

Bird & Bird

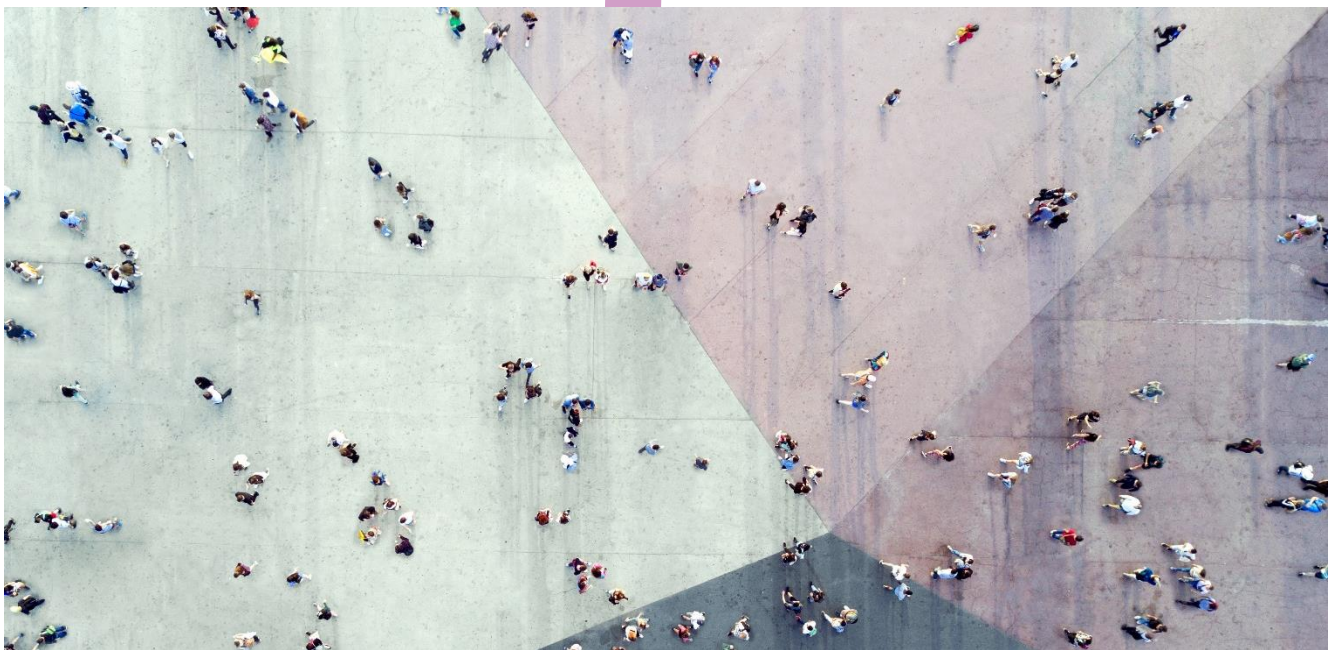
# Setting up a business in China

2025



# Common Challenges Faced by Foreign Brands in China

*The challenges multi-national businesses are facing in China since the end of the pandemic-related disconnection have substantially changed from previous years. Many organisations have to recalibrate their China strategies for economic, regulatory, political or competition related reasons. With our decades-long experience operating in China and being involved in strategic discussions with many international businesses, we are helping clients to navigate these hurdles, ensure compliance with the current regulatory landscape, and develop strategies for the future.*



## Compliance and Regulation

Both foreign and domestic compliance requirements in China are becoming more complex every year, forcing companies to spend an increasing amount of time in understanding and responding to these requirements. Moreover, there is a clear focus of governmental authorities to enforce such requirements on a broader basis. Over the last five years, we have seen an increasing number of cases where foreign-invested companies became the subject of administrative investigations in China and by Chinese authorities enforcing local law. Most of these resulted in hefty fines being imposed on the targeted companies. Therefore, given the importance of continued access to the Chinese market for many international companies, a high degree of legal compliance became top priority for foreign investors. Typical issues include the following:

### General Regulatory

- General licenses, approvals and registrations for subsidiaries in China, including registration of proper business scope for the actual operations of the company and up-to-date registrations needed for day-to-day operations
- Compliance with investment restrictions in restricted or prohibited industry sectors
- All regulatory approvals and registrations for the actually carried out business (such as in relation to manufacturing and/or distribution of regulated products and services, handling of dangerous goods, product certifications etc.)

### Technology Regulation, Cybersecurity & Data Protection

#### Cybersecurity & Breach Response

- Data and cyber breaches, including risk reduction strategies and advising from the moment of discovery to regulatory action
- Cloud, outsourcing and other supply chain compliance issues

#### Privacy & Personal Information Protection

- Internal rules and policies relating to protection of personal information
- Personal information policies for clients/customers, including consent forms
- Marketing, website, cookie and location data compliance
- Commercial exploitation of information and protection of database

## Data Governance & Export

- Agreement with third parties (e.g. service providers, data processors) on use or transfer of personal information
- Data export strategies including implementing standard contractual clauses and Binding Corporate Rules;

## Intellectual Property

### Trademark

Navigating trade mark protection in China presents unique challenges for foreign brands, from clearance and registration to enforcement and brand monitoring. With a complex regulatory landscape and a fast-moving market, strategic and proactive brand protection is essential.

#### Brand Clearance & Risk Assessment

Foreign brands often face uncertainty when launching in China due to conflicting prior registrations and local nuances in trade mark law. We help clients:

- Conduct clearance searches and assess risks associated with new brand adoption.
- Provide validity and availability opinions, along with practical strategies to overcome conflicts.
- Collaborate with designers to adjust branding elements and reduce registration risks.

#### Filing & Portfolio Management

Trade mark registration in China requires a tailored approach:

- We develop filing strategies for new applications and existing portfolios.
- Our team manages all formalities in-house, using Web TMS for real-time portfolio access and seamless coordination with national offices and WIPO.

#### Enforcement & Dispute Resolution

Infringement risks are high in China's competitive market. We support clients by:

- Designing enforcement strategies from the outset of engagement.
- Handling oppositions, appeals, validity actions, domain name disputes, and social media takedowns.
- Acting swiftly to prevent escalation and protect brand integrity.

## Strategic Commercial Advice

Foreign brands must align legal protection with commercial goals:

- We advise on brand architecture, expansion strategies, acquisitions, and consolidation.
- Our expertise includes negotiating trade mark co-existence agreements and brand licensing globally.

## Patent

Foreign businesses continue to face key patent-related hurdles in China:

- **Enforcement Barriers:** No IP rights pre-registered in China, different legal regimes and complicated enforcement procedures.
- **Invalidation Risks:** Competitors may initiate patent invalidation proceedings to challenge validity of registered patent rights, which is very common in various sectors including tech and pharma.
- **Localisation Demands:** Effective portfolio management requires tailored filing strategies and local monitoring.
- **Technology Transfer Exposure:** Joint ventures and licensing deals risk IP leakage without strong structural safeguards.

## Trade Secrets

Foreign brands operating in China face challenges in safeguarding trade secrets, especially in sectors where proprietary technology and business processes are key competitive assets. These challenges include:

- **Less-advanced Preventative Systems:** Inconsistent local practices and long supply chain make audits and internal/external controls hard to implement.
- **Enforcement Barriers:** Evidence threshold is high. Legal actions like injunctions or search orders can be slowed by procedural delays and inconsistent regional enforcement.
- **Cross-border Complexity:** Disputes spanning multiple jurisdictions require navigating different legal standards and enforcement cultures.

## Copyright

Foreign brands face several copyright-related hurdles in China, especially in digital media, software, and content-driven sectors:

- **Enforcement Barriers:** Combating unauthorised use—particularly online—is often

slow and infringement frequently reoccurs very easily.

- **Licensing Complexity:** Local licensing structures and collective rights management may differ from international norms.
- **Cross-border Uncertainty:** Structuring international agreements is complicated in clearly defining rights and obligations.

Proactive monitoring and localised strategies are essential to navigate China's copyright landscape effectively.

## Unfair Competition

Foreign brands in China may encounter unfair competition practices that undermine brand value. Key challenges include:

- **Imitation and Brand Confusion:** Local companies may mimic foreign brands' trademarks, packaging, or advertising to mislead consumers and dilute brand identity. Sometimes they have prior trademark/trade name rights in China.
- **False Advertising:** Competitors may exaggerate product claims or subtly disparage foreign brands in marketing, creating unfair market perceptions.
- **Enforcement Barriers:** It may be difficult to fully appreciate the interaction between unfair competition law and other IP laws and anti-trust laws in China, which impacts litigation strategies.

## Employment

China is a highly regulated and employee-friendly jurisdiction from an employment law perspective. The key pieces of legislation that govern employment law in China are the PRC Labour Law, the PRC Labour Contract Law and the PRC Social Insurance Law. The laws cover a range of topics including formation, performance, contract revisions and terminations. They apply to all employers that are based in the territory of the PRC and to all employees with whom they establish an employment relationship. Typical issues for foreign invested enterprises include:

- Employment contracts
- Wages
- Termination and severance pay
- Internal employee handbooks
- Working hour system, annual leave and public holidays



- Social insurance and housing fund contributions
- Individual Income Tax
- Immigration, secondment and employment of foreigners in China
- Employee transfers and dispatch
- Labour disputes

## Competition Law

- Distribution systems
- Restrictions imposed on customers
- Investigations of anti-competitive conduct
- Participation in trade associations and other organisations
- Cooperation agreements / strategic alliances / JVs with competitors

## Bribery Prevention

- Creating and maintaining internal rules and procedures on bribery prevention and other decision-making processes
- Managing relationships with governmental and quasi-governmental agencies and officers
- Gifts, hospitality, entertaining, sponsorships and donations
- Responsibilities and powers of compliance officer, government relations officer and similar functions
- Applicability of extraterritorial legislation, such as the U.S. Foreign Corrupt Practices Act
- Training programs and whistle-blower hotlines for relevant employees
- Investigations of bribery and corruption allegations against companies and individuals



# Setting up a WFOE in China

## Type

A Wholly Foreign-Owned Enterprise (**WFOE**) takes the legal form of a limited liability company with shareholders who are foreign incorporated entities or individuals with foreign nationality. Taiwan, Hong Kong and Macao are regarded as “foreign” in this context. Sometimes China investments are made through an intermediary holding in places like Hong Kong which increases the flexibility of the investment. The alternative type of commercial presence in China, a representative office of a foreign company, can be set up quicker and without capital commitment requirements, but is restricted to liaison activities and cannot generate revenue, hence is a cost rather than a profit centre.

The establishment of a WFOE has been simplified over the last years and is now broadly follows the same process as that required for setting up a local company with limited liability. While the required registrations typically take around two weeks only the entire establishment procedure until achieving actual operability may still take two to three months.

## Business Scope

Except the business set forth in the so-called Negative Lists for foreign investment as issued by the Chinese government from time to time (such as tobacco, publishing, compulsory education), WFOE structures are available to conduct various businesses in China. Such business must be explicitly spelled out in the WFOE business scope which is subject to a review process by the competent government authorities prior to the actual company registration. Often, the government authority will request some changes to the proposed wording of the business scope to bring it in line with standard formulations, in particular if the review process is conducted online. For certain regulated business activities (such as food, medical instruments, financial services etc). special requirements for the registered address, registered capital, staffing would apply. It is therefore a good idea to decide the business scope at the very beginning of the preparation of the WFOE incorporation.

## Registered Capital

The registered capital of Wholly Foreign-Owned Enterprise (**WFOE**) the capital subscribed by all shareholders, and their liability is limited to the amount of capital they have committed. While China previously adopted a “subscription-based” system that allowed flexible capital contribution schedules, the new Company Law effective from 2023 now requires that all subscribed capital must be fully paid-in within five years from the date of incorporation. This marks a significant shift from the earlier practice and means that companies must now align their financing plans with this statutory timeline to remain compliant.

## Registered Address

In general, virtual or letterbox companies are not permitted in China so that the lease or purchase of physical office or factory space is required. Such suitable space needs to be secured at the very beginning of the WFOE incorporation process because the signed lease contract is part of the first government applications.



## Company Governance

Shareholder, legal representative, director (executive director/Board of Directors), supervisor and general manager are compulsory roles in a WFOE's company governance structure. WFOE could choose to have an executive director (sole director) or set up a Board with at least 3 directors. Current Chinese legislation has no nationality, physical presence, education background and working experience requirements for company governance roles. WFOE can also have several senior officers besides the roles mentioned above based on the actual management needs without being compulsory.

Meetings of Board of Directors/shareholders/supervisors may take place in or outside of China physically or via telecommunication or video or online as long as the Articles of Association of the WFOE allow for it.



## Accounting

WFOE's accountings shall in line with the Accounting Standard for Business Enterprise or Accounting Standards for Small Enterprises issued by Ministry of Finance in China. The financial year must always be the calendar year. As required by Chinese company law, WFOE shall, at the end of each financial year, prepare a financial report and have it audited by an accounting firm. Chinese authorities only recognise the audit report issued by a Chinese qualified CPA.



## Tax

Tax issues for WFOE include the tax registration after incorporation, regular tax reporting and the annual tax settlement. Part of the initial tax registration is to verify the categories of tax to be paid by the WFOE and applying for VAT invoice issuance by the WFOE (i.e. "Fapiao"). Regular tax reporting is required on a monthly basis. Under certain circumstances, such as profit distributions to foreign shareholders, special tax reports are required.



## Bank Account

It's compulsory for WFOE to open a RMB basic account and a capital account in China, typically with one of the large Chinese banks. As in many countries around the world, bank account opening formalities are becoming increasingly difficult to complete due to increasing anti-money laundering requirements. The legal representative of WFOE is always required to be present in person for identity certification.



## IP

Business names are protected regionally in each city. In order to enjoy protection in whole China, the company and brand names (in both English and Chinese) should be registered as trademarks. The first-to-file principle is the key rule for trademark registrations and requires registration in various relevant sub-classes of the goods/service classification as early as possible. International registrations under the Madrid protocol can be extended to China to secure an earlier application date, but a local Chinese character trademark shall be registered in China in parallel to avoid the use of unprotected transliterations in this important market.

Industry designs are protected as patents in China for which only national filings are available so far. The other two types of patents are inventions and utility models, which can be filed nationally or through the PCT nationalising approach. Any creation completed in China shall pass a security examination before it can be filed as patent in other countries or regions.

Copyright works are not necessary to be registered for obtaining protection. But if it is difficult to retain proof of the dates of creation and/or publication of the works, voluntary registrations with the CPCC are recommended. Commissioned works will be owned by the entrusted party by default - it is necessary to stipulate the ownership in the commission contracts beforehand.

IP rights can be enforced by local courts or administrative authorities. Infringement against copyrights and registered trademarks may lead to criminal liabilities. However, compensation is only available in civil proceedings in the courts.



## Employment

China is a highly regulated and employee-friendly jurisdiction from an employment law perspective. This is particularly demonstrated by very rigid termination rules, which render unilateral termination of employment extremely difficult for employers. An employer must base unilateral termination of employment strictly on the limited termination grounds and procedures required by law; or otherwise the termination would be deemed illegal. The legal consequence for illegal termination is double statutory minimum severance or reinstatement of employment in the worse scenario.

Non-compete restrictions can be enforced in China after an employee has left provided that such restrictions are agreed on in writing by the both parties and the employer pays compensations on a monthly basis through the non-compete period. Non-solicitation of customers or non-poaching of employees are generally not enforceable.

A foreign national will generally require a work visa and a work permit to legally work in China. In most cities of China, to obtain a work permit, a foreign national need to enter into an employment contract with the Chinese company for which she/he works.

Employees are required to participate in the social insurance scheme and the housing fund scheme administered by government. Employers and employees should pay their respective portions of the contributions. Social insurance includes pension, medical, unemployment, maternity and work related injury insurance. An employer is obliged to withhold an employee portion of contributions from his/her salaries and pay them to the relevant schemes.



## Data Protection / Privacy / Cybersecurity

There is no single comprehensive data protection law in China. Instead, legal provisions on personal data are scattered in different laws and regulations, among which the Chinese Cyber Security Law (CSL) is the most important piece that provides the highest-level legislation. Following this, an abundance of implementing regulations and rules, measures and guidelines have been issued or published for consultation.

### Main requirements for data protection

- Organisations considered as network operators are required to comply with the following obligations, including but not limited to:
- Complying with the data protection principles;



- Specifying and complying with their policies regarding the purpose, manner, scope, and rules of collecting and using personal information;
- Providing notice to and obtaining consent from data subjects before their information are collected and processed;
- Taking technical and other necessary measures to ensure that personal information is kept confidential and safe;
- Responding timely to data subjects' rights; and
- Notifying relevant authorities and individuals in the event of cyber incident.
- Cross-border data transfer
- Data localisation and security assessment rules are provided for critical information infrastructure operators (CIIO).
- Broader security assessment scheme in terms of cross-border data transfer has been proposed to cover almost all network operators.

### Cybersecurity requirements

Network operators are required to implement the Multi-level Protection Scheme (MLPS), together with network grading assessment, filing, and testing requirements, where applicable.

Data protection and cybersecurity requirements are fast evolving in China. Organisations doing business in China should keep following with relevant updates to ensure compliance.

# About Bird & Bird in China

*We use our extensive experience to help clients navigate the complexities of China's business and regulatory environment.*

Local knowledge is vital, especially in law and especially when our work involves multiple jurisdictions. Our **Beijing, Shanghai, Shenzhen and Hong Kong** offices are composed of over 100 bilingual professionals with extensive experience in advising Chinese state-owned and private companies on their outbound investment opportunities, as well as first-hand knowledge and a deep understanding of the Chinese legal system and the strict legislative framework governing foreign investment. Our team of lawyers is comprised of experts with both overseas and local Chinese backgrounds. The mixed composition ensures that we can bridge any potential gaps in terms of language, culture or business practices.

Bird & Bird's formal association with a prominent local Chinese law firm, Lawjay, enables us to assist our clients in contentious matters in Mainland China by litigating in the Chinese Courts. We also have an established wholly owned trade mark agency in Beijing, Bird & Bird IP (Beijing) Co. Ltd., which enables us to conduct trademark and copyright matters directly for our clients, including on enforcement matters.

The key to our success is our sector focus. Our deep industry knowledge gives us:

- Expertise in the law and regulatory framework relating to each sector
- A practical, commercial approach to navigating the sector, supported by advisors who have worked for many years in these specific industries.

Operating as one, truly international partnership, with shared goals and accounting and a single profit pool, we are committed to providing our clients advice from the right lawyers, in the right offices, working together properly in the interests of our client.

Today, we maintain an open and flexible business culture, aiming to respond as rapidly as possible to the commercial pressures that our clients face and to ensure that our own business remains configured in the best way possible to provide excellent service to our clients, however they themselves define excellence.

## The Legal 500 - China (Foreign Firms), 2025

- Intellectual Property: Tier 1
- TMT: Tier 1
- Labour and Employment: Tier 2
- Data Protection: Tier 2
- Life Sciences and Healthcare: Leading Firm
- Corporate and M&A: Leading Firm

## Chambers - China (International Firms) 2025

- Intellectual Property: Band 1 (15 years ranked)
- Life Sciences: Band 2 (15 years ranked)
- Technology, Media, Telecoms (TMT): Leading Firm (14 years ranked)
- TMT: Data Protection & Privacy (International Firms): Leading Firm, 2025 (2 years ranked)
- Employment: Hong Kong-based: Leading Firm (4 years ranked)

## China Business Law Awards – Firm of the Year

Legaltech pioneers; Corporate compliance; IP (Copyright); Internet and e-commerce.



# Thank you

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