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CLIENT'S PERSPECTIVE

Lansen Pharmaceutical Holdings Limited: A Hong Kong IPO Experience

Medical Device Import In China

PROCESS & REQUIREMENTS

PARTNERSHIP ENTERPRISE:

China Opens a New Format For Foreign Investors

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**HOW TO BUILD A SYSTEM
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NOTE FROM THE EDITOR



Welcome to the new edition of Focus on Asia.

A lot has happened in the world since our last edition. To spare you from yet another deliberation on the shape of the global recession (L, V, W?), I instead would like to invite you to take a closer look at the Asia Pacific region, China in particular:

The face of China has changed. Transformation is the word that describes best the effect the global downturn has had on the country. China is no longer a cheap manufacturing ground. With the drop in foreign orders, China has re-invented its manufacturing capabilities to serve its internal consumer market. The country's strengthening middle class is driving the demand for goods and services. (for example, China is now the world's biggest market for cars and the largest energy user owing it to increased domestic power usage).

Doing business with China is no longer one way - i.e. China inbound investment. The government encourages growth and outbound expansion of domestic businesses. In August 2010, China officially became the world's second biggest economy having surpassed Japan and earlier in 2009 – Germany.

“Transformation is the word that describes best the effect the global downturn has had on China”

And yet, the region still offers immense opportunities to foreign investors. Carmakers, global life sciences and luxury companies are expanding aggressively in China.

Of course, these opportunities do not come without challenges. IP rights, fraud, stricter quality standards, the reform of the healthcare system, demands for higher wages by local factory workers - are all on the agenda for foreign businesses and the Chinese government.

This means that as lawyers we are busy as ever. To keep up to speed with the market, we have hired new partners who are now driving our international arbitration, employment, tax, IP, and corporate practices in China.

We are passionate about Asia and we want your journey here to be a smooth one. On behalf of Salans' Greater China team, I hope that you will find the articles in this issue of Focus on Asia helpful.

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“ We have lawyers of over twenty nationalities who speak over thirty languages with offices made up predominantly of local lawyers. This allows us to advise clients in ways that provide greater understanding of a nation’s style of thinking and problem-solving, as well as its legal system ”

Carl Salans, co-founder of Salans LLP

Healthcare: Medical Device Import Process & Requirements In China

“To be sold in China, medical devices made by foreign manufacturers must be registered with the relevant Chinese authorities. The registration process is somewhat opaque, and timelines are often longer than specified in the regulations”



China has a comprehensive regulatory framework for the import of medical devices. Though the basic law on medical device administration was introduced in 2000, many regulations are currently undergoing revisions to bring them more into line with those in developed countries.

To be sold in China, medical devices made by foreign manufacturers must be registered with the relevant Chinese authorities. The registration process is somewhat opaque, and timelines are often longer than specified in the regulations.

In this article we provide an overview of the medical device import regulatory framework for foreign companies that are introducing their products or planning business activities in China.

Regulatory Agencies

There are three Chinese agencies that hold regulatory roles for imported medical devices. Depending on the specific product being exported to China, these are:

- the State Food and Drug Administration (SFDA),

- the Ministry of Health (MOH), and
- the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ).

For medical device products that fall into the category of pressure vessels, Chinese Customs requires manufacturing licenses issued by the Special Equipment Licensing Office (SELO) of the State Administration for Technical and Quality Supervision, in addition to SFDA and AQSIQ certification.

State Food and Drug Administration

The State Food and Drug Administration (SFDA) supervises the safety and management of drugs, medical devices and cosmetic products in China. All imported medical devices must obtain a registration certificate from SFDA before being sold

in China. The SFDA has a comprehensive system for medical device registration and inspection, which includes product type testing and factory audits. The Centre for Medical Device Evaluation affiliated with the SFDA is responsible for the technological evaluation of medical devices.

Ministry of Health

The Ministry of Health (MOH) is in charge of drafting laws, regulations, and policies related to public health, overseeing the administration of traditional Chinese medicine, and for administering China's rural health insurance system. The MOH is mainly responsible for the procurement of medical equipment on the provincial level, including overseeing the bidding and tendering process for medical devices and pharmaceuticals sold to State-run hospitals.

General Administration of Quality Supervision, Inspection and Quarantine

The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) is tasked with overseeing inspection, quarantine, and establishing the technical standards of goods for import and export. AQSIQ also has responsibility for certifying electrical safety for a wide variety of products, including some electro-medical devices. Upon certification, products receive a "China Compulsory Certification" (CCC) mark, which serves as evidence that the catalogue-covered products can be imported, marketed and used in China.

Classification of Medical Devices

Definition of Medical Devices

"Medical devices" under PRC law refer to those instruments, equipment, tools, materials and other objects, including the software attached to them, that are designed to be used either independently or in combination on the human body. These devices should be used for:

- prevention, diagnosis, treatment, monitoring or remission of diseases;
- diagnosis, treatment, monitoring, remission or compensation of injury or physical disability;

- research, replacement or adjustment of anatomical or physiological processes; and
- control of pregnancy.

Classification of Medical Devices

Medical devices are divided into the following three categories:

- (i) Class I Medical Devices - are those for which safety and effectiveness can be ensured through routine administration;
- (ii) Class II Medical Devices - are those for which further control is required to ensure their safety and effectiveness; and
- (iii) Class III Medical Devices - are those implanted into the human body, or used for life support or sustenance, or pose potential risk to the human body and thus must be strictly controlled for safety and effectiveness.

Each successive class requires progressive controls to ensure safety and effectiveness. Medical devices in all three classes are subject to registration. Domestically manufactured products are registered with Provincial Health Bureaus, while imported medical devices must be registered with the State Food and Drug Administration.

Medical Device Registration Process

All imported medical devices must apply to SFDA for a medical device registration certificate. The certificate is valid for four years and can be renewed or updated by filing a separate application to SFDA.

Who is the applicant?

China issues registration certificates and licenses in the name of the device manufacturer directly, not to the agent or distributor. Therefore, foreign companies who have no legal entity registered in China need to entrust a qualified agent to apply for the medical device registration on their behalf. The agent will then hand over the obtained certificates or licenses to the foreign company.

What are the required documents and information?

Usually the following items are to be submitted when a foreign manufacturer prepares to register an imported medical device in China for the first time.

a. Standard forms for medical device registration

These forms are available at the official website of SFDA, which is in Chinese only.

b. Business certification of the foreign manufacturer

This includes the incorporation registration certificate of the foreign manufacturer; the medical device manufacturing permit/license issued by the local competent authority in the country (or region) of origin, and other legal documentation that can prove the legitimate existence and qualifications of the manufacturer.

If an agent is entrusted to process the registration for the foreign manufacturer in China, a separate letter of authorisation must be issued by the manufacturer. The letter should state that the agent is the sole agent for the medical device registration and that the manufacturer is responsible



“The foreign manufacturer should designate a local agent in China to be responsible for sales and after sale service for the imported medical devices products”



for the relevant products to be registered. A photocopy of the agent's business license is also necessary.

c. Manufacturing authorisation document in the country of origin

This includes documents showing proof of product marketing approval issued by the government of the country (or region) of origin (e.g. 510(k) clearance from the FDA in the US, a PMA, or a CE certificate issued by a European Union Notified Body).

d. Product standard

This includes the quality standards the product must meet before factory shipment, such as a declaration of compliance with adopted standards, either ISO, IEC or other standard technical requirements for the products.

e. Product operation manual

The foreign manufacturer should prepare an operation manual for the medical devices to be imported. Depending on the specialty of the medical devices, the following contents, among others, should generally be included:

- (i) name of product; name, address, postal code and telephone number of the manufacturer;
- (ii) registration number of the products;
- (iii) applied product standards;
- (iv) the main structure, performance, specification of the products; the usage, scope of application, contra-indications,

precautions, warnings and suggestions for the products;

- (v) interpretation of the figures, logos, abbreviations, etc. on the labels and marks;
- (vi) illustration and graphic expression for installation and operation; and
- (vii) the maintenance methods, special storage methods and length of life of the products.

f. Type test report (only applicable to Class II and Class III medical devices)

For medical devices that are not subject to clinical trials, the report should be issued by a medical devices quality control and testing agency recognised by SFDA within one year after the application is accepted by SFDA. For a medical device that must undergo clinical trials, the report should be issued by the said qualified test agency within six months before the commencement of the clinical trial.

g. Clinical trials materials (only applicable to Class II and Class III medical devices)

This includes the clinical trials contract, test schemes, and testing report issued by the qualified Chinese laboratory or foreign laboratory recognised by the Chinese expert panel, as discussed further below.

h. Quality guarantee letter

This letter should be issued in the name of the foreign medical device manufacturer, stating the imported products are of the

same quality as those sold in the country (region) of origin.

i. After-sales authorisation letter by the manufacturer

The foreign manufacturer should designate a local agent in China to be responsible for sales and after sale service for the imported medical devices products. A letter of authorisation from the manufacturer and a letter of undertaking from the agent will be required by SFDA. The manufacturer also has the obligation to inform SFDA properly of any change to its designated agent in China.

j. Manufacturer or agent's declaration

The foreign manufacturer or its designated agent must warrant to the Chinese government agencies that the data and information submitted in the registration documents are accurate, and that it assumes liability for any inaccuracies that may exist.

When are clinical trials of medical devices necessary?

For first-time registration with SFDA for Class II and Class III medical devices, a foreign manufacturer is required to provide a testing report for the product by a SEDDA-certified Chinese laboratory. A clinical trial report with clinical data based on the clinical trials from at least two medical institutions is also required. In certain situations, SFDA will also require the clinical trial report approved by the regulatory authorities in charge of

medical devices in the country of origin of the imported medical devices.

When is a “CCC” mark required?

According to the PRC regulations for compulsory product certification approved by the AQSIQ in November 2001, a variety of electro-medical devices covered in a separate catalogue are required to undergo the “China Compulsory Certification” (CCC) process.

This certification, inclusive of a certificate and a mark, serves as evidence that the catalogue-covered products can be imported, marketed and used in China. The CCC Mark is administered by the China National Certification and Accreditation Administration (CNCA), which designates the China Quality Certification Centre (CQC) to process CCC mark applications.

The following seven categories of electro-medical device products require CCC certification under the currently applicable PRC regulations:

- (i) Electrocardiographs;
- (ii) Hemodialysis equipment;
- (iii) Extracorporeal blood circuit for blood purification equipment;
- (iv) Hollow fibre dialyser;
- (v) Implantable cardiac pacemakers;
- (vi) Medical x-ray diagnostic equipment;
- (vii) Artificial heart-lung machine (including roller pump, pulsatile roller pump, bubble oxygenator, heart exchanger, water heating/cooling system, silicon rubber pump tube).

The application process for the CCC mark requires the submission of numerous technical documents and can take 60 to 90 days or longer. Manufacturers must submit a product sample to an accredited laboratory in China. CCC mark certification also requires a factory inspection by Chinese officials at the applicant’s expense. In some cases, component parts of the manufacturer’s finished products may require CCC

certification. In those cases, the component manufacturer is generally required to apply for the CCC mark.

How long does it take for a registration application?

SFDA has 90 working days to complete its regulatory review of each product. This period, however, is not binding as SFDA may ask additional questions or request additional materials for review. License renewal applications (which must be done every four years within six months prior to the expiry of the license validity period) can also take 4 to 6 months, as they are often treated as a new product. It is worth noting that SFDA’s 90-day review period does not cover the time required for clinical trial testing, which may prolong the process of registration.

Other Issues related to Imported Medical Devices

Labelling and Packaging Requirements

Medical Devices imported into China must be labelled in Chinese. Labels should be affixed to products prior to customs clearance and must include the registration certificate number, product features, the scope of usage for the product, as well as side-effects and other warnings. Perishable products must be labelled accordingly and expiry dates must be stated.

The following is prohibited on medical devices labelling:

- (i) Absolute expressions on efficacy, such as: “best effect of treatment”, “full recovery guarantee”, “immediate effect”, “without toxicity and side-effects”;
- (ii) Guarantees such as “money back if not effective”, “highest technology”, “most scientific”, “most advanced” and “the best”;

- (iii) Cure rate or efficacy rates, comparisons to the efficacy and safety of one manufacturer’s products with another’s;
- (iv) Making use of the name or image of any firm or individual for the purpose of approval or recommendation;
- (v) Expressions that may mislead people into feeling that they have contracted or would contract a certain disease, or that their disease could get worse if this medical device is not used.

Centralised Procurement of Medical Devices

To sell medical devices to State-run hospitals in China, medical devices manufacturers or distributors must go through a bidding and tendering process supervised by MOH. The MOH is in the process of introducing a new centralised purchasing system for high-valued medical devices, which are applying to 3A¹ hospitals in the capital cities of 8 provinces, including Beijing, Tianjin, Shanghai, Chongqing, Guangdong, etc.

Changes and Renewals

There are separate procedural formalities in connection with the modification of any registration information for a registered imported medical device and for the renewal of a registered imported medical device whose registration period is due to expire. It is important to note that the required documents and information, and the relevant application process for modifying or renewing the registration are slightly different. It is therefore always advisable for a foreign manufacturer to consult with its local counsel in China before filing the relevant registration or making related changes or renewals.

¹ Hospitals are ranked in China depending on various factors. There are three levels (3, 2, 1) and sublevels (A, B, C), and the highest rank is 3A.

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China Opens Up Partnerships For Foreign Investors

China's foreign invested partnership enterprises ("FIPE") are the country's most recent investment vehicle for foreigners and are reportedly being established in several Chinese cities.

China's 1997 Partnership Law always catered for FIPEs. However, the government only recently enacted rules, known collectively as the "FIPE Regulations", to govern their administration:

- Administration Regulations on Establishing Partnership Enterprises by Foreign Enterprises or Individuals in China issued by the State Council on November 25, 2009;
- Administration Measures on the Registration of Foreign Invested Partnership Enterprises issued by the State Administration of Industry and Commerce ("SAIC") on January 29, 2010.

These bring the number of legal forms available to a foreign invested enterprise in China to four. The others being:

- Wholly foreign owned enterprise ("WFOE");
- Chinese-foreign equity joint venture ("EJV"); and,
- Chinese-foreign cooperative joint venture ("CJV").

These are known collectively as foreign investment enterprises ("FIE"). With a few exceptions, traditional FIEs were limited liability companies with independent legal person status.¹

Legal Considerations for FIPEs

Market entry restrictions

Chinese law requires FIPE investors to comply with China's industry policies for foreign investment, that is, the Guidance Catalogue of Industries for Foreign Investment ("Catalogue").² This was issued by the Ministry of Commerce ("MOC") and National Development and Reform Commission ("NDRC") in 2007 and is subject to amendment by these authorities from time to time. Before the FIPE Regulations became effective, the Catalogue applied only to traditional FIEs. Now, it is also applicable to FIPE and prohibits a FIPE to be established in any industry that:

- Is prohibited to foreigners;
- Is only open to EJVs and CJVs;
- Is only open to a project with "absolute controlling Chinese shareholder(s)" or with "relative controlling Chinese shareholders"; or
- Requires a specific shareholding ratio of foreign investor(s) in a project.

Generally, the Catalogue subjects FIPEs to more restrictions than CJVs or EJVs: a foreign investor may find it is not allowed to set up a FIPE in the industry it intends to enter.

No clarity on FIPEs as equities investment vehicles

The FIPE Regulations provide no clear guidance on setting up FIPEs for equity



investment. Following verbal consultation with SAIC, our understanding is that a FIPE fund can be registered if its set-up is supported by local regulations. However, the State Administration of Foreign Exchange ("SAFE") has no specific rules on how a FIPE fund's capital could be converted to RMB for equity investment purposes. This may restrict, or even prohibit, FIPE funds from making equity investments in China. We recommend that before registering FIPE funds, foreign investors should first consult the relevant local branch of SAFE to check how it will treat such funds.

Additionally, according to FIPE Regulations and our verbal discussion with SAFE, a FIPE fund is deemed a foreign investor if it invests in another enterprise in China. Thus the investor should follow the current approval and registration requirements under the existing FIE and FIPE regimes, depending on the type of enterprise in which it wishes to invest.

Partnerships with state and public companies barred

Foreign investors should note that Chinese law prohibits any of the following entities from being a general partner ("GP") in a partnership enterprise:

- Wholly state owned companies
- State-owned enterprises;
- Listed companies; and,
- Public welfare institutions or social entities.

Foreign investors should take care when accepting a subsidiary of a state-owned enterprise as a GP, since this may still violate Chinese law and should obtain clarification from the local state-owned assets administration commission in this respect. Rather, they may consider requesting the subsidiary to take the role of limited liability partner ("LP") in the FIPE.).

No registered capital requirement; more capital flexibility

FIEs face a minimum registered capital requirement. In practice, this is normally USD 100,000 although it depends on an individual FIE's business plan. If the FIE pays registered capital in instalments, Chinese law requires its investors to contribute 15% of the registered capital within three months of the date on which the FIE's business license is issued, with the remainder being paid within two years of that date. Investors can contribute cash, assets in kind, intellectual property, and land use rights, etc. as registered capital, but cannot contribute any assets whose value cannot be appraised, for example, labour. In addition, the cash contribution must be a minimum of 30% of the registered capital.

There is more flexibility over capital contributions to a FIPE than to a FIE. A FIPE does not need to have registered capital, nor does it have a mandatory timeline for capital contributions. An investor may contribute cash, assets in kind, intellectual property, land use or other proprietary rights, for which an appraised value is not necessary. Labour contributions are allowed subject to the following restrictions:

- An LP cannot make a labour contribution; and
- Currently, a foreign partner is unable to make a labour contribution.³

Investing in other domestic investments through a FIPE: Clarity needed

If an FIE intends to invest in an enterprise in China, which is a "permitted" or "encouraged" industry under the Catalogue, it need only file with SAIC or its local branches. However, if the enterprise is a "restricted" industry, approval from a provincial level MOC counterpart is also needed.⁴

There are no Chinese laws on the requirements for domestic investments made by FIPEs, except for those whose





main business is “making investment in other projects and enterprises”; that is, a FIPE fund. We recommend FIPEs, other than funds, should consult their relevant local authorities and wait until the regulations or practice is clearer before investing in any enterprise in China.

Tax Considerations for FIPEs

Tax transparency for partnerships; partners to pay taxes

Tax rules for partnership enterprises are scattered throughout a number of tax circulars including Circular Guo Shui Fa [1997] No. 43 (“Circular 43”), Circular Cai Shui [2000] No. 91 (“Circular 91”) and Circular Cai Shui [2008] 159 (“Circular 159”). A partnership enterprise is tax transparent.

Enterprise Income Tax Law and its implementation rules (“EIT Laws”) are not applicable to partnership enterprises. A partnership should calculate its taxable income and then allocate the taxable income to its partners accordingly. The partners pay individual income tax (“IIT”) or enterprise income tax (“EIT”) on this taxable income.

No preferential EIT treatment, at least until regulations are issued

EIT Laws provide preferential treatment (including tax exemption, reduced tax rate, super deduction) to enterprises in certain encouraged activities or businesses.⁵ For example, a high-tech product-manufacturing company may enjoy a reduced EIT of 15%, but a partnership enterprise conducting the same business might not be clear on whether its partners can receive the 15% EIT for such income. We suspect the tax authority will not allow the FIPE partners to enjoy preferential treatment under EIT Laws until a specific regulation has been issued.

Tax on individual FIPE partners

Circular 91 requires an individual partner to pay IIT on the taxable income from a partnership enterprise at a progressive rate ranging from 5-35% as if it is “business income of individual industry and commerce household”.⁶ One exception to this is a partnership’s dividends or interest allocated to individual partners, in which case an individual partner can pay 20% EIT as if it was its own dividends or interest income.⁷ It is unclear how Circular 91 and other relevant circulars will be applicable to foreign partners.

At State level, there is no law to specify if an individual partner will be subject to capital gain tax when it transfers its partnership interests. In practice some tax authorities may impose 20% IIT on the capital gain of an individual partner; however, it is not clear how the capital gain will be calculated as there is no official interpretation on how to impose capital gain in tax treaties on foreign partners.

Nevertheless, a certain level of clarity is provided by local regulations, promulgated mainly to encourage the development of equity investment funds in those local regions. For example, under a local regulation in Shanghai⁸ that covers taxable income from a partnership fund, an individual GP would be subject to the 5-35% IIT, while an individual LP would pay 20% IIT under the “dividends and interests” tax item. However, a local regulation in Beijing⁹ allows all individual partners to be subject to 20% IIT for a partnership fund’s taxable income. Nevertheless, only partners in funds may enjoy this treatment under these local rules.

We believe that the State Administration of Taxation needs to issue circulars to clarify the current ambiguity and inconsistency over the taxing of foreign individual partners.

Tax on company FIPE partners

Chinese law is also unclear on how to tax a foreign company partner. However, the following provision taken from Circular 61, which is applicable only to foreign invested venture capital enterprises (“FIVCEs”), gives some indication as to how these could be taxed:

“A foreign investor should be regarded a foreign tax resident with establishment in China to pay EIT. However, if the FIVCE has not set up a management organisation to engage directly in management and consulting of venture capital business but authorises another management company or FIVCE to operate its business, the partner of this FIVCE can pay EIT as if it is a foreign enterprise without establishment in China.”

If the principles implied here are adopted by Chinese tax authorities for FIPEs, a foreign partner (whether LP or GP) might be taxed as a permanent establishment (“PE”) in China, unless it can prove it has not formed a PE under an applicable tax treaty. Both these scenarios are analysed below:

1. A company partner taxed as a PE

Under the various tax treaties China has signed, a PE must calculate its taxable income as if it is tax resident in China. If there is no special treatment for a PE partner in a FIPE,

it should calculate its own tax income after deducting expenses and costs and should pay 25% EIT.

2. A company partner taxed as a non-PE

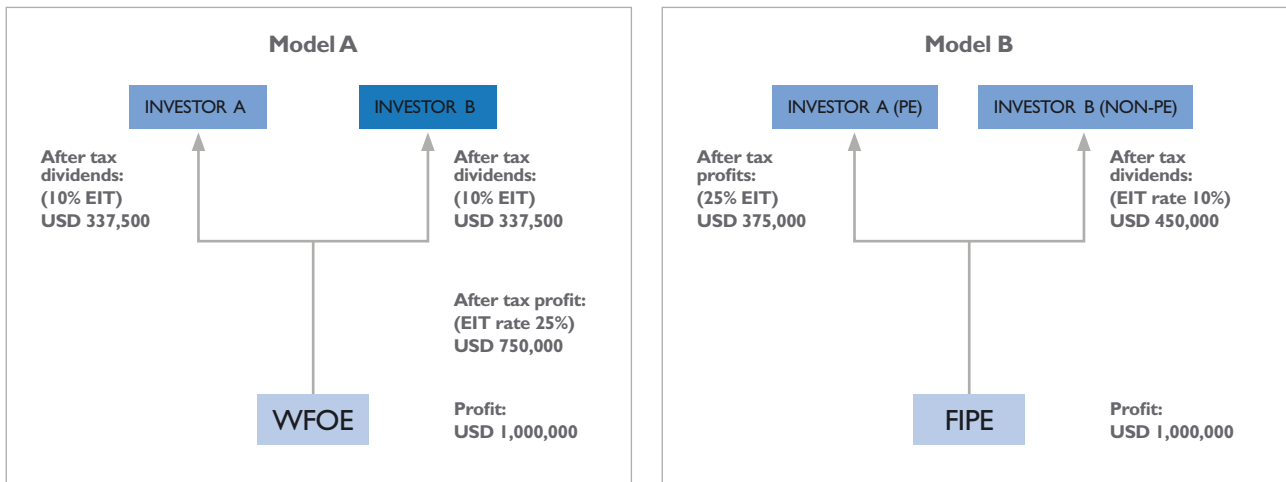
If the Chinese tax authorities confirm that a partner is not a PE in China and an applicable tax treaty exists, the partner may be required to pay tax only on passive income derived from China. Such income includes dividends, interest, royalties and capital gains. In view of the principles implied in Circular 61, the tax authorities might also require a non-PE’s income derived from a FIPE to be subject to withholding tax at 10% or lower as determined by an applicable tax treaty.

The diagram below compares the tax consequences for the same foreign investors when entering into either a WFOE or a FIPE in China. Model A shows two foreign investors setting up a WFOE, while Model B shows the same two investors setting up a FIPE where one investor creates a PE and the other does not. For ease of comparison between the two models, we have assumed:

- The WFOE or FIPE has earned USD 1 million business profit;
- The foreign investors’ shareholding in the WFOE or FIPE is split 50:50, a ratio on which the dividend distribution or taxable income allocation will be based;

“If the Chinese tax authorities confirm that a partner is not a PE in China, and an applicable tax treaty exists, the partner may be required to pay tax only on passive income derived from China”

Comparison of the tax consequences for foreign investors entering into a WFOE or a FIPE in China



“ Before registering FIPE funds, foreign investors should first consult the relevant local branch of SAFE to check how it will treat such funds ”

Under Model B, when the profit from the FIPE is allocated to the PE investor, it attracts 25% EIT with no deductions, while the profit allocated to the non-PE investor attracts only 10% EIT. Thus, in this example, the total tax burden under this model would be USD 175,000. Model B's total tax burden in China is lighter than Model A's, mainly because one layer of taxes is omitted due to the nature of the FIPE.¹⁰

Note that this analysis is purely based on our own assumptions and our understanding of certain tax circular principles, which may not be totally applicable to FIPEs. We do not know if future FIPE tax rules will accord with these principles.

Additionally, if the investors from Model A transfer their shares in the WFOE they will normally pay 10% EIT, subject to the relevant capital gain provisions under an applicable tax treaty. Under Model B however, we believe

that, subject to an applicable tax treaty, 10% capital gain tax might only apply to the non-PE partner when it transfers its FIPE interests. However this needs to be clarified by future tax laws as FIPEs continue to develop in China.

Better tax planning opportunities

The specific character of a FIPE offers investors further tax planning opportunities. Firstly, Chinese law allows investors to agree on the allocation ratio in the partnership agreement. A limited partnership enterprise can thus allocate all profits to some of the investors (“Special Allocation”), or subject to tax authority restrictions;¹¹ it can adjust the allocation ratio when calculating the partners' taxable income.

Moreover, partnership losses can be carried forward and offset against the partnership's income over the next five years,¹² although these losses cannot be allocated to any partner to offset that partner's own profit. When the partnership itself has profits, but a partner has losses, the profits allocated to that partner can offset that partner's loss.¹³ This rule and the Special Allocation rule offer partners the opportunity for tax planning, although this could increase the chance of being challenged by tax authorities.

We are interested to see if various types of FIPE income will be taxed differently at the level of its partners in future FIPE tax rules.

For example, will the dividend income of the FIPE continue to be taxed as the dividend income of its partner, or as the business profit of its partner? Will the FIPE's equity transfer income be regarded as a partner's capital gains?

We believe such questions must be answered by China's tax authority to enable the continued and stable growth of FIPEs in China. The answers will definitely affect FIPE tax planning.

¹ Theoretically CJOs can be set up as entities without legal person status.

² The current version of the Catalogue divides industries for foreign investment into three categories (encouraged, restricted, and prohibited). Foreign investment is usually allowed in any industries not listed in the Catalogue.

³ Primarily because a foreign partner may be unable to obtain a work permit in China by contributing his/her labour to a FIPE

⁴ “Interim Regulations on the Domestic Investment by Foreign Invested Enterprises”

⁵ E.g. software and integrated circuit production; high-tech products manufacture; R&D; environment protection; energy/water saving; safe production

⁶ Under this tax item, if the taxable income is higher than RMB 50,000, the applicable tax rate is 35% with a deduction of RMB 6750

⁷ Guo Shui Han [2001] No. 84

⁸ Hu Jin Rong Ban Tong [2008] No. 3

⁹ Jing Jin Rong Ban [2009] No. 5

¹⁰ Taxation in the investor's home country must be considered in order to make an overall assessment of either model.

¹¹ Circular 159 states that partners must not “agree in a partnership agreement that all of a partnership enterprise's profits be allocated to one partner”.

¹² Circular 91

¹³ Circular 159



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Distressed Ship Financing In China

Options To Consider

The recent difficult financial conditions have taken their toll on many industries, including shipping where the economic situation has changed dramatically in just one year. The global economic downturn has affected the world's major economies wiping out global trade, which has in turn crippled freight rates. Yet, in marked contrast, many shipyards' orderbooks are full with orders for newbuilds that were placed during the shipping boom that preceded the current economic downturn.

For example, the orderbook for Capesize bulk carriers stood at 143 million dwt in January 2009, while the size of the current fleet stood at 142 million dwt during the same period. These orders were placed during the boom time, when freight rates were high and banks were lending money at very favourable rates.

Currently banks are either not lending, or do not have the money to lend, to finance imminent deliveries. In the past, loan-to-value ratios, that are typically used in ship financing arrangements governed by English law, have been a matter of formality and have never been strictly enforced. In the current economic climate, banks are calling on ship-owners to find additional financing to make up the gap, as the valuation of vessels decrease in the current market. As freight rates continue to decline and banks tighten their credit lines for the financing of new vessels, ship-owners are being forced to seek alternative funding or even cancel orders.

China has much at stake, being one of the largest shipbuilding nations in the world. According to statistics released in the first quarter of 2010, private and state-owned shipyards in China cumulatively hold 47.8% of the world's new shipbuilding orders, plus 37.3% of orders in hand for the first quarter of 2010.

The shipbuilding industry is of strategic importance to China. In recognition of this, the State Council in China has passed a stimulus plan to boost China's shipbuilding industry. The plan spans 2009 to 2011 and is being implemented by:

- Encouraging domestic banks to provide sellers with credit to cover the cash flow of shipyards with valid orders;
- Encouraging domestic banks to issue payment and refund guarantees to reputable ship-owners and shipping companies;
- Permitting mortgages to be granted to raise finance for ships-under-construction;
- Permitting shipping/shipbuilding companies to be listed in order to raise capital;
- Setting up funds for investment in the shipping sector; and,
- Encouraging financial institutions to give credit to buyers from large foreign shipping and key shipbuilding companies.

The list below points options that ship-owners could consider in order to obtain additional financing in China ("domestic financing") in light of the current credit squeeze in the Western hemisphere.

“To boost the shipbuilding industry, the State Council in China has passed a stimulus plan that spans 2009 to 2011”



“In November 2009, Bank of China rescued Schulte Group, a German ship-owner, by extending it a USD 149 million credit line... But other domestic banks are more cautious, and loans are being made on consideration of the risks involved, rather than on governmental policies”

1. Arranging Credit for Buyers through Chinese Banks

China's Export-Import Bank ("EXIM Bank") is one of the policy banks led by the State Council to carry out its stimulus plan. It has become one of the first institutions to lend funds to shipbuilders and foreign ship-owners. In a news report from China Daily on July 2, 2009, a senior credit manager from EXIM Bank stated that the bank is prepared to lend funds to the top twenty overseas ship-owners in an effort to help them order ships in China. The bank will also lend to shipbuilders at any phase of the building process, provided they satisfy the bank's criteria.

Though many ship-owners have submitted applications for buyer's credit with EXIM Bank, successful cases have been few and they have mainly been for tankers.

Based on reports in Lloyd's List in November 2009, Bank of China rescued Schulte Group, a German ship-owner, by extending it a USD 149 million credit line for nine chemical tankers, due to be delivered in 2010 and 2011. This marks the first time a Chinese state-owned bank has lent to a foreign owner who had ordered vessels from a Chinese yard.

Other domestic banks are more cautious, and loans are being made on consideration of the risks involved, rather than on governmental policies.

2. Approaching Chinese Credit Insurance Companies for Finance

An alternative to approaching domestic banks for finance would be to approach Chinese credit insurance companies, such as China Export Credit Insurance Corporation ("Sinosure"). Credit insurance companies basically guarantee the lending banks' financing to ship-owners, based on the credibility of those owners. Credit insurance makes it possible for ship-owners to obtain finance from commercial banks in China that have not been involved traditionally in financing shipping, as the banks' risk would be insured by the credit insurance firm.

According to reports in Lloyd's List in December 2009, French ship finance bank Société Générale broke new ground that month, with a USD 167 million loan, backed by Sinosure, to Torm, a leading Danish tanker company for financing a fleet of medium-range tankers. Société Générale acted as co-mandated lead arranger on the deal, along with the Bank of China. Half of the loan was covered by the export credit agency, for up to 95% of its value, while the other half remained an uncovered commercial loan.

3. Considering Sale and Leaseback of Vessels Arrangements

Ship-owners can consider entering into a sale and lease-back arrangement with a credit insurance company, whereby the ownership of the vessel belongs to the credit insurance





company. Under such arrangements, the ship-owner enters into a long term (10 to 15 years) charter with the credit insurance company, buying back the vessel at the end of the term for a nominal sum.

However, credit insurance companies will probably only buy a vessel at its current market value, potentially leaving a shortfall between that and its newbuild cost, which ship-owners may have to finance with equity. At the same time, news reports suggest that in an attempt to help domestic buyers to bridge this gap, the Central Government will extend its policy of giving domestic ship buyers a 17% subsidy on the prices of ocean-going ships until 2012.

For options (1), (2) and (3) above, ship-owners may need to sign long term charters or contracts of affreightment ("COAs") with Chinese state-owned chartering corporations, such as COSCO, or the China National Chartering Corporation ("Sinchart") or alternatively with large state-owned steel mills. This will add to a vessel's commercial value and viability, factors financial institutions will consider favourably when deciding whether to grant credit.

4. Leveraging Current Orders on Credit Offered for New Vessels

To encourage new shipping orders, the Central Government has now made it easier to obtain financing for new orders rather than for existing orders. Thus, ship-owners who will consider adding new orders to existing ones may be able to leverage credit for those existing orders against funds that Chinese banks might offer for new vessels. It might also be possible to put a package deal in place covering all the vessels.

5. Approaching Chinese Shipping-focused Private Equity Funds

To aid the shipbuilding industry, a 20-billion yuan shipping assets investment fund initiated by the State Council has been formed in Tianjin, China. The fund will aid in equity investment and ship leasing. It will also support mergers and acquisitions among shipyards and help in purchasing vessels that are cancelled by buyers. This private equity fund has to-date raised about 2.85 billion yuan from several state-owned enterprises and investment funds, including Tianjin City Infrastructure Investment Co., Tianjin Jinneng Investment Co., Tianjin Innovative Finance Investment Co., and the China Shipping

Assets Investment Fund Management Co. This investment fund is managed by China Shipping Assets Investment Fund Management Co., and the trustee bank is Shanghai Pudong Development Bank. This may offer opportunities to explore co-investment or equity investment by these investment funds.

Although the Central Government has authorised the above measures to provide the shipbuilding sector with an additional boost, ship-owners must be aware that the demand for domestic financing is immense. The commercial viability of a vessel will be a very important factor when banks consider whether to provide finance.

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Practical Tips For Managing Disputes In The Chinese Context

Parties enter into transactions with the aim and expectation of a successful outcome, and often treat dispute resolution clauses in their contracts as an afterthought - something for the “papering” process only. Unfortunately, problems sometimes do arise, despite all measures taken to the contrary.

This article discusses some of the important practical considerations for parties to take into account when entering a transaction and when faced with potential conflicts with business partners in China. We have highlighted the steps to avoid common mistakes and for simple but effective measures essential to optimise standing in a legal dispute.

BE PREPARED: Draft dispute resolution clauses carefully

China-related disputes usually bring about extensive and often time-consuming negotiations, which are frequently set apart by their particularly Chinese characteristics. These may include the importance of saving “face”, indirect approaches to key problems, the impacts of business relationships (“guanxi”), and other factors.

However, while it is often (though not always) in the interest of all parties to reach a negotiated settlement, the traditional view that Chinese parties dislike or seek to avoid adverse proceedings, whether in litigation or arbitration, is no longer fully accurate. Recent years have seen a dramatic increase in the number (and value) of China-related legal proceedings, as well as in the percentage of such proceedings that are initiated and driven by the Chinese party.

In China-related transactions there is a widespread view that arbitration is more advantageous than litigation. This is not only because of the elements of neutrality, confidentiality, and ability to select arbitrators with expertise to hear the case, but also because of the international enforceability of arbitration awards under the New York Convention (as well as enforcement

under the Arrangement between the Mainland and the Hong Kong SAR on the Mutual Enforcement of Arbitral Awards). However, arbitration is a consensual process that is only available upon agreement of the parties. If there is no agreement to arbitrate or if the arbitration agreement is defective, the claimant may have to sue at the courts that have jurisdiction over the dispute, i.e. generally at the place of business of the defendant. In such circumstances, the party that feels most comfortable with those courts is likely to have a stronger negotiating position, and the other party - a stronger incentive to settle. It is, therefore, vital to draft dispute resolution clauses with care to ensure that they provide the intended protections.

In terms of permitted arbitration venues and rules, Chinese law distinguishes between “domestic” and “foreign-related” transactions. A contract will generally be “foreign-related” if (i) one of the parties to the contract is foreign (with Hong Kong being treated as foreign for this purpose), (ii) the object of the contract is pursued or located primarily or entirely outside of Mainland China, and/or (iii) the contract relates to the “occurrence, modification or expiry of civil rights or obligations outside of China”. “Foreign-related” disputes can be arbitrated either within or outside of Mainland China and may be conducted either under the auspices of an arbitral institution or ad hoc.





“Domestic” transactions – a category which includes any transactions between two Chinese entities not falling into categories (ii) or (iii) above, even if one of the Chinese entities is wholly foreign-owned – may only be arbitrated within Mainland China. Such arbitration must be conducted under the auspices of an arbitral institution registered in China, and ad hoc arbitration is not permitted. Violation of these restrictions will result in invalidation of the arbitration clause, leaving the parties with domestic courts as their only option.

BE PREPARED: Document facts and events pertaining to the dispute

If negotiations break down or if one party decides to initiate legal action parallel to the negotiations, it becomes of utmost importance that each of the parties – whether acting as claimant or respondent – be able to prove their case before the relevant tribunal.

In many jurisdictions, and particularly in China, contemporaneous documentary evidence supporting the allegations is of considerable importance. It is, therefore, recommended to keep careful files throughout a transaction, documenting all important aspects and developments – and any early signals of a potential dispute – in a comprehensive fashion. In international commercial arbitration, a wide range of documentary evidence – from emails and manager notes to formal correspondence – is generally admissible, and photocopies usually suffice unless there are justifiable doubts as to the authenticity

of a given document. In contrast, in litigation before the Chinese People’s Courts the parties are required to submit notarised and legalised copies of all documents made outside of the People’s Republic of China which the party intends to rely upon as documentary evidence.

The file of documents to be kept would include letters and other correspondence with the other side that describe the dispute and/or identify breaches committed by the other side, any requests for the other party to remedy such breaches, and any responses received from the other side. Wherever possible, attachments sent with such correspondence should be kept in the file together with the correspondence, so as to create a clear reference when and if needed.

In addition to maintaining copies of formal correspondence, it can also be helpful to document important facts and conditions by, for example, conducting on-site inspections and taking photographs of problem installations. Meetings, discussions, telephone calls and on-site visits should be, as far as appropriate, documented in internal “notes to file”, in particular if the other side has made admissions or concessions during such events. Moreover, the paper trail does not have to consist only of formal letters or formal reports. Often, a carefully drafted string of emails will serve the same purpose. Private journals of project managers and staff are another important source of documentary evidence. As they provide for a contemporaneous account of events, they also help project managers called upon as witnesses to remember the facts and development of the dispute.

It is important to choose the wording carefully, especially when drafting informal correspondence, such as emails. While such correspondence should give a clear account of the events in question – especially breaches by the other side and related requests for remedies – one should avoid any unnecessary admissions of one’s own failures or premature commitments, as they

may have an impact on legal rights and may be damaging in legal proceedings.

In addition, it is becoming increasingly common in international arbitration for the tribunal to order at least some limited document disclosure by each party at the request of the other. Such disclosure orders are often guided by the principles of the IBA Rules on the Taking of Evidence in International Arbitration, which limit disclosure to “narrow and specific” documents or categories of documents that are “relevant to the case and material to its outcome” and that are not already in the possession of the requesting party. Exemptions from disclosure can be sought on various grounds, including where the documents in question are privileged, unreasonably burdensome to produce, or on grounds of commercial or technical confidentiality that the tribunal determines to be compelling. Although to date disclosure orders by tribunals sitting in proceedings before Chinese domestic institutions such as CIETAC are relatively rare, there are indications (such as a recent joint CIETAC/IBA conference on the topic) that they may become more prevalent in the future.

Therefore, care should be taken even with internal documents to ensure that they are either protected by applicable privilege, or would not be damaging if ultimately disclosed to the other side in arbitral proceedings. For this reason, internal notes and correspondence discussing the chances of the success of legal proceedings, potential liability or defects in a party’s case, or negotiation strategy are best developed with the involvement of legal counsel to preserve an argument of exclusion on grounds of privilege.

BE PREPARED: Ensure possession and preservation of important documents

If important documents are in the possession of third parties (such as the common joint venture of the parties, suppliers or customers), it is important to ensure copies of these documents are retained as early as possible. If possible, originals should also be retained if a

“ Recent years have seen a dramatic increase in the number and value of China-related legal proceedings, as well as in the percentage of such proceedings that are initiated and driven by the Chinese party ”

dispute appears imminent. This is particularly relevant if there is a risk that a party may be forcefully excluded from the joint venture premises or that the other party may remove, destroy, alter, or otherwise tamper with such documents.

In addition, for arbitral proceedings it is particularly important to ensure the possession of the original arbitration agreement, which is required in many jurisdictions for enforcement of the award. For all other documentary evidence simple photocopies are usually sufficient.

The requirements for documentary evidence in litigation vary from one jurisdiction to another. While in many jurisdictions it is sufficient to provide photocopies, in other jurisdictions the parties may be required to submit original documents or, as in China, even notarised and legalised copies of the originals.

BE PREPARED: Be careful when preparing correspondence during settlement negotiations

Correspondence prepared during settlement negotiations should be reviewed carefully to ensure that all rights with respect to legal proceedings are properly reserved and that

the contents of such letters do not impose limitations on a party's flexibility to present its case before a court or arbitral tribunal.

All settlement proposals, drafts and correspondence related to settlement should be marked as such. A header stating "exchanged in connection with settlement negotiations; confidential and without prejudice" should suffice.

It is, however, important to note that even if the parties agree to keep the documents exchanged during settlement negotiations private and confidential, in practice such documents may in any event make their way into arbitration / litigation proceedings.

BE PREPARED: Comply with notice requirements and statutory limitations

Many arbitration clauses contain a mandatory negotiation period, the duration of which is often specified as 30, 60, or 90 days. As a general rule, the arbitral tribunal will only have jurisdiction to hear the case once this negotiation period has expired. Even if the settlement negotiations have been ongoing for some time, to minimise the risk of jurisdictional challenge, it is often

advisable to give formal notice citing the relevant arbitration provision prior to the initiation of arbitration. Equally, parties should pay attention to statutory limitation periods so as not to be barred from raising claims by waiting too long to initiate suit after the claim came into existence or a party became aware of the relevant facts.

BE PREPARED: Have procedures in place to deal with claims

Once a request for arbitration has been filed, the early stages of the arbitration – including deadlines for an initial response, initial indication of counterclaims, and designation of arbitrator where relevant – can occur quite quickly and involve some very important strategic decisions and steps. Claims are often addressed simply to the company, or to an individual named in the notice provision (who may no longer even be with the company). It is, therefore, important to have procedures in place to recognise claim documents and transmit them quickly to the responsible individuals within the company, rather than allowing them to languish in the company mailroom indefinitely.

Conclusion

Even though a negotiated settlement is usually the preferred solution to a dispute, parties place themselves in a better negotiating position by preparing in parallel for the possibility that negotiations will break down, and arbitration/litigation will become necessary. By keeping careful records of discussions and developments and establishing a solid paper trail, a party can better preserve its rights and will have a greater chance of success in the event that arbitration/litigation is ultimately required. Counsel's assistance in this process can be invaluable.



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Hong Kong IPO: **A Client's Perspective**

In recent years, the Hong Kong Stock Exchange (HKEx) has emerged as an attractive market for initial public offerings (IPOs). A successful flotation requires careful planning, strategic thinking and advisers who understand both the requirements of the regulator and the issuer's business.

A Salans client - **Lansen Pharmaceutical Holdings Limited** – shares its experience.

On the Rise: The Hong Kong Stock Exchange

There is no doubt that in recent years Hong Kong has emerged as one of the world's leading capital markets, and the Hong Kong Stock Exchange (HKEx) has played an integral part in the city's rise as one of the world's major financial centres.

Though significantly smaller than either the New York or London Stock Exchanges (i.e. by total market capitalisation and the number of companies listed), HKEx is no less ambitious. Following the structure of the London, Frankfurt and New York markets, HKEx also has two Boards. The Growth Enterprise Market (GEM) is younger and more junior; while the Main Board is the core market and hosts companies with a longer trading track record and data performance.

Whilst European markets were affected by an extensive period of inactivity up to the fourth quarter of 2009, the HKEx securities market proved more resilient to the downturn caused by the global financial crisis. By the end of 2009, the total market capitalisation of the securities market (including the Main Board and the



GEM) was USD 2,301.2 billion (HKD 17,874.3 billion). Single-day turnover in the securities market had its highest level of the year at USD 18.9 billion (HKD 146.6 billion) on 13 May 2009, and its total securities market turnover was USD 1,997.5 billion (HKD 15,515.2 billion). In 2009, a total of 73 companies were newly listed on the Main Board and the GEM, raising USD 32.0 billion (HKD 248.2 billion). This has made HKEx the top stock exchange in the world in terms of funds raised by way of IPOs. Total equity funds raised amounted to USD 82.7 billion (HKD 642.1 billion) in 2009.

In the past few years, HKEx has made extra efforts to boost its appeal as a listing venue for companies from outside Hong Kong and mainland China. The exchange has been actively trying to attract companies based in Australia, Africa and Latin America as well as in the emerging markets of Russia and the CIS. In particular, those companies involved in metals and mining and in traditional and alternative energy sectors have been successfully targeted.

As a result, there has been a continued rise in the participation of institutional investors in the market, and many of the IPOs through HKEx have also been global fund raisings. UC Rusal, South Gobi and L'Occitane are examples of companies headquartered outside Hong Kong and China and which are now listed on HKEx.



Why Hong Kong?

There are a number of reasons why a foreign company should find a Hong Kong flotation attractive. With zero capital flow restrictions, numerous tax advantages, currency convertibility and the free transfer of securities, Hong Kong is an attractive market for both issuers and investors alike. Serving as the gateway between mainland China and the rest of the world, and with its close trading and business links to other Asian economies, Hong Kong is strategically placed in a high growth region.



Hong Kong's political and economic stability together with its well-established legal system, based on English common law principles, offers an attractive foundation for companies to raise funds, and gives confidence to investors by way of robust corporate governance requirements. Along with Hong Kong Financial Reporting Standards and International Financial Reporting Standards, HKEx permits the use of generally accepted accounting principles in the United States of America, or other accounting standards by new applicants, under certain circumstances.

Hong Kong boasts sound and solid securities and banking sectors which are supported by a strong trading, clearing and settlement infrastructure. The Hong Kong Monetary Authority's US Dollar Clearing System allows local financial institutions to settle US dollar transactions in real time in the Asian time

zone against the delivery of Hong Kong dollars, instead of 12 hours later in the New York time zone. This significantly reduces the foreign exchange settlement risk.

Another important feature of the Hong Kong market is its liquidity. Once a company is listed in Hong Kong, the market offers broad opportunities for further fundraising, often through undocumented primary and secondary block trades to institutional investors.

Practical Tips for Issuers

In Hong Kong, unlike in most other jurisdictions, the stock exchange acts as the frontline regulator of listing approvals – a role it must balance against its commercial ambitions to attract new listings. Any foreign company wishing to list in Hong Kong undergoes

serious scrutiny, and a high level of disclosure is required (in line with international standards and demand from listed issuers). The strict corporate disclosure requirements ensure that investors have access to timely and transparent information which allows them to appraise the position and the prospects of the companies on the market.

We advise that companies do not underestimate the time required for the preparatory work for the flotation and do their 'corporate housekeeping' as far in advance as possible. Being mindful of the requirement to comply with the transparency rules dramatically reduces the obstacles to a successful flotation.

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The Lansen Experience - A View From The Board

Lansen Pharmaceutical Holdings Limited (Lansen) is a pharmaceutical company which engages in the development, manufacturing and distribution of rheumatic specialty western pharmaceuticals in the People's Republic of China. In 2005, Lansen was acquired by Cathay International Holdings Limited (Cathay), a company listed on the main board of the London Stock Exchange.

In May 2010, Lansen completed its IPO on the Hong Kong Stock Exchange (HKEx) and, through this flotation, raised just over USD 78 million (HKD 611.3 million, including the exercise of an over-allotment option of 15 million shares representing 15% of the new shares initially offered under the Share Offer). The IPO was priced at the top of the range and was over 850 times oversubscribed, which made it one of the most popular public offers ever to be completed on HKEx.

Based in Ningbo, China and with its parent's management headquarters in Hong Kong, strictly speaking, Lansen is a 'local' company. However, the Hong Kong IPO was, in many ways, an international transaction and required compliance with the laws of three different jurisdictions and approvals from two major international securities regulators, the UK Listing Authority and HKEx.

Salans acted for Lansen during its flotation on HKEx. **Benny Pang**, managing partner of Salans' Hong Kong office, led the Hong Kong team advising Lansen. Salans corporate partner **Rob Askew** in London advised Lansen's parent company, Cathay, on its obligations under the UK Listing Rules. Prior to the Lansen flotation, Rob had represented Cathay for over a decade.

We asked **Mr. Stephen Hunt**, non-executive chairman of Lansen's Board of Directors and non-executive deputy chairman of Cathay's Board of Directors about the challenges and the attractions of the Hong Kong flotation.

Given that Lansen's parent company is listed on the main market in London, was any consideration given to listing Lansen elsewhere and why was it ultimately decided to proceed with a Hong Kong listing?

Stephen Hunt: That's a good question. Lansen is a company whose business and assets are located in mainland China. We felt that the proximity to the Hong Kong investor community was a compelling factor that would enable a deeper understanding of the business being floated. We consulted extensively with our professional and financial advisers and, as with any IPO, the timing of the offer and the location of the market were key considerations. The pharmaceutical sector was performing well in Hong Kong at the time our decision was being made. All the indications were that with Lansen's solid business platform, its excellent recent performance and good expansion opportunities the investor appetite would be strong in Hong Kong. And so it proved.

Whilst we were very aware of the London market and continue to monitor matters closely, we felt Hong Kong was the sensible choice. Our decision to date has proved to be correct and we remain positive about the future prospects.

Were there any particular issues connected to the Lansen IPO that proved particularly challenging or required enhanced dialogue with the regulator?

Stephen Hunt: One of the key issues for the Hong Kong regulator to understand was the relationship between the Lansen business and its parent company. Commercially speaking, the business plans of both companies are compatible but the Hong Kong regulator was keen to understand how the Lansen business would be able to run independently going forward. We understood how important this was both from a regulatory point of view and from a business perspective.



Lansen Pharmaceutical Holdings Limited

Major Industry:

Medicine & Drugs,
Pharmaceutical & Healthcare

Principal Activities:

The development, production and sale of specialty prescription western pharmaceuticals for the treatment of autoimmune rheumatic diseases in China

Headquarters:

Ningbo, Zhejiang Province, China

Holding company:

Cathay International Holdings Limited (London mainboard listed, FTSE sector - Pharmaceuticals & Biotechnology)

Employees: 630

1993: Ningbo Liwah, a major operating subsidiary of Lansen Pharmaceutical, established

2001: Shenzhen Lansen established

2005: Ningbo Liwah and Shenzhen Lansen acquired by Cathay International Holdings Limited

2010: listed on the Hong Kong Exchange (SEHK: 00503), raising over USD 78 million (HKD 611.3 million) through its IPO. The public offer was over 850 times over-subscribed, having become one of the top ten over-subscribed IPOs in the history of the Hong Kong Exchange

2009 Turnover: USD 47.9 million

2010 Market Cap:

USD 199 million (HKD 1,548 million; based on closing price of HKD 3.73 on 27 September 2010)

Main recognition:

The Group has received an award in recognition of its achievements in product quality, technological development, and success in brand development from Chinese Rheumatology Association



Mr. Stephen Burnau Hunt

Mr. Stephen Burnau Hunt was appointed as a non-executive director and chairman of Lansen Pharmaceutical Holdings Limited on 9 April 2010. He is the former executive director and deputy chairman of Cathay International Holdings Limited and continues to sit on the Cathay board as a non-executive director and deputy chairman. He was formerly the managing director of Aliant Capital, an investment company in Hong Kong.

Mr. Hunt has spent 24 years with Bank of America in international management and lending positions. He was senior vice-president and area general manager for Bank of America located in Hong Kong.

In 1989 he was president of the American Chamber of Commerce in Hong Kong and in 1990, was appointed to the Hong Kong Government's International Business Committee.

From 1989 to 1991 he was a member of the Hong Kong Government's Advisory Committee on Free Trade and is currently a trustee of the American Chamber of Commerce's Charitable Foundation.

Mr. Hunt is also a member of the Main Board and GEM Listing Committee of the Hong Kong Stock Exchange.

He holds a Bachelor of Arts degree from Duke University and a Master's degree in International Affairs from Columbia University.



The core business of Lansen does not compete with the Cathay group following the IPO. To underscore the commercial reality, a formal 'non-compete' undertaking was entered into at the time of the listing, the terms of which were extensively described in the Hong Kong IPO prospectus.

The continuity of the management team was also very important to us, and we went to great lengths to ensure that this would be preserved for an appropriate period going forward. Further, in accordance with the requirements of HKEx, an appropriate Selling Restrictions Agreement was entered into in respect of Lansen shares held by certain key members of the Lansen management.

What are your reflections on the IPO process, and is there any advice you would give to issuers considering a listing?

Stephen Hunt: The listing of Lansen in Hong Kong represents a significant step forward in the development of the Cathay group. The success of the flotation is an endorsement of the investment strategy of the Cathay group management team and its ability to identify opportunities in the PRC to build shareholder value, and we are very excited about Lansen's opportunities for further growth.

Salans worked tirelessly as Lansen's legal adviser to make the flotation a success. As I have already stated, one of the key aspects of a successful IPO is timing and the co-ordination of the process. In this area the support and guidance of Salans

was invaluable. It was important that the Cathay shareholders were able to vote on the proposal to proceed with the Lansen IPO on a fully informed basis. We, therefore, needed to time the convening of Cathay's special general meeting in order to obtain shareholder approval at the most appropriate time.

Working with our financial advisors, Rob's team in Salans' London office was instrumental in ensuring that the approval of the UK Listing Authority of the circular to Cathay's shareholders was obtained so that we were able to send the document to shareholders at the right time. Similarly, once the process was off and running, as one of the key professional firms working for Lansen's IPO, Benny Pang and his team locally at Salans in Hong Kong advised Lansen in respect to questions raised by the Hong Kong regulator. Coordinating the approval process was challenging and required expert assistance and a very real appreciation of the questions raised by the regulators.

My advice to issuers is to plan ahead and to consider the timing of issues carefully. Dedicate the appropriate management to the task and select advisers who understand your business and who are able to manage significant work volume whilst keeping to deadlines. Keep your advisers fully informed. Carry out any required intra group re-organisations or restructuring as far in advance as possible, and consult with your lawyers early to ensure that this is appropriately documented.

Fraud & Corruption In China: Corporate Compliance & Sanitization

Fraud and corruption are key business risks for foreigners in China. Almost every day the Chinese media report a new investigation into a high profile official taking bribes. A government report estimates that about 10% of all government spending, contracts and transactions are used as kickbacks and bribes, or are simply stolen. Fraud is also part of daily business life in China, but is not often reported in the media.

Both fraud and corruption flourish in environments where corporate governance and compliance systems are insufficient. They usually focus on supply chain weaknesses, frequently coupled with IP infringement and tax evasion.

Many Chinese live by high moral standards, and corruption is consistently rated the number one concern in opinion polls (ahead of pirated goods and pollution). Yet fraud and corruption remain a problem, primarily because compliance systems in China are notoriously weak, both for Chinese companies and for foreign subsidiaries.

When fraud or corruption is uncovered, the Chinese legal infrastructure is often unhelpful. Police and state prosecutors frequently do not want to get involved as they do not believe solving companies' "economic" problems is their concern. Exercising diplomatic pressure or using investigators to collect evidence can help, as the police are more likely to take action when given well investigated material.

The key issue however, is how to prevent and eliminate corporate fraud and corruption in China. The so-called "Sanitization Process" (illustrated by diagram A) comprises steps to be taken to reduce the risk profile considerably and these are considered in this paper:

Step I: Risk Assessment - Due Diligence and Internal Audits

The first step in eliminating corporate fraud and corruption is to carry out an internal revision of the current procedures, or for an audit team to conduct an on-site risk assessment. Often internal revision teams based remotely at company headquarters feel uneasy when asked to investigate in China. However, many external specialists including lawyers, forensic auditors or specialised investigators, with the necessary social and cultural skills, are available to help. Our experience shows that serious matters requiring correction are detected in about two-thirds of such investigations.

A good way of designing an effective investigation program is to conduct a value chain analysis on the company and all third parties linked into it, as shown by diagram B on page 25.

Almost all fraud and corruption is a collusive activity involving a company's own staff and intermediaries including:

- Distributors
- Agents
- Sales representatives
- Suppliers

Diagram A: The "Sanitization Process"





- Joint venture partners
- Consultants
- Local accountants
- Customs brokers

Typical causes for concern in an intermediary due diligence are:

- Inadequate intermediary, staff size, experience, expertise
- Excessive compensation
- Payments in cash to intermediaries' private accounts
- Payments made to shell corporations
- Intermediary will not use written agreement, only oral agreements
- Vague scope of work descriptions
- Intermediary worked in the same government office previously
- Intermediary was recommended by a government official

If serious problems are detected during an audit, it is important to terminate the worst schemes quickly, even before stable risk management and compliance systems can be established. In practice, detecting and eliminating unethical behaviour creates awareness for the scale of the problem and triggers more systematic action.

A problem that foreign investors often face is the massive loss of face for the Chinese management caused by conducting a full assessment. Typically, the Chinese managers either resign or the company is forced to terminate their employment, either of which can result in serious problems for the company. Adopting indirect approaches, for example using a third party market study on procurement and distribution structures, or using customer requirements to convince local management to adjust structures and processes that are prone to illegal activities, could alleviate this problem.

Step 2: Compliance Organisation

Most victims of unethical practices have neglected basic business controls and measures. Such blind spots attract fraudsters. Once the risk profile has been identified, compliance systems and structures must be developed. This is usually done by reviewing a company's corporate structure and its processes.

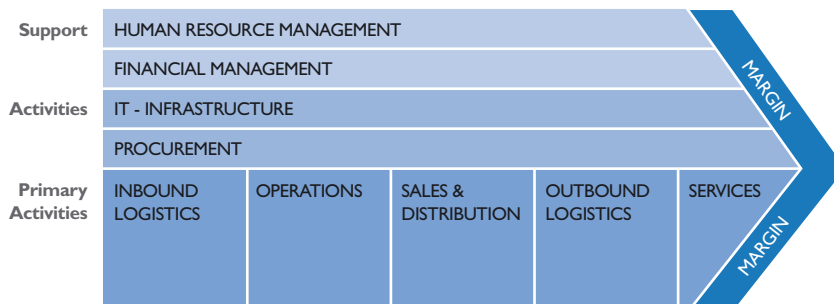
Corporate Structure

Under Chinese company law, the board of shareholders of a limited liability company is the highest organ of the company. Usually, particularly in foreign invested companies, the shareholders establish a board of directors that is charged with strategic decision making and with supervising the operational managers, typically headed by a general manager.

Under company law, a supervisory board can also be established, or for small companies, one or two supervisors can be appointed (Article 52 ii Company Law). Directors and senior officers may not concurrently serve as supervisors, making this organ particularly suitable for a top compliance role in the organisation.

Many companies have not yet defined a clear role for their supervisory board and may want to take a more cautious approach, by appointing a Chief Compliance Officer (CCO) or creating a specific compliance department to support their general manager.

Diagram B: Value chain analysis



Stock corporations have a more complex corporate governance structure and further bodies are also needed for listed companies (see diagram C).

Businesses must structure their compliance organisation according to their own size and needs: there is no standard solution as compliance organisations and systems are embedded in the overall structure and culture of a global enterprise group. The compliance manager; however, needs adequate resources and authority to fulfil the role, together with regular access to top management.

Once an appropriate compliance organisation has been developed, it should be properly anchored in the corporate constitutional documents: ideally being integrated into the company's articles of association. For foreign invested companies, this can be a cumbersome task as changes need to be approved by the relevant examination and approval authority, which are not always open to innovation. The local Administration of Industry and Commerce (AIC) bureau also has to accept the registration of the new articles of association. If the authorities are not cooperative - something we have observed in some parts of China - an alternative is to create specific management rules to be enacted by the board of directors. Creative legal counsel will always find a way to establish a sufficiently stable legal basis for a compliance organisation.

Processes

A new organisational structure alone does not change much; effective compliance processes must also be developed. Regular monitoring is a key element in a sustainable corporate compliance policy. Managers often shy away from establishing clear monitoring systems fearing employees could misunderstand this as mistrust, yet, the number of employee-related problems can be dramatically reduced if they are discovered earlier.

Adequate reporting systems, in particular confidential hotlines and whistle-blowing procedures, are a prerequisite for effective

monitoring, but must be linked to the head of compliance. Some international investors also develop a second reporting line to the foreign group company's compliance.

While each company must find a design that suits its own needs, a robust risk and compliance management system should encompass:

- Segregation of duties
- Clear procurement processes
- Restricted access to IT systems
- Rotation of sales and finance personnel
- Adoption of 'Four Eyes Principle' (e.g. the CEO together with a relatively independent CFO)
- Documentation and archiving (on central networks)
- Background screening of staff, vendors, distributors, resellers

Managing compliance-related risks is a continuous task as there is a high risk that once compliance problems have been eradicated complacency can set in, with the same problems re-emerging.

**Step 3:
Company Guidelines**

Often, a company's employees simply do not know what is acceptable and what is not. This is particularly an issue with regard to corruption, where what employees consider common practice may border on a criminal act in the opinion of foreign shareholders.

Creating "codes of conduct" or specific company guidelines is very helpful in establishing acceptable behaviour. The guidelines usually cover:

- Confidentiality rules
- Anti-corruption rules
- Anti-trust rules
- Insider trading rules
- Gift policy
- Travel and entertainment policy
- Donations policy
- Use of business intermediaries

Well-drafted policy guidelines, adjusted to Chinese perceptions, can have a strong moral force. The code of conduct and other guidelines should be integrated in the labour

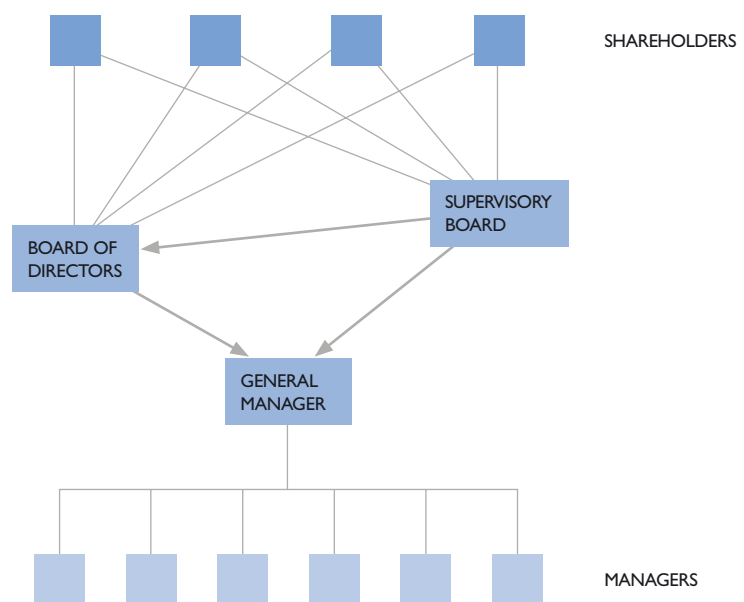


Diagram C: Governance structure in limited liability companies



contracts and the employee handbooks to ensure all employees are aware of the standards required by an international organisation. All employees must confirm in writing that they have read the guidelines. Policies must be in place that outline what constitutes a violation of these standards and what sanctions are taken in this instance. To create a legal basis for disciplinary actions, including dismissal, these must be set out in the employee handbook. The handbook should be implemented in the company by a “democratic” procedure as required by the PRC labour contract law. To meet the requirement for employee participation it might also be worth involving trade unions. In practice, it is often helpful to ask staff to report any suspicions they may have regarding corruption, but it is also important to prevent baseless denunciation of colleagues.

These policies should also be tied into contracts with suppliers and distributors to outlaw unethical behaviour, especially collusive activities between staff and business counterparties.

Step 4: Compliance Culture

Ethical and unethical behaviour in a company has a clear cultural element, and companies must develop a “culture of compliance” to achieve sustainable change. Slogans like, “we do not buy business!” send a message that is profound and easy to understand. The effect of culture should never be underestimated

in fighting fraud and corruption in China. If an organisation’s culture accepts fraud and corruption as standard business practices, the whole organisation tends to move in this direction and vice versa. The same applies to top management: if the average employee believes “those on the top are corrupt or exploit the company”, they will see no reason to behave differently. Senior management buy-in for compliance is a pre-requisite for change, but in China securing this buy-in is often a major challenge.

Simply including compliance in the labour contracts and employee handbooks is not sufficient, as for many staff in China it will be the first time that they encounter concepts such as good governance. Compliance must be backed with a solid training program, ideally embedded in specific workshops attended by a large number of employees, which must tackle cultural norms and generally accepted practices. More advanced companies are also disseminating their codes of conducts into third party business associates through ethical awareness and compliance training.

Liabilities for Non-compliance

A risk to consider is the possible violation of relevant bribery and corruption laws, such as the US Foreign Corrupt Practices Act (FCPA) or the UK Bribery Act. An FCPA violation occurs when a company or individual corruptly pays a foreign official to assist in obtaining or retaining business, or when there is deceptive recordkeeping. The FCPA applies not only to US individuals and US companies, but to foreign-based

companies listed on US stock exchanges (including the European and Asian subsidiaries of such companies) and to foreign companies or individuals who, when visiting the United States cause, directly or indirectly, an act in furtherance of a corrupt payment.

Foreign companies doing business in China are also subject to Chinese anti-bribery rules governed by the Anti-Unfair Competition Law of the PRC (“AUCL”), the Interim Rules of the State Administration of Industry and Commerce on Prohibition of Commercial Bribery (“Interim Rules”) and the Criminal Law of the PRC (“Criminal Law”). Under the AUCL and Interim Rules, a business operator may not give something to another legal entity if the purpose is to exclude its competitors from obtaining transaction/opportunities or favourable business conditions. In addition, a sales commission payment that is not correctly booked is deemed to be commercial bribery. Under the Criminal Law neither government officials nor commercial entities may give or accept bribes for any “wrongful and unlawful interest”.

The scope of commercial bribery under the PRC Criminal Law is not exactly the same as that under the unfair competition law system (i.e. the AUCL and the Interim Rules). The major differences are set out in the table below.

Under Criminal Law, commercial bribery does not depend on the way the payment is booked, so not all acts that constitute unfair trade practice are regarded as criminal activities.

	AUCL	Criminal Law
Bribe Recipient	Other legal entities or individuals	State-controlled enterprise or its staff
Main Condition	Bribery of others in order to purchase or sell products, or: Payment of kickbacks or commissions that are not correctly booked	Transfer of money or properties for wrongful and unlawful interests



A criminal offence is committed only when the bribe is offered to a SOE or an individual who works for an enterprise AND it involves wrongful or unlawful interests.

Bribery for commercial purposes is also a criminal offense under section 299 of the German Criminal Code (Strafgesetzbuch, StGB), which is not limited to competition in Germany. Certain acts committed outside Germany can be punishable under German Criminal Law (Weltstrafrecht).

Unethical behaviour may also create risks for foreign employees in China. The recent Rio Tinto case is a relevant example. Four employees of Rio Tinto's Shanghai representative office were arrested last year on suspicion of stealing state secrets and were eventually indicted on charges of bribery and stealing commercial secrets and sentenced to long terms in prison.

Dawn Raids

Chinese authorities increasingly conduct unannounced regulatory on-site inspections ("dawn raids"). Most dawn raids are initiated by the State Administration for Industry and Commerce ("SAIC"). For raids investigating fraud and corruption, the AUCL and the Interim Rules empower SAIC officials to:

- (i) Make enquiries relating to the companies, interested parties and witnesses;
- (ii) Require these parties to provide evidence or other information concerning acts of unfair competition, in accordance with the prescribed procedure;
- (iii) Investigate and copy agreements, account books, bills, receipts, documents, minutes, business letters, business telegrams, business telexes, business facsimiles and other materials connected with an alleged act of unfair competition.

Rooting out fraud and corruption will minimise a company's risk of a dawn raid. Companies should also create a Dawn Raid Manual that details its compliance management organisation, the powers of the SAIC officials and the company's internal procedures for dealing with a dawn raid. Most importantly, a company's management and employees should have a clear understanding on what to do and what not to do if a dawn raid is mounted. Companies should conduct regular training to ensure their managers and employees know how to respond to and cooperate with the SAIC officials before, during and after a dawn raid.

“ Chinese authorities increasingly conduct unannounced regulatory on-site inspections - ‘dawn raids’ ”

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Staying Put: **Contracts For Localised Expats Are Changing**

According to official statistics, the number of foreign employees in China has more than doubled since 2003 and now exceeds 300,000. Managing expatriate costs and localisation is a major concern for many foreign-invested enterprises (FIE).

In the past, working in China often meant personal and professional sacrifices by foreigners who were dispatched abroad by their companies (known as “expatriates” or “expats”). But this has changed with dramatic improvements in living conditions and increased opportunities for professional growth resulting in more foreigners deciding to stay in China. This, combined with the growing number of locally qualified staff and Chinese returning from working overseas, has given FIEs a broader range of

employees to choose from when recruiting managerial staff. Set against this background is an emerging trend to employ foreigners locally rather than using a traditional secondment agreement.

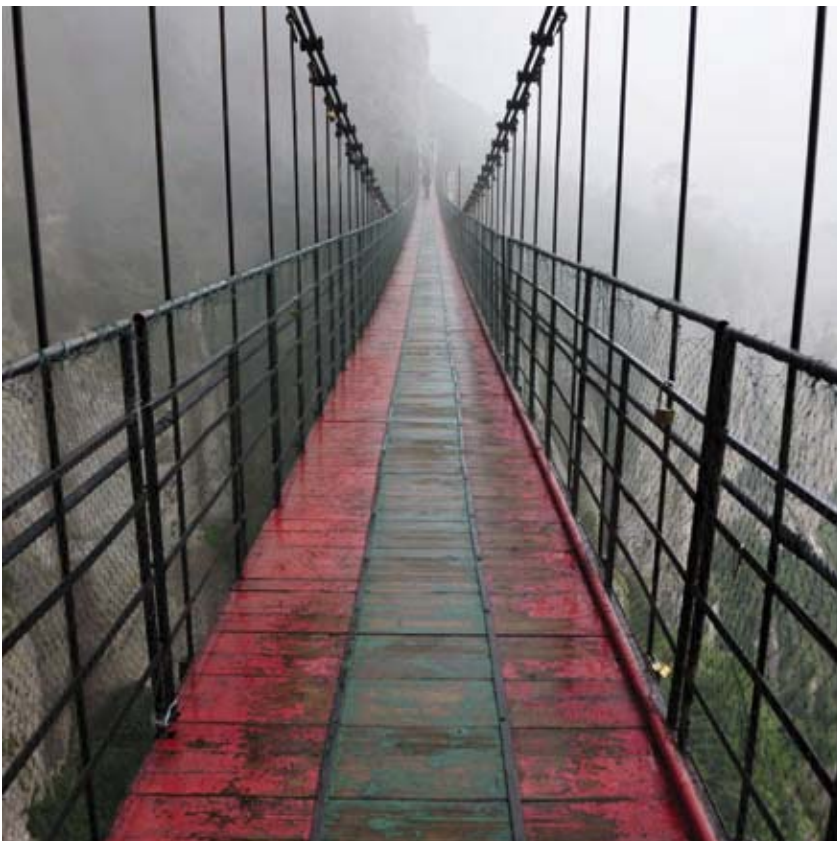
Various Reasons

Transferring headcount to the Chinese subsidiary and then adjusting often expensive remuneration packages to local levels are

only some of the reasons behind the emerging trend of providing local contracts to foreign staff. In addition, the increasing number of qualified Chinese holding similar positions makes it harder to justify huge salary discrepancies between local and foreign employees. Moreover, expats are generally part of the Chinese organisational matrix with respect to their work performance, reporting lines and costs, so implementing a corresponding contractual structure seems justified.

These political considerations with regard to finances and human resources are supported by recent legal developments. When applying for work permits, some cities like Shenzhen require foreign employees to have local employment contracts. All too common is the somewhat unwise approach adopted by some companies of simply signing a false one page ‘contract’ without reference to the secondment agreement that effectively guides their employment relationship. Such an approach creates actual and legal uncertainty for both parties, especially on termination issues.

Moreover, the Labor Contract Law, enacted in 2008, requires Chinese companies to enter into a written employment contract with their employees. Chinese companies relying on a secondment agreement risk an employee claiming a double salary as compensation - a sanction which the labour contract law provides for in case of a missing contract - as there is no legal certainty that foreigners are treated differently.





In addition, in a notice issued in the second half of 2009, the State Administration of Taxation (SAT) requested that local tax authorities thoroughly examine the secondment arrangements of non-resident companies sending staff to China. Specifically, local tax authorities have to examine whether an expat performs duties for the benefit of the Chinese or the mother company. A permanent establishment (PE) is created under double tax treaties if the overseas mother company provides services to an affiliated Chinese firm through the seconded employee in China.

Maintaining Connections and Standards

Depending on the actual labour market, localisation does not always allow for cost reductions (for example, lower salaries). Since expats are mainly considered for specialist and executive positions, it is difficult to find staff with the necessary skill sets when offering local contracts under local conditions only. Despite adjusted remuneration packages – salary and benefits, such as housing allowance or school fees – it

is also important to provide expats the same standard of labour protection and social security they are accustomed to. In addition, foreign employees, if not locally hired, might not accept just a local employment contract. A possible solution that maintains a link to the home company (comparable to the original secondment) is an agreement to suspend rather than dissolve the original labour contract for the time of the deployment. Once the local employment contract with the Chinese affiliate ends, the expat is automatically reemployed by the home company. The following steps are required to change a secondment agreement to a local employment agreement:

- (i) Terminate the secondment agreement between the home company and the expat;
- (ii) Conclude a suspension agreement governing the employment contract between the home company and the expat;
- (iii) Conclude an employment contract between the Chinese subsidiary and the expat; and,

- (iv) Adjust the inter-company agreement between the home company and the Chinese subsidiary.

What to Include in Agreements

Most importantly, the content and structure of an employment agreement must be designed to avoid the risk of forming a permanent establishment in China. Although the SAT looks more closely at an expat's actual work performance, the contract must avoid content that could be regarded as the home company providing services to the Chinese subsidiary by dispatching the expat. The considerations detailed below (amongst others) must be taken into account, according to the current internal handling of tax authorities.

Reporting Line and Instructions

An expat manager must not report to the investor or its managers, but to managers of the Chinese company (for example, the managing director). This also applies to receiving general instructions and daily orders.

“The contract must avoid content that could be regarded as the home company providing services to the Chinese subsidiary by dispatching the expat”

Remuneration and Other Benefits

The expat’s full salary, social security contributions, etc. are paid by the Chinese company, and their details must thus be included in the local contract not in the suspension agreement, as is often the case. This is probably one of the most difficult aspects of localising staff, as foreigners typically will need money transferred to their home bank accounts. As foreign currency exchanges are restricted, foreign staff will require their employers to reimburse costs and provide the relevant proof – for taxation etc. – for these transactions.

Position

The employee’s position is with the Chinese subsidiary, and he or she works for several Chinese companies only when employed by the regional headquarters in China.

Liability and Compensation

The liability for the foreign employee’s work must be with the Chinese company. Any unavoidable compensation payments between the companies must be based on actual costs. This should be documented in the respective inter-company agreement.



Additional clauses

In contrast to a previous secondment, local contracts are subject to Chinese law. So it is important that the employer is aware of the main regulations of Chinese labour law in order to be able to assess the different employment risks. As basic employment conditions will change, additional contractual clauses may be necessary to make contracts attractive to foreigners. Such clauses may cover the topics shown below, amongst others.

Vacation and Holidays

China’s statutory annual vacation entitlement is generally lower than that provided by law or collective agreements in an expat’s home country. While this is variable under the agreement, additional paid leave will apply on 11 statutory Chinese holidays, and this might be increased by paid leave on other international holidays such as Christmas. If the statutory annual vacation entitlement is not granted for operational reasons, the cost impact for companies is significant – up to 300% of salary.



Working Hours and Overtime

Chinese labour law does not allow clauses that include all overtime payments together with the monthly salary, as is often found in foreigners' employment contracts. However, particularly for management positions, a flexible working schedule deviating from the standard working time of eight hours a day, five days a week may be applied (subject to any necessary local authority approval) to avoid overtime payments that can be up to 300% of salary.

Sick Leave and Pay

Chinese regulations provide for a deduction from an employee's salary from the first day of sick leave. The maximum period and the amount of sick pay depend on the employee's length of service, or on respective agreements.

Seniority

A foreign employee's length of service with the home company can be measured for benefits under the Chinese employment agreement in the local contract. Similarly, the suspension agreement can include a clause that recognises the number of years spent working in China for continued employment back home.

Termination

Many foreign employers are not aware of the increased dismissal protection under Chinese law. Employers may only unilaterally terminate a contract, with or without prior notice, for reasons specified in the Labour Contract Law. The binding notice period provided by law is 30 days for both parties. Moreover, for any termination attributable to the employer (such as, dismissal, failure to extend fixed term contracts or initiating an agreement), a statutory severance payment is due. This severance entitlement and the employee's right to resign early without needing to provide a reason should also be covered in the suspension agreement.

Perspective

Given the recent developments in this area, it is likely that localisation of expatriates will continue. Whether this actually leads to cost reductions in individual packages is a question for the actual labour market. However, these considerations are probably only part of the reassessment of localisation strategies in all the most important dimensions, namely changing secondment to local employment, hiring foreigners from the local market and employing local staff instead of expats.

“As basic employment conditions will change, additional contractual clauses may be necessary to make contracts attractive to foreigners”

Dr. Iris Duchetsmann, Shanghai
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About the Authors



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Dr. Iris Duchetsmann joined Salans Shanghai practice in 2010 as a Senior Associate. She heads the China labour law team and particularly specialises on aspects of labour law that involve cross-border employment and international HR management. Iris also provides advice on matters of residency, tax, and social security. She has extensive work experience both in China and Germany, where she gained insight on corporate processes working as an in-house lawyer in the HR department of a multinational corporation. Iris sits as Vice Chair of the Human Resources Forum of the European Chamber of Commerce in China.

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Wei Liu is a Partner in Shanghai. He started his career in 1999 and gained substantial experience in providing service for many large multinational companies. He was in charge of numerous M&A deals, including foreign companies' acquisition of existing foreign-invested enterprises, private enterprises, state-owned enterprises (SOEs), and listed companies. In addition, Wei has advised clients in numerous foreign direct investment projects and restructuring of joint ventures. He has also advised a number of private equity clients.

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Siew Lin Mok is a Senior Associate in Shanghai. She is experienced in mergers and acquisitions and general corporate work in China. She also assists international clients in shipping-related matters, from shipbuilding and conversions to dispute resolution in China, working with both state-owned and privately-owned shipyards. Having practiced in Singapore and Shanghai, Siew Lin communicates effectively with her international clients and their local counterparts in their respective mother tongues. Her clients particularly appreciate Siew Lin's ability to anticipate their needs and to deliver in negotiations, in both contentious and non-contentious matters.

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Matthias Müller is the Managing Partner of Salans' Beijing office. Matthias specialises in all aspects of corporate law and foreign direct investment, including mergers and acquisitions and restructuring of foreign invested enterprises. His work focuses on private companies and on approaches of corporate governance in industries still restricted from foreign investment in China. Matthias structures investments and assists clients in their lobbying efforts with government departments for a broad range of projects. He also works in the sector of leasing enterprises and lease finance in China. He started his career in China in 2002 as legal advisor in a legal development cooperation project counselling the National People's Congress on matters of legal reform.

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John Flanigan is a Partner in Salans' Paris office and former Co-Managing Partner of Salans in Shanghai. John heads Salans' China Desk in Paris and serves as the point of contact for French clients who have invested or are interested in investing in China. John specialises in mergers and acquisitions and corporate finance, including leveraged acquisitions, securities offerings and venture capital investments. He acts for clients in the private equity and financial sector and in a wide range of business sectors and industries, including life sciences, technology, aerospace and defence, wines and spirits, consumer goods, and emerging markets.

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Felix Hess is Of Counsel in Shanghai. He advises clients on foreign investment in China, including development of investment structures, corporate set-up, mergers & acquisitions, contentious matters and restructuring of existing investments. Felix focuses on dispute resolution and international arbitration and has been involved in a number of China-related disputes concerning, among others, construction and machine building projects, oil and gas investments, JV disputes, international trade and IP infringements matters. He has represented and advised clients with respect to arbitrations under various arbitration rules including those of ICC, CIETAC and ICSID. Felix has lived in China since 2003 and speaks Mandarin.

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Brenda D. Horrigan is Co-Head of Salans' Global International Arbitration Practice Group and a Partner in Salans' Paris and Shanghai offices. Having worked with Russia, CIS, Eastern Europe and China, emerging markets are Brenda's speciality. She has been involved in numerous complex international arbitration matters involving commercial and investment treaty disputes in emerging markets. Brenda is a regular speaker at international conferences on the subjects of arbitration and challenges of investments in emerging markets. Brenda's involvement in China began in 2008, followed by relocation to Shanghai in early 2010. Brenda continues to split her time between China and Europe.

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Benny Pang is the Managing Partner of Salans in Hong Kong. Benny specialises in corporate finance and securities law in Hong Kong, with a focus on equity capital markets and mergers and acquisitions. Benny has worked on a broad range of corporate transactions with private and public corporations. He has represented issuers and underwriters in equity fund-raising transactions, including share placements, rights issues and open offers. He has participated in over 25 Hong Kong initial public offerings, including global offering of H-shares of SOEs. Benny has represented clients in the United States, Canada, Hong Kong, China, Taiwan, India, Indonesia, and Australia.

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Dr. Bernd-Uwe Stucken is the Managing Partner of the Shanghai office and of Salans' Greater China practice as a whole. He has lived and worked in China for over 20 years and has extensive experience advising on foreign direct investment, mergers and acquisitions and restructurings, including strategic business and tax aspects. He is also advises clients on developing and implementing compliance programs adjusted to the Chinese environment. Bernd is a former Chairman of the Shanghai chapter of the German Chamber of Commerce and is a frequent speaker and writer on Chinese legal and business topics.

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Yun Wei is Of Counsel in Shanghai and Head of Salans' China Tax Practice Group. As a qualified CPA and Chinese lawyer with tax expertise, Yun specialises in providing integrated tax and legal advice on tax planning, cross border investment, group restructuring, and M&A transactions. She also advises clients on tax issues in various business types including transfer pricing and tax disputes.

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Salans News

Brenda Horrigan



Darren FitzGerald



Salans Expands Its Labour and Employment Practice in China

In March 2010, our China Labour and Employment Practice grew as the firm was joined in Shanghai by senior associate **Dr. Iris Duchetsmann** and associate **Lijuan Zheng (“Cynthia”)**.

Dr. Duchetsmann joined the firm to head the China Labour Law Group. Iris advises on cross-border employment in China, ASIA local labour law and international HR management. She is also qualified to advise on labour law in Germany, providing a unique offering to Salans’ international clients in China as the links between the two countries are becoming increasingly important. A native German and a fluent English speaker, Iris also has a good command of Mandarin.

In the same month, Iris was elected as Vice Chair of **HR Forum in Shanghai** at the **European Union Chamber of Commerce (EUCCC)**. EUCCC has more than 1300 members in 8 cities across China. The HR Forum is a platform for exchanging information and promoting awareness on HR and labour-related issues with relevant Chinese authorities and international organisations. Salans is one of 3 firms that are on the board of EUCCC’s HR Forum.

Salans Grows Its Arbitration Practice in China and Hong Kong

Salans’ Asian Arbitration Practice has grown. First, **Brenda Horrigan**, Co-Head of Salans’ Global International Arbitration Practice Group, relocated to Shanghai from Salans’ Paris office. Brenda has worked for Salans in the CIS and Europe, and she continues to travel extensively within Asia and globally.

In June 2010, **Darren FitzGerald**, former Head of the Asia Dispute Resolution and China Employment Groups of Bird & Bird, joined Salans Hong Kong. Darren has practiced in the Asia Pacific for 15 years and has worked on some of the largest and most complex commercial disputes and regulatory matters. He specialises in international arbitration and cross-border litigation and has particular experience in Hong Kong and PRC-related disputes. Darren is an accredited mediator with the HKIAC and is an experienced contentious insolvency lawyer. Darren has been named among the **“Hot 100: Pre-eminent Asia-Pacific Lawyers of 2010”** by the Asian Legal Business (ALB) Magazine. The “hot” list recognises professional achievement and the most promising lawyers in the Asia-Pacific region.

Both arrivals happened in recognition of growing market demand for on-the-ground dispute resolution capabilities in Asia. **Salans’ Asia Arbitration Practice** is part of the firm’s Global International Arbitration Group composed of more than 50 attorneys across the firm’s 22 offices, and the practice is still growing.

Salans Shines in China Real Estate

Salans has been named **Asian-Counsel Firm of the Year for the category of Real Estate/Construction in China** by the **2010 Asian-Counsel Representing Corporate Asia Survey in Asia Pacific and the Middle East**. The survey is based on nominations by over 15,000 individual in-house lawyers and senior company directors based on the quality and value of service received from external counsel in their jurisdiction. Salans was the only international firm recognised in the Real Estate/Construction category.

The **Asian-Counsel Representing Corporate Asia Survey** is the largest and most definitive survey of in-house counsel and buyers of legal services across the region.

New Home for Salans in Hong Kong

As our ambition for the region is growing, Salans’ Hong Kong office has moved into the 76th floor of the **International Commercial Centre (ICC Tower)**. At 118 floors and 484m tall, the ICC Tower is the tallest building in Hong Kong and is among the tallest buildings in the world. It is a unique commercial development that comprises luxury residential space, modern retail and two 6-star hotels.

Along with a panoramic view over Hong Kong’s central business district, Salans will benefit from proximity to major investment banks and many of our clients.

Salans Around the World



- Salans has been named **European Law Firm of the Year** and **French Law Firm of the Year** by The Lawyer European Awards 2010. Salans has also been shortlisted by the same publication for The Law Firm of the Year for Russia and CIS and for Central Europe.
- Salans has been **ranked 2nd among top international law firms in Russia in 2010** by the prestigious Kommersant Secret Firmy Magazine. It is Secret Firmy's first law firm ranking for Russia, and the firms are assessed based on the number of partners and lawyers, net operating profit and citation index.
- **Salans' China Tax Practice** has been ranked tier 3 by The Legal 500 for year 2010. The team has previously been recognised and was named Asian-Counsel Tax Firm of the Year in 2007. However, it is the first time it has been ranked by The Legal 500.
- Salans has won **emeafinance magazine's Best Legal Firm in CEE & CIS** (Capital Markets and Corporate Actions) for its achievements and success in 2009.
- Salans is top-ranked by **Chambers Europe 2010**, one of the leading directories of the legal profession. Salans has achieved a total of 90 individual rankings and 60 practice rankings.
- Salans has been awarded **the 2010 Banking & Finance Law Firm of the Year in Ukraine** by Corporate INTL Magazine. The Corporate INTL Magazine Global Awards recognise the leading law firms internationally across 12 key practice areas and are judged by a panel of industry experts.
- **Salans in Paris** has further strengthened its expertise in M&A, Private Equity and Litigation with hires of 12 lawyers (3 partners and 9 associates) in 2010.
- In 2008, 2009 and 2010, **Salans' International Arbitration Practice Group** has been ranked among the top 20 arbitration practices in the world in the Global Arbitration Review's GAR 30. This ranking is established by the Global Arbitration Review's GAR 100 - a selection of 100 international arbitration practices, resulting from a thorough survey based on three criteria: reputation, recent work and experience. It aims to show the most active international arbitration practices globally.

Upcoming Events

Event: China Tax Webcast

Date: 2 November, 8:00-9:00 GMT/
17:00-18:00 CST

Location: Online

Who should attend:

CEO's, CFO's, tax directors, corporate lawyers and top management

Subject matter:

Salans China Tax Webcast is part of the series of global online webinars covering tax incentives for business in "hot" investment areas. These webcasts aim to assist top management all over the world to optimise their business operations. The China webcast will focus on tax related incentives available in the PRC

Registration:

The event is free of charge. To book visit www.salans.com/webcast

Event: China Tax Seminar for the Luxury and Cosmetics Sectors

Date: 30 November 2010, 12.30 pm

Location: Paris

Who should attend:

CFOs and tax directors of luxury goods and cosmetics companies with existing or planned China operations

Subject matter:

Customs duties, transfer pricing and domestic law regulations when entering the Chinese luxury goods and cosmetics market

Registration:

The event is free of charge; booking required. Please contact Ms Sophie Cymer seminaire@salans.com

Our Recent Awards and Recognitions



Firm of The Year 2007 for Tax in China by **Asia-Counsel** magazine.



Firm of The Year 2010 for Real Estate/Construction in China by **Asia-Counsel** magazine.



Cited by **Chambers Asia 2009** as a Band 1 law firm in the PRC in the Mid-Market M&A/ FDI section.



Cited by **Legal 500 Asia Pacific 2009/2010** as Tier 3 in the PRC in the Tax section.



European Law Firm of the Year by The Lawyer European Awards 2010



French Law Firm of the Year by The Lawyer European Awards 2010



Central and Eastern Europe Law Firm of the Year; Award for Excellence by **Chambers Europe 2009**



Best Legal Firm in the CEE and CIS regions in Capital markets and Corporate Actions by **emeafinance 2009 and 2010**



Best European Law Firm by **International Legal Alliance Summit and Awards, 2010**



Salans' Paris office awarded the Silver Trophy, LBO Small and Mid Cap, **Trophees du Droit et de la Finance**

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