Foreword: Lord Sassoon

I am delighted to introduce the China Business Handbook 2017/18. British businesses will find this updated edition to be an encyclopedic collection of practical advice, produced by experts from the China-Britain Business Council (CBBC) and our wide reaching community of 1,000 member companies and other organisations.

As business relations between our two countries deepen, there has never been a better time for British and Chinese companies to work together. China is changing and opportunities are emerging in new sectors and in different parts of the country all the time. At CBBC, we work hard to ensure that you are at the forefront of these developments and best placed adapt and succeed.

I would like to thank all of the CBBC members who have generously contributed to this Handbook, especially to our sponsors who made it possible. This year our Gold Sponsor is Santander Bank which has an exciting partnership with Bank of Shanghai to help support UK-China trade.

I hope you will agree that the Handbook provides an excellent reference for any business looking to export to China for the first time, for anyone considering China market entry, as well as for multinationals as they expand operations within China or move to protect their business interests. I hope it will serve as a useful tool in ensuring every success for your business in China.

Lord Sassoon
Chairman, China-Britain Business Council
Foreword: Nathan Bostock

The China Business Handbook 2017/18 comes at an important moment for British businesses. In the wake of the Brexit vote and the US presidential election, the global trade environment has changed and world markets are in an unprecedented period of flux.

In response, UK plc is having to think differently about how it does business – and where. As we move towards a post-Brexit world, British companies in search of growth or diversification are having to look beyond traditional markets and focus their sights further afield. In this context, China has become even more important than ever.

At Santander, we believe this represents a moment of real opportunity. For many, China is seen as an unconventional, complex market. The prospect of doing business there can be daunting. Certainly, it poses challenges, but UK businesses are well-placed to benefit from a market where new opportunities continue to emerge in a range of different sectors, the demand for foreign goods is increasing rapidly and ‘Brand Britain’ is exceptionally strong. There is plenty of potential to be realised for those who have the right support in place.

I am proud to be able to say that Santander has successfully opened the doors for many UK SMEs and large corporates to trade and invest in China. We have strong local presence and partners in both countries and understand the breadth of practical help that is needed to connect businesses to the right opportunities. This covers a variety of support from knowledge of the local culture, language and regulatory environment to operational support such as legal or HR resources. Above all it means helping businesses move with confidence by putting them in touch with people they know they can trust.

This is where the China Business Handbook has such an invaluable role to play. Drawing on the experience and expertise of the China-Britain Business Council and its base of more than 1,000 members, it contains a wealth of authoritative advice and practical support for those thinking of trading with China for the first time, as well as those looking to expand their presence. I am proud to be able to recommend it, and wish you all the best as you seek to connect with exciting new opportunities.

Nathan Bostock
CEO, Santander UK

A Fresh Perspective on International Trade

We’re focused on bringing a fresh perspective to businesses with ambitions to grow beyond their traditional markets. Our extensive local networks and knowledge around the world means we’re ideally placed to support your international trade plans. Let us help you un

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About this Handbook

The China Business Handbook 2017, written by the China-Britain Business Council (CBBC) in extensive collaboration with our members, is an encyclopaedic collection of information and advice intended to offer a comprehensive introduction to doing business in China.

The reader will find in-depth, practical advice on the most common issues that are faced by companies doing business in China. A wide range of topics are covered, from essential operational considerations, to legal matters, HR, due diligence, e-commerce, customs compliance and more. Companies already doing business in China should also find it a useful guide to complement their own experience.

This Handbook is best used as something to use as circumstances arise, rather than as a book to be read cover to cover. It has been designed so that the relevant section can easily be found when readers face the relevant circumstances. The book is broadly organised into four chapters:

- Chapter 2 – Preparing for Trade with China. The second chapter sets out the main methods for exporting, as well as strategic considerations for both building a supply chain in China as well as the best way to transport goods to and from the UK. Our gold sponsors Santander also introduce the topics of e-commerce and cross-border trade transactions, both of which have unique landscapes in China. We also offer a guide to the services that CBBC can offer SMEs as well as some practical tips that ensure your business trip to China go as smoothly as possible.

- Chapter 3 – Operating & Growing a Business in China. The third chapter gives an introduction to the issues that companies must be aware of when setting up or operating a business in China, including the different legal entities that exist under Chinese law and their tax implications, marketing and HR issues, as well as some case studies that illustrate major pitfalls companies often fall victim to. In addition to this, our silver sponsors CDNetworks offer a guide on how to ensure that your Chinese website is optimised in a way that is best suited to the Chinese market.

- Chapter 4 – Protecting your Business Interests. The fourth chapter helps companies trading, investing, and operating in China to understand some of the major challenges that China’s business environment presents and how best to mitigate these risks. This includes the essentials of due diligence, most common risks and forms of malpractice or fraud, as well as how to ensure that your intellectual property is well protected and options available in commercial disputes.

Our China Business Handbook is an annual publication, which enables UK firms to keep up with the very latest developments in this dynamic and exciting market. We welcome enquiries from CBBC members who would like to contribute to, or suggest ideas for, the next publication.

Please contact Chief Editor mick.ryan@cbbc.org.cn.
Chapter one introduces the Chinese business environment as it stands at the beginning of 2017. We chart how China reached the point it is at today, and examine the economic trends that ensure China’s economy continues to be a worthwhile investment.

In the first section, we chart how China’s economic miracle brought it to the position it is in today, and contextualise the recent slowdown to show there has still never been a better time for UK companies to enter China.

The second section breaks down the differences between China’s different regions and their present economic trends; and identifies what this means for your business when deciding where to enter the Chinese market.

In the third section, we explore some of the major macroeconomic trends that are transforming the Chinese economy, the key policies and drivers that are effecting this transformation, and some of the challenges China faces in continuing on the path to a prosperous, modern economy.

We then move on to examine the government’s landmark policies – the latest Five-Year Plan, the Belt & Road Initiative and Made in China 2025, through which China hopes to take the economy to the next stage of development.

The fifth section tackles questions arising over the effect of Brexit on potential British-Chinese business relations, and looks at the great wealth of opportunities to be taken advantage of by British business in the near future.

Finally, the last section of the chapter outlines the continuing work that both the British Government and CBBC are doing on behalf British companies. We detail the network of support that is in place across China and the UK to assist you starting up or operating in China. We also include examples of events organised by CBBC and our partner organisations that facilitate the growth of networks and spread of China savvy best practice.
A Rise to Prominence

It has been almost 40 years since the beginning China’s ‘reform and opening up’ policy in 1978 propelled it into a period of the most rapid economic growth in world history. This period has seen China average nearly 10% growth in Gross Domestic Product annually – with a peak coming in 2007 at an astonishing 14.2%. China is now the second largest economy in the world, and widely projected to overtake the United States by the middle of this century.

These changes have secured China’s position as a major player in the global economy, and as an engine of growth for the Asian region and wider world.

1.1 China in 2017

A “New Normal”

China’s economic growth rate has begun to slow in recent years, causing concern in some quarters. In 2016 China posted 6.7% GDP growth, the slowest growth for 26 years, and in March 2017 Premier Li Keqiang told the legislature that the target for this year would be “around 6.5% or higher if possible”.

First, it’s worth noting that these figures are still high relative to developed nations, albeit a reduction by Chinese standards. Second, the Chinese government presents this as part of their plan to rebalance its economy away from investment and export-led growth. This is what it calls a “new normal” – of higher-quality growth for the long run – in exchange for which China is willing to accept lower overall economic growth. Lastly, in absolute terms this growth is still extraordinary given China’s current size, allowing it to expand by the economic equivalent of Switzerland every year.

With rising wages and retiring baby boomers causing a decreasing working population, China is taking steps to move away from labour-intensive cheap exports, which are susceptible to shocks in global demand. Rather, it will seek to rebalance towards a more highly mechanised and service-oriented economy, with a heightened reliance on domestic demand and perhaps added emphasis on environmental sustainability.

China Driving Global Growth

China still has some catching up to do in terms of industrialisation, urbanisation, and agricultural modernisation. But as the world’s largest developing country, the economic potential ahead of it is huge. While China only makes up 14.8% of the world’s economy, the State Council pointed out in a January 2017 article that it accounts for 39% of global economic growth¹.

It is worth remembering that because of China’s overall scale and population, a slower growth today actually represents a larger impact on global GDP than faster growth in previous years. In 2006, when China was growing at around 12.7%, it was equivalent to an annual increase in GDP of USD 300 billion. Whereas in 2016, 6.7% growth represented nearly USD 800 billion increase – almost three times greater absolute growth than 2006. Although this is a simplification, it is clear that the bigger China is the more purchasing power it has, the more business is being done, and the larger the opportunity for UK firms.

China is now too big and important a market to ignore, and every company with a global view needs to make an assessment about if and how to engage.

¹ http://english.gov.cn/news/china_news/2017/01/16/content_28147642971540.htm

This article was written by CBBC
1.2 Breaking Down the China Opportunity by Region

Though everyone is aware of the rise of China on the international stage, with a country the size of a continent, it is important to understand that China is not just one market. China’s vast territory and large population means that there is wide variation in its industry mix and overall development across the country. In this section we will break down these differences, to help you identify the regions of most relevance to your business.

Regional Differences

Various factors including geographic endowments, historical legacies and the “Opening Up” policies favoring coastal areas, are part of what is behind present day regional disparities in China. Coastal provinces have also benefited disproportionately from their location; more advanced commercial infrastructure; and preferential policies for urban development.

The map on this page compares Chinese provinces’ GDP per capita, with the darker more developed areas along the eastern seaboard.

In order to address regional economic disparity, the Chinese government has in recent years announced policies such as “Go West” and the more recent “Belt & Road Initiative”. Other initiatives include deliberate attempts to steer capital, technology, and labour from wealthy coastal areas to poor inland provinces, as well as to reverse the brain drain that the wealthier regions cause.

Recent years have seen some nascent success of these efforts with the emergence of two growth areas—one in central China around Wuhan, and another encompassing the western cities of Chengdu and Chongqing.

City Tiers

China is a country with over 160 cities of more than one million inhabitants, and a city-tier system has therefore been devised to classify them. Although different organisations may have slightly different criteria for definitions, factors such as GDP, population, income per capita, infrastructure development and commercial vitality are standard measures used to classify cities into five categories, from tier 1 (highest) to tier 5 (lowest).

The majority of the tier 1 and wealthier tier 2 cities have received increasing attention and investment from foreign countries, and are located in China’s east or southern coastal areas, such as Tianjin, Nanjing, Qingdao, Suzhou or Xiamen. However, there are a few inland provincial capital cities often counted as tier 2, including Wuhan, Xi’an, Chengdu and Urumqi which are inland. As you go from tier 3 to tier 4 and tier 5, the cities get smaller and less affluent.

Sources: SFC, World Bank

Chinese Provinces’ GDP Per Capita (USD)

Megaregions’ Development

China has three main mega-urban zones in its eastern regions: the Jingjinji Megalopolis, the Yangtze River Delta and the Pearl River Delta.

The Jingjinji Megalopolis, as part of the Bohai Bay economic rim, was officially announced as an economic entity in 2014, and is a project that aims to integrate the cities of Beijing and Tianjin with Hebei province into a single megalopolis in northern China.

- Home to a population of 100 million;
- Total area of 218,000 square kilometres, slightly smaller than the UK (around 242,500 square kilometres);
- GDP accounts for 10% of China’s total;
- By 2020 the area will have the largest cluster of sea ports in China, reaching a capacity of 2 billion tons and a container loading capacity of 300 million;
- Beijing is a centre of the finance industry. Tianjin is focused on the development of advanced manufacturing, aviation, bio-pharmacy, shipping and logistics; and Hebei is taking steps to transfer parts of industry from Beijing and Tianjin, especially around information technology, cultural & creative sectors, education & training, as well as sports & leisure.

The other two more mature megaregions have been the major engines of China’s recent economic growth.

The Yangtze River Delta, as centered around Shanghai and spans across the numerous major cities within Jiangsu, Zhejiang and (is now expanding) to Anhui province.

- Home to 156 million people;
- GDP accounts for 20% of China’s total;
- Responsible for 1/3 of China’s imports and exports;
- Estimated urbanisation ratio will reach 80% before 2020, far higher than the national average;
- In 2016 the NDRD (National Development and Reform Commission) released a blueprint for developing the Yangtze River Delta into a “world-class” cluster of cities by 2030
- Innovation in key areas has been encouraged to cluster in the region, including equipment manufacturing, information technology, bio-pharmacy, auto, finance, logistics, and culture & creative industries.

The Pearl River Delta consists of nine major cities in Guangdong province and also encompasses Hong Kong and Macau. It was the earliest region in China to open up to foreign trade and investment in the late 1970s.

- Home to 120 million people;
- GDP of the nine biggest cities in Guangdong province accounts for 12% of China’s total;
- Enjoyed a GDP per capita of ¥107,000, 2.2 times the national average; Exports account for roughly 27% of China’s total;
- Attracts 20% of China’s total foreign direct investment;
- Serves as manufacturing base for the entire world and has broadened its industrial clusters from food & beverages, toys and clothes; to high-tech equipment, petrochemical products, auto, and IT products.

While these three major regions are the centres of commerce and wealth at the moment, its worth to note that China’s other regions have their advantages for UK business. First, it’s generally the inland and less developed cities which are growing fastest – UK companies with a long term view may look at them as places of great potential. Furthermore, wages in the regions are still relatively low compared to coastal areas, making them a draw for manufacturing in labour intensive sectors.

This article was written by CBBC

China’s population of 1.37 billion ensures that it has a huge market for UK exporters.

1.3 Chinese Economic Trends

The Chinese economy is now well into its transition phase to a “new normal”. The changes being made in the country’s economic policy and structure have led to the emergence of new trends, as China matures into a more services and innovation-driven economy. Whether they pertain to new foreign investment laws, the property market or an evolving import mix, keeping abreast of the impact of these trends is useful to companies seeking to do business in China.

China’s Imports & Important Drivers

Following a long period of increasing imports, there was a decline for the first time in 2015, and a further fall by 5.5% in real terms in 2016. One driver for this is the move towards consumption and services for growth, as these are relatively less import intensive. Furthermore, a relatively strong renminbi (RMB, ¥) has contributed to the slowdown in demand for China’s exports, indirectly affecting the amount of intermediate inputs it imports. Meanwhile, certain imports are also being replaced by increasingly competitive domestically produced goods. However, it is a mixed picture and there are many product categories which are still seeing strong demand for imports.

China’s population of 1.37 billion ensures that it has a huge market for UK exporters. Below we identify some sectors with strong demand in 2017 for the Chinese consumer:

- **The Chinese Consumer/Retail**
  - With an increasing number of middle income citizens and growing consumer confidence, the Chinese retail market is expanding. China’s retail sales of consumer goods grew 10.4% year-on-year in 2016, hitting ¥33 trillion (€3.9 trillion), about ten times the size of the UK’s consumer goods market in the same year (€388 billion).1

- **Health and Lifestyle**
  - Mintel research reveals that Chinese consumer trends in 2017 will see an increase of more spending on living a higher quality lifestyle. Consumers are increasingly focusing on longevity, health and fitness, with organic and healthy foods seeing a rise in popularity. As a result of rising concern over child obesity, more Chinese parents now prioritise providing healthy food for their children. Higher sales of vegetables are also an indicator that health, food and fitness are a growing trend. In addition, health and wellbeing mobile applications are seeing rapid growth – with 19% of Chinese consumers in 2016 reportedly using them.

- **Smart Devices**
  - Smart devices have already begun to enter people’s homes and consumers are now looking for new ways to utilise their private space to make their lives more comfortable. This is especially true of the older generations. New utilisation of space is expanding to smart cities, with smog reducing technology and smart skyscrapers. Pop-up stores and personal 3D printing are also new trends predicted to become even more prominent in 2017.

- **New Payment Systems & Tech**

- **Growing Rural Access to Goods via the Internet**
  - Another key trend is rise of the rural consumer. Internet user growth has reached near saturation in urban areas and there is now high priority placed on the development of infrastructure in rural areas by the Chinese government. According to JP Morgan, the tier 1 cities of Beijing, Guangzhou and Shanghai will only account for 11 million of the 160 million new Internet users between 2015 and 2018. With these new Internet connections comes different consumer demands and the rural consumer will be an important area of growth in 2017.

- **Luxury & Travel**
  - In other sectors, luxury goods are expected to continue to rebound from their low 2014 levels, with brands adjusting designs to suit more developed, discerning Chinese tastes. Overseas travel shopping is predicted to continue, however with an increase in cross-border taxes, domestic sales are also set to increase. International travel is also expected to continue to grow in 2017, although domestic travel is expected to become more fashionable with large government investment over the next three years.

- **New Energy**
  - In the energy sector, China has transitioned from emphasising energy supply to quality of energy and energy efficiency. China plans to invest nearly £300 billion by 2020 on renewable energy with solar, wind power and hydropower receiving the majority of the investment. The government’s newly published Energy Development Plan indicates moves to increase the proportion of non-fossil energy from 12% to 15%, and for the first time it detailed the government’s geothermal development plan. 2017 is also likely to see significant growth in usage of biofuels and new energy automobiles in China.

#### Below are some examples of key drivers which we see will have a major impact in industrial sectors in 2017:

- **Modernising Agriculture**
  - In agriculture, the government’s strategy is to enhance support for agricultural environmental protection and increase the quality of agricultural products. More specifically, there will be opportunities for companies in smart agriculture (Internet of Things in farming and agricultural data processing), Internet plus agriculture (facilitating operation, trading, logistics of agriculture and intelligence training, etc.) and agricultural technology.

#### Important Drivers

**China’s Imports & Important Drivers**

- **Infrastructure**
  - Infrastructure remains one of the main engines of economic growth. Both well-developed coastal provinces and underdeveloped inland provinces are receiving infrastructure investment, especially transportation infrastructure (one of their key focuses for 2017). Guangdong, Fujian and Shaanxi are among the top provinces for infrastructure investment. It is estimated that infrastructure investment will grow at a pace of 20% in 2017, creating a market worth £1.9 trillion.4

2 http://www.chinadaily.com.cn/business/2017-01/06/content_27881857.htm
4 http://www.163.com/ent/17/0106/11/CA3HBN0H02858056.html
5 http://www.chinadaily.com.cn/business/2017-01/06/content_27881857.htm

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2 [http://www.chinadaily.com.cn/business/2017-01/06/content_27881857.htm](http://www.chinadaily.com.cn/business/2017-01/06/content_27881857.htm)
Liberalising Foreign Investment Rules

A major development in foreign investment law was the approval of amendments to the law on Wholly Foreign Owned Enterprises (WFOEs) in 2016, affecting how and what businesses UK companies can operate. These amendments replace the existing approval requirements by the Ministry of Commerce, and have reduced processing times and increased certainty of transactions.

In early January 2017, the central government completed a one month public consultation for a new draft version of the “Catalogue for the Guidance of Foreign Investment Industries”, a key document for foreign investors to tell which industries they will be permitted to operate in. A “negative list” system, which had already been in place in Tianjin, Shanghai, Guangdong and Fujian, is now being rolled out as a nationwide negative list. The negative list system is a method of regulating incoming investment by use of a list of sub-sectors where investments not permitted. In 2016, China’s Minister of Commerce Gao Hucheng stated that the government would ease investor access to the services sector and high-end manufacturing, highlighting the country’s desire for international expertise in these areas. This was further underlined in a circular released by the State Council in January 2017, which also explicitly stated that foreign firms investing in industries that are necessary for the development of China’s western region, will benefit from favourable corporate income tax; while companies migrating to central, western and north western China will also have an advantage in capital and land policies.

Chinese Outbound Investments

China’s outbound investment has been growing rapidly to an extent where it already exceeds inbound FDI. In 2016, outbound direct investment soared by 44.1% to $170 billion (around £136 billion).

In 2016, the UK was the second biggest recipient of Chinese direct investment in Europe after Germany, and the two countries attracted 46% of all Chinese investment in Europe. The UK alone received $9 billion (£7.2 billion) of inward investment from China, an increase of 130% on 2015.

Chinese investors are increasingly positive about the UK. They are attracted by world class finance, education, legal and professional services, London’s position as a leading global financial centre, as well as its liberal economic system and business environment.

A Middle Income Economy

The World Bank has considered China an “upper middle income” country since 2010, according to its classification which categorises economies based on gross national income (GNI) per capita. In order to attain the much coveted “high income” status China must buck a trend which has seen only 13 out of 101 middle income economies in 1960 make that transition by 2008.

The 13th Five-Year Plan, ratified in 2016, sets out China’s economic vision to 2020. One of its explicit aims is to take appropriate measures to avoid the “middle income trap”, though this will need to be done by directly addressing issues such as the country’s massive private debt. At the same time, a great deal depends on the Chinese economy’s transition to a more innovation-driven and high-added value market.

Rising labour costs coupled with an ageing population are also major challenges the Chinese government is trying to tackle. Chinese companies are trying to tackle. Cheap labour has long been a driving force for the economy, and has contributed to a model which encourages Chinese enterprises to operate overseas, the scope for British companies of all sizes to partner with China is increasing and will continue to do so for the foreseeable future.

China is forecast to become one of the world’s biggest outbound investors by 2020

http://uk.reuters.com/article/uk-china-m-a-idUKKBN14J038
http://uk.nasa.gov/article/uk-china-m-a-idUKKBN14J038
http://uk.nasa.gov/article/uk-china-m-a-idUKKBN14J038
http://foreignpolicy.com/2016/03/12/on-china-avoid-the-middle-income-trap-five-year-plan-economy-two-sessions/
China is a country where Five-Year Plans and big macroeconomic policies have a clear impact on the way that companies are driven and incentivised. This section will outline the big policies which are defining China’s path at the moment and for the coming years. The 13th Five-Year Plan provides the overarching roadmap for China’s economic future.

The Belt & Road Initiative is an exciting plan for China to reconceive global supply chains and investments patterns in its own image. Made in China 2025 on the other hand promotes China’s domestic capacities – it represents an opportunity for other hand promotes China’s domestic capacities – it represents an opportunity to move away from being the source of “made in China” low quality goods, towards “designed in China” and high end manufacturing.

Five-Year Plan
China’s 13th Five-Year Plan (2016-2020) was ratified during the government’s annual ‘Two Sessions’ policy meetings in March 2016. The plan comes at a crucial time – the last five-year period before China reaches its 2020 deadline for achieving a ‘moderately prosperous society’ – and it reveals how the government is planning to relieve the numerous pressure points on the economy.

Medium-to-High Growth Target
The government has set a target to achieve at least 6.5% average annual growth with immediate effect. By 2020, it hopes to double GDP and per capita income as compared with 2010 levels. Although the 6.5% target is much lower than the nearly 8% in the previous Five-Year Plan, and lower even than the 6.9% achieved in 2015, this still falls in the range of medium-to-high-speed growth and remains higher than that of all other major economies. This suggests that the government is driving towards more sustainable, higher-quality, long-term development. Efforts are being made to harness new engines of growth, including supply-side reform, technological innovation, green development, urbanisation and agricultural modernisation.

Supply-Side Reform
‘Supply-side reform’ is one of the key phrases in the new plan. It is best understood as the attempt to optimise the allocation of production factors in the economy – capital, resources and labour – to tackle inefficient supply and production oversupply.

It includes restructuring many state-owned ‘zombie’ enterprises (so called because they rely on government support and subsidies to keep them alive); enforcing mergers and close-downs and moving production away from industries with oversupply (e.g. steel, cement, coal); and injecting new resources into emerging industries. Estimates of the amount of workers that will be laid off as a result range between 3 and 6 million, for whom the government has introduced a £12 billion redeployment fund.

Innovation
The plan stipulates that, by 2020, the proportion of GDP accounted for by R&D should increase to 2.5% (from less than 2.2% in 2015) and that accounted for by science and technology to 60% (from 55% in 2015). 1,200 training bases, aiming to cultivate 10 million skilled workers, will be established by 2020. Further aims include removing institutional barriers that currently hinder the commercialisation of innovative ideas; and offering incentives to encourage innovation, which, it is hoped, will boost Chinese industry in concert with the ‘Made in China 2025’ initiative.

Infrastructure Investment
Alongside the measures to improve supply-side efficiency, infrastructure investment will continue to grow under the new plan. This includes investment of ¥800 billion (around £80 billion) on railways and ¥1.65 trillion (£165 billion) on roads; 20 major new water conservation projects; and large-scale projects relating to hydro and nuclear energy, high-voltage power transmission, smart grid technology and networks, oil and gas pipelines and further urban transport infrastructure projects.

Targets set for the end of 2020 include the building of 50 new civil airports; the realisation of a 30,000km high-speed rail network covering 80% of big cities; the building or rebuilding of 30,000km of urban railways; and the construction of 3,000km of urban railways in cities with more than 3 million residents.

Environment & Green Development
‘Environmental sustainability’ has become a priority for the first time in the Five-Year Plan. Energy efficiency and green growth will come under closer scrutiny in the effort to combat environmental pollution, and the government promises to take ‘the most exacting environmental protection measures ever’ over the next five years to achieve a number of goals. These goals are to decrease fine particulate matter concentrations by 25%; to raise the amount of ‘good air quality days’ to 80%; and to cut water consumption, energy consumption and carbon dioxide emissions per unit of GDP by 23%, 15% and 18% respectively.

What Does this Mean for UK Business?
The 2016-2020 plan is an ambitious one, and we can expect China to make a concerted effort over these five years to cultivate a more dynamic, mature and outward-looking market. Acquisitions and corporate mergers, particularly in the state-owned sector, will continue in high-energy-consuming industries and some of those with overcapacity, and the use of clean energy is being encouraged. Government support programmes are being introduced to achieve cumulative production and sales of 5 million new-energy vehicles by 2020.

Financial Reform
Financial reform remains firmly on the agenda. The government hopes to encourage private capital into the banking sector to develop an ‘inclusive’ financial system encompassing diverse medium, small and micro institutions. The plan contains proposals to increase the proportion of direct financing, to reduce financing costs and to accelerate the development of the foreign exchange, gold, insurance and reinsurance markets.

Infrastructure Investment
We can expect China to make a concerted effort over these five years to cultivate a more dynamic, mature and outward-looking market.
UK companies can play an important role in supporting the development and connectivity of China’s provinces and neighbouring countries, while simultaneously benefiting from new commercial opportunities both within China and in countries along the routes.
have excellent natural and agricultural resources, will need to upgrade its technologies and improve productivity and efficiency. It is important that UK companies consider how they can become part of the process. Eastern coastal provinces, such as Fujian, Guangdong, Jiangsu and Zhejiang are also expected to present new opportunities in more advanced sectors, such as finance and professional services, shipping and logistics, advanced manufacturing, e-commerce, healthcare and life sciences.

**CBBC’s BRI Reports & Activities**

In 2017, CBBC launches its third milestone report on the BRI, following previous publications in 2015 and 2016 which were published in partnership with the UK’s Foreign & Commonwealth Office and Tsinghua University respectively. Over the past two years CBBC has undertaken many seminars, briefings and roundtable meetings, across China and in the UK, to help businesses begin to understand the new opportunities BRI will bring, and to facilitate and develop closer partnerships between UK and Chinese businesses working together on BRI projects.

A new 2017 report will be part of a partnership CBBC has with the Chinese Academy of International Trade & Economic Cooperation (CAITEC) – a think tank of China’s Ministry of Commerce. It tracks the progress of routes along BRI’s southern land and maritime routes, particularly through ASEAN and South Asia countries, and is especially relevant to UK companies with business in these countries.

Within China, it highlights the role of the southern provinces of Guangxi, Yunnan, Guangdong, Fujian and Hainan as BRI connectors. Beyond China, three economic corridors in southern routes are analysed, these are: China-Indochina Peninsula Economic Corridor, China-Pakistan Economic Corridor and Bangladesh-China-India-Myanmar Economic Corridor.

Opportunities will be varied, so careful planning, sufficient due diligence and risk assessment are strongly recommended. To learn more about BRI and more opportunities by sector and by province, please visit www.cbbc.org/sectors/obcasestudies to view CBBC’s comprehensive 2015 and 2016 reports.

The “Made in China 2025” plan was released by the Chinese government in May 2015. It is part of a long-term vision for the future of China’s manufacturing sector with “Three Steps”, intended to continue to make China into one of the world’s manufacturing powers.

**Made in China 2025**

**Phase 1:**

By 2020 – further strengthen China’s position as a major manufacturing nation; master key technologies in selected important fields; raise the standard of smart manufacturing; and markedly reduce consumption and emissions.

By 2025 – improve the all-round quality of manufacturing sectors and the integration of industry and IT; substantial focus on energy consumption, material consumption and emissions in line with advanced global levels; establish a group of competitive multinational companies to significantly elevate China’s role and position in global industry and value chains.

**Phase 2:**

By 2035 – raise China to a mid-ranking position among the most powerful manufacturing nations; substantially increase innovation; develop key sectors to realise important breakthroughs; make China a leading player in worldwide innovation; and complete China’s industrialisation.

**Phase 3:**

By 2049 – advance China to a place among the leading ranks of the world’s most powerful manufacturing nations; in the main industrial sectors enable China to drive innovation and possess distinct competitive advantages; and form world-leading technological and industrial systems.

The Made in China 2025 plans highlights ten key sub-sectors:

- Integrated circuits and professional equipment
- High-end numerical-control machine tools and robotics
- Aviation and aerospace equipment
- Marine engineering equipment and high-tech ships
- Advanced rail transit equipment
- Low-energy and new-energy cars
- Electronic equipment
- Agricultural machinery
- New materials
- Biopharmaceuticals and high-performance medical equipment

**Five Focus Points**

The plan highlights five major objectives:

1. Establishing Manufacturing Innovation Centres

By 2020, China will establish around 15 such centres to boost technological breakthroughs and innovation in key fields, chief among which are new-generation IT, smart manufacturing, additive manufacturing, materials manufacturing, new materials and biopharmaceuticals.

2. Encouraging Smart Manufacturing Projects

Outstanding companies will be involved in setting up smart projects or digital factories to promote smart techniques in key industrial processes, to robotise key posts, to oversee the optimal use of smart techniques in the production process, and to optimise the supply chain.

3. Investing in Strong Industrial Bases

Research centres known as the “Four Bases” are being mapped out and established to overcome bottlenecks in developing core infrastructural components, techniques and materials, and production technology.

4. Emphasising Green Manufacturing

Green projects will be set up, as well as key model projects in the fields of energy efficiency and environmental protection, the comprehensive use of resources, re-manufacturing and the industrial adoption of low-carbon technology. One thousand model green factories and a hundred model green industrial parks will also be established by 2020.
5. Emphasising High-end Equipment Manufacturing

Innovative and industry-specialised projects will be set up in a number of fields: large aircraft, aircraft engines and gas turbine engines; civil aerospace; smart/green trains; low-energy and new-energy vehicles; marine engineering equipment and high-tech ships; equipment for smart integrated electricity grids; high-end numerical-control machine tools; nuclear power equipment; and high-end medical equipment.

What Will Chinese Companies Be Doing?

Chinese companies will be encouraged to forge links with foreign companies based on “strong-strong” cooperation and complementary strengths, so as to improve their global competitiveness. They will want to develop intellectual property, by drawing on overseas expertise in R&D, design and engineering structures. This will also involve international acquisitions to accelerate new technology development and to position Chinese companies firmly in the global supply chain.

More R&D centres will be established in provincial regions or indeed in third countries with advanced manufacturing industries, including specialist technological R&D centres. The blueprint for China’s industrial parks will evolve in line with policy changes – with clusters of themed R&D parks to be mapped out and efforts made to implement model projects. For example, Zhangjiang Hi-Tech Park near Shanghai has already set out its Action Plan for a Global Technology Innovation Centre.

In 2017

The Ministry of Industry and Information Technology (MIIT) released implementation guidelines for each of the “Five Focus Points”. It also published two action guidelines on developing manufacturing related service industry, and on fostering quality and brand building in manufacturing equipment; and four development plans for talent and development in new materials, information technology, biopharmaceuticals and manufacturing.

The majority of the provinces in China have also published their own implementation guidelines for “Made in China 2025”. Furthermore, some cities, such as Shenyang, Changchun, Chengdu, Qingdao and Ningbo were selected by MIIT as the “Experimental Demonstration city of implementing “Made in China 2025”.

CBBC has hosted a number of seminars in both the UK and China to help UK businesses better understand the implications from “Made in China 2025” and better take advantage of the business opportunities for UK companies.

To download CBBC’s report on MIC2015, please visit http://www.cbbc.org/mic2015/

This article was written by CBBC.

2016 was a tumultuous year. In the Western world the Brexit vote and the US election were two of the more notable events. To what extent the US under a Donald Trump presidency becomes more protectionism remains to be seen. But the UK must clearly work for greater constructive engagement with global partners such as China as it leaves the EU. We have a unique opportunity to be a Global Britain, and a clear responsibility as business leaders to make it so.

Golden Era

As the UK economy is predominantly built on services and innovation, we are ideal partners for the Chinese economy and for Chinese firms. The UK is more open to foreign investment and international collaboration than almost any other major economy.

Furthermore, the UK government can conclude trade deals and get them ratified within months, whereas in the US and the EU ratification can be delayed for years or indefinitely due to the need for approval by Congress or each parliament of the EU.

Britain is home to a large proportion of China’s investment in Europe. So far, China’s FDI stock in the UK has totalled nearly $17 billion (£13.8 billion) and more than 500 Chinese companies have settled in the UK. The ‘Golden Era’ of the UK-China relationship has been re-affirmed by President Xi Jinping and Theresa May at the G20 in Hangzhou, and many practical steps were agreed when Vice-Premier Ma Kai and Philip Hammond met in London in November 2016.

So where are some of the specific opportunities? Let us focus on just three of the many:

1. E-commerce – by far the best way to reach the Chinese consumer or SMEs
2. Services sector – including R&D, innovation, design and globalisation
3. Joint international collaboration – between UK and Chinese firms

E-commerce

China had 731 million internet users at the end of 2016 – more than twice the population of the Eurozone (340 million) or the number of Internet users in the EU excluding the UK (353 million). Chinese people live their lives on the mobile internet to an extraordinary extent, and at present WeChat (owned by Tencent) is ubiquitous at all levels of Chinese society including Chairmen and CEOs. Many people in the UK are aware of Alibaba which primarily provides marketplaces rather like a souped up version of e-Bay. The other major player in Chinese e-commerce is JD.com which is more like Amazon – owning its own warehouses and stock, and indeed going beyond Amazon in controlling the distribution chain to the point of employing its own delivery drivers. JD.com is owned 15% by Tencent, so WeChat users find it easy to buy from JD. There are also a large number of specialist e-tailers for particular segments. UK companies with something that can be sold by e-commerce to Chinese consumers should regard this as their dominant or sole channel and should form good relationships with one of more strong partners in this field.

Advanced or High Quality Services

50% of China’s economy is now services. But partly because they have a manufacturing culture they are not really used to paying for quality in services and therefore many, though by no means all, of the Chinese services companies are of pretty low quality.

The UK excels at advanced services, and some UK services companies are highly successful in China. There is a lot more scope for this, although the cultural differences are not to be underestimated. In addition, the UK is the strongest centre for R&D and technical innovation outside the US, and it is also a global hub of artistic and cultural creativity. Deep partnerships between the UK and China in these areas will provide rich rewards. Don’t expect quick results, but on a 5-15 year view, engagement with China can be highly lucrative and is indeed almost essential for anyone who is really world-class.

International Collaboration

With a handful of notable exceptions, almost all big Chinese firms have more
than 90% of their turnover and 98% of their profits in China. They are strongly encouraged by their government and by their economic situation to “go global” but this is fraught with pitfalls if you have built your business in the Chinese domestic market which is unlike any other. Almost any successful UK firm has many years of experience of international business and many have been pretty global for decades. Indeed, the UK has a history of global trading engagement stretching back centuries.

Consulting firms can certainly help but there are also larger opportunities for firms that can be meaningful partners with large Chinese enterprises as they navigate the complex regulatory and political terrain of unfamiliar geographies. So if your company has deep experience or contacts outside China, it is well worth looking at particular international markets in which business has an integral role.

Looking Ahead

Chinese businesses already cooperate closely with UK business and invest in them with great freedom. Chinese and UK business leaders and officials will be cooperating over the next two years to find win-win international trade deals that can be put in place shortly after the UK leaves the EU, likely in 2019. At a time when many countries and trading blocs are becoming more inward-looking and protectionist, the UK remains the most attractive international partner for Chinese businesses. This will increase after Brexit as Great Britain becomes, to an even greater extent, Global Britain.

Britain has clearly demonstrated its strategic insight and courage to take the lead in international cooperation, by becoming the first major Western country to join the Asian Infrastructure Investment Bank. 2017 marks the 45th anniversary of ambassadorial diplomatic relations between China and the UK. Looking into the future, both China and the UK need perseverance and enterprise to ensure a steady and enduring “Golden Era” of win-win cooperation that will benefit China, the UK and the global economy.

This article was written for CBBC by Nicholas Beale, Chairman of Sciteb which provides Special Thinking: Strategy and Search to UK, Chinese and US clients.

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1.6 Policy Dialogue: Improving the Business Environment

In this section we outline some of the important mechanisms which government and industry have put in place to help UK companies as they engage with China. Successful commerce is underpinned by a conducive business environment which can only be improved by long-term, strategic engagements with policy makers. Sometimes these efforts seem abstract, but they show their value over time as market entry barriers come down.

Government Exchanges

Over the past five years, the relationship between the UK and China has continued to grow and strengthen, with a constant stream of senior-level visits in both directions. With the State Visit by President Xi Jinping in October 2015, the two countries opened a ‘golden era’ which continues to develop, and in which business has an integral role.

Whilst Brexit and other economic/geo-political issues will have an impact on bilateral relations, there are undoubtedly opportunities going forward, and both governments have pledged to continue to work closely together. There is a full programme of visits to China by UK ministers planned throughout 2017 and, following her first visit to China in September 2016 for the G20 Summit, the Prime Minister has indicated that she will pay a return visit later this year.

The UK and China have a number of regular, structured top-level dialogues in place, which cover a spectrum of political, cultural and economic activity. These include the Economic and Financial Dialogue (EFD) and the People to People Dialogue (P2P), as well as the Joint Economic and Trade Commission (JETCO), which focuses specifically on business issues and includes opportunities for UK and Chinese business to interact. CBBC plays a role in these activities to make sure that businesses’ voices are heard. During the EFD in 2016, CBBC hosted a dinner where companies could meet with Vice Premier Ma Kai; we attended and spoke at events during the P2P; and managed the business seminar and matchmaking event for the JETCO.

The Prosperity Fund

The UK Foreign and Commonwealth Office manages a Prosperity Fund, which is set up to create the conditions suitable for global growth and prosperity. By supporting targeted projects, the Fund focuses on areas where the UK is a world leader and has high quality policy and commercial expertise to offer China.

There are three key strands to promote: 1. Sustainability; 2. Openness; and 3. Opportunity (for UK companies to contribute).

CBBC leads or supports a range of projects under the Prosperity Fund, with the aim of building a healthy business environment in China, including working to promote sustainable economic development in line with international best practice.
Projects in 2017 will fall under specifically themed strands, including:

- **Infrastructure**
  Announced during the visit of President Xi to the UK, and an outcome of the Economic & Financial Dialogue. This initiative is a platform for UK and Chinese companies to work together through a UK-China Infrastructure Alliance on projects in third markets.

- **Rule of Law**
  Enhancing China’s commitment to the rule of law is a key area of focus for this year’s work. This includes support for the development of the Intellectual Property Programme, which will likely include a Commercial Legal & Regulatory Framework of organisations offering practical support across the UK and China. To understand more about CBBC and DIT services for SMEs, see SMEs: Trade Advice & Available Support in this Handbook.

- **Low Carbon & New Energy**
  Helping alleviate pollution issues and energy needs in China and also developing opportunities for UK companies to work together through a UK-China Infrastructure Alliance on projects in third markets.

- **Healthcare**
  Support for the development of the healthcare sector and its ability to tackle issues such as elderly care, chronic illness, rural population challenges, whilst positioning the UK and its healthcare sector’s vast experience in these areas to the front of the queue.

- **Smart Livable/Cities**
  Tackling China’s growing urbanization challenges in areas such as transport, energy usage, utilities, environmental challenges and water supply. Initiatives in this field will leverage UK firms’ specialisms and experience around the world coming up with innovative solutions to difficult problems.

- **Education & Skills**
  Upskilling and improving China’s education system to promote innovation, talent development, re-skilling, entrepreneurial talent and creativity whilst developing UK interests as service providers ready to meet China’s needs.

- **Financial & Professional Services**
  Support in this area will focus on areas China aims to expand market access for foreign companies and also plays to the UK’s strengths, including in areas around wealth management, insurance, etc.

Companies doing business with China need practical support, to navigate the business environment in China as it stands today and be successful. In this section we also outline a whole framework of organisations offering practical support across the UK and China. To understand more about CBBC and DIT services for SMEs, see SMEs: Trade Advice & Available Support in this Handbook.

**China-Britain Business Council**

The China-Britain Business Council (CBBC) is the leading organisation helping UK companies grow and develop their business in China. With 11 offices in the UK, and a presence in 15 cities across Greater China, CBBC helps companies of all sizes and sectors, whether new entrants or established operations, access the full potential of the fastest growing market in the world.

For companies serious about growing a China business, CBBC membership provides the advice, on-going support and connectivity necessary to achieve long-term success. CBBC members also benefit from reciprocal membership of the Beijing-based British Chamber of Commerce in China (BritCham).

As a partner of the Department for International Trade (DIT), CBBC delivers business-to-business services in China, including Business Support Services (BSS) which enables UK companies to identify partners, arrange market visit programmes and carry out market research. All UK companies are eligible to access the service, which is an excellent way of addressing a one-off business challenge and to get a taster of the China market. To find out more please visit: [www.cbbc.org/services](http://www.cbbc.org/services)

**The China Outbound Network**

CBBC’s China Outbound Programme offers a comprehensive platform for UK companies and organisations to identify and develop partnerships with potential Chinese investors interested in the UK, and to explore opportunities for UK firms to partner with Chinese counterparts on third country projects. We work with M&A advisors, corporate finance boutiques, investment managers as well as other financial service providers in the cross-border transactions, to bridge the connection with the high profile investors from China. For more information please see: [www.cbbc.org/services/china-outbound-programme-2017/](http://www.cbbc.org/services/china-outbound-programme-2017/)

**Department for International Trade**

The Department for International Trade (DIT) is a UK Government department working with businesses based in the United Kingdom to ensure their success in international markets, and encourages the best overseas companies to look to the UK as their global partner of choice. DIT is located throughout the UK and around the British Embassy and four Consulates-General in China. CBBC is DIT’s strategic trade service delivery partner for the mainland Chinese market. To find out more please visit: [https://www.gov.uk/government/organisations/department-for-international-trade](https://www.gov.uk/government/organisations/department-for-international-trade) and [https://www.gov.uk](https://www.gov.uk)

DIT has a network of International Trade Advisors across the UK, who work closely with CBBC’s 10 regional offices. DIT has 12 regional offices – for locations and contact information please see: [www.contactus.trade.gov.uk/office-finder](http://www.contactus.trade.gov.uk/office-finder)

**British Chambers of Commerce in China**

CBBC has close relationships with British Chambers (BritChams) in China, including longstanding reciprocal membership with BritChams in Beijing, as well as Southwest China. There are also BritChams in Hong Kong, Shanghai and Guangzhou which have separate membership schemes but cooperate with CBBC and British government on a broader level in different ways. Participating with a BritCham in the city you are located in provides an instant network, and a community of companies to share knowledge and ideas with you.
You’ll find the BritChams in China are very proactive, setting up hundreds of events every year to take your pick from.

**EU SME Centre**

The EU SME Centre is a European Union funded initiative helping small & medium-sized enterprises get ready to do business in China. The Centre provides practical information, confidential advice, and training in the areas of business development, legal issues, standards and HR to facilitate market access for European SMEs. The Centre also acts as a platform to facilitate coordination amongst Member State and European public and private sector service providers to SMEs. The EU SME Centre is operated by a consortium of European Chambers of Commerce, led by CBBC and also including the Benelux, French, Italian and EU Chambers and Euro Chambers. For more information please see: http://eumescentre.org.cn/

**EU-China Business Association**

The EU-China Business Association (EUCBA) is the EU-wide federation of national non-profit business organisations in the European Union with specialisation and particular expertise in exchange of knowledge on investments and trade with China. EUCBA promotes direct investment and trade between China and the EU through international exchange of information and joint projects of its members – providing European companies a stronger base for expanding trade cooperation with China. EUCBA unites 18 members in 18 countries, for which CBBC is the UK representative. For more information see: http://www.eucba.org/en/

**CBBC Events for your Business**

CBBC and our partners run a vast range of events for companies of all sizes from all sectors, both across the UK and China. This includes workshops, seminars, webinars, 1-2-1 business clinics and social events.

Find out more at [www.cbcc.org/events](http://www.cbcc.org/events)

**Flagship Events – UK**

CBBC holds its annual China Business Conference each year in London, normally in March. Go to [www.chinabusinessconference.org](http://www.chinabusinessconference.org) for more information.

Each year in the autumn, CBBC holds the SME China Forum in a different UK location. In previous years it has been held in Manchester, Birmingham, Nottingham and Glasgow. In 2017, the forum will move to Bristol. Find out more at [www.smechaforum.org](http://www.smechaforum.org)

**Flagship Events – China**

The China Outbound Conference is the leading UK-focused event in China supporting Chinese investment into the UK. It is held each year in October/November and has visited Beijing and Shanghai a number of times. The 2017 conference will be held in Shenzhen 29/30 November. Find out more on our events pages.

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2. Preparing for Trade with China

In this chapter, we introduce the major routes to the Chinese market, as well as key strategic considerations for companies who are looking to build a supply chain there. We also offer some essential tips for the business trip that you make, and an introduction to what CBBC can do in assisting your efforts to trade with China.

In the first section we introduce exporting to China, and how to effectively find the right business partner, as well as the usual methods of establishing sales channels to Chinese consumers.

In the second section, our gold sponsor Santander offers an introduction to the thriving world of Chinese e-commerce, and the growing opportunities in cross-border shipments. We also look at how to get around market barriers and the different types of Chinese consumer.

In the third section offers a short introduction to Chinese payment platforms, and the differences between the platforms that British businesses may be familiar with and the ones that are commonly used in China.

In the fourth section, Santander discuss how to make payments across borders, including issues such as the relative advantages of using different currencies, as well as safeguards that guarantee you are protected when making transactions of large monetary value.

The fifth section provides some essential information on Chinese customs and how to ensure that your products are fully compliant with their requirements.

The sixth section offers advice on logistics, detailing the relative advantages of different forms and means of transportation to be aware of as you discuss terms with Chinese buyers or suppliers.

The seventh section deals with supply chains and how to ensure that you find and set up the most strategically suitable manufacturing partners for your business in China, including best practice for sourcing and quality assurance.

In the seventh section, we detail the many services that CBBC offers to assist SMEs in successfully establishing your China strategy, as well as basic advice and a quick guide to check whether you are China Ready yet.

Finally, we offer a handy selection of business trip tips to ensure that your trip to China goes as smoothly as possible, including a guide on how to get your visa, basic social etiquette and how to prepare for your meetings.

2.1 Exports: Routes to Market

In this section we outline some of the most common ways to establish sales channels to Chinese clients and customers, and the business partners involved in the process.

**Distributors & Agents**

A distributor generally purchases goods from the producer at a discount and sells them on at a profit. There are different ways to structure an agreement with a potential distributor. They may be a sole licensed distributor, a master distributor with a network of sub-distributors, or one of several distributors responsible for different geographical regions or industry verticals.

An agent will typically take responsibility for selling, promoting, winning orders, problem-solving and debt collection in exchange for a commission. However, they do not usually handle goods themselves, leaving you to find another service provider for logistics and customs.

Operating through a business partner such as a distributor or agent can have many advantages, including the reduction of time and costs accrued in entering the market and the benefit of your partner’s local knowledge and network. They not only help overcome entry barriers but can also assist with collecting market data, tracking regulatory updates, and providing local customer support. Distributors can provide useful insight into market trends, especially if they work with several categories of product. They may be essential in heavily regulated market sectors, and can also enable companies to test the market before committing to wholly-owned entity and employing staff directly in China.

Nevertheless, there are also drawbacks. Finding suitable partners with aligned interests can be challenging, and employing a third party can result in additional cost in the supply chain. You may also lose some control over the marketing and image of your brand in the market, and increase the risk of your product being copied or counterfeited. Be aware that not all distributors will have their own import licences – if they do not they may have to employ another third party, adding to your intermediary costs.

**How Your Chinese Partners Help You:**

- Speed of market entry
- Access to local knowledge of logistical issues for imported products
- Can provide wider geographical coverage
- Knowledge and connections to deal with Chinese administrative issues, regulations and customs
- Manage relationships with sub-distributors, retailers and customers
- Well suited to companies for which little or no product adaptation is needed for the local market
- Safeguards that guarantee you are protected when making transactions of large monetary value

**The Challenges:**

- Loss of margin for your business or increased shelf price
- Loss of oversight and control of your products’ marketing and sales
- Difficulty of finding a suitable distributor
- The distributor may not prioritise your products and they may be unwilling to invest in marketing and advertising
- May request exclusivity, which increases your reliance on their sales ability
- IP risks and need for due diligence
Identifying Distributors & Agents

China’s size and complexity as a market can make it difficult to know where to start when looking to appoint a local partner. It may be necessary to carry out some initial research to determine where end customers are likely to be based, and to identify specific industry clusters for vertical markets you are targeting. Some typical channels via which foreign firms often find distributors:

- Unsolicited enquiries via company website
- Referrals from existing (trusted) contacts
- Internet searches
- Exhibition directories or published directories
- Bespoke research (via CBBC or other third party)

Some Chinese distributors may have no English language website, or can be difficult to find just using English language resources. Employing a native Mandarin speaker to undertake research helps to broaden the search, and can also be valuable in terms of making first contact with potential partners.

CBBC’s Business Support Services (BSS) can be an extremely useful way to conduct research, identify potential partners and organise a meeting schedule when you visit China. This service is delivered on behalf of the Department for International Trade (DIT) and available to any UK-registered company. For more information please see www.cbbc.org/services/research

When choosing an agent or distributor as a business partner, a company should consider the following:

- Does the agent/distributor have a genuine interest in representing your product?
- Can they benefit from actively promoting your products (is it a win-win)?
- Do they also represent any competing companies/products?
- Can you communicate effectively with your counterpart?

Due Diligence & Contracts

Carrying out effective due diligence on potential partners is essential before entering into any kind of distribution agreement. This may involve checking company registration information, business licences and asking for references from other suppliers or customers. For more information on carrying out due diligence in China please see section Due Diligence for Risk Mitigation of this Handbook.

Prior to signing a distribution contract, it is essential that you ensure that you have taken steps to register your IP rights (such as trade marks or patents) in China. It is also advisable to employ a Chinese lawyer to draw up any agreement in Chinese, and to keep the language of the contract as simple as possible (avoiding unnecessary legal jargon). In most cases, PRC law would be the legal jurisdiction for a distribution agreement, and so contracts should be drawn up in accordance with provisions under Chinese law.

A few considerations to bear in mind when drawing up distribution agreement:

- Whether exclusive or non-exclusive
- Territory or vertical sector coverage
- Whether agreement covers online as well as offline channels
- Specific products and services covered
- Duration of agreement
- Margins, commissions and KPIs
- Pricing
- Payment terms
- Legal jurisdiction of contract
- Intellectual property use rights
- Dispute resolution

Further information on contracts can be found in section 4.3 of this Handbook.

Managing Your Partner

Once a working relationship is established, the distributors and agents need to be managed actively. This may be achieved by the following:

- Visiting regularly at a senior management level, in order to reinforce your interest in and commitment to the agent and the market. This also provides opportunities to learn about the market and the popularity of your products;
- Helping with marketing and sales strategy planning;
- Providing regular training for the sales and after-sales staff;
- Linking performance to incentives and agreeing milestone targets.

It may also be beneficial for companies to have their own Chinese employee permanently based in China to support the activities of distribution partners. This can be done either by setting up a Rep Office or by using CBBC’s Launchpad business incubator service.

For more information on Launchpad please see: www.cbbc.org/services/launchpad

Alternative Channels

Setting up a Full Local Presence (WFOE/FICE)

Some UK firms may wish to establish a full legal entity in China to carry out sales and distribution activities in-house. This option offers the greatest level of control over China sales activity, and is perhaps most suitable for companies that have some existing customers in China and require a local team to service them and develop new business. There are a variety of types of entity that foreign companies can set up for this purpose.

For detailed information on setting-up in China please see section 3.1 of this Handbook.

Direct Retail Channels

Some retailers in China have their own import licences and will procure directly from overseas suppliers on a wholesale basis. However, this varies according to product category, and in reality most British brands still require a local importer to manage the import process. Likewise, most department store retailers in China operate concession models rather than direct purchase, which makes it necessary to either appoint local franchise partners or to sell directly to the company operating the outlet.
will increase costs. This option may be distributable in China anyway, which the knowhow for the Chinese market consolidator will often either lack. This option may seem to be the most attractive to any UK business that can handle the exports from the UK for you. This option may be the most straightforward, but the non-Chinese consolidator will often either lack the knowhow for the Chinese market and/or need to use local agents and distributors in China anyway, which will increase costs. This option may be attractive to smaller producers that do not have budgets for market visits, or the time required to compare or to carry out due diligence on Chinese distributors.

**Cross-border E-commerce**

Cross-border e-commerce channels have become a very popular way for Chinese shoppers to buy products from overseas. Equally, the Chinese government has recently introduced new legislation to encourage cross-border e-commerce through legitimate channels, and to improve the monitoring of products entering China through these channels. Whether offering China as a shipping destination from your existing UK website, or selling via a Chinese cross-border e-commerce website, this can be an extremely effective way for new-to-market brands to test the market and ship directly to end customers.

While this model removes some of the distribution costs of working with distributors, there may be additional costs associated with making a UK website China-friendly, setting up on a cross-border e-commerce store and the marketing spend required to bring traffic to an e-store.

For more information on selling online in China please turn to section 2.2 E-commerce of this Handbook.

This section was written by CBBC.
Most of the leading e-commerce marketplaces in China also have cross-border platforms

The foreign business can also consider running the domestic online store in-house from its Chinese wholly foreign-owned enterprise (WFOE) entity. This requires a significant investment in terms of local warehousing, inventory and other operational costs incurred in China to manage the domestic online store. As the goods are imported to China and are then resold, the foreign brands will not benefit from the cross-border e-commerce regulation and will be subject to full customs requirements.

### Cross Border E-commerce

Most of the leading e-commerce marketplaces in China also have cross-border platforms, which enable brands with no existing presence in China to sell to Chinese consumers. As well as Taobao Global and JD Worldwide, a number of other platforms such as VIP.com, NetEase Kaola, Amazon, Xiuxi.com and Seecoo operate cross-border stores (along with a “long-tail” of smaller e-commerce platforms). Some of these platforms require overseas brands to set up and operate stores themselves, while operating a wholesale model or providing full end-to-end logistics and store management services for a fee. There are also a number of curated stores operated by third parties on these platforms, which can be an effective way for brands to share the costs of listing on an e-commerce platform.

- **WeChat Store**
  
  WeChat is the leading social media platform in China with over 700 million monthly active users. Unlike many social platforms in the West, WeChat also has a payment function and acts as a platform for apps, games and e-commerce stores. Overseas brands can now set-up their own custom-built WeChat store to sell directly cross-border to Chinese shoppers. While this is a lower cost model than selling via existing e-commerce marketplaces, it does require some investment in marketing to build up a sizeable enough WeChat following to generate sales.

### Market Barriers

There are a number of challenges facing UK companies when looking to sell online in China. Although there are a wide variety issues to consider, we cover below the seven most common barriers facing UK firms:

- **Chinese Website & ICP Licensing**
  
  Most UK retailers will be used to selling directly to UK shoppers from their own stand-alone e-commerce website. However, any foreign company looking to set-up a website in mainland China needs to apply for an Internet Content Provider (ICP) filing, which is only available to companies with a registered legal entity in China. Furthermore, a full Commercial ICP licence is required to operate a transactional e-commerce website, and this is very difficult for most foreign companies to obtain.

- **The Great Firewall of China**

  While some retailers may look to sell to Chinese shoppers directly from a UK site, it is important to consider the speed and performance of a UK site for Chinese users. The system of censorship and filtering known as the ‘Great Firewall of China’ tends to slow inhibit the performance of UK-hosted websites for Chinese users. It is worth considering whether you are able to make changes to your UK site to improve the Chinese user-experience, or whether to consider alternative e-commerce channels.

- **Chinese E-Marketplaces**

  For the above reasons, third-party E-marketplaces (such as Tmall and JD.com) tend to dominate Business to Consumer (B2C) e-commerce in China. However, in order to sell via these platforms, overseas brands often have to invest significantly in store set-up, management and other operational costs (logistics, customer service and marketing). These costs can run into the hundreds of thousands, and can be prohibitive especially for new-to-market SMEs.

- **Regulations**

  Depending on the sales channel, it may be necessary to obtain local approvals or certification in order to sell via leading e-commerce platforms. Although products sold via cross-border e-commerce have tended to be treated as personal parcels in the past, the introduction of a new ‘Positive List’ for cross-border e-commerce has created more clear definitions as to which products can be sold. There may also be some restrictions on sensitive categories or additional certifications required.

### Taxes & Duties

Understanding landed costs, including local taxes and duties, is essential when determining if you can sell at a price acceptable to your target demographic. Taxes and duties will vary considerably according to product category, price, and specific e-commerce channel.

### Marketing

In a market as crowded as China, significant investment in marketing is often required to increase brand awareness and drive traffic to an e-commerce store. For new-to-market firms it is particularly important to allocate sufficient resource to marketing. It may be necessary to dedicate marketing spend across numerous digital media, or to using Key Opinion Leaders (KOLs) to help traffic to build brand recognition.

### Intellectual Property

Intellectual property (IP) registration is critical when considering to trade with China. Although the government has implemented significant reforms to encourage and protect foreign brands, there is a “first-to-file” principle for trade mark registration, meaning companies could register your brand before you enter China and block you using your own trade name or logo. Speaking to experts is highly recommended to ensure this does not become an entry barrier.

### Dealing with Exporting Challenges

Although e-commerce may seem one of the most straightforward ways to sell into China, there are potential obstacles. It can be difficult for foreign businesses to know which agent, distributor or platform to work with, or whether they are getting a good deal. Logistics and red tape linked to customs present significant practical issues too. Equally, language can be a considerable barrier while intellectual property (IP) protection may also need to be addressed.

Therefore, Santander has set up a partnership with JD Worldwide, the cross border e-commerce platform of JD.com, China’s largest online retailer.* It is designed to assist in meeting these challenges. Not only does this deal allow UK firms to sell direct to consumers in China through JD Worldwide’s British Mall, Santander has also established relationships with a number of trustworthy, experienced partners including IP lawyers, e-commerce service providers and logistics firms.

As part of Santander’s comprehensive support, these partners offer preferential rates to the British businesses that connect with them. They have been pre- vetted thus removing a considerable amount of the risk involved when dealing with new partners in a new country.

As with any business venture, it will never be possible to eliminate all risks and challenges. Companies considering exporting to China should think about how easy they would find it to meet the needs of such a large market, for example, and whether they could scale up their production or divert stock from other markets at short notice. However, Santander’s teams in China and the UK are committed to helping businesses realise their exporting potential by connecting them to opportunities that will allow them to prosper internationally.

To find out more about what JD Worldwide can do for your brand, contact Santander’s China Desk denise.san.tander.co.uk

* by revenue
The Chinese E-consumer

Chinese online consumers have some unique characteristics. Around 70% of buyers on a leading Chinese cross-border e-commerce site are aged between 24 and 32 years old, with an average annual income of ¥100,000 (£11,850). Nowadays Chinese consumers are more likely to buy via smartphone apps rather than directly from desktop websites. It is forecast that by 2020 purchases made by mobile phone will account for 74% of e-commerce in China.

As the income levels rise, Chinese consumers are developing an insatiable appetite for higher quality and premium goods. The general preference of Chinese shoppers is for Western brands when they look for high quality, premium, luxury, safe, and higher social status. UK brands are no exception – generally associated with higher social status. UK brands are no exception – generally associated with classiness, prestige and heritage. Some of the UK’s most well received product segments are: fashion, luxury goods, food & drinks, maternal & baby related, health-related, consumer electronics and cosmetics, to name a few.

More generally, consumers who use e-commerce can be divided into six major groups:

- **Frequent female shoppers**
  This group buys online on a regular basis, and their most common purchases include clothes, mother-and-baby products plus skincare and cosmetics. Quality and a wide range of choice are key concerns.

- **Quality-conscious male shoppers**
  They spend more money and focus on consumer electronics such as computers and smartphones. Price and the availability of credit are key concerns.

- **Young shoppers**
  Aged 45 and below, this group is more likely to buy cosmetics and skincare products. They tend to buy online by clicking links in social media or by searching keywords.

- **Middle-aged shoppers**
  This group is more likely to buy via websites as opposed to apps, and their focus is on clothes, small appliances and phones.

- **High-income shoppers**
  They shop more frequently online and spend higher amounts on the likes of jewellery, furniture and appliances.

- **Practical shoppers**
  This group tends to buy clothes, shoes and telecoms products online in a targeted way, but they are less likely to use apps to do or to browse/window-shop for long periods.

It is important to spend some time researching the shopping habits of your target consumer groups prior to launching into the market. While there are a number of reports available on Chinese consumer habits, it is also possible to obtain search data from Chinese search engines and e-commerce platforms. It may also be worthwhile to use focus groups as a way to gather feedback on the appeal of your products in China.

This article was written by CBBC and Santander Bank. For more information please contact Santander’s China Desk at dennis.lin@santander.co.uk

Platforms are Different in China

Traditional platforms that are most commonly used in the West, such as Amazon.com, are comparatively unknown in China. These companies often have market shares in the single digits. The names that you might not be as familiar with like Tmall and JD.com are less known to Western companies, but they are very big platforms in China.

Getting your products on these platforms is a critical step to help grow revenue.

Payment Methods are Different in China

Payment methods that we have in the West — like credit cards are — also not very popular in China. The preferred payment methods are as follows:

- **Alipay**, launched in 2004 by the Alibaba Group, owner of e-commerce platforms Tmall (formerly Taobao Mall) and Taobao (eBay-like consumer portal)
- **UnionPay**, run by China’s top four state banks
- **WeChat Wallet**
- **Tenpay**, a unit of Tencent

It’s all about making it easy for the customer and giving them options with which they are comfortable.

Here is a high-level summary of steps for incorporating two popular payment methods into a website, specifically Alipay and WeChat Wallet.

**Alipay**
1. Finalise your website and customer shopping experience
2. Confirm your Alipay account is ready
3. Complete Alipay real-name authentication
4. Select an Alipay payment package
5. Submit a contract online
6. Make a test payment
7. Application approval

**WeChat Wallet**
1. Finalise your website and customer shopping experience
2. Set up a WeChat public account and request verification
3. Submit required company documents
4. Achieve verification approval
5. Finalise WeChat program development
6. Sign the contract and make a deposit

How Much Does it Cost?
As each case is unique, it can often be difficult to estimate costs. A large percentage of the cost depends on the amount of programming you’ll need to do to create a smooth user experience on your website. To give you a feel, a recent project cost a company we work with approximately ¥20,000 (£2,360) for programming the website user experience, plus ¥4,000 (£470) for creating a WeChat QR code, and ¥300 (£35) for WeChat’s annual verification.

How Long Does it Take?
Plan on about two weeks to set up either payment system, assuming you have your company documentation in order as well as web developer familiar with your website’s structure.

Are Special Certifications Required?
No, other than the standard company documents you need to submit during the Alipay or WeChat application process.

One Important Parting Note...
It should be noted that your website may not be the preferred way consumers want to buy your solution in China. Chinese consumers are often very concerned about online security, and as a result most prefer to use large commercial e-commerce platforms like those listed above. The space is evolving rapidly. In 2016 WeChat evolved as a serious platform contender and is expected to challenge e-commerce giants like Tmall and JD.com in the coming months. Flexibility and agility are operating imperatives in China.

This article was written for CBBC by Complete Manufacturing and Distribution. For more information visit www.completeMAD.com or contact Jennifer.Clement@completemad.com
2.4 Cross-border Trade Transactions

One major concern for British companies when doing business with their Chinese counterparts is how they will make and receive payments.

While China’s international currency transfer system has become much more open in recent decades, there are still a number of regulations and limitations that apply to cross-border transactions. Although these currency controls are not an obstacle to doing business in China, it is important that companies understand their potential impact and ensure they obtain expert guidance to help them avoid potential problems.

Chinese companies and banks offer foreign firms several options when it comes to making and receiving payment for goods and services. These range from letters of credit to telegraphic transfers and documentary collections – all methods commonly used in international trade. Chinese banks also offer the service of escrow accounts, which are an unusual method of payment for international trade but can be used for certain projects. The most suitable option for a particular business will depend on factors such as the relationship between the bank and the company in question, the sector the business is working in, the size of the transaction and the amount of risk the UK firm is willing to take.

Foreign-exchange Restrictions

It is possible to make and receive payments for transactions with Chinese firms in foreign currencies such as sterling or US dollars, but there are limits that companies must take into consideration.

Broadly speaking, the trade of goods in foreign currencies – as well as those carried out in RMB (¥, renminbi) – is permitted provided it is supported by the correct documentation, which can include paperwork such as sales agreements, customs declarations and shipping invoices.

For services, there is no limitation on foreign currency transactions for amounts up to and including US$50,000 (€40,000), but higher-value transactions must be supported by the correct documentation.

Bear in mind also that the Chinese government operates sector- and region-specific cross-border payment rules – for firms trading in certain goods or in certain parts of China, transactions could face stricter controls. It is therefore important to consult with experts such as a bank based in China before agreeing to do business.

For example, Santander’s team based in Bank of Shanghai can help UK enterprises identify any issues that could affect their ability to receive or make payments.

Cross-border RMB Payments

The Chinese authorities have recently taken steps to encourage the use of RMB for international trade, a fact that is worth bearing in mind when negotiating sales agreements. The controls placed on international RMB transactions by China’s government are generally less strict than on foreign-currency exchange – for example, approval from the authorities only needs to be sought for China-to-UK transfers worth more than ¥5 million (€583,000).

Agreeing to do business in RMB may also enable UK firms to negotiate more favourable terms with their Chinese partners, as the latter will face less currency risk. This risk will instead be borne by the British company.

UK-based firms which receive payment in RMB will need a domestic bank account denominated in the currency.

Mitigating Trading Risks

While dealing with currency fluctuations is part and parcel of international trading, so too is the risk that agreed payments or shipments of goods will not materialise.

For transactions where there is less need to mitigate the risk of non-payment or non-delivery, banks in China offer telegraphic transfer of funds being blocked. Whatever payment method is used, it is vital that documents are completely error-free – a mistake as trivial as misspelling a company name on a letter of credit, say, could result in funds being blocked.

Santander’s relationship with the Bank of Shanghai and other trusted consultants in China can help British firms check documentation and ensure such problems do not arise, as well as guiding UK businesses through other parts of the payment process.

This section was written for CBBC by Santander Bank. For more information please contact Santander’s China Desk at dennis.lin@santander.co.uk

While dealing with currency fluctuations is part and parcel of international trading, so too is the risk that agreed payments or shipments of goods will not materialise.

Letters of credit and escrow accounts, both of which are available to businesses trading with China, offer a form of insurance for each party in a transaction. A letter of credit is essentially a guarantee underwritten by the buyer’s bank that the sum agreed for a particular shipment of goods will be paid provided the seller meets certain conditions.

These typically involve providing documents such as the original sales agreement, commercial invoices and proof of shipping and/or delivery. When a letter of credit is issued, the seller no longer has to worry about the buyer keeping their side of the deal – this responsibility has passed to the buyer’s bank. At the same time, the buyer receives assurances that the seller will deliver the documents required by the letter of credit on time.

An escrow account is an account run by a trusted third-party in which payment for certain goods is held until the buyer receives them or other pre-agreed conditions are met.

Letter of credits are popular as they offer a high level of guarantee and can be more flexible than escrow services. For example, letters of credit can include terms that allow discounts for payment in advance.

Telegraphic Transfers & Documentary Collection

For transactions where there is less need to mitigate the risk of non-payment or non-delivery, banks in China offer telegraphic transfer of funds whether they are in renminbi or foreign currency – these are direct electronic transfers of cleared funds. The main advantages of telegraphic transfers are that they are fast – with money arriving in the payee’s account more or less immediately – as well as secure. Fees for transfers are typically lower than for payment methods that require banks to check documentation, such as letters of credit.

Banks in China also provide documentary collection services – this means that they take responsibility for checking the documentation on a deal. If the documents are found to be in order, the bank releases the payment. Whatever payment method is used, it is vital that documents are completely error-free – a mistake as trivial as misspelling a company name on a letter of credit, say, could result in funds being blocked.

Cross-border Trade Transactions
Chinese customs clearance is an essential but notoriously thorny process when importing into China. Many of the import requirements from China still vary from WTO standards. Therefore, you will need specialist knowledge regarding how to import your goods.

Nearly all products intended for sale in the local Chinese market need to go through full clearance at the China Customs Office. Notable exceptions include goods sold through e-commerce channels, which will be discussed later. Imports into China can typically be categorised into three types of goods:

- **Unrestricted**: General goods that have basic China import requirements.
- **Restricted**: Goods that can be imported into China, but with more stringent import requirements.
- **Sensitive**: Categories of goods that are generally outside the scope of what foreign companies can import into China.

### 2.5 Chinese Customs Compliance & CCC Mark Basics

#### Unrestricted: Basic Requirements for Customs Clearance

1. Exporter Documentation
   - Regardless of the product you are looking to import into China, there are certain China import requirements that apply across the board. If your goods are in an unrestricted category, then these are the only requirements, and they break down into two categories: Exporter Documentation. As an exporter to China, the China Customs Office will expect to see a set of standard documents from you for the goods to be cleared:
     - Bill of Lading
     - Packing List
     - Commercial Invoice
     - Certificate of Free Sale (F&B only)
     - Certificate of Origin (certain categories only e.g. F&B & industrial goods)
   - You will need to ensure that these documents are all in order and that there are no anomalies that could cause confusion at the Chinese Customs Office. For example, companies can find that their packing lists have been rejected for things as simple as having a blank line item generated automatically by their logistics provider. Bills of Lading are another area where overseas freight forwarders often fail to produce a document that meets the standards set by the China Customs Office.

2. China Importer of Record Documentation
   - You will need an importer of record in China to receive the goods. The default option for this would usually be your corporate customer in China. However, it is also common for a distributor not to have the necessary China Import Licence to import goods into China, and may not want to get involved in the import & logistics side of the deal. In this case, you will need to find a 3rd party importer of record with the correct import licence to clear the goods through customs and import into China. Regardless of who it is, the importer of record will need to provide:
     - The International Sales Contract (signed and stamped by a registered company in China)
     - China Business Licence
     - China Import Licence
   - There are some requirements, such as a Chinese label on the product, that can be fulfilled by either side and is often down to negotiation as part of the deal. It is not uncommon for companies to have major deals lined up only for them to reach an impasse over who would produce the Chinese label. It is therefore important not to overlook import requirements when negotiating with a Chinese distributor.

#### Restricted: Special Product Registration for China Customs Clearance

1. CCC Mark Basics
   - The CCC Mark is an example of special registration requirements.
   - **Equivalent to the CE marking in the EU and other countries, CCC is a compulsory safety mark across approximately 20 product categories that you can see in the box below, from electrical wires and cables to electrical equipment and medical devices.**

   - **A quick search of the requirements under the HS Code you are importing into China under will confirm whether CCC is required or not when importing your product into China. Each product within the categories listed above will have its own ‘Guo Biao’ (GB) which stands for ‘Country Standard’. The product composition must comply with the GB in order for you to successfully obtain CCC for your product and import into China. You can conduct a quick search for your HS code at www.hsbianma.com**

   - **CCC as an Example of Special Registration Requirements**
What Do You Need to Know About CCC?

While many manufacturers will already have a CCC and will supply one on request, applying for a CCC for the first time significantly increases the lead time and complexity of importing goods into China. If you are importing a product that requires application for a new CCC, you can expect a 60-90 day lead time, with the following requirements imposed on the applicant company:

- Testing at an accredited laboratory in China (Self-inspection or third-party testing results not accepted)
- Submission of numerous technical documents relating to the product required
- Submission of a product sample to the accredited Chinese testing laboratory
- Factory inspection by Chinese officials at the applicant’s expense
- Follow-up inspections every 12 to 18 months

It is essential that you are 100% clear on whether your product requires CCC before spending the resources to obtain it. Companies are often concerned about CCC listed components within their products. In this case, if you are importing the whole product under an individual HS Code and as a single ‘set’, then you won’t need to go through the trouble of obtaining CCC for the individual components.

In a recent example, an Australian company was looking to import a tractor and crop sprayer into China. The tractor didn’t require a CCC but the crop-sprayer did. Thus, in order to save administrative costs and time, they enlisted the services of a consulting company, who imported them as a single ‘set’ of ‘tractor + crop sprayer’, which did not require a supporting CCC.

Sensitive: Restricted Import Categories

These are categories of goods that the Chinese government restricts to a small number of state-owned enterprises (SOEs) to import, because they are of a sensitive nature to the Chinese state.

Though it is possible to export these items from the UK, you have to do so through a designated importer. This is particularly relevant to companies in creative sectors, such as sellers and publishers of books. There are many UK book-sellers who have successfully developed partnerships with these SOEs, in order to supply the China market. The key to being able to bring such products into the Chinese market is to develop a partnership, on reasonable commercial terms, with such an SOE.

This guide was written for CBBC by LNP China. Visit lnpchina.com or contact Alex.Phillips@lnpchina.com
2.6 Logistics

Logistics is an essential consideration for any buyer or seller considering trading goods with the Chinese market. As logistics can be an expensive process, once you have made a decision as to what product you want to ship, it should be one of your first considerations.

Incoterms

Incoterms are globally recognised rules which define the responsibilities of sellers and buyers under the purchasing contract of your shipment. It is vitally important to understand these terms, as it will have a bearing on the charges you are responsible for.

The following table shows the financial obligations which the buyer and seller are responsible for under different incoterms:

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<th>Incoterm</th>
<th>Export</th>
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Incoterms are globally recognised rules which define the responsibilities of sellers and buyers under the purchasing contract of your shipment.

Negotiating which Incoterm will be used with the buyer/seller should be a priority. The two most commonly used Incoterms are Free on Board (FOB) and Ex-Works (EXW), as it will affect the cost per product sold:

- **FOB**: This means that the seller is responsible for getting the goods to your designated forwarder. The buyer will be responsible for shipping the goods from the port of origin and all charges at the country of destination. This is the most commonly used Incoterm.
- **EXW**: Ex Works favours the seller, as the buyer is responsible for local charges at origin, as well as domestic and international freight costs to destination and all destination charges.

Whether you are shipping by air or sea, the buying terms FCA (for air) and FOB (for sea) are the most commonly used by those importing from China. These terms allow the buyer to control the shipment from early in the process. Furthermore, local charges in China will generally be the responsibility of the seller, thus allowing the buyer to accurately forecast the costs of the shipment without any hidden costs. The responsibility of export licences, commodity inspection certificates and other relevant documents will be the responsibility of the seller, which is typically more familiar with local requirements.

**Controlling Costs when Importing from China**

It is important to control your costs; this is why the recommended terms of purchase is on an FOB basis. With the help of a reputable freight forwarder, you will be able to move your goods with the most cost effective method, within the timelines that you need your goods to arrive.

Many UK importers have been caught out by allowing the supplier to deliver the goods to the UK “Free of Charge”. Although this sounds very attractive, when shipments arrive, the local charges in the UK are hugely inflated and more often than not more expensive than controlling the freight by yourself.

You also need to consider duty rates on the products you are buying and be aware that duty is payable on the freight charges as well, as it is considered by revenue and customs to be part of the value build-up of your goods.

Once you have decided upon a commodity that you wish to import and have found the supplier you wish to work with, there are certain things you need to consider which are further explored below.

**Registering for VAT & EORI**

You will need to register for VAT. This is a simple procedure and the necessary forms can be found at: https://www.gov.uk/government/publications/vat-application-for-registration-vat1. You can apply to be registered for VAT online.

Even if you have a registered VAT number, you will also need to make sure that you have registered for an EORI (Economic Operator Registration Identification). For details on applying for an EORI number please follow this link: http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pages/library_ShowContent&id=HMCE_PROD1_028527&propertyType=document.

If you have applied online for your VAT registration, this automatically applies you for an EORI too, and you should receive your EORI number with three days of your VAT registration number being issued. You can check whether your EORI number has been validated by using the following link: http://ec.europa.eu/taxation_customs/dds2/eos/eori_validaton.jsp?lang=en

Once you have this you are ready to start importing.
Transportation Charges

Once you have chosen your preferred buying terms, it is important to consider the costs of shipping your consignment to the UK. Each type of transport has its own set of advantages and disadvantages. While sea freight is the cheapest option, it takes much longer than air freight, and therefore requires greater consideration for production times and deadlines.

There are two main options for sea freight. The first is the purchase of a Full Container Load (FCL), which involves the purchase of a full container – ranging from 20ft to 40ft in size. The second is the employment of a groupage service, which is often referred to as a Less than Container Load (LCL). For LCL shipments, the minimum charge is for either 1 ton in weight or a cubic metre. This can be a very cost effective way of sending your shipment, but can take 4-6 weeks depending on the location of the supplier.

Though air freight is a lot more expensive than sea freight, for smaller consignments it can be as cost effective as sea. For larger shipments the price may vary, dependent on service chosen.

Duty Rates & Commodity Codes

When calculating the final costs of your product, you must also consider the duty rate applicable to your commodity. There are various ways of checking. Customs offer an advice line on 01702 366077 which allows you to get quick, non-legally binding advice with a simple description of your goods. You can also check online for yourself using the following link: https://www.gov.uk/trade-tariff

You can also apply for a “BTI Ruling” which is legally binding throughout Europe and valid for six years. This takes away any possibility of any post clearance queries from HM Revenue & Customs on duty rates. It will require a short form to be completed, accompanied by either a sample of the product or technical literature. All samples can be returned after the ruling has been issued. BTI rulings can be applied for at this link: http://customs.hmrc.gov.uk/ChannelPortalWebApp/channels/PortalWebApp.portlet?_nbfp=true&_pagelabel=pageOnlineServices_ShowContent&i=HMCE_CI_001087&propertyType=document

Exporting to China

The importation process in China is quite complex and varies depending on the province. It is up to the buyer of your products to ensure that they are legally set up in China with the necessary import licences and compliant with other local regulations. It is recommended that you sell using Ex Works, FOB or C&F (to arrival designated port or airport). It is vitally important that the Incoterms are agreed at the beginning of negotiations.

Professional Guidance & Freight Forwarders

As the above processes can be very daunting, the guidance and assistance of a good freight forwarder, who can provide assistance and advice on the entire process, is recommended. It is further advisable to insure your goods from the moment that you become legally responsible for them as dictated by the terms of your chosen Incoterm.

You should not be frightened to ask questions. A reputable freight forwarder should have most of the answers for you, and if not, be able to advise a governing body which will provide assistance and advice on the information you need.

Though there is very little advice available on how to choose the right freight forwarder for your business, there is an abundance of good freight forwarders who will genuinely care about ensuring your shipment arrives without problem. They will ease the pressures of any uncertainty that you may have, and ensure that you are fully aware of any restrictions on your product and any complications that may arise in the course of transit.

It is often said that one of the disadvantages of using a freight forwarder is that they have little control over schedules and only contract out third parties, e.g. airlines and shipping lines. Though this is true to an extent, as very few freight forwarders own aircraft or container vessels, there are other considerations that outweigh the negative implications of this. Good freight forwarders can offer knowledge and expertise of the various services available, and should be able to find you the best, most economical solution that is appropriate for your specific needs. They should also maintain strong relationships with airlines and shipping lines and be able to offer you competitive prices.

It is essential that you do some due diligence and seek recommendations where possible. A good record is a good sign of credibility, but you should also meet them face to face and ensure that questions are asked which test their knowledge. There is always a ‘leap of faith’ involved in selecting new service providers, but by meeting the company you can gain a proper understanding of them, and just as important, they can also gain a full understanding of your requirements.

Train Freight

The beginning of 2017 saw a great deal of attention for a new train freight service launched from China (Yiwu) to London. The official reception for the first train arriving was held at the St Pancras Renaissance Hotel, London on 18th January.

The arrival of the train in Barking was received by the UK and Chinese press, along with a delegation from the Chinese company funding and servicing the train, “Yiwu Timex”, who are a logistics company backed by the Chinese government. Whilst this first train was only a trial run, it was positioned as a genuine option for future Shipment.

There are a few things to note about this as a shipping route:

- Transit time will be 16-18 days;
- The final pricing for this service has not been decided upon, but it seems likely to be pitched around $6,000 per container from China to the UK, and $3,000 on the return journey;
- Capacity of the train is so far only 68 TEU per journey (34 carriages – 2 x 20ft per carriage);
- The goods travelled under a T1 transit document from Germany to UK, which will need to be changed before regular UK-China shipments can commence;
- Shippers need to be aware that the train’s terminus is Yiwu, and there will be further requirements to reach your origin destination elsewhere in China.
Successful Sourcing

We define Sourcing as the process of searching for and locating a primary factory with the ability to produce a required product. Sourcing includes the due diligence to confirming authenticity of the factory upon identification, and the full agreement of all procurement terms for both parties.

Sourcing can be performed by an individual or by a professional entity (such as a managed sourcing company) and is a crucial early step in Supply Chain Management. Effective sourcing requires not only the understanding of the product to be produced and procured, but also of issues influencing the intended partner factories.

The sourcing process will vary depending on certain influencing factors:
- Product – What is it? What materials, finish, dimensions and requirements?
- Industry – Is this a commonly produced mature product, or is it an innovative niche item?
- Quantity – Critical to understanding whether the factory has the ability to produce, whether economies of scale pricing can be enjoyed, and sampling and production lead times.

If we assume that the product is a unique, never-before-seen item made from uncommon materials and in small order quantities, the likelihood of sourcing a China factory willing to help with development is remote. Chinese manufacturers are aware of their limitations to drive to innovate. Generally speaking, Chinese manufacturers’ real strength is in offering skill in recreating and perfecting client concepts at pricing still usually less than possible in the West.

Background & Considerations

Many factories offering commercial OEM production continue to grow by targeting the world’s largest markets for the products in which the factory specialises.

The low-cost manufacturing advantages China can offer have been brought about over several decades of social-economic development and political policy making and not least by the very real lure of producing products for the world’s biggest industrial companies and consumer goods retailers.

First-class manufacturers can and do usually choose to work with market leading customers. They will therefore have high order criteria, such as high minimum order quantity (MOQ) requirements, minimum annual spend targets or prototype development budgets that smaller companies may struggle to fulfill. Smaller orders therefore may be able to consider piggybacking off their larger competitors’ high volume orders. However, this can be a bruising, uncompromising and difficult experience.

Be realistic with the attractiveness of your business to a Chinese factory. It may be that the biggest and best factories will simply be unsuitable partners. By comparison, a less impressive smaller factory, but which has good, experienced and eager management will often provide a better prospect. Sourcing is a compromise between many such factors.

This leads onto the critically important question of Quantity.

Minimum Order Quantity

Factories will set MOQs for various reasons. These MOQs can be higher than the average buyer wishes to accept, especially when targeting fast warehouse turnaround for incoming stock.

Factors affecting factories’ flexibility on MOQs can include:
- Production/assembly line capacity;
- Raw material supplier MOQs; this includes packaging and printing.

Raw material suppliers in China are often state controlled and will invariably offer no credit terms to the buying factories;
- Management costs increase for training of all production line staff for producing/assembling new items;
- Worker output consistency will be impacted with the introduction of increasingly varied items;
- Worker profit – the majority of workers get paid per item produced/ assembled so will be comparatively dissatisfied and unenthused to work on small orders;
- FOB local charges will be levied on the factory for every shipment they prepare, meaning that the larger the order, the lower the shipment charges per item;
- Factory cash flow vs admin costs.

Therefore, what might initially appear to be stubborn desire on the part of a factory for more revenue may in fact be a reasonable request.

Importance of Face to Face

Your company or a representative must meet with the factories producing your orders. Ideally before production even begins, a visit can take place as part of confirming all details communicated are accurate whilst also performing an audit of the facilities and business licences. Of equal importance is the benefit of meeting the owners and management of the business, to understand the roots, the current challenges and the future plans for the factory. This can be incredibly helpful in forming a decision about whether this factory is the right fit.

Quality Assurance

Once your efforts have resulted in the successful sourcing of a factory, price, payment terms and shipment negotiation, quality level agreed and orders placed; production inspectors play a crucial role in testing the relationship, trust and ultimately success of production.

The importance of being able to conduct independent quality inspections on China based production cannot be overstated. Quality Control is largely achieved by inspecting production as part of a broader Quality Assurance (QA) system, including inspection/testing methodology, inspector/factory training, auditing and production sample handling/storage process.

It is advisable to not rely on a factory’s own QA system to ensure your products’ quality. Factories will have their own concept of quality and its importance to the products. For certain items, product quality can only be achieved by using factories which already have quality built into the product via the machinery, equipment and staff that they employ.

For products which need tooling in order to be produced, submitting 3D drawings for the tooling makers to use will help limit any unexpected issues. However, samples from the tooling will need to be checked before production can be signed off.

In fact, checking pre-production samples is one of the best ways to ensure production will be accurate,
As it transcends language barriers and cultural confusions. Within a matter of seconds dimensions, colour, surface finish, material feel and overall appearance can all be assessed and confirmed/rejected. Rejecting products with quality problems is essential and one can generally follow an “Acceptable Quality Level/Limit” rule, expressed as a percentage of defects in a batch or other easily quantifiable form. This system is useful when batch size is larger than can be reasonably inspected.

By showing a factory the system which will be used during the pre-production phase, there is little room for later debates regarding what is and is not acceptable quality. Agreeing what the method of rework or compensation shall be in the event of a quality issue should also help save time later on.

**Payment & Risk Mitigation**

Payment to a properly sourced (audited and visited) factory will bear no greater risk than to any business in the West. By showing a factory the system which will be used during the pre-production phase, there is little room for later debates regarding what is and is not acceptable quality. Agreeing what the method of rework or compensation shall be in the event of a quality issue should also help save time later on.

Re-sourcing

An overseas company will be exceedingly fortunate if they can complete a sourcing project and enjoy a long term successful business relationship with only one supplier. Finding a dependable manufacturing partner that can be relied upon to produce products on time, on budget and to the right quality is the goal for companies’ product sourcing in China. Things may start out brightly, but being prepared for, or at least flexible enough to react promptly to any potential supply chain problem is important.

Some issues can include:

A manufacturer who loses business and is on the ropes financially. A sinking supplier will not give early notice as they find themselves in serious financial difficulties. Losing a paying customer by admitting difficulties will make their predicament worse, faster. There are some major red flags and more subtle signs to look out for when a factory is in financial trouble. These can include but are not limited to:

- Avoiding calls and a general lack of contact on common daily work related topics;
- Increasing frequency of broken promises, with more tenuous excuses;
- Loosening of product specifications and irrational justification for changes when it is aimed at cost cutting;
- Repeated hand-over of your project to different staff members;
- Staff leaving (Note: usually by this stage they will be more than willing to share their side of the fiasco that has claimed their job! This is also why keeping relationships at all levels of a supplier can be very helpful!);
- Company premises’ maintenance degrading;
- Changing transport for more economical forms;
- Continuing to give visitors gifts to save face when all other signs point to problems.

Discovering any financial problems before they become problems for one’s own business is vital.

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Discovering any financial problems before they become problems for one’s own business is vital. Should the factory be solely dependent on your custom, or you share an unusually strong bond, it is advisable to begin dialogue with back up suppliers sourced earlier, or re-source a new supplier immediately.

**Feeding the Competition**

We all work hard to make our businesses a success. However, when working closely with a Chinese supplier, one must be aware of the risk this hard work may have on your market.

It should be noted that many Chinese manufacturers offering OEM products will be fully prepared to offer exclusivity on a design, but change the slightest details (such as colour or material) to make a compelling offer to several market players. To the consumer, these changes will be negligible and possibly result in a price-war as the two or more competing products have little differentiation.

It is therefore important to have agreements in place early on to protect anything foreseeable as being a possible alteration of your idea. If the supplier is unwilling to offer their agreement, that may be an indication that future trust issues could arise.

One must also be aware not to over promise sales capabilities. If you forecast 10,000 units, but are only ordering 500 units at a time, then the supplier may feel loses must be recouped by looking for a higher volume customer.

To limit the chance competing products appear on the market, our tips are to do the following:

- Gauge the supplier’s appetite for genuine commitment to your business and products based on your realistic projections;
- Agree in writing the terms you set before placing orders. This may include a clear clause not permitting copies with a definition of what constitutes a copy;
- Monitor what other clients and products the supplier is working on;
- Keep an eye on what new products appear in the market. Any strikingly close to your own?

**Tooling**

Once sourcing has progressed to the point of deciding to place an order, tooling may need to be commissioned. The creation of moulds may make re-sourcing more complex, but is possible.

Factories see having tooling under their control, in their factory, as insurance protecting the account. Moving the tooling away means no business for the supplier. Thus, shifting existing tooling to a newly sourced factory, despite being within your rights, is rarely a smooth transfer.
This is a further reason to be sure the manufacturer sourced is the correct choice. If in the first meeting or two they seem awkward to deal with, that can be taken as a warning sign. However also being too keen for the business in the first place may indicate a level of desperation, which is arguably worse when it comes to the supplier’s stability and possibility of cooperating on a future tooling move.

It is prudent to have plans and agreements already in place to avoid as much hassle as possible when it comes to a tooling move. Proof that payment to components, the primary factory

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**Interaction with Potential Manufacturing Partners**

It is generally best not to consider any entity a manufacturing partner unless they are a managed sourcing company or a primary factory.

A primary factory (one which takes responsibility for final assembly and shipment) will use numerous regular outsourced factories to supply components, packaging, plating, finishing, painting, machining, or any one of hundreds of processes that make a product complete. So being aware of this but allowing the factory to control their own supply chain is important. If changes need to be made to components, the primary factory should take responsibility for resourcing themselves, assuring the quality.

Factories will likely have several salespeople who will each have abundant online inquiries arriving daily from all over the world. They will also have daily emails and Skype calls with their existing, paying clients, so getting their attention and responses is a fine balance between being clear, tolerant and firm.

The keys to successful communication with Chinese businesses throughout the sourcing process are to:

- Give a clear and concise explanation of the product, using Chinese is more effective;
- Be honest about quantities and ask the factory’s MOQ;
- Offer target pricing if the project is time sensitive and the product is largely unknown;
- A representative must meet with the factory to understand the roots, the current challenges and the future plans for the factory.

This section was written for CBBC by Chinawand. For more information please contact ian.l@chinawand.com.

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**2.8 SMEs: Trade Advice & Available Support**

This section explains the opportunity in China for Small and medium-sized enterprises (SMEs), provides advice for those considering it as an export destination, and contains a checklist of issues to consider and where to get help. We also signpost other information, tools and expertise which can help you, such as the China Ready checklist, the New Exporter Programme, and CBBC China Business Advisors near you.

**Opportunities for SMEs in China**

SMEs may find China daunting and some are put off by the challenge. CBBC has therefore developed a host of programmes, services and advice for SMEs looking at China, to make the journey easier to navigate.

There are many opportunities in consumer and hi-tech sectors as China increases its demand for high-quality imported goods and services, the middle class expands (creating a more sophisticated consumer market), and Chinese manufacturers move up the value chain. China’s new thirst for innovation represents significant opportunities across the ICT, clean energy, biotech, e-commerce, new materials and robotics sectors.

As Chinese companies internationalise, they are also increasingly looking to make strategic investments overseas. This presents opportunities for UK SMEs to partner with Chinese companies in the UK or in third markets, and/or receive investment which can help you to grow. For more information on what China means for SMEs please see: http://www.cbcc.org/news/cbbc-insights-smes-reasons-to-be-cheerful-about-ch/

**Advice for SMEs in China**

Having supported SMEs in China for many years, CBBC has significant experience of the opportunities and challenges they face. While challenges vary between businesses and sectors, based on our experience we have summarised some of the most common themes:

- You will most likely need a Chinese partner. Regulatory barriers, cultural differences and China’s sheer size and complexity often make it essential to have a local China partner. The right local Chinese partners can help to navigate the complexities of the market and accelerate business development.
- It is difficult to compete on price. China is an extremely competitive market, and it can be difficult for foreign companies to compete in low end goods. It is therefore best to understand your unique selling point in China – is it quality, original design, safety, reliability? Does your brand tell a compelling story? Try to compete in areas other than price.
- Register your trade mark before someone else does. Put simply, China uses a ‘first to file’ trade mark registration principle, meaning that just because you were the first to use your company’s name/logo/image, it does not stop someone else attaining the right to use it and block you. For advice on this, please refer to Registering Trade Marks and IP Protection in this Handbook.
- Understand the market and tailor your offering. Taking time with initial research will help you to understand whether there is a market for your product, which similar products already exist in the market and how you may need to adapt your product for competitive edge. Research can also be used to identify target regions, demographics and to better understand any regulations that may prevent your product from being sold in China. CBBC runs a business support service – for more information please see: http://www.cbbc.org/services/research/.
- Make your marketing China friendly. Preparing marketing materials in Mandarin with photos will help to bridge the gap when presenting your company and products in China.
- Be clear about your business plan. Expect to present during meetings and remember that the Chinese counterpart will want to understand whether the offering makes commercial sense for them to proceed.
CBBC is working with UK companies to help them enter the China Market for the first time.

### Checklist for SMEs & Where to Find Help

<table>
<thead>
<tr>
<th>What &amp; Why</th>
<th>Further Support</th>
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</thead>
<tbody>
<tr>
<td>Understand the general outlook for your sector in China</td>
<td>• Read sector specific reports available on the CBBC website: <a href="http://www.cbbc.org/services/resources/china-reports/">http://www.cbbc.org/services/resources/china-reports/</a> and EUSME Centre</td>
</tr>
<tr>
<td>Check your product or service can be exported to China and the regulations</td>
<td>• Access advice/information available from the EU SME Centre: <a href="http://www.eusmecentre.org.cn/">http://www.eusmecentre.org.cn/</a></td>
</tr>
<tr>
<td>Determine the best mode of market entry</td>
<td>• Try the CBBC China Ready Self-diagnostic Tool: <a href="http://www.cbbc.org/readyforchina/">http://www.cbbc.org/readyforchina/</a></td>
</tr>
<tr>
<td>Increase granularity</td>
<td>• See the different typical models used: <a href="http://www.cbbc.org/services/resources/setting-up-in-china/">http://www.cbbc.org/services/resources/setting-up-in-china/</a></td>
</tr>
<tr>
<td>Establish sales channels and target geographies appropriate to you; and make a business plan</td>
<td>• Commission market research for a more detailed market study for your product: <a href="http://www.cbbc.org/services/research/">http://www.cbbc.org/services/research/</a></td>
</tr>
<tr>
<td><strong>Advice from a Business Advisor</strong></td>
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<tr>
<td>UK companies may access CBBC’s experienced team of China Business Advisors (CBAs) from across the network of 11 UK offices and 15 China offices. China Business Advisors provide you with the local access, knowledge and insight that your business needs. The full list of our client-facing staff in the UK and China is available at: <a href="http://www.cbbc.org/contact-us/find-an-advisor/">http://www.cbbc.org/contact-us/find-an-advisor/</a></td>
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CBBC also works closely with the Department for International Trade’s (DIT’s) International Trade Advisors to support companies with the China market and a broader export strategy.

### Export Opportunity Programme

CBBC and the Department for International Trade work round the year to identify demand from Chinese companies for goods and services from the UK, and post 1,000s of live opportunities each year on the websites: [http://www.cbbc.org/services/business-opportunities/](http://www.cbbc.org/services/business-opportunities/) and [http://www.exportingisgreat.gov.uk/](http://www.exportingisgreat.gov.uk/)

Opportunities chosen are those that will lead directly to overseas business for UK companies, including:
- Distributors/agents looking for products;
- Immediate, specific requirements for goods and services;
- Joint ventures or partnerships to develop new products or markets;
- Joint research projects;
- University/school collaborations;
- Government tenders – advanced notice of projects which will start in the next 12-18 months.

To contact your local International Trade Advisor please see: [https://www.contactus.trade.gov.uk/office-finder/](https://www.contactus.trade.gov.uk/office-finder/)

Please note that this service is only available for registered UK companies.
The Process:

Step One: You see and register for an opportunity online.

You will then receive a response from the CBBC Export Opportunities team requesting further information about the products or service, and why they think it is a good match. You will need to provide evidence of your capability to meet the specific Chinese company requirement and more information about who you are.

Step Two: We show your offer to the Chinese company.

CBBC will then forward your information and contact details to the Chinese company to review and consider if you are the type of company with an offer they’re seeking.

Step Three: You’re informed of decision and how to take forward.

The Chinese company will select the companies that most closely match their requirement and respond directly to the UK company. CBBC will then write to the UK company indicating whether the Chinese company would like to follow up with them or not and leave it to the two businesses to do the rest.

CBBC won’t go anywhere, and if we can continue to support just let us know.

For more information please see: www.cbbc.org.uk
Or contact: Amy.Wang@cbbc.org.cn

New China Exporter Programme

CBBC has a special support programme for to help UK companies become ready for China, and to export to China for the very first time.

CBBC can help companies progress through the steps below as they prepare to become China exporters:

• identify and/or appoint potential partners to work with;
• attend China related missions or events to develop info and contacts;
• have made a trip out to China to meet Chinese companies;
• taken steps to protect IP (where appropriate);
• ready to start signing deals with a Chinese companies when then opportunity comes up.

To find out more about the New China Exporter Programme, please contact: Aileen.Clay@cbbc.org

Export for Growth (South West)

CBBC is currently supporting 40 selected companies from the South West of England via a special programme called Expand Your Global Reach – Export for Growth, funded by the European Regional Development Fund. The Extend Your Global Reach programme is aimed at helping experienced SME exporters to enter the high growth markets of Latin America, China, India and South East Asia. Examples of support for companies that qualify include:

• ready to start signing deals with China companies;
• meet Chinese companies;
• events to develop info and contacts;
• visa fees.

Remember to apply for a visa:

Most travel to China necessitates obtaining a visa. There are two main types of visa depending on the nature of your trip. M visas are issued to those who intend to go to China for commercial and trade activities; while F visas are issued to those who intend to go to China for exchanges, visits, study tours and some other activities. The processing time for most Chinese visas is typically four working days (although this can be expedited with a premium charge). The visa fee for regular service is £151 (as of January 2017).

In the case of very short term trips there is also now an option for visa-free transit. This option is available in Beijing, Shanghai, Guangzhou, Chengdu, Chongqing, Harbin, Shenyang, Dalian, Xian, Guilin, Kunming, Wuhan, Xiamen, Tianjin and Hangzhou and can be used by anyone with a confirmed onward transit within a 72 hour period.

There are three Chinese visa centres in the UK (London, Manchester and Edinburgh). If you are willing to pay a premium, a visa agency can handle the entire process instead. Agents can be particularly useful in making sure you have all the documentation is in order; and especially helpful for companies not located near a visa centre.

2.9 Business Trip Tips

Travelling to China for business can be an enjoyable experience. In order to make sure your trip goes smoothly, CBBC has prepared a list of things to watch out for. While not exhaustive, it is recommended that you take these points into consideration both before and during your stay in China.

Before you Leave: Preparing for the Trip

Remember to apply for a visa:

Most travel to China necessitates obtaining a visa. There are two main types of visa depending on the nature of your trip. M visas are issued to those who intend to go to China for commercial and trade activities; while F visas are issued to those who intend to go to China for exchanges, visits, study tours and some other activities. The processing time for most Chinese visas is typically four working days (although this can be expedited with a premium charge). The visa fee for regular service is £151 (as of January 2017).

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Change money:

China’s currency is the renminbi (¥, also yuan/RMB). It is a good idea to change some money before you go to China. It is also important to note that outside large hotels and some international shops, vendors will rarely accept credit/debit cards. However, most of the large banks have ATMs that accept international (at the fire).

Pack wisely:

Weather varies dramatically across China. Some parts of the country can be extremely warm and humid or cold depending on the season. It is important to look up the relevant forecasts to ensure a decent level of comfort throughout the duration of your stay. It is also important to be aware that pollution is a problem in major cities, especially during winter and in the north.

Bring power adapters:

China operates on a 220V/50HZ system. Chinese sockets are similar to those found in the US.

Keep in mind that Internet access is restricted:

You will experience restricted access on certain foreign websites and apps. This includes Google, Gmail, Google Maps, Wikipedia App, Facebook, YouTube and Twitter. However, some paid subscriptions to Virtual Private Networks (VPNs) can allow smooth access.
Have the address of your hotel and destination written/printed in Chinese characters (汉字).

Once in China: Practical Issues

**Taxi:**
Have the address of your hotel and destination written/printed in Chinese characters (汉字). Taxi drivers will usually not be able to understand English writing or Romanised Chinese written with the Latin alphabet (also known as pinyin). Note that it is very difficult to get a taxi on rainy days and during rush hour, and big Chinese cities can get very congested at these times. Never take unlicensed taxis (known as “black taxis” in reference to their being illegal rather than their colour). Always ask to use the meter. Note that Uber has a separate app for China and versions downloaded outside of the mainland will not work, nor is the mainland specific currently available in English.

**Account for irregular travel times:**
Whether travelling within a large city or cross-country, it is a good idea to account for delays and longer than usual travel times. This is especially true in cities such as Beijing or Shanghai where traffic can increase transit times considerably. Generally speaking, the trains in China run on time, but planes are often delayed. The high-speed rail network (with an average speed of 200 km/h) is a fast, comfortable and reliable choice.

**Road safety:**
Crossing the road can be precarious for someone unfamiliar with Chinese traffic regulations and how they are applied. Cars do not have to stop at zebra crossings, and they are allowed to turn right through red lights even if there is a green man at the pedestrian crossing. Many roads have cycle and motorcycle lanes. Be careful, and when in doubt, follow a local.

**ATMs:**
Unlike in the UK, you will receive your cash first, and then the card. Do not leave without both!

Once in China: Business Meetings, Communications & Social Etiquette

**Business card etiquette:** Always give and receive business cards with both hands and a short bow. When receiving a business card, do not put it immediately in your pocket, as this may be portrayed as flippant. Take a moment to inspect it.

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**Arrange travel insurance:**
It’s better to be safe than sorry, so make sure your travel insurance covers international hospitals (where staff speak English), visits to which can be very expensive if self-funded.

**Research Chinese local customs/practices:**
You will impress your guest if you familiarise yourself with some of the more nuanced traditions of the cities you will be visiting (e.g. in Guangdong, it is customary to wash bowls and cutlery yourself before eating – this is typical even in very clean restaurants as well).

**Have the address of your hotel and destination written/printed in Chinese characters (汉字).**

**Arrange an interpreter:**
As English is not widely spoken in China, arranging an interpreter may be useful. CBBC can arrange this for you.

**Bring plenty of business cards:**
Exchanging business cards is a common activity when conducting business in China. It is recommended to print double-sided English/Chinese cards, and hand them to your Chinese counterparts with both hands.

**Social Etiquette**

Meetings, Communications &

**Physical contact:**
Although shaking hands has become the norm for business greetings in China, it is often deemed unnecessary on social occasions. Avoid physical contact such as hugs and back patting, particularly of the opposite sex.

**Be patient:**
Business negotiations can be drawn out considerably longer than in the West. Concessions and agreements may be saved for right at the last minute.

**Avoid taboo subjects:**
It is unwise to bring up politically sensitive subjects such as Taiwan, South China Sea or Hong Kong sovereignty, Tibet or Xinjiang secessionist movements, official bribery, human rights and democracy, or jokes of an adult nature.

**Give your hosts ‘face’ at all times:** ‘Saving face’ is one of the most important aspects of Chinese culture. Even inadvertently causing your host/business partners to lose face – e.g. by showing them up or correcting them in front of their peers – can be disastrous for your relationship with them, even if they do not show embarrassment at the time.

**Have emergency contact information prepared:**
This could be choosing personal contact, or your CBBC relationship or project manager if you have one. Keep the Embassy’s contact details on hand in case you encounter a situation that requires consular support. The UK has a presence in the following locations:

- **North China:** Beijing (British Embassy):
  +86 (0)10 5192 4000

- **East China:** Shanghai (Consulate-General):
  +86 (0)21 3279 2000

- **Southern China:** Guangzhou (Consulate-General):
  +86 (0)20 8314 3000

- **Western China:** Chongqing (Consulate-General):
  +86 (0)23 6369 1400/6369 1500

- **Central China:** Wuhan (Consulate-General):
  +86 (0)27 8270 3600

- **Remember the time difference:**
The whole of mainland China is under one time zone – China Standard Time, CST (GMT+8) – all year round. CST is 7 hours ahead of British Summer Time (BST). This is important to keep in mind when phoning business partners or your prospective hosts in China. Given the time difference, it is a good idea to allow for some time to get over your jet lag too.
Once in China: Hospitality & Dining

Chinese food is shared:
In most situations, food is ordered for the whole table for everyone to share. It would be considered very odd to keep the tastiest dishes to yourself (this rule does not apply when eating Western food).

Chopsticks:
Be aware that many restaurants do not have Western-style cutlery. Some visitors choose to bring their own.

Alcohol & smoking:
Drinking alcohol is common at business dinners in China, as alcohol is thought to show an individual’s ‘true face’. If you do not wish to drink, make this clear to your host before dining (be prepared to hold your ground). The traditional Chinese liquor is Baijiu, though beer and wine are also very common, and they are often drunk with a small toast. Smoking is also common in restaurants, especially outside of Beijing and Shanghai.

Guests eat first:
Your host may insist that you, as the guest, be the first to try each dish.

Expect your host to offer you excessive amounts of food:
It is considered hospitable to invite your guest to eat to excess. But they will understand that everyone has their limits.

Basic Mandarin

The written language is uniform throughout China but China’s spoken dialects vary from region to region. The standard language, Putonghua (often called Mandarin), is similar to the Beijing dialect and is spoken by most people across the country. This is the language of business and if you would like to speak some Chinese, Putonghua is usually the one to study. There are numerous free-to-access websites designed to help you learn Putonghua, and some simple phrases are below.

This article was written by CBBC.

English Phrase | Pinyin (Romanised Chinese) | Phonetic Pronunciation | Chinese Characters
--- | --- | --- | ---
Hello | Ni hao | Nee how | 你好
Goodbye | Zai jian | Sigh jyen | 再见
Thank you | Xie xie | Share share | 谢谢
You’re welcome | Bu ke qi | Boo ke chee | 不客气
Sorry | Dui bu qi | Dway boo chee | 对不起
No problem (it’s okay) | Mei guanxi | May gwan shee | 没关系
I would like to go to... | Wo xiang qu... | Wor sheang choo | 我想去
Hotel | Jiu dian | Jeew Oyen | 酒店
How much is... | Duo shao qian | Dwo shao chee yen | 多少钱
Too expensive | Tai guile | Tie gway ia | 太贵了
Toilet | Xi shou jian | Shee Show Jyen | 洗手间
Cheers | Ganbei | Ganbay | 干杯
This chapter is provided in partnership with 2017 silver sponsors CDNetworks—experts in the Chinese Internet and how to harness it for your business. Here we set out to provide a practical introduction to the issues that companies need to be aware when considering setting up and operating a business in China.

In the first section, our 2017 bronze sponsors Koehler Group detail the various legal entities in China that businesses can choose from when entering the market with a physical presence on the ground.

The second section introduces the essentials of recruitment and labour laws, including hiring and firing, information on wages, and methods of resolving any potential disputes that may arise with your employees.

The third section aims to set out the basics of tax law as well as other costs that running a business in China can be subject to, in order to ensure that your affiliate in China is in full compliance with legal requirements.

In the fourth section, our silver sponsor CDNetworks introduces the unique landscape of the Chinese Internet, how to harness it to maximise your business prospects, and how to ensure you avoid the usual pitfalls.

The fifth section discusses marketing in China, including utilising social media and endorsements to make sure your target customers get your message.

Lastly, the sixth section provides a series of case studies for you to reference obstacles running companies in China, and how to solve them. This includes market entry teething problems, challenges with accounting, and how to handle thorny HR issues.

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Your website:

www.your-website.com

Test now

“85% of European websites fail to meet Chinese user expectations.”
3.1 Incorporation & Implications of the Main Business Models

Considerations for Market Entry

When entering the Chinese market, companies should answer a few key questions in order to find out which type of entity suits their operations best. We have compiled here below a series of questions that all companies should ask themselves about their project in China.

<table>
<thead>
<tr>
<th>Who am I going to employ to manage my China business?</th>
<th>What am I actually going to be doing in China – what is my business strategy?</th>
<th>Why am I really going to China?</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Start with a distributor or agent?</td>
<td>• Sourcing, Sales, Service</td>
<td>• Have you done a market research study?</td>
</tr>
<tr>
<td>• Will I have a department responsible in my home jurisdiction?</td>
<td>• Do I have important IP which needs to be protected?</td>
<td>• Have you made a business plan putting in black and white your goals and strategies for market penetration?</td>
</tr>
<tr>
<td>• Will I second an expatriate to China? If yes, where are they from?</td>
<td>• Where is my business in China going to be in the short and long-term?</td>
<td>• Where do I want my business to be in 5-10 years’ time?</td>
</tr>
<tr>
<td>• Will I localise my business and only hire local employees?</td>
<td>• Where is my short-term strategy focused on?</td>
<td>• Laws and regulations change daily – your business plan needs to be updated regularly!</td>
</tr>
<tr>
<td>• Will I have a mix of cultures to foster both the philosophy of the company and the culture of the local market?</td>
<td>• Where do I want my business to be in 5-10 years’ time?</td>
<td></td>
</tr>
</tbody>
</table>

Given China’s size, diversity and complexity, it may make sense for investors to engage several companies to outsource a series of functions, such as market analysis, administration, finance, law, risk mitigation, logistics, distribution functions, particularly during the start-up of the China operation to make sure that everything is in compliance. The key to entering China is to do your research – make sure there is an actual market place for sourcing, distributing or even providing services. Discover who your prospective suppliers, customers and partners are and begin to establish, develop and maintain these necessary relationships.

Business Models

Based on the answers to the above questions you can decide which type of entity suits you best. This section outlines various structures that are available for your business.

Selling Structure for Import into China

For companies that are looking to sell into the Chinese market a Limited Liability Company (LLC) in the form of a Wholly Foreign Owned Enterprise (WFOE) or Foreign Invested Commercial Enterprise would be required, especially if you are planning to sell in renminbi to your customers. An LLC is a limited liability company wholly owned by the foreign investor(s). They allow foreign investors to manufacture, process, assemble, trade, distribute or deliver services in China.

Manufacturing in Mainland China

Unlike most jurisdictions, incorporation in China requires the business entity to have a physical office (at an appropriate site) as its registered place of business. As a manufacturing company, the usage of such physical premise should be a factory/production line of 16.5%. Furthermore, you will be able to sell directly from Hong Kong to worldwide clients without involving your headquarters, and without goods burdening your warehouse. As a result, you can offer lower FOB Asia prices. In addition, you do not require bank credit since your clients would open a transferable Letter of Credit. This frees up your capital and improves cash flow.

Providing Services in Mainland China

When providing any type of service in mainland China the issue of whether to establish a Limited Consulting Company comes down to whether the customers in China require you to have a Limited Company and / or require you to invoice them in renminbi. Should you need to invoice them in renminbi for the services being provided, then it would be necessary to establish a Limited Consulting Company. Should it be possible to invoice in foreign currency then an alternative could be to open the consulting company in Hong Kong. In addition since the internationalisation of the renminbi it is also possible to invoice in this currency from a Hong Kong Company and receive this currency. The only difference, however, is that the Hong Kong Company cannot issue VAT (Value-Added Tax invoices) which may be a requirement by your Chinese customer.

Buying Structure for Export

Enterprises that are looking to source product from China and export overseas are advised to establish a Hong Kong Company rather than establishing a trading facility in mainland China, due to the potential tax savings that can be generated. By founding a Hong Kong company, you will enjoy significant tax and operational benefits. Profits can be structured tax free or at the low rate of 16.5%. Furthermore, you will be able to sell directly from Hong Kong to worldwide clients without involving your headquarters, and without goods burdening your warehouse. As a result, you can offer lower FOB Asia prices. In addition, you do not require bank credit since your clients would open a transferable Letter of Credit. This frees up your capital and improves cash flow.
A good holding structure not only streamlines the business of a group but could also enable future restructuring at low or even no tax costs.
Due Diligence
Because of the complexity and opacity of Chinese market structures and enterprises, conducting due diligence is of great importance for foreign investors who wish to partner with a Chinese company through a Joint Venture. Due Diligence is not as common in China as it is in Western countries, and you may face several obstacles, such as language, lack of documentation or reluctant Chinese partners.

Conclusion
Establishing a legal presence in China can be a challenge without having profound knowledge of the country and its legal system. Companies without extensive experience should consider thorough, independent consulting beforehand.

This section was written for CBBC by Koehler Group.
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Kristina@koehlerservices.com

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3.2 Recruitment & Labour Laws

For UK companies looking to enter the Chinese market, an understanding of the common visa, tax and employment practices is essential. It is important for all companies and employees to understand their rights in terms of contractual agreements, hiring, terminating as well as other employment issues, such as the dangers to the individual and company should things not be followed to the law.

Where to Start
For effective international talent acquisition of Chinese professionals you need the right recruitment data and insights. The most popular channels used to recruit professionals in China are as follows:

- Online job platforms
- Social media networks
- Personal network
- Job fairs/career events
- Recruitment agency
- Resume upload database

Top 5 online job platforms to recruit Chinese professionals
1. 51job.com
2. 58.com
3. ganji.com
4. liepin.com
5. zhaopin.com

Chinese professionals
1. 51job.com
2. zhaopin.com
3. 58.com
4. ganji.com
5. liepin.com

It should be noted, however that these online recruitment agencies request to see proof of legal status in China (i.e. that a legal entity has been established).

Taking a Cautious Approach
Hiring employees in China (the right way) is almost as difficult as terminating them. If you do not do your due diligence on your new employees, you find yourself losing lawsuits. Including clauses in your employment contract such as the non-competition clause are basic and of vital importance. There are plenty of other clauses that can be important as well. It is not recommended to use private investigators to investigate potential new hires as this is generally illegal in China. Instead speak with the previous employers about the potential hire, check references and salary slips from former jobs.

It also makes sense to insert a provision in your employment contracts with new hires that makes clear that a condition of employment is that your new employee has no restrictions of any kind from its previous employment. Note though that for this sort of provision to be effective you must set a probation period, and not a short one. Then if the employee fails to meet the conditions of employment, he or she can be terminated before drafted Employer Rules and Regulations. Lastly document everything and if you see a “red flag” terminate the employment yourself (or use a professional to handle it on your behalf).

Labour Laws

Independent Contractors
Though retaining someone as an independent contractor is not entirely impossible, it can only be done under very limited circumstances. First, you need to consider the tasks of the person you are seeking to hire. If your “independent contractor” is being managed according to your rules and regulations (i.e. the employee handbook) and s/he is working full-time in the office, it is very likely that such a person will be deemed an employee for purposes of the Chinese labour law. Moreover, if you wish to have full control over such person’s behaviour, you might as well hire him/her as an employee in the first place.

Employment-at-will
China is not an employment-at-will jurisdiction, making it harder to come and go. Nonetheless, China employees can leave at any time for any reason so long as they give advance notice (generally speaking, three days notice during the probation period and 30 days written notice once past the probation period). In some Chinese cities (but not in others), with a well-crafted employment contract in both English and Chinese, it is possible to have an at-will arrangement with a non-Chinese employee.

Employment Contracts
An employer must conclude an individual written employment contract for each full-time employee. An employee contract may be in a foreign language. However, in the event of a conflict with a Chinese version, the Chinese version shall prevail. If an employment contract is not signed with an employee within one month of the employee beginning to work for the employer, then the employee is entitled to 200% of their wage. If no employment contract is signed within one year of the employee’s commencement of work for the employer, then the parties shall be deemed to have concluded an open-term employment contract.

Please note that Representative Offices are not permitted to directly employ their staff. Instead they must use the services of labour service companies.

Minimum Wage Requirements and Average Salary Levels
In most cities, the minimum wage is around 30 percent of the average wage, while in the capital Beijing it is as low as 24 percent. See chart below.

Employee Handbooks
Every China employer should have a set of rules and regulations setting out employee and employer duties and obligations. This document should cover all types of employees, including part-time employees. It also should at minimum, cover the following:

- Employee evaluations, especially end-of probation reviews
- Protection measures on the company’s confidential information (trade secrets) and property
- Employee benefits programme(s)
- Special leave such as maternity leave

Every China employer should have a set of rules and regulations setting out employee and employer duties and obligations.

Minimum wage workers can sometimes double their basic salary by working long periods of over-time, but even then their take home pay is usually just enough to get by. Continual increases in the cost of living in China’s cities, especially accommodation costs, mean that most minimum wage workers have very little left over at the end of the month. Average wages in China usually increase by around 10 percent per year, according to official figures, and as a result, the pay gap between many low-paid workers and those earning the average wage is actually widening in real terms. The growing disparity between low-paid manual labourers and managers and professionals has been particularly apparent.

Comparison of average and minimum wages in selected Chinese cities

(Note: In RMB) Source: The China Labour Bulletin 2016

Average Salary Levels

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Beijing</td>
<td>2,100</td>
<td>2,500</td>
</tr>
<tr>
<td>Shanghai</td>
<td>1,700</td>
<td>2,000</td>
</tr>
<tr>
<td>Guangzhou</td>
<td>1,600</td>
<td>1,900</td>
</tr>
<tr>
<td>Chengdu</td>
<td>1,500</td>
<td>1,800</td>
</tr>
<tr>
<td>Kunming</td>
<td>1,400</td>
<td>1,700</td>
</tr>
</tbody>
</table>

Vacation days
Rest and working time
Overtime
Disciplinary actions for employee’s breaches
Termination

Realise that there are specific China regulations.

Employee Benefits

- Sickness and injury
- Maternity
- Parental
- Maternity leave
- Long service
- Retirement
**Working Hours**
Chinese regulations provide for a standard working hours system under which employees should not work more than eight hours per day and 40 hours per week. However, Chinese law also provides for alternative working hour systems. Upon governmental approval, an employer may institute the Comprehensive Working Hours System or the Flexible Working Hours System, effectively allowing for overtime.

**Statutory Annual Leave**
Regulations stipulate that employees who have worked between:
- 1-10 years = 5 days annual leave
- 10-20 years = 10 days annual leave
- >20 years = 15 days annual leave

However, common practice by foreign investors is to provide employees 10 days on weekend days either side. Naturally, as it is holiday season, many employees also use annual leave at this time too.

**Public Holidays**
Under PRC laws, employees are entitled to 11 statutory public holidays per year. The holidays are as follows:
- New Year’s Day (1 day)
- Spring Festival (3 days)
- Tomb Sweeping Day (1 day)
- Labour Day (1 day)
- Dragon Boat Festival (1 day)
- Mid-Autumn Day (1 day)
- National Day (3 days)

It should be noted that while the Spring Festival (or ‘Chinese New Year’) and National Day are three work days off, they’re actually Golden Weeks where in practice companies are usually off work for seven consecutive days. To make up for the additional days off it’s usual to have employees work extra days on weekend days either side. Naturally, as it is holiday season, many employees also use annual leave at this time too.

**Maternity Benefits**
Female employees are entitled to no less than 98 days of maternity leave, commencing 15 days prior to the projected birth. In the event of a difficult labour, the maternity leave is extended by an additional 15 days. Where the female employee bears more than one child in a single birth, she shall be granted an extra maternity leave of 15 days for each additional child born.

Other forms of Leave include: Bereavement Leave, Paternity Leave, Sick Leave, Marriage Leave, etc.

**Taxes**

**Social Insurance Law**
By law, all enterprises have to contribute to the system and must register with the local social insurance institution; participate in social insurance schemes and pay social insurance premiums on a monthly basis. The part that has to be contributed by the employee will be withheld and deducted from the employee’s salary, and be paid to the relevant authorities by the employer.

**Individual Income Tax (IIT)**
Individual income tax in China is levied at a progressive rate. Anyone domiciled in China including (foreign nationals) will be subject to the tax brackets and corresponding rates shown below.

<table>
<thead>
<tr>
<th>Monthly Taxable Income (in RMB)</th>
<th>Tax Rate</th>
<th>Quick Calculation Deduction (in RMB)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 1,500</td>
<td>3%</td>
<td>0</td>
</tr>
<tr>
<td>1,500 - 4,500</td>
<td>10%</td>
<td>105</td>
</tr>
<tr>
<td>4,500 - 9,000</td>
<td>20%</td>
<td>555</td>
</tr>
<tr>
<td>9,000 - 35,000</td>
<td>25%</td>
<td>1,005</td>
</tr>
<tr>
<td>35,000 - 50,000</td>
<td>30%</td>
<td>2,755</td>
</tr>
<tr>
<td>50,000 - 80,000</td>
<td>35%</td>
<td>5,505</td>
</tr>
<tr>
<td>Over 80,000</td>
<td>45%</td>
<td>13,505</td>
</tr>
</tbody>
</table>

Monthly Taxable Income = Monthly Gross Income – ¥4,800 for foreigners and ¥3,500 for Chinese – Allowances
Tax Payable = Monthly Taxable Income * Applicable Tax Rate – Quick Calculation Deductions

**Employment for Foreign Nationals**
Structuring your expatriate employees’ salaries and ensuring they are compliant is a major part of any corporate planning for companies in China. Structuring your expatriate employees’ salaries and ensuring they are compliant is a major part of any corporate planning for companies in China. Should the employee not be compliant then neither will the employer be, and this could result in the possibility of high fines and future audit problems. Companies should frequently review arrangements (legal form and economic substance) with their foreign employees to make sure all matters are in accordance with PRC requirements. Prior to relocating foreign employees to China or hiring foreign employees on the ground, it is important to check with the overseas tax advisors on how to best structure their employment contracts, so that the employees can gain all benefits when going back to their home country.

**Red Flags when Applying for Work Permits & Residence Visas**
There are certain criteria which are important to keep in mind when applying for a visa in the PRC, such as:
- The retirement age for expatriate women is 55 years and for expatriate men 60 years. After the employees have reached this age it might become more difficult to receive a visa, if at all;
- A university degree is necessary for the visa application. It is important to check whether your employee holds an appropriate degree before relocating them;
- The employment letter must already be in place as this must be submitted for the application.
To qualify for a Chinese visa in tier 1 cities the applicant should have had at least two years relevant work experience. The tier 2 and 3 cities are less strict on these criteria. Due to this fact it is becoming more difficult for foreign firms in the major cities to hire interns for a temporary or full-time employment, particularly as a “working proof” document is required to be signed by the previous company.

Termination & Severance Pay

Under China’s labour laws, terminating a China employee who has completed his or her probation period is virtually never easy. Termination usually requires good cause and a severance payment. Most importantly a China employer must be able to show that any unilateral termination was based on statutory grounds.

Though your China employees can terminate the labour contract relatively easily (by providing 30 days written notice or three days notice during the probation period), you as the employer generally cannot terminate an employee without cause and a severance payment. The severance payment in China is one month’s average wages (including base pay, bonus and allowance) over the 12 months preceding the termination date multiplied by the service years with the company. The monthly average wage is subject to a statutory cap (currently three times the local average wage, which varies regionally). The total severance payment is subject to a further cap of 12 months.

Labour Disputes

As China is an employee friendly jurisdiction, the arbitration or court costs are low and the employer bears the burden of proof in almost all of labour disputes. Labour disputes in China have a specific procedure, with four stages usually observed:

1. Voluntary enterprise mediation
2. Arbitration in a government labour arbitration tribunal
3. Litigation in the district court to appeal the arbitration decision in the first instance
4. Litigation in the intermediate court to appeal the district court’s decision in the second instance

Resolving a ‘labour dispute’ through labour arbitration is mandatory, and a prerequisite if a court is to have jurisdiction later. If either party is not satisfied by the arbitration decisions, they can file litigation to the court for review. There is a one-year statutory limit for raising claims for labour disputes. The arbitration and/or litigation require the employer to be ready for advocacy with well-organised evidence, so it is recommended to employers to be organised in their regular management of labour related documents.

This section was written for CBBC by Koehler Group. For more information please contact Kristina@koehler-services.com.

Differences in terms of business environment, regulation and culture can present a range of challenges as you sell your products and services in China, and these areas can combine when dealing with the Chinese tax system.

There are a range of taxes that affect operations in China, and due to the combination of direct corporation tax, indirect taxes and withholding taxes, China can be a relatively high tax jurisdiction. In addition, the application of legislation can vary, and the risk of non-compliance can be substantial, so businesses need to ensure that they properly understand the issues that will affect their plans.

While the main categories of tax appear broadly familiar, there are inevitably fundamental differences to their UK equivalents. Here we outline the general issues that UK companies may face in China. In practice, each business is unique and the application of legislation may vary, so we recommend that professional assistance is sought in organising your Chinese tax affairs and liaising with the local tax authorities.

Forming a Taxable Presence

There are strict rules governing what activities overseas organisations can undertake in China without forming a taxable presence. If the permitted scope and the project duration time are breached, a “permanent establishment” is created and the UK company will thus need to pay tax in China. While Chinese regulations require a permanent establishment to be registered for tax filing purposes, it is not a formal separate entity.

Under the UK-China Double Tax Treaty a permanent establishment can be created in China in a number of ways, including having a fixed place of business, by having dependent agents in the country, or by providing services for a total of more than 183 days in a 12 month period (this is cumulative including different staff members).

If a permanent establishment is created there are registration and administrative requirements, as well as tax obligations. Corporate income taxes may become payable, and UK staff may be liable for individual income taxes as soon as they start working in China. For these reasons, if the formation of a permanent establishment is foreseen, it may be advisable to assess whether the fixed place of business, dependent agents, or on the ground duration of service provision is necessary for your business, and if it is, careful consideration should be given as to whether a formal entity (such as a representative office or wholly foreign owned enterprise) should be established to deal with your Chinese activities.

Corporate Income Tax

Corporate Income Tax is China’s equivalent of UK Corporation Tax, and is charged on profits at a flat rate of 25%. For this to apply to actual profits, proper financial records must be kept. This may be viable for a local entity, but is often not realistic for a permanent establishment or representative office, which must often apply a deemed profit margin calculated on income or costs, and which is then taxed at 25%. The applicable rate will be determined by the tax authorities following review of the final signed contractual documents underpinning your business activities. Services may also face Corporate Income Tax if a permanent establishment is created, with a deemed profit method used to calculate the rate.

Withholding Tax

Withholding taxes can be charged on gross cross-border payments for royalties, interest and dividends.

Where due, the Chinese party remitting money out of the country will be expected to retain the appropriate tax and pass it to the Chinese authorities. In many circumstances, the Chinese bank will not remit funds until proof is produced that appropriate taxes have been withheld.
The domestic rates of withholding taxes are 10% on each category of income, although the UK-China Double Taxation Treaty reduces the rate in many circumstances. Withholding taxes on royalties can be reduced to 6% if they are for the use of, or the right to use, industrial, commercial, or scientific equipment. Qualifying companies will face withholding tax of 5% on dividends. Where withholding taxes are applied attention should be given to whether double taxation relief is available in the UK.

Indirect Taxes

VAT is charged on goods at a standard rate of 17%, and customs duties may also be due on imports depending on their classification. Recent reforms have replaced the old Business Tax system for services with VAT, and services are now subject to VAT at 6%. While credits for input VAT are available to ‘general VAT payers’ in a similar way to the UK, there is also a ‘small scale VAT payer’ regime for some businesses. Industrial enterprises may also be needed in the UK to help them claim double tax relief if possible.

If staff are subject to Chinese individual income tax, companies can help take care of the administration directly, or through a local tax advisor. Systems may also be needed in the UK to help them claim double tax relief if possible.

Under the state-level Social Insurance Law, rules around compulsory contributions to China’s social security system now also apply to non-Chinese nationals with work permits. However, detailed implementation is determined by the local authorities, and therefore, the application of these rules can vary in practice. eu adv ice should be sought on whether activities will create a social security liability.

A Local Flavour

China’s main employment tax, Individual Income Tax, is charged at a progressive rate based on salary bands. Broadly, Individual Income Tax will apply to all Chinese and UK employees for the time they spend in China to perform work for a permanent establishment, or if no permanent establishment exists.

If staff are subject to Chinese individual income tax, companies can help take care of the administration directly, or through a local tax advisor. Systems may also be needed in the UK to help them claim double tax relief if possible.

The Laws of Licensing

Related to the Firewall, brands also need to acquire local licences. Without them, your website will simply not be permitted to load, and all your hard work will have all gone to waste.

All websites in China must have a “Bei’an” licence, while those that ‘make money’ need an additional “ICP” licence. Certain vertical markets also need further licences, especially those in publishing, news, video and audio, culture, education, gaming, entertainment, e-commerce and medicine.

“ICP” licences are only available in Chinese, so you must have a registered office in China. The information and application forms are available in Chinese, so you must be able to communicate in the local language. You also need to attend authorisation meetings in person to identify the place of supply of services to the UK, which can in some circumstances lead to sales taxes being payable in both countries. Local surtaxes (which vary by location) are also added as a percentage of the indirect tax on services.

Individual Income Tax

China is a large and diverse country, and its relatively concise tax law can be interpreted and applied in different ways by different regional authorities. This variability can be amplified by regular reforms to the tax regime in parallel with the country’s economic development.

Local understanding, and dialogue with the relevant tax authorities regarding their interpretation, can be required to determine how these taxes will apply to specific activities in a particular region. Local support is likely to be needed in managing tax compliance in an unfamiliar jurisdiction and a foreign language.

This article was written for CBBC by Grant Thornton LLP. For more information on Grant Thornton LLP’s services, please contact Duncan Levesley on +44 (0)207 728 3239 or at duncan.levesley@uk.gt.com

The Challenges with China

China’s Internet landscape is somewhat unique. A web search in China can give quite different results to a search made in Europe. While the existence of the Great Firewall – China’s unique Internet filtering system – is broadly recognised, less known is how it blocks certain types of content and even makes some domains completely inaccessible. Even when the content is accessible, the Firewall can contribute to unacceptably long load times.

Currently, European brands are not doing enough to make sure they are overcoming these issues. The average amount of time a Chinese user expects to wait for a website to load is just under five seconds, but the average load time of a European brand’s website in China is 33 seconds – almost seven times longer. The point at which a Chinese internet user will typically give up and try another website is 23.9 seconds – a full ten seconds before many will have loaded.

Chinese users are not forgiving of the slow loading times of European websites. While most users are aware of the technical difficulties the Great Firewall poses, more than half expect European websites to have done something to overcome these problems. Slow websites are leading to users thinking European brands don’t value their custom, to concerns over security and the brand’s longevity.

What is causing these delays? In part, it is doing enough to do some to overcome these. The average amount of time a Chinese user expects to wait for a website to load is just under five seconds, but the average load time of a European brand’s website in China is 33 seconds – almost seven times longer. The point at which a Chinese internet user will typically give up and try another website is 23.9 seconds – a full ten seconds before many will have loaded.

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complete and submit all documents and have the authorisation witnessed.

It’s important to note that keeping up to date with recent legislation is essential. With the laws of licensing subject to change without notice, irreversible blacklisting of previously-permitted websites is not uncommon.

Making Mobile Count

While having the right licences and understanding of the laws governing the Internet is crucial for success in China, they are only the first pieces of the puzzle. Having a mobile app and a mobile version of your website is much more important in China than in other territories. This is because China has 695 million mobile internet users – accounting for 95% of total Internet users in China.

If you have implemented responsive design, you may think you’ve solved this problem. However, websites in China have not followed the West’s example and adopted responsive design as a mobile solution. Mobile sites are more often separate URLs, and even considered the primary website.

Many also forget that because typing in Chinese on an alphabet-based keyboard can be an obstacle for some users, they may want to click links rather than search a website. Furthermore, slow internet speeds mean that text-heavy sites are preferred, as it avoids loading multiple, “heavy” image-led pages.

Another nuance of the mobile approach in China is “light apps”, microsites for the mobile audience often accessed using a QR code. They have a single message, and are designed to be shared across social platforms, rather than to sell something directly to the person browsing.

Searching for the Answer – the Importance of Search Engine Optimisation

Just as in Europe, Search Engine Optimisation (SEO) is essential to ensure users can find your website. But with China’s complex internet landscape, SEO is trickier than European brands are used to.

First, this is because Google is blocked by the Great Firewall. Baidu is the number one search engine in China. While many of the same rules of SEO apply, there is one factor that becomes critically important – loading times. For Baidu, a long loading time will have an even greater impact than for Google on both the amount of information indexed, and where the site appears when searched (if it even appears at all). Baidu also tends to limit its indexing to the first 100kb or so of a web page, which means your keywords need to sit even closer to the top of your page to ensure they are captured.

Second, Baidu is also especially harsh on duplicate content. While creating unique content is a must for succeeding with any search engine, because of Baidu’s even greater focus on it, content monitoring is also critical for SEO. If your content is stolen and republished, it is no longer unique – and this will negatively impact your search engine rankings. You must therefore ensure you prevent content scrapers publishing your unique content elsewhere.

Finally, Baidu prioritises the security of a website in its rankings, which means security flaws, such as vulnerabilities to DDoS attacks or SQL injections, will also affect your SEO performance.

Making the Most of China

While China is a lucrative market, it is not easy for European brands to have a successful presence in the region – keeping up to date with rules and regulations is essential if European businesses want to thrive. In fact, there may be some important modifications on delivering web content in mainland China on the horizon. So while the tips and tricks outlined in this article will help ensure that your website loads, loads quickly, is easy to find – and is there to stay for good – make sure you keep a lookout for news on any upcoming changes!

The laws of licensing - What you need to know about website licences in China and which licences are needed to operate a website.

The licence you need depends on the purpose of the website – whether it’s purely for information, whether payment systems are part of the site, whether the website is for a particular industry, or whether it offers certain services. All of this will affect what is needed.

The most common licences are:

ICP Bei’An License (or just “Bei’An”) This is a mandatory licence required for all websites in China regardless of their purpose. The Bei’An is a licence that is managed by the Chinese Ministry of Industry and Information Technology (MIIT), ICP stands for “Internet Content Provider”. The licence must be displayed on the bottom of each website.

Here is an example of what it looks like:

ICP 京ICP备15170218号

**China Checklist**
1. Understand the Great Firewall and check your web content
2. Make a mobile website and/or app that is text heavy
3. Make sure your SEO keywords appear high up on your web page
4. Make sure your website is secure
5. Check you have the right licences
6. Re-check your web content to make sure it won’t be blocked!
Industry-specific licences
There are also industry specific licences that are required depending on the type and purpose of the website, such as publishing, news, video & audio, culture, education, gaming, entertainment, e-commerce, medical & healthcare, pharmaceuticals and medical equipment etc. These websites require pre-approval and a specific licence from the MIIT in addition to the Bei’an licence.

ICP Licence
This licence is often confused with the Bei’An Licence because they both have the term "ICP" in their name, but they are two different types of licences.

Which licences are mandatory?
The Bei’An is mandatory for all websites regardless of their purpose and industry. If your website offers a payment system hosted in China, you will also need an ICP Licence. The industry-specific licences are mandatory for websites that serve certain industries.

What if a website doesn’t have the proper licences?
The various governing bodies will put the domain on a blocked blacklist. It is incredibly difficult if not impossible to get these domains off of the blacklist. Having the proper licences is very important.

How do I obtain an ICP Bei’An Licence?
You must apply for the licence in the province your business licence was issued. Please note that the requirements might differ from province to province.

As a minimum you will need:
- a registered office in China with an up-to-date business licence;
- a passport copy of both the company representative and the web administrator, that is the person who takes responsibility for the content on the website. This person must be a Chinese national;
- to have an official photo taken of the web administrator in front of an authorised background;
- to have someone on site to complete and submit all documents;
- to read, write and understand Chinese in order to fill in the applications forms which are only available in Chinese.

Using a registration agent can be the easiest way to obtain the right licences. However, care is needed, as there is a market in providing fake licences – you should only work with a registration agent you know you can trust.

This section was written for CBBC by CDNetworks. CDNetworks is a global content delivery network (CDN) with a fully integrated cloud security solution, offering unparalleled speed, security and reliability for the almost instant delivery of web content. Optimised for any device, browser and network, we ensure all users have a fast and safe web experience – whether you’re serving B2B or B2C customers, mobile employees or remote offices.

CDNetworks accelerates and secures websites and web applications over our strategically built network of global PoPs in both established and emerging markets. We specialise in those parts of the world where keeping a website accessible is most difficult: Mainland China, Russia, South East Asia, and the Middle East.

Since 2000, we have been providing our customers with exceptional customer services and support, thanks to our teams of dedicated tech engineers located across the globe. CDNetworks has offices located in the UK, France, Germany, the US, South Korea, China, Japan, and Singapore.

For more information, please visit: www.cdnetworks.com, or contact us at +44 (0)203 657 2727 or info@cdnetworks.com

Average actual load time of European brands’ Chinese websites

Why are websites loading sooooo slowly?
Poor infrastructure in China & the Great Firewall slow down access to any website hosted outside of China.

European websites are letting Chinese users down

How patient is the average web user in China?

How long they think it should take
4.82 seconds

How long until they give up and look elsewhere
23.92 seconds
3.5 Marketing Services in China

It is often said that China is a land of contrasts; rich in history and tradition yet always innovating and looking forwards. Twenty years of globalisation and modernisation has created a greater deal of commonalities between the Chinese and Western publics than is often thought, but the arena in which they operate is still substantially different. The corollary of this is that while the core of your approach to marketing should be transferable to the Chinese market – an emphasis on multimedia content, for instance – the reality is that it has to be fine-tuned and tailored to work in what is a fairly unique environment.

This article will outline some of the first things you should consider when building your marketing strategy and engaging with marketing services in China.

Size Matters

In terms of size and spending power, China is a market like no other. With a population of nearly 1.4 billion people, China is the most populous country on the planet. Modern day China has a large and growing urban population, boasting four of the world’s ten biggest cities.

To put that into perspective, the combined population of Europe and North America sits at just over 1.3 billion. Treating the US, UK and continental Europe with a blanket approach wouldn’t work, so doing the same with China is merely inviting failure. Understanding the differences across the Chinese population isn’t simple and when making your first steps into the market, seeking the counsel of those who know it and appreciate its nuances is wise. These partners will help you build an effective strategy that can reach different audiences, effectively.

Positioning is Key

A USP which has underpinned sales and marketing in the UK will not necessarily translate to China. Pushing a brand as low-cost or budget conscious is likely to backfire in a fiercely competitive market awash with budget options. Heritage brands that emphasise quality and status are far more likely to connect with consumers due to their associations with business and financial success. As such, defining a clear proposition that will appeal to Chinese sensibilities and attitudes is hugely valuable.

Defining a position should be informed by the cultural landscape of China and the characteristics it values. The country has worked hard to shake its tag as solely being the manufacturing capital of the world and as such intelligence and innovation have become highly valued qualities. Companies which are able to focus on what sets them apart – particularly in terms of invention and industry leadership – will find themselves in a stronger position than those who focus on areas such as price.

Defining a clear position which resonates locally will provide a robust platform on which to build a wider marketing strategy and tactics.

Speak the Local Language

In recent years, increased travel and greater economic cooperation, has seen Chinese expectations and demands with regards to media and how it is consumed become more aligned with those of the West. There remains, however, a significant disconnect in the language and tone of content which is successful.

Just as a company’s positioning will need fine-tuning and tweaking when it enters China, so too will its messaging. A simple translation won’t offer the same results as building messaging specifically tailored to Chinese cultural preferences.

This might mean avoiding certain numbers – four, for instance, is the corollary of number 13 in the West which happens to be quite lucky in China – while showing preference for others, such as the lucky number eight. Similarly, use of colours in marketing materials such as red is preferable over those such as white which is associated with mourning. Likewise, green which is a popular choice for branding in the West as it evokes ideas of growth and freshness does quite the opposite in China due to its use in indicating falling stock market prices. The same applies for analogies and imagery – while we might consider the owl the best way of depicting learning or wisdom, the tortoise would be far more suitable for a Chinese audience.

Awareness of these cultural factors will ensure that marketing is much more effective and that the desired message is conveyed.

Three Key Social Media Channels to Remember

China, just like everywhere else in the world, is addicted to social media. However, the way China does it is different to elsewhere. Western mainstays such as Facebook, Twitter and YouTube are nowhere to be seen, and a rich and varied ecosystem of platforms tailored to the Chinese market have sprung up to fill the vacuum. Social media is essential to any successful marketing campaign in China, a vital tool for ensuring your content reaches its audience. Here are three key platforms to consider when building your marketing strategy in China:

WeChat – The ‘everything’ platform. Regularly dismissed as a WhatsApp clone in the UK, in China you can live your life by it. It combines elements of Facebook with Twitter and Instagram, plus a dash of Pinterest. It also goes beyond the social platforms we know to include payments, services and a kind of marketplace. With 768 million users, it is a mainline to Chinese consumers across different demographics. Businesses need to set up official accounts to promote their products and invest in them accordingly. While organic growth is extremely difficult, as a platform for paid third-party endorsement, WeChat is unparalleled.

Weibo – A micro-blogging platform, broadly comparable to Twitter and used by businesses in largely the same way. A great medium for the dissemination of news and information, Weibo has always embraced rich content formats such as images, video and emotions. Around 200 million people actively use it daily and it has proved extremely popular with Key Opinion Leaders (KOLs), brands and celebrities looking to reach the public.

Youku – China’s leading video hosting and streaming service, filling the hole left by the ban on Google’s YouTube. Owned by Alibaba, it is a key tool in the e-commerce giant’s recent emphasis on content. Just like in the UK, Chinese consumers are more likely to engage with video content. Consumer and luxury brands looking to expand their brands in China have found success working with Youku to reach consumers across the country, outside of the tier-1 cities such as Beijing and Shanghai.
The Importance of Endorsement

The political environment in which China operates has a pronounced effect on how marketing works too. Factors such as a state-run media, censorship and a culture which values collaboration over confrontation mean that any business marketing in the region needs to follow certain rules. While a brand breaking into the UK market might look to punch above its weight via an ‘in your face’, even abrasive approach, this is not a viable option in China.

Rather than challenge the status quo or engage in tactics such as lobbying, the state-run economy means businesses should employ partnership programmes to gain a foothold in the market, by leveraging local endorsement. The country looks dimly on what it considers calculated ‘smash and grab’ tactics that fail to show respect for a thriving and sophisticated market.

There are rarely, if ever, quick wins to be had and so patience should be at the heart of any business’ marketing campaign. It should be built with a long-term view in mind and that long-term view should be evidenced too. Showing commitment and investment in China is always well received.

There is a huge opportunity for UK and Western companies in China, but it must be understood that success will take time. However, when the rewards are so great, it is worth the investment.

This article was written for CBBC by Andrew Laxton, EVP & MD Europe & Asia, Racepoint Global. alaxton@racepointglobal.com

Play the Long Game

Many foreign companies over the past twenty years have had their fingers burned when trying to crack China, being punished for lazy and arrogant approaches. Chinese companies and consumers want to be seen as peers to their Western counterparts, and businesses that can bring real invention and leadership are welcomed with open arms. By the same token, the country looks dimly on what it considers calculated ‘smash and grab’ tactics that fail to show respect for a thriving and sophisticated market.

Within six months the company had built up good relations with bigger clients, and bigger orders were coming in. In order to meet these new demands, the client needed to manufacture locally. But even though deals were on the table, the company was stuck in a bureaucratic nightmare: the consultant had failed to prepare any of the necessary elements to help the company grow quickly. It transpired that he had only registered the company and nothing else; there was no local bank account, no customs licences, no registration with the local tax bureau — nothing. Not only was the consultant understaffed and unable to complete crucial administrative tasks but more importantly he was unable to plan out the longer term development of the company and so registered a scope of business that would severely restrict activity.

When entering China companies need to clearly consider the type of business they want to register based on their plans for the market and their scope of business; as it can take months to get permission to change any of this and sometimes it’s quicker to start all over from scratch. Executives at foreign companies charged with launching operations in China are usually too focused on winning business and are not equipped to deal with company formation. That’s why it pays to work with an experienced partner who can plan for the future and prevent unnecessary additional costs in the long run.

Company Formation: Getting in the Way of Growth

Poor Planning when Entering Market Caused Family LED Maker to Miss Big Orders

One of the most significant developments in global business in the past few years has been the shift from “Made in China” to “Sell to China” as firms cater to a large and growing economy. Thousands of foreign companies have rushed to get a foot in the door and then scale up their operations.

In a recent example, a European family-owned producer and supplier of environmentally friendly and energy efficient LED lighting products for large venues was looking to take advantage of the commercial and industrial property boom across the country.

Be Careful to Avoid the Wrong Steps to Market Entry

Setting up a local operation was part of this company’s strategic plan to get closer to local clients, first by establishing a Wholly Foreign Owned Enterprise (WFOE) to seal smaller deals before rolling out local manufacturing capabilities to capture large orders. The company took on board some local employees who were tasked with building the local operation, and one of these early employees recommended a small, one-person consultancy that apparently specialised in company formation to handle the administrative side of the process. Seeking to move quickly to capture emerging opportunities, the company approved the recommendation and left the consultant to it. He duly registered a WFOE with only the permitted business scope of a trading company. With the help of a local distributor, orders came in soon after and the business began taking off.

Within six months the company had built up good relations with bigger clients, and bigger orders were coming in. In order to meet these new demands, the client needed to manufacture locally. But even though deals were on the table, the company was stuck in a bureaucratic nightmare: the consultant had failed to prepare any of the necessary elements to help the company grow quickly. It transpired that he had only registered the company and nothing else; there was no local bank account, no customs licences, no registration with the local tax bureau — nothing. Not only was the company unable even to provide the buyers with a VAT invoice for their purchase but they also did not have permission to start manufacturing locally in time to meet the orders. The company eventually lost out on a major tender.

In ordinary circumstances this loss would be bad enough, but the company had always planned to scale up quickly and establish a local factory to meet demand. Unfortunately the desire to move quickly to enter China and to control expenditure by taking on a small consultant would prove very costly. Not only was the consultant understaffed and unable to complete crucial administrative tasks but more importantly he was unable to plan out the longer term development of the company and so registered a scope of business that would severely restrict activity.

3.6 Case Studies – Business Issue Problem Solving
Accounting: When the Numbers Don’t Add Up

Messy Accounting Practices Could have Cost Family Textile Firm Millions

In 2013 a mid-sized family textile business that had been sourcing almost all of its products from China for many years decided to set up operations locally. Business was good, with clients in more than 50 countries, and growing demand meant that it made sense to have a local team to strike better deals and improve efficiency. The company considered several locations before settling on an office in scenic Hangzhou, once the pre-eminent imperial holiday retreat and now the capital of Zhejiang, a thriving manufacturing province on China’s east coast.

Struggling with the Numbers

The company decided that it wanted to control all aspects of the China operation and set about hiring people to take care of key tasks. One of the main hires was an in-house accountant who had several years’ work experience with a foreign company, which in theory meant that she would be able to prepare accounts in accordance with the requirements of HQ. But almost immediately after starting work the accountant took it upon herself to make records based on her personal preferences – there was no attempt to set up a formal accounting system or produce a matching chart for the company’s accounts, nor did she communicate with the group accounting team for guidance. In addition to not standardising its accounting procedures, the company also had nobody on their local team who understood how to handle VAT tax refunds for export deals. Three months after the office was opened the company sent a shipment to Europe without even knowing what percentage of a VAT refund it could get or even how to claim for it. This lack of basic organisation extended to other areas as well. The company kept a small number of popular products in the office to show to clients but had no system in place to manage inventory.

Straightening out the Paperwork

Such disorganised internal accounting and inventory management created uncertainty and unnecessary paperwork in HQ, and was costing the company money. Finally, the company hired external international accounting specialists, who sent a small team to their office to conduct a comprehensive internal audit. They looked at the accounting books and export transactions, spoke with different people in the office, and had several conference calls with HQ. In the end the China office’s internal accounting books were converted into a management report in a format that could be accepted and understood by HQ under IFRS standards. A simple inventory control method was developed to help monitor inventory levels on a daily basis. The international accounting consultants’ tax team reviewed all export related documentation for 2013 and started to arrange a VAT tax refund with the local tax authority. After straightening out the back office functions, the company successfully claimed a VAT tax refund amounting to USD 1.5 million for all their export sales in the previous year.

HR & Payroll: Unsupervised Executive Creates Havoc

Rogue GM Severely Undermined British Trading Firm’s Operations

Over the past decade an increasing number of foreign companies that source from China have opted to establish a local presence, or agent, to secure better quality products and improve their supply chains. One such company, a British trading firm founded in the 1980s that deals mostly with clients in Europe and the US, opened a local office 10 years ago and set about building a global purchasing team. For the task they recruited an experienced Chinese national as General Manager, who steadily set about building up an operation with 20 employees.

At Arm’s Length, Problems Can Multiply

In the early years, the Chinese branch’s performance was stable and operational affairs smooth, so HQ took a hands-off approach to the day-to-day running of the China business. Then, one day HQ received an email from a disgruntled employee in China who had been made redundant complaining that the company had not been correctly paying her social benefits and threatening legal action. This alone would not have been enough to prompt a strong response from HQ, but concerns had lingered that in recent
years the China business was not growing as expected as the company was becoming less price competitive in the market. Eventually, a Managing Director from the UK was dispatched to China to investigate the situation.

One-Man Show Creates Room for Suspicious Activity

After reviewing the company’s accounts & contracts and spending time in the local office, the Managing Director was still not able to make sense of what was going wrong in China and so reached out to specialised HR and payroll consultants for help. After a full internal audit, a number of serious problems were uncovered that had had a significant financial impact on the company and could have resulted in damaging legal issues as well. First, the China office had 20 people on the payroll but there were only 18 employees in the office. Two people had left the company but their names were still on the payroll and they were still drawing a “salary”. It turned out that the Chinese GM’s wife was the company’s accounting manager and HR manager, which put her in a position to cover her tracks; she was also deliberately underpaying social insurance contributions for some employees, which was not only fraudulent behaviour but exposed the employer to legal action when an employee was fired. As for the uncompetitive pricing of the company, detailed analysis of suspicious transactions revealed that the Chinese GM was fulfilling orders to the client from his personal business at inflated prices in order to create higher profit margins for himself.

Supervision Can be Outsourced to a Trusted Third Party

Entrusting your China business to a single partner or senior employee with little or no managerial oversight is a huge risk, as this company discovered. The Chinese GM was able to get away with these practices for so long because he had directly hired everybody in the local office without any oversight from HQ. This also prevented anyone from spotting the potential conflict of interest between accounting and HR departments, which should be managed separately. In China, where labour laws strongly protect employees, there can be no shortcuts; all employees should sign a full legal contract and be issued with an official company handbook, while social insurance should be paid based on the full amount of salary, stipulated in the employment contract. Finally, for companies that are operating a Chinese business remotely, it makes sense to hire a third-party service provider to handle or check payments and company accounts to prevent business from being conducted under the table and losing the business money.

This article was written for CBBC by Vistra Group
Contact: Karen.Wang@vistra.com

This chapter is designed to ensure that companies considering trading with and operating in China are aware of some of the unique challenges that the Chinese business environment presents, and are better able to mitigate risk to their business interests.

The first section offers an introduction to the most common risks that companies doing business in China face. It offers several case studies of common forms of malpractice and scams, and what can be done to ensure that they do not happen to you.

The second section stresses the importance of doing due diligence in China, and what companies must be on the lookout for in terms of reputational, legal and financial due diligence.

The third section covers the necessary precautions that companies must take when entering into contractual relationships, such as Non-Disclosure Agreements, as well as the best practices and things you must note when drafting other forms of commercial contracts.

The fourth section aims to emphasise that registration of intellectual property (IP) rights is of the utmost importance for companies who plan to do business in China, whether it be now or in the future, and the steps necessary to obtain the various forms of rights available.

In the fifth section we introduce the mechanisms that exist in China to enforce registered IP rights, including the use of courts, in addition to the quicker and lower cost options for administrative enforcement.

The last section seeks to inform companies how they can deal with any dispute that may arise in the course of doing business in China, and which resolution method is most appropriate for different situations; in addition to offering advice on how to approach business negotiations.
4.1 Common Business Risks in China

China is a large and expanding market for UK businesses, whether looking to tap into the country’s fast growing consumer base, or to expand networks of suppliers. While China appears keen to promote foreign investment, British firms should be aware of the myriad risks associated with conducting business in China, including in association with malpractice and fraud. Some of the most common business risks affecting companies operating in the country, and some basic procedures to mitigate these risks are outlined in this article.

Increased Opportunities; Continued Challenges

A recent China business climate survey18 noted an increase in foreign firms reporting their local operations as more profitable in 2016 than previously, but also noted various barriers to doing business. The top five challenges cited were:

<table>
<thead>
<tr>
<th>Business Challenge</th>
<th>Percentage of Companies Affected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inconsistent interpretation and enforcement of regulations</td>
<td>58%</td>
</tr>
<tr>
<td>Rising labour costs</td>
<td>58%</td>
</tr>
<tr>
<td>Increasing Chinese protectionism</td>
<td>32%</td>
</tr>
<tr>
<td>Shortage of qualified management</td>
<td>30%</td>
</tr>
<tr>
<td>Difficulty obtaining required licences</td>
<td>29%</td>
</tr>
</tbody>
</table>

These current challenges are often indirectly associated with illicit or fraudulent activity. For example, inconsistency regarding licence approvals or regulatory enforcement provides fertile ground for corruption. Also, shortages of qualified management negatively impacts companies’ ability to screen candidates who have falsified their qualifications or pose ethical risks.

Examples of Common Risks

Companies operating in China should prepare for the a complex array of scams deployed across the country that lead to lost inventory, assets or company data. The five key issues below should be of particular concern to international companies.

Management Ties to Third Parties

One common problem is the lack of independent partners engaged by a Chinese company in its operations. This exposes an investor to concerns about quality standards and competitive pricing, as well as the apparent limited corporate governance controls in place at the local firm.

Misrepresentation

All companies present their best front, whether by promoting strong operational capabilities or listing impressive business credentials. But the glossy face of their marketing can be misleading.

Misrepresentation can also involve a company’s financial probity. Non-payment is a major risk when engaging new partners in transactional business, whether for selling products to a “customer” or sourcing from a “supplier”.

Case Study 1: A multinational manufacturer had concerns whether their PRC general manager had beneficiary interests in a number of their distributors. They found four of the GM’s immediate family owned the distributors – an undeniable conflict of interest.

Mitigation: Pre-emptive and comprehensive due diligence as part of any selection process.

Case Study 2: A global manufacturing company reviewed its multiple third party vendors and identified risk related issues including: a quarter with incorrect corporate information; or operating from residential premises or no physical existence at all. At least a third had no discernable expertise in the industry.

Mitigation: Establishing an ongoing vendorscreening programme to monitor changes, capability and track record of candidate companies as well as inherent business risks.

Case Study 3: A multinational manufacturer suspected irregularities by its China sales director. Investigations revealed the subject had established a competing company after transferring product and management know-how, which then became a serious commercial rival.

Mitigation: Close monitoring of crucial business information (technical specifications, customer and supplier lists).

Case Study 4: A multinational manufacturer of chemicals investigated whistle-blower allegations against a purchasing manager, and found that suppliers were willing to facilitate kickbacks by establishing phantom “third party” agents to disguise payments. This kind of graft was viewed as just “the way business is done in China”.

Mitigation: Extend compliance programme requirements, training and monitoring to third parties.

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Establishing Competing Ventures

There are many instances of local operators in China diverting business to a separate enterprise after establishing a business relationship with a foreign partner. A local representative may be concurrently working for firms that are in direct competition using the original company’s information and resources.

Corrupt Practices

Establishing and maintaining business relationships remain important in China but can also increase the risk of corruption. While Chinese authorities have been increasingly aggressive in their pursuit of graft in recent years, perceptions remain that corruption may actually be increasing19. The expanding anti-corruption campaign into the commercial sphere exposes international partners to regulatory enforcement. Corruption extends into multiple levels of the way business is conducted in China.

Case Study 3: A multinational manufacturer suspected irregularities by its China sales director. Investigations revealed the subject had established a competing company after transferring product and management know-how, which then became a serious commercial rival.

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18 China Business Climate Survey Report 2017 – Bain & Company
19 Transparency International Report: “Corruption in Asia Pacific: what 20,000+ people told us”
Loss of Intellectual Property (IP)
Foreign companies focusing solely on China distribution or on establishing a manufacturing presence in-country can face heightened risks when bringing valuable IP into the country. Risks arise through the loss of propriety information sold onto local competitors, low quality copies entering the country. Risks arise through the loss of propriety information.

A multinational pharmaceutical company investigating counterfeit products in the local market traced the source of the counterfeits through local distributors to a manufacturer run by a former business partner of the firm.

Case Study 4: A foreign wine producer targeting the growing China market found that their China distributor had registered the company’s Chinese brand name falsely claiming it as its own. The distributor began independently importing products using the “registered brand” and forced the “infringing” foreign company into an agreement.

This chapter was written for CBBC by FTI Consulting. For more information on how FTI can help you avoid business risks in China, please contact Philippa Symington at philippa.symington@fticonsulting.com or Ewen Turner at ewen.turner@fticonsulting.com

Mitigation: Include IP registration and brand integrity management in any market entry business plan.

Risk Mitigation Steps
While fraudulent activity remains prevalent in China, inherent risks such as those outlined above can be managed through:

- Pre-emptive due diligence involving comprehensive checks on the authenticity, capability and track record of a Chinese party prior to entering a business relationship;
- A dynamic compliance programme including controls over recruitment, suppliers and data protection;
- A whistleblower system and ongoing monitoring to aid swift identification and mitigation of potential scams.

By obtaining more detail about the actual activities and reputation of potential business partners, a company can weed out suspect entities, avoid embarrassing entanglements, and identify lower risk partners as required.

When considering entering the Chinese market or sourcing from Chinese suppliers, you may be tempted to focus all your attention on the potential upside of an immediate business opportunity. Too many companies have learned the hard way to appreciate the risks that can interfere with your ability to actually capture the value of an opportunity in China.

Common Risk Scenarios
- Overpromising – Your partners may not be capable of fulfilling their part of the opportunity, for financial, operational or other reasons;
- Business opportunity is false – For example, your company will not get the product or service promised; your company will not get paid for services provided; or a counterparty is a middleman so there are unknown risks;
- IP infringement – Some companies may be involved to get access to your intellectual property, including being first to register a company name or product name in China, and end up competing against you;
- Reputational risk – The counterparties may operate in a way that could negatively affect your own reputation in China and beyond, such as corruption, poor products or service quality in the supply chain.

We discuss reputational DD in more detail below. For some industries, environmental DD or technical DD may also be crucial.

4.2 Due Diligence for Risk Mitigation

Due Diligence as an Early Warning System
Due diligence (“DD”) can help identify these risks early. There are as many types of DD as there are business disciplines, so companies with limited budgets should prioritise by considering which risk scenarios constitute the biggest threat, both to the immediate business opportunity and the company’s ongoing involvement in China.

At a basic level, DD is a process of information gathering aimed to gain a better understanding of a company or person associated with a particular business opportunity, such as a partner, supplier, distributor or representative. Legal DD, financial DD and reputational DD are generally considered fundamental to understanding a specific business opportunity because the three types of DD help contextualise the findings of the others.

- Legal DD – helps determine whether a company is a legally established entity authorised to conduct the business opportunity unimpeded;
- Financial DD – assesses the financial condition of the business;
- Reputational DD – helps determine whether your association with the counterparty is likely to get you in trouble.

Acquisitions
Companies considering the acquisition of a Chinese entity will need to go much further, such as commercial DD (which usually includes reviews of target’s business plans, customers, products, and suppliers), operations DD (technology, fixed assets, facilities, operation) and human resources DD (organisational structure, benefits, management, staff), among other types.

The pre-transaction DD that a company considering an acquisition in China should undertake is beyond the scope of this article, but should also be guided by risk scenarios that could threaten the long-term value of the deal.
Reputational DD in China

Reputational DD builds on information derived from legal and financial DD, based on knowledge about how apparent opportunities in China have previously gone wrong for companies, with the addition of on-the-ground fact-checking.

Key areas for basic reputational DD in China include the following:

- Verify whether the counterparty in an opportunity actually has a physical presence. Companies that avoid this step may later discover that the counterparty operates from a hotel room or at the same address as another business with which the company does not actually have a relationship.

- Ask around in the industry about the counterparty and its personnel to assess their track record and previous experience working with international companies. The counterparty you are considering engaging may be poorly registered and licensed, but could be known to habitually resort to bribery to sell products and may operate the same way when selling yours. If the counterparty is a legitimate new entrant to the industry, it will be less likely to deliver on its commitments to you.

- Research the counterparty and contacts, including outside of the context in which you come across the business opportunity. Many trade shows are filled with potential “partners” whose only profiles are on the trade show’s directory but which are not actually operational entities. Companies that engage these “partners” may ultimately find that their own company’s and products’ names in Chinese have already been registered in China, thereby blocking the companies from moving into the market on their own without a legal dispute.

Alternatively, your contact may be keen to do legitimate business, but on behalf of a hidden party, such as a government official, another individual normally barred from transacting business, or the entity to which your contact ultimately plans to subcontract the work.

Case Study: Why DD is not a One-Time Exercise

A common misconception about DD is that it is a one-time exercise. In a recent case, a multinational with years’ of doing business in China through third parties, assumed there would be few surprises when it instituted a new periodical reputational DD programme. Unfortunately, there were adverse issues with roughly one out of every four companies in the sample checked under the new programme. Issues included service complaints, product quality complaints, litigation against the third parties, fines or bidding irregularities and litigation against the third party’s key principals. All these issues could easily impact the multinational’s ability to do business in China if they remained unaddressed. Nearly half of the key principals were found to be running businesses on the side that were completely unknown to the multinational, along with the risks they represented.

China is a vast country and there are new regulations and commercial realities introduced all the time, so the risks to capturing the value of an opportunity change – even after the contract has been signed. Companies of all sizes need to conduct DD regularly in order to maintain it as an effective early warning system.

Thorough Financial Due Diligence can provide informative and comprehensive insights during M&A transactions by identifying drivers for synergies and risks on investment return.

With the intention of greater understanding of the target company’s business, financial performance should be reviewed pursuant to applicable accounting principles. The aim should be to gain a sense of the company’s normal operating results and financial status in order to reflect the business truthfully. Special attention and typical issues identified in Financial Due Diligence include:

- **Deal Structure**
  An effective deal structure is critical to successful implementation of M&A deals. Asset deals and equity deals have different advantages and concerns, and should be considered together with legal and tax implications.

- **Internal Control**
  Internal control should be a major concern when assessing a company for a potential merger. An absence of functional internal control can lead to insufficient control of business, insufficient operation and inaccurate financial reporting. These issues can result in a lack of separation of duties, unclear job descriptions, use of personal bank accounts for company matters, or incomplete documentation.

- **Financial Reporting**
  The methods used to keep financial accounts should be subject to significant scrutiny. Manual bookkeeping and adoption of unsuitable accounting policies are a common cause for concern. This is especially common for startups and can often present the risk of financial accounts being misreported.

- **Related Party Transactions**
  It is a red flag if you find that assets have been transferred to a related-party applicable to lower tax rates or tax preferences. If pricing strategies for transactions between related parties deviate from the market benchmark, allowing them to fluctuate within different products/service lines or time periods, it should also be a warning sign.

- **Contingent Liabilities & Off-Balance Sheet Items**
  Watch out for unrecorded or under-accrued warranty, depreciation or other expenses that imply that a company may be underestimating its liabilities. On top of that, mutual guarantees, mortgages, lease commitments and any potential taxation must also be considered for their contingent impact.

- **Taxation & Social Welfare Contribution**
  Practices not compliant with local tax law and regulations can lead to potential tax liabilities and penalties, which may be borne by the buyer side after the M&A transaction. The same risks can also appear with regard to social welfare obligations. It is not uncommon for some Chinese companies not to pay social welfare in full compliance with social welfare regulations and this can result in potential liabilities after the merger is completed. Therefore, identification and assessment of the impact of tax and social welfare risk must be clarified during the financial due diligence process.

This section was written for CBBC by FTI Consulting. For more information on how FTI can help you perform due diligence, please contact Senior Director of Risk, Investigation & Dispute Asia-Pacific Beth Epstein at beth.epstein@fticonsulting.com

*Image*
Legal Due Diligence in China

Legal due diligence (DD) can help companies understand the legal facts about their business partners in China, and they should go on to receive well-informed opinions about what that means from a professional service provider. This article outlines basic information you should look out for when conducting legal DD on your local partners.

• **Legitimacy**
  When you start a business venture with Chinese partners, a copy of their business licence should be provided to prove that it is an established legal entity under Chinese laws and regulations. After you have seen the business licence, you can check the website of the local State Administration of Industry and Commerce (“AIC”, analogous to Companies House in the UK), to see if the information provided is in line with official records. You will find more information about your business partners on the AIC website too – if they have filed their annual report then you will know if they are considered to have normal operations and good compliance management.

• **Enterprise Qualification**
  All enterprises in China should carry out activities strictly within their business scope, as determined by relevant licences and approvals from government authorities. For example, if an enterprise in China says they are an import and export business, it should be registered with the local AIC as well as the relevant customs authority, Administration of Foreign Exchange, and even Entry-exit Inspection & Quarantine Bureau. You should ask your local partners to provide evidence to show they are qualified to carry out activities they propose to deliver.

• **Relationship Between Affiliated Companies**
  The shareholder(s) of the company should be checked to find out who legally owns the company. If necessary, a more detailed investigation of the ownership structure can also be carried out to determine if there are any hidden owners or partial shareholders. Chinese partners often work with their relatives for business, which can make company management non-transparent and can be risky for corporate governance. It is common to see that the major clients of a local partner are their relatives, which makes them susceptible to non-business decision making. In such case, you should consider if in this particular case it could be risky to have a long-term business deal with the company.

• **Intellectual Property Rights**
  Foreign companies face high risk of losing their intellectual property (IP) rights to local partners in China. Before you start business, you should get your IP protection strategy in place. It is simple to check the official websites of the Chinese Trademark Office and State IP Office to see if any trade mark and/or patent applications have been filed by your local partners. If in doubt there are service providers which can help you check.

• **Site Visits**
  A site visit is necessary for legal due diligence under certain circumstances. This can help you to judge if their operational office/factory is consistent with what they told you. You can see their employees and/or manufacturing site for yourself to understand if their capabilities match what they claimed. While in town, you could also find a local lawyer to obtain your partner’s official records from the jurisdiction’s AIC office.

The above-mentioned techniques are all basic legal due diligence for initial business deals. For Mergers & Acquisitions and initial public offerings, far more in-depth due diligence investigations will be needed for risk management. More in-depth legal due diligence may include: legal registration documents, capital contribution status, senior management, labour management, internal and external transactions, major contracts, assets and liabilities, insurance status and any possible disputes.

For all the above-mentioned legal due diligence, you need to have a trained professional who understands these documents review them. We advise you to entrust qualified agency in China to conduct legal due diligence on behalf of your company.

This section was written by CBBC.
4.3 Confidentiality Agreements, Commercial & Supplier Contracts

The negotiation, interpretation and terms of a contract in mainland China can be very different from experiencing the same in a common law or more developed jurisdiction (such as the UK).

In this short article we present several key points to consider when negotiating commercial contracts with Chinese counterparties, with a focus on confidentiality agreements and supply contracts. When in doubt, consult your advisors or local business council.

Confidentiality Agreements

Confidentiality agreements (also known as non-disclosure agreements or NDAs) require the party that receives particular information during negotiations, or performance of business arrangements, to keep that information confidential in order to protect the business interests of the information provider. For example, where lists of key contacts are exchanged, include an express prohibition in the NDA that your counterparty cannot communicate with these contacts without your written permission.

Increasing Awareness

To facilitate your Chinese counterparty’s awareness of the information which is protected under the measures set out in your NDA, the scope of confidential information, especially including your IP rights, should be described and identified as comprehensively as possible. To the extent that it is practical, you should also mark important documents and emails as “confidential”.

Enforcing Obligations

As additional protection to a right to claim contractual damages, you should seek agreement from your Chinese counterparty of inclusion in your NDA of a so-called “specific performance” clause. These provisions clarify that a party can compel a party in breach of their contract to comply with its non-monetary obligations (such as refraining from disclosing or otherwise misusing confidential information in breach of the NDA).

Protecting Against Misuse

You will want to stop any information which is provided to your counterparty being used contrary to your business interests. For example, where lists of key contacts are exchanged, include an express prohibition in the NDA that your counterparty cannot communicate with these contacts without your written permission.

Preserving Value After Termination

You will want to protect your confidential information at the end of your business arrangements, or if negotiations break down early. Confidentiality obligations imposed on the recipient of information should therefore expressly extend beyond termination of your contractual dealings. Consider also seeking a right in your NDA to require your counterparty to return or destroy any confidential information (or analysis derived from it) in order to maintain your control over the information.

Controlling Disclosure

Extra caution may be needed to protect your information where there may be a higher risk of information leaking into the public domain due to the nature of the counterparty. Such protection may include specific restrictions against the transfer of information among a group of their entities or among officials (which is a common practice among large corporate groups or state controlled bodies).

Supply Contracts

A supply contract aims to set out the terms on which a supplier sells its goods or services to the buyer and will apply to the various stages of such a business relationship.

Using “Master Agreements”

It is common for Chinese parties on either side of supply arrangements to use what would be considered in markets outside China extremely short and simple forms of contract.

Whereas there may be good reason to respect convention when engaging with a Chinese counterparty, in a long-term, high-value supply arrangement, there is benefit in convincing your counterparty to conclude a comprehensive master agreement as a basis for short-form purchase orders. In other words, this would be a longer document of common terms that will apply to each purchase of goods or services made by the buyer. It is entered into so as to commence the supply relationship (the master agreement), with the specific terms applicable to each individual order being detailed in a shorter document agreed and signed at the time of each order (the purchase order).

Treat Pre-contractual Dealings with Care

Parties to a Chinese contractual negotiation are required to conduct themselves with “good faith”. This means that they shall not:

• provide false information or intentionally conceal essential information that is relevant to the contractual relationship; or
• during negotiations enter into or continue with negotiations without any intention of reaching agreement with the counterparty.

A party may be liable to compensate its counterparty for any losses suffered due to bad faith. However, in practice, bad faith is not easy to prove.

Closely linked to this concept is the principle that a business can be considered to have accepted its obligations before signing up to the written agreement in which those obligations will be set out. If a contracting party performs its main obligations under a Chinese law contract, and such performance is deemed accepted by the other party, the contract may be enforceable against the first party—even if it has not yet been signed.
Dismissing Material Breaches of Contract

It is a common practice in China to stipulate a pre-agreed sum to be payable by your counterparty if a contract is breached or prematurely terminated – so-called “liquidated damages”.

As a general principle under Chinese law, damages are recoverable by reference to the actual loss that a party suffers. If this loss exceeds the amount of liquidated damages contractually agreed with your counterparty, the aggrieved party can request a court to increase the amount payable to it. However, the party that has breached the contract is also entitled to seek a reduction of the amount of liquidated damages contractually agreed if it is “excessively” higher than the actual damage suffered.

Using Indemnities as Contractual Protection

In common law jurisdictions such as the UK, an “indemnity” refers to a promise to compensate in full the party that is granted the benefit of the promise if a defined event or loss occurs, irrespective of who caused the loss. However, Chinese law does not define indemnities as clearly. Contractual protection from known risks must therefore be carefully negotiated and drafted. You should be specific as to:

- what event or other grounds are intended to trigger a claim;
- what losses are intended to be compensated and how they are to be quantified;
- what form of evidence of the loss should be put forward to substantiate a claim.

Other Issues in Commercial Contracts

Importance of Dispute Resolution

Selection

While you should be optimistic for your business transactions in China, as elsewhere, you should also prepare for the worst. Therefore, when writing contracts, think about the possibility that disputes with your counterpart may need to be resolved. Common options for this are court litigation and non-court arbitration.

Compared with litigation, arbitration in China tends to be more impartial. Particularly in central and western regions of China, there is often seen to be a risk that courts may be influenced by external stakeholders. Furthermore, a party to a dispute may appeal the decision of the Chinese courts, whereas arbitral awards are final except in certain special circumstances.

If you wish to seek to resolve a dispute overseas, an award of a foreign court, other than a Hong Kong court with exclusive authority to hear the dispute, is generally not enforceable in China. However, one benefit of foreign arbitral awards is that they can be enforced in China pursuant to international conventions.

Of course, a Chinese counterparty may be reluctant to accept a dispute resolution venue with which it is unfamiliar, so Hong Kong arbitration can often be a compromise on the basis of close-proximity and cultural similarities.

Language & Drafting

Unless your agreement is to be submitted to a government authority for approval, registration or other procedures in China, there is no general requirement under Chinese law for agreements in English to have a Chinese version, and contractual stipulations that a non-Chinese language prevails are generally given effect in China. That said, if you wish to introduce an English language agreement as evidence in proceedings before a Chinese court or present the agreement to a Chinese bank to facilitate a cross-border payment, translation fees need to be factored in as an additional cost.

What is more important than the language itself is that both parties have the same understanding of the contractual terms.
4.4 Registering Trade Marks & IP Protection

Intellectual property (IP) rights are a common concern for companies doing business in China. If you are doing business in China or plan to do so, it is important that you know how to use, register and enforce the intellectual property rights that are relevant to your business activities in China.

This article provides an introduction to obtaining IP protection in China. However, we recommend that you seek advice from your IP advisor.

China has modern, comprehensive IP laws that generally match international standards and is party to important international agreements relating to intellectual property such as the Patent Cooperation Treaty, the Paris Convention, the Madrid Protocol and TRIPS.

This article will focus on obtaining registered rights, including the recordal of copyright.

The factors to consider when deciding to obtain registered IP in China are no different from those that you would consider in any other country. IP is an important business tool in the 21st century and it is vital that your IP filing strategy supports your business objectives, both in the short term and the medium to long term.

It is extremely important to appreciate that registered intellectual property rights are territorial. Thus, for example, a patent granted in the UK has no effect in China (however it could be used to prevent importation of a product made in China into the UK). Additionally, a Chinese patent, or other registered intellectual property right, provides protection in Mainland China only. Separate registration is required in Hong Kong and in Macao.

**Trade Marks & Registration**

A trade mark is a sign that allows consumers to distinguish the goods or services of one undertaking from those of another. A wide range of signs can be registered as a trade mark provided that they are capable of graphic representation, such as words, stylised words, letters, numerals, shapes, colours and combinations of these things. It is generally advisable to register word marks in both English and in Chinese characters.

The term of trade mark protection is ten years but can be renewed indefinitely.

**Trade Mark Registration**

Unlike most other countries, China has a first to file trade mark system. Accordingly, you need to consider filing for trade mark registration at an early stage, otherwise you run the risk of being blocked from use; registration of your trade mark by an earlier conflicting trade mark, or perhaps becoming the victim of “trade mark hijacking”. It can prove extremely difficult to overcome an earlier conflicting trade mark, or to recover a trade mark which has been “hijacked”.

Prior to using your trade mark in China and to filing a trade mark application, it is our recommendation that a trade mark search is conducted, to check that the proposed trade mark has not already been registered (or applied for) by a third party. If there are earlier conflicting trade marks on the Register in China, then you could encounter issues with the use and registration of your proposed trade mark in China. It is therefore advisable to discuss with your IP advisor the need for appropriate trade mark searches before you commence business in China.

In addition to the appropriate trade mark searches, you should give careful consideration to the particular mark you decide to adopt in China. In particular, you should consider how your trade mark translates into the Chinese language. A Chinese trade mark equivalent to your English language trade mark could be damaging to your brand’s reputation as the meaning, sound, and tone and even the look of Chinese characters used in the trade mark, could be very different to the English language trade mark.

When filing a trade mark application, it is necessary to identify the goods and services in relation to which your trade mark will be used. The Chinese Trade Marks Office (CTMO) has very specific rules relating to the classification of goods and services in China, and uses a unique system of sub-classes, which are worth considering further with your IP advisor before seeking trade mark protection in China.

Trade marks can be registered through the national system or through the International (Madrid Protocol) Registration system. Using the Madrid Protocol system, the application in China is based either on a trade mark application or registration in your home country.

There may also be a risk of trade mark infringement if your products are manufactured in China, but not marketed or sold on the Chinese market. For this reason, it is still recommended to put in hand appropriate trade mark searches, and to seek a trade mark registration.

**Patents**

In China, there are three types of patent: invention patents, utility models, and design patents.

China, like most other countries has a first to file system for patents, designs and utility models. This means that it is usually necessary to consider your filing strategy for China at an early stage in the development of a product, perhaps many years before you are ready to take the product to China (whether to manufacture it there or market it there).

**Invention Patents**

Invention patents provide protection for a product or process which has practical application.

To be patentable an invention must be novel. This means that it must not have been made public anywhere in the world, in any language, in any form (such as in a printed document, an electronic disclosure, an oral disclosure or by use) before the patent application is filed.

The invention must also be inventive. This means that the invention must not have been obvious in view of information that was publically available before the patent application was filed.

Chinese invention patents provide protection for a maximum period of 20 years from the date on which the patent application was filed, subject to the payment annual fees. Before a Chinese patent can be granted the application is subject to an examination by the State Intellectual Property Office (SIPO) to ensure that the invention satisfies the requirements for patentability. Thus, it can take several years to obtain a granted patent.

**Utility Model Patents**

Utility model protection is an extremely useful form of protection in China and remains under used by companies based outside China. We would strongly recommend that companies based outside China make more use of utility model protection in China.

Utility model protection is available for products that have practical application, but not for processes, chemicals or biotechnology.

The requirement for novelty for a utility model is the same as for an invention patent. However, although there is a requirement for the product to be inventive, this is a significantly lower hurdle than for an invention patent. As a result, utility models are particularly useful if you wish to obtain protection for an improvement to an existing product.

Utility models provide protection for a maximum of 10 years subject to the payment of the necessary fees.

The validity of a utility model application is not examined in detail before the utility model is granted. This means that a utility model can be granted in a matter of months after filing. Thus, offering a quick, simple and cheap means of preventing a technical product in China.
Design Patents
Chinese design patents are very much like registered designs in Europe and protect the visual appearance of a product, such as the shape, pattern or colour of a product or any combination of these. Design patents provide protection of a maximum of 10 years and are usually granted in less than a year.

Filing for Patents and Design Rights
Timing is extremely important when filing an application for registered intellectual property.

Invention Patents & Utility Models
We will now briefly discuss a possible patent filing strategy for a UK company assuming that the invention is made in the UK. Typically, a UK company will file a UK patent application first. As discussed above, this needs to be done before there has been any public disclosure of the invention. This inevitably means that the patent application is filed at an early stage of the development of a product. After filing the UK application the applicant has 12 months in which to file applications in other countries. At this point, he/she has the option to file national applications in each country of interest or to file what is known as an International or PCT patent application. Filing a PCT application at this stage is the most popular route.

Please note that there is no such thing as an International patent. Therefore, a PCT application provides the option of obtaining patent protection in the vast majority of economically significant countries and more time to decide which countries are important for the business. Within 30 months of the filing of the patent application in the UK it is necessary to convert the International application into national patent applications in the countries of interest; it is at this point that a patent application is filed in China. The 20 year patent term runs from the date on which the International patent application was filed, although it is not possible to enforce the patent until after it has granted.

Alternatively, a Chinese patent application can be filed within 12 months of the filing of the initial UK application. This can be advantageous if the applicant wishes to obtain more rapid grant of the Chinese patent application but it does bring forward significant costs.

It is also possible to file the utility model application based on a UK patent application or to convert a PCT application into a Chinese utility model application. It is not possible to convert a PCT application into both a Chinese invention patent application and a Chinese utility model application. However, the option to convert a PCT application into a utility model could be advantageous if, from the information received during the International phase, it looks as though it will be difficult to obtain a granted patent. It is also not possible to have both a granted Chinese patent and a granted Chinese utility model for the same invention. However, there can also be advantages in filing both an invention patent application and a utility model application in China; particularly if there is a serious risk of infringement before the patent application is likely to be granted. If you wish to adopt this strategy, it is recommended that you file both a Chinese utility model application and a Chinese invention patent application on the same day within 12 months of the date on which the UK patent application was filed. The utility model patent should be granted within a few months of filing, and it will then be possible to enforce the utility model to prevent infringement. Once the patent application has been granted the utility model can be allowed to lapse. By this strategy, you achieve the right to enforce your intellectual property rights quickly by virtue of the utility model and also obtain protection for the longer period of time provided by a patent.

Your patent filing strategy will need to be slightly different if you employ staff in China or are in collaboration with a Chinese company and the invention you wish to protect was made in China. In this situation it is necessary to file the first patent application in China or to obtain clearance from the Chinese Patent Office to file abroad.

Design Patents
An application for a design patent can be filed directly at the State IP Office (SIPO) or may be based on a design registration filed in another country, provided that the application in China is filed within 6 months of the filing in another country.

Design Patents
An application for a design patent can be filed directly at the State IP Office (SIPO) or may be based on a design registration filed in another country, provided that the application in China is filed within 6 months of the filing in another country.

Copyright Recordal
Copyright arises automatically and protects written or published works such as books, computer software, songs, films, artistic content and web content. It is not essential to record copyright in China, but it can be advantageous to do so, particularly if a dispute over ownership arises. Copyright is recorded at the National Copyright Administration of China. To record copyright, it is necessary to provide evidence of ownership and the date of creation of the copyright work.

Assistance with Obtaining Registered Intellectual Property in China
A foreign company with a legal presence in China can apply directly to the SIPO or CTMO office to obtain patent, utility model, design or trade mark registration. Foreign companies without a legal address in China need to file via a Chinese patent or trade mark attorney. You may, of course, instruct a Chinese patent or trade mark attorney directly. We would, however, recommend that you use your European patent or trade mark attorney to manage your patent and trade mark filing strategies in China and elsewhere around the world. Most European patent and trade mark attorney firms can recommend Chinese patent and trade mark attorneys that they trust and have an established business relationship with. Additionally, not only can they help you ensure that you satisfy all of the requirements of the patent or trade mark office, they can also provide invaluable assistance to help you achieve a consistent intellectual property strategy around the world.

This article was written by Potter Clarkson LLP. For further information, please contact Dr Charlotte Crowhurst at charlotte.crowhurst@potterclarkson.com.
There are three main formal routes for intellectual property (IP) enforcement in China, as follows:

1. Administrative (including Customs)
2. Civil
3. Criminal

This section provides a brief overview of how IP rights are enforced in China, but does not replace the need to seek qualified (in some cases legal) advice in relation to any specific IP matters.

It goes without saying that enforcement is only available where you own applicable IP rights in China (most forms of IP require registration), and you are not able to directly enforce UK (EU or so-called ‘international’ – unless they have specifically been extended to China) IP rights in China. A separate section of this guide provides information on securing IP rights, which in China, unlike the UK, generally involves taking the formal steps of applying for and securing registration of these.

Administrative Enforcement

Administrative enforcement is one of the most common forms of IP enforcement in China, as it can often provide a quick, low-cost remedy that does not require representation by a law firm or any court action.

Administrative enforcement of IP is often the first avenue explored and pursued by UK IP owners, China is moving in the direction of developed jurisdictions like the UK, by which enforcement of IP is becoming increasingly a matter of private dispute. In other words, the levels of IP litigation are growing at an unprecedented rate, and this is reflected in all IP fields, but especially the field of design rights, utility models (like patents but with lower permitted thresholds for inventiveness) and patents (called ‘design patents’, ‘utility model patents’ and ‘invention patents’, respectively, in China).

State Administration of Industry & Commerce

China’s IP laws empower various government agencies with the jurisdiction to enforce IP rights. For example, in relation to trade marks, false advertising and trade dress infringement, authority is given under the trade mark relevant laws to the State Administration of Industry and Commerce (SAIC) and its local Administration of Industry and Commerce (AIC) branches.

If an IP owner discovers an infringing act, such as infringing products being sold at a retail outlet, stored in a warehouse or produced at a factory, they bring a case before the nearest AIC branch. Note that an investigation to establish the location of infringement must be done by the IP owner – the AIC will not investigate general information of infringing goods in the market; they will only respond to a specific complaint. This is a trend found throughout China’s IP enforcement system – there is a lot of ‘do it yourself’ demanded of IP owners. The AICs generally do not require complex formalities or evidence in order to act, and often ask only for:

- Copies of the IP rights concerned (such as trade mark certificates)
- A Power of Attorney (scanned copy is often sufficient)
- A brief written submission with the case facts
- Samples of the items suspected of infringement are usually not required for a case of identical counterfeiting, but will generally be requested if the AIC are not familiar with products (in other words, the matter does not concern products that are well-known), or if brands and/or the trademarks or packaging are not identical and require comparison. The AIC officers will often act promptly, sometimes within the same day, if the case is urgent (for example, if there are goods which may be shipped imminently). The AIC officials will conduct an on-site inspection of the target premises, and have powers to seize all suspected items suspected of infringement, including finished and semi-finished goods, packaging and tools such as moulds.

Unlike police, the AIC do not have powers of search or arrest, but the suspected infringer is required by law to cooperate with their investigation. The AIC officials may seize sales records and other electronic or physical records. However, generally their enforcement is based on physical articles at the scene – so the best results are obtained if infringement is ‘in progress’ and there are sufficient stocks of infringing items found.

The AIC officials may allow the IP owner’s representative to attend the raid, although this is not stipulated in law and in recent times the AIC at some locations have refused to allow the IP owner’s representative to attend. The AIC will normally provide a record of the seized goods to the IP owner’s representative. This can form the formal proof of the nature of infringement and quantity of products.
If the scale of infringement discovered is noticeably large, the AIC may transfer the case to the Public Security Bureau (PSB, or the police) for criminal prosecution (see section on Criminal Enforcement below).

The AIC will later interrogate the responsible person, determine infringement and, after around two to three months, will issue a Punishment Decision that typically includes:

- An order to cease infringement
- Forfeiture and destruction of the seized items
- A fine based on the turnover of the infringing goods – generally fines are low, just a few hundred or thousand pounds
- On the IP owner’s request, the AIC will usually provide a copy of the Punishment Decision

As their workload has increased dramatically, AICs are sometimes not forthcoming about the Punishment Decisions. However again IP owners should insist on them as this is the only formal proof that a finding has been made against the infringer (and if the Criminal Enforcement threshold met, criminal penalties pursued). The IP owner is sometimes allowed to witness destruction of the goods, but this is not a right specified by law. IP owners should ask their representatives to maintain contact with the AIC to ensure that they are notified well in advance, should the AIC decide to destroy infringing products as part of a ‘batch destruction’, which is often the case. The fines issued by the administrative authorities such as the AIC are retained by the national treasury, and if the IP owner is seeking compensation for the infringement, they will have to use the administrative punishment decision as the evidentiary-basis for filing a ‘fast track’ civil suit.

While the above describes the enforcement process of the AIC for infringement of trade marks and trade dress etc, similar principles broadly apply to other administrative authorities that have jurisdiction over patents (the various provincial Intellectual Property Offices), copyright (the National Copyright Administration) and quality and labelling standards (the Administration of Quality Supervision, Inspection and Quarantine), the latter body having some overlapping jurisdiction with the AIC, as they can also enforce against acts of counterfeiting.

Note however that the Intellectual Property Office’s (IPO’s) system for administrative enforcement of patents is presently still a ‘work in progress’, as there is no seizure of infringing items, only samples, and no fines can be imposed, only a ‘decision of infringement’ made. Except for relatively small and minor cases which may be suitable for the IPO system, or to have design and patent infringements removed during trade fairs, bringing cases in civil courts are a better route for protecting IP rights.

**Customs Route**

Chinese Customs are another source of administrative enforcement, albeit with a special jurisdiction over goods both entering and (most importantly for those familiar with border-measures in other countries) also those exiting China. Like other administrative enforcement bodies, Chinese Customs have independent powers to handle cases without recourse to the judicial system, although in certain situations a case must be brought before the courts (see below). As already mentioned, Chinese Customs enforcement has an important differentiating feature compared to other border measures, namely that Chinese Customs actively monitor exports – this is especially helpful to IP rights holders who have relevant rights in China as it allows them to impede the distribution of infringing products originating in China, right at their source rather than in several destination markets.

To prepare for Customs enforcement, an IP owner must first record their IP rights with Customs on a national database, which must also include a contact person in China – either an agent or the IP owner’s own local representative. The IP owner may also choose to file an up to date “white-list” of any companies authorised to export their products so as to avoid unintended Customs detentions, which they manage on Customs’ database via a password-protected portal.

For Customs enforcement to be effective, it is essential for IP rights holders to provide training for Customs officers at key ports. Training should avoid detailed technical information and instead provide officers with very simple indicators as to how to recognise suspicious shipments and products (for example “our products are never shipped mixed with competitors’ products”). Experienced IP agents can organise training sessions.

Over 95% of Customs cases are discovered by random inspections, and involve goods exiting, not entering China (again, a unique feature to China’s Customs enforcement system).

When Customs find goods suspected of infringement, they will notify the IP owner who then has only **three working days** to request its detention or release. Customs will not send samples or spend time on detailed photographs, so it is essential to have a local contact person authorised to conduct verification.

If the IP owner wishes to detain the goods, they are required to place a cash bond, up to a maximum of ¥100,000 (approx. £12,000) with Customs for the duration of the case, but bank guarantees can often be arranged for IP owners who have a large volume of cases.

Where the value of a case meets the threshold for criminal prosecution, a Customs case can be transferred to the PSB for prosecution.

After detention, Customs will conduct an investigation against the shipper, order the goods to be seized, and issue a modest fine, which may be no more than a few hundred pounds. This fine is submitted to the national treasury and there is no provision for compensation to the IP owner. On conclusion of a case, the IP owner must pay storage costs which are deducted from the bond. The confiscated goods will either be destroyed or, if they have resale value, by law can be re-sold provided that the infringing features are removed (via removal of logos, designs etc.).

Customs will not share shipping documents with the IP owner. Where a case is of a relatively large scale, the IP owner may consider threatening civil proceedings against the shipper to demand disclosure of the other parties in the supply-chain, and may also demand that the shipper pay storage costs.

Customs officials only have powers to handle straightforward cases of counterfeiting and piracy. For cases involving patents or non-identical infringement, Customs will act to detain goods on the IP owner’s instructions, however it will also require the IP owner to file a civil litigation within 50 days. Therefore, Customs border protection measures for IP rights are most simple and effective for dealing with counterfeit goods rather than more complex types of IP infringement. Having said that, where it is difficult to gain access to the infringement premises or to ‘catch’ the infringement in transit, considered Customs enforcement can be a useful tool in design, copyright and even patent cases.
The Chinese court system can be characterised as procedurally simple and fast.

Civil Litigation

Civil litigation of IP infringement through China’s courts is becoming increasingly common, with about 110,000 IP cases concluded by China’s various courts in 2015.

The Chinese court system can be characterised as procedurally simple and fast. Without such ‘tools’ as discovery, interrogations and juries, IP civil litigation cases generally involve only 2-3 days in court, one of which is usually spent in the ‘evidence exchange’ procedure and the other one or two on the hearing of the merits of each side of the case.

Since there is no evidence discovery process imposed by the court, the plaintiff must gather as much relevant evidence as they can themselves and have it notarised by a domestic public notary – this is not least because there are also no sanctions against perjury or contempt of court. An experienced corporate investigator should be engaged for this either directly or through a law firm.

Judges in China prefer to deal with cases in a quick and practical manner and actively encourage parties to settle, which may result in an enforceable mediation decision issued by the court. This can be useful if the IP owner wants to conclude the case and obtain monetary compensation with as little time and cost as possible. Alternatively, if the parties cannot reach a mediated decision, the judge will issue a court decision in the usual manner.

The law provides preliminary measures such as interim injunctions, “evidence preservation orders” (i.e. a court search orders executed by procedural judges) and “asset preservation orders” (an asset freeze / sequestration). After an initial trend when injunctions were readily granted, courts have become increasingly reluctant to grant them. Beginning with the inception of the specialist IP courts which were formed in the second half of 2014 and beginning of 2015 in Beijing, Shanghai and Guangzhou, there is some sign that the granting of injunctions, at least by these courts, appears to be reviving. Evidence and asset preservation orders can be more easily secured but require the deposit of a bond, set by the court. Asset preservation orders, which freeze the defendant’s bank account, can be a useful tactic to force negotiations, stop the defendant from wasting time and delaying or evading the litigation, and ensure that the plaintiff can secure some of the defendant’s assets for recovery.

Courts generally do not engage in a detailed analysis of compensation to the plaintiff. Most commonly, judges will rely on “statutory damages”, which means a discretionary range of damages that the judge can award in the absence of clear evidentiary basis. For an overview of what damages to expect, you may consult the CIELA database (www.ciela.com.cn) which compiles information on all published IP cases. For example, the average damages awarded for trade mark infringement is ¥129,000 (approx. £13,000). However, with the statutory damages level in the recently amended Trade Mark Law significantly increased (up to ¥3 Million (over £355,000) in statutory damages per claim), it is likely that averages will be raised. The impending amendment of the Patent Law (at the time of writing still in draft form), will likewise see statutory damages for patent infringements increase significantly.

Enforcement of court decisions in China needs to be well thought out, and plaintiffs may find that they have to spend further costs on following up procedures to try to compel the defendant to comply with the court orders. In practice plaintiffs often agree to accept a lower percentage of the amount of court ordered compensation (say 90% of the award) in exchange for avoiding the cost of enforcement. With the new restrictions on foreign currency transactions making it difficult for winning plaintiffs to repatriate awards/compensation outside China, with defendants being able to do this more easily, more pressure to ‘settle’ for less than the award may be expected.

Administrative Enforcement (e.g. Trade Marks and Patents)

1. IP owner investigates and gathers evidence
2. IP owner or agent brings complaint to administrative authorities (e.g. AIC for trade marks and passing off, IPO for patents)
3. Admin authority will conduct inspection of site and seize samples, infringing goods, tools and documents. IP owner usually may attend
4. IPO will hold a mediation hearing between the parties and if infringement is determined, will issue a decision and order to stop. No seizure of infringing goods is made
5. Seized items will be destroyed in batches by authorities

If IP owner wants to claim compensation, the administrative decision can be used to file a separate civil suit
Due to the relative speed and low cost of civil litigation for straightforward cases, many IP owners use the courts as an add-on to an administrative action (see above) where the facts of infringement have already been established and the only issue the compensation amount to be paid. Such cases may conclude within four to six months or more quickly if the parties settle.

However, some types of case may involve the trial of one or more substantive and complex issues, for example, passing off a product’s trade dress, or patent, utility model and design infringements. Such cases can be time consuming, but are a comparative ‘bargain’ if one looks at the cost of litigation in the UK. Such cases generally do not take longer than 1 year from filing until judgement is received at first instance, making them useful for cases where a more in-depth consideration of the issues is required – something that some administrative authorities are often unwilling, unqualified or unable to do.

While warning letters threatening action and requesting undertakings can be effective in stopping smaller or less determined infringers, IP owners should be aware that the recipients of such warning letters can file a ‘non-infringement’ statement, effectively dragging the IP potential claim for ‘non-infringement of such warning letters can file a statement verifying that the suspect goods are counterfeit.

While the IP owner is not required to engage a lawyer to represent them as the victim, it is generally advisable for the IP owner to do so to see that the case proceeds smoothly.

Sentences for IP crimes are typically a monetary fine of a few thousand pounds and often a suspended sentence. For large scale and serious crimes, there may be a custodial sentence imposed of up to seven years, although such a high sentence is rare. A criminal case will generally take six to 12 months from the start of a PSB investigation to the issuing of a sentence, while it can take 12 to 24 months in some protective jurisdictions.

**IPR Investigations**

It should be noted that for all the above enforcement routes (except for ex-officio actions by Customs), the IP owner is expected to conduct most of the investigation work to identify the infringing activity and the involved parties. The enforcement authorities rarely conduct lengthy investigations on their own initiative. Therefore, much of the success of the above enforcement relies on IP owners investigating and preparing cases themselves before bringing them to law enforcement authorities or the courts.

As the investigation industry is not regulated in China, it is advisable for IP owners to arrange investigations through their lawyer.

**Factors you Should Consider**

To determine which manner of IP enforcement is most appropriate in a given situation, IP owners will need to consider a number of factors including:

- **Nature of the rights infringed** – trademarks and look-alikes may be best combated via administrative enforcements including through Customs, while in the case of patents, unless the action is to take place during trade fairs, civil litigation may be the only tenable option;
- **Complexity of the evidence and legal circumstances** – if the IP infringement is less straightforward – for example the look-alike is not all that similar – then even trade mark infringement cases may require deeper consideration for which courts and civil litigation is often more suitable;
- **Jurisdiction concerned and remedies sought** – administrative authorities in non-first-tier cities can sometimes be prone to local protectionism. Administrative enforcement has to be sought at the authorities in the jurisdiction of the infringement or infringer. Where experience shows that such authorities may be reluctant to take enforcement action against local companies, or the intended target, then civil litigation provides a way out by offering some flexibility to find a jurisdiction that may be more neutral;
- **Costs** – administrative enforcement is generally cheaper than civil litigation. Where costs are a major factor, and/or the volumes of infringement do not justify such costs, administrative enforcement may be the more suitable option.

This section was written for CBBC by CBBC member company Rouse & Co. International LLP. Enquiries: Chris Bailey, cbailey@rouse.com
Online IP Enforcement

China’s Internet usage is increasing rapidly, throwing up myriad opportunities in e-commerce, and m-commerce (sales via smartphones). There were 731 million Chinese netizens by January 2017 according to the China Internet Network Information Centre, and it is estimated that over 467 million of them shop online20. Meanwhile WeChat, China’s biggest social media app says it had 768 million active users in 2016, more and more of whom use it for product recommendations and even mobile purchases.

As well as the commerce opportunities which the Internet creates, it also allows criminals a degree of security, by disaggregating the manufacture, advertisement, sale, and delivery of illicit goods. This also includes IP—the Chinese Internet has been a popular channel for those selling counterfeit and pirated products—adversely affecting producers and exporters of legitimate product.

It is possible to protect your IP online in China, and we outline some of the ways to do so below. However, it is important to ensure that before you enforce any IP in the China, you have IP rights in the country. Please see the Protecting your Intellectual Property section of this Handbook to learn about obtaining valid IP rights.

Removing Infringing Products

Over the years, a principle has developed from Chinese Tort Law that an e-commerce (or other website) can be deemed jointly liable for an IP infringement, if it “knowingly” allowed the sale to take place. In order for the platform to know it needs to be notified. For this purpose, e-commerce platforms have developed means of receiving notifications. This may be anything from simple complaints email address, to a sophisticated portal which accepts hundreds of notifications in one go. Unfortunately, different marketplaces all have different rules and standards, but once the platform is notified it is generally obligated to remove a product if the notification is correct. Note that the legality of this may change depending on the pending E-commerce Law.

Below we signpost the notification systems of a number of Internet companies in China. There are many law firms and other service providers which can help you to use these if you cannot do it in-house, or if you need help with systems which are Chinese language. Please note also that in order to stop infringement as early as possible, it is recommended that you proactively monitor the Internet for counterfeits. Service providers can help you do this too.

Taobao & Other Alibaba Platforms

The Alibaba Group is the world’s largest e-commerce company (by GMV). It has a number of e-commerce platforms, notably Taobao (PRC retail C2C and informal B2C): Tmall (PRC retail B2C), Alibaba.com (global wholesale B2B), AliExpress (global retail B2C) and 1688.com (PRC wholesale B2B). Alibaba has a relatively sophisticated IP Protection Platform, which accepts notifications for all its platforms. It can be used in English and you can register an account at: https://ip.alibaba.com/index.html?localeChangeRedirectToken=1

JD.com

JD is China’s largest direct sales shopping platform. It has a relatively new but sophisticated system for receiving notifications, which is currently only available in Chinese, at: IPR.JD.com, or in English after you register an account at: enip.jd.com

WeChat

WeChat is owned by one of China’s largest data companies Tencent. WeChat users have an interface to issue complaints about Private Accounts within the App, which get sent to brand owners registered with Tencent for verification. It also has a platform to accept notifications against Public Accounts, which is currently only available in Chinese, at: https://wenxin10.qq.com/security/readtemplate?t=security_center_website/report

Further Reading

For more information about Online IP protection in China, contact: Mick.Ryan@cbbc.org.cn

For information on Online IP protection for SMEs, please see: http://www.china-iprhelpdesk.eu/sites/all/docs/publications/v9_How_to_remove_counterfeits.pdf

For information on protection of Domain Names, please see: http://www.china-iprhelpdesk.eu/sites/all/docs/publications/China_IPR_SME_Helpdesk-domain_name_Guide.pdf

This article was written by CBBC.

Options for Resolving Commercial Disputes

Commercial disputes in China can be resolved in a number of ways:

Administrative Action
Depending on the type of dispute in question, several government departments and agencies in China can assist parties to resolve commercial disputes. A common example is action taken against intellectual property infringement by the State Administration of Industry and Commerce (SAIC) and its local offices. The SAIC is empowered to conduct investigations and raids, and to impose penalties and sanctions.

Consultation & Mediation
Consultation
Consultation is an informal means of dispute resolution in China. It is common for contracting parties to meet to discuss their respective positions prior to escalating their disputes to formal litigation or arbitration. This is often seen as a “cooling off” period for the parties to communicate and to attempt to preserve an otherwise mutually beneficial relationship. Subject to the parties’ agreement, a neutral third party can be appointed to act as a facilitator for the discussions. Even though the consultation is intended to be casual and informal in nature, its results can be made to be legally binding if this is expressly stipulated in the parties’ agreement.

Mediation
The idea of mediation is that the contracting parties in dispute voluntarily present their respective cases to a trained and impartial third party (mediator) who assists in making suggestions to resolve the issues in dispute. It is non-binding and confidential in nature which promotes communication between the parties and may also help to preserve their business relationship. Mediation can also result in pragmatic settlement terms beyond the legal remedies which a court is entitled to grant.

Mediation is commonly conducted in the PRC as part of arbitration and litigation (see below), where parties are encouraged to participate in mediation by judges or an arbitration tribunal. However, it is a voluntary process and the court and/or the tribunal cannot compel the parties to participate in it.

Judicial Mediation
Pursuant to the PRC Civil Procedure Law, a Chinese court will require parties to attempt mediation with a judge (as both mediator and adjudicator) during the early stage of the litigation proceedings. If a party refuses mediation or the mediation fails, the parties will need to argue their respective case with the same judge. However, if it is anticipated that a settlement may be reached after a trial but before the judge hands down a judgment, judicial mediation is still possible. In the event that a settlement agreement can be reached at the conclusion of the mediation, it becomes legally binding and can be enforced by the court.

Arbitration
Arbitration of China-related disputes can be divided into domestic arbitration and international arbitration. The respective rules and procedures can be very different, and once again care must be taken in selecting the most appropriate forum.

Domestic
Onshore arbitration is conducted by Chinese arbitration commissions established under the PRC Arbitration Law. There are nearly 250 arbitral commissions in the country. The China International Economic and Trade Arbitration Commission (CIETAC) and the Beijing Arbitration Commission (BAC) are well-known and established commissions which can handle both domestic and international commercial disputes.

One of the shortcomings of domestic arbitration in China is that the Chinese courts have supervisory jurisdiction over any disputes relating to an arbitral award issued within the jurisdiction. Further, the choice of arbitrators is usually restricted to a relatively local tribunal which often constitutes a significant concern for foreign parties. The position has improved recently in that CIETAC have allowed parties to appoint arbitrators who are not on their official panel, subject to their final approval. This change has been followed by several different arbitration commissions over the past few years, including by the Shanghai International Economy and Trade Arbitration Commission (SHIAC) and the South China International Economic and Trade Arbitration Commission (SHAC) though it is only available in specified circumstances and some may impose certain restrictions to qualify for the freedom of choice outside the panel. Cases tend to be determined by reference to documentary evidence and it is uncommon for oral evidence to be given or witnesses cross-examined.

Another issue is that in general, Chinese arbitration commissions do not have powers to grant interim measures in order to preserve property or evidence during the arbitral process.

Although the latest CIETAC arbitration rules now allow its tribunals to grant interim remedies prior to commencement of arbitral proceedings (for example an injunction), they still lack the power to order conservatory measures (such as preservation of evidence and assets of a defendant for future enforcement purposes), applications for which must be transferred to a competent court for ruling.

A good governing law clause promotes certainty in deciding the enforceability and validity of a contract, which may become invalid if the contract is illegal under Chinese law.
International
Foreign investors naturally prefer to turn to international arbitration for resolving their commercial disputes in China, as some of the weaknesses associated with domestic arbitration can then be avoided. The Hong Kong International Arbitration Centre (HKIAC), the Singapore International Arbitration Centre (SIAC) and the International Chamber of Commerce (ICC) are all well-established and experienced in handling disputes involving Chinese parties.

One practical issue is that, as stated above, only “foreign-related” disputes maybe legitimately arbitrated outside China pursuant to Chinese law. It is also common during contract negotiations for Chinese parties to be unwilling to arbitrate overseas. Hong Kong often serves as a compromise given that it is a common law litigation system commensurate with international standards yet based in China.

Litigation
There are four levels of courts in China and each has its specific jurisdiction: Basic-level People’s Courts, Intermediate People’s Courts, Higher People’s Courts, and the Supreme People’s Court (which now includes six circuit courts located outside of Beijing, each acting as the agent of the local courts and possessing the same level of power over all the lower courts. Contractual disputes which involve foreign elements (for example, the contracting party or subject matter of the commercial contract is foreign) are usually heard by the Intermediate People’s Courts.

Mandarin Chinese is the official language in litigation proceedings and foreign litigants are required to use interpreters at their own cost. Any party which is dissatisfied with the decision of the court of first instance may appeal once to the court immediately above.

Arbitration vs Litigation in China
For most foreign parties, arbitration (whether domestic or international) is a better option than litigation for resolving disputes in China. The advantages include the finality of an arbitral award and arbitral rules and processes which are usually more transparent than litigation. Although China continues to reform its civil litigation system, significant concerns remain over substantiating enforcement, bias and local protectionism.

Dispute Resolution & Governing Law Clauses
Onshore vs Offshore
Litigation in China can be a frustrating experience for foreign parties because of the language, bureaucracy and unfamiliar legal procedures involved. It also limits a foreign party’s choice of legal representative as only PRC qualified lawyers can appear in the local courts.

It is important to bear in mind that mainland China does not enforce foreign judgements, except in the few instances where there is a reciprocal treaty with that foreign jurisdiction. Enforcement of an arbitration award in China will face fewer obstacles given China is a party to the New York Convention, of which most countries are member states. In general, arbitration in China tends to be the preferred option for resolving China-related disputes.

Whichever option is preferred, it is always of crucial importance to seek legal advice and communicate clearly with counterparties during contract negotiations.

Governing law clauses may appear to be routine provisions. However, they play a critical role when disputes arise. A good governing law clause promotes certainty in deciding the enforceability and validity of a contract, which may become invalid if the contract is illegal under Chinese law.

In China, commercial contracts which are not “foreign-related” must be governed by Chinese law, and disputes resolved (whether by litigation or arbitration) within China. A contract relationship between the contracting parties is foreign-related.

Chinese law will still apply to certain “foreign-related” contracts, including where the subject matter involves land and share ownership, employment issues and insolvency. Significant, a contract between a Wholly Foreign Owned Enterprise (WFOE) and a Chinese party will not be “foreign-related”.

Drafting Tips
For the sake of certainty and clarity, the dispute resolution and governing law clauses should be drafted in simple wording. Prior to drafting or agreeing to such a clause, always refer to the latest version of the relevant legislation or rules to confirm its validity and application.

In summary, there is no hard and fast rule in respect of dispute resolution and governing law clauses in relation to Chinese contracts. Each case should be reviewed in accordance with its specific circumstances, taking into consideration factors such as the location of the parties’ assets and the type of remedies to be sought.
China has signed mutual legal assistance treaties with over 50 countries including the United Kingdom, which can assist in asset tracing and recovery in China.

The arrangement has significant implications for foreign investors as it further expands the choice of jurisdiction for contracting parties, taking into account the geographical proximity between Hong Kong and the mainland. It also saves the time and expense which would be required to bring parallel enforcement proceedings in China. More importantly, a Chinese court is required to give effect to the relevant Hong Kong judgment and cannot simply ignore it.

**Protective / Injunctive Measures**

**Travel Bans**

In the event that foreign nationals in China become involved in a commercial and/or civil dispute and the case is submitted to a Chinese court, the Chinese court has the power to prohibit the foreign party from leaving the country until the resolution of the dispute and his/her travel documents may be confiscated.

If a foreign national is found at the crime scene and suspected of having engaged in any serious criminal acts, the police can exercise their power of detention for 24 hours for interrogation. If a travel ban is imposed by the Chinese government, the relevant Embassy or Consulate will be notified. Any detainee has the right to appoint a legal representative, who must be a qualified PRC lawyer.

Any person who is subject to a travel ban in China is advised to request the relevant Embassy or Consulate for assistance without delay.

**Prohibition Orders to Preserve Property & Evidence**

If there is a likelihood that a losing party will not comply with an execution order granted by a Chinese court at the conclusion of civil proceedings, the winning party can apply to the court for a preservation order to freeze that party’s assets. Such an order may be granted by the court prior to the commencement of court proceedings or arbitration if it can be shown that irreparable damages to the subject’s property may occur without immediate preservation.

The applicant is generally required to provide a security (effectively a bond) upon the application for a preservation order, failing which the application will be dismissed. Prior to commencement of a civil action or arbitration in China, the potential plaintiff can also apply to the Chinese court to preserve evidence on the basis that such information or materials may be destroyed or altered.

**Review of Government Authorities’ Sanctions or Decisions**

In general, there are two ways to challenge a sanction or decision made by PRC authorities: administrative review and administrative proceedings.

Administrative review is an internal check conducted by the legal offices of the administrative body which carried out the relevant act. This covers a range of issues including physical detention, freezing and seizure of assets, and suspension of a business licence. The review will usually be conducted in the form of a paper trial and be processed within 30 days upon request. A complainant should usually first apply for administrative review before resorting to administrative proceedings.

Although this option saves time and cost, in practice it has proved ineffective in reversing government decisions.

An alternative is to submit a complaint to a Chinese court for determination. The procedures involved are similar to those for a normal civil matter. One point to note is that the court will not accept cases involving national defence and foreign affairs, or an administrative regulation or order that has a binding effect on the general public.

This article was written for CBBC by Bird & Bird. For more information and any enquiries, please contact Richard.Keady@twobirds.com
There are vast differences in the historical background of Western and Chinese society.

Successful Negotiations for Dispute Resolution

Step Three: Clarify Responsibilities
It is highly unlikely that blame is attributable solely to one side. The mediator has to analyse the mistakes made by each party and try to weigh them up objectively. The mediator has to find a way to present the case to each side in a sensitive fashion, gently pointing out mistakes so that each side can accept them and see that the other’s actions were rational, even if they are still unacceptable. This is a crucial step towards preparing the conditions for both sides to compromise rather than to fight to the death.

Step Four: Identify Disadvantages
The next step is to identify disadvantages in the other party’s position. This could come from any suspicious transactions – perhaps in relation to land or property – or regulatory infringements that the counterparty would not want exposed to the authorities. Disadvantages might come from reliance on overseas customers or from ownership of overseas assets, both of which might be more vulnerable to legal action than if they were located in the PRC. All counterparties have disadvantages and a skilled mediator needs to be able to identify them accurately and not waste time and energy acting in a way that proves counterproductive.

Step Five: Identify Key Influencers
The mediator needs to identify the key influencers on the Chinese counterparty. Most likely, the local government will have crucial influence on the counterparty but it could also come from local banks, who may feel exposed, or possibly local customers, even aggrieved ex-employees. Conversely, it is very unlikely to be the court system or the local security or police organisations. The important thing is to identify the influencers on the counterparty and try to determine what those influencers’ objectives are, and how these might be used to bring pressure onto the counterparty.

Step Six: Build Alliances
The mediator needs to build up carefully calibrated pressure on the key influencers identified above, so as to create the conditions where the Chinese counterparty sees the benefit of compromise, even when he knows that it is unlikely that any solution will be imposed upon him. This step could involve appealing to the relevant embassy or home government to raise the issue with the provincial government in China, with a request for them to make enquiries of the local government and to assist in a friendly resolution. Alternatively, it could involve direct approaches to the local government.

Step Seven: Develop a Framework Agreement
Once the general conditions have been established for a resolution between the parties, the process now enters more familiar territory since there are many capable and experienced PRC lawyers who can structure settlement agreements. Nevertheless, it is likely that the mediator will have to remain involved in the detail, since the Chinese counterparty may remain suspicious of the other side and be less familiar with the more complicated aspects of a legal agreement, which would seem normal to a foreigner. It is likely that gentle handling through the negotiation process will still be needed. Whilst the process outlined in this approach may seem simplistic, experience has shown that these seven steps can provide a framework for navigating through situations that are highly complex and emotionally charged in the PRC. Using them can greatly increase the likelihood of a successful resolution. Of course, both sides will need to compromise in a dispute, but “a successful resolution” should mean one which is ultimately acceptable to both sides, both emotionally and financially, and where each can move forward feeling a little chastened but certainly much the wiser.

This article was co-written by CBBC Board Member and Chairman of China Resolutions, John McLean OBE and Chief Resolutions Officer of China Resolutions, Tim Clissold.

Many foreign investors in China feel that the PRC courts do not yet constitute a reliable and timely venue for commercial dispute resolution. Whilst this does not mean that the rights of foreign investors cannot be enforced within the PRC, a more imaginative and practical approach is often needed.

A number of disputes between foreign investors and Chinese partners often derive from the arrangements made right at the outset due to different but unspoken assumptions by each side about how the cooperation will work. There are vast differences in the historical background of Western and Chinese society. Close cooperation across this divide provides fertile ground for misunderstanding. The problem is compounded when misunderstanding leads to personal animosity. What starts out as a rational divergence of economic interests, when compounded by difficulties in translation across language and cultural barriers, can often develop into a dispute about fundamental societal or business principles rather than about the actual commercial substance. For this reason, using an intermediary to help solve complex disputes in China can often be a smart opening move. Where this method is chosen, the seven-step framework below can help a mediator to develop solutions, which have proved successful in practice.

Step One: Research the Chinese Counterparty
The intermediary must research the case objectively from the perspective of each side. There is a surprising amount of information available on the Chinese web that can be used to supplement an original brief. It is vital to gather independent information on the counterparty and develop an understanding of their background, development, current status and likely standpoint.

Step Two: Release Emotions
This is a crucial step. Understandable frustration often develops into a powerful negative animosity on both sides. It is crucial to allow each party to vent and express their frustrations to someone who is sympathetic and willing to listen. Only after that has been done will each be able calmly to set out their opinions on the reasons for the dispute and their objectives in any resolution. There is no way forward until both sides move beyond the immediate sense of being wronged. Releasing of emotion is often a major step forward which needs constant reinforcement.

Step Three: Clarify Responsibilities
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The mediator needs to build up carefully calibrated pressure on the key influencers identified above, so as to create the conditions where the Chinese counterparty sees the benefit of compromise, even when he knows that it is unlikely that any solution will be imposed upon him. This step could involve appealing to the relevant embassy or home government to raise the issue with the provincial government in China, with a request for them to make enquiries of the local government and to assist in a friendly resolution. Alternatively, it could involve direct approaches to the local government.

Step Seven: Develop a Framework Agreement
Once the general conditions have been established for a resolution between the parties, the process now enters more familiar territory since there are many capable and experienced PRC lawyers who can structure settlement agreements. Nevertheless, it is likely that the mediator will have to remain involved in the detail, since the Chinese counterparty may remain suspicious of the other side and be less familiar with the more complicated aspects of a legal agreement, which would seem normal to a foreigner. It is likely that gentle handling through the negotiation process will still be needed. Whilst the process outlined in this approach may seem simplistic, experience has shown that these seven steps can provide a framework for navigating through situations that are highly complex and emotionally charged in the PRC. Using them can greatly increase the likelihood of a successful resolution. Of course, both sides will need to compromise in a dispute, but “a successful resolution” should mean one which is ultimately acceptable to both sides, both emotionally and financially, and where each can move forward feeling a little chastened but certainly much the wiser.

This article was co-written by CBBC Board Member and Chairman of China Resolutions, John McLean OBE and Chief Resolutions Officer of China Resolutions, Tim Clissold.
The China-Britain Business Council (CBBC) helps British and Chinese businesses and organisations work together in China, the UK and third markets around the world. With 60 years of experience, experts in 11 UK offices and 15 Chinese locations, and a diverse 1,000-strong membership, we operate alongside the British Chamber of Commerce in China to support companies of all sizes and sectors from multinationals to SMEs.

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