Doing Business In China Comparative Guide

1. Legal framework

1.1 Does your jurisdiction have a civil law system, a common law system or a hybrid system?

China's legal system is based on civil law.

1.2 Which legislative and regulatory provisions primarily govern the establishment and operation of enterprises in your jurisdiction?

The establishment and operation of enterprises in China is mainly governed by the Company Law of the Republic of China (2018 Revision). This is complemented by the five Provisions of the Supreme People's Court on Issues Relating to Application of the Company Law of the China (respectively adopted in 2006, 2008, 2014, 2016, and 2019, as subsequently revised).

In 2019, the National People's Congress of China passed the Foreign Investment Law (FIL), a landmark statute aimed at:

- regulating foreign investments in China; and
- providing stronger protection for foreign investors.

The FIL took effect from 1 January 2020, repealing:

- the prior laws governing:
  - Sino-foreign equity joint ventures;
  - Sino-foreign cooperative joint ventures; and
  - wholly foreign-owned enterprises; and
- their respective implementing regulations.

Since the FIL took effect, all foreign-invested enterprises – be they joint ventures or wholly foreign-owned entities – are governed by the Company Law if they are incorporated, or by other relevant laws such as the Partnership Law, if they are unincorporated, in the same way as all domestic entities.

When operating in China, an enterprise must also comply with:

- other laws and regulations that apply to any enterprise operating in China, such as regulations governing:
  - data collection, transfer and management;
  - cybersecurity; and

    - the environment; and/or
- regulations specific to certain sectors, such as:
    - banking;
    - insurance;
    - medical;
    - pharmaceuticals, etc.

1.3 Which bodies are responsible for drafting and enforcing these provisions? What powers do they have?

As far as the drafting of laws is concerned, according to the Legislative Law of China (2023 Revision), the National People's Congress and the Standing Committee of the National People's Congress exercise the legislative powers of the state in accordance with the Constitution. The National People's Congress enacts and amends the basic laws on criminal matters, civil matters, and state authorities, among other things. The Standing Committee of the National People's Congress enacts and amends laws other than those enacted by the National People's Congress.

Legislative motions can be submitted to the National People's Congress by the following bodies, within their respective functions and powers:

- the Presidium of the National People's Congress (a body elected by the National People's Congress when it is in session, to conduct that session);
- the Standing Committee and special committees of the National People's Congress;
- the State Council;
- the Central Military Commission;
- the National Oversight Commission;
- the Supreme People's Court; and
- the Supreme People's Procuratorate.

A delegation of more than 30 deputies to the National People's Congress can put forward motions to the National People's Congress.

As far as the enforcement of laws is concerned, the State Administration for Market Regulation (SAMR), established in 2018, is the administrative body in charge of enforcing these provisions and overseeing market control, including:

- issuing business permits and licences;
- regulating anti-monopoly behaviour;
- supervising drug safety;
- implementing the national enterprise credit information publicity system;
- supervising and inspecting prices; and
- enforcing anti-unfair competition and IP legislation.

SAMR is the result of reshuffles and mergers between several government bodies which were previously in charge of these matters. As such, SAMR is entrusted with a very broad remit of market regulation and control. The creation of this unified body was aimed at:

- simplifying administrative procedures; and
- providing consistent market regulation standards.

2. Types of business structures

2.1 What are the main types of business structures in your jurisdiction and what are their key features?

The main types of business structures in China include:

- limited liability companies;
- partnerships;
- companies limited by shares;
- joint stock companies; and
- representative offices.

Trusts are not an independent legal entity in China.

Representative offices can be used by foreign companies to operate in China but they do not have legal personality; they rather serve as a liaison office for a foreign company in China. They cannot engage in direct business activities or generate revenue, but they can engage in market research, promotion and so on.

A limited liability company must remain non-listed; whereas a joint stock company can either be non-listed or offer shares publicly and list them on domestic stock exchanges or designated venues and certain overseas stock exchanges. In this sense, limited liability companies must be incorporated by not more than 50 shareholders contributing to the capital.

The liability of a company is limited to its entire assets. The liability of a shareholder of a limited liability company is limited to the amount of its capital contribution. The liability of a shareholder of a company limited by shares is limited to the number of its subscribed shares.

The most common structure used by foreign investors is that of a wholly foreign-owned enterprise (WFOE). A WFOE is a limited liability company controlled by foreign investors. It is the most flexible structure available to foreign investors. The joint venture is the second most commonly used structure by foreign investors. It is also a limited liability company:

- which is formed between a foreign investor and a Chinese company in order to:
  - comply with regulatory obligations regarding investments in restricted sectors; or
  - partner with a local partner with sophisticated market awareness; and
- whose ownership structure and profit distribution can vary depending on the agreement between the parties.

2.2 What capital requirements apply to these different types of business structures?

Chinese company law specifies no minimum amount of registered capital for the establishment of a limited liability company, although some specific sector-related regulations (eg, telecommunications, securities, finance, insurance) may specify certain requirements. However, in practice, the authorities might verify that the articles of association provide for a registered capital of at least one year of working capital.

Shareholders may make capital contribution either in cash or in kind, such as:

- intellectual property;
- land use rights; and
- other non-cash property which can be valued and transferred in accordance with the law. Non-cash property used for capital contributions:
  - must be valued and verified; and
  - must not be overvalued or undervalued.

The shareholders must make their respective capital contributions in accordance with the schedule stipulated in the articles of association of the company.

2.3 What is the process for establishing these different types of business structures? What procedural and substantive requirements apply in this regard? What is the typical timeline for their establishment?

The process for establishing different types of business structures in China can be complex and time consuming, involving various procedural and substantive requirements. The following is a general overview of the steps involved in establishing different types of business structures in China:

- Choosing a Chinese company name: A Chinese company name must be chosen that is unique and has not already been registered in China.
- Obtaining approval from relevant authorities: Depending on the business structure and industry, approval must be obtained from different authorities, such as:
  - the State Administration for Market Regulation;
  - the Ministry of Commerce (MOFCOM); and

    - the National Development and Reform Commission (NDRC).
- Drafting and filing necessary documents: The company's articles of association, business licence application and other relevant documents must be drafted and filed with the relevant authorities. Such documents must be notarised and legalised in their home country; however, on 8 March 2023, China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents. The convention will take effect in China on 7 November 2023, thus simplifying the procedures for the transnational circulation of official documents.
- Registering for tax: Companies must register for tax with the relevant tax authorities.
- Opening a bank account: A bank account must be opened in the company's name.
- Obtaining business licences and permits: Depending on the type of business, additional licences and permits may be required.

The timeline for establishing a business in China can vary depending on several factors, including:

- the type of business structure;
- the location of the business; and
- the completeness of the application.

Generally, it can take between one and six months to establish a business in China. The process for establishing a business in China is subject to change and can vary depending on local regulations and policies.

2.4 What requirements and restrictions apply to foreign players that wish to establish a business directly in your jurisdiction?

Foreign players that wish to do business directly in China must comply with several requirements and restrictions, including the following:

- Investment approvals: Depending on the industry and the size of the investment, foreign businesses may need to obtain approval from various government agencies, such as MOFCOM or the NDRC, before investing in China.
- Legal form: Foreign businesses must choose a legal form that is recognised under Chinese law, such as a wholly foreign-owned enterprise, a joint venture or a representative office.
- If foreign investors send expatriates to China, they must comply with applicable laws, including obtaining work permits and visas for foreign employees.
- Regulatory compliance: Foreign businesses must comply with Chinese laws and regulations related to their industry, including:
    - obtaining necessary licences and permits; and
    - complying with environmental, health and safety, and other regulatory requirements.

2.5 What other opportunities, using people/entities not connected with the main person, are there to do business in your jurisdiction (eg, agency, resale); and what requirements and restrictions apply in this regard?

In addition to establishing an enterprise, there are other opportunities for foreign companies to do business in China, as follows:

- Agency: Foreign companies can appoint a Chinese agent to represent their interests in China. The agent can act on behalf of the foreign company, including:
  - selling products or services;
  - negotiating contracts; and
  - establishing relationships with customers and suppliers.

  The agent must be a registered Chinese company and must be authorised to act on behalf of the foreign company.
- Resale/distribution: Foreign companies can also sell their products or services in China through a third-party distributor. The distributor buys the products from the foreign company and then sells them in the Chinese market. The foreign company must ensure that the distributor is qualified and has the necessary licences and permits to sell the products in China. This can be combined with a licence granted to the local partner to use the intellectual property of the seller to this end in exchange for a fee or royalty.
- Contract manufacturing: Foreign companies can contract with Chinese manufacturers to produce goods for export to other markets. This is a common practice in industries such as electronics, textiles and toys.
- Franchise: A franchisor grants franchisees the right to use its business model, brand, knowhow and intellectual property to sell its branded products and services in exchange for fees, royalties or other compensation. The franchisor must have:
  - a mature business model; and
  - the ability to provide franchisees with long-term guidance, support and training.

  It must also:
  - have operated at least two direct-owned outlets for more than one year before starting a franchise in China; and
  - register with the authorities within 15 days of signing of the franchise contract.
- E-commerce: Foreign companies can sell their products to Chinese consumers through online platforms such as Alibaba's Tmall and JD.com.
- Outsourcing: Foreign companies can outsource certain functions to Chinese companies, such as manufacturing, logistics and customer service. This can be a cost-effective way to do business in China while leveraging the expertise of local companies.

- Research and development: China has become a hub for research and development in various industries, and foreign companies can collaborate with Chinese universities and research institutions to develop new products and technologies.

Specific laws and regulations that apply to each kind of model will need to be checked; prior verifications such as customs procedures and whether the product can actually be sold on the Chinese market will also be required. In all such relationships, a detailed investigation of the potential Chinese partner carried out by a local law firm is essential. These methods of cooperation can result in infringements of the seller's IP rights, so it is important before entering the Chinese market that:

- IP rights be protected under Chinese law; and
- the agreements contain clear clauses on these aspects.

Chinese law prohibits the seller from placing an obligation on the distributor to sell products or services to third parties (eg, consumers and retailers) at a specific price, or to maintain a minimum resale price, except where authorised by the Anti-monopoly Law.

3. Directors and management

3.1 How is management typically organised in the different types of business structures in your jurisdiction?

The shareholders' meeting is the highest authority in a limited liability company. If a board of directors is to be set up, it must have a minimum of three directors, who will be appointed by the shareholders; alternatively, a sole executive director can be appointed by the shareholders.

A company can only have one legal representative, who must be registered with the Company Registration Authority. Persons other than the legal representative may only represent the company on the basis of a power of attorney issued by the legal representative.

The chairman of the board of directors, the executive director or the general manager (generally nominated by the shareholder(s) and appointed by the board of directors) can be appointed as the legal representative of the company in accordance with the powers granted by the board and the provisions of the articles of association. The person appointed is in charge of the company's daily management.

In China, the company seal has the same validity as the signature of the legal representative, which means that contracts and documents affixed with the company seal are generally valid and legally binding, even if they have not been signed (hence, the persons with the power to hold or use the company seal should be carefully defined and entrusted).

3.2 Is the establishment of specialist committees recommended or mandated for certain types of enterprises? If so, which areas should they cover?

The establishment of specialist committees may be recommended or mandated for certain types of enterprises in China, depending on their legal form and business activities.

For example, companies listed on the Shanghai Stock Exchange or the Shenzhen Stock Exchange must establish certain committees – such as an audit committee, a remuneration and appraisal committee and a nomination committee – in accordance with the China Securities Regulatory Commission's regulations. These committees are responsible for:

- ensuring the independence and effectiveness of the company's internal controls;
- supervising the company's financial reporting and risk management; and
- evaluating the performance of directors and senior executives.

Similarly, under the Company Law, limited liability companies with a certain number of employees must establish a trade union to protect the legal rights and interests of employees.

Additionally, companies in certain industries – such as banking and insurance – may be required to establish specialised committees to oversee compliance with industry-specific regulations.

In general, the establishment of specialist committees can be beneficial for companies as they provide additional oversight and expertise in key areas such as audit, risk management and compliance. The specific areas that such committees should cover will depend on:

- the company's size, structure and business activities; and
- any legal or regulatory requirements that may apply.

3.3. Is the appointment of corporate directors permitted in your jurisdiction?

Corporate directors are not permitted in China.

3.4 What requirements and restrictions apply to the appointment of directors, in terms of factors such as number, residence, independence, diversity etc?

Apart from the shareholders' meeting, which is the highest authority in a limited liability company, such companies also have a board of directors, which must consist of three to 13 members. Limited liability companies with a small number of shareholders or which are relatively small in scale may have one single executive director instead of a board of directors.

There are few legal restrictions on who can become a director. In general, any natural person with full civil capacity may become a director. The directors of a Chinese company may be of any nationality and may be residents of China or other countries. However, if a director is not a resident of China, the company must appoint a local representative to act on behalf of the director in China.

However, pursuant to Chinese company law:

- any person who has been convicted of certain financial crimes, who was personally responsible for the bankruptcy of a company in which he or she acted as director or manager or who was personally responsible for the revocation of the business licence of a company of which he or she was the legal representative can only be appointed as a director again after a certain time period (three or five years) has passed;
- persons who have a relatively large amount of debts due but unpaid cannot act as directors; and
- a supervisor cannot act as a director or manager of the same company at the same time.

The Company Law imposes the following restrictions on a director's activities to prevent conflicts of interest:

- A director is prohibited from entering into contracts or conducting transactions with the company unless otherwise provided in the company's articles of association or with the consent of the shareholders.
- Without the consent of the shareholders, a director cannot take advantage of his or her position:
  - to exploit for himself or herself, or for third parties, commercial opportunities that should belong to the company; or
  - to operate on his or her own behalf, or for third parties, the same type of business as that of the company.

The articles of association may stipulate additional limitations.

The rules on listed companies specify that at least one-third of the members of the board of directors of a listed company must be independent. An 'independent director' is defined as:

> *a director who does not hold any position in a listed company other than that of a director and has no relationship with the listed company engaging him or her or its principal shareholders that may obstruct him or her from making independent and objective judgments.*

Where special committees for remuneration and appraisal, audit and nomination, among other things, are established under the board of directors of a listed company, independent directors must:

- constitute the majority of the committee members; and
- serve as the conveners of those committees.

There are no specific requirements for diversity on boards of directors in China.

3.5 How are directors selected, appointed and removed? Do any restrictions or recommendations apply to their tenure?

The selection, appointment and removal of directors are governed by the Company Law and related regulations. The board of directors is responsible for the selection of directors and they are appointed at the shareholders' meeting.

The number of directors in a limited liability company can be determined by the company's articles of association but cannot be less than three or more than 13.

Directors can be removed by a resolution of the shareholders' meeting. The tenure of directors is to be specified by the articles of association, but each term of office shall not exceed three years. Directors can be re-elected after their term expires.

3.6 What are the directors' primary roles and responsibilities, and how are these exercised?

Pursuant to the Company Law, the roles and responsibilities of directors are as follows:

- Convene shareholders' meetings and report to the board of shareholders;
- Execute resolutions passed by the board of shareholders;
- Decide on the business plans and investment schemes of the company;
- Formulate the annual financial budget and financial accounting plan of the company;
- Formulate the profit distribution plan and loss recovery plan of the company;
- Formulate a plan for increases or reductions in registered capital and the issue of corporate bonds;
- Formulate a plan for a merger, division, dissolution or change of company structure;
- Decide on the set-up of the internal management organisation of the company;
- Decide on:
  - the appointment or dismissal of company managers and their remuneration; and
  - the appointment or dismissal of deputy managers and the finance controller of the company based on the nomination by the managers; and
- Formulate the basic management system of the company.

To exercise their roles and responsibilities, directors typically attend board meetings and participate in decision making. They may also delegate certain functions to committees, such as audit or remuneration committees, or to management.

3.7 Are the roles of individual directors restricted? Is this common in practice?

The roles of individual directors are not generally restricted by law, but there are certain requirements and limitations that apply. For instance, directors must:

- act in the best interests of the company; and
- exercise their powers and duties with due care, skill and diligence.

Directors may also be subject to conflicts of interest rules and must disclose any potential conflicts to the board of directors.

In practice, it is not uncommon for individual directors to have specific roles and responsibilities assigned to them by the board or by the articles of association. For example, a director may be appointed as the chair of a committee, such as the audit committee or the remuneration committee. In addition, some companies may have specific requirements for their directors, such as a minimum level of experience or expertise in a particular field.

3.8 What are the legal duties of individual directors? To whom are these duties owed?

The primary roles and responsibilities of directors in China are set out in the Company Law and related regulations. These include the following:

- Fiduciary duty: Directors have a duty to act in good faith and in the best interests of the company and its shareholders.
- Duty of care and diligence: Directors must exercise due care and diligence when making decisions on behalf of the company.
- Duty of loyalty: Directors must avoid conflicts of interest and not use their position for personal gain.

These duties are owed to the company and its shareholders, and not to any individual director or other third party. Directors may also have additional duties under applicable laws and regulations, such as environmental or health and safety regulations, depending on the nature of the company's business activities.

In listed companies:

- directors must perform their duties loyally, diligently and prudently;
- the professional structure of the board of directors must be reasonable;

- members of the board of directors must possess the requisite knowledge, skills and quality for the performance of their duties; and
- diversity in the members of the board of directors is encouraged.

3.9 To what civil and criminal liabilities are individual directors primarily potentially subject?

Individual directors in China may face civil and criminal liabilities for breach of their legal duties. These liabilities may arise in various circumstances, such as when they:

- fail to act in good faith;
- act in a way that causes harm to the company; or
- disclose confidential information without authorisation.

If directors of a company breach the law, administrative regulations or the articles of association of the company in the performance of their functions and cause losses to the company, they are liable to compensate the company. With regard to third parties, the company as a legal person bears civil liability for the operational activities of its personnel, including directors. Therefore, in principle, in respect of civil liability, a board member of a company is personally liable towards a third party only for his or her personal actions, and not for his or her corporate actions. However, the theory of 'piercing of the corporate veil' has been applied by the Chinese courts under certain circumstances, leading to directors having to compensate third parties because they acted outside the scope of their duties.

Civil liabilities may include damages, which a director may be ordered to pay to the company. Criminal liabilities may result in fines, imprisonment or other penalties.

In addition to civil and criminal liabilities, directors may face administrative liabilities or reputational risks if they breach their legal duties. Negative publicity or damage to their reputation may affect their ability to serve as directors in the future.

4. Shareholders/members

4.1 What requirements and restrictions apply to shareholders/members in your jurisdiction, in terms of factors such as age, bankruptcy status etc?

There are no requirements or restrictions in terms of the age of shareholders. The regulations also do not specifically forbid a company under bankruptcy proceedings from becoming a shareholder, but this will probably be verified by the authorities on the establishment of the company and forbidden.

4.2 What rights do shareholders/members enjoy with regard to the company in which they have invested?

The shareholders' meeting is the highest decision-making authority of a company.

Shareholders in China generally enjoy a number of rights, including:

- the right to attend and vote at shareholders' meetings;
- the right to receive dividends, if and when they are declared by the company;
- the right to transfer their shares in the company;
- the right to sue the company or its directors if they believe that their rights have been violated; and
- the right to approve certain major decisions of the company, such as:
  - mergers and acquisitions;
  - changes to the company's articles of association; and
  - changes to the registered capital of the company.

These rights are generally set out in the articles of association, which is a key governance document for the company. Shareholders can also exercise their rights through the board of directors, which has a duty to act in the best interests of the company and its shareholders.

4.3 How do shareholders/members exercise these rights? Do they have a right to call shareholders' meetings and, if so, in what circumstances?

Pursuant to the Company Law, the shareholders' meeting of a limited liability company exercise the following functions:

- determining the company's operational guidelines and investment plans;
- electing and changing the directors and supervisors assumed by non-representatives of the employees and deciding matters relating to their salaries and compensation;
- deliberating on and approving reports of the board of directors;
- deliberating on and approving reports of the board of supervisors or the supervisor;
- deliberating on and approving annual financial budget plans and final account plans of the company;
- deliberating on and approving company profit distribution plans and loss recovery plans;
- adopting resolutions about increases or reductions in the company's registered capital;
- adopting resolutions about the issuance of corporate bonds;
- adopting resolutions about the assignment, split-up, change of company form, dissolution or liquidation of the company;
- revising the articles of association; and
- undertaking other functions as specified in the articles of association.

If all shareholders consent to any of the matters listed above in writing, they need not hold a shareholders' meeting and may make decisions and have the decisions signed and sealed by all shareholders.

Shareholders' meetings are classified as either regular meetings or interim meetings.

Regular meetings are held according to the articles of association. An interim meeting will be held when it is proposed by:

- shareholders representing at least one-tenth of the voting rights;
- directors representing at least one-third of the voting rights; or
- the board of supervisors, or the supervisors where the company has no board of supervisors.

Where the company has set up a board of directors, shareholders' meetings are convened by the board of directors and presided over by the chairman of the board of directors. For a company with no board of directors, shareholders' meetings are convened and presided over by the acting director.

Shareholders exercise their voting rights at the shareholders' meetings based on their respective percentage of the capital contributions, unless otherwise prescribed by the articles of association.

In a joint stock limited company, the shareholders' assembly is composed of all shareholders. It is the company's 'organ of power' pursuant to the Company Law. The provisions of the Company Law regarding the powers of the shareholders' assembly of a limited liability company also apply to the shareholders' assembly of a joint stock limited company.

An annual session of the shareholders' assembly must be held each year. An interim shareholders' assembly session will be held within two months if, among other circumstances, shareholders separately or aggregately holding 10% or more of the company's shares ask for it. Shareholders separately or aggregately holding 3% or more of the shares of the company may put forward a written interim proposal to the board of directors 10 days before a shareholders' assembly is held. When a shareholder attends a meeting of the shareholders' assembly, it has one voting right for each share it holds.

4.4 What influence can shareholders/members exert on the appointment and operations of the directors?

Shareholders can influence the appointment and operations of the directors in several ways:

- They have the right to elect the directors of the company. The voting power of the shareholders is proportionate to their shareholding in the company.

- They can remove a director by passing a resolution in a general meeting.
- They can propose resolutions on matters of importance at the general meeting of the company, which can affect the operations of the directors.
- They can use their voting power to approve or reject the company's management and financial reports, which can affect the board's decision making.

4.5 What are the legal duties/responsibilities and potential liabilities, if any, of shareholders/members?

Shareholders of a company:

- must exercise their rights in accordance with the provisions of laws and administrative regulations and the articles of association of the company;
- must not abuse their rights to cause damage to the company or the interests of other shareholders. Shareholders that abuse their rights and cause the company or other shareholders to suffer damages will bear compensation liability in accordance with the law; and
- must not abuse the independent legal person status of the company and the limited liability of the shareholders to cause damage to the interests of creditors of the company. Shareholders that abuse the independent legal person status of the company and the limited liability of shareholders to evade debts and cause damage to the interests of creditors will bear joint liability for the company's debts.

4.6 To what civil and criminal liabilities might individual shareholders/members be subject?

In general, shareholders in China are not directly liable for the actions of the company, as the company is considered a separate legal entity. A shareholder of a limited liability company will be liable for the company to the extent of its capital contribution; while a shareholder of a company limited by shares will be liable for the company to the extent of the shares it has subscribed.

However, there are some circumstances in which individual shareholders may be held liable for the actions of the company, such as in case of:

- breach of duty – for example:
  - failure to establish a liquidation committee within the statutory timeframe and to start the applicable liquidation process; or
  - delay in the performance of obligations during liquidation; or
- unpaid capital contributions as required by law.

This is the theory of ‘piercing the corporate veil’, which means that the corporation is set aside by the court such that personal liability attaches to a shareholder or director and his or her personal assets may be reached.

4.7 Are there rules governing the issuance of further securities in a company? Do rights of pre-emption exist and, if so, how do they operate? Can they be circumvented? If so, how and to what extent?

Yes, in China, there are rules governing the issuance of further securities in a company. The issuance of securities by a listed company must comply with the relevant regulations of the China Securities Regulatory Commission (CSRC). The CSRC requires that a company obtain approval for the issuance of securities before they can be offered to the public.

Pre-emption rights exist in China, in case of both a capital increase and an equity sale:

- Where a company intends to increase the capital, its shareholders have a pre-emptive right to subscribe to the newly issued equity pro rata to their existing contribution, unless agreed otherwise by all shareholders; and
- Where a shareholder intends to transfer its equity to any third party other than the shareholders, the other shareholders have a pre-emptive right to purchase the equity to be transferred upon their consent.

If two or more shareholders claim a pre-emptive right, they must determine their respective purchase percentages through negotiation. If they fail to reach agreement, they will exercise the pre-emptive right based on their respective capital contributions, unless the articles of association provide otherwise.

4.8 Are there any rules on the public disclosure of levels of shareholding and/or stake building?

Yes, there are rules on the public disclosure of levels of shareholding and/or stake building in China. According to the Measures for the Administration of Information Disclosure by Listed Companies (2021 Revision), the periodic reports that a listed company must disclose include:

- an annual report, within four months of the end of each fiscal year; and
- a semi-annual report, within two months of the end of the first half of each fiscal year.

The annual report must contain, among other things:

- information about:
  - the issuance and changes of corporate stocks and bonds;
  - the total amount of stocks and bonds by the end of the reporting period;
  - the total number of shareholders; and

  - the shares held by the top 10 principal shareholders;
- information about:
  - shareholders holding 5% or more of the shares;
  - controlling shareholders; and
  - actual controllers; and
- information about:
  - the appointment of directors, supervisors and officers;
  - changes affecting the shares they hold; and
  - their annual remuneration.

The semi-annual report must contain, among other things, information about:

- the issuance of and changes to corporate stocks and bonds;
- the total number of shareholders; and
- the shares held by the top 10 principal shareholders.

In addition, shareholders that acquire or dispose of shares in a listed company must disclose such transactions within a certain timeframe. These disclosures are made through filings with the CSRC and the stock exchanges.

5. Operations

5.1 What are the main routes for obtaining working capital in your jurisdiction? What are the advantages and disadvantages of each?

As the routes available in China to domestic companies and to foreign companies are quite different, the discussion below is limited to means available to foreign investors for obtaining working capital (apart from registered capital).

Borrowing from domestic Chinese banks, while possible in theory, is extremely difficult for foreign-invested enterprises (FIEs). Bank loans for FIEs are generally obtained against guarantees from banks outside China, which typically require further risk assessments by overseas headquarters. Meanwhile, borrowing from overseas through foreign exchange loans, including from parent companies – which should be easier for FIEs to access – can still be limited by either:

- the so-called ‘borrowing gap’ (total amount invested minus registered capital); or
- the ratio and parameters established by regulations – at present, the maximum amount that a company can borrow from overseas:
  - is twice its capital or net assets; and
  - is subject to a certain foreign debt quota.

The Chinese government is also encouraging enterprises to improve their operational capacities through supply chain financing (analogous to factoring). The advantages of this solution include:

- quick access to capital; and
- the ability to improve cash flow.

The disadvantage is the high fees involved.

Although dominated by domestic actors, incentives and funding instruments in China are also open to FIEs. However, awareness of these opportunities can be limited, especially among small and medium-sized enterprises.

Various stock exchanges have been created in China's main cities, but access is still relatively restricted for FIEs.

In recent years, China has also rapidly developed its green financing system, allowing for the issuance of green bond projects in six sectors:

- energy saving;
- clean production;
- clean energy;
- ecology and the environment;
- green upgrading of basic infrastructure; and
- green services.

Although it has become easier for foreign companies in China to issue renminbi-denominated bonds, the number actively doing so (especially issuing green bonds) is very limited and it is still very difficult for issuers to transfer proceeds freely, including overseas.

5.2 What are the main routes for the return of proceeds in your jurisdiction? What are the advantages and disadvantages of each?

Dividend payments are the most common profit repatriation strategy. Once a financial audit has been completed, payment of taxes (corporate income tax and withholding tax) has been confirmed and confirmation documents have been obtained from the Tax Bureau, the internal procedure carried out by the bank can be lengthy in certain circumstances.

Another route chosen by FIEs to repatriate proceeds is through a service/royalty fee. The tax burden can be lower than for dividend payments, as the applicable taxes are value-added tax and withholding tax. In principle, this arrangement should be supported by genuine arm's-length transactions directly related to the company's business; otherwise, it may be

challenged by the Tax Bureau. Moreover, only limited amounts can be repatriated in this way.

Companies may also resort to intercompany loans within a group of companies; however, this is not a permanent solution for the repatriation of proceeds, as the loans must be repaid.

5.3 What requirements and restrictions apply to foreign direct investment in your jurisdiction?

To operate a business in China, foreign investors must:

- incorporate an FIE; and
- obtain a business licence from the local government.

The incorporation of an FIE must be reported to (or, as the case may be, approved by) and filed/registered with the Chinese authorities.

An enterprise set up in China by a foreign entity must comply with:

- the provisions of the Company Law; and
- the provisions of the Foreign Investment Law, which entered into force on 1 January 2020 and replaces the three laws which governed foreign-invested companies before then:
    - the Law on Sino-Foreign Equity Joint Ventures;
    - the Law on Wholly Foreign-Owned Enterprises; and
    - the Law on Sino-Foreign Cooperative Joint Ventures.

China restricts investments by foreign entities in certain sectors. These sectors are defined through a system involving what are called:

- ‘negative lists’; and
- ‘market access lists’.

Pursuant to these lists, foreign investments in China are prohibited, restricted, encouraged or merely permitted. Market access lists apply to both domestic and foreign investors and set out the sectors restricted to both. Negative lists define the sectors that are restricted to foreign investors. Investors that operate outside these negative lists need only proceed to an administrative filing of their project and no longer require approval. There are negative lists:

- at the national level;
- at the level of each of the 21 free trade zones; and
- for Hainan.

The lists applicable in the free trade zones and in Hainan open up more investment sectors to foreign investment than the national list.

In addition, foreign investments made through greenfield projects or acquisitions that would or could affect national security will be subject to security review pursuant to the National Security Law and its implementation measures.

Foreign entities which are engaged in non-profit activities (eg, non-governmental and non-profit organisations and charities; but also foreign trade associations or federations engaged in the trade promotion of certain products or resources) and that wish to establish a legal entity in China are not subject primarily to the Company Law, but rather to the Law on Administration of Activities of Overseas Non-governmental Organisations in Mainland China. Pursuant to this law, foreign non-governmental organisations can only carry on activities in China through:

- the registration of a representative office; or
- the registration of temporary activities.

5.4 What exchange control requirements apply in your jurisdiction?

Money transfers to overseas countries are subject to foreign exchange controls which apply to foreign investment in China and cross-border trade. The People's Bank of China and the State Administration of Foreign Exchange (SAFE):

- regulate the flow of foreign exchange in and out of the country; and
- set exchange rates through a managed float currency exchange rate regime.

The main purpose of these controls is:

- to manage and regulate the flow of foreign currency into and out of the country; and
- to maintain the stability of the Chinese currency, the renminbi.

SAFE's approval or record filing is required for a range of transactions involving inbound and outbound forex payments.

Where outbound payments are contemplated (eg, under a commercial contract or a loan contract), SAFE imposes various obligations in relation to:

- the reporting or registration of companies, contracts, payments or repayments under a contract;
- certain quotas of payments overseas;
- the provision of supporting documentation; and
- compliance with anti-money laundering and anti-terrorist financing requirements.

For instance:

- prior approval from SAFE is necessary to obtain a shareholders' loan and its payment; and
- SAFE will request access to the contract terms and the reasons for a shareholders' loan before granting its approval.

FIEs that wish to do import/export business with China must, among other things, be registered with SAFE, which is allowed to carry out onsite inspections.

FIEs are also subject to restrictions on:

- the amount of foreign currency that can be transferred out of China; and
- the use of renminbi for certain types of transactions.

Exchange control requirements also apply to:

- inbound payments such as capital injections into China;
- capital repatriation out of China; and
- inbound and outbound financing.

5.5 What role do stakeholders such as employees, pensioners, creditors, customers and suppliers play in shaping business operations in your jurisdiction? What other influence can they exert on an enterprise?

In China, stakeholders such as employees, pensioners, creditors, customers and suppliers have a significant impact on business operations. The Chinese government places great emphasis on stakeholders' participation and enterprises are expected to engage with and listen to the concerns of these groups. The progressive evolution of China from the status of the 'factory of the world' and a 'copycat country' to an innovation hub has resulted in new business models that embrace stakeholders' wishes and seek to create value for them, thus reinforcing their importance.

Employees are a particularly important stakeholder group in China, and labour laws and regulations are designed to protect their rights and interests. Labour unions also play a role in representing employees' interests and promoting their welfare. Besides protecting employees' rights, paying attention to their opinions on the company's products or services is particularly recommended, as they are usually the first point of contact with such products/services and may provide valuable feedback on them, anticipating public opinion responses.

Creditors, including banks and other financial institutions, are also important stakeholders in Chinese enterprises, and their interests are protected by laws and regulations governing borrowing and lending.

Customers and suppliers additionally have an impact on business operations in China. Enterprises are expected to:

- provide high-quality products and services tailored to customers' needs; and
- maintain good relationships with suppliers to ensure the timely delivery of goods and services.

In some companies, innovation which was formerly initiated by the company may be initiated by consumers.

Other stakeholders, such as pensioners and local communities, may also have an influence on business operations in China. Enterprises are expected to act responsibly and take into account the interests of all stakeholders when making decisions that affect them.

5.6 What key concerns and considerations should be borne in mind with regard to general business operations in your jurisdiction?

There are several key concerns and considerations that businesses should keep in mind when operating in China:

- Cultural and linguistic differences: China has a unique culture and linguistic differences that can make doing business challenging. It is important to understand these differences and adapt business operations accordingly.
- Legal and regulatory environment: China has complex laws and regulations that can impact business operations, and these laws are often subject to change. Companies should stay up to date with the latest laws and regulations and ensure ongoing compliance.
- Due diligence: It is essential to conduct due diligence and basic verifications regarding a potential Chinese partner in order to verify:
    - its existence;
    - its capacity to deliver on its promises; and
    - its compliance with the law.

  Engaging a local law firm to conduct such verifications and to verify the contractual terms before signing of documents is essential to avoid frauds and scams.
- IP protection: Businesses should take steps to protect their intellectual property as soon as possible, even before entering the market, to avoid infringement.
- Human resources: China has a large and diverse workforce, but there are challenges associated with recruitment, retention and management of employees.

- Political and economic risks: China's political and economic situation has become volatile and subject to change in recent years. Businesses should be aware of these risks and have contingency plans in place.
- Environmental and sustainability issues: China is increasingly focused on environmental and sustainability issues, and businesses should be aware of and comply with relevant regulations.
- Technology and digitalisation: China is becoming increasingly digitalised and innovative, and businesses should keep up to date with these changes in order to remain competitive. This includes:
    - understanding the latest technologies and digital platforms, and the needs of local consumers; and
    - complying with relevant regulations related to technology and data privacy.

6. Accounting reporting

6.1 What primary accounting reporting obligations apply in your jurisdiction?

Companies have an obligation both:

- to prepare an annual audit report; and
- to comply with annual reporting requirements to the authorities.

The Company Law requires that companies hire a qualified certified public accountant firm which is registered in China to conduct an annual audit of the previous year's activities set out in their financial reports (although this is a requirement under the Company Law, in some cities the local Tax Bureau may not require it; therefore, some companies do not conduct an audit in order to save costs). The purpose of the audit is to ensure that the company's financial statements:

- conform to Chinese General Accepted Accounting Principles; and
- reflect the true financial position of the company.

It is also a good sign of proper governance of the company. In addition, the annual report is required in order for the company to distribute profits. The annual audit report consists of:

- a balance sheet;
- an income statement; and
- a cash-flow statement.

In order to proceed with annual corporate income tax filings in May each year, an audit reports should be completed before the end of April.

Once the annual audit report and the subsequent filing of annual corporate income tax are complete, foreign-invested enterprises (FIEs) must submit information to several authorities, including:

- an annual report for the previous fiscal year to the Administration of Industry and Commerce (AIC) through the corporate credit and information publicity system, covering each year from 1 January to 30 June; and
- an annual combined report to:
  - the Ministry of Commerce;
  - the Ministry of Finance (MOF);
  - the State Administration for Market Regulation of Industry and Commerce;
  - the State Administration of Foreign Exchange; and
  - the National Bureau of Statistics.

  This aims to verify:
  - the company's compliance with audit and tax regulations; and
  - that the information relating to each administration is up to date.

Depending on the activity of a given company, other reporting obligations may apply, such as:

- reporting obligations to the China Securities Regulatory Commission for listed companies;
- foreign exchange reporting requirements;
- environmental reporting requirements;
- labour reporting requirements; and
- data protection reporting requirements.

6.2 What role do the directors play in this regard?

The directors play an important role in ensuring that the company complies with:

- its reporting obligations; and
- other relevant laws and regulations.

They are responsible for ensuring that:

- reporting obligations are met; and
- the company's financial statements accurately reflect its financial position and performance, including ensuring that its financial statements:
  - comply with applicable accounting standards; and
  - are audited by an independent auditor.

6.3 What role do accountants and auditors play in this regard?

Accountants are responsible for preparing and maintaining accurate financial records that adhere to the accounting standards applicable in China, which are set by the MOF.

Auditors:

- review the company's financial statements; and
- ensure that these are compliant with accounting standards and relevant laws and regulations.

They may be asked to provide an independent assessment of the company's financial health and its ability to meet its reporting obligations. Within the framework of an acquisition, they may be requested to provide a report on the financial situation and financial value of the company.

6.4 What key concerns and considerations should be borne in mind with regard to accounting reporting in your jurisdiction?

Several concerns and considerations should be borne in mind by companies, including the following:

- Companies operating in China are subject to a wide range of laws and regulations governing their reporting obligations, including tax, accounting and financial reporting requirements. It is important for companies to understand these regulations and ensure that they are compliant with them.
- Chinese regulations require companies to disclose a wide range of information, including:
  - financial statements;
  - internal controls;
  - related-party transactions; and
  - other material information.

  Companies must be aware of these disclosure requirements and ensure that they provide accurate and timely information to regulators and stakeholders.
- China has strict data protection and privacy laws, and companies must ensure that they are compliant with these regulations when reporting. Companies must:
  - be careful not to disclose sensitive personal information without the proper consent of data subjects; and
  - take steps to protect personal data from unauthorised access or disclosure.

7. Executive performance and compensation

7.1 How is executive compensation regulated in your jurisdiction?

In a limited liability company, executive compensation is considered as an element of remuneration. The Company Law and the Labour Contract Law provide very general terms regarding the remuneration of executives, which includes both salary and compensation. It is the role of:

- the shareholders' meeting to decide on matters relating to the salaries and compensation of directors and supervisors; and
- the board of directors to decide on the salary and compensation of:
  - the company's manager and vice manager; and
  - the persons in charge of finance.

Equity incentives in listed companies are regulated by the Measures for the Administration of Equity Incentives of Listed Companies (2018). These define 'equity incentives' as "long-term incentives whereby a listed company uses the stock of its own as a means to motivate its directors, senior executives and other employees". A listed company that plans to implement equity incentives may utilise the following methods as the source of underlying stocks:

- the issuance of shares to incentive grantees;
- the repurchase of the company's shares; or
- other methods as permitted by laws and administrative regulations.

The measures also authorise and regulate the allocation of stock options as incentives to executives.

The total amount of the underlying stocks involved in all equity incentive plans of a listed company within the validity term must not exceed 10% of the total amount of its capital stocks. Without the approval of the shareholders' meeting by way of special resolution, the total number of stocks granted to anyone under all equity incentive plans within the validity term must not exceed 1% of the total amount of the company's capital stocks.

If the period during which the directors and senior executives of a listed company trade in the company's stocks is restricted:

- the listed company must not grant the restricted stocks as incentives during the relevant restriction period; and
- the incentive grantees must not exercise their equities.

There are some limits provided in regulations on incentive compensation for:

- insurance companies;
- commercial banks; and
- state-owned listed companies.

7.2 How is executive compensation determined? Do any disclosure requirements apply?

In listed companies, the remuneration and evaluation committee established by the board of directors is responsible for drafting the equity incentive plan. The board of directors must make a resolution on the draft equity incentive plan in accordance with the law; those directors who are the object of the incentive or who have an association with them must withdraw from voting. Once the board of directors has deliberated on and adopted the draft equity incentive plan, and announced the relevant resolutions, the equity incentive plan will be submitted to the shareholders' meeting for consideration.

In addition, strict assessment goals are formulated for executives who are allocated equity incentives. Performance evaluation indicators include:

- company performance indicators; and
- individual performance indicators.

A listed company may use the company's historical performance or the relevant indicators of comparable companies in the same industry as the basis for the company performance indicators. These may include:

- return on net assets;
- earnings per share;
- dividends per share;
- other comprehensive indicators that reflect shareholder returns and company value creation;
- net profit growth rate;
- main business income growth rate; and
- other growth indicators that reflect the company's profitability and market value.

If the relevant indicators of comparable companies in the same industry are taken as the basis for comparison, at least three comparable companies must be selected. The personal performance indicators for incentive grantees will be determined by the listed company itself. The listed company will also disclose the scientific nature of and rationale for the indicators when announcing the draft equity incentive plan.

Disclosure requirements apply at various stages of the process:

- Before convening the shareholders' meeting, the names and positions of incentive grantees are announced through the company's website or any other means. The

board of supervisors then examines the list of incentive grantees and solicits opinions from the public.

- The company must disclose its explanation of the board of supervisors' examination and publication of the list of incentive grantees five days before the equity incentive plan is deliberated on at the shareholders' meeting.
- Once the equity or stock options have been granted, the company must disclose issues such as:
  - the methods of allocation;
  - the accounting treatment;
  - the determination of fair value; and
  - the rationale for the adoption of the equity incentive plan.
- If the allocation is terminated, the company must disclose the related shareholders' resolution, board of directors' resolution, opinion of law firm or similar.

If any disclosure obligation is not met, the China Securities Regulatory Commission may apply sanctions.

7.3 How is executive performance monitored and managed?

Listed companies must establish a remuneration and evaluation committee in order to:

- oversee executive compensation; and
- ensure that it is aligned with company performance and the interests of shareholders.

Independent directors and the board of supervisors will offer their opinions on:

- whether the draft equity incentive plan is conducive to the sustainable development of the listed company; and
- whether the plan could potentially damage the interests of the listed company or those of its shareholders.

Where any independent director or the board of supervisors deems it necessary, he or she may suggest that the listed company retain an independent financial consultant:

- to offer professional opinions on the feasibility of the equity incentive plan; and
- to assess the above criteria and the impact on shareholders' interests.

If the listed company fails to retain an independent financial consultant, it must provide a special explanation accordingly.

7.4 What key concerns and considerations should be borne in mind with regard to executive performance and compensation in your jurisdiction?

The key concerns and considerations that should be borne in mind with regard to executive performance and compensation in China include the following:

- Differences between Chinese listed companies and Western listed companies: One significant difference between listed firms in China and those in other countries concerns the ownership of shares. Most listed firms in China have a dominant shareholder that helps to shape the strategies and policies of the company. It is rare for the capital of listed Chinese firms to be dispersed widely among many shareholders. The dominant shareholder can exercise substantial control over a firm by way of board representation and through voting rights. The controlling shareholder can be:
    - the state or a local government;
    - a state-owned entity (from which the listed firm was 'carved out'); or
    - a private shareholder.

  The different types of controlling investors have different objectives for the firm, which in turn will have consequences for the type of incentive remuneration chosen for executives.
- Market competitiveness: To attract and retain top talent, companies should offer competitive compensation packages that reflect the market rate. This can be challenging in a country where salary expectations can vary widely depending on region, industry and seniority.
- Performance metrics: Companies should:
    - establish clear performance metrics that align with their strategic goals and objectives; and
    - ensure that executive compensation is tied to these metrics.

  This can help to ensure that executives are incentivised to achieve the company's objectives and create value for shareholders.
- Transparency and accountability: Companies should:
    - be transparent about their executive compensation practices; and
    - ensure that they are accountable to shareholders and other stakeholders.

  This includes:
    - disclosing executive pay ratios; and
    - explaining how executive compensation is determined.
- Social responsibility: Companies operating in China should:
    - be aware of the growing social and environmental concerns in the country; and
    - ensure that their executive compensation practices align with their social responsibility goals.

  This may include incorporating sustainability metrics into performance evaluations.

8. Employment

8.1 What is the applicable employment regime in your jurisdiction and what are its key features?

The applicable employment regime in China is governed by:

- the Labour Law;
- the Labour Contract Law; and
- the Social Security Law.

These laws:

- set out the basic rules and standards for employment relationships in China; and
- provide protections for both employers and employees.

The key features of the employment regime in China include the following:

- Written employment contracts: Employers must provide written employment contracts to all employees, which must include basic information such as:
    - the name, domicile and legal representative or main person in charge of the employer;
    - the employee's name, domicile and ID number (or other valid documentary evidence of identity);
    - the term of the employment contract;
    - the job description and place of work;
    - working hours, rest and leave;
    - remuneration;
    - social insurance;
    - labour protection;
    - working conditions;
    - protection against occupational hazards; and
    - any other matters that are legally required to be included in employment contracts under the applicable laws and regulations.
- Working hours: There are three types of working hours systems applicable to full-time employees:
    - Standard working hours system: An employee should not work more than eight hours per day and 40 hours per week. The employee is entitled to at least one rest day every week. If the employee is required to work over the above limits, he or she will be entitled to overtime pay.
    - Comprehensively calculated working hours system: This generally applies to certain industries in which long shifts are required (eg, transportation, airlines,

fisheries, offshore oil exploration). Employees usually work intensively for one period and then take continuous days of rest.
    - Flexible working hours system: This applies only to certain job positions (eg, executives, sales personnel, taxi drivers).
- Minimum wage: There is no nationally applicable minimum wage in China. The local government of each region sets its local minimum wage, which is normally updated at least every two years and applies to all employees, regardless of their age, position or experience. There is generally:
    - a monthly minimum wage, which applies to all full-time employees; and
    - an hourly minimum wage, which applies to all part-time employees.

  There is no salary cap under Chinese law.
- Social insurance: Employers must provide social insurance for their employees, which includes:
    - pension;
    - medical insurance;
    - unemployment insurance;
    - work-related injury insurance; and
    - maternity insurance.
- Termination rules: Employers can only terminate an employee for specific reasons, such as:
    - serious misconduct;
    - poor performance; or
    - changes in business circumstances.

  Employers must follow specific procedures for terminating employees, including providing notice and severance pay.
- Dispute resolution: The labour dispute resolution system in China includes:
    - administrative mediation;
    - labour arbitration; and
    - litigation.

  Employees have the right to:
    - file a complaint with the labour authorities; or
    - pursue legal action in court.

8.2 Are trade unions or other types of employee representation recognised in your jurisdiction?

Pursuant to the Labour Law and the Trade Union Law, employees have the right to participate in and organise trade unions. All trade unions are under the leadership of the All-China Federation of Trade Unions (ACFTU), the main government body overseeing the country’s trade unions. Independent unions are not permitted under Chinese law. The ACFTU is a national-level organisation that reports directly to the Chinese Communist Party. If employees request that a company establish a trade union, the company cannot obstruct this process. In addition to the ACFTU, some companies in China have established

enterprise-level unions, which represent the interests of employees within a specific company. These enterprise-level unions are affiliated with the ACFTU and must follow its policies and regulations. Some companies have also voluntarily established some new forms of representation which are not yet officially recognised (eg, workers' councils and collective bargaining) in order to improve communication and cooperation between employees and management.

Trade unions represent and safeguard the legitimate interests of employees. Their main role is:

- to negotiate with employers on behalf of employees; and
- to sign 'collective contracts' with employers to safeguard employees' rights and interests.

The government has a say in the appointment of union leaders and can limit their ability to take action. The scope of activity permitted under China's trade unions is more limited than in other countries (eg, organising strikes and protests is not permitted). Foreign-invested enterprises are subject to all provisions of the Trade Union Law, but there is often greater pressure placed on them to unionise than on domestic companies.

8.3 How are dismissals, both individual and collective, governed in your jurisdiction? What is the process for effecting dismissals?

The termination of an employment contract can be bilateral or unilateral. Where termination by the employer is unilateral:

- it must comply with the statutory procedural requirements; and
- the employee must be given reasonable notice of 30 days in principle, which may be extended to 60 days in certain circumstances. If an employer fails to provide reasonable notice, it will be liable to pay to the employee the salary for the period of notice that should have been given plus an amount equivalent to 30% of the salary

Certain people are protected against termination. Under law, severance pay amounts to one month's pay per year of service. Severance pay can also be negotiated between the employer and the employee.

An employer can terminate an employment contract:

- for reasons of fault or misconduct; or
- without fault:
    - under the circumstances defined by the Labour Contract Law; or
    - due to economic layoffs.

If more than 20 employees or over 10% of all employees are to be laid off, the employer must report this to the labour union or to all employees 30 days in advance. The labour union or the employees will provide their opinions and the employer must report the layoff plan to the labour administrative authority. This may occur where:

- the employer:
  - has filed for bankruptcy;
  - faces difficulties in production or operation; or
  - needs to undergo certain structural changes in its operational organisation; or
- the economic circumstances of the employment contract have changed, making it impracticable.

8.4 How can specialist talent be attracted from overseas where necessary?

Attracting specialist talent from outside China can be challenging, especially post-COVID-19; but there are several strategies that companies can use to increase their chances of success:

- Leverage personal networks: Personal connections (*guanxi*) are important in China, and leveraging personal networks can be an effective way to identify and recruit specialist talent. This may include tapping into:
  - alumni networks;
  - industry associations; or
  - other professional networks.
- Utilise recruitment agencies: Recruitment agencies can help companies to identify and recruit specialist talent from outside of China. Agencies can provide expertise in navigating the local job market and help companies to identify candidates who meet their specific requirements.
- Utilise online recruitment platforms: Online recruitment platforms are widely used in China and can be an effective way to reach a large pool of potential candidates.
- Offer competitive compensation and benefits: To attract top talent, companies should offer competitive compensation and benefits.
- Provide opportunities for career development: Many employees in China are looking for opportunities for career development and advancement. Companies that offer clear career paths and opportunities for training and development are more likely to attract specialist talent.

8.5 What key concerns and considerations should be borne in mind with regard to employment in your jurisdiction?

The key concerns and considerations that should be borne in mind with regard to employment in China include the following:

- Legal compliance: Companies operating in China should be aware of the legal requirements governing employment relationships, including the Labour Contract Law and other relevant regulations. Non-compliance can result in:
  - fines;
  - legal action; and
  - damage to the company's reputation.
- Labour costs: Labour costs in China are rising and employers should budget accordingly. These include costs associated with:
  - social insurance;
  - overtime pay; and
  - severance pay.
- Labour shortages: Some industries in China are facing labour shortages due to demographic changes and other factors. Companies should be aware of these shortages and develop strategies for attracting and retaining talent.
- Workforce management: Managing a workforce in China can be challenging, particularly for foreign companies that may be unfamiliar with local customs and practices. Companies should establish clear policies and procedures for managing employees, including:
  - performance evaluations;
  - disciplinary action; and
  - termination.
- Employee benefits and incentives: To attract and retain top talent, companies should offer competitive employee benefits and incentives, including:
  - social insurance;
  - paid leave;
  - bonuses; and
  - other perks.

9. Tax

9.1 What is the applicable tax regime in your jurisdiction and what are its key features?

The tax regime in China consists of several types of taxes, including:

- value-added tax (VAT);
- corporate income tax (CIT);
- individual income tax (IIT); and
- consumption tax.

The key features of some of these taxes are discussed below.

Income taxes:

- CIT: The standard tax rate is 25%, but there are also reduced rates for small and medium-sized enterprises and certain industries.
- Withholding income tax on payments to non-residents: A concessionary rate of 10% is currently applicable to interest, rental, royalty and other passive income.
- IIT: This is levied on the income of individuals in China. The tax rates for IIT range from 3% to 45%, depending on the amount of income earned.

Taxes on transactions:

- VAT: This applies to the sale of goods, except real estate, and the provision of labour services in relation to the processing of goods and repair and replacement services within China. The standard tax rate is 13%, but there are also reduced rates of 9% and 6% for certain goods and services.
- Consumption tax: This applies to the following categories of consumable goods:
    - tobacco;
    - alcoholic drinks;
    - cosmetics;
    - jewellery;
    - fireworks;
    - gasoline;
    - diesel oil
    - tyres;
    - motorcycles;
    - automobiles;
    - golf equipment;
    - yachts;
    - luxury watches;
    - disposable chopsticks; and
    - wooden floorboards.

  The tax is computed based on sales price and/or sales volume.
- Business tax: This applies to:
    - the provision of services;
    - the transfer of intangible property; and
    - the sale of real estate properties in China.

  The tax rates range from 3% to 20%.

In addition, there are also taxes such as the following:

- taxes levied on:
    - land appreciation;
    - natural resources;

    - urban maintenance and construction tax; and
    - property;
- stamp tax; and
- customs duties.

9.2 What taxes apply to capital inflows and outflows?

China has various taxes that may apply to cross-border capital inflows and outflows, including the following:

- Withholding tax may apply to payments made to foreign companies or individuals. For example, if a Chinese company pays dividends to foreign shareholders, it may be subject to withholding tax on the dividends.
- In the case of a winding-up of a foreign-invested enterprise (FIE), the FIE's statutory reserves and retained earnings will be treated as dividends subject to withholding tax in China. The distribution of paid-up capital to foreign investors will not be subject to withholding tax in China to the extent that the amount of distribution does not exceed the original investment cost.
- FIEs are not subject to income tax liability when borrowing and repaying debts. Foreign lenders are generally subject to VAT and withholding tax on interest income from China.
- Since 1 July 2022, FIEs have been subject to stamp duty at:
    - 0.025% of equity investments (paid-up capital and capital surplus) received from shareholders; and
    - 0.005% of the amount of the borrowed funds stated in loan agreements if the loans were made from financial institutions.
- VAT: VAT may apply to certain cross-border transactions involving the import or export of goods or services. For example, the import of goods into China is subject to VAT, while the export of goods from China is generally exempt from VAT.

9.3 What key exemptions and incentives are available to encourage enterprises to do business in your jurisdiction?

At a national level, special incentives can be granted to encourage:

- the development of specific technologies or industries; or
- investment in research and development and intellectual property.

For example:

- companies classified as a 'high-tech enterprises' will enjoy various tax reductions or supporting funds granted by governments; and
- companies that own patents may be eligible for tax incentives and other benefits.

Tax incentives may include:

- reduced CIT rates;
- VAT exemptions; and
- other tax breaks.

Incentives can also be granted to companies investing in Western China.

At a local level, governments can grant preferential policies to attract investors, such as:

- a subsidy for renting premises;
- local tax reductions;
- financial support;
- land use preferences; and
- streamlined approval processes.

China has established several free trade zones (FTZs) to encourage foreign investment and trade. Companies operating in FTZs may benefit from preferential policies, including:

- reduced tariffs;
- streamlined customs procedures; and
- relaxed restrictions on foreign investment.

China offers various visa and residency incentives to foreign entrepreneurs and investors, including expedited visa processing and permanent residency for high-net-worth individuals.

The specific exemptions and incentives available may vary depending on the industry and region in which a company operates. Additionally, the Chinese government may revise or eliminate these incentives in response to changing economic and political conditions.

9.4 What key concerns and considerations should be borne in mind with regard to tax in your jurisdiction?

China has a complex and ever-changing tax system, and it is important to ensure compliance with all relevant laws and regulations. Failure to comply with tax laws can result in significant financial and legal penalties.

Companies operating in China should engage in tax planning to minimise their tax liability while remaining compliant with relevant laws and regulations. This may include:

- taking advantage of available tax incentives and exemptions;
- structuring transactions in tax-efficient ways; and

- managing transfer pricing risks.

China has tax treaties with many other countries to avoid double taxation of income earned in multiple jurisdictions. It is important to:

- understand the relevant tax treaty provisions; and
- manage potential risks associated with cross-border transactions.

The Chinese tax authorities conduct regular tax audits of companies operating in China. It is important to:

- maintain accurate and complete tax records; and
- cooperate fully with the tax authorities during audits.

China has implemented various anti-avoidance rules to prevent companies from using tax-planning strategies to avoid paying taxes. It is important to:

- stay up to date on any changes to these rules; and
- structure transactions in compliance with relevant laws and regulations.

Transfer pricing is a key concern for multinational companies operating in China. Companies should:

- establish transfer pricing policies that are compliant with relevant laws and regulations; and
- maintain accurate and complete transfer pricing documentation.

10. M&A

10.1 What provisions govern mergers and acquisitions in your jurisdiction and what are their key features?

M&A activity in China is governed by several laws and regulations, including the following:

- Company law: This provides the basic legal framework for M&A activity in China, including provisions governing share transfers, mergers and acquisitions.
- For mergers and acquisitions involving foreign investors, the primary governing statute is the Regulations on the Merger and Acquisition of Domestic Enterprises by Foreign Investors, last revised in June 2009. However, it is expected that these regulations will be repealed or updated in the near future as part of the implementation of the Foreign Investment Law.

- Foreign Investment Law: The Foreign Investment Law and the Regulation for Implementing the Foreign Investment Law of the China provide the legal framework for foreign investment in China, including provisions governing M&A transactions involving foreign investors. It abolishes the 'case-by-case' approach and establishes an administrative system for:
    - foreign investment review;
    - information reporting; and
    - national security review.
- Securities Law: The Securities Law:
    - regulates M&A activity involving listed companies; and
    - requires certain disclosures and approvals before such transactions can take place.

Chinese law recognises two forms of merger:

- merger by absorption; and
- merger by new establishment.

However, cross-border mergers are currently unavailable under China law – that is, it is not possible to directly merge a foreign entity with a domestic company (including foreign-invested enterprises (FIEs)). As far as foreign investors are concerned, the only permissible forms of merger in China are:

- between FIEs; and
- between FIEs and domestic companies.

The State Administration of Foreign Exchange issued a circular in late 2019 that allows FIEs to use their registered capital to make investments in China. Previously, except for foreign-invested investment and venture capital enterprises, FIEs were not permitted to use registered capital or foreign currency loans to invest in or acquire the equity of other enterprises. Under the new policy, all FIEs can be used to acquire and hold interests in other Chinese entities, which gives foreign investors greater flexibility in structuring their investments into China.

The key features of the provisions governing M&A in China include the following:

- National security review: M&A transactions that may have an impact on national security are subject to review by the relevant authorities. The review process can be lengthy and complex, and may result in the transaction being blocked or subject to conditions.
- Foreign investment restrictions: Some sectors in China are subject to restrictions on foreign investment and M&A transactions involving foreign investors may be subject to additional scrutiny.

- Approval requirements: Certain M&A transactions in China require approval from the relevant authorities, including:
    - the Ministry of Commerce;
    - the State Administration for Market Regulation; and
    - for listed companies, the China Securities Regulatory Commission.
- Disclosure requirements: Companies involved in M&A transactions in China are subject to various disclosure requirements, including requirements:
    - to disclose information about the transaction; and
    - to obtain shareholder approval in some cases.

10.2 How are mergers and acquisitions regulated from a competition perspective in your jurisdiction?

M&A activity in China is regulated from a competition perspective by:

- the Anti-Monopoly Law (AML), revised in 2022; and
- implementing regulations, some of which were revised in 2023.

These provisions are enforced by the State Administration for Market Regulation (SAMR).

The AML prohibits M&A transactions that may have the effect of eliminating or restricting competition in the relevant market. These include transactions that may result in market dominance or a significant reduction in competition. Under the AML, M&A transactions that meet the following thresholds are subject to review by the SAMR:

- The combined worldwide turnover of all parties involved in the transaction exceeded RMB 10 billion and the turnover of at least two parties involved in the transaction in China exceeded RMB 400 million in the last financial year; or
- The combined turnover of all parties involved in the transaction in China exceeds RMB 2 billion and the turnover of at least two parties involved in the transaction in China exceeds RMB 400 million in the last financial year.

Modifications to the notification thresholds are being contemplated. The SAMR:

- has the power to block or impose conditions on M&A transactions that are found to violate the AML; and
- since the 2022 revision, can require notification even if a transaction does not meet the above thresholds if there is evidence that the transaction may impede market competition.

The review process can be lengthy and complex, and can involve multiple rounds of negotiations between the parties and the SAMR. Penalties were recently enhanced for parties

which do not comply with merger control provisions and a ‘stop the clock’ mechanism was introduced that allows the SAMR to suspend a merger review in certain circumstances.

10.3 How are mergers and acquisitions regulated from an employment perspective in your jurisdiction?

Potential investors should first consider the structure of the deal with respect to employment issues. In an asset deal in China – unlike in other countries, where employees may be transferred automatically when a business is transferred from one owner to another – the employees of the target and the related employment contracts are not automatically transferred to the buyer. The employees may only be transferred by termination and subsequent rehire.

As a consequence, severance pay is a common problem in asset deals in China: the seller and the buyer must agree beforehand on how to deal with the previous service period of each employee. Employees will often seek to take advantage of pre-M&A severance negotiations and ask the seller for much higher severance payments than they would be entitled to under the statutory calculations, using them as an opportunity to negotiate better terms with employers.

In contrast, in an equity deal, the employer does not change when the target’s equity is transferred; therefore, the existing employment contracts between the target and its employees and the employees’ tenure survive the transaction. However, the disadvantages of an equity transaction are that the buyer will:

- assume pre-existing employment law liabilities that the target incurred before closing; and
- retain all existing employees, including underperforming and potentially redundant employees.

Labour contracts may include non-compete and confidentiality obligations which may impede the transfer of the employees to the new employer; a waiver of these provisions should thus be sought from the current employer. The usual issues to pay attention to in labour law due diligence prior to an M&A transaction relate to matters such as:

- the absence of employment contracts;
- outstanding payments due to employees (eg, unpaid overtime);
- protection of personal data related to employees during the due diligence process; and
- collective layoffs carried out pursuant to the transaction.

In terms of consultation of labour unions prior to the M&A transaction, the labour laws provide that where an employer’s decision may affect employees’ vital interests, the employer must consult with the employees and the trade union and hear their opinions.

10.4 What key concerns and considerations should be borne in mind with regard to M&A activity in your jurisdiction?

The key concerns and considerations to keep in mind with regard to M&A in China include the following:

- Regulatory environment: China's regulatory environment can be complex and constantly evolving. Foreign investors should be aware of the relevant laws and regulations governing M&A activity, including anti-monopoly, national security and foreign investment laws.
- Due diligence: Conducting thorough due diligence is critical in any M&A transaction, but especially in China, where business practices and accounting standards may differ from those in Western countries.
- Cultural differences: Western companies and Chinese companies do not necessarily have the same appreciation of time, which can be crucial in an M&A process; and Chinese companies doing domestic deals do not necessarily give the same importance as Western companies to confidentiality or due diligence. It is therefore sometimes difficult to align Western and Chinese companies as regards the acquisition process and price multiples.
- IP rights: Protection of IP rights can be a significant issue in China. Investors should ensure that:
  - their intellectual property is adequately protected; and
  - a potential target has not infringed the IP rights of others.
- Local partners: Working with local partners that have a deep understanding of the market can be invaluable in navigating the complexities of doing business in China. Investors should choose their partners carefully and conduct due diligence on them before starting a relationship.

11. Financial crime

11.1 What provisions govern money laundering and other forms of financial crime in your jurisdiction?

Money laundering and other forms of financial crime are governed by a vast range of laws and regulations in China, as provisions in this area are scattered among several laws. The key laws include the following:

- Anti-Money Laundering Law of 2007: This law sets out the framework for preventing and combating money laundering in China. It requires financial institutions to establish internal control systems and to report suspicious transactions to the authorities.

- Criminal Law of 1997 (last amended in 2020): This law prohibits a range of financial crimes, including:
    - money laundering;
    - embezzlement; and
    - bribery.

  The penalties for these crimes include:
    - fines;
    - imprisonment; and
    - in some cases, the death penalty.
- Securities Law of 2006 (amended in 2019): This law regulates the securities markets in China and includes provisions to prevent:
    - insider trading;
    - market manipulation; and
    - other forms of financial crime.

Financial institutions and other regulated entities in China are also subject to supervision and enforcement by:

- the People's Bank of China;
- the China Securities Regulatory Commission; and
- other regulatory bodies which have issued standards of professional conduct. Certain industry associations (eg, the China Futures Association and the Securities Association of China) have issued codes of commercial conduct that ban fraudulent practices by their members.

11.2 What key concerns and considerations should be borne in mind with regard to the prevention of financial crime in your jurisdiction?

Preventing financial crime in China is a complex and multifaceted process, and there are several key concerns and considerations to bear in mind. Some of these include the following:

- Compliance with relevant laws and regulations: Companies must comply with relevant laws and regulations related to financial crime prevention in China. This includes implementing appropriate internal controls, policies and procedures to prevent:
    - money laundering;
    - fraud; and
    - other forms of financial crime.
- Risk assessment: Companies should conduct regular risk assessments to identify areas of potential vulnerability to financial crime, including the risks associated with:
    - employees;
    - customers;

- counterparties;
  - transactions; and
  - products.
- Know your customer (KYC): Companies should have robust KYC procedures in place to verify the identity of customers and understand their sources of funds. These include conducting ongoing monitoring of customer transactions to identify any suspicious activity.
- Training and awareness: Companies should provide regular training and awareness programmes to employees to ensure they understand the risks of financial crime and their role in preventing it.
- Reporting and cooperation: Companies should establish procedures for:
  - reporting suspicious transactions to the authorities; and
  - cooperating with law enforcement agencies in investigations of financial crime.
- Third-party risk management: Companies should have appropriate due diligence procedures in place when dealing with third-party vendors, partners and agents to ensure that they are not involved in financial crime.
- Data protection: Companies should protect customer data and other sensitive information from theft and unauthorised access to prevent financial crime.

12. Audits and auditors

12.1 When is an audit required in your jurisdiction? What exemptions from the auditing requirements apply?

The Company Law provides that, following the end of each fiscal year, a company must:

- formulate a financial report; and
- have it audited by an accounting firm.

If the enterprise fails to submit the annual reporting information on time, it will be included in the Catalogue of Enterprises with Irregular Operations, which is open to the public. The legal representative and general manager of a blacklisted enterprise will be banned from taking a legal representative or general manager role in other enterprises for three years; while a blacklisted enterprise will be in a disadvantageous position in terms of:

- bidding, government procurement, licensing applications and land purchases; and
- obtaining new investments in the future.

In addition, in certain circumstances, if the board of supervisors or the supervisors of a company that does not have a board of supervisors finds that the company is running

abnormally, they may conduct an investigation and hire an accounting firm to help them with the investigation.

Periodic audits also enable companies to improve internal control systems and, as the case may be, detect fraud at an early stage.

12.2 What rules relate to the appointment, tenure and removal of auditors in your jurisdiction?

From a general point of view, the appointment or removal of the auditor of a company:

- must comply with the articles of association of the company; and
- is decided at a shareholders' general meeting or by the board of directors.

Generally, auditors are appointed for a term of one year and may be reappointed for consecutive terms, unless otherwise provided by the articles of association. Their appointment must be approved by a simple majority of the shareholders present at the annual general meeting.

The board of shareholders, a shareholders' general meeting or the board of directors will allow the auditor to make a representation when passing a resolution on the removal of the auditor.

12.3 Are there any rules or recommendations that limit the scope of services as regards the provision of non-audit services by an auditor?

China has no specific regulations or guidelines that regulate the provision of non-audit services by accounting firms.

While there have been discussions and proposals for such regulations in the past, as well as some restrictions on non-audit services in certain situations, there is no comprehensive regulatory framework in place for non-audit services in China.

In November 2022, the Chinese authorities conducted raids of some of the Big Fours operating in China and their associated Chinese law firms, which subsequently ceased operation in China, with their lawyers joining other domestic law firms instead. These were prompted by the requirement under Chinese law that practising law in China is reserved to domestic firms only.

The provision of non-auditing services is being encouraged by the Chinese government as a way for Chinese accounting firms to develop their offerings. Some auditing firms are choosing to provide non-audit services accordingly. However, there is also concern among auditing firms that if the 'non-audit services' part of their business receives a significant proportion of its fees from a client of the accounting firm, the audit part will become

dependent on the non-audit services part. Thus, in order to protect their independence, some auditing firms recommend the disclosure in the financial report delivered to clients of certain information relating to non-audit services, such as:

- the proportion of audit and non-audit services;
- the types and costs of non-audit services; and
- the revenues raised from non-audit services.

12.4 Are there any rules or recommendations which cap the remuneration of an auditor as regards payment for the provision of non-audit services?

There are no specific rules or recommendations that cap the remuneration of an auditor as regards payment for the provision of non-audit services.

13. Termination of activities

13.1 What are the main routes for terminating business activities in your jurisdiction? What are the advantages and disadvantages of each?

There are several routes for terminating business activities in China, including the following:

- Voluntary liquidation: This involves the self-imposed winding up and dissolution of a company that has been approved by the shareholder(s). Such a decision will be taken where a company's leadership decides that the company has no reason to continue operating. This type of liquidation requires that a liquidation committee be established and start the process within 15 days from its establishment. The committee will wind up the company's affairs and sell its assets to pay off the liquidation expenses, outstanding debts, fees and taxes. Once these debts have been discharged, the liquidation committee can distribute the remaining returns among the shareholders. If the company's assets are insufficient to settle the debts, it will file a bankruptcy declaration with the court. In some cases, the process can be relatively straightforward and allows the company to wind up its affairs and distribute assets to shareholders. However, in other cases it may:
  - be time consuming;
  - involve a lot of steps; and
  - require the approval of various authorities, which can add complexity and costs.
- Bankruptcy: This involves a formal process in which a company is declared insolvent and its assets are liquidated to pay its creditors. Bankruptcy can be complicated and costly, and may not be suitable for all companies, but it can provide a way for the company to discharge its debts and move on.
- Dissolution: This involves the company ceasing operations and cancelling its registration with the relevant authorities. Dissolution can be a relatively

straightforward process, but it may require the payment of outstanding taxes and other liabilities.

- Informal dormancy: The Company Law does not officially permit the existence of dormant companies; however, it is possible to temporarily discharge a company from most of its liabilities until the business can be restarted or officially closed. This involves:
  - ceasing activities and lifting liens (eg, employees, customers, equipment);
  - paying all remaining taxes and debts; and
  - relocating the company to a low-cost location.

  After all these steps, the company still exists but will be dormant and the taxes incurred will be much lower than previously. This is a temporary solution, as after several months the local government will either start to levy higher taxes or threaten to revoke the business licence. This also requires the monitoring of tax payments and compliance with reporting obligations. This has the advantage of deferring expenses and allowing the shell company to survive until its fortunes can change. However, the potential impact on the company's reputation should be considered.

13.2 What key concerns and considerations should be borne in mind with regard to the termination of business activities in your jurisdiction?

The key concerns and considerations to bear in mind when terminating business activities in China include the following:

- Compliance with relevant laws and regulations: Companies must comply with relevant laws and regulations when terminating their business activities in China.
- Taxation and other liabilities: Companies must settle any outstanding taxes, debts and other liabilities before terminating their business activities in China.
- Employment issues: Companies must comply with relevant employment laws and regulations when terminating their business activities in China. This includes providing appropriate notice and severance payments to employees.
- Protection of intellectual property: Companies must take steps to protect their intellectual property when terminating their business activities in China. This includes ensuring that all IP rights are properly transferred or licensed to another entity.
- Repatriation of funds: Companies must comply with relevant foreign exchange regulations when repatriating funds out of China. This can be a complex process and may require the approval of various authorities.
- Customers/suppliers management: Companies must manage their relationships with suppliers, customers and other stakeholders when terminating their business activities in China. This includes:
  - providing appropriate notice; and
  - managing any outstanding contracts or obligations.

14. Trends and predictions

14.1 How would you describe the current landscape for doing business and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

COVID-19 and recent geopolitical turmoil have considerably changed the landscape for doing business in China. While China was formerly considered to be a predictable jurisdiction, with policies issued in five-year plans (or longer), foreign companies now increasingly regard it as unpredictable – not least due to:

- the sudden change in COVID-19 policy; and
- blows to Chinese tech companies and the education sector.

It remains to be seen how the Chinese economy will recover post-pandemic.

The prevailing trends that are shaping the business environment in China include the following:

- While trends towards openness and modernisation are reflected in the recent issuance of the Foreign Investment Law and a reduction in the number of sectors in which foreign investment is restricted, among other things, there are also parallel trends of:
    - tightened state controls;
    - increased localisation requirements; and
    - new uncertainties for foreign companies.

  In a number of business sectors (eg, medical equipment and pharmaceuticals), China has introduced localisation requirements which will oblige foreign suppliers to partner with local Chinese companies and localise their production, applying a policy of 'Made in China for China'. Some companies will thus need to shift from an export model to an 'investment in China' model, which requires a different kind of strategy and resources.
- This shift towards localisation is complemented by a 'dual circulation' policy, which enshrines China's longstanding ambition to become self-sufficient by:
    - reducing its dependency on foreign products and technologies; and
    - stimulating domestic consumption.

  Post-pandemic, this was one of the first goals of the new government designated in 2023.
- The tendency to control and promote national interests is also reflected in:
    - the National Security Law;
    - the Export Control Law;
    - the Data Security Law;
    - the Cybersecurity Law; and
    - the Personal Information Protection Law.

These introduce new obligations for foreign companies, in particular through the control of the transfer of certain products and data outside China.

- China has long left behind the label of 'factory of the world' to become an innovation hub, ramping up investments in artificial intelligence, chips, decarbonation, batteries and other cutting-edge technologies. As such, it constitutes a real laboratory for research and development which can improve the capacity of foreign companies to diversify their innovations.
- Forthcoming reforms will target China's most pressing priorities:
  - promoting scientific and technological self-reliance and innovation in the face of heightened rivalry with the United States that threatens to curb China's domestic chip development;
  - reining in large corporate and financial institutions under a single regulatory authority to reduce systemic risks; and
  - strengthening data governance.

  Other forthcoming legislative reforms include:
  - draft amendments to the Company Law;
  - amendments to the Counterespionage Law (2023 Revision); and
  - a new law on the social credit system.

15. Tips and traps

15.1 What are your top tips for doing business smoothly in your jurisdiction and what potential sticking points would you highlight?

Our top tips for doing business smoothly in China are as follows:

- Develop strong relationships: Building strong relationships with business partners and stakeholders in China is essential. This includes:
  - taking the time to understand the Chinese business culture;
  - building trust; and
  - developing business and personal relationships.

  Now that borders have reopened following the pandemic, it is essential to make the time to travel to China to meet business counterparts in person, after taking all initial steps and measures to protect your business and activities (eg, by protecting trademarks and intellectual property and ensuring confidentiality).
- Seek local expertise: It is important to work with local experts who have a deep understanding of the Chinese business environment, including cultural norms, legal and regulatory frameworks, and market trends.
- Dedicate the necessary resources, including financial resources, for investment in China: Investment in China is becoming increasingly costly; to succeed, foreign companies need to dedicate an appropriate budget accordingly.
- Be patient: Doing business in China can be a slow process and time does not have the same meaning in China as it does elsewhere, so it is important to be patient and

persistent. Building trust and establishing a solid business network can take time, but are essential for long-term success.

- Stay compliant: China's regulatory environment can be complex and is constantly evolving, so it is important to ensure ongoing compliance with relevant laws and regulations. This includes:
  - working with local experts;
  - conducting due diligence; and
  - keeping up to date with the latest legal and regulatory developments.

As for potential sticking points, there are a number of challenges that companies may face when doing business in China, including the following:

- Compliance and regulatory issues: China's regulatory environment can be complex and is constantly evolving, and companies must ensure ongoing compliance with relevant laws and regulations. In particular, China is issuing increasing numbers of regulations which are increasingly sophisticated, so the necessary resources must be devoted to compliance.
- Linguistic and cultural barriers: Communication can be a challenge due to linguistic and cultural differences.
- IP protection: IP protection can be a challenge in China; but some surveys indicate that companies which have taken the necessary time and measures to properly protect their IP assets before approaching the Chinese market have been able to assert their rights in a fairly satisfactory manner.
- Cybersecurity and data privacy: Cybersecurity and data privacy are increasingly important issues in China, and companies should ensure that they have appropriate safeguards in place.

By being aware of these potential sticking points and taking steps to mitigate them, companies can increase their chances of success when doing business in China.