

INVESTMENT GUIDE

投資指南

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CHINA
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BUSINESS IN CHINA – LEGAL GUIDE
投资中国 – 法律指南

I. INTRODUCTION

This Guide is of informative nature and aims to provide potential investors with an introductory knowledge of the legal framework on the setting-up of a commercial presence and on how to conduct business in China.

In this context and based upon the laws and directives currently in force in China in the most relevant areas, this Guide outlines in general terms the structure of the two types of commercial companies, the different alternatives on options for investments, administrative licenses and restricted business areas, tariffs and trade protection instruments, tax, legal aspects of employment relationships and types of visas for foreigners, protection of intellectual property rights, concluding with the judicial system.

This Guide is for general reference only, and does not exhaust all relevant aspects of the legal regimes of the areas covered. This guide can not be construed as legal advice, nor can it be considered as a basis for claiming the existence of an attorney-client relationship. For advice and legal assistance to carry out specific transactions interested investors should consult and retain lawyers licensed to practice in China.

For general information about China and its economy, readers can consult the website of the Central Government at <http://english.gov.cn/> and the website of Xinhua News Agency at <http://www.chinaview.cn/index.htm> in English.



一、简介

本指南旨在为投资者简介中国商事法律制度以及提供投资中国的相关参考信息。

本文依据中国现行法律法规，主要向读者介绍商事公司的两种结构形式，行政许可，受限的商业领域，关税和贸易保护政策，税务，劳务关系，外国人签证，知识产权的保护以及司法制度。

本指南仅供范略参考，所涉及的法律领域有限，并非法律意见，也不得以此推定在读者与编者之间成立了委托代理关系。如投资者需法律咨询服务，请向中国律师咨询。

如需查询中国及其经济的相关情况，请查询中国中央政府网站（英文版<http://english.gov.cn/>），以及新华社网站（英文版<http://www.chinaview.cn/index.htm>）。



II.COMMERCIAL ENTITIES AND FOREIGN INVESTMENT

COMMERCIAL ENTITIES

Introduction

The most widely used type of business in China is Limited Liability Company or LLC, and public limited companies (Joint Stock Limited Company or JSCL). Both types are governed by the Company Law of the People's Republic of China, which is revised in 2005 (the "Company Law"). The Company Law establishes the requirements to be met by LLCs and JSCLs in respect of the object of the company, the share capital, the organizational structure, the transfer of shares and dissolution.

(A) Limited Liability Company (LLC)

The LLC is a type of company in which shareholders are liable up to the value of the capital they subscribed. The number of shareholders shall be no more than 50.

Company Name

The company name of an LLC must include the phrase Limited Liability Company or Limited Company.

Registered Capital

Minimum registered capital

The company capital of the LLC is the total amount of equity invested in the company, subscribed by all shareholders and registered with the commercial register. Except for specific cases laid down by law, the minimum company capital for incorporation of an LLC is RMB 30 000 (approx. USD 4 500). The amount of the initial company capital subscribed and paid up by all shareholders should not be lower than 20% of the registered company capital or lower than the minimum established by law. Shareholders must pay the remaining amount within 2 years upon the date of incorporation. For an investment company, the shareholders must make the payment of the remaining amount within 5 years upon the date of incorporation.

The shareholders may pay the capital to be invested in the company in cash or in kind, in the form of assets of which value can be determined in cash or legally transferable rights, such as intellectual property rights, usufruct of land or other intangible assets, excluding the cases specifically provided for by law or administrative provision. The value of the capital paid in kind must be established and confirmed according to the law and administrative regulations applicable to valuation, if any.

二、商事主体和外商投资

商事主体

简介

在中国运用的最广泛的公司形式是有限责任公司和股份有限公司。中国公司法(2005年修订版)及其配套法规对这两种公司形式主要规定了以下一些方面:公司目的,公司股份,组织结构,股份转让和公司解散等等。

(一) 有限责任公司

有限责任公司的股东以其认缴的出资额为限对公司承担责任, 股东人数在50人以下。

公司名称

依照本法设立的有限责任公司, 必须在公司名称中标明有限责任公司或者有限公司字样。

注册资本

最低注册资本

有限责任公司的注册资本为在公司登记机关登记的全体股东认缴的出资额。公司全体股东的首次出资额不得低于注册资本的百分之二十, 也不得低于法定的注册资本最低限额, 其余部分由股东自公司成立之日起两年内缴足; 其中, 投资公司可以在五年内缴足。有限责任公司注册资本的最低限额为人民币三万元(约合美元四千五百元)。法律、行政法规对有限责任公司注册资本的最低限额有较高规定的, 从其规定。

股东可以用货币出资, 也可以用实物、知识产权、土地使用权等可以用货币估价并可以依法转让的非货币财产作价出资; 但是, 法律、行政法规规定不得作为出资的财产除外。对作为出资的非货币财产应当评估作价, 核实财产, 不得高估或者低估作价。法律、行政法规对评估作价有规定的, 从其规定。

In any case, the capital invested in the company which is to be paid up by all shareholders in cash must represent at least 30% of the registered capital of the LLC. Each shareholder must fully and duly pay the capital they subscribed in accordance with the articles of association. Each shareholder must deposit the cash contribution in full in the temporary account of the LLC or legally transfer the contribution in kind by following appropriate transfer process for the assets prescribed by the law. If a shareholder fails to meet this obligation, that shareholder will remain liable for payment in full to the company and also be liable for his default towards other shareholders who have met their obligations on time. The law also provides that, for each capital contribution made by the shareholders, the company shall retain verification from a legitimate capital verification institution.

Minimum capital requirements for foreign investment in special industries

As mentioned above, the minimum capital for an LLC is RMB 30 000 (approx. USD 4 500). However, Chinese law requires higher minimum capital for incorporation of an LLC in special industries as follows, such as banking, investment, insurance and international transport:

- Foreign-capital banks and foreign invested banks: RMB 1 billion (approx. USD 150 million) or the same value in a freely convertible equivalent currency.
- Foreign invested insurance companies: RMB 200 million (approx. USD 30 million) or the same value in a freely convertible equivalent currency.
- An investment company incorporated by foreign investors: USD 30 million.
- Foreign invested international freight forwarding enterprises: USD 1 million.

Total investment

In addition to the minimum capital, foreign invested companies must estimate and indicate their total planned investment amount in their articles of association. The amount of the total investment is made up of the registered capital and financing estimated to be necessary for the foreign investment company to operate productively. The proportion of registered capital and the total amount of investment of the foreign invested companies shall comply with the requirements for LLCs referred to above.¹

¹ Interim Provisions of the State Administration for Industry and Commerce on the Ratio of the Registered Capital to the Total Investment of a Sino-Foreign Equity Joint Venture Enterprise

Article 3 The ratio of the registered capital to the total investment of an EJV shall be in conformity with the following provisions:

(1) Where the total investment of an EJV is USD3 million or less, the registered capital of the EJV shall be at least seven tenths of the total investment;

(2) Where the total investment of an EJV is more than USD3 million and not exceeding USD10 million, the registered capital of the EJV shall be at least one half of the total investment, provided that the registered capital shall be no less than USD2.1 million if the total investment is less than USD4.2 million;

(3) Where the total investment of an EJV is more than USD10 million and not exceeding USD30 million, the registered capital of the EJV shall be at least two fifths of the total investment, provided that the registered capital shall be no less than USD5 million if the total investment is less than USD12.5 million;

(4) Where the total investment of an EJV is more than USD30 million, the registered capital of the EJV shall be at least one third of the total investment, provided that the registered capital shall be no less than USD12 million if the total investment is less than USD36 million.

全体股东的货币出资金额不得低于有限责任公司注册资本的百分之三十。股东应当按期足额缴纳公司章程中规定的各自所认缴的出资额。股东以货币出资的，应当将货币出资足额存入有限责任公司在银行开设的账户；以非货币财产出资的，应当依法办理其财产权的转移手续。股东不按照前款规定缴纳出资的，除应当向公司足额缴纳外，还应当对已按期足额缴纳出资的股东承担违约责任。股东缴纳出资后，必须经依法设立的验资机构验资并出具证明。

特殊行业领域外资最低资本要求：

如前所述，有限责任公司的最低注册资本为人民币三万元（约合美元四千五百元），在特定行业领域例如银行、投资、保险和国际货运，法律另行规定了最低注册资本：

- 外资银行、合资银行的最低注册资本为十亿元人民币（约合美元一亿五千万）或者等值的自由兑换货币。
- 外商投资保险公司：注册资本最低限额为两亿元人民币（约合美元三千万）或者等值的自由兑换货币。
- 外商举办投资性公司的最低注册资本不低于三千万美元。
- 设立外商投资国际货运代理企业注册资本最低限额为100万美元。

投资总额

除过最低资本的要求，外资公司须在公司章程中注明其计划投资的总额。投资总额包括注册资本额以及外资公司生产活动所需资金。外资企业的注册资本与投资总额的比例关系应当符合关于中外合资经营企业注册资本与投资总额比例的规定。²

² 第三条 中外合资经营企业的注册资本与投资总额的比例，应当遵守如下规定：

(一)中外合资经营企业的投资总额在三百万美元以下(含三百万美元)的,其注册资本至少应占投资总额的十分之七。

(二)中外合资经营企业的投资总额在三百万美元以上至一千万美元(含一千万美元)的,其注册资本至少应占投资总额的三分之一,其中投资总额在四百二十万美元以下的,注册资本不得低于二百一十万美元。

(三)中外合资经营企业的投资总额在一千万美元以上至三千万美元(含三千万美元)的,其注册资本至少应占投资总额的百分之二,其中投资总额在一千二百五十万美元以下的,注册资本不得低于五百万美元。

(四)中外合资经营企业的投资总额在三千万美元以上的,其注册资本至少应占投资总额的三分之一,其中投资总额在三千六百万美元以下的,注册资本不得低于一千二百万美元。

Shareholders Meeting (General Meeting)

Unless otherwise provided for by law or regulations, or even by the articles of association of the company, the corporate body with the highest level of jurisdiction and authority in the LLC is the general meeting of the shareholders made up of all shareholders assembled in a general meeting.

The first general meeting must be convened and chaired by the shareholder with the greatest capital investment in the company. The ordinary general meeting of the shareholders is convened and presided over in accordance with the articles of association of the LLC and the extraordinary general meeting is called and held when proposed by:

1. Shareholders holding 10% or more of the shares with voting rights, or
2. More than one thirds (1/3) of the directors, or
3. The supervisory board or, the individual supervisor alone if the company does not have a supervisory board.

Major corporate decisions shall be approved at the shareholders' meeting by an absolute majority, which means such resolutions shall be approved by shareholders who representing 2/3 or more of the shares with voting rights. Examples of matters to be decided in this way are a review of the articles of association, an increase or reduction in the company's registered capital, a change in the type of company and the merger, division or dissolution of the company.

To the extent that it is not otherwise provided for in the articles of association, shareholders' voting rights at the shareholders' meeting are proportionate to their stake in the capital of the company.

The Board of Directors

The law requires the LLC board of directors consists a minimum number of 3 and a maximum of 13. However, LLCs with few shareholders or smaller scale may only have a single executive director instead of a board. This executive director may simultaneously act as the manager of the company. The term of office of the directors of the LLC should be stipulated in the articles of association, but each term shall be no more than 3 years. Directors have the right to stay in office if they are re-elected for another term.

The rights and duties of the board are, among others established by law, to convene general meetings, to decide on the company's activities and investment plans, to prepare financial budgets, to distribute profits and losses and increase or reduce the company capital.

The Manager

The LLC is permitted to have a manager who can be hired or dismissed at the board's disposal. The manager answers to the board and will be responsible for organizing the implementation of annual business plans and investment plans of the company, as well as for developing the internal management structure and other duties imposed by law or by the board.

股东大会

有限责任公司股东会由全体股东组成，股东会是公司的权力机构。法律法规或公司章程另有规定的，从其规定。

首次股东会会议由出资最多的股东召集和主持，依照本法规定行使职权。定期会议应当依照公司章程的规定按时召开。临时会议的召开需由：(1) 代表十分之一以上表决权的股东，或(2) 三分之一以上的董事，或(3) 监事会或者不设监事会的公司的监事提议。

公司的重大决议须经股东大会绝对多数的股东通过，换言之，必须经代表三分之二以上表决权的股东通过。例如股东会会议作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议。

股东会会议由股东按照出资比例行使表决权；但是，公司章程另有规定的除外。

董事会

有限责任公司设董事会，其成员为三人至十三人。股东人数较少或者规模较小的有限责任公司，可以设一名执行董事，不设董事会。执行董事可以兼任公司经理。董事任期由公司章程规定，但每届任期不得超过三年。董事任期届满后，连选可以连任。

董事会行使的职权包括：召集股东会会议；决定公司的经营计划和投资方案；制订公司的年度财务预算方案、决算方案；制订公司的利润分配方案和弥补亏损方案；制订公司增加或者减少注册资本方案。

公司经理

有限责任公司可以设经理，由董事会决定聘任或者解聘。经理对董事会负责，行使下列职权：组织实施公司年度经营计划和投资方案；拟订公司内部管理机构设置方案；董事会授予的其他职权及公司章程的授予的职权。

The Supervisory Board

Among other duties prescribed by law and the articles of association, the supervisory board is responsible for supervising the financial affairs of the company and ensuring that the directors and senior managers carry out their duties. The supervisory board of the LLC shall consist of at least 3 members. However, smaller LLCs may have only 1 or 2 supervisors instead of a supervisory board.

The Company Law strictly prohibits any director or senior manager from simultaneously occupying the position of supervisor of the company. The term of office of a supervisor is 3 years and the supervisor has the right to stay if re-elected for another term. The supervisory board must meet at least once a year and any supervisor may convene extraordinary meetings. Unless otherwise provided by the Company Law, the supervisory board's discussion and voting procedures are established in the articles of association. Resolutions of the supervisory board are to be approved by a simple majority of its members which means over half of the supervisors.

Transfer of Shares

In an LLC, the shares may be transferred between shareholders or to any third party, provided the transfer is made in accordance with the applicable law. Shareholders have a pre-emptive right to acquire the shares of other shareholders. The law gives companies a margin to decide on the methods for the transfer of shares, that if special clauses are included in the articles of association regarding transfer of shares of the company, these special provisions should prevail.

Financial Reports

At the end of each financial year, the company is required to provide a management report and accounts to be audited by an auditing firm. The fiscal year in China begins on 1 January and ends on 31 December. LLCs must submit the financial report for consideration to the shareholders by the deadline established in the articles of association.

Dissolution

An LLC may be dissolved in the following situations: 1) upon the business term provided in the articles of association 2) upon the occurrence of any of the situations for dissolution provided for in the articles of association, 3) upon resolution of the shareholders, 4) in the event of merger or division of the company, 5) if the business license is cancelled, or 6) when its dissolution is ordered by the Court.

Shareholders holding 10% or more of shares with voting rights can apply to the courts for dissolution when the company is unable to operate and the continuation of business operation would result in a huge loss to the shareholders.

监事会

监事会的职权主要是对董事、高级管理人员执行公司职务的行为进行监督，以及法律和公司章程规定的其他义务。监事会成员不得少于三人，股东人数较少或者规模较小的有限责任公司，可以设一至二名监事，不设监事会。

中国公司法规定董事、高级管理人员不得兼任监事。监事的任期每届为三年。监事任期届满，连选可以连任。监事会每年度至少召开一次会议，监事可以提议召开临时监事会会议。监事会的议事方式和表决程序，除公司法有规定的外，由公司章程规定。监事会决议应当经简单多数，即半数以上监事通过。

股份转让

有限责任公司的股份依法定程序可在股东以及股东以外的第三人之间转让。股东对其他股东转让股份享有优先购买权。公司章程对股权转让另有规定的，从其规定。

公司财务会计报告

公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。会计年度从每年一月一日至十二月三十一日。有限责任公司应当依照公司章程规定的期限将财务会计报告送交各股东。

公司解散

公司因下列原因解散：(1) 公司章程规定的营业期限届满；(2) 公司章程规定的其他解散事由出现；(3) 股东会或者股东大会决议解散；(4) 因公司合并或者分立需要解散；(5) 依法被吊销营业执照、责令关闭或者被撤销；(6) 人民法院依法予以解散。

公司经营管理发生严重困难，继续存续会使股东利益受到重大损失，通过其他途径不能解决的，持有公司全部股东表决权百分之十以上的股东，可以请求人民法院解散公司。

(B) Joint Stock Limited Company (JSLC)

The JSLC is a company in which the shareholders are liable in proportion to the shares to which they subscribe. It can be incorporated by two ways: (i) through the subscription of capital by certain promoters, or (ii) through public subscription of shares.

(i) In the former case (promotion), all shares are subscribed by the promoters.

(ii) As to the latter option – a JSLC with open capital – the shares issued by the company are subscribed by the promoters together with the general public, or by a particular group of people.

To establish a JSLC in either way, the number of promoters cannot be fewer than 2 or more than 200. At least half of the promoters must be domiciled in China.

Company Name

The company name of the JSLC should include words such as “Joint Stock Limited Company” or “Joint Stock Company” to indicate the type of company.

The Company Capital

The minimum registered capital of a JSLC is RMB 5 million (about USD 0.7 million), without prejudice of specific conditions imposed by law for certain situations. For example, the minimum capital of a JSLC with foreign capital is RMB 30 million (about USD 4.4 million). The capital of a JSLC is divided into shares carrying the same nominal value. The certificate of ownership of the shares must be issued by the JSLC to prove ownership of the shares subscribed.

If the JSLC is set up by promoters, the capital at registration should be the total capital of the shares subscribed by the promoters at the Registry of Companies. The minimum amount of initial capital subscribed and paid up by all promoters should be more than 20% of the total capital and the outstanding amount should be paid by the promoters within 2 years of the date of incorporation. In the case of an investment company, the period is five years. Shares may not be offered to third parties for subscription until the set up capital has been paid.

If the JSLC is incorporated with open capital, its capital will consist of any such amount which has actually been paid, corresponding to shares registered with the Registry of Companies.

The type of capital being invested and the percentage required for payment in kind within the total company capital contribution are the same as those described above for LLCs.

(二) 股份有限公司

股份有限公司的股东以其认购的股份为限对公司承担责任。股份有限公司的设立，可以(1)采取发起设立或者(2)募集设立的方式。

(1) 发起设立，是指由发起人认购公司应发行的全部股份而设立公司。

(2) 募集设立，是指由发起人认购公司应发行股份的一部分，其余股份向社会公开募集或者向特定对象募集而设立公司。设立股份有限公司，应当有二人以上二百人以下为发起人，其中须有半数以上的发起人在中国境内有住所。

公司名称

股份有限公司，必须在公司名称中标明股份有限公司或者股份公司字样。

公司资本

股份有限公司注册资本的最低限额为人民币五百万元。法律、行政法规对股份有限公司注册资本的最低限额有较高规定的，从其规定。例如法律规定外资股份有限公司的最低注册资本为人民币三千万元(约合美元四百四十万元)。股份有限公司的资本划分为股份，每一股的金额相等。股份有限公司当对已缴纳的注册资本出具相应的股权证明。

股份有限公司采取发起设立方式设立的，注册资本为在公司登记机关登记的全体发起人认购的股本总额。公司全体发起人的首次出资额不得低于注册资本的百分之二十，其余部分由发起人自公司成立之日起两年内缴足；其中，投资公司可以在五年内缴足。在缴足前，不得向他人募集股份。

股份有限公司采取募集方式设立的，注册资本为在公司登记机关登记的实收股本总额。

出资形式以及实物出资与注册资本的比例适用有限责任公司的规定。

General Meeting

The General Meeting is the supreme corporate body in a JSLC and is made up of all the shareholders. The ordinary general meeting of shareholders must be held once a year. However, extraordinary general meetings may be called with two months' prior notice in the following circumstances (among others provided for in the articles of association): if the number of directors is less than 2/3 of the required number, if the company's losses exceed 1/3 of the capital, when the board of directors or supervisory board deem it to be necessary, and by any shareholder or shareholders cumulate holding at least 10% of the shares. The shareholders present at the meeting are entitled to one vote for each share they hold in the company. However, the shares held by the company do not have voting rights.

Resolutions of the general meeting must be approved by simple majority of the votes of the shareholders attending the meeting. However, issues of greater relevance such as changing the articles of association, increasing or reducing the share capital, changing the company type, merger, division or dissolution of the company, must be approved by 2/3 or more of the votes of shareholders attending the meeting.

Board of Directors

The JSLC must establish a board of directors, which must be made up of at least 5 directors and no more than 19. The term of office and the powers held by the board are the same as those described above for LLCs. The board must meet twice a year and extraordinary meetings must be held when proposed by: 1) shareholders representing 1/10 or more of the voting shares, 2) at least 1/3 of the directors, or 3) the supervisory board. The meeting of the board can only take place if more than half of the directors are present. Any decision of the Board of Directors must be approved by more than half of all directors; each director shall have one vote only.

The Manager

JSLCs must have a manager who is hired and dismissed by the directors. The term of office and powers assigned to the manager are the same as those described above for LLCs.

Supervisory Board

Unlike LLCs, the supervisory board of the JSLC is made up of at least 3 members. They meet regularly once every 6 months or whenever proposed by a supervisor. The term of office of its members, functions, discussion methods and voting procedures of the board are the same as that for the LLC, as described above.

股东大会

股份有限公司股东大会由全体股东组成。股东大会是公司的权力机构。股东大会应当每年召开一次年会。有下列情形之一的，应当在两个月内召开临时股东大会：董事人数不足公司法规定人数或者公司章程所定人数的三分之二时；公司未弥补的亏损达实收股本总额三分之一时；单独或者合计持有公司百分之十以上股份的股东请求时；董事会认为必要时；监事会提议召开时；公司章程规定的其他情形。股东出席股东大会会议，所持每一股份有一表决权。但是，公司持有的本公司股份没有表决权。

股东大会作出决议，必须经出席会议的股东所持表决权过半数通过。但是，股东大会作出修改公司章程、增加或者减少注册资本的决议，以及公司合并、分立、解散或者变更公司形式的决议，必须经出席会议的股东所持表决权的三分之二以上通过。

董事会

股份有限公司设董事会，其成员为五人至十九人。有限责任公司董事任期和职权的规定，适用于股份有限公司董事。董事会每年度至少召开两次会议，(1) 代表十分之一以上表决权的股东、或者(2) 三分之一以上董事，或者(3) 监事会，可以提议召开董事会临时会议。董事会会议应有过半数的董事出席方可举行。董事会作出决议，必须经全体董事的过半数通过。

公司经理

股份有限公司设经理，由董事会决定聘任或者解聘。有限责任公司经理职权和任期的规定，适用于股份有限公司经理

监事会

股份有限公司设监事会，其成员不得少于三人。监事会每六个月至少召开一次会议。监事可以提议召开临时监事会会议。关于有限责任公司监事任期、职权、议事方式和表决程序的规定，适用于股份有限公司监事。

Transfer of Shares

There are two types of shares in a JSLC, namely, registered/nominative stock and unregistered/bearer shares. Registered or nominative shares may be transferred by endorsement or other ways provided for by relevant laws or administrative regulations and unregistered shares or bearer shares are transferred by simply handing them over to the transferee. Shares issued to promoters or legal persons must be registered shares and may only be registered in the name of those promoters or legal persons. Chinese Company Law imposes restrictions on the term and value of shares held by promoters, directors, supervisors and senior managers in JSLCs, on their transferring of such shares.

Annual Reports and Accounting

At the end of each financial year, the company is required to produce a report regarding its financial situation prepared by a legitimate auditing firm. In China the financial year begins on 1 January and ends on 31 December. The report and accounts must be submitted to the shareholders for consideration in the 20 days preceding the annual meeting of shareholders. If the JSLC is a listed company, it should make public its management report and accounts.

The documents, books, balance sheets, reports and other accounting documents must be prepared in accordance with the unified accounting rules laid down by the Accounting Law of People's Republic of China as revised in 1999.

Articles of Association

The articles of association contain the rules that govern the operation of the company. In both LLCs and JSLCs, the articles of association must state the company name, the object of the company, the registered office, the registered capital and the capital subscribed by each shareholder, the directors and the rights and obligations of the shareholders, among other issues.

股份转让

公司发行的股票，可以为记名股票，也可以为无记名股票。记名股票，由股东以背书方式或者法律、行政法规规定的其他方式转让，无记名股票的转让，由股东将该股票交付给受让人后即发生转让的效力。公司向发起人、法人发行的股票，应当为记名股票，并应当记载该发起人、法人的名称或者姓名，不得另立户名或者以代表人姓名记名。公司法对发起人、公司董事、监事、高级管理人员的持股转让在时限和价值上进行了规定。

年度报告和会计

公司应当在每一会计年度终了时编制财务会计报告，并依法经会计师事务所审计。会计年度从每年一月一日至十二月三十一日。股份有限公司的财务会计报告应当在召开股东大会年会的二十日前置备于本公司，供股东查阅。公开发行股票的股份有限公司必须公告其财务会计报告。

资产负债表，财会报表以及相关文件须符合中国会计法及相关配套法规的规定。

公司章程

在有限责任公司和股份有限公司中，公司章程是公司的纲领，它规定了公司的名称和住址，公司的商业目标，注册资本和股东缴纳的资本，股东权利义务以及其他问题。

FOREIGN INVESTMENT

Introduction

The most important decision to be made by investors in China is the choice of the most suitable investment vehicle. Typically, the most popular forms of foreign investment in China are:

- the Wholly Foreign-Owned Enterprise (WFOE外商独资企业) - a company fully established by foreign capital.
- Joint Ventures (合资企业) divided into Equity Joint Ventures (EJVs) and Contractual Joint Ventures (CJVs). Joint ventures are formed on the basis of foreign and Chinese joint investments.
- the Representative Office (Rep. Office 代表处).

Foreign investors can also opt for more specific forms of investment such as:

- Build-Operate-Transfer (BOT).
- Compensation Trade (CT 补偿贸易).
- Processing & Assembly (PA 来料加工装配贸易).
- International Leasing (IL 国际融资租赁).

1. Leading Solutions for Investment

(A) The Wholly Foreign-Owned Enterprise (WFOE)

A WFOE is a Chinese limited liability company composed entirely of foreign capital owned by one or more foreign investors, excluding branches set up in China by foreign enterprises and other foreign economic organizations. China encourages the establishment of WFOEs with the capacity to export their products or that are equipped with innovative technology.

Typically, there is only one investor behind a WFOE, but this is not always the case. Two individuals or two or more foreign legal persons that wish to invest jointly in China may, for example, set up a holding company in a country or jurisdiction they are familiar with and then set up a WFOE and invest in China through this controlling company (holding).

The WFOE must conduct its activities and its business under the precise category of which the commercial license granted. In order to comply with Chinese law, it should retain formal and independent accountants, keep organized and independent accounting records, approve and register its balance sheets and financial statements and be ready any kind of supervision by the Chinese regulatory and financial authorities.

外国投资

简介

在中国投资一个很重要的决策就是要选择正确的投资形式，总的来说，有以下一些常用形式：

- 外资独资企业：全部由外资构成。
- 合资企业：由中外共同投资设立的公司，包括股份式合资企业以及合作经营企业。
- 代表处

另外还有其他可供选择的投资方式：

- 建设-经营-转让协议
- 补偿贸易
- 来料加工装配贸易
- 国际融资租赁

1、首选投资方案

(一) 外资独资企业

外资独资企业是由外国投资人全资注册的有限责任公司，并不包括外国企业在中国的分支机构及其他外国经济组织。中国鼓励具备出口能力以及创新能力的外资独资企业。

一般情况下，外资独资企业只有一个投资者，但不尽然。当两个外国自然人或法人有相同的投资意向时，可以在他们都熟悉的国家或法域内建立一个公司，进而通过该公司在中国投资设立外资独资企业。

外资独资企业可在营业执照中注明的期限内在进行经营活动。营业期间，外资独资企业须具备正规和独立的会计，经批准并注册的资产负债表和财务报表，并接受财务机关的监督。

There are three common types of WFOEs in China:

- Manufacturing WFOEs
- Consulting WFOEs
- Commercial WFOEs

In China, WFOEs were originally designed to encourage manufacturing activities aimed at exporting or introducing innovative technology to China. However, after China's accession to the WTO in 2001, such policies on WFOEs have changed. WFOEs are now increasingly used as a means of investment in services such as management consulting or software development and trading. In 2004, the Ministry of Commerce of People's Republic of China issued the 'Measures for the Administration of Foreign Investment in Commercial Fields', whereby foreign investors were allowed to establish Commercial WFOEs with 100% foreign capital, destined for wholesale or retail sales and franchises in China.

Some of the advantages of WFOEs:

- It has all the functionality of an independent legal entity, with the power to enter into contracts, issue invoices, hire and fire employees, make payments and receive payment in RMB;
- It allows full management powers and total control by the management board;
- It has the independence to implement strategies of a global dimension made by the affiliated companies without having to consider the involvement of Chinese shareholders;
- It can convert profits earned in RMB (or, CNY) to USD if it intends to distribute them to an associated company located outside China;
- It benefits from more effective protection for its intellectual property, know-how and technology;
- It has greater efficiency in its operation, administration and future development.

(B) The Joint Venture

The Joint Venture (JV) is another popular vehicle of investment in China. This investment solution always combines the market knowledge, the favourable market treatment and the manufacturing capacity of the Chinese partner, with the technology, know-how and market experience of the foreign partner.

The JV is usually formed as a limited liability company, taking the form of an equity joint venture or a cooperative joint venture. While the EJV is more strictly regulated and operates more closely to the corporate model, the CJV allows its shareholders greater flexibility when setting out contractual provisions that regulate, for example, distribution of profit, management and registered capital.

以下是三类常见外资独资企业：

- 生产类外资独资企业
- 咨询类外资独资企业
- 贸易类外资独资企业

中国批准设立外资独资企业，原本只是为了鼓励出口和技术创新。但在2001年加入世贸组织之后，相关政策发生了变化，外资独资企业被广泛采用于服务行业，例如战略管理咨询，软件开发和贸易。2004年，商务部通过《外商投资商业领域管理办法》，允许外资独资企业涉足批发零售业，特许经营等。

采用外资独资企业的优势主要有：

- 具备完全独立的法人资格，能签订合同，开具发票，雇佣员工，用人民币结算；
- 管理层对公司享有完全的治理权限；
- 可独自执行关联公司的全球经营战略，不受中国股东的影响；
- 可将人民币收益兑换成美金，转账到外国联营公司；
- 对知识产权、技术和科技提供更有效的保护；
- 更有效的经营管理和商业发展。

(二) 合资企业

合资企业在中国也被广泛采用。这种投资方案需要综合考虑中方的市场能力和生产能力以及外商的科技技能和市场经营经验。

通常合资企业采用有限责任公司的形式，包括合资经营企业和合作经营企业。对合资经营企业的规定比较严格，企业运营也更为接近公司模式，而合作经营更注重合作性质，操作具备更高的灵活性，例如双方可约定利益分配、经营管理权限和注册资本等等。

合资经营与合作经营具备很多相似性，例如在管理体制，申请政府批准方面，以及与主管申请当局之间的关系，合同形式，税收豁免，法律地位，适用的法律以及商业纠纷救济主管当局都一样。

CJVs and EJVs resemble each other and, in many respects, work in the same way. Aspects in which they are similar include their general management structure, the process of getting governmental approval and their relations with authorities to which they must submit requests for approval. They also share similar contractual formats, tax exemptions, legal status and applicable legal provisions as well as the authorities to which they may resort to settle potential commercial disputes.

(C) Equity Joint Venture

The EJV is a partnership between a Chinese company and a foreign company in China, through which shareholders can share the profits, risks and losses in proportion to their respective shares in the capital of the company. The foreign investors, in general, shall contribute no less than 25% of the total investment. Any transfer of capital to the EJV by any investor requires authorization from the other shareholders and should be made by consensus. It should also be approved by the supervisory authority with jurisdiction to grant approval and must follow the procedures for changes with the registration and administration office. Partners of EJVs have pre-emptive rights in acquiring of other partners' shares. EJVs are limited liability companies and their investors or shareholders are not personally liable for the debts which the company may incur. As a company, the EJV is able to acquire property, hire employees independently, execute works, etc.

The investment by foreign investors and Chinese investors in an EJV can take the form of cash, intellectual property rights, technology, real estate or other assets, such as equipment. However, only advanced technology and equipment that fit Chinese needs can be treated as foreign joint venture investment. China specifies through regulation the proportion of the capital that must be submitted for registration in face of the total amount invested in the EJV. It also specifies the minimum registered capital when the foreign investment concerns certain industrial activities regarded as special, as referred to above.

The management of the EJV is under the control of a board consists of at least 3 directors. The term of office for directors is 4 years and may be renewed with the consent from the investors of the joint venture. The usual period of operation for an EJV is between 10 and 30 years.³

(D) Contractual Joint Venture

The CJV is an enterprise established by a Chinese company and a foreign company. Unlike the EJV, which is subject to tighter legal regulation, the CJV is based on a contract for a cooperative joint venture (partnership) that regulates issues such as the duration of the enterprise and the sharing of profits and risks, as well as the division of losses at the end of the CJV. Profits from a CJV are divided in accordance with the clauses of the agreements rather than simply following the investment proportion of each partner as in the EJV. Furthermore, the way in which profits can be shared is more flexible.

In a CJV, Chinese companies usually provide the workforce, land and manufacturing infrastructures, whereas the foreign companies normally provide technology, equipment and capital.

(三) 合资经营

合资经营企业由中外公司设立，股东以其资本比例获取收益，共担风险。外方投资占总投资额的比例不得低于25%。投资方转让合资经营企业的股份的，须获得其他股东的一致同意，且获得原审批机关批准并在登记管理机关进行注册。合资经营企业合营他方在股份转让中享有优先购买权。合资经营企业是有限责任公司，其投资人或股东不对公司的债务承担责任。公司能独立取得财产并雇用员工及其他行为。

合资经营企业中外投资人的投资形式可以是货币、知识产权、技术、不动产或其他资产，例如设备。当然，只有满足中国需要的高科技技术和设备才能被认可用作投资。中国对外资投资的注册资本和总投资额之间的比例以及外资在特定行业投资的最低注册资本（前文有述）进行了特别规定。

董事会负责管理合资经营企业的经营，董事会成员不低于三人，任期四年，经投资方同意可连任。合资经营企业一般经营十年至三十年。⁴

(四) 合作经营企业

合作经营企业同样由中外公司依合作经营协议设立而成。该合作协议规定合作的期限，利益分配，风险分担，以及解散时的损失分担。在合作经营企业中，收益分配不是按照各方投资比例来确定，而是按照合同条款的约定来确定，由此可见其灵活性。

合作经营企业运营中，通常由中方提供劳动力，土地使用权和生产基础设施，外资方提供生产科技，设备和资本。

³ The Article 100 in "Regulations for Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures" says the duration of a joint venture shall be decided upon through consultation among all the parties to the joint venture according to the actual conditions of the particular lines of business and projects. The duration of a joint venture engaged in an ordinary project shall, in principle, be between 10 to 30 years. Duration for those engaged in projects requiring large amounts of investment, long construction cycles and low profit rates on the capital, or in projects producing highly sophisticated products or products well selling in the international market, with advanced technology or key technology offered by the foreign parties to the joint ventures, may extend to 50 years. The duration of a joint venture may be longer than 50 years, if specially approved by the State Council.

⁴ 根据1986年1月15日国务院发布的《国务院关于〈中华人民共和国中外合资经营企业法实施条例〉第一百零一条的修订》，此条款修改为：“合营企业的合营期限，根据不同行业和项目的具体情况，由合营各方协商决定。一般项目的合营期限为十年至三十年。投资大、建设周期长、资金利润率低的项目，由外国合营者提供先进技术或关键技术生产尖端产品的项目，或在国际上有竞争能力的产品的项目，其合营期限可以延长到五十年。经国务院特别批准的可在五十年以上。”

(E) Representative Office

Another common form of foreign investment is through the setting up of a representative office (Rep. Office), which is not an independent company and is, therefore, considered as an extension of its parent company. A Rep. Office normally serves as a commercial link between the holding company and local companies in China. It is also used to conduct market surveys and product promotions, to establish contacts with potential consumers, to structure and organize the travel of representatives of the holding company to China and to conduct other not-for-profit activities. A Rep. Office is unable to engage in any activity that generates income, except in the cases where there are intergovernmental agreements for that purpose.

The Rep. Office is less demanding in terms of procedure and takes less time to be established. Normally, the Rep. Office activities are restricted and it may NOT:

- engage directly in business activities aimed at making a profit;
- issue invoices;
- accept payments in RMB;
- open Bank accounts, use letters of credit or benefit from other financial services;
- employ local labours directly (but hire local employees through qualified human resources agencies).

2. Other Forms of Investment**(F) Build-Operate-Transfer**

Foreign investors who carry out industrial and infrastructure projects in China have the option of investing through a BOT. This form of investment usually requires investors to finance, design, build and conduct the business for a certain period of time, after which, upon the expiry of the contract, the ownership of the project is transferred to the Chinese government.

(G) Business of Compensation

In the compensation business, essentially, the Chinese companies produce goods with the use of machinery, equipment, raw materials and technology which are provided by foreign investors directly or on a credits basis. Foreign investors receive their compensation through capital obtained from other manufactured products, negotiated by both parties. This form of investment involves technology transfer, trade in raw materials and financing by foreign investors and by their Chinese partner.

(五) 代表处

设立代表处也是外商投资常用方式之一。该代表处非独立法人，仅是总公司的业务延伸，起到连接总公司和中国本地公司的桥梁的作用。同时代表处也可以进行市场调查，产品推广，与潜在顾客建立联系，负责总公司代表访问中国事宜以及其他非盈利活动。代表处不得从事盈利活动，除非该类活动有政府间协议。

代表处的成立比较便捷，其活动范围受到如下限制：

- 不能直接参与盈利性商业活动；
- 不得开具发票；
- 不得接受人民币付款；
- 不能开设银行账户，开具信用证，或者接受其他相关金融服务；
- 不得直接招聘当地员工（需经过有资质的劳务公司雇用劳动力）。

二、其他投资形式**(六) 建设-经营-转让协议**

在中国投资工业和基础设施建设的外国投资者可以选择建设-经营-转让合同进行投资。投资者需自行融资、设计、建设并自主经营一段时间，合同到期后，将工程转让给中国政府。

(七) 补偿贸易

补偿贸易中，中方公司在信用的基础上，直接运用外方投资者提供的机器设备，原材料和技术来生产。通过中外双方的谈判，以产品来补偿外商的投资。该种投资方式涉及技术转让，原材料贸易和中外双方的融资。

(H) Processing & Assembly

This kind of investment is based on a processing and assembly contract to be established between a Chinese company and a foreign company, allowing foreign investors to benefit from the manufacturing of products in China without the need to form a company with this sole object. This form of investment is very popular in Southern China.

The foreign investor usually provides the raw material, parts and components required for the manufacturing process, while the Chinese partner provides manufacturing and industry facilities and the workforce. The Chinese company operates under the directions of its foreign partner and then exports the final product to the foreign partner.

(I) International Leasing

International leasing involves the leasing of equipment to the lessee in China and, under the contract terms, receiving the income arising from that lease. During the period of the lease, the lessee has the right to use the equipment, while ownership of the equipment remains with the lessor. In the lease, the lessor and lessee normally agree on what will happen to the equipment at the end of the lease agreement. The lessor can choose between taking back the equipment and selling it to the lessee for a fixed price.

3. Additional considerations on financial institutions and investment companies incorporated with foreign capital**(A) Financial institutions incorporated with foreign capital**

Financial institutions incorporated with foreign capital registered in China include banks, financial companies and the manufacturers and distributors of credit cards, which are financed entirely by foreign capital or through a partnership known as a Sino-Foreign Equity Joint Venture.

A financial institution funded with foreign capital may opt to set up a representative office (Rep. Office) in China to undertake non commercial activities such as consulting, networking and market research. Under no circumstances can the representative office enter into an agreement with any individual or legal person with a view to making a profit for the financial institution represented, or engage in any commercial and operational activities.

The incorporation of banks funded with foreign capital is dependent on compliance with statutory requirements and regulations. The minimum registered capital of the bank is RMB 1 Billion (approx. USD 0.15 Billion) or the equivalent in other freely convertible currencies and this capital must be fully paid up.

(八) 来料加工

该类投资以中外双方的来料加工合同为基础，外国投资者无需建立公司就可以在国内进行产品生产。该方式在中国南部被运用的非常广泛。

通常外国投资人提供原材料或产品的组装部件，中方提供组装设备及劳动力。中方根据外商的指示进行生产最后将成品出口给外商。

(九) 国际租赁

国际租赁主要是指中方承租人承租外方设备并依据合同条款支付外方租金。租赁期间，中方承租人有权使用设备，外方出租人继续拥有设备所有权。一般情况下，租赁期满时双方会就设备处置问题达成协议，外方出租人可以选择收回设备或者按约定价格卖给中方承租人。

三、外资金融机构和外资投资公司的特别规定**(一) 外资金融机构**

在中国注册的外资金融机构包括银行、金融公司和信用卡制作发放单位，融资形式包括外资全资和中外合资（中外合资经营企业）。

外资金融机构可在中国设立代表处以便进行非商业活动，例如咨询，联络和市场调查。代表处不得以其公司利益为目的与任何自然人或法人签订合同，不得从事商业性质的活动。

外资设立银行，视其符合法律法规的具体情况而定。银行最低注册资本为人民币十亿元（约合美元一亿五千万美元）或其他等值可兑换货币，且必须足额注册。

Under the Regulation of the People's Republic of China on Administration of Foreign-Funded Banks, in force since 2006, banks funded by foreign capital in China have been allowed to accept deposits from the general public. Foreign financial institutions are also subject to the Chinese Anti-Money Laundering Law, in force since 2007. Financial institutions are required to establish internal anti-money laundering control systems including customer identification and records preserving the details of their customers and transactions carried out. They must also have alert systems for amounts that are large or suspicious for any reason.

(B) Investment Companies financed by foreign investors

The regulations on the establishment of investment companies by foreign investors in China are contained in the Provisions of the Ministry of Commerce on the Establishment of Investment Companies by Foreign Investors enacted in 2003, revised twice in 2004 and supplemented by the Supplementary Provisions on the Establishment of Investment Companies by Foreign Investors in 2006.

An investment company established by foreign investors is a company with limited liability entirely controlled by foreign capital or a mixed joint venture company, designed for direct investments. To incorporate an investment company, the investor must previously have had at least ten companies incorporated with foreign capital in China. The minimum share capital for this type of company is US\$ 30 million, which must be fully paid up. This kind of investment company is often encouraged for industry, agriculture, infrastructure and energy projects.

(C) Restrictions to Foreign Investment

Investment projects in China are legally classified as encouraged, permitted, restricted and forbidden under the Provisions Guiding the Orientation of Foreign Investment. If the project does not fit into the Foreign Investment Industrial Guidance Catalogue (2011 Revision)⁵ or the Catalogue of Foreign-Funded Dominant Industries of the Mid-west Region (2008 Revision), it may be classified as permitted and therefore will not be subject to any favourable treatment or restriction. These regulations are constantly updated to reflect the foreign investment policies of the country.

依据2006年的中华人民共和国外资银行管理条例，外资银行可在中国境内吸收公共存款。依据2007年的中华人民共和国反洗钱法的规定，外资银行须建立内部反洗钱监管机制、客户识别与交易记录，任何可疑的大数额交易预警系统。

(二) 外商投资举办投资性公司

2003年颁布的商务部《关于外商投资举办投资性公司的规定》对外资投资公司进行了规范，该规定于2004年两度修改，配套法规还有2006年的《关于外商举办投资性公司的补充规定》。

外商举办的投资性公司是用于直接投资的有限责任公司，可由外商独资成立或由合资企业设立。成立投资性公司，外商需要有至少十家以及在中国成立的外资公司。投资性公司最低注册资本为美元三千万，且须足额缴付。政府鼓励该类投资性公司在工业、农业、基础设施和能源项目上投资。

(三) 外资投资的限制

根据《指导外商投资方向规定》，中国对外商投资的政策有四个级别，分别是：鼓励，准许，限制和禁止。如果投资项目不属于《外商投资产业指导目录（2007修订）⁶》或《中西部地区外商投资优势产业目录（2008修订）》中所列举的项目，则被认定为准许，不受限制也不享有优惠待遇。这些规则反映中国对外资的态度。

⁵ Catalogue of Industries for Guiding Foreign Investment (2011 Revision) will come into force since Jan 30, 2012.

⁶ 《外商投资产业指导目录（2011修订）》已于2011年12月14日通过，将于2012年1月30日生效。

Approval Authority - MOFCOM

The establishment of a Foreign Investment Enterprise (FIE) in China is subject to approval by the Ministry of Commerce of China (MOFCOM) or by one its departments for different areas, depending on the volume of the investment and the classification code of the activity. In 2009, MOFCOM issued two new circulars: Circular of the Ministry of Commerce on Further Enhancement of the Approval Scheme for Foreign Investment (Shang Zi Han No. 7 (2009) ("Circular 7"), in force since 5 March 2009 and Circular of the Ministry of Commerce on Delegation of Approval Authority on the Establishment of Foreign Investment Holding Companies (Shang Zi Han No. 8 (2009) ("Circular" 8), in force since 6 March 2009.

Activities where foreign investment is prohibited

- Foreign investment is generally prohibited in the following areas of business:
- State security and/or public interest activities;
- Pollution to the environment, damage to natural resources or human health;
- Threat to security and use of exclusive military areas;
- Excessive occupation of farmland adverse to the protection and development of natural resources;
- Exclusive use of Chinese resources in the production of goods.

Activities where foreign investment is restricted

Restricted foreign investment is subject to approval and special assessment. The legislation also controls the form of investment in the case of activities restricted to "EJVs and CJVs", in which the Chinese partner's investment and control will be greater than that of the foreign investor.

- Activities in which foreign investment is restricted:
- Exploitation of specific types of mineral resources the use of which is limited by the State;
- Activities harmful to natural resources and environmental protection;
- Obsolete technologies;
- Industries previously prohibited which the State is gradually liberalizing.

The activities in which foreign investment is restricted are updated regularly by the State. Currently, banking, financial activities, trust investments, exchange, insurance, construction and operation of luxury hotels and high end villas, high end office buildings, market research, credit research and consultancy are among the activities where foreign investment is restricted.

批准机关——中国商务部

外资企业成立须经过商务部或其部门(视具体的投资额和投资领域而定)的批准。2009年,商务部发布两个通告:《商务部关于进一步改进外商投资审批工作的通知(商资函【2009】7号)》(2009年3月5日生效)以及《商务部关于下放外商投资举办投资性公司审批权限的通知(商资函【2009】8号)》(2009年3月6日生效。)

禁止外商投资的领域

总体而言,下列为禁止类外商投资项目:

- 危害国家安全或者损害社会公共利益的
- 对环境造成污染损害,破坏自然资源或者损害人体健康的
- 危害军事设施安全和使用效能的
- 占用大量耕地,不利于保护、开发土地资源的
- 运用我国特有工艺或者技术生产产品的

限制外商投资的领域

限制外商投资的项目须经过批准和特别评估。立法对外商投资项目规定“限于合资、合作”的,要求“中方控股”或者“中方相对控股”。

限制外商投资的领域有:

- 从事国家规定实行保护性开采的特定矿种勘探、开采的;
- 不利于节约资源和改善生态环境的;
- 技术水平落后的;
- 属于国家逐步开放的产业的。

对限制外商投资的项目由国家定期更新。目前,限制外商投资的项目有:银行,金融租赁⁷,财务公司,信托投资公司,货币经济公司,保险公司,高档宾馆、别墅、高档写字楼和国际会展中心的建设、经营,市场调查(限于合资、合作),资信调查与评级服务公司,法律咨询等等。

⁷《外商投资产业指导目录(2011修订)》中不再是限制外商投资的领域

Activities where foreign investment is encouraged

Activities where foreign investment is encouraged are:

- high and new technologies or advanced application technologies which can improve the performance of products, increase the technologic and economic efficiency of companies, or create new equipment and materials which are beyond the capacity of domestic production;
- new technologies for agriculture, comprehensive development of agriculture, energy, transportation and the raw materials mining industry;
- energy saving and raw materials and environmental protection;
- product improvement and development of new markets or increasing the international competitiveness of products;

Currently, foreign investment is principally encouraged in the areas of modern logistics, international economy consulting services, science, technology, environmental protection, outsourcing for financial intermediation services, human resources services, software development, call center⁸ services, data processing and the operation of sports events.

4. Setting up a company through investment of a foreign company

(A) Establishment of a Representative Office (Rep. Office)

Foreign companies planning to set up a Rep. Office in China have to complete the registration with the competent authorities. Prior approval is required for a company to operate in an area where foreign investment is restricted. The registration request must include:

- The Application Form;
- Certificate of registration of foreign company;
- Letter proving credit;
- Appointment of legal representative;
- CV and identification of the legal representative;
- Tenancy agreement for the Rep. Office address.

鼓励外商投资的项目

鼓励外商投资的项目：

- 属于高新技术、先进适用技术，能够改进产品性能、提高企业技术经济效益或者生产国内生产能力不足的新设备、新材料的；
- 属于农业新技术、农业综合开发和能源、交通、重要原材料工业的；
- 属于新技术、新设备，能够节约能源和原材料、综合利用资源和再生资源以及防治环境污染的
- 适应市场需求，能够提高产品档次、开拓新兴市场或者增加产品国际竞争能力的。

目前，鼓励外商投资的项目有：现代物流，国际经济、科技、环保信息咨询服务，以承接服务外包方式从事系统应用管理和维护，信息技术支持管理，银行后台服务，财务结算，人力资源服务，软件开发，呼叫中心，数据处理等信息技术和业务流程外包服务。

四、外国公司投资设立公司

(一) 成立代表处

外国公司在中国设立代表处须在主管当局注册。经营限制外商投资项目需要提前批准，注册需要的文件有：

- 申请书
- 外国公司注册证明
- 资信证明
- 首席代表任命书
- 首席代表简历和身份证明
- 代表处地址的租赁合同

⁸ In Catalogue of Industries for Guiding Foreign Investment 2011 Revision, Call Center has been specified as Off-shore Call Center.

(B) Incorporation of Foreign Investment Enterprise (FIE)

The following steps are required in connection with the incorporation of an FIE:

1. Due diligence

Finding appropriate premises for the headquarters of the FIE or choosing a partner are examples of tasks to be performed in advance.

2. Pre-approval of the company name

Prior to registration, the name of the company has to be pre-approved by the commercial register of companies – the local Administrative Bureau for Industry and Commerce.

3. Approval of the articles of association and contracts

These documents must be submitted for review and further approval to either MOFCOM or to one of its departments located in any of the different provinces. The approval is granted through the issue of a certificate for the FIE.

4. Business license

Within 30 days of the issue of the certificate of approval, the foreign investor must register the FIE and apply for a commercial license from the local commercial register. The date of the commercial license granted to the FIE is also the date when the company is deemed to have been incorporated, after which it may begin its activity under the terms of its commercial license.

5. Other formalities

The company must take the following steps within 30 days of the issue of the commercial license:

- i) obtain approval to make a corporate seal from the police department;
- ii) obtain the organizational code from the Bureau of Quality and Technical Supervision;
- iii) apply for registration with the local administration for the foreign currency exchange;
- iv) open a foreign currency bank account in the name of the company and transfer the registered capital to that account;
- v) register with the local Statistics Bureau;
- vi) register with the Tax Bureau, at the local and state levels;
- vii) apply for authorization to print or purchase financial invoices/receipts;
- viii) register with the Social Security Bureau;
- ix) if the company is involved in the import/export business, it must also register with Customs Authorities.

(二) 外商投资企业的设立

步骤：

1. 尽职调查

为外商投资企业选择合适的总部所在地，选择合作方等都是前提准备工作。

2. 公司名称须提前批准

登记注册前，公司名称须经过当地的工商行政管理局的预先核准。

3. 公司章程与中外合作合同的批准

公司章程与中外合作合同须递交中国商务部或各省商务厅批准。通过批准后获得批复。

4. 营业执照

批复发出30日内，外商须注册外资企业并在当地申请工商营业执照。取得工商营业执照后外资企业方得设立，并依照营业执照所载项目开展营业活动。

5. 其他手续

取得营业执照30日内，公司须完成如下手续：

- (1) 从公安部门获准刻制公司印章；
- (2) 从质量技术监督局申领企业代码；
- (3) 在当地行政单位进行外汇登记证。
- (4) 以公司名义开办外币户口并将注册资本转账至该户口；
- (5) 在当地统计局登记；
- (6) 在当地国税局和地税局登记；
- (7) 申请开具金融发票；
- (8) 在社保局登记；
- (9) 公司业务涉及进出口贸易的，须同时向海关登记。

6. Registration of foreign capital

Once issued, the Foreign Currency Exchange Registration Certificate is valid for one year and reviewed annually. If the company changes its name, address, nature of business, transfers shares, increases capital or merges then, after carrying out the statutory changes and the commercial registration of the same, the FIE should apply for the replacement of the Foreign Exchange Registration Certificate.

The FIE must open a foreign currency exchange bank account with a bank which is certified to provide such service before the expiry of validity of the FIE's Foreign Currency Exchange Registration Certificate, within the deadline required by the local government.

7. Employee Registration

Within 30 days of its formation, the newly incorporated company must register its employees and social welfare contributions with the local Social Security Bureau, as required by the 1999 Interim Measures on the Management of Social Insurance Registration (社会保险登记管理暂行办法 1999) and upon doing so, it will be granted its social security registration card.

(C) Incorporation of a manufacturing company

In addition to meeting the general procedure described above, the following specific steps are to be taken for setting up a foreign capital manufacturing company in China.

1. Letter of Intent or Investment Agreement

After selecting the primary site in China where the investment will be located, foreign investors are advised to sign a Letter of Intent or Investment Agreement with the local government (this document is not legally enforceable). The Letter of Intent or Investment Agreement should address the following subjects:

- Project description;
- Amount of investment;
- Project schedule;
- Demarcation of land (including details such as location, size and the price of land);
- Preferential treatment offered by the local government;
- Support to be offered by the local government during the approval process.

外国资本注册

外汇登记证有效期一年，且须年检。如更换公司名称、地址、商业性质，进行股份转让，增加资本或进行合并，外资企业需在进行相应的商事注册更改之后，申请更换外汇登记证。

在外汇登记证过期之前，以及当地政府要求下，外资企业需在有资质的银行开办外币兑换户头。

雇员登记

外资企业成立30日内，须依据《社会保险登记管理暂行办法(1999)》向当地社保局注册员工和社保缴费。公司应当根据社保注册卡，专门为缴纳社保金开户。

(三) 成立生产公司

除上述一般规定外，成立外资生产公司须满足一下步骤：

1. 投资意向书或者投资协议

在选定主要投资地点后，外商最好与当地政府签订投资意向书或者投资协议，该文件没有强制执行力，包括以下内容：

- 项目介绍
- 投资额
- 项目日程表
- 地界 (包括详细的地址，面积和价格)
- 政府提供的优惠政策
- 批准过程中当地政府给予的支持

2. Land use

Land properties in China are of two kinds: (a) collectively-owned land or (b) State-owned land.

(a) Public land - usually rural farmland and rarely an investment option by foreign investors. If a foreign investor intends to invest in this type of land, it is advisable to first seek appropriate professional support.

(b) State-owned land – subdivided into two subtypes: i) land allocated and ii) land granted.

i) the utilization of the allocated land is granted to the entity by the Chinese government with a particular purpose. Allocated land cannot be freely transferred, mortgaged or sold without the approval from the local authority and the payment of an allocation fee. Normally, this right is not limited in time.

ii) granted land, on the other hand, is paid for and can be used for commercial and industrial purposes. Moreover, the right to use this type of land – usufruct – can be transferred, mortgaged and leased freely.

The usufruct right of the land is acquired further to the conclusion of a contract granting land tenure with the competent authority for land administration. For the grant of the land tenure, the company must pay the government a special Fee. Provided the applicable requirements are met, the government will pass the Land Use Certificate to the company. Pursuant to China land law, the usufruct is valid for a maximum fixed term of 50 years for industrial projects. Once the term expires, the holder is granted a time span to apply for an extension of the contract against payment of a fee on land use.

3. Project Feasibility Report

A Project Feasibility Report should be submitted to the National Development and Reform Commission, at state or local level, to request approval. The report should touch upon subjects such as name, term and target of the project, qualification of the investor, fundamental information of the project, adopted technologies, the selected area, environmental assessment, sales, purchases and consumption of raw materials, registered capital and investment capital proportion, etc. The feasibility report is not a compulsory document and no longer has to be approved by the authorities.

4. Environmental Impact Report

The environmental impact report shall be submitted to the local government for the establishment of an industrial unit. The report usually covers matters such as types and volume of pollution involved in the project, the impact on environment, pollution controlling measures and technical flow chart. The environmental impact report must be prepared by a technical expert. The environmental authority will assess the project, which can only proceed upon its written approval.

(2) 土地使用

在中国，土地有两类：(1) 集体所有土地和(2) 国有土地。

(1) 集体所有土地-通常都是农村的农田，而且外商绝少选择这种投资。如果外商对此感兴趣，最好先进行专业法律咨询。

(2) 国有土地-又细分为两类：(i) 政府划拨和(ii) 政府出让使用权。

(i) 政府划拨土地有特定目的，划拨的土地不能自由转让，抵押，经当地政府批准并支付一定费用后，方能出卖。通常划拨土地的使用没有期限。

(ii) 土地使用权，经付费可作商业和工业用途。土地使用权可以自由转让，设立抵押，租赁。

在与土地管理部门签订合同后能获得土地使用权。在付费并符合各方面要求后，政府将土地使用权证授予公司，根据中国法律，工业用地使用权有效期为50年。到期后，使用人可续交费用申请延期。

(3) 项目可行性报告

工程可行性报告须递交至国家和地方的国家发展改革委员会申请批准。该报告包含工程名称，期限，工程目标，投资者资质，工程基本资料，采用的技术，选择的区域，环境评估，销售，原材料的购买和消耗，注册资本与投资额的比例等等。可行性报告不再是通过政府审批的必须文件。

(4) 环境影响报告

在工业单位建设施工获得批准之前，需要向当地政府递交环境影响评估报告。报告需就工程可能造成何种污染的和大小，对环境的影响，控污措施和技术流程图进行说明。环境影响报告需由环境影响评价师做出。环保局也需对工程进行测评并书面同意。

III. TYPES OF ECONOMIC REPRESENTATION

China has a wide range of diversified commercial agreements, some modelled by the law and Chinese regulations (civil jurisdiction deriving in particular from German and French law), and others are essentially defined by an intense commercial practice, which at the international level, with respect for general Chinese law rules. These agreements allow the access to the hyperactive Chinese distribution market in a diversified way, as regards corporate structures, with different levels of control, and as regards the implementation of the distribution company scope, with forms that offer considerable flexibility for the operations.

Investors should be aware of the specificities Chinese law foresees as regards some of those contracts, such as the franchising agreement, as well as the typical features of the most-commonly used agreements in international distribution, such as the agency, concession and other agreements of the retail and wholesale distribution when used in the Chinese market.

As we will see, some of those contracts still have an unsophisticated legal basis or at least one that is different from the European and American models, in particular due to the fact the Chinese market was closed to foreign investment with severe restrictions until the adhesion of China to the World Trade Organization, in 2001, and in some cases (as happened with services and distribution) until later.

China liberalized the services sector to foreign investment, including the wholesale and retail distribution, in the end of 2004, through the Administration Measures for Foreign Investment in the Commercial Sector, of April 16, that is, three years after the adhesion to the World Trade Organization, excluding most of the barriers for access and operability in this market.

In fact, Chinese legislation nowadays allows foreign companies and individuals to set up agents, enter into franchise agreements and act as wholesalers and retailers through foreign investment companies set up in China, including companies with only foreign capital. Except when one foreign retailer has by itself 30 or more branches distributing pharmaceutical products, pesticides, vegetal oil, cotton, sugar, chemical fertilizers, grains and plastic films to protect the soil or other products with different trademarks from different suppliers, the foreign capital proportion may not surpass 49%.⁹ Also, the tobacco and salt markets are still interdict to foreign investors in China, since these are State monopolies.

In China, wholesaling refers to the activities of sale of goods to retailers or to industrial, commercial or institutional clients or to other wholesalers and the provision of associated services. Wholesaling includes the sale of products, agency (exception made to auctions), the import and export of goods and relevant accessory businesses. Conversely, retail refers to the sale of goods for consume or use by individuals or groups and the offer of accessory services in fixed places, on television, by phone, mail, internet or automatic machines. This activity includes, therefore, the retail sale of products, the import of self-made products, the purchase of national products for export and other relevant accessory businesses.

Beyond the agreements more structural to the company and its distribution activity, China has a legal diversification of contracts and a market openness that allows the performance of ancillary services such as assembling, trial and classification of lots a bulk, warehousing, marketing and publicity, after-sales services, etc. in an organized manner.

⁹ Supplementary Provisions (IV) for the "Administrative Measures on Foreign Investment in the Commercial Sector" says where a service supplier from Hong Kong or Macau has opened more than 30 stores accumulatively in the Mainland and the commodities that it deals in include pharmaceutical products, agricultural chemicals, agricultural film, chemical fertilizers, vegetable oil, edible sugar, cotton, etc., and the commodities are of different brands and are from different suppliers, such service supplier is allowed to operate the business as a sole proprietor.

三、各种商事形式

中国拥有多种商事合同，其中一些以成文法条（源自德国法国的大陆法系）为蓝本，其他的则以商业惯例定义，即在国际层面上遵循一般中国的法律规则。这些协议对公司的结构具有不同程度的控制，而对公司的经营分配范围也相当灵活的运作形式，有助于投资者多元化地进入中国分销市场。

投资者应当注意到中国法律中各种合同协议，例如特许经营合同，以及在国际分销市场广泛采用的代理协议、特许协议、其他零售和批发销售协议在中国市场的适用的特殊性。

正如我们将会看到的，这些合同的法律依据依然不够成熟，至少与欧洲及美国的模式具有差异，特别是在2001年加入世贸组织前，中国市场不对外开放，对外商投资进行了严格的限制。

在2004年底，《外商投资商业领域管理办法》中规定了中国开放了服务业的外商投资，包括批发和零售市场，从4月16日该管理办法颁布距中国加入世贸组织共经历了三年的时间，排除了市场准入和运营壁垒。

事实上，当今中国法律允许外国公司和个人设立代理公司，特许经营，或直接设立外商企业的批发商和零售商，其中包括外商独资企业，但是如果单一外国零售商如拥有30家或更多的经销点销售药品、农药、植物油、棉花、食糖、化肥、粮食和用来保护土壤的塑料薄膜或来自同的不同供应商的不同品牌的其他产品，在这种情况下，外资所占公司资本不得超过49%。¹⁰一方面，由于国家垄断，中国烟草和食盐市场仍然禁止外国投资者投资。

在中国，批发商的定义是将商品销售给零售商或工业、商业或机构客户或其他批发商及提供相关服务。批发活动包括产品的销售，代理（拍卖除外），货物及相关配套进出口。另一方面，零售则被认为是消费品的出售或个人或团体的使用，以及在固定的地方提供配套服务，如电视，电话，电子邮件，因特网或自动机。因此零售活动包括产品的零售，自制品的进口，社会产品采购出口及其他相关配件交易。

中国拥有多样的合同及开放的市场，组装，仓储，销售，宣传及售后服务等附属性服务将在这里有序的进行。

¹⁰ 根据《外商投资商业领域管理办法补充规定（四）》，对于同一香港、澳门服务提供者在内地累计开设店铺超过30家的，如经营商品包括药品、农药、农膜、化肥、植物油、食糖、棉花等商品，且上述商品属于不同品牌，来自不同供应商的，允许香港、澳门服务提供者以独资形式经营。

Agency – general

Despite its generalized use, as referred, based in the international experience and in the principles of civil and contract Chinese general laws, the economical representation through the agreement of agency, which is considered a wholesale commercial activity, is not specifically regulated in the Chinese law, in particular as regards the rights and obligations of commercial agents.

The General Principles of Civil Law from PRC, from January 1 1987, foresee some rules of a very general character as regards agency, which have a mandatory application to agents and principals, who may not enter into contracts outside the scope thereby foreseen.

This law distinguishes three types of agents: agents with mandate, which powers derive from the principal, the statutory agents, which powers are defined by law, and the agents appointed by the Court or a certain unit or service.

This law does not foresee a definition of commercial agent or principal, the former is defined by remission to the aforementioned 2004 Administration Measures, in which commissionaire agents are defined as sales agents, brokers, auctions or other goods wholesalers, who sale to other persons or provide relevant accessory services, being remunerated for doing so according to the agency agreement.

On the other hand, the PRC Contract Law, from March 15 1999, defines commissionaire agency contracts as those where the agent conducts commercial activities in its own name on behalf of the principal, paid by the principal the corresponding remuneration.

Furthermore, within the PRC General Principals of Civil Law referring to agency is not distinguished between agents with or without representation, depending on the authorization the agent has or not to celebrate contracts in the name of the principal (further to the promotion of said agreements between the principal and third parties), as it happens in the European and Portuguese commercial agents regulations.

The agency agreement may be formalized in the written form or merely orally. The written form is foreseen only for the cases the law states the activities addressed to the agent should be formalized in written. The written form is however the form usually chosen when there is foreign partners. In this last case, the agency agreement should indicate clearly the name of the agent, the tasks required from him, the scope and duration of the powers conferred and should be signed (or stamped) by the principal.

This general law also does not foresee the written notification with a fixed minimum term previous notice to denounce or termination of the contract by the parties; a damage compensation right or the payment of commissions after the termination of the contract is not foreseen; the compensation for client brought is not foreseen and any non contractual rights of the agent after the termination of the agreement neither.

一般代理

尽管使用普遍，但根据国际经验，民法规定和一般合同法，在中国法律中没有对这种被看作是批发商业活动通过代理协议的经济表现形式作出明确的规定，尤其是商务代理商的权利和义务。

1987年1月1日实施的中华人民共和国民法通则，制定了代理商一般法律原则，强制委托人及代理人遵守合约。

该法将代理界定为三种类型：由委托人管理的委托代理；由法律来规范的法定代理；以及法院或某单位指定代理商或服务的指定代理。

这部法律没有定义商务代理商或委托人，商务代理商是在上述的2004年管理办法中被定义的。其中加盟代理被定义为销售代理商，经纪，拍卖或其他商品批发商，向他人进行销售或提供相关配套服务，根据代理协议获得报酬。

另外，1999年3月15日中华人民共和国合同法对隐名代理做出了明确定义，即以自己的名义代委托人进行商业活动，委托人支付相应的报酬。

与欧洲和葡萄牙关于商事代理的规定类似，民法通则未区分显名代理与隐名代理，代理人与第三人签订的合同是否有效由代理人是否有被代理人的授权来判断。

民事法律行为的委托代理，可以用书面形式，也可以用口头形式。法律规定用书面形式的，应当用书面形式。书面委托代理的授权委托书应当载明代理人的姓名或者名称、代理事项、权限和期间，并由委托人签名或者盖章。

一般的法律并未规定双方废除或终止合同时应具有最低期限的书面形式的通知，没有规定合同终止后的损害赔偿权利或佣金的支付；也没有规定协议终止后客户补偿及协议后代理商的非合同权利。

Transfer of the contractual position of the agent

According to the General Principles of Civil Law on agency, the agent shall obtain the authorization of the principal before transferring the powers hold under the agency contract umbrella to third parties. If the authorization is not previously obtained, the principal shall be informed soon, after the transfer of powers, but the agent is liable in case the principal does not accept the transfer. Exception is made, however, in the cases the transfer of the agent's contractual position is done in emergency circumstances in the interest of the principal (similar to the theory of the urgent necessity received in certain situations by Portuguese law).

Breach of the agreement

The parties may claim the breach of the agreement by the counterpart, but the General Principles of Civil Law does not foresee any consequence for that case. The PRC Contract Law shall apply the damaged party should be compensated for the damages, although subject to the general obligation to mitigate them if there is the possibility to do so.

Liability of the agent and the principal

According to General Principles of Civil Law, the liability of the agent and of the principal verifies in the following cases and terms:

- The principal is liable by the acts of the agent in case it accepts the act of the agent done without authorization or beyond the powers assigned in the agency agreement, the same verifying after the end of the agreement;
- In case the Principal is aware of the execution by the agent of an act within the scope of the agency agreement, not reacting against that act, the act is considered consented;
- In case the agent does not comply with the duties foreseen in the agency causing damages to the Principal, the agent is considered liable for those damages;
- In case of an agreement between the agent and third parties that creates damages to the Principal, the agent and the third party will be jointly responsible for those damages;
- In case the agent carries on an illegal activity and the Principal has knowledge of the fact without reacting against the illegal act, both agent and Principal are jointly liable.

Applicable law and forum

Regardless of the agreement between the parties on the choice of law regulating the agreement and the choice of forum for the situations of conflict, as regards agency contracts executed in China, the Chinese law is applicable, prevailing also the Chinese jurisdiction to solve conflicts.

代理合同的转让

根据民法通则, 委托代理人为被代理人的利益需要转托他人代理的, 应当事先取得被代理人的同意。事先没有取得被代理人同意的, 应当在事后及时告诉被代理人, 如果被代理人不同意, 由代理人对自己所转托的人的行为负民事责任, 但在紧急情况下, 为了保护被代理人的利益而转托他人代理的除外 (与葡萄牙法律制定的在某特殊情况下的紧急需要理论相似)。

违约

由对方违反协议当事人可以索赔, 但民法通则并未对此作出任何结论。中国合同法中, 受损害方应获得赔偿。

代理人与委托人责任

根据中国民法通则, 代理人和委托人的责任体现在下列情况及条款中:

- 代理人作为委托人的代表, 对委托人负责, 代理人必须在委托人的授权范围内行事。委托人对代理人的代理行为承担责任;
- 如果委托人知道代理人在代理协议范围内实施民事行为而不作否认表示的, 视为同意。

代理人不履行职责而给被代理人造成损害的, 应当承担民事责任。

- 代理人和第三方损害被代理人的利益的, 由代理人和第三人负连带责任。

代理人知道被委托代理的事项违法仍然进行代理活动的, 或者被代理人知道代理人的代理行为违法不表示反对的, 由被代理人和代理人负连带责任。

适用的法律和管辖法院

无论当事人之间就代理协议适用的法律和管辖法院如何约定, 在中国签订的代理协议, 优先适用中国法并在中国法院解决争议。

Termination of the agreement

The termination of the agency agreement occurs in the end of the term when foreseen (fixed term, the contract expires) or when the activities foreseen in the contract are completed. Furthermore, the agency agreement ends, according to Chinese Civil Law, in case the Principal denounces the agreement or in case the agent declines the task entrusted to him; or in case the agent dies; or in case the agent loses civil capacity or in case the Principal or the agent preclude being legal persons.

This light regulation of agency by General Principles of Civil Law of People's Republic of China, which does not consider many problems the European regulation pays attention, is relatively compensated only by the rules of the Chinese Contracts Law in the chapter related with commission and mediation – as it used to be the case in Portuguese law, through the use of analogy, before the Agency Law existed -, and more important through the regulation of the “commission agency”, sometimes also translated as Brokerage agreement.

According to this Law, it is still specified that the expenses the agent incurred during the execution of the agency agreement should be paid by him except the parties foresee it otherwise.

The law foresees a care duty as regards the goods in the possession of the agent and entrusted to him within the scope of the agency agreement. The agent may decide upon goods with defect, consumable and deteriorating goods in its power, with the consent of the Principal, unless unable to communicate with the Principal, case in which the agent should decide about those goods reasonably.

In the case of sales of goods below the price or purchase of goods above the price established by the principal, the agent must get consent of the principal, without which the transaction only binds to the latter if the agent bridges the price difference. In the case of sales of goods above the price or purchase of goods at a price below the one established by the principal, the agent's remuneration can increase in accordance with the contract. In the case of lack of agreement in this regard or in the case the contract proves to be unclear regarding the same subject, the monetary advantage will be reversed in favour of the principal, unless customs and traditions of the business are various.

In the case special instructions about the price have been given by the principal to the agent, the latter is not allowed to buy or sell in opposition to such instructions.

In the case of purchase or sell of goods at the price established by the market, the agent can still act within the functions of a buyer or seller, unless the principal expresses opposition, and hence be entitled for remuneration.

The principal is obliged to accept the goods bought by the agent according to the agency contract. Once he denies doing so, unjustifiably, the agent can consign those goods to deposit and even sell them, in specific cases.

In the case of concluding a contract between the agent and a third party, the agent assumes the rights and obligations of such contract. If the third party does not fulfill the obligations stated in the contract and hence resulting in damages to the principal, the agent is responsible for such damages, unless another agreement has been established between the parties.

协议的终止

当代理期间届满（固定期限，合同到期），或者代理事务完成，则代理协议终止。此外，根据民法，如果委托人宣布废除协议或代理人辞去代理职责，或代理人死亡，或代理人丧失民事行为能力，作为被代理人或者代理人的法人终止，代理协议终止。

中国民法通则没有欧洲的代理制度那么全面，只是通过合同法中的居间合同——这与葡萄牙立法相似，在葡萄牙正式的代理法出台前都是通过类推的方式解决法律问题——以及更重要的行纪合同，有时亦翻译为经纪人合同进行了补充。

根据该法的规定，在履行协议期间，代理商所产生的费用自行负责，除非双方提前约定。

该法规定代理商对占有和根据行纪协议委托的货物负有照顾义务。代理商在取得委托人同意后，可根据货物的缺陷，消耗及变质对其进行自行处理，如无法联系委托人，代理人应合理处理这些货品。

在已商议价格的基础上，如需要以相对高价买入或相对低价卖出，代理人必须取得委托人的同意，否则将由代理商补足差价。如果代理商以相对低价买入或以相对高价卖出，代理的报酬将根据合同条款规定而有所提高。如果双方没有达成一致，或合同条款不够明确清晰，所得报酬将为委托人所有。

如果委托人关于价格给出了特别说明，代理人的买卖活动应遵循委托人的要求。

代理人可根据市场价格买卖货物，除非委托人明确表示反对，才有权请求赔付。

委托人必须接受代理商根据代理协议代所购买的商品，如委托人无正当理由不接受商品，代理可自行处理，甚至可依据具体情况出售这些商品。

如合同中存在第三方，代理人承担的权利和义务。如果第三方不履行协议职责而导致委托人的利益受到损害，代理人承担相应责任，但双方提前约定除外。

Remuneration of the agent

The agent is remunerated by the principal once all or part of the tasks, which he was entrusted to, is concluded. In the case of default on payment by the principal, the agent has the right to withhold the principal's goods in his possession, unless another agreement has been established between both parties.

In order to complement the rules stated by the commission agency, the tout court commission rules are applied whereby, as an example, the agent should communicate to the principal the business progress in accordance with the conditions established between the parties, and most importantly, the final results once the conduct is concluded.

With some repercussion in the definition of the agency contract according to Chinese law can be also the mediation contract, according to which the agent communicates to the principal a chance to conclude a business or acts as an intermediary for the contract conclusion, receiving for such job a remuneration, similar figure (but very distant from it), therefore, to the agency without representation in the European standards, i. e. the situation where the agent only promotes the conclusion of businesses being these celebrated only between the principal and third parties.

Conclusion

This regulation diversity should be taken into account while formatting the Agency Contracts to be executed in Chinese territory, either relative to the contracts based on ab initio destined for this market, or those that may adapt from the templates used by international enterprises. The fact that certain common features are not specifically regulated by the Chinese Law – in accordance with those usually found in the United State and Europe, including Portugal – it will leave more room for negotiation to both parties, as long as the applicable Chinese rules – of broader patterns in the configuration of these contracts – are considered.

Franchising

The Franchise Contract is widely used in China, noticeable simply by visiting any big or medium-size Chinese city, where the great majority of International Trademarks are already present with considerable vigour, i.e. multiple representatives.

Specific characteristics of the Chinese Market in transition (including yet some cultural factors) related to the protection of Intellectual Property Rights (IPR) and Quality Control, affect some trademarks, even though they apply the franchise model in great extent on the formation of their businesses, by emptying later the contracts of franchising nature, seeking to acquire part or totality of the shares from the franchisee, thus achieving higher profits and protecting their business reputation.

代理人薪酬

根据代理协议，代理人履行全部合约职责后，委托人向代理人支付薪酬。如果委托人拖欠支付，代理人可拒绝交付商品直到双方达成一致。

根据规定，代理商有义务与委托人沟通进行业务反馈，尤其是代理的最终成果。

根据中国法律，居间合同与代理合同不同，代理人作为交易中间人为被代理人提供交易信息并促成被代理人与第三方达成交易，收取相应报酬。

结论

在中国，如果规定一个代理协议的格式，无论是打造专属这个市场的新的协议构架，还是要依据国际普遍使用的版本进行定制，都要考虑到代理协议的多样化。在美国和欧洲，包括葡萄牙在内的条款中存在的一些普遍的方面，中国的法律没有进行相关的规定，粗框架合约模式为双方的协商留出了更大的空间。

特许经营权

从国外的特许经营发展现状看，特许经营显然已经成为国外零售业的主流模式、商业发展的关键条件及经济发展的最重要动力之一。按照经济发展的规律，在国外取得辉煌业绩的特许经营也必将在中国大放灿烂之光。事实也确实如此。

中国市场整合过程中（包括一些文化方面的原因）对版权的保护和质量的把关打造了一些品牌，为了寻求更大的利润，并保护其商业信誉，他们使用特许经营的形式建立自己的商业模式，通过特许经营权等方面的合同，寻求加盟商进行部分或全面合作。

As China rapidly becomes a first-line country in the International Market, meanwhile solving issues of Legal Predictability and Law Enforcement, these defence measures should be gradually abandoned by foreign companies, in order to allow the Franchise Model to arise powerfully in this market with all its advantages, as it happens in the other International Markets.

By the end of 2004, China created applicable rules to all Franchises operating in the Chinese territory – Administrative Measures for Businesses through Commercial Franchising, 30th December. In 2007, a regulation of upper legislative level came to widely replace these Measures. Successfully, today, the Regulation of Management of Commercial Franchising (6th February 2007), the Administrative Regulation of Registration of Commercial Franchising and the Administrative Regulation of Information Access in Commercial Franchising (both became effective on 1st May 2007), constitute the Great Franchising Legislation in China.

With these rules, China changed from a country of closed borders in terms of foreign investment, to a country that seeks to attract and receive great International Trademarks, well-established businesses in the global market, specially those successful models which they can learn from, hence catching the same pace in respect of the country's prior isolation.

Commercial Franchising is considered a commercial activity whereby the Franchiser, through the execution of contracts, authorizes the Franchisee to use its own Operational Resources such as brands, logo, patents and know-how, while the Franchisee uses the Franchiser's Business Format for the contracts and pays this latter, the remuneration of the franchise.

y transcribing the Chinese Civil and Contractual Law into the Chinese Franchising Law, both parties are obliged to conduct the Pre-Trading Business Phase and the formation of contracts, and their activity based on the following principles: Freedom, Justice, Honesty and Good Faith.

The application of the Franchising Regulation is supervised by the State, nationally and locally. Moreover, any person can present testimonies on violation of Legal Regulations to these authorities.

Requirements of the Franchiser

The Franchiser must possess a well-developed Business Format and the capacity to serve continuous operational capacity, as well as technical support, professional training and other services to the Franchisee.

On the other hand, the Franchisee must already hold two units or stores, which are directly managed and in operation for over a year. The Law does not specify if those stores have to be in Chinese territory, however, stores and units established in foreign countries have gained acceptance especially in big cities.

同时，由于中国已迅速进入国际市场前线，特许经营在国外有一百多年的历史，目前已发展为一种成熟的营销方式，其主要优势是操作简便，成本较低，可以快速扩大营销规模，满足消费者对便利化、规范化服务的需要。因此，特许经营这种营销方式将在中国市场登场。

中国已与2004年底已根据《商业特许经营管理办法》建立适用于所有专营权的规则。2007年，一项立法部门颁布的法规很大程度上取代了这些措施。2007年2月6日颁布《商业特许经营管理条例》于 07年5月1日起正式实施，此条例的实施为中国特许经营构建了坚实的框架。

中国由封闭式国家转变为对外开放，吸引了很多全球市场上的国际品牌，他们大多拥有成功的商业模式让中国学习借鉴。

商业特许经营是一种营销方式。它是指拥有注册商标、企业标志、专利、专有技术等经营资源的企业，也就是特许人，通过订立合同，将其拥有的这些经营资源许可其他经营者也就是被特许人使用，被特许人按照合同约定在统一的经营模式下开展经营，并向特许人支付相应费用的经营活动。

特许经营法引入了不少民法通则和合同法的内容，根据规定，双方当事人应当在自由、公平和诚实守信的原则下进行营业前阶段和订立合同的活动。

国家和地方政府负责特许经营条例的监督，任何与特许经营相关的主体都可就违法进行举报。

特许人要求

特许人从事特许经营活动应当拥有成熟的经营模式，并具备为被特许人持续提供经营指导、技术支持和业务培训等服务的能力；

另一方面，规定特许人从事特许经营活动应当拥有至少2个直营店，并且经营时间超过1年。法律并未明确规定是在中国境内或境外，但境外大城市的直营店应该是认可的。

Registration

Within 15 days *after* the conclusion of the Initial Franchising Contract, the Franchiser must present themselves for registration at the responsible Local Governmental Entity, by submitting the following documents:

- Duplicate copy of Business Licence or Business Registration Certificate (Certificate of Incorporation);
- Copy of Franchise Contract;
- Operation Manuals of Franchising;
- Marketing Plan;
- Written statement and evidence materials supporting the compliance by the Franchiser with the above-mentioned requirements established by the Chinese Law;
- Other documents required by the relevant Local Governmental Entity;
- In the case products and services offered by the Franchising are subject to Law approval, the Franchiser must also present the relevant documents for the effect.

If all these documents are presented, within 10 days, the Registration Entity must register the Franchising and announce it to the Franchiser. If the documents are incomplete, the authority can require the presentation of supplementary documents or materials within 7 days.

The State Authorities publish the list of Registered Franchisors on their internet domain.

Commerce department shall record and update the list of licenses posted on the government website.

Franchise Contract

A Franchise Contract should be written and indicative of the Franchiser and Franchisee's essential information; content and length of Franchise; type, value and payment methods of the Franchising remuneration; specific contents and assistance for Operation Manual, Technical Support, Professional Training and other services; quality, standards and guarantee of products or services offered by the Franchise; promotion and advertisement of products or services; agreements on the protection of Consumers Rights and Interests; and the division of Indemnity Responsibilities in respect of Franchising activities. Furthermore, the Contract must determine the Guiding Principles/Rules which embrace the following situations: contractual changes, rescission and cessation of Franchise Contract; responsibility of both parties for the breach of Contract; dispute/litigation solving methods; and other issues considered relevant by both parties.

The Contract must be given to the Franchisee 30 days prior to the signing day.

备案

特许人应当自首次订立特许经营合同之日起15日内，依照本条例的规定向商务主管部门备案并提交下列文件：

- (一)营业执照复印件或者企业登记(注册)证书复印件；
- (二)特许经营合同样本；
- (三)特许经营操作手册；
- (四)市场计划书；
- (五)表明其符合本条例第七条规定的书面承诺及相关证明材料；
- (六)国务院商务主管部门规定的其他文件、资料。
- 特许经营的产品或者服务，依法应当经批准方可经营的，特许人还应当提交有关批准文件。

商务主管部门应当自收到特许人提交的符合规定的文件、资料之日起10日内予以备案，并通知特许人。特许人提交的文件、资料不完备的，商务主管部门可以要求其在7日内补充提交文件、资料。

商务主管部门应当将备案的特许人名单在政府网站上公布，并及时更新。

特许经营合同

特许经营合同应当包括下列主要内容：特许人、被特许人的基本情况；特许经营的内容、期限；特许经营费用的种类、金额及其支付方式；经营指导、技术支持以及业务培训等服务的具体内容和提供方式；产品或者服务的质量、标准要求和保证措施；产品或者服务的促销与广告宣传；

特许经营中的消费者权益保护和赔偿责任的承担；特许经营合同的变更、解除和终止；违约责任；争议的解决方式；以及特许人与被特许人约定的其他事项。

特许人应当在签订特许经营合同之日前至少30日想被特许人提供特许经营合同文本。

Trial period

The Franchisor and the Franchisee should state in the Franchise Contract that within a certain period after the conclusion of the Contract, the Franchisee can unilaterally terminate the Contract.

Operation period

The Franchise Contract should have a minimum length of 3 years, unless the Franchisee consents to another operation period.

Technical Support

The Franchiser must provide the Franchise Operation Manual to the Franchisee and supply operational assistance, technical support and continuous professional training, as well as other services among the agreed contents and methods

Configuration in accordance with the Chinese Product and Services Law

Products and services provided by the Franchise must comply with the Chinese Law, as well as to the Regulations and other Rules issued by the State.

Franchise Remuneration

In case the Franchiser requires the payment of remuneration before the conclusion of the Franchise Contract by the Franchisee, for that effect, it should be written and explained to the Franchisee the reasons and conditions of payment and refund.

Promotion and advertising

The payment of promotion and advertisement taxes is collected by the Franchiser from the Franchisee. Information regarding the use of this fund must be stated previously on the Franchise Contract by the Franchiser.

Moreover, promotion and advertising conducted by the Franchiser must not be misleading or deceptive. The Franchiser must not publicize the Franchisee's profit/income.

Transfer of Contractual Position

The Franchisee must not transfer the Franchise to a third party without the consent given by the Franchiser. In addition, it is established by law that the Franchisee must not divulge or allow the use of the Franchiser's business/trading secrets by any other parties.

试用期限

特许人和被特许人应当在特许经营合同中约定，被特许人在特许经营合同订立后一定期限内，可以单方解除合同。

经营期限

特许经营合同约定的特许经营期限应当不少于3年。但是，被特许人同意的除外。

技术支持

特许人应当向被特许人提供特许经营操作手册，并按照约定的内容和方式为被特许人持续提供经营指导、技术支持、业务培训等服务。

符合中国产品及服务法规

特许经营的产品或者服务的质量、标准应当符合法律、行政法规和国家有关规定的要求。

特许经营费用

特许人要求被特许人在订立特许经营合同前支付费用的，应当以书面形式向被特许人说明该部分费用的用途以及退还的条件、方式。

广告和推广

特许人向被特许人收取的推广、宣传费用，应当按照合同约定的用途使用。推广、宣传费用的使用情况应当及时向被特许人披露。

特许人在推广、宣传活动中，不得有欺骗、误导的行为，其发布的广告中不得含有宣传被特许人从事特许经营活动收益的内容。

合同转让

未经特许人同意，被特许人不得向他人转让特许经营权。被特许人不得向他人泄露或者允许他人使用其所掌握的特许人的商业秘密。

Annual Report

In the first trimester of each year, the Franchiser must communicate to the responsible Commercial Entities, the situation of their Franchising Contract (the one signed in the previous year).

Access to Franchiser's Information

The procedure of access to the Franchiser's information is quite strict in China, and in general, much stricter than the European frameworks.

As mentioned above, besides the Franchise Contract, 30 days before closing the contract, the Franchiser should provide the following information to the Franchisee:

- *The franchisor's name, domicile, legal representative, registered capital, business scope; and basic characteristics of the Franchise;*
- *Background information on the registration of trademarks, logo, patents, know-how, and business model;*
- *Franchise Taxes: type, amount, method of payment – specifying the necessity of making a deposit and the respective conditions and methods for its refund;*
- *Price and Conditions to provide products, services or equipment to the Franchisee;*
- *Specific contents, methods and plans regarding the deployment of continuous assistance, technical support, professional training and other services provided to the Franchisee;*
- *Specific measures regarding assistance and supervision of the Franchisee's operational activities;*
- *Investment Budget in the Franchising Business;*
- *Report on the existent Franchisees in the Chinese territory – number, geographic distribution and evaluation of operational state;*
- *A summary of the Financial Reports audited by an Accounting Company and the summary of the Auditor's report regarding the past 2 years;*
- *Franchise-related litigation and arbitration processes in the past 5 years;*
- *Major illegal business records performed by the Franchiser and its legal representative;*
- *Any other information required by the Local Commercial Authority.*

The information provided to the Franchisee by the Franchiser must be true, complete and current, and the same should be promptly informed about any noticeable alterations. The failure to do so, gives the franchisee the right (as serious as) to rescind the Contract.

年度报告

特许人应当在每年第一季度将其上一年度订立特许经营合同的情况向商务主管部门报告。

获取特许人信息

在中国，对特许申请过程中特许人的信息要求比欧洲严格很多。

特许人应当在订立特许经营合同之日前至少30日，以书面形式向被特许人提供以下信息，并提供特许经营合同文本。

特许人的名称、住所、法定代表人、注册资本额、经营范围以及从事特许经营活动的基本情况；

- 特许人的注册商标、企业标志、专利、专有技术和经营模式的基本情况；
- 特许经营费用的种类、金额和支付方式(包括是否收取保证金以及保证金的返还条件和返还方式)；
- 向被特许人提供产品、服务、设备的价格和条件；
- 为被特许人持续提供经营指导、技术支持、业务培训等服务的具体内容、提供方式和实施计划；
- 对被特许人的经营活动进行指导、监督的具体办法；
- 特许经营网点投资预算；
- 在中国境内现有的被特许人的数量、分布地域以及经营状况评估；
- 最近2年的经会计师事务所审计的财务会计报告摘要和审计报告摘要；
- 最近5年内与特许经营相关的诉讼和仲裁情况；
- 特许人及其法定代表人是否有重大违法经营记录；
- 国务院商务主管部门规定的其他信息。

特许人向被特许人提供的信息发生重大变更的，应当及时通知被特许人。

特许人隐瞒有关信息或者提供虚假信息的，被特许人可以解除特许经营合同。

Liability and Legal Sanction

Unauthorized operation

As mentioned above, if the Franchiser, upon the moment of registration, does not hold at least two Franchises for over one year and directly operated by them, and it is still in the franchising business, can be sued by the Commercial Authorities – to remedy the violation, confiscation of illegal profits – subject to penalty of 10.000 and 50.000 Euros fine. The Authorities publicize this fact.

No registration

In the absence of registration, the authorities must establish a deadline for its completion and may also impose a fine between 1000 and 5000 Euros. If the Franchiser does not complete the registration at the stated deadline, the operator may be applied a penalty in a value between 5000 and 10000 Euros, with public disclosure of this fact.

Irregular payment of Franchise Taxes and lack of Annual Communication to the Authorities

There are two situations which may demand correction and application of a fine, lower than 1000 Euros, established by the State Authorities – prepayment of Franchise taxes does not obey the above-mentioned document; lack of annual communication to the State Authorities.

However, in circumstances of serious violations, the Authorities may apply a penalty between 1000 and 5000 Euros, and hence publicize this fact.

Fraudulent, deceptive or abusive promotion and advertisement

The fraudulent, deceptive or abusive promotion and advertisement, in the terms previously mentioned, can equally result in a demand by the Authorities – payment of high fines and public disclosure of the case and, in this subject, even the suspension of the franchising activities, without prejudice to its rightful prosecution and other repercussions stated in the Advertising Laws.

Once again, the Chinese Legislature's severe action was motivated by unruly practices of serious consequences that occurred with the absence of the relevant law on this matter and appeared on Chinese Courts during the early implementation of the new legislation, which sought to discipline these cases.

In addition, fines and penalties are foreseen in the cases of lack of anticipated access to the Franchise Contract by the Franchisee or in the case of incomplete or false disclosure of relevant facts on this matter, influencing the Franchisee's contract decision.

法律责任

未经许可经营

特许人的直营店少于2家，或经营时间超过1年而从事特许经营活动的，由商务主管部门责令改正，没收违法所得，处10万元以上50万元以下的罚款，并予以公告

企业以外的其他单位和个人作为特许人从事特许经营活动的，由商务主管部门责令停止非法经营活动，没收违法所得，并处10万元以上50万元以下的罚款。

未登记备案

特许人未依照规定向商务主管部门备案的，由商务主管部门责令限期备案，处1万元以上5万元以下的罚款；逾期仍不备案的，处5万元以上10万元以下的罚款，并予以公告。

未支付费用未做年度报告

特许人未按规定支付费用或做年度报告的，由商务主管部门责令改正，可以处1万元以下的罚款；情节严重的，处1万元以上5万元以下的罚款，并予以公告。

虚假欺骗广告和推广

特许人利用广告实施欺骗、误导行为的，由工商行政管理部门责令改正，处3万元以上10万元以下的罚款；情节严重的，处10万元以上30万元以下的罚款，并予以公告；构成犯罪的，依法追究刑事责任。

在中国立法初期，由于法制不健全而引发的种种问题促使了中国立法机关更加严厉，强烈地对违纪行为的处罚。

罚款和处罚条款是为了保证特许经营是在被批准的情况下进行，并且特许人将严格遵守合同条款进行经营。

With great severity and equally motivated by cases appeared in Chinese Business practice, pyramid sales systems under the designation of franchising are also punished, as well as other fraudulent actions of serious financial or patrimonial repercussions, in which specific legislation already applies.

Similarly, cases of Management corruption are punished with criminal gravity.

Intellectual Property Rights (IPR)

It remains to say, very briefly, that on this matter China applies - with certain exceptions - the rule of property according to the first registration, so it matters that the Franchiser first registers its trademarks, patents and carefully ensure the protection of its remaining IP Rights.

It is of interest, for instance, in a particular way, to register the Chinese version of the Trademarks' designation and logos, as we will verify in a later stage.

Sector Association

The Chinese Association of Commercial Chains and Franchising is the sector association, which is supervised by the Chinese State, almost governmental, due to its responsibility for the discipline, development and emission of Franchise Conduct Policies.

Market Features

The foreign Franchiser that intends to carry through investment operations in China must devote a special attention to understand the market, the Chinese consumer and culture. With effect, many International Trademarks had to customize their products, sales techniques and the designations associated to their Trademarks and Company, to the market and the Chinese consumer, in order to turn their business familiar and appellative to the Chinese Market.

For instance, even though it is not mandatory, it will prove very convenient that the company trademarks are translated and customized in a way to suggest their meaning in English, to have identical phonetics and to be appellative to the local market. For example, realizing with great success, Carrefour and Starbucks translated their trademarks respectively as "Jia Le Fu" (the whole family happy) and "Xing Ba Ke", "Xing" meaning star and being "Ba Ke" similar to the "Bucks" in English.

同其他不法特许经营一样，指定或特许传销系统也同样受到了立法机关严厉的惩罚。

此外，腐败案件也会受到严厉的刑事处罚。

知识产权

这个问题比较简单，在中国，除了某些例外，都依据首次登记规则。所以特许经营的商标和专利的首次登记注册至关重要，这也是之后受到法律保护的前提。

当然，我们可以看到，注册一个中国商标是非常有帮助的。

中国连锁经营协会

中国连锁经营协会是中国政府下的一个附属机关，负责监管特许经营过程中的纪律，发展和行为准则。

市场特点

打算通过在中国进行投资运作的国外特许人，应了解中国市场，中国的消费者和文化。为了让自己的产品在中国市场被消费者认可，熟悉，许多国际品牌已根据中国市场特别定制自己的产品，销售技巧和相关的商标名称。

例如，为了让多数消费者熟悉他们，公司的品牌需要根据发音和意思翻译成中文，如家乐福和星巴克，它们将自己的品牌翻译成“家乐福”（全家幸福）和“星巴克”，意思是“星”（英语中是明星的意思）和“巴客”英文中的发音为“bucks”。

Contracts of Distribution

Beyond Franchising, a foreign company that has been constituted as a foreign capital company in China can also choose to distribute or sell directly its products or services in this market as a wholesaler or retailer.

In the wholesale market, as we have already seen, it includes the commissionaire agent and the counters, being able to choose one or several wholesale distributors or contact directly the local retailers. In this case, the company initially concludes a Distribution Contract with the wholesale(s) distributor(s), through which it rebuilds the controlled and supervised network of several retail distributors or enters into several Distribution Contracts directly with retailers.

The parties are free to format the Distribution Contracts with great breadth, taking only into account that under the Chinese Competition Law, vertical agreements on fixing resale prices and abuse of dominant position through sales refusals, tying, and sale at unreasonably high or discriminatory prices are prohibited.

Moreover, Chinese Law does not foresee any restrictions on the matter of selective distribution, nor is the distributor's compensation, after a contract termination, an implemented practice in this market.

Department stores

In the case of units or counters in department stores (like El Corte Inglés), the company must request the leasehold spaces of the store and divide profits with the same. Normally, a Joint Operating Agreement – with varying length (usually from half to three years) – will be celebrated between the two companies, through which the company decides the prices to be charged in the store and provides its products, decides or headhunts the recruitment of its staff, leaving the shop responsible for the administration of the space, uniform decoration, collection of the sales revenue, issuance of receipts, provision of post-sale support services as complaints management of defective products, and for the guards and security patrols, and cleaning services.

Usually there is no discrimination between the different departments that work under the same conditions, although there may be exceptional negotiation aspects especially if the products or services in question have major repercussions in the Chinese market.

Calculation of commissions and service fees

Each department store has implemented their commission's own calculation method, usually through the retention of a fixed percentage regarding the realized sales by the Trademark (about 20-30%), or a pre-determined monthly minimum commission, which functions as a guarantee and under which is added after a lower percentage of monthly sales, or even the choice between a percentage of monthly sales or a predetermined monthly income, whichever represents the highest amount (especially in the case of large surfaces).

Moreover, Companies found in department stores pay the latter a flat monthly fee for services provided by the shop or a percentage of their sales to the same.

分销协议

外资公司在中国也可以批发或零售的形式对其产品及服务进行配送及销售。

在批发市场,包括代理和柜台,因为我们已经看到,将可以选择一个或多个批发分销商或与当地零售商进行交易。在这种情况下,公司最初可与一个或多个批发商经销商联系,进行多方监管,或与几个零售商经销直接进行分销协议。

当事人自定义分配合约,但根据中国竞争法协议规定了固定转售价格,禁止利用地位优势拒绝销售,或以过高的价格或歧视性销售。

此外,中国法律没有规定对选择性分配的限制,也没有规定市场中实施的终止合同的做法对经销商的赔偿。

百货

公司必须要求在同一商场中的部门或柜台分化利润空间(如El Corte Inglés公司)。通常,联合经营运作协议是在两家公司之间进行的,具有不同时间期限(通常是由半到三年),通过该公司决定的价格,在商店的收费,并提供产品,招聘其工作人员,统一装修,征收销售收入,发放收据,支持投诉售后服务,并提供警卫安全巡逻和清洁服务。

通常在同一工作环境下的不同部门之间没有区别,虽然在商议时可能会出现特殊情况,特别是产品或服务会对中国市场产生重大影响。

佣金及服务费计算

每个百货公司有自己的佣金计算方式,通常有以下几种:在每个品牌销售额的基础上扣留的固定百分比(大约20%-30%),或每月预设一个最低费用(相当于担保),再根据当月销售额按比前文比例低的百分比收取费用,或约定每月按上述两法中较高者收取费用。

另外,进驻百货公司的企业还须按月为店铺提供的服务支付固定费用或以销售额为基础按比例支付费用。

Unilateral Termination of the Contract

Another standard practice is the situation when departments with lower performance during a time period (not exceeding 6 months), the shop can unilaterally drop the contract with that company and reorganize the departments with full control of the store.

Regarding the retail market, the foreign company must ensure that this activity is provided in its Corporate Purpose as defined in its Business License, which can also be done through an extended subsequent change in the social subject of that company. For such purpose, the foreign company must deliver to the responsible authority the original contract concerning the leased space or the certificate of ownership of it, if the intention is to purchase the store.

Normally the opening of new stores goes through the establishment of a Branch and its registration in that store's address, and thus the Mother Company must require an authorization from the local responsible Authorities.

The rented or purchased spaces destined for retail must have been specifically foreseen for commercial purposes. The parties have broad freedom to rest in the conformation of negotiating leases or purchase and sale of the property, subject nevertheless to the following models already successful with the authorities. Indeed, these contracts must first be presented in the Chinese land register (if the landlord didn't make that contact already) before approving the formation of a new company or a branch.

Sales via the Internet

In practice, since the law requires and permits, it has been proved hard to obtain from the Authorities the approval of including retail sales via Internet as part of the Corporate Purpose of Retail Companies. However, some licenced retailers still practice this activity without complying with this requisition, but at their own risk, they are subject to terminate this activity at any moment.

What occurs sometimes is that companies have their own Internet domain for non-commercial purposes, using that fact for registration with the Authorities responsible for Telecommunications, which normally do not check the Company's Corporate Purpose.

单方面终止合同

按照惯例，如果性能较低部门不超过六个月的期限可与商场单方面解除合同。

在零售方面，外国公司必须确保所经营项目在经营许可范围内的。如果选择购买的百货公司，外国公司必须向主管当局出示房屋租用或所有权证书的原始合同，。

一般情况下，设立分店需要通过相同地址注册，因此母公司需要向所在地区主管部门索要许可。

零售用途的空间租用或购买必须在商业店铺企划中明确注明。双方有很大空间达成一致谈判租赁或购买，但仍须遵守主管部门规定。事实上，在新公司成立前，这些合同必须首先进行备案（如果出租人没有进行备案）。

网络销售

实践中，想要获得有关部门的许可，在网上进行销售（作为零售的一部分）是很难的。不过，一些特许零售商在实践中不遵守相关规定，只能自行承担随时可能被迫停止经营活动的风险。

有时公司会有自己非商业目的的互联网域名，这种网络域名只需在电信部门登记注册，而电信部门并不审查注册公司的社会主体。

IV. FOREIGN TRADE POLICY

(A) Tariff Measures

Import tariffs

China import tariffs are calculated based upon the Harmonization System of Classification Codes (HS-Code) and the rates vary according to the type, composition and final destination of these products. Similarly to other jurisdictions, China provides a favourable tariff for imports from countries with whom it has a convention or an agreement and/or with WTO members.

Partial repayment of Export Taxes

The partial refund of taxes on exports envisages the competitiveness of exports, the increase in the quality of export goods and consists of the recovery of part of the amount already paid as taxes on production and circulation of goods, whenever such goods are for export.

The China Government has repeatedly extended the percentage of refund of taxes on exports of various products, mainly for textiles and clothing, iron, nonferrous metals, petrochemicals, information technology and energy. The present value of tax deduction can be easily found on the website of the State Administration of Taxation (<http://202.108.90.130/n8136506/index.html>).

(B) Non-tariff measures

(i) Classification of imports

Imported goods are subject to different requirements and are divided into the following categories:

- prohibited goods - weapons, poisons and chemicals of toxic nature;
- restricted circulation goods - the ones that require an import license or are subject to limitation by quota;
- free circulation goods - class that comprises the great majority of imports.

More detailed information about categories of goods, their restraints and relevant policies involving each type may be obtained in the English language web site of the Ministry of Commerce of China: <http://english.mofcom.gov.cn>.

(ii) Import License

The Chinese government has recently implemented a system of "import license" that allows a more stringent control on certain imported goods of restricted circulation. For example, on 1st April 2007, the Chinese government waived import licenses on 338 different categories of products. With the new "licensing system of importation", Chinese importers may request an "automatic import license".

四、外贸政策

一、关税措施

进口关税

中国进口关税在编码协调制度的基础上，依据商品的种类、成分和最终目的地进行计算。同样，中国对公约或协议参与国以及WTO成员国提供进口关税优惠。

出口退税

退还出口商品的部分税款目的在于提高出口产品的竞争力，增加出口数量。退还的税款包括国内生产环节和流通环节缴纳的税。

中国政府不断扩展了各种商品的退税率，主要有纺织产品、钢铁、有色金属、石油化工产品、信息技术和能源。现下退税率可从国家税务总局网站查得：<http://202.108.90.130/n8136506/index.html>

二、非关税壁垒

(一) 进口分类

- 进口产品需满足不同的要求，并分为以下几类：
- 禁止进口产品：武器，毒药和剧毒化学物品；
- 限制流通产品：需要进口证或属于进口配额的商品；
- 自由流通产品：绝大多数进口产品都属于自由流通产品。

中国商务部网站(英文版)可查询各类产品的各种详细信息：
<http://english.mofcom.gov.cn>

(二) 进口许可证

中国政府近年来开始实行进口许可证制度来控制特定限制流通产品的进口。例如2007年4月1日，中国政府取消了338种产品的进口许可证管理。随着新的“进口许可制度”的设立，中国进口商可申请“自动进口许可证”。

Import licenses are granted by the Chinese Ministry of Commerce and the General Administration of Customs. The latest list of catalogues of goods subject to automatic import license in 2011 is included in the Announcement No. 106 (2010) of the Ministry of Commerce and the General Administration of Customs.

(iii) Import quotas

Import quotas are used as a form of protection of the local producers of goods in the domestic market economy. Since China's adherence to the WTO in 2001, it has been cancelling its import quotas for various types of products.

Import quotas are regulated and determined by the National Commission on Reform and Development and by the Ministry of Commerce.

(iv) Anti-dumping and Anti-subsidy

(A) Regulations

China currently adopts extensive regulations that deal with the anti-dumping measures, providing and addressing possible breaches. Some examples of regulations are: the Anti-dumping Regulation of the PRC (revised in 2004), the Provisions on Anti-dumping cases concerning Exported Products (2006), the Provisions on the Antidumping Investigation of Industry Injury (2003), the Interim Rules on the Access to Non-Confidential Information in Anti-dumping Investigations (2002), the Interim Rules on Price Commitments in Antidumping Investigations (2002), etc.

The Tariff and Classification Committee of State Council and the Ministry of Commerce are the bodies responsible for setting the anti-dumping and anti-subsidy regulations and directives.

(B) Measures to protect anti-dumping and anti-subsidy

As anti-dumping measures that may be imposed in China, there are (i) provisional anti-dumping measures (deposits in guarantee, letters of guarantee, etc.), (ii) obligations (they may take the form of guarantee given by the exporter on price changes or on ceasing any imports at prices deemed below market price, or even guarantees about the elimination or limitation of granted subsidies).

The Ministry of Commerce shall have the final decision on the acceptability of such guarantees and/or anti-dumping measures (required when a dumping or subsidy situation is ruled by final and irrevocable decision, as harmful to the domestic market - the responsible entities for the payment of tariffs will be the importers of the dumping products and/ or the subsidized products).

进口许可证需向商务部和海关总署申请。商务部、海关总署公告2010年第106号—公布《2011年自动进口许可管理货物目录》公告了最新的适用自动进口许可证的产品。

(三)进口配额

进口配额的规定能保护本国市场经济中的本地生产者。中国2001年加入WTO后，取消了多数产品的进口配额限制。

进口配额由国家发展改革委员会和商务部统一规范规定。

(四)反倾销和反补贴

(1) 法规

中国针对各种可能的倾销制定了详细的反倾销规则。包括《中华人民共和国反倾销条例（2004年修订）》、《出口产品反倾销案件应诉规定（2006）》、《反倾销产业损害调查规定（2003）》、《反倾销调查公开信息查询暂行规则（2002）》以及《反倾销价格承诺暂行规则》

国务院关税税则委员会和商务部负责制定反倾销和反补贴规则。

(2) 保护反倾销反补贴措施

中国实施反倾销的措施包括：(i) 暂时性措施（担保存款，保证书等等）；(ii) 义务性措施（包括出口商承诺提高价格或者终止进口低于市场价格的产品，以及承诺取消或限制补贴）。

商务部对采取的具体措施具有最终决定权（当最终认定存在危害国内市场的倾销和补贴情形后，进口商需支付相关产品的关税）。

(C) Anti-dumping and anti-subsidy authorities

- *Bureau of Fair Trade for Imports and Exports of the Ministry of Commerce - responsible for the admission of applications, filing of cases, goal-setting for products, providing of information and notification of the parties involved in situations of dumping or grant of subsidies. It is also responsible for the investigation procedure in relation to offenses and for setting the minimum margin below which the product is considered under market value, and for supervising the implementation of agreed prices (<http://wms2.mofcom.gov.cn/>). Furthermore, it is also responsible for conducting and coordinating cases involving situations considered as dumping and public subsidy initiated by third party countries dealing with exported Chinese products.*
- *Bureau of Industry Injury Investigation of the Ministry of Commerce - responsible for reviewing issues, conducting investigations and determining possible damages to the domestic industry, as well as for the investigation and determination of damage to the agricultural industry. It also has the direct participation of the Ministry of Agriculture in conjunction with the Ministry of Commerce.*
- *Bureau of Industry Injury Investigation of the Ministry of Commerce - responsible for the investigation and analysis of possible damages on the domestic industry. The investigation and determination of damage to the agriculture will also have the direct participation of the Ministry of Agriculture in conjunction with the Ministry of Commerce.*
- *Customs Tariff Commission of the State Council under the supervision of the State Council is in charge of the collection of anti-dumping and anti-subsidy payments, according to the determination of the Ministry of Commerce, which will subsequently make them public.*

(D) Anti-dumping Cases in China

China frequently faces claims of anti-dumping filed by foreign countries. For further information about these cases, you may check the website of Bureau of Fair Trade for Imports and Exports of the Ministry of Commerce at:

<http://gpj.mofcom.gov.cn/static/f/d/e/f.html/1>

(3) 反倾销反补贴机构**商务部**

- 商务部进口公平贸易局-负责受理申请、立案、设定目标产品和提供涉及倾销和享受补贴当事人的信息并公告。同时该局还负责对案件的调查程序,设定产品可低于市场价格的浮动空间,监督进口商履行约定价格,协调他国对中国出口产品提起的反倾销反补贴案件。
- 商务部产业损害调查局-负责审查问题,调查并裁决产业损害,包括农业产业。该局还直接参与农业部和商务部的协同工作。
- 商务部产业损害调查局-负责调查分析对国内产业遭受的损害。与农业部和商务部一同对调查和裁决农业产业的损害。
- 国务院关税税则委员会在国务院领导下,依据商务部决议及其公布的裁决,负责收取反倾销反补贴赔偿。

(4) 中国的反倾销案件

中国经常被外国提起反倾销之诉。更详细信息可以查阅商务部进出口公平贸易局网站:

<http://gpj.mofcom.gov.cn/static/f/d/e/f.html/1>

V. TAXATION

China tax system is regulated by sparse laws, administrative regulations and tax norms issued by various authorities at different levels. The authorities involved are the National People's Congress and its Standing Committee, the State Council, the Ministry of Finance, the State Administration of Taxation (SAT), the Tariff and Classification Committee of the State Council and the State General Administration of Customs.

Tax laws are approved by the supreme legislative authority, the National People's Congress, v.g. the Law of the People's Republic of China on Individual Income Tax or its Standing Committee, as it is the example of the Law of the People's Republic of China on the Administration of Taxation Collection. The regulations and administrative rules are drafted by the State Council, for example, the Detailed Regulations for the Implementation of the Law of the People's Republic of China on the Administration of Tax Collection or the State Council under the authorization of the National People's Congress and its Standing Committee, such as the Provisional Regulations of the People's Republic of China on Value Added Tax. The tax rules of the different tax departments are approved by the Ministry of Finance, the State Administration of Taxation, the Tariff and Classification Committee of the State Council and the State General Administration of Customs, for example, the Detailed Rules for the Implementation of the Provisional Regulations of the People's Republic of China on Business Tax.

The government authority responsible for collecting taxes is the State Administration of Taxation. The State General Administration of Customs and its offices are responsible for collecting tariffs. Hong Kong SAR and Macau SAR have independent tax systems and double taxation agreements with China, meaning that the Central Government cannot levy any tax in these two special administrative regions.

(A) Types of Taxes

Taxes in China can be divided into various categories, according to their nature and function:

- Taxes on turnover: the collection of this category is normally based on the taxpayers' turnover or sales in the sectors of manufacturing, the distribution or services, such as value added tax, consumer tax and transactions tax.
- Taxes on income: these taxes are assessed on profits earned by producers or traders or income earned by individuals, such as the Enterprise Income Tax and Individual Income Tax.
- Taxes on natural resources:¹¹ these taxes are assessed by the usage of natural resources on territory of People's Republic of China and apply to investors involved in the holdings of natural resources.
- Taxes for specific purposes: these taxes are collected for specific regulatory reasons, including tax on construction and city maintenance, tax on the occupation of cultivation land, the regulating tax on investment in fixed assets, land value added tax, and the tax on the acquisition of motor vehicles.

¹¹ According to Interim Regulations of the People's Republic of China on Resources Tax, **Article 1**- All entities and individuals engaged in exploitation of mineral products prescribed by these Regulations or in production of salts within the territory, and sea areas under the jurisdiction, of the People's Republic of China shall be the taxpayers for resources tax and shall pay resources tax in accordance with these Regulations.

Tax on land for construction is not a tax on natural resources.

五、税收政策

中国税制包括各有权机关制定的法律法规规章制度。有权规定税制的机关有全国人民代表大会及其常务委员会，国务院，财政部，税务总局，国务院关税税则委员会，海关总署。

税制中的法律包括中国最高立法机关人民代表大会通过的《中华人民共和国个人所得税法》及其常务委员会通过的《中华人民共和国税收征管法》等等。行政规章有由国务院起草的《中华人民共和国税收征收管理法实施细则》及国务院在人民代表大会及其常务委员会授权下颁布的《中华人民共和国增值税暂行条例》。不同的税务部门如财政部，税务总局，国务院关税税则委员会制定各自的税收规定，例如《中华人民共和国营业税暂行条例实施细则》。

税务总局负责收取税收，海关总署及其部门负责收取关税。香港特别行政区和澳门特别行政区拥有独立的税制并与中国签订了双重税收协议，中央政府无权在特区内征税。

一、税种

依据税种的不同性质，可分为以下几类：

- 流转税：指以纳税人商品生产、服务和流通环节的流转额或者数量以及非商品交易的营业额为征税对象的一类税收。包括增值税、消费税和营业税等等。
- 所得税：以生产者、经营者以及个人等主体的所得额为征收对象的一类税。包括企业所得税以及个人所得税等等。
- 资源税：针对国有自然资源使用以及从事自然资源开发的投资者征收的一类税。

- *Property tax: this category is based on the properties held by individuals or legal entities, including the tax on house property and the urban property tax.*
- *Taxes on behavior: This category of taxes is based on specific conducts, including Tax of Vehicles and Ships, stamp duty, the tax on contracts, the tax on slaughter.*
- *Customs duties: taxes or customs charges are charged on goods and articles that are exported from the Chinese territory.*

(B) Taxation of individuals

In accordance with the provisions of article 1 of the Individual Income Tax Law of the People's Republic of China (6nd Revision, 2011), all individuals who reside or who are domiciled in China or, not being under these conditions, who remain in China for over one year, must pay tax on personal income applicable to any income obtained from both inside and outside Chinese territory.

Any income earned in China by individuals who reside abroad or are not resident in China, although they remain in Chinese territory for less than one year, will also qualify for tax collection in China.

Individual income in China

The individual income tax basis in China is as follows:

- (i) Income derived from retainers and salaries;*
- (ii) Income from private or domestic industries, namely those derived from production and private trade.*
- (iii) Income derived from sale of commercial enterprise or lease to companies and institutions;*
- (iv) Income from services rendered;*
- (v) Income from authors' rights;*
- (vi) Income from royalties;*
- (vii) Interest, dividends and bonuses;*
- (viii) Rents;*
- (ix) Income from transfer of property;*
- (x) Other occasional earnings; and*
- (xi) Other taxable income specified by the tax departments of the State Council.*

- **特定目的税**：国家为达到某种特定目的而设立的税种，包括城市维护建设税、耕地占用税，固定资产投资方向调节税（已停征），土地增值税，车辆购置税等。
- **财产税**：以个人或法人拥有的财产为课税对象的一种税。包括房屋税和城市房地产税等。
- **行为税**：针对特定行为而为课税对象的一种税收。包括车船使用税，印花税，契税，屠宰税等。
- **关税**：进出口中国的货物都需缴纳关税。

(二) 个人税

根据《中华人民共和国个人所得税法（2011年第六次修订）》，在中国定居或者在中国居住满一年的个人需就为其来自中国内外的个人所得缴纳个人所得税。

在中国境内无住所又不居住或者无住所而在境内居住不满一年的个人，从中国境内取得所得的，也需缴纳个人所得税。

中国的个人所得税

依据中国法律，个人所得税包括：

- (i) 工资、薪金所得
- (ii) 个体工商户的生产、经营所得
- (iii) 对企事业单位的承包经营、承租经营所得
- (iv) 劳务报酬所得
- (v) 稿酬所得
- (vi) 特许权使用费所得
- (vii) 利息、股息、红利所得
- (viii) 财产租赁所得

Tax rates on personal income

The main tax rates of personal income in China are (i) the progressive rate and (ii) fixed rate, depending on the types of income.

(i) The progressive tax is applicable to the following income:

- Wages income: the rate varies between 3% and 45%. The amount of income subject to taxation is the remaining monthly income after deduction of 3,500 RMB. For foreigners, the amount of the deduction is 4,800 RMB per month.
- Income from private or domestic industries, namely arising from private production and trade and income from companies' assignment or lease to companies and institutions: the rate varies between 5% and 35%, the collectable subject (tax base) being the annual income obtained, after deduction of costs, expenses and losses.

(ii) The flat rate applies to the following income:

- Tax on authorship rights: the tax rate on this one time income is 20%. to which 30% tax reduction should be made.
- Taxes on services: the tax rate is 20%. To extremely high remunerations an additional amount may be collected.

In the remaining cases, the tax rate is always 20%, namely on royalties, income from interest, dividends and premiums, rents, income derived from transfer of property, occasional earnings and other income.

Exemptions of Individual Income Tax

Certain types of income are exempted from taxation in accordance with the provisions set forth in Article 4 of the Individual Income Tax Law of the People's Republic of China (2nd Revision, 2007). As an example, some subsidies and/or scholarships for science, education, technology, health, etc, interest derived from Public Treasury bonds or income of diplomatic representatives and its employees are exempted by law and international conventions applicable in China.

(ix) 财产转让所得

(x) 偶然所得

(xi) 其他所得

个人所得税税率计算

税率主要有两种：(1) 累进税率和(2) 固定税率(根据收入的类型而定)。

(1) 适用累进税率的情况：

- 工资所得：税率最低一级为3%，最高一级为45%，应纳税额为所得减去人民币3500元后的余额，外国人的应纳税额为收入减去4800元后的余额。
- 个体工商户的生产、经营所得：个体工商户的生产、经营所得和对企事业单位的承包经营、承租经营的全年应纳税所得额，按照税率最低一级为5%。最高一级为35%依法纳税。

(2) 固定税率适用于以下情况：

- 稿酬所得：税率为20%，其中稿酬所得，适用比例税率，税率为百分之二十，并按应纳税额减征百分之三十。
- 劳务报酬所得，适用比例税率，税率为百分之二十。对劳务报酬所得一次收入畸高的，可以实行加成征收，具体办法由国务院规定。
- 其他情况下，税率为20%，主要包括特许权使用费所得，利息、股息、红利所得，财产租赁所得，财产转让所得，偶然所得和其他所得。

个人所得税的免除

根据《中华人民共和国个人所得税法》第四条相关规定，符合法定情况的纳税人可以免税，包括按照国家统一规定发给的补贴、津贴，福利费、抚恤金、救济金，科学、教育、技术、文化、卫生、体育、环境保护等方面的奖金，依照我国有关法律规定应予免税的各国驻华使馆、领事馆的外交代表、领事官员和其他人员的所得等等。

(C) Taxation of Legal Persons

The main taxes applying to legal persons in China are: (i) Enterprise Income Tax, (ii) Value Added Tax, (iii) Consumption Tax, (iv) Business Tax and (v) Customs Duties.

(i) The EIT - Enterprise Income Tax

According to the Enterprise Income Tax Law, effective since 1st January 2008, companies and other organizations earning income in the Chinese territory are subject to this tax. The “individual entrepreneurs” or business partnerships are not subject of the EIT, but subject to individual income tax.

Tax base

The law distinguishes between the “resident companies for taxation purposes” and the “non-resident company for taxation purposes”, applying a different tax to each case.

A company based in China or based in a foreign country but with its main administrative organization established in China, is generally considered as a “resident company for taxation purposes” and should pay EIT to the Chinese government for all the income earned worldwide.

For companies that are established in foreign countries but with an establishment in China, or that have no establishment in China, but have a source of income in China, are generally known as “non-resident company for taxation purposes” and should pay EIT only on the income obtained, directly or indirectly, from China.

Rates and tax assessment

Typically, the amount of EIT to be paid by a “resident enterprise for taxation purposes” is calculated with reference on income subject to taxation, at the applicable rate of 25%. The tax rate for EIT for “non-resident companies for taxation purposes” is 20% for their income generated in China.

Since 1st January 2008, foreign investment companies and other foreign companies benefit from the same tax treatment and shall observe the same tax rules as Chinese companies. Presently, favourable treatment is granted to small companies and businesses with small profits, who pay 20%, while companies whose business is focused on cutting-edge technology pay 15%.¹²

¹² According to article 28 of the Law of the People's Republic of China on Enterprise Income Tax:

With respect to a qualified small enterprise earning low profits, the tax levied on its income shall be reduced at a rate of 20 percent.

With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced at a rate of 15 per cent.

(三) 法人的征税

法人在中国依法纳税主要包括：(1) 企业所得税，(2) 增值税，(3) 消费税，(4) 营业税，(5) 关税。

(1) 企业所得税

根据2008年生效的企业所得税法，公司和其他组织在中国境内的所得都需依法纳税。个人独资企业和合伙企业不适用企业所得税法，但需缴纳个人所得税。

征税对象

该法对“居民企业”和“非居民企业”加以区别，适用不同的税率。

“居民企业”是依法在中国境内成立，或者依照外国(地区)法律成立但实际管理机构在中国境内的企业，应当为其境内外所得依法缴纳企业所得税。

“非居民企业”，是依照外国(地区)法律成立且实际管理机构不在中国境内，但在中国境内设立机构、场所的，或者在中国境内未设立机构、场所，但有来源于中国境内所得的企业，应当为其在中国境内的直接或间接所得缴纳企业所得税。

税率和征税估值

通常，居民企业所得税的税率为25%。非居民企业在中国境内的所得的税率为20%。

自从2008年1月1日起，外资公司和其他外国公司与中国公司都适用一样的税收法规。现在的优惠政策主要面向的是符合条件的小型微利企业，税率为20%，还有国家需要重点扶持的高新技术企业，税率15%。

Major exemptions and tax deductions

Income exempted from tax:

- (i) income derived from treasury bonds;
- (ii) dividends, premiums, etc., distributed among private investment companies that are resident for taxation purposes;
- (iii) income derived from investment, as dividends, bonuses, etc., obtained by non-resident companies for taxation purposes with establishment in China paid by resident companies for taxation purposes, provided that such income is effectively connected with such establishment;
- (iv) income from a non-profit organization (which meets all the criteria) may be exempted from EIT.

Tax exemptions or tax reductions may be granted to companies or projects whose income involves projects in agriculture, forestry and aquaculture; investment projects in basic infrastructure strongly supported by the government; environmental protection, renewable energy and hydro conservation that meets all the conditions imposed; projects involving the transfer of technology, etc.

Payment of the EIT and tax statements

The EIT of the company can be paid in advance every month or every quarter. The company shall submit its declarations of self-assessed EIT and settle payment through bank deposit to the authorities in the last 15 days of each month or quarter. In the 5 months prior to the end of the year, the company shall deliver the annual statement of EIT to the tax authority and calculate the payable tax and the refundable tax.

(ii) VAT (Value Added Tax)

According to the Interim Regulation of the People's Republic of China on Value Added Tax 2008 Revision), revised on 10th November 2008 and effective on 1st January 2009, any company, unit or individual who engages in sales or import of goods, the provision of services of processing, repair and distribution (hereafter referred to as "taxable services") qualify for VAT tax in the Chinese territory.

税收减免的主要情况：

免除所得税的情况：

- (i) 国债利息收入；
- (ii) 符合条件的居民企业之间的股息、红利等权益性投资收益；
- (iii) 在中国境内设立机构、场所的非居民企业从居民企业取得与该机构、场所有实际联系的股息、红利等权益性投资收益；
- (iv) 符合条件的非营利组织的收入。

企业的下列所得，可以免征、减征企业所得税：从事农、林、牧、渔业项目的所得；从事国家重点扶持的公共基础设施项目投资经营的所得；从事符合条件的环境保护、节能节水项目的所得；符合条件的技术转让所得等。

企业所得税征收管理

企业应当自月份或者季度终了之日起十五日内，向税务机关报送预缴企业所得税纳税申报表，通过银行账户预缴税款。企业应当自年度终了之日起五个月内，向税务机关报送年度企业所得税纳税申报表，并汇算清缴，结清应缴应退税款。

(2) 增值税

根据2009年1月1日生效的《中华人民共和国增值税暂行条例(2008年修订)》，在中华人民共和国境内销售货物或者提供加工、修理修配劳务以及进口货物的单位和个人，为增值税的纳税人。

Taxable goods and tax rates

- 0% - for Export merchandise (excluding those stipulated by the State);
- 13% - for the following goods: i) cereals, vegetable cooking oil; ii) water, central heating, air conditioning, hot water, domestic gas, liquid oil gas, natural gas, methane and coal for domestic use; iii) books, newspapers and magazines; iv) food for animals, chemical fertilizers, pesticides, mechanic agriculture, film compounds; and v) other merchandise specified by the State Counsel from time to time; and
- 17% - for all merchandise not mentioned above, transformation services, repairing and replacement.

Payment of tax due

Taxpayers subject to VAT are differentiated between (i) small-scale taxpayers and (ii) the general taxpayers, the calculation of payable tax being different in each case.

- (i) Currently, small-scale taxpayers are enterprises whose annual revenues of sales are less than RMB 500,000, for companies in the manufacturing industry and companies that provide services subject to taxation, retail companies and other companies with less than RMB 800,000. These pay VAT at a rate of 3%.
- (ii) The remaining taxpayers, other the small-scale, must register with the tax administration authorities under the general regime of taxation. To determine the amount of VAT to be taxed, these companies must separately calculate the tax already borne by the company and the tax that is levied by the State. The difference between the tax paid and the tax collected will be the current amount of VAT to be paid.

Imported goods

Imported goods are taxed based on the estimated final price by, applying the relevant tax rate.

VAT refund to exporters

Exporters can apply for a refund of VAT paid on export goods.

征税货物和税率

- 0%-出口产品免增值税(国家另有规定的除外);
- 13%-以下货物税率为13%: i) 粮食、食用植物油; ii) 自来水、暖气、冷气、热水、煤气、石油液化气、天然气、沼气、居民用煤炭制品; iii) 图书、报纸、杂志; iv) 饲料、化肥、农药、农机、农膜; v) 国务院规定的其他货物;
- 17%-以上未提及的货物, 纳税人的加工、修理修配劳务。

纳税管理

增值税一般纳税人分为: (1) 小规模纳税人和(2) 一般纳税人。

- (1) 目前对小规模纳税人的界定是从事货物生产或者提供应税劳务的纳税人, 以及以从事货物生产或者提供应税劳务为主, 并兼营货物批发或者零售的纳税人, 年应征增值税销售额(以下简称应税销售额)在50万元以下(含本数, 下同)的, 以及除上述纳税人等以外的, 年应税销售额在80万元以下的纳税人。税率为3%。
- (2) 一般纳税人应当向税务主管机关进行纳税申报。计算增值税应缴税额, 一般纳税人应当分别计算公司的销项税额和进项税额, 两者的差额就是增值税额。

进口货物

进口货物以最终销售价为基准, 通过相关税率计算出进口货物。

增值税退税

出口商可申请退还出口商品已缴纳的增值税。

VAT exemptions

Exempted items include: agricultural products sold directly by producers; contraceptive products; antique books; instruments and equipment imported to serve scientific research and education directly; offers of goods and equipment donated freely by foreign governments or international organizations; articles of specific use for the disabled that are imported directly by charity or social organizations and the items sold after being used by sellers.

(iii) Consumption Tax

All involved in the production or import or selling of consumption products taxable in Chinese territory shall pay Consumption Tax.¹³ Taxable consumption products exported by taxpayers are exempted from consumption tax, unless they are restricted by the state of export.

Taxable items

Tobacco; spirits and alcohols; cosmetics; valuable jewelry, precious stones and jades; firework materials; refined oil products; tires of motor vehicles; motorcycles; vehicles; balls and golf equipment; luxury watches; yachts; wooden disposable chopsticks; and wood floors.

(iv) Business Tax

All who offer the services stated by law, intangible assets or who sell real estate qualify for Business Tax according to Interim Regulation of the People's Republic of China on Business Tax (中华人民共和国营业税暂行条例), revised on 10th November 2008 and effective from 1st January 2009.

Taxable goods and tax rates

- 3% - communications and transport; construction; post and telecommunications; culture and sports;
- 5% - financial transactions and insurance; services; sale of real estate property; transfers of intangible assets;
- 5% - 20% - entertainment.

Tax settlement

Taxpayers who provide taxable services, intangible assets or sale of real estate property, shall calculate the tax payable according to the gross revenue of business and the specific tax rates.

¹³ According to article 1 of Interim Regulations of the People's Republic of China on Consumption Tax: Entities and individuals engaged in producing, commissioned processing or importing the consumer goods as specified in these Regulations, within the territory of the People's Republic of China, and all other entities and individuals determined by the State Council to sell such consumer goods specified in these Regulations shall be the taxpayers of consumption tax and shall pay such consumption tax in accordance with these Regulations.

增值税的免除

免除情况包括：农业生产者销售的自产农产品；避孕药品和用具；古旧图书；直接用于科学研究、科学试验和教学的进口仪器、设备；外国政府、国际组织无偿援助的进口物资和设备；由残疾人的组织直接进口供残疾人专用的物品；销售的自己使用过的物品。

(3) 消费税

所有境内的应税产品的生产或进口和销售都需缴纳消费税。纳税人出口应税产品，免征消费税，除非国家另有规定。

应税产品

烟、酒及酒精、化妆品贵重首饰及珠宝玉石，鞭炮、焰火，成品油，汽车轮胎，摩托车，小汽车，高尔夫球及球具，高档手表，游艇，木制一次性筷子和木质地板。

(4) 营业税

在中国境内提供《中华人民共和国营业税暂行条例（2008年修订）》规定的劳务、转让无形资产或者销售不动产的单位和个人，为营业税的纳税人，应当缴纳营业税。

应税商品和税率

- 3%-交通运输业，建筑业，邮电通信业，文化体育业；
- 5%-金融保险业，服务业，不动产销售，转让无形资产；
- 5% - 20% -娱乐业。

税收管理

提供应税服务、转让无形资产或者销售不动产的纳税人的应缴税额，应当依据收入总额和特定的税率计算。

Major exemptions

Tax on commerce can be exempted: (i) for caring services provided by nurseries, kindergartens, nursing homes, senior resting homes and charity institutions for the disabled, as well as funeral and marriage services; (ii) for services provided by the disabled, according to their capabilities, (iii) for medical services provided by hospitals, clinics and other health institutions; (iv) for educational services provided by schools and other educational institutions and services provided by students in student-worker programs, (v) for agricultural tractor cultivation, irrigation and drainage, prevention and control of plant diseases and elimination of pests, in plant protection, agro-pastoral insurances and in related technical training, and also in the breeding, prevention and control of diseases of poultry livestock and fish farms; (vi) for income derived from admission fees related to or collected by memorials, museums, cultural centers, administrative organizations for the protection of cultural relics, art galleries, exhibition halls of painting and calligraphy as well as libraries, (vii) for income derived from admission fees for cultural and religious institutions; and (viii) insurance provided by domestic insurance companies linked to exports of goods.

(v) Customs Duties

The consignees of the imported goods, the consignors of the exported goods and owners of imported goods are subject to Customs Duties.

Fees

Fees include import and export tariffs. Import tariffs are divided into six categories: the “most favored nation” tariff, the conventional tariff, the preferential tariff, the normal tariff, the quota tariff and the temporary tariffs. The “most favored nation” tariff is applicable to imports from countries or regions with which China has bilateral or multilateral trade agreements containing the ‘most favored nation clause’. The conventional tariff and preferential tariff are respectively applicable to imports from countries with which China have already signed trade agreements containing preferential or special preferential duty clauses. The normal rate applies to the import of goods from other countries.

Settlement of charges

Customs duties are payable or paid in accordance with the principle ad valorem or according to the quantities. The taxable price of goods for import and export should be defined by customs based on their transfer prices. If the price of transaction cannot be determined, the Customs can estimate the taxable price in accordance with the law. The price will usually include the value of goods, freight, insurance, etc.

免税的情况：

(i)托儿所、幼儿园、养老院、残疾人福利机构提供的育养服务，婚姻介绍，殡葬服务；(ii)残疾人员个人提供的劳务；(iii)医院、诊所和其他医疗机构提供的医疗服务；(iv)学校和其他教育机构提供的教育劳务，学生勤工俭学提供的劳务；(v)农业机耕、排灌、病虫害防治、植保、农牧保险以及相关技术培训业务，家禽、牲畜、水生动物的配种和疾病防治；(vi)纪念馆、博物馆、文化馆、美术馆、展览馆、书画院、图书馆、文物保护单位举办文化活动的门票收入；(vii)宗教场所举办文化、宗教活动的门票收入；(viii)境内保险机构为出口货物提供的保险产品。

(五) 关税

进口货物收货人，出口货物出货人和进口货物所有人都是关税的纳税人。

费用

关税指进口和出口关税。进口关税分为六类：最惠国关税，协定关税，特惠关税，普通关税，关税配额和暂时性关税。最惠国关税适用于来自与中国签订最惠国条款的国家的进口产品。协定关税和特惠关税分别适用于与中国签订有优惠条款和特别优惠条款的国家的进口产品。普通关税适用于其他来自国家的进口产品。

税收管理

关税依过关产品的具体数量而征收。海关根据商品的转让价来征收进出口关税。交易价格无法确认的，海关依法确定交易价格，该交易价格通常包括商品自身的价格，运费和保险等。

Main reductions and exemptions from customs duties

- The following goods may be exempted from customs duties in accordance with the Customs authorities:
 - a) goods donated by international organizations or foreign governments¹⁴; when the value contained in a single billing document is lower than RMB50, goods used for advertising or non-commercial samples;
 - b) goods or products that are specified in international trade agreements or contracts to which China is a party;
 - c) raw materials, parts and accessory components, components and materials for packaging imported for the processing, assembly or production aimed at exportation of products effectively completed and exported; or
 - d) imported products which are subsequently exported.

(vi) Tax on representative offices (Rep. Office)

Representative offices are subject to tax in China even if they do not enter into local transactions or conduct any profit generating activities locally. Transfers of funds from the foreign company to its representative for funding of the Rep. Office's costs are deemed to be income of the Rep. Office.

Rep. offices are therefore subject to the following taxes:

- (i) trade tax applicable on monthly administrative expenses, and
- (ii) tax on the income of the company.

There are two major methods for tax assessment in relation to the Rep. Office:

- (i) the effective yield method - applicable to representative offices of lawyers' and accountants' firms.
- (ii) the method of cost-plus - taxable income of the Rep. Office will be calculated according to the incurred expenses within the taxation period. The majority of the representative offices use this method.

Exemption

Rep. Offices that only engage in preliminary or subsidiary activities for the information and support of the main company; Rep. Offices established by foreign governments, non-profitable organizations and non-governmental organizations (NGOs) may be exempted from payment of the above tax upon approval from the competent authorities.

¹⁴ According to Regulations of the People's Republic of China on Import and Export Duties, Article 45
The duties on goods damaged prior to Customs release may be deducted in accordance with the degree of damage confirmed by the Customs, there is only a possibility of exemption from customs duties.

关税减免

以下产品根据海关规定免除关税：

- a) 外国政府、国际组织无偿赠送的物资；关税税额在人民币50元以下的一票货物；无商业价值的广告品和货样；
- b) 中华人民共和国缔结或者参加的国际条约规定减征、免征关税的货物、物品；
- c) 为境外厂商加工、装配成品和为制造外销产品而进口的原材料、辅料、零件、部件、配套件和包装物料；
- d) 进口后随即出口的产品免征进口关税。

(六) 代表处的征税

代表处在境内虽然没有交易和盈利，依然需要纳税。外国公司为建立代表处而转让至代表处的资金视为代表处的所得，应当依法纳税。

代表处需依法缴纳所得税，营业税以及可能的增值税。

计算代表处应纳税额的两种方法：

- (1) 按实际收入计算-适用于律师事务所和会计师事务所的代表处
- (2) 按成本加成计算-根据代表处产生的各种经费来计算，这也是代表处纳税的主要办法。

税收的免除

代表处仅为总公司提供初步性的和辅助性的信息和支持；由外国政府和非盈利组织、非政府组织设立的代表处经有关机构批准，可免除纳税义务。

Agreements for avoiding double taxation in force in China

Up to January 2010, China has entered into 92 Double Taxation Avoidance Agreements with various regions and countries all around the world, including Portugal and China's Special Administrative Regions of Macau and Hong Kong.

中国参与的双重税收条约

直至2010年1月，中国与世界各国和地区签订了92个避免双重征税条约，包括葡萄牙、香港特区和澳门特区。

VI. LABOR RELATIONS

Labor laws in China

Labor in China is governed by a set of comprehensive laws that have been subject to several revisions to strengthen the protection of workers' rights. The main labor laws include:

- Labor Law of the People's Republic of China (1994) ("Labor Law");
- Employment Contract Law of the People's Republic of China (2007) (effective from 1st of January of 2008);
- Labor Arbitration and Dispute Resolution of the People's Republic of China (2007) (effective from 1st May 2008), and
- Trade Union Law of the People's Republic of China (2009 Revision)

The Labor Laws listed above have been successively complemented by a number of national and local laws, regulations, measures and circulars.

Hiring employees

Duration

As in most jurisdictions, in China working schedules are divided into (A) part-time and (B) full-time.

(A) Part-time – involves the provision of normally no more than 4 hours per day and no more than 24 hours per week.

(B) Full time – full time work is divided into three types of contract, as follows:

- (i) fixed term: date of expiry pre-agreed;
- (ii) open / no fixed term: there is no term date specified;
- (iii) by project / task – for completion of a defined task.

Forms of Contract

The employment contract must be executed in writing. If the employment relation was established without a written contract, the contract should be completed within 1 (one) month from the date on which the worker initiated functions.

If an employment contract is not completed within 1 (one) month after the beginning of employment, the employer will be subject to payment of double wages during the period without completion of the employment contract in writing. If 1 (one) year passes without a written contract, the employer is not only subject to payment of double the wages for that 1 (one) year period but shall be bound in relation to the employee by an open-ended employment contract.

六、劳动关系

中国的劳动法规

为保护劳工的权利，中国颁布了一套系统的劳动法律法规，主要有：

- 《中华人民共和国劳动法》；
- 《中华人民共和国劳动合同法》；
- 《中华人民共和国劳动争议调解仲裁法》；
- 《中华人民共和国工会法》；

以上法律通过大量国家和地方法律法规、章程来实施。

雇用员工

劳动期限

与世界多数国家相同，中国劳动法也将员工分为（一）兼职和（二）全职。

（一）兼职-每天工作不超过4小时，每周工作不超过24小时。

（二）全职-全职分为三类：

- （1）固定期限：事先约定了合同期限；
- （2）无固定期限：未约定合同期限；
- （3）任务为期限：完成特定任务为期限。

合同格式

劳动合同必须签订书面合同。已建立劳动关系，未同时订立书面劳动合同的，应当自用工之日起一个月内订立书面劳动合同。

用人单位自用工之日起超过一个月不满一年未与劳动者订立书面劳动合同的，应当向劳动者每月支付二倍的工资。用人单位自用工之日起满一年未与劳动者订立书面劳动合同的，自用工之日起满一个月的次日至满一年的前一日应当依照劳动合同法第八十二条的规定向劳动者每月支付两倍的工资，并视为自用工之日起满一年的当日已经与劳动者订立无固定期限劳动合同，应当立即与劳动者补订书面劳动合同。

Statutory References

Pursuant to the Law on Employment Contracts, the following shall always be stated in an employment contract:

- (i) name and address of the employer and its legal representative or the main responsible person;
- (ii) name, address and ID card number or any other valid identification document of the employee;
- (iii) duration of the employment contract (term / no-term);
- (iv) job functions/ category and workplace;
- (v) working hours, rest and leave days;
- (vi) remuneration;
- (vii) social security;
- (viii) labor protection, working conditions and prevention against accidents at work.

Regarding the probation period, the labor law provides a maximum probation of 1 month if the contract term is between 3 months and 1 year. If the term is of 1 to 3 years, the probationary period shall not exceed 2 months. For a term contract over 3 years or a no-term contract, the trial period should not exceed 6 months. There can be no more than one probation period.

Minimum wages

According to the Provisions on Minimum Wages (2004) (最低工资规定), the employer must pay employee the minimum wage set by law, under the precondition that employees have provided work within normal working hours, as defined in the employment contract and in accordance with the law.

Working Hours

The normal working hours in China corresponds to 8 hours a day, 5 days per week for a maximum period of 40 hours, with 2 rest days (typically on Saturday and Sunday). Any additional hours of work required by the employer should be compensated according to the standard below indicated:

- Working days: 150% of the standard remuneration;
- Rest days: 200% standard remuneration, and
- Public holidays: 300% standard remuneration.

法例参考

根据劳动合同法规定, 劳动合同必须包含以下内容:

- (1) 用人单位的名称、住所和法定代表人或者主要负责人;
- (2) 劳动者的姓名、住址和居民身份证或者其他有效身份证件号码;
- (3) 劳动合同期限;
- (4) 工作内容和工作地点;
- (5) 工作时间和休息休假;
- (6) 劳动报酬;
- (7) 社会保险;
- (8) 劳动保护、劳动条件和职业危害防护;

劳动合同期限三个月以上不满一年的, 试用期不得超过一个月; 劳动合同期限一年以上不满三年的, 试用期不得超过二个月; 三年以上固定期限和无固定期限的劳动合同, 试用期不得超过六个月。同一用人单位与同一劳动者只能约定一次试用期。

最低工资

根据2004年最低工资规定, 劳动者在法定工作时间或依法签订的劳动合同约定的工作时间内提供了正常劳动的前提下, 用人单位依法应支付最低劳动报酬。

工作时长

中国通常采用8小时、5天工作制, 每周最多工作40小时, 两天(一般为周六、周日)休息。超过工作时间, 雇主应当依照以下标准支付加班费:

- 工作日加班的: 按报酬标准的1.5倍支付加班费;
- 休息日加班的: 按报酬标准的2倍支付加班费;
- 公众假日加班的: 按报酬标准的3倍支付加班费。

Presently, public holidays provided in Chinese law include New Year's Day (1 day), Spring Festival (3 days), 1st May (1 day), National Day holiday – 1st October (3 days), Qing Ming Day (1 day), Dragon Boat Festival (1 day) and Full Moon Festival (1 day).

Remunerated Leave

Apart from the public holidays established by law, according to the Regulation on Annual Paid Leaves to Employees (职工带薪年休假条例), those who have worked continuously for 1 (one) year or more are entitled to a period of paid annual leave, as follows:

- 5 days - employees who have worked for 1-10 years;
- 10 days - employees who worked for 10-20 years;
- 15 days - employees who have worked for 20 years or more.

If an employer does follow the employee's right to annual leave, the employee is entitled to the proportionate payment of three times his daily remuneration for each day of leave not taken.

Social Security

Employers in China must grant the following benefits and social security payments to its employees, known as "Five insurances, One Fund":

- Basic pension insurance;
- Unemployment insurance;
- Medical insurance;
- Maternity insurance;
- Insurance against working accidents; and
- Housing Fund.

The employee and employer contribute together to the first 3 types of insurance (basic pension, unemployment insurance, medical insurance) and to the housing fund, while the employer is the sole contributor to the last 2 insurances (maternity insurance and insurance for accidents at work), which rates vary by geographic location.

The maximum percentage amount of Social Security for each employee to pay shall not exceed 40% of their wages; employees do not need to pay to the remainder of the highest proportion.

中国现行法律规定的公众假日包括新年(一天), 春节(三天), 劳动节(一天), 国庆节(三天), 清明节(一天), 端午节(一天)和中秋节(一天)。

带薪休假

根据《职工带薪年休假条例》,除了法律规定的公众假日,连续工作一年或以上的员工有权依以下规定休年假:

- 连续工作一年到十年的,可休5天带薪假
- 连续工作十年到二十年的,可休10天带薪假
- 连续工作二十年或以上的,可休15天带薪假

对职工应休未休的年休假天数,单位应当按照该职工日工资收入的三倍支付年休假工资报酬。

社会保障

雇主应当为雇员办理以下“五险一金”:

- 养老保险
- 医疗保险
- 失业保险
- 工伤保险
- 生育保险
- 住房公积金。

其中,雇主和雇员共同缴纳头三种保险(包括养老保险,失业保险和养老保险)和住房公积金,雇主单独缴纳后两种保险(生育保险和工伤保险费率视具体地域而不同)。

每个员工缴纳的社保比例最高额不得超过其工资的40%,雇主无需缴纳到最高比例。

Maternity Protection

The law in China grants mothers stability of employment from the time they inform the employer of the pregnancy until 1 year after the child's birth. The woman employee is also entitled to a maternity leave of 90 days, to be granted during the period closer to birth (usually 15 days before and 75 days after birth are due). In addition, first time mothers over 24 years old can get additional leave days, which vary depending on the different regional jurisdictions (v.g. Shanghai, 30 days). Remuneration paid to the worker during the pregnancy period is undertaken by the Social Security Fund.

Non-competition and Confidentiality

The Law on the Employment Contract specifies that an employment contract between employer and employee may include provisions on non-competition and confidentiality. The obligation relating to confidentiality normally requires that the employee maintains confidentiality about business secrets and intellectual property of the employer. The non-competition obligation after termination of employment requires the payment of a compensation in order to be valid.

The obligations of non-competition are not applicable to all employees and apply only to management, senior staff and employees with access to trade secrets of the employer.

The non-competition agreement shall be in writing, in a separate document but forming part of the employment contract and which shall define the term, scope, radius of geographical application and compensation for the period of non-competition, etc. The term of non-competition cannot be longer than 2 (two) years.

Termination of employment

(i) Termination by mutual agreement

The employment contract may be terminated by mutual agreement between the employer and employee. It should be noted that if the employer is proposing to terminate the work contract, even if the employee agrees with its specification, the employer has to pay the termination compensation to the employee.

(ii) Termination by the employee

The employee may terminate the contract of employment, giving written notice to the employer with 30 days in advance. During the probationary period, the employee shall give a prior notice of 3 (three) days.

If there is just cause of termination the employee may terminate without prior notice to the employer. For example, there will be just cause of termination by the employee if the employer does not provide the working conditions agreed in the employment contract, if the employer does not pay the remuneration in total, among others.

生育保护

按照中国法律，女员工在怀孕、产期和哺乳期，其与单位的劳动关系得到法律的保护。同时，怀孕员工可以享有90天的产假（通常是产前15天和产后75天）。另外，24周岁以上首次生育的女员工依据各地法规可享带薪假（例如上海是30天）。怀孕期间的工资报酬由社保基金支付。

竞业禁止与保密协议

根据劳动合同法规定，雇主与员工之间的劳动合同可规定竞业禁止与保密协议条款。保密协议通常规定了员工对雇主的商业秘密和知识产权负有保密义务。竞业禁止义务在劳动关系结束之后，雇主支付赔偿金后方能生效。

竞业禁止义务并非适用于所有员工，而适用于高管人员和接触雇主商业秘密的员工。

竞业禁止协议必须采用书面形式，作为劳动合同的一部分而单独存在。该合同应当规定竞业禁止的期限、范围、适用的地理范围以及赔偿金。竞业禁止协议不得超过两年。

合同关系的解除

(1) 协议解除

劳动者和雇主可协议解除劳动合同。值得注意的是，当雇主提出解除劳动关系，就算劳动者同意解除，雇主依然要支付经济补偿金。

(2) 劳动者解除劳动关系

劳动者解除劳动关系需提前30日书面通知雇主，试用期间劳动者解除劳动关系需提前3天通知雇主。

出现法定解除劳动关系的情形，劳动者可不提前通知雇主就解除劳动关系。例如，雇主未提供劳动合同中约定提供的劳动条件的，以及未及时足额支付劳动报酬的等等。

(iii) Termination by the employer

Prior to terminating an employment contract, the employer is advised to pay special attention to the causes and legal requirements applicable, and in some cases it may be required to pay compensation. The legal termination of employment contracts in China is divided into two categories: (a) termination without notice and (b) termination upon notice.

- (a) The employer may terminate the employment contract without giving any notice to the employee if the latter fails to comply with the company's internal rules or the rules of general labor law, if convicted of a crime, or causing damages to the employer by abandoning his work post, or by violation of the exclusivity obligation (when applicable). During the probation period, the employer may also terminate the employment contract without notice.
- (b) There are several other circumstances under which the employer may terminate the employment contract, by giving the employee a notice of 30 days or payment in lieu. The Employment Contract Law provides an exhaustive list of situations based upon which the employment contract may be terminated, such as when it is deemed that the worker has no competence for the job, even after professional training, or cannot work due to suffering from a disease unrelated to the employment.

(iv) Prohibition of termination

Under Chinese labor law unilateral termination is clearly prohibited under the following circumstances:

- (i) Whenever the employee is suspected of or has been medically confirmed to have developed an occupational disease, or is exposed to occupational hazards and has not undergone a medical examination, or is under the period of diagnosis; before leaving his position, the employee must go through a health check up;
- (ii) When confirmed that the employee has fully or partially lost his work capacity as a result of an illness or injury related with his employment;
- (iii) When the employee has contracted an illness or injury unrelated with his employment and still remains within the period of medical treatment;
- (iv) When the employee is pregnant (having communicated such pregnancy to the employer), and up to 1 (one) year after the child is born;
- (v) When the employee has worked for a period of at least 15 years and will be retired in less than 5 years.

(3) 雇主解除劳动关系

解除劳动合同之前，雇主需要特别注意相关法律和条款，因为可能涉及到经济补偿金问题。中国法律规定劳动合同的结束有两种情况：(一) 无需书面通知即解除和(二) 书面通知解除劳动关系。

- (一) 雇主可无需书面通知就解除劳动关系的情况有：严重违反用人单位的规章制度的，被依法追究刑事责任的，严重失职，营私舞弊，给用人单位造成重大损害的，以及违反专属义务(如存在)的。
在试用期间，雇主同样无需书面通知劳动者就可以解除劳动关系。
- (二) 依据《劳动合同法》，用人单位提前三十日以书面形式通知劳动者本人或者额外支付劳动者一个月工资后结束劳动关系的情况有且仅有：劳动者患病或者非因工负伤，在规定的医疗期满后不能从事原工作，也不能从事由用人单位另行安排的工作的；劳动者不能胜任工作，经过培训或者调整工作岗位，仍不能胜任工作的；劳动合同订立时所依据的客观情况发生重大变化，致使劳动合同无法履行，经用人单位与劳动者协商，未能就变更劳动合同内容达成协议的。

(4) 禁止解除劳动合同的情况

依照《劳动合同法》，用人单位不得在下列情形下解除劳动合同：

- (1) 从事接触职业病危害作业的劳动者未进行离岗前职业健康检查，或者疑似职业病病人在诊断或者医学观察期间的；
- (2) 在本单位患职业病或者因工负伤并被确认丧失或者部分丧失劳动能力的；
- (3) 患病或者非因工负伤，在规定的医疗期内的；
- (4) 女职工在孕期、产期、哺乳期的；
- (5) 在本单位连续工作满十五年，且距法定退休年龄不足五年的。

(v) Layoffs for economic reasons

If the employer needs to dismiss their employees for economic reasons, it should follow a series of special regulations. The economic reasons may be justified by a restructuring process, bankruptcy, insolvency or serious difficulties in the production or the management of the business operations, and others stipulated by law.

If at least 20 persons or 10% of the workforce (whichever is less) has to be laid off, the employer must take into account the following procedures:

- (i) issue a notice 30 days before the layoff;*
- (ii) explain the situation clearly and consult employees and trade unions representing them; and*
- (iii) report the reduction/ lay-off plan to the local labor authorities, justifying it.*

In its decision, the employer shall give priority to maintaining employees with long term employment contracts as well as those who provide for the main sustenance of their families and those who have elderly or small children under their care. These employees must be notified and given priority in any recruitments of the employer within 6 months.

(vi) Compensation for termination of employment contract

For termination of employment under certain conditions the employer has to pay the employee a termination compensation.

If a fixed term contract expires and is not renewed, the compensation for cessation is mandatory in China.

Compensation for termination of an employment contract is also imposed in all circumstances set out above for notice of termination and layoffs by economic reasons. If the employer has the right to terminate the contract of employment without notice under the circumstances described, compensation for termination of employment contract is not mandatory.

In general, compensation should be paid to the employee based on the number of years of work at the rate of a monthly salary for each full year of work. For periods between 6 to 12 months, the compensation should be one month salary. For periods less than 6 months, the compensation should be half of one month salary. "A monthly salary" is usually set by Chinese labour law as the average monthly salary over a period of 12 months of work prior to termination.

(5) 裁员

用人单位因经济原因而裁员的，需遵守一系列特别法规的规定。经济原因包括企业改组程序、破产、清算或者生产、管理中的严重困难或者法律规定的其他情况。

用人单位遵照以下程序方可裁减人员二十人以上或者裁减不足二十人但占企业职工总数百分之十以上的员工：

- (1) 用人单位提前三十日通知；
- (2) 用人单位向工会或者全体职工说明情况并听取工会或者职工的意见；
- (3) 裁减人员方案经向劳动行政部门报告。

裁减人员时，应当优先留用下列人员：与本单位订立较长期限的固定期限劳动合同的；与本单位订立无固定期限劳动合同的；家庭无其他就业人员，有需要抚养的老人或者未成年人的。用人单位在裁员后，六个月内重新招用人员的，应当通知被裁减的人员，并在同等条件下优先招用被裁减的人员。

(6) 解除劳动合同后的经济赔偿

在某些情况下解除劳动关系，用人单位要向劳动者支付经济补偿金。

固定期限劳动合同到期而未续约的，用人单位必须支付经济补偿金。

在上文提及的书面通知解除劳动合同以及裁员的情形下，用人单位都需要支付经济补偿金。用人单位在解除劳动合同而无需书面通知的情形下，无需支付经济补偿金。

经济补偿按劳动者在本单位工作的年限，每满一年支付一个月工资的标准向劳动者支付。六个月以上不满一年的，按一年计算；不满六个月的，向劳动者支付半个月工资的经济补偿。月工资是指劳动者在劳动合同解除或者终止前十二个月的平均工资。

Work for foreign employees

The main law regulating foreign employees in China is the Regulation on the Administration of Employment of Foreigners in China, in force since 1st May 1996.

To hire a foreigner, the employer in China firstly has to qualify for the "Certificate of the People's Republic of China Permitting the Employment of Foreigners" - "Certificate of Permission for Hiring".

In order to seek employment in China, a foreigner must meet the following qualifications:

- be 18 years of age and in good health;
- have professional skills and work experience for the position to be filled;
- no criminal records;
- receive an employment offer from a Chinese employer;
- hold a valid passport.

Foreigners who fail to obtain a certificate of residence (with F, L, C, and G types of visas) and those under study programs in China should not work without prior approval by the competent authorities.

The term of Employment Contracts between employer and a foreign employee shall be no more than 5 years and renewal shall be subject to approval by the labor authorities in China.

Foreign employees working in China need authorization to change jobs, or otherwise the work under the new (non-authorised) position will be deemed illegal.

外国劳动者

外国人在中国工作而产生的劳动关系主要由《外国人在中国就业管理规定》来调整，该规定生效于1996年5月1日。

中国用人单位要雇用外国劳动者，必须具备《中华人民共和国外国人就业许可书》（简称“许可证书”）。

外国人在中国就业须具备下列条件：

- 年满18周岁，身体健康；
- 具有从事其工作所必须的专业技能和相应的工作经历；
- 无犯罪记录；
- 有确定的聘用单位；
- 持有有效护照。

未取得居留证件的外国人(即持F、L、C、G字签证者)、在中国留学、实习的外国人不得在中国就业。

中国用人单位与外国劳动者之间的劳动合同的期限最长不得超过五年。劳动合同期限届满即行终止，按规定履行审批手续后可以续订。

外国劳动者更换工作的需要办理变更手续，未办理手续的为非法劳工。

China Visas

A foreigner wishing to enter, exit or transit through Chinese territory, must apply for a visa. Generally, the issuing of a visa and the type of visa to be granted by China authorities, will be determined by the nationality of the foreigner, the reason for his visit to China and the type of passport (in China, there are three types of passports: civil passport, business passport and official passport).

The China authorities responsible for granting visas are authorized to operate through the Ministry of Foreign Affairs of China, such as embassies, consulates, agencies and specialized departments established abroad.

Types of Visas

There are four types of visa in China: diplomatic visa; courtesy visa; official visa and ordinary visa. In general, there are eight different types of ordinary visas that may be requested by the interested foreigner, such as:

- *work visa (Z-type);*
- *residency visa (D-type);*
- *student visa (X-type);*
- *visiting visa (business or academic motive) (F-type);*
- *tourist visa (L-type);*
- *transit visa (G-type);*
- *visa to foreign correspondents (journalists) (J-1 or J-2-type); and*
- *visa for employees of international transportation (train, ships and airplanes) (C -type).*

More detailed information on this matter may be obtained from lawyers in the field or through consultation of the official Chinese websites of the Internet or from Chinese embassies around the world (see also <http://www.china.org.cn/english/Life/34355.htm>).

中国签证

外国人进入中国需要中国签证。一般情况下,中国官方签发其认可的签注受到外国人国籍、进入中国的原因和护照的种类的影响。中国有三种护照:公民护照,商务护照和公务护照。

外交部下的大使馆,领事馆,办事处和特殊驻外处可签发签注。

签注的种类

中国有四类签注:外交签注,礼遇签注、公务签注、普通签注。总的来说,普通签注分为八类:

- 职业签证 (Z)
- 定居签证 (D)
- 学习签证 (X)
- 访问签证 (F)
- 旅游签证 (L)
- 过境签证 (G)
- 记者签证 (J)
- 乘务签证 (C)

如需详细信息请咨询该领域的专业律师,或者从中国官方网站上查询,以及咨询中国在各国的大使馆(也可看<http://www.china.org.cn/english/Life/34355.htm>)。

VII. INTELLECTUAL PROPERTY

After China's accession to the WTO, the country is now required to submit greater efforts in guaranteeing the protection of intellectual property, especially regarding its legislation. At present, China has laws and regulations that govern the protection of patents, trademarks, design of electronic circuits, franchises, software, copyright, etc.

The Trademark Office under the direct supervision of the State Administration for Industry & Commerce, is the responsible body for registering and control of trademarks in the country. The State Intellectual Property Office (SIPO), which acts under the control of the State Council, is the responsible body for promoting and coordinating the protection of the rights inherent to patents in the country.

(A) Patent Rights

Patent rights cover inventions, utility models and their designs. An invention or any utility model, to which the patent is awarded, should be innovative, gifted with inventive activity, i.e., resulting from a technical study that enabled the invention and its practical applicability. A design, to which the patent is awarded, should have distinctive features and not be identical with or similar to any publicly known design at domestic or foreign levels, and also not conflict with lawful rights that were obtained by any other entity before the date of filing.

The term of the patent is 20 years and the duration of a patent for utility models or design is 10 years, both counted from the date of application.

The Patent Law stipulates that no patent will be granted for an invention that reveals itself contrary to law or to social morality, harms the public interest or is based on genetics, if proven that its access or use violates the laws or applicable administrative regulations. Moreover, the Patent Law of China is clear to stipulate that no patent rights may be granted to certain scientific discoveries, rules and methods that involve mental processes, diagnosis or methods for the treatment of diseases, varieties of animals and plants, excluding scientific method used to achieve a particular variety of plant or animal; substances obtained from nuclear transformations, or designs used to identify patterns, colours or the combination of both.

A foreigner, a foreign company or any other type of foreign organization lacking residence or business office in China, who intend to apply for a patent or deal with matters related to patents in China, must hire one of the Patent Agencies duly constituted and certified to represent its interests before the authorities. Patent rights in China also respect the priority rights over patents.

七、知识产权

中国加入世贸组织之后，对保护知识产权的要求就更高了，尤其是在立法方面。现在，中国颁布了一系列保护专利，商标，电路设计，特许经营，软件和版权的法律法规。

在国家工商行政管理总局的领导下，商标局负责商标的注册和使用。国家知识产权局在国务院的领导下，负责促进和协调对专利的保护。

(一) 专利权

专利包括发明，实用新型，外观设计。任何发明或实用新型都要具备新颖性，先进性和工业实用性。申请外观设计的产品需具备与已知产品明显区别的特征，同时不得与先前已存在的外观设计权利发生冲突。

专利的保护期限为20年，实用新型和外观设计的保护期限是10年，都是从申请之日起计算。

专利法规定任何专利都不得有违法律和社会道德规范，伤害社会公共利益，对违反法律、行政法规的规定获取或者利用遗传资源，并依赖该遗传资源完成的发明创造，也不能取得专利权。另外，专利法也明确了某些科学发现，诊断医疗方法和药品，动植物新品种（不包括培育动植物新品种的科学方法），用原子核变换方法获得的物质，对平面印刷品的图案、色彩或者二者的结合作出的主要起标识作用的设计。

在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托国务院专利行政部门指定的专利代理机构办理。中国专利法同样有优先权的规定。

(B) Trademark

The Trademark Law of China was amended on 27th October 2001 and provides 4 types of trademarks, including commodities trademarks, service trademarks, collective trademarks and certification trademark.

The validity period of the registered trademark is 10 years from the date the registration is approved, renewable for successive periods of 10 years per renewal. An application for renewal must be made within six months prior to expiration, and only one extension period of six months will be granted if the registrant fails to request the renewal in due time.

With the exception of a few other limitations, any visible mark distinguishing a type of goods from another is subject to registration of the mark, if easily identified and not conflicting with any other rights that have been acquired by those who hold a priority right. These brands include words, designs, letters, numbers, 3D (three dimensional), the combination of brands or colors or the combination of all the above components.

Trademark rights of China clearly stipulate the marks which are unsusceptible of registration, such as trademarks identical to names, flags or States' symbols of countries or international organizations, without prior approval, or even marks which lack features that make them differ from others, as well as the brands that exalt to discrimination, exaggeration and falsehood.

The Trademark Law of China also prescribes the conditions of the priority right. Moreover, if a trademark is recognized as "well-known", it may enjoy other protections. In addition to the Trademark Law of China, "well-known" marks are also subject to protection by the Provisions for the Determination and Protection of Well-known Trademarks, in force since 1st June 2003.

(C) Technology and Technical and Scientific Services

The Regulation on the Protection of Integrated Circuit Design (Integrated Circuit Layout Design) of 2001 provides for the protection of intellectual property rights to the design of integrated circuits.

The design of integrated circuit includes a three-dimensional display of the integrated circuit composed of two or more components (one being the active component), the circuits being interconnected or set in three-dimensions, in part or in its entirety, intending for their manufacture. The protection of the designs thus conferred does not apply to ideas, data processing systems, operation methods or mathematical concepts.

The validity of the exclusive right of protection for designs of integrated circuits is 10 years counted from the date of those previously requested for the first time or the date on which, for the first time, the concerned design has been made available for commercial use, anywhere in the world. However, after 15 years from the date of creation of the design in question, whether registered or exposed to commercial use, the right to protection and exclusivity no longer exists.

(二) 商标

2001年修订的《中华人民共和国商标法》规定了四种商标形式：商品商标，服务商标，集体商标和证明商标。

商标的有效期为10年，从注册之日起算，每次续展注册的有效期为十年。注册商标的续展应当在期满前六个月内申请续展注册；在此期间未能提出申请的，可以给予六个月的宽展期。宽展期满仍未提出申请的，注销其注册商标。

除某些例外限制，任何在外观上能与其他标志进行区分的都可以注册为商标，只要不和既存权利有冲突即可。具体形式包括文字，设计，字母，数字，3D，颜色组合以及上述要素的组合。

法律明确了不能作为注册商标的情形，包括同中华人民共和国的国家名称、国旗、国徽、军旗、勋章相同国旗或者近似的，未经该组织同意，同政府间国际组织的名称、旗帜、徽记相同或者近似的，缺乏与其他商标进行区分的特色的，带有歧视色彩，夸张成分和欺骗性的。

商标法同样规定了优先权的情况。当商标被认定为驰名商标，就可依据《驰名商标认证和保护规定》以得到更多的保护。

(三) 技术和科学技术服务

2001年的《集成电路布图设计保护条例》旨在为集成电路设计提供保护。

集成电路设计是指集成电路中至少有一个是有源元件的两个以上元件和部分或者全部互连线路的三维配置，或者为制造集成电路而准备的上述三维配置。集成电路设计的保护并非保护的是思想，数据运算程序，计算方法或者数理概念。

集成电路设计的保护期限是10年，自布图设计登记申请之日或在世界任何地方首次投入商业使用之日计算，以较早日期为准。但是，无论是否登记或投入商业利用，布图设计自创作完成之日起15年后，不再受到保护。

(D) Copyright

The works protected by the Law of Copyright in China are intellectual creations in the fields of literature, art, natural sciences, social sciences, technology engineering and other areas more prone to be manifested in a tangible form, for example, oral and written works, musical works, paintings, sculptures, maps, etc.

Copyrights include the rights of publication, authorship, alteration, integrity, reproduction, payment, distribution, location, exposure, performance, exhibition, broadcast, translation, compilation of words, etc. They may be partially transferred by the holder, but the rights of publication, authorship, alteration and integrity cannot be transmitted.

Copyrights are valid from the day the work to be protected is in its final form. The protection of the rights of authorship, alteration and integrity are not limited by time, while the other rights in copyrights are limited to specific protection periods. These time-limited copyrights shall lapse 50 years after the death of the work's creator (in works of joint authorship works the copyright will lapse after the death of the last surviving co-author). In some special works, including cinematographic works, or those created in a way similar to cinematography, as well as those where the holder of the copyright is a legal entity, the 50-year term will be calculated from the date of the first publication of the work. When a work created by a foreign person is published in the territory of China within 30 days after it was first published outside the country, it is considered as having been published in China simultaneously.

The Law on Copyrights in China also stipulates the cases in which the work can be used without the approval of the owner or without payment of remuneration to the holder.

(E) Franchise

Franchises are regulated by the Regulation on the Administration of Commercial Franchises, effective since May 1st, 2007. The term "commercial franchise" (hereinafter referred to as "franchise") as mentioned in this Regulation refers to such business operations by which an enterprise owning a registered trademark, enterprise mark, patent, know-how or any other business resource (hereinafter referred to as "franchiser") confers the said business resource to any other business operator (hereinafter referred to as "franchisee") by means of contract, and the franchisee undertakes business operations under the uniform business model as stipulated by the contract, and pay franchising fees to the franchiser.

A franchiser for engagement in franchise activities shall possess a mature business model and the ability to provide long-term business guidance, technical support, business training and other services to the franchisee. A franchiser for engagement in franchise activities shall have at least two direct sales stores, and have undertaken the business for more than a year.

(四) 著作权

著作权法保护的是文学、艺术、自然科学、社会科学、工程技术和其他领域的智慧成果的有形表达方式，例如口头和书面作品、音乐作品、绘画、雕塑和地图等等。

著作权包括发表权、署名权、修改权、保护作品完整权、复制权、发行权、表演权、展览权、广播权、翻译权、汇编权等。著作权人可以部分转让这些权利，但发表权、署名权、修改权和保护作品完整权不得转让。

作品完成时即宣告取得著作权。对署名权、修改权和保护作品完整权的保护没有时间期限，其他著作权则有时间期限，通常是作者有生之年加上作者去世后50年（联合著作作品的著作权保护期限在最后一位作者去世50年之后失效）。在某些作品保护方面，包括影像作品或类似影像作品，其著作权人是法人的，50年的保护期限从作品第一次公开发表之日起计算。外国人的作品在中国境外发表后30日内又在中国发表的，视为在中国同时发表。

中国著作权法同时也规定了在何种情况下可不经著作权人同意或无需付费即可使用作品的情况。

(五) 特许经营

2007年五月一日生效的《商业特许经营管理条例》对特许经营进行了规范。商业特许经营（以下简称特许经营），是指拥有注册商标、企业标志、专利、专有技术等经营资源的企业（以下称特许人），以合同形式将其拥有的经营资源许可其他经营者以合同形式将其拥有的经营资源许可其他经营者（以下称被特许人）使用，被特许人按照合同约定在统一的经营模式下开展经营活动，并向特许人支付特许经营费用的经营活动。

特许人从事特许经营活动应当拥有成熟的经营模式，并具备为被特许人持续提供经营指导、技术支持和业务培训等服务的能力。特许人从事特许经营活动应当拥有至少2个直营店，并且经营时间超过1年。

特许经营合同应当包括下列主要内容：特许经营的内容、期限，特许经营费用的种类、金额及其支付方式等。

特许经营合同约定的特许经营期限应当不少于3年。但是，被特许人同意的除外。续签特许经营合同的，不受3年期限的限制。

A franchise contract shall include the following main contents: contents and term for the franchise; type, amount and payment method for the franchising fees, etc.

The franchise term stipulated in the franchise contract shall not be less than three years, unless it is otherwise agreed upon by the franchisee. The preceding paragraph shall not be applicable when the franchiser and the franchisee renew the franchise contract.

A franchiser shall, within 15 days after having concluded a franchise contract for the first time, report it to the commercial administrative department for archival filing according to this Regulation.

(F) Software

Computer software includes computer programs and correlative documentation. To enjoy protection in accordance with the Regulation of China on the Protection of Computer Software (which came into force on the 1st January 2002) the software should be developed independently by its creator and must already exist physically. Pursuant to regulations of software copyrights, the available protection does not cover ideas, courses of processing, operative methods, mathematical concepts applied to the development of that software, etc.

Holders of copyrights on software enjoy protection on publication rights, authorship, review, duplication, leasing, network dissemination of information, in addition to the right of translation, among others.

The protection of software is similar to the protection of other author rights and begins to run from the date on which the software is in its final form, i.e., fully developed.

特许人应当自首次订立特许经营合同之日起15日内，依照本条例的规定向商务主管部门备案。

(六) 软件

计算机软件包括计算机程序和有关文档。受《计算机软件保护条例》保护的软件必须由开发者独立开发，并已固定在某种有形物体上。对软件著作权的保护不延及开发软件所用的思想、处理过程、操作方法或者数学概念等。

软件的版权所有人受保护的权利有：发表权，署名权，修改权，复制权，出租权，信息网络传播权，翻译权等。

其他著作权的保护类似，软件著作权自软件开发完成之日起产生。

VIII. JUDICIAL SYSTEM

(A) Judicial system – Courts' hierarchy

The judicial system in China covers four different degrees of hierarchy, which are divided as follows:

- a) The People's Supreme Court, which is the highest authority;
- b) The People's Superior Courts;
- c) The People's Intermediate Courts;
- d) The People's District Courts, the first instance courts of the Chinese justice system.

In addition to the four different degrees that include the common Chinese judicial system, there are the so-called special courts that deal with specific matters, such as the military, maritime and railway matters.

All cases have the right to a second trial and the decision issued pursuant to the second analysis is considered final and not subject to appeal.

(B) Arbitration

Arbitration is regarded as a common and very important form of dispute resolution in China, especially in relation to trade disputes and related investments. The Arbitration Act of the People's Republic of China was adopted on 31st August 1994, by the People's National Congress, China's legislative body, entering into force and applicable from 1st September 1995 and slightly revised on 27th August 2009 (CAA 2009). The CAA 2009 applies to arbitration cases involving national or international issues. This law includes modern concepts and current information on arbitration and describes the basic principles by which arbitration is governed in China.

Arbitration Authorities

(1) Board of Arbitration

The board of arbitration is the authority to be appointed by the parties of the arbitration agreement. If no board of arbitration is appointed in the agreement, the two parties shall make a complementary agreement to choose one; if the two parties fail to reach a complementary agreement, the arbitration agreement will be invalid.

八、司法制度

(一) 司法体系——法院的级别

中国法院系统分四级：

- a) 最高人民法院
- b) 高级人民法院
- c) 中级人民法院
- d) 基层人民法院

此外还有特别法院，包括军事法院，海事法院和铁路法院。

法院审理案件适用二审终审制。

(二) 仲裁

仲裁在中国被非常广泛的应用于解决贸易、投资纠纷。1994年8月31日中国人民代表大会颁布了中国仲裁法，该法于1995年9月1日生效实施，2009年8月27日进行了少许修改。2009年仲裁法适用于国内和国际纠纷，吸收了现代仲裁理念并规定了在中国仲裁应遵循的基本原则。

仲裁机构

(1) 仲裁委员会

仲裁委员会是仲裁协议当事人选择的仲裁机构。依据法律规定，当事人在中国仲裁，在仲裁协议中未选定仲裁机构的，双方当事人应在补充协议中选定在该地点依法重新组建的仲裁机构，仲裁协议方有效；双方当事人达不成补充协议的，仲裁协议无效。

(2) *China International Economic and Trade Arbitration Commission* - It is considered the most important body in permanent operation. Since 2000, the CIETAC is also known as the Court of Arbitration of the International Chamber of Commerce of China. The headquarters of CIETAC are currently located in Beijing, and there are two sub commissions in the cities of Shanghai and Shenzhen, called respectively CIETAC (Shanghai Subcommittee) and CIETAC (Subcommittee of South China). To promote and encourage arbitration, the CIETAC set up 19 affiliated offices in various localities with specific business departments in order to sustain, in the best possible way, those who seek to resort to arbitration.

Matters that can be the subject of an arbitration award by the CIETAC are not limited to commercial disputes or merely based on the origin of the parties involved. Matters arising from economic and commercial transactions, contractual or non-contractual, may also be submitted to arbitration. These subject matters may include:

- International disputes per se, or which involve international relations;
- Disputes originated from the Special Administrative Regions of Hong Kong, Macau or from Taiwan; and
- Internal disputes.

Arbitration Agreement

A valid Arbitration Agreement is the basis of arbitration. It is a pre-requisite that the Arbitration Board accepts cases brought to its analysis and disregards the jurisdiction of the courts.

Notwithstanding, even after the arbitration agreement has been signed by the parties, courts may intervene if and when:

- a) the arbitration agreement is considered invalid or its validity has expired; and/or
- b) if a party resolves to take the dispute to the analysis of the State Courts and the other party agrees.

CIETAC provides a *Model Arbitration Clause* (quote):

“Any dispute arising from or in connection with this Contract shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration which shall be conducted in accordance with the Commission’s arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.”

(2) 中国国际经济贸易仲裁委员会

中国国际经济贸易仲裁委员会在中国仲裁界有很高的地位。从2000年起，中国国际经济贸易仲裁委员会同时启用中国国际商会仲裁院的名称，总部设在北京，在上海和深圳有中国国际经济贸易仲裁委员会深圳分会（以下简称深圳分会）和中国国际经济贸易仲裁委员会上海分会（以下简称上海分会）。为促进仲裁的发展，中国国际经济贸易仲裁委员会建立了19个附属机构，以便当事人通过仲裁解决纠纷。

提交中国国际经济贸易仲裁委员会的可仲裁事项不限于当事人之间的商事纠纷。经济贸易纠纷，合同和非合同纠纷同样可以提交中国国际经济贸易仲裁委员会进行仲裁。具体包括：

- 国际纠纷或涉外纠纷；
- 来自香港特区、澳门特区和台湾地区的纠纷；
- 国内纠纷。

仲裁协议

仲裁协议时仲裁的基础，是将纠纷提交仲裁而排斥法院管辖的依据。

即便当事人签订了仲裁协议，法院依然可以在以下情况下进行干预：

- a) 仲裁协议无效；
- b) 一方当事人将纠纷诉至法院而另一方当事人未提出管辖权异议的。

中国国际经济贸易仲裁委员会提供的示范条款：

“凡因本合同引起的或与本合同有关的任何争议，均应提交中国国际经济贸易仲裁委员会，按照申请仲裁时该会现行有效的仲裁规则进行仲裁。仲裁裁决是终局的，对双方均有约束力。”

Effects of the Award

The final Arbitration Award issued is immediately effective upon on the parties, without the possibility of appeal. Notwithstanding, the unsatisfied party has the right to seek review before the judicial courts, that may rule on the invalidity of the Arbitration Award upon verification and the existence of evidence that one of the conditions foreseen in the Arbitration Law has occurred, such as the disregard for the regulations and directives in force and the consequent (proven) violation of these regulations, among others.

Recognition and Enforcement of Foreign Arbitral Awards

China is a signatory country to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("1958 New York Convention") since 22nd April 1987, and its accession to the Convention is subject to trade restrictions and reciprocity.

Due to the applicability of that Convention, it is possible for parties of certain juridical relationships to recognize and enforce Arbitral Awards which are issued in the State where the debtor has assets, provided that such State is also a signatory country to the New York Convention. According to the UN Committee on the International Trade Law (UNCITRAL), so far 144 countries are signatories to the Convention. For further details, please check the website of UNCITRAL at:

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

仲裁裁决的效力

仲裁裁决到达当事人时生效，不得上诉。但当事人不服的可依仲裁法关于撤销仲裁裁决的规定申请撤销程序，主要依据有仲裁庭的组成或者仲裁的程序违反法定程序的等等。

外国裁决的承认与执行

中国在1987年4月22日成为纽约公约的成员国，并声明了商事保留和互惠原则。

根据纽约公约的规定，当事人可以在对方当事人财产所在的公约成员国内寻求仲裁裁决的承认和执行。根据联合国国际贸易法委员会公布的数据，现在该公约共有144个成员国，更多详细信息，请查阅：

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html

Technical File

The information contained on this Guide does not pretend to be exhaustive, nor excludes the support and assistance of a Lawyer or Legal Consultant for its practical use on a case to case basis, being solely intended to allow its readers to have a better understanding on China legal system and background.

技術文件

本指南資訊存在未盡之處，亦有賴於律師或法律顧問以具體情形具體分析加以在實踐中運用，資訊僅供讀者對中国法律體系以及背景有更多理解。

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