



DEZAN SHIRA & ASSOCIATES



Years
1992-2017

Establishing a Trading Company and HR Concerns



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**Years
1992-2017**



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



ASIA BRIEFING





- Dezan Shira & Associates Offices
- Dezan Shira Asian Alliance Members

Our Global Presence

CHINA

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United States
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Numbers That Matter

1992 Dezan Shira's establishment

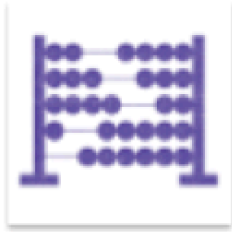
200+ Our team of legal, tax, accounting and audit professionals

2,000+ Multinational clients that have already chosen us

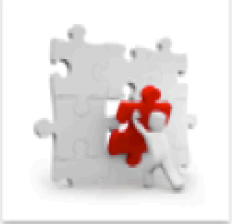
80+ Countries served by our professional services

17+ Our offices in **China** (Beijing, Shanghai, Guangzhou, Shenzhen, Dalian, Qingdao, Hangzhou, Suzhou, Zhongshan, Ningbo, Dongguan and Hong Kong), **India** (New Delhi, Mumbai), **Vietnam** (Hanoi and Ho Chi Minh City), **Singapore**, liaison offices in **Italy**, the **United States** and **Germany**, and alliance offices in **Indonesia**, **Malaysia**, the **Philippines**, and **Thailand**.

Services Suite



Pre-Investment and Entry Strategy Advisory

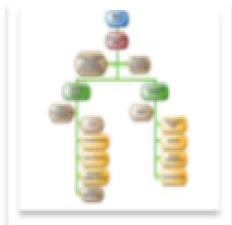


Payroll and HR Service

Corporate and Tax Structuring



Tax and Compliance



ERP and Financial System Advisory



Treasury Administration

Accounting and Reporting



Audit, Financial Review, and Due Diligence



Section II

Legal & Company Structures

Choosing the right legal structure



Your Investment Options

- Representative Office (RO)
- Wholly Foreign Owned Enterprise (WFOE)*
 - ❖ Service WFOE
 - ❖ Manufacturing WFOE
- Foreign Invested Commercial Enterprise (FICE)*
- Sino-Foreign Joint Venture (JV)*
 - ❖ Equity Joint Venture (EJV)
 - ❖ Contractual Joint Venture (CJV)
- Hong Kong Holdings

* Foreign Invested Entity

Wholly Foreign Owned Enterprise (WFOE)

Manufacturing
WFOE

Service
WFOE

Advantages

- ✓ Direct hiring of employees possible (unlimited expat hire)
- ✓ Can receive revenue RMB
- ✓ Can issue VAT invoices (*Fapiao*) for clients

Disadvantages

- ✗ Application & incorporation procedure: 3 - 6 months
- ✗ Equity-Debt ratio limited to 70:30
- ✗ Important: Exit strategy, cash flow

Foreign-Invested Commercial Enterprise (FICE)

Trading WFOE
("FICE")

Key Points:

- Can be setup as either a WFOE or JV
- Used for retailing, franchising or distribution operations
- Sourcing, quality control, purchasing & export facilities
- As a Trading WFOE Structure, the FICE avoids the logistical issue of having to buy from overseas and having the goods shipped abroad before reselling them to the Chinese domestic market

Section IV

Establishing a Trading Company



PRE -LICENSING



POST -LICENSING



Name Approval

Submit at least 8 names

Valid for 3 months

Can renew only 1 time

Registered Authority – SAIC

Usually takes 1 day to process

Must have the city, industry and trade name in the full name

Only Chinese name is registered

Example of a Name

Must follow a certain pattern

The general structure of a company name is as follows:

[Admin. Division]+[Trade Name]+[Industry]+[Organization Type]

[行政区划]+[字号]+[行业]+[组织形式]

An example naming structure of a WFOE:

Shanghai]*+[Trade name]+[Consulting]+[Co., Ltd]

[上海]+[字号]+[咨询]+[有限公司]

*Alternatively, the administrative division can be placed in brackets after the Trade Name or Industry, e.g. XXX Consulting (Shanghai) Co., Ltd. This is permitted for foreign-invested enterprises only.

Cannot include: “中国”(China), “中华”(China), “全国”(National), “国家”(State), “国际”(International) – requires a high RC

Registered Address

Still need an office to register in

Depending on business scope you may need a warehouse

Inspections are becoming more common

Perform a DD on the landlord prior to signing anything

Include a clause allowing ownership to transfer to WFOE when setup

Include a clause terminating the agreement if no business license is obtained

Retail units must be on the ground floor of any complex for WFOEs

If you are dealing in special products, various approvals will need to be made on the property

One business per unit – relaxing policies in some areas.

Registered Capital

- Post-March 2014 – *Minimum Registered Capital* **annulled**
- Registered Capital = Initial Investment
- Registered Capital can be paid out through a schedule – must be defined in the Articles of Association
- In practice, governing authorities **will assess registered capital**
- Now based on a **Investment-To-Capital Ratio**

Registered Capital cont.

Investment-to-Capital Ratios

Total Investment (US\$)	Minimum Registered Capital
3 million or less	7/10 of total investment
3 million - 4.2 million	US\$2.1 million
4.2 million - 10 million	1/2 of total investment
10 million - 12.5 million	US\$5 million
12.5 million - 30 million	2/5 of total investment
30 million - 36 million	US\$12 million
36 million or greater	1/3 of total investment

Business License & Business Scope

- Must specify operational activities
- Once incorporated, **MUST** abide to stipulated business scope
- Scope cannot be phrased too broadly
- Defining your business scope will impact:
 - Incorporation procedure, tax treatment, zoning requirements
- Geographic location will be affected (what part of the city, development zone, preferential policies, etc.)

Business License & Business Scope cont.

Changing a Business Scope

- Change in operations MUST have Business Scope Amendment
- Service → Manufacturing WFOE; difficult change
- May require additional investment into registered capital
- Renewal of Certificate of Approval
- Lengthy – can take up to 2 months

Steps to Changing a Business Scope

Step
1

Shareholder resolution for change of business scope

Step
2

Apply for change of business scope with AIC in accordance with the shareholder resolution

Step
3

Obtain and fill out registration form for change of business scope

Step
4

Obtain new business license

Step
5

Tax registration

Business License & Business Scope cont.

- Negative list – Catalogue for the Guidance of Foreign Investment – outlines certain activities unable to come within a business scope
- Once the scope is approved, business license granted
- *September 2015 saw the launching of the New Business License (integrated)*



5 in 1 license



Five-in-one

- ★ Social security registration certificate
- ★ Statistical registration certificate

Three-in-one

- ★ Business license
- ★ Organization code
- ★ Tax registration certificate

Post BL Procedures

Carve company
chops

Register for Tax

Open Bank Accounts
– Capital, Basic and
Settlement (for
trading)

Capital Verification
(if needed)

Register foreign
exchange

Register E-Port and
Customs

Setup HR and Social
Security accounts
and payroll systems.

Documentation for a FICE setup

- a) The latest annual audit report (Official copy) from the parent Company that is provided by a Certified Public Accountant (CPA), and Custom HS Code of the proposed Import/Export products in China
- b) The latest annual audit report (Certified copy) from the parent company (must be provided by a Certified Public Accountant (CPA))
- c) Customs HS Code of proposed Import/Export products in China
- d) A feasibility study report
- e) An accompanying application for foreign investment company incorporation, signed by the proposed legal representative
- f) Articles of Association
- g) Enterprise Name Approval in Advance Notice
- h) Certificate of Incorporation – notarised and legalised
- i) The appointment letters and ID cards of directors, supervisors and managers
- j) The Legal Representative's appointment letter and ID card
- k) Certificate of Assessment of Capital
- i) Bank Reference letter

Section V

VAT



What is VAT?

- VAT=Value Added Tax (增加税)
- VAT is the tax added onto the sales of services and products.
- Input VAT refers to the VAT paid or borne by the taxpayer when purchasing goods or receiving processing, repair and replacement services and taxable services. Input VAT that can be deducted from output VAT includes the VAT amount specified on:
 - Calculating VAT:
 - $\text{VAT payable} = \text{current output VAT} - \text{current input VAT}$
 - $\text{Output VAT} = \text{sales volumes} \times \text{VAT rate}$
 - $\text{Sales Volume} = \text{tax-inclusive sales volume} / (1 + \text{VAT rate})$

VAT Cont



Section VI

HR Concerns





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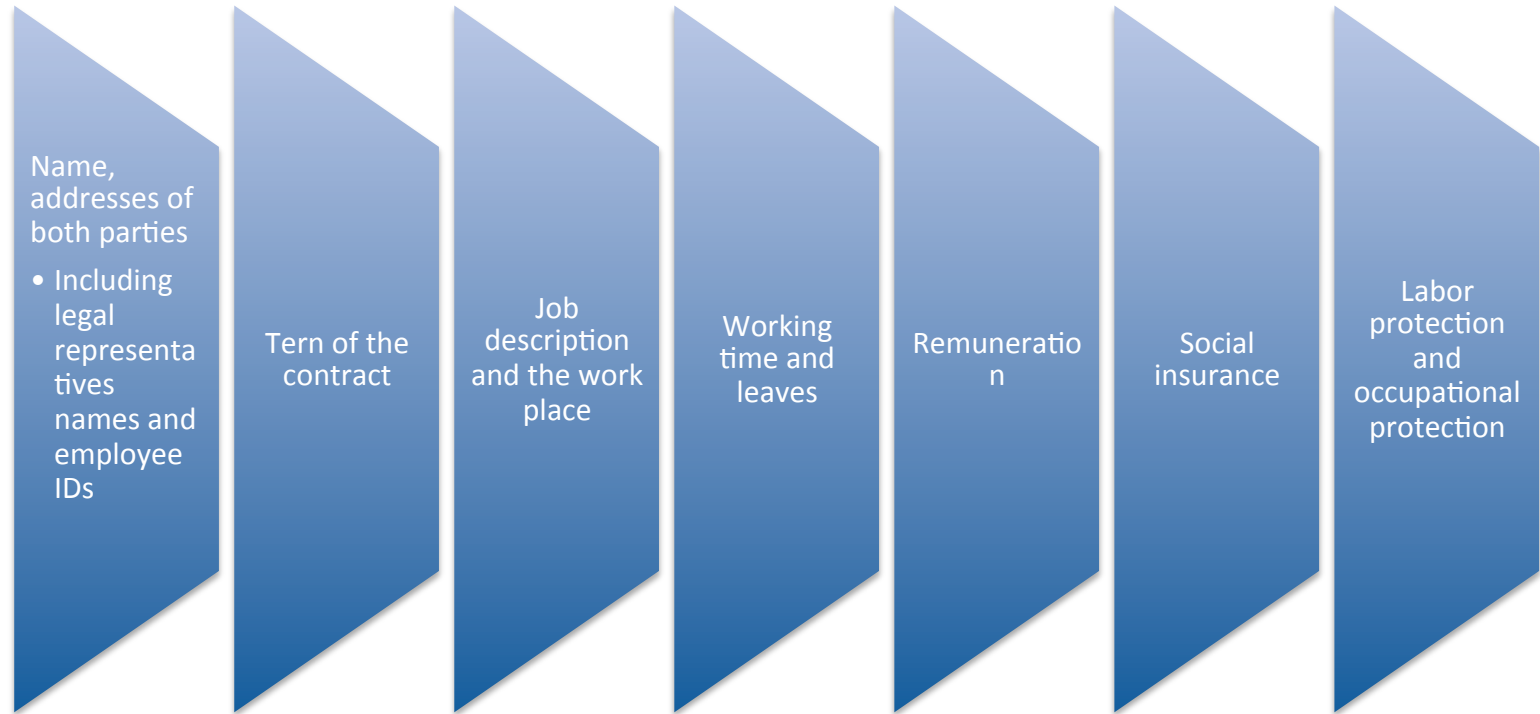
Employment Contracts



Employment Contracts in China

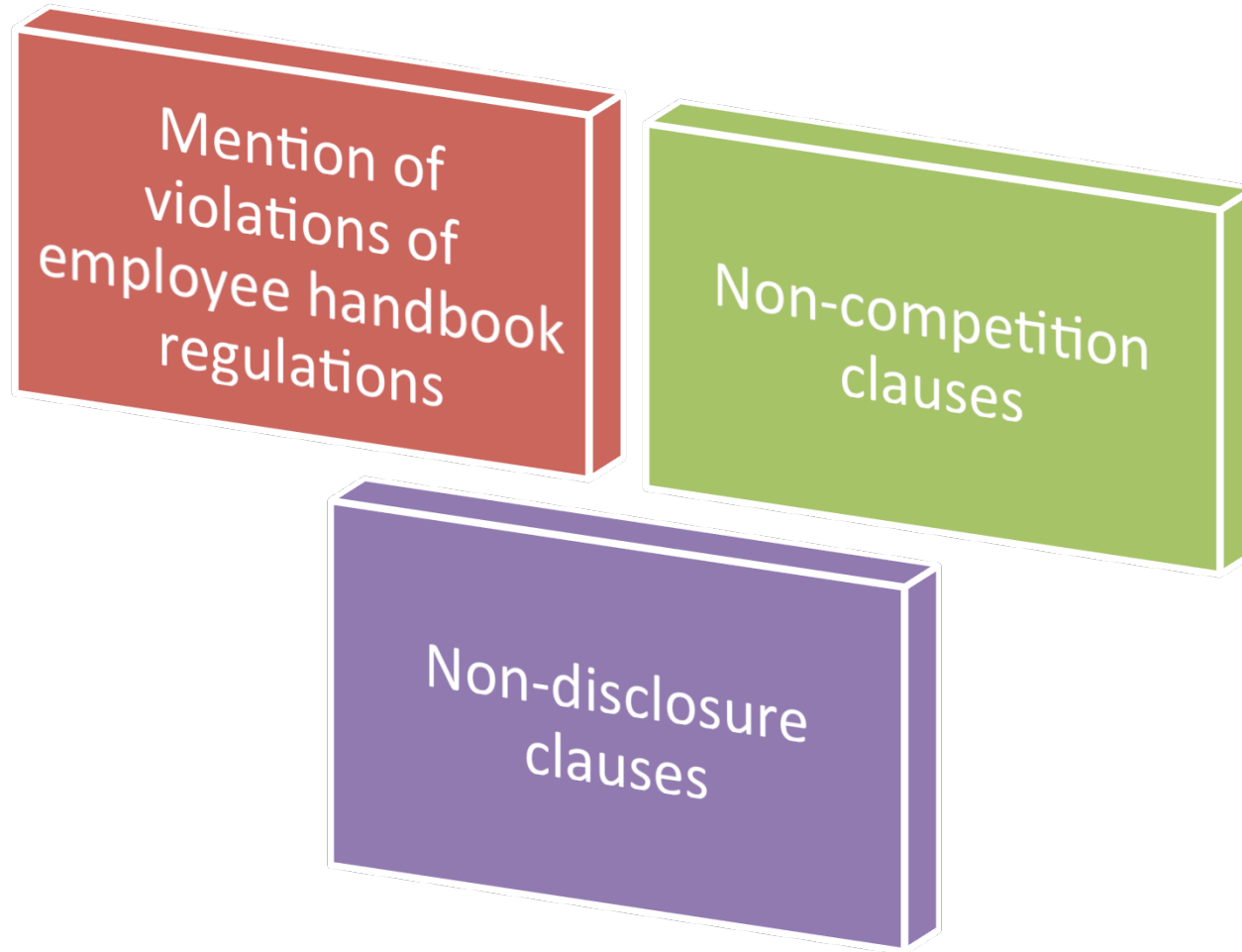


Mandatory Clauses



Fixed-term, open-ended, or project-based employment?

Worth Including in the Contract





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Staff Handbook



Staff Handbook

Guidelines on employer
and employee rights
and duties

Details on employment
contract provisions

“Code of Conduct”

Effective instrument and
proof of the content of
employment relation
when needed

Suggested Content

Recruitment requirements and on board procedure

Working hours, overtime

Remuneration rules, bonuses and social welfare

Paid annual and other leaves,

Discipline measures including right for termination

Confidentiality and non-competition

Performance assessment

General behavior

Pension plan

Trainings

Workplace security

Procedures

Special rules important for particular business

*To be addressed
in more detail*



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Working Hours, Overtime, Annual Leave



Working hours and overtime

Standard Labor Regulations

- Employees cannot work more than 8 hours a day, and no more than 40 hours per week
- Employees must have 1 day of rest per week
- Overtime cannot exceed 3 hours per day

Calculation

- Working day: 150% of basic hourly salary
- Weekend day: 200% of basic hourly salary
- Public holiday 300% of basic hourly salary
- *Compensation rate x hours worked overtime x basic hourly salary*

Other Working Hour Systems

Comprehensive working hour system

Calculated based on specific periods (week, month, year etc.)

Should follow rules of Standard system; **average** weekly working time should not exceed 40 hours.

Suitable for industries with unique work hours such as railways, transportation etc.

Non fixed working hours system

Does not follow specific working time.

Applies to senior management, salesperson, drivers, etc. whose whose working times are inconsistent or hard to calculate.

Attendance



“Absence from work without proper approval is a serious violation of company policy”

Paid Statutory Annual Leave

Statutory Annual Leave	
Work Tenure	Days Leave
Less than one year	No leave
1-10 years	5
10-20 years	10
Over 20 years	15

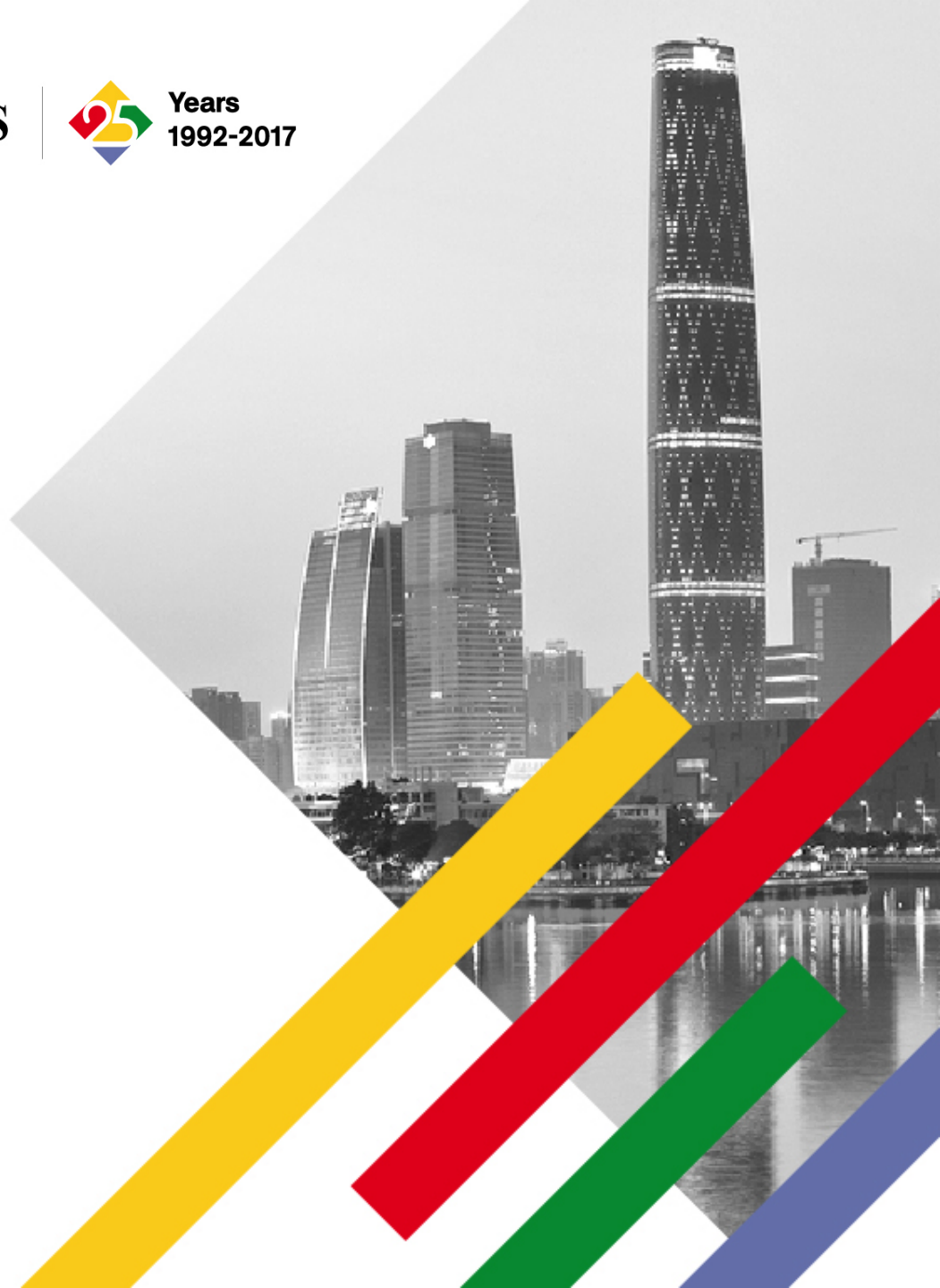


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Termination



Termination

Immediate Termination

- Unqualified during Probation
- Corruption, Dereliction of Duty
- Simultaneously working for competitor
- Fraud
- Criminal Liabilities
- **Seriously Violation of Internal Rules and Regulations**

Severance / 30 Days Notice

- **Contract expires**
- **Bankruptcy**
- **Business License Revoked**
- **Incompetence – has to be proved**

Consequences of Illegal Termination

If the employer terminates the employee's employment for other reasons than those allowed by Labor Contract Law, or without any reason the employer will be regarded:

To have **illegally terminated** the employees contract, and

Will be ordered by the court to **reinstate the employee**, or

To **pay damages to the employee** which generally amount to **twice** the rate of the severance pay

Section VII

Dezan Shira & Associate's Credit System



What are credits?

- Credits are used as an alternative to USD, to purchase our KSP & Publication Store content
- **Advantages:**
 - Each publication is 99 cents cheaper with credits
 - Can buy 50 for 45 USD
 - Can send credits to friends and colleagues

How do I buy publications with credits on KSP? (1)

- Create an account on our website (dezshira.com)
- Login to your account on [Knowledge Sharing Platform](#)
- Search by type of resource to find magazines or guides

KNOWLEDGE SHARING PLATFORM ▾

- Investment Destinations
- Language
- Media Types
- Treaties
- Investor Tools
- Help

USER MENU ▾

- Dashboard
- Recharge Credits
- Gift Credits
- Your Transaction History
- Change Password
- Logout

Search for your resources

SEARCH RESULT PER PAGE 10 ▾

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Published Date

Keyword

Q SEARCH

1 2 3 4 5 6 7 Last

Page 1 of 380

How do I buy publications with credits on KSP? (2)

- Select which resource you would like
- Choose *Pay with Credit*
- Enter your billing address
- Click on the red button *Pay X Credits*
- Select *Download*

PAY: CHINA INVESTMENT ROADMAP: THE ELDERLY CARE INDUSTRY



In this issue of China Briefing magazine, we present a roadmap for investing in China's elder care industry. We provide the latest market research, detail the procedures and benefits for foreign direct investment, and examine the main barriers and risks that foreign companies are likely to encounter when entering the market.

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Credit Price of this resource:

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Your credit available:

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