

CHINA AND THE WAY BACK TO NORMALITY: A STATUS REPORT

While the EU countries are in the middle of combating the second wave of the COVID-19 pandemic, the situation in China has now almost normalised. In addition to business life, social life within China has also largely returned to normality.

In order to minimise the risk of re-importing the virus from abroad, China continues to maintain the established hurdles for entry from abroad. These entry restrictions present a variety of challenges for European companies that are already active on the Chinese market or are planning to enter the market in China.

In the following, we have summarised the most important topics in China which our clients were intensively engaged with in the past months and which will continue to be important.

I. ENTRY OPTIONS

The blocking of all entry by foreign nationals into China decreed on 28 March 2020 was lifted on 11 August 2020 for persons from all EU member states, provided they already have a residence permit for China. These persons can request a visa for China at the Chinese diplomatic missions abroad.

When applying for the visa, the submission of a so-called "PU invitation" is required for foreigners without a residence permit who would like to enter China to commence employment activities. Such a PU invitation is generally only granted if the entry is required to carry out

"mandatory necessary economic and technological projects". Here, the authorities are entitled to further discretion so that the application for such a PU invitation usually causes a considerable need for coordination with the competent authorities.

However, in the meantime, a complete entry ban has again been imposed for a number of European countries on the basis of the current situation in Europe, regardless of the existence of a residence permit. Currently, this particularly concerns nationals from France, Italy and the United Kingdom.

The prerequisite for entering China is still a health declaration form. This declaration is issued by the responsible foreign diplomatic mission by QR code. This health declaration is only issued if the results of a negative nucleic acid test as well as an IgM antibody blood test, which may be a maximum of two days old on the flight date to China (valid from performing the test), are available.

Furthermore, all persons travelling to China must undergo a COVID-19 test at the initial arrival location and then spend a 14-day quarantine in a facility assigned by the state. Here, there are partially deviating regulations regionally in different provinces.

II. OPPORTUNITIES AND RISKS FOR COMPANIES IN CHINA

Due to the existing entry restrictions in China, it is not currently possible for many companies



to send their employees to China for necessary meetings and deadlines (audits, controlling/compliance measures, board meetings, contract discussions/conclusions). Here we regularly support our clients by assuming supervisory functions and implementing the necessary controlling measures.

In addition, the COVID-19 pandemic is also having significant impact on the fulfilment of many commercial contracts and other obligations. In many cases, the contractual partners in China are invoking force majeure in order to be released from their contractual obligations. It should be noted that in many provinces special state regulations have been issued in order to regulate the settlement of such force majeure cases.

In the event of contract conclusions in the context of M&A transactions (acquisition of a company, establishment of a joint venture), our clients are regularly faced with the problem of organising and structuring the signing of the investment contracts as well as the settlement of the transactions on site in China. In this respect, we have recently carried out regular "signing dates" by video conference with the contracting parties. In addition, the proper signing of the contract can be accompanied and monitored directly on site at the Chinese party by our lawyers in China.

Despite the current positive development, it is to be assumed that China urgently needs foreign capital to cope with the consequences of the COVID-19 pandemic. The National Development and Reform Commission (NDRC) has already signalled that there will be further relaxations of restrictions and tax relief for foreign investments. For European companies, new opportunities for direct investments in China are thus offered (founding of a WFOE, development of a joint venture, expansion in new business areas). Our local experts will be happy to advise you on your business activities in China in this respect.

III. ECONOMIC OUTLOOK

After a massive collapse in the 1st quarter of 2020, the Chinese economy was able to recover relatively quickly. In the 3rd quarter of 2020, the course of the recovery is already clearly determined. Compared to the previous year, GDP increased by 4.9% according to the statistics office.

This value is therefore lower than expected. On average, experts assumed growth of 5.5%. Nevertheless, China's economy grew by 0.7% in the first nine months of the year. Thus, the Chinese economy – in all probability – will be the only major economy that can report growth for the crisis year 2020.

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