

# Moving Forward – Expansion Strategies for Law Firms in Asia under the Existing Regulatory Frameworks

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Fall Meeting 2016

October 18 – 21

Tokyo

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Hilton Tokyo

Anderson Mori & Tomotsune  
Tatsu Katayama

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# Regulatory Framework of Legal Markets in Japan

- Legal practices are reserved for *bengoshi* and registered foreign lawyers
- Nationality not required to become *bengoshi*
- Commitment to open legal services markets through WTO
- Qualification to become a registered foreign lawyer to be approved by Ministry of Justice - 3 years experiences in home jurisdictions
- Registration with Japan Federation of Bar Associations required except for international arbitration
- Registered foreign lawyers may practice the laws of home jurisdiction (limited license)
- Local law practices are possible through joint venture with, or employment of, *bengoshi*



# Legal markets in Japan

## Domestic – Full Service

Nishimura & Asahi  
Anderson Mori & Tomotsune  
Mori Hamada & Matsumoto  
Nagashima Ohno & Tsunematsu  
TMI Associates  
⋮

## International – Full Service

Baker & McKenzie  
Jones Day  
Clifford Chance  
Morrison & Foerster  
White & Case  
⋮

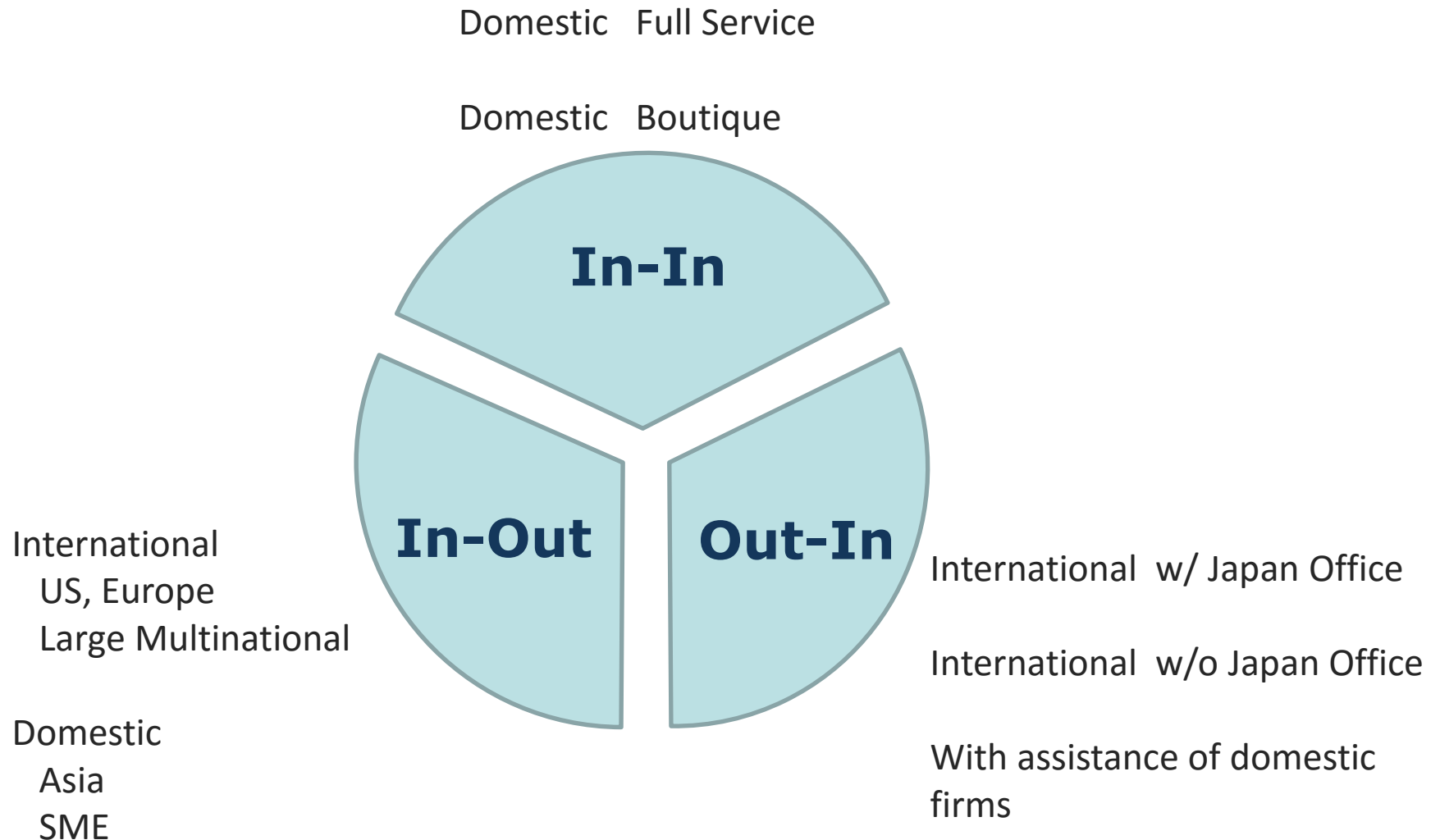
## Domestic – Boutique

IP  
Antitrust  
Insolvency  
Employment

## International – Home Country

US Capital Markets  
US IP  
US Litigation

# Legal Markets in Japan



# Regulatory Framework of Legal Markets in Asian Jurisdictions

	Nationality Requirement for Local Lawyer	Commitment to open legal services market	Establishment of Foreign Firms	Handling of Local Law by Foreign Firms	
China	Yes	WTO	Yes	No	
Vietnam	Yes	WTO	Yes	Yes*	* Except for representations before the courts
Thailand	Yes	WTO	Yes*	Yes	*foreign investors allowed up to 49%, except for Australia
Singapore	No	No	Yes	Yes*	*Subject to license of QFLP, FLA or JLV
Indonesia	Yes	No	No*	No	*Foreign lawyer may practice as employee or consultant of local firm
India	Yes	No	No	No	

# Japanese Law Firms outside of Japan

	Tokyo	Nagoya	Osaka	Kobe	Fukuoka	Beijing	Shanghai	Singapore	Hong Kong	Hanoi	Bangkok	Yangon	Jakarta*	Phnom Penh	Silicon Valley	New York
Nishimura & Asahi	○	○	○		○	○	○	○	○	○	○	○				
Anderson Mori & Tomotsune	○	○			○	○	○	○		○		○				
Mori Hamada & Matsumoto	○	○	○		○	○	○			○	○	○				
Nagashima Ohno & Tsunematsu	○					○	○	○	○	○		○				○
TM Lea Associates	○	○		○	○	○	○	○	○		○		○	○		
*Affiliation with local firms																



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A nighttime photograph of the Singapore skyline. In the foreground, the Esplanade - Theatres on the Bay is illuminated with warm yellow lights. A large red crane stands to the left of the Esplanade. The Helix Bridge, a modern cable-stayed bridge, spans the water in the middle ground, illuminated with blue lights. The background features several skyscrapers, including the Helix Bridge's distinctive twin towers, which are illuminated with yellow lights. The water in the foreground reflects the lights from the buildings and the bridge. The sky is dark with some clouds.

# Foreign Law Practices in Singapore



# CONTENTS

- Current Statistics
- Licensing Requirements for foreign law firms
- Permitted Areas of Legal Practice
- Taking a stake in Singapore Law Practices



# Current Market<sup>1</sup>

- Foreign Law Practices - 113
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# Licensing Requirements for foreign law firms

- Foreign Law Practice
- Qualifying Foreign Law Practice
- Joint Law Venture
- Formal Law Alliance

# Foreign Law Practice

- Must be registered with Ministry of Law
- Practitioners must be licensed
- Can only practise non-Singapore law except where a relevant agreement specifies Singapore law as governing law or place of arbitration



# Qualifying Foreign Law Practice

- The fullest licence for foreign law firms
- Can practise in all areas except specified (litigation, real estate, criminal)
- Lawyers must be registered
- Numerical limits on number of lawyers practising Singapore law in the QFLP

# Joint Law Venture

- Practise through a joint venture with a Singapore law firm
- Can practise in all areas except specified (litigation, real estate, criminal)
- Provision of legal services in or from Singapore only through the Joint Law Venture
- Conditions
  - Relevant legal expertise and experience
  - Residency in Singapore
  - Equity Partners
  - Written Agreement and Business Plan

# Formal Law Alliance

- Contractual alliance with Singapore Law Firm
- Conditions
  - Relevant legal expertise and experience
  - Residency in Singapore
  - Equity Partners
  - Written Agreement and Business Plan
- Practise Singapore law in specified areas as prescribed

# Taking a stake in Singapore Law Practices

- No more than 1/3 shareholding
- No more than 1/3 of the Board
- No more than 1/3 profit sharing
- No more than 1/3 foreign lawyers
- Managing Partner must be Singapore qualified lawyer
- Foreign lawyer may have to complete course

# Morgan Lewis Stamford

- No restrictions on areas of practice in Singapore
- Provision of foreign legal services through lawyers from other offices with appropriate qualifications

# OUTLOOK

- REGULATORY ADVICE AND INVESTIGATIONS
- INTERNATIONAL ARBITRATION
- SINGAPORE INTERNATIONAL COMMERCIAL COURT
- CROSS-BORDER INSOLVENCY
- CROSS-BORDER PROJECTS
- ANTI-TRUST
- TECHNOLOGY





THANK YOU



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# Moving Forward: Expansion Strategies for Law Firms in Asia under the Existing Regulatory Frameworks

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# Moving Forward: Expansion Strategies for Law Firms in China

## Topics to Discuss

- ◆ The Chinese legal market and legal profession
- ◆ Current regulatory framework
- ◆ Recent developments in the Shanghai FTZ
- ◆ Expansion strategies for law firms in China



# The Chinese Legal Market and Legal Profession

- ◆ The Chinese legal market (estimated)
  - ◆ Global legal market: 1 Trillion USD, with about 40% for US and UK (200 Billion for US, 180 Billion for UK)
  - ◆ Chinese legal market: 10 Billion USD (heading to 100 Billion RMB in a decade or two?)
- ◆ The Chinese legal profession (based on official stats at end of 2014)
  - ◆ About 300K licensed lawyers, with about 30K in Guangdong and 20K in Beijing
  - ◆ Over 22K law firms, with 15.3K partnership, 5.3K solo and 1.4K state-owned
  - ◆ 330 foreign law firms (265 foreign + 65 HK + 9 TW)
  - ◆ Over 50 Chinese law firms outside Mainland China



# Current Regulatory Framework

- ◆ Quick review of history
  - ◆ Total overthrow of pre-regime in 1949
  - ◆ Law or lawless, without lawyers, 1949 – 1978
  - ◆ Short lived “People’s Lawyers” at 800 Law Advisory Offices, 1955 - 1957
  - ◆ Lawyers as state workers, 1979/1980/1982 – 1987
  - ◆ Co-operative lawyers, 1988 - 1993
  - ◆ Lawyers as private practitioners, 1993 - present
- ◆ Basic requirements for becoming a licensed lawyer
  - ◆ Lawyers Act 1996, as amended in 2001, 2007 and 2012
  - ◆ Supporting the PRC Constitution (Art. 5(1));
  - ◆ Having passed the Unified National Judicial Examination (Art.5(2));
  - ◆ Having articulated in a law firm for one full year (Art.5(3)); and
  - ◆ Having good character (Art.5(4))



# Current Regulatory Framework, cont'd

- ◆ Regulations on Chinese law firms
  - ◆ General partnership only, unlimited and joint liability
  - ◆ Solo practice allowed upon special approval
  - ◆ “Special general partnership” as an exception: unlimited liability, but severance of joint liability if intention or gross negligence. Threshold financial requirements: 10M RMB registered capital in cash (20M RMB for Beijing law firms)
  - ◆ Annual review of firm ‘s and lawyer’s licenses
  - ◆ Competition from non-lawyers virtually allowed
- ◆ Regulations on foreign law firms
  - ◆ China accession to WTO in 2001
  - ◆ Regulations on the Administration of the Representative Institutions of Foreign Law Firms in China , by the State Council (“Basic Regulations”)
  - ◆ Implementation Rules for the Basic Regulations, by the Ministry of Justice





## Current Regulatory Framework, cont'd

- ◆ Regulations on foreign law firms, cont'd
  - ◆ Can practice through “Representative Office”
  - ◆ Can practice international or home jurisdiction laws
  - ◆ Cannot practice Chinese law, and can only provide “information on the impact of the Chinese legal environment,” with a disclaimer to such effect
  - ◆ Cannot practice Chinese law by hiring licensed Chinese lawyers, and the license of any Chinese lawyer hired by a foreign law firm will be suspended immediately
  - ◆ Foreign citizens are not allowed to take the Unified National Judicial Examination and are not allowed to become Chinese lawyers.



# Recent Developments in the Shanghai FTZ

- ◆ **New regulations for the Shanghai Free Trade Zone**
  - ◆ On September 18, 2013, the State Council approved an overall action plan proposed by the Shanghai Municipal Government for implementing the policy of establishing the Shanghai Free Trade Zone ("SFTZ") and experimenting special policies. The action plan includes a proposal of "opening up" the legal services market.
  - ◆ On January 27, 2014, the Ministry of Justice approved an action plan proposed by the Shanghai Bureau of Justice for pioneering new models of cooperation between Chinese and foreign law firms.
  - ◆ On November 4, 2014, the Shanghai Bureau of Justice prepared two implementation rules and had them approved by the General Office of the Shanghai Municipal Government on November 18, 2014.



# Recent Developments in the Shanghai FTZ, cont'd

- ◆ Market access, although limited, for foreign law firms in the Shanghai FTZ
  - ◆ Still no direct market access for foreign law firms
  - ◆ Still no joint venture between Chinese and foreign law firms
  - ◆ Cross-secondment: A Chinese law firm and a foreign law firm may second lawyers to each other's law firm – seconded lawyers must have at least 5 years post-qualification experience
  - ◆ Joint operation: A Chinese law firm and a foreign law firm may set up a joint operation – each firm must have been in operation for 3 years, with the Chinese firm having at least 20 lawyers
  - ◆ Prerequisite for both types of cooperation: both firms must have a representative or branch office in the Shanghai FTZ
  - ◆ Lawyers involved are not limited to serving clients only from the Shanghai FTZ, but could serve any clients from anywhere



# Expansion Strategies in China

## ◆ Swiss Vereins

- ◆ An association of independent legal entities for specifically defined purposes. Joint strategy, branding and IT, but separate partner compensation and no profit sharing
- ◆ Known examples: Baker & McKenzie (2004, earliest), DLP Piper, Hogan Lovells, Norton Rose Fulbright, Squire Patton Boggs
- ◆ King & Wood Mallesons: March 1, 2012
- ◆ Dacheng Dentons: November 10, 2015

## ◆ Joint Operations

- ◆ In the Shanghai Free Trade Zone
- ◆ Fengxun Baker & McKenzie: April 15, 2015
- ◆ Yingtai Holman Fenwick Willan: March 30, 2016



# Expansion Strategies in China, cont'd

## ◆ Branch Office Setup/Acquisition

- ◆ For Chinese law firms only: Junhe, Zhonglun, etc.
- ◆ DeHeng: “6 overseas offices in New York, the Hague, Paris, Brussels , Dubai and Chicago; and relationships with 100 associated law firms in Hong Kong, Frankfurt, Tokyo, Seoul, Dubai, São Paulo, Tel Aviv, Moscow, Melbourne, Delhi and other major cities.”
- ◆ Yingke: “As the biggest own-operated law firm in Asia Pacific area, Yingke, with 36 local branches, 31 oversea offices and the headcount of 5000 lawyers and staffs so far, has created its own global service system. Yingke has 5 offices, which are set up in New York, Chicago, Mexico City, Sao Paulo and Rio de Janeiro, in the region of the Americas; 19 offices in European region, including London, Budapest, Verona, Milan, Warsaw, Poznan, Gdansk, Brussels, Lisbon, Madrid, Valencia, Barcelona, Moscow, Athens, Monaco, Berlin, Bratislava, Prague and Zurich; 3 offices in Middle-east, including Istanbul, Tel Aviv and Dubai; 4 offices in Asia, including Singapore, Seoul, Hong Kong and Taipei.”





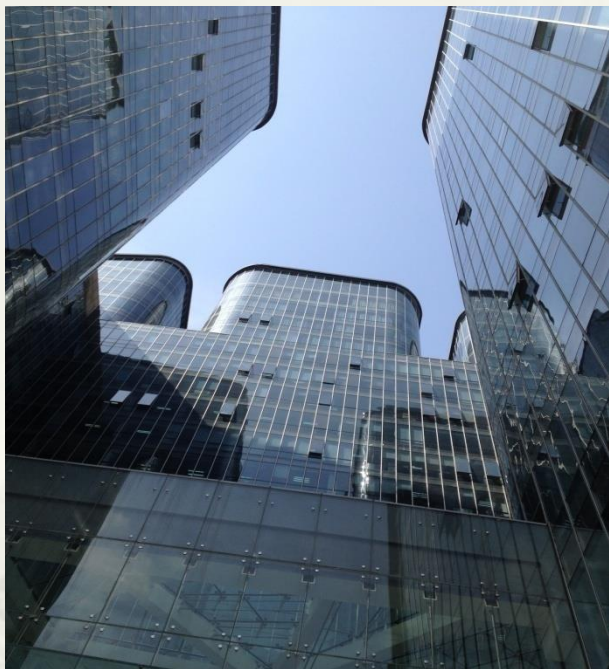
# Expansion Strategies in China, cont'd

- ◆ Cross-Secondment
  - ◆ No published case yet
- ◆ Alternative Business Structure
  - ◆ “Big Four” accounting firms, and maybe others
  - ◆ (Deloitte) Qin Li Law Firm (勤理): 2013
  - ◆ EY Chan & Co. Law Firm (瑛明): 2014
- ◆ “Moving-Around” Strategies
  - ◆ Traditional, and for most foreign law firms
  - ◆ The McDermott model





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A nighttime photograph of the Oriental Pearl Tower in Shanghai, China, with its illuminated spheres and supporting legs. The background shows other skyscrapers of the city, also lit up. The image is partially covered by a dark red diagonal shape on the right side.

# ABA Section of International Law 2016 Fall Meeting

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October 21, 2016  
2:30 PM – 4:00 PM  
Room Yamato Higashi  
Hilton Tokyo

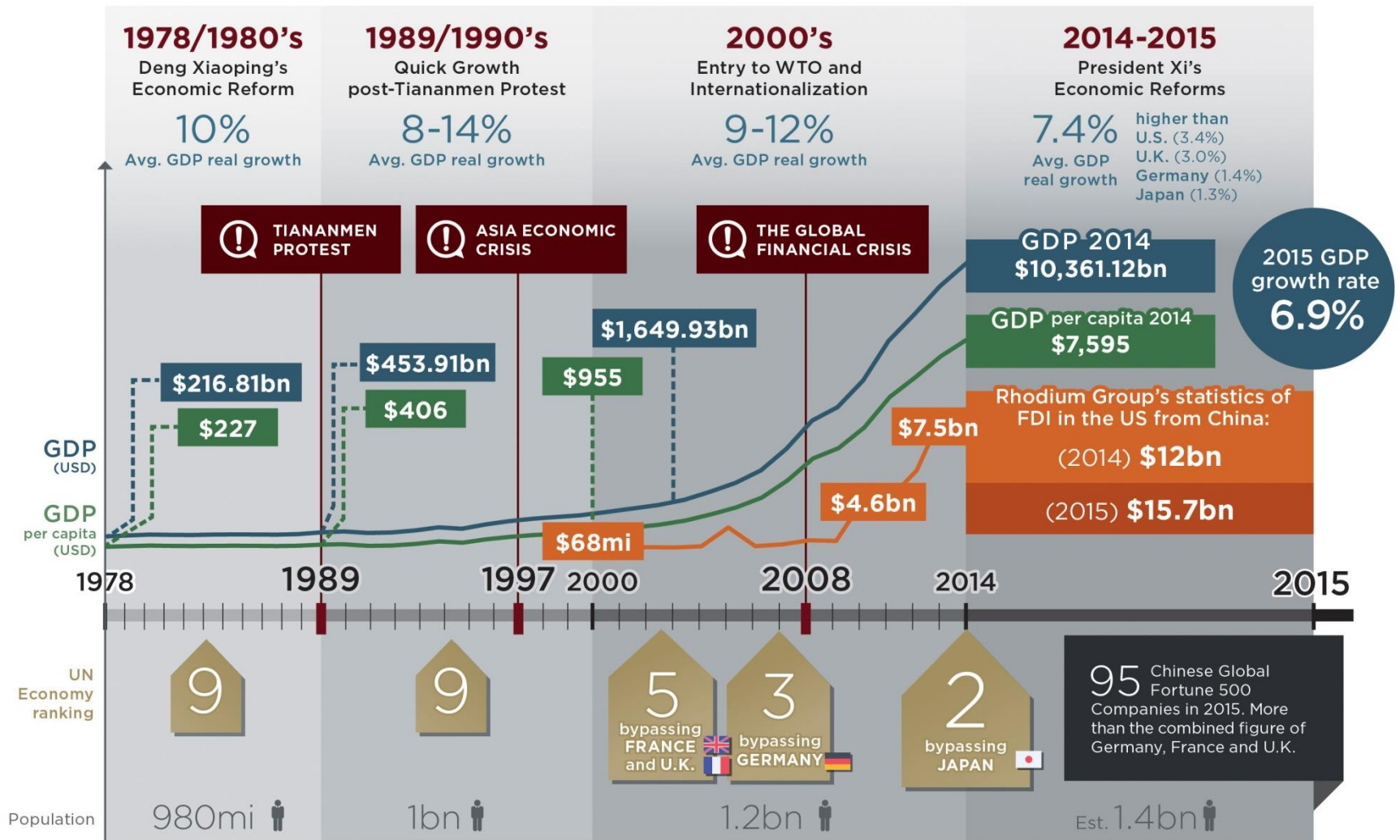
*haynesboone*



# China: 1978 – 2015

## Continuing Growth, Despite Setbacks

haynesboone



# What's Next for China

*“China retains the potential to generate 20-30% of the world’s economic growth for many years to come.”*

**McKinsey China**

## Hurdles:

- Slowing growth and exports
- Depreciation of the Renminbi (RMB)
- Volatility in the stock market

## Why McKinsey remains bullish on China:

- A USD 10 trillion economy (over \$3 trillion of foreign reserves), 7% GDP growth rate
  - Still faster than most of the world’s top 20 economies
- Needs for consumer products and service
  - 1.4 billion population
  - Rise of middle class
  - Urbanization (more than 88 cities with over 5 million people, as of 2012)
- Recent industrial reforms and upgrades
  - From labor intensive production to high-end manufacturing and service
  - 13<sup>th</sup> Five-Year Plan
  - President Xi’s “Indigenous innovation”
  - Premier Li’s “Made in China 2025”
- Capital is substituting for labor in enterprises’ operation
- Property is holding steady

# The 13<sup>th</sup> Five-Year Plan

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Five underlying concepts for the country's development from 2016 – 2020:

- **Innovation**, which will be necessary for China to transition into a high value-added economy and, consequently, achieve a higher quality of growth
- **Opening up**, which looks to increase the efficiency of China's market by further integrating it with the global market
- **Green development**, which places importance on developing China's green economy by tackling pollution and energy efficiency issues through market initiatives
- **Regional development**, which aims to address China's development disparity among regions and between urban and rural areas through infrastructure investment and the stimulation of regional markets
- **Inclusive development**, which aims to ensure that China's development process benefits all individuals at all levels of society.



## Continuing Economic Reform

### Xi's Indigenous Innovation

- China's innovation policy expected to continue and lead the country from low cost, production-led economy (low to medium-technology industries) to 'Knowledge Based Economy' (medium to high-technology product or service economy)
- China technological-led economic transformation aimed to transform China to become a scientifically and technologically advanced country in 2025 with self-driven 'unique' scientific and technological capabilities, knowledge and intellectual properties
- In 2014-2015, 928,000 patents were filed in China versus 578,000 in the U.S. China plans to double that number by 2025. University R&D is increasing 22% annually since 2010

### Li's Made in China 2025 Plan

- China's Version of Technology-driven Industry 4.0
- Ten Key Industries:
  1. New generation technology
  2. Biomedicine and advanced medical device
  3. Aviation and aerospace equipment
  4. Rail transportation
  5. New materials
  6. Electrical power equipment
  7. Agricultural equipment
  8. New energy vehicles
  9. Maritime engineering
  10. High-end robotics

## Continuing Economic Reform (Cont'd)



# Monetary Policy / Regulatory and Government Support

*“The improvement in monetary conditions is “a stabilizing signal that growth will likely moderate only slightly,” to 6.8 percent this quarter (2015 Q3) from 7 percent the previous three months.”*

**Bloomberg**  
Sept. 2015

## Easing Monetary Policy

- Encourage consumer spending
- Expanding public projects
- Cutting Interest rate
- Reducing the amount of deposits banks must hold as reserves
- Increasing fiscal support
- RMB internationalization (In 2015, RMB surpassed Yen as the world’s 4<sup>th</sup> most used payment currency; and IMF voted to include RMB as a global reserve currency along with US\$, Euro, British Pound and Yen)

Source: <http://www.bloomberg.com/news/articles/2015-09-27/china-financial-gauge-improves-offering-a-signal-for-growth>

## Monetary Policy / Regulatory and Government Support (Cont'd)

### Deregulation

#### Outbound Investment from China

- Government approval simplified
- Transparency enhanced
- Easier to predict timeline

#### Inbound Investment to China

- Simplified government formalities for faster incorporation/acquisition
- Removal of industrial restrictions on market entry for various sectors

### Financial Support

#### Technology

- Subsidies for International patent registration
- Subsidies for hiring of science and technology “talent”
- Tax deductions for R&D costs
- Seed Capital
- Billions investment in telecom, Internet, hardware and software platforms, satellite networks, etc.



## Conclusion

*“China is in the middle of a fundamental and welcome transition as it moves to slower but more sustainable growth.”*

**Christine Lagarde**  
Head of IMF

*“Chinese investments are the fastest growing source of FDI in the US – particularly in M&A and JV transactions. America’s economic future is absolutely intertwined with China because of the US-China relationship is one of the most significant economic relationship on earth.”*

**Penny Pritzker**  
US Secretary of Commerce

*“Greater China region is Apple’s second largest market in the world – with 112% year-over-year revenue growth to \$13.2 billion as of 3rd Quarter 2015”*

**Tim Cook**  
CEO, Apple, Inc.

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