



**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

China

DOING BUSINESS IN

Contributor

SGLA Law Firm



Jingliang Li

Senior Partner | jingliang.li@sgla.com

Sean (Xiaoye) Wang

Senior Partner | sean.wang@sgla.com

Charles (Weihua) Xue

Senior Partner | charles.xue@sgla.com

Dr. Keren Wu

Assistant Lawyer | keren.wu@sgla.com

This country-specific Q&A provides an overview of doing business in laws and regulations applicable in China.

For a full list of jurisdictional Q&As visit legal500.com/guides

CHINA

DOING BUSINESS IN



1. Is the system of law in your jurisdiction based on civil law, common law or something else?

People's Republic of China ("PRC") is a unitary multi-jurisdictional country. In theory, the laws of Mainland of China, Taiwan, and Macao Special Administrative Region are deeply influenced by the continental law system, whilst the law of Hong Kong Special Administrative Region is deeply influenced by the common law system. In this chapter, the answers to the remaining questions are all and only based on the relevant laws and regulations of the mainland of the People's Republic of China. In addition, hereinafter "China" particularly refers to Chinese mainland and "Chinese law" particularly refers to the law of Chinese mainland for the purpose of this Chapter only.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

The main types of business structures include different forms of companies and partnerships.

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

No. Non-domestic entities conducting business in China must incorporate or register entities, such as foreign-funded companies or partnerships, or branches, as pursuant to relevant laws and regulations of China.

4. Are there any capital requirements to consider when establishing different entity types?

The minimum registration capital for establishing a company in mainland of China is RMB 1 yuan. Where the

laws, administrative regulations and the State Council decisions stipulate otherwise on paid-up registered capital and the minimum amount of registered capital of limited liability companies (e.g., foreign-funded insurance companies, foreign-funded banks, foreign-funded investment companies, etc.), such provisions shall prevail. On December 29, 2023, the Seventh Session of the Fourteenth National People's Congress Standing Committee voted to pass the newly revised "Company Law of the People's Republic of China" (hereinafter referred to as the "New Company Law"), which will take effect from July 1, 2024. This revision is the largest-scale amendment to date. One of the most notable changes is found in Article 47 of the New Company Law, which stipulates that the registered capital of a limited liability company shall be the total amount of capital contributions subscribed by all shareholders registered with the company registration authority. Shareholders are required to fully pay their subscribed capital contributions within five years from the date of the company's establishment.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

In general, there is no noted discrepancy amongst establishing different types of entities in China - they must all submit the application of registration of establishment to the local market supervision and administration authority, either on-site or via the local government service online platform. As for the establishment of entities in special industries or business, certain approval documents or production licenses are required. For example, as for the establishment of foreign-invested companies, the requirements as provided under the Special Administrative Measures (Negative List) for Foreign Investment Access (revised and effected in 2021) need to be satisfied.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

Taking a limited liability company as an example, the board of shareholders makes the decision, and they could authorize the board of directors to operate, manage and make decisions on the important matters. The board of directors could authorize managers to operate, manage and make decisions on the general matters on daily basis.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

(a) For shareholders

Limited liability companies shall be incorporated by not more than 50 shareholders contributing to the capital. The number of promoters required for the establishment of a company limited by shares shall be more than two but less than 200, and more than half of the promoters shall have a domicile in China.

(b) For directors, supervisors and senior managers

The New Company Law clarifies that the authority of the board of directors and managers can be extended based on provisions in the company's articles of association and internal authorizations, granting enterprises more operational flexibility. This adjustment is particularly significant for foreign-invested enterprises. It aligns better with the operational reality of foreign-invested companies, allowing them to optimize their governance structure and enhance management efficiency. For instance, Article 83 of the New Company Law states that small-scale or low-shareholder-count limited liability companies may choose not to establish a supervisory board and instead appoint a single supervisor to exercise the powers of the supervisory board. With unanimous consent from all shareholders, they may even choose not to have a supervisor at all. Additionally, Article 69 allows limited liability companies to establish an audit committee composed of directors within the board of directors, as specified in the company's articles of association, to perform the functions of the supervisory board, without necessarily having a separate supervisory board or supervisor. Employee representatives among the board members can also serve as members of the audit committee.

A significant change in China's corporate legal system pertains to the "legal representative" system. Article 10 of the New Company Law specifies that the legal representative of a company shall be appointed according to the company's articles of association and shall be a director or manager responsible for executing the company's affairs. If the director or manager serving as the legal representative resigns, they are considered to have simultaneously resigned from the position of legal representative. In such cases, the company must appoint a new legal representative within thirty days from the date of resignation. Unlike the previous Company Law, which allowed the chairman of the board (executive director) or manager to serve as the legal representative, the New Company Law designates the legal representative as the director or manager responsible for "executing company affairs" and introduces an automatic resignation mechanism. The purpose is to emphasize that the legal representative must fulfill their duties in accordance with the law and to eliminate the practice of using a "legal representative" as a mere figurehead to evade legal responsibilities.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

Under the current legal framework in China, there are no restrictions for the entities to carry out commercial activities including working with traders/commercial agents to expand business, subject to some restrictions to certain restricted or special industries.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

Apart from the Company Law that generally governs different types of entities, there are additional regulations that certain entities shall comply with, such as the Foreign Investment Law of the PRC (revised in 2019 and effected in 2020) for foreign-invested companies. For enterprises in special industries, such as banks, securities, trusts, insurance, funds and other financial related institutions, some industry regulations are need to be complied with as well.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The companies could obtain the working capital (1) by obtaining a loan from their shareholders, employees or other non-financial institutions, (2) via financing methods such as commercial factoring, financial leasing, pawn shops, and (3) via debt financing instruments such as obtaining a loan from banks or trusts, or issuing corporate bonds or negotiable instruments.

In addition, the companies could consider obtaining capital from shareholders' increase in capital or by issuing ordinary shares and preference shares.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

Company Law provides that the shareholders shall not withdraw their capital contribution, and only under the following restricted situations the proceeds could be returned to the shareholders:

- Distribution of post-tax profits after making up the companies' losses and contribution of the statutory capital reserve.
- The situation where the shareholders who cast opposing votes to a resolution passed by the board of shareholders as to the merger, division and transfer of main assets of the company, keeping the existence of the company albeit with the expiry of the term of business operations or the occurrence of a trigger event for dissolution stipulated in the articles of association ("AoA"), or the circumstances under which the company has not made a profit distribution to the shareholders for five consecutive years, may request the company to acquire their equity interests at a reasonable price.
- The situation where investors request the companies to fulfill their obligation as to repurchasing equity interests according to the valuation adjustment mechanism concluded between the investors and the companies.
- Capital reduction by formulating a reduction proposal that must be passed by a two-third majority of votes cast by its shareholders, following with a preparation of balance sheet and list of assets as well as a notice to the creditors, the public announcement on the newspapers, and application to the market supervision and administration authority.

12. Are specific voting requirements / percentages required for specific decisions?

There are special voting requirements for particular matters including the amendment to the AoA of the company, increase or reduction of registered capital, company merger, division, dissolution or change of company structure. In a limited liability company, resolutions by a shareholders' meeting shall be passed by shareholders holding two-thirds or more of the voting rights. In a company limited by shares, resolutions of a shareholders' general meeting shall be passed by two-thirds majority of votes cast by shareholders present at the meeting.

For other ordinary matters except from the above, a simple majority of votes is required.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

The board of shareholders of a limited liability company or the shareholders' general meeting of a company limited by shares is the authority of the company, and they are entitled to issue binding instructions to the management according to unanimous and effective resolutions or the AoA. On the other hand, a partnership enterprise determines whether a single partner has the right to issue binding instructions to the partner who executes the affairs through the partnership agreement.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The following chart contains the non-exhaustive core overview of employment protection as pursuant to the Labor Law (revised and effected in 2018), the Labor Contract Law (revised in 2012 and effected in 2013) and other relevant laws and regulations in China:

Rights/Protection	Details
Minimum Wage	There is no unified standard at national level, and each province, autonomous region, and municipality directly under the Central Government will announce the minimum wage standard in its region every year.
Holiday	Employees have the right to take holidays on statutory holidays and other holidays stipulated by laws and regulations. In addition, employees who have worked continuously for more than one year are entitled to the paid annual leave.
Working Hours	The daily working hours of employees shall not exceed eight hours, and the average working hours shall not exceed forty-four hours per week.
Rest Periods	Employees have at least one day off per week.
Pension	Employees enjoy social insurance benefits after retirement, and the social insurance fund pays retirement wages to retired employees on a monthly basis.
Discrimination	Employees are entitled to the equal employment and choice of occupation, and are not discriminated against due to differences in ethnicity, race, gender, or religious belief.
Maternity Leave and Pay	According to national regulations, female employees are entitled to 98 days of maternity leave, of which 15 days can be taken before giving birth; for dystocia, an additional 15 days of maternity leave; for multiple births, for each additional baby, 15 days of maternity leave can be added. For female employees who have participated in maternity insurance, the maternity allowance during maternity leave will be paid by the maternity insurance fund according to the average monthly salary of employees in the previous year; for female employees who have not participated in maternity insurance, the maternity allowance will be paid by the work unit according to the salary standard before maternity leave.
Paternity Leave	There is no uniform regulation.
Shared Parental Leave	There is no uniform regulation.
Statutory Sick Pay	During the prescribed period of medical treatment, the enterprise shall pay the employees' sick leave wages or disease relief expenses according to relevant regulations, which shall not be lower than 80% of the minimum wage standard.
Statutory Notice Period	Only under the premise of no-fault dismissal such as the expiration of the medical treatment period, incompetence, and changes in objective circumstances, there is the possibility of applying the notice period (that is, the employer must notify the employee in writing 30 days in advance); of course, the employer can also replace the statutory notice period by paying employees an additional month's wages.
Unfair Dismissal	An employer may not dismiss an employee on the premise of no-fault dismissal or economic layoff under the following circumstances: (1) Workers engaged in operations exposed to occupational disease hazards have not undergone occupational health examinations before leaving the post, or suspected occupational disease patients are in the period of diagnosis or medical observation; (2) Worker suffering from occupational diseases or work-related injuries in the unit and confirmed to have lost or partially lost the ability to work; (3) Workers suffering sickness or non-work-related injury, within the prescribed medical treatment period; (4) Female employees who are pregnant, giving birth, or breastfeeding; (5) Those who have worked in the unit for 15 consecutive years and are less than five years away from the statutory retirement age; (6) Other circumstances stipulated by laws and administrative regulations. If the enterprise dismisses the employee under these circumstances, and the employee requests to continue to perform the labor contract, the employer must continue to perform it; if the employee does not request to continue to perform the labor contract or the labor contract can no longer be performed, the employer shall, after one full year, pay twice the standard of one month's wages plus the economic compensation to employees.
Statutory Severance Pay	The economic compensation for employees dismissed by the enterprise is based on the number of the years that the employee has worked in the unit, and the standard of one month's salary is paid for each full year. If it is more than six months but less than one year, it will be calculated as one year; if it is less than six months, an economic compensation of half a month's wages will be paid to the employee. However, negligent dismissal is excluded.
Notification	When recruiting workers, the employer must truthfully inform them of their work content, working conditions, work location, occupational hazards, safety production conditions, labor remuneration, and other information required by the employees.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

In general, there are threefold bases under which an employee may be dismissed: (1) dismissal of an employee who has conducted negligence; (2) dismissal of an employee who has not conducted negligence; (3) redundancy as an equivalence similar to "collective dismissal". The associated costs have been listed in the chart under question 14.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Employers need to set up the trade union and employee representatives congress system according to the sizes of the companies in China. The All-China Federation of Trade Unions is the leading authority for the trade unions at national level as followed by local general trade unions of all levels.

In practice, the Special Purpose Vehicles established in the form of companies, small-scale sole proprietorship or the companies having less than 25 members may not need to set up grassroots trade unions subject to the specific situations.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

There is no such unified anti-bribery or anti-corruption legislation in China at the moment, whilst the relevant regulations governing the anti-bribery or anti-corruption related matters are non-exhaustively listed as below:

S/N	Regulation name	Year of implementation (last revision)
1	Criminal Law of the People's Republic of China	2021
2	Law of the People's Republic of China Against Unfair Competition	2019
3	Supervision Law of the People's Republic of China	2018
4	Bidding Law of the People's Republic of China	2017
5	Government Procurement Law of the People's Republic of China	2014
6	Provisions of the Supreme People's Procuratorate and the Ministry of Public Security on the Criteria for Docketing and Prosecution of Criminal Cases under the Jurisdiction of Public Security Authorities (II)	2022
7	Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Issues Concerning Application of Law in Handling Criminal Cases of Corruption and Bribery	2016
8	Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Issues Concerning the Specific Application of Laws to Criminal Cases Regarding Bribing	2013
9	Opinions on Certain Issues Concerning the Application of Law in Handling Criminal Cases of Commercial Briberies	2008
10	Opinions of the Supreme People's Court and the Supreme People's Procuratorate on Certain Issues Concerning the Application of Law in Handling Criminal Cases of Commercial Briberies	2008
11	Opinions on Issues relating to the Application of Law to Criminal Cases Involving the Acceptance of Bribes	2007
12	Administrative Measures on Fair Trading between Retailers and Suppliers	2006
13	Interim Provisions of the State Administration for Industry and Commerce on Prohibition of Commercial Bribery	1996

It is to be noted that items No. 2-13 in the chart above generally do not have extraterritorial effects, except for those provisions concerning liabilities pursuant to Criminal Law.

In addition to the above, China has become a member of the United Nations Convention against Corruption since 2005, and therefore the criminal conviction and prosecution of the cross-border bribery are possible.

Also, according to Articles 8 and 9 of Criminal Law (revised and effected in 2021), foreigners who commit bribery to persons outside the territory of PRC against its

citizens may also be prosecuted by Chinese law.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

There is no such a uniform code regulating economic crime in China at the moment, but the relevant provisions can be found in Chapter 3 (Crime of Disrupting the Order of the Socialist Market Economy), Chapter 8 (Crime of Corruption and Bribery) of the Specific Provisions of Criminal Law.

There is no such obligation to report economic crime to the relevant authorities under Chinese law for the moment.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

People's Bank of China has formulated and enacted the Measures for the Supervision and Administration of Anti-money Laundering and Counter-terrorism Financing of Financial Institutions in 2021 based upon the Anti-Money Laundering Law of the PRC (effected in 2007 and is now open for public opinion for the amendment), the Law of the PRC on the People's Bank of China (revised and effected in 2004), the Anti-Terrorism Law of the PRC (revised and effected in 2018).

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

There is no such uniform or single Act equivalence regulating compliance in the supply chain in China, but the relevant provisions can be located in various departmental laws, including but not limited to the Civil Code, the Labor Law, the Labor Contract Law, the Work Safety Law (revised and effected in 2021), the Law of the Protection of Rights and Interests of Consumers (revised in 2013 and effected in 2014), and other regulations that may involve the liabilities under Criminal Law.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial

statements in your jurisdiction.

Within the current legal framework in China, on the one hand, generally, companies only need to disclose their financial conditions (e.g., the payment of capital contributions, assets status, etc.) to the market supervision or credit information authority on a voluntary basis, and there is no need for companies to particularly hire an auditing company to issue an annual report for the purpose of submitting a record to the business registration authority.

On the other hand, listed companies are required to formulate periodic reports (including annual reports and interim reports) by virtue of the Administrative Measures on Information Disclosure by Listed Companies (effected in 2021), under which the financial accounting reports (which must be audited) and major auditing data and the indicators shall be disclosed. In addition, the full auditing report shall be included in the annual report.

22. Please detail any corporate / company secretarial annual compliance requirements?

The company annual compliance requirements include but not limited to the following, within the current legal framework and practice in China:

- Construction of companies' documentation system;
- Compliance examination for the purpose of discovering defects and loopholes in the companies' system;
- Compliance assessment and report;
- Regulatory responses (especially to the criminal and administrative compliance issues derived from the companies' conduct of business);
- Construction of the compliance guarantee system;
- Training for companies' management and employees;
- Other arrangement in relation to the specific compliance matters based on the industries and actual situations where the companies are in.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder

meeting?

The shareholders' meeting of a limited liability company shall be held regularly or temporarily in accordance with the company's articles of association.

The shareholders' general meeting of a company limited by shares shall hold an annual meeting every year.

As for a listed company, the shareholders' general meeting shall be held annually within six months after the end of the previous fiscal year, in which the board of directors, the board of supervisors, as well as each independent director, shall report as to their work in the past year to the shareholders' general meeting.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

There are disclosure requirements on beneficial owners or UBO for listed companies. The disclosed periodic reports should record the information of shareholders/controllers/controlling shareholders/actual controllers holding more than 5% of the shares, whilst the major changes and the related incidents should be disclosed in the interim reports from time to time.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Companies in China mainly need to pay the corporate income tax and the value-added tax.

The corporate income tax is levied on the total profit of each tax year combined with a tax adjustment, the overall tax rate being 25% for resident enterprises, and a tax rate of 20% is applicable to the non-resident companies.

The value-added tax is levied on the annual taxable sales amount, and the mainly applied rates are 13%, 9% and 6%.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive

regimes, employee schemes, or other?)

Yes, there is attractiveness to business in the following respects:

- The qualified non-resident enterprises can enjoy a 20% rate of corporate income tax, which has been halved compared to the previous regulations;
- The qualified corporate equity investment income can be exempted from taxation;
- Tax incentives are also provided to qualified small low-profit enterprises and high-tech enterprises under certain circumstance;
- Different levels of tax incentives for local enterprises provided by local governments.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

In principle, whilst there is no restriction imposed upon the foreign exchange transactions under the current account, there are certain restrictions imposed upon the foreign exchange transactions under the capital account. The foreign exchange management department of the government conducts necessary review and management of capital inflows and outflows.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

Stamp duties are levied on written contracts, property transfer documents, business account books, and securities transactions, and the corresponding rates are set according to different types of contracts or property transfer. The tax burden related to the transactions (transfer of equity interest, asset or business) shall be considered together with the potential impact brought by the income tax and turnover tax. In addition, if the real estate transactions are concerned, the potential impact of the land appreciation tax and deed tax needs to be taken into account.

29. Are there any public takeover rules?

Pursuant to the Securities Law of the PRC (revised in 2019 and effected in 2020), investors may acquire a listed company by way of takeover bid, a scheme of arrangement and any other legitimate means.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

There is a “concentration of undertakings regime” in China equivalent to merger control regime. The concentration needs to be declared by the operators of the parties involved in the merger or the operator who has obtained control, as according but not limited to the Anti-monopoly Law of the PRC (revised and effected in 2022), the Rules of the State Council on Declaration Threshold for Concentration of Undertakings (effected in 2018), the Interim Provisions on the Review of Concentrations of Undertakings (effected in 2022), and the Guiding Opinions for the Declaration of Concentration of Undertakings (effected in 2018). According to the above, the State Administration for Market Regulation, or the local market supervision department entrusted by the State Administration of Market Regulation, is responsible for the anti-monopoly review of the concentration of business operators, and the authority investigates and handles the concentration of business operators that is illegally implemented.

31. Is there an obligation to negotiate in good faith?

Yes. According to Article 7 of the Civil Code, all civil subjects engaging in civil activities shall comply with the principle of good faith, adhere to the principle of honesty and fulfill their commitments.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

In a broad sense, corporate mergers and acquisitions are generally divided into equity acquisitions and asset acquisitions. During the acquisition process, in principle, there will be no direct impact on the rights and interests of employees, and there will be no discrepancy as to the obligations of or the notification by the employers to employees caused by asset transactions or stock transactions.

33. Please detail any foreign direct

investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

Foreign investors may be prohibited or restricted from investing in certain specific areas listed in the Negative List. For the fields not on the negative list, foreign investors do not need to apply for approval or filing with the approval authorities. The Ministry of Commerce of China will be responsible for the anti-monopoly review of foreign capital mergers and acquisitions if the same is triggered in China.

34. Does your jurisdiction have any exchange control requirements?

Whilst there is no general restriction imposed on international payments and transfers under the current account, as for the capital account, foreign institutions or individuals who make direct investment in China or engage in the issuance and trading of securities and financial derivatives shall register with the national foreign exchange authority in China.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The most common ways to terminate an entity in China include:

- Liquidation on a voluntary basis, whereby the entities need to commence liquidation as according to their AoA or partnership agreements and the entities shall establish a liquidation group within 15 days from the date when the cause of dissolution arises;
- Compulsory liquidation, whereby the dissolution and liquidation initiated through the intervention of the public power when the entity itself cannot be self-liquidated. Creditors can apply to the Court to designate relevant persons to form a liquidation group for the purpose of liquidation.
- Bankruptcy liquidation, whereby the liquidation is implemented as according to the Business Bankruptcy Law of the PRC (effected in 2007) following the declaration of the bankruptcy of the entity.

Contributors

Jingliang Li
Senior Partner

jingliang.li@sgla.com



Sean (Xiaoye) Wang
Senior Partner

sean.wang@sgla.com



Charles (Weihua) Xue
Senior Partner

charles.xue@sgla.com



Dr. Keren Wu
Assistant Lawyer

keren.wu@sgla.com

