Healthcare and Life Sciences Companies Operating in China: Finding the Right Cash Repatriation Strategy

- **To fully capture the opportunities available in China's healthcare market, companies need to manage their cash repatriation effectively given strict and complex rules.**
- **Dividend remittance requires no regulatory approval and is the most straightforward option for many US healthcare and life sciences companies operating in China.**
- **Cross-border lending or pooling can make sense for larger firms. But it is critical to seek guidance on cash repatriation well in advance of the need arising.**

China is the world's second largest healthcare market[1] and is therefore a priority for many US healthcare and life sciences companies, whether for sales, research and development, or manufacturing. But managing cash generated in China can be challenging as regulations, especially relating to local currency, are stricter and more complex than the US or European countries, for example.

Selecting the right strategy for the repatriation of cash may not seem a priority for US companies when they are setting up operations in China; after all, generating revenue in healthcare and life sciences can take several years after gaining regulatory approval to operate. Nevertheless, cash repatriation is critical and should be carefully thought through before a local entity is established and certainly well in advance of generating cash.

It's important for companies to be aware of the various options for repatriating cash – and tailor their strategies accordingly – to ensure cash repatriation is as efficient and effective as possible. As importantly, no company wants to risk being fined for breaching regulations or suffer the reputational damage – and possible restrictions on their activity in China – that might follow from such a breach.

What options are available?

Chinese regulators impose a variety of rules and requirements on the movement of funds from China, prohibiting the use of some methods of repatriation that may be commonplace in other jurisdictions and placing strict caps in other circumstances. Nevertheless, with careful planning, US companies can take advantage of three principal repatriation structures that can meet a variety of needs for companies at different stages of development.

- **Dividend remittance** is the most common strategy for most US healthcare and life sciences companies operating in China. Dividends are a one-way transfer of funds and are simple to execute: there are no restrictions on the use of dividends and no need to return funds to China at a later date. As execution is straightforward, and no regulatory approvals are required when remitting dividends, the strategy is valuable even for companies with limited treasury resources. Dividends can be adopted as both a near and long-term repatriation solution. Healthcare companies will need to pay withholding tax to the local tax bureau, so it is important to consider the impact of this on P&L when repatriating funds.

- **Cross-border lending from China** involves more complex structures than dividend remittance and may be more applicable to companies with greater treasury resources or more sophisticated treasury arrangements. While companies must register with China's State Administration of Foreign Exchange (SAFE) or with banks in certain pilot areas in order to lend cross-border, specific regulatory approval is not required. Execution is both straightforward and can be completed on a timely basis. Cross-border lending is subject to a number of requirements, however. Repatriated funds can only be used for working capital and lending cannot exceed more than 50% of the China entity's equity, limiting the ability of a US company to extract surplus renminbi from China. The tenor of lending is subject to the underlying lending contract tenor.
- **Cross-border pooling** is a more complex arrangement for repatriating funds and is typically applicable for healthcare or life sciences companies with regional or global treasury hubs that utilize sophisticated structures to optimize liquidity management. Cross-border pooling requires registration or filing with local regulators and offers flexible borrowing/lending quotas. Self-generated funds can be swept offshore and then freely converted to other currencies. Certain foreign currency pooling structures do not include a regulatory repayment period and the tenor can be stipulated in the underlying loan agreement that is filed with regulators. Pooling structures can also evolve as required: new entities can be added to the pool as companies' China business grows.

  While cross-border pooling offers many benefits, it is complicated to set up and execute and there are a variety options available, including programs administered by SAFE and China's central bank (the People's Bank of China) and a program for companies that operate in the Shanghai Free-Trade Zone. In addition, repayment of RMB is required within 12 months under certain structures. Consequently, currencies may need to be converted twice when funds are lent and repaid, potentially increasing costs.

Choosing the right banking partner

For US healthcare and life sciences companies, the attractions of the world's second largest healthcare market are clear. However, companies need to be aware of the challenges associated with repatriating cash from China and plan accordingly.

While companies' needs may evolve as their operations in the country grow, it is essential to identify appropriate strategies well in advance of generating revenue in China. Regulations in China are subject to rapid and frequent change and therefore companies also need to be aware of government and regulatory announcements.

Healthcare and life sciences companies planning to establish operations in China – or with existing operations in the country – should work closely with their bank to identify appropriate strategies to ensure that they can repatriate cash in the most efficient way and in compliance with local rules and regulations.

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