







are generally internally reported by the Chinese university to its local educational bureau or commission, and thus can generally be carried out between a foreign and C

Certain educational programs may also necessitate separate approvals by multiple agencies at various municipal, provincial, and central levels. While the MOE and its local bodies oversee all educational activities, other governmental agencies also regula



Sometimes, it is more advantageous for foreign IHEs to hire Chinese nationals because of their k h[. (m)-9i72mnes





well as other local surcharges such as urban construction and maintenance taxes, education surcharges, and other local surcharges depending on taxable activity and the particular region of physical operation in China.

On July 25, 2018, the SAT issued Public No. 42 on Several Issues Concerning the Administration of Value-Added Tax Collection for Matters Including Sino-Foreign Cooperative Education (“**PN 42**” or “**Bulletin 42**”) which clarifies that in the event that the foreign educational institutions cooperate with the domestic schools engaged in academic education to conduct Sino-foreign cooperative education, their income derived from the academic education services will be exempt from VAT.[\[37\]](#)

#### **b. Individual-Level Taxes**

On August 31, 2018, the Chinese National People’s Congress adopted one of the most significant reforms to the individual income tax (“**IIT**”) regime that took effect on January 1, 2019. Generally, there are two ways foreign nationals can be taxed on individual income under the new Chinese IIT law:

- i. Tax Resident: Applies to those foreign nationals who either have a domicile in China, or reside in China for 183 days or more in a tax year[\[38\]](#). For an individual who does not have a domicile in China and has resided in China for 183 days or more cumulatively in a tax year for less than six consecutive years, his/h

foreign IHE triggers a PE in China, any foreign employees could still be subject to IIT from their first day of working in-country.

Other issues to consider when you have foreign nationals working in China include payroll administration and compliance issues (e.g., setting up a shadow or split payroll system, or a combination thereof), and social security and other welfare benefits contribution factors (check to see if there is a totalization agreement between China and the foreign IHE's home country; there is none between the U.S. and China).

**9. How will your institution manage the health and safety risks of your students and employees studying and working in China?**

International risk management considerations applicable to all countries, such as having various travel insurance coverages, a centralized communication system, and an emergency response plan, apply similarly to foreign students and employees in China. Generally, Mainland China and its two Special Administrative Regions ("**SARs**") (namely Hong Kong and Macau) are considered relatively safe for travel. That being said, there can be times where there are heig.8 ( )-10.6 (n)10.5 3omif Chi

**10. How will your institution’s intellectual property, research, and data privacy rights be protected in China?**

**a. Intellectual Property**

Chinese intellectual property (“**IP**”) laws protect trademarks, patents, copyrights, software, and domain names. These PRC laws only apply to mainland China, as there are different IP registration regimes in the Hong Kong and Macau SARs. While China as a country remains a notorious offender of IP rights, IP protection in China has been improving, albeit slowly, in recent years as Chinese authorities become more sophisticated at enforcing infringement.[\[47\]](#)

Trademarks in China are governed under the PRC Trademark Law[\[48\]](#) and overseen by the Chinese Trade Mark Office (“**CTMO**”) under the SAMR. Since China is a member of the Madrid Protocol, foreign IHEs can register their marks directly with the CTMO (commonly referred to as a “**National Application**”), or through the World Intellectual Property Organization (“**WIPO**”) (commonly referred to as an “**International Application**”). While both methods take about the same time (12-18 months), a National Application is commonly preferred as it offers certain benefits, most notably the ability to trademark the Chinese name of

## **b. Research**

There are numerous Chinese laws, issued across various industry sectors, that regulate international research between Chinese and foreign entities. Most notably, the Measures for the Management of Scientific Data<sup>[51]</sup> (promulgated by the Chinese State Council on March 17, 2018 for immediate effect) and the Working Measures on the Outbound Transfer of Intellectual Property (for Trial Implementation)<sup>[52]</sup> (promulgated by the Chinese State Council on March 18, 2018 for immediate effect) will both likely have an impact on how foreign IHEs collaborate with their Chinese partners on the collection and use of scientific data, as well as the transfer of such data and resulting technologies abroad.<sup>[53]</sup> Additionally, China's proposed Export Control Law, which in its current draft form does not contain a comparable "fundamental research" exclusion as available under U.S. laws, could also create significant restrictions to ongoing and future collaborative research activities between Chinese and foreign IHEs.

## **c. Data Privacy**

Among the myriad of Chinese privacy and data security laws and regulations, the most significant is the Chinese Cyber-Security Law ("CSL").<sup>[54]</sup> As multi-national entities, including foreign IHEs, implement compliance plans under the European Union's General Data Protection Regulation ("GDPR"), many organizations will likely turn their attention to potential compliance requirements under the CSL. Compliance will likely be even more challenging than under GDPR given the broad language of the CSL and its vague set of related regulations, some of which are still in draft form and some of which have not even been released by the Chinese authorities.

Generally, the CSL seeks to broadly regulate the protection of personal information, as well as define security requirements for "network operators" and "critical information infrastructures."<sup>[55]</sup> Of particular significance to foreign IHEs will be the CSL's requirements regarding local data storage and data transfers. Foreign IHEs that operate networks or offer services through networks in China will likely be required to keep all "personal information" and "other important data" collected or produced in China, within China. Such data cannot be sent out of the country without a legitimate business need, consent, and a security assessment conducted by relevant Chinese units.<sup>[56]</sup>

## **CONCLUSION:**

Operating educational activities in China has, and will remain a dynamic balance of risks and benefits. Hopefully, this Note can provide foreign IHEs with a basic roadmap to navigate through the most pertinent issues. At the end of the day, all analysis aside, a lot may boil down to learning the local norms and practices to best deal with the many "grey zones" of Chinese law.

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[XL LAW AND CONSULTING P.A. RESOURCES PAGE](#) on operative Chinese laws governing international education and collaborating with Chinese universities (last visited June 17, 2019).

## END NOTES:

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[2] Organization for Economic Co-operation and Development, [Education in China: A Snapshot](#) (2016); CHINESE M

[4] Li Xia, “

[14]

[\[26\]](#) Id. at Art. 14 (“If the employer fails to sign a written labor contract with an employee after the lapse of



[47] See U.S. CHAMBER OF COMMERCE'S GLOBAL INNOVATION POLICY CENTER, [U.S. CHAMBER INTERNATIONAL IP INDEX 7TH EDITION](#), 10 (Feb. 2019) (indicating that China has shown positive IP reform in the past 7 years).

[48] STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS, [TRADEMARK LAW OF THE PEOPLE'S REPUBLIC OF CHINA](#) (Aug. 23, 1982) (amended Oct. 27, 2001).

[49] STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS, [PATENT LAW OF THE PEOPLE'S REPUBLIC OF CHINA](#), at Art. 42 (effective Oct. 1, 2009) (English version).

[50] STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS, [COPYRIGHT RIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA](#), at Art. 21 (June 1, 1991) (last amended Apr. 1, 2010).

[51] CHINESE STATE COUNCIL, [MEASURES FOR THE MANAGEMENT OF SCIENTIFIC DATA](#) (Mar. 17, 2018).

[52] CHINESE STATE COUNCIL, [WORKING MEASURES ON THE OUTBOUND TRANSFER OF INTELLECTUAL PROPERTY](#) (FOR TRIAL IMPLEMENTATION) (Mar. 18, 2018).

[53] For more detailed discussion on these laws and other related laws, see Xinning Shirley Liu, "[China 101: Nuts and Bolts of Operating Educational Activities in China](#)" (NACUA Annual Conference 2018).

[54] STANDING COMMITTEE OF THE NATIONAL PEOPLE'S COUNCIL, [CYBER-SECURITY LAW OF THE PEOPLE'S REPUBLIC OF CHINA](#) (hereinafter "CSL