



Field Fisher Waterhouse

Doing business in China



“Field Fisher Waterhouse is now the choice for the big ticket international clients.”

Chambers UK, 2009

About us

Field Fisher Waterhouse is a European law firm providing commercial solutions across a range of industry sectors. We have a particular focus on companies that are highly regulated and those with intellectual property and technology driven business models.

The firm has over 140 partners, 240 other lawyers and nearly 300 support staff across offices in Brussels, Hamburg, Paris, London and Manchester. The firm also has an exclusive relationship with Italian firm, La Scala.

Our main areas of practice are corporate and commercial, intellectual property (IP) and technology, banking and finance, regulatory and real estate. We also have particular expertise in competition & EU law, dispute resolution, employment, personal injury and clinical negligence, public sector and tax.

Our international client base chooses to work with us because we provide exceptional lawyers with industry expertise and strong commercial knowledge of their businesses, enabling us to work with them to maximise their market opportunities. We are acknowledged as leading experts in sectors such as technology and communications, energy, financial services, transport, retail, media and hotels and leisure as well as for our public sector work.

Our China Practice

Field Fisher Waterhouse's China practice is growing quickly in response to the region's recent economic development. A large number of Chinese companies are investing in Europe, listing on stock exchanges, establishing subsidiary companies, business partnerships, joint ventures and acquiring companies abroad. Also, many European and American companies are investing in China or expanding their operations to the region through franchising and licensing.

Our clients are our best credential



“ The firm is recommended for work with an international flavour.”

Chambers UK, 2009

Areas of expertise

We work with a number of Chinese law firms and Chinese Advocates most of whom we have known for years.

Together with these firms we are able to advise clients across the range of areas including:

- corporate including M&A, joint ventures, private equity, venture capital, management buy-outs, management buy-ins
- commercial advice including contracts, entry/exit strategies
- real estate
- investment regulations
- antitrust
- franchising and licensing
- employment
- trade marks, copyright, patents and anticounterfeiting
- technology law including outsourcing, data protection, software licensing, e-commerce and new media
- disputes
- energy and infrastructure

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Culture and commerce is key

We understand the Chinese culture and commerce which enables us to be more than mere legal advisers to our clients. We are also able to acquaint those of our clients wishing to do business in China with the cultural and commercial sensitivities. A burgeoning middle class means that there is a growing market for many goods.

There is a population of approximately 1.3 billion and a strong consumer base, of which a significant percentage would be classified as high net worth individuals. Further, a large proportion of the population are under 25.

China's sovereign credit rating by the major ratings agencies has improved over time and there is a stable outlook with good economic prospects and an improving fiscal situation.

Specific issues

Market research and commercial issues

It is very important to conduct proper research before entering the Chinese market. Product localisation and price point are just two issues that need to be addressed before entering the market.

Regional differences are important and need to be taken into account when planning an entry strategy. Shanghai and Beijing are seen as the main cities but are relatively saturated with goods and services. Cities such as Guangzhou, Shantou and Shenzhen have a wealthy population. However, they are far less well served by goods and services.

Our in-depth knowledge of the Chinese market allows us to advise clients on both the commercial and legal aspects of entering the country.

Finance

Our Equity Markets team have wide experience in public company transactions on aim as well as the Main Market. Our client base is made up principally of aim quoted and fully listed companies as well as a wide range of brokers, sponsors and nominated advisors. In 2009, the team acted on over 40 listed transactions with a total deal value of £680 million.

Our team are very experienced in executing cross border transactions. We are able to identify the brokers who are most active and interested in the applicable sector, geographic region and size of fundraising and can facilitate introductions to companies seeking to raise finance in London.

Corporate

Before an investor or business can structure their investments in China they have to find out whether they are permitted to invest directly in that sector, and if so to what extent. If the sector permits foreign shareholding in a Chinese company, then to what extent is it automatically approved and above what threshold is Government consent required?

There are several structures that can be used, such as a wholly owned subsidiary in some sectors, joint venture companies, acquiring shares of existing Chinese companies and having special purpose vehicles.

We can, with the help of the appropriate Chinese law firms around the country, advise and assist you on:

- pros and cons of various models from legal and practical points of view
- tax issues relating to the investments including any benefits from double taxation avoidance treaties
- application for consent from a Governmental authority if the need arises
- company procedures from formation to dissolution
- preparation of legal documentation including shareholders' agreements and detailed articles and memoranda of association to provide full protection under the law



Cross border structuring

Effective cross-border planning is essential when trading between the UK and China to ensure that structures are aligned with the groups commercial goals. Failure to implement suitable structures at the outset can give rise to tax leakage, trapped cash which cannot be returned to shareholders or can cause unnecessary administrative burdens.

Tax

For companies and businesses entering China there are important tax considerations. These include:

- what amounts to have an establishment or taxable presence in China
- transfer pricing
- withholding tax
- treaties on avoidance of double taxation if a foreign individual is travelling frequently to China on work within a financial year, when tax liability arises

Finding a business partner – due diligence

In China it is useful to have a resourceful business partner who is well-known and well connected. An influential business partner can be helpful in relation to obtaining any requisite Governmental consents at Central, State or local level.

Prior to committing to a partner it is advisable to conduct legal and financial due diligence and this is an area in which we can assist.

Data Protection

There are restrictions on transferring personal data outside the EEA. However, these restrictions can be overcome in several ways, including entering into the EU Commission's standard contractual clauses, implementing a group data protection policy which meets UK/EU requirements or obtaining the informed consent of the data subject.

Tax Incentives

Various tax breaks and reduced rates are available to foreign investment enterprises depending on the industry and location. Incentives are often available for investments considered to be (high-tech) or for R&D related activity.

Employment

Companies wanting to do business in China will need to consider any employment issues arising out of employing or transferring employees to China. If there is a transfer of business to China, then the parties will need to consider the application of the EU Acquired Rights Directive.

In the case where a UK company expands its business in China or sets up a new company in China, it will need to consider local employment laws. However, if employees are moving to China to work in this new company with UK employment contracts, then any contractual and jurisdictional issues, including any pay and tax issues, will need to be considered. Seconding employees to China will also create employment issues on which businesses should seek advice.

Dispute resolution

Businesses investing in China may not have dispute resolution at the forefront of their considerations. However, focussing on the practical resolution of disputes that may arise before an investment is made may well prove a prudent step. In particular, those investing in China need to be aware that:

- the length of time taken by the Chinese Courts to resolve cases may be significantly longer than in other jurisdictions. Litigating in the Chinese Courts can be lengthy, expensive and frustrating, although it is unavoidable in certain situations.

- Given these issues, whichever law is chosen to be the governing law of an agreement, it may make considerable sense for suitable Chinese lawyers to be instructed to check compliance with Chinese legislation. It may also be important to identify at the outset (and to monitor throughout the life of the contract) whether the Chinese contracting party has assets outside the Chinese jurisdiction against which any foreign judgment or award obtained may be enforced.
- Field Fisher Waterhouse's lawyers have substantial experience of multi-jurisdictional litigation, arbitration and enforcement issues, and experience of guiding clients through disputes concerning Chinese entities and/or assets.
- We have a substantial network of contacts within the leading Chinese law firms including Tian Yuan Law Firm (www.tylaw.com.cn) which means that we are well-placed to assist our clients in choosing the most appropriate Chinese lawyers for a particular dispute, and to advise our clients in navigating through litigation, arbitration and enforcement in and involving China as efficiently as possible.

Conclusion

Should your business be looking to enter the Chinese market, we can help identify the potential issues in various areas discussed above and help to make the entry as smooth as possible. Please do not hesitate to contact us if we can be of any help.

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