China

RISK & COMPLIANCE REPORT

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Executive Summary - China	
Sanctions:	EU embargo on arms
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score) Failed States Index (Political Issues)(Average Score)
Medium Risk Areas:	Weakness in Government Legislation to combat Money Laundering

Major Investment Areas:

Agriculture - products:

world leader in gross value of agricultural output; rice, wheat, potatoes, corn, peanuts, tea, millet, barley, apples, cotton, oilseed; pork; fish

Industries:

world leader in gross value of industrial output; mining and ore processing, iron, steel, aluminum, and other metals, coal; machine building; armaments; textiles and apparel; petroleum; cement; chemicals; fertilizers; consumer products, including footwear, toys, and electronics; food processing; transportation equipment, including automobiles, rail cars and locomotives, ships, and aircraft; telecommunications equipment, commercial space launch vehicles, satellites

Exports - commodities:

electrical and other machinery, including data processing equipment, apparel, radio telephone handsets, textiles, integrated circuits

Exports - partners:

US 17.2%, Hong Kong 15.8%, Japan 7.4%, South Korea 4.3% (2012)

Imports - commodities:

electrical and other machinery, oil and mineral fuels, optical and medical equipment, metal ores, motor vehicles

Imports - partners:

Japan 9.8%, South Korea 9.2%, US 7.1%, Germany 5.1%, Australia 4.3% (2012)

Investment Restrictions:

China has a legal and regulatory framework that provides the government with discretion to promote investment in specific regions or industries it wishes to develop, and to restrict foreign investment deemed not to be in its national interest or that might compete with state-sanctioned monopolies or other favored domestic firms.

China has indicated that it plans to restrict foreign investment in resource-intensive and highly-polluting industries, citing some kinds of basic manufacturing as an example. In addition, China appears to discourage foreign investments in sectors: 1) where China seeks to develop domestic firms into globally competitive multinational corporations; 2) that have benefited historically from state-sanctioned monopolies or from a legacy of state investment; or 3) deemed key to social stability. It also discourages investments that are intended to profit from currency, real estate, or asset speculation.

Assets Supervision and Administration Commission (SASAC) listed industries in which the state should maintain "absolute control" (aviation, coal, defense, electric power and the state grid, oil, and petrochemicals, shipping, and telecommunications) and "relative control" (automotive, chemical, construction, exploration and design, electronic information, equipment manufacturing, iron and steel, nonferrous metal, and science and technology). China maintains that these lists do not reflect its official policy. In some cases, more than fifty percent ownership in some of these industries has been permitted on a case-by-case basis, especially if a particular expertise or technology is deemed important at the time.

Contents

Section 1 - Background

For centuries China stood as a leading civilization, outpacing the rest of the world in the arts and sciences, but in the 19th and early 20th centuries, the country was beset by civil unrest, major famines, military defeats, and foreign occupation. After World War II, the communists under MAO Zedong established an autocratic socialist system that, while ensuring China's sovereignty, imposed strict controls over everyday life and cost the lives of tens of millions of people. After 1978, MAO's successor DENG Xiaoping and other leaders focused on market-oriented economic development and by 2000 output had quadrupled. For much of the population, living standards have improved dramatically and the room for personal choice has expanded, yet political controls remain tight. Since the early 1990s, China has increased its global outreach and participation in international organizations.

Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

China is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

The FATF has approved and published the follow-up report for China. The first mutual evaluation report of China was adopted in 2007.

China was placed on an enhanced follow-up process as a result of partially compliant and non-compliant ratings in certain of the Core and Key Recommendations in its mutual evaluation report. China reported back at each FATF Plenary on the progress it had made in addressing the deficiencies identified in the mutual evaluation report.

China made significant progress and in October 2008, the Plenary agreed to place China on the regular follow-up process, whereby it would provide the FATF Plenary with annual progress reports.

China took additional action to address the deficiencies in its AML/CFT regime and was therefore taken off the regular follow-up process in February 2012. Henceforth, China will report back to the Plenary on any further improvements to its AML/CFT regime on a biennial basis.

The decision by the FATF to remove a country from the regular follow-up process is based on updated procedures agreed in October 2008. These procedures require a country to have taken sufficient and effective action to address the compliance levels of Core Recommendations 1, 5, 10, 13, SR II and IV and overall sufficient and effective action to address the compliance levels of Key Recommendations 3, 4, 23, 26, 35, 36, 40, SR I, SR III, SR V, where those Recommendations were previously rated as partially compliant or non-compliant. “Sufficient and effective action” is defined as a level essentially equivalent to compliant (C) or largely compliant (LC).

US Department of State Money Laundering assessment (INCSR)

China is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

The development of China's financial sector has required increased enforcement efforts to keep pace with the sophistication and reach of criminal networks. Chinese authorities continue to identify new money laundering methods, including illegal fundraising activity, cross-border telecommunications fraud, weapons of mass destruction proliferation finance and other illicit finance activity linked to North Korea, and corruption in the banking, securities, and transportation sectors.

While China continues to make improvements to its AML legal and regulatory framework, gradually making progress toward meeting international standards, there are shortcomings in implementing laws and regulations effectively and ensuring transparency, especially in the context of international cooperation. China should cooperate with international law enforcement in investigations regarding indigenous Chinese underground financial systems, virtual currencies, shell companies, and trade-based value transfers that are used for illicit outbound transfers and/or inbound criminal proceeds.

VULNERABILITIES AND EXPECTED TYPOLOGIES

The primary sources of criminal proceeds are corruption, drug and human trafficking, smuggling, economic crimes, intellectual property theft, counterfeit goods, crimes against property, and tax evasion. Criminal proceeds are generally laundered via methods that include bulk cash smuggling; TBML; the use of shell companies to mask the true originators and beneficiaries of transactions; manipulating invoices for services and the shipment of goods; purchasing valuable assets, such as real estate and gold; investing illicit funds in lawful sectors; gaming; and exploiting formal and underground financial systems, in addition to third-party payment systems. Chinese officials have noted that corruption in China often involves state-owned enterprises, including those in the financial sector.

China is not considered a major offshore financial center; however, China has multiple Special Economic Zones (SEZs) and other designated development zones at the national, provincial, and local levels. SEZs include Shenzhen, Shantou, Zhuhai, Xiamen, and Hainan, along with 14 other coastal cities. As part of China's economic reform initiative, China opened FTZs in Shanghai in 2013 and in Tianjin, Guangdong, and Fujian in 2015.

KEY AML LAWS AND REGULATIONS

In an August 2016 report, the People's Bank of China (PBOC) AML Bureau Director General reviewed China's work to date, noting that China had published five major guidelines clarifying implementation of the AML Law and built up an alert system, including client identity verification, suspicious transaction reporting, and customer information and transaction recording.

On July 1, 2016, a PBOC guideline took effect, which requires real-name identity verification for online payment platforms operated by non-bank financial institutions. Tencent and Alipay, online and mobile payment systems, have reportedly implemented the requirements.

In February 2016, the PBOC issued a guideline requiring the Shanghai FTZ to construct an AML system and to conduct capital monitoring and analysis in the zone. The guideline calls for prioritizing client due diligence investigations and focusing on actual account holders and transaction beneficiaries. China has comprehensive KYC and STR regulations. Financial institutions are required to determine and monitor the risk levels of customers and accounts, including whether the customer is a foreign PEP. Accounts with the highest risk level must be subject to re-verification at least every six months. If it is determined an existing customer has become a PEP, then senior management approval must be obtained to continue that relationship.

China is a member of the FATF as well as the APG and the EAG, both FATF-style regional bodies.

AML DEFICIENCIES

Improvements should be made to address the rights of bona fide third parties and the availability of substitute assets in seizure/confiscation actions.

China's FIU is not a member of the Egmont Group.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

China should enhance coordination among its financial regulators and law enforcement bodies, and with international partners, to better investigate and prosecute offenders. China's Ministry of Public Security should continue ongoing efforts to develop a better understanding of how AML tools can be used in a transparent fashion to support the investigation and prosecution of a wide range of criminal activity.

The government should ensure all courts are aware of and uniformly implement mandatory confiscation laws. In domestic cases, once an investigation is opened, all law enforcement entities and public prosecutors are authorized to take provisional measures to seize or freeze property to preserve its availability for confiscation upon conviction. Although China's courts are required by law to systematically confiscate criminal proceeds, enforcement is inconsistent and no legislation authorizes the seizure/confiscation of substitute assets of equivalent value.

The United States and China are parties to the Agreement on Mutual Legal Assistance in Criminal Matters. U.S. agencies consistently seek to expand cooperation with Chinese counterparts on AML matters. U.S. law enforcement agencies note China has not cooperated sufficiently on financial investigations and does not provide adequate responses to requests for financial investigation information. In addition, China's inability to enforce U.S. court orders or judgments obtained as a result of non-conviction-based forfeiture actions against China-based assets remains a significant barrier to enhanced U.S.-China cooperation in asset freezing and confiscation.

In 2015, there were 1,540 money laundering prosecutions. Information on convictions is not available.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, China does not conform with regard to the following government legislation: -

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

Cooperates with International Law Enforcement - By law or regulation, banks are permitted/required to cooperate with authorized investigations involving or initiated by third party jurisdictions, including sharing of records or other financial data.

Ability to freeze assets without delay - The government has an independent national system and mechanism for freezing terrorist assets in a timely manner (including but not limited to bank accounts, other financial assets, airplanes, autos, residences, and/or other property belonging to terrorists or terrorist organizations).

EU White list of Equivalent Jurisdictions

China is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index

To view Failed States Index Ctrl + Click here

Offshore Financial Centre

China is not considered to be an Offshore Financial Centre

Reports

US State Dept Narcotics Report 2017 (introduction):

China's geographical location, vast land area, massive population, and expanding economy have all contributed to it becoming a hub for illicit drug consumption, drug and precursor chemical production and trafficking, and money laundering activities. China shares borders with drug source countries in both Southeast and Southwest Asia and remains a major destination and transit country for heroin produced in these areas. Its numerous coastal cities with high-volume seaports and a vast network of major international airports make China an ideal destination and transit country for illicit drugs, as well as a major source of new psychoactive substances (NPS) and precursor chemicals intended for illicit drug production. Domestic Chinese criminal organizations distribute illicit drugs within China as well as to international markets, and Chinese authorities have noted the presence of international drug trafficking organizations originating from Africa and Mexico operating within the country. China's role as a major international financial center has also fueled an increase in illicit drug and precursor chemical-related money laundering activities.

China is a major producer and exporter of NPS, and domestic use of other synthetic drugs (primarily methamphetamine and ketamine) is becoming increasingly prevalent. China's large chemical and pharmaceutical industries provide an ideal environment for the illicit production and export of these drugs. According to U.S. and international law enforcement sources, a majority of the NPS seized in North America and Europe originate from businesses in China and can be purchased via the internet and shipped or mailed to overseas customers. Chemical alterations of non-scheduled drugs to circumvent existing anti-drug laws have challenged efforts to stem the flow of these drugs.

China is a major source of supply for illicit fentanyl and fentanyl analogs bound for the United States, Canada, and Mexico. In addition, China is the primary origin country for the precursor chemicals used to make fentanyl.

Conclusion

Drug control cooperation between the United States and China is improving, particularly through the JLG process. While drug trafficking, manufacturing, diversion and other drug-related crimes remain significant problems in China, the central government continues to take steps to integrate China into regional and global drug control efforts, as well as to address the country’s domestic drug problem through enforcement and rehabilitation. U.S. law enforcement has made inroads in building working relationships with provincial public security bureaus, with oversight by central authorities, as relations continue to strengthen.

US State Dept Trafficking in Persons Report 2016 (introduction):

China is classified a Tier 2 (watch list) country - a country whose government does not fully comply with the minimum standards and is not making significant efforts to do so.

The People's Republic of China (China or PRC) is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking. China's internal migrant population, estimated to exceed 294 million people, is vulnerable to trafficking with Chinese men, women, and children subjected to forced labor in coal mines and factories, some of which operate illegally and take advantage of lax government enforcement. Forced begging by adults and children occurs throughout China. There are reports of traffickers targeting children whose parents have migrated to the cities and left them with relatives and persons with developmental disabilities for forced labor and forced begging. International media and the ILO report children in some work-study programs supported by local governments and schools are forced to work in factories. African and Asian men are exploited on Chinese vessels, working under conditions indicative of forced labor.

State-sponsored forced labor continues to be an area of significant concern in China. "Re-education through labor" (RTL) was a systematic form of forced labor in China for decades. The PRC government reportedly profited from the forced labor of individuals subjected to administrative (extra-judicial) detention, often with no remuneration, for up to four years. In 2013, the PRC's National People's Congress ratified a decision to abolish RTL. The government closed most RTL facilities by October 2015; however, the government converted some RTL facilities into state-sponsored drug rehabilitation facilities or detention centers. Reports of the government's ongoing use of forced labor in government rehabilitation facilities and detention centers continued. Religious and political activists held in legal education facilities reported that at times forced labor occurred in pretrial detention and outside of penal sentences. In Aksu prefecture, the government forced ethnic Uighurs to perform farm labor as a way of keeping them from getting involved in "illegal activities." The government previously detained some women arrested for prostitution for up to two years without due process in "custody and education" centers where they were subjected to forced labor, but reported that it had changed its official policy in 2015 to limit the time women arrested for prostitution could be held in detention facilities to 15 days. However, government officials acknowledged that isolated instances of forced labor may still occur in detention facilities or prisons, even if not officially condoned by the PRC.

Chinese women and girls are subjected to sex trafficking within China; traffickers typically recruit them from rural areas and take them to urban centers. Well-organized criminal syndicates and local gangs play key roles in the trafficking of Chinese women and girls in China, recruiting victims with fraudulent employment opportunities and subsequently forcing them into prostitution.

Chinese men, women, and children are also subjected to forced labor and sex trafficking in other countries. Traffickers recruit girls and young women, often from rural areas of China, using a combination of fraudulent job offers and coercion by imposing large travel fees, confiscating passports, confining, or physically and financially threatening victims to compel their engagement in prostitution. Chinese men and women forced to labor in restaurants, shops, agriculture, and factories in overseas Chinese communities. They are promised jobs abroad and confined to private homes upon arrival overseas, held in conditions indicative of forced labor, and compelled to conduct telephone scams. Chinese men in Africa and South America experience abuse at construction sites, in coal and copper mines, and in other extractive industries where they face conditions indicative of forced labor such as withholding of passports, restrictions on movement, non-payment of wages, and physical abuse. Chinese women and girls are subjected to forced prostitution throughout the world, including in major cities, construction sites, remote mining and logging camps, and areas with high concentrations of Chinese migrant workers.

Women and children from neighboring Asian countries, Africa, and the Americas are subjected to forced labor and sex trafficking in China. North Korean women are subjected to forced prostitution, forced marriage, and forced labor in agriculture, domestic service, and factories. African and South American women are promised legitimate jobs in China and forced into prostitution upon arrival. The Chinese government's birth limitation policy and a cultural preference for sons create a skewed sex ratio of 117 boys to 100 girls in China, which observers assert increases the demand for prostitution and for foreign women as brides for Chinese men – both of which may be procured by force or coercion. Women and girls are kidnapped or recruited through marriage brokers and transported to China, where some are subjected to prostitution or forced labor.

The Government of the People's Republic of China (PRC) does not fully meet the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Despite these measures, the government did not demonstrate overall increasing anti-trafficking efforts compared to the previous reporting period; therefore, China is placed on Tier 2 Watch List for a third consecutive year. Per the Trafficking Victims Protection Act, China was granted a waiver from an otherwise required downgrade to Tier 3 because its government has devoted sufficient resources to a written plan that, if implemented, would constitute making significant efforts to meet the minimum standards. Reports continued of the government's complicity in forced labor, including through state-sponsored forced labor policies. Despite the 2013 policy announcement abolishing the RTL program, unverifiable reports continued of forced labor in government detention centers outside the penal process. Overseas human rights organizations and media report local officials in Xinjiang coerced Uighur men and women to participate in forced labor in and outside of the province. The government's criminal law does not fully criminalize all forms of trafficking such as the facilitation of prostitution involving children younger than the age of 18 and defines several things as human trafficking that are not consistent with international law. The government handled most cases with indicators of forced labor as administrative issues and initiated prosecutions of the traffickers in relatively few cases. The government reported cooperating with other countries to repatriate foreign trafficking victims and improve anti-trafficking coordination efforts. Although authorities asserted all women arrested for prostitution are now screened for indicators of trafficking, it remained unclear if this occurred in practice during the reporting period, and some may have been punished for crimes committed as a direct result of being subjected to trafficking. Providing law enforcement data, the government reported substantial law enforcement efforts, convicting at least 714 traffickers, although it is unclear how many of these victims meet the international definition of human trafficking. The government amended its criminal code to address some of the gaps in the definition of trafficking-related crimes and approved a national victim identification system. The government took steps to implement its national action plan against trafficking in persons, which addressed efforts to amend the anti-trafficking law, improve interagency and international cooperation, boost anti-trafficking investigations, develop anti-trafficking awareness campaigns, and enhance victim protection services. The written plan directed all levels of government to allocate funding to implement the activities in the plan. In addition to local government funding of local anti-trafficking operations, the Ministry of Public Security (MPS) supplemented 50 million RMB ($7.7 million) for a special anti-trafficking fund for local law enforcement and 5 million RMB ($774,593) to central government anti-trafficking campaigns, some of which focuses on activities inconsistent with international legal definitions of human trafficking.

US State Dept Terrorism Report 2016

Overview: In 2016, China's government continued to list terrorism as one of "three evils" – along with religious extremism and separatism, which threaten domestic stability. China's counterterrorism efforts focused primarily on the East Turkistan Islamic Movement (ETIM), an organization that advocates independence for the Uighurs, China's largest Muslim ethnic minority. In the past year, Chinese authorities have escalated security and surveillance in the Xinjiang Uighur Autonomous Region (XUAR). China's first comprehensive counterterrorism law came into effect on January 1, 2016. This law explicitly endorses China's longstanding counterterrorism efforts, which are sometimes difficult to distinguish from suppression of individuals and groups, most often ethnic Uighurs, who the Chinese Communist Party deems politically subversive.

There were also indications that ISIS was beginning to pose a threat to China in 2016. An ISIS song published in Mandarin called for Chinese Muslims to take up arms against China because of its religious suppression. The Chinese government reported that some Chinese citizens have joined ISIS and other terrorist organizations in the Middle East, and are concerned these foreign terrorist fighters could return to China with increased skills. As a result, China has attempted to prevent some of its citizens from traveling to Syria, Iraq, and Central Asia.

Counterterrorism cooperation between China and the United States remained limited. In 2016, the United States hosted the third bilateral Counterterrorism Dialogue with China and the second expert-level exchange on Countering Improvised Explosive Devices. Chinese law enforcement agencies generally remained reluctant to conduct joint investigations or share specific threat information with U.S. law enforcement partners. Chinese law enforcement officials also did not respond to requests for information about state media-reported arrests and operations. This lack of transparency complicated efforts to verify details of terrorism and other violent acts inside China.

Legislation, Law Enforcement, and Border Security: Counterterrorism measures enacted in 2015 that intensified enforcement, surveillance, and security throughout the country continued in 2016. These measures increased inspections at all main transportation hubs, including bus and train stations, railways, airports, and ports. The measures also included an enhanced and expanded video and data surveillance network. Chinese law enforcement and security forces in Xinjiang conducted violent raids and unannounced house searches, and carried out body searches and mobile phone searches in public venues, according to international and Chinese state media sources.

In addition to these counterterrorism measures, the National People's Congress passed the country's first counterterrorism law on December 28, 2015, to "provide legal support for counterterrorism activities, as well as collaboration with the international community." The law, which took effect on January 1, 2016, broadened China's definition of terrorism beyond internationally accepted definitions and intensified the scope of its counterterrorism measures. The law further made provisions to establish a counterterrorism intelligence center to better coordinate terrorism response and information sharing across government agencies.

The law also required foreign firms to provide technical and decryption assistance to Chinese authorities as part of terrorism-related investigations. The legislation stipulated measures on internet security management, inspection of dangerous materials, prevention of terrorist financing, and border controls. Other provisions under the new law include: the Central Military Commission's ability to authorize the People's Liberation Army to perform counterterrorism operations abroad; punishment of news media that report counterterrorism operations without approval from government authorities; greater cooperation with international counterterrorism bodies; protection for overseas Chinese citizens; deletion of terrorism-related audio and video material from the internet; strengthened border controls; and edicts to eliminate "religious extremism," including the "education and transformation" of terrorist offenders using "authentic" religious teachings.

In July, XUAR became the only provincial-level government to pass specific implementing measures for the counterterrorism law. These XUAR implementing measures banned "instigating, encouraging, or enticing a minor to participate in religious activities," proscribed the wearing of clothing that "advocate's extremism," and prohibited the "distortion of the concept of halal" or "distorting sensitive cases." The XUAR's regional law-making body also threatened fines up to US $72,700 for spreading news or information through social media or websites that could harm "stability" or "religious harmony" more broadly. We refer you to the *State Department's Country Reports on Human Rights Practices* for further information.

In December, the XUAR People's Congress adopted amendments to its border management regulations, tightening rules for individuals crossing to and from neighboring countries and granting local authorities the power to close border crossings to address "defense management, counterterrorism, and stability maintenance needs."

Countering the Financing of Terrorism: China is a member of the Financial Action Task Force (FATF), the Asia/Pacific Group on Money Laundering, and the Eurasian Group on Combating Money Laundering and Terrorist Financing. The Chinese government has strengthened preventive measures to counter terrorist financing, such as making suspicious transaction reports more comprehensive. Based on current law enforcement investigations, the United States is concerned that China does not adequately control terrorist financing. Chinese law enforcement claims to have limited ability to freeze funds and investigate banking transactions. Additional concerns include: a lack of guidance for designated non-financial businesses and professions; underdeveloped procedures for individuals and groups who seek to be delisted from domestic sanctions; and inadequate regulations defining the rights of bona fide third parties in seizure and confiscation actions.

International Sanctions

There is currently an EU embargo on arms.

For further information: -

http://ec.europa.eu/external_relations/cfsp/sanctions/docs/measures_en.pdf

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	41
World Governance Indicator – Control of Corruption	49

Corruption in China presents business operating or planning to invest in the country with high risks. The Chinese government, led by President Xi Jinping, is in the midst of a sweeping anti-corruption campaign that has led to thousands of arrests, nonetheless, corruption continues to negatively influence the business environment. Companies are likely to experience bribery, political interference or facilitation payments when acquiring public services and dealing with the judicial system. The common practice of guanxi is a custom for building connections and relationships based on gifts, banqueting, or small favors. Guanxi-related gifts can be considered bribery by foreign companies and by national and international anti-corruption laws. Companies are advised to carefully consider the type and value of gifts, the occasion, and the nature of the business relation. China offers a comprehensive legal framework in both the public and private sectors to criminalize several corrupt practices such as facilitation payments, money laundering, active and passive bribery, and gifts in the public and the private sector with the Anti-Unfair Competition Law focusing on commercial bribery. Anti-corruption laws are inconsistently and selectively enforced. **Information provided by GAN Integrity.**

US State Department

Overview

Corruption remains endemic in China. The lack of an independent press, as well as the fact that all bodies responsible for conducting corruption investigations are controlled by the Chinese Communist Party, hamper anti-corruption efforts. Senior officials and family members are suspected of using connections to avoid investigation or prosecution for alleged misdeeds.

According to Chinese law, accepting a bribe is a criminal offense with a maximum punishment of life in prison or death in "especially serious" circumstances. The maximum punishment for offering a bribe to a Chinese official is five years in prison, except when there are "serious" or "especially serious" circumstances, when punishment can range from five years to life in prison. A February 2011 amendment to the Criminal Law made offering large bribes to foreign officials or officials of international organizations a punishable offense, although there has yet to be a prosecution.

The Supreme People's Procuratorate and the Ministry of Public Security investigate criminal violations of laws related to anti-corruption, while the Ministry of Supervision and the Chinese Communist Party Discipline Inspection Committee enforce ethics guidelines and party discipline. China's National Audit Office also inspects accounts of SOEs and government entities.

Anti-corruption measures

China has stepped up efforts against corruption in Party ranks. President Xi Jinping has said that endemic corruption threatens the Party's survival and has vowed to go after high-flying "tigers," as well as lowly "flies." New anti-corruption measures, part of November 2013 Third Plenum reforms, signaled an intensified push to fight graft. The Third Plenum documents implored public officials to "keep power within the cage of regulations," criticized material excess, and called for senior officials to disclose their wealth. Premier Li Keqiang said China has "zero tolerance" for corruption. However, individual citizens who have called for officials to disclose their public assets in support of the government's anti-corruption goals have been subject to criminal prosecution.

In 2013, China engaged in an intensive and large-scale anti-corruption campaign, during which 31 central government SOE officials of director general rank or higher were investigated for graft by the Party's Organization Department. Eight cases were transferred to the judicial authorities. High profile SOE executives were investigated and charged with corruption. Overall in 2013, Chinese Communist Party discipline organs investigated 173,000 corruption cases and disciplined 182,000 officials, of which 9,600 criminal suspects were transferred to judicial authorities. Nationally, prosecutorial authorities accused 51,000 officials of graft and job-related crimes, and courts nationwide concluded 23,000 graft and bribery cases.

China's anti-corruption crackdown could curb abuse of administrative powers by government officials aligned with private sector patrons; however, selective application of anti-corruption rules may also raise concerns among foreign companies in China.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

China ratified the United Nations Convention against Corruption in 2005 and participates in Asia-Pacific Economic Cooperation (APEC) and Organization for Economic Cooperation and Development (OECD) anti-corruption initiatives. China has not signed the OECD Convention on Combating Bribery.

Corruption and Government Transparency - Report by Global Security

Political Climate

The People's Republic of China is governed by the Communist Party of China (CPC), which in late 1978 embarked on a reform process to combine socialism with a market economy. The implemented economic reforms have gradually created economic development with unprecedented growth rates. However, it has also given rise to widespread corruption as the opportunities for public officials to engage in corruption and enrich themselves have multiplied. This poses a serious challenge to the Chinese political leadership, who are aware that their legitimacy is tied to curbing corruption and maintaining economic progress. The current president, Xi Jinping, who took office in March 2013, is seen as having a strong stance against corruption and as being pro-business, according to a BBC News special report on China's Leaders. Since assuming office, President Xi has vowed to fight corruption, and promised to fight 'tigers' and 'flies', by which he referred to high and low-ranking officials, according to an April 2013 article by The New York Times. Several high-ranking government officials, including the former director of the transport bureau, Zhang Shuguang, the former railway minister, Liu Zhijun and the former deputy of the National Development and Reform Commission, Liu Tienan, were charged with corruption and abuse of office. One of the anti-corruption strategies taken by the new leaders is to toughen controls on military licence plates. According to a 2013 article by The Wall Street Journal, abuse of licence plates has been regarded as one of the most visible forms of corruption in China.

Despite the most recent crackdown on corrupt government officials, corruption continues to be a widespread problem in China today. The Chinese government acknowledges that corruption is a major threat to both the country's economic development and political stability and has been pursuing a vigorous anti-corruption campaign. The CPC ratified a five-year Anti-Corruption Plan (2008-2012) (in Chinese), which emphasises that the anti-corruption work should combine punishment with education and better supervision of public officials. The second five-year Anti-Corruption Plan (2013-2017) has also been ratified by the CPC in August 2013, according to an August 2013 news article published by Sina. In December 2010, for the first time the Chinese government released a white paper on corruption issued by the Cabinet. The document expresses the Chinese government’s will to strengthen its efforts in fighting corruption. Furthermore, effective from 1 May 2011, bribery of foreign government officials and officials of international public organisations became criminalised under the Criminal Law.

In recent years, successful prosecutions and arrests in high profile corruption cases have taken place. For example, in August 2013, China witnessed its biggest political scandal involving former Communist Party Chief in Chongqing Bo Xilai. Bo was accused of taking advantage of his position to seek profits for others and receiving massive bribes personally and through his family. Click here to read more about the Bo Xilai scandal and the latest development. Despite efforts by the government in the fight against corruption, 35% of Chinese households surveyed by Transparency International's Global Corruption Barometer 2010/2011 consider the government's anti-corruption initiatives to be 'ineffective', and 46% of the households perceive that the level of corruption in China has increased over the past 3 years (China is not included in TI's GCB 2013 survey). Despite the obstacles posed by corruption, foreign investors are not being scared off. In fact, China is considered to be the most attractive investment destination by investors, as illustrated in Congressional Research Service Report 2013, where China is listed as the second largest FDI recipient in 2012.

Business and Corruption

The most important part of the Chinese business culture is probably the establishment of close and long-lasting personal ties called guanxi in Chinese. It is important to have in mind that guanxi-related gift-giving could be considered bribery in most foreign companies; therefore, companies are strongly advised to consider the value and type of gifts they would like to offer to business partners in China beforehand. A July 2013 news article by The Atlantic reports that gift-giving culture in the form of red envelopes (Hong Bao) or gift cards is endemic in China. The news article is based on the post of a popular blog among Chinese netizens, in which a real estate company's gift-giving list consisting of different government officials was exposed. It is said that the amounts ranging from RMB 1,000 to RMB 3,000 were given to officials in order to, for instance, register businesses and obtain licenses to pollute. Corruption in China is endemic within the public and the private sector, despite the fact that both passive and active bribery are considered a serious crime, which can lead to life imprisonment and, in the most serious cases, the death penalty. Business executives surveyed by the World Economic Forum's Global Competitiveness Report 2013-2014 report that public funds are sometimes diverted to companies, individuals or groups due to corruption, and that the lack of ethical behaviour of companies in their interactions with public officials, politicians and other companies represents a competitive business disadvantage for China. Congressional Research Service Report 2013 suggests that widespread government corruption, financial fraud and misuse of investment funds, resulting from a general lack of rule of law, poses a serious barrier for doing business in China. Kickbacks in the pharmaceutical industry haven proven to be endemic, as illustrated by several most recent corruption scandals involving international pharmaceutical companies such as GlaxoSmithKline and Sanofi. Click here to read more about the GSK bribery scandal. Foreign companies should be aware that when conducting business in China, the state and CPC are frequently key stakeholders, and companies will invariably be in contact with the authorities, either central or local levell, at every phase of the business process. This is further supported by Congressional Research Service Report 2013, which warns that government 'connection' is an essential determinant of successful business. Companies are strongly recommended to develop, implement, and strengthen integrity systems when planning to do and when already doing business in China.

Third parties, such as agents and distributors, are commonly used in China as a way of lowering transaction costs and thus generating higher profits. However, companies should note that corruption prevention controls are difficult to enforce when dealing with Chinese agents and distributors. Some companies have been known to use these kinds of intermediaries as a useful channel for outsourcing corruption to avoid direct involvement with corrupt activities. These agent companies are often one-man companies that are extremely difficult to control and that need to be checked thoroughly, as companies can be held legally responsible for bribes paid by their agents. Companies should also be wary of an individual's credentials, as there is a widespread use of false degrees and titles. Thus, it is highly recommended that a thorough screening of agents and potential partners is conducted. For further information, see this portal's due diligence tools.

China's anti-corruption activities were in the past largely targeted towards Chinese settings. Today, the campaign is more comprehensive and an increasing number of foreign and multinational companies have come under scrutiny and been accused of corrupt practices by the authorities, such as the most recent GSK bribery scandal. This trend signals an end to the common belief that corrupt activities are found mostly in the interaction between Chinese companies and government offices and do not involve foreign investors. Transparency International's Bribe Payers Index 2011 shows that Chinese companies' ethical track record when operating abroad is questionable, with the surveyed business executives perceiving Chinese companies to be the second most likely to engage in bribery abroad, after Russia.

Regulatory Environment

With China's entrance into the WTO, many laws and regulations are being harmonised to meet WTO requirements. Since 2002, China has made attempts to join the Government Procurement Agreement (GPA), which calls for more transparent and non-discriminatory conditions for international competition. As of September 2013, China is still in the process of acceding to the GPA. Although much progress can be witnessed, as reported by the US

Department of State 2013, China is still trying to protect its ‘vital industries and key fields’, which is defined as ‘industries concerning national security, major infrastructure and important mineral resources, industries that provide essential public goods and services, and key enterprises in pillar industries and high-tech industries’. In 2006, China introduced a series of policies linking government procurement to indigenous innovation by Chinese firms, which sparked strong criticism from foreign investors calling the policies discriminatory. In July 2011, the government removed three of the controversial indigenous innovation rules a move that has been praised by many foreign businesses.

China is constantly enacting new laws and regulations and revising existing ones and, according to the World Economic Forum Global Competitiveness Report 2013-2014, the surveyed business executives give a score of 4.3 on a 7-point scale to the burden of government regulation, (1 being 'extremely burdensome' and 7 'not burdensome'), representing a competitive advantage for doing business in China. However, a 2013 Business Confidence Survey conducted by the European Union Chamber of Commerce in China reveals that 30% of the surveyed European businesses perceived Chinese government policies to have become less fair to them over the past two years, and one of the most significant regulatory obstacle perceived by business respondents is the discretionary enforcement of regulations. Figures from the World Bank & IFC's Doing Business 2013 show that to start a business in China, companies need to spend an average of 33 days and go through 13 administrative procedures at a cost of 2.1% of the GNI per capita, which is more complicated and time-consuming than the OECD average. According to the US Department of State 2013, the government owns all land in the country; however, individuals and companies can own and transfer long-term leases, as well as structures and personal property.

Commercial disputes are heard in the economic courts, which, like other Chinese courts, are not considered independent of the government. Corruption is also found within the judicial system and may influence court decisions. There are examples of local officials ignoring court rulings, making enforcement of court decisions an area requiring improvement. Although there has been an increase in the use of litigation to settle disputes, according to the US Department of State 2013, Chinese authorities usually encourage companies to resolve disputes through informal conciliation. Otherwise, arbitration is encouraged when mediation is called for, typically through the China International Economic and Trade Arbitration Commission (CIETAC). Many foreign companies hesitate to settle through arbitration because it is a very time-consuming and unreliable process in China. The US Department of State 2013 further reports that although a few foreign companies have received a favourable ruling from CIETAC, many still question its reliability. Companies should note that foreign arbitration is a possibility and provisions for it can be included in their contracts; China is a member of the International Centre for the Settlement of Investment Disputes (ICSID) and has ratified the New York Convention 1958. However, companies should not expect foreign court decisions to be enforced in China, as this rarely occurs. Companies can also access the Lexadin World Law Guide for a collection of legislation in China.

Section 3 - Economy

Since the late 1970s, China has moved from a closed, centrally planned system to a more market-oriented one that plays a major global role; in 2010, China became the world's largest exporter. Reforms began with the phaseout of collectivized agriculture, and expanded to include the gradual liberalization of prices, fiscal decentralization, increased autonomy for state enterprises, growth of the private sector, development of stock markets and a modern banking system, and opening to foreign trade and investment. China has implemented reforms in a gradualist fashion. In recent years, China has renewed its support for state-owned enterprises in sectors considered important to "economic security," explicitly looking to foster globally competitive industries. The restructuring of the economy and resulting efficiency gains have contributed to a more than tenfold increase in GDP since 1978. Measured on a purchasing power parity (PPP) basis that adjusts for price differences, China in 2015 stood as the largest economy in the world, surpassing the US in 2014 for the first time in modern history. Still, China's per capita income is below the world average.

After keeping its currency tightly linked to the US dollar for years, China in July 2005 moved to an exchange rate system that references a basket of currencies. From mid-2005 to late 2008, cumulative appreciation of the renminbi against the US dollar was more than 20%, but the exchange rate remained virtually pegged to the dollar from the onset of the global financial crisis until June 2010, when Beijing allowed resumption of a gradual appreciation. In 2015, the People's Bank of China announced it would continue to carefully push for full convertibility of the renminbi after the currency was accepted as part of the IMF's special drawing rights basket.

The Chinese Government faces numerous economic challenges including: (a) reducing its high domestic savings rate and correspondingly low domestic consumption; (b) facilitating higher-wage job opportunities for the aspiring middle class, including rural migrants and increasing numbers of college graduates; (c) reducing corruption and other economic crimes; and (d) containing environmental damage and social strife related to the economy's rapid transformation. Economic development has progressed further in coastal provinces than in the interior, and by 2014 more than 274 million migrant workers and their dependents had relocated to urban areas to find work. One consequence of population control policy is that China is now one of the most rapidly aging countries in the world. Deterioration in the environment - notably air pollution, soil erosion, and the steady fall of the water table, especially in the North - is another long-term problem. China continues to lose arable land because of erosion and economic development. The Chinese government is seeking to add energy production capacity from sources other than coal and oil, focusing on nuclear and alternative energy development.

Several factors are converging to slow China's growth, including debt overhang from its credit-fueled stimulus program, industrial overcapacity, inefficient allocation of capital by state-owned banks, and the slow recovery of China's trading partners. The government's 13th Five-Year Plan, unveiled in November 2015, emphasizes continued economic reforms and the need to increase innovation and domestic consumption in order to make the economy less dependent in the future on fixed investments, exports, and heavy industry. However, China has made only marginal progress toward these rebalancing goals. The new government of President XI Jinping has signaled a greater willingness to undertake reforms that focus on China's long-term economic health, including giving the market a more decisive role in allocating resources. In 2014, China agreed to begin limiting carbon dioxide emissions by 2030.

Agriculture - products:

world leader in gross value of agricultural output; rice, wheat, potatoes, corn, peanuts, tea, millet, barley, apples, cotton, oilseed; pork; fish

Industries:

world leader in gross value of industrial output; mining and ore processing, iron, steel, aluminum, and other metals, coal; machine building; armaments; textiles and apparel; petroleum; cement; chemicals; fertilizers; consumer products (including footwear).

Exports - commodities:

electrical and other machinery, including data processing equipment, apparel, furniture, textiles, integrated circuits

Exports - partners:

US 18%, Hong Kong 14.6%, Japan 6%, South Korea 4.5% (2015)

Imports - commodities:

electrical and other machinery, oil and mineral fuels; nuclear reactor, boiler, and machinery components; optical and medical equipment, metal ores, motor vehicles; soybeans

Imports - partners:

South Korea 10.9%, US 9%, Japan 8.9%, Germany 5.5%, Australia 4.1% (2015)

Banking

Regulators: People's Bank of China and China Banking Regulatory Commission

Tasked to formulate and implement monetary policy, the People's Bank of China (PBOC) is China's central bank and reports to the State Council. The State Council, however, maintains oversight of the PBOC and makes all final decisions on China's major financial and monetary policy issues. According to the 1995 Central Bank Law, the PBOC has full autonomy in applying monetary instruments, including setting interest rates for commercial banks and trading in government bonds. It maintains the banking sector's payment, clearing and settlement systems, and manages official foreign exchange and gold reserves. The PBOC also oversees the State Administration of Foreign Exchange (SAFE) in the setting of foreign exchange policies.

The China Banking Regulatory Commission (CBRC) was launched on April 28, 2003 to improve the efficiency of bank supervision and allow the PBOC to further focus on the country's macro-economic and currency policy and to take over the bank supervisory role from the PBOC. According to the official announcement the CBRC posted on its website, the CBRC is responsible for "the regulation and supervision of banks, asset management companies, trust and investment companies as well as other deposit-taking financial institutions. Its mission is to maintain a safe banking system in China."

State-Owned Commercial Banks – The 'Big Four'

At present, four major state-owned banks, the Industrial and Commercial Bank of China (ICBC), the Bank of China (BOC), the China Construction Bank (CCB), and the Agricultural Bank of China (ABC), dominate the banking system and together account for well over half of all loans and deposits in China's banks. Several have become some of the largest banks in the world as valued by market capitalization, with ICBC and ABC having conducted the largest IPOs in history in 2006 and 2010, respectively. While the State, operating through the Ministry of Finance, continues to own a majority stake in each of these institutions, they all are publicly listed in Chinese stock markets and also on international bourses. The "Big Four" (along with the Bank of Communications) constitute the absolute majority of bank lending in China. Bank lending remains the most important financing vehicle in the country; equity finance and the corporate bond market remain very small in comparison, while bank lending constitutes roughly 80% of total lending

Foreign Banks in China

China has in steps opened its banking sector to foreign participation, lifting the previous geographic and client restrictions, and allowing foreign banks to conduct RMB-denominated business with local Chinese clients. In December 2006, "The Regulations of the PRC on Administration of Foreign-funded Banks" promulgated by the State Council went into effect. Although foreign banks gained access to the local currency-based retail banking business in 2006, and no longer face geographic and client restrictions on operations, they still must adhere to China's strict regulatory requirements to conduct retail business. Foreign banks' presence in the Chinese market remains very small, falling to 1.75% of total lending by the end of 2010. They are unable to fully engage in the bond trading and underwriting market, offer the full range of derivatives and hedging products, purchase securities firms outright or build their branch network beyond one or two new offices annually. To become a locally incorporated bank in China, a foreign bank needs to apply to the Chinese Banking Regulatory Commission, but separately must win approval from SAFE to bring working capital onshore, frequently a lengthy process.

Stock Exchange

China's securities sector is comprised of three main types of institutions: securities organisations, futures and fund institutions. Securities organisations are institutions that provide intermediary services to security market participants. Sector. China has two stock exchanges—the Shanghai Stock Exchange and the Shenzhen Stock Exchange.

Section 4 - Investment Climate

Executive Summary

China employs a more restrictive foreign investment regime than its major trading partners, including the United States. While China was the world's top destination for foreign direct investment (FDI) in 2015, broad sectors of the economy remain closed to foreign investors. China relies on a Foreign Investment Catalogue to encourage foreign investment in some sectors of the economy, while restricting or prohibiting investment in many others. China's investment approval regime shields inefficient and monopolistic Chinese enterprises from competition – especially those companies China attempts to cultivate as national champions.

U.S. companies surveyed in 2015 by the American Chamber of Commerce in China (AmCham) cited inconsistent regulatory interpretation and unclear laws as their top challenge doing business in China. Other difficulties listed were, in descending order, labor costs, obtaining required licenses, the shortage of qualified employees, industrial overcapacity, the shortage of qualified management, increasing Chinese protectionism, corruption, taxes, and intellectual property rights infringement.

Around 77 percent of the businesses consulted felt foreign firms were increasingly less welcome in China.

In 2015, the Chinese central government announced a series of reforms and pledges that could lead to gradual improvements in the investment climate if they were implemented, both from market access and regulatory standpoints. Major developments of 2015:

- During a state visit in September 2015, President Obama and President Xi agreed to "intensify" negotiations for a high-standard Bilateral Investment Treaty (BIT) that would level the playing field for U.S. investors in China and expand market access to previously restricted sectors of the Chinese economy. China in 2015 also continued its investment agreement negotiations with the European Union.

- China announced it would introduce two national "negative lists" – one covering both domestic and foreign investors and another list with additional limits on foreign investment. The negative lists delineate sectors of the economy where certain Chinese agencies would continue to require investors to secure approval from those agencies for investment projects. Investments in unlisted sectors would no longer require approval by those agencies; however, China would maintain separate approval, licensing, and screening processes conducted by other agencies. China is now piloting the foreign investment negative list in the Shanghai, Tianjin, Guangdong, and Fujian Free Trade Zones (FTZs).

- To date, China has not described how it would implement the national negative list. The national negative list's impact on China's many industry-specific licensing and approval processes is unknown. There are also issues regarding compatibility with China's Foreign Investment Catalogue (the most-recent version dates to March 2015), as well as with separate Chinese reviews of investment projects for their impact on China's security, environment, land-use, and other considerations. Given the limited transparency of China's current investment approval processes, in addition to private sector concerns that rules are inconsistently applied, the impact of a national negative list on market access is uncertain.

- Other legislative concerns revolve around the National Security Law, enacted in July 2015, which expanded the scope of economic activities that can be screened on national security grounds to include an investment's impact on cultural security, information security, industrial security, military security, technological security, and territorial security, among others. The pending Foreign Investment Law, in its current draft, would also create a broad national security review mechanism for foreign investment.

Although the Chinese Communist Party (CCP) says it expects to fulfill by 2020 the market-oriented economic reform agenda it announced at the CCP's third plenum in 2013, it has yet to provide a detailed reform roadmap and timetable. At present, foreign investors worry about discriminatory industrial policies, opaque and selectively enforced investment approval procedures, licensing barriers that favor domestic firms (especially state-owned enterprises and private Chinese firms that enjoy government support), and the lack of an independent judiciary to settle disputes. Poor enforcement of intellectual property rights (IPR), the forced transfer of technology, and systemic lack of rule of law are also challenges.

The United States government has raised concerns about China's investment restrictions and discriminatory policies at high levels, in bilateral fora such as the U.S.-China Joint Commission on Commerce and Trade (JCCT), the U.S.-China Strategic and Economic Dialogue (S&ED), and the U.S.-China BIT negotiations. The United States government emphasizes the benefits to China of opening new sectors to foreign investment, increasing transparency, and improving the enforcement of existing laws to protect investors' rights.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	83 of 168	transparency.org/cpi2015#results-table
World Bank's Doing Business Report "Ease of Doing Business"	2015	84 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	29 of 141	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country (stock positions)	2014	$65.77 billion	bea.gov/international/di1usdbal.htm
World Bank GNI per capita	2014	$7,400	data.worldbank.org/indicator/NY.GNP.PCAP.CD

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The Chinese government has stated it welcomes foreign investment. In 2015, China's inward FDI flow rose around six percent from the year earlier to USD 126.3 billion, according to the Ministry of Commerce (MOFCOM). China's sustained high economic growth rate and the expansion of its domestic market help explain its attractiveness as an FDI destination. Foreign investors, however, often temper their optimism regarding potential investment returns with uncertainty about China's willingness to offer a level playing field with domestic competitors. In addition, foreign investors report a range of challenges related to China's current investment climate. These include industrial policies that protect and promote state-owned and other domestic firms, equity caps and other restrictions on foreign ownership in many industries, weak IPR protection, a lack of transparency, corruption, discriminatory and non-transparent anti-monopoly enforcement, excessive national or cyber security requirements, and an unreliable legal system. The 2015 Anti-Terrorism Law, the draft Foreign Non-Governmental Organizations (NGO) Law, and the measures restricting bank purchases of foreign technology raised concerns that China was back-tracking on reforms to further open to foreign investment.

The AmCham 2015 American Business in China White Paper: http://www.amchamchina.org/whitepaper
The AmCham 2016 Business Climate Survey: http://www.amchamchina.org/policy-advocacy/business-climate-survey
The U.S.-China Business Council's China Economic Reform Scorecard: https://www.uschina.org/reports/uscbc-china-economic-reform-scorecard-september-2015
FDI Statistics from MOFCOM: http://www.fdi.gov.cn/1800000121_10000177_8.html

Other Investment Policy Reviews

Organization for Economic Cooperation and Development (OECD)

China is not a member of the OECD. The OECD Council decided to establish a country program of dialogue and co-operation with China in October 1995. The most recent OECD Investment Policy Review for China was completed in 2008. The OECD Investment Policy Review noted that the policy changes in China between 2006 and 2008 tightened restrictions on inward direct investment, including cross-border mergers and acquisitions.

OECD 2008 report: http://www.oecd.org/investment/investmentfordevelopment/oecdinvestmentpolicyreviews-china2008encouragingresponsiblebusinessconduct.htm

In 2013, OECD published "China Investment Policy: An Update." This working paper examines China's investment policy since the publication of the 2008 Investment Policy Review. The report noted that while China's economic strength buoys foreign investor confidence, fears of investment protectionism are growing.

OECD 2013 Update: http://www.oecd.org/china/WP-2013_1.pdf

World Trade Organization (WTO)

China became a member of the World Trade Organization (WTO) in 2001. WTO membership boosted China's economic growth and advanced its legal and governmental reforms. The most recent WTO Investment Trade Review for China was completed in 2014. The report states that, despite the establishment of the Shanghai FTZ, there were few changes to

China's policies on inward foreign investment during the period under review (2012-2014). The trade review also said that China encourages inward FDI as well as joint ventures between Chinese and foreign companies, particularly in research and development.

WTO Investment Trade Review for China:
https://www.wto.org/english/tratop_e/tpr_e/tp400_e.htm
IMF information on China: http://www.imf.org/external/country/Chn/

Laws/Regulations on Foreign Direct Investment

Overview

China has a legal and regulatory framework that provides the government with discretion to promote investment in specific regions or industries it wishes to develop, and to restrict foreign investment deemed not to be in its national interest or that would compete with state-sanctioned monopolies or other favored domestic firms. Foreign investors report that many regulations contain undefined key terms and standards, and that regulations are often applied in an inconsistent manner by different regulatory entities and localities. Potential investment restrictions in China are thus much broader than those of many developed countries, including the United States.

China's accession to the WTO spurred significant transformations in various areas of Chinese domestic law. The current Chinese leadership has emphasized the need to strengthen the rule of law in China. Nonetheless, foreign investors have expressed concern that the legal system allows regulators significant discretion to adapt decisions to changing circumstances, which results in an unpredictable business climate and rulings that can appear arbitrary or discriminatory. Generally, unlike the United States, the legal system is designed to serve state and Communist Party interests, and as such, does not consistently protect individual rights or effectively resolve disputes. The current legal system is still being developed as a venue to address investment and commercial disputes.

FDI Laws

The Constitution of the People's Republic of China was adopted by the 5th National People's Congress on December 4, 1982, with several revisions through 2004. Article 18 of the Constitution permits foreign enterprises and other economic organizations or individuals to invest in China. The issuance of the China-Foreign Equity Joint Venture Enterprise Law in 1979 marked the beginning of the establishment of China's foreign investment legal regime. Since then, China has established a foreign investment legal regime based on three central laws. These are: the China-Foreign Equity Joint Venture Enterprise Law, the China-Foreign Cooperative Joint Venture Enterprise Law, and the Foreign-Invested Enterprise Law.

Administrative regulations and regulatory documents governing FDI issued by the State Council – China's cabinet – include, but are not limited to:

- Implementation Regulations of the China-Foreign Equity Joint Venture Enterprises Law
- Implementation Regulations of the China-Foreign Cooperative Joint Venture Enterprise Law
- Implementation Regulations of the Foreign-Invested Enterprise Law
- State Council Provisions on Encouraging Foreign Investment

- Provisions on Guiding the Direction of Foreign Investment
- Administrative Provisions on Foreign Investment to Telecom Enterprises

There are over 1,000 rules and regulatory documents related to foreign investment in China issued by government ministries. They include, but are not limited to:

- Catalogue for the Guidance of Foreign Investment Industries
- Provisions on Mergers & Acquisitions of Domestic Enterprises by Foreign Investors
- Administrative Provisions on Foreign Investment in Road Transportation Industry
- Interim Provisions on Foreign Investment in Cinemas
- Administrative Measures on Foreign Investment in Commercial Areas
- Administrative Measures on Ratification of Foreign Invested Projects
- Administrative Measures on Foreign Investment in Distribution Enterprises of Books, Newspapers and Periodicals
- Provision on the Establishment of Investment Companies by Foreign Investors
- Administrative Measures on Strategic Investment in Listed Companies by Foreign Investors

In addition, local legislatures and governments also enact their own regulations and rules to regulate foreign investments within their jurisdictions, in accordance with national laws and policies. Examples include Wuhan's Administration Regulation on Foreign-Invested Enterprises and Shanghai's Municipal Administration Measures on the Land Usage of Foreign-Invested Enterprises.

Under this foreign investment legal regime, China approves foreign investments on a case-by-case basis following review by multiple government agencies. China claims to provide foreign investors with national treatment, or treatment no less favorable than that provided to domestic investors, after an investment has been established, but not before. Foreign investors may only invest where allowed by laws, regulations, and rules, in specified areas or industries, and are required to obtain ratification for planned investment projects and to establish companies. In some industries, such as the telecommunication industry, foreign investors are also required to obtain approval from relevant industry regulators. Separate approval processes govern land use and other administrative areas. Reviews may overlap, resulting in potentially redundant examinations. Low transparency limits the predictability of outcomes.

A list of Chinese laws and regulations, central and local: http://www.gov.cn/zhengce/

FDI Reform Announcements

In November 2013, following the Third Plenum of the 18th Party Congress, the Chinese Communist Party issued a decision which is described by the Chinese leadership as one of the largest and most ambitious economic reform programs since Deng Xiaoping's pioneering market-oriented reforms in 1978. Among other things, the decision directs China to broaden foreign investment access in China; to explore the possibility of a model for allowing foreign investment that would provide national treatment at all phases of investment, including market access (i.e., the "pre-establishment" phase of investment), and employ a "negative list" approach in identifying exceptions (meaning that all investments are permitted except for those explicitly identified); and to set up more free trade zones like the recently established and still evolving Shanghai FTZ. The decision also stated that China intends to unify laws and regulations governing foreign and domestic investment.

The English version of the Third Plenum decision:
http://www.china.org.cn/china/third_plenary_session/2013-11/16/content_30620736.htm

In January 2015, MOFCOM issued a new draft Foreign Investment Law for public comment. When enacted, the law will unify and supersede the three main laws governing foreign-invested enterprises (FIEs): the China-Foreign Equity Joint Venture Enterprise Law, the Foreign-Invested Enterprise Law, and the China-Foreign Cooperative Joint Venture Enterprise Law. The draft Foreign Investment Law would abolish case-by-case approval of foreign investment in favor of a system that would treat FDI the same as domestic investment, except for foreign investment in sectors detailed in a "negative list." While this approach has the potential to equalize treatment in some sectors, it would also codify discrimination in the sectors on the negative list. Thus, its impact depends on both the length of the negative list and the consistency of the approval processes that apply to both foreign and domestic investors for unlisted sectors.

In April 2015, the State Council issued a General Plan for the free trade zones in Tianjin, Guangdong, and Fujian that offers national treatment in the pre-establishment phase of investment, except for discriminatory measures identified on a negative list. The State Council-issued negative list for these free trade zones, plus the Shanghai FTZ, comprises 85 measures restricting foreign investment and 37 measures forbidding foreign investment. Together, this negative list has 17 fewer measures than the negative list adopted in the Shanghai FTZ in 2014 and 68 fewer measures than Shanghai FTZ's 2013 negative list. Despite the numerical reduction in discriminatory measures, no commercially significant openings for foreign investment were created.

China also issued in 2015 the Interim Measures on the National Security Review of Foreign Investment in Free Trade Zones. The definition of national security contained in these Interim Measures is broad, implicating investments in military, national defense, agriculture, energy, infrastructure, transportation, culture, information technology products and services, key technology, and manufacturing.

In addition, MOFCOM issued the Administrative Measures for the Record-Filing of Foreign Investment in Free Trade Zones, outlining the streamlined process that foreign investors need to follow to register investments in the free trade zones.

In May 2015, the State Council approved a pilot program in Beijing to test openness to investors in science and technology, internet and information, culture and education, financial services, commerce and tourism, and healthcare. The pilot program has not yet begun, however, because authorities have not issued any implementation regulations.

Business Registration

Basic business registration procedures are difficult. The World Bank ranked China 84th out of 189 economies in ease of doing business. For starting a business, the World Bank ranked

China 136th (between Paraguay and Cameroon), reporting that starting a business requires at least 11 procedures in Shanghai and Beijing that average more than 30 days to complete. Procedures include pre-approval for the company name, a business license with the State Administration for Industry and Commerce, an organization code certificate with the Quality and Technology Supervision Bureau, registration with the provincial and local tax bureaus, a company seal from the police department, registration with the local statistics bureau, a bank account, the authorization to print or purchase invoices and receipts, and registration with the Ministry of Human Resources and Social Security, as well as with the Social Welfare Insurance Center.

Recently, however, the State Council has tried to reduce red tape. For example, the State Council eliminated hundreds of administrative licenses and either cancelled or delegated administrative approval power across a range of sectors. The number of investment projects subject to central government approval reportedly dropped more than 75 percent. The State Council has set up a website in English about doing business in China (http://english.gov.cn/services/doingbusiness). MOFCOM's Department of Foreign Investment Administration is responsible for foreign investment promotion in China.

Despite streamlining efforts, though, foreign companies continue to complain about the challenges of setting up a business, including registration and administrative licenses. Numerous companies offer consulting, legal, and accounting services for establishing wholly foreign-owned enterprises, partnership enterprises, joint ventures, and representative offices. The differences among these corporate entities are significant, and investors should review their options carefully with an experienced advisor before choosing a particular corporate entity or investment vehicle.

Despite these challenges, China is the third-largest export market for U.S.-based small- and medium-sized enterprises (SMEs). According to the National Bureau of Statistics, SMEs account for 99.7 percent of all companies registered in China. These SMEs contribute 60 percent of China's industrial output and create 80 percent of China's jobs. The Regulations on the Standards for Classification of SMEs defines "mini," "small," and "medium," and vary by sector. In the software and IT services industry, for instance, a small enterprise would have between 10 and 100 employees with operating revenue greater than RMB 500,000 (USD 76,800). A medium enterprise would have between 100 and 300 employees and an operating revenue between RMB 10 million (USD 1.5 million) and 100 million (USD 15.4 million). In some services-based industries, such as architecture, regulators consider operating revenue and total assets rather than the number of employees. The central government has developed several policies to support SME growth, including access to credit from state-owned and small private banks.

Industrial Promotion

Five-Year Plan

China defines its broad economic goals through five-year macro-economic plans. The most significant of these for foreign investors is China's Five-Year Plan (FYP) on Foreign Capital Utilization. The 12th FYP for Utilization of Overseas Capital and Investment Abroad, issued by the National Development and Reform Commission (NDRC) in 2012, promises to guide more foreign direct investment to an identified set of strategic and newly emerging industries (SEIs), namely energy efficiency and environmental technologies, next generation information technology, biotechnology, advanced equipment manufacturing, new energy sector, new materials, and new-energy vehicles, while “strictly” limiting FDI in energy and resource-intensive and environmentally damaging industries; encourage foreign multinationals to set up regional headquarters and research and development centers in China; encourage foreign investment in production services such as modern logistics, software development, engineering design, vocational skill training, information consulting, technology, and intellectual property services; “steadily open up” banking, securities, insurance, telecom, fuel, and logistics industries; “gradually open up” education and sports; guide foreign capital to enter healthcare, culture, tourism, and home services; and encourage foreign capital to enter creative design. The National People’s Congress approved the 13th FYP, covering 2016 to 2020, in March 2016.

Innovation

A major goal of China’s investment policies, stated in the 12th FYP, is to encourage the domestic development of technology and know-how. China’s investment authorities tend to look favorably on investments that transfer technology or facilitate “indigenous innovation.” China seeks to promote investment in higher value-added sectors, including high technology research and development, advanced manufacturing, clean energy technology, and select services sectors. Foreign investors often must weigh the potential value of accessing China’s market against China’s inability or unwillingness to protect intellectual property.

Regional growth

China also seeks to spread the benefits of foreign investment beyond its relatively wealthy coastal areas by encouraging foreign companies to establish regional headquarters and operations in Central, Western, and Northeastern China. China publishes and regularly revises a Catalogue of Priority Industries for Foreign Investment in the Central-Western Regions, which outlines incentives to attract investment in targeted sectors to those parts of China.

Catalogue of Priority Industries for Foreign Investment in the Central-Western Regions: http://www.ndrc.gov.cn/zcfb/zcfbl/201305/W020130516388520815145.pdf

Limits on Foreign Control and Right to Private Ownership and Establishment

Catalogue for the Guidance of Foreign Investment in Industries

China outlines its specific foreign investment objectives primarily through its Catalogue for the Guidance of Foreign Investment in Industries, most recently revised in March 2015, and maintained by MOFCOM and NDRC. The catalogue delineates sectors of the economy where foreign investment is “encouraged,” “restricted,” and “prohibited.” Investment in sectors not listed in the catalogue is considered permitted. China “encourages” investment in sectors where it believes it will benefit from foreign assistance or technology. Investment is “restricted” and “prohibited” in sectors that China deems sensitive, that touch on national security, or that do not meet the goals of China’s economic development plans.

The 2015 edition of the Catalogue lifts restrictions on foreign investment in several areas, including in manufacturing, but makes limited progress in services, agriculture, and infrastructure. According to NDRC, the Catalogue reduces the number of restricted industries from 79 to 38, with direct sales and insurance brokerage companies among the beneficiaries. It also limits the number of sectors for which Chinese-controlled joint ventures are required from 44 to 35. Additionally, the new Catalogue reduces the number of industries requiring joint ventures with Chinese partners, but allowing foreign control, from 43 to 15, including in real estate development.

The overall reforms to the Catalogue may improve market access in some sectors, but the Catalogue also reduces access in others. In general, foreign investment restrictions remain largely unaltered in industries that have traditionally faced heavy restrictions, such as banking, telecommunications, and cultural industries. On the positive side, the new Catalogue exempts the e-commerce industry from the 50 percent equity cap for foreign investment in value-added telecom services.

The Chinese version of the 2015 Foreign Investment Catalogue:
http://www.mofcom.gov.cn/article/b/f/201503/20150300911747.shtml

Problems with the Catalogue

The Catalogue exhaustively describes China's foreign investment restrictions. Contradictions between the Catalogue and other measures have confused investors and added to the perception that investment guidelines do not provide a secure basis for business planning. Even in "encouraged" and "permitted" sectors, regulations apart from the Catalogue often detail additional restrictions on the specific forms of investment that are allowed. Chinese regulators have maintained the flexibility to ignore the Catalogue's guidance in some instances, and to restrict or approve foreign investment for reasons other than those specified. The government may also adopt new regulations or establish industrial policies that supersede the most recently published edition of the Catalogue. Uncertainty as to which industries are being promoted and how long such designations will be valid undermines confidence in the stability and predictability of the investment climate.

Equity Caps

In addition to dividing industries into "encouraged," "restricted," and "prohibited" categories, the catalogue may also require that investment take certain forms (such as a domestic-foreign equity joint venture) and/or that the foreign shareholder's proportion of investment in the enterprise be limited to a minority share. Agency-specific regulations may also require that investment take certain forms.

For example:

- In the oil and natural gas exploration and development industry, foreign investment is required to take the form of equity joint ventures and cooperative joint ventures.
- In the accounting and auditing sectors, the Chief Partner of a firm must be a Chinese national.
- In higher education and pre-school, foreign investment is only permitted in the form of cooperative joint ventures led by a Chinese partner.
- In some sectors, the Chinese partners, individually or as a group, must maintain control of the enterprise; for example, in construction and operation of civilian airports, construction and operation of nuclear power plants, establishment and operation of cinemas, and the design and manufacture of civil-use satellites.

In some sectors, the foreign shareholder's proportion of the investment may not exceed a certain percentage. For example, foreign stakes are limited to:

- 50 percent in value-added telecom services (excepting e-commerce)
- 49 percent in basic telecom enterprises
- 50 percent in life insurance firms
- 49 percent in security investment fund management companies

Mandatory Intellectual Property (IP)/technology transfer requirements

Mandatory joint venture structures and equity caps give Chinese partner firms significant control, often allowing them to benefit from technology transfer. In addition, the relative opacity of the approvals process and the broad discretion granted to the authorities foster an environment where government authorities can impose deal-specific conditions beyond written legal requirements, often with the intent to force technology transfer as a condition of market access or to support industrial policies and the interests of local competitors.

Privatization Program

Early indications following China's November 2013 Third Plenum reform pronouncements suggest that China will attempt to sell shares in state-owned enterprises (SOEs) to outside investors, improve SOE management structures, emphasize the importance of SOEs meeting financial goals, and take steps to bring private capital into some sectors traditionally monopolized by SOEs, such as energy, telecoms, and finance. Practically, the government must still work out how to implement its SOE reform vision. The government's listing over the past few years of several large SOEs and their assets in Hong Kong, where they are subject to greater transparency rules and heightened regulatory scrutiny, suggests a possible mechanism to improve SOE corporate governance and transparency. The government also committed at the Third Plenum to raise the portion of earnings that SOEs pay out as dividends to the public budget, although here, too, the pace and method of implementation remain uncertain.

Screening of FDI

Overview

As mentioned, foreign investors are required to obtain approvals for their investment projects and to establish an enterprise. In some industries, such as telecommunications, foreign investors are also required to get approval from industry regulators.

Catalogue of Investment Projects Subject to Government Ratification

In July 2004, the State Council issued its Decision on Investment Regime Reform and the Catalogue of Investment Projects subject to Government Ratification (Ratification Catalogue). According to the Ratification Catalogue, all proposed foreign investment projects in China must be submitted for "review and ratification" by the National Development and Reform Commission (NDRC) or provincial or local Development and Reform Commissions, depending on the sector and value of the investment. In 2013, however, the government issued a new catalogue narrowing the scope of foreign investment projects subject to NDRC ratification. Foreign investment which does not require Chinese control according to the Foreign Investment Catalogue and which is not listed in the Ratification Catalogue requires only "filing for record" with the local NDRC office. The policy shift marked a positive step toward easing bureaucratic barriers to foreign investment.

In November 2014, China released a new edition of the Ratification Catalogue, which eliminates the requirement for NDRC ratification in 15 sectors (out of approximately 50) and delegates ratification authority to local governments in another 23 sectors. The new Ratification Catalogue also raises the threshold of foreign ownership that would trigger the requirement for NDRC approval, as opposed to registration, in several sectors. When announcing the reforms, NDRC stated the goal of the latest revision to the Ratification Catalogue is to limit ratification to projects relating to “national and ecological security, geographic and resource development” and the “public interest.” NDRC estimated the number of projects requiring ratification from central government authorities would fall by 76 percent following revisions made over the past several years.

NDRC’s approval process for foreign investment projects includes assessing the project’s compliance with China’s laws and regulations; its compliance with the Foreign Investment Catalogue and industrial policy; its national security, environmental safety, and public interest implications; its use of resources and energy; and its economic development ramifications. In some cases, NDRC also solicits the opinions of relevant Chinese industrial regulators and “consulting agencies,” which may include industry associations that represent domestic firms. This can create conflicts of interest that disadvantage foreign investors. The State Council may also weigh in for high-value projects in “restricted” sectors.

The Catalogue of Investment Projects subject to Government Ratification: http://www.gov.cn/zhengce/content/2014-11/18/content_9219.htm

Approvals

Based on the three foreign investment laws, once NDRC approves the foreign investment project, foreign investors must apply to MOFCOM for approval to legally establish a company. Next, foreign investors apply for a business license from the State Administration for Industry and Commerce (SAIC), which allows the firm to operate. Once a license is obtained, the investor registers with China’s tax and foreign exchange agencies. Greenfield investment projects must also seek approval from China’s Environmental Protection Ministry and its Ministry of Land Resources. The actual implementation of China’s foreign investment approvals process may vary in specific cases, depending on the details of a particular investment proposal and local rules and practices.

U.S. Chamber of Commerce report on China’s Approval Process for Inbound Foreign Direct Investment:
http://www.uschamber.com/sites/default/files/reports/020021_China_InvestmentPaper_hires.pdf

Draft Foreign Investment Law

As mentioned, MOFCOM in January 2015 proposed a new Foreign Investment Law, which reflects key principles from the U.S. model Bilateral Investment Treaty, including the use of a negative list to enumerate instances where FDI is treated differently than domestic investment. The draft would also streamline the approval process for foreign investment in some sectors, but contains a number of troubling provisions that could facilitate discriminatory treatment of foreign investment. The draft law was released for public comment in January 2015. Since then, there has been no further update.

Anti-monopoly Review and National Security Review

MOFCOM conducts anti-monopoly and/or national security reviews of proposed mergers and acquisitions (M&As) of domestic enterprises by foreign investors. The anti-monopoly review is detailed further below, in the section on competition policy. Article 31 of China's Anti-monopoly Law also notes that if a merger or acquisition of a domestic enterprise by a foreign investor poses national security concerns, a separate national security review is also required. Article 12 of MOFCOM's Rules on Mergers and Acquisitions of Domestic Enterprises by Foreign Investment stipulates that parties are required to report a transaction to MOFCOM if:

- Foreign investors obtain actual control, via merger or acquisition, of a domestic enterprise in a key industry.
- The merger or acquisition affects or may affect national economic security.
- The merger or acquisition would cause the transfer of actual control of a domestic enterprise with a famous trademark or a Chinese time-honored brand.

If MOFCOM determines that the parties did not report a merger or acquisition that affects or could affect national economic security, MOFCOM, together with other government agencies, may require the parties to terminate the transaction or adopt other measures to eliminate the impact on national economic security.

In February 2011, China released the State Council Notice Regarding the Establishment of a Security Review Mechanism for Foreign Investors Acquiring Domestic Enterprises. The notice established an interagency Joint Conference, led by NDRC and MOFCOM, with the authority to block foreign mergers and acquisitions of domestic firms that it believes may impact national security. The Joint Conference is instructed to consider not just national security, but also national economic security and "social order," when reviewing transactions. China has not disclosed any instances in which it has invoked this formal review mechanism.

Local commerce departments are responsible for flagging transactions that require a national security review when they review them in an earlier stage of China's foreign investment approval process. Some provincial and municipal departments of commerce have previously posted on the internet a Security Review Industry Table listing non-defense industries where transactions may trigger a national security review, but MOFCOM has declined to confirm whether these lists reflect official policy. In addition, third parties such as other governmental agencies, industry associations, and companies in the same industry can seek MOFCOM's review of transactions, which can pose conflicts of interest that disadvantage foreign investors. Investors may also voluntarily file for a national security review.

In addition to transforming the current foreign investment regime, the aforementioned MOFCOM draft Foreign Investment Law would also establish a broad and potentially intrusive national security review mechanism. As it is currently envisaged, the national security review could be used to hinder market access and increase the financial burden of foreign investment in China.

Competition Law

Competition Policy, Laws, and Regulations

China has many laws and regulations that classify sectors into monopolies, near-monopolies, or authorized oligopolies. These measures are most common in resource-intensive sectors such as electricity and transportation, as well as in fixed-line telephony and postal services to ensure national coverage. The measures also target sectors the government deems vital to national security and economic stability, including defense, energy, and banking. Examples of such laws and regulations include the Law on Electricity (1996), Civil Aviation Law (1995), Regulations on Telecommunication (2000), Postal Law (1986), Railroad Law (1991), and Commercial Bank Law (amended in 2003), among others.

Anti-monopoly Law

China's Anti-monopoly Law (AML) took effect in August 2008 and established an anti-monopoly commission with oversight and coordinating responsibilities. Three agencies share enforcement responsibilities: MOFCOM reviews mergers and acquisitions; NDRC reviews cartel agreements to fix prices, abuse of dominance, and abuse of administrative power involving pricing; and SAIC reviews the same types of activities as NDRC when those activities are not directly price-related. After the AML was enacted, MOFCOM, NDRC, SAIC, and other Chinese government ministries and agencies began to formulate implementing regulations, departmental rules, and other measures. Generally, these ministries and agencies have been willing to seek public comment on their proposed measures, although sometimes comment periods are less than 30 days.

Implementation Rules for AML Enforcement

In 2015, for the first time, the Chinese Communist Party's Central Committee and the State Council stated that all future economic policies would reflect China's competition policy. In addition, the State Council tasked the three AML enforcement agencies to draft guidelines on six enforcement themes, including "abuse" of intellectual property rights. The State Council is expected to consolidate those draft guidelines in 2016.

Enforcement

China's enforcement of competition laws and regulations is uneven. Inconsistent central and provincial enforcement may be exacerbated by local protectionism. Government authorities at all levels in China may also restrict competition with favored firms through various forms of regulation. Official statements frequently suggest these efforts are tied primarily to employment concerns. However, the ultimate beneficiaries of the resulting measures are often unclear. In addition, local governments frequently enact rules that restrict inter-provincial trade, which may also restrict market access for certain imported products, raise production costs, and limit market opportunities for FIEs. Foreign companies have expressed concern that the central government uses AML enforcement to promote industrial policy, thereby favoring Chinese companies over foreign companies.

Since the AML went into effect, MOFCOM's oversight of mergers has yielded the most enforcement activity. Under the AML, through the end of 2015, China has "unconditionally" approved 1,278 merger cases and "conditionally" approved 27, according to Chinese statistics. Twenty-three of the 27 cases approved with conditions have involved offshore transactions between foreign parties. The other four transactions involved foreign companies merging with Chinese enterprises. Observers have expressed concern over the speed and inconsistent review process. In 2015, MOFCOM amended two sets of rules concerning M&A

notification and review process. The average time to start a review fell 13 percent, according to MOFCOM.

In 2015, foreign companies expressed fewer complaints than in 2014 about NDRC's conduct during investigations. Some believe that a leadership change at NDRC improved enforcement practices. In 2015, NDRC opened more investigations into Chinese companies than foreign ones. That said, many foreign companies still complain that AML regulators use competition law to promote China's industrial policy goals by limiting competition from foreign firms.

At the same time, NDRC has made progress towards greater transparency by releasing aggregate data on investigations and publicizing case decisions. MOFCOM stated it will enforce the requirement that Chinese firms, in addition to foreign firms, must also notify China of proposed mergers and acquisitions for review.

During the U.S.-China Joint Commission on Commerce and Trade in November 2015, China expressed support for key competition policy principles, including recognizing that intellectual property licensing enhances competition and the need for coherent AML rules related to intellectual property rights; that AML agencies should be free from intervention from other agencies; and that commercial secrets obtained in AML proceedings should not be disclosed.

It remains unclear how China will implement the AML with respect to SOEs and government monopolies in industries deemed nationally important. While introductory language in the law says the AML protects the lawful operations of SOEs and government monopolies in industries deemed nationally important, the three AML enforcement agencies have publicly stated the law applies to SOEs, and have pursued some enforcement actions against them. But concerns remain that enforcement against SOEs will remain limited, especially given China's proactive orchestration of mergers in rail, marine shipping, metals, and other strategic sectors. Such actions may limit competition, raising prices in China while also increasing the market power of the combined Chinese firms, just as China is promoting their expansion into new overseas markets.

On the positive side, AML provisions restricting regulators from abusing administrative monopolies, which also appear in NDRC's and SAIC's implementing regulations, could help promote the establishment and maintenance of more competitive markets in China, if enforced.

Additional Laws Related to Foreign Investment

China's State Secrets Law gives the government broad authority to classify information as a "state secret," creating uncertainty and potential risk for investors negotiating with SOEs or operating in sensitive sectors. The Contract Law encourages contractual compliance by providing legal recourse for a breach of contract, although enforcement of judgments continues to be a problem. Additional investment-related laws include, but are not limited to, the Administrative Permissions Law, the Arbitration Law, the Corporate Income Tax Law, the Enterprise Bankruptcy Law, the Foreign Trade Law, the Government Procurement Law, the Insurance Law, the Labor Contract Law, the Law on Import and Export of Goods, and the Securities Law.

2. Conversion and Transfer Policies

Foreign Exchange

Since early 2016, several foreign companies have complained about lengthening administrative delays in remitting large sums of money from China, even after completing all of the documentation requirements. Such incidents come amid reports that the Chinese government has tightened scrutiny of currency transfers due to increased capital outflows from China.

FIEs in China do not need pre-approval to open foreign exchange accounts and are allowed to retain income as foreign exchange or convert it into renminbi without quota requirements. Foreign exchange transactions on China's capital account no longer require a case-by-case review by the State Administration of Foreign Exchange (SAFE). Instead, designated foreign exchange banks review and directly conduct foreign exchange settlements. The Chinese government registers all commercial foreign debt and limits foreign firms' accumulated medium- and long-term debt from abroad to the difference between total investment and registered capital. China issued guidelines in February 2015 that allow, on a pilot basis, a more flexible approach to foreign debt within several specific geographic areas, including the Shanghai FTZ. The main change under this new approach is to allow FIEs to expand their foreign debt above the difference between total investment and registered capital, so long as firms have sufficient net assets.

More broadly, China has been gradually liberalizing foreign exchange controls, and in April 2014 and August 2015, announced new rules (the Regulations on Forex Capital Pooling Operations and Management of Multinational Companies) that provide greater flexibility in transferring foreign currency for large domestic and foreign multinational firms. Foreign firms must report their foreign exchange balance once per year. In April 2015, SAFE announced a further loosening of capital controls for foreign-funded firms, which are now allowed to convert up to 100 percent of their registered foreign-currency capital into renminbi based on business needs.

China's exchange rate regime is managed within a band that allows the currency to rise or fall by two percent per day from the midpoint "reference rate" set each morning. In August 2015, China announced that the reference rate would more closely reflect the previous day's closing spot rate, linking it closer to market forces than before. Since that change, daily volatility of the renminbi has at times been higher than in recent years, but for the most part, remains well below what is typical for other currencies.

Remittance Policies

The following operations do not require SAFE approval: purchase and remittance of foreign exchange as a result of capital reduction, liquidation, or early repatriation of an investment in a foreign-owned enterprise, or as a result of the transfer of equity in a FIE to a Chinese domestic entity or individual where lawful income derived in China is reinvested.

The remittance of profits and dividends by FIEs is not subject to time limitations, but FIEs need to submit a series of documents to designated banks for review and approval. The review period is not fixed, and is frequently completed within one or two working days of the submission of complete documents.

Remittance policies have not changed substantially since SAFE simplified some regulations in January 2014, devolving many review and approval procedures to banks. Firms that remit profits at or below USD 50,000 dollars can do so without submitting documents to the banks for review. For remittances above USD 50,000, the firm must submit tax documents, as well as the formal decision by its management to distribute profits.

For remittance of interest and principle on private foreign debts, firms must submit an application form, a foreign debt agreement, and the notice on repayment of the principle and interest. Banks will then check if the repayment volume is within the repayable principle.

The remittance of financial lease payments falls under foreign debt management rules. There are no specific rules on the remittance of royalties and management fees.

The Financial Action Task Force has identified China as a country of primary concern. Global Financial Integrity estimates that over $1 trillion of illicit money left China between 2003 and 2012, making China the world leader in illicit capital flows.

3. Expropriation and Compensation

Chinese law prohibits nationalization of FIEs except under "special" circumstances. Chinese officials have said these circumstances include national security and obstacles to large civil engineering projects, but the law does not define the term "special." Chinese law requires compensation of expropriated foreign investments, but does not set forth the formula to be used in calculating the amount. The Department of State is not aware of any cases since 1979 in which China has expropriated a U.S. investment, although the Department has notified Congress of several cases of concern.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Chinese officials typically urge firms to resolve disputes through informal conciliation. If formal dispute resolution is necessary, Chinese parties and the authorities typically promote arbitration over litigation. Many contracts require arbitration by the China International Economic and Trade Arbitration Commission (CIETAC). Established by the State Council in 1956 under the auspices of the China Council for the Promotion of International Trade (CCPIT), CIETAC is China's most widely-utilized arbitral body for foreign-related disputes. Some foreign parties have obtained favorable rulings from CIETAC, while others question CIETAC's fairness and effectiveness.

CIETAC is based in Beijing and has four sub-commissions in Shanghai, Shenzhen, Tianjin, and Chongqing. In 2012, CCPIT, under the authority of the State Council, issued new arbitration rules that granted CIETAC headquarters significantly more authority to hear cases than the sub-commissions. Expecting a loss in revenue, CIETAC Shanghai and CIETAC Shenzhen declared their independence, issued their own rules, and changed their names. As a result, CIETAC disqualified its former Shanghai and Shenzhen affiliates from administering arbitration disputes.

This jurisdictional dispute between CIETAC in Beijing and the former sub-commissions raised serious concerns in the U.S. business and legal communities, particularly regarding the validity of arbitration agreements specifying particular arbitration procedures and the enforceability of arbitral awards issued by the sub-commissions. In 2013, the Supreme People's Court (SPC) issued a notice clarifying that any lower court that hears a case arising out of the CIETAC split must report the case to the SPC before making a decision. However, the SPC notice is brief and lacks detail on certain issues, including the timeframe for the lower court's decision to reach the SPC and for the SPC to issue its opinion.

Other arbitration commissions exist and are usually affiliated with the government at the provincial or municipal level. The Beijing Arbitration Commission and the Shanghai Arbitration Commission have emerged as serious domestic competitors to CIETAC. For contracts involving at least one foreign party, offshore arbitration may be adopted. Foreign companies often encounter challenges in enforcing arbitral decisions issued by Chinese and foreign arbitration bodies. Investors may appeal to higher courts in such cases.

Legal Code

Rules governing commercial activities are present in various laws, regulations, and judicial interpretations, including China's Civil Law, Contract Law, Partnership Enterprises Law, Security Law, Insurance Law, Enterprises Bankruptcy Law, Labor Contract Law and Implementing Regulations, and Supreme People's Court Interpretation on Several Issues Regarding the Application of the Contract Law. China does not have specialized commercial courts, but in 2014 began a three-year pilot program to establish three IPR courts in Beijing, Guangzhou, and Shanghai. See Section 6.2 for more information on IPR issues.

Lack of Judicial Independence

China's Constitution provides a legal basis for China's courts to independently exercise adjudicative power, and several laws have provisions stating that courts are not subject to interference by administrative organs, public organizations, or individuals. However, in practice, China's court system is not independent of the government or the CCP, which often intervene in disputes. Interference takes place for many reasons, including:

- Courts fall under the jurisdiction of local governments.
- Courts budgets are appropriated by local administrative authorities.
- Judges in China have administrative ranks and are managed as administrative officials.
- The CCP is in charge of the appointment, dismissal, transfer, and promotion of administrative officials.
- China's Constitution stipulates that local legislatures appoint and supervise the courts.
- Corruption may also influence local court decisions.

The U.S. business community consistently reports that Chinese courts, particularly the lower courts, are susceptible to outside (political) influence, lack the sophistication to understand complex commercial disputes, and operate opaquely. U.S. companies often avoid challenging administrative decisions or bringing commercial disputes before a local court for fear of political retaliation.

Reports of business disputes involving violence, death threats, hostage-taking, and travel bans involving Americans continue to increase, although American citizens and foreigners in general do not appear to be more likely than Chinese nationals to be subject to this treatment. Police are often reluctant to intervene in what they consider to be internal contract disputes.

Fourth Plenum Reforms

The CCP's October 2014 Fourth Plenum Decision called for the strengthening of rule of law through top-down judicial, legal, and administrative reforms. The Fourth Plenum Decision set six major tasks: Improving the Constitution-centered legal system "with Chinese socialist characteristics" and strengthening the implementation of the Constitution, promoting administration by law and speedily moving toward a government ruled by laws, safeguarding judicial justice, improving judicial credibility, promoting the public's awareness of rule of law, and enhancing and improving the party's leadership in comprehensively promoting the rule of law. Since the conclusion of the Fourth Plenum, the CCP has moved forward with several preliminary measures to implement these reforms, including the establishment of some new courts and the promulgation of rules prohibiting official interference in judicial cases. If successful, these reforms could result in fairer judicial procedures and allow companies to pursue judicial or administrative action in a district outside of their base of operations.

However, the CCP clearly emphasized in the Fourth Plenum that it remains above the law. Many observers say "rule by law," a phrase often used to criticize the Chinese legal system, is a more accurate description of the CCP's Fourth Plenum goals. Ultimately, the implementation of these reforms will be a significant challenge for the CCP, and even if the reforms are successful, it could be many years before they begin to have a significant effect.

In 2013, the Supreme People's Court (SPC) issued a measure that requires people's courts at all levels throughout China to submit their judgments and rulings for publication on a central website, established and maintained by the SPC.

Judgments of Foreign Courts

There are few precedents where Chinese courts have recognized and enforced foreign court judgments. Articles 281 and 282 of China's Civil Procedure Law cover the recognition and enforcement of the effective judgments of foreign courts by the court system of China. According to these laws, if the courts determine, after reviewing the foreign courts' judgments, China's treaty obligations, reciprocity principles, basic principles of Chinese laws, China's sovereignty, security, and social public interests, the Chinese courts shall issue verdicts to recognize the effectiveness of foreign court judgments and issue enforcement orders if enforcement is needed. China has concluded 27 bilateral agreements on the recognition and enforcement of foreign court judgments, but none with the United States. China's recognition of judgments by U.S. courts can be inconsistent, according to anecdotal reports.

Fourth Plenum Website:
http://www.china.org.cn/china/fourth_plenary_session/node_7214095.htm

Bankruptcy

In June 2007, China's new Enterprise Bankruptcy Law came into force. For both foreign investors as well as domestic companies, the bankruptcy process is rarely used to wind down company operations or seek protection from creditors, due to the incomplete nature of the legal regime and judicial inexperience in this area of corporate law.

Investment Disputes

The Chinese government and judicial system do not maintain a public record of investment disputes. The SPC maintains a count of the annual number of cases involving foreigners tried throughout China, but does not specify the types of cases, identify civil or commercial disputes, or note foreign investment disputes. Rulings are open to the public only in some cases.

International Arbitration

China has bilateral investment agreements with over 100 countries and economies (see Section 13). The majority of these agreements set mediation, domestic remedies, and international arbitration as the means to settle foreign investment disputes.

China is a party to the New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Chinese courts, however, inconsistently recognize or enforce foreign arbitration awards in China, especially when those awards are found against a Chinese party.

ICSID Convention and New York Convention

China is a member of the International Center for the Settlement of Investment Disputes (ICSID) and has ratified the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention). The domestic legislation that provides for enforcement of foreign arbitral awards related to these two Conventions include the Arbitration Law adopted in 1994, the Civil Procedure Law adopted in 1991 and amended in 2012, the Law on Chinese-Foreign Equity Joint Ventures adopted in 1979 and amended most recently in 2001, and a number of other laws with similar provisions. In addition, Chinese Arbitration Law has embraced many of the fundamental principles of The United Nations Commission on International Trade Law’s Model Law on International Commercial Arbitration.

Duration of Dispute Resolution

Article 270 of China’s Civil Procedure Law states that time limits in civil cases do not apply to cases involving foreign investment. According to the 2012 CIETAC Arbitration Rules, in an ordinary procedure case, the arbitral tribunal shall render an arbitral award within six months (in foreign-related cases) from the date on which the arbitral tribunal is formed. In a summary procedure case, the arbitral tribunal shall make an award within three months from the date on which the arbitral tribunal is formed.

In a domestic arbitration case, the arbitral tribunal shall render an arbitral award within four months from the date on which the arbitral tribunal is formed. At the request of the arbitral tribunal and with the approval of the Secretary General of the CIETAC, the time period of rendering an arbitral award may be extended.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

When joining the WTO in 2001, China committed to eliminate and cease the enforcement of trade and foreign exchange balancing requirements; local content and export performance offsets; and technology transfer requirements made effective through laws, regulations, and other measures. China also committed to lift within two years all measures applicable to motor vehicle producers that restrict categories, types, or models of vehicles permitted for production, and to increase limits within which investment in motor vehicle manufacturing could be approved by provincial governments.

In 2015, the Chinese government issued draft banking measures that place local-content requirements on information and telecommunications (ICT) equipment used by the banking sector. While WTO members maintain discretion to take steps to improve cybersecurity, foreign companies have expressed concern about measures that would severely limit access to China's banking sector for many foreign ICT products. In response, China has stressed the necessity to protect security in the banking sector, adding that many countries have enacted similar legislation. China continues to review stakeholder comments on the draft banking measures. No new release date for the measure has been issued.

Regarding public procurement, the United States continues to encourage China to join the Government Procurement Agreement (GPA) as soon as possible and to bring Chinese law in line with the GPA. In January 2015, China submitted a revised GPA offer. Further improvements are still needed, however, especially concerning state-owned enterprises and localities.

USTR's 2015 Report to Congress on China's WTO Compliance:

https://ustr.gov/sites/default/files/2015-Report-to-Congress-China-WTO-Compliance.pdf

Investment Incentives

Many localities – including special economic zones, development zones, and science parks – court foreign investors with packages of reduced income taxes, resource and land-use fees, and import/export duties, as well as priority treatment in obtaining basic infrastructure services, streamlined government approvals, and funding support for start-ups. These packages may also stipulate export, local content, technology transfer, or other requirements.

Research and Development

There is no express prohibition against foreign firms participating in research and development programs that China finances. In certain sectors where China does not possess the expertise to conduct advanced research, foreign participation is generally encouraged. However, a large number of sectors which China deems sensitive to national security, including broadly defined "economic security," are effectively closed to investment from U.S. and other foreign firms.

Performance Requirements

China has committed to eliminate export performance, trade and foreign exchange balancing, and local content requirements. China has also committed to enforce only technology transfer rules that do not violate WTO standards on IP and trade-related investment measures. In practice, however, local officials and some regulators prefer investments that develop favored industries and support the local job market. Provincial and municipal governments often restrict access to local markets, government procurement, and public works projects, even to firms that have invested in the province or municipality. In addition, Chinese regulators have reportedly pressured foreign firms in some sectors to disclose IP content or to license it to competitors, sometimes at below market rates.

Data Storage

Regulatory restrictions limit foreign companies' ability to invest in China's emerging cloud industry and many sectors of the economy that involve cross-border services. Examples include mandatory source code or IP disclosure requirements in testing and certification regimes related to government procurement; prescriptive technology adoption requirements (often in the form of domestic standards that diverge from global standards); and operational restrictions such as privacy measures, data center colocation, and cross-border data flow restrictions.

6. Protection of Property Rights

Real Property

The Chinese legal system mediates acquisition and disposition of property. Chinese courts have an inconsistent record in protecting the legal rights of foreigners.

All land in China is owned by the state. Individuals and firms, including foreigners, can own and transfer long-term leases for land, structures, and personal property, subject to many restrictions. China's Property Law stipulates that residential property rights will be automatically renewed, while commercial and industrial grants shall be renewed absent a conflicting public interest. A number of foreign investors have seen their land-use rights revoked when neighborhoods are slated by the government for development. Investors report compensation in these cases has been nominal.

China's Securities Law defines debtor and guarantor rights and allows mortgages of certain types of property and other tangible assets, including long-term leases as described above. China does not have laws or regulations prohibiting foreigners from buying non-performing debt, which they may acquire through state-owned asset management firms. However, in practice, China uses bureaucratic hurdles that limit foreigners' ability to liquidate assets in order to discourage them from purchasing non-performing debt.

Intellectual Property Rights

Following WTO accession, China updated many of its laws and regulations to comply with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and other international agreements. However, there are still aspects of China's IPR legal and regulatory regime that appear to fall short of international best practices, and, if improved, would provide greater protection to IPR. Furthermore, effective enforcement of China's IPR laws and regulations remains a significant challenge.

In general, criminal penalties for infringement are not applied on a frequent and consistent enough basis to significantly deter ongoing infringement. Furthermore, administrative sanctions are typically non-transparent and are so weak as to lack a deterrent effect. Because of relatively low damage awards, civil litigation against IPR infringement continues to have a limited effect. For detailed information on China's environment for IPR protection and enforcement, please see the following reports:

Office of the United States Trade Representative's (USTR) 2016 Special 301 Report (see section on China): https://ustr.gov/issue-areas/intellectual-property/Special-301

USTR's 2016 National Trade Estimate Report on Foreign Trade Barriers in China (see section on China): https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf

USTR's 2015 Report to Congress on China's WTO Compliance:

https://ustr.gov/sites/default/files/2015-Report-to-Congress-China-WTO-Compliance.pdf

For additional information about treaty obligations and points of contact at local IP offices, please see the World Intellectual Property Organization's country profiles at http://www.wipo.int/directory/en/.

Resources for Rights Holders

Contact at Embassy Beijing:

Joel B. Blank
Intellectual Property Attaché
Tel: +86 10 8531 4812
Joel.Blank@trade.gov

Local lawyers list: http://beijing.usembassy-china.org.cn/acs_legal.html

7. Transparency of the Regulatory System

China's legal and regulatory system is complex, and Chinese regulators and other government authorities inconsistently enforce regulations, rules, and other regulatory documents. Foreign investors rank inconsistent and arbitrary regulatory enforcement and the lack of transparency among the major problems they face in China's market. Government-controlled trade organizations and regulatory bodies set all standards, but foreign companies are often targets of enforcement that ignores Chinese transgressors. Confusion also occurs when central versus local rules apply, causing problems for foreign companies in some instances.

The State Council's Legislative Affairs Office (SCLAO) has issued instructions to Chinese agencies to publish all foreign trade- and investment-related laws, regulations, rules, and policy measures in the MOFCOM Gazette, in accordance with China's WTO accession commitment. In addition, it has also issued notices to require its own departments and other central government agencies to post proposed trade- and economic-related administrative regulations and departmental rules on the official SCLAO website for public comment. However, the SCLAO and ministries falling under the State Council continue to post only a fraction of draft administrative regulations and departmental rules on the SCLAO website for a 30-day public comment period. Comment periods can be extremely brief, and the impact of public comments on final regulations is not clear.

Moreover, there are an increasing number of regulatory policies for which public comment is not sought before they are finalized. Foreign investors report that Chinese regulators at times rely on unpublished internal guidelines that nonetheless affect their businesses.

State actions motivated by a perceived need to protect social stability or achieve other political goals can affect foreign investors. The close link between government, companies, and the CCP means it is not always clear where decisions that seem discriminatory against foreign companies originate. Self-regulatory organizations (SROs), for example, are formally responsible for certain licensing decisions in the financial sector. Therefore, Chinese financial institutions that are members of these SROs can decide on license applications from foreign firms, and foreign firms point to non-transparent and discriminatory licensing procedures in certain cases.

Access to foreign online resources, including news, cloud-based business services, and virtual private networks (VPNs), is often and increasingly restricted without official acknowledgement or explanation. FIEs have also reported threats of retaliation by the government for actions taken by the United States and other foreign governments at the WTO.

Regarding accounting practices, Chinese companies must use the Chinese Accounting Standards for Business Enterprises (ASBE) for all financial reporting within mainland China. Companies listed overseas (including in Hong Kong) may choose to use ASBE, the International Financial Reporting Standards (IFRS), or Hong Kong Financial Reporting Standards (HKFRS).

8. Efficient Capital Markets and Portfolio Investment

China's leadership aims to build a modern, developed, multi-tiered capital market. Bank loans continue to provide the majority of credit in China, although other sources of capital, such as corporate bonds, trust loans, equity financing, and private equity financing, are expanding their scope, reach, and sophistication. Regulators use administrative methods to control credit growth, although market-based tools such as interest rate policy play an increasingly important role.

The People's Bank of China (PBOC), China's central bank, has gradually increased flexibility for banks in setting interest rates – the floor on the lending rate was removed in 2013 and the deposit rate cap was removed in 2015. Favored borrowers, particularly SOEs, benefit from greater access to capital and lower financing costs, as lenders perceive these entities to have an implicit government guarantee and hence lower risk profiles. SMEs, by contrast, experience the most difficulty obtaining bank financing, and instead, often finance investments through retained earnings or informal channels, including other Chinese firms or private lenders.

In recent years, China's "shadow banking" sector, which includes vehicles such as wealth management and trust products, has grown rapidly. Chinese authorities have taken successive steps to increase the transparency and strengthen the supervision of these activities, while also permitting their continued development, as in many cases, these products increase channels for private firms to obtain capital at market rates. In 2014, the government also announced a pilot program that will allow private investors to establish small commercial banks, with an expansion of this pilot in 2015.

Non-bank financing has expanded over the last few years, including through public listing of stock, either inside or outside of China, and more firms and local government entities are issuing bonds. Most foreign portfolio investment in Chinese companies occurs on foreign exchanges, primarily in New York and Hong Kong. In addition, China has significantly expanded quotas for certain foreign institutional investors to invest in domestic stock markets, and has approved a two-way, cross-border equity direct investment scheme between Shanghai and Hong Kong that will allow Chinese investors to trade designated Hong Kong-listed stocks through the Shanghai Exchange, and vice versa. Direct investment by private equity and venture capital firms is also rising rapidly, although from a small base.

Money and Banking System

After several years of rapid credit growth, China's banking sector faces asset quality concerns. The reported non-performing loans (NPL) ratio rose to 1.7 percent at the end of 2015, up from 1.3 percent at the end of 2014.

The outstanding balance of commercial banks' NPLs in 2015 increased 51.25 percent from 2014. China's total banking assets hit RMB 199.35 trillion ($30.8 trillion) in December 2015, up 15.7 percent from a year earlier, and account for over 20 percent of global banking assets. The top five state-owned commercial banks account for 39.2 percent of China's banking sector assets. The PBOC operates as China's central bank.

9. Competition from State-Owned Enterprises

There are approximately 156,000 Chinese SOEs, of which around 54,000 (35 percent) are owned by the central government, and the remaining companies by local governments. The central government directly controls and runs 106 strategic SOEs through the State-owned Assets Supervision and Administration Commission (SASAC), and 66 of these companies are listed on stock exchanges domestically and/or internationally. SOEs, both central and local, represent about 30 to 40 percent of China's total GDP and around 20 percent of total employment. It is not known what percentage of expenditures SOEs allocate to research and development. SOEs can be found in all sectors of the economy, from tourism to heavy industry. A list of SOEs can be found here:
http://www.sasac.gov.cn/n86114/n86137/index.html

China's leading SOEs benefit from preferential government policies and practices aimed at developing bigger and stronger national champions. SOEs enjoy favored access to the most essential economic inputs (land, hydrocarbons, finance, telecoms, electricity) and considerable power in the markets for others (steel, minerals). SOEs have long enjoyed preferential access to credit and the ability to issue publicly traded equity and debt. SOEs also are not subject to the same tax burden as their private sector rivals. According to some Chinese academics, provincial governments have used their power to manipulate industrial policies to deny operating licenses in order to persuade reluctant owners to sell out to bigger state-owned suitors.

The November 2013 Third Plenum agenda calls for SOEs to remain a key part of China's economic system, even as China makes them more efficient and transparent by limiting their monopoly power and preferential access to factors of production to improve their contribution to economic development. The Third Plenum meeting called for a "mixed ownership" economic structure, which would allow for private and state-owned businesses to co-exist in the domestic economy, and proposed greater balance between private and state-owned businesses, including access to factors of production, competition on a level playing field, and equal legal protection.

The Third Plenum Decision explains that SOEs will focus resources in areas that "serve state strategic objectives." However, experts point out that SOEs continue to hold dominant shares in their respective industries, regardless of whether they are strategic, which may further restrain private investment in the economy. Moreover, the application of China's Anti-monopoly Law, together with other industrial policies and practices that are selectively enforced by the authorities, protect SOEs from private sector competition.

China is not a party to the Government Procurement Agreement (GPA) within the framework of the WTO, although Hong Kong is listed.

Investment Restrictions in "Vital Industries and Key Fields"

The December 2006 Guiding Opinions Concerning the Advancement of Adjustments of State Capital and the Restructuring of State-Owned Enterprises called on China to consolidate and develop its state-owned economy, including enhancing its control and influence in "vital industries and key fields relating to national security and national economic lifelines." The document defined "vital industries and key fields" as "industries concerning national security, major infrastructure and important mineral resources, industries that provide essential public goods and services, and key enterprises in pillar industries and high-tech industries."

At the time the document was published, the SASAC chairman listed industries in which the State should maintain "absolute control" (aviation, coal, defense, electric power and the state grid, oil and petrochemicals, shipping, and telecommunications) and "relative control" (automotive, chemical, construction, exploration and design, electronic information, equipment manufacturing, iron and steel, nonferrous metal, and science and technology). China maintains that these lists do not reflect its official policy. In some cases, more than 50 percent ownership in some of these industries has been permitted on a case-by-case basis, especially if a particular expertise or technology is deemed important at the time.

China's current agriculture trade rules, regulations, and limitations on foreign agricultural investment severely restrict the contributions of American agriculture companies and, consequently, the many potential benefits to China's agriculture sector. China's agriculture investment restrictions also appear to be at odds with the objectives of China's 12th FYP, which emphasizes the need to shift more resources to agriculture and food production in order to improve people's lives and meet China's food security and food safety needs.

China's State Assets Law is intended to safeguard China's economic system, promote the "socialist market economy," fortify and develop the state-owned economy, and enable SOEs to play a leading role in China's economy, especially in "vital industries and key fields." The law requires China to adopt policies to encourage SOE concentration and dominance in industries vital to national security and "national economic security."

OECD Guidelines on Corporate Governance of SOEs

SASAC, the main regulator of central SOEs, participates in the OECD Working Party on State-Ownership and Privatization Practices (WPSOPP). China has indicated to WPSOPP that it intends to use OECD guidelines to improve the professionalism of its SOEs, including making boards more independent from political influence. However, despite China's Third Plenum commitments – to foster "market-oriented" reforms in China's state sectors – Chinese officials and SASAC have made minimal progress to fundamentally change regulation and business conduct of SOEs.

There is no unified guideline or governance code for SOEs, especially among provincial or locally controlled SOEs. Among larger, listed SOEs (primarily those run by SASAC), senior management reports to the CCP and senior party members control or fill positions. The board of directors may include representatives of stockholders or key investors, but these board members wield no power over management decisions.

Because of this and because no SOE has less than 51 percent state control, SOEs are considered de facto arms of the government with no independent decision-making ability. SOEs are almost always guaranteed to prevail in legal disputes because the CCP cannot be found at fault in court. U.S. companies often complain about the lack of transparency and objectivity in commercial disputes with SOEs. In addition, SOEs enjoy preferential access to a disproportionate share of available capital, whether in the form of loans or equity.

In its September 2015 Guiding Opinions on Deepening the Reform of State-Owned Enterprises, the State Council instituted a system for classifying SOEs as public service or commercial enterprises. Some commercial enterprise SOEs were further sub-classified as being part of a "strategic or critically important" sector, i.e., with a strong national economic or security importance. SASAC has said the new classification system would allow the government to reduce support for commercial enterprises competing with private firms and instead channel resources toward public service SOEs.

Other recent reforms have included salary caps, limits on employee benefits, and attempts to create stock incentives for managers that have produced mixed results so far. Analysts have discussed the need to push forward a clear separation of SOE administration and policy functions. Currently, both functions are intertwined in SASAC.

Another hurdle to SOE reform is that SOE executives often outrank their SOE regulators, which minimizes SASAC and other government regulators' effectiveness. Moreover, SOE executives are often promoted to high-ranking positions in the central CCP or local government, which further complicates the regulation of Chinese SOEs.

Sovereign Wealth Funds

China's principal sovereign wealth fund (SWF) is China Investment Corporation (CIC), which was established in 2007. CIC is overseen by a board of directors and a board of supervisors and invests on a 10-year time horizon, using rolling annualized returns to evaluate performance. China's sovereign wealth is also invested by a subsidiary of SAFE, a government agency that manages China's foreign reserves and reports directly to the PBOC. The SAFE Administrator serves concurrently as a PBOC Vice Governor.

While CIC publishes an annual report containing information on its structure, investments, and returns, SAFE does not. At the end of 2014, the most-recent data, the value of the assets of the CIC fund was USD 746.7 billion. It invests in the financial sector, consumer discretionary sectors, information technology, consumer staples, manufacturing, healthcare, energy, telecommunication services, and utilities.

China's National Social Security Fund also makes investments using China's sovereign wealth. The Silk Road Fund, established at the end of 2014, is also designed to use China's sovereign wealth to make investments abroad.

China does not report what portion of SWF assets are invested domestically. Of CIC's three subsidiaries, Central Huijin Investment oversees domestic investments. As of June 2015, Central Huijin held stakes in 18 financial institutions, including banks, securities firms, and insurance companies.

China's SWFs follow the voluntary code of good practices known as the Santiago Principles, and CIC participates in the IMF-hosted International Working Group on SWFs. The Chinese government does not have any formal policies specifying that the CIC invest funds consistent with industrial policies or in government-designated projects, although CIC is expected to pursue government objectives. The SWF generally adopts a "passive" role as a portfolio investor.

10. Responsible Business Conduct

Responsible Business Conduct (RBC) is a relatively new concept for domestic companies in China, where it is understood differently and less widely accepted than in the United States. General awareness of RBC standards (including environmental, social, and governance issues) is extremely low, especially within companies operating domestically. In general, domestic laws pertaining to RBC are limited in scope and often voluntary, and where they do exist, they risk being undermined by economic imperatives. There are few independent NGOs, investment funds, worker organizations/unions, or business associations promoting or monitoring RBC in China.

A recent draft law restricting the activities of foreign NGOs has been the subject of concern, particularly considering the role that foreign NGOs play in helping companies develop and implement RBC and/or corporate social responsibility practices. Investors looking to partner with Chinese companies or expand operations with Chinese suppliers face challenges ensuring domestic firms meet internationally recognized, voluntary industry standards in such areas as labor, the environment, and good manufacturing practices. As of the end of 2015, the Chinese government was still mulling the details of the draft law after considerable pushback from the international community.

Nonetheless, awareness of RBC in China is increasing, with the environment being the most important issue for the Chinese government in terms of corporate social responsibility. China's 13th FYP highlights sustainability issues as a means to draw attention to the subject.

OECD Guidelines for Multinational Enterprises

In 2014, China signed a memorandum of understanding (MOU) with OECD to cooperate on RBC, but does not necessarily adhere to the OECD Guidelines for Multinational Enterprises and does not have a formal national contact point. Industry leaders have been pushing to establish a focal point or a center on RBC, and MOFCOM is launching an "RBC Platform" to raise awareness of the issue in 2016.

China participated in both the OECD's 2014 and 2015 Global Forums on RBC and hosted an RBC workshop in Beijing in May 2015. Other policy developments include the incorporation of human rights in social responsibility guidelines for the electronics industry that refer to the United Nations Guiding Principles on Business and Human Rights; the mandating of social impact assessments for large footprint projects; and the drafting of a law on public participation in environmental protection and impact assessments.

Additionally, the MOFCOM-affiliated Chinese Chamber of Commerce of Metals, Minerals, and Chemical Importers and Exporters (CCCMC) signed a separate MOU with the OECD in October 2014 to help Chinese companies implement RBC policies in global mineral supply chains. In December 2015, CCCMC released Due Diligence Guidelines for Responsible Mineral Supply Chains, which draw heavily from the OECD Due Diligence Guidelines. China is currently drafting legislation to regulate the sourcing of minerals, including tin, tungsten, tantalum, and gold, from conflict areas. China is not a member of the Extractive Industries

Transparency Initiative (EITI), but overseas Chinese companies participate in EITI schemes where these are mandated by the host country.

11. Political Violence

The risk of political violence directed at foreign companies operating in China remains small. Every year there are reportedly many tens of thousands of protests. The government is adept at handling them without violence, but given the number of mass incidents annually, the potential for violent flare-ups is real. Violent but unconnected protests that have occurred throughout China generally involved ethnic tensions or local residents protesting corrupt officials, environmental and food safety concerns, confiscated property, and disputes over unpaid wages.

In several recent examples, workers and mid-level managers have protested against corporate merger and acquisition decisions on the grounds that employees were not consulted. There have also been a small number of cases of foreign businesspeople being trapped in China during a business dispute.

Recently, Chinese authorities have detained or arrested several foreign nationals, including American citizens, and refused to notify or allow access for consular officers to visit the detainees, in direct contravention of recognized international agreements and conventions. There is a possibility of detention as either a witness in a criminal prosecution or as the subject of a criminal investigation or prosecution, without proper notification being provided to the United States government.

12. Corruption

Corruption remains endemic in China. The lack of an independent press, as well as the fact that all bodies responsible for conducting corruption investigations are controlled by the CCP, hamper the transparent and consistent application of anti-corruption efforts.

According to Chinese law, accepting a bribe is a criminal offense with a maximum punishment of life in prison or death in “especially serious” circumstances. The maximum punishment for offering a bribe to a Chinese official is five years in prison, except when there are “serious” or “especially serious” circumstances, when punishment can range from five years to life in prison.

In August 2015, the National People’s Congress amended several corruption-related parts of the Criminal Law. For instance, it is now a crime to bribe civil servants’ close relatives and others closely related to them; monetary fines will be imposed on both bribe-givers and bribe-takers; bribe-givers in minor cases and who help authorities will be given greater leniency; and instead of basing punishments on the specific amounts of money involved, authorities will have more discretion to impose punishments. A February 2011 amendment to the Criminal Law made offering large bribes to foreign officials or officials of international organizations a punishable offense, although there has yet to be a prosecution.

The Supreme People’s Procuratorate and the Ministry of Public Security investigate criminal violations of laws related to anti-corruption, while the Ministry of Supervision and the CCP Discipline Inspection Commission enforce ethics guidelines and party discipline. China’s National Audit Office also inspects accounts of SOEs and government entities.

Anti-corruption Measures

China is in the midst of the most intensive and large-scale anti-corruption campaign it has seen in decades, with investigations reaching into all sectors of the government, military, and SOEs. President Xi Jinping has said that endemic corruption threatens the CCP's survival. The CCP announced at recent annual plenums its intention to press ahead with judicial and administrative reform and to more thoroughly fight corruption. Key CCP meetings in 2015 pledged to use judicial reforms to institutionalize the fight against corruption, and concrete measures are emerging slowly. To enhance regional anti-corruption cooperation, the 26th Asia-Pacific Economic Cooperation (APEC) Ministers Meeting adopted the Beijing Declaration on Fighting Corruption in November 2014.

In 2015, the CCP disciplined around 336,000 officials, 49 percent more than the year earlier. Of the total, over 20,000 cases were transferred to the courts. CCP officials also investigated 49,000 people for suspected violation of CCP anti-extravagance rules, punishing 3,400. Discipline inspectors faced corruption probes as well, with the CCP punishing nearly 2,500 inspectors. Authorities investigated 43 SOEs in 2015, up from 10 in 2014 and two the year before, looking at more than 60 SOE officials. Around 40 percent of the probed SOEs were from the energy sector.

China's overseas fugitive-hunting campaigns captured 1,023 fugitives suspected of official crimes in 2015, 37 percent more than in 2014. The Chinese government recovered around USD 461 million in criminal proceeds as part of these operations.

China's anti-corruption crackdown could curb abuse of administrative powers by government officials colluding with private sector patrons; however, inconsistent and discretionary application of anti-corruption rules raises concerns among foreign companies in China. To fight rampant commercial corruption in the medical/pharmaceutical sector, China's health authority issued "black lists" of firms and agents involved in commercial bribery. Several of these blacklisted firms were foreign. Additionally, anecdotal information suggests many government officials are slowing approval of foreign investment projects so as not to arouse corruption suspicions.

The CCP is constantly on guard against threats to political or social stability. It views independent criticism of the CCP as dangerous, and therefore, citizens who have called for officials to disclose their public assets or have campaigned against officials' misuse of public resources have been subject to criminal prosecution.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

China ratified the United Nations Convention against Corruption in 2005 and participates in APEC and OECD anti-corruption initiatives. China has not signed the OECD Convention on Combating Bribery.

Resources to Report Corruption

The following government organization receives public reports of corruption:

- Anti-Corruption Reporting Center of the CCP Central Commission for Discipline Inspection and the Ministry of Supervision
- Telephone Number: +86 10 12388

13. Bilateral Investment Agreements

China has bilateral investment agreements with over 100 countries and economies, including Austria, the Belgium-Luxembourg Economic Union, Canada, France, Germany, Italy, Japan, South Korea, Spain, Thailand, and the United Kingdom. China's bilateral investment agreements cover expropriation, arbitration, most-favored-nation treatment, and repatriation of investment proceeds. They are generally regarded as weaker than the investment treaties the United States seeks to negotiate.

A list of China's signed BITs:
http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml

In the fall of 2012, the United States and China resumed negotiation of a BIT after the United States released its 2012 model BIT.

China maintains 14 Free Trade Agreements (FTAs) with its trade and investment partners, and is negotiating or implementing an additional eight FTAs. China has FTAs with ASEAN, Singapore, Pakistan, New Zealand, Chile, Peru, Costa Rica, Iceland, Switzerland, Hong Kong, Macao, and Taiwan. China has also recently signed FTAs with Korea and Australia, both of which include a chapter on investment.

China's signed FTAs: http://fta.mofcom.gov.cn/index.shtml

Bilateral Taxation Treaties

The United States and China concluded a bilateral taxation treaty in 1984.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

China's principal customs-bonded areas include Shanghai, Tianjin, Shantou, three districts within Shenzhen (Futian, Yantian, and Shatoujiao), Guangzhou, Dalian, Xiamen, Ningbo, Zhuhai, and Fuzhou. Besides these official duty-free zones identified by China's State Council, numerous economic development zones and open cities offer similar privileges and benefits to foreign investors.

In September 2013, the Shanghai municipal government and the State Council announced the establishment of the Shanghai FTZ, which condensed four previously existing bonded areas into a single free trade zone. In April 2015, the State Council expanded the number of free trade zones to include Tianjin, Guangdong and Fujian, although the Shanghai FTZ remains the largest of the four. The goal of the FTZs is to provide a trial ground for trade- and investment-liberalization measures and to introduce services sector reform, especially in financial services, that China expects to eventually introduce in other parts of the domestic economy.

In particular, Chinese officials tout the use of a negative list – in this context, expressly identifying sectors where national treatment does not apply – as a key reform introduced in the zones. In April 2015, the State Council published a revised "Negative List" to regulate trade and investment in all four FTZs, superseding the 2014 list. The new list reduces the number of excluded items to 122 (down from a high of 190 items when the list was first rolled out in 2013). Major sectors in which restrictions have been lifted by this revision include manufacturing, construction, wholesale and retail, IT services, financial services, real estate, and business services.

Nevertheless, many foreign firms have expressed concern that the FTZ liberalizations are limited in scope and uneven in application. According to officials, over 18,000 entities have registered in all four FTZs. The municipal and central governments have released a number of administrative and sector-specific regulations and circulars that outline the procedures and regulations in the FTZs.

The State Council recently announced that it will likely expand the number of FTZs again in 2016, with a third batch of FTZs (approximately five to eight cities located in inland and border regions) intended to integrate more closely with the One Belt, One Road Initiative and explore new paths to develop inland and border regions.

April 2015 Negative List: http://www.gov.cn/zhengce/content/2015-04/20/content_9627.htm

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) ($T USD)	2015	$10.4 trillion	2014	$10.35 trillion	worldbank.org/en/country/china
U.S. FDI in partner country (stock positions)	2014	$75.38 billion	2014	$65.77 billion	bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Host country's FDI in the United States (stock positions)	2014	$38.01 billion	2014	$9.47 billion	bea.gov/international/direct_investment_ multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2014	16%	N/A	N/A	N/A

*Source: National Bureau of Statistics of PRC; China Commerce Yearbook; MOFCOM

Table 3: Sources and Destination of FDI

According to MOFCOM's 2015 China Commerce Yearbook, the top five destinations for China's Outward Direct Investment from 2004 to 2014 are Hong Kong, British Virgin Islands, Cayman Islands, United States, and Australia.

Direct Investment from/in Counterpart Economy Data					
From Top Five Sources/To Top Five Destinations *(US Dollars, Millions)*					
Inward Direct Investment			Outward Direct Investment		
Total Inward	2,331,755	100%	Total Outward	N/A	100%
China, P. R. Hong Kong	1,107,874	48%			
Brit Virgin Islands	313,384	13%			
Japan	134,368	6%			
Singapore	94,055	4%			
United States	70,264	3%			
"0" reflects amounts rounded to +/- USD 500,000.					

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

IMF Coordinated Portfolio Investment Survey data for China are unavailable.

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chiefs of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments]

Legal system:

civil law influenced by Soviet and continental European civil law systems; legislature retains power to interpret statutes; note - criminal procedure law revised in early 2012

International organization participation:

ADB, AfDB (nonregional member), APEC, ARF, ASEAN (dialogue partner), BIS, CDB, CICA, EAS, FAO, FATF, G-20, G-24 (observer), G-77, IADB, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRCS, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM (observer), IPU, ISO, ITSO, ITU, LAIA (observer), MIGA, MINURSO, MONUSCO, NAM (observer), NSG, OAS (observer), OPCW, PCA, PIF (partner), SAARC (observer), SCO, SICA (observer), UN, UNAMID, UNCTAD, UNESCO, UNFICYP, UNHCR, UNIDO, UNIFIL, UNISFA, UNMIL, UNMISS, UNMIT, UNOCI, UNSC (permanent), UNTSO, UNWTO, UPU, WCO, WHO, WIPO, WMO, WTO, ZC

Section 6 - Tax

Exchange control

Foreign currency transactions are controlled by the State Administration of Foreign Exchange Control and its branch offices. Financial institutions cannot engage in foreign exchange business without prior approval.

Treaty and non-treaty withholding tax rates

China has signed **112 agreements** (**103 DTC** and **9 TIEA** agreements) providing for the exchange of information.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Albania	DTC	13 Sep 2004	28 Jul 2005	Unreviewed	No
Algeria	DTC	6 Nov 2006	27 Jul 2007	Unreviewed	No
Argentina	TIEA	13 Dec 2010	16 Sep 2011	Yes	Yes
Armenia	DTC	5 May 1996	28 Nov 1996	Unreviewed	No
Australia	DTC	17 Nov 1988	28 Dec 1990	Yes	No
Austria	DTC	10 Apr 1991	1 Nov 1992	No	No
Azerbaijan	DTC	17 Mar 2005	17 Aug 2005	Unreviewed	No
Bahamas, The	TIEA	1 Dec 2009	28 Aug 2010	Yes	Yes
Bahrain	DTC	16 May 2002	15 Aug 2002	Yes	No
Bahrain	DTC Protocol	16 Sep 2013	not yet in force	Unreviewed	Yes
Bangladesh	DTC	12 Sep 1996	10 Apr 1997	Unreviewed	No
Barbados	DTC	15 May 2000	27 Oct 2000	Yes	Yes
Belarus	DTC	17 Jan 1995	3 Oct 1996	Unreviewed	No
Belgium	DTC	7 Oct 2009	not yet in force	Yes	Yes
Belgium	DTC	18 Apr 1985	11 Sep 1987	Yes	No
Bermuda	TIEA	3 Dec 2010	3 Nov 2011	Yes	Yes
Bosnia and Herzegovina	DTC	2 Dec 1988	16 Dec 1989	Unreviewed	No
Botswana	DTC	11 Apr 2012	not yet in force	Unreviewed	Yes
Brazil	DTC	5 Aug 1991	6 Jan 1993	Yes	No
Brunei Darussalam	DTC	21 Sep 2004	29 Dec 2006	No	No
Bulgaria	DTC	6 Nov 1989	25 May 1990	Unreviewed	No
Canada	DTC	12 May 1986	29 Dec 1986	Yes	No
Cayman Islands	TIEA	26 Sep 2011	15 Nov 2012	Yes	Yes
Croatia	DTC	9 Jan 1995	18 May 2001	Unreviewed	No
Cuba	DTC	13 Apr 2001	17 Oct 2003	Unreviewed	No
Cyprus	DTC	25 Oct 1990	5 Oct 1991	Yes	No
Czech Republic	DTC	28 Aug 2009	4 May 2011	Yes	Yes
Denmark	DTC	16 Jun 2012	28 Dec 2012	Yes	Yes

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Ecuador	DTC	21 Jan 2013	not yet in force	Unreviewed	Yes
Egypt	DTC	13 Aug 1997	24 Mar 1999	Unreviewed	No
Estonia	DTC	12 May 1998	8 Jan 1999	Yes	No
Ethiopia	DTC	14 May 2009	25 Dec 2012	Unreviewed	No
Finland	DTC	25 May 2010	25 Nov 2010	Yes	Yes
Former Yugoslav Republic of Macedonia	DTC	9 Jun 1997	29 Nov 1997	Yes	No
France	DTC	30 May 1984	21 Feb 1985	Yes	No
Georgia	DTC	22 Jun 2005	10 Nov 2005	Unreviewed	No
Germany	DTC	10 Jun 1985	14 May 1986	Yes	No
Greece	DTC	3 Jun 2002	11 Nov 2005	Yes	No
Guernsey	TIEA	27 Oct 2010	17 Aug 2011	Yes	Yes
Hong Kong, China	DTC	10 Dec 2003	8 Dec 2006	Yes	Yes
Hungary	DTC	17 Jun 1992	31 Dec 1994	Yes	No
Iceland	DTC	3 Jun 1996	5 Feb 1997	Yes	No
India	DTC	18 Jul 1994	21 Nov 1994	Yes	No
Indonesia	DTC	7 Nov 2001	25 Aug 2003	Yes	No
Iran	DTC	20 Apr 2002	14 Aug 2003	Unreviewed	No
Ireland	DTC	19 Apr 2000	6 Apr 2001	Yes	No
Isle of Man	TIEA	26 Oct 2010	14 Aug 2011	Yes	Yes
Israel	DTC	8 Apr 1995	1 Jan 1996	Yes	No
Italy	DTC	31 Oct 1986	13 Dec 1990	Yes	No
Jamaica	DTC	4 Jul 1996	16 Mar 1997	No	No
Japan	DTC	6 Sep 1983	26 Jun 1984	Yes	No
Jersey	TIEA	29 Oct 2010	10 Nov 2011	Yes	Yes
Kazakhstan	DTC	12 Sep 2001	27 Jul 2003	Unreviewed	No
Korea, Republic of	DTC	28 Mar 1994	27 Sep 1994	Yes	No
Kuwait	DTC	25 Dec 1989	20 Jul 1990	Unreviewed	No
Kyrgyzstan	DTC	24 Jun 2002	29 Mar 2003	Unreviewed	No
Lao People's Democratic Republic	DTC	25 Jan 1999	22 Jun 1999	Unreviewed	No
Latvia	DTC	7 Jun 1996	27 Jan 1997	Unreviewed	Yes
Lithuania	DTC	3 Jun 1996	18 Oct 1996	Yes	No
Luxembourg	DTC	12 Mar 1994	28 Jul 1995	No	No
Macao, China	DTC	15 Jul 2009	15 Sep 2010	Yes	Yes
Malaysia	DTC	23 Nov 1985	14 Sep 1986	No	No
Malta	DTC	23 Oct 2010	25 Aug 2011	Yes	Yes
Mauritius	DTC	1 Aug 1994	4 May 1995	Yes	Yes
Mexico	DTC	12 Sep 2005	1 Mar 2006	Yes	No
Moldova, Republic of	DTC	7 Jun 2000	26 May 2001	Unreviewed	No
Mongolia	DTC	26 Aug 1991	23 Jun 1992	Unreviewed	No
Morocco	DTC	27 Aug 2002	16 Aug 2006	Unreviewed	No
Nepal	DTC	14 May 2001	31 Dec 2010	Unreviewed	No
Netherlands	DTC	13 May 1987	5 Mar 1988	No	No
New Zealand	DTC	16 Sep 1986	17 Dec 1986	Yes	No
Nigeria	DTC	15 Apr 2002	21 Mar 2009	Unreviewed	No
Norway	DTC	25 Feb 1986	21 Dec 1986	Yes	No

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5
Oman	DTC	25 Mar 2002	20 Jul 2002	Unreviewed	No
Pakistan	DTC	15 Nov 1989	27 Dec 1989	Unreviewed	No
Papua New Guinea	DTC	14 Jul 1994	16 Aug 1995	Unreviewed	No
Philippines	DTC	18 Nov 1999	23 Mar 2001	Yes	No
Poland	DTC	7 Jun 1988	1 Jan 1990	Yes	No
Portugal	DTC	21 Apr 1998	7 Jun 2000	Yes	No
Qatar	DTC	2 Apr 2001	21 Oct 2008	Yes	No
Romania	DTC	16 Jan 1991	5 Mar 1992	Unreviewed	No
Russian Federation	DTC	27 May 1994	1 Jan 1998	Yes	No
San Marino	TIEA	9 Jul 2012	not yet in force	Yes	Yes
Saudi Arabia	DTC	23 Jan 2006	1 Sep 2006	Yes	No
Serbia	DTC	21 Mar 1997	1 Jan 1998	Unreviewed	No
Seychelles	DTC	26 Aug 1999	17 Jan 2000	Yes	No
Singapore	DTC	11 Jul 2007	18 Sep 2007	Yes	Yes
Slovakia	DTC	11 Jun 1987	23 Dec 1987	Yes	No
Slovenia	DTC	13 Feb 1995	27 Dec 1995	Yes	No
South Africa	DTC	25 Apr 2000	7 Jan 2001	Yes	No
Spain	DTC	22 Nov 1990	20 May 1992	Yes	No
Sri Lanka	DTC	11 Aug 2003	22 May 2005	Unreviewed	No
Sudan	DTC	30 May 1997	9 Feb 1999	Unreviewed	No
Sweden	DTC	16 May 1986	3 Jan 1987	Yes	No
Switzerland	DTC	6 Jul 1990	27 Sep 1991	No	No
Switzerland	DTC	25 Sep 2013	not yet in force	Unreviewed	Yes
Syrian Arab Republic	DTC	31 Oct 2010	1 Sep 2011	Unreviewed	Yes
Tajikistan	DTC	27 Aug 2008	28 Mar 2009	Unreviewed	Yes
Thailand	DTC	27 Oct 1986	29 Dec 1986	Unreviewed	No
Trinidad and Tobago	DTC	18 Sep 2003	22 May 2005	No	No
Tunisia	DTC	16 Apr 2002	23 Sep 2003	Unreviewed	No
Turkey	DTC	23 May 1995	20 Jan 1997	Yes	No
Turkmenistan	DTC	13 Dec 2009	30 May 2010	Unreviewed	No
Uganda	DTC	11 Jan 2012	not yet in force	Unreviewed	Yes
Ukraine	DTC	4 Dec 1995	18 Oct 1996	Unreviewed	No
United Arab Emirates	DTC	1 Jul 1993	5 Jun 1994	Yes	No
United Kingdom	DTC	26 Jul 1984	23 Dec 1984	Yes	No
United States	DTC	30 Apr 1984	22 Oct 1986	Yes	No
Uzbekistan	DTC	3 Jul 1996	3 Jul 1996	Unreviewed	Yes
Venezuela	DTC	17 Apr 2001	23 Dec 2004	Unreviewed	No
Viet nam	DTC	17 May 1995	18 Oct 1996	Unreviewed	No
Virgin Islands, British	TIEA	7 Dec 2009	30 Dec 2010	Yes	Yes
Zambia	DTC	26 Jul 2010	30 Jun 2011	Unreviewed	Yes

Methodology and Sources

Section 1 - General Background Report and Map

(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: CIA World Factbook / https://www.cia.gov/library/publications/world-leaders-1/index.html)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes PKF International)

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