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## **REGULATORY SIMPLIFICATIONS FOR FOREIGN INVESTORS IN CHINA (SHANGHAI) PILOT FREE TRADE ZONE**

### **1. GENERAL ISSUES CONCERNING TRADE BETWEEN THE PEOPLE'S REPUBLIC OF CHINA AND THE REPUBLIC OF POLAND**

The statistics of the trade balance between the Republic of Poland and the People's Republic of China are all but favourable to the former. The almost ceaselessly increasing<sup>1</sup> volume of trade is not accompanied by any evident growth of exports to the Middle Kingdom.<sup>2</sup> Consequently, it is based solely on the growing import of products and services to Poland. The natural result of this trend is a rising trade deficit.<sup>3</sup> The continual increase of imports from China is rather obvious from the economic point of view, and the lack of a parallel growth in exports from Poland has remained a challenge for the successive Polish governments as well as for Polish businesses.<sup>4</sup>

The process of China opening to the world was initiated by Deng Xiaoping in 1979. It concerned both trade and foreign investment. Step by step, China underwent reforms aimed at transforming the closed and centrally planned economy into an open and more free-market economy. This transition can be perfectly

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<sup>1</sup> The volume of trade dropped in 2015 in comparison to 2014 by 4.2%, as follows from the reports of the Polish Central Statistical Office (GUS), *Rocznik Statystyczny Handlu Zagranicznego 2015*.

<sup>2</sup> The value of exports to China in the years 2013–2016 amounted to approximately 2 billion USD.

<sup>3</sup> Conclusions based on the data presented by the Polish Central Statistical Office in *Rocznik Statystyczny Handlu Zagranicznego 2013, 2014, 2015 and 2016*.

<sup>4</sup> The existing deficit in the Sino-Polish trade relations was mentioned e.g. by Deputy Prime Minister Mateusz Morawiecki during the visit of General Secretary Xi Jinping. More on the subject in the article *Polsko-chińskie porozumienia gospodarcze*, available at: <https://www.mr.gov.pl/strony/aktualnosci/polsko-chinskie-porozumienia-gospodarcze/> (accessed: 1.12.2018).

illustrated by the following statement made by H. L. Chan: ‘it was more that the door [to China] was no longer closed rather than it being fully open’.<sup>5</sup>

Even though the People’s Republic of China joined the World Trade Organisation in 2001, the barriers in access to the market continue to be perceived as the central reason for the poor performance of European exporters.<sup>6</sup> The main entry barriers may be divided into information-related, legal and financial ones.<sup>7</sup> The present article covers the issue of legal barriers, with daily press describing them often as related to administrative provisions, certification, establishment of partnerships or companies, hiring employees and dispute resolution. Rankings which assess the ease of doing business in various economies confirm that administrative barriers present in China render it considerably difficult to run a business.<sup>8</sup> Difficulties are encountered particularly by foreign investors, the so called Foreign-Invested Entities, which are subject to additional restrictions.

## 2. LEGAL REGULATIONS APPLICABLE TO FOREIGN BUSINESSES

The Chinese legal system is characterised by a duality with respect to commercial partnerships and companies. The entities whose shares are held solely by citizens of the People’s Republic of China are treated differently than those owned or co-owned by foreigners. The latter are jointly referred to as Foreign-Invested Entities (FIE).<sup>9</sup> The principal difference concerns the admissibility of taking up business activity in a particular sector on the territory of the PRC, which is determined by the Catalogue of Industries for Guiding Foreign Investment.<sup>10</sup> This legal act is essentially equivalent to a Polish regulation. It consists of three parts. The first one lists sectors in which entrepreneurs are encouraged to make investment (Catalogue of Encouraged Industries for Foreign Investment). Parts two and three are jointly referred to as the negative list, as they enumerate the areas which

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<sup>5</sup> H. L. Chan, (in:) M. J. Foster, Ch. S. Tseng, *China FDI Booms but problems persist for FIEs*, “Journal of International Business and Economy” 2017, issue 18(1), p. 71.

<sup>6</sup> T. Sporek, *Analiza stosunków handlowych pomiędzy Chińską Republiką Ludową a Unią Europejską*, „Studia Ekonomiczne” 2012, issue 123, p. 24.

<sup>7</sup> M. Piekut, *Wirtualny gigant: rynek e-commerce w Chinach*, PAiiIZ, Warszawa 2016, p. 5.

<sup>8</sup> China is ranked 78<sup>th</sup> in the World Bank Group’s report *Doing Business 2018*. The report is available at: <http://www.doingbusiness.org/~media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf> (accessed: 1.12.2018).

<sup>9</sup> M. J. Foster, Ch. S. Tseng, *China FDI Booms but problems persist for FIEs*, “Journal of International Business and Economy” 2017, issue 18(1), p. 71.

<sup>10</sup> Q. Wang, *The Management of Foreign Private Equity Funds Involves Foreign Investment and Foreign Exchange in the China (Shanghai) Pilot Free Trade Zone*, “The Chinese Economy” 2017, issue 50(4), p. 249.

feature investment constraints (part one – Catalogue of Restricted Industries for Foreign Investment)<sup>11</sup> or in which foreign business activity is completely forbidden (part three – Catalogue of Prohibited Industries for Foreign Investment).<sup>12</sup> If the partnership's or company's objects are not included in the negative list, they are deemed allowed.<sup>13</sup> The catalogue is updated on average every two years and the negative list is systematically shortened.<sup>14</sup> As from 1 October 2016, establishing a partnership or a company whose objects are not included in the negative list does not require the permission of the Chinese Ministry of Commerce (MOF-COM) any more and the entire procedure is completed on the local level (with Administration for Industry and Commerce acting as the competent authority).

### 3. ESTABLISHING A COMPANY IN CHINA

Even when the planned activity is not listed in the negative catalogue, the investor may not freely take up business in the Middle Kingdom. The Chinese regulations on companies essentially provide for two types of such entities, with the first one being equivalent to the Polish private limited liability company (*spółka z ograniczoną odpowiedzialnością*) and the second corresponding to the Polish public limited liability company (*spółka akcyjna*).<sup>15</sup> However, foreign investors may neither establish such companies nor buy their shares. Special types of companies are dedicated to foreign entities instead, with the Chinese provisions applying to them only *mutatis mutandis*. The main types of companies available to foreign citizens are: Wholly Foreign Owned Enterprise (WFOE), Sino-Foreign Equity Joint Venture (EJV) and Sino-Foreign Cooperative Joint Venture (CJV).<sup>16</sup>

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<sup>11</sup> These constraints consist mainly in the requirement to obtain a relevant permission and to undergo additional verification. Before that, numerous ownership restrictions were in place, as well, for instance the company was required to have a Chinese majority shareholder.

<sup>12</sup> *Catalogue of Industries for Guiding Foreign Investment (Revision 2017)* promulgated on 28 June 2017, Promulgation Number: No. 4, Decree of the National Development and Reform Commission and the Ministry of Commerce of the People's Republic of China, Promulgation Department: National Development and Reform Commission, Ministry of Commerce of the People's Republic of China, available at: [http://www.fdi.gov.cn/1800000121\\_39\\_4851\\_0\\_7.html](http://www.fdi.gov.cn/1800000121_39_4851_0_7.html) (accessed: 1.12.2018).

<sup>13</sup> Q. Wang, *The Management of Foreign Private Equity...*, p. 250.

<sup>14</sup> Currently, the list of encouraged industries consists of 348 items, the list of restricted sectors – of only 35, and the catalogue of prohibited industries – of 28.

<sup>15</sup> Company Law of the People's Republic of China (Revised in 2013) promulgated on 28 December 2013 by the Standing Committee of the National People's Congress.

<sup>16</sup> Regulated by the Law of the People's Republic of China on Wholly Foreign-Owned Enterprises, the Law of the People's Republic of China on Sino-Foreign Equity Joint Venture and the Law of the People's Republic of China on Sino-Foreign Cooperative Joint Venture, respectively.

Each of them is subject to regulation by a separate act.<sup>17</sup> Currently, the most popular form is the WFOE, as it allows foreign citizens to retain full ownership and, consequently, control over the company. Furthermore, Wholly Foreign Owned Enterprises can be subdivided according to the type of business activity into those which: offer services, engage in trade or deal with production.<sup>18</sup> Depending on which type of the WFOE an investor wishes to register, they need to meet a different set of requirements, for instance with regard to real property, in which the entrepreneur has to have a title prior to establishing the company.

Since foreign investors are subject to other provisions than Chinese entities, the admissible forms of running business are less flexible and involve certain flaws. These include: restrictions with regard to hiring staff, complex administrative procedures related to obtaining additional permits as well as problems with the protection of intellectual property rights and with asserting claims. A further problem are the disparities in the application of law in various provinces and by various authorities.<sup>19</sup>

The Chinese authorities intended to introduce equal forms of running business for Chinese and foreign entities. In January 2015, the Ministry of Commerce published draft Foreign Investment Law of the People's Republic of China,<sup>20</sup> which was supposed to abolish the special types of companies dedicated to foreign entrepreneurs and to allow them to establish companies in the forms so far dedicated to Chinese entities, plus to buy shares in the already existing Chinese companies.<sup>21</sup> The main objective of the legislation was to introduce a complex regulation of foreign business activity in China. However, the draft was not enacted for the following two years. In the meantime, a law<sup>22</sup> was passed which liberalised the procedure of establishing foreign-owned companies and which included

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<sup>17</sup> The Chinese legislation on foreign businesses is published online in English on the government's website devoted to foreign investment, available at: <http://www.fdi.gov.cn> (accessed: 1.12.2018). Each amendment is published separately and no consolidated texts can be viewed on the website, which is fairly inconvenient. Consolidated texts are published in databases operated by other entities, for instance the database run by Peking University available at: <http://en.pkulaw.cn> (accessed: 1.12.2018). The access to those databases, however, is paid.

<sup>18</sup> Usa Ibp Usa, *China Company Laws and Regulations Handbook*, International Business Publications, 2009, p. 58.

<sup>19</sup> M. J. Foster, Ch. S. Tseng, *China FDI Booms...*, p. 74.

<sup>20</sup> EY, *Detailed interpretation of "The Foreign Investment Law of the People's Republic of China (Draft for Comments)"*, available at: [http://www.ey.com/Publication/vwLUAssets/EY-the-foreign-investment-law-of-peoples-republic-china/\\$FILE/EY-the-foreign-investment-law-of-peoples-republic-china.pdf](http://www.ey.com/Publication/vwLUAssets/EY-the-foreign-investment-law-of-peoples-republic-china/$FILE/EY-the-foreign-investment-law-of-peoples-republic-china.pdf) (accessed: 1.12.2017).

<sup>21</sup> I. Duncan, *Development of China's Foreign Investment Law*, "Quarterly Journal of Chinese Studies" 2016, issue 4(4), p. 3.

<sup>22</sup> Decision of the Standing Committee of the National People's Congress on Amending Four Laws Including the Law of the People's Republic of China on Foreign-funded Enterprises, promulgated on 3 September, Presidential Decree of the People's Republic of China No. 51, Promulgation Department: The National People's Congress of the People's Republic of China.

some of the provisions from the draft Foreign Investment Law of the People's Republic of China. The fact that the legislative process was never completed and that another law was passed which included some of the provisions from the draft suggests that the concept of the Foreign Investment Law had lost the support of the Chinese government. On the other hand, the spokesperson of the Ministry of Commerce said in a press conference on 3 November 2017 that the Ministry continued to work on the draft and intended to accelerate the related works.<sup>23</sup>

#### 4. PROVISIONS ON B2B AND CROSS-BORDER TRADE

The restrictions mentioned above concern doing business on the Chinese market through an entity registered in China. However, it is possible to trade<sup>24</sup> on the Chinese market without establishing a company in the PRC. This applies to two types of commercial transactions. The first one is B2B, that is when a foreign investor sells a product or a service which meets all the requirements necessary to gain access to the market, including relevant certificates, to a business entity which is registered in China and has an import permit.

The second type of transaction, called cross-border e-commerce (CBEC), involves the sale of products by a foreign business directly to the Chinese consumer<sup>25</sup> via a dedicated Chinese online platform. This is possible subject to a number of requirements. The central one is for the product to be included in the Cross-border E-commerce Retail Import Commodity List, which enumerates products that may be sold in this manner.<sup>26</sup> It is key to sell the product via a Chinese e-commerce platform. Most platforms do not offer solutions which enable foreign businesses to engage in this type of trade, and the few that do are

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<sup>23</sup> S. Jing, *Foreign investment law enactment progresses*, China Daily, available at: [http://www.chinadaily.com.cn/business/2017-11/03/content\\_34053394.htm](http://www.chinadaily.com.cn/business/2017-11/03/content_34053394.htm) (accessed: 1.12.2017).

<sup>24</sup> This does not apply to all commodities. Certain products do not require certificates, which are available solely to entities registered in the People's Republic of China.

<sup>25</sup> Some products may be sold in the form of 'bonded imports', which means that the commodity is first transported to China, where it is placed in a warehouse located in the bonded area and subsequently sold via a Chinese platform to the Chinese consumer.

<sup>26</sup> Cross-border E-commerce Retail Import Commodity List, issued on 6 April 2016 jointly by the Ministry of Finance, the National Development and Reform Commission, the Ministry of Industry and Information Technology, the Ministry of Agriculture, the Ministry of Commerce, the General Administration of Customs, the State Administration of Taxation, the General Administration of Quality Supervision, Inspection and Quarantine, China Food and Drug Administration, the Endangered Species Import & Export Management Office and Cryptography Administration Office, available at: [https://2016.export.gov/china/build/groups/public/@eg\\_cn/documents/webcontent/eg\\_cn\\_100092.pdf](https://2016.export.gov/china/build/groups/public/@eg_cn/documents/webcontent/eg_cn_100092.pdf) (accessed: 1.12.2017).

several times more expensive. The majority of e-commerce platforms require that the company be registered in the People's Republic of China.<sup>27</sup>

## 5. CONCLUSION

Regardless whether a foreign investor intends to carry out commercial activity in the People's Republic of China in a manner which requires it to register a company there or whether its business model involves selling commodities to an entity registered in China or directly to the consumers in the form of cross-border e-commerce, Shanghai Free Trade Zone is supposed to facilitate doing business by such entrepreneurs.

## 6. SHANGHAI FREE TRADE ZONE

China (Shanghai) Pilot Free Trade Zone – which is the full name of the Shanghai Free Trade Zone (SHFTZ) – was launched on 29 September 2013. The free trade area initially occupied a territory of 29 square kilometres (Shanghai FTZ Bonded Area). It expanded in 2014 to 120 square kilometres, including the areas of Lujiazui Financial Area, Jinqiao Export Processing Zone and Zhangjiang High Tech Park.<sup>28</sup>

From the legal point of view, the SHFTZ is an area subject to other regulations than the remaining territory of the People's Republic of China. This solution is in line with Article 89 of the Chinese constitution, pursuant to which the State Council of the People's Republic of China is competent to section off a part of a province and to introduce administrative regulations in this zone, as well as with Article 9 of the Legislation Law (an act on law-making), according to which the Standing Committee may authorise the State Council to pass provisions that will close loopholes in legislation.<sup>29</sup> The operation of the Shanghai FTZ is governed by an act of local law passed by the city authorities in 2014 under the name Regulations of China (Shanghai) Pilot Free Trade Zone.<sup>30</sup>

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<sup>27</sup> More on the subject in M. Piekut, *Wirtualny gigant...*

<sup>28</sup> China (Shanghai) Pilot Free Trade Zone (the official website of the Shanghai Free Trade Zone), <http://en.china-shftz.gov.cn/About-FTZ/Introduction/> (accessed: 1.12.2018).

<sup>29</sup> D. Peng, X. Fei, *China's Free Trade Zones: Regulatory Innovation, Legal Assessment and Economic Implication*, "The Chinese Economy" 2017, issue 50, p. 240.

<sup>30</sup> Regulations of China (Shanghai) Pilot Free Trade Zone, available at: <http://en.china-shftz.gov.cn/Government-affairs/Laws/General/319.shtml> (accessed: 1.12.2018).

From the perspective of economic sciences, free trade areas are a category of special economic zones, that is they are areas in which business and trade laws are different from those in the remaining part of the relevant country. This concerns particularly provisions related to investment climate and trade, including customs, taxes and administrative provisions, which in principle are supposed to be more liberal and efficient than those which are in effect elsewhere in the country.<sup>31</sup>

Moreover, Shanghai FTZ has a socio-political significance for the Middle Kingdom, which is related to the manner in which economic reforms have been implemented since the times of Deng Xiaoping: individual solutions are first tested in a limited area, and if they meet the expectations, they are gradually introduced elsewhere. This was the case in this event, as well, as three further free trade zones were founded in 2015<sup>32</sup> and the area of the Shanghai FTZ expanded fourfold. Currently, eleven free trade areas exist in China. Furthermore, the negative list which has been mentioned with reference to the registration of foreign entities and which was introduced in 2017 was modelled on such a list developed for SHFTZ.<sup>33</sup> Prior to that, each branch of business was subject to the consent of MOFCOM.

To sum up, the fact that the solutions adopted in Shanghai were copied in other areas firstly reveals that they were approved by the Chinese authorities and secondly indicates the course of the PRC's policy with regard to foreign investors.<sup>34</sup>

### Simplifications in Shanghai FTZ

The regulatory simplifications available to Chinese and foreign entities in Shanghai FTZ concern particularly: the procedure of establishing a company, financial operations in the renminbi, dispute resolution, protection of intellectual property rights and taxation. These are additional functions of the FTZ, with the principal role being to provide an area where products may be manufactured, processed, imported and stored and not be subject to customs procedures as long as they stay within the zone. That is why the zone was initially called Shanghai FTZ Bonded Area and constituted a place where a foreign investor could supply and store commodities on Chinese territory without fulfilling customs obligations until it sold the product abroad. Businesses are not always exempted from sanitary controls and quality checks carried out by a special authority established

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<sup>31</sup> T. Farole, *Special Economic Zones in Africa: Comparing Performance and Learning from Global Experiences*, World Bank 2011, p. 23, (in:) A. Klimek, *Shanghai Free Trade Zone: Expectations and reality*, „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu” 2015, No. 413, p. 33.

<sup>32</sup> D. Peng, X. Fei, *China's Free Trade Zones...*, p. 239.

<sup>33</sup> Q. Wang, *The Management of Foreign Private Equity...*, p. 250.

<sup>34</sup> D. Yao, J. Whalley, *The China (Shanghai) Pilot Free Trade Zone: Background, Developments and Preliminary Assessment of Initial Impacts*, “The World Economy” 2016, p. 2.

within the zone – the Shanghai Entry-Exit Inspection and Quarantine Bureau. Essentially, however, the inspection and customs procedures have been considerably simplified.<sup>35</sup>

## 7. REGISTERING BUSINESS ACTIVITY

The main types of companies which foreign entities may establish in Shanghai FTZ are identical with the forms available in the People's Republic of China that have been discussed above. Upon the foundation of the zone in 2013, the Standing Committee authorised the State Council to temporarily adapt the regulations on the WFOE, EJV and CJV in terms of registration.<sup>36</sup> At first, the exceptions were planned to apply for three years. Then, they were prolonged and extended to other free trade areas.<sup>37</sup>

As opposed to the remaining part of the People's Republic of China, the Catalogue for the Guidance of Foreign Investment Industries does not apply in Shanghai FTZ. Instead, all free trade areas have their completely independent negative list.<sup>38</sup> Similarly as the general Chinese catalogue, also this list is updated almost annually. It is characterised by a different structure, as it enumerates industries, individual lines of business in each industry and the constraints applicable to such lines of business in the FTZ. It is considerably shorter (covering only 15 sectors)<sup>39</sup> and less restrictive.<sup>40</sup> If a particular line of business is not listed in the negative catalogue, it may be freely carried out following registration and the company is supposed to be treated equally with Chinese entities. In addition, it means that

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<sup>35</sup> *Ibidem*, p. 10.

<sup>36</sup> D. Peng, X. Fei, *China's Free Trade Zones...*, p. 240.

<sup>37</sup> Circular of the State Council on Promoting the Replicable Experience from the Pilot Reform of the China (Shanghai) Pilot Free Trade Zone available in Chinese at: [http://www.gov.cn/zhengce/content/2015-01/29/content\\_9437.htm](http://www.gov.cn/zhengce/content/2015-01/29/content_9437.htm) (accessed: 1.12.2018).

<sup>38</sup> The Catalogue for the Guidance of Foreign Investment Industries was a so called positive list until 2017, that is only the types of business it enumerated were not subject to the requirement of a permission at the central level. Currently, the catalogue has a negative character, as well, similarly as the negative list in effect in Shanghai FTZ. Still, the Chinese list still includes the category of encouraged industries, which indicates which lines of business are especially needed from the perspective of the Chinese economy. Shanghai FTZ's negative catalogue does not include such a section.

<sup>39</sup> Example sectors are agriculture, forestry, animal husbandry or fishery. The relevant lines of business subject to restrictions are fishing and the production of seeds. In the case of fishing, it is for instance the requirement to obtain a fishing permit, which is granted by the Chinese government to individual ships.

<sup>40</sup> The 2017 negative list concerning the activity of foreign businesses in the free trade zones, available in Chinese at: [http://www.gov.cn/zhengce/content/2017-06/16/content\\_5202973.htm](http://www.gov.cn/zhengce/content/2017-06/16/content_5202973.htm) (accessed: 1.12.2018).

launching a business is not contingent any more on a discretionary administrative decision of central administration (MOFCOM), which has been replaced with the mandatory act.<sup>41</sup>

## 8. TRANSACTIONS IN THE RENMINBI

The official currency of the People's Republic of China is the renminbi (abbreviated as CNY or RMB). Otherwise than the majority of currencies, exchange of the renminbi is subject to considerable restrictions, which are only gradually being lifted.<sup>42</sup> The People's Bank of China,<sup>43</sup> which is the central bank of the PRC,<sup>44</sup> issued on 21 February 2014 detailed rules on settling transactions with foreign entities in Shanghai FTZ. They entail simplifications in the form of the possibility to transfer the renminbi directly from a foreign entity to a Chinese one. In addition, persons employed in SHFTZ may open an account which renders it possible to make transactions with foreigners in the renminbi. This is not allowed outside of the zone: international transactions use the United States dollar, which is then converted into the renminbi.<sup>45</sup>

## 9. DISPUTE RESOLUTION IN SHANGHAI FTZ

Disputes are an inevitable element of carrying out business activity, particularly if it is international. Shanghai FTZ was founded in order to attract foreign investors to carry out business in the People's Republic of China.<sup>46</sup> Foreign businesses attach great weight to the possibility to assert their claims efficiently and to fair dispute resolution. They often fear that the Chinese system of justice might be susceptible to political influence. Therefore, in order to ensure efficiency and fairness in dispute settlement, a special court competent for the zone was

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<sup>41</sup> Q. Wang, *The Management of Foreign Private Equity...*, pp. 252–253.

<sup>42</sup> Transactions in RMB are subject to the Regulations on Foreign Exchange System of the People's Republic of China, available at: <http://www.pbc.gov.cn/english/130733/2830262/index.html> (accessed: 1.12.2018).

<sup>43</sup> People's Bank of China (official website in Chinese and in English) available at: <http://www.pbc.gov.cn/> (accessed: 1.12.2018).

<sup>44</sup> Law of the People's Republic of China on The People's Bank of China, available at: <http://www.pbc.gov.cn/english/130733/2941519/2015082610501049304.pdf> (accessed: 1.12.2018).

<sup>45</sup> D. Yao, J. Whalley, *The China (Shanghai) Pilot...*, p. 11.

<sup>46</sup> B. Wang, *Arbitration Within the China (Shanghai) Pilot Free Trade Zone*, "The Chinese Economy" 2017, issue 50(4), p. 274.

established under the name Free Trade Zone Court of Shanghai Pudong New Area People's Court. Yet the number of suits and the preferences of the investors created the need to found a court of arbitration, as well. China (Shanghai) Pilot Free Trade Zone Arbitration Court was launched on 1 May 2014 under the auspices of Shanghai International Arbitration Commission (SHIAC).<sup>47</sup> Thus, foreign and Chinese businesses can choose whether they wish their disputes to be settled in the course of court or arbitration proceedings.<sup>48</sup>

## 10. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The greatest worry of foreign entities that carry out or intend to carry out business activity in China are infringements of intellectual property rights. The Chinese government has taken numerous actions recently in order to ensure a fair standard of protection of intellectual property. One of the measures was to establish within the structures of Shanghai Pudong New Area People's Court a special court competent solely for matters of intellectual property, which is why it is unofficially referred to as 'the IP Court'. It has adjudicated upon 420 cases since its establishment, which took place on 9 April 2015.<sup>49</sup> The court itself is not directly related to the zone, but the choice of its location seems to have been intentional.

## 11. HIRING STAFF

According to the guidelines of the State Council of the PRC with regard to Shanghai FTZ,<sup>50</sup> matters related to employment regulations fall within the competence of the authority governing the zone. However, no solutions that would essentially modify the generally applicable labour law have been adopted.<sup>51</sup> Despite the different character of employment in Shanghai FTZ, which consists mainly in varying durations of employment contracts, the employment

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<sup>47</sup> *Ibidem*, p. 274.

<sup>48</sup> Both parties to the dispute have to consent to arbitration.

<sup>49</sup> L. Shang, *Intellectual Property Protection in China (Shanghai) Pilot Free Trade Zone-Judicial and Administrative Practice in Trademark Infringement of OEM*, "The Chinese Economy" 2017, issue 50(4), p. 259.

<sup>50</sup> Overall Plan for the China (Shanghai) Pilot Free Trade Zone.

<sup>51</sup> Administrative Regulations on the Employment of Foreigners in China, People's Republic of China Labor Law, People's Republic of China Labor Contract Law, People's Republic of China Law on Mediation and Arbitration of Labor Disputes, People's Republic of China Labor Promotion Law.

of numerous foreigners and flexible working hours, no detailed provisions that would render hiring staff easier for foreign and Chinese entities in the zone have been introduced, although it is possible to do so. This lack of initiative has been criticised by the representatives of legal doctrine, particularly on account of conflicting legislation, which falls behind the world standards in labour law.<sup>52</sup>

## 12. CONCLUSION

China (Shanghai) Pilot Free Trade Zone is an interesting example of introducing reforms by way of testing them first within a specific area for a particular period. This method leads to certain ‘innovation in regulation’,<sup>53</sup> which thanks to its experimental character is verified in practice and then copied in successive areas until it becomes generally applicable. Even though China joined the WTO and has become gradually more open ever since 1978, it remains a country with a great number of barriers to doing business, the majority of which concern solely foreign investors. Nevertheless, it ought to be noted that the course of gradual liberalisation is maintained, which sets the solutions adopted in Shanghai FTZ in the right context.

The current experience of almost four years since the establishment of the Pilot Free Trade Zone reveals that: 1) the solutions which work are subsequently adopted in the entire country (example being the negative list); 2) solutions applicable in Shanghai FTZ are gradually expanded to cover further free trade areas. It is fairly obvious that the legal regime in those zones is less restrictive with regard to foreign entities, which considerably facilitates foreign investments in the People’s Republic of China. That said, it ought to be noted that despite numerous simplifications, the investment climate is far from perfect and that entering the Chinese market requires the services of local lawyers even within free trade areas.

The stipulations that need amendment most and first of all are those which concern hiring employees, and in particular aliens, in foreign-invested entities. Next, it would be beneficial to abolish the numerous additional permits<sup>54</sup> which hamper economic activity of both foreign and local entities and which apply in Shanghai FTZ to the same extent as in the rest of the country.

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<sup>52</sup> B. Wang, *Arbitration Within the China...*, pp. 267–269.

<sup>53</sup> D. Peng, X. Fei, *China’s Free Trade Zones...*, p. 239.

<sup>54</sup> Permit to run a shop, import permit, export permit, permit to create online content etc.

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## **REGULATORY SIMPLIFICATIONS FOR FOREIGN INVESTORS IN CHINA (SHANGHAI) PILOT FREE TRADE ZONE**

### **Summary**

The present article deals with the legal regime in Shanghai Free Trade Zone in the context of business activity taken up by foreign (Polish) entities on the territory of the People's Republic of China. First of all, the author discusses the general problems in international exchange between Poland and the PRC as well as the chief barriers in access to the Chinese market. The following section of the article is devoted to the general legal provisions that apply to foreign businesses in the Middle Kingdom. Part three discusses preliminary issues related to Shanghai Free Trade Zone with regard to partnerships and companies established by foreign entities. The final section concerns the legislative simplifications in the Free Trade Zone as compared with the general regulations which apply to foreign (Polish) businesses in the PRC. The conclusion features an evaluation of the simplifications and their attractiveness for Polish businesses.

### **KEYWORDS**

China, legal and administrative barriers to trade, Free Trade Zone, foreign businesses in China

### **SŁOWA KLUCZOWE**

Chiny, prawne i administracyjne bariery w handlu, Strefa Wolnego Handlu, biznes obcy w Chinach