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China goes Europe –  
CMS Newsletter

中国走向欧洲 –  
CMS 通讯

## Introduction

Europe and European companies increasingly become an important market for PRC companies. Europe offers a stable political and economical environment, qualified workforce, excellent infrastructure and a common market with more than 480 million potential customers, regarding only the member states of the European Union.

CMS, as an alliance of nine major European law firms, is able to offer you comprehensive and qualified legal advice in every relevant jurisdiction throughout Europe, guiding you through the whole process of your business operation or investment. Our lawyers have vast experience in advising multi-national companies as well as small and medium enterprises. You will find offices of CMS member firms in over 47 cities throughout the world, including of course every major business city in Europe as well as Shanghai, Beijing and Hong Kong.

In this edition of our newsletter you will find information about investment issues in France, Germany and the United Kingdom. If you are considering investments in Europe or have any further questions, please do not hesitate to contact us. We will be happy to be at your service.

## Investment in France

Foreign investments and business development are strongly encouraged in France. In recent years, the French government has been relentless in its efforts to promulgate regulations for promoting employment, creation of small and medium companies size companies, and especially foreign direct investment. There is virtually no restriction on foreign investments. On the contrary, investors may enjoy different favorable treatments according to their investment scales and forms.

The formalities for setting up a company in France are quite simple. The investors shall draft articles of association and provide the required documents to the Register of Commerce and Companies ("Registre du Commerce et des Sociétés") before the competent Commercial Court for registration.

Foreign investors enjoy the same treatment as French citizens when creating a company, a branch, or a liaison office. However, a foreigner individual appointed to represent the entity and/or manage the direct day-to-day affaire (i.e. general manager or members of a Directorate of a joint stock company, manager of a limited liability company, or chairman of the board of a simplified joint stock company) shall hold a foreign merchant permit ("Carte de commerçant étranger"), except for EU citizens.

There are basically three possibilities offered to foreign investors to do business in France. A temporary solution is to establish a representative office, whilst the permanent solution is to establish a branch or a subsidiary.

Let's take a look at the main various forms of business foreign investors can conduct in France.

## 简介

欧洲及欧洲公司现已日益成为中国公司的重要市场。欧洲具有稳定的政治和经济环境、高素质的劳动力、优良的基础设施，以及（仅按欧盟成员国算）超过四亿八千万潜在消费者的统一市场。

CMS，作为九大主要欧洲律师事务所的联盟，能够就全欧洲每一个法域提供全面的高质量的法律服务，能够为您的商务运行和投资提供全程服务。我们的律师在为跨国公司及中小型企业提供法律服务方面积累了丰富的经验。CMS 成员律师事务所在全球 47 个城市设有分所，包括欧洲各主要商业城市以及中国的北京、上海和香港。

在我们本期法律快讯中，您可获得有关在法国、德国和英国投资方面的信息。如您正筹划在欧洲投资或有任何疑问，请及时与我们联系。我们将很荣幸能为您提供服务。

## 在法国投资

法国政府积极鼓励外国投资者来法国投资或创业。近年来，法国政府大力颁布法规旨在促进就业，鼓励创立中小型企业，特别是外商直接投资。外国投资本质上不受限制，反而外国投资者可根据投资规模和形式的不同享受不同的优惠待遇。

在法国，申请设立公司的程序十分简单。外国投资者在起草公司章程，向商业或公司登记处提交有关申请材料后，便可前往有管辖权的商业法庭注册登记成立公司。

在法国，外国投资者在创立公司、分公司或代表处时享有与法国公民同样的待遇。如果外国人（欧盟公民除外）被委派代表公司和/或直接处理日常业务（如股份有限公司的总经理或董事会成员，有限责任公司的经理，简式股份有限公司的董事长），都应持有外国商人证。

对于外国投资者来说，在法国开展商业活动一般有三种方式。暂时的做法是设立一个代表处，而长久性的做法是设立一个分公司或子公司。

以下我们向您介绍在法国开展商业活动的几种主要商业形式：

### 1. Liaison/representative office

Setting up a liaison/representative office in France is an easy short term solution considering its relatively low cost. A rep. office can engage in the following activities: contact French or foreign companies for import and export; disseminate advertisements in the media for the purpose of introducing its products or services; attend expositions or give demonstrations.

A liaison/representative office has no legal status under French law, thus it could not engage in commercial activities. Accordingly it is not subject to corporate income tax or VAT. It is not required to provide any financial documents, nor to hire any accountant. VAT on its office expenditures can be refunded.

If the development of business requires it, a liaison/representative office could be transformed into a branch or subsidiary and the proper legal procedure under French law shall be complied with accordingly.

### 2. Branch

A branch has no legal status under French law. However, it could engage in commercial activities such as: manufacturing, take or issue orders, issue invoices, deliver goods, make custom declaration, etc. Its legal representative is authorized to sign commercial contracts.

A branch is a permanent establishment under French law. Therefore, it is subject to corporate income tax and VAT.

### 3. Subsidiary

Subsidiaries are companies incorporated under French law and have legal status. They can conduct commercial activities such as import, export, issue invoices, deliver goods, and manufacture, etc.

The most common form chosen by investors to set up a company are limited liability company, single person limited liability company and joint stock company.

#### a) Limited liability company

Due to its flexibility, limited liability company is the most used form of company in France, especially when establishing small or medium size companies with low capital. It could have from 2 to 100 limited partners whose liability is limited to their capital contribution, or even just one shareholder for single person limited liability company. Since 2003, there is no minimum capital requirement anymore. The capital contribution may consist in cash, in kind, or in work. One fifth of the contribution in cash may be paid up at the registration and the rest within the following five years. The articles of association must be in writing; they may consist in a private agreement or a notarized deed.

#### b) Joint stock company

Larger size companies commonly take the form of a joint stock company, due to the possibility to offer shares to the public. The minimum capital requirement is euros 37,000 and euros 225,000

### 1. 联络处/代表处

在法国设立联络处/代表处是一个投资较少且操作便捷的短期方案。代表处可在法国从事以下活动：与法国或外国公司进行进出口贸易联络；在媒体上刊登广告介绍本公司产品和服务项目；参加博览会以及进行产品展示。

根据法国法律，联络处/代表处不具备法人资格，因此其不能从事商业经营活动。所以，联络处/代表处无须缴纳企业所得税或增值税。联络处/代表处不需要提供任何财务文件，也不用聘请任何财会人员。代表处办公支出所产生的增值税可以返还。

根据业务发展的需要，联络处/代表处可以变更为分公司或子公司，上述变更也需要符合法国的相关法律程序。

### 2. 分公司

根据法国法律，外国公司在法国设立分公司，不具备法人资格，但可以从事商业活动，诸如：生产、接受或发出订单、开具发票、送货、报关等商业活动。其法定负责人有权签订商务合同。

根据法国法律，分公司被视为常驻机构。因此，分公司应缴纳企业所得税和增值税。

### 3. 子公司

根据法国法律，外国公司在法国设立的子公司属于法国法人。子公司可以从事商业活动，如进出口、开具发票、送货以及生产等。

外国投资者最普遍选择设立的公司是有限责任公司，股份有限公司或个人独资有限公司。

#### a) 有限责任公司

由于灵活性大，有限责任公司是法国最常见的公司形式，特别适合于设立注册资本不高的中小型企业。发起人可有 2 到 100 人，发起人根据其各自出资比例承担有限责任。甚至可以只有一个发起人的个人独资有限公司。出资可以是现汇、实物等。从 2003 年起，取消了设立的最低资本限制。发起人注册时可先缴纳 1/5 的现金，其余部分于 5 年内缴清。公司章程须为书面形式，其可以由股东采用私下协议的方式或公证的方式订立。

#### b) 股份有限公司

股份有限公司因为其可通过向公众发行股份，一般适合大型企业。最低注册资本为 37000 欧元；如果是采取公募方式设立的公司，则最低注册资本

for companies offering shares to the public. It must have no less than seven shareholders. The internal management system may consist in a board of directors only, or a board of directors together with a board of supervision.

The capital of a joint stock company is divided into equal shares and shareholders are liable up to their capital contribution. Shares are freely transferable (excepted otherwise provided in the articles of association).

### c) Simplified joint stock company

Since the reform of 1999, the Simplified joint stock company has become more and more popular especially with medium sized companies, innovative companies and multinational companies which often choose this form to create wholly owned subsidiaries in France. The advantage of this structure is to provide a large flexibility in the internal organization of the company that, in a broad extend, may be freely determined in the articles of association.

Simplified joint stock company can be set up by just one person (Single person simplified joint stock company). The minimum registered capital requirement is euros 37,000 and no public offering is allowed. Contributions may consist in cash or in kind.

### d) Limited partnership company

There are two kinds of limited partnership company: one is a simple limited partnership company and the other is a joint stock limited partnership company. Both forms tend to disappear in practice.

The particularity of limited partnership companies consist in the presence of two types of shareholders, one having unlimited liability called "associés commandités" (at least one) and the other(s) having a limited liability called "associés commanditaires" (at least three). The former type of shareholders is generally in charge of the management of the company (except otherwise provided in the articles of association).

### e) Partnership company

There is no minimum capital requirement for setting up a partnership company and only two partners are needed. This kind of company is rarely used in France since the partners have an unlimited liability and the transfer of the equity interest must be authorized by the other partner(s). Usually this form of company is adopted where the "intuitu personae" is very important. However, some investors may also choose this form for tax purposes since the entity is considered as transparent, i.e. it is not subject to tax as legal entity, only partners are subject to tax proportionally to their capital contribution.

The death, bankruptcy or loss of capacity of the partners usually leads to the dissolution of the company.

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为 225000 欧元。发起人至少由 7 人组成。股份有限公司可选择单管制（即只备有董事会）或双管制（即具备董事会及监事会）。

股份有限公司的资本被分为等额股份，股东以其所持有的股份为限对外承担有限责任。公司的股份可以自由转让（但章程禁止的除外）。

### c) 简式股份有限公司

自从 1999 年改革后，简式股份有限公司的公司形式为近年来越来越受到人们的青睐，特别是中型企业、创业企业和跨国企业经常选择该种形式在法国设立完全控股的子公司。这种形式的优点是在公司内部组织上有很大的灵活性。广义上而言，内部组织可以根据公司章程自由决定。

简式股份有限公司可由一个发起人成立（独资简式股份有限公司）。最低注册资本为 37000 欧元，不允许采用公募方式。出资可以是现金或实物。

### d) 两合公司

两合公司有两种：一种是一般两合公司，另一种是两合股份有限公司。两种形式在实践中渐于消失。

两合公司的特别之处在于存在着两种类型的股东，一种是承担无限责任的股东（至少 1 人）和另一种承担有限责任的股东（至少 3 人）。前一种股东负责管理公司经营（除非章程中有相反规定）。

### e) 合股公司

法国法律对设立合股公司没有最低注册资本要求，只需要两名合伙人。合股公司目前在法国的数量较少，因为合伙人对外承担的是无限连带责任，而且转让股权也要获得其他合伙人的同意。通常如果采用这种形式的公司，合伙人之间的信用很重要。不过，由于其避免双重征税，一些投资者为了税收因素而采用这种形式的公司，即不能作为法律实体对其征税，而只能对合伙人根据其资金比例所得的收益征税。

股东死亡、破产或丧失行为能力，通常会导致公司的解散。

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## INVESTMENT IN GERMANY

### The German Limited Liability Company

(Gesellschaft mit beschränkter Haftung – GmbH)

Investors planning to enter the German market, whether via a branch operation or a legally independent German subsidiary, can choose from a broad variety of possible investment vehicles.

German company law distinguishes between partnerships (*Personengesellschaften*) and corporations (*Kapitalgesellschaften*). While partnerships are based on the partners as individuals or entities, corporations are based on the invested capital. Such capital-based corporations are independent legal persons and only the corporation with its assets (including share capital) is liable for the corporation's debts. In contrast, with partnerships the partners are usually liable, with their personal estates, for the debts resulting from the partnership's business. Therefore, investors normally choose a corporation as the investment vehicle for their business set up in Germany. The main forms of corporations are the *Aktiengesellschaft* (AG – Stock Corporation) and the *Gesellschaft mit beschränkter Haftung* (limited liability company). While the AG is popular for big companies and can be publicly listed on stock exchanges, small and medium sized companies as well as foreign investors usually prefer the GmbH.

A GmbH may be established for any legal business purpose by one or more persons (e.g. Chinese individuals as well as Chinese legal entities). The required Articles of Association of the GmbH should provide the name of the company, its business scope, the total registered capital and the amounts to be paid in by each shareholder. Further provisions, for example regarding minority rights of shareholders, can be stipulated at the discretion of the shareholders. There are almost no legal restrictions on such further provisions. The Articles of Association have to be signed in front of, and notarized by, a German notary. The company name of the GmbH has to contain the suffix 'GmbH' or any other commonly understood abbreviation indicating the limitation of liability. The Articles of Association also have to contain the registered office of the company in Germany. The establishment of a GmbH requires a registered share capital of at least EUR 25,000. If the company is to have only one shareholder, the registered share capital has to be fully paid in, in cash or in kind, to be at the disposal of the company's managing director and may not be paid back to the shareholders until the liquidation of the company.

Upon notarisation of the Articles of Association, the acting notary will arrange for the registration of the company at the local commercial register. Once the company has been registered, the company may start to operate. Acting in the name of a GmbH prior to its registration can expose the acting persons to personal liability and should thus be avoided.

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## 投资德国

### 德国有限责任公司

(Gesellschaft mit beschränkter Haftung – GmbH)

如果您想通过设立分公司或设立具有独立法人资格的子公司进入德国市场，有多种不同的投资方式可供您选择。

德国公司法区分合伙（Personengesellschaften）和公司（Kapitalgesellschaften）。合伙是基于合伙人（可为个人或组织）而设立，而公司是基于出资资本而设立。那些基于资本的公司具有独立法人资格，并且仅以公司资产（包括股权资本）为限对公司债务承担责任。而合伙则需由合伙人以其个人资产对合伙企业在其经营过程中产生的债务承担责任。因此，投资者在德国设立企业时通常会选择公司形式。主要的公司形式有股份有限公司（Aktiengesellschaft，简称 AG）和有限责任公司（Gesellschaft mit beschränkter Haftung，简称 GmbH）。AG 比较适合大公司并可在股票交易所公开上市，而中小型公司及外国投资者通常更青睐 GmbH。

GmbH 可由一人或多人（中国的个人或法人）基于任何一种合法的经营目的而设立。公司章程须包括如下信息：公司名称、经营范围、注册资本额及各股东分别须缴纳的注册资本额。如果各股东认为必要，还可在章程中进一步就诸如小股东权利等其他事项作出约定。对于这类进一步的约定，法律几乎没有限制。公司章程必须在一名德国公证员面前签订并经该公证员公证。GmbH 公司名称后必须包含“GmbH”或者表明其为有限责任的其它周知的缩写语。公司章程还必须注明公司在德国的注册地址。设立 GmbH 至少需要两万五千欧元的注册资本。如公司只有一位股东，则公司的注册资本额必须以现金或实物全额缴付，该缴付的出资可由公司常务董事自由支配，并且在公司完成清算程序之前不能退还给股东。

公司章程经公证后，承办公证员将会安排公司在地方商业登记处注册登记。公司完成登记后便可开始从事其经营活动。如任何人在完成登记前以 GmbH 名义从事经营活动，该行为个人须承担责任，因此这类行为应予以避免。

A GmbH should have one or more managing directors and may have a supervisory board. The latter is not mandatory and for small and medium sized companies rather unusual. The managing director has to be an individual. He or she does not have to be a shareholder or of German nationality or residence. The managing director is bound to implement instructions and resolutions of shareholders' meeting. Shareholders' instructions or shareholders' resolutions can be passed in physical shareholders' meetings or by written circular vote.

The liability of the company is limited to its assets. After registration with the local commercial register, there is no additional shareholder's liability.

Shares of a GmbH may be sold and assigned to any third party unless certain restrictions are provided in the company's Articles of Association. Every assignment of a share requires notarization by a notary and shall be brought to the attention of the company. However, there is no obligation for the company to maintain a share register or any other formal records of share ownership. Shares in a GmbH are not evidenced by share certificates. Ownership of shares of a GmbH follows from the notarial documents covering the sale and assignment of such shares.

In Germany there are no restrictions concerning repatriation of earnings or capital. The profits of the GmbH as a legal person are subject to German corporate income tax (*Körperschaftsteuer*). The tax rate amounts to 25%. In addition a Solidarity Surcharge of 5.5% is levied on the corporate income tax change (XJ: ??). Furthermore, it is subject to a local trade tax (*Gewerbesteuer*) with a range between 15% and 20%. The trade tax amount paid may be deducted from the taxable income and thus reduce the corporate income tax. Additionally, profits distributed to a shareholder are subject to individual income tax (*Einkommensteuer*). To avoid (domestic) double taxation, only 50% of the distributed profits are subject to income tax which is enforced by a withholding tax (*Kapitalertragsteuer*). In general foreign shareholders are also subject to German income tax in respect of the profits arising in Germany. In accordance with the Double Tax Treaty between Germany and China the withholding tax rate amounts to 10%.

## Secondment of Chinese employees to Germany

More and more Chinese companies desire to enter the European, and in particular the German, market by establishing a German subsidiary or branch. Especially in the start-up phase of a newly established or acquired company or branch operation, specific know-how needs to be transferred from the Chinese company to the German sites. Before a Chinese company second Chinese employees to Germany, it should make itself familiar with the German immigration regulations.

Non-EU foreigners who wish to work in Germany either need a "settlement permit" (*Niederlassungserlaubnis*) or a "residence permit for working purposes" (*Aufenthaltserlaubnis zum Zwecke der Erwerbstätigkeit*). As Germany recently had more than five million unemployed, there are strict requirements to be fulfilled by foreign nationals to qualify for a residence permit. The admission of foreign employees to the German labour market is therefore linked to

GmbH 应设一位或多位常务董事，也可同时设监事会，但后者并非法律强制要求，且对于中小型公司而言较为罕见。常务董事必须是自然人，但不必是公司股东或具有德国国籍或居住在德国。常务董事应执行股东会指示和决议，股东会指示或股东会决议可通过实际召开股东会会议或书面传递表决形式作出。

公司仅以其资产为限承担责任。在公司向地方商业登记处完成注册登记之后，股东无需另外承担任何责任。

除非公司章程另有限制，GmbH 股权可出售和转让给任何第三方。然而每一次股权转让必须经一名公证员公证并通知公司。但是公司没有义务保存一份股权登记簿或就股权归属作任何其它正式记录。对 GmbH 的股权并不是通过股权证书来证明，而是以实现股权出售和转让的相关公证文件为准。

德国不限制盈利或资本汇回本国。作为公司法人，GmbH 应就其利润须缴纳德国公司所得税 (*Körperschaftsteuer*)，税率为 25%。此外，再按公司所得税额的 5.5% 另征收团结基金。公司还得缴纳地方贸易税 (*Gewerbesteuer*)，税率为 15-20%，已付的贸易税额可从应税所得中扣除，从而减少公司所得税。另外，分配给股东的利润还须缴纳股东个人所得税 (*Einkommensteuer*)。为避免 (国内的) 双重征税，所分配的利润仅按其 50% 的金额以预提税 (*Kapitalertragsteuer*) 的形式缴纳个人所得税。一般而言，外国股东也必须就其德国境内的利润所得缴纳德国个人所得税。根据中德签订的双边税收协议，预提税税率为 10%。

## 委派中国雇员至德国

越来越多的中国公司想通过设立分公司或子公司形式进入欧洲，尤其是德国市场。尤其是在新成立或新收购的公司或分支机构的初创阶段，中国公司可能需要转移特定的专有技术至德国。中国公司在委派中国雇员至德国前，有必要首先熟悉有关德国移民政策的规定。

希望到德国工作的非欧盟的外国人需要取得定居许可证 (*Niederlassungserlaubnis*) 或工作居留许可证 (*Aufenthaltserlaubnis zum Zwecke der Erwerbstätigkeit*)。由于德国近期失业人数达五百多万，德国现在对外国人获取居留许可的要求较严格。因此，外国职员能否进入德国劳动市场，取决于是否符合德国经济需要。德国移民局仅在申请者取得德国

the requirements of the German economy. The German immigration office will only issue a residence permit for working purposes upon the approval of the German Federal Employment Agency. Such an approval will only be granted if such agency concludes that the employment of the Chinese applicant will have no negative impact on the domestic labour market.

Such lacking negative impact can be proven by demonstrating that the Chinese employee possesses a certain qualification that is not available otherwise on the German labour market. In this regard, involvement of a legal advisor is usually beneficial. If possible, such legal advisor will argue that the Chinese applicant belongs to one of the privileged groups of foreign nationals from outside the EU. These privileged foreign nationals – whose employment is principally considered to have no negative impact on the German labour market – may obtain a residence permit for employment purposes without prior approval of the Federal Employment Agency. In such case, the immigration office will issue the required residence or settlement permit without forwarding the application to the Federal Employment Agency. Such simplified procedure particularly applies to foreign employees who are sent to Germany only for a short term of up to 3 months in order to assemble, maintain or repair any technical machinery. Furthermore, the so-called "highly qualified" foreign nationals belong to this privileged groups of employees. The term "highly qualified" covers scientists with special technical knowledge, teaching personnel or scientific personnel in prominent positions and specialists and executive personnel with special professional experience who receive a salary of, currently, at least € 85,000.00 p.a. The same applies to the managers of the management board of a company with limited liability or of a stock corporation and to managers with special power of attorney (*Prokurist*).

As far as Chinese nationals are concerned, residence permits shall always be applied for in the form of a visa prior to entering Germany at the visa department of the German embassy or consulate general in the People's Republic of China. Unless a simple short-term stay (up to 3 months) is planned, this can be a time consuming process, since the German embassy or consulate general shall procure the consent of the competent German immigration office at the place of the intended residence. Only once an application for a visa has been approved by such immigration office, can the embassy or consulate general grant the desired entry visa. After arrival in Germany, the Chinese national and any accompanying family members must apply for a confirmation of the visa obtained.

## The new European General Product Safety Directive 2001/95/EC

Almost all member states of the European Union have already incorporated the new General Product Safety Directive (2001/95/EC) into their national law. Since Germany was among the first EU-countries to enact the corresponding German Act, the "Appliance and Product Safety Act" (*Geräte- und Produktsicherheitsgesetz – GPSG*), some of the resulting national legal effects are described below by taking the German situation as an example.

The EU Directive, and thus the German GPSG, is designed to in-

联邦就业署的批准之后方会签发工作居留许可证。而联邦就业署作出批准的前提是他们认为该中国申请者的就业不会对德国国内劳动力市场产生消极影响。

为证明不会产生上述消极影响，可以说明该中国职员拥有特定的技能，而该技能是德国劳动力市场所无法提供的。就这类问题，听取法律顾问的意见通常是有帮助的。在可能的情况下，该法律顾问会申辩中国申请者属于非欧盟外国雇员中享有特殊优惠待遇的群体之一。这些享有特殊优惠待遇的外国人，因其就业原则上不认为会对德国劳动力市场造成消极影响，可以在无需事先获得联邦就业署批准的情况下即取得工作居留许可。在这种情况下，移民局不需要将申请转交给联邦就业署而可直接颁发定居或居留许可证。此简化程序尤其适合于那些被短期 (不超过三个月) 派至德国，从事机械安装、维修或修理工作的外国职员。此外，被称为“高素质”的外国人也属于享受特殊优惠待遇的雇员群体。“高素质”人员包括那些拥有特殊技术知识的科学家、身处重要位置的教学和科学人员、拥有特殊专业经验且目前年薪至少为八万五千欧元的专家及管理人员。该规则同样适用于有限责任公司或股份有限公司管理层的经理和拥有特别授权 (*Prokurist*) 的经理。

对中国申请者而言，申请居留许可证是在去德国之前，向德国驻中华人民共和国大使馆或总领事馆签证处以申请签证的方式提出。如果去德计划不是短期停留 (三个月以内) 的话，则办理申请所需时间较长，因为德国大使馆或总领事馆首先需取得申请人欲居住地的主管移民局的同意。只有在上述移民局批准签证申请后，大使馆或总领事馆才会给申请者签发准入签证。到达德国后，中国籍雇员及其任何随同家属必须向当地移民局申请签证确认或居留许可。

## 修订后的欧盟有关一般产品安全的指令 2001/95/EC

几乎全部欧盟成员国都已经将《欧盟有关一般产品安全的指令》(2001/95/EC) 纳入到其国内法中。由于德国是第一批颁布相应国内法，即《器具及产品安全法》(*Geräte- und Produktsicherheitsgesetz*，简称 GPSG)，的欧盟成员国，所以下文以德国为例，说明该指令对国内法的影响。

欧盟指令和德国 GPSG 的目的在于通过禁止向欧

crease the safety requirements for consumer products and technical equipment by prohibiting the supply of unsafe products to the EU market. A product does not just have to be safe when used for its designated purpose; it shall also be safe when it is used incorrectly but in a reasonably foreseeable manner.

The GPSG is directed at manufacturers or distributors as well as other parties acting on their behalf such as agents or importers. Even if manufacturers do not actually produce the product themselves but have it produced by another entity and supply the product on the market in their own name, they are still regarded as manufacturers.

Under the GPSG there are certain requirements to be fulfilled by the manufacturer and/or the distributor in marketing consumer products. In particular the manufacturer has to fulfil wide ranging information and product monitoring requirements.

- The instructions for use of the consumer product must be in the German language if the product is supplied to the German market.
- The product or the packaging shall evidence the name and address of the manufacturer and the product must be marked in such a way that it can be clearly identified. Manufacturers outside the European Economic Area must apply the name and address of their representative or importer within the European Economic Area. All necessary measures must be taken to permit an effective consumer warning or recall of a product if it becomes apparent that the product is unsafe i. e. dangerous. This means that the manufacturer must implement its own crisis management with clear guidelines.
- For this reason it is particularly important that the product can be clearly identified. How the product is identified or marked is the decision of the manufacturer. Possible means of identification are type or serial numbers or lists of customers. The company must be able to respond quickly and effectively in the event that a consumer product is found to be unsafe.
- The manufacturers shall take samples of the consumer products which they have put on the market, investigate complaints and keep a record of its investigation.
- Distributors shall be informed by the manufacturer about any products that turned out to be defective and any measures which are taken.
- Finally, manufacturers must notify the authorities immediately if they know or have reason to believe that a consumer product constitutes a risk to health and safety.

Distributors must not put consumer products on the market if they know or have good reasons to assume that such products are unsafe. Further, they shall monitor the products that they have put on the market (the same obligation apply to manufacturers).

The authorities can request the distributors to recall dangerous products. Distributors are obliged to cooperate both with the manufacturer and the authorities. They shall make contingency plans,

洲市场提供不安全的产品，以提高消费产品和技术设备的安全要求。一种产品不仅在按指定用途使用时必须是安全的，而且在以一种不正确的方式使用时也必须是安全的，只要这种使用方式是可以合理预见的。

GPSG 主要是针对制造商或销售商以及他们的代表，如代理商和进口商。即使制造商并没有自己实际制造某产品，而是让其它的企业制造，但产品是以制造商的名义向市场提供时，他们仍应被认为是制造商。

GPSG 要求制造商和/或销售商在销售消费产品时必须满足一定的要求。特别是，制造商需要满足下列大量有关信息和产品监控的要求：

- 消费产品如销往德国市场的话，产品使用说明书必须用德文书就。
- 产品或包装必须注明制造商的名称和地址，而且产品必须以一种易识别的方式标注。如制造商位于欧洲经济区外，则该规则适用于该制造商在欧洲经济区内的代表或进口商的名称和地址。制造商须采取一切必要的措施，以便在发现产品不安全，即具有危险性时，可以有效地向消费者发出警告或将该危险产品召回。这意味着，制造商必须建立自己的方针明确的应急机制。
- 基于这一原因，产品能否清晰识别就显得尤为重要。如何识别或标识产品是由制造商决定的，可能的识别方式有标注型号、序列号或列举消费者名单等。在发现消费产品不安全时，公司必须能快速和有效地作出反应。
- 制造商必须保留一些其已投放市场的消费产品的样品，调查各种投诉并保留这些投诉记录。
- 制造商必须通知经销商任何证明具有缺陷的产品及其已采取的措施。
- 最后，在制造商知道或有理由相信消费产品对健康和安全有危险时，必须及时通知政府机关。

经销商知道或有充分理由相信产品不安全时，他们不得将该种产品投放市场。此外，他们还必须监督其已投放市场的产品（该义务同样适用于制造商）。

政府机关可要求经销商召回危险产品，经销商有义务与制造商和政府机关合作。他们必须制定如行动计划之类的应急计划，并恰当地整理保存相应的文件。经销商如有理由相信其

for example plans of action and appropriate documentation, and keep them in a suitable manner. Distributors must inform the authorities immediately if they have reason to believe that the products that they have put on the market are unsafe. A distributor can only meet all these obligations if it installs and maintains its own effective product surveillance system.

If a consumer product does not comply with the GPSG, the authorities have a very wide discretion as to how to act. The action scenario may range from simple product investigations, product warnings in the press, radio and on the internet, orders for product recalls or even prohibiting the marketing of a dangerous product. The competent national authorities are also empowered to confiscate products which are unsafe. Even though the authorities can only act directly vis-à-vis the distributor located in Germany, such action may have drastic consequences for the manufacturer located in countries outside the EU, e.g. in the People's Republic of China (e.g. in case of a recall etc.). Therefore, compliance by Chinese manufacturing companies with the EU-product safety directives and the corresponding national laws like the German GPSG is advisable.

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## Investment in the UK

- No restrictions on foreign investment
- Easy access to capital markets
- London is Europe's financial hub
- U.K. has strengths in financial services, technological industries, as well as the traditional manufacturing industries
- The U.K. has a long and successful multicultural heritage
- New ideas and foreign investors are welcomed and encouraged

#### YOUR WORKFORCE

It is important to emphasise that, generally, when you hire local workers or local managers in the U.K., you make an employment contract with them and usually, provide them with at least a written statement of the essential terms of the contract.

In addition to employment contracts, relations between employers and employees are governed by labour legislation and collective bargaining agreements, which often means that some terms will be implied into contracts of employment. In the U.K., even if you do not agree either an oral or a written contract with your em-

已投放市场的产品不安全，则必须立即通知政府机关。经销商只有在建立并维持一套有效的产品监督系统时，才有能力履行上述义务。

如果某一种消费产品不符合 GPSG 要求，政府机关可基于其裁量采取多种不同的措施，如简单的产品调查、通过新闻媒体、广播电台及互联网发布产品警告信息、发布产品召回命令以及甚至禁止危险产品的销售等。各国国内主管政府机关还有权没收不安全产品。尽管政府机关只能针对位于德国的经销商采取行动，但那些行动将会对那些位于欧盟之外的，如中国的制造商产生非常严重的后果（如在产品召回时）。因此，对于中国制造业公司而言，遵守欧盟一般产品安全指令及其相应的国内法，如德国 GPSG，是明智的。

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## 投资英国

- 对外商投资没有限制性规定
- 容易进入资本市场
- 伦敦是欧洲的金融中心
- 英国在金融服务业、技术行业以及传统生产行业兼具实力
- 英国拥有历史悠久并且成功的多元性文化传统
- 英国欢迎并鼓励新的观念和外国投资者

#### 劳动力市场

值得强调的是，一般当你在英国雇佣当地工人或者当地管理人员时，你应当与他们签订劳动合同。通常你必须向他们提供一份至少含有基本合同条款的书面说明。

除了劳动合同以外，雇主和雇员的关系同时还受到劳动法律以及集体劳资协议的管辖。这通常意味着这些规定暗含在劳动合同中。在英国，即使你没有与你的员工达成任何口头或者书面的劳动

ployee, such a contract is still implied by law.

This means that employees are protected from unfair dismissal, that they are usually entitled to a certain period of notice, before you can dismiss them and in certain situations they might be entitled to compensation or a redundancy payment if their employment ceases. Some of the legitimate reasons for dismissal are serious misconduct, lack of qualifications of the employee and genuine business reorganisations. Even in these cases the employer should observe proper dismissal procedures.

The strength and influence of trade unions in the U.K. has diminished significantly over the last twenty-five years.

## OBTAINING WORK PERMITS

Chinese employees or managers working in the U.K. will need a visa, a permission to stay and a work permit. Britain has one of the most flexible labour regulatory environments, with fixed work permit application fees and low general labour costs.

If a non-EU citizen has a valid permission to stay in the U.K. he or she would still need a visa to be able to travel to another European Union country. However, when you apply for a short stay "Schengen" visa, it is possible to move freely in many European Union countries within the validity of the visa. So, for example, if you obtain a Schengen visa to France, you would then be able to travel from France to Italy or Spain, for instance, so long as your visa has not expired. To obtain this type of visa you will be required to hold a passport or travel document that is valid at least three months beyond the validity of the visa.

## TAXATION AND PROPERTY

Chinese employees working in the U.K. must pay income tax. The rates of income tax for the tax year 2004-2005 were as follows: income up to £ 4,745 is exempt, income over that amount and up to £ 6,765 is taxed at 10%, then at 22% for income from £ 6,766 to £ 36,145 and at 40% for income over £ 36,145. However, Chinese employees on short-term assignments are likely to be exempt from income tax.

Also, generally, in the U.K. there are no exchange control or currency regulations, save for anti-money laundering legislation. Chinese employees can take out any money earned in the U.K. without restrictions.

There are no restrictions on acquisition of land or property anywhere in Britain.

## RECRUITING PEOPLE TO WORK FOR YOU

Britain has a wide network of recruitment and head hunting agencies that, for a fee, will undertake to find suitable candidates for your business. The advantage of contacting such agencies is that they have knowledge and experience of the local British markets and local workforce.

The content of job advertisements and where they are placed should be given serious consideration, as it may give rise to claims for sexual, racial, religious or disability discrimination. Employers

合同, 根据法律这种劳动合同还是存在的。

这就意味着法律保护员工免于被不公平地解雇, 并且要求你在解雇员工之前提前一段时间通知他们。并且在有些情况下, 在劳动关系终止时员工还有权获得经济补偿。部分法定解除原因包括严重过错、缺少资质以及真正的业务重组。即使在这些情况下, 雇主也应当遵循一定的解雇程序。

英国工会的势力和影响度在过去的二十年中日趋削弱。

## 工作许可证

中国籍员工或者管理人员在英国工作就需要签证、居住证和工作许可证。英国有最灵活的劳动政策环境, 加上固定的劳动许可证的申请费, 和低廉的普通劳动力成本。

如果一个非欧共体公民拥有一份在英国居住的有效居住证, 他仍然需要申请签证才能在其他欧盟国家旅行。但是如果你申请的是短期的申根签证, 你可以在该签证的有效期内在欧洲的许多国家自由出入。例如, 如果你获得了去法国的短期申根签证, 你就可以自由地在签证的有效期内从法国到诸如意大利或者西班牙等欧洲国家旅游。获得此种签证的条件是申请者应当持有有效期至少为三个月的护照或者其他旅游文件。

## 税收和房产

在英国工作的中国籍员工通常必须缴纳所得税。2004-2005 纳税年度的所得税税率为: 应纳税所得额少于或者等于 4 745 英镑的免征所得税; 应纳税所得额超过 4 745 英镑至 6 765 英镑(包括 6 765 英镑)的税率为 10%; 应纳税所得额超过 6 765 英镑至 36, 145 英镑(包括 36 145 英镑)的部分税率为 22%; 应纳税所得额超过 36 145 英镑的部分税率为 40%。短期委派来英国的中国籍员工有可能无需缴纳当地所得税。

同时, 一般说来, 在英国除了反洗钱方面的立法, 不存在其他外汇兑换控制或外汇管理条例。中国籍员工可以不受任何限制的将他们在英国赚的钱带出境。

在英国任何地方也不存在土地或者房产购置方面的限制。

## 招聘

英国拥有广泛的招聘网络和猎头中介, 这些中介收取一定的费用, 然后为你的企业寻找合适的候选员工。这些中介的优势在于他们了解英国当地市场和劳动力情况, 并拥有相关的经验。

应当充分注意招聘广告的内容和发布的地方, 因为如果处理不善可能会引起性别、种族、宗教或者残疾人歧视方面的指控。雇主必须确保其招聘广告不含有某些能够让人感到诸如该职位

must always ensure that there are no words or pictures, contained in an advert that could give the impression that, for example, a man would be preferred for the post. It is also important to ensure that circulation of the advert is wide enough to ensure that no religious group, racial group or sex will be directly discriminated against, because they will not have the opportunity to see the advert.

If you are considering employing Chinese nationals for junior management jobs, many British universities have Chinese nationals studying who will have good language skills and understand about living in the U.K., both of which will be important for your Chinese employees in the UK.

## WHAT IS IT LIKE TO LIVE IN THE U.K.?

According to a recent survey among 500 European companies Europe's best business city is London in terms of external transport links, quality of telecommunications and languages spoken. London, as well as other major cities in Britain have thriving Chinese communities, with Chinese community centres, numerous food outlets and restaurants, etc.

It is generally safe to live in British cities.

## EDUCATION

In Britain it is a legal requirement for all children between the ages of approximately 5 and 16 to receive full-time education. Education standards vary. The majority of children are educated in state-run non-fee paying schools. These are available to all people living in the U.K., including your own employees living in the U.K. The remainder go to independent schools that rely on privately paid tuition fees. If you have employees moving to the U.K. with children of school age it is advisable to select an area in which to live that offers good schooling. There are consultants who can advise you on this.

## CONCLUSION

With its flexible economy and skilled and adaptable workforce, many of the world's most successful companies have chosen the U.K. to set up or expand their business.

If you are thinking of investing or trading with the U.K. too, we are ready to help with practical and accurate advice on any aspect of your business expansion.

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优先考虑男性此类的表述或者图片。另外雇主也应当确保该广告的发行区域足够宽广, 以免某一宗教、种族或者性别的人群因为没有机会看到广告而直接受到歧视。

如果你打算雇佣中国人担任初级管理职位, 很多英国大学拥有中国学生, 这些中国学生具备优秀的语言能力, 也很了解英国生活, 这两个因素对于你在英国的中国雇员十分重要。

## 生活在英国

最近在欧洲 500 个公司进行的一项调查表明, 从外部交通状况、电讯质量以及语言几个方面来看, 伦敦是欧洲最好的商业城市。伦敦以及英国的其他主要城市有着日益繁荣的中国社区, 这些社区又都拥有中国社区中心、各种食品商店和饭店等。

总体上讲, 居住在英国城市是比较安全的。

## 教育

英国法律都要求年龄在 5 至 16 岁之间的所有的孩子接受全日教育。英国有不同的教育标准。大部分学生是在公立的学校接受教育, 这些公立学校不收学费。此类学校向所有生活在英国的人开放, 包括你在英国的员工。其余的学生在私立学校学习, 但是必须缴纳学费。如果你的员工带着学龄子女居住在欧洲, 我们建议你选择能够提供良好的教育的地区居住。在这方面有咨询师可供您咨询。

## 结论

英国拥有灵活的经济加上熟练和适应能力强的劳动力, 很多世界上非常成功的公司都选择英国来建立和扩展他们的业务。

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