



# China

Prepared by Lex Mundi member firm,  
JunHe LLP

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**A GUIDE TO DOING BUSINESS**

**IN**

**PEOPLE'S REPUBLIC OF CHINA (THE "PRC")**

**BY**

**JUN HE LAW OFFICES**

**DECEMBER 2016**

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## ABBREVIATIONS

PRC	People's Republic of China
NBS	National Bureau of Statistics of the PRC
MOFCOM	Ministry of Commerce of the PRC
NPC	National People's Congress of China
CPC	Communist Party of China
SPC	Supreme People's Court
WTO	World Trade Organization
SAIC	State Administration for Industry and Commerce
CBRC	China Banking Regulator Commission
NDRC	National Development and Reform Commission
SAFE	State Administration of Foreign Exchange
CSRC	China Securities Regulatory Commission
IP	Intellectual Property
TRIPs	Trade-Related Aspects of Intellectual Property Rights
SIPO	State Intellectual Property Office
Trademark Office	Trademark Office of SAIC
FTA	Free Trade Agreement

# 1 THE COUNTRY AT A GLANCE

## 1.1 Geography

China<sup>1</sup> is located in the east of the Asian continent, on the western shore of the Pacific Ocean, with a land area of about 9.6 million km<sup>2</sup>. It is the third largest country in the world, only after Russia and Canada.

China is bordered by Korea to the east; Mongolia to the north; Russia to the northeast; Kazakhstan, Kyrgyzstan and Tajikistan to the northwest; Afghanistan, Pakistan, India, Nepal and Bhutan to the west and southwest; and Myanmar, Laos and Vietnam to the south. Across the seas to the east and southeast are the Republic of Korea, Japan, the Philippines, Brunei, Malaysia and Indonesia.

Most of China lies in the North Temperate Zone, characterized by a warm climate and distinctive seasons, while parts of the southern area are in the Tropical Zone or Subtropical Zone and parts of the northern area in the Frigid Zone. Most of China has a continental monsoon climate.

## 1.2 Languages

The most spoken varieties are Mandarin (“*Putonghua*”, based on the Beijing dialect). Besides, there are Cantonese, Wu (Shanghainese), Minbei (Fuzhou), Minnan (Hokkien-Taiwanese), Xiang, Gan, and Hakka dialects, as well as minority languages.

## 1.3 Population and Economy

In accordance with the official statistics published by the NBS<sup>2</sup>, by the end of 2014, China has a population of approximately 1.36782 billion.

China is firmly committed to economic reform and has experienced significant and rapid economy development since its opening-up initiated in 1978. According to the official statistics of NBS, in 2014 China's GDP hit RMB 64397.4 billion and it has surpassed Japan to be the second largest economy in the world.

In the past, China's economy largely relies upon export but after the global financial crisis in 2008 it is moving from export dependency to the development of domestic market. The rapid growth of China's economy also benefits from increasingly attracted foreign investment. Pursuant to the official statistics of MOFCOM, from January to October 2016, newly approved foreign-invested enterprises (“**FI**Es”) amounted to 22,580, up by 7.4% year on year; and the actual use of foreign investment reached USD 103.91 billion, up by 4.2% year on year.<sup>3</sup>

Pursuant to the latest official statistics published by the NBS, the inflation rate of China as of 2014 is 2 percent.

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<sup>1</sup> For the purpose of this Guide, unless otherwise specified, “China” or the “PRC” refers to the mainland China, excluding Hong Kong SAR, Macau SAR and Taiwan Province.

<sup>2</sup> Annual Data issued by NBS available at:

<http://data.stats.gov.cn/easyquery.htm?cn=C01&zb=A0301&sj=204>

<sup>3</sup> Statistics of China's Absorption of FDI from January to December 2016, at:

<http://english.mofcom.gov.cn/article/statistic/foreigninvestment/201612/20161202165831.shtml>.

## 1.4 Infrastructure

China has a relatively well-developed and high standard infrastructure. In 2008, the State provided a package of RMB 4 trillion to minimize the negative effects brought by global financial crisis and to stimulate domestic economy. As planned by the central government, most of the package would be used on construction of infrastructure, such as railways, roads and airports.

### (a) Railway

Railway system plays an important role in China especially in passenger transportation and freight transportation. In accordance with the official statistics of Ministry of Railways of the PRC, by the end of 2014, China's railway traffic mileage reached 111,800 km.<sup>4</sup> In recent years, China is devoting major efforts to construct high-speed railways.

### (b) Roadways

The growth of China's economy, especially domestic and international trade, has given impetus to the development of China's roadway system including expressways. Pursuant to the official statistics published by NBS, by the end of 2014, the roadway traffic mileage was 4.4639 million km.<sup>5</sup>

### (c) Airports

With rapidly expanding civil aviation industry, China had built 210 civil airports by the end of 2015, some of which are for military-civil use.<sup>6</sup> China is planning to construct more airports or rebuild some existing ones in the forthcoming ten years to relieve pressure on main existing airports such as Beijing International Airport and Shanghai Pudong Airport.

### (d) Ports

China's ports, especially seaports, are of great importance to international trade. China has several top seaports in the world in terms of both cargo throughputs by weight and by the number of containers involved, such as Shanghai and Qingdao.

### (e) Public Transportation

Local transportation such as buses and taxis has been commonly used in most cities of China. Furthermore, subway systems have been developed in recent years. According to the annual data of 2014 issued by NBS, China's urban rail transit lines in service reached a total of 2816 km by the end of 2014.

## 1.5 Telecommunication

The State has monopoly over the communication sector of China. The major operators in the sector, such as China Telecom, China Mobile and China Unicom, are all state-owned enterprises (“SOEs”). They are now providing wide range of services

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<sup>4</sup> Annual Data (2014) issued by NBS available at <http://data.stats.gov.cn/easyquery.htm?cn=C01&zb=A0G02&sj=2014>

<sup>5</sup> Annual Data (2014) issued by NBS available at [http://www.caac.gov.cn/I1/K3/201002/t20100205\\_30262.html](http://www.caac.gov.cn/I1/K3/201002/t20100205_30262.html).

<sup>6</sup> 2015 Airport Statistical Communique of Civil Aviation Administration of China, at <http://www.caac.gov.cn/XXGK/XXGK/TJSJ/201605/P020160531575434538041.pdf>

throughout China in terms of Internet, broadband, mobile, telephone, cable, etc. FIEs have only limited access to engage in the industry.

## **1.6 Public Services**

The central government has control over almost all kinds of public utilities in China, mainly through government invested projects or SOEs. The government is the monopoly supplier of water, electricity, gas or other similar public services.

## **2 GENERAL CONSIDERATIONS**

### **2.1 Political System**

#### **(a) Overview**

China is a socialist state. The CPC is the country's sole political party in power. The NPC is the highest organ of state power which exercises legislative power of the State. The State Council, as the central government, is the highest executive body of state power.

The political power has been stabilized during the last decade. The rapid growth of China's economy has also benefited from political stability, which has been determined by strength of ruling party, military expenditure, democratization, and living quality for citizens, etc. Currently the central government has exerting itself to strengthen social stability by building a safety environment for living and solving the largely existing problems such as the income gap, environment pollution, abuse of official authority, etc.

#### **(b) Election System**

An election system is implemented in China to elect deputies to the NPC and local people's congresses at various levels. All citizens of China who have reached the age of 18 have the right to vote and stand for election.

The election system operates in two ways, namely,

Indirect election, which means deputies to the NPC and to the people's congresses of provinces, autonomous regions, municipalities directly under the central government, cities divided into districts, and autonomous prefectures should be elected by the people's congresses at the next lower level; and

Direct election, which means deputies to the people's congresses of cities not divided into districts, municipal districts, counties, autonomous counties, townships, nationality townships and towns should be elected directly by their constituencies.

The election is held every five years and the next one will be held in 2012.

#### **(c) Diplomatic Relations**

As of March, 2016, China has established diplomatic relations with 173 countries around the world.<sup>7</sup> For the details and information of embassies or consulates in China,

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<sup>7</sup> List of Countries that Established Diplomatic Relations with China, Ministry of Foreign Affairs of the PRC, at [http://www.fmprc.gov.cn/web/ziliao\\_674904/2193\\_674977/](http://www.fmprc.gov.cn/web/ziliao_674904/2193_674977/)

please visit the official website of Ministry of Foreign Affairs of the PRC, [available at http://www.fmprc.gov.cn/web/zwjg\\_674741/zwsg\\_674743/yz\\_674745/](http://www.fmprc.gov.cn/web/zwjg_674741/zwsg_674743/yz_674745/).

## 2.2 Legal System

### (a) Judicial System

It is the first time for the NPC to adopt a provision emphasizing the rule of law under the *Constitution* in 1982. Since then, great efforts have been made to develop the court system, improve legislation and modernize and professionalize the judges, lawyers and other personnel in the area.

#### Court System

The court system was conceived as an independent power within China. In accordance with the Constitution, as amended in 2004, courts exercise judicial power independently and free from interference of any administrative organ, public organization or individual.

The courts are divided into:

- (i) Local courts at various levels including primary people's courts, intermediate people's courts and higher people's courts;
- (ii) Military courts, Railway Transport Court, Maritime Court and other special courts; and
- (iii) The SPC.

#### Dispute Resolution

Basically there are four ways to resolve a commercial dispute in China: negotiation, mediation, arbitration and litigation. Negotiation is normally the first choice of parties concerned because it is the least expensive and most friendly approach to resolve a dispute. Mediation is also welcomed and encouraged especially during the judicial procedure, and it can effectively preserve the cooperation relationship of the parties involved. Compared with litigation, arbitration is a preference for most parties mainly because it is not that time consuming and the procedure is relatively simple. Litigation is regarded as a final way to resolve a dispute. In China, foreign parties have equal rights to bring action in courts as Chinese parties.

- (i) The PRC law contains no political method of dispute resolution. However, the government may exert its influence on certain disputes involving SOEs or government invested projects. Litigation
  - (A) Litigation is considered as the final way to resolve a commercial dispute in China due to the following reasons: The litigation procedure is time consuming. For example, in a civil case, the first instance procedure will at most last six (6) months from the initiation date and the duration can be extended for another six months or even longer. If any party concerned was dissatisfied with the ruling of the first instance and filed an appeal, the appealing case will take another three (3) months to close, and similar to the duration of the first instance, the duration of appeal

can also be extended.

- (B) A lack of qualified judges and other professional personnel.
- (C) The courts' independence cannot be ensured because most of them rely on the financial support from local governments.

The dispute can also be resolved in a foreign court or arbitration commission. In principle, for any dispute arising from a contract or property rights and interests involving foreign elements, the parties concerned may choose a court in the place out of China having an actual connection with the dispute to have jurisdiction. However, disputes arising from the performance of Sino-foreign equity joint venture contracts, Sino-foreign cooperative joint venture contracts or contracts for Sino-foreign cooperative exploration and development of natural resources should be under the jurisdiction of courts of China.

A foreign judgment cannot be directly enforced in China. All of the following conditions shall be met to enforce a judgment made by a foreign court:

- (A) The judgment is legally effective;
  - (B) The foreign country and China have concluded bilateral treaty, or China has acceded to international treaties, or based on the principle of reciprocity with respect to the enforcement of foreign judgment; and
  - (C) The judgment is not contrary to the basic principles of the laws of China or the State's sovereignty, security or social public interest.
- (ii) Unfortunately, China has not acceded to Hague Jurisdiction Convention or any other international treaties with respect to enforcement of foreign judgment. In addition, Chinese courts rarely recognize the principle of reciprocity. Therefore, unless a bilateral treaty has been concluded, a foreign judgment can hardly be enforced in China. China has concluded bilateral treaty with only around 30 countries or regions, excluding most well-developed countries such as the US and Canada. Arbitration

Aside from judicial procedure, arbitration is also available under PRC law as an alternative mechanism for resolving commercial disputes. Currently there are a number of arbitration commissions in the main cities throughout China.

If parties choose to settle a dispute through arbitration, they should enter an arbitration agreement (including arbitration clauses in a contract and written agreements on arbitration) which indicates clear intention for arbitration. The conclusion of arbitration agreement will preclude the jurisdiction of courts, unless the arbitration agreement is invalid.

Foreign arbitration awards are enforceable in China in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 to which China is a party and the *Civil Procedure Law of the PRC*,

as amended in 2012.<sup>8</sup>

(b) Legislative System

*Framework*

The legislative system of China is a relatively complicated system. It is made up of four main parts: The highest level is the *Constitution*, which is the fundamental law of the State and with supreme legal authority; The second level is called "law", which can only be enacted by NPC and its Standing Committee; The third level, named "administrative regulation", refers to regulations promulgated by the State Council; The fourth level is made up of the local regulations enacted by local people's congress or their standing committees and rules formulated by ministries and commissions of the State Council or local governments.

*Effect of Legislation*

The legal effect of the *Constitution* is the highest and no laws, regulations or rules may contradict it. The effect of laws is higher than that of administrative regulations, local regulations and rules. The effect of administrative regulations is higher than that of local regulations and rules. The effect of local regulations is higher than that of rules of local governments at or below the corresponding level. The effect of rules enacted by ministries or commissions under State Council is equal to that of rules of local governments.

*Judicial Interpretation*

Both the SPC and the Supreme People's Procuratorate have the authorities to give interpretation on questions concerning specific application of laws in judicial proceedings. In practice, such judicial interpretation will be applied by all the courts throughout China.

*International Treaties*

In the area of civil law, if any international treaty concluded or acceded to by China contains provisions differing from those in the laws of China, the provisions of the international treaty shall apply, unless the provisions are ones on which China has announced reservations. Therefore, once China ratifies an international treaty, the treaty will automatically become part of Chinese domestic civil law, except those provisions to which China has declared reservation.

### **3 FOREIGN INVESTMENT IN CHINA**

#### **3.1 General**

During the past twenty years, the investment climate of China has changed dramatically. In 1980s, foreign investments were strictly restricted within the area of export-oriented sectors and there must be a domestic party in an FIE. Since the early

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<sup>8</sup> China is a signatory state to and ratified the New York Convention, with the reservations of "commerciality" and "reciprocity".

1990s, China has gradually allowed foreign investors to manufacture and sell wider range of products on the domestic market, and to establish wholly foreign owned enterprises (“WFOEs”) in China. The improvement of investment environment has strengthened China's position as an important production base in the world. In addition, more foreign investment has been made to capital market, technology-oriented industries, service industries as well as new energy and energy efficient and environmental protection industries.

China is now one of the biggest foreign investment recipients in the world. The performance of China on attracting foreign investment thanks to China's entry into WTO, progress on industry structural reforms as well as policy-making in line with international standards.

### **3.2 Investment Environment**

#### **(a) Management Authority**

The central government has playing an active role in attracting foreign investments and it has continuously improving its foreign investment management system. The MOFCOM and its local counterparts have been established as the main governmental authority in charge of foreign investment issues. Their major functions include:

- ◆ To give general guidance to foreign investment;
- ◆ To examine, approve or record the establishment and changes of FIEs, within the authorities prescribed by law;
- ◆ To verify the contracts and statutes of large-scale projects with foreign investment;
- ◆ To supervise the enforcement of FIE related laws, regulations, rules and policies.

Investment promotion agencies have also been established at the national or local level to promote foreign investment. The agencies promote foreign investment mainly through regularly held promotion activities, as well as provision of information regarding investment opportunities.

#### **(b) Cultural and Other Influences on Foreign Investment**

There are no cultural or religious prohibitions on the way that business is conducted in China. Nevertheless, China does have a unique business culture differing from western countries, given its unique history and background. For instance, interaction between business partners is considered more important than contract or other written documents; also, it is very important to maintain a good network of contacts in China, etc. Any foreign investor seeking to enter Chinese market needs to be aware of such cultural differences and develop a comprehensive understanding of Chinese business culture.

### **3.3 Limitations on Foreign Investment**

Since 1995, foreign investment in China has been guided by the Catalogue of Industries for Guiding Foreign Investment (“**Catalogue**”) updated approximately every three years in order to reflect the government’s then prevailing economic and political goals and policies, and adjust the directions of foreign investment according to the necessity of economic development of China.

In accordance with the latest Catalogue issued in 2015, foreign investment is classified into four categories:

- (a) Encouraged. Foreign investment projects in “encouraged” sectors benefit from customs duty-free import of certain equipment and other similar preferential policies. This category includes 349 different industries, such as fruit and vegetable drink production; agricultural machinery manufacture, and the development and manufacture of software products.
- (b) Restricted. Investment in restricted sectors is subject to various limitations and approval requirements. This category includes 38 different industries, such as highway passenger transportation, value-added telecommunication services, and banks, insurance companies or securities companies. However, these restrictions may be relaxed in the central and western regions.
- (c) Prohibited. Certain businesses are not open to foreign investment and fall into prohibited category. This category includes 36 different industries, such as air traffic control, post offices and consulting service on Chinese legal affairs..
- (d) Permitted. Investments that do not fall into any of the above three categories are generally permitted.

Foreign investors also need to be aware that certain investment structures may not be permitted at all or foreign investment may be restricted to certain kinds of business vehicle. For example, a joint venture (“**JV**”) rather than a WFOE is permissible for certain sectors. In addition, the amount of interest that a foreign party can hold may vary from sector to sector, such as up to a 70% interest or a minority interest of up to 49% in some cases.

In October, 2016, China has streamlined its foreign investment regime by replacing the original approval process for the establishment and alteration of FIEs in most industries with an online record-filing system. Generally, for industries not subject to the “special market entry administrative measures prescribed by the State” , which refers to the industries (i) prohibited or restricted to foreign investments, and (ii) encouraged to foreign investments but subject to minimum shareholding for Chinese shareholders or management personnel requirements, in each case specified in the 2015 Catalogue of Industries for Guiding Foreign Investment ( “Negative List”), foreign investors no longer need to obtain MOFCOM’s approval for the incorporation or alteration of the FIEs, instead, foreign investors only need to file certain documents via MOFCOM’s online filing system(<http://wzzxbs.mofcom.gov.cn/>) within 30 days after the business license is issued (for incorporation) or the alteration matter is occurred (for alteration).

### **3.4 Investment Incentives**

(a) Incentives at National Level

The PRC law offers various incentives to FIEs, mainly tax reductions and tax exemptions.

*Import Incentives*

Pursuant to the *Notice of the State Council on Adjusting the Taxation Policies for Imported Equipment* promulgated by the State Council in 1997, and *Notice on Import Taxation Policy for Further Encouraging Foreign Investment* promulgated by General Administration of Customs in 1999, tariffs at importation should be exempt with respect to:

- ◆ Imported equipment for foreign invested projects in “encouraged” sectors in the Catalogue and with technology transfer involved. The imported equipment should be for self-use and within the total amount of investment.
- ◆ Imported equipment for self-use in the projects under foreign government loans and loans from international financial institutions and those provided by foreign businessmen for processing trade and not evaluated.
- ◆ Imported equipment of FIEs under “encouraged” sectors in the Catalogue, foreign-invested R&D centers, FIEs with advanced technology or FIEs with export-oriented products, provided that such equipment cannot be manufactured in China or their capacities cannot meet relevant requirements, and they should be for self-use and for technology reform.
- ◆ The technologies and matching components and parts imported along with the above equipment in accordance with relevant contracts.

An FIE is subject to examination for recognition of “encouraged” sector to enjoy above exemption. With the confirmation letter issued by competent authorities and other required documents, the exemption application shall be submitted to the customs for examination and verification.

*Export Incentives*

Exporters, including foreign trade operators and manufacturing enterprises without the qualification for export that export via agencies, after export customs declaration and financial accounting for sales, may report to the office of the State Administration of Taxation for approval of rebate of value-added tax (“VAT”) or consumption tax. Such rebate policy also applies to FIEs.

Tax rebate for export is limited to certain types of products such as costumes, mechanical and electrical products, etc. The scope of tax rebate of exported goods, tax rebate rate and tax rebate methods may be adjusted by the State from time to time.

*Income Tax Incentives*

Special incentives are granted for investment in western China.<sup>9</sup> FIEs established in western areas of China under “encouraged” sectors under the Catalogue or *Catalogue of Prioritized Industries for Foreign Investment in Central and Western China*, as revised in 2013, may pay the enterprise income tax at a reduced rate of 15% until year 2020.

An FIE is subject to examination and approval for recognition of “encouraged” sector to enjoy above reduction. With the confirmation letter issued by competent authorities and other required documents, the reduction application shall be submitted to competent tax authorities for examination and verification.

(b) Incentives at Local Level

Subsidies are usually granted to foreign investors by various levels of local governments. The fund may be granted to FIEs directly. Or, it may be given as a rebate of tax, a rebate of price for land transfer, etc. The object and amount of subsidy grant will depend on industrial policies of local places. For example, in most places of China, high-tech oriented industry is the most welcomed and encouraged sector and various incentives will be offered to operators in the industry.

## 4 STRUCTURES FOR DOING BUSINESS

### 4.1 Governmental Participation

China has been developing to be a market economy country. Chinese government no longer directly requires its participation in every aspect of the economy activities. However, the government still controls and owns the majority equity interests of large SOEs, and members of the board of directors of those SOEs are appointed by the government. Meanwhile, many large SOEs continue to hold monopoly power, including the industries of public utilities, transportation and the manufacturing of products that are considered to be of strategic economic importance by the government, such as petroleum, steel, coal, etc. Some industries, which are considered to be vital to national security and economy, such as national defense, civil aviation, power grid, etc., are still not open to foreign investors or even private Chinese investors.

For JVs where a Chinese SOE is to contribute its tangible assets as its capital contribution into the JV, the State-owned Assets Supervision and Administration Commission or equivalent authorities will be involved in approving the asset appraisal and contribution, which adds more complexity to the structure and ongoing business.

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<sup>9</sup> For the purpose of income tax incentives, western China refers to 16 provinces, autonomous regions or municipalities directly under the central government, including Shanxi Province, Qinghai Province, Gansu Province, Sichuan Province, Yunnan Province, Guizhou Province, the Inner Mongolia Autonomous Region, the Tibet Autonomous Region, the Guangxi Autonomous Region, the Ningxia Autonomous Region, the Xinjiang Autonomous Region and Chongqing City, the Xinjiang Production and Construction Corps, as well as Xiangxi Tujia Autonomous Region in Hunan Province, Enshi Tujia Autonomous Region in Hubei Province and Yanbian Chaoxian Automous Region in Jilin Province, according to *Circular on Issues Concerning Tax Policies for In-depth Implementation of Western Development Strategies (Cai shui [2011]58)*.

Nevertheless, support from national and regional government plays a significant role in establishing, developing and operating enterprises. The role of government is also considerable in determining market access for products, in mergers and acquisitions, and in terms of the general management of risk, including regulatory and commercial risks. Businesses seeking to enter China need to develop a comprehensive understanding of the government and its constituent institutions.

## 4.2 Foreign Investment Structures

Foreign investors are allowed to establish subsidiaries, representative offices, branch offices, venture capital enterprises, and partnership to operate their business in China. A subsidiary usually takes one of the following forms: equity joint venture (“EJV”), cooperative joint venture (“CJV”) and WFOEs. Almost all of the EJVs, CJVs and WFOEs are independent legal entities and limited liability companies under the *Company Law of the PRC*, as revised in 2013. The registration of those aforementioned entities is subject to a nominal charge. The time it will take for such registration may vary due to different projects they have and different industries they are in.

### (a) EJVs

An EJV is an independent legal person with limited liability. The investors contribute capital to enterprise and enjoy rights to a percentage of the profits equal to their contributed capital. Capital contributions may be in cash and/or in-kind (such as land use rights, buildings, intangible assets or equipment), and the contribution can be made in installments at the parties’ discretion subject to the business needs of the EJV. Normally the ratio of equity interests held by the foreign investor(s) in an EJV must be at least 25%. Any transfer of equity interests is also subject to the consent of the other EJV partner(s).

Board of Directors is the highest authority of the EJV. The Chairman of the Board, who is usually the EJV’s legal representative, appointed by one party, may be a Chinese or a foreign national, while the Vice Chairman is traditionally appointed by the other party. Managerial staff consists of a General Manager in addition to other board-appointed officers, such as a Chief Financial Officer or Deputy General Manager. It is common that if one party nominates the General Manager, the other party will nominate the Chief Financial Officer.

### (b) CJVs

A CJV is often established as a company with limited liability and legal person status, but the PRC law allows it to be a non-legal person, akin to a partnership, without the protection of limited liability. However, it should be noted that although it is legally feasible to establish a CJV without legal person status, it is difficult to obtain government approval to do so in practice due to lack of applicable tax and other related laws or regulations regarding the non-legal person entity in China.

Compared to an EJV, the legal regime offers more flexibility to a CJV, where the profit-sharing ratio does not necessarily have to reflect the ownership

interest ratio of each investor but may be decided by the investors based on their joint venture contracts. The parties may provide cooperation conditions instead of capital contributions to the CJV.

The highest authority of the CJV is generally a Board of Directors, in the case of a limited liability CJV, or a Joint Management Committee, in the case of a CJV without legal person status. There must be at least three members on the Board of Directors or Joint Management Committee, which can be served by Chinese as well as foreign national.

(c) WFOEs

A WFOE is a limited liability company with legal person status and entirely owned by its foreign investor or investors. Currently, WFOE is the most common utilized foreign investment vehicle in China.

Unlike the EJVs and CJVs, a meeting of the shareholders is the highest authority of a WFOE. The production and operation plans of the WFOE are required to be filed with the relevant Chinese entity responsible for monitoring the activities of the WFOE. Such filings are only for recording purposes, and legislation expressly prohibits interference in the operation and management activities of a WFOE that conducts its business according to its articles of association.

(d) Representative Offices

Setting up a representative office is an option for foreign companies who intends to establish a simple form business presence in China. A representative office is not allowed to engage in direct business activities, and is restricted to performing liaison, information gathering and market research. Representative offices are not permitted to recruit personnel directly, but must do so through the government sponsored recruitment agencies. Also, after the promulgation of new representative office rules in 2010, there are more restrictions on maintaining a representative office in China, such as annual reporting system and limitation of business term, etc.

The establishment of a representative office does not require government pre-approval for most industry sectors, as it is only necessary for the representation office to carry out registration with the local branch of SAIC. For certain special industries, such as shipping, aviation, securities, publishing, and travel agency, pre-approval must first be obtained from the industry administrative authority in charge of the administration of the relevant industry before registration.

(e) Branch Offices

A foreign company can set up a branch office in China if certain prerequisites, which may vary from industry to industry, can be met. Such branch office does not have independent legal person status and its parent company will be held liable for all of its business activities in China. For certain regulated industries, it is required to obtain the approval from the industry administrative authority,

such as China Insurance Regulatory Commission or CBRC. In contrast to representative offices, branch offices can engage in revenue-generating activities.

(f) Foreign Invested Venture Capital Enterprise

RMB fund may now be established pursuant to the *Administrative Provisions for Foreign-Invested Venture Capital Enterprises* as revised in 2015 (“**Provisions**”). The Provisions provides that a foreign invested venture capital enterprise (“**VCE**”) may be established by a foreign investor, independently or jointly with a Chinese company, enterprise, or other entity. The VCE is a Chinese entity, in the form of non-legal person or limited liability company. The investors of the VCE without legal person status are severally liable for the VCE’s debts. However, such investors may also agree upon in the VCE contract that the requisite investors bear the several liability, while the liabilities of the other investors are limited to their subscribed capital contribution.

The advantages to the VCE include that, without establishing an offshore structure, it can deploy funds directly and quickly to Chinese portfolio companies which are eligible for listing on the Chinese stock exchanges. However, VCEs may not be listed on offshore stock exchanges, such as the Hong Kong stock exchange or NYSE, and it remains uncertainties to the tax treatment of the foreign funds upon exit from their investments.

(g) Foreign Invested Partnerships

The State Council issued the *Administrative Measures on the Establishment of Partnership by Foreign Enterprises or Individuals* (“**Measures**”) in February 2014. By lowering the thresholds and simplifying the set-up process, the Measures allow foreigners to use partnership as a vehicle to do business in China.

Foreign invested partnership (“**FIP**”) refers to general or limited partnership established in China by foreign investors or by foreign investors and Chinese investors. Foreign investors may also join existing domestic partnerships which will be converted into FIPs. An FIP may be established upon the approval of the SAIC and its local counterparts without requirements for prior approval from MOFCOM.

The FIP provides substantial flexibility in terms of capital contribution and profit distribution. Partners may make capital contributions to the partnership in cash, or in kind, such as labor, intellectual property, land use rights, building or other property rights. Foreign investors may make their contributions either in exchangeable foreign currencies or in legally acquired RMB. Profit distribution can be arranged according to the partnership agreement, and the ratio of the distribution does not have to correspond to the partners’ respective capital contributions. However, the existing restrictions and regulation of foreign ownership in certain industries still apply to FIPs, as do provisions

concerning taxation, foreign exchange, customs and other matters that apply to FIEs in general.

(h) **Other Business Vehicles**

The sole proprietorship enterprise in China is an unlimited liability company invested by only one natural person who bears unlimited liability for the debts of the enterprise to the extent of his or her personal assets. In contrast, an enterprise invested by only one foreign investor (natural person, company or other forms of entity) is referred as a WFOE, which is limited liability company instead of sole proprietorship enterprise.

Due to lack of applicable laws and regulations regarding undisclosed partnership in China, Chinese courts do not recognize this vehicle but usually treat it as general partnership or loan agreement.

### **4.3 Trusts**

The *Trust Law of the PRC*, promulgated in 2001, defines trust as that the grantor, based on his faith in trustee, entrusts his or her property rights to the trustee and allows the trustee to, according to the will of the grantor and in the name of the trustee, administer or dispose of such property in the interest of a beneficiary or for any intended purpose. There is no limitation on the national of grantor, trustee or beneficiary under the Trust Law. In the event that certain property is prohibited to transfer to foreign individuals or entities, such as cultural relic stipulated in the *Cultural Relics Protection Law of the PRC*, foreign investors cannot act as the beneficiary of such trust property.

After a trust is created, in the event that the grantor dies, or is dissolved or cancelled according to laws, or is declared bankrupt, where the grantor is the sole beneficiary, the trust will be terminated, and the trust property will become his or her legacy or its liquidation property; where the grantor is not the sole beneficiary, the trust will subsist, and the trust property will not become his or her legacy or its liquidation property; where the grantor is one of the co-beneficiaries, his or her right to benefit from the trust shall be treated as his or her legacy or its liquidation property. In the event that the trustee dies, or is dissolved or cancelled according to laws, or is declared bankrupt, the trust property will not be treated as his or her legacy or its liquidation property.

Trust property cannot be enforced unless certain circumstances arises, such as taxes are levied on the trust property, the trustee incurred debts in the course of handling trust property, or the creditors enjoy the priority right to be paid with the trust properties. The claims arising from the administration or disposition of trust assets by the trustee cannot be used to offset the liabilities incurred by the trustee's property or incurred by administration or disposition of other grantor's trust property.

## **5 REQUIREMENTS FOR THE ESTABLISHMENT OF A BUSINESS**

### **5.1 Alien Business Law**

When foreign investors enter Chinese market, the establishment of their business is usually subject to a series of alien business laws and regulations, such as the *Sino-foreign Equity Joint Venture Law of the PRC*, *Sino-foreign Cooperative Joint Venture*

*Law of the PRC, Foreign-invested Enterprise Law of the PRC, the Catalogue, the Provisions, etc.* Please refer to *STRUCTURES FOR DOING BUSINESS* for more detailed information regarding application of those laws and regulations as well as registration requirements.

## **5.2 Antitrust Laws**

A broad range of the PRC laws contain provisions prohibiting anti-competitive activities, such as the *Anti-unfair Competition Law of the PRC* and the *Price Law of the PRC*. The *Anti-monopoly Law of the PRC*, promulgated in 2008, is the primary law to regulate and control anti-competitive activities. Each of NDRC, SAIC and MOFCOM has issued governmental regulations to further interpret aforementioned anti-trust laws or further tackle anti-competitive conducts. Those laws and regulations apply to the monopolistic conducts in all kinds of economic activities within the territory of the PRC or outside the territory of the PRC but exerting the effect of eliminating or restricting competition on the domestic market of the PRC. FIEs within the territory of the PRC are subject to the same regulatory regime as domestic enterprises.

In accordance with the *Provisions of the State Council on Thresholds for Prior Notification of Concentrations of Undertakings (“Decree No. 529”)*, promulgated in August 2008, where a concentration of undertakings reaches certain thresholds as stated in Decree No. 529, the undertaking(s) concerned shall file a prior notification with the competent commerce department of the State Council, and no such concentration may be implemented without the clearance of prior notification. Where a concentration of undertakings does not reach any of the thresholds specified in Decree No.529, but facts and evidence collected in accordance with the prescribed procedures establish that such concentration effects, or is likely to effect, the elimination or restriction of competition, the competent commerce department of the State Council shall initiate an investigation in accordance with law.

## **5.3 Environmental Regulations**

The *Environmental Protection Law of the PRC*, promulgated in December 1989 and revised in 2014, is the national law governing all environmental protection matters in the PRC. Other laws and regulations, such as the *Prevention of Atmospheric Pollution Law* and the *Prevention of Water Pollution Law*, have been enacted to regulate different aspects of the environment. Different provinces and municipalities have also implemented local environmental protection regulations which are of regional application.

Since the *Regulation on Administration of Environmental Protection of Construction Projects* was issued by the State Council in 1998, China has set up a comprehensive environmental impact assessment mechanism affecting the establishment, expansion and renovation of business facilities. The *Environmental Impact Assessment Law of the PRC*, promulgated in September 2003 and revised in 2016, requires all investors, business operators, construction companies, technical consultants and governmental departments to pay increasing attention to environmental compliance. Environment impact assessments are meant to provide an analysis, prediction and

assessment of the potential environmental impacts of building plans and construction projects once they are implemented. The environmental impact report must be prepared by a qualified professional environmental impact assessment institution, which will add costs to the construction projects. Environmental impact assessments form a substantial portion of the due diligence necessary before investing in China. FIEs within the territory of the PRC are subject to all of the environmental laws and regulations applied to domestic enterprises.

#### **5.4 Government Approvals**

Incorporation and operation of FIEs in China is subject to a system of multi-tiered approvals as follows:

(a) **NDRC**

The NDRC co-ordinates development policy and takes a major role in approving foreign investment projects. According to *Administrative Measures for Approval and Record-filing of Foreign Investment Projects*, promulgated in May 2014, in the event that the total investment of an FIE is sufficiently high (projects in the encourage category with total investment amounting to USD 300 million or above, or projects in the restricted category with total investment amounting to USD 50 million or above), an application or proposal to set up an FIE must first undergo the project verification and approval procedures conducted by NDRC or its local counterpart. Along with the project approving procedure, opinions from other relevant authorities are often involved in this process. This approval usually takes 2-3 weeks, provided that all of the documents requested can meet the requirements.

(b) **MOFCOM**

The MOFCOM is responsible for examining, record-filing or approving the establishment of FIEs, including the form of their constitutional documents and the approved scope in which they will be permitted to conduct business. Please refer to *Investment Environment and Limitations on Foreign Investment* for more detailed information regarding the functions of MOFCOM. The MOFCOM process usually takes 2-3 weeks, provided that all of the documents requested can meet the requirements.

(c) **SAIC**

All business entities need to maintain records of corporate documents with local branches of SAIC including basic information regarding directors, shareholders, and the constitutional documents. Following approval, an FIE is required to register with the local branch of SAIC. SAIC will issue the company's business license. Registration with SAIC is subject to a nominal charge and annual inspection. In general, this step takes 1-2 weeks, provided that all of the documents can meet the requirements.

(d) **SAFE**

SAFE is the government authority in charge of regulating all foreign exchange transactions in China. Pursuant to the *Regulations of the PRC on Foreign Exchange Administration*, amended by the State Council in 2008, after an FIE is approved and established in China, it needs to apply for foreign exchange registration with SAFE in order to be allowed to use foreign exchange in the ordinary course of its business.

(e) Other Authorities

After obtaining the business license, an FIE further needs to make certain registrations with relevant government authorities, including without limitation to the tax registration, foreign exchange registration, customs registration. From 2015, the organization code certificate and the certificate of taxation registration have been integrated into the business license mentioned in item (c) above. An FIE no longer needs to apply for the organization code certificate and the certificate of taxation registration separately.

If the FIE is in a specific business sector, special approvals of the FIE's business scope may be necessary. In China, when the described business falls under the supervision of a particular government authority, an approval from such body may be required in addition to a general record-filing or approval from MOFCOM. For example, an FIE that manufactures pharmaceuticals would need its business scope approved by the State Food and Drug Administration; an FIE engaged in information technology may require approval from the Ministry of Information Industry. The time it will take for this procedure may vary due to the different requirements of different authorities.

## 5.5 Insurance

Enterprises in China are required to carry insurance according to their business scope and the industry they are in. For example, for construction projects, enterprises usually carry property insurance, contractor's all risks insurance, third party liability insurance, etc. All employers and employees are required to contribute to basic social insurance and housing fund schemes. Mandatory social insurance consists of pension, medical, maternity, unemployment and occupational injury insurance. The amount the employer and employee must contribute every month is stipulated by local regulations. Enterprises with vehicles are required to carry Compulsory Traffic Accident Liability Insurance.

State investment, private investment and foreign investment are all allowed to enter insurance industry. The *Regulation of the People's Republic of China on the Administration of Foreign-funded Insurance Companies* issued by the State Council in December 2001 and amended in 2016 and its Implementation Rules promulgated in May 2004 are meant to strengthen and improve the supervision and administration of foreign-invested insurance companies, which applies to Sino-foreign joint venture insurance companies, wholly-foreign owned insurance companies and branches of foreign insurance companies.

## 5.6 Licenses/Permits

Besides the general approval/registration certificate for the establishment of FIE and the business license, an FIE may need to apply for specific licenses or permits to engage in different business in China. Usually, it is the FIE, instead of its investor, that applies for such licenses or permits. The requirements and application procedures of such licenses and permits are decided by the business scope of the FIE. Most of such licenses and permits are the same as those of domestic enterprises, while some are special for FIEs. For example, an FIE that intends to engage in the business of food circulation has to apply for a specific food circulation permit from the AIC prior to the issuance of its formal business license. It takes approximately one week to get this permit. If an FIE intends to engage in printing business, it has to apply for print permit after it has obtained the business license. The procedures for such application will take more than 10 weeks.

## **6 OPERATION OF THE BUSINESS**

### **6.1 Advertising**

The *Advertising Law of the PRC ("Advertising Law")*, promulgated in October 1994 and amended in 2015, which applies to advertisers, advertising operators, disseminators and advertisement endorsers that engage in advertising activities in China, is the basis for all advertising laws in China. The Advertising Law defines the conception of “false advertisement” and it mainly exerts the following requirements and restrictions on advertising:

- (a) All advertisements in China, where there are statements on the performance, function, place of origin, purpose, quality, ingredients, price, producer, valid period and guarantees of the product, or the content, provider, form, quality, price and guarantees of the service, such statements shall be accurate, clear and explicit.;
- (b) Advertisements shall not use state symbols, obstruct public order or act against good social customs;
- (c) Advertisement shall not contain contents that discriminate on the basis of nationality, race, religion or sex or contains obscene, eroticism, gambling, superstitious, terrifying or violent contents;
- (d) Use of comparative advertising requires substantiation and must not denigrate the products or services of other producers or dealers;
- (e) It provides basic guidelines concerning advertising of certain special industrials such as pharmaceuticals and medical apparatus, dietary supplements, alcohols, education, real estate, etc.;
- (f) Advertisers must not conduct unfair competition activities;
- (g) Advertising personnel must be qualified and properly licensed;
- (h) Advertisements in certain business sectors must be approved in advance releasing the advertisements for public viewing;

- (i) Advertisements shall not contain "state-level", "the highest-grade", "the best" or other similar words;

## **6.2 Attorneys**

It is necessary to engage with a local counsel for foreign investors to do business in China. China has its unique legal system combining both civil law tradition and common law development. The governmental administration on business in China is relatively strict and the legislative development is also very quick. Engaging with a prestigious local counsel is very important to ensure the success in China. There are many ways to find a suitable local counsel. Foreign investors may directly search local counsels through state and local bar associations in China or through intermediaries, such as law firm network, chamber of commerce, law firm ranking, etc.

Under the current legal system of China, foreign law firms, such as US law firms and European law firms, are not authorized to practice Chinese law. The foreign law firms having offices in Chinese cities are only their representative offices. They are not qualified to practice Chinese law, but can practice their home country law in China.

The attorney's fees of local counsels are usually charged on hourly rate basis. If the work scope is quite clear, the legal fee could be agreed on a flat fee basis.

## **6.3 Bookkeeping Requirements**

- (a) EJVs

EJVs must prepare quarterly and annual accounting statements for distribution to the JV partners, the local tax bureau and other governmental authorities. Such statements must be audited by a Chinese registered accounting firm. The foreign party may also conduct a separate audit of the EJV's accounts at its own expense, but such audits are not binding under the PRC law.

- (b) CJVs

CJV accounts must be audited and verified by an accountant engaged individually or jointly by the parties and registered in China. A CJV without legal person status must keep unified account books and the parties must also keep their own separate account books.

- (c) WFOEs

Accounting rules applicable to WFOEs are similar to those of EJVs. All accounting records must be kept in Chinese, and for those written in a foreign language, notes in Chinese must be included. Only Chinese-registered accountants may verify annual financial statements. WFOE account books must be maintained within China, and annual financial statements must be submitted for the record to the local financial and tax authorities.

## **6.4 Business Ethics/Codes**

Different industries in China have different business ethics/codes, part of which are issued by competent governmental authorities and have legislative effectiveness,

such as the *Enterprise Accounting Guideline* issued by Ministry of Finance, or the *Listed Companies Governance Guideline* issued by CSRC; however, the others are issued by trade associations or other self-governance entities and only have limited effectiveness, such as the *Ethical and Professional Standards in Practice for Practitioners in Security Business* issued by Securities Association of China, and the Business Standards of Internet Advertisement issued by China E-Commerce Association.

## 6.5 Consumer Protection Laws

*Law of the PRC on the Protection of Consumer Rights and Interests* ("**Consumer Protection Law**"), promulgated in October 1993 and amended in October 2015, is the principal law providing protection on rights and interests of consumers in purchasing and using commodities or receiving services for daily consumption. The Consumer Protection Law stipulates the principals of voluntariness, equality, fairness, honesty and credibility that business operators and consumers shall follow in transactions. SAIC also issued *Opinions on Enhancing the Protection of Consumers' Rights and Interests in the Internet Sector* in October 2016 to further guide the protection of consumers' rights and interests in internet sector. Provincial or municipal regulatory authorities also issued relevant local regulations to enhance protection of consumer's interests. Chinese and foreign enterprises are equally required to follow those consumer protection laws and regulations in their business operation.

## 6.6 Construction

In China, for any given construction project, permits from competent Land and Resources Bureau, Planning Bureau, and Construction Commission have to be obtained prior to commencement of such construction project, including (a) the State-owned Land Use Certificate; (b) the Construction Land Planning Permit; (c) the Construction Works Planning Permit; and (d) the Construction Works Commencement Permit. It usually takes three to four weeks for examination of submitted documents and issuance of the permits stated above, provided that all of the documents requested can meet the requirements. There is no charge to get such permits.

The land in China is either State-owned, in the case of urban area of a city, or collectively owned, in the case of rural area of a city, unless otherwise specified by law. Therefore, land use rights has be to obtained either by compensatory grant from the government or allocation by the government without payment of land premium. Allocated land use rights cannot be transferred, assigned or let.

The major costs of construction of a project mainly include: (a) the costs for acquisition of land use right, inclusive of the land premium, the deed tax and other relevant fees; (b) the costs for relevant services, such as the design fee, supervision fee and survey fee; (c) the costs for construction to the contractors for construction works; and (d) the costs for purchase of relevant materials and equipments, such as elevators and building materials.

## 6.7 Contracts

Investors can freely enter into local contracts and agree on governing laws over the contracts (such as PRC Law or New York State Law, etc.). However, certain contracts such as joint venture operation contracts have to be governed by Chinese Law. The *Contract Law of the PRC* (“**Contract Law**”), promulgated in March 1999, is the fundamental law that provides a detailed set of provisions that governs the activities of contract in China. The Contract Law stipulates different kinds of contracts to protect the lawful rights and interests of contracting parties.

In addition, the *Labor Contract Law of the PRC*, promulgated in June 2007 and amended in December 2012, is a specialized contract law providing administration over contract relationship between employers and employees in China. It applies to execution, performance, revision, rescission and termination of labor contracts between employees and any enterprises, private non-enterprise entities, individual economic organizations and other organizations within the territory of the PRC.

## **6.8 Price Controls**

The *Price Law of the PRC*, promulgated in May 1998, provides control over pricing in domestic market in order to stable the general level of market price, rationally allocate resources, and protect lawful rights and interests of consumers and business operators. Other PRC laws also contain provisions on price control, such as the *Anti-unfair Competition Law of the PRC* and the *Anti-Monopoly Law of the PRC*.

The *Anti-unfair Competition Law of the PRC* provides that no business operator may sell commodities at a price lower than costs for the purpose of excluding competitors. The *Anti-monopoly Law of the PRC* stipulates that monopoly agreements containing price fixing provisions are forbidden where they have an effect in the market notably. In the case of vertical agreements, fixing resale prices and restricting minimum resale process are both prohibited under the *Anti-monopoly Law*.

## **6.9 Reductions or Return on Capital**

FIEs can repatriate their investments prior to expiration of the operation term of the FIEs through reduction of registered capital.

A foreign party's investment in a CJV may be repatriated, in full or in part, prior to the expiration of the term of the joint venture under the condition that the joint venture contract provides that the ownership of all fixed assets of the CJV shall revert to the Chinese party upon expiration of the term of the CJV.

## **6.10 Sale of Goods**

Parties to the contracts of purchase and sales of goods may determine the manner, time and place of sale of goods upon mutual agreement. In the event of absence of such terms and conditions, for domestic sales, the parties should deliver the goods and pay the contract price in accordance with Chapter 9 of the Contract Law; for international sales, the *United Nations Convention on Contracts for the International Sale of Goods* may also apply.

## **6.11 Trade Associations**

There are a large number of trade associations for various industries in China. In tradition, most of trade associations in China are under the supervision of relevant governmental authorities and act as the implementing branches of such authorities. The investors engaging in the relevant business are required to join those trade associations so that the authorities can effectively supervise such business practitioners. However, nowadays, increasing number of trade associations are self-governed entities and separated from the governmental authorities. Only certain industries in China still require mandatory participation in relevant trade associations, such as the Securities Association of China, which requires securities companies to join in. Currently, the investors of most industries may choose to, but are not obligated to, join relevant trade associations.

## **7 CESSATION OR TERMINATION OF BUSINESS**

### **7.1 Termination**

FIEs may be terminated upon the occurrence of specific events, such as bankruptcy, an event of force majeure, expiration of term of operation, revocation of business license, the inability to operate due to business losses or other conditions expressly stated in the joint venture contract or articles of association. The termination of an FIE is subject to the record-filing procedure or approval of relevant government authorities, usually the authorities that recorded or approved its establishment.

In addition, a termination will not be approved or recorded without the proper liquidation of the FIE. Liquidation in China is the process of disposing and settling all of the assets and liabilities of the FIE by a liquidation committee, which is composed of shareholders, in the case of a limited liability company, or the directors and the candidates determined by the board of shareholders, in the case of company limited by shares. After paying off the liquidation expenses, the salaries, social insurance premiums, the statutory compensation premiums of the staff members, the due and payable taxes, and the debts of the company to creditors, the remaining assets may be distributed to shareholder. During the liquidation, the company continues to exist, but it shall not carry out any business activity irrelevant to the liquidation. Once the liquidation process is completed, the liquidation committee shall ensure that the FIE deregister with relevant governmental authorities, including SAIC, the taxation authority and SAFE.

For VCE without legal person status, in the event that all investments are sold, all its debts are paid off and all the remaining assets are distributed to investors, the dissolution and termination procedure may be initiated without the aforementioned approval, provided that such VCE shall submit, at least 30 days in advance prior to the effectiveness of the said dissolution, a written description to the examination and approval authority for record filing.

### **7.2 Bankruptcy and Restructuring**

The *Bankruptcy Law of the PRC* (“**Bankruptcy Law**”), promulgated in June 2007, intends to effectively codify bankruptcy law and the associated procedures for all entities that hold legal person status, including private companies, foreign enterprises, limited liability companies, companies limited by shares, and state owned enterprises.

The Bankruptcy Law offers three different types of bankruptcy proceedings: liquidation, restructuring and settlement with creditors. It also allows the conversion of restructuring and settlement proceedings into bankruptcy proceedings, which in turn can be terminated if the debtor or a third party has repaid all the debtor's debts.

According to the Bankruptcy Law, the debtor's representative may not move from his or her residence or hold any director or senior management positions in any other enterprise once bankruptcy proceedings have begun. In addition, the Bankruptcy Law imposes civil liability on directors, supervisors, and senior managers who commit a breach of their obligation of loyalty or due diligence and cause the enterprise's bankruptcy. The punishment includes being prohibited from acting as a director, supervisor, or senior manager of any enterprise for three years from the day of the conclusion of bankruptcy procedure.

A creditor or a debtor may directly petition the court to restructure the debtor. The Bankruptcy Law requires specific matters to be included in the proposed restructuring plan, such as debtor's business plan, classification of debts, debt adjustment scheme, debt repayment scheme, time limit for execution of the plan, time limit for monitoring and supervising the execution of the reorganization plan, and other schemes beneficial to the debtor's restructuring. Once the restructuring plan has been approved by the court, the debtor is responsible for its implementation. During the restructuring period, the court may declare the debtor bankrupt upon an application made by the administrator or a materially interested party under certain circumstances.

## 8 INTELLECTUAL PROPERTY

### 8.1 General

The PRC law protects different categories of IP, such as patents, trademarks and copyright.

Patents are mainly governed by *Patent Law of the PRC*, as amended in 2008, and its implementing rules (“**Patent Law**”); Trademarks are mainly governed by *Trademark Law of the PRC*, as amended in 2013, and its implementing rules (“**Trademark Law**”); and Copyright is regulated under *Copyright Law of the PRC*, as amended in 2010, and its implementing rules (“**Copyright Law**”). The legislation has been revised or amended several times to be in line with the relevant provisions of the TRIPs, following China's entry into WTO in 2001.

China is a party to and has ratified several IP related international treaties, mainly include:

- (a) Paris Convention for the Protection of Industrial Property (since 1985);
- (b) Madrid Agreement Concerning the International Registration of Marks (since 1989), Paris Convention for the Protection of Industrial Property (since 1985);
- (c) Berne Convention for the Protection of Literary and Artistic Works (since 1992);
- (d) Convention Establishing the World Intellectual Property Organization

(WIPO, since 1980); and

- (e) TRIPS (since 2001).

## 8.2 Patents

- (a) Scope of Protection

PRC law provides protection for patents including invention patents, utility model patents and design patents. To be patentable, an invention or utility model must be novel, inventive and practically applicable. A design must have distinctive features which are easy to recognize and not conflict with other prior and existing legal rights of other persons. The law excludes certain inventions from patent granting, such as scientific discoveries.

- (b) Patent Registration

Patent application for registration should be made to the SIPO. The procedure of the patent application is made up of the following steps:

### *Preliminary Examination*

It is proceeded to ensure the patent application meets the filing requirements in law. Patents for utility models or designs will be granted if there is no “cause to reject”. The patent application for inventions that survive preliminary examination, however, will be subject to further substantive examination as requested by the applicant.

### *Publication (for inventions only)*

After 18 months from the application date, the SIPO will publish the application or it may publish the application earlier per the request of the applicant.

### *Substantive Examination (for inventions only)*

At any time within three years from the application date, the SIPO will make a substantive examination on the patent application upon the request of the applicant.

### *Granting of Patent Right*

If the SIPO, after a series of examination (preliminary examination for utility models and designs, substantive examination for inventions), concludes that there is no “cause to reject” the patent application, it will issue a certificate of patent. Patent rights become effective as of the date of publication.

- (c) Rights of the Patentee

The patentee has the exclusive right to use its patented inventions, utility models or designs and prevent others from using it without his consent.

- (d) Duration of Patents

The duration of an invention patent is 20 years, the duration of the patent for a utility model or design is ten years, counted from the date of application. A

patent may be terminated before the expiration of its duration if an annual fee is not paid or the patentee waives his patent by a written declaration. These periods are not renewable.

(e) Enforcement of Patent Rights

The SIPO and courts are responsible for enforcing patent rights and they can impose the following penalties on patent infringers:

- ◆ Administrative fines;
- ◆ Confiscation of illegal proceeds arising from the infringement;
- ◆ Injunctions prohibiting the infringement; and
- ◆ Damages.

The infringer can also be criminally liable for serious violations, for example, if the illegal turnover is more than RMB200,000 (about US\$29,255).

(f) Transfer

Both patent applications and patents may be transferred, provided that a written contract should be concluded by the parties concerned and such contract should be filed for registration with SIPO. In addition, patents may be licensed or pledged on the premise that a written contract is concluded and it should be duly recorded in competent authorities.

### 8.3 Trademarks

(a) Scope of Protection

Pursuant to PRC law, any mark including word, design, letter, number, 3D (three-dimension) mark, color combination or sound, or the combination of the elements above mentioned, that can distinguish the commodities of the natural person, legal person or other organization from those of others, can be subject to an application for trademark. The trademark for which an application for registration is filed shall have distinctive characteristics easy to identify, and may not conflict with the legal rights acquired by others in priority.

The following types of trademarks can be registered in China:

- ◆ Product trademarks that are used to identify products;
- ◆ Service trademarks that are used to identify services;
- ◆ Certification trademarks that are controlled by the organizations with supervising power over some kind of commodities or services yet are used by the units or individuals apart from the said organizations on their commodities or services, thus to certificate the origins, raw materials, manufacturing methods, quality or other specific characteristics of the said commodities or services;
- ◆ Collective trademarks that are registered in the name of groups, associations or other organizations and that are provided to the members

of the said organizations for business activity use, thus to indicate the membership of the users in the said organizations.

- (b) Certain marks may not be used as trademarks such as those identical with or similar to the national name, national flag or medals of China. Furthermore, certain marks may not be registered in China such as those simply indicating the quality, raw materials, functions, use, weight or other characteristics of the products concerned. Trademark Registration

Trademark application for registration should be submitted to the Trademark Office. The Trademark Office will make a preliminary examination to ensure that the trademark is in conformity with filing requirements under law and grant preliminary approval and publish the trademark. Within three months from the date of publication, any person may file an opposition to the trademark which has been given preliminary approval. If no one files such opposition, the Trademark Office will approve the registration of the trademark and publish notice of registration.

The principle of reciprocity will apply when the applicant is a foreigner or foreign enterprise with respect to the formalities for notarizing and authenticating.

- (c) Rights of the Owner of a Registered Trademark

The owner of a registered trademark can use the mark exclusively and prevent others from using the mark without his consent. The right to exclusive use of a registered trademark shall be limited to trademarks which have been approved for registration and to commodities on which the use of a trademark has been approved

- (d) Duration of Registered Trademark

The period of validity of a registered trademark is ten years from the date of approval. Trademarks are continuously protected, subject to renewal application to the Trademark Office.

- (e) Enforcement of Trademark Rights

The SAIC and the court are responsible for enforcing trade mark rights. The liabilities and remedies are similar to those for patents (see above, Patents).

- (f) Protection of Well-Known Trademarks

PRC law provides protection for well-known trademarks. The following factors will be taken into account in recognition of a well-known trademark:

- ◆ Cognition of the mark among the relevant public;
- ◆ Length of continuous use of the mark;
- ◆ Continuous length of time, degree, and geographical scope for promoting the mark;
- ◆ Record of protection of the mark as a well-known mark; and

- ◆ Any other factors related to the mark's well-known status.

Pursuant to PRC law, an unregistered trademark which is recognized as well-known can be protected against registration or use of a trademark that is a reproduction, imitation, or translation of such well-known trademark on same or similar goods. A registered trademark which is recognized as well-known can be protected from registration or use of a trademark that is a reproduction, imitation, or translation of such well-known trademark on different or dissimilar goods.

(g) Transfer

To transfer a registered trademark, the transferor and transferee should enter into a transfer agreement and submit the agreement to the Trademark Office for verification and approval.

A registered trademark can also be licensed or pledged. Licenses and pledges should be set out in writing and duly recorded with the Trademark Office.

## 8.4 Copyright

(a) Scope of Protection

Under PRC law, copyright applies to intellectual creations in literary, artistic and scientific domains, provided they are capable of being reproduced in a tangible form. The Copyright Law does not apply to documents of a legislative, administrative or judicial nature, news, works of folk literature, etc.

Unlike patents and trademarks, copyright will be automatically granted from the work's creation without registration. However, parties can voluntarily register their works with competent authority for the purpose of providing preliminary evidence to resolve copyright disputes arising from copyright ownership.

(b) Rights of Copyright Owner

Copyright includes the following types of personal rights and property rights:

- ◆ Right of publication;
- ◆ Right of authorship;
- ◆ Right of alteration;
- ◆ Right of integrity;
- ◆ Right of reproduction;
- ◆ Right of distribution;
- ◆ Right of rental;
- ◆ Right of exhibition;
- ◆ Right of performance;
- ◆ Right of projection;

- ◆ Right of broadcasting;
- ◆ Right of dissemination via information network
- ◆ Right of cinematography;
- ◆ Right of adaption;
- ◆ Right of translation;
- ◆ Right of compilation; and
- ◆ Other rights to which a copyright owner shall be entitled.

(c) Duration of Copyright

The protection of an author's rights of authorship, alteration and integrity is not subject to a time limit.

With respect to a citizen's work, the term of protection for the right of publication and the rights under items (5)-(17) as listed above is the life of the author plus 50 years after his decease, and ends on 31 December of the 50th year after the author's decease.

With respect to a work of a legal person or other organization, the term of protection for the right of publication and the rights under items (5)-(17) as listed above is 50 years and ends on 31 December of the 50th year after the work's first publication.

(d) Enforcement of Copyright

The General Administration of Press and Publication and the courts are responsible for enforcing copyrights. The liabilities and remedies are similar to those for patents (see above, Patents).

(e) Transfer

The property rights attached to copyright may be transferred, licensed or pledged. Pledges of such rights should be set out in writing and registered with the National Copyright Administration of the PRC.

## 8.5 Trade Secret

Know-how is protected under PRC law as a type of trade secret. Pursuant to *Anti-Unfair Competition Law of the PRC*, promulgated in 1993, "trade secret" means technical information and business information that is unknown to the public, can bring economic benefits to the right owner, is of a practical nature and is protected by confidentiality measures taken by the right owner. The holder of trade secret is entitled to benefit exclusively from the information and prohibit others from using and disclosing it without his consent.

Trade secret can also be protected through contractual terms, which are often applied between employees and employers or between a company and its suppliers or distributors.

The SAIC and the courts are responsible for enforcing rights attaching to trade secrets. The liabilities and remedies are similar to those for patents (see above, Patents).

Protection for trade secret lasts for as long as the information remains confidential.

## **8.6 Licenses**

### **(a) License of Patent, Trademark and Copyright**

Under PRC law, patents, trademarks and copyright can be licensed. (See above, respectively, Patents, Trademarks and Copyright)

### **(b) Anti-Monopoly Law and Licenses**

The *Anti-Monopoly Law of the PRC* states that it shall apply with respect to business operator's acts of abusing intellectual property rights to exclude or limit competition, without defining the acts of "abusing intellectual property rights". The law is still in its infancy and has not identified how to apply it in the area of IP.

### **(c) Restriction on Royalties**

The PRC law has no statutory restrictions on the amount of royalties from licenses. However, foreign investors which licensed their IPs to FIEs and implemented high rated royalties for the purpose of tax avoidance are in violation of PRC tax laws and the relevant royalty rate may be adjusted by Chinese taxation authorities. Please refer to TAX for more details.

### **(d) Licensing Agreement between Foreign Enterprises and WFOEs**

In China, WFOEs were essentially conceived for encouraged manufacturing activities that were either export orientated or introduced advanced technology, and also have been used as providers of services such as consulting and soft development and management.

The foreign parent company normally licenses IP to its WFOEs in China by entering licensing agreements. However, in consideration of the weak enforcement of IP laws in China, the parent company may impose certain restrictions on such licenses. Under such circumstance, the WFOE, as the licensee, enjoys very limited licensing rights.

## **9 FINANCIAL FACILITIES**

### **9.1 Banking System**

#### **(a) Development of Banking Sector**

The People's Bank of China ("PBC" ) was established on December 1, 1948. As a central bank, it had been exercising all the functions of banking regulation and controlled all banking businesses throughout China until the establishment (or reorganization) of four specialized commercial banks in 1980s, including the Industrial and Commercial Bank of China ("ICBC"), China Construction Bank ("CCB"), Bank of China ("BOC") and Agricultural Bank of China ("ABC") which took over the banking businesses from PBC.

Around 1995, policy-orientated lending businesses were entrusted to three new established policy banks, including the China Development Bank (“**CDB**”), the Agricultural Development Bank of China (“**ADBC**”) and the Export-Import Bank of China (“**Eximbank**”).

In 2003, the CBRC was established to take over the regulatory functions from PBC so that the later can concentrate on monetary policy issues. Upon such transformation of functions, PBC has been concentrated on formulating and implementing monetary policy while CBRC has been concentrated on regulating financial institutions, capital adequacy and restructure of banking sector.

(b) Major Operators in Banking Sector

*PBC*

The main functions of PBC include:

- ◆ Formulating and implementing monetary policy in accordance with law;
- ◆ Issuing the RMB and administering its circulation;
- ◆ Preventing and mitigating systemic financial risks to safeguard financial stability;
- ◆ Maintaining the RMB exchange rate at adaptive and equilibrium level and holding the managing the state gold reserves;
- ◆ Managing the State treasury as fiscal agent;
- ◆ Providing guidance to anti-money laundering work in the financial sector and monitoring money-laundering related fund movement; and
- ◆ Other functions prescribed by the State Council.

*Four Specialized Banks*

The main functions of four specialized banks are classified as following:

- ◆ CIBC: to handle industrial and commercial credits and international business.
- ◆ CCB: to lend long-term funds for construction projects such as infrastructure projects and urban real-estate development.
- ◆ BOC: to manage foreign exchange transactions and reserves, and trade finance.
- ◆ ABC: to provide funds for the agricultural sector.

Since 2004 the four specialized banks have all completed shareholding system reform, which would be favorable for them to establish standardized corporate governance for modern commercial banks, to restructure the financial system and to reinforce minimum capital requirement for financial enterprises.

*Three Policy Banks*

The mission of ADBC is to promote development of agriculture and rural areas through raising funds for agriculture related businesses, undertaking agricultural policy credit businesses and serving as an agent for the state treasury to allocate special funds for supporting agriculture.

The CDB mainly focuses on lending businesses in key sectors of national economy such as natural resources, infrastructures, electricity, etc., and sectors concerning social development and people's living standards including education, medical care, environment protection, etc.

The Eximbank has been acting as a key channel of policy financing for import and export of mechanic and electronic products, complete sets of equipments, high-tech products and undertaking of offshore construction contracts, as well as overseas investment by Chinese companies.

#### *Other Commercial Banks*

In addition to the four specialized commercial banks, there are other commercial banks which are generally healthier in the aspect of asset quality and have relatively lower non-performing loan ratios. Besides, many city commercial banks have been established mainly for the purpose of financing local infrastructure and projects to support local economy. Such city commercial banks normally have close connection to local government and are majority or wholly owned by the State.

#### *Foreign-funded Banks*

##### (i) Foreign Banks in China

Overseas investors are allowed to establish wholly foreign owned banks, Sino-foreign equity joint bank, branches or representative offices in China, among which the representative offices can only engage in non-business activities. Foreign financial institutions are also allowed to make equity investment to Chinese-funded financial institutions established in accordance with law, provided that the equity investment made by a single overseas financial institution shall not exceed 20% of the total number of shares.

##### (ii) Scope of Business

Following China's entry into WTO in 2001, the State Council released regulations detailed the establishment, registration, scope of business, supervision, dissolution and liquidation of foreign-funded banks. The current effective foreign-funded banks management rule was effected on January 1, 2015 under Decree No. 657, which permits foreign funded banks to conduct full sets of foreign-currency businesses and certain RMB businesses subject to specific requirements and restrictions.

In 2006, the State cancelled the geographical and client restrictions on foreign-funded banks in their provision of RMB services. Since then foreign-funded banks can provide RMB services to all the citizens within the territory of China, and free from geographical restrictions.

## 9.2 Stock Market

### (a) Overview

China has developed a national capital market which is rapidly growing with incremental development of the economy, and with expansion of market size, improvement of institutional infrastructure and intermediaries and investors becoming increasingly sophisticated.

At present, securities products available in China include stocks, bonds, securities investment funds, warrants and commodity futures, etc. Stocks are divided into A-shares, B-shares, H-shares and New Third Board shares.

### (b) Stock Exchanges

There are three stock exchanges in China: the Shanghai Stock Exchange (“SSE”), Shenzhen Stock Exchange (“SZSE”) and National Equities Exchange and Quotations (“NEEQ”).

The SSE was founded on November 26, 1990 which is directly governed by the CSRC. It is the most preeminent stock market in China in terms of number of listed companies, number of shares listed and total market value, etc. By the end of 2016, there are a total of 1175 companies listed on the SSE and the total stock market capitalization hit RMB28.69 trillion.

The SZSE was established on December 1, 1990 which is under supervision of CSRC. By December 16, 2016, SZSE was home to 1,858 listed companies, with 478 on the main board, 817 on the SME board and 563 on the ChiNext market. The total market capitalization was valued at RMB22.43 trillion.

Moreover, in order to strengthen the multilevel capital market, China has launched the Shanghai-Hong Kong Stock Connect Program on November 17 2014 and Shenzhen-Hong Kong Stock Connect program on December 5, 2016, both allow investors from PRC and Hong Kong to trade eligible shares listed on respective market.

The NEEQ was established on September 20, 2012 which is a national stock exchange approved by State Council. The NEEQ is a stock exchange specifically providing financial support for enterprises that are not up to the standard of the main board or GEM listing conditions. By December, 2016, NEEQ was home to 100,80 listed companies.

### (c) Stocks

#### *A-shares*

A-shares are RMB-dominated ordinary shares issued by PRC-incorporated companies and traded on the SSE and SZSE. Trading of A-shares is restricted to investors from Mainland China who are either institutions or individuals. In accordance with the official statistics of CSRC, in 2015, the capital raised in A-share market hits RMB1,435.101 billion including RMB157.808 billion through IPOs, RMB668.063 billion through private placements with

consideration by cash, RMB605.587 billion through private placements with consideration by assets and RMB3.643 billion through rights issues.<sup>10</sup>

#### *B-shares*

B-shares are RMB-dominated shares issued by PRC-incorporated joint stock companies and traded on the SSE and SZSE, which are subscribed to and traded in foreign currencies.

#### *H-shares*

H-shares refer to shares issued by PRC-incorporated companies and listed on the Hong Kong market or other overseas market such as US. Pursuant to the official statistics of CSRC, in 2015, H-share companies raised USD45.4 billion in total, of which USD25.9 billion through IPOs and USD19.5 billion through refinancing..<sup>11</sup>

#### *New Third Board shares*

New Third Board shares refer to shares issued by PRC-incorporated companies and traded on NEEQ. Pursuant to the official statistics of NEEQ, in 2015, the capital raised in New Third Board shares market by means of listing hits RMB 121.6 billion.

### **9.3 Bank Account of Foreign Investor**

#### **(a) Special Foreign Exchange Account**

A foreign investor who makes direct investments or engages in activities related to direct investment in China may apply to SAFE to open different types of foreign exchange accounts, mainly including:

##### *Up-front fee Foreign Exchange Account*

The Up-front fee foreign exchange account is a temporary account, the income of which shall be the foreign exchange remitted by overseas legal persons or natural persons for the establishment of an FIE, and the expenditure of which shall be the operation expenditure and other relevant costs for the establishment of FIE. Upon the establishment of the FIE, the balance in the temporary account may be transferred into the capital account of the FIE as investment capitals of foreign investors.

##### *Foreign Exchange Capital Account*

The income of the foreign exchange capital account shall be the capitals invested in foreign exchange by the foreign investors, and the expenditure shall be the foreign exchange expenditure under current account and certain items under capital account as approved by foreign exchange bureaus.

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<sup>10</sup> CSRC Annual Report 2015, November 5, 2010, at <http://www.csrc.gov.cn/pub/newsite/zjhjs/zjhnb/201610/P020161012641106288538.pdf>, p.14.

<sup>11</sup> *Ibid*, p.44.

### *Margin Account*

Prior to making investments in China, if a foreign investor is required to provide to the relevant Chinese institutions the guarantee of funds in accordance with relevant provisions and contract stipulations, the foreign investors may, within the time period prescribed in the contract, apply to open a guarantee account to deposit and pay foreign exchange guarantee funds. The funds in the margin accounts shall not be used for settlement of exchange.

From December, 2012, according to the *Circular of the State Administration of Foreign Exchange on Further Improving and Adjusting the Direct Investment Foreign Exchange Administration Policies* promulgated by SAFE, the opening of up-front fee foreign exchange account, foreign exchange capital account, and margin account no longer require the approval by SAFE. Qualified banks shall handle the account opening formalities for relevant account-opening subjects based on the information registered in the relevant operation system of the administration of foreign exchange.

The list of documents that are required for opening above foreign exchange accounts is available on the official website of SAFE: <http://www.safe.gov.cn>.

## **10 EXCHANGE CONTROLS**

### **10.1 General**

The PRC law has implemented control over receipts and payments of foreign exchange or foreign exchange operation activities of domestic institutions or individuals, as well as receipts and payments of foreign exchange or foreign exchange operation activities in China of overseas institutions or individuals.

For the purpose of foreign exchange control, “domestic institutions” means State organs, enterprises, institutions, social organizations, armed forces and other entities in the territory of China, excluding foreign diplomatic missions, foreign consular institutions, representative offices of the international organizations; “domestic individuals” means the Chinese citizens or the foreigners who consecutively reside in the territory of China for one year, excluding the foreign diplomatic personnel in China, representatives in China of the international organizations.

### **10.2 Exchange Rate**

The exchange rate for RMB generally follows a managed floating exchange rate system based on market demand and supply. As of December 1, 2016, the RMB/USD exchange rate is 1:0.145 and the RMB/Euro exchange rate is 1:0.138.

### **10.3 Exchange Control over FIEs**

The PRC law imposes foreign exchange over FIEs from the following aspects:

#### *Registration of an FIE*

After obtaining a business license, an FIE shall apply to the SAFE for foreign exchange registration. With the registration certificate (an IC Card), the FIE may apply with qualified banks to open a foreign exchange account.

### *Control over the Current Account Transactions*

“Current account transactions” means the transactions relating to goods, services, profits, and frequent transfer in the international balances of payments. An FIE may make foreign exchange payments for current account transactions by presenting valid transaction documents. It can either use its own foreign exchange, or it may purchase foreign exchange from financial institutions that operate foreign exchange settlement or sale business.

An FIE is allowed to retain foreign exchange under its current account within the amount prescribed by SAFE. The exceeding part must be sold to designated banks.

### *Control over the Capital Account Transactions*

“Capital Account Transactions” means the transactions causing the external assets and liabilities level in the international receipts and including capital transfer, direct investment, securities investment, products and loans, etc.

Under PRC law, receipts under capital account of an FIE mainly include:

- ◆ Capital as the contribution made by the investors to an FIE;
- ◆ External debts and loans provided by Chinese financial institutions to an FIE; and
- ◆ Revenues derived from an FIE's share issue, etc.

An FIE may retain or sell 100% of such receipts from capital account transactions to financial institutions at its discretion; however, SAFE may adjust such percentage from time to time based on the international revenue and expenditure situation.

Payments under capital account of an FIE mainly include:

- ◆ Disposal of capital fund in foreign exchange of an FIE; and
- ◆ Repayment of external debts, outbound investment and the amount paid to foreign investor of an FIE after termination of FIE, etc.

## **10.4 An FIE may make foreign exchange payments for capital account transactions by presenting valid transaction documents. It can either use its own foreign exchange, or it may purchase foreign exchange from financial institutions that operate foreign exchange settlement or sale business. Some of the payments are subject to the approval of SAFE. Control over Cross-border Money Transfer**

Under PRC law, an individual exiting the territory of China may carry foreign currency in terms of cash, bill of exchange, traveler's check, international credit card, etc. An individual exiting China can carry foreign currency cash of less than the amount equal to USD5,000 without the permit for carrying foreign exchanges. If foreign currency cash of more than the amount equal to USD5,000 but less than the amount equal to USD10,000 was carried out of China, a permit should be obtained from a designated foreign exchange bank. Any individual exiting the territory of China cannot, in principle, carry foreign currency cash of more than the amount equal to USD10,000, unless for some particular reasons.

Foreign currency cash carried by an individual entering the territory of China exceeding the amount equal to USD5,000 should be declared to Chinese customs in writing, except for multiple returns on the same day or multiple returns within a short period.

## **11 IMPORT/EXPORT REGULATIONS**

### **11.1 Overview**

#### **(a) Legislation**

China has been promulgating new legislation or updating existing legislation in the aspect of import and export since 2001 to fulfill its WTO commitments. Such legislation mainly include *Foreign Trade Law of the PRC*, *Regulations of the PRC on Import and Export Duties*, *Regulations of the PRC on Administration of Import and Export of Goods*, *Regulations of the PRC on Administration of Import and Export of Technology*, *Measures for the Administration of Export License of Goods*, *Administrative Measures for Goods Import Licenses*, etc.

Based on above legislation, China has endeavored itself to relax its control over import and export activities. The quota and licensing control has been gradually removed, as part of its WTO commitments.

#### **(b) FTA**

Currently China has signed 14 FTA agreements comprising of 22 economies. These FTA agreements include:

- ◆ China-Australia FTA;
- ◆ China-South Korea FTA;
- ◆ China-Switzerland FTA;
- ◆ China-Iceland FTA;
- ◆ China-ASEAN (Association of Southeast Asian Nations) FTA and its updated version executed in 2015;
- ◆ China-Pakistan FTA;
- ◆ China-Chile FTA;
- ◆ China-New Zealand FTA;
- ◆ China-Singapore FTA;
- ◆ China-Peru FTA;
- ◆ Mainland and Hong Kong Closer Economic and Partnership Arrangement;
- ◆ Mainland and Macau Closer Economic and Partnership Arrangement; and
- ◆ China-Costa Rica FTA.

Besides, there are some FTAs that are still under negotiation including RCEP (Regional Comprehensive Economic Partnership), China-GCC (Gulf Cooperation Council) FTA, China-Japan-Korea FTA, China-Sri Lanka FTA, China-Maldives FTA, China-Georgia FTA, and China-Norway FTA.

## 11.2 Exports

### (a) Statistics

*Based upon the official statistics published by MOFCOM, from January 2016 to November 2016, China's export totaled USD1897.17 billion with a year-on-year decrease of 7.5%.<sup>12</sup>*

### (b) Restrictions on Export

In principle, the State encourages the development of foreign trade and permits free import and export of goods and technologies. However, it may restrict or prohibit the import or export of certain goods or technologies for the following reasons:

- ◆ for safeguarding State security, public interests and ethics;
- ◆ for protecting human health or safety, the lives or health of animals and plants, or the environment;
- ◆ for implementing the measures related to the export of gold and silver;
- ◆ for short supply on domestic market or for effective conservation of exhaustible natural resources;
- ◆ for the limited market capacity of the importing country or region;
- ◆ for serious chaos in export order;
- ◆ for establishing or speeding up the establishment of a particular domestic industry;
- ◆ it is necessary to restrict the import of agricultural, animal husbandry and fishery products of any form;
- ◆ for maintaining the State's international financial position and the balance of international receipts and payments; or
- ◆ other goods the import or export of which needs to be restricted or prohibited in accordance with relevant laws, regulations or international treaties or agreements.

To enforce its restrictions on export, the MOFCOM (or former Ministry of Foreign Trade and Economic Cooperation) has issued the catalogues of export- prohibited and export-restricted technologies and catalogues of export- prohibited or export-restricted goods. The State exercises its

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<sup>12</sup> Brief Statistics on China's Import and Export (2016/10), at <http://www.mofcom.gov.cn/article/tongjiziliao/cf/201612/20161202180940.shtml>

restrictions on export of goods through quotas, licensing, etc, on export of technologies through licensing.

(c) Quotas and Licenses for Export under Restrictions

*Quotas*

For the export of goods under export restrictions with quantitative restrictions imposed by the State, it is administered by allocating quotas. The total export quotas for the next year will be published by October 31 of each year by the MOFCOM. Per the applicant's application, the MOFCOM or other authorities authorized by MOFCOM will allocate the export quotas for the next year to the applicant by December 15 of each year.

Quotas may be allocated in a way of direct allocation or bid invitation, or in other ways.

*Export License of Goods*

For the export of other goods that are not administered by quotas, it should be subject to export licenses. The applicant shall apply to the Quota and License Administrative Bureau, the commissioner's offices of MOFCOM of all regions or local authority in charge of commerce for the issuance of export licenses.

*Export License of Technologies*

Technology export operators that intend to export the export-restricted technology shall apply to relevant local authority in charge of commerce for export licensing. If the application is approved, a Proposal for Technology Export License with a validity period of three years will be issued to the applicant. The technology export contract should be concluded within the validity period and be submitted with other required documents to local authority in charge of commerce for a technology export license.

(d) Export Duties

The Customs collect export duties on all goods permitted to be exported out of the territory. The consignor of export goods is the duty payer. The rates of export duties depend on the goods involved.

### 11.3 Imports

(a) Statistics

Based upon the official statistics published by MOFCOM, from January 2016 to November 2016, China's import totaled USD1422.07 billion with a year-on- year decrease of 6.2%.

(b) Restrictions

Similar to export, the State may prohibit or restrict the import of certain goods or technologies for the reasons as listed above.

The MOFCOM has issued catalogues for import-prohibited or import-

restricted goods, as well as catalogues for import-prohibited or import-prohibited technologies. The State exercises its restrictions on import of goods through quotas, licensing, etc, on import of technologies through licensing. Aside from quotas and licensing, the import of goods may also be subject to tariff rate quotas.

(c) Quotas and Licenses for Import under Restrictions

*Quotas*

For the import of goods under import restrictions with quantitative restrictions imposed by the State, it shall be administered by allocating quotas. The total import quotas for the next year will be published by July 31 of each year by the MOFCOM. Per the applicant's application, the MOFCOM or other authorities authorized by MOFCOM will allocate the import quotas for the next year to the applicant by October 31 of each year.

*Licenses*

For the import of other goods under import restrictions but are not administered by quotas, it should be subject to import licenses. The applicant shall apply to the Quota and License Administrative Bureau, the commissioner's offices of MOFCOM of all regions, or local authority in charge of commerce for the issuance of import licenses.

(d) Goods under Tariff Rate Quota

The State exercises control of part of the imported goods through tariff-rate quota and it has issued relevant catalogues of goods under tariff rate quota administration. For goods imported in tariff rate quotas, they shall be taxable at in-quota duty rates; for goods imported out of tariff rate quotas, they shall be taxable at out-of- quota duty rates.

(e) Import Duties

The Customs collect import duties on all goods permitted to be imported. The consignee of import goods is the duty payer. Duty rates on import goods are composed of most-favored-nation duty rates, conventional duty rates, special preferential duty rates, general duty rates, tariff quota duty rates, etc.

## 11.4 Customs Clearance

The major steps of customs clearance of import or export goods include:

(a) Declaration

The consignee for import goods should make declaration to customs within 14 days from the date of declaration of the arrival of the means of transport and submit the import license (if applicable) and relevant documents to the customs for inspection.

The consigner for export goods should make declaration to customs upon the arrival of the goods at the customs surveillance zone and 24 hours prior to

loading and submit the export license (if applicable) and relevant documents to the customs for inspection.

(b) Examination

The customs have the power to examine any of the import and export goods to confirm their origin, amount, and whether there is any inconsistency between the goods and those as declared, etc.

(c) Payment of Duty and Release

Import and export goods will be released upon the customs endorsement after the consignee or consigner has paid the duties or provided a bond. The dutiable price for import and export goods will be determined on the basis of transaction value of the goods. The customs will assess the dutiable price by itself only if the transaction value cannot be ascertained.

## 12 TAX

### 12.1 Enterprise Income Tax

(a) Taxation of Resident Enterprises *General*

Pursuant to the PRC Enterprise Income Tax Law (“**EIT Law**”) and its implementing regulations, both effective on January 1, 2008, all PRC resident enterprises, except partnerships and sole proprietorships<sup>13</sup>, are subject to 25% enterprise income tax (“**EIT**”) on their worldwide taxable income, unless a reduced rate<sup>14</sup> or special exemptions or deductions apply. For the purpose of EIT, resident enterprises include companies and other entities/organizations that (i) were incorporated within China, or (ii) were incorporated under the laws of a foreign jurisdiction but have their place of effective management located in China. The “place of effective management” refers to an organization that has material and overall management and control over the business, personnel, accounts and properties of an enterprise.

Taxable income of a resident enterprise is the balance derived from the annual gross income, which may include income from sale of goods, income from providing services, capital gains, dividends, interest, rental, royalty, income from donation and other incomes, after deduction of the non-taxable income, tax-exempted income and various deductible items and permitted recovery of losses of previous years. Dividends received from qualified resident enterprises are tax-exempted income.

Under the EIT Law, reasonable expenses that are actually incurred and relevant to the income obtained, including costs, fees, tax payments, losses and other expenses, may be deducted for computation of taxable income. However, the

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<sup>13</sup> Partnerships and sole proprietorships incorporated in the PRC are pass-through entities not subject to EIT. Income tax will be levied at the partners/investors level.

<sup>14</sup> For qualified high and new technology enterprises, the EIT rate is reduced to 15%; for qualified small-scale enterprises, the EIT rate is reduced to 20%.

following items are not deductible:

- ◆ dividends paid to investors;
- ◆ income tax payments;
- ◆ fines; losses resulting from the confiscation of property;
- ◆ overdue tax surcharges and other tax penalties;
- ◆ donations and contributions (other than charitable donations within 12% of the taxpayer's total annual profit);
- ◆ payments made to sponsor sports and other events;
- ◆ provisions made without prior approval by the tax authorities;
- ◆ management fees paid to another enterprise; and
- ◆ other expenditures not related to income obtained.

Depreciation of fixed assets and amortization of intangible assets and long-term expenses calculated in accordance with the provisions of EIT Law and its implementing regulations are deductible for purpose of EIT. Such depreciation and amortization are generally calculated using the straight-line method subject to the statutory minimum period of depreciation/amortization.

Losses may be carried forward for up to five years; however, no loss carrybacks are allowed under any circumstances.

Capital gains are subject to EIT as ordinary income.

#### *Transfer Pricing*

Chinese tax authorities have the right to make reasonable adjustments if the business dealings between two affiliated enterprises were not conducted in accordance with the arm's length principle thereby causing the taxable income of either of the affiliated enterprises to decrease. According to the EIT Law, enterprises shall provide information regarding transactions with affiliated enterprises by filing annual transfer pricing information returns together with their annual income tax returns.

In addition, EIT Law provides that enterprises may report to Chinese tax authority the pricing principle and calculation method of the transactions with their affiliated enterprises, and upon negotiation and confirmation, Chinese tax authority may reach advance pricing arrangement with enterprises.

#### *Thin Capitalization*

A resident enterprise may not deduct interest paid to its affiliates exceeding the permitted debt-to-equity ratio. The permitted debt-to-equity ratio is 5:1 for financial enterprises and 2:1 for other enterprises.

#### *Controlled Foreign Corporation*

The profit of a foreign subsidiary is not required to be imputed to a parent company that is a PRC resident enterprise; except that, if the foreign subsidiary

is established in a jurisdiction where the actual tax burden is obviously lower than PRC tax burden, and the profits of such foreign subsidiary are not distributed or are partially distributed without reasonable business needs, the portion of the profits attributable to the PRC resident enterprise shall be included in the income of the PRC resident enterprise of the current period.

#### *Foreign Tax Credit*

A PRC resident enterprise would be able to claim a direct foreign tax credit (“FTC”) for foreign withholding taxes withheld and paid to the foreign tax authorities on the dividends, interest and royalties received by it, and claim an indirect FTC for foreign income taxes indirectly borne by it and paid by its foreign subsidiaries on the earnings out of which the dividends were paid. Based on the clarifications provided by the State Administration of Taxation, “direct FTC” means that the foreign income tax directly paid by taxpayers on their foreign-sourced income shall be credited against the income tax payable by the taxpayers in respect of the same income in China, and “indirect FTC” means that the portion of the foreign income tax paid by foreign enterprises on their profits before distribution of dividends and indirectly borne by the PRC resident enterprises attributable to the dividends distributed to them shall be credited against the PRC resident enterprises' income tax payable in China. A PRC resident enterprise is required to own at least 20% shares of the foreign subsidiary in order to obtain an indirect FTC.

#### *General Anti Avoidance Rule*

Article 47 of the EIT Law provides that Chinese tax authorities have the right to make reasonable adjustments if an enterprise carries out business arrangement with an unreasonable commercial purpose (i.e. having the main objective of avoiding, exempting or delaying income tax payment) thereby reducing its taxable income. The tax authorities may initiate investigations of enterprises which are suspected of engaging in tax avoidance activities such as abuse of preferential tax treatment, abuse of tax treaties, abuse of a company's corporate structure, transacting with companies registered in a tax haven to avoid taxes; and other business arrangements without bona fide commercial purposes.

#### (b) Taxation of Non-resident Enterprises

Under the EIT Law, nonresident enterprise are enterprises that were incorporated in a foreign jurisdiction and whose place of effective management are not located in China; however, they either engage in production or other business activities through a place or establishment in China, or derive income from sources within China even though they do not have a place or establishment for production or other business activities in China. The “place or establishment” includes a management office, business establishment, representative office, factory, site for extraction of natural resources, place where services are provided, site for operating a construction, installation, assembly, repair or exploration project, and the place of business of an agent

who has the authority to sign contracts and exercises authority to conclude contracts on behalf of a nonresident enterprise.

#### *Nonresident Enterprises not Acting through a Place or Establishment in China*

Nonresident enterprises are subject to 10% withholding tax on dividends, interest, royalties, rental, capital gains or other passive income received from China, unless the applicable bilateral tax treaties would reduce the withholding tax to a lower rate or exempt the withholding tax.

#### *Nonresident Enterprises Acting through a Place or Establishment in China*

Nonresident enterprises which carry out business in China through a place or establishment therein are generally taxed on their profits generated from business activities of their place or establishment in China in the same manner as resident enterprises are taxed; however, unlike resident enterprises that are taxed on a net profit basis, nonresident enterprises would generally be subject to income tax on a deemed profit basis, or in the case of PRC representative offices of nonresident enterprises most frequently on a cost-plus basis.

#### (c) Filing and Payment Requirements

Resident enterprises and nonresident enterprises with a place or establishment in China shall file EIT returns to the tax authority within 15 days of the completion of a month or a quarter to make tax prepayment, and file an annual tax return to the tax authority and make the settlement of the payable and refundable tax payment within five months of the completion of the year.

Passive incomes received by nonresident enterprises without a place or establishment in China are generally declared by the Chinese payer of the income. The Chinese payer is required to withhold tax payable, and file a withholding tax return each time when it makes payment of the income to the nonresident enterprise. The withholding tax shall be paid to the tax authority within seven days from the date when the payment of the income to the nonresident enterprises becomes due. If the withholding agent does not or is unable to withhold tax, the nonresident enterprise shall declare and pay tax to the Chinese tax authority by itself.

## **12.2 Individual Income Tax**

#### (a) General

An individual that has his domicile in China or living in China continuously for one full calendar year would be considered a tax resident in China. A foreign national living in China shall be considered as living in China for one full calendar year if he leaves China for no more than 30 days for one single trip or for no more than 90 days for multiple trips in such year.

A PRC tax resident must pay individual income tax (“**IIT**”) on his worldwide income; however, an expatriate who has stayed in China continuously for one

year or longer but less than five years can be exempted from payment of IIT in China in respect of his non-PRC-sourced income that is paid by overseas entities or individuals.

For salary income received from employment, the IIT payable shall be computed at 7-grade progressive rates between 3% and 45%, depending on the amount of taxable income. Currently, for purpose of IIT, Chinese employees are allowed to deduct RMB3,500 from the total monthly income, and expatriate employees are allowed to deduct RMB4,800.

For income received from provision of independent services, the individual income tax rate will be 20%, 30% or 40% depending on the actual amount of service fee income received each time. The individual income tax rate on royalty, interest, dividends, rental and capital gains income is 20%. However, dividends paid by foreign-invested enterprises to their foreign individual shareholders are currently exempted from IIT. For computing IIT in respect of remuneration from labor services, authors' remuneration, royalties and lease of property, a fixed deduction of RMB 800 is allowed where the total income is not more than RMB 4,000, and a deduction equivalent to 20% of the income is allowed where the total income exceeding RMB 4,000.

Non-tax resident employees need only pay IIT on their PRC-sourced income. The rates are the same as for tax resident employees, subject to any applicable bilateral tax treaty. If a non-tax resident employee has been in China for a period or periods not exceeding 90 days (or 183 days for tax residents of countries which have a bilateral tax treaty with China) in a calendar year, he will not be required to pay PRC individual income tax on his China-sourced income that is or deemed to be paid or borne by an overseas employer.

Capital gains are subject to IIT as ordinary income. However, capital gains derived from transfer of shares of PRC listed companies are currently exempted from IIT.

**(b) Filing and Payment Requirements**

IIT is generally withheld and paid to tax authorities by payers of the income as withholding agents on a monthly basis. In the following circumstances, individuals that receive the income shall file IIT return to the tax authorities.

- ◆ Where the annual income is RMB120,000 or more;
- ◆ Where they receives salary or wage from two or more sources within China;
- ◆ Where they receive income from sources outside China;
- ◆ Where there is no tax withholding agent; or
- ◆ Other circumstances stipulated by the State Council.

There is no inheritance tax in China. As for the income from gift, strictly speaking, any kind of assets obtained by an individual as gift shall be considered as taxable income and subject to 20% income tax. If the value of

such asset is not available, the taxable basis may be determined through asset evaluation or any other reasonable methods chosen by tax authority. However, as an exception, transfer of real property between certain relatives, in the form of either gift or inheritance, will not be subject to IIT.

### **12.3 Tax Treaties**

China has entered into tax treaties with 102 countries such as U.K., France, Germany, U.S., Canada, Australia, etc. for avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

China has also entered into similar tax arrangements with Hong Kong SAR, Macao SAR and Taiwan.

### **12.4 Value-added Tax**

#### **(a) General**

Enterprises and individuals that sell commodities or providing processing or repair services in China or import goods into China must pay Value-added Tax (“VAT”) generally at 17%. Sale or import of a few categories of goods such as grain, tap water and gas, etc. is taxed at 13%.

Generally, Input VAT paid by VAT taxpayers to their suppliers may be credited towards the Output VAT.

Producers or trading companies which export their products are generally exempted from VAT. In addition, they may also be refunded a certain percentage of the Input VAT they have paid to their suppliers vis-a-vis the exported products.

Small-scale VAT taxpayer is subject to the VAT at the rate of 3%.

#### **(b) Business Tax to Value-added Tax (“B2V”) Pilot Program**

In 2012, the State Council resolved to implement a B2V Pilot Program, replacing Business Tax (“BT”) with VAT, to mitigate the whole tax burden associated with goods and services. Before the Pilot Program, BT, along with VAT, were the two most important taxes applicable for doing business in China in addition to the income tax.

In May 1, 2016, B2V Pilot Program expands to cover all the industries that were subjected to BT, earmarking the completion of the B2V Pilot Program and the official removal BT from China tax system.

Under the B2V Pilot Program, VAT rate applicable to the tangible movable property leasing service is 17%; to transportation service, postal service, basic telecommunications service, construction and real estate service is 11%; to value-added telecommunications service, certain modern service, financial service and consumer service is 6%.

#### **(c) Filing and Payment Requirements**

Tax payment periods for value-added tax are respectively one day, three days, five days, ten days, fifteen days, one month or one quarter. The specific tax

payment period for a taxpayer shall be determined by the competent tax authority according to the amount of tax payable by the taxpayer; tax that cannot be paid within a fixed period may be paid on a transaction-by-transaction basis. Taxpayers to whom the tax payment period of one month or one quarter applies shall file a VAT return and pay VAT within fifteen days of the expiration of such period; taxpayers to whom the tax payment period of one day, three days, five days, ten days, fifteen days applies shall prepay VAT within five days of the expiration of such period and within the first fifteen days of the following month file a VAT return and settle VAT payable for the current month. Taxpayers that import goods shall pay tax within fifteen days of the date on which special receipts for import VAT are issued by the Customs.

## **13 LABOUR AND EMPLOYMENT**

### **13.1 Employment Regulations**

The labor relations, duties and interests of employers and employees are regulated by laws and regulations of various levels. The *Labor Law of the PRC*, which became effective on 1 January 1995, is the foundation of labor laws of PRC. This law refers to almost every aspect of employment but the provisions are rather limited. The *Labor Contract Law of the PRC*, effective on 1 January 2008 and as amended on 28 December 2012, mainly regulates the formation, execution and termination of labor contract between employers and employees, and prevails over the *PRC Labor Law* in case of a conflict. Besides, the *Employment Promotion Law of the PRC* and the *Labor-dispute Mediation and Arbitration Law of the PRC* came into effect on 1 January 2008 and 1 May 2008 respectively.

In addition to those provisions applicable to the whole state, there are also local regulations and rules issued by provincial, municipal, and other lower level authorities that are applicable only to relevant local regions.

### **13.2 Employment Relations**

#### **(a) Employment Contract**

Pursuant to *Labor Contract Law of the PRC*, a written labor contract should be concluded upon the establishment of labor relations.

#### **(b) Employee Training**

Pursuant to the *Vocational Education Law of the PRC*, which came into force as of September 1, 1996, an employer shall, in light of its actual conditions, provide systematic vocational education and training for its own employees and for the persons to be employed. Besides, any worker who is to do a technical type of job must undergo training beforehand; and any worker who is to do a job that requires special skills must undergo training and obtain the necessary qualifications for such a job.

#### **(c) Working Hour System**

Under PRC law, there are three kinds of working hour systems, namely, the "Standard Working Hour System", the "Flexible Working Hour System" and

the "Accumulative Calculation of Working Hour System". Under the Standard Working Hour System, working hours shall be not more than 8 per day and 40 per week. Under the Flexible Working Hour System, there is no such working hours limitation. The employees arrange the working and rest time at their own discretion and the employer do not monitor the attendance of the employees. The Comprehensive Work Hour System means that the working hours are totaled per week, per month, per quarter, or per year according to the relevant approval. The average working hours per day and per month shall be the same as those under the Standard Work Hour System. In accordance with the *Labor Law of the PRC*, approval from the local labor authority is required for both the Flexible Working Hour System and the Accumulative Calculation of Working Hour System. The Standard Working Hour System will be considered as the default system if no approval is obtained.

(d) Vacation and Sick Days

Pursuant to the *Regulations on Paid Annual Leave for Employees of the PRC*, an employee is entitled to annual leave if he/she has worked continuously for one year, including service time for all the employers that he/she has serviced with. The number of annual leave days is as follows:

- 9 Years of service are more than one year and less than 10 years: five days;
- 9 Years of service are more than 10 year and less than 20 years: 10 days;
- 9 Years of service are more than 20 year: 15 days.

For sick days, pursuant to the *Regulation on Medical Treatment Period of Employees for Illness and Non-Work Related Injuries*, the length of medical treatment period, decided according to the employee's accumulated service years for all prior employers and the service years for the current employer, is from three months to 24 months.

(e) Hiring and Firing

Pursuant to the *Labor Contract Law of the PRC*, a written labor contract shall be concluded upon the establishment of labor relations. Except for mutual termination, the employer could only dismiss the employee unilaterally in accordance with the circumstances and procedures provided by the *Labor Contract Law of the PRC*. The employer is not granted to any right to terminate a labor contract with a notice without reason.

The employers have a continuing obligation towards dismissed employees. Pursuant to the *Labor Contract Law of the PRC*, an employer shall, upon termination of a labor contract, produce a certificate of termination or ending of the labor contract, and shall handle the procedures for the transfer of files and social insurance relations of the employees within 15 days. In addition, the employer shall maintain the terminated or ended labor contracts and the materials regarding the employee's wage, attendance and other information for at least two years for inspection.

There is no statutory requirement on the minimum number of people or

minimum number of nationals that are employed by an employer.

(f) Unions

Pursuant to the *Trade Union Law of the PRC*, which came into effect as of October 27, 2001, a so-called “basic-level trade union” shall be established in an enterprise. Aside from the basic-level trade unions in enterprises, there are also local trade union federations established in places at or above the county level, industrial trade union federation and the All-China Federation of Trade Unions. The establishment of basic-level trade union organizations shall be subject to the approval of trade union organization at the next higher level.

### 13.3 Expatriate Employees

(a) Labor Permits

The employment of foreigners is subject to the approval of labor administrative departments. Pursuant to the *Provisions on the Administration of Employment of Foreigners in China*, as revised in 2010, in order to employ a foreigner, an employer shall firstly apply to local labor administrative department for employment permission for the foreigner. The employer shall file the application of employing foreigners in online system of labor administrative department in charge and provide the following documents:

- ◆ A curriculum certification of the foreigner that the employer intends to employ;
- ◆ A letter of employment intent;
- ◆ A qualification certification of the foreigner for engaging in the relevant work;
- ◆ A health condition certification of the foreigner; and
- ◆ Other documents as specified by laws and regulations.

The foreigner approved to seek employment in China shall apply for an occupational visa at a Chinese embassy, consulate or office in foreign countries.

Within 15 days from the date when the foreigner that the employer intends to employ enters the territory of China, the employer shall apply for an Employment Permit for the foreigner, which will become invalid upon the expiration of his/her labor contract with the employer.

The foreigner who has obtained the Employment Permit shall apply for a Residence Permit at a public security authority, the period of validity of which will be determined in accordance with that of the Employment Permit.

(b) Labor Contract

Pursuant to the Labor Contract Law of the PRC and the Provisions on the Administration of Employment of Foreigners in China, a labor contract should be concluded between the employer and the foreigner that the employer intends

to employ. The maximum duration of a labor contract shall not exceed five years. The labor contract will automatically terminate upon its expiration and it can be renewed upon mutual agreement between the employer and foreigner.

(c) Living and Working Conditions

*Drivers' Licenses*

To drive a motor vehicle in China, a motor vehicle driver's license should be obtained. The applicant shall meet the requirements for driver's license specified by the department for public security, for example, the physical and age conditions. After passing written and practical examinations, the applicant will be issued a driver's license with the type of the motor vehicle. The above rules apply also to foreigners.

A person holding a motor vehicle driver's license of another country who meets the requirements for driver's license and passes written and practical examinations will be issued a Chinese driver's license.

*Housing*

Administration on house purchase by foreigners has been relatively relaxed in 2015. Since 2006, only the foreigner that has worked or studied in China for more than one year is permitted to purchase a commercial house for self-use or self-accommodation and he/she shall not purchase any commercial house not for self-use or self-accommodation. However, a new rule released in 2015 now allows foreigners work or study in China to purchase commercial house for self-use or self-accommodation according to actual needs unless applicable local rules have different restrictions.

A real-name system is adopted for the purchase of commercial house for self-use or self-accommodation by foreigners. A foreigner shall go to the administrative department of land and real estate for formalities for registration of land use right and house property right, with relevant approval certificates on his/her work and study in China. In addition, the remittance and settlement of foreign exchange for purchase price will be subject to the examination of SAFE or its local branch.

*Medical Care and Education*

China provides expatriates with all sorts of medical care facilities. An expatriate may, go to local Chinese hospital, or Chinese hospitals with special foreigner/VIP department or privately run foreign-invested facilities, for medical care services. Expatriates may join commercial medical insurance to solve medical treatment fees.

The policies for education of family members of expatriates may vary from place to place. In principle, the expatriates' families enjoy the same treatment as nationals with respect to going to local private schools. They can also choose international schools special for families of expatriates, which are more expensive in tuition fee.

## 14 IMMIGRATION REQUIREMENTS

### 14.1 Visas

Foreigners must bear valid visa before entering the territory of China, except for certain circumstances under which a visa is exempted. For example, a foreigner who is transiting China by international flight is exempted from a Chinese visa; nationals of Singapore and Japan are exempted from Chinese visas for 15 days if they visit China for tourism, business, visiting relatives, etc.

There are several types of Chinese visas, mainly include:

- ◆ Tourist Visa (L Visa) for foreigners who come to China for sightseeing, visiting friends, etc;
- ◆ Business Visa (M Visa) for foreigners who come to China for a business trip
- ◆ Student Visa (X Visa) for foreigners who come to China for study;
- ◆ Employment Visa (Z Visa) for foreigners who come to China for a post or employment.

Besides, there are also other types of visas such as C Visa for crewmembers working on board of international trains, airliner or vessels to China, J1 Visa and J2 Visa for journalists who come to China for temporary news coverage, and Residence Permit for aliens who come to China for residence for relevant long term, etc.

The validity periods of different visas are normally different.

For the details of Chinese visa applications, please consult with the visa offices of the Chinese embassies or consulates which have jurisdiction over the places where the applicant resides.

### 14.2 Immigration Requirements

Foreigners may apply for permits to permanently stay in China and become permanent residence in China, the residence period of which is usually 5 years, without limitation on extension so long as below immigration requirements can still be met.

#### (a) Immigration Requirements

Foreigner intending to apply for permanent residence in China shall observe Chinese laws, be healthy and have no criminal record, and must meet at least one of the following requirements:

- ◆ Having made direct investments in China with stable operation and good tax payment records for three successive years;
- ◆ Having been holding the post of deputy general manager, deputy factory director or above, or having the associate senior title of associate professor or associate research fellow or above, and enjoying an equal treatment, in China for at least four successive years, with a minimum period of residence in China for three cumulative years within four years and with good tax payment records;

- ◆ Having made great and outstanding contributions to China and being specially needed by China;
- ◆ Being the spouse or unmarried children under the age of 18, of a person mentioned under Item (a), (b) or (c) of this paragraph;
- ◆ Being the spouse of a Chinese citizen or of an foreigner with permanent residence status in China, in a marriage relationship for at least five years, with at least five successive years of residence in China and at least nine months of residence in China each year, and having stable source of subsistence and a dwelling place in China;
- ◆ Being an unmarried child under the age of 18, dependent on his/her parents; and
- ◆ Being a person at the age of 60 or older who has no direct relatives overseas but is patronized by direct relatives in China, having stayed in China for at least five successive years with at least nine month residence in China each year, and having stable source of subsistence and a dwelling place in China.

(b) Application Documents

To apply for a permanent residence permit, the applicant shall fill in an application form and submit the following materials:

- ◆ A valid foreign passport or any other certificate that may be used instead of the passport;
- ◆ A health certificate issued by a hygiene and quarantine authority designated by the Chinese government or issued by a foreign hygiene and medical institution and authenticated by the Chinese Embassy or Consulate in that country;
- ◆ A certificate of no criminal record in a foreign country concerned as authenticated by the Chinese Embassy or Consulate in that country;
- ◆ Four recently-taken full-faced color photos, 2 by 2 inches, bareheaded, of the applicant; and
- ◆ Other relevant materials required by laws and regulations, as well as required by public security authority.

The applicant can submit the application even if he/she is out of Chinese territory. If the application was approved, such applicant can apply for a D Visa to enter into China.

Permanent residences in China may apply to become Chinese nationals. A person whose application for naturalization as a Chinese national has been approved cannot retain foreign nationality.