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TECHNOLOGY MAY-RATHON

FROM VIE TO SAFE: TECH INVESTMENTS INTO AND FROM CHINA

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AGENDA

- Investments in Chinese companies – general
- Investments in Chinese companies – tech
- Investments by Chinese companies



Introduction

Preinvestment Considerations:

Wholly Owned Entity

VS.

Joint Venture with Chinese Partners

Onshore Investment

VS.

Offshore Investment



Some factors to consider:

- Control over assets
- Flexibility
- Enforceability
- Exit Venue

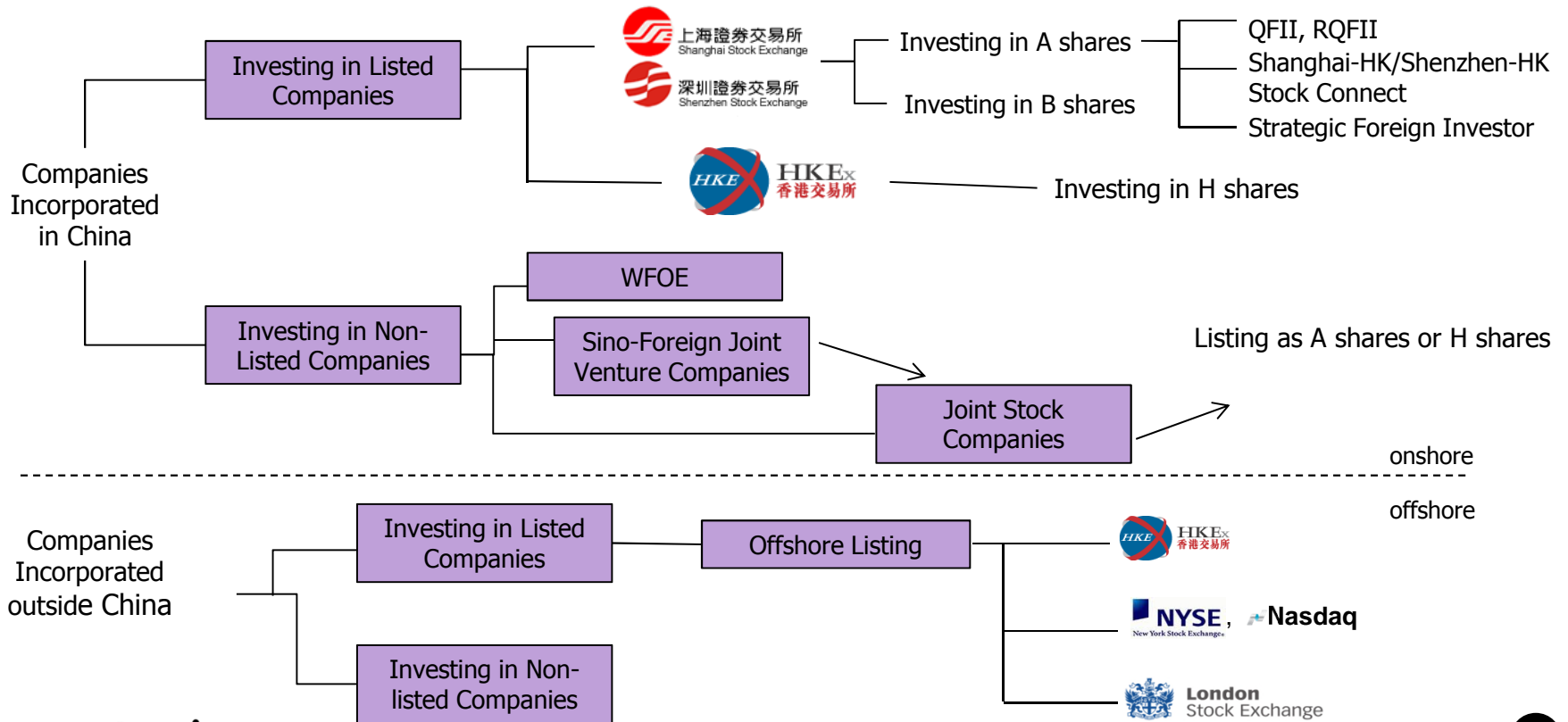
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PRINCIPAL WAYS TO INVEST IN CHINESE COMPANIES

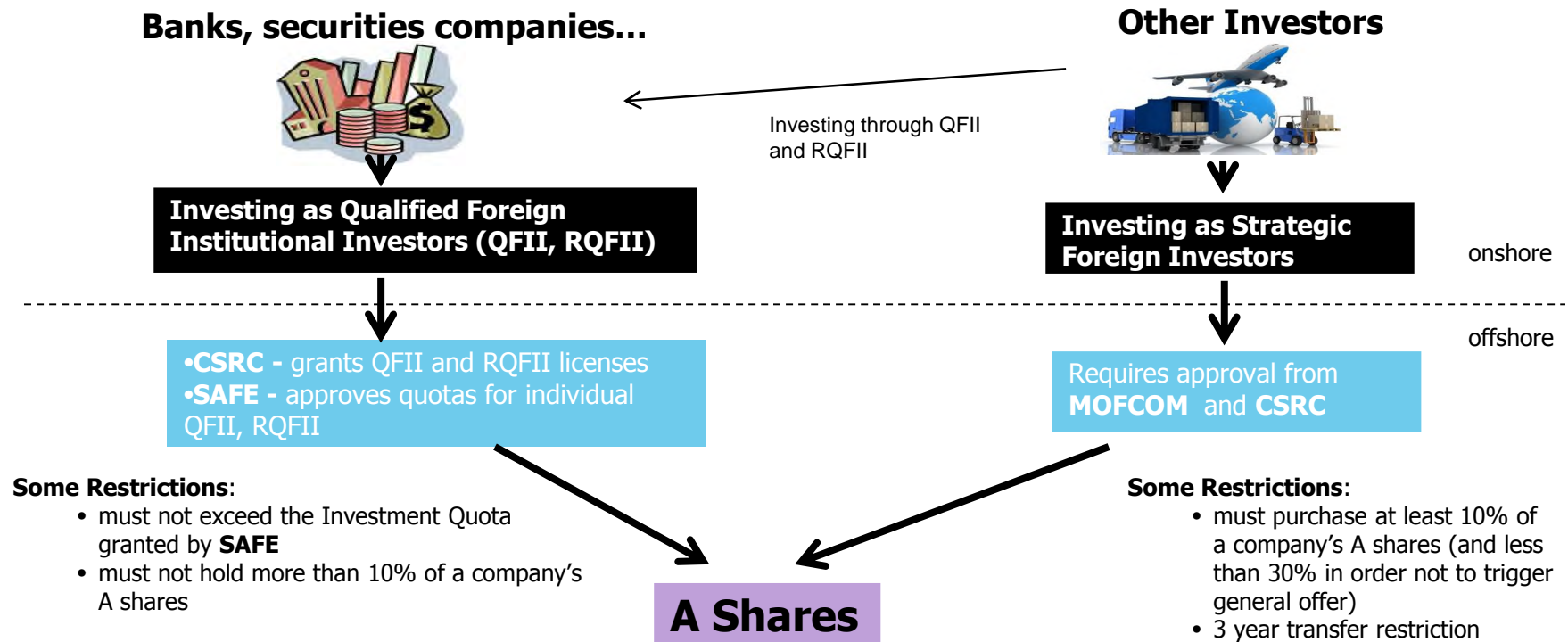


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Principal Ways to Invest in Chinese Companies



Listed in China – A Shares



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Listed in China – B Shares

	A shares	B shares
Listed on	Shanghai or Shenzhen Stock Exchange	Shanghai or Shenzhen Stock Exchange
Traded in	Renminbi	SHSE: US Dollar SZSE: HK Dollar
Foreign Investment	Generally Restricted	Allowed
Examples of Foreign Controlled Listed Companies	SEB Internationale S.A.S. (France based) holds 71.3% of Supor (苏泊尔) through an acquisition of A shares	Alstom Group (France based) holds 51% of Wuhan Boiler (武汉锅炉) through an acquisition of B shares

B shares are officially called “Domestically Listed Foreign Investment Shares”

Foreign investors may trade B shares, provided that the investment accounts are in the proper currency

Listed in Hong Kong - H Shares or Red Chip Shares

H shares are shares of China–incorporated companies traded on the Hong Kong Stock Exchange in Hong Kong dollars

Red Chip shares are shares of offshore holding companies traded on the SEHK in HK dollars, in the United States in US dollars, or in London in GBP, etc.



Wholly Foreign-Owned Enterprise (WFOE)

Foreign companies may directly set up a WFOE (subsidiary) in China

Some Issues:

- Holding Company
- Capital Structure
- Restricted Industries
- Negative List



Joint Ventures with Chinese Parties

Joint Venture Company or Joint Stock Company

Capital Structure

- Registered Capital vs. Total Investment
- Difficulties with Valuation
- Rigidity of Capital Structure
 - Capital must be actually contributed
 - Veto power of minority



Conversion to Joint Stock Company

- Converting a Sino-Foreign Joint Venture into a Joint Stock Company:
- No Mofcom approval required if not falling into the Negative List
- Foreign Investor Acquires Shares of an Existing Joint Stock Company:
- MOFCOM's approval may not be necessary

Listing

- Only stock companies can become listed

Joint Ventures with Chinese Parties (continued)



**Cooperative
Joint Venture**

or

**Equity Joint
Venture**

Parties' contribution

- Cash/Noncash intangibles?

Profit sharing

- Must be proportional to shareholdings?

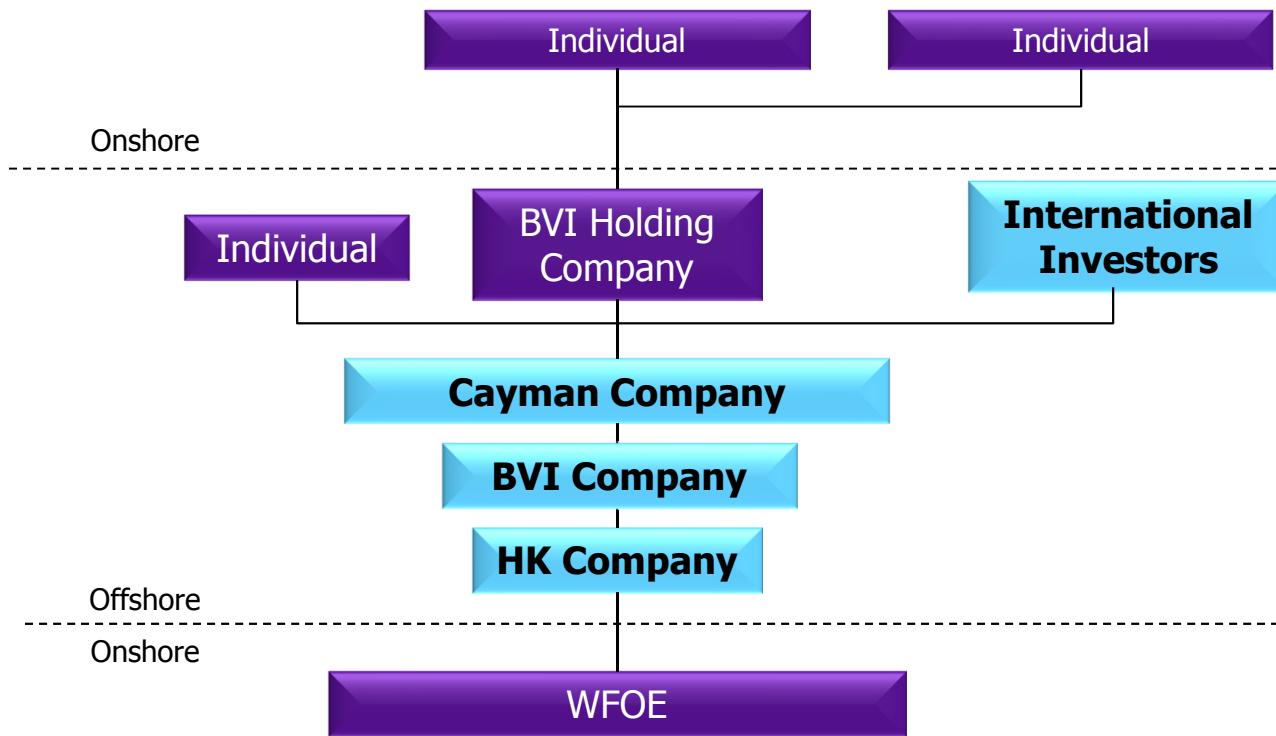
In reality

Red Chip Companies

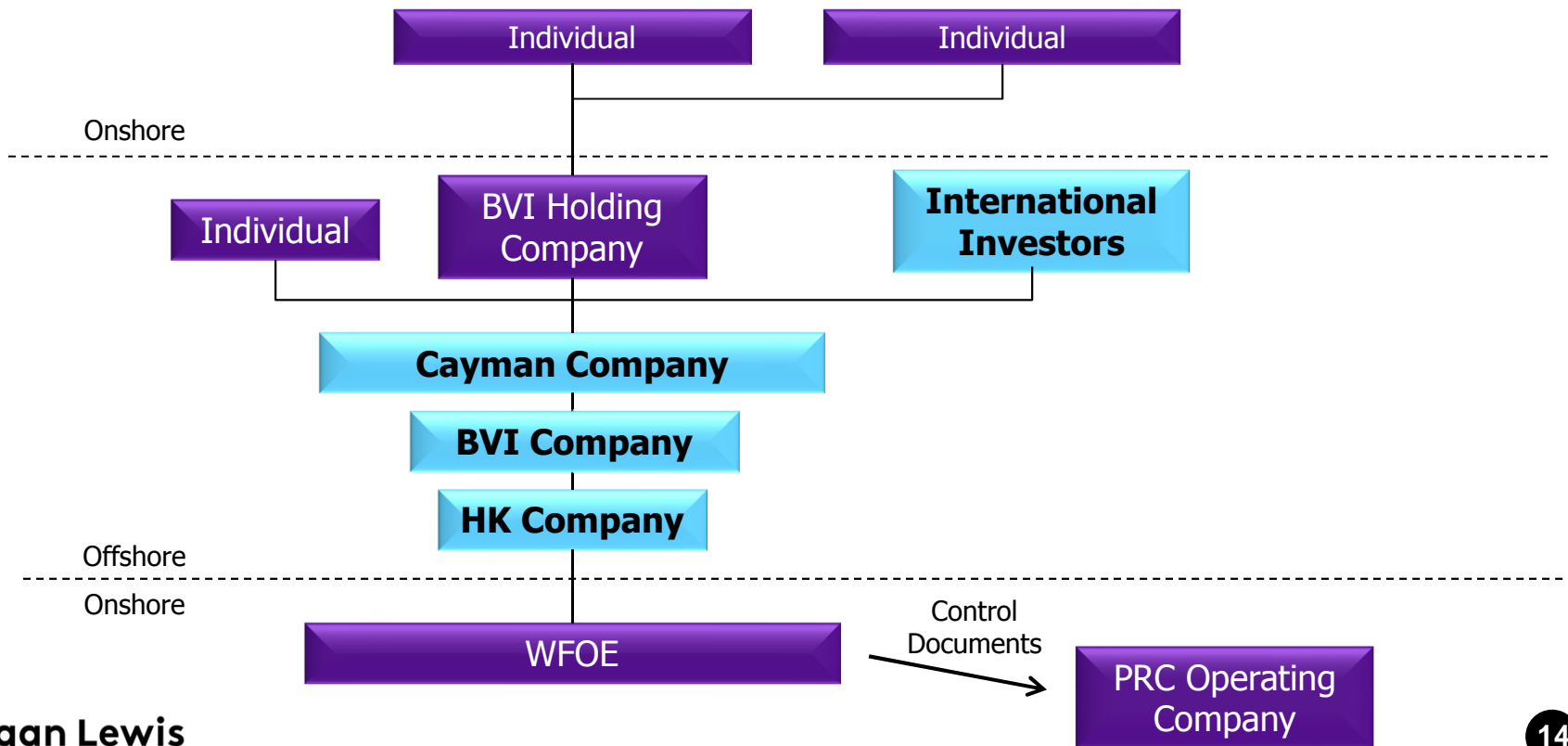
The businesses of Red Chip companies are based in China but they are incorporated internationally and listed on the Hong Kong Stock Exchange or other international stock exchanges.



Red Chip Companies – Holding Structure



Red Chip [Tech] Companies – with VIE



Typical VIE Control Documents

Exclusive Services Agreement

Loan Agreement

Exclusive Equity and Assets Transfer Option Agreement

Equity Pledge Agreements

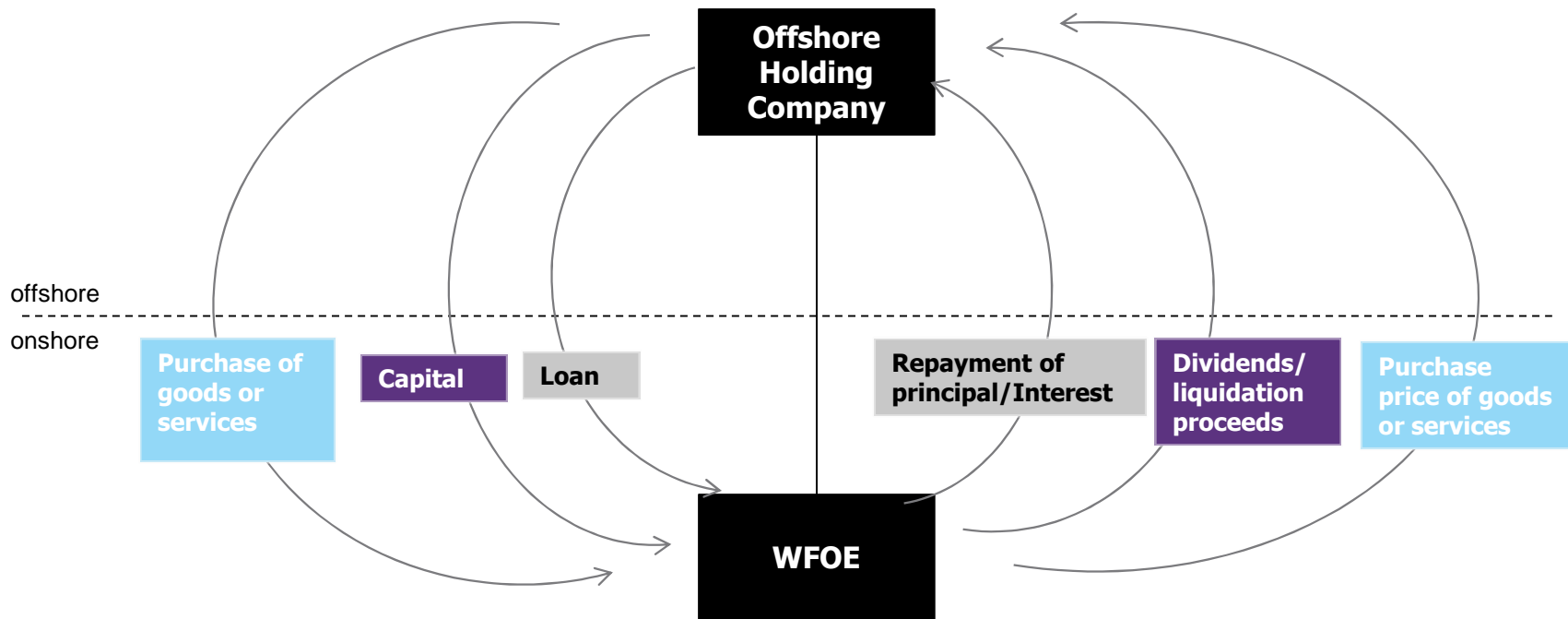
Spouse Acknowledgements

Articles of the PRC Operating Company

MATTERS OF CONCERN



A. Foreign Exchange Control



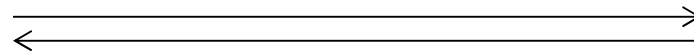
B. Dealing with State-owned Enterprises (SOE)



State-Owned Assets Supervision and Administration Commission ("SASAC")



every sale and purchase decision of an SOE is subject to SASAC's appraisal, approval and/or bidding procedures



deals agreed to with the management of an SOE could be later deemed invalid



Investor

C. Other Matters of Concern

Multiple Layers of Companies in Different Jurisdictions

Restricted Industries

Registered Capital Rather Than Shares

Exit by IPO

Exit by Sale

OUTBOUND INVESTMENTS FROM CHINA



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Relevant Approval Authorities

NDRC – National Development & Reform Commission

MofCom – Ministry of Commerce

CSRC – China Securities Regulatory Commission

CIRC, CBRC, and Other Industry Regulators

SAFE – State Administration of Foreign Exchange

Biography



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Maurice Hoo has more than 25 years of experience advising private equity and venture capital investors, as well as multinationals and strategic investors, in their cross-border mergers, acquisitions, investments, restructurings, and divestments. Maurice is a Registered Foreign Lawyer in Hong Kong and is admitted to practice in California.

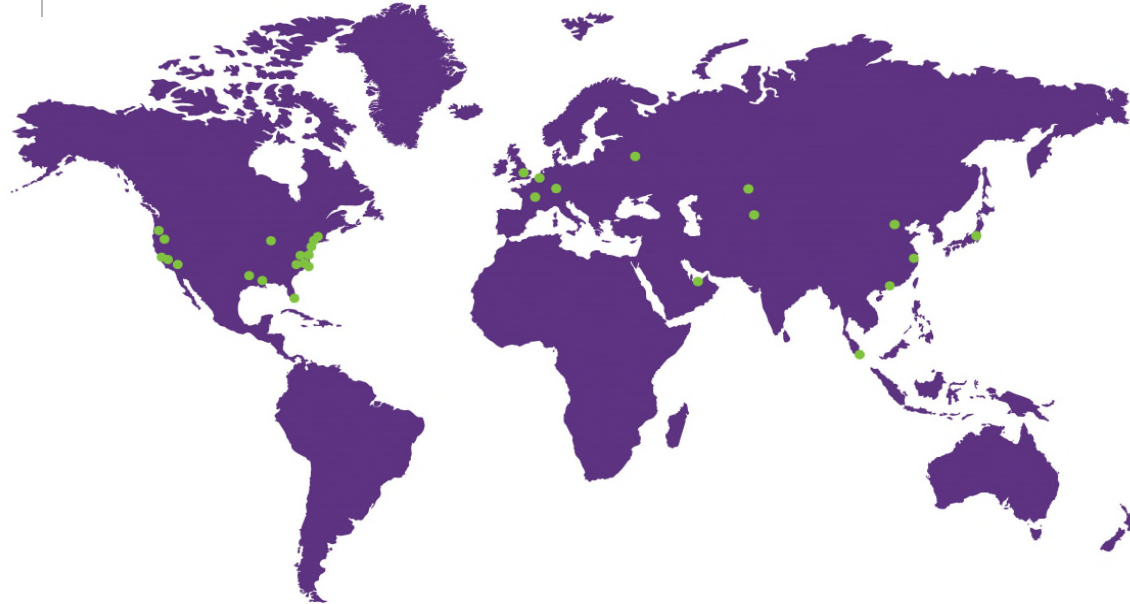
Maurice focuses on technology companies that do business in Asia, especially in China, and his deal experience spans a wide range of industries, including education, life sciences and medical devices, environmental protection and renewable energy, food, media and entertainment, mobile technology, and retail.

Our Global Reach

Africa
Asia Pacific
Europe
Latin America
Middle East
North America

Our Locations

Almaty	Dallas	London	Paris	Shanghai*
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THANK YOU

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