HWFisher

DEZAN SHIRA & ASSOCIATES
Your Partner for Growth in Asia

SETTING UP A COMPANY IN CHINA AND THE UK

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British investment interest in China remains strong, with corporate needs to access a high growth consumer market of an expected 1 billion middle-class consumer base by 2030. Likewise, the UK is an attractive market for Chinese businesses looking to partner with British financial services capabilities. Both Beijing and Hong Kong are looking to develop their various cross-border wealth connect schemes, offering **international wealth management** access to the mainland's estimated US$3 trillion in privately held assets.

This report concentrates on the UK-China business angle and answers some of the most frequently asked questions about setting up a company in China and the UK.

Key insights are provided by, **Maria Kotova**, Head of UK Business Development and China market entry Director at **Dezan Shira & Associates**, Partner and Head of Private Client, **Jamie Morrison**, and **Adam Bonnell**, Partner at **HW Fisher**.

DO WE NEED TO HAVE AN OFFICE TO REGISTER A COMPANY IN CHINA AND THE UK?

China

To register a Foreign Invested Enterprise in China, it is a prerequisite to own or lease offce premises (as the primary place of business) and register this with the local AMR in charge. This will mean that companies wishing to set up an office in China must ensure that they meet the required criteria before they can establish themselves legally.

It is often necessary to relocate an office to a new location. Office relocations can be complicated and cause significant delays that may hinder your business. Relocating within a tax district is a relatively simple process, but cross-district relocations are significantly more involved, requiring several months to complete. Where possible, relocation to a new business address should be avoided to prevent the loss of time and money necessarily incurred.

UK

In order to set up a UK company, you will need a UK registered office address. The company does not need to trade in the UK, nor do the directors have to be based in the UK.

There are several options for setting up the registered office address of a company – leasing your own office space, leasing a serviced office or using a professional firm to provide a registered office facility.

HOW TO OPEN A BANK ACCOUNT FOR A NEW COMPANY IN CHINA AND THE UK

China

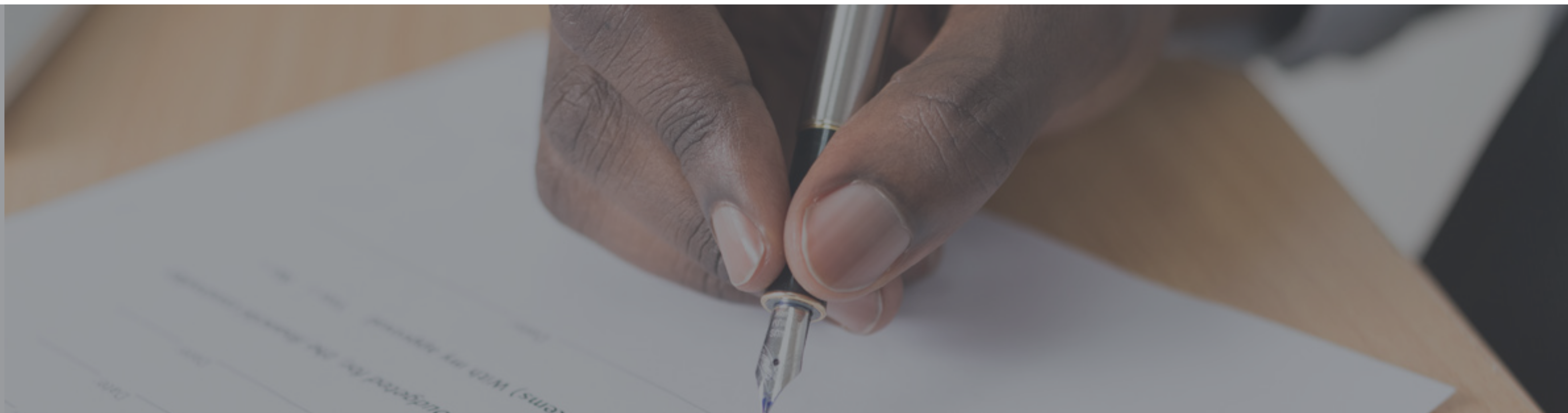
The process of becoming a new client of a bank can give off the impression that it will not be simple for foreign investors. This is due to the People's Bank of China's (PBOC) intense scrutiny of Chinese banks, which has led to the focus placed on the KYC (know your client) policy.

Chinese banks have become stricter about opening bank accounts, especially for newly established companies. Upon obtaining a business licence in China, the newly established foreign-invested enterprise (FIE) must choose a specific bank to open the bank account with, without which the entity will not be able to carry out its daily operation.

In China, FIEs must open at least two bank accounts: an RMB basic account and a foreign currency capital contribution account. Because of an existing business relationship, foreign investors in China frequently prefer to open an account with an international bank. However, opening accounts with a Chinese bank has a number of advantages.

UK

There is no legal requirement in the UK for foreign investors to have a business bank account. You do not have to live in the UK to open a business bank account, but it is difficult for non-UK residents to open a bank account in the UK due to strict anti-money laundering (AML) regulations that require those applying for bank accounts to verify their identities.



WHAT ARE THE KEY CONSIDERATIONS OF CORPORATE GOVERNANCE WHEN OPENING A COMPANY IN CHINA AND THE UK?

China

China's economic reform and policies over the last four decades have succeeded in establishing international standards of corporate governance in the country. This facilitated the emergence of modern enterprise structures, contributing to the development of one of the largest economies in the world today.

Corporate governance includes the guiding principles a company has established to guide all its activities, from compensation, risk management, and employee treatment to reporting unfair practices, and more.

Whether entities are seeking to enter for the first time or are already operating in China or the UK, it is crucial to understand the key considerations of corporate governance. It should serve as a safeguard and boost the interests of shareholders through setting the strategic direction of the entity in China or the UK – an important element to ensure success. When the mechanism is missing, it leads to bankruptcy and an ineffective business.

UK

All companies in the UK are subject to the Companies Act 2006, which covers a company's full lifecycle, from incorporation to winding up, duties and roles of directors, share regulation and rules around accounting and audits. Listed companies fall under the UK Corporate Governance Code.

THE IMPORTANCE OF TRADEMARK REGISTRATION IN CHINA AND THE UK

China

If you are planning on doing business in China, it is important to protect your trademark. China operates on a first-to-file basis, which means that whoever registers their trademark first will have the rights to it. This can be problematic if someone beats you to the punch and registers your trademark first. To avoid this situation, it is important to register your trademark in China as soon as possible.

While it is relatively inexpensive to register a trademark in China, the consequences of not doing so can be severe. If someone else has registered your trademark, it can be very difficult (and expensive) to get them to relinquish the rights to it. We've heard stories of companies having to pay millions of dollars just to get their trademark back.

Keep in mind that simply having your trademark registered elsewhere in the world does not mean it is automatically protected in China. You need to register your trademark in China specifically to be protected.

By taking the time to register your trademark in China, you can avoid a lot of headaches and expenses down the road.

Steps to register your trademark in China

Step 1: Filing the application
The company must either directly file an application with the China Trade Mark Office (CTMO) or file the application through the World Intellectual Property Organization (WIPO). If choosing the latter, the trademark application must be based in the country where the mark is currently registered.

Step 2: Choosing the product and service subclasses
While China accepts the International Classification of Goods and Services under the 1957 Nice Agreement, it further divides these classes into subclasses. For example, general footwear and boots belong to different subclasses in China, so the same trademark can be registered by different companies in each subclass if these subclasses are not deemed as similar. Thus, it is crucial that the applicant's trademark covers all the relevant products and services – in each of the subclasses – pertaining to the business' scope when filing for registration.

Step 3: Registering the trademark in Chinese characters
Foreign firms entering China should be aware that their trademark in Roman characters will not completely protect them against infringement. The same or similar trademark can be registered in Chinese characters by another business. This is also key to a business' profitability and image in China.

If other firms or the public informally uses your trademark in the locally-spoken language, there are chances of losing customers and diminishing your brand value due to the meaning, the pronunciation, or even the appearance of the Chinese characters. Illustrating this is the experience of luxury clothing brand Ralph Lauren in China, whose label has been referred to by the Chinese name 'San Jiao Ma' (三脚马) that translates as 'three-legged horse' – the name being created out of the designer's logo.

On the other hand, the Chinese word for Coca Cola is 'delicious happiness' – not a direct transliteration, but effective in establishing the right brand reputation. Coca Cola didn't get it right the first time though – initially, it used the name Ke Dou Ken La, which translated into something along the lines of 'bite a wax tadpole' (蝌蚪啃蜡). Another interesting example is the case of Toyota and Mercedes-Benz in the auto market. In Chinese, Toyota could be translated as 'thriving' (丰田); Mercedes-Benz, however, faced difficulty when it entered the Chinese market as its name 'Bensi' got translated as 'rush to die'.

The American electronics group Best Buy is also a good reference, when learning from branding mistakes in China. While multiple factors may have led the company to wind up its operations in the country after five years, its name certainly did not help its cause. Best Buy's trademark name in China used the characters '百思', which combined the sound of the word 'best' and the direct translation of the word 'buy' (买) – all of which unfortunately got translated as 'think a hundred times before you buy'.

UK

Trademark registration in the UK is simple and can easily be done online. However, it is important to check that the name you want to use for your company is not already taken in your sector of business.

There is a fee for registering a trademark. The process generally takes 4 weeks to get feedback on your application but can take up to 4-6 months for the trademark to be registered. A certificate will be issued once it has been registered. Trademarks are valid for 10 years.

Registering your trademark is important because it gives you legal protection for your brand. This means that you can take action against anyone who uses your trademark without permission. It also makes it easier to sell or licence your business as a whole. If you do not register your trademark, you may still have some protection under the common law, but it is more difficult to prove infringement. Trademarks can be renewed indefinitely as long as they are being used.

There are many benefits to registering your trademark, but it is important to remember that it is not a requirement in the UK. You may choose to rely on common law protection instead. However, if you do decide to register your trademark, it is recommended that you use a professional services firm to help you with the process. This will ensure that your trademark is registered properly and gives you the best possible chance of success.

HOW TO DEFINE A BUSINESS SCOPE IN CHINA AND THE UK

When expanding a business into new international markets, it is important to ensure that the business scope is clearly defined and understood by all parties. We will explore how to define a business scope in China and the UK and look at some of the top practices for doing so according to industry professionals.

One of the first steps in defining a business scope is to understand the local market conditions and regulations. This can be done by conducting market research, speaking with local lawyers or experts, and attending trade shows or conferences. Once you have a good understanding of the local market conditions, you can begin to develop your business model and determine what products or services you will offer.

Another important step in defining a business scope is to understand the needs of your target market. This can be done through market research, surveys, and interviews with potential customers. It is important to ensure that you are able to meet the needs of your target market before expanding into a new territory.

By understanding the local market conditions and the needs of your target market, you can begin to develop a clear business scope. When doing so, it is important to keep in mind any restrictions that may be placed on your business by the government or other regulatory bodies – it is important to communicate this information to all parties involved in the expansion process.

China

Some things to keep in mind when defining a business scope in China:

- Define your business scope at the pre-investment stage to decide on what type of legal entity meets your objectives.
- The Chinese government has strict regulations on products and services that can be sold within its borders.
- It is important to consult with local lawyers or experts to make sure that your product or service is allowed to be sold in China.
- The Chinese market is very different from markets in other countries, so it is important to understand the needs of Chinese consumers before expanding into the country. By taking the time to properly define your business scope and consult with local experts, you can ensure that your business is able to operate successfully in China.

UK

When expanding your business into the UK, it is important to be aware of these regulations and ensure that your business scope takes them into account. Failure to do so could result in problems down the road. By taking the time to properly define your business scope from the outset, you can avoid these potential problems and set your business up for success in the UK market.

Products in the UK that are subject to strict regulations:

- Alcohol
- Tobacco
- Clothing
- Electrical Devices
- Firearms
- Medical Devices and Equipment
- Food and Drink
- Cosmetics

These are just a few examples of products in the UK that are subject to strict regulations which can restrict sales in the UK or prevent importation.

HOW TO CHOOSE THE RIGHT COMPANY NAME FOR YOUR BUSINESS IN CHINA AND THE UK

When starting or expanding a business to international markets, one of the most important decisions you will need to make is choosing a company name. This name will be associated with your brand and how customers perceive your business. In China and the UK, there are some things you should keep in mind when selecting a company name.

China

When choosing a company name in China, it is important to consider the following:

- Each company in China has its unique name and it should be in Chinese.
- A company name is a brand identity and is used to market a business's products or services.

As a business's reputation grows around the world, it is wise to consider the meaning of a company's name in each local market and in some cases, create a local name for different consumers. In China this is particularly important – because the meaning, sound, tone, and even look of the Chinese characters you choose for your company name can affect a brand's reputation.

Three ways to choose your Chinese trademark name

Create a literal translation
A literal translation works when the trademark has a distinctive meaning. For example, Apple chose the brand name 'Ping Guo' (苹果), which is Chinese for 'apple'. Similarly, Palmolive is known as 'Zong Lan' (棕榄), a combination of the exact translation of 'palm' and 'olive'.

The disadvantage of this method is that the Chinese characters will sound different from your original trademark. This means that marketing time and money will need to be spent on building the association between your Roman character trademark and the Chinese character trademark.

Create a phonetic translation
A phonetic translation involves creating a Chinese character name that sounds like your trademark. Pinyin is the official Chinese phonetic alphabet that uses Roman characters, which can be used to create the transliteration. For example, 'McDonald's' is known as 'Mai Dang Lao' (麦当劳), to local Chinese consumers. 'Siemens' goes by the name of 'Xi Men Zi' (西门子), 'KFC' is known as 'Ken De Ji' (肯德基) to locals, and 'Audi' is known as 'Ao Di' (奥迪).

This method is preferable when your trademark already has a reputation amongst Chinese speaking consumers. However, care must be taken when choosing a phonetic version of a foreign mark, because the Chinese characters may have an undesirable meaning in one or more of the six major Chinese dialects.

Combine a literal and phonetic translation
The best trademarks are those that sound the same and also make reference to a defining characteristic of your brand or have positive meaning in Chinese culture. For example, after considering hundreds of combinations of the four syllables that make up its name, Coca-Cola finally settled with 'Ke Kou Ke Le' (可口可乐), which means 'taste and be happy'. The German brand 'Fuchs' which in German means 'fox' is translated into 'Fu Si' (福斯) which translates to 'good luck and blessing'.

Regardless of what method you choose, it is recommended to engage a professional Chinese-speaking expert to ensure that the Chinese characters you choose do not have a negative connotation.

In 2017, China's State Administration for Industry and Commerce (SAIC), introduced the Rules for the Prohibition and Restriction of Enterprise Names, which ban businesses from registering company names authorities consider "strange", overly long, politically sensitive, or mimicking existing brands.

UK

When choosing a company name in the UK, there are a few things to keep in mind:

- It is essential to determine that the name has not already been taken. HW Fisher recommends that when choosing a company name, the entity should have two to three additional name options.
- The name should be unique and not too similar to other companies in your industry. You might have to change your company name if Companies House deems it too similar.
- A company's name cannot be offensive.
- Some names are deemed to be sensitive and may not be used or may only be used with approval from an appropriate body.
- The company's name must usually end in either 'Limited' or 'Ltd' for a private limited company or public limited company or plc for a public company.

FUNDING AND SUBSCRIBED CAPITAL WHEN OPENING A COMPANY IN CHINA AND THE UK

China

Registered capital is the fund all shareholders contribute or promise to contribute to the company when they apply to the local administration of Market Regulation (AMR) for incorporation of the company. The amount of the registered capital depends on a range of factors, which include the region, the sector, the company's business scope, the planned scale of operations, etc. It will show in the company's business licence and, this information is available to the public to show the fund strength or capacity of a company to some extent.

The registered capital does not need to be paid completely up front. The previous system of paid-up capital has been replaced by a subscribed capital model, under which a schedule of contributions must be declared in the Article of Association and be registered with the local AMR in charge. The government will check whether the investors follow the capital injection plan.

There is no minimum registered capital requirement for corporate establishment except for a few industries, such as banking, financing, insurance, etc. Despite this, in practice, the governing authorities will ensure that a company's registered capital is sufficient to support its business operations for at least one year, including its rent, labor costs, and office expenses.

UK investors need to strike a balance between the amount of capital and estimated business expenses. If you subscribe too low of an amount and your company is not generating enough profit to cover expenses, your company may run out of cash. It may take months to apply for the increase.

On the other side, if your subscribed capital is too high and your company in China starts to generate profit very fast, it will be difficult to reduce this amount. You will need to submit an application with strong evidence and while authorities are generally supportive of increasing the capital amount, they are often reluctant to reduce it and it may take some time to be approved.

Moreover, the registered capital can affect the amount of offshore debt the FIE can borrow from other investors or foreign banks if the FIE chooses to follow the ratio between registered capital and total investment. The upper limit of offshore debt is the gap between the total investment and the registered capital.

UK

When setting up a limited company in the UK only a de-minimis amount of capital needs to be subscribed for, and you can form a company with as little as £1 of share capital.

There is no limit to the number of shares you can issue and it is up to the company to issue either paid or unpaid shares, which means you don't have to pay for your shares in full at once (although tax and other commercial consequences can arise from this).

The rights attaching to the shares (e.g. voting rights, rights to dividends) are set out in a company's Article of Association, which are adopted on incorporation, but which can be subsequently changed by agreement of the shareholders.

VAT TAXPAYER STATUS IN CHINA AND THE UK

China

VAT is one of two major turnover taxes in China, the other being consumption tax. VAT is levied on the gross margin at every point on the supply chain where value is added to a taxable product or service. It is considered a neutral tax, allowing taxpayers to offset VAT that has already been paid for relating to the cost of materials used in the product at a previous stage.

VAT taxpayers are categorised into general taxpayers and small-scale taxpayers based on their annual taxable sales amount. Taxpayers with annual taxable sales exceeding the annual sales ceiling (RMB 5 million, approx. US$710,000) set for small-scale taxpayers must apply for general taxpayer status. VAT payers whose annual taxable sales are below the ceiling, as well as those who have newly established their business, can voluntarily apply for general taxpayer recognition upon meeting certain conditions.

Traditionally, a company must obtain VAT general taxpayer status in order to be able to issue special VAT invoices. However, starting from February 1, 2020, China has been allowing all small-scale taxpayers (except other individuals) to voluntarily use the VAT invoice administrative system to issue the special VAT invoice by themselves, after testing that in several pilot programs since 2016.

Small-scale taxpayers are generally subject to a lower VAT levy rate of three percent (reduced to one percent during the period between March 1, 2020, and December 31, 2021), as compared to rates ranging from six to 13 percent for general taxpayers, but they cannot credit input VAT from output VAT, nor are they entitled to export VAT refunds.

UK

In the UK there is no need to register for VAT unless your business taxable turnover exceeds £85,000 in any rolling 12-month period or in the next 30 days. Registration can also be applied for voluntarily where supplies are being made below the £85,000 threshold and where there is an intention to make taxable supplies.

For non-established businesses, the £85,000 threshold does not apply, and registration is required once activity commences in the UK.

It is important to get the VAT registration date correct as penalties can apply for failing to notify at the correct time. Only supplies at the standard, reduced and zero rate contribute to the registration threshold.

The standard rate of VAT in the UK is currently 20 percent which applies to most goods and services with a reduced rate of five percent which applies to for example, conversion of commercial property to residential and a zero-rate which applies to items such as books, construction of new dwellings etc. In addition to these three rates, some supplies can be classified as VAT exempt (financial services) and other as outside the scope (receipt of grant income where nothing is done in return).

There are also other administrative and cashflow advantages for smaller enterprises via annual accounting, cash accounting and various flat rate schemes.

HOW LONG DOES IT TAKE TO REGISTER A COMPANY IN CHINA AND THE UK?

China

Foreign investment into the People's Republic of China (hereafter "China") can be made via one of several types of investment vehicles. Choosing the appropriate investment structure for your business depends on a number of factors, including its planned activities, industry, and investment size.

Whilst there are different investment options and entities available, we will focus on a Wholly Foreign Owned Enterprise (WFOE).

A WFOE is a limited liability company wholly owned by one or more foreign investor(s), which offers a very straightforward management structure.

Unlike an RO, a WFOE can make profits and issue local invoices in RMB to its suppliers. A WFOE can employ local staff directly, without any obligations to employ the services of an employment agency. A WFOE can also expand to create subsidiaries in China.

And compared to a JV, a WFOE has better autonomy and flexibility to execute the company policies intended by the investors without considering the Chinese partner. It is also believed to be better at protecting the company's intellectual property and technology.

However, the setup procedure of a WFOE is more complicated. A WFOE is not feasible if the targeted sector is listed as "restrictive" in the Special Administrative Measures on Access to Foreign Investment ("National Negative List") or the Special Administrative Measures (Negative List) for Foreign Investment Access in Pilot Free Trade Zones ("FTZ Negative list"), where foreign investors need to have a Chinese equity partner to form the business. In other words, incorporating a WFOE to engage in these sectors would not be permitted. Investors that try to do so will see their application denied. WFOEs that engage in these activities illegally after being incorporated face fines or even the cancellation of their business licence.

There are three distinct WFOE setups available:

- Service (or consulting) WFOE;
- Trading WFOE (or foreign-invested commercial enterprise [FICE]); and
- Manufacturing WFOE.

While all three structures share the same legal identity, they differ significantly in terms of their setup procedures, costs, and the range of commercial activities in which they are allowed to engage. Trading WFOEs and manufacturing WFOEs must derive the majority of their revenue from their namesake business, but can also provide associated services. Service WFOEs are additionally permitted to conduct trading activities related to their services.

Timeline and setup procedure when establishing a foreign investment structure in China:

Establishing a foreign investment structure in China generally takes between three and six months and involves the following government authorities:

- Ministry of Commerce (MOFCOM) and its local branches;
- State Administration for Market Regulation (SAMR) and its local branches;
- State Administration of Foreign Exchange (SAFE) and its local branches;
- State Taxation Administration (STA) and its local branches;
- General Administration of Customs (GAC) and its local branches; and
- National Bureau of Statistics (NBS) and its local branches.

The establishment process varies based on one's chosen investment structure and planned business scope. For example, manufacturing WFOEs require an environmental evaluation report to be completed, while trading WFOEs need to comply with the customs/ commodity inspection requirements.

In the following page we take WFOE as an example to demonstrate the setup procedure.

WFOE SETUP PROCEDURE

Pre - licensing (2-3 months)

Basic information collection from client
(depends on client)

Incorporation document prepared by client
Including the proof of lawful use of the office premises
(depends on client)

Environment impact assessment*
Including report assessment, on-site environmental impact assessment, and report approval from authorities in charge
(3-6 months)

AMR Business Registration **
Including online incorporation information submission and pre-review, and on-site documentation submission to the authority in charge
(7-10 working days)

Foreign investment information reporting ***
(real time)

Company now legally exists

Carve company chop, financial chop, invoice ("fapiao") chop, and legal representative chop
(1-2 working days)

Post-licensing (2-3 months)

RMB Basic Account
(2 weeks)

Foreign exchange registration certificate
(around 2 weeks)

Foreign capital account
(5-7 working days)

Capital injection
(in accordance with Articles of Association)

Capital verification assistance
(2 weeks)

Tax Registration
(Including tax identification authentication of the legal representative or financial employee in charge, VAT taxpayer status set-up, and on-site submission of documentations
(3-5 working days)

MOFCOM Foreign Trade Dealer/Operator Filing****
(around 5 working days)

Custom registration****
(around 2 weeks)

Safe import-export enterprise name filing****
(2-3 woking days)

*For manufacturing WFOE only.
**In an effort to simplify company estabilishment procedures, the government intends to integrate the customs registration with the AMR business registration. However, at the time of writing this guide, the reform hadn't yet been fully implemented in practice.
***No separate reporting is needed in cities offering one-stop service such as Shanghai. The reporting can be conducted contemporaneously after the company name is filled for record.
****For manufacturing and tracing WFOE only.

UK

Once you have chosen the company's name and have the relevant information ready (such as the names of the directors and shareholders and the appropriate articles of association have been drafted), the timeline for setting up a UK Company is short. A company can be formed and incorporated within 24 to 48 hours once the application is made. However, opening a business bank account, registering a trademark, etc. are separate processes and cannot be undertaken until the company has been incorporated. It is important to mention that once the company is incorporated, you will be able to operate your business before completing some of the other processes.

Experts at HW Fisher mention that, "it is important that you register for Corporation Tax within 3 months of starting to trade. Furthermore, you may need to register as an employer and pay payroll taxes if you employ UK-based staff, as well as considering your VAT position as highlighted above."

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DEZAN SHIRA & ASSOCIATES

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For queries regarding the content of this magazine, please contact: grant.williams@dezshira.com

HWFisher

T +44 (0)20 7388 7000 | **E** info@hwfisher.com | **W** www.hwfisher.co.uk

HW Fisher LLP,
Acre House, 11–15 William Road,
London NW1 3ER

HWFisherUK hw-fisher

DEZAN SHIRA & ASSOCIATES
Your Partner for Growth in Asia

T +852 2376 0334 | **E** maria.kotova@dezshira.com | **W** www.dezshira.com

Dezan Shira & Associates Limited
Unit 507, 5/F, Chinachem Golden Plaza,
77 Mody Road, Tsim Sha Tsui East,
Kowloon, Hong Kong

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