

An Introduction to Relevant Chinese Laws for Conducting Business in China ¹

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Preface

Since the late 1970's, the People's Republic of China has adopted a policy of reform and opening-up. In order to absorb foreign funds and import advanced technology and managerial method, in 1979, the first law governing foreign investment, i.e. the Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture (EJVL), was adopted by the National People's Congress (NPC). In 1982, the newly adopted Constitution of the People's Republic of China declares that China permits foreign enterprises, other economic organizations and individuals to make investment in China according to Chinese law, to have economic cooperation with Chinese enterprises and other economic organizations in various forms; foreign enterprises and other economic organizations and Chinese-Foreign Equity Joint Ventures (EJV) shall abide by Chinese law, and their legitimate rights and interests shall be protected by Chinese Law.² Subsequently, another two laws governing the foreign investment, i.e. the Law of the People's Republic of China on Wholly Foreign Capital Enterprises (WFCEL), and the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (CJVL) were adopted by the National Congress in 1986 and 1988 respectively. In the past 20 years, an enormous amount of laws and regulations related to foreign trade and investment have been promulgated.

On December 11, 2002, after 15 years of hard efforts and negotiation, China finally became a member of the World Trade Organization (WTO). This is of a great significance for China, both politically and economically, and is bringing a tremendous change to the Chinese legal system, especially in the field of foreign trade and investment. To fulfill its commitments made for its WTO accession, China is undergoing a thorough amendments of existing laws,

¹ This article is intended to be educational in nature and its contents are not to be interpreted as legal advice. For legal consultation, please contact Mascont Law Firm at (+86-20) 3358-0346, (+86) 133-1876-0212.

² See Article 18, the Constitution of the People's Republic of China (1982).

and numerous regulations, administrative rules and procedures on foreign investments, foreign trade, taxation, exchange controls, labor and personnel management, and intellectual property protection, both at the central level and the local level. Many new regulations are being enacted to meet the requirement of opening the Chinese market where foreign trade and investment are growing rapidly.

This chapter is to give you a general description of the most important laws and regulations that may influence and affect foreign companies, other economic organizations and individuals doing business in or with China.

Chapter 1 Establishment of Enterprises

Chapter 2 Merger and Acquisition

Chapter 3 Acquisition of Realty

Chapter 4 Taxation

Chapter 5 Customs Regulations

Chapter 6 Foreign Exchange Regulations, Capital and Profit Transfer

Chapter 7 Competition Law

Chapter 8 Intellectual Property Protection

Chapter 9 Employment Law

Chapter 1 Establishment of Enterprises

[1] Limited Liability Company

There are three basic laws and regulations governing the foreign investment, i.e. the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures (EJV); the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (CJVL); the Law of the People's Republic of China on Wholly-Foreign Capital Enterprises (WFCEL), and their Implementing Rules. According to these laws and regulations, a Chinese-Foreign Equity Joint Venture (EJV) is a limited liability company; a Chinese-Foreign Contractual Joint Venture (CJV) can be a limited liability company if it acquired the qualification of being

a legal person, otherwise it can not be a limited liability company; a Wholly-Foreign Owned Enterprise (WFOE) is a limited liability company unless otherwise approved by the competent authority.

[a] Chinese-Foreign Equity Joint Venture

The basic laws and regulations governing the establishment and operation of the Chinese-foreign equity joint ventures (EJV) in China include the Law of the PRC on Chinese-Foreign Equity Joint Venture (EJVL, promulgated in 1979 and amended in 1990 and 2001), and its Implementation Rules (adopted in 1983 and amended in 2001); the Labor Law of the PRC (1995) and the Labor Management Rules on Foreign-Invested Enterprises; the Income Tax Laws of the PRC on Foreign-Invested Enterprises and Foreign Enterprises (1992) and its Implementation Rules (1991), which will be discussed separately. The Regulation of the PRC on the Administration of the Registration of Enterprise Legal Person (1988) and its Implementation Rules (amended in 2000) provide the detailed procedures for the EJV to be registered with industry and commerce department to get a business license.

[i] Features

In accordance with the EJVL, and its Implementation Rules, for the purpose of international economic cooperation and exchange of technology, foreign enterprise companies, enterprises and other economic organizations and individuals are allowed to set up joint ventures in China with Chinese companies, enterprises or other economic organizations³. This is so-called equity joint ventures (EJVs). An EJV is legal entity established in China between Chinese and foreign venturers that acquires the Status of a legal person and is governed by Chinese law. There are three features that distinguish the equity joint ventures from the so-called contractual joint ventures (CJVs).

First of all, the contributions to the registered capital by the parties to the equity joint venture either in cash or in other forms shall be priced and calculated into a proportion (i.e. a ratio) and the parties shall share profits, risks and losses and be responsible for its debts in proportion to their respective contributions. The proportion of the registered capital contributed by one party shall be assigned only after approval has been granted by other parties and the examination and approval authority as well. In this case the other party has the priority to buy the proportion of the registered capital to be assigned. As a limited company,

³ See Article 1 of the EJVL (amended 2001).

the parties to the joint venture are only liable to the joint venture's debts to the extent of their subscribed capital. Thirdly, the Parties to the joint venture shall distribute profits in currency and not in products or in other forms. The investments made by the parties cannot be recovered purposely by increasing profit share or accelerating the depreciation process.

[ii] Approval and Registration Procedure

All foreign investment has to be examined and approved by the examination and approval authority (EAA). In the case of establishing an equity joint venture, the EAA refers to the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), or the local authorities (including department responsible for foreign trade and economic cooperation of the State Council, autonomous regions, special economic zones, coastal open cities and cities having an independent economic planning power), depending on how large the investment is, and whether it is encouraged. The EAA shall make a decision whether or not the EJV project is approved within 3 months after receiving all relevant documents required. Within 1 month after the approval has been granted by EAA, the EJV shall be registered with registration authority (i.e. the State Administration for Industry and Commerce or the local departments of industry and commerce), the competent departments in charge of taxation and other relevant departments such as the customs and foreign exchange control departments.

[iii] Capital Contribution

The parties to the EJV may use currency, buildings, factory houses, machinery and equipment and other materials, industrial property right, technical know-how and the right to use a work site as contributions to the registered capital. The machinery and equipment or other materials contributed by the foreign party shall be indispensable and needed by the EJV, and their price should not be higher than the same in the international market. The industrial property right or technical know-how contributed by the foreign party as investment shall meet one of the following conditions: (1) it can remarkably improve the quality of the products, or promote the productivity efficiency; (2) it can remarkably save raw materials, fuel or power. Where foreign party use machinery and equipment, other materials, industrial property right or technical know-how as investment contribution, approval shall be granted by the examination and approval authority (EAA). According to the Company Law of the PRC, which shall also apply to EJV if it is a limited liability company, the contribution in industrial property right or non-patented technology shall not be priced more than 20% of the registered capital of the EJV. Another prominent feature is that foreign investment contribution in an EJV shall not be less than 25% of the registered capital.

[iv] Management

In EJV, the board of directors is the highest authority, which will make decisions regarding all important issues of the EJV. The members of the board of directors shall not be less than 3 people and the number shall be distributed among the parties in accordance with their proportion of the registered capital. The term of office of the board members is 4 years, who can be appointed continuously after the term expires. Decisions on the following issues shall be unanimously approved by the board of directors: (1) the amendments of the articles of association of the EJV; (2) the termination or dissolving of the EJV; (3) the increase and decrease of the registered capital; (4) the merger or separation of the EJV. Other matters can be decided according to the decision-making rules stipulated in the articles of association of the EJV. The Chairman of the board of directors is the legal representative of the EJV.

A managerial organ, headed by the general manager, shall be set up in the EJV, responsible for the daily management operation. The general manager shall carry out decisions made by the board of directors, and shall represent the EJV within the power authorized by the board of directors. The general manager, deputy general manager(s), who can be both Chinese and foreign citizens, shall be engaged by the board of directors. They can not be concurrently be general manager or deputy general manager(s) of other economic organizations, and shall not engage in commercial competition of other economic organizations with the EJV.

[v] Operation

According to the EJV Law and its Implementation Rules, the machinery and equipment, raw materials, fuels, parts and components, transportation vehicles and office facilities etc. needed by the EJV can be bought in the domestic market or international market in accordance with the principle of equity and rational. EJVs are encouraged to sale products outside China. Products can be exported directly by the EJV or exported by its agent entrusted, and can also be exported through the Chinese foreign-trade agencies. Products of the EJV can also be sold in the Chinese market. If it is necessary, the EJV may establish branches outside China or in Hong Kong and Macao after approval from the MOFTEC. With its business license, EJV can open its foreign exchange bank account in banks or other financial institutions granted permit to do foreign exchange business by the state administration department. All foreign exchange matters of EJVs shall be handled according to the Regulations of PRC on Foreign Exchange Administration and other related rules. If necessary in its business operation, EJV can borrow loans of RMB or foreign exchange from domestic banks, and can also borrow foreign exchange loans from foreign banks, banks in Hong Kong or Macao pursuant to the relevant

regulations of China. Insurance policies of the EJV shall be underwritten in insurance companies in China.

[vi] Labor and personnel Management

Pursuant to the Implementation Rules of the EJVL, the matters related to the employment of staff of EJV, such as the recruitment, dismissal, resign, salary, welfare, labor protection, labor insurance, labor discipline shall be governed by the related provisions of labor and social security of China. The salary and welfare of High-ranking offices of EJV such as the (deputy) general manager, the (deputy) general engineer, the (deputy) Chief accountant etc. shall be decided by the board of directors.

[vii] Profit Distribution and Repatriation

After the payment of the income tax, the EJV shall set aside, from gross earnings gained by the EJV, allocations for the reserve funds, funds for the expansion of the EJV, bonuses and welfare funds for employees; net profit can be distributed among the venturers in accordance with the ratio of the register capital contributed by each venturer. Profits can not be distributed before the losses in previous years have been made up. Remaining profit in previous years can be distributed together with that of the current year.

Profits gained by the foreign venturer can be remitted abroad, so can funds distributed after the expiration or termination of EJV and other funds. After the payment of individual income tax, salary and other legitimate income earned by foreign employees can be remitted abroad in accordance with the foreign exchange administration regulations.

[viii] Nationalization and Expropriation

In the EJVL, it is declared that the Chinese government protects the foreign venturer's investment, profits which should be distributed, and other legitimate rights and interests in the EJV according to law. EJV shall not be nationalized and expropriated. Under special circumstance, if required by the public interests of the society, EJV can be expropriated through legal procedures, and corresponding compensation shall be rendered. China also has concluded a lot of bilateral investment protection treaties with many countries since late 1970s. Provisions regarding the legal procedures and the principle of compensation can be usually found in these treaties.

[ix] Duration and Liquidation

According to the EJVL and its Implementation Rules, the duration of the EJV can be

stipulated according to different investment fields and circumstances. In some fields, EJV should have a limited duration; while in others, it can have a limited duration or a permanent duration (no limited duration). Details can be found in the Interim Rules on the Duration of the Chinese-Foreign Equity Joint Ventures. Where EJV has a limited duration and the venturers agree to extend the duration, an application shall be filed with the examination & approval authority (EAA) 6 months before the expiration of the duration. EAA shall make a decision whether or not approval is granted within one month after receiving the said application.

EJV can be dissolved under the circumstances that (1) duration of the EJV expires; or (2) the EJV suffers a severe loss and is unable to sustain business operation; or (3) one party fails to perform its obligation in accordance with the agreement, contract, or articles of association of the EJV, and cause the EJV unable to sustain business operation; or (4) EJV suffers a heavy loss due to Force Majeure such as natural disaster or war etc.; or (5) the purpose of the EJV has not been reached and there is no bright future for development; or (6) other circumstances for the dissolution of the EJV stipulated in the contract or the articles of association. Under the above circumstances of (2), (4), (5), (6), the board of directors shall submit an application for dissolution to the EAA for approval. Under the above circumstance of (3), the party who breaches the agreement, contract, or articles of association of the EJV shall compensate the EJV for its losses thus incurred, and other party who performed its duty can file an application of dissolution with the EAA.¹

When EJV is dissolved, liquidation shall be carried out in accordance with the Liquidation Measures on Foreign-Invested Enterprises. A liquidation committee (the Committee) shall be formed to be responsible for the liquidation matters. The members of the Committee should usually be composed of directors of the EJV. Should any director is unable or unfit to be a member of the Committee, Chinese lawyer or registered public accountant can be engaged by the EJV to be a member. During the liquidation, the Committee can sue or be sued on behalf of the EJV. EJV shall be liable for its debts with all its assets. After liquidation, remaining property of the EJV shall be distributed among the parties in accordance with the ratio of the registered capital contributed by each party, unless otherwise stipulated in the agreement, contract or articles of association of the EJV. When the liquidation is finished, the Committee shall submit a report to EAA after it has been approved by the meeting of the board of

¹ Compensation should be made to the party who performed his duty, rather than EJV. See Article 48 of Implementation Rules of CJVL.

directors, and go through the registration cancellation procedure with the registration administration department and hand in the business license of the EJV. The account books shall be kept by the Chinese party after EJV's dissolution.

[x] Settlement of Disputes

According to the EJVL and its Implementation Rules, disputes which can not be settled through consultation can be arbitrated by Chinese arbitration institutions, or by other (foreign) arbitration institutions in accordance with their written arbitration agreement. In the event that there is no written arbitration clause contained in the EJV contract, or¹ no arbitration agreement is reached afterwards, legal proceeding can be instituted with the People's Court. China became a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention 1958) in 1987, foreign arbitral awards made in the territory of the contracting parties to the Convention can be enforced in accordance with the said Convention and relevant provisions of the Chinese civil procedure law and regulations.

[b] Contractual Joint Venture

The Chinese-Foreign Contractual Joint Venture (CJV) is also called the cooperative joint venture, which is governed mainly by the Law of the People's Republic of China on Chinese-Foreign Contractual Joint Ventures (CJVL) newly amended in 2001 and its Implementation Measures ratified by the State Council and promulgated by MOFTEC in 1995. Regarding its income tax, labor and registration, the laws and regulations mentioned in [a] above also apply to CJV.

[i] Features

CJV has some common features with EJV: (1) the requirements for the venturers are the same. The foreign venture can be foreign enterprises, other economic organizations or individuals; the Chinese venture can be Chinese enterprises and other economic organizations, excluding Chinese individuals. (2) Both CJV and EJV are enterprise set up in China. (3) Both are joint venture in which profits and losses are shared by the venturers. However, besides the common features, CJV has its own unique features.

Firstly, the prominent feature of CJV is its contractual nature and flexibility. The foreign and

¹ "or" should be "and". See Article 25 of CJVL.

Chinese venturers shall stipulate the form of investment and/or conditions for cooperation investment, distribution of earnings or products, sharing of risks and losses, the manner of operation and management and the ownership of the property upon termination of CJV. Unlike EJV, the investment contribution and/or cooperative conditions to CJV need not to be priced and calculated into a proportion (ratio).

Secondly, CJV can be a legal person which shall be a limited liability company. It also can be an establishment which is not a legal person.

Thirdly, the foreign venturer(s) of CJV may recover its investment in advance by increasing profit share or accelerating the depreciation process during the term of cooperation on the condition that all fixed assets of the CJV shall belong to the Chinese venturer(s) when the term of cooperation stipulated in the CJV contract expires. Parties to the joint venture may distribute profits in currency or products.

[ii] Approval and Registration Procedure

The approval and registration procedure of CJV is similar to that of EJV. The establishment of CJV shall be examined and approved by the examination and approval authority (EAA), i.e. the MOFTEC or departments authorized by the State Council or the local governments, depending on the how large the investment is and whether it belongs to the encouraged category according to the Industry Guidance Catalog for Foreign Investment (newly revised in 2002). EAA shall make a decision whether or not it approves the investment with 45 days after receiving all documents required. Within 30 days after the approval granted by EAA, the CJV shall go through registrations with the industry & Commerce department to obtain the business license, and also register with the tax department, the customs, the foreign exchange department.

[iii] Investment Contribution

Investment contributed by the Chinese and foreign venturers can be currency, materials, land use right, industrial property, non-patented technology or other property rights. Investment paid by the foreign venturer shall not be less than 25% of the registered capital of the CJV if it is a legal person, and shall not be less than 25% of the total investment of the CJV if it is not a legal person. Conditions for cooperation, referring to real property or other property rights, including land use right, buildings, industrial property, technical know-how and etc. shall be the property of the CJV. They are not priced in currency, but shall also be registered and be liable for the debts of the CJV. According to the Implementation Measures of the

CJVL, no mortgage or other forms of guarantee shall be set on the investment or conditions for cooperation contributed by the venturers.

[iv] Management

According to the CJVL and its Implementation Measures, CJV shall set up a board of directors or joint management organization which shall make decisions on important issues of the CJV in accordance with the contract or articles of association of the CJV. The board of directors or joint management organization shall appoint or engage a general manager who shall be responsible for the daily operation and management of the CJV. The general manager shall be responsible to the board of directors or the joint management organization.

The board of directors or joint management organization shall consist of at least 3 members. The distribution of number to each party shall be decided by consultation with reference to the investment or condition for cooperation contributed by each party, which is entitled to designate and re-designate member(s) of the board of directors or joint management organization within the number distributed to it.

In case CJV is entrusted to the management of other person other than the venturers of the CJV after it is established, unanimous approval shall be obtained from the board of directors or the joint management organization, and this shall be report to the EAA for approval, after which, registration alteration shall be done with the industrial & commerce department.

[v] Operation

CJV is entitled to operate in accordance with its own plan and the business scope and scale approved by EAA. Governmental departs shall not demand CJV to implement plans made by the governmental departments. CJV is entitled to purchase machinery, raw materials, fuels, parts, accessories, components, vehicles and office facilities etc. inside or outside China at its own discretion. CJV is encouraged to sell its products in the international market and is entitled to decide the price of its products according to law. CJV shall not export its products at a price which is remarkably lower than the price in the international market, and shall not import materials at a price higher than the price in the international market.

[vi] Profit Distribution and Transfer

The venturers of CJV may distribute the earnings of the CJV by sharing the profits, distributing the products, or by other means agreed by them. The foreign venturer may recover its investment in advance in the following ways within the term of cooperation on the condition that all the fixed assets of the CJV shall belong to the Chinese venturer when the

term of cooperation stipulated in the CJV contract expires:

- (1) The CJV contract may stipulate that the foreign venturer enjoy a larger sharing-ratio;
- (2) The foreign venturer may recover its investment before CJV pays income tax after being examined and ratified by the finance & tax departments according to the relevant provisions of the Chinese tax law.
- (3) Other forms ratified by the finance & tax departments and EAA.

Where the foreign venture recovers its investment in the above ways within the term of cooperation, both the foreign and the Chinese ventures shall be liable for the debts of the CJV in accordance with the provisions of relevant laws and also the stipulations of the CJV contract. According to the Implementation Measures of the CJVL, the foreign venturer shall not recover its investment in advance before the losses of the CJV is made up. Profits, other legitimate earnings and funds distributed after CJV's termination can be remitted abroad in accordance with law. Salary and other legitimate incomes earned by foreign employees can be also remitted abroad after income tax payment.

[vii] Duration and Liquidation

According the CJVL and its Implementation Measures, the duration of the CJV can be stipulated in the CJV contract after the consultation of the venturers. In case the venturers agree to extend the duration, they shall submit application to the EAA for approval 180 days before the expiration of the duration, together with an agreement reached between the venturers concerning the rights and obligation during the extended duration. The EAA shall rendered a decision with 30 days after receiving the application. Matters regarding the dissolution of CJV are similar to that of EJV. The liquidation matters of the CJV shall be handed in accordance with the provisions of relevant laws, regulations and also the contract and articles of association of the CJV.

Matters concerning the labor and personnel management, nationalization and expropriation, settlement of disputes of CJV are comparable to those of the EJV, which have been mentioned.

[c] Wholly-Foreign Capital Enterprises

Wholly-Foreign Capital Enterprise (WFCE) is an enterprise established and registered in China pursuant to Chinese laws with capital solely contributed by foreign investor(s), not including branches set up in China by foreign enterprises and other economic organizations.

WFCE is thus wholly owned and controlled by foreign investor(s). The principal law and regulations governing WFCE is the Law of the People's Republic of China on Wholly-Foreign Capital Enterprises (WFCEL), enacted in 1986 and newly amended in 2000, and its Implementation Measures promulgated in 1990 by MOFTEC after being ratified by the State Council and newly amended in 2001.

[i] Approval and Registration Procedure

According to the WFCEL and its Implementation Measures, the establishment of WFCE shall be guided by the Industry Guidance Catalog for Foreign Investment (Catalog) which lists the fields where WFCEs are permitted or not. In some industries, only joint ventures (JVs) are allowed to be set up by foreign investors, while in other industries, both JVs and WFCEs are allowed to be established. The Catalog is promulgated by MOFTEC and has been newly revised in 2002 in accordance with China's commitments to its WTO accession.

According to the Implementation Measures, the establishment of WFCE shall not be approved if:

- (1) it is detrimental to China's sovereignty or public interests;
- (2) it jeopardizes China's security;
- (3) it violates Chinese law and regulations;
- (4) it is not in line with the development of Chinese national economy;
- (5) it may pollute the environment.

To set up WFCE, application shall be submitted to the EAA for examination and approval. Before it submits its application, the foreign investor shall send a report to the local government concerning the following issues: the purpose of the WFCE, its business scope and scale, products, technical equipment to be used, land area to be used and requirements, etc. The local government shall give a reply within 30 days after receiving the said report. Among other things, the application, the feasibility study report and the articles of association of the WFCE are the main three documents to be submitted to EAA which will make a decision within 90 days. After the approval of the EAA, the foreign investor shall, within 30 days, register with the industry & commerce administration to get a business license, and also with the tax administration, foreign exchange administration and the customs.

[ii] Capital Contribution

Foreign investors can use convertible foreign currency as investment contribution, they can

also use the priced machinery and equipment, industrial property, technical know-how as their investment contribution. After the approval of the EAA, foreign investors can also use Renminbi profits earned from other foreign-invested enterprises in China as investment contribution. Machinery and equipment used as investment by foreign investors shall be necessary for the production of the WFCE, and their price shall not be higher than the normal price in the international market. Industrial property and technical know-how used as investment by foreign investors shall be owned by the foreign investors, their pricing should be in line with the international practice, and their amount of pricing shall not be more than 20% of the registered capital of the WFCE. The time limit for the payment of investment contribution by the foreign investor(s) shall be prescribed in the application for the establishment of the WFCE and the articles of association. Foreign investors are allowed to pay their investment by installment, but the last installment shall be contributed within 3 years after the issuance of the business license of the WFCE, and first installment, which shall be contributed within 90 days after the issuance of the business license of the WFCE, shall not be less than 15% of the registered capital subscribed by the foreign investor(s). In case the foreign investor fails to contribute the first installment accordingly, the approval certificate issued by EAA shall be revoked automatically, the registration of the WFCE shall be cancelled. After each contribution made by the foreign investor, certified public account(s) in China shall be engaged by the WFCE to certify the investment contribution, and work out a report, which shall be filed with the EAA and industry & commerce administration for record.

[iii] Land Use and Land Use Fee

Land used by WFCE shall be allocated by the local government at or above the county level where the WFCE is to be located. WFCE shall go through the formalities with the land administration of the local government at or above the county level to obtain the land use certificate which is the legal certificate for WFCE to use the land. Without the approval of the authority, WFCE shall not transfer its land use right within its duration. WFCE shall pay land use fee and/or land development fee when using developed land in accordance with relevant Chinese provisions. The duration of using the land shall be the duration of the WFCE approved by the authority.

[iv] Management

According the Implementation Rules of the Law of the People's Republic of China on Wholly Foreign-Capital Enterprises (WFCEL), the internal organization and structure, the power and responsibilities of the internal organization and the procedures of decision-making of WFCE

shall be stipulated in the Articles of Association of the WFCE. Except for that, the Law of the People's Republic of China on Wholly Foreign-Capital Enterprise and its Implementation Rules do not say anything about the formation, function, decision-making procedures, etc. of the Board of Directors of WFCE. In other words, these matters shall be decided by the foreign investors or WFCEs themselves.

According to Article 45 of the Company Law of the People's Republic of China (CL) which also shall apply to WFCE, if the WFCE is a limited liability company (LLC), a LLC shall have a Board of Directors composed of 3 to 13 members, and shall have a Chairman of Board of Directors who shall be the legal representative of the WFCE, and may have 1 or 2 Vice Chairman(s), the appointment of the Chairman and Vice Chairman shall be stipulated in the Articles of Association of the company. Article 47 of the said Law says: "The term of office of Directors shall be stipulated in the Articles of Association of the company, but shall not exceed three (3) years for each term. The Director can be re-appointed when the term expires. Before his/her term of office expires, the Shareholder Meeting shall not depose him/her without good reason." Article 49 of the CL says: "Unless otherwise provided in this Law, the way and procedures of making decisions by the Board of Directors shall stipulated in the Articles of Association of the company."

[v] Operation

WFCE is entitled to purchase, at its own discretion, machinery and equipment, raw materials, fuel, parts, accessories, elements and components, vehicles and office facilities needed in Chinese market or international market, and shall be treated equally as Chinese enterprises under the same condition when purchasing materials in China. WFCE can sell its products in the Chinese market, and is encouraged to export its products by itself or through agents. The price of materials, technology and labor service imported shall not be higher than the normal price of the same in the international market. The price of product exported shall be decided by WFCE itself by reference to the price in the international market, but shall not be lower than the reasonable export price. WFCEs shall be sanctioned by the tax administration and bear the legal responsibilities if WFCEs evade tax by the means like importing in high price and exporting in low price.

WFEC shall pay tax in accordance with provisions of relevant laws and regulations. This issue will be discussed separately in this chapter.

Foreign exchange matters of WFECs shall be handled in accordance with relevant regulations related to foreign exchange. WFECs shall open its foreign exchange account in bank in China

which is permitted to do the foreign exchange business. Foreign exchange earnings and expenditures of WFCE shall be deposited in and paid from its foreign exchange account. For WFCE to open foreign exchange account in bank outside China, approval shall be granted by the State Administration on Foreign Exchange. Foreign investor's legitimate profits earned from WFCEs, other lawful earnings and remaining funds after liquidation can be converted into foreign exchange and remitted abroad. The salaries and other lawful incomes of the foreign employees of the WFCE can also be remitted abroad after tax payment.

WFCE shall set up its finance and accounting system according to provisions of Chinese laws and regulations, the system shall be reported to the local finance and tax administrations on file. Reserve funds, bonus funds for staff and welfare funds shall be set aside from profit earned by WFCE after taxation. The allocation of reserve funds shall not be less than 10% of the profit after taxation, and may not be allocated if its cumulated total amounts to 50% of the registered capital. The ratio of the allocation of bonus funds and welfare funds can be decided at the WFCE's own discretion. Profit shall not be distributed before the losses of previous accounting year(s) are made up; undistributed profits of previous accounting year(s) can be distributed with profits of the current year. The annual accounting report and liquidation accounting report shall be verified by public accountant registered in China, who shall issue a report. Account books shall be kept in the location of the WFCE, which shall be superintended by the finance and tax administrations.

[vi] Labor and Personnel Management

Labor contract shall be concluded between WFCE and its employees in accordance with the Chinese Labor Law and other relevant regulations when WFCE employs staff in China. Matters such as employment, dismissal, emolument, welfare, labor protection, social security and etc. shall be stipulated in the contract.

[vii] Nationalization and Expropriation

According to WFCEL, WFCE shall not be nationalized and expropriated. Under special circumstances, for the purpose of the public interests, WFCE can be expropriated through legal procedures, and corresponding compensation shall be rendered. Provisions on this matter for WFCE are comparable to those for EJV and CJV.

[viii] Duration and Liquidation

Duration of WFCE shall be decided first by the foreign investor, and approved by EAA. The extension of duration shall be applied to the EAA 180 days before the expiration of the

duration. EAA shall make a decision within 30 days.

Dissolution and liquidation matters for WFCE are similar to those of EJV and CJV.

[2] Joint Stock Corporation

Foreign-invested joint stock corporation is another kind of Chinese-foreign joint venture. In October 1993, MOFTEC promulgated the Notice Regarding Relevant Problems of Chinese-Foreign Joint Venture in the Form of Foreign-Invested Joint Stock Corporation, which says that the establishment of foreign-invested joint stock corporation by issuing RMB special shares is another way to utilize foreign direct investment.¹ Company Law of the PRC (CL) which take effect in 1994 is the basic law governing joint stock companies including Chinese-foreign joint stock company. Based on CL, the State Council promulgated the Special Regulations on Joint Stock Company's Offering and Listing of Shares Abroad, and the Regulations on the Joint Stock Company's Listing of Foreign Capital Shares in China in 1994 and 1995 respectively. MOFET promulgated the Interim Regulations on Issues regarding the Establishment of Foreign-Invested Joint Stock Company in 1995 (Interim Regulations), which gave a detailed prescription on the establishment of foreign-invested joint stock company.

According to the Interim Regulations, foreign-invested joint stock company (the Company) refers to an enterprise legal person established in accordance with these Regulations, with the entire capital being divided into shares of equal value, where the shareholders bear responsibilities to the Company to the extend of the number of the shares they held and the company bears responsibilities for its debts with all its assets, and where the Chinese and foreign shareholders jointly hold the company's stock, with the shares subscribed and held by foreign shareholders being more than twenty-five per cent of the company's registered capital.

[a] Establishment Procedure

According to the Interim Regulations, the Company is one of the forms of foreign-invested enterprises and it shall be governed by the relevant laws and regulations of China. Therefore, the establishment of the Company shall be in line with the China's policy towards foreign-invested enterprises. The establishment of manufacture-oriented enterprises adopting advanced technology shall be encouraged.

¹ Notice Regarding Relevant Problems of Chinese-Foreign Joint Venture in the Form of Foreign-Invested Joint Stock Corporation, 1993.

The Company can be established by promotion or offer. Where the Company is to be established by promotion, besides conditions set for promoters in the Company Law (CL),¹ at least one of the promoters shall be foreign shareholder. If the Company is to be established by offer, besides the condition set in the preceding sentence, at least one of the promoters shall have a record of 3 consecutive profited years before the offer of shares, who shall submit finance and accounting reports for the last 3 years audited by the public accountant registered in China in case the promoter is a Chinese shareholder. If the said promoter is a foreign shareholder, finance report audited by public accountant registered in the residential place of the foreign shareholder shall be submitted. After an agreement for the establishment of the Company being concluded among the promoters, one of the promoters can be entrusted jointly by the promoters to settle the application formalities for the establishment of the Company. The procedures are as follows:

(1) Application letter, feasibility study report and asset assessment report etc. shall be submitted to the competent authority of the province, autonomous region, city directly under the central government, or city with a independent planing (the Competent Authority) where the applicant is located. Prospectus shall also be submitted if the Company is to be set up by offer of shares.

(2) After being examined and approved by the Competent Authority, the aforesaid documents shall be forwarded to the department in charge of foreign trade and economic cooperation of the same province, autonomous region, city directly under the central government, or city with a independent planing (the Department). After the aforesaid documents being approved by the said department, the promoters can officially conclude the agreement for the establishment of the Company and the articles of association of the Company.

(3) After the agreement for the establishment of the Company and the articles of association of the Company are examined and approved by the said Department, they shall be forwarded to the MOFTEC for examination and approval. MOFTEC shall make a decision of approval

¹ According to Article 75 of the Company Law, to set up a joint stock company, there shall be at least 5 promoters, among whom, half will have residence in China. Promoters shall subscribe shares in accordance with this Law, and undertake the responsibility of going through the formalities for the establishment of the company (Article 76). Where the company is to be established by promotion, the promoter shall subscribe all of the shares which shall be issued; if the company is to be established by offer, the promoter shall subscribe part of the shares which shall be issued, the rest shall be offered to the public (Article 74).

or disapproval within 45 days.

After the agreement for the establishment of the Company and the articles of association of the Company are approved, the promoters shall open a special account in the bank within 30 days by presenting the approval certificate issued by MOFTEC. The promoters shall purchase the shares which they have subscribed in one installment within 90 days after the issuance of the approval certificate. The promoters shall bear a joint and several responsibility for the purchase of the shares of the Company before all of the shares of the Company are purchased. In case the Company fails to be set up, the promoters shall be jointly and severally responsible for the expenses and debts arising from the actions to establish the Company.

Where the Company is to be established by means of promotion, after purchasing their shares subscribed, the promoters shall elect the board of directors and board of supervisors. The board of directors shall be responsible for the registration of the Company by submitting the approval documents, articles of association, asset assessment certification and etc. to the registration authority. Where the Company is to be established by means of offer, after the shares issued have been purchased, certification shall be issued by a statutory agency responsible for capital verification. Within 30 days Promoters shall convene and preside a founding meeting of the Company, in which board of directors, board of supervisors shall be elected. The board of directors shall responsible for the registration by submitting the approval documents, articles of associate, capital assessment certification, minutes of the founding meeting of the Company, and etc. to the registration authority. The registration authority shall finish the registration formalities and issue the business license within 30 days after receiving all the document required.

[b] Shareholders Meeting

According to the Company Law of the People's Republic of China (CL), the shareholders meeting of joint stock company (Company), composed of the shareholders, is the authority organ of the Company, which have the following power according to Article 103 of the CL:

- (1) to decide the business policy and investment plan of the Company;
- (2) to elect and/or replace the director(s), decide the remuneration of the directors;
- (3) to elect and/or replace the supervisor(s) representing the shareholders, decide the remuneration of the supervisors;
- (4) to deliberate and ratify the report of the board of directors;

- (5) to deliberate and ratify the report of the board of supervisors;
- (6) to deliberate and ratify the annual financial budget, final settlement of account;
- (7) to deliberate and ratify the profit distribution plan or plan to make up the loss;
- (8) to make a decision on the increase or decrease of the capital of the Company;
- (9) to make a decision on the issuance of bonds of the Company;
- (10) to make resolutions on matters on merger, separation, dissolution, and liquidation of the Company;
- (11) to amend to the articles of association of the Company.

Shareholders meeting shall be convened once a year. Under the following circumstances, interim shareholders meeting shall be convened within 2 months: (a) the number of directors is less than that required by the CL, or less than two-thirds (2/3) of the number required by the article of association of the Company; (b) the losses not made up account for one-thirds (1/3) of the total share capital; (c) shareholders holding 10 percent of the shares of the Company request to convene the meeting; (d) the board of directors thinks it is necessary; (e) the board of supervisors makes a motion to convene the meeting.

Shareholders meeting shall be called by the board of directors in accordance with the CL, and shall be presided over by the chairman of the board of directors. In case the chairman of the board of directors is unable to perform his duty due to special reason, the meeting shall be presided over by the vice chairman of the board of directors or other director appointed by the chairman. Issues which will be deliberated in the meeting shall be notified to the each shareholder 30 days before the date when the meeting will be held. In interim shareholders meeting, no resolution shall be made on issues which were not on the notice.

Each share has one vote. A resolution shall be made if the shareholders who hold more than half of the shares held by all the shareholders present at the meeting voted in favor of it. Resolution concerning the merger, separation, dissolution, or amendment to the article of association of the Company shall be made only if it is approved by shareholder who hold more than two-thirds (2/3) of the shares held by the shareholders present at the meeting. Shareholders may delegate proxy to attend the shareholders meeting on his or her behalf. The proxy shall submit the authorization of the shareholder to the Company, and shall vote within the authorization.

[C] Board of Directors

According to the CL, joint stock company (Company) shall have a board of directors composed of 5 to 19 members. The board of directors is responsible to the shareholders meeting, and have the following powers:

- (1) to be responsible for calling and report its work to the shareholders meeting;
- (2) to execute the resolutions made by the shareholders meeting;
- (3) to make decision on the business plan and investment scheme;
- (4) to make plan on the annual financial budget and final settlement account;
- (5) to make plan on the profit distribution and/or making up loss;
- (6) to make plan on the increase or decrease of the registered capital, and make plan on issuance of bond;
- (7) to make plan on the merger, separation and dissolution of the company;
- (8) to decide the structure of the internal management departments;
- (9) to decide the engagement and salary of the manager of the company; to decide the engagement and salary of the deputy manager and the person in charge of the finance of the company according to the nomination by the manager;
- (10) to make the internal management rules.

The board of directors shall have one chairman, and may have one or two vice chairman. The chairman and vice chairman shall be elected by the board of directors with the consent of half of all directors of the Company. The chairman is the legal representative of the Company, and has the following power: (a) to preside over the shareholders meeting, call and preside over the meeting of the board of directors; (b) to inspect the implementation of the resolutions made by the board of directors; (c) the execute the shares and bonds of the Company. Vice chairman shall assist the work of the chairman. In case the chairman is unable to perform his duty, he shall be represented by the vice chairman appointed by him. The office term of directors shall be specified in the articles of association, but shall not exceed three years for each term. Upon expiration, the director's office term can be renewed if he or she is reelected. Before the expiration of his or her term, director shall be deposed by the shareholders meeting without a good reason.

The meeting of board of directors can be held only if half of the directors are present. For the board of directors to make a resolution, the approval of half of all directors shall be needed. Directors should attend the meeting of board of directors in person. In case he or she is unable

to attend the meeting due to special reason, the director can delegate another director to attend on his or her behalf with a written authorization in which the authorized power shall be specified. Minutes of resolutions on the matters deliberated in the meeting of the board of directors shall be made. The directors present and the recorder shall sign on the said Minutes. Directors shall be responsible for the resolutions made by the meeting of board of directors. In case the resolution(s) made by the board of directors violate the laws, administrative regulations or articles of association, and cause the Company to suffer heavy loss, the directors who participated in making the resolution(s) shall be liable to compensate the Company, but those directors who expressly presented objection in voting which is entered into the minutes of the meeting shall be exempt from the liability.

[D] Manager

The joint stock company shall have a manager whom shall be engaged or dismissal by the board of directors. The manager shall be responsible to the board of directors, and have the following power:

- (1) to lead the work of the business operation of the company, to implement the resolution made by the board of directors;
- (2) to implement the annual business plan and investment scheme;
- (3) to devise the internal management department structure;
- (4) to draft the basic managerial system of the company;
- (5) to enact the specific rules of the company;
- (6) to make a motion on the engagement and dismissal of the deputy manager and the person in charge of the finance;
- (7) to engage or dismiss the managerial officials except those who should be engaged or dismissed by the board of directors;
- (8) other power authorized by the articles of association and the board of directors.

Manager shall attend the meeting of the board of director. Director shall be appointed to be the manager after being approved by the board of directors.

[E] Supervisory Board

Joint stock company shall have a supervisory board whose member shall not be less than 3 people among whom a caller shall be elected. Supervisory Board shall be composed of

supervisors representing the shareholders and appropriate number of supervisors representing the employees. Directors, managers and the official in charge of finance shall not concurrently be supervisor. The office term of the supervisors shall be 3 years, and can be renewed after expiration if the supervisor being reelected. Supervisory board shall have the following powers:

- (1) to check the accounting books and records;
- (2) to supervise the acts of directors, manager to perform their duty;
- (3) to demand the rectification of the acts conducted by the directors and manager which damage the interests of the company;
- (4) to make a motion that an interim shareholders meeting be convened;
- (5) to other powers stipulated in the articles of association.

Supervisors shall attend the meeting of the board of directors, and shall perform their duty honestly. The ways of deliberation and the procedure of decision-making of the supervisory board shall be stipulated in the articles of association.

Chapter 2 Merger and Acquisition

Concerning merger and acquisition by foreign investors in China, relevant laws include the Laws of the People's Republic of China on Chinese-Foreign Equity Joint Ventures, the Laws of the Peoples Republic of China on Contractual Joint Ventures, the Laws of People's Republic of China on Foreign Enterprises, the General Principle of the Civil Code (1986), the Company Law (1995), the Security Law (1998). According to the Guidance Catalog of Industries for Foreign Investment, foreign investments are classified into four categories, i.e. the encouraged, the permitted, the restricted, the prohibited. All foreign investment in China has to be examined in order to decide which category they belong to before they are granted approval. As merger and acquisition is also a form of investment, the Chinese authorities also adopt the examination and approval procedure to make sure that this kind of foreign investment conforms to the government policy on foreign investment, i.e. the said Guidance Catalog of Industries for Foreign investment. Besides, as merger and acquisition usually involves many legal aspects such as the arrangement of employees, the credit and debt of the object enterprise, the anti-competition, the disposal of the state-owned assets, etc., it is much more complicated than the establishment of foreign-invested enterprises. To govern merger and acquisition by foreign investors, numerous administration regulations has been promulgated, among which, the following are the major ones: the Provisional Regulation on

Foreign Investors Merging and Acquiring Domestic Companies (promulgated on March 13, 2003, effective on April 12, 2003), the Measures on Regulating the Acquisition of Listed Company (2002) promulgated by the China Security Regulatory Commission, the Interim Provisions on Domestic Investment Made by Foreign-invested Enterprises (2000), and the Several Provisions on the Change of Equity Owned by Investors of Foreign-invested Enterprises (1997), both issued by Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce.

[1] Provisional Regulation on Foreign Investors Merging and Acquiring Domestic Companies

The Ministry of Foreign Trade and Economic Co-operation (MOFTEC), the State Administration of Taxation, the State Administration for Industry and Commerce and the State Administration of Foreign Exchange jointly promulgated the Provisional Regulation on Foreign Investors Merging and Acquiring Domestic Companies on March 13, 2003, which provides detailed procedures for the merge and acquisition by foreign investors, and is one of the major regulations in the legal framework regarding M&As by foreign investors in China. This Regulation comes into force as of April 12, 2003.

According to Article 2 of this Regulation, foreign investors can merge and acquire the domestic enterprises not invested by foreign investors (Domestic Companies) in two ways. One is called Shares Acquisition, which refers to purchasing the shares owned by shareholder(s) of the Domestic Company, or subscribing the shares issued by the Domestic Company. The other is called Asset Acquisition, which refers to purchasing the assets of the Domestic Company and operating the assets, or purchasing the assets of the Domestic Company and using the assets to set up a foreign-invested enterprise.

When merging or acquiring Domestic Companies, Foreign investors shall abide by the laws, administrative regulations and rules issued by the governmental departments, comply with the principle of fairness, being paid for consideration, good faith. The merge and acquisition shall not cause over-concentration, exclusion of or restriction on competition, and shall not disturb the social economic order and prejudice the public interests.

Merger and acquisition of Domestic Companies by foreign investors shall be confirm with the qualification of foreign investor(s) and the policy on industries required by Chinese laws, administrative regulations and rules issued by the governmental departments.

Merger and acquisition by foreign investor shall not lead to the foreign investor to become the sole owner of the Domestic Company (Company) where foreign investors are not allowed to set up a wholly-foreign owned enterprise in this industry in terms of the Industry Guidance Directory for Foreign Investors (Directory). The Chinese party shall remain the majority shareholder of the Company after it has been merged and acquired by foreign investor where majority shareholding is required in terms of the Directory. Where the industry is prohibited

from foreign investment, foreign investors shall not merge and acquire the Domestic Company engaged in this industry.

For foreign investor to set up foreign-invested enterprise by merging and acquiring the Domestic Company, approval shall be obtained from the examination and approval authority (EAA), and registration shall be gone through with the registration administration authorities. Shares owned by foreign investors in the foreign-invested enterprises established through merger and acquisition shall usually not be lower than 25% of the total. Where the proportion of registered capital contributed is lower than 25%, examination and registration shall be gone through in accordance with the effective examination and registration procedures for the establishment of foreign-invested enterprises unless otherwise provided by laws and regulations. The Approval Certificate shall be issued by the examination and approval authority with the remark “Ratio of foreign investment is lower than 25%”. The Business License of the foreign-invested enterprise shall be issued by the registration authority with the remark “Ration of foreign investment is lower than 25%”.

[2] Measures on Regulating the Acquisition of Listed Company

The Measures on Regulating the Acquisition by Listed Company is promulgated by the China Security Regulatory Commission, and becomes effective as of 1 December 2002. This Measure is formulated to regulate the acquisition of listed companies. According to Article 2 of this Measure, the “acquisition of listed company” referred in the Measure, means that the acquirer gains or may gain the actual control over a listed company, either by holding a certain proportion of shares of the listed company through the shares transfer in the stock exchange, or by controlling the shares of the listed company to a certain amount through other legal means rather than the shares transfer in the stock exchange. The acquirer may obtain the actual controlling rights on a listed company through acquisition of the listed company by means of agreement, offer or bid in the stock exchange. The acquisition of a listed company shall be undertaken in a transparent, fair and impartial manner, and relevant parties shall be in good faith, and shall themselves maintain the security market order.

This Measure contains provisions on acquisition by means of agreement and by means of offer. According to the Measure, where acquisition is undertaken by means of agreement, on the next day after the conclusion of the acquisition agreement, the undertaker shall submit report on the acquisition of listed company, which, at the same time, shall also be submitted to the local branch of the China Security Regulatory Commission (CSRC) and the stock exchange. Where shares acquired by the undertaker is 30% of the total shares issued by the company and the acquisition of the shares or control is to increase, or the shares acquired are more than 30% of the total shares issued by the company, an offer to acquire the shares they owned shall be sent to all the shareholders of the company, unless exemption is obtained from the CSRC when the conditions set forth in Chapter 4 of this Measure are met. Where the shares to be assigned are held by organizations authorized by the State, or the assignment of

the shares needs the administrative approval, the parties to the acquisition shall perform the shares acquisition agreement only after obtaining approval from the competent authorities.

According to the regulations on acquisition by means of offer, contained in the Measure, where a undertaker of an acquisition who has held or controlled 30% of the shares issued by a listed company intends to increase his shares issued by the company or increase the control over the same, an offer to purchase all their shares shall be sent to all the shareholders of the company, unless exemption has been obtained from the CSRC where conditions contained in chapter 4 of this Measure are met.

[3] Several Provisions on the Change of Equity Owned by Investors of Foreign-invested Enterprises

This Provision was jointly promulgated by the Ministry of Foreign Trade of Economic Cooperation (MOFTEC) and the State Administration for Industry and Commerce in 1997 and contains mainly procedures and formalities on the “Change of Equity”.

The “Change of Equity”, referred in the Provision, means the change of the shareholder(s) of the Chinese-Foreign Joint Ventures, Chinese-Foreign Contractual Joint Ventures and Wholly Foreign-Owned Enterprises, or the change of investment contribution (shares) the held by the aforesaid shareholders in the aforesaid enterprises, including but not limited to:

- (1) The transfer of shares between the shareholders by agreement;
- (2) After the consent of other shareholders, the transfers of shares of a shareholder to the associated enterprises or to other transferee;
- (3) The change of shares among the shareholders caused by the adjustment of the registered capital by agreement of the shareholders;
- (4) A pledgee or other beneficiary legally acquires the shares of the shareholder who pledged his shares to the creditor;
- (5) The heir, the creditor or other beneficiary acquires the shares of the shareholder(s) according to law after the bankruptcy, dissolution, disband, cancellation or decease of the shareholder(s);
- (6) The successor acquires the shares of the shareholders after the merge of the shareholders or the separation of the shareholder(s);
- (7) After being approved by the original examination and approval authority, the replacement of the investors or the change of shares for the reason of investor’s failing to perform his duties of investment distribution in term of contract or the articles of association.

Besides the above three regulations, the Interim Provisions on the Re-organization of State-owned Enterprises by Utilizing Foreign Capital (promulgated on 8 November 2002, effective on 1 January 2003), the Interim Administrative Measures on Investment in the

Domestic Security Market by Qualified Institution Investors outside China (promulgated on 8 November 2002, effective on 1 December 2002), and the Circular on Issues regarding Transferring to Foreign Investors the State-owned Shares or the Legal Person's Shares in Listed Companies (issued on 1 November 2002) are also very important regulations related to merger and acquisition by foreign investors.

Chapter 3 Acquisition of Realty

China has enacted two basic laws governing the acquisition of real estate. One is the Land Administration Law of the People's Republic of China (Land Law), adopted on June 25, 1986, newly revised on August 29, 1998. The other is the Urban Real Estate Administration Law of the People's Republic of China (Real Estate Law), adopted on July 5, 1994, and came into force as of January 1, 1995. Laws related to real estate include the Constitution of People's Republic of China, the Criminal Law, the Urban Planning Law, the Law on the Protection of Consumer's Rights and Interests, etc. There are also numerous administrative regulations promulgated by the State Council or by the Ministry of Construction, such as the Regulation on the Implementation of the Land Administrative Law of the People's Republic of China (1999), the Interim Regulations on the Assignment and Transfer of the Land-Use Right (1990), the Regulations on the Administration of the Transfer of Real Estate (1995), the Rules on the Administration of the Mortgage of Real Estate (1997), the Rules on the Administration of the lease of Real Estate (1999), the Regulations on the Administration of Demolishing Urban Real Estate and Rehousing (2001), and etc.

[1] Land Law

The following is an introduction of the Land Administration Law of the People's Republic of China (Land Law):

[a] General Provisions

The purpose of this Law is to strengthen land administration, safeguard the socialist public ownership of land, protect and develop land resources, rationally utilize the land and protect the cultivated land.

China practises the socialist public ownership of land, namely ownership by the whole people and collective ownership by the laboring masses. The ownership by the whole people, namely the ownership of state-owned land, shall be exercised by the State Council on behalf of the

state. No unit or individual shall illegally occupy, buy and sell or illegally transfer land in other forms. Land use right may be transferred in accordance with law. The state may, for public interest, requisition land collectively owned in accordance with law. The state practises the system of using state-owned land by payment in accordance with law. However, appropriation of state-owned land use right by the state within the scope prescribed by law is excluded.

Most sparing and rational land utilization and earnest protection of cultivated land constitute China's basic state policy. People's governments at all levels should take measures in overall planning, strict administration, protection and development of land resources and curbing illegal acts of occupation of land. The state practises the system of control over the purpose of using land. The state compiles overall planning for land utilization, provides land-using purpose and classifies land as farm land, land for construction and un-utilized land. Strict restriction shall be imposed on turning farm land into land for construction, quantum of land for construction shall be controlled and special protection shall be provided for cultivated land. Farm land refers to land used directly for agricultural production including cultivated land, forest land, grassland, land for farmland water conservancy and water surface for cultivation and breeding; land for construction refers to land for building constructions and structures, including land for urban and rural residences and public facilities, land for industries and mines, land for communications and water conservancy works, land for tourism and land for military installations; un-utilized land refers to land other than farm land and land for construction. Any unit or individual that uses land must use the land in strict accordance with the uses determined by the overall planning for land utilization.

The competent department of land administration under the State Council shall be uniformly responsible for the work of land administration and supervision nationwide. The establishment of competent departments of land administration of local people's governments at or above the county level and their responsibilities shall be determined by the people's governments of the provinces, autonomous regions and municipalities directly under the Central Government pursuant to the relevant provisions of the State Council.

[b] Land Ownership and Use Right

In China, the ownership of land is separated from the using of land in most cases. According to the Law, land in urban areas of cities belongs to the state. Land in rural areas and suburban areas of cities excluding those belonging to the state prescribed by law belongs to peasants'

collective ownership; house sites, land allotted for personal needs and hilly land allotted for private use belongs to peasants' collective ownership. State-owned land and land collectively owned by peasants may be determined in accordance with law to be used by units or individuals. Units and individuals using the land have the obligation to protect, manage and rationally utilize the land.

China practices the system of land registration. Land collectively owned by peasants shall be registered and certificates shall be issued by the People's governments at the county level to confirm the ownership. People's governments at the county level shall also enter into registration in a register, issue certificates in confirmation of both the land use right for construction for land collectively owned by peasants to be used for non-agricultural construction, and the land use right for state-owned land used by units and individuals in accordance with law.

Confirmation of ownership or the right to use of forest land and grassland, confirmation of the right to use for cultivation and breeding of water surface and beaches and shoals shall be handled pursuant to the relevant provisions of the Forest Law of the People's Republic of China, the Grassland Law of the People's Republic of China and the Fishery Law of the People's Republic of China.

Whoever changes land ownership and use in accordance with law shall go through formalities of change in registration. The ownership and the using right of the land which have been registered in accordance with law is protected by law, and upon which no unit and individual shall infringe.

State-owned land may be contracted for management by units or individuals for cultivation, forestry, animal husbandry and fishery production. Land collectively owned by peasants may be contracted and managed by units or individuals other than those in the collective economic organization for cultivation, forestry, animal husbandry and fishery production. The contract issuing party and the contractor should conclude a contract agreeing on the rights and obligations of both parties. The duration of land contracting and management shall be agreed on in the contract. The units and individuals that contract the land for management have the obligation to protect and rationally utilize the land pursuant to the use agreed on in the contract. For land collectively owned by peasants contracted out for management by units or individuals other than those in the respective collective economic organization, it must have the consent of over two thirds of the members of the peasants' conference or over two thirds

of the villagers' representatives and be submitted to the village (township) people's government for approval.

Disputes over land ownership and the right to use shall be resolved by the parties interested through consultation; it shall be handled by the people's government in the event of failure of consultation. Disputes between units shall be handled by people's governments at or above the county level; disputes between individuals and those between an individual and a unit shall be handled by the village-level people's governments or people's governments at or above the county level. The party interested that refuses to obey the decision on the handling by the people's government concerned may, within 30 days starting from the date of receipt of the notice on the decision on handling, file a suit at a people's court. Neither party shall alter the status of land utilization prior to the resolution of the dispute over the land ownership and the right to use.

[c] Overall Planning for Land Utilization

According to the Law, people's governments at all levels shall organize the compilation of overall planning for land utilization. The quantum of land for construction in the overall planning for land utilization compiled by local people's governments at all levels shall not exceed the control targets determined in the overall planning for land utilization at the next higher level, and the quantum of preserved cultivated land shall not be lower than the control targets determined by the overall planning for land utilization at the next higher level. The overall planning for land utilization compiled by people's governments of the provinces, autonomous regions and municipalities directly under the Central Government should ensure that there is no reduction in the quantum of cultivated land within their respective administrative areas.

The overall planning for land utilization at the county level should delimit land use zones and define land uses. Village (township) overall planning for land utilization should delimit land use zones, determine the use of every plot of land according to the conditions of the land and an announcement to the effect shall be made.

Overall planning for land utilization shall be examined and approved by different levels. The overall planning for land utilization of the provinces, autonomous regions and municipalities directly under the Central Government shall be submitted to the State Council for approval. The Law provides that the overall planning for land utilization once approved must be strictly

implemented.

People's governments at all levels should strengthen administration of land utilization plan and practise quantum control of land used for construction. Revision of the approved overall planning for land utilization must be submitted to the original approval organ for approval; no alteration shall be made in land uses determined in the overall planning for land utilization without approval. In case of necessity of alteration in overall planning for land utilization for land for construction of large energy, transport and water conservancy infrastructure approved by the State Council, revision of the overall planning for land utilization shall be made pursuant to the approval document of the State Council.

[d] Cultivated Land Protection

The state protects cultivated land and strictly controls turning cultivated land into non-cultivated land. The state practises the system of compensation for the occupation and use of land. For the occupation and use of cultivated land for non-agricultural construction with approval, the unit that occupies and uses cultivated land shall be responsible for the reclamation of cultivated land equivalent to the quantity and quality of cultivated land occupied and used in accordance with the principle of "quantity of reclaimed land being equivalent to that occupied"; where there are no conditions for reclamation or the reclaimed land does not conform to requirements, cultivated land reclamation fee should be paid as prescribed by the provinces, autonomous regions and municipalities directly under the Central Government, the special-purpose fund shall be used for the reclamation of new cultivated land.

[e] Land for Construction

Any unit or individual that needs to use land for construction must apply for the use of state-owned land in accordance with law; however, use of land collectively owned by peasants by the respective collective economic organization approved in accordance with law for the establishment of rural and township enterprises and construction of residences by villagers, or use of land collectively owned by peasants approved in accordance with law for the construction of village (township) public facilities and non-profit undertakings is excluded. Application for the use of state-owned land in accordance with law referred to above includes the state-owned land and the land that originally belonged to collective ownership by peasants and has been requisitioned by the state.

For occupation and use of land for construction involving turning agricultural land into land

for construction, formalities of examination and approval for turning agricultural land into other uses should be completed.

Requisition of the following land shall be subject to the approval of the State Council: (1) basic farmland; (2) cultivated land other than the basic farmland exceeding 35 hectares; (3) other land exceeding 70 hectares. Requisition of land other than those prescribed above shall be subject to the approval of people's governments of the provinces, autonomous regions and municipalities directly under the Central Government, and submitted to the State Council for the record.

For requisition of land, compensation shall be given in accordance with the original use of the requisitioned land. Compensation fee for the cultivated land requisitioned include land compensation fee, subsidy for resettlement as well as compensation fee for ground appendixes and young crops.

The competent department of land administration may, during the feasibility study of a construction project, examine the matters related to the land for construction and put forth suggestions in accordance with the overall planning for land utilization, the annual land use plan and standards for land for construction. For an approved construction project that needs to use state-owned land for construction, the construction unit should bring the relevant documents prescribed by laws and regulations and file an application at the competent department of land administration of people's government at or above the county level.

Use of state-owned land for a construction project should be obtained in the form of paid use such as assignment; however, the following use of land for construction may be obtained in the form of appropriation subject to the approval of people's government at or above the county level in accordance with law: (1) land use by state organs and land use for military purposes; (2) land use for urban infrastructure and land use for non-profit undertakings; (3) land use for such infrastructure as energy, communications and water conservancy to which the state renders key support; (4) other land uses prescribed by laws and administrative regulations.

A construction unit that uses state-owned land should use the land in accordance with the agreement in the contract for the assignment of land use right or the provisions of the approval document on the appropriation of land use right; where change in the use of the said plot of land for construction is necessitated, it should be subjected to the consent of the competent department of the people's government concerned and submitted to the people's government that originally approved the land use for approval. Where the land whose use is

to be changed is within an urban planning zone, consent of the competent department of urban planning should be sought first prior to submission for approval.

[f] Legal Liability

According to the Land Law, whoever illegally transfers land by buying and selling or in other forms shall be confiscated of the illegal gains by the competent department of land administration of people's government at or above the county level; whoever turns agricultural land into land for construction without authorization in violation of the overall planning for land utilization shall be given a specified time period to dismantle the newly-built constructions and other facilities on the illegally transferred land and restore the original state of the land, where it conforms to the overall planning for land utilization, the newly-built constructions and other facilities on the illegally transferred land shall be confiscated; and may concurrently be imposed a fine; the person-in-charge directly responsible and other personnel directly responsible shall be imposed administrative sanctions according to law; where a crime has been constituted, criminal liability shall be investigated according to law.

Criminal liability for violation of the land administrative laws and regulations are provided in Article 228, 342, 410 as follows:

(1) Whoever illegally transfers and sells land use right with profit-making as the purpose in violation of land administration regulations when the circumstances are serious shall be sentenced to imprisonment under three years or hard labor in detention, and concurrently imposed a fine of more than 5% less than 20% of the amount of the illegally transferred or sold price of land use right; where the circumstances are extremely serious, a sentence of more than three years less than seven years shall be passed, and a fine of more than 5% less than 20% of the amount of the illegally transferred and sold price of land use right concurrently imposed.

(2) Whoever illegally occupies and uses cultivated land and turns it into other uses in a big amount resulting in great destruction of cultivated land in violation of land administration regulations shall be sentenced to imprisonment under five years or hard labor in detention, and concurrently or separately imposed a fine.

(3) Functionaries of state organs who indulge in malpractices for selfish gains, abuse power in illegally approving requisition and occupation of land or illegally transfer the right to use of state-owned land at a low price in violation of land administration regulations where the

circumstances are serious, shall be sentenced to imprisonment under three years or hard labor in detention; whoever causes extremely great losses to state or collective interests shall be sentenced to more than three years less than seven years of imprisonment.

[2] Real State Law

The following is an introduction of the Urban Real Estate Administration Law (Real State Law):

[a] General Provisions

This Law is formulated to govern the activities of obtaining the land-use right for development of real estate, engaging in development of real estate and transaction of real estate, and exercising administration of real estate in the State-owned land within a planned urban area in the People's Republic of China (State-owned land).

"Houses" as used in the Law means buildings and structures such as houses on the land.

"Development of real estate" as used in the Law means acts of building infrastructure and houses on the State-owned land whose the land-use right has been obtained in accordance with the Law.

"Transaction of real estate" as used in the Law includes transfer of real estate, mortgage of real estate and lease of houses.

According to the Law, China practises a system of paid and terminable use of State-owned land in accordance with the law, however, appropriation of the land-use right by the State under this Law shall be excepted.

The department of construction administration and the department of land administration under the State Council shall, in accordance with the division of functions and powers prescribed by the State Council, attend to their own duties, act in close coordination and manage the work concerning real estate of the whole country. Institutional structures, and functions and powers of the departments of housing administration and land administration under the people's governments at or above the county level shall be determined by the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

[b] Land Used for Development of Real Estate

[i] Granting of the Land-use Right

Granting of the land-use right refers to acts that the State grants land users the right to use the

State-owned land (the land-use right) for a certain number of years and the users shall pay the State a granting fee for the land-use right. The land-use right for the collective-owned land within a planned urban district may be granted with payment only after it is requisitioned in accordance with the law and turned into State-owned land. The maximum term for the granting of the land-use right shall be prescribed by the State Council.

The land-use right may be granted by means of auction, bidding or agreement between the two parties. For Land used for commercial, tourism, recreation and luxury housing purposes, where conditions permit, the mode of auction or bidding shall be adopted; where conditions do not permit and it is impossible to adopt the mode of auction or bidding, the mode of agreement between the two parties may be adopted.

Granting of the land-use right shall be conducted through concluding a written granting contract. The contract for granting the land-use right shall be concluded between the departments of land administration under the people's governments of the cities or counties and the land users.

A land user must pay the fees for the granting of the land-use right as agreed upon in the granting contract. However, the said fees shall not be lower than the lowest price as determined in accordance with the provisions of the State. Where fees are not paid as agreed upon in the granting contract, the department of land administration shall have the power to rescind the contract and may demand compensation for the breach of contract. Where a land user has paid the fees for the granting of the land-use right as agreed upon in the granting contract, the department of land administration under the people's government of the city or county must provide the land granted as agreed upon in the granting contract; where the land granted is not provided as agreed upon in the granting contract, the land user shall have the right to cancel the contract, the fees for granting the land-use right shall be returned by the department of land administration, and the land user may demand compensation for the breach of contract.

Where a land user who needs to modify the land-use purpose agreed upon in the contract for granting the land-use right, he must obtain the consent of the granting party and the competent administrative department for urban planning under the people's government of the city or county, conclude an agreement on the modification of the granting contract or conclude a new contract for granting the land-use right and the fees for granting the land-use right shall be readjusted accordingly.

Before the term for the use of land as agreed upon in the contract for granting the land-use

right expires, the State shall not recover the land-use right obtained by the land user in accordance with the law. Under special circumstances as required by public interests, the State may, in accordance with legal procedures, recover the land-use right before the expiration of the term and shall make appropriate compensation based on the number of years of utilization and the actual development of the land by the land user.

Where the term for the use of land as agreed upon in the contract for granting the land-use right expires, and the land user needs to continue the use of the land, the land user shall apply for an extension of the term no later than one year ahead of the expiration. Such an application shall be approved except for the land to be reclaimed as required by public interests. Upon approval of the extension, the land user shall enter into a new contract for the granting of the land-use right and pay fees for the granting in accordance with the relevant provisions. Where the term for the use of land as agreed upon in the contract for granting the land-use right expires, and the land user does not apply for an extension of the term or his application therefor is not approved in accordance with the above provisions, the land-use right shall be reclaimed by the State without compensation.

[ii] Appropriation of the Land-use Right

Appropriation of the land-use right refers to acts that the people's government at or above the county level approves in accordance with the law to appropriate the land to a land user after the latter has paid compensation and expenses for resettlement, etc. for the appropriated land, or gratuitously appropriates the land-use right to the land user. Where the land-use right is obtained by mode of appropriation in accordance with the provisions of this Law, except as otherwise provided by the laws, administrative rules and regulations, there shall be no restriction with respect to the term of use.

The land-use right for the following land used for construction may, if really necessary, be appropriated upon approval by the people's government at or above the county level in accordance with the law: (1) land used for State organs or military purposes; (2) land used for urban infrastructure or public facilities; (3) land used for projects of energy, communications or water conservancy, etc. which are selectively supported by the State; (4) land used for other purposes as provided by the laws, administrative rules and regulations.

[c] Development of Real Estate

According to the Real State Law, the development of real estate must be strictly subjected to the urban planning and carried out in a manner of overall planning, rational distribution,

comprehensive development and construction with supporting facilities.

Where the land-use right is obtained by means of granting for development of real estate, the land must be developed according to the land-use purpose and the time limit to start the development as agreed upon in the contract. Where the land remained undeveloped for one year from the date agreed in the contract to start the development, fees for idle land which is not to exceed twenty percent of the fees for granting the land-use right shall be paid; where the land remain undeveloped for two years, the land-use right may be reclaimed without compensation, however, the circumstances wherein the delay to state the development is caused by force majeure or acts of governments or by early necessary preparations shall be excepted.

The design and construction of a project of real estate development must conform to the relevant standards and norms of the State. A completed project of real estate may be turned over for use only after being checked and accepted.

The land-use right obtained pursuant to the law may, in accordance with the provisions of laws and regulations, be valued and contributed as shares in developing and operating real estate in the form of joint ventures or contractual joint ventures. The State shall adopt preferential measures in aspects such as taxation to encourage and support real estate development enterprises to develop and construct residential houses.

A real estate development enterprise is an enterprise engaged in real estate development and operation for purpose of profit. To establish a real estate development enterprise, the following conditions shall be met: (1) to have a name and institutional structure of its own; (2) to have fixed office for business operation; (3) to have registered assets conforming to the provisions of the State Council; (4) to have sufficient professional and technical personnel; (5) other conditions as provided by laws, administrative rules and regulations.

The proportion of registered assets of a real estate development enterprise to its total investment shall comply with the relevant provisions of the State.

[d] Transaction of Real Estate

According to the Law, when the real estate is transferred or mortgaged, the ownership of the premises and the right to use the land covered by the premises shall be transferred or mortgaged therewith.

The State shall practise an appraisal system for real estate prices. The basic land price, standard land price and replacement prices for houses of various types shall be determined

and made public regularly. Specific measures shall be formulated by the State Council.

The State shall practise a report system for real estate transaction prices. An obligee of real estate shall, in transfer of his real estate, faithfully report the transaction price to the department designated by the local people's government at or above the county level and shall not make a concealed or false report.

Where real estate is transferred or mortgaged, the party concerned shall register the ownership of the real estate pursuant to the provisions of Chapter V of this Law.

[ii] Transfer of Real Estate

Transfer of real estate refers to acts that an obligee of real estate transfers his real estate to another person through sale, donation or other legal means. The following real estate shall be not transferred:

- (1) The land-use right is obtained by means of granting, but not meeting conditions set forth in Article 38 of the Real Estate Law;
- (2) The rights of real estate are sealed up by order of the judicial organ or decision of the administrative organ pursuant to law or limited by other ways;
- (3) The land-use right is reclaimed in accordance with the law;
- (4) For jointly-owned real estate, written consent of other co-owners has not been obtained;
- (5) The ownership is under dispute;
- (6) The real estate is not registered in accordance with the law and the certificate of the ownership is not obtained; or
- (7) Other circumstances under which transfer is prohibited by laws, administrative regulations.

According to Article 38 of the Law, where the land-use right is obtained by means of granting, transfer of the real estate shall meet the following conditions:

- (1) to have paid all the fees for the granting of the land-use right as agreed upon in the granting contract and obtained the certificate of the land-use right; and
- (2) to have invested for development as agreed upon in the granting contract and have fulfilled twenty-five percent or more of the total investment for development in the case of housing projects, or have constituted conditions of land-use for industrial purposes or other construction projects in the case of developing tracts of land.

Where real estate is to be transferred with the construction of houses completed, the certificate of the house ownership shall be acquired.

Where the land-use right is obtained by means of appropriation, the transfer of the real estate shall, according to the provisions of the State Council, be reported for examination and approval to the people's government that has the authority for approval. Upon approval of the transfer by the people's government, the transferee shall go through the formalities for the granting of the land-use right and pay the fees therefor according to the relevant provisions of the State. Where the people's government decides in accordance with the provisions of the State Council that the formalities for granting the land-use right need not be gone through, the transferor shall, pursuant to the provisions of the State Council, turn over to the State the proceeds obtained from land in the transfer of the real estate or dispose of such proceeds otherwise.

Where the land-use right is obtained by mode of granting and after the real estate is transferred, the term for the use of the land-use right shall be the remaining years after subtracting the years of use by the former land user from the original term.

For the presale of commercial houses, the following conditions shall be met:

- (1) to have paid all the fees for the granting of the land-use right and obtained the certificate of the land-use right;
- (2) to have a permit for construction project planning;
- (3) the funds put into the development construction have reached twenty-five percent or more of the total investment for the construction project, and the schedule of construction and the date of completion and delivery have been set; and
- (4) to make registration for presale at the administrative department in charge of house property under the people's government at or above the county level and to obtain the certificate of permission for the presale of commercial houses.

Pre-sellers of commercial houses shall, in accordance with the relevant provisions of the State, submit the presale contracts to the departments of housing administration and departments of land administration under the people's governments at or above the county level for registration and record. The proceeds obtained from the presale of commercial houses must be used for the relevant construction projects.

[iii] Mortgage of Real Estate

Mortgage of real estate refers to acts that a mortgagor provides the mortgagee security for the payment of a debt with his legal real estate in the manner that the possession of his real estate is not transferred. Where a debtor fails to pay his debt, the mortgagee shall have the right in accordance with the law to enjoy the priority to be compensated with funds obtained from auction of the real estate mortgaged.

A mortgage may be set on the ownership of a premises obtained according to law, and on the land-use right covered by the premises. A mortgage can be set on the land-use right obtained by means of granting. The establishment of a mortgage of real estate shall be on the strength of the certificate of the land-use right and the certificate of ownership of the house, and a written contract shall be entered into between the mortgagor and the mortgagee.

Where the land-use right on which a mortgage is set is obtained by means appropriation, the mortgagee may enjoy the priority to be compensated only after the amount equal to the fees for the granting of the land-use right is paid from the funds obtained from auction of the real estate. After a contract for the mortgage of the real estate is concluded, newly-built houses on the land shall not be regarded as the mortgaged asset. If the mortgaged real estate needs to be sold by auction, the newly built houses on the land may be auctioned off according to law together with the mortgaged assets. However, the mortgagee shall not have the priority in compensation with respect to the funds obtained from auction of the newly built houses.

[iv] Lease of Premises

To lease a premises, the leaser and the lessee shall conclude a written lease contract defining such matters as the term, purpose, and price of the lease, liability for repair, as well as other rights and obligations of both parties, and shall register the lease with the department of housing administration for the record. The lease of residential premises shall be carried out in accordance with policies formulated by the State and the people's government of the city where the said premises are located. Where premises is leased for activities of production and business operation, the rent and other terms for the lease shall be determined by both parties through consultation.

Where an owner of a premises, for profit-making purposes, leases the premises built on the State-owned land of which the land-use right is obtained by means of appropriation, he shall turn over to the State the proceeds derived from the land and contained in the rent.

[v] Intermediary Service Agencies

Intermediary service agencies for real estate include real estate consulting agencies, real

estate price appraisal agencies and real estate broking agencies. They shall meet the following conditions:

- (1) to have names and institutional structures of their own;
- (2) to have fixed office to provide services;
- (3) to have necessary property and funds;
- (4) to have sufficient professional personnel; and
- (5) other conditions provided by laws and regulations.

For establishing an intermediary service agency for real estate, an application for registration of the establishment shall be submitted to the administrative department for industry and commerce and a business licence shall be obtained before it conducts business.

[e] Administration of Real Estate Ownership Registration

According to the Law, the land use right and the ownership of a premises shall be registered and certificates shall be issued by the competent department. Where the land-use right is obtained by means of granting or appropriation, an application for registration shall be submitted to the department of land administration under the local people's government at or above the county level, upon whose verification, the certificate of the land-use right shall be issued by the people's government at the corresponding level. On the strength of the certificate of land-use right, an application for registration shall be submitted to the department of housing administration under the local people's government at or above the county level, which shall issue the certificate of ownership of the premises after verification.

Where a transfer or modification is made regarding real estate, an application for registration of the modification shall be submitted to the relevant department of housing administration and on the strength of the modified certificate of the ownership of the premises, an application for registration of the modification of the land-use right shall be submitted to the competent department of land administration, upon whose verification, a new or a modified certificate of the land-use right shall be issued by the people's government at the corresponding level. The related provisions of other laws shall prevail if they provide otherwise.

Where a department of the local people's government at or above the county level is in charge of both housing administration and land administration as determined by the people's government of the relevant province, autonomous region or municipality directly under the

Central Government, such department may make and issue the uniform certificate of the ownership of real estate, in which the confirmation and modification of the ownership of houses and the land-use right of the house site shall be recorded respectively in accordance with the provisions of Article 60 of this Law.

Where real estate is mortgaged, registration of mortgage shall be also made with the department designated by the local people's government at or above the county level. Where the land-use right and the ownership of a house are obtained from disposal of mortgaged real estate, the change of ownership of the premises and the land-use right shall be registered in accordance with the relevant provisions mentioned above.

Chapter 4 Taxation

According to the Chinese tax laws and regulations, main taxes applicable to the foreign-invested enterprises and foreign enterprises include Income Tax on Foreign-Invested Enterprises and Foreign Enterprises, Customs Duties, Tax in Circulation Stage (referring to VAT, Consumption Tax, Business Tax), Land Appreciation Tax, Resource Tax, Urban Real Estate Tax, etc.

[1] Income Tax on Foreign-Invested Enterprises and Foreign Enterprises

Income Tax on Foreign-Invested Enterprises and Foreign Enterprises (Foreign Enterprise Income Tax) is a tax levied on the income of the foreign-invested enterprises and foreign enterprises. The basic law and regulation concerning this tax are the Income Tax Law of the People's Republic of China on the Foreign-Invested Enterprises and Foreign Enterprises (EITL), effective in 1990, and its Implementation Rules, effective in 1991.

[a] The Taxpayer

According to EITL, the taxpayers of this tax are:

- (1) Foreign-invested enterprises (refers to WFOE, EJV and CJV), which were incorporated in China according to Chinese law;
- (2) Foreign enterprises, which were not incorporated in China.

[b] Taxable Incomes

According to EITL and its Implementation Rules, the following incomes of the

foreign-invested enterprises and foreign enterprises shall be taxable:

- (a) Incomes derived from production or business operation;
- (b) Other incomes, which refers to profits (dividends), interests, rentals, royalties and etc.

Dividends earned by foreign investors from foreign-invested enterprises are exempted from taxation.

[c] Tax rate

According to EITL, the income tax rate for foreign-invested enterprises is 33% (including 3% levied by the local government).

[d] Tax preferential treatment

According to EITL and its Implementations and other relevant regulations, Profits (dividends) earned by foreign investors from foreign-invested enterprises are exempted from taxation. Foreign-invested enterprises enjoy the following tax preferential treatments:

- (1) Foreign-invested enterprises established in the Special Economic Zones (SEZ, referring to Shenzhen, Zhuhai, Shangtou, Xiamen and Hainan), or foreign-invested manufacturing enterprises established in the Economic and Technology Development Zones (ETDZ, approved by the State Council) can enjoy a reduced tax rate of 15%;
- (2) Foreign-invested manufacturing enterprises can enjoy a reduced tax rate of 24% if they are set up in the old urban area of the cities where the Coastal Economic Opening Zones (CEOZ), the SEZs, or the ETDZs are located.
- (3) Foreign-invested enterprises which were invested in the field of energy, transportation, sea port, dock or other projects encouraged by the Country can enjoy a reduced tax rate of 15%.
- (4) Foreign-invested manufacturing enterprise with a duration of more than 10 years, is exempted from income taxation in the first and second year after the enterprise begin to make a profit, and is exempted half of its income tax in the third year through the fifth year, except those which are invested in the fields of development of resources such as oil, natural gas, rare metal, precious metal, etc.
- (5) Foreign-invested enterprises which are invested in the encouraged fields in the Western Area of China can enjoy a reduced tax rate of 15% from the year 2001 to 2010 according to the Measures for the Implementation of Policies on the Western Region Development enacted by Administrative Office of the State Council.

(6) If profits earned by the foreign investor from the foreign-invested enterprise are re-invested either to increase the registered capital of the said foreign-invested enterprise or to establish another foreign-invested enterprise whose duration is no less than 5 years, the foreign investor may be refunded 40% of the tax levied on the profits which are re-invested.

(7) Foreign-invested enterprise, after the above mentioned term for tax exemption or reduction expires, may be exempted half of its income tax if its annual export value exceeds 70% of its annual production value.

(8) Foreign-invested enterprises using advanced technology may be exempted half of its income tax for another 3 years after the above mentioned term for tax exemption and deduction expires [see (4) above].

(9) If profits earned by the foreign investor from the foreign-invested enterprise are re-invested either to expand the said foreign-invested enterprise which is an export-oriented or advanced technological enterprise or to establish another such enterprise, the foreign investor may be refunded all of the tax levied on the profits which are re-invested.

(10) Local governments can decide at its discretion the exemption of the local income tax (3%).

[2] Tax in Circulation Stage

There are three major types of taxes in circulation stage levied on products and services: (a) VAT levied on goods and services for processing, maintenance and assembling; (b) the Consumption Tax on some selected consumer products; and (c) the Business Tax on providing services, transferring intangible assets and selling real estate. Both the VAT and the Consumption Tax were applicable to entities importing goods. VAT and the Consumption Tax on imported goods were collected by General Customs Administration (Customs) at the point of entry. VAT was reimbursed once goods were exported. Exported goods were exempted from the Consumption Tax. The State Council determines all policies concerning the levying of VAT and the Consumption Tax, adjustment of tax types and tax rates (tax value), as well as the tax exemption of VAT, the Consumption Tax and the Business Tax. The laws and regulations were interpreted and implemented by the Ministry of Finance and the State Administration of Taxation. VAT and the Consumption Tax were levied and administered by the State competent departments of taxation, while the Business Tax was collected and administered by the local competent departments of taxation. China committed that from the date of accession, China would ensure that its laws, regulations and other

measures relating to internal taxes and charges levied on imports would be in full conformity with its WTO obligations and that it would implement such laws, regulations and other measures in full conformity with those obligations.¹

There are three basic regulations concerning VAT, consumption tax and business tax respectively, i.e. the Regulations on Value-Added Tax (1994), the Regulations on Consumption Tax (1994), and the Regulations on Business Tax (1994), which apply to both the foreign-invested enterprises and domestic enterprises from January 1, 1994. According to another two regulations enacted by the State Administration on Tax in 1999, foreign-invested enterprises and foreign enterprises are exempted from business tax levied on the gross income earned from the assignment and/or development of technology, and related technological services such as technical consultancy; foreign-invested enterprises can be refunded the VAT levied on equipment purchased from and produced by the enterprises registered in China, including WFOE, EJV and CJV.

The VAT tax rate is 17% usually, except for goods such as grain, food plant oil, tap water, natural gas, books, newspapers, magazines, fertilizer and etc., for which the VAT tax rate is 13%. VAT tax rate for export goods is zero.

Generally speaking, Business Tax rate is 3% to 5% based on the business volume, depending on different areas in which business of services, rather than manufacturing, is conducted.

[3] Custom Duties

The fundamental legislation concerning Customs Duties is the Regulations on Import and Export Duties of the People's Republic of China, which was promulgated on March 7, 1985 by the State Council, revised and re-promulgated by the State Council for the first time on September 12, 1987, and revised and re-promulgated by the State Council for the second time on March 18, 1992 and was effective as of April 1, 1992.

All imported and exported goods shall be classified and matched with the proper tariff numbers and applied with proper tariff rates in accordance with the Customs Import and Export Tariff Classifications of the People's Republic of China. The average tariff rate has been reduced to 12% in 2002 in accordance with China's commitments to its WTO accession.

According to relevant regulations enacted by the State Council and the State General Customs,

¹ See the Report of the Working Party on the Accession of China, paragraph 107.

custom duties and VAT at the import stage on the following equipment imported for self-use, and the technology, accessories and parts imported together with the said equipment by the enterprises (projects) may be exempt:

- (1) That imported within the total investment by the foreign investment projects or domestic investment projects encouraged and supported by the State;
- (2) That imported by R&D centers set up by the foreign investors within the total investment.

According to regulations concerning bonded zones and export processing zones, machinery and equipment imported by enterprises in bonded zones and export processing zones for their own production use are exempted from import duty and VAT at the import stage; raw materials, parts, accessories, components, packing materials and consumption materials imported for inward processing or assembling for foreign markets or for production for foreign markets, shall be in bond. Further details concerning custom duties and VAT at the import stage in bonded zones, export processing zones and Economic Technology Development Zones are available if you require.

[4] Land Appreciation Tax

The basic legislation for Land Appreciation Tax includes the Provisional Regulations of the People's Republic of China on Land Appreciation Tax (1994) enacted by the State Council and its Implementation Rules (1995) enacted by the Ministry of Finance.

According to the above Regulations, Land Appreciation Tax is levied on income derived from the transfer of state-owned land use rights, and real estate (including buildings and attached facilities on ground).

[5] Urban Real Estate Tax

China's Urban Real Estate Tax is levied on urban real estate in accordance with the Provisional Regulations Governing Urban Real Estate Tax (1951) and other relevant Rules.

The owner of property shall pay Urban Real Estate Tax (URET).

There are two types of tax base for the computation of URET: one is based on the price of the house property, and the other is based on the rental income from leasing the house property if the price of the house property is not available. Accordingly, there are two rates: one is 1.2% of the price of the house property for the tax based on the price of the house property, and the other is 18% of the annual rental for the tax based on the rental income.

Chapter 5 Customs Regulations

The basic law of the customs legislation of China is the Customs Law of the People's Republic of China (Customs Law), effective as of July 1, 1987 and amended in 2000, The Regulations on Import and Export Tariff of the People's Republic of China, promulgated by the State Council on March 7, 1985, newly amended in 1992, provide provisions concerning the matter of customs duty.

[1] General Provisions

According to the Customs Law, the Customs of the People's Republic of China is the state organ responsible for supervision and control over everything entering and leaving the Customs territory (inward and outward persons and objects). The Customs shall, in accordance with this Law and other related laws and regulations, exercise supervision and control over the means of transport, goods, travelers' luggage, postal items and other articles entering or leaving the territory (inward and outward means of transport, goods and articles), collect Customs duties and other taxes and fees, uncover and suppress smuggling, work out customs statistics and handle other Customs operations. The General Customs Administration set up by the State Council exercises unified administration of Customs throughout the country. Customs are set up at ports open to foreign countries and regions and at places which call for concentrated customs operations of supervision and control. The subordination relationship among the Customs shall not be restricted by administrative divisions. Customs shall exercise their functions and powers independently in accordance with the law, and shall be responsible to the General Customs Administration. Customs shall exercise the following powers:

- (1) To check inward and outward vehicle of transport and examine inward and outward goods and articles: to detain those entering or leaving the territory in violation of this Law or other relevant laws and regulations.
- (2) To examine the papers and identifications of persons entering or leaving the territory; to interrogate those suspected of violating this Law or other relevant laws and regulations, and investigate their illegal activities.
- (3) To examine and make copies of contracts, invoices, book accounts, bills, records, documents, business letters and cables, audio and video products and other materials related to the inward and outward vehicle of transport, goods and articles; to detain those related to

the vehicles, goods or articles which are in the violation of this Law or other relevant laws and regulations.

(4) To search, within a Customs surveillance zone and the specified coastal or border area in the vicinity of a Customs, means of transport suspected of involvement in smuggling, and storage places suspected of concealing smuggled goods and articles, and to search persons suspected criminal smuggler, who may be detained and handed over to judicial organ. Such detention shall not exceed 24 hours and, under special circumstances, may be extended to 48 hours.

(5) Customs officers may chase means of transport or persons defying and escaping from Customs supervision to places beyond a customs surveillance zone or the specified coastal or border area in the vicinity of a Customs and bring them back to be properly dealt with;

(6) A Customs may be provided with arms for the performance of its duties. Rules governing the carrying and use of arms by Customs officers shall be drawn up by the General Customs Administration jointly with the public security department under the State Council and reported to the State Council for approval.

All inward and outward means of transport, goods and articles shall enter or leave the territory at a place where there is a Customs. If, under special circumstances, they have to enter or leave the territory at a place without a Customs establishment as a matter of contingency, permission shall be obtained from the State Council or an organ authorized by the State Council, and Customs formalities shall be duly completed in accordance with Customs Law.

Unless otherwise provided for, all import and export goods shall be declared and duties on them paid by the shipper, or by enterprises registered with the Customs entitled to engage in import and export business. The Customs formalities concerning declaration of inward and outward articles and payment of duties on them may be completed either by the owner or by a person the owner has entrusted to act as his agent.

Where a Customs officer meets with resistance while carrying out his duties, the public security organ and the People's Armed Police units performing related tasks shall provide assistance.

[2] Inward and Outward Means of Transport

When a means of transport arrives at or departs from a place where there is a Customs, the person in charge of the means of transport shall make a truthful declaration to the Customs,

submit the relevant papers for examination and accept Customs control and examination. The inward and outward means of transport staying at a place with a Customs shall not depart from it without prior permission by the Customs. Before an inward or outward means of transport moves from one place with a Customs establishment to another place with a Customs establishment, it shall comply with the control requirements of the Customs and complete Customs formalities; no means of transport shall be allowed to change its course and leave the territory unless it has cleared the Customs.

An inward means of transport which has entered the territory but has not made its declaration to the Customs or an outward means of transport which has cleared the Customs but has not left the territory shall move along routes specified by competent communications authorities; in the absence of such specification, the routes shall be designated by the Customs. The Customs shall be notified in advance, either by the person in charge of a means of transport or by the relevant transport and communications department, of such details such as when an inward or outward vessel, train or aircraft will arrive and depart, where it will stay, what places it will move to during its stay, and when the loading or unloading of the goods and articles will take place.

The inward or outward goods and articles being loaded on or unloaded from a means of transport and the inward and outward passengers boarding or getting off a means of transport shall be subject to Customs surveillance. Upon the completion of such loading or unloading, the person in charge of the means of transport shall submit to the Customs documents and records which reflect the actual situation of the loading and unloading. Those boarding or getting off an inward or outward means of transport who carry articles with them shall truthfully declare to the Customs and shall be subject to Customs examination.

When an inward or outward means of transport is being checked by the Customs, the person in charge of the means of transport shall be present and open the holds, cabins, rooms or doors of the vehicles at the request of the Customs; where smuggling is suspected, such person shall also open or dismantle the part of the means of transport which may conceal smuggled goods and articles or remove the goods and materials. In accordance with work requirements, the Customs may dispatch officers to perform duties on board the means of transport. The person in charge of the means of transport shall provide them with conveniences.

An inward means of transport of countries or regions outside the territory or an outward means of transport of units or enterprises inside the territory shall not be transferred or

devoted to other uses prior to the completion of Customs formalities and payment of Customs duties. Where inward or outward vessels and aircraft are concurrently engaged in transportation of goods and passengers within the territory, Customs approval shall be obtained and requirements for Customs surveillance shall be met. Customs formalities shall be completed with the Customs for an inward or outward means of transport to be changed to transport business within the territory. Coastal transport vessels, fishing boats and ships engaged in special operation at sea may not carry, obtain on an exchange basis, purchase or transfer inward and outward goods and articles without Customs approval.

When, owing to force majeure, an inward or outward vessel or aircraft is forced to berth, land or jettison and discharge goods and articles at a place without a Customs establishment, the person in charge of the means of transport shall report immediately to the Customs establishment nearby.

[3] Inward and Outward Goods

All import goods, throughout the period from the time of arrival in the territory to the time of Customs clearance; all export goods, throughout the period from the time of declaration to the time of departure from the territory, shall be subject to Customs surveillance.

The consignee for import goods and the consignor for export goods shall make an accurate declaration and submit the import or export license and relevant papers to the Customs for examination. In the absence of import or export license, goods whose importation or exportation is restricted by the State shall not be released. Specific measures for handling such matters shall be enacted by the State Council. Import declaration shall be made by the consignee within 14 days after the declaration of the arrival of the means of transport; declaration of export goods shall be made by the consignor 24 hours prior to loading unless otherwise specially approved by the Customs. Where the consignee fails to declare the import goods within the time limit prescribed above, a fee for delayed declaration shall be imposed by the Customs.

All imports and export goods shall be subject to Customs examination. While the examination is being carried out, the consignee for the import goods or the consignor for the export goods shall be present and be responsible for moving the goods and opening and restoring the package. The Customs shall be entitled to examine or reexamine the goods or take samples from them without the presence of the consignee or the consignor whenever it considers this necessary. Import and export goods may be exempted from examination if an application has been made by the consignee or consignor and approved by the General Customs

Administration.

Unless specially approved by the Customs, import and export goods shall be released upon Customs endorsement only after the payment of duties or the provision of a guarantee.

Where the consignee fails to declare the import goods to the Customs within three months of the declaration of the arrival of the means of transport, the goods shall be taken over and sold off by the Customs. After the costs of transport, loading and unloading and storage and the duties and taxes are deducted from the money obtained from the sale, the remaining sum, if any, shall be returned to the consignee provided he submits an application to the Customs within one year of the sale of the goods; if nobody applies within the time limit the money shall be turned over to the State Treasury. Inward goods confirmed by the Customs to be misdischarged or over-discharged may be returned to the place of consignment or imported upon completion of necessary formalities by the person in charge of the means of transport carrying the goods or the consignee or the consignor for the goods within three months of the discharging. When necessary, an extension of three months may be granted upon Customs approval. If the formalities are not completed within the time limit, the goods shall be disposed of by the Customs in accordance with the aforesaid provisions. Where goods are not suitable for storage over a long period, the customs may, according to actual circumstances, dispose of them before the time limit is reached. Import goods declared to be abandoned by the consignee or the owner shall be taken over and sold off by the Customs. The money thus obtained shall be returned over to the State Treasury after the costs of transport, loading, unloading and storage are deducted.

Goods that are temporarily imported or exported with the approval of the Customs shall be re-shipped out of or into the territory within six months. An extension may be granted in special circumstances through Customs approval.

The operation of the storage, processing and assembling and consignment sales of bonded goods and duty free shop shall be approved by and registered with the Customs.

Customs formalities for import goods shall be completed by the consignee at the Customs establishment at the place where the goods enter the territory; those for export goods shall be completed by the consignor at the Customs establishment where the goods depart from the territory. If applied for by the consignee or the consignor and approved by the Customs, Customs formalities for import goods may be completed at the place of destination where there is a Customs establishment, and those for export goods at the place of consignment where there is a Customs establishment. The transport of such goods from one place with a

Customs establishment to another shall comply with the control requirements of the Customs. When necessary, Customs officers may escort the goods in transportation. Where goods enter or leave the territory by electric cables, pipelines or other special means of conveyance, the management units concerned shall report at regular intervals to the designated Customs establishment and complete Customs formalities as required.

All transit, transshipment and through goods shall be truthfully declared by the person in charge of the means of transport to the Customs establishment at the place where the goods enter the territory, and shall be shipped out of the territory within the designated time limit. The Customs may examine such goods whenever it considers this necessary.

Without Customs approval, no unit or individual may open, pick up, deliver, forward, change, repack, mortgage or transfer goods under Customs control or change the identification marks on such goods. Seals affixed by the Customs may not be opened or broken by any person without Customs authorization.

Enterprises for warehousing the goods under Customs control shall be registered with the Customs, and shall go through procedures for the receipt and delivery of goods in accordance with Customs regulations. The storage of goods under Customs control at a place outside a Customs surveillance zone shall be approved by the Customs and subject to Customs control.

Customs shall protect the intellectual property rights (IPR) related to goods imported or exported in accordance with the laws and administrative regulations. In case it is necessary to declare the status of the IPR to Customs, the consignees or consignors or their agents of the goods imported or exported shall declare to Customs the true status of the IPR concerned, and submit certification documents to prove their legal use of the relevant IPR.

[4] Inward and Outward Articles

Inward and outward luggage carried by individuals and inward and outward articles sent by post shall be limited to reasonable quantities for personal use and shall be subject to Customs surveillance. All inward and outward articles shall be accurately declared to the Customs by the owner and shall be subject to Customs examination. Seals affixed by the Customs may not be opened or broken by any person without authorization. The loading, unloading, transshipment and transit of inward and outward mail bags shall be subject to Customs control, and a covering waybill shall be submitted to the Customs by the postal enterprise concerned.

The postal enterprise shall inform the Customs in advance of the schedule for the opening and sealing of international mail bag. The customs shall dispatch officers to supervise checking and examination on the spot on time. Inward and outward articles sent by post shall be posted or delivered after being checked and released by the Customs.

Articles registered with and approved by the Customs for temporarily entering or leaving the territory duty free, shall be taken out or brought into the territory again by the owner. Without Customs approval, persons passing through the territory may not leave in the territory the articles they carry with them. Customs shall dispose of inward and outward articles declared to be abandoned by the owner, articles to which no one makes a claim or for which Customs formalities are not completed within the time limit set by the Customs, and inward postal items which can neither be delivered nor be returned. Inward and outward articles intended for official or personal use by foreign organization or personnel enjoying diplomatic privileges and immunities shall be dealt with in accordance with provisions of relevant laws and regulations.

[5] Customs Duty

Customs duties shall be levied according to the import and export tariff on goods permitted to be imported or exported and articles permitted to enter or leave the territory. The payer of customs duty includes the consignee of the import goods, the consignor of the export goods and the owner of the inward and outward articles.

The Customs duty payer of import or export goods shall pay the amount levied within fifteen (15) days following the date of issuance of the duty memorandum. In case of failure to meet this time limit, a fee for delayed payment shall be imposed by the Customs. Where the delay exceeds three (3) months, the Customs may instruct the guarantor to pay the duties or sell off the goods to offset the duties. The Customs may inform the bank to deduct the amount of duties due from the deposits of the guarantor or the obligatory Customs duty payer when it considers this necessary. The obligatory customs duty payer shall make the payment of duties on inward or outward articles, prior to their release.

The duty-paying value of the goods imported or exported shall be determined by customs based on the transaction price of the goods. Where the transaction price can not be ascertained, the duty-paying value of the goods shall be assessed by the customs. The duty-paying value of the import goods is its normal CIF price, which shall be approved by the Customs; the duty-paying value of export goods shall be its normal FOB price, which shall be approved by the Customs, minus the export duty. The duty-paying value of an inward or outward article

shall be fixed by the Customs.

Duty reduction or exemption shall be granted for import or export goods and inward or outward articles listed below:

- (1) Advertising items and trade samples of no commercial value;
- (2) Materials presented free of charge by foreign governments or international organizations;
- (3) Goods to which damage or loss has occurred prior to Customs release;
- (4) Articles of a quantity or value within the fixed limit;
- (5) Other goods and articles specified by law as items for duty reduction or exemption; and
- (6) Goods and articles specified as items for duty reduction or exemption by international treaties to which the People's Republic of China is either a contracting or an acceding party.

Duty reduction or exemption may be granted for import and export goods in specific areas, owned by specific enterprises or devoted to specific purpose. The State Council shall define the scope and formulate the rules for such reduction and exemption. The aforesaid import goods and articles for which duty reduction or exemption is granted shall be used only in specific areas and enterprises or for specific purposes. They shall not be utilized otherwise unless customs approval is obtained and duties duly paid. Temporary duty reduction or exemption not specified above shall be determined by the State Council. Temporary duty exemption shall be granted for goods approved by the Customs as temporarily imported or exported items and for bonded goods imported by special permission after the consignee or the consignor of the goods submits to the customs a guarantee or a deposit of an amount equal to the duties.

Where the customs finds that the duties are short-levied or not levied on a consignment of import or export goods or on an inward or outward article after its release, the customs shall collect the money payable from the obligatory customs duty payer within one year from the previous duty payment or the release of the item. If the short-levied or non-levied duties are attributable to the duty payer's violation of the customs regulations, the customs may collect the unpaid amount from him within three years. Where the duties are over-levied, the customs, upon discovery, shall refund the money without delay. The duty payer may ask the customs for refunding within one year of the date of duty payment.

Where the obligatory customs duty payer is involved in a dispute over duty payment with the customs, he shall first pay the duties and may, within 30 days of the issuance of the duty

memorandum, apply to the customs in writing for a reconsideration of the case. The Customs shall reach a decision within 15 days after the receipt of the application. If the obligatory customs duty payer refuses to accept the decision, he may apply to the General Customs Administration for a reconsideration of the case within 15 days after the receipt of the decision. If the decision of the General Customs Administration is still considered unacceptable by the obligatory customs duty payer, he may file a suit in a people's court within 15 days after the receipt of the decision.

[6] Legal Responsibility

In violation of laws and regulations, to evade the customs surveillance or tax in one of the forms listed below shall constitute an act of smuggling:

- (1) To transport, carry or send by post into or out of the territory goods, articles which are restricted or prohibited from import or export by the State, or which are taxable;
- (2) Without customs approval and payment of duties, to sell bonded goods, goods listed for special duty reduction or exemption, or other goods, articles which are under customs surveillance, or overseas means of transport inward;
- (3) Other acts to evade the customs surveillance, constituting acts of smuggling.

Where any act mentioned above is conducted, which it is not serious enough to constitute a crime, customs shall confiscate the smuggling goods, articles and illegal earnings, and may concurrently impose a fine at the same time. To purchase directly and illegally import goods and articles from a smuggler shall be dealt with as an act of smuggling and shall be punished accordingly:

Any individual who carries or sends by post articles for personal use into or out of the territory in a quantity exceeding the reasonable limit and fails to declare them to the Customs shall be made to pay the duties and may be fined.

A fine may be imposed for any of the following acts which violate the regulations on Customs surveillance prescribed in the Customs Law:

- (1) For a means of transport to enter or leave the territory at a place without a Customs establishment;
- (2) To fail to inform the Customs of the arrival and departure time of a means of transport and the place where it will stay or any change of such a place;
- (3) To fail to declare truthfully to the Customs the import or export goods or the transit,

transshipment and through goods;

(4) To fail to accept, in accordance with relevant regulations, the checking and examination by the Customs of the means of transport, goods or articles entering or leaving the territory;

(5) For an inward or outward means of transport to load or unload inward or outward goods or articles or let passengers get on or off without Customs approval;

(6) For an inward or outward means of transport staying at a place with a Customs establishment to leave without Customs approval;

(7) For an inward or outward means of transport en route from one place with a Customs establishment to another with a Customs establishment to move out of the territory or to a point in the territory where there is no Customs establishment without completing the clearance formalities and obtaining Customs approval;

(8) For an inward or outward means of transport to engage concurrently in or change to service within the territory without Customs approval;

(9) For an inward or outward vessel or aircraft which, by force majeure, stops or lands at a place without a customs establishment, or jettisons or discharges goods or articles in the territory to fail unjustifiably to report to the Customs authorities nearby;

(10) To open, pick up, deliver, forward, change, repack, mortgage or transfer goods under customs control without Customs approval;

(11) To open or break seals affixed by the Customs without authorization; or

(12) To operate the business of transport, storage, processing of the goods, the damage or demolishing of the relevant good or relevant record is not true, for which no justifiable reason is given;

(13) Other acts which violate provisions of customs surveillance.

Chapter 6 Foreign Exchange Regulations, Capital and Profit Transfer

China was now a member of the International Monetary Fund (IMF) and that recently its system of foreign exchange (forex) had undergone rapid change. Significant moves had been taken to reform, rationalize and liberatize the forex market. The practice of multiple exchange rates in swap centers had been abolished. China had already unified its forex market and

moved many of the restrictions on the use of forex. The purpose of China's forex reform was to reduce administrative intervention and increase the role of market forces. From 1979, a forex retention system was applied in China, although forex swap was gradually developing. In early 1994, official RMB exchange rates were unified with the market rates. The banking exchange system was adopted and nationwide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current accounts. Since 1996, foreign invested enterprises (FIEs) were also permitted into the banking exchange system, and the remaining exchange restrictions on current accounts were eliminated. On 1 December 1996, China had formally accepted the obligations of Article VIII of the IMF's Articles of Agreement, removing exchange restrictions on current account transactions. Accordingly, since then the Renminbi had been fully convertible on current accounts. The State Administration of Foreign Exchange (SAFE), under the auspices of the People's Bank of China (PBC), was the administrative organ empowered to regulate forex. For forex payments under current account, domestic entities (including FIEs) could purchase forex at market exchange rates from designated banks or debit their forex accounts directly upon presentation of valid documents. For payments such as pre-payments, commission, etc., exceeding the proportion or limit, the entities could also purchase forex from the banks upon meeting the bona fide test administered by SAFE. Forex for personal use by individuals could be purchased directly from the banks upon presentation of valid documents (within a specified limit). For amounts exceeding the limit, individuals able to prove their need for additional forex could purchase it from the banks. Current account forex receipts owned by domestic entities had to be repatriated into China, some of which could be retained and some sold to the designated banks at market rates. A verification system for forex payment (imports) and forex receipt (exports) had also been adopted.

Since the unification of exchange rates on 1 January 1994, China had adopted a single and managed floating exchange rate regime based on supply and demand. PBC published the reference rates of RMB against the US dollar, the HK dollar and Japanese yen based on the weighted averaged prices of forex transactions at the interbank forex market during the previous day's trading. The buying and selling rates of RMB against the US dollar on the inter-bank forex market could fluctuate within 0.3 per cent of the reference rate. For the HK dollar and Japanese yen, the permitted range was 1 per cent. Designated forex banks could deal with their clients at an agreed rate. Under such contracts the exchange rate of the US dollar was required to be within 0.15 per cent of the reference rate, whereas for the HK dollar and Japanese yen, the permitted range was 1 per cent. The exchange rates for other foreign

currencies were based on the rates of RMB against the US dollar and cross-exchange rates of other foreign currency on the international market. The permitted margin between the buying and selling rate could not exceed 0.5 per cent.

Since 1 January 1994, designated forex banks had become major participants in forex transactions. On 1 April 1994, the China Foreign Exchange Trading System was set up in Shanghai and branches were opened in dozens of cities. The Foreign Exchange Trading System had adopted a system of membership, respective quotation, concentrated trading and forex market settlement. Designated forex banks dealt on the inter-bank market according to the turnover position limit on banking exchange stipulated by SAFE and covered the position on the market. Depending on its macro-economic objectives, the PBC could intervene in the forex open market in order to regulate market supply and demand, and maintain the stability of the RMB exchange rate.

Since 1 July 1996, forex dealing of the FIEs was carried out through the banking exchange system. To encourage foreign direct investment, China had granted national treatment to FIEs in exchange administration. Accordingly, FIEs were allowed to open and hold forex settlement accounts to retain receipts under current accounts, up to a maximum amount stipulated by SAFE. Receipts in excess of the maximum amount were required to be sold to designated forex banks. No restrictions were maintained on the payment and transfer of current transactions by FIEs and FIEs could purchase forex from designated forex banks or debit their forex accounts for any payment under current transactions, upon the presentation of valid documents to the designated forex banks or SAFE for the bona fide test. FIEs could also open forex accounts to hold foreign-invested capital, and they could sell from these accounts upon the approval of SAFE. FIEs could also borrow forex directly from domestic and overseas banks, but were required to register with SAFE afterwards, and obtain approval by SAFE for debt repayment and services. FIEs could make payments from their forex accounts or in forex purchased from designated forex banks after liquidation, upon approval by SAFE according to law.¹

Main laws and regulations concerning the foreign forex and its administration include: Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture; Law of the People's Republic of China on Chinese-Foreign Contractual Joint Venture; Regulations on the Exchange System of the People's Republic of China; and Regulations on the Sale and

Purchase of and Payment in Foreign Exchange.

According to the commitment made by China for its WTO accession, China would not resort to any laws, regulations or other measures, including any requirement with respect to contractual terms, that would restrict the availability to any individual or enterprise of forex for current international transactions within its customs territory to an amount related to the forex inflows attributable to that individual or enterprise.²

According to provisions of WFOEL, EJVL, CJVL and their Implementations, and Article 11 of the Regulations on Foreign Exchange (1997), and Article 21 of the Rules on the Administration of Purchase, Sale and Remittance of Foreign Exchange, profits or dividends earned by foreign investors from foreign-invested enterprises can be remitted abroad.

The following is an introduction of the Regulations on the Exchange System of the People's Republic of China (the Regulation).

[1] General provisions

According to the Regulation, foreign exchange as referred to in the Regulation includes means of payments and assets denominated in foreign currency for international settlement as the following: (1) foreign currencies, including bank notes and coins; (2) payment instruments denominated in foreign currency, including bills, bank certificate of deposit and certificate of postal deposit etc.; (3) securities denominated in foreign currency, including government bonds, corporate debentures and stocks etc.; (4) Special Drawing Rights and European Currency Units; and (5) other assets denominated in foreign currency.

The regulations shall govern all activities related to the receipts and payments of foreign exchange as well as foreign exchange operations of domestic entities, individuals, foreign establishments, and foreign nationals in China. The payment in and transfer of foreign exchange for current international transactions shall not be subject to the government control or restriction.

Foreign currency is prohibited for circulation and shall not be quoted for pricing or settlement in the territory of the People's Republic of China.

[2] Foreign exchange for current account transactions

¹ see the Report of the Working Party on the Accession of China.

² Ibid.

All foreign exchange receipts of domestic entities for current account transactions shall be repatriated and shall not be deposited abroad in violation of the relevant government regulations without authorization. All foreign exchange receipts for current account transactions shall be sold to the designated foreign exchange banks in accordance with the regulations issued by the State Council on the sale and purchase of foreign exchange and making payments in foreign exchange, or upon approval, deposited in the foreign exchange account at the designated banks for foreign exchange operations. Purchase of foreign exchange for current account transactions shall be conducted with the designated foreign exchange banks, in accordance with the regulations issued by the State Council on the sale and purchase of foreign exchange and making payments in foreign exchange, upon the presentation of valid documents and commercial bills.

The collection of export proceeds and the payments for imports in foreign exchange by domestic entities shall be processed in accordance with the relevant government regulations governing the verification procedures for export proceeds and import payments.

Foreign exchange owned by individuals can be held at their own discretion, deposited in banks or sold to the designated foreign exchange banks. Individuals' foreign exchange savings deposit shall be placed with banks on a voluntary basis, withdrawn freely and bear interest with confidentiality for depositors' identity ensured.

The purchase of foreign exchange for personal travel abroad and other miscellaneous expenses shall be granted within the specified limit. Individuals may apply for the purchase of foreign exchange over and above the limit at the government agencies in charge of foreign exchange. And the request for such purchase shall be approved if it proves to be for bona fide transactions. Individuals carrying foreign exchange into or out of China shall declare their foreign exchange in the customs office. Individuals shall present to the customs office valid documents for carrying a large sum of foreign exchange exceeding the specified limit. The remittance and/or carrying of foreign exchange abroad for such income derived from the possession of assets in China shall be granted upon the presentation of the specific certifying documents at the designated foreign exchange banks. Foreign assets held by Chinese citizens residing in China in the form of payment instruments and securities denominated in foreign currency etc. shall not be taken or sent abroad without authorization of the exchange administration agencies.

The purchase of and payment in foreign exchange abroad for the legitimate income in Renminbi for foreign establishments and foreign nationals in China shall be granted upon the

presentation of the supporting documents and statement of charges at the designated foreign exchange banks. Foreign exchange sent or carried in by foreign establishments and foreign nationals in China can be held at their own discretion, deposited in designated banks or sold to the designated foreign exchange banks. Such foreign exchange can also be remitted or taken abroad upon the presentation of valid documents.

[3] Foreign exchange for capital account transactions

Unless otherwise specified by the State Council, all foreign exchange receipts of domestic entities for capital account transactions shall be repatriated. All foreign exchange receipts for capital account transactions shall be placed in the foreign exchange account at the designated foreign exchange banks in accordance with the relevant government regulations; such receipts can be also sold to the designated foreign exchange banks upon the approval by the exchange administration agencies.

The source of foreign exchange for overseas investment by domestic entities shall be reviewed by the exchange administration agencies before the application for such investments is filed for approval by the relevant government agencies. If approval is granted, remittance of funds shall then take place in accordance with the regulations on overseas investment issued by the State Council.

External borrowing in loans shall be undertaken in accordance with the relevant regulations by the government agencies designated by the State Council, financial institutions and other enterprises duly authorized by government agencies of the State Council in charge of exchange administration. External borrowing in loans by foreign-invested enterprises shall be filed with the exchange administration agencies for records.

The issue of bonds abroad denominated in foreign currency by financial institutions requires the approval by the government agencies of the State Council in charge of exchange administration before the issue proceeds in accordance with the relevant government regulations.

External guarantee shall only be offered by qualified financial institutions and enterprises meeting the government requirements and subject to the approval by the exchange administration agencies.

The government adopts a registration system for external debt. All domestic entities shall register external debt in accordance with the regulations formulated by the State Council on monitoring statistics of external debt. The government agencies of the State Council in charge

of exchange administration shall take the responsibility for collecting and monitoring statistics of external debt and publish these statistics on a regular basis.

The currency in Renminbi belonging to the foreign counterparts of foreign-funded enterprises which have been terminated in accordance with the law, can be converted into foreign exchange at the designated foreign exchange banks and then sent or taken abroad after the liquidation and tax payments. All the foreign exchange belonging to the Chinese counterpart investors shall be sold to the designated foreign exchange banks.

[4] Foreign exchange operations for financial institutions

Financial institutions shall have the approval of the exchange administration agencies for conducting foreign exchange transactions, and a license for such operations is also required. No entities or individuals are allowed to undertake foreign exchange operations without the approval of the exchange administration agencies. Financial institutions duly authorized for foreign exchange operations shall never operate beyond the approved business scope.

Financial institutions duly authorized for foreign exchange operations shall open foreign exchange accounts for their clients and conduct business operations in accordance with the relevant government regulations. Designated foreign exchange banks shall use their own funds in Renminbi to purchase foreign exchange. The foreign exchange operations by financial institutions are subject to inspection and supervision by the exchange administration agencies. Financial institutions undertaking foreign exchange operations shall submit to the exchange administration agencies the balance sheet, income statement, other financial reports and information for foreign exchange operations.

To terminate foreign exchange operations, financial institutions shall file application with the exchange administration agencies. Once the termination of foreign exchange operations is approved, these financial institutions shall settle their claims and liabilities in foreign currencies and hand in their license for foreign exchange operations for revocation.

[5] Renminbi exchange rate and foreign exchange market

According to the Regulation, the exchange rate for Renminbi is a single, managed floating exchange rate based on market demand and supply. The People's Bank of China announces the exchange rate of Renminbi against major currencies on the basis of the prevailing exchange rates in the inter-bank foreign exchange market.

The trading of foreign exchange in the market shall comply with the principle of transparency, openness, fairness, and honesty. The number of currencies traded in the market and the

trading methods are decided upon and reviewed by the government agencies of the State Council in charge of the administration of the exchange system.

Designated foreign exchange banks and other financial institutions involved in foreign exchange operations are dealers in the inter-bank foreign exchange market. Based on the exchange rates announced by the Peoples Bank of China and the specified margins, designated foreign exchange banks and other financial institutions undertaking foreign exchange operations can quote the buying rate and selling rate for their clients and conduct the trading of foreign exchange accordingly. In light of the orientation of monetary policy and the developments in foreign exchange market, the People's Bank of China shall regulate foreign exchange market in accordance with the law.

[6] Legal responsibilities

According to the Regulation, in case of the following circumstances of foreign exchange evasion, the exchange administration agencies shall order the foreign exchange in question to be repatriated, impose its conversion and place a penalty fine in the range of more than 30 percent and less than 5 times the amount of foreign exchange under the evasion scheme.

- (1) to place foreign exchange deposit abroad without authorization and in violation of government regulations;
- (2) to act in defiance of the government regulations on the sale of foreign exchange to the designated foreign exchange banks;
- (3) to remit or take foreign exchange abroad in violation of the government regulations;
- (4) to take or mail abroad through postal services certificates of foreign exchange deposit and securities denominated in foreign currencies without authorization of the exchange administration agencies; or
- (5) other types of exchange evasion scheme.

To penalize the illegal exchange arbitrage listed as follows, the exchange administration agencies shall serve a warning, impose mandatory conversion of foreign exchange and place a penalty fine in the range of more than 30 percent and less than 3 times the amount of foreign exchange under the arbitrage scheme.

- (1) to pay, in violation of the government regulations, in Renminbi or in kind for imports or other similar types of expenses that require payment in foreign exchange;
- (2) to pay in Renminbi for local expenses on behalf others and get paid back in turn in foreign

exchange;

(3) to invest in China by overseas investors in Renminbi or with goods purchased locally without authorization of the exchange administration agencies;

(4) to purchase foreign exchange from designated foreign exchange banks with forged or invalid documents, contracts and bills;

(5) other types of illegal arbitrage activities.

To penalized any activity listed as follows undertaken by domestic entities in violation of the regulations governing external debt, the exchange administration agencies shall serve a warning, issue a public reprimand and impose a penalty fine in the range of 100, 000 to 500, 000 yuan.

(1) to process external borrowing without authorization;

(2) to issue bonds denominated in foreign currency abroad without authorization and in violation of the relevant government regulations;

(3) to provide guarantee for external obligations without authorization and in violation of the relevant government regulations; and

(4) other activities in violation of the regulations on external debt.

In case that the domestic entities undertake any activity involving illicit use of foreign exchange listed as follows, the exchange administration agencies shall order these entities to redress the case, impose the mandatory conversion of foreign exchange, confiscate the illegal earnings and impose a penalty fine no more than the equivalent amount of foreign exchange in question.

(1) to use foreign exchange in China for pricing or settlement;

(2) to pledge foreign exchange in lien without authorization;

(3) to change the designated use of foreign exchange without authorization;

(4) other types of illicit use of foreign exchange.

To penalize unauthorized trading, disguised trading of foreign exchange, the exchange administration agencies shall serve a warning, impose the mandatory conversion of foreign exchange, and place a penalty fine in the range of more than 30 percent of and less than 3 times the amount of the foreign exchange in question. In case that domestic entities open foreign exchange accounts in China or abroad without authorization, rent, transfer of foreign

exchange accounts in violation of the regulations governing foreign exchange account or use the foreign exchange account beyond the designated purpose without authorization, the exchange administration agencies shall order these entities to redress the case, or close the foreign exchange accounts, issue a public reprimand and impose a penalty fine in range of 50,000 to 300,000 yuan.

In case that domestic entities forge, alter, rent, transfer or reuse the verification certificate for import payment and export proceeds in violation of the regulations governing the verification procedures for foreign exchange, or fail to comply with verification procedures prescribed by the relevant regulations, the exchange administration agencies shall serve a warning, issue a public reprimand, confiscate the illegal earnings and impose a penalty fine in the range of 50,000 to 300,000 yuan.

In case of criminal offense, criminal responsibility shall be investigated.

If the party penalized does not accept the decisions and the penalty imposed by the exchange administration agencies, the party may appeal to the exchange administration agencies at the immediate higher level to review the case within 15 days after receiving the penalty notice; the exchange administration agencies at the immediate higher level shall make a decide within two months after receiving the appeal for review. If the party still does not accept the review decision, the party may file a lawsuit with the People's Court in accordance with the law.

Chapter 7 Competition Law

China encourages the fair competition and was against acts of unfair competition of all kinds. The Law of the People's Republic of China against Unfair Competition, promulgated on 2 September 1993 and implemented on 1 December 1993, was the basic law to maintain the order of competition in the market. In addition, the Price Law, the Law on Tendering and Bidding, the Criminal Law and other relevant laws also contained provisions on anti-monopoly and unfair competition. China was now formulating the Law on Anti-Monopoly. The following is an introduction of the Law of the People's Republic of China against Unfair Competition.

[1] General Provisions

The Law of the People's Republic of China on Combating Unfair Competition (this Law) is

formulated with a view to safeguarding the healthy development of the socialist market economy, encouraging and protecting fair competition, preventing acts of unfair competition, and defending the lawful rights and interests of operators and consumers. A business operator shall, in transactions in the market, follow the principle of voluntariness, equality, fairness, honesty and credibility, and observe generally recognized business ethics. "Unfair competition" in this Law refers to acts of operator which contravene the provisions of this Law, damage the lawful rights and interests of other operator, and disturb the social-economic order. "Operator" in this Law refers to a legal person or other economic organization or individual engaging in the trading of goods or profit-making services ("Goods" mentioned hereinafter include services).

According to this Law, the People's Governments at various levels shall adopt measures to prevent acts of unfair competition and create a favorable environment and conditions for fair competition. The administrative authorities for industry and commerce in the People's Governments above the county level shall supervise and inspect acts of unfair competition. In respect of those acts which, according to the provisions of various laws and administrative regulations, are subject to supervision and inspection by other departments, these provisions shall be abided by. The state encourages, supports and protects all organizations and individuals in carrying out social supervision over acts of unfair competition. Staff members of State organs shall not support or cover up acts of unfair competition.

[2] Acts of Unfair Competition

An operator may not adopt the following unfair means to carry out transactions in the market and cause damage to competitors:

- (1) passing off the registered trademark of another person;
- (2) using, without authorization, the name, packaging or decoration peculiar to well-known goods or using a name, packaging or decoration similar to that of well-known goods, so that his goods are confused with the well-known goods of another person, causing buyers to mistake them for the well-known goods of the other person;
- (3) using, without authorization, the business name or personal name of the other person on his own goods, leading people to mistake them for the goods of the other person;
- (4) forging or falsely using, on his goods, symbols of quality such as symbols of certification and symbols of famous and high-quality goods, falsifying the origin of his goods, and making false representations which are misleading as to the quality of the goods.

A public utility enterprise or any other operator having monopolistic status according to law may not restrict others to buying the goods of operators designated by it so as to exclude other operators from competing fairly. Governments and their subordinate departments may not abuse their administrative powers to restrict others to buying the goods of operators designated by them and to restrict the lawful business activities of other operators. Governments and their subordinate departments shall not abuse their administrative powers to restrict the entry of goods from other parts of the country into the local market or the flow of local goods to markets in other parts of the country.

An operator may not practice bribery to sell or buy goods. Where an operator secretly pays a kickback to the other party (an entity or individual), without accounting for it in the books, he shall be deemed to have offered a bribe and be punished; where the other party (an entity or individual), secretly accepts a kickback without accounting for it in the books, it or he shall be punished for taking a bribe. In the selling or buying of goods, an operator may expressly offer a discount to the other party and pay a commission to the middleman. Where an operator gives a discount to the other party and pays a commission to the middleman, he must enter the items in the books factually. An operator accepting a discount or commission must enter it in the books factually. An operator may not use advertisements or other means to give false, misleading publicity as to the quality, composition, performance, use, manufacturer, useful life, origin, etc. of the goods. An advertisement operator shall not act as an agent for, or design, produce or release advertisements containing false representations of which he is obviously aware or should be aware.

An operator may not adopt the following means to infringe business secrets:

- (1) obtaining business secrets from the owners of rights by stealing, promising of gain, resorting to coercion or other improper means;
- (2) disclosing, using, or allowing others to use business secrets of the owners of rights obtained by the means mentioned in the preceding item;
- (3) disclosing, using or allowing others to use business secrets that he has obtained by breaking an engagement or disregarding the requirement of the owners of the rights to maintain the business secrets in confidence.

Where a third party obtains, uses or discloses the business secrets of others when he obviously has or should have full awareness of the illegal acts mentioned in the preceding paragraph, he shall be deemed to have infringed the business secrets of others. "Business

secret" mentioned above means technical information and operational information which is not known to the public, which is capable of bringing economic benefits to the owner of rights, which has practical applicability and which the owner of rights has taken measures to keep secret.

An operator may not sell goods at a price below cost for the purpose of excluding his competitors, however, none of the following acts constitute unfair competition:

- (1) selling fresh or live goods;
- (2) disposing of goods the useful life of which is about to expire or other overstocked goods;
- (3) reducing prices seasonably;
- (4) selling goods at reduced prices for paying off debts, changing the line of production or closing the business.

An operator may not, in sales of goods, make a tie-in sale against the wish of the buyer or attach other unreasonable conditions.

An operator may not make the following kinds of sales with prizes attached:

- (1) making sales with prizes attached by the fraudulent method of falsely claiming the existence of prizes or intentionally causing internally chosen people to win the prizes;
- (2) promoting the sale of inferior but high-priced goods by offering prizes;
- (3) making sales with prizes attached in the form of a lottery where the amount for the highest prize exceeds 5 , 000 yuan (RMB).

An operator may not utter or disseminate falsehoods to damage the goodwill of a competitor or the reputation of his goods. Tenderers may not submit tenders in collusion with one another to force the tender price up or down. A tenderer shall not collaborate with the party inviting tenders to exclude competitors from fair competition.

[3] Supervision and Inspection

The supervising and inspecting authorities above the county level may exercise supervision over and carry out inspection of acts of unfair competition. In exercising supervision over and carrying out inspection of acts of unfair competition, the supervising and inspecting authorities are entitled to exercise the following powers:

- (1) questioning operators, interested parties and witnesses, and requiring them to provide

evidential material or other information related to acts of unfair competition in accordance with prescribed procedure;

(2) consulting and copying written agreements, account books, receipts, bills, vouchers, invoices, documents, records, business correspondence and other material related to acts of unfair competition;

(3) inspecting property related to acts of unfair competition as stipulated in Article 5 of this Law and, where necessary, ordering the operator under investigation to explain the source and quantity of the goods, temporarily stop selling them for inspection, and not to remove, conceal or destroy them.

When exercising supervision over and carrying out inspection of acts of unfair competition, members of the supervising and inspecting authorities shall produce warrants of inspection.

When the supervising and inspecting authorities are exercising supervision over and carrying out inspection of acts of unfair competition, the operators under investigation, interested parties and witnesses shall truthfully provide them with relevant data or information.

[4] IV Legal Responsibility

According to this Law, where an operator, in contravention of the provisions of this Law, causes damage to the injured operator, he shall bear the responsibility for compensating the damages. Where the losses suffered by the injured operator are difficult to calculate, the amount of damages shall be the profits gained by the infringer during the period of infringement through the infringing act. The infringer shall also bear all reasonable costs paid by the injured operator in investigating the acts of unfair competition committed by the operator suspected of infringing his lawful rights and interests. Where the lawful rights and interests of the injured operator are damaged by the acts of unfair competition, he may institute proceedings before a People' s Court.

Where an operator passes off the registered trademark of another person, uses the business name or personal name of another person without authorization, forges or falsely uses symbols of quality such as symbols of certification and symbols of famous and high-quality goods, falsifies the origin of the goods and makes false representations which are misleading as to the quality of the goods, he shall be punished in accordance with the provisions of the Trademark Law and the Product Quality Law of the People' s Republic of China. Where an operator uses, without authorization, the name, packaging or decoration peculiar to well-known goods or uses the name, packaging or decoration similar to that of well-known

goods so that his goods are confused with the well-known goods of another person, causing buyers to mistake them for the well-known goods, the relevant supervising and inspecting authority shall order it or him to cease the offense, confiscate the illegal earnings, and may impose, according to circumstances, a fine of more than one time and less than three times the amount of illegal eaning; where the circumstances are serious, the said authority may revoke his business license; where an operator sells goods which are counterfeit or of inferior quality, constituting a crime, his criminal responsibilities shall be investigated according to law. Where an operator practices bribery, by using money, gifts or other means to sell or buy goods, constituting a crime, his criminal responsibilities shall be investigated according to law; where the act does not constitute a crime, the relevant supervising and inspecting authority may, according to circumstances, impose a fine of more than 10, 000 yuan (RMB) and less than 200, 000 yuan (RMB). His illegal eaning, if any, shall be confiscated.

Where a public utility enterprise or any other operator having monopolistic status according to law restricts others to buying the goods of operators designated by it so as to exclude other operators from competing fairly, the supervising and inspecting authorities at the level of provinces or municipalities which are divided into districts shall order it to desist from the illegal acts and may punish it by imposing, according to circumstances, fines of more than 50,000 yuan (RMB) and less than 200,000 yuan (RMB). Where the designated operators take advantage of the arrangement to foist inferior but high-priced goods on buyers or make exorbitant charges, the supervising and inspecting authorities shall confiscate the illegal income and may, according to circumstances, impose fines of more than one time and less than three times the illegal income.

Where an operator uses advertisement or other means to give false, misleading publicity to his goods, the relevant supervising and inspecting authority shall order him to desist from the illegal act, dispel the bad influence, and may, according to circumstances, impose a fine of more than 10, 000 yuan (RMB) and less than 200,000 yuan (RMB). Where an advertisement operator acts as an agent for, or designs, produces or releases advertisements containing false representations of which he is obviously aware or should be aware, the relevant supervising and inspecting authority shall order him to desist from the illegal act, confiscate his illegal income, and impose a fine on him according to law.

Where any party infringes the business secret of another person in contravention of the provisions of Article 10 of this Law, the relevant supervising and inspecting authority shall order him to desist from the illegal act and may, according to circumstances, impose on him a

fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB). Where an operator makes sales with prizes attached in contravention of the provisions of Article 13 of this Law, the relevant supervising and inspecting authority shall order him to desist from the illegal act and may, according to circumstances, impose on him a fine of more than 10,000 yuan (RMB) and less than 100,000 yuan (RMB).

Where tenderers submit tenders in collusion with one another to force the tender price up or down, or where a tenderer collaborates with the party inviting tenders to exclude competitors from competing fairly, his successful bid is null and void. The supervising and inspecting authority may, according to circumstances, impose on them a fine of more than 10,000 yuan (RMB) and less than 200,000 yuan (RMB).

Where an operator commits an act in contravention of an order to temporarily stop selling, and not to remove, conceal or destroy, property related to acts of unfair competition, the relevant supervising and inspecting authority may, according to circumstances, impose on him a fine of more than one time and less than three times the price of the property which has been sold, removed, concealed or destroyed.

Where a party is not satisfied with the decision on punishment made by the relevant supervising and inspecting authority, he may, within 15 days from the date of the receipt of the decision on punishment, apply to the competent authority at the next highest level for review; where the party is not satisfied with the decision made after review, he may, within 15 days from the date of receipt of the written decision made after review, institute proceedings before a People's court. The party may also directly institute proceedings before a People's Court.

Where a government and its subordinate departments, in contravention to the provisions of Article 7 of this Law, restrict others to buying the goods of operators designated by them, restrict the legitimate business activities of other operators, or restrict the normal flow of goods between regions, the higher authorities shall order them to rectify the situation; where the circumstances are serious, the competent authorities at the same level or the next highest level shall impose disciplinary sanctions on the persons directly responsible. Where the designated operators, taking advantage of this arrangement, foist inferior but high-priced goods on buyers or make exorbitant charges, the supervising and inspecting authorities shall confiscate the illegal income and may, according to circumstances, impose a fine of more than one time and less than three times the illegal income.

Where the functionary of the State organ responsible for supervision over and inspection of

acts of unfair competition abuses his powers and neglects his duty, constituting a crime, his criminal responsibilities shall be investigated according to law; where the act does not constitute a crime, he shall be subject to disciplinary sanction. Where the functionary of the State organ responsible for supervision over and inspection of acts of unfair competition practices illegally out of personal consideration, intentionally covers up for an operator and causes him to avoid prosecution, obviously knowing that he has contravened the provisions of this Law, constituting a crime, the said functionary's criminal responsibilities shall be investigated according to law.

Chapter 8 Intellectual Property Protection

To protect the intellectual property, China adopted the Trademark Law, the Patent Law and the Copyright Law in 1982, 1984 and 1990 respectively. Some amendments to these laws have been made in the following years. To meet the requirements of China's WTO accession, especially to comply with the rules of TRIPS Agreement, the Patent Law was amended in 2000, the Trademark Law and Copyright Law were also amended in 2001. The three Detailed Implementations Regulations of the Patent Law, the Trademark Law and the Copyright Law were enacted in 1985, 1988 and 1991 respectively, and newly amended in 2001 and 2002. In addition, other intellectual property laws and regulations are also formulated. They are the Regulations for the Protection of Computer Software (effective as of 1 January 2002), the Regulations of the People's Republic of China on the Protection of New Varieties of Plants (effective as of 1 October 1997), the Law of the People's Republic of China Against Unfair Competition (effective as of 1 December 1993), Regulations on the Implementation of the Integrated Circuit Layout Design (effective as of 10 October 2001). The following is an introduction of the Patent Law, the Trademark Law and the Copyright Law.

[1] Patent

The Patent Law of the People's Republic of China (PL) was newly amended in 2000, and took effect on July 1, 2001. To be compatible with the amended PL, the Detailed Implementation Regulations of the Patent Law (Patent Implementation Regulations) was also amended and promulgated by the State Council, and took effect on the same day as the PL. Most of the amendments are made to comply with the rules of the WTO and the international practice.

[a] Requirements for Grant of Patent Right

According to the Patent Law and its Implementation Regulations, inventions-creations, i.e. inventions, utility models and designs, for which patent right may be granted must possess novelty, inventiveness, and practical applicability.

Novelty means that, before the date of filing, no identical invention or utility model has been publicly disclosed in publications in the country or abroad or has been publicly used or made known to the public by any other means in the country, nor has any other person filed previously with the Patent Administration Department Under the State Council an application which described the identical invention or utility model and was published after the said date of filing.

Inventiveness means that, as compared with the technology existing before the date of filing, the invention has prominent substantive features and represents a notable progress and that the utility model has substantive features and represents progress.

Practical applicability means that the invention or utility model can be made or used and can produce effective results.

Any design for which patent right may be granted must not be identical with and similar to any design which, before the date of filing, has been publicly disclosed in publications in the country or abroad or has been publicly used in the country, and must not be in conflict with any prior right of any other person.

[b] Exclusion

According to the PL, for any of the following, no patent right shall be granted:

- (1) scientific discoveries;
- (2) rules and methods for mental activities;
- (3) methods for the diagnosis or for the treatment of disease;
- (4) animal and plant varieties;
- (5) substances obtained by means of nuclear transformation.

For processes used in producing products referred to in item (4) of the preceding paragraph, patent right may be granted in accordance with the provisions of the PL.

[c] Application for Patent

According to the PL, where an application for a patent for invention or utility model is filed, a request, a description and its abstract, and claims shall be submitted. The request shall state

the title of the invention or utility model, the name of the inventor or creator, the name and the address of the applicant and other related matters. The description shall set forth the invention or utility model in a manner sufficiently clear and complete so as to enable a person skilled in the relevant field of technology to carry it out; where necessary, drawings are required. The abstract shall state briefly the main technical points of the invention or utility model. The claims shall be supported by the description and shall state the extent of the patent protection requested.

Where an application for a patent for design is filed, a request, drawings or photographs of the design shall be submitted, and the product incorporating the design and the class to which that product belongs shall be indicated.

[d] Examination and Approval of Application for Patent

Different examination and approval procedures are prescribed for the application for patent for invention, utility model and design according to the PL.

[i] Invention

Where, after receiving an application for a patent for invention, the Patent Administration Department Under the State Council, i.e. the State Intellectual Property Office (SIPO), upon preliminary examination, finds the application to be in conformity with the requirements of the PL, it shall publish the application promptly after the expiration of eighteen months from the date filing. Upon the request of the applicant, the SIPO may publish the application earlier.

Upon the request of the applicant for a patent for invention, made at any time within three years from the date of filing, the SIPO will proceed to examine the application as to its substance. If, without any justified reason, the applicant fails to meet the time limit for requesting examination as to substance, the application shall be deemed to have been withdrawn. SIPO may, on its own initiative, proceed to examine any application for a patent for invention as to its substance when it deems it necessary.

When the application for a patent for invention requests examination as to substance, he or it shall furnish pre-filing date reference materials concerning the invention. For an application for a patent for invention that has been already filed in a foreign country, the SIPO may ask the applicant to furnish within a specified time limit documents concerning any search made for the purpose of examining that application, or concerning the results of any examination made, in that country. If, at the expiration of the specified time limit, without any justified

reason, the said documents are not furnished, the application shall be deemed to have been withdrawn.

If the SIPO, after the examination as to substance of the application for a patent for invention, finds that the application is not in conformity with the provisions of the PL, it shall notify the applicant and request him or it to submit, within a specified time limit, his or its observations or to amend the application. If, without any justified reason, the time limit for making response is not met, the application shall be deemed to have been withdrawn.

After the applicant has made the observations or amendments, the SIPO finds that the application for a patent for invention is still not in conformity with the provision of the PL, then the application shall be rejected. If no cause for rejection of the application for a patent for invention has been found, SIPO shall make a decision to grant the patent right for invention, issue a certificate of patent for invention, and make a registration and announcement. The patent right for invention shall take effect as of the date of the announcement.

[ii] Utility Model and Design

Where it is found that after preliminary examination that there is no cause for the rejection of the application for a patent for utility model or design, the SIPO shall make a decision to grant patent right for the utility model or design, issue the relevant patent certificate, and make registration and announcement. The patent right for utility model or design shall take effect as of the date of the announcement.

A Patent Reexamination Board (PRB) is set up. Where an applicant for patent is not satisfied with the decision made by the SIPO, the applicant may, within three months from the date of receipt of the notification, request the PRB to make a reexamination. The PRB shall, after reexamination, make a decision and notify the applicant, who may, within three months from the date of receipt of the notification, institute legal proceedings in the people's court if the applicant is not satisfied with the decision made by the PRB.

[e] Duration and Validity of a Patent

The duration of patent right for inventions shall be twenty years, the duration of patent right for utility models and designs shall be ten years, counted from the date of filing. In any of the following cases, the patent right shall cease before the expiration of its duration: (a) where an annual fee is not paid as prescribed; (b) where the patentee abandons his or its patent right by a written declaration.

Where, starting from the date of the announcement of the grant of the patent right by the SIPO, any entity or individual considers that the grant of the said patent right is not in conformity with the relevant provisions of the PL, it or he may request the PRB to declare the patent right invalid. The PRB shall examine the request for invalidation of the patent right promptly, make a decision and notify the person who made the request and the patentee. The decision declaring the patent right invalid shall be registered and announced by the SIPO. Where the patentee or the person who made the request for invalidation is not satisfied with the decision made by the PRB declaring the patent right invalid or upholding the patent right, such party may, within three months from receipt of the notification of the decision, institute legal proceedings in the people's court.

[f] Compulsory License for Exploitation of a Patent

In the following three circumstances, compulsory license for exploitation of a patent may be granted:

(1) Where any entity which is qualified to exploit the invention or utility model has requested for authorization from the patentee of an invention or utility model to exploit its or his patent on reasonable terms and conditions and such efforts have not been successful within a reasonable period of time, the SIPO, upon the request of that entity, grant a compulsory license to exploit the patent for invention or utility model;

(2) Where a national emergency or any extraordinary state of affairs occurs, or where the public interest so requires, the SIPO may grant a compulsory license to exploit the patent for invention or utility model.

(3) Where the invention or utility model for which the patent right has been granted involves important technical advance of considerable economic significance in relation to another invention or utility model for which a patent right has been granted earlier and the exploitation of the later invention or utility model depends on the exploitation of the earlier invention or utility model, the SIPO may, upon the request of the later patentee, grant a compulsory license to exploit the earlier invention or utility model; where a compulsory license to exploit the earlier patentee is granted, the SIPO may, upon the request of the earlier patentee, also grant a compulsory license to exploit the later invention or utility model.

[g] Protection of Patent Right

According to the PL, after the grant of the patent right for an invention or utility model, except where otherwise provide for in the PL, no entity or individual may, without the

authorization of the patentee, exploit the patent, that is, make, use, offer to sell, sell or import the patented product, or use the patented process, and use, offer to sell, sell or import the product directly obtained by the patented process, for production or business purposes.

Where a dispute arises as a result of the exploitation of a patent without the authorization of the patentee, that is, the infringement of the patent right of the patentee, it shall be settled through consultation by the parties. Where the parties are not willing to consult with each other or where the consultation fails, the patentee or any interested party may institute legal proceedings in the people's court, or request the administrative authority for patent affairs to handle the matter. When the administrative authority for patent affairs handling the matter considers that the infringement is established, it may order the infringer to stop the infringing act immediately. If the infringer is not satisfied with the order, he may, within 15 days from the date of receipt of the notification of the order, institutes legal proceedings in the people's court in accordance with the Administrative Procedure Law of the People's Republic of China. If, within the said time limit, such proceedings are not instituted and the order is not complied with, the administrative authority for patent affairs may approach the people's court for compulsory execution. The said authority handling the matter may, upon the request of the parties, mediate the amount of compensation for the damage caused by the infringement of the patent right. If the mediation fails, the parties may institute legal proceedings in the people's court in accordance with the Civil Procedure Law of the People's Republic of China.

The amount of compensation for the damage caused by the infringement of the patent right shall be assessed on the basis of the losses suffered by the patentee or the profits which the infringer has earned through the infringement. If it is difficult to determine the losses which the patentee has suffered or the profits which the infringer has earned, the amount may be assessed by reference to the appropriate multiple of the amount of the exploitation fee of that patent under contractual license.

According to the newly amended Patent Law, provisional measures: if any patent or interested party has evidence to prove that another person is infringing or will soon infringe its or his patent right and that if such infringing act is not checked or prevented from occurring in time, it is likely to cause irreparable harm to it or him, it or he may, before any legal proceedings are instituted, request the people's court to adopt measures for ordering the suspension of relevant acts and the preservation of property.

Prescription for instituting legal proceedings concerning the infringement of patent right is two years counting from the date on which the patentee or any interested party obtains or

should have obtained knowledge of the infringing act.

[2] Trademark

To be consistent with the rules of WTO, the Trademark Law of the People's Republic of China (Trademark Law) and its Implementation Regulations has been newly revised in 2001 and 2002 respectively.

[a] General Provisions

According to the Trademark Law, a registered trademark is a trademark that has been accepted and registered by the Trademark Office, which may be a trademark used on goods, a service mark, a collective mark or a certification mark. Any visually perceptible sign, capable of distinguishing the goods or services of any individual, legal person or other organization from those of other persons, including words, devices, letters, numerals, three-dimensional signs, combination of colours as well as the combination of such signs, shall be eligible for application for registration as a trademark. Individuals, legal persons and other organizations can apply for a registration of a trademark. The owner of a registered trademark shall have the exclusive right to use the trademark, which shall be protected by law. Goods on which trademark(s) must be used according to provisions of the State shall not be sold without using a registered trademark.

[b] Application for Trademark Registration

An applicant for registration of a trademark shall indicate, in accordance with a prescribed classification of goods, the classification of the goods and the designation of the goods in respect of which the trademark is to be used. A new application for registration of a trademark shall be made if the sign of a registered trademark is to be altered. An application for a change shall be made if the name or address of the owner of a registered trademark, or other matters contained in the registration, is to be changed.

An applicant for registration of a trademark who, within six months from the date of application for registration of his trademark in a foreign country, applies for registration of the same trademark in China in respect of the same goods has a right of priority in accordance with any agreement concluded between China and the foreign country, or with the international treaty to which both countries are party, or on the principle of mutual recognition of the right of priority.

If a trademark is first used on goods exhibited at an international exhibition sponsored or recognized by the Chinese government, an applicant for registration of the trademark has a

right of priority for a period of six months from the date of exhibition of the goods.

[c] Examination and Approval of the Registration of a Trademark

Where an application for registration of a trademark is in compliance with the relevant provisions of the Trademark Law, the Trademark Office shall give preliminary approval of the application and publish the same; where an application for registration of a trademark is not in compliance with the relevant provisions of this Law, or if the trademark is identical with or similar to a trademark of another person that has been registered or accepted in respect of identical or similar goods, the Trademark Office shall refuse to accept the application and shall not publish the same.

Where two or more applicants apply for registration of identical or similar trademarks in respect of identical or similar goods, the application filed the earliest shall be accepted and published; if the applications are filed on the same day, the trademark which is used the earliest shall be accepted and published, and applications of other persons shall be refused and not be published.

Any person may, within three months from the date of publication, file an opposition against an application for registration of a trademark which was granted the preliminary approval by the Trademark Office. If no opposition is filed within that period, the trademark shall be registered, a certificate of registration shall be issued, and the registration shall be published.

An application for registration of a trademark shall not be of such a nature as to infringe the existing prior right of another person. An application shall not be made to register in advance by improper means a trademark which is used by another person and enjoys certain reputation.

Where an application for registration of a trademark is refused and no publication is made, the Trademark Office shall notify the applicant of the same in writing. Where the applicant is dissatisfied, he may, within fifteen days from receipt of the notification, apply for review to the Trademark Review and Adjudication Board, which shall make a decision and notify the applicant in writing. Where any party is dissatisfied with the decision of the Trademark Review and Adjudication Board, he may, within thirty days from receipt of the notification, institute legal proceedings with the people's court.

Where an opposition is filed against an accepted and published application for registration of a trademark, the Trademark Office shall hear both the opponent and the opposed party's statement of facts and grounds and shall, after investigation and verification, make a decision.

Where any party is dissatisfied, he may, within fifteen days from receipt of the notification, apply for review to the Trademark Review and Adjudication Board, which Board shall make a decision and notify both the opponent and the opposed party in writing. Where any party is dissatisfied with the decision of the Trademark Review and Adjudication Board, he may, within thirty days from receipt of the notification, institute legal proceedings with the people's court. The people's court shall notify the other party to the review proceedings to participate in the legal proceedings as the third party.

Where, within the specified period, no party applies for review of a decision made by the Trademark Office or institutes legal proceedings with the people's court against a decision of the Trademark Review and Adjudication Board, the decision shall come into force.

If it is decided that an opposition is not justified, the trademark shall be registered, a certificate of registration shall be issued, and the registration shall be published; if it is decided that an opposition is justified, no registration shall be made.

[d] Renewal, Assignment and Licensing of Registered Trademark

The period of validity of a registered trademark shall be ten years starting from the date of the approval of the registration.

Where a holder of a registered trademark intends to continue to use the trademark after the expiry of the period of validity, an application for renewal of the registration shall be made within the last six months of the said period of validity in the above paragraph. Where no application is made within the said period, a grace period of six months may be allowed. If no application is filed within the grace period, the registered trademark shall be removed from the register. The period of validity of each renewal of registration shall be ten years.

Where a registered trademark is to be assigned, the assignor and assignee shall sign an agreement of assignment and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the assigned trademark is used.

The owner of a registered trademark may, by signing a trademark license contract, authorize another person to use his registered trademark. The licensor shall supervise the quality of the goods on which the licensee uses the licensed trademark. The licensee shall guarantee the quality of the goods on which the licensed trademark is used.

The trademark license contract shall be submitted to the Trademark Office for recording

[e] Adjudication of Disputes on Registered Trademark

Where a registered trademark stands in violation of the provisions of Article 10, 11 or 12 of the Trademark Law, or the registration of a trademark has been acquired by fraud or any other improper means, the Trademark Office shall cancel the registered trademark; any other organization or individual may request the Trademark Review and Adjudication Board to make an adjudication to cancel such a registered trademark.

Where a registered trademark stands in violation of the provisions of Article 13, 15, 16 or 31 of the Trademark Law, the owner of the trademark or any interested party may, within five years from the date of registration, request the Trademark Review and Adjudication Board to make an adjudication to cancel the registered trademark. Where the registration has been made in bad faith, the owner of a well-known trademark shall not be bound by the five-year time limit.

In addition to the situations as provided for in the preceding two paragraphs, any person disputing a registered trademark may, within five years from the date of registration, apply to the Trademark Review and Adjudication Board for adjudication.

Where any party is dissatisfied with the adjudication of the Trademark Review and Adjudication Board, he may, within thirty days from receipt of the notification, institute legal proceedings with the people's court.

[f] Administration of the Use of Trademark

The Trademark Office shall order the user of a registered trademark to rectify the situation within a specified time limit, or shall cancel the registered trademark, if the user:

- (1) alters the registered trademark without the prescribed procedure;
- (2) changes the name or address of the owner of a registered trademark, or other matters contained in the registration, without the prescribed procedure;
- (3) assigns the registered trademark without the prescribed procedure; or
- (4) has not used the trademark for a consecutive period of three years.

Where any person who uses an unregistered trademark has committed any of the following, the local administrative authority for industry and commerce shall stop the use of the trademarks, order him to rectify the situation within a specified time limit, and may in addition circulate a notice of criticism or impose a fine:

- (1) where the trademark is falsely represented as registered;

(2) where any provision of Article 10 of the Trademark Law is violated; and

(3) where the goods are roughly or poorly manufactured, or are of bad quality which pass off as those of good quality, so as to deceive consumers.

Any party dissatisfied with the decision of the administrative authority for industry and commerce to impose a fine in accordance with the provisions of Article 45, 47 or 48 may, within fifteen days from receipt of the notification, institute legal proceedings with the people's court. If there have been instituted no legal proceedings or made no performance of the decision upon the expiry of the said period, the administrative authority for industry and commerce may request the people's court for compulsory execution.

[g] Protection of Registered Trademark

The exclusive right to use a registered trademark is limited to the trademark which has been registered and to the goods in respect of which the registration has been made. The following acts shall constitute infringement of the exclusive right:

(1) To use a trademark that is identical with or similar to a registered trademark in relation to identical or similar goods without the consent of the owner of the registered trademark;

(2) To sell goods that are in infringement of the exclusive right to use a registered trademark;

(3) To counterfeit, or make without authorization, representations of a registered trademark of another person, or offers for sale such representations;

(4) changes a registered trademark and put goods bearing the changed trademark on market without consent of the owner of the registered trademark; or

(5) causes, in other respects, prejudice to the exclusive right of another person to use a registered trademark.

Where a dispute arises from any of the above acts of infringement of the exclusive right to use a registered trademark, the parties involved shall settle the dispute through consultation. Where any of the parties refuses to pursue consultation or where consultation fails, the owner of the registered trademark or an interested party may institute legal proceedings with the people's court, or request the administrative authority for industry and commerce for actions.

The amount of damages for infringement of the exclusive right to use a registered trademark shall be the profit that the infringer has earned through the infringement during the period of the infringement or the losses that the infringe has suffered through the infringement during the period of the infringement, including any reasonable expenses the infringe has incurred

in his effort to stop the infringement.

Where the profit earned by the infringer or losses suffered by the infringer through the infringement mentioned in the preceding paragraph cannot be determined, the people's court shall grant a compensation not exceeding RMB 500,000 yuan, according to the circumstances of the act of infringement.

Where a party sales goods without knowing the infringement of the right of the owner of the registered trademark on the goods which he sells, but is able to prove that he has obtained the goods lawfully and to identify the supplier, he shall not be held liable for damages.

Where the owner of a registered trademark or an interested party has evidence indicating that another person is engaged in or will soon engage in an act of infringement of the former's exclusive right of his registered trademark and that, unless the act is stopped in a timely manner, irreparable injury will be caused to his legitimate rights and interests, he may, before instituting legal proceedings, apply to the people's court for measures prohibiting the act and preserving the latter's property.

To stop an act of infringement, where evidence may be destroyed or lost or become difficult to obtain in the future, the owner of a registered trademark or an interested party may, before instituting legal proceedings, apply to the people's court to have the evidence preserved.

Any person who, without the consent of the owner of a registered trademark, uses a trademark that is identical with the registered trademark in relation to identical goods, if it constitutes a crime, shall be prosecuted according to law for his criminal liabilities in addition to compensating the damages that the infringer suffers.

[3] Copyright

The Copyright Law of the People's Republic of China (Copyright Law) was first adopted in 1990. To comply with the rules of WTO, China newly amended the Copyright Law and its Implementing Regulations in 2001 and 2002 respectively.

[a] General Provisions

According to the newly amended Copyright Law, Chinese citizens, legal entities or other organizations, shall enjoy copyright over their works, whether published or not. The term "works" includes works of literature, art, natural science, social science, engineering technology and the like, such as: (1) written works; (2) oral works; (3) musical, dramatic, quyi', choreographic and acrobatic works; (4) works of fine art and architecture; (5)

photographic works; (6) cinematographic works and works created by virtue of an analogous method of film production; (7) drawings of engineering designs, and product designs; maps, sketches and other graphic works and model works; (8) computer software; (9) other works as provided for in laws and administrative regulations.

The Copyright Law shall not be applicable to:

(1) laws; regulations; resolutions, decisions and orders of State organs; other documents of a legislative, administrative or judicial nature; and their official translations;

(2) news on current affairs; and

(3) calendars, numerical tables and forms of general use, and formulas.

The exercise of the copyright shall not violate the Constitution, or the law and may not harm the public interest. Prohibited works shall not be protected by the law.

[b] Copyright Owners and Their Rights

According to the newly amended Copyright Law, "copyright owners" shall include: (1) authors; (2) other citizens, legal entities and other organizations enjoying copyright in accordance with this Law. "Copyright" shall include the following personality rights and property rights:

(1) the right of publication, that is, the right to decide whether to make a work available to the public;

(2) the right of authorship, that is, the right to claim authorship and to have the author's name mentioned in connection with the work;

(3) the right of alteration, that is, the right to alter or authorize others to alter one's work;

(4) the right of integrity, that is, the right to protect one's work against distortion and mutilation;

(5) the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work or by any other means;

(6) the right of distribution, that is, the right to make available to the public the original or reproductions of a work through sale or other transfer of ownership;

(7) the right of rental, that is, the right to authorize, with payment, others to temporarily use cinematographic works, works created by virtue of an analogous method of film production,

and computer software, except any computer software that is not the main subject matter of rental;

(8) the right of exhibition, that is, the right to publicly display the original or reproduction of a work of fine art and photography;

(9) the right of performance, that is, the right to publicly perform a work and publicly broadcast the performance of a work by various means;

(10) the right of showing, that is, the right to show to the public a work, of fine art, photography, cinematography and any work created by analogous methods of film production through film projectors, over-head projectors or any other technical devices;

(11) the right of broadcast, that is, the right to publicly broadcast or communicate to the public a work by wireless means, to communicate to the public a broadcast work by wire or relay means, and to communicate to the public a broadcast work by a loudspeaker or by any other analogous tool used to transmit symbols, sounds or pictures;

(12) the right of communication of information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them;

(13) the right of making cinematographic work, that is, the right to fixate a work on a carrier by way of film production or by virtue of an analogous method of film production;

(14) the right of adaptation, that is, the right to change a work to create a new work of originality;

(15) the right of translation, that is, the right to translate a work in one language into one in another language;

(16) the right of compilation, that is, the right to compile works or parts of works into a new work by reason of the selection or arrangement; and

(17) any other rights a copyright owner is entitled to enjoy.

A copyright owner may authorize another person to exercise, or assign in part or in whole, the rights under the preceding paragraphs (5) to (17), and receive remuneration.

[c] Ownership of Copyright

Except where otherwise provided, the copyright in a work shall belong to its author, the citizen who has created the Work. Where a work is created according to the intention and

under the supervision and responsibility of a legal entity or other organization, such legal entity or organization shall be deemed to be the author of the work.

Where a work is created by adaptation, translation, annotation or arrangement of a preexisting work, the copyright in the work thus created shall be enjoyed by the adapter, translator, annotator or arranger, provided that the exercise of such copyright shall not prejudice the copyright in the original work.

Where a work is created jointly by two or more co-authors, the copyright in the work shall be enjoyed jointly by those co-authors. Co-authorship may not be claimed by anyone who has not participated in the creation of the work. If a work of joint authorship can be separated into independent parts and exploited separately, each co-author shall be entitled to independent copyright in the parts that he has created, provided that the exercise of such copyright shall not prejudice the copyright in the joint work as a whole.

The ownership of the copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party.

[d] Duration of Protection of Copyrights

The duration of protection of rights of authorship, alteration and integrity of an author shall be unlimited. The duration of protection for the right of publication and the rights referred to in Article 10, paragraphs (5) to (17), of the Copyright Law in respect of a work of a citizen shall be the lifetime of the author and fifty years after his death, and expires on 31 December of the fiftieth year after the death of the author. In the case of a work of joint authorship, such term shall expire on 31 December of the fiftieth year after the death of the last surviving author.

The duration of protection for the right of publication and the rights provided for in Article 10, paragraphs (5) to (17), of this Law in respect of a work where the copyright belongs to a legal entity or other organization or in respect of a work created in the course of employment where the legal entity or other organization enjoys the copyright (except the right of authorship), shall be fifty years, and expires on 31 December of the fiftieth year after the first Publication of such work, however, any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

[e] Limitations on Rights

In the following cases, a work may be exploited without permission from, and without

payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and other legal rights enjoyed by the copyright owner shall not be prejudiced:

- (1) use of a published work for the purposes of the user's own private study, research or self-entertainment;
- (2) appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on a work, or explanation of an issue;
- (3) reuse or citation, for any unavoidable reason, of a published work in newspapers, periodicals, at radio stations, television stations or any other media for the purpose of reporting current events;
- (4) reprinting by newspapers or periodicals, or rebroadcasting by radio stations, television stations, or any other media, of articles on current issues relating to politics, economics or religion published by other newspapers, periodicals, or broadcast by other radio stations, television stations or any other media except where the author has declared that the reprinting and rebroadcasting is not permitted;
- (5) publication in newspapers or periodicals, or broadcasting by radio stations, television stations or any other media, of a speech delivered at a public gathering, except where the author has declared that the publication or broadcasting is not permitted;
- (6) translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;
- (7) use of a published work, within proper scope, by a State organ for the purpose of fulfilling its official duties;
- (8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or any similar institution, for the purposes of the display, or preservation of a copy, of the work;
- (9) free-of-charge live performance of a published work and said performance neither collects any fees from the members of the public nor pays remuneration to the performers;
- (10) copying, drawing, photographing or video recording of an artistic work located or on display in an outdoor public place;
- (11) translation of a published work of a Chinese citizen, legal entity or any other

organization from the Han language into any minority nationality language for publication and distribution within the country; and

(12) transliteration of a published work into Braille and publication of the work so transliterated.

Besides the above limitation on copyrights, another one is: in compiling and publishing textbooks for implementing the nine-year compulsory education and the national educational program, parts of published works, short written works, music works or single copies of works of painting or photographic works may be compiled into textbooks without the authorization from the authors, except where the authors have declared in advance the use thereof is not permitted, with remuneration paid according to the regulations, the name of the author and the title of the work indicated and without prejudice to other rights enjoyed by the copyright owners according to this Law.

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

[f] Copyright Licensing and Assignment Contracts

Unless otherwise provided in the Copyright Law, anyone who exploits a work created by others shall conclude a contract with, or otherwise obtain permission from the copyright owner. Also, assignment of a right referred to in Article 10, paragraphs (5) to (17), of the Copyright Law shall require conclusion of a contract in writing.

The other party shall not, without permission from the copyright owner, exercise any right that the copyright owner has not expressly licensed or assigned in the licensing and assignment contract. Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have obtained, pursuant to the relevant provisions of this Law, the right to exploit the copyright of others, shall not prejudice the authors' rights of authorship, alteration or integrity, or their right to remuneration.

[g] Publication, Performance, Sound Recording,

Video Recording and Broadcasting

Rights relate to publication, performance, sound recording, video recording and broadcasting are also provided in the Copyright Law.

[h] Legal Liabilities and Enforcement Measures

According to the Copyright Law, anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making an apology or paying compensation for damages, depending on the circumstances:

- (1) publishing a work without the permission of the copyright owner;
- (2) publishing a work of joint authorship as a work created solely by oneself, without the permission of the other co-authors;
- (3) having one's name mentioned in connection with a work created by another, in order to seek personal fame and gain, where one has not taken part in the creation of the work;
- (4) distorting or mutilating a work created by another;
- (5) plagiarizing a work of another person;
- (6) exploiting by exhibition, film production or any analogous method of film production, or by adaptation, translation, annotation, or by other means, without the permission of the copyright owner, unless otherwise provided in this Law;
- (7) exploiting a work created by another person without paying remuneration as prescribed by regulations;
- (8) renting a work, sound recording or video recording, without the permission of the copyright owner of a cinematographic work, a work created by virtue of an analogous method of film production, computer software, sound recording or video recording or the owner of a copyright-related right unless otherwise provided in this Law.
- (9) exploiting the typographic arrangement of a book or periodical without the permission of the publisher
- (10) broadcasting live a performance or communicating the live performance to the public, or recording his performance without the permission of the performer; or
- (11) committing any other act of infringement of copyright and of other rights and interests relating to copyright.

Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making an apology or paying damages, depending on the circumstances; if public interests were damaged, he may, in addition, be ordered by the copyright administration department to cease the infringing act, confiscate unlawful income from the act, confiscate and destroy infringing

reproductions and imposing a fine; where the circumstances are serious, the copyright administration department may also confiscate the materials, tools, and equipment mainly used for making the infringing reproductions; and if the act constitutes a crime, the infringer shall be prosecuted for his criminal liability:

(1) reproducing, distributing, performing, showing, broadcasting, compiling or communicating to the public on an information network a work created by another person, without the permission of the copyright owner, unless otherwise provided in this Law;

(2) publishing a book where the exclusive right of publication belongs to another person;

(3) reproducing and distributing a sound recording or video recording of a performance, or communicating to the public his performance on an information network without the permission of the performer, unless otherwise provided in the Law;

(4) reproducing and distributing or communicating to the public on an information network a sound recording or video recording produced by another person, without the permission of the producer, unless otherwise provided in the Law

(5) broadcasting and reproducing a radio or television program produced by a radio station or television station without the permission of the radio station or television station, unless otherwise provided in this Law;

(6) intentionally circumventing or destroying the technological measures taken by a right holder for protecting the copyright or copyright-related rights in his work, sound recording or video recording, without the permission of the copyright owner, or the owner of the copyright-related rights, unless otherwise provided in law or in administrative regulations;

(7) intentionally deleting or altering the electronic right management information of a work, sound recording or video recording, without the permission of the copyright owner or the owner of a copyright-related right, unless otherwise provided in law or in administrative regulations; or

(8) producing or selling a work on which the signature of another is counterfeited.

Where a copyright or a copyright-related right is infringed, the infringer shall compensate for the actual injury suffered by the right holder; where the actual injury is difficult to compute, the damages shall be paid on the basis of the unlawful income of the infringer. The amount of damages shall also include the appropriate fees paid by the right holder to stop the infringing act. If the right holder's actual injury or infringer's unlawful income cannot be determined, the

People's Court shall judge the damages not exceeding RMB 500,000 depending on the circumstances of the infringing act.

Provisional measures are also provided in the Copyright Law:

(1) A copyright owner or owner of a copyright-related right who has evidence to establish that another person is committing or will commit an act of infringing his right, which could cause irreparable injury to his legitimate rights and interests if the act is not stopped immediately, may apply to the People's Court for ordering cessation of the related act and for taking the measures for property preservation before instituting legal proceedings.

(2) For the purpose of preventing an infringing act and under the circumstance where the evidence could be lost or is difficult to obtain afterwards, the copyright owner or the owner of a copyright-related right may apply to the People's Court for evidence preservation before initiating legal proceedings.

Chapter 9 Employment Law

The basic legislation of employment in China is the Labour Law of the People's Republic of China (Labour Law), adopted in 1994 and effective as of January 1, 1995. Labour Law is applicable to employment in enterprises of various kinds, including foreign-invested enterprises. Besides the Labour Law, there are other provisions related to employment in laws such as the Law of the People's Republic of China on Chinese-Foreign Equity Joint Venture, the Law of the People's Republic of China on Foreign-Capital Enterprise, the Trade Union Law of the People's Republic of China, the Law of the People's Republic of China on the Protection of Rights and Interests of Women, etc. There are also many administrative regulations related to employment, such as the Regulations on Labour Administration in Foreign-Invested Enterprises, the Provisional Rules on the Administration of Salary Income in Foreign-Invested Enterprises, etc. The following is an introduction of the Labour Law.

[1] General Provisions

The Labour Law applies to all enterprises and individual economic organizations (employing units) within the territory of the People's Republic of China and labourers who established a labour relationship therewith. Administrative organs, institutions and societies and labourers who established a labour contract relationship therewith shall follow this Law.

According to the Labour Law, labourers shall equally have the right to be employed, choose occupations, obtain remuneration for their labour, take rest, have holidays and leaves, obtain protection of occupational safety and health, receive vocational training, enjoy social insurance and welfare, and submit applications for settlement of labour disputes, and other rights relating to labour as provided by law. Labourers shall fulfill their labour tasks, improve their vocational skills, follow rules on occupational safety and health, and observe labour discipline and professional ethics

The employing units shall establish and perfect their rules and regulations in accordance with the law so as to ensure that labourers enjoy the right to work and fulfill the labour obligations.

According to the Labour Law, Labourers shall have the right to participate in and organize trade unions in accordance with the law. Trade unions shall represent and safeguard the legitimate rights and interests of labourers, and independently conduct their activities in accordance with the law.

[2] Promotion of Employment

According to the Labour Law, the State shall encourage enterprises, institutions and societies to initiate industries or expand businesses for the increase of employment within the scope of the provisions of laws, and administrative rules and regulations. Local people's governments at various levels shall take measures to develop various kinds of job-introduction agencies and provide employment services.

Labourers shall not be discriminated against in employment, regardless of their ethnic community, race, sex, or religious belief. Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for females as stipulated by the State. Where there are special stipulations in laws, rules and regulations on the employment of the disabled, the personnel of national minorities, and demobilized army men, such special stipulations shall apply.

No employing units shall be allowed to recruit juveniles under the age of 16. Units of literature and art, physical culture and sport, and special arts and crafts that need to recruit juveniles under the age of 16 must go through the formalities of examination and approval according to the relevant provisions of the State and guarantee their right to compulsory education.

[3] Labour Contracts and Collective Contracts

According to the Labour Law, a labour contract shall be concluded where an employment relationship is to be established. A labour contract is the agreement reached between a labourer and an employing unit for the establishment of the employment relationship and the definition of the rights, interests and obligations of each party.

Conclusion and modification of a labour contract shall follow the principles of equality, voluntariness and unanimity through consultation, and shall not run counter to the provisions of laws, administrative rules and regulations. Once concluded in accordance with the law, a labour contract shall be binding. The parties involved must fulfill the obligations as stipulated in the labour contract.

According to the Labour Law, a labour contract shall be invalid if it:

- (1) violates laws, administrative rules and regulations; or
- (2) is concluded by resorting to such measures as cheating and intimidation.

An invalid labour contract shall have no legal binding force from the very beginning of its conclusion. Where a part of a labour contract is confirmed as invalid and does not affect the remaining part, the remaining part shall remain valid. The invalidity of a labour contract shall be confirmed by a labour dispute arbitration committee or a people's court.

A labour contract shall be concluded in written form and contain clauses of the term of the labour contract, contents of work, labour protection and working conditions, labour remuneration, labour discipline, conditions for the termination of a labour contract, and responsibility for the violation of a labour contract. Apart from the above required clauses, other contents in a labour contract may be agreed upon through consultation by the parties involved. In case a labourer has kept working in a same employing unit for ten years or more and the parties involved agree to extend the term of the labour contract, a labour contract with a flexible term shall be concluded between them if the labourer so requested. A probation period may be agreed upon in a labour contract. The longest probation period shall not exceed six months. The parties involved in a labour contract may reach an agreement in their labour contract on matters concerning keeping the commercial secrets of the employing unit.

A labour contract shall terminate upon the expiration of its term or the emergence of the conditions for the termination of the labour contract as agreed upon by the parties involved. A labour contract may be discharged upon agreement reached between the parties involved through consultation. The employing unit may discharge the labour contract with if the

labourer:

- (1) is proved not up to the requirements for recruitment during the probation period; or
- (2) seriously violates labour disciplines or the rules and regulations of the employing units; or
- (3) causes great losses to the employing unit due to serious dereliction of duty or engagement in malpractice for selfish ends; or
- (4) is investigated for criminal responsibilities in accordance with the law.

In any of the following circumstances, the employing unit may discharge a labour contract but a written notification shall be given to the labourer 30 days in advance:

- (1) where a labourer is unable to take up his original work or any new work arranged by the employing unit after the completion of his medical treatment for illness or injury not suffered at work; or
- (2) where a labourer is unqualified for his work and remains unqualified even after receiving a training or an adjustment to an other work post; or
- (3) no agreement on modification of the labour contract can be reached through consultation by the parties involved when the objective conditions taken as the basis for the conclusion of the contract have greatly changed so that the original labour contract can no longer be carried out.

During the period of statutory consolidation when the employing unit comes to the brink of bankruptcy or runs deep into difficulties in production and management, and if reduction of its personnel becomes really necessary, the unit may make such reduction after it has explained the situation to the trade union or all of its staff and workers 30 days in advance, solicited opinions from them and reported to the labour administrative department. Where said the employing unit is to recruit personnel six months after the personnel reduction, the reduced personnel shall have the priority to be re-employed.

The employing unit shall make economic compensations in accordance with the relevant provisions of the State if it discharges its labour contracts according to the stipulations in Article 24, Article 26, and Article 27 of the Labour Law. However, the employing unit shall not discharge the labour contract with a labourer in accordance with the stipulations in Article 26 and Article 27 of the Labour Law in any of the following circumstances:

- (1) the labourer is confirmed to have totally or partially lost the ability to work due to

occupational diseases or injuries suffered at work; or

(2) the labourer is receiving medical treatment for diseases or injuries within the prescribed period of time; or

(3) the labourer is a female staff member or worker who is in pregnant, puerperal, or breast-feeding period; or

(4) other circumstances stipulated by laws, administrative rules and regulations.

The trade union of an employing unit shall have the right to air its opinions if it regards as inappropriate the revocation of a labour contract by the unit. If the employing unit violates laws, rules and regulations or labour contracts, the trade union shall have the right to request for reconsideration. Where the labourer applies for arbitration or brings in a lawsuit, the trade union shall render him support and assistance in accordance with the law.

A labourer who intends to revoke his labour contract shall give a written notice to the employing unit 30 days in advance. However, a labourer may notify at any time the employing unit of his decision to revoke the labour contract in any of the following circumstances: (1) within the probation period; (2) where the employing unit forces the labourer to work by resorting to violence, intimidation or illegal restriction of personal freedom; or (3) failure on the part of the employing unit to pay labour remuneration or to provide working conditions as agreed upon in the labour contract.

The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption.

A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise. A collective contract shall be reported to the labour administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labour administrative department within 15 days from the date of the receipt of a copy of the contract. Collective contracts concluded in accordance with the law shall have binding force to both the enterprise and all of its staff and workers. The standards on working conditions and labour payments agreed upon in labour contracts concluded between

individual labourers and the enterprises shall not be lower than those as stipulated in collective contracts.

[4] Working Hours, Rest and Vacations

The State shall practise a working hour system under which labourers shall work for no more than eight hours a day and no more than 44 hours a week on the average. But according to the Regulations on the Working Time of Employees promulgated by the State Council and revised in 1995, all enterprises shall adopt a working hour system under which labourers shall work for no more than eight hours a day and no more than 40 hours a week starting from 1 May 1997. The employing unit shall guarantee that its staff and workers have at least one day off in a week. Where an enterprise can not follow the above provisions due to its special production nature, it may adopt other rules on working hours and rest with the approval of the labour administrative department.

The employing unit shall arrange holidays for labourers in accordance with the law during the following festivals: (1) the New Year's Day; (2) the Spring Festival; (3) the International Labour Day; (4) the National Day; and (5) other holidays stipulated by laws, rules and regulations.

The employing unit may extend working hours due to the requirements of its production or business after consultation with the trade union and labourers, but the extended working hour for a day shall generally not exceed one hour; if such extension is called for due to special reasons, the extended hours shall not exceed three hours a day under the condition that the health of labourers is guaranteed. However, the total extension in a month shall not exceed thirty six hours. However, the extension of working hours shall not be subject to restriction of the aforesaid provisions of under any of the following circumstances:

- (1) where emergent dealing is needed in the event of natural disaster, accident or other reason that threatens the life, health and the safety of property of labourers;
- (2) where prompt rush repair is needed in the event of breakdown of production equipment, transportation lines or public facilities that affects production and public interests; and
- (3) other circumstances as stipulated by laws, administrative rules and regulations.

The employing unit shall not extend working hours of labourers in violation of the provisions of this Law.

The employing unit shall, according to the following standards, pay labourers remunerations

higher than those for normal working hours in accordance with the following standards:

(1) to pay no less than 150 percent of the normal wages if the extension of working hours is arranged;

(2) to pay no less than 200 percent of the normal wages if the extended hours are arranged on days of rest and no deferred rest can be taken; and

(3) to pay no less than 300 percent of the normal wages if the extended hours are arranged on statutory holidays.

The State shall practise a system of annual vacation with pay. Labourers who have kept working for one year and more shall be entitled to annual vacation with pay. The concrete measures shall be formulated by the State Council.

[5] Wages

The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work. The level of wages shall be gradually raised on the basis of economic development. The State shall exercise macro-regulations and control over the total payroll. Also, the State shall implement a system of guaranteed minimum wages. Specific standards on minimum wages shall be determined by the people's governments of provinces, autonomous regions or municipalities directly under the Central Government and reported to the State Council for the record. Wages paid to labourers by the employing unit shall not be lower than the local standards on minimum wages.

The employing unit shall independently determine its form of wage distribution and wage level for its own unit according to law and based on the characteristics of its production and business and economic results. Wages shall be paid monthly to labourers themselves in form of currency. The wages paid to labourers shall not be deducted or delayed without justification. The employing unit shall pay wages according to law to labourers who observe statutory holidays, take leaves during the periods of marriage or funeral, or participate in social activities in accordance with the law.

[6] Occupational Safety and Health

The employing unit must establish and perfect the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate labourers on occupational safety and health, prevent accidents in the process of work, and reduce occupational hazards. Facilities of occupational safety and health must meet the

standards stipulated by the State. Facilities of occupational safety and health installed in new projects and projects to be rebuilt or expanded must be designed, constructed, put into operation with the main project at the same time.

The employing unit must provide labourers with occupational safety and health conditions conforming to the provisions of the State and necessary articles of labour protection, and providing regular health examination for labourers engaged in work with occupational hazards. Labourers to be engaged in specialized operations must receive specialized training and acquire qualifications for such special operations. Labourers must strictly abide by rules of safe operation in the process of their work. Labourers shall have the right to refuse to operate if the management personnel of the employing unit command the operation in violation of rules and regulations or force labourers to run risks in operation; labourers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

[7] Special Protection For Female and Juvenile Workers

According to the Labour Law, the State shall provide female workers and juvenile workers with special protection. Juvenile workers refer to labourers at the age of 16 but not 18 yet. It is prohibited to arrange female workers to engage in work down the pit of mines, or work with Grade IV physical labour intensity as stipulated by the State, or other work that is unsuitable prohibited for female workers to do. During their menstrual periods, female workers shall not be arranged to engaged in work high above the ground, under low temperature, or in cold water or work with Grade III physical labour intensity as stipulated by the State; and during their pregnancy female workers shall not be arranged to engage in work with Grade III physical labour intensity as stipulated by the State or other work that they should avoid in pregnancy. Female workers pregnant for seven months or more shall not be arranged to extend their working hours or to work night shifts. After childbirth, female workers shall be entitled to no less than ninety days of maternity leaves with pay. During the period of breast-feeding their babies less than one year old, they shall not be arranged to engage in work with Grade III physical labour intensity as stipulated by the State or other work that is unsuitable and prohibited for them to do during their breast-feeding period, or to extend their working hours or to work night shifts.

No juvenile workers shall be arranged to engage in work down the pit of mines, work that is poisonous or harmful, work with Grade IV physical labour intensity as stipulated by the State, or other work that is unsuitable and prohibited for them to do. The employing unit shall

provide regular physical examinations to juvenile workers.

[8] Vocational Training

The employing unit shall establish a system for vocational training, raise and use funds for vocational training in accordance with the provisions of the State, and provide labourers with vocational training in a planned way and in the light of the actual situation of the unit. Labourers to be engaged in technical work must receive pre-job training before taking up their posts.

The State shall determine occupational classification, set up professional skill standards for the occupations classified, and practise a system of vocational qualification certificates. Examination and verification organizations authorized by the government are in charge of the examination and verification of the professional skills of labourers.

[9] Social Insurance and Welfare

The State shall develop social insurance undertakings, establish a social insurance system, and set up social insurance funds so that labourers may receive assistance and compensations under such circumstances as old age, illness, work-related injury, unemployment and child-bearing. The sources of social insurance funds shall be determined according to the categories of insurance, and an overall pooling of insurance funds from the society shall be introduced step by step. The employing unit and labourers must participate in social insurance and pay social insurance premiums in accordance with the law.

Labourers shall, in accordance with the law, enjoy social insurance benefits under the following circumstances: (1) retirement; (2) illness or injury; (3) disability caused by work-related injury or occupational disease; (4) unemployment; (5) child-bearing. The survivors of the insured labourer's family shall be entitled to subsidies for survivors in accordance with the law after the labourer's death. The conditions and standards for labourers to enjoy social insurance benefits shall be stipulated by laws, rules and regulations. The social insurance amount that labourers are entitled to, must be timely paid in full.

The State shall encourage the employing unit to set up supplementary insurance for labourers according to its practical situations. The State shall advocate that labourers practise individual insurance in form of saving account. The employing unit shall create conditions so as to improve collective welfare and raise welfare treatment of labourers.

[10] Labour Disputes

Where a labour dispute between the employing unit and labourers takes place, the parties concerned may apply for mediation or arbitration or take legal proceedings according to law, or may seek for a settlement through consultation. Where a labour dispute takes place, the parties involved may apply to the labour dispute mediation committee of their unit for mediation; if the mediation fails and one of the parties requests for arbitration, that party may apply to the labour dispute arbitration committee for arbitration. Either party may also directly apply to the labour dispute arbitration committee for arbitration. If one of the parties is not satisfied with the adjudication of arbitration, the party may bring the case to a people's court.

The party that requests for arbitration shall file a written application to a labour dispute arbitration committee within 60 days starting from the date of the occurrence of a labour dispute. The arbitration committee may generally make an adjudication within 60 days from the date of receiving the application. The parties involved must implement the adjudication if no objections are raised. Where a party involved in a labour dispute is not satisfied with the adjudication, the party may bring a lawsuit to a people's court within 15 days from the date of receiving the ruling of arbitration. Where one of the parties involved neither brings a lawsuit nor implements the adjudication of arbitration within the statutory time limit, the other party may apply to a people's court for compulsory implementation.

Where a dispute arises from the conclusion of a collective contract and no settlement can be reached through consultation by the parties concerned, the labour administrative department of the local people's government may organize the relevant departments to handle the case in coordination. Where a dispute arises from the implementation of a collective contract and no settlement can be reached through consultation by the parties concerned, the dispute may be submitted to the labour dispute arbitration committee for arbitration. Any party that is not satisfied with the adjudication of arbitration may bring a lawsuit to a people's court within 15 days from the date of receiving the adjudication.