



## LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The business Climate Score rating is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.



# How to Use This Brief

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As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

**Internal Staff:** Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

**Government Leaders:** In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

**In-country Business Partners:** In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

## Talking Points

"China's lack of LGBT+ protections is driving top local LGBT+ talent to the West and inhibiting diverse forms of innovation.

"China's lack of LGBT+ inclusion has negative economic consequences, such as a brain drain from local firms to international firms inclusive of LGBT+ people, lost productivity from LGBT+ workers due to covering, untapped consumer spending, and inhibited creativity.

"Given China's competitive ambitions in the global marketplace, China's policies cannot afford to ignore LGBT+ diversity and inclusion. Even parts of the government seem to recognize this: a state-owned news company invested millions of dollars in a gay dating app in early 2017.

"The Publicity Department of the Central Committee of the Communist Party of China's ongoing campaign against representations of LGBT+ people in media is a growing concern, and contributes to an atmosphere of stigma that makes it difficult for me to justify locating top LGBT+ talent in China.

"China's current laws make it difficult for me to consider relocating any of my talented LGBT+ employees to the country, due to complications around spousal and family visas.

"Accepting conservative estimates that 4-6% of the general population identifies as LGBT, there are between 54 million and 83 million LGBT+ people in China. Estimates put potential LGBT+ Chinese spending power at \$300 billion annually. If Chinese laws and cultural attitudes shifted in favor of LGBT+ equality, millions of LGBT+ people would be able to participate more fully and openly in the economy."



# Current Legal Status of LGBT+ People

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## *Legal Status of the Lesbian, Gay, and Bisexual Community*

Article 33 of the Constitution of the People's Republic of China states that all citizens are equal before the law, though no comprehensive equal opportunity law for LGBT+ people is currently in place.

While same-sex acts were decriminalized in 1997, same-sex marriage and other benefits are not available to LGBT+ couples. This was reaffirmed in 2016, when a court decided against the first gay couple to sue for the right to marry in China.

Although the Employment Protection Law was passed in 2008, it lacks provisions for the LGBT+ community and contains almost no guidelines for how employers should be punished for noncompliance.

In June 2017, the government banned "abnormal sexual lifestyles," including homosexuality, from online video programs, resulting in significant outcry on Weibo.

In January 2016, a Chinese court in Changsha heard China's first lawsuit over gay couples' marriage rights. The court ruled against the appellants.

In January 2015, a Chinese court in Shenzhen heard what is believed to be the country's first lawsuit over gay workplace discrimination. The court ruled in favor of the employer and rejected all the requests from the appellant.

In a landmark case in December 2014, a Beijing court awarded compensation to a gay man who had undergone electric shock therapy by a clinic that claimed it could cure him of his homosexuality. The court ruled that electric shocks were illegal and unnecessary. Homosexuality is not a mental illness, the court said, and therefore does not require treatment.

Surrogacy is illegal in China, but gay couples there increasingly join their heterosexual counterparts in paying to use surrogates abroad.

## *Legal Status of the Transgender and Gender-Diverse Communities*

There is no law in China forbidding people from legally changing their gender; however, this is conditional on having undergone gender reassignment surgery. In 2002 and again in 2008, the government published guidelines on how to change the registered gender on ID cards and residence registration books, after it became clear that transgender people were having difficulties operating within the Chinese social system.

Transgender people in China can legally adopt children, and some have done so successfully. However, such adoptions may be subject to special scrutiny, as adoption agencies are obligated to ensure that adoptees will be raised in a healthy environment and some agencies believe that transgender people are at risk of psychological problems after transitioning.

Once transgender people change the registered gender on their ID card or residence registration book, they are officially the opposite sex, and are free to marry based on their new gender identity. However, they cannot change the gender on their diploma if they complete the transition after graduation, which can cause problems for them when job-hunting.

In January 2017, a court in the southwestern province of Guizhou ruled in favor of a transgender man who alleged that he was fired from a job due to discrimination. While the court did say that the man was fired illegally, it said that there was no proof the termination was due to bias against trans people.

# Current Legal Status of LGBT+ People

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## *Government Statements and Actions*

Politically, the Chinese government has adopted a "triple no" attitude towards LGBT+ people, characterized by "no approval, no disapproval, no promotion." But the state invested several million US dollars, albeit indirectly, in Blued, China's largest gay dating app, in early 2017. Blued received the donation from the Beijing News Group, a state-owned media company.



# Current Legal Status of LGBT+ People

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## *Government Statements and Actions (cont.)*

The government has been progressive in spreading education around HIV and AIDS, though at the expense of stigmatizing the LGBT+ community.

There have been reports of the government censoring and banning public demonstrations around LGBT+ rights, with at least one case of the authorities arresting activists who organized an "illegal rally".

Films, literature, and art with same-sex themes are subject to censorship in China; there is also online filtering and monitoring of words like "homosexuality," though there have been some exceptions to this censorship in recent years.

# Socio-cultural Environment of LGBT+ People

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## *Status of LGBT + Organizing and Community*

As of 2012, more than 100 LGBT+ organizations had been established in various parts of China and the number is steadily increasing. But the vast majority of them are unable to register as civil organizations, and have been told they are not ideologically aligned with Chinese culture. They register, instead, as businesses, and are taxed accordingly.

Pride festivals do exist, but they are difficult to organize and maintain due to the government's general censorship of public demonstrations.

Within the workplace, the main issues LGBT+ employees report are: (1) fear of coming out, (2) lack of awareness and respect for sexual minorities, (3) lack of visibility, (4) isolation, (5) lack of LGBT+ friendly policies, and (6) lack of role models. This is especially the case within China's state-owned enterprises, where only 2% of LGBT+ employees are completely open; compared to 8% and 9% at private and foreign companies, respectively.

## *Cultural Views of the LGBT + Community*

In 2018, Sina Weibo, the dominant Chinese social network, announced that it would censor LGBT+ content (in keeping with governmental directives) but backed down after triggering a widespread outcry from users.

Social and cultural attitudes towards homosexuality are changing gradually from traditional Confucian teachings and patriarchal restrictions to more tolerant views, especially in Tier-1 cities and regional urban hubs.

Though homosexuality was removed from a list of mental illnesses in 2001, beliefs persist that homosexuality can be cured, and a number of clinics in China offer "conversion" shock therapy for gay people.

Culturally, there are many misconceptions facing the LGBT+ community due to general lack of education and social interaction with LGBT+ people, particularly in rural areas.

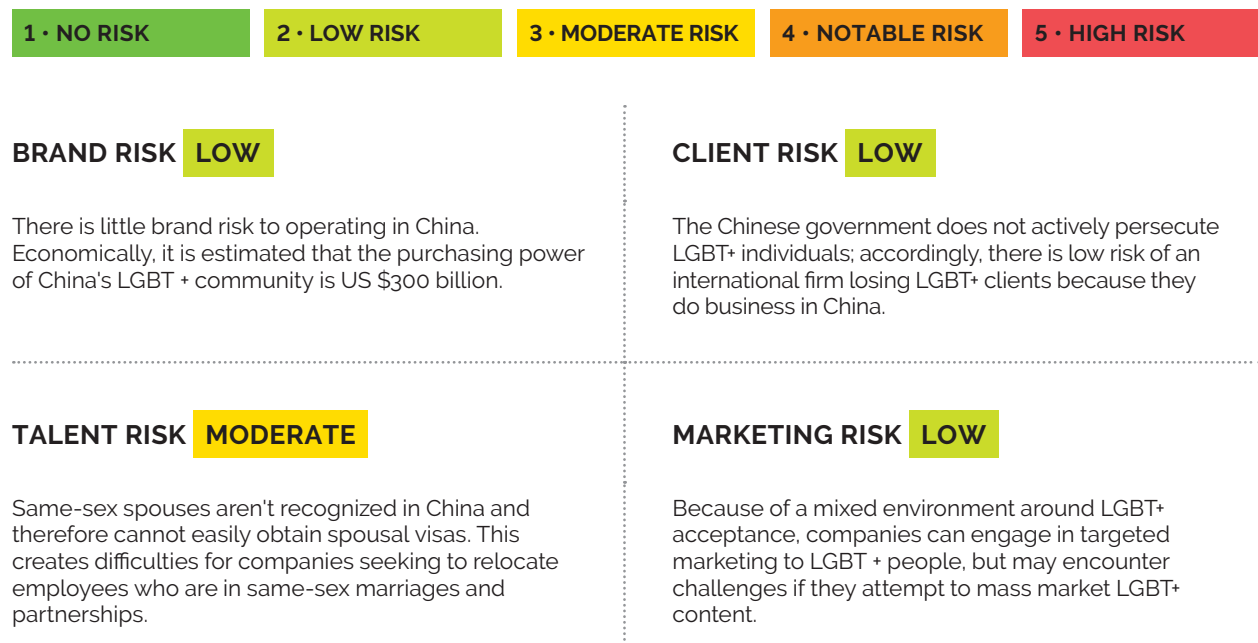
Many associate gay people with the HIV epidemic due to misinformation.

China's decades old One Child Policy, which became a two-child policy in 2015, has put pressure on single children to marry the opposite sex and produce children. In this context, homosexuality is often viewed as destructive of the family core and against Confucian values.

LGBT+ is often viewed as a "Western import" with no legitimacy in China, despite a recorded history of homosexuality in ancient times.

Nonetheless, Chinese people appear to be gradually accepting the LGBT+ community. A 2014 survey of city residents showed that 59% believed society should accept homosexuality; this is a significant improvement from a broader-based 2013 survey showing only 21% of respondents saying homosexuality should be accepted.

# Impact of LGBT Discrimination on Business & Talent



## Local Leaders Advocating for LGBT Equality

There are many openly LGBT+ activists and experts in China. Out Leadership recommends:

**Jacob Huang**  
Corporate Program Director  
Afbai Culture and Education Center

**Xin Ying**  
Executive Director  
Beijing LGBT Center Purpose

**Dandan "Dana" Zhang**  
Executive Director  
Chinese Lila Alliance

**Xu Bin**  
Director  
Common Language

## Purpose

Multinational companies face operational and reputational risk when they do business in countries where the legal and/or social atmosphere makes it difficult for LGBT+ people to live openly. Discrimination against LGBT+ people creates serious challenges for talent mobility, retention, and development.

Out Leadership's LGBT+ CEO Business Briefs seek to help C-Suite leaders understand and respond to these risks. Secondly, these Briefs seek to inform and empower corporate executives to engage in conversations with trade officials and other local stakeholders about why discrimination against LGBT+ people negatively impacts their ability to do business.



## Additional Resources

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### **2016 International Gay and Lesbian Association State Sponsored Homophobia Report**

This report contains a country-by-country analysis of anti-LGBT laws and policies around the world.

### **2016 Human Rights Watch World Report**

This report contains a country-by-country analysis of human rights concerns for 2014, and includes specific information pertinent to LGBT issues.

## Special Thanks

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Our partners and colleagues at the Global Equality Fund, 11.e Council/or Global Equality, The Palette Fund, The United States Department of State, Stonewall, Gay, Lesbian & Straight Education Network, Oogachaga, OutRight Action International, Human Rights Watch, and the Williams Institute were instrumental in the creation of this brief.

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### **Pro Bono Legal Partner**

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**ROPES & GRAY**

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