Some legal issues on MSMEs in China

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MOFCOM, CHINA
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What are MSMEs in China?
Standard & Criteria
What are MSMEs in China


<table>
<thead>
<tr>
<th>Catologue</th>
<th>Indicator</th>
<th>Unit</th>
<th>Medium-sized</th>
<th>Small-sized</th>
<th>Micro-sized</th>
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<tr>
<td>Farming, forestry, animal husbandry and fishery</td>
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<td><strong>Others</strong></td>
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<td>person</td>
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<td>10 ≤ X &lt; 100</td>
<td>X &lt; 10</td>
</tr>
</tbody>
</table>
How are MSMEs in China

Important & Active
MSMEs are the major proportion of all market entities.

MSMEs in all enterprises:
- Micro: 85.3%
- Small: 13.2%
- Medium sized: 1.3%

National Bureau of Statistics: Small, medium and micro enterprises become an important force to promote economic development (the 12th report of the series reports of the fourth national economic census).
MSMEs are crucially important.

National Bureau of Statistics: *Small, medium and micro enterprises become an important force to promote economic development* (the 12th report of the series reports of the fourth national economic census).
Laws on MSMEs in China
General & Specific
Laws and regulations on MSMEs in China

- National People's Congress laws
- State council regulations
- Ministry & Department administrative rules
- Provincial governments regional ordinances
Laws and regulations on MSMEs in China

- **National People’s Congress**
  - Law on Promotion of MSMEs
  - Company Law
  - Partnership Law
  - Individual proprietorship law

- **The State Council**
  - Regulation of ensuring the payment to MSMEs (2020)
  - Guidelines on Promoting the Healthy Development of MSMEs (2019)
  - Further support measures for the healthy development of MSMEs (2012)
  - Regulations on the Administration of Registration of Market Entities (2021)
  - Regulations on improving the Business Environment (2019)
Laws and regulations on MSMEs in China

- **Ministries and departments**
  - **Ministry of Finance**: Measures for the administration of Credit Guarantee Funds for MSMEs (2012)
  - **Ministry of Industry and Information Technology and other 16 departments**: Several guidelines on perfecting the system of supporting the development of MSMEs (2020)
  - **Ministry of Science and Technology**: Policies and measures to support technology-based MSMEs to accelerate innovation and development in the new era (2019)
  - **Banking and Insurance Regulatory Commission**: Measures for supervision and evaluation of financial services for MSMEs by commercial banks (2020)

- **Regional governments** (34 provincial regions, including Hongkong, Macao, Taiwan, etc)
  - Ordinances on the promotion of MSMEs
Some Legal Issues
Chinese approaches & UNLLO
Some legal issues

Whether Chinese experiences are in the same direction with UNLLO? I think so.
The possible types of the organizations for MSMEs in China

- **Company**
  - LLC & Stock company limited

- **Partnership**
  - Partnership & LLP

- **Individual Proprietorship**
  - One natural person as the sole investor

- **Individual Business Operator**
  - Individual person or individual family
Legal Personality

Company Law (China)

Article 3 A company is an enterprise legal person. It has independent legal person property and enjoys legal person property rights.

All other types of enterprises in China cannot have the legal personalities. However, they could play as the civil subjects after registration.

Recommendation 3: The law should provide that the UNLLO has a legal personality distinct from its members.
Limited Liability

Company Law (China)

Article 2 A company referred to in this Law means a limited liability company or a joint stock limited company.

Article 57 "one-person limited liability company".

Partnership Enterprise Law (China)

Chapter 3 Limited partnership enterprises

Recommendation 4: The law should provide that a member is not personally liable for the obligations of the UNLLO solely by reason of being a member of that UNLLO.
Contribution & Minimum Capital

Recommendation 5: The law should not require a minimum capital for the formation of an UNLLO.

Recommendation 21: The law should establish that members may agree in the organization rules on the type, timing and value of their contributions.

Company Law (China)

Article 26 The registered capital of a limited liability company shall be the amount of capital contributions subscribed by all the shareholders.
Enterprise management

Partnership Enterprise Law (China)

Article 26 All partners shall enjoy equal rights in the management of partnership affairs.

Article 30 Where the partners intend to adopt a resolution, the method of vote of the partnership agreement shall be used. Where no such method is stipulated in the partnership agreement, a resolution is adopted by a majority vote.

- Recommendation 11 ...members have equal rights in the UNLLO irrespective of their contributions, if any.
- Recommendation 14: the UNLLO is managed by all of its members exclusively, unless....
- Recommendation 15: ..., differences among members on matters concerning day-to-day operations of the UNLLO should be resolved by a majority decision of the members.
- Recommendation 16:..., designated manager(s) may be appointed and removed by a majority decision ....
Registration

Regulations on the Administration of Registration of Market Entities (2021)

A.16 The State Administration for Market Regulation shall, according to the types of market entities, make lists of registration materials and sample forms of documents and publicize them on the government website.

A.19 The registration authority shall conduct formal examination and register on the spot those that are conform to the legal form. If the application materials cannot be registered on the spot, the registration shall be made within 3 working days. If the circumstances are complicated, the period may be extended for another 3 working days upon approval by the person-in-charge of the registration authority.

Recommendation 8: The law should provide that the UNLLO is formed once it is registered.

52. .....issuance of the notice of registration should be as fast and as streamlined as possible.

Recommendation 9: The law should:

…
(b) keep additional information required, if any, to a minimum.
• “One web all done” public services

• To enable administrative departments to share information with each other

• To provide services to the market entities with higher efficiency
Other issues

• Access to Credit
  • State Council: *Guidelines on giving full competence to the role of Government Financing Guarantee Funds to support MSMEs and the development of agriculture, rural areas and farmers*(2019)

• Tax
  • Tax rate are differentiated to different types of MSMEs

• Payment to MSMEs
  • Regulation of ensuring the payment to MSMEs (2020)

• Specialized, Fined, Peculiar and Innovative MSMEs

• Counter Covid-19 measures
Taxation

• **Law on Promotion of MSMEs**

• Article 11 The State shall implement tax policies conducive to the development of small and micro enterprises, implement measures such as delaying or reducing the collection or exemption of enterprise income tax and value-added tax for qualified small and micro enterprises in accordance with relevant provisions.

5. The Guide focuses on the formation and operation of the UNLLO and does not consider other matters that may be relevant to the existence of the business, for example issues of taxation policy.
Organizational rules in the future
more flexible internally,
higher efficiency externally,
lower cost for investors

Traditional laws
company law, partnership law, etc.

UNCITRAL LLE
Combination of existing rules
Gift for MSMEs
Thanks for listening

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