOFCOM with respect to its joint venture with Rio Tinto;
- Advising Research In Motion for its investment in China, IP, e-commerce, data protection and product liabilities.
- Advising a major multinational company to enforce the arbitration award issued by The London Court of International Arbitration.