

CHINA

PRACTICE GROUP



 **BENESCH**
Attorneys at Law

Benesch's Commitment to our Clients' Global Needs



Benesch is a law firm that has built its practice and reputation in the corporate arena as a provider of sophisticated transactional services to private and public companies. We have served our clients, both nationally and internationally, for more than 70 years. In recent years, the dramatic economic growth of Greater China has made the region a focal point for many of our clients' businesses. In response to our clients' needs, Benesch's China Group offers an experienced team of legal professionals dedicated to helping U.S. companies successfully conduct business in China and helping Chinese companies conduct business in the U.S.

CHINA GROUP OVERVIEW

Through our Shanghai and U.S.-based offices, the attorneys in Benesch's China Group offer practical advice, useful experience and responsive assistance in navigating the uncertainties and risks associated with entering an international market as challenging and complex as China. We represent clients ranging from middle-market, privately held companies to large public entities, and we help those clients as they structure, negotiate and document China-related transactions.

We regularly counsel clients on a wide range of topics in China, including capital structure, governance, operating control, intellectual property rights, customs, taxation and employment law, and our attorneys travel extensively throughout China in order to meet with and represent our clients as they pursue their growth objectives and business expansion plans. We have valuable experience working with government officials, allowing us to help our clients navigate the often challenging regulatory environment, where local customs and practices can vary significantly.

Our established network of experienced and reliable U.S. and China-based service providers, including Chinese law firms able to serve as "local counsel" if necessary, enables us to help produce complete Chinese business/legal solutions. Together we provide international legal, tax, governmental relations, import/export, construction, HR, operational and other solutions for our clients in a cost effective manner.

China Group

We help U.S. companies in China as they:

- Establish strategic alliances and joint ventures for manufacturing, distribution and other purposes
- Form wholly-owned manufacturing or other business operations
- Engage in merger and acquisition transactions
- Dissolve and liquidate China-based enterprises and ventures
- Structure debt and equity financings
- Negotiate land use right transactions and engage in construction-related arrangements
- Deal with various government agencies in connection with operationally-related legal and business issues
- Address product import, export and customs related issues
- Address human resource matters (expatriate as well as local hiring), including social benefit issues, compliance with China's Labor Contract Law and downsizing
- Formulate and implement intellectual property protection strategies, as well as deal with trademark, patent applications, copyright (including software) registrations and domain name registrations
- Deal with foreign exchange control issues, including repatriation of profits, expense reimbursement and payments of royalties and other fees
- Address the transportation, logistics and other legal aspects of sourcing-related matters
- Implement their litigation strategies (with the assistance of local Chinese law firms)

In addition, we help Chinese companies with respect to U.S. legal and business considerations as they invest in the U.S. by:

- Helping them implement their "Go Out" strategy
- Establishing U.S.-related strategic alliances and joint ventures for manufacturing, assembly, distribution or other purposes
- Establishing subsidiaries and other business operations in the U.S.
- Acquiring the shares or assets of U.S. companies
- Addressing creditors' rights and bankruptcy-related issues, as well as general commercial law issues
- Serving as counsel in litigation and arbitration proceedings in the U.S.

FOCUS AREAS

The following "focus area" descriptions are illustrative of some of the types of matters on which we are regularly engaged:

FOREIGN DIRECT INVESTMENT/MERGERS & ACQUISITIONS

From our Shanghai and U.S. offices, we are well prepared to assist and advise U.S., Chinese and other clients with due diligence review, negotiation, documentation and obtaining governmental approvals in connection with acquisition and formation of (or joint venturing with) China-based businesses, whether they are divisions or subsidiaries of Chinese state-owned enterprises, Chinese privately-owned enterprises, or foreign-owned enterprises. Aspects of such transactions include:

- Legal and business due diligence review respecting the target's existence, ownership and structure, and coordination with other professionals, as necessary, with respect to operational, accounting and tax diligence

- Contract negotiations with the transaction counterparty, in English and Chinese as necessary
- Preparation of English and Chinese language documentation
- Advise respecting regulatory matters, including obtaining necessary licenses, permits and approvals from supervising governmental authorities and other third parties
- Ensuring compliance with applicable corporate, employment, land use rights, environmental, customs, foreign exchange, tax and other laws and regulations
- Intellectual property protection, including strategy and enforcement
- Litigation and arbitration consultation
- Immigration and EB-5 consultation

LABOR AND EMPLOYMENT

As a result of world-wide economic conditions and various policy changes in China, starting in late 2008, and well into 2009, China has seen a dramatic reduction in the number of manufacturing jobs. Adding to this growing labor problem is the ongoing privatization of state-owned enterprises which, as part of the privatization process, often must shed unnecessary workers in order to become more efficient. Accordingly, there has been increased tension between China's commitment to protect and improve the conditions of its workers through measures such as the Labor Contract Law, which went into effect at the beginning of 2008, and the need to cope with reduced job creation capacity and resulting unemployment.

We have been helping our clients navigate the Labor Contract Law and other applicable laws as they find it necessary to lay off workers in their China-based operations - in some cases to eliminate redundancies as part of the integration process following an acquisition and, in other cases, due to adverse economic conditions.

BUSINESS REORGANIZATION

As both China-based and U.S.-based companies become deeply imbedded in each other's supply chains, we are frequently called upon by our clients as creditors seeking to better understand and enforce their rights - both U.S. companies coping with China's new Enterprise Bankruptcy Law, which went into effect on June 1, 2007, and China-based companies requiring help to deal with U.S. bankruptcy laws.

Indeed, Chinese companies increasingly find themselves included among the largest creditors of their U.S.-based customers. Our Business Reorganization Practice Group can provide counsel that will increase their chances of recovery.

INTELLECTUAL PROPERTY

In the area of intellectual property, we are experienced in working with Chinese governmental officials and others to maximize the protection and enforcement of our clients' valuable patents, trademarks, know-how, trade secrets and other intellectual property rights. We are also experienced in practicing before the U.S. International Trade Commission in "Section 337" cases on behalf of U.S. as well as foreign parties.

Representative Matters

REPRESENTATIVE INBOUND MATTERS

- Assisted a Chinese iron and steel company with the purchase of mills and with litigation in the U.S.
- Assisted a Taiwanese trading company in a foreign direct investment in Europe and with regulatory compliance issues in the U.S.
- Counseled a Chinese heating and cooling company regarding U.S. patent law issues
- Assisted a Japanese steel company establish a joint venture in Ohio with a U.S. steel company and later assisted the joint venture acquire real estate for future expansion
- Assisted a Chinese real estate developer develop motel franchises across the U.S.
- Assisted a Korean auto manufacturer acquire a U.S. company
- Assisted two Chinese furniture companies acquire real estate and establish distribution centers in the U.S.
- Assisted a Chinese manufacturer and distributor of energy-efficient light bulbs with distribution, assembly and intellectual property/patent defense issues in the U.S.
- Assisted a German-listed Chinese company in its financing arrangement with a U.S. lender; and counseled it respecting the U.S. investment regulatory environment

REPRESENTATIVE OUTBOUND MATTERS

Mergers & Acquisitions

- Assisted a U.S. company in its sale of assets of a rubber compounding business to a Chinese public company
- Assisted a U.S. company acquire an equity interest in a state-owned enterprise in the liquid crystal display industry
- Assisted a U.S. rubber compounder establish a majority interest (with a Japanese multinational as the minority owner) in a wholly foreign-owned enterprise (“WFOE”) in China, and the construction and operation of a green field manufacturing facility in China
- Assisted a U.S. furniture fasteners company acquire an equity interest in a Taiwanese-owned processing company
- Carried out a due diligence investigation of an investment in a plastics processing company, and assisted with a transfer of the investment to a third party
- Assisted a client in connection with the establishment of a joint venture between an Asia-based trading company and a European-based trading company
- Counseled a client in connection with its sale of an automotive-related manufacturing business with branches and assets in the U.S., Brazil, Mexico and China

- Assisted a U.S. company acquire the shares of an affiliate of a Chinese state-owned enterprise in the tire mold business
- Assisted a U.S. caster of private equity-owned major appliance components acquire a majority interest in a Taiwanese-owned-WFOE, including structuring advice, extensive due diligence, holding company and WFOE formation and negotiation of WFOE business license application, land use rights documentation and acquisition agreements, as well as counseling on, and drafting of employment and other operational arrangements
- Assisted in the sale of a private equity-owned capital equipment manufacturer in the rubber test equipment business (with sales and offices in Europe and Asia) to another private equity firm
- Assisted a North American energy company in connection with the public financing of its China-based coal bed methane exploration activities
- Assisted a North American energy company acquire a coal mine in China

Foreign Direct Investment

- Assisted a U.S. retail supply distributor establish a foreign-invested commercial enterprise (“FICE”), including structuring and business license advice, as well as counseling on, and drafting of, employment and other operational arrangements

- Assisted in the establishment of a WFOE for a U.S. medical software developer and assisted with compliance, business licensing and other legal and regulatory requirements
- Assisted a U.S. material handling equipment manufacturer structure a Hong Kong joint venture, and counseled respecting formation of a FICE to distribute products in China
- Assisted two U.S. metal processing companies restructure their investments in land, factory and equipment, including negotiation and drafting of documentation with Chinese JV partner effecting change of control at HK holding company level and WFOE level, restructuring total investment and registered capital of WFOE, counseling on tax-free machinery importation issues, and resolution of various disputes
- Assisted a major Midwest public university in establishing a formal presence in China as a platform for serving U.S. and Chinese alumni, students, faculty, businesses and others
- Assisted North American logistics company establish operations in China
- Assisted a Chinese state-owned enterprise in the chemical industry negotiate and document an equity joint venture with a multinational public company

Intellectual Property Rights

- Assisted a U.S. medical software developer with the trademark registration and software copyright registration in China
- Advised a specialty online service provider respecting Chinese trademarks and copyright registrations
- Advised a U.S. adhesive products manufacturer respecting its technology license to a Chinese subsidiary and assisted with documentation and remittance of royalty payments
- Counseled a U.S.-based publishing firm in connection with amending a copyright license agreement in light of changes to applicable Chinese copyright regulations, and counseled respecting legality of conducting on-line publishing activities
- Assisted a U.S. company enter into technology licensing arrangement with a Chinese state-owned energy company
- Counseled a U.S.-based solar energy company obtain high tech status in China, and advised respecting trademark registration, patent application and global IP strategy
- Counseled a U.S.-based e-book distributor in connection with its cross license agreements with major Chinese e-book publishers and distributors

- Assisted a Chinese chemical company license synthetic rubber technology from a multinational company
- Assisted a New Zealand pollen distributor manage its China trademarks portfolio

Labor and Immigration

- Counseled and assisted respecting Chinese employment laws and regulations, employee handbooks, employment-related policies, employment contracts, secondment contracts, expatriate contracts, social benefits compliance and employee terminations
- Prepared and conducted training program respecting confidentiality, trade secrets and non-competition for management employees of a Chinese subsidiary of a U.S. company
- Assisted in the application process for visitor visas, business visas and work visas for U.S. employees and their relatives
- Assisted many U.S. owned Chinese companies in negotiation and documentation of employee hiring and terminating

Tax and Customs

- Counseled respecting Chinese corporate income tax, individual income tax, value added tax and business tax implications in various transactions

Representative Matters (continued)

- Assisted an existing WFOE qualify for “encouraged” status, enabling it to realize significant economic benefits through duty-free importation of equipment
- Counseled respecting Chinese taxation of intellectual property
- Counseled U.S. medical film printer company respecting dispute with Chinese customs authorities relating to classification of the goods and proper duty imposed
- Advised several U.S. companies respecting proper bonded warehouse arrangement in connection with the supply chain arrangements
- Assisted a client with its application to release the “controlled equipment” and bonded raw materials from restrictions imposed by Chinese customs authorities

Disinvestment

- Counseled a U.S. joint-venture partner in the metal-processing industry in connection with the dissolution of an equity joint venture with its Chinese partner
- Assisted U.S. companies close respecting the downsizing of its Chinese manufacturing facilities
- Assisted U.S. companies deregister their Chinese foreign representative offices

Dispute Resolutions

- Assisted a U.S. furniture manufacturer investigate counterfeit goods sold in China by a U.S.-owned company and obtain return of “stolen” trademarks
- Counseled a Chinese metals recovery company respecting breach of fiduciary duty litigation against a U.S. citizen

- Counseled a U.S.-owned company in a labor dispute in connection with overtime pay and social benefit contributions
- Assisted a printing company in connection with its commercial contract dispute with a Chinese manufacturer in a CIETAC arbitration proceeding

For more information, contact any member of our China Group:

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