NEWSLETTER

Fidinam Group
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Highlights

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- Non-taxable benefits for foreigners
- CEO insights into the fashion and luxury industry in Asia

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Agence France Presse/Getty Images

INTRODUCING FIDINAM SHANGHAI

With the opening of Fidinam Shanghai in Jing' An District, a prime location in the most vibrant city of China, our Group marks a significant milestone in its expansion in Asia.

After a 10-year journey since the opening of our Hong Kong office, Fidinam today counts on a strong presence in Asia Pacific with offices in Shanghai, Hong Kong, Ho Chi Minh City, Singapore, Sydney and Melbourne.

Our team in Shanghai is based on a mix of local and foreign professionals serving Corporates and SMEs in their investments in mainland China from company incorporation to accounting, HR and tax filing with a full set of local compliance services.

Our solutions for Chinese companies and individuals looking to set-up and protect their investments overseas will be presented and coordinated by our local Relationship Managers, connecting our clients to our global network of professionals and business partners.

Our new office in Shanghai is managed by Tommaso Colli, a young and talented professional with over 8 years of experience in Business Consulting and Financial Services in China.

Tommaso's areas of expertise include accounting, tax compliance and tax planning for companies and individuals, M&A operations, tax and financial audits.

Thanks to Tommaso and his team, Fidinam core services in China will cover the followings:

- Company establishments;
- Accounting;
- Tax compliance;
- Treasury services;
- Payroll management;
- Tax and financial internal audits;
- Restructuring and liquidation;
- M&A (with a focus on due-diligence and evaluations);
- Corporate or personal tax optimization and planning (national and international);
- Support in dealing with local authorities;
- Funds repatriations.

Introducing Mr. Tommaso Colli

MD of Fidinam Shanghai

Tommaso's academic credentials include a Master's Degree in International Management obtained from both Bocconi University (Italy) and Fudan University (China). After experience as a financial analyst and an auditor at a Big Four in Italy, Tommaso moved to China where he specialized in accounting, international taxation and financial advisory working in boutique firms.

Over the years, Tommaso has helped companies in a wide range of industries establishing their operations in China, as well as managed ordinary compliance and extraordinary ad hoc consulting projects, supporting his clients in their development in China with a double-digits growth.

"With the support of Tommaso and his team, we are confident to offer our services in China with the highest standards, following our dedicated and practical approach to clients", said Alessandro Pedrinoni, CEO Asia Pacific at Fidinam.

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LAST-MINUTE EXTENSION OF NON-TAXABLE BENEFITS AND PREFERENTIAL TAX POLICIES

In the very last week of 2021, the Chinese Government promulgated two official announcements concerning the treatment of non-taxable benefits for foreign professionals and the preferential tax policy on annual bonuses.

Respectively on December 29 and December 31, 2021, two major official announcements were made by the State Council, and by the Ministry of Finance (MoF) and the State Administration of Taxation (SAT). The first notice concerns the prolongation of some preferential individual income tax (IIT) policies; the second notice was about the (long-awaited) "Continuation of the Preferential Policies on Individual Income Taxes for Foreign Personal Allowances and Subsidies".

Below we will analyze the features and implications of both announcements. With the notice of December 29, the Government intended to further reduce the burden of individual income tax and relieve the pressure for low- and middle-income taxpayers' categories.
The ways in which that is achieved are:

1. The annual one-off bonus can still be separated from the comprehensive income for tax calculation purposes. The implementation of a separate taxation policy for an annual bonus is extended until the end of 2023.
2. Supplementary individual income taxes that must be paid when completing the annual IIT filing can be exempt for the amount not exceeding RMB 400. This policy is also applicable for those whose annual income does not exceed RMB 120,000. This preferential tax treatment is extended until the end of 2023 as well.
3. Preferential tax policies are extended for equity-based incentives of listed companies until the end of 2022.

The three policies mentioned are expected to reduce taxes by RMB 110 billion a year. More in general, the separate treatment of the annual bonus can reduce the overall tax burden businesses and individuals will face from 2022 onwards.

On December 31, 2021, festivities for the new year aside, there was another highly unexpected reason to rejoice. The official notice from the MoF and SAT on the "Continuation of the Preferential Policies on Individual Income Taxes for Foreign Personal Allowances and Subsidies" released that day was probably the most welcomed regulatory update for foreign employees and employers in China throughout the entire year of 2021.

The Announcement [2021] no. 43 stated that the non-taxable fringe benefits for expatriates will maintain their tax-free status for at least two more years, so until the end of 2023.

Previously, Announcement [2018] no. 164 issued in 2018 stated that foreign employees working in China could only enjoy the preferential tax-exemption policies for housing subsidies, language training expenses and children's education expenses until the end of 2021. This Announcement [2021] no. 43 revised the above-mentioned provision and extended the implementation of the preferential policy on tax-free allowances and subsidies for foreign individuals until the end of 2023.

The issuance of this policy is a significant (and much appreciated) benefit to expatriates in China, essentially meaning that their tax burden will remain unchanged for the next two years.

Furthermore, it was previously anticipated that the costs for businesses employing foreigners who enjoy tax-exempt benefits would increase (given that the Announcement [2018] no. 164 was due to expire on December 31, 2021); however, the recent Announcement [2021] no. 43 implies no increase in tax burden for employers as a result.

Overall, although many companies had probably already renegotiated the contracts with their key foreign employees in China, these recent updates give a good 2-extra-years breather, from a financial perspective to all companies employing foreign professionals in China. It might be necessary for employers and employees to sit down once again to rediscuss some terms, but this last-minute extension of preferential tax policies remains much appreciated.

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A QUICK GUIDE TO CHINA OUTWARD REMITTANCES

Outbound remittance from China often proves challenging for overseas shareholders. While several options are available, related procedures need to be adequately anticipated.

1. Dividends

The most common way to repatriate profits from China is through the distribution of dividends by the China Foreign Invested Enterprise (FIE).

Prerequisites include injection of registered capital of the FIE and achievement of annual audit and tax compliance. Besides, former losses (if any) shall offset accumulated distributable profits, part of which shall be contributed to a mandatory surplus reserve.

Taxes and control of changes include:

- Withholding tax at the standard rate of 10%, often reduced under Double Taxation Agreements (DTAs);
- Approval of the State Administration Foreign Exchange (SAFE).

Timeline & frequency: minimum 6 to 8 weeks, once a year.

2. Management Fees

Intercompany services are another way to repatriate profits from China. Overseas headquarter offices (HQ) typically charge their FIE for supporting services including HR, IT, financing, or use of intangible assets (such as trademark, patent, or know-how). Despite many advantages, this option comes with higher risks of tax investigations, especially if the services fees are not at arm's length, which can challenge their tax deductibility at FIE level. Adverse tax treatment might also occur if a Permanent Establishment of the overseas HQ is characterized in China.

Taxes and control of changes include:

- Withholding tax at the standard rate of 10% (reduced under DTAs) or up to 25% if attributable to a permanent establishment in China;
- VAT at the standard rate of 6%;
- Approval of the SAFE.

Timeline & frequency: around 6 weeks, several times a year if reasonable.

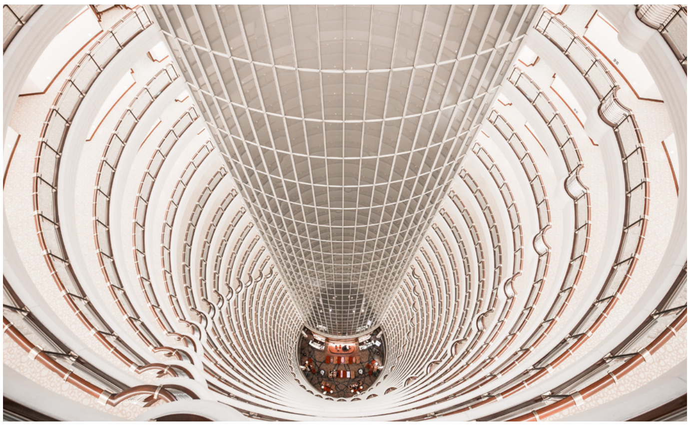
3. Loan's Interest

Intercompany loans are a third option to repatriate profits from China. The parties shall have an equity relationship and both must be established for at least one year. There is a limited loan ratio and the full amount shall be repaid within five years. To be effective, the contract shall be registered with the SAFE and the funds shall be deposited on a dedicated foreign loan bank account.

Taxes and control of changes include:

- Withholding tax at the standard rate of 10% (reduced under DTA);
- VAT at the standard rate of 6%;
- Approval of the SAFE.

Timeline & frequency: around 5 weeks, once a year.



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UNDERSTANDING CULTURAL DIFFERENCES IN ASIA

We had the pleasure to interview Gian Luca Traverso, former CEO of Philipp Plein. Gian Luca was born in Italy and has been living in Asia for the past 28 years. He has always worked for European fashion and luxury brands, developing the business in the region. Currently, he lives in Hong Kong with his family.

Gian Luca Traverso

Could you tell us more about your experience in Asia's fashion and luxury industry?

The markets, dynamics, main levers, and everything related to the industry have changed so much in the past 28 years I have lived in Asia. When I first moved to Hong Kong, Japan was the only strongly fashion-oriented market in Asia. Hong Kong was just a promise and Korea was trying to imitate Japan – with department stores and alluring Japanese customers to their duty-free/casino network. But most significantly, China was not even in the picture. We all knew that the Chinese market would eventually open and the mirage of reaching its massive population could become a reality. In the meantime, not only China has evolved: markets like Singapore, Thailand, Indonesia and Vietnam have all become interesting realities for luxury and fashion brands.

As a result, the central role of Hong Kong as a regional hub surged to a new level of strategic relevance. Having an office in Hong Kong, not only as a stepping stone for China but also to reach the entire region, became almost an obligatory passage. What I liked the most in all these years has been the cultural learning, understanding the differences between different countries, identifying the strategic approach for each market, and so on. This, I think, is the real asset that I have acquired in all my time spent here in Asia.

What are the major challenges you faced in opening the Asian market for European brands?

I always say that my role – representing European brands in Asia – is first and foremost to be a storyteller. It does not matter how popular the brand already is in the region, whether it is a well-established label or a new brand that is approaching a new market: my most significant task has been and still is "to send the message across". You need this if you are looking for a new partner in a certain market or negotiating with a landlord about a location for opening a store.

Or even simply if you need to explain to your local staff why the headquarters in Europe is deciding something that might not be necessarily obvious to them. These are just simple examples of how crucial and sometimes difficult our role here can be.

> **As human beings, we tend to take for granted what we have been growing up with, sometimes forgetting that cultural differences play a significant role.**

I have always tried to challenge myself in not doing that, trying to find solutions or alternatives, as much as possible "out of the box" or that in any case could be understood by a local perspective.

I think many Western brands sometimes fail in their approach to Asia simply because they disregard the importance of this point. You must be humble and realize that Asia is not only China.

What is the current situation of your industry in China, considering the restrictions caused by the COVID-19 pandemic?

COVID-19 has been a devastating experience globally. It has changed so much of our daily life, affecting it to a level that none of us could have expected or prepared for. However, it has also forced us to find new ways of doing business and grabbing opportunities.
Many brands have grown stronger and bigger in China, taking advantage of the travel restrictions of the Chinese consumers, who were forced to shop domestically.

Brands like ours, Philipp Plein, saw the opportunity to take back control of the market by switching from a franchise model to a direct-operated model.
Even though I could not travel, in 2021 I was able to negotiate the opening of nine new store openings in China – thanks to the experience I have gathered during so many years in Asia. I know the cities very well, the malls, the locations and most importantly, have a good relationship with all the main landlords. So, even during a terrible experience such as COVID-19, there are still ways to grow or develop the business.

What will be future threats and opportunities for European brands already present in China?

I would say that the main threat right now is the deteriorating relationship that China has with the US. We might not see it, but some of the restrictions that the Chinese Government is implementing right now will have a strong impact on the consumption trend of the Chinese for sure. Nevertheless, I am still moderately optimistic about the future, especially when COVID-19 is defeated. The fact that the Chinese are not traveling at the moment forces all brands already present in China to focus 100% on the domestic market.

It is an opportunity to study the Chinese consumer more deeply and pay more attention to what they really like, considering that they are no longer followers but have acquired their own, strong discerning taste.

Digitalization and e-commerce are becoming more relevant than ever before, forcing retailers to be more creative and innovative. The traditional brick and mortar shops will not disappear, but they are meant to become the natural complement of the e-commerce channel.

> **The whole retail game is already played at the omnichannel level, where everything becomes an integrated platform, tailor-made to interact with the consumer needs.**

Will the inclusive growth strategy of China cut off foreign investors or will it open the market to new players (e.g. affordable luxury)?

I don't think China will close off to foreign investors, but it will simply change the rules of the game. Think for example of the Metaverse and the NFT phenomenon. With the control on the internet that the Central Government is applying, how can this new reality find a way to expand in China? Probably through new rules and new agreements, but it would be exciting to see how different players will approach this. Also, the growing middle class is creating great opportunities for new affordable luxury products, opening new market segments. But there will also be Chinese brands finally expanding outside China. For example Shein, the Chinese fast fashion brand that is rapidly becoming a threat to Inditex and H&M.

HOW TO SET UP A PRESENCE IN CHINA

The second-largest economy in the world

China is expected to surpass the United States and become the world's largest economy over the next few years. In recent decades, the country has opened to a free market, welcoming a large amount of foreign investment.
As a sign of a strong commitment to opening the economy to foreign investors and stimulating local consumption, China issued a New Foreign Investment Law (FIL) in 2020.

How can I set up a company in China?

The new FIL changed the landscape of the foreign-owned entities in China, such as Wholly Foreign-Owned Enterprise (WFOE) and (Equity) Joint Venture (E)JV, by establishing new legal forms available to investors.

In fact, the new law doesn't distinguish between local and foreign investors anymore.

As a result, the entities available are now the following:

1. **Limited Liability Company (LLC)**

   The Limited Liability Company is a separate and distinct entity. An LLC is composed of maximum 50 shareholders with limited liability of their investment amount only. Shareholders can be either individuals or corporations. An LLC may have restrictions on the transfer of shares.

2. **Company Limited by Shares (or Joint Stock Company).**

   The total capital of a Company Limited by Shares shall be divided into equal shares, shareholders shall assume liability towards the company to the extent of their respective shareholdings, and the company shall be liable for its debts to the extent of all its assets. It is a separate and distinct entity, incorporated by means of sponsorship or by means of share offer.

   To incorporate a Company Limited by Shares, there shall be five or more sponsors, of which more than half must have their domicile in China.

   Other types of entities available in China are:

   - Common Partnership
   - Limited Liability Partnership
   - Representative Office
   - Branch Office

The tax framework in China

China taxation has been subjected to **several reforms** during the last decade. Nowadays, **major taxes** are listed as follow (*other miscellaneous taxes or certain trivial surtaxes on the major tax have not been listed*):

- Income Taxes:
  - → Corporate Income Tax (CIT) – Tax resident: 25% in general; a reduced rate of 15% is applied to high-tech companies, another reduced rate of 20% is instead applied to the so-called small enterprises (with the first CNY 1mln of taxable income taxed at 5%, then up to CNY 3mln taxed at 10%) or tax holiday for qualified enterprises under certain incentives
  - → Withholding Income Tax (WHT) – Non-tax resident: 10% in general, reduced rate as per Double Taxation Agreement (DTA)
  - → Individual Income Tax (IIT): 3% - 45% on a progressive basis
- Turnover taxes and customs duty:
  - → Value-added Tax (VAT): 6% - 13%
  - → Consumption Tax (CT): applies to 14 categories of consumable goods including, tobacco, alcoholic drinks, cosmetics, jewelry, fireworks, gasoline. The tax is computed based on sales price and/or sales volume.
  - → Customs Duty (CD): the duty rate depends on the nature and country of origin of the imported goods.

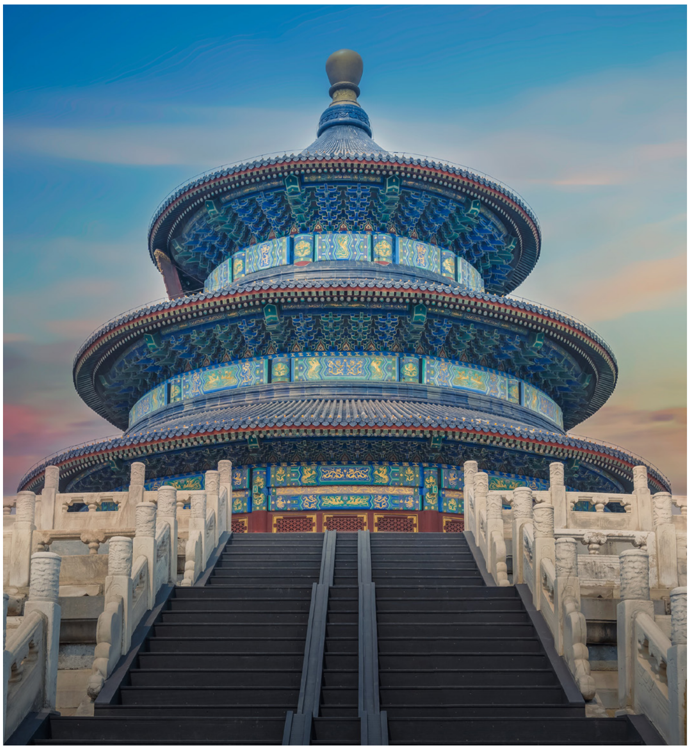
Visa in China

All foreigners who want to stay and work in mainland China should hold a valid visa. For foreign professionals, there are two main options: M-Visa and Z-Visa.

M-Visa: Commercial trade activities

China business visa (M-Visa) is issued to foreigners coming into China for commercial and trade activities, such as attending trade fairs, visiting clients and factories, negotiating with clients, signing contracts and other commercial activities.

The validity period of an M-Visa is three months in most cases, while the allowed duration of stay is usually 30 days and can be longer depending on applicants' personal cases.



Z-Visa: Work

Chinese work visa (Z-Visa) is issued to foreign experts working in China, for commercial performance, chief representative or representative of a foreign company, offshore oil operations, volunteering (more than 90 days), and foreigners working in China with a Work Permit issued by the Chinese government.

The Z-Visa itself only allows a stay duration of 30 days from the date of arrival in China, during which the employer must seek a Temporary Residence Permit for the term of the work contract, to a minimum of 90 days and a maximum of 5 years. Note that the work visa is usually single-entry and the duration is to be determined by the Temporary Residence Permit the person gets after entering China.

With the world still struggling with the COVID-19 pandemic, the situation of visa issuance in China is everchanging and quite different from the standards of before the pandemic.

Currently, the Chinese government only issues visas for work (Z) or business (M) and in some cases, also Q or S visas for family reunification. If the traveler has a valid residence permit, there is no need to apply for a new visa.

Please find more information and a longer guide via fidinam.com/en/our-presence-in-asia.

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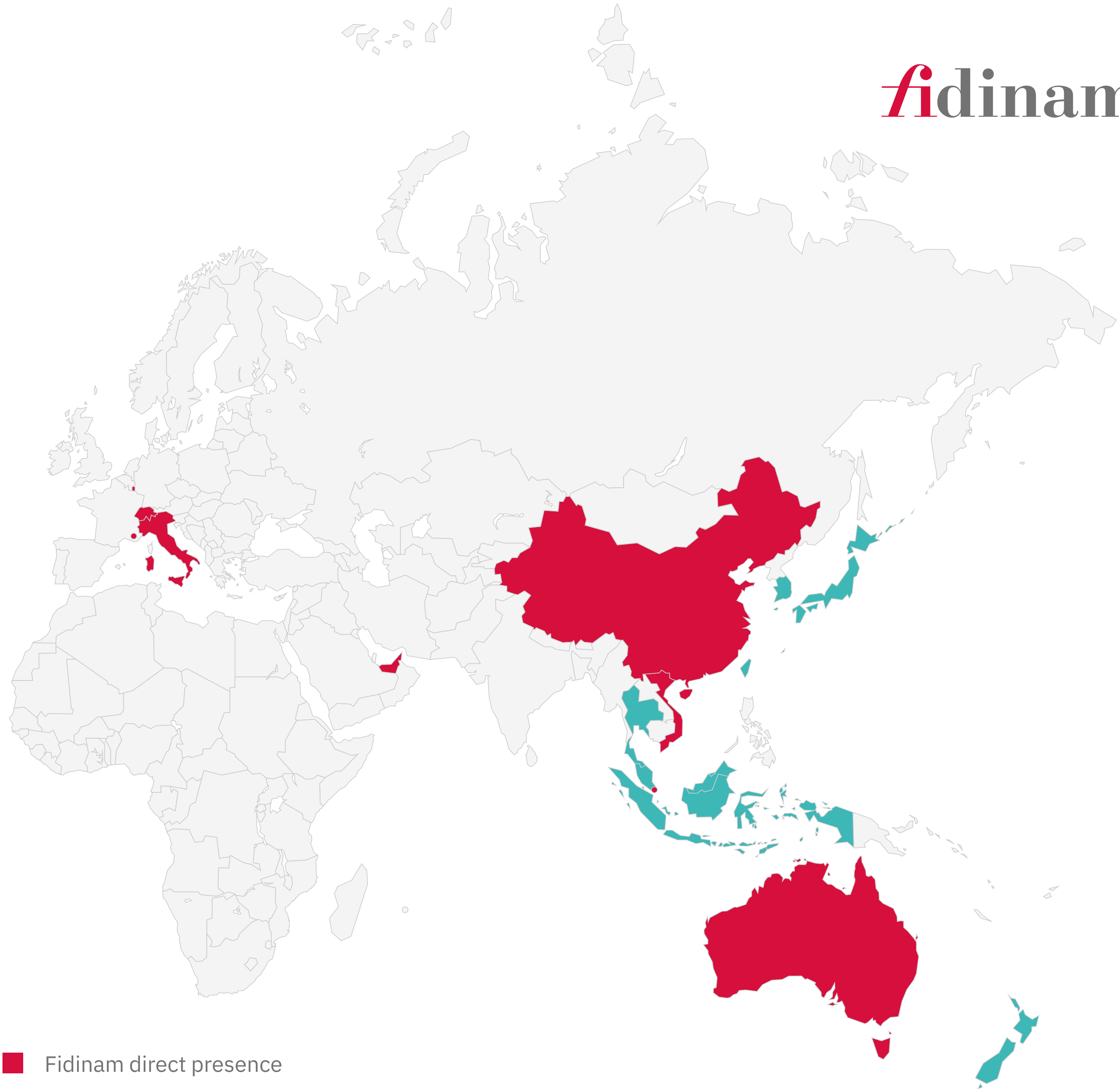

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