

## COMMENTS

# THE DEVELOPMENT OF COMMERCIAL LAW FOR FOREIGN INVESTMENT IN CHINA

### I. INTRODUCTION

In a short time, China has produced a body of law that plays a key role in drawing foreign investment to China.<sup>1</sup> The most important laws and regulations for foreign investment are the 1982 constitution,<sup>2</sup> the Joint Venture Law,<sup>3</sup> the Foreign Economic Contract Law,<sup>4</sup> the regulations on preferential areas in China,<sup>5</sup> the Joint Venture Foreign Exchange Balancing Provisions,<sup>6</sup> the Foreign Enterprise Law,<sup>7</sup> the Civil Code,<sup>8</sup> the Encouragement Law,<sup>9</sup> and the laws and regulations associated with each. Investors interested in China need to be aware of these new laws and regulations. This comment provides some historical background and surveys the major provisions.

### II. BACKGROUND

Written law has traditionally played a limited role in China's society. Instead, the teachings of Confucius provided the standards to judge individual conduct, and the family, village elders, or local associations resolved any conflicts. Before 1911, China used written law only when other means of social control failed.<sup>10</sup>

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1. Yuqing, *Like Bamboo Shoots after a Rain: Exploiting the Chinese Law and New Regulations on Sino-foreign Joint Ventures*, 8 NW. J. INT'L L. & BUS. 59, 64-65 (1987).

2. See *infra* notes 17-18 and accompanying text.

3. Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment [hereinafter JV Law]. See *infra* notes 19-78 and accompanying text.

4. Foreign Economic Contract Law [hereinafter FECL]. See *infra* notes 79-91 and accompanying text.

5. See *infra* notes 92-122 and accompanying text.

6. Provisions of the State Council on the Question of the Balancing of Foreign Exchange Receipts and Expenditures of Chinese-foreign Joint Ventures [hereinafter JV Foreign Exchange Balancing]. See *infra* notes 123-27 and accompanying text.

7. Law of the People's Republic of China Concerning Enterprises with Sole Foreign Investment [hereinafter Foreign Enterprise Law]. See *infra* notes 128-43 and accompanying text.

8. General Principles of Civil Law of the People's Republic of China [hereinafter Civil Code]. See *infra* notes 144-56 and accompanying text.

9. Provisions for Encouragement of Foreign Investment [hereinafter Encouragement Law]. See *infra* notes 157-81 and accompanying text.

10. Valauskas, *China Special Economic Zones in Perspective: A Contextual Discussion with Emphasis on the Shekou Industrial Zone*, 9 HASTINGS INT'L & COMP. L. REV. 149, 173 (1986).

Soon after coming to power in 1949, the Communist government of the People's Republic of China (PRC) revoked all existing laws and established a new legal system. A less formal and more traditional legal system gradually replaced the formal legal system. By the late 1950s, most laws were once again unwritten. China's powerful leader of that time, Chairman Mao Tse Tung, had a concept for the new state which provided the moral rules for the Confucian legal system. The informal system depended on Maoist thought; thus, those in power could manipulate the system to their benefit. Confusion and disorder resulted, but Mao's distrust of the formal legal system prevented its restoration until his death in 1976.<sup>11</sup>

In the late 1970s, China's new leaders considered the establishment of a formal legal system necessary to keep order and to build a strong socialist state.<sup>12</sup> In December 1978, before the announcement of the open door policy,<sup>13</sup> China had no laws or regulations on foreign investment<sup>14</sup> and realized that it must provide a legal structure for business transactions in order to attract foreign investment.<sup>15</sup> Since the late 1970s, China has also conducted an ambitious economic reform program which affects nearly every aspect of Chinese life. The development of law has played an important part in the reform process. China faced the task of developing a new legal system to regulate the domestic economy and to stimulate foreign trade. Prior to economic reform and the open door policy, China made little, if any, effort to codify the legal relationship between Chinese and foreign enterprises.<sup>16</sup>

### III. CONSTITUTION

The most important source of law on foreign investment in the PRC is its constitution, which was adopted in 1982. Article 18 allows foreign enterprises, economic organizations, and individuals to invest in China in accordance with Chinese law. Foreign investors also may cooperate economically with Chinese enterprises and other economic organizations. The constitution protects the lawful rights and interests of foreign investors, but foreign enterprises and individuals must obey China's laws.<sup>17</sup>

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11. *Id.* at 174-75.

12. *Id.* at 175-76.

13. The open door policy is China's official policy of promoting foreign investment. Note, *The Wholly Foreign-Owned Enterprise in China: An Alternative to the Equity Joint Venture*, 11 HASTINGS INT'L & COMP. L. REV. 129, 132 (1987).

14. Yuqing, *supra* note 1, at 63.

15. Valauskas, *supra* note 10, at 175-76.

16. Hayden, *The Role of Contract Law in Developing the Chinese Legal Culture*, 10 HASTINGS INT'L & COMP. L. REV. 571 (1987).

17. Gu, *Recent Developments in Chinese Economic Legislation*, 21 U.S.F. L. REV. 217, 221 (1987).

Although China has a written constitution, it is not genuinely the supreme law of the land. China's courts can not necessarily enforce the guarantees in the constitution because the Communist Party controls the National People's Congress in China and makes the basic policy and legislative decisions for the country. Actions by the National People's Congress can override and effectively amend China's constitution, even though the constitution states otherwise.<sup>18</sup>

#### IV. JOINT VENTURE LAW

On July 1, 1979, the National People's Congress adopted seven laws, including the Joint Venture Law for Sino-foreign joint ventures in China. The government showed the importance that it gave the Joint Venture Law by making it effective immediately.<sup>19</sup> Foreign investors heralded the Joint Venture Law as a milestone in China's modernization program.<sup>20</sup> Like most of the laws adopted by China, the Joint Venture Law is a brief declaration of principles rather than a regulatory document. To implement the law, China issued another more detailed, but still brief, statute.<sup>21</sup>

This section of the comment addresses both equity and contractual joint ventures. Equity joint ventures are those created under the Joint Venture Law,<sup>22</sup> as opposed to contractual joint ventures, to which the new law does not apply. A contractual joint venture is based solely upon contract.<sup>23</sup>

##### A. Equity Joint Ventures

Equity joint ventures started slowly because China and foreign investors had conflicting expectations. China saw the equity joint venture as an export enterprise to earn foreign exchange, whereas foreign investors mainly wanted to trade in China's domestic market. China hoped to develop its backward regions with technology transfers, but foreign investors preferred to locate in economically advanced places with well-developed infrastructures and skilled workers. China wanted equity joint ventures to use domestic raw materials and components, but foreign investors wanted superior, more dependable, and more accessible foreign raw materials. China emphasized its sovereignty and control, even

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18. Thomas, *China's "Open Door" Policy—Do the Words Mean What They Say?*, 23 WIL-  
LAMETTE L. REV. 615, 616 (1987).

19. Valauskas, *supra* note 10, at 175-76.

20. Chang and Pow, *Trade and Investment Law and Practice in the People's Republic of  
China*, 3 CHINA L. REP. 5, 24 (1985).

21. Valauskas, *supra* note 10, at 176.

22. See *infra* notes 24-69 and accompanying text.

23. See *infra* notes 70-78 and accompanying text.

though foreign investors sought sufficient autonomy to meet the demands of the marketplace. Other factors leading to the disappointing pace of foreign investment included China's strict foreign exchange readjustment policies in 1980 and 1981, the worldwide economic recession in the early 1980s, better investment terms offered by China's neighbors, and China's inadequate legislation on foreign investment.<sup>24</sup> Fortunately, however, China's 1983 Joint Venture Implementing Regulations are more obliging to foreign investors.<sup>25</sup>

An equity joint venture is a legal person<sup>26</sup> in China and is subject to Chinese laws.<sup>27</sup> A foreign investor in an equity joint venture must either supply advanced technology or export most of its products, observe China's laws and regulations, and establish enterprises that will help China.<sup>28</sup> Article 19 of the Joint Venture Law Implementing Act limits the liability of the joint venture parties to the amount of capital contribution subscribed by each party;<sup>29</sup> however, the amount of foreign investment must be at least twenty-five percent of the joint venture's total investment.<sup>30</sup>

The joint venture contract binds the parties to establish the equity joint venture. Before signing the joint venture contract, the parties may sign a joint venture agreement. Provisions of the joint venture agreement that do not conflict with the joint venture contract also govern the equity joint venture.<sup>31</sup> An equity joint venture contract must be in Chinese. If the parties also agree to have the contract in a foreign language, both versions of the contract have equal legal force.<sup>32</sup>

The Chinese party to the equity joint venture submits the necessary documents for formal approval.<sup>33</sup> The authorities then have three months to approve or to reject the equity joint venture application.<sup>34</sup> Within one month after formal approval, the equity joint venture must register with the local State Administration for Industry and Commerce. The equity joint venture is officially established when that local agency

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24. Note, *supra* note 13, at 136-37.

25. *Id.* at 137.

26. See *infra* text accompanying notes 144-48 regarding the "legal person" concept in China.

27. Chang and Pow, *supra* note 20, at 27-28. (noting the Regulations for the Implementation of the Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment [hereinafter JV Implementation Regs.]).

28. Note, *supra* note 13, at 145. (discussing JV Law arts. 1, 2, 5).

29. Chang and Pow, *supra* note 20, at 28.

30. Stein, *Wholly Foreign Owned Ventures in China: A Comparison of 3M China Ltd., Grace China Ltd. and the New Foreign Enterprise Law*, 4 CHINA L. REP. 1 (1987).

31. Chang and Pow, *supra* note 20 at 29. (discussing JV Implementation Regs. art. 13).

32. *Id.* at 30. (discussing JV Implementation Regs. art. 9(2)).

33. *Id.* (discussing JV Implementation Regs. art. 9(2)).

34. *Id.* (discussing JV Implementation Regs. art. 10).

issues the business license.<sup>35</sup> During the term of the joint venture, an equity joint venture must not reduce its registered capital.<sup>36</sup>

If one party to an equity joint venture wants to sell its interest to a third party, the other parties in the joint venture have the right to veto the sale. Joint venture parties also have preemptory rights to purchase another joint venturer's interest prior to extending the option to others. A party exercising its preemptory rights must receive terms that are at least as good as the terms offered to a third party.<sup>37</sup>

A board of directors governs the equity joint venture.<sup>38</sup> Each party separately appoints its own representatives as directors, and the joint venture parties do not act together to appoint directors. The ratio of capital contributions sets the number of directors that a party may appoint.<sup>39</sup> The chairman of the board must be an appointee of the Chinese party.<sup>40</sup> The law contains no provision for the exercise of authority by the investors in an equity joint venture. Therefore, to assure that the board cannot make important decisions without the knowledge of the foreign investor, the foreign party may be advised to appoint some of its senior personnel as directors of the joint venture.<sup>41</sup>

The general manager of the equity joint venture has the authority to control its internal affairs and to represent the joint venture in its external affairs.<sup>42</sup> The equity joint venture must also have at least one deputy general manager,<sup>43</sup> whom the general manager must consult before making a general decision.<sup>44</sup> In a typical equity joint venture, the foreign party appoints the general manager, and the Chinese party appoints the deputy general manager. Consequently, an equity joint venture operates by consensus because of the limited decision-making ability of any one party.<sup>45</sup>

An equity joint venture has limited freedom to select its employees. The local labor department specifies the localities and the worker pool from which an equity joint venture must recruit,<sup>46</sup> and the equity joint venture must gain the local labor department's consent to recruit outside

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35. *Id.* at 30-31. (noting JV Implementation Regs. art. 11).

36. Yuqing, *supra* note 1, at 79. (discussing JV Implementation Regs. art. 22).

37. *Id.* (discussing JV Implementation Regs. art. 23).

38. Chang and Pow, *supra* note 20, at 31. (noting JV Implementation Regs. art. 33).

39. *Id.* (discussing JV Implementation Regs. art. 34).

40. *Id.* at 32. (discussing JV Implementation Regs. art. 34).

41. *Id.* at 31.

42. *Id.* at 32. (noting JV Implementation Regs. art. 39).

43. *Id.* (noting JV Implementation Regs. art. 38).

44. *Id.* (noting JV Implementation Regs. art. 40).

45. *Id.*

46. *Id.* at 33. (discussing the Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment [hereinafter JV Labor Regs.] art. 3).

the specified localities or from other sources of workers.<sup>47</sup>

Removal of employees of an equity joint venture is difficult. The local labor department must approve the removal of an employee who violates the joint venture's rules,<sup>48</sup> and if an equity joint venture lays off surplus employees, it must compensate them.<sup>49</sup> In addition, the labor union may object to the equity joint venture's board of directors regarding removal of workers, arbitrate before the labor bureau, and appeal ultimately to a Chinese court.<sup>50</sup> Some employees are even immune from dismissal.<sup>51</sup>

Equity joint venture parties pay tax on the worldwide net income of a joint venture at a thirty-three percent rate. The national tax rate is thirty percent, and there is a ten percent local surtax.<sup>52</sup> Foreign parties also pay a ten percent tax on profits repatriated outside China.<sup>53</sup> Equity joint ventures with a term of at least ten years qualify for an exemption from income taxes in the first two profitable years and for a fifty percent tax reduction in the next three years.<sup>54</sup> After this tax benefit expires, an equity joint venture in a low profit operation or in a remote and economically underdeveloped location may receive a fifteen to thirty percent reduction in income taxes for ten years.<sup>55</sup> For dividends that are reinvested in China for five consecutive years, the foreign investor may ask the tax authorities to repay forty percent of the income tax, which the joint venture originally paid on the reinvested amount.<sup>56</sup> An equity joint venture may carry tax losses forward for up to five years.<sup>57</sup> Foreign personnel based in China pay high individual income taxes as well.<sup>58</sup>

An equity joint venture has an available exemption from both the Consolidated Industrial and Commercial Tax (CICT) and customs duties. The exemption applies to machinery, equipment, parts, and other materials which are either part of the foreign party's capital contribution

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47. *Id.* (noting the Provisions for the Implementation of the Regulations on Labour Management in Joint Ventures Using Chinese and Foreign Investment [hereinafter JV Labor Implementation Provisions] art. 3).

48. *Id.* (noting JV Labor Regs. art. 5).

49. *Id.* (noting JV Labor Regs. art. 4 and JV Labor Implementation Provisions art. 7).

50. *Id.* at 33-34. (discussing JV Labor Regs. arts. 6, 14).

51. *Id.* at 34. (discussing JV Labor Implementation Provisions art. 7). Examples of workers who are immune from dismissal are those who are pregnant at least six months, ill, or injured. *Id.*

52. Yuqing, *supra* note 1, at 89. (noting the Income Tax Law Concerning Joint Ventures with Chinese and Foreign Investment [hereinafter JV Tax] art. 3).

53. *Id.* (noting JV Tax art. 4).

54. *Id.* at 90; Chang and Pow, *supra* note 20, at 36. (discussing JV Tax art. 5).

55. Yuqing, *supra* note 1, at 90. (discussing JV Tax art. 5). Examples of low profit operations are farming and forestry. *Id.*

56. *Id.*; Chang and Pow, *supra* note 20, at 36-37. (discussing JV Tax art. 6).

57. Yuqing, *supra* note 1, at 90. (discussing JV Tax art. 7).

58. Chang and Pow, *supra* note 20, at 37. See Individual Income Tax Law and Detailed Rules and Regulations for the Implementation of the Individual Income Tax Law.

to the joint venture, (capital that the joint venture imports within its total amount of investment), or which the joint venture imports with additional capital. The exemption is applied to these items after China's authorities approve them, either because China has no domestic production of the product, or because China has a shortage of the product.<sup>59</sup>

An equity joint venture must generate all of its foreign exchange requirements.<sup>60</sup> A joint venture must open separate foreign exchange and Chinese currency accounts with the Bank of China or with another bank designated by the Bank of China. All of the joint venture's foreign exchange income and expenditures must use the foreign exchange account.<sup>61</sup> In the following instances, the joint venture may receive foreign currency in settlement: sales of import substitutes to a Chinese foreign-trade enterprise; construction contracts; and, in cases with special approval. A joint venture may also ask the local government or the State Planning Commission to help with foreign exchange problems if the joint venture has approval to sell most of its products domestically.<sup>62</sup> Nevertheless, there is no guarantee that a government authority will supply foreign exchange because China has a shortage of foreign exchange reserves.<sup>63</sup>

A joint venture in China does not last indefinitely. The term is usually between ten and thirty years.<sup>64</sup> When the original term ends, the joint venture parties may negotiate an extension which the authorities must approve.<sup>65</sup>

China has many internal regulations which are not available to foreign parties but which nonetheless carry the force of law. As a protection, a foreign party should agree to the application of China's law only to the extent that the law is made known to the foreign party; however, the Chinese might not accept this provision.<sup>66</sup> A foreign party may want to guarantee its rights and interests in the contract. If the appropriate government department approves the contractual guarantees, they have the force of law, and the parties need not revise their joint venture contract whenever there are new laws and regulations.<sup>67</sup>

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59. Yuqing, *supra* note 1, at 92-93. (discussing JV Implementation Regs. art. 71).

60. *Id.* at 93. (discussing JV Implementation Regs. art. 75); Chang and Pow, *supra* note 20, at 37-38. (noting JV Implementation Regs. art. 75).

61. Yuqing, *supra* note 1, at 93. (noting JV Implementation Regs. art. 74).

62. Chang and Pow, *supra* note 20, at 38. (noting Joint Venture Law Implementing Act art. 75).

63. Yuqing, *supra* note 1, at 93.

64. Chang and Pow, *supra* note 20, at 40. (noting JV Implementation Regs. art. 100).

65. *Id.* (noting JV Implementation Regs. art. 101).

66. Hayden, *supra* note 16, at 574-75.

67. Gu, *supra* note 17, at 225.

To guide foreign investors, the Ministry of Foreign Economic Relations and Trade (MOFERT) issued a Model Contract for Joint Ventures in early 1984. The Model Contract provides a foreign investor with contract language which is acceptable to China. The investor can thus save time and energy on the wording of less important provisions in the equity joint venture contract.<sup>68</sup> The equity joint venture is legally complex, and the Chinese legal system is incomplete and ambiguous. Therefore, the joint venture parties should draft their contract with great care in order to avoid disputes and to protect their interests in the event of a dispute.<sup>69</sup>

### B. Contractual Joint Ventures

Chinese and foreign parties may avoid the equity joint venture procedures by forming contractual joint ventures based on contract only. The issues are simpler, and the form is more flexible.<sup>70</sup> The foreign investor's share of capital is not subject to a twenty-five percent minimum; each party need not convert its in-kind capital contributions into cash value; the parties may distribute profits in the form of either cash or a share of the contractual joint venture's products; and the parties may even distribute the profits on a flexible basis without regard to each party's proportion of capital contribution. The management structure of a contractual joint venture is also far more diverse and flexible.<sup>71</sup> A contractual joint venture generally registers as a project with the same authorities that register equity joint ventures.<sup>72</sup>

A contractual joint venture is not a separate entity for income tax purposes in China. Each party is separately taxed on its share of the joint venture's income.<sup>73</sup> The foreign investor in a contractual joint venture must pay income tax with rates from twenty to forty percent<sup>74</sup> in addition to a ten percent local tax.<sup>75</sup> Thus, the total effective tax rate is thirty to fifty percent because the local tax is on all taxable income.<sup>76</sup> Nevertheless, there is no withholding tax on repatriated profits.<sup>77</sup> Even though a contractual joint venture is not a separate income tax entity, it

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68. Note, *supra* note 13, at 133 n.22.

69. Yuqing, *supra* note 1, at 74-75.

70. Chang and Pow, *supra* note 20, at 40-41.

71. Zheng, *Business Organization and Securities Laws of the People's Republic of China*, 43 BUS. LAW. 551, 586 n.250 (1988).

72. Chang and Pow, *supra* note 20, at 42.

73. *Id.* at 42. See Foreign Enterprise Income Tax Law of the People's Republic of China [hereinafter FEITL].

74. Chang and Pow, *supra* note 20, at 41. (discussing FEITL arts. 1, 3).

75. *Id.* (noting FEITL art. 4).

76. Han, *New PRC and Shanghai Regulations for the Encouragement of Foreign Investment*, 10 HASTINGS INT'L & COMP. L. REV. 557, 564 n.41 (1987).

77. Chang and Pow, *supra* note 20, at 41.

does pay customs duties and CICT.<sup>78</sup>

## V. FOREIGN ECONOMIC CONTRACT LAW

The Foreign Economic Contract Law (FECL) applies to contracts which involve a foreign party in China.<sup>79</sup> The FECL sets only the most basic contract law rules, most of which are very familiar to American attorneys.<sup>80</sup> American companies, however, should be aware that a contract lacking consideration may be enforceable in China. Thus, China may enforce an American company's promise to a Chinese company even if the Chinese company gives no consideration in return.<sup>81</sup>

FECL article 2 defines the parties which may form Sino-foreign economic contracts. Foreign parties may be foreign enterprises, other economic organizations, and individuals. Chinese parties may be corporations or other economic establishments of the PRC. Contracts by any other parties are simply void.<sup>82</sup>

Parties to a contract may choose the law which applies to the contract. If the contract does not provide for a choice of law, then the law of the most closely related country governs. Nonetheless, China's law must govern contracts for joint ventures, cooperative management, or cooperative development of natural resources.<sup>83</sup> International norms<sup>84</sup> control where China's law is silent.<sup>85</sup> Treaties prevail over conflicting laws inside China, but there are limitations. China must be a party to the treaty, and treaty provisions to which China has declared reservations are not included.<sup>86</sup>

If China's law requires governmental approval of a contract, the

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78. *Id.*

79. Zhao, *A Comparative Study of the Uniform Commercial Code and the Foreign Economic Contract Law of the People's Republic of China*, 6 INT'L TAX & BUS. LAW. 26 (Winter 1988).

80. Yuqing and McLean, *China's Foreign Economic Contract Law: Its Significance and Analysis*, 8 NW. J. INT'L L. & BUS. 120, 143 (1987).

81. Zhao, *supra* note 79, at 34.

82. Chen, *Why Some Sino-Foreign Economic Contracts Are Void and How to Prevent Voidness*, 23 WILLAMETTE L. REV. 679, 688 (1987).

83. Zhao, *supra* note 79, at 27. (noting FECL art. 5). As a practical matter, the exercise of discretion on the choice of law may be difficult. The parties will perform most foreign economic contracts in China, and disputes will consequently most likely occur in China. Therefore, the choice of foreign law to resolve disputes in China may not be practical. In addition, the country where the contract is to be performed is the governing law of the contract according to the general principle of conflicts of law. This conflict-of-law principle may affect the decision because the FECL declares that trade customs and norms apply. Finally, the choice of foreign law may risk disapproval of the contract by the government of China. As a result, the law of China seems to be the practical choice for the parties. *Id.* at 27 n.9.

84. International norms include commercial usages for private and government contracts, other principles of international law, and treaties. *Id.* at 28 n.13.

85. *Id.* at 28. (noting FECL art. 5).

86. *Id.* at n.14. (noting FECL art. 6).

contract is not binding before it is approved.<sup>87</sup> MOFERT or local authorities designated by MOFERT must approve a contract for a joint venture<sup>88</sup> or for a foreign technology transfer.<sup>89</sup>

All foreign economic contracts must be written and signed by all parties.<sup>90</sup> If the parties form a contract through an exchange of written communications, either may ask for a confirmation letter signed and executed by all parties. A failure to comply with the request voids the contract.<sup>91</sup>

## VI. PREFERENTIAL AREAS

### A. *Special Economic Zones*

China has established five Special Economic Zones (SEZ's): Shenzhen, Xiamen, Shantou, Zhuhai, and Hainan Island. Hainan Island became an official SEZ in late 1987, but the other four SEZ's started in the late 1970s and early 1980s.<sup>92</sup> The SEZ's have led China in economic development. In fact, the economic growth of the SEZ's has been extraordinary as a result of high foreign investment and a more liberal economic policy.<sup>93</sup>

The SEZ's are a laboratory for new laws and policy. Many experimental laws and policies in the SEZ's have become national laws and policies. Because the SEZ's are in the vanguard, they have a more comprehensive legal structure than other areas of China.<sup>94</sup>

China has a state-planned economy, but the SEZ's for the most part have a market orientation. Consequently, China faces a dilemma in weaving the SEZ's into the national economic plan. The fast growth of the SEZ's increases the demand for supplies from other parts of China, and this may result in shortages. Additionally, the increase in sales of their products in other parts of China may disrupt planned markets.<sup>95</sup>

Foreign investors receive more preferential tax treatment from the

87. *Id.* at 35. (discussing FECL art. 7).

88. *Id.* at 35 n.60. (noting JV Implementation Regs. art. 8).

89. *Id.* at 36 n.61. (noting the Regulations of the People's Republic of China on Administration of Technology Acquisition Contracts art. 4).

90. *Id.* at 35. (discussing FECL art. 7).

91. *Id.* at 37.

92. Zheng, *Law and Policy of China's Special Economic Zones and Coastal Cities*, 8 N.Y.L. SCH. J. INT'L & COMP. L. 193, 199 (1987).

93. *Id.* at 203. The attractive features of the SEZ's allow them to realize unprecedented economic growth. For example, the total industrial output of Shenzhen SEZ increased 31 times (from 80 million yuan to 2.5 billion yuan) between 1980 and 1985 while state revenue increased 13.5 times. The other SEZ's also sustained rapid economic growth. *Id.* at 197 n.5.

94. *Id.*; Post, *Entering China Through the SEZ Open Door*, 10 HASTINGS INT'L & COMP. L. REV. 577, 578 (1987); Zheng, *supra* note 71, at 586 n.249.

95. Zheng, *supra* note 92, at 204-05; Post, *supra* note 94, at 579.

SEZ's than from China nationwide.<sup>96</sup> The SEZ's apply a flat fifteen percent income tax rate on Sino-foreign equity joint ventures, contractual joint ventures, and wholly foreign-owned enterprises.<sup>97</sup> Contractual joint ventures and wholly foreign-owned enterprises may be eligible for a longer tax holiday,<sup>98</sup> and a foreign party in an equity joint venture does not pay the ten percent tax on repatriated profits.<sup>99</sup> Foreign enterprises without an establishment in China pay only a ten percent tax on dividends, interest, rents, or royalties derived from SEZ's.<sup>100</sup> The SEZ's may waive even this tax if the terms of the transaction are beneficial to China or if the project involves high technology.<sup>101</sup> In general, products marketed within the SEZ's are exempt from the CICT.<sup>102</sup> Foreign enterprises in the SEZ's have an exemption from import duties for the acquisition of foreign equipment, raw materials, vehicles, and spare parts for production. There is also an exemption from export duties for products sold abroad by foreign enterprises.<sup>103</sup>

Sino-foreign joint ventures may extend for fifty years in the SEZ's versus thirty years in most of the rest of China.<sup>104</sup> Factories in the SEZ's pay lower land use fees,<sup>105</sup> and enterprises may keep their hard currency earnings for reinvestment rather than handing it to the government.<sup>106</sup> With the approval of the local government, factories in the SEZ's may buy and sell directly abroad without using the official trading companies.<sup>107</sup>

Before a foreign enterprise may close an operation in an SEZ, it must explain the reason to the provincial administrative committee, which must approve the closing. After the foreign enterprise has the required approval and takes care of its loans and other obligations, the

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96. Zheng, *supra* note 92, at 216.

97. Interim Regulations of the State Council on the Reduction and Exemption of Income Tax and Consolidated Industrial and Commercial Tax in the Special Economic Zones and Fourteen Coastal Cities [hereinafter '84 Tax Regs.] chap. I, art. 1.

98. *Id.* This provision applies the five-year tax holiday available to equity joint ventures under article 5 of J.V. Tax to all foreign investment enterprises, including wholly foreign-owned enterprises. Without this provision, a wholly foreign-owned enterprise has only a three-year tax holiday under article 5 of the FEITL. The provision applies solely to production projects which function more than ten years. To get the tax benefit, a taxpayer must apply and receive the tax authority's approval. The tax holiday for a service enterprise stays three years. *Id.* at 217-19.

99. '84 Tax Regs. chap. I, art. 3.

100. '84 Tax Regs. chap. I, art. 4. Without this provision, article 11 of the FEITL provides a twenty percent rate for income from dividends, interest, rents, or royalties derived from SEZs. *Id.* at 217-19.

101. *Id.*

102. '84 Tax Regs. chap. I, art. 7.

103. Post, *supra* note 94, at 579.

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

foreign enterprise may close the business operation and remove the assets from China.<sup>108</sup>

### B. Economic and Technological Development Zones

Economic and Technological Development Zones (ETDZ's) are a broader-based offshoot of the SEZ's. In April, 1984, the central government approved the establishment of ETDZ's in fourteen coastal cities. In November, the State Council issued interim preferential tax regulations for the ETDZ's.<sup>109</sup> Because the ETDZ's and SEZ's have similar goals to attract foreign investment with preferential tax rules, the inexperienced ETDZ's naturally looked to the SEZ's for guidance in dealing with foreign investment. As a consequence, the legal structure of the ETDZ's is like the legal structure of the SEZ's.<sup>110</sup>

The key to attracting foreign investment to the ETDZ's is preferential tax treatment. Taxes on foreign investment in the ETDZ's are similar to those in the SEZ's, but the tax preferences apply only to industrial manufacturing and scientific or technological development projects. There is a fifteen percent tax on the income of foreign investment enterprises in the ETDZ's. The ten percent tax on repatriated profits does not apply to a foreign party in a Sino-foreign joint venture.<sup>111</sup> Foreigners without an establishment in an ETDZ have a lower ten percent withholding tax on interest, royalties, rent, and dividends.<sup>112</sup> Even the withholding tax can be reduced or eliminated for a project with advanced technology or favorable terms to China. In addition, exports of unrestricted items and imports of means of production, raw materials, components, means of transportation, office equipment, and reasonable personal belongings are exempt from the CICT.<sup>113</sup>

### C. Coastal Cities

In 1984, China selected fourteen coastal cities<sup>114</sup> as preferential areas for certain foreign investment projects in certain parts of the cities. Up to a set amount, the cities may approve production projects that do not need the central government to provide overall balance, marketing support, or export quotas; otherwise, the central government must also

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108. Valauskas, *supra* note 10, at 198. (noting the Regulations on Special Economic Zones in Guangdong [hereinafter SEZ Regs.] art. 11).

109. Zheng, *supra* note 92, at 197-98, 217-19.

110. *Id.* at 266.

111. '84 Tax Regs. chap. II, art. 1.

112. '84 Tax Regs. chap. II, art. 4.

113. '84 Tax Regs. chap. II, art. 5.

114. The fourteen coastal cities are (from north to south) Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang, and Belhai. Zheng, *supra* note 92, at 277.

authorize the project.<sup>115</sup> Foreign investors welcomed this accommodation because the cities included economically developed areas and the experimental industrial region of Dalian.<sup>116</sup>

Only foreign investment projects in "old urban areas"<sup>117</sup> receive favorable tax treatment. Selected foreign investment projects in the coastal cities have the same fifteen percent income tax rate as in the SEZ's and ETDZ's.<sup>118</sup> Unlike the SEZ's and ETDZ's, qualifying investment projects must (1) involve intensive technology or knowledge, (2) develop energy, transportation, or ports, or (3) have an investment of at least thirty million dollars and a low profit margin.<sup>119</sup>

Foreign investment projects that do not qualify for the most favorable tax treatment may still receive a twenty percent reduction in income taxes. To qualify, the enterprise must be in (1) machinery manufacturing or electronics industries; (2) metallurgical, chemical, or building material industries; (3) light industry, including textiles and packaging; (4) medical machinery and pharmaceutical industries; (5) agricultural, forestry, husbandry, breeding, and related processing industries; or (6) the construction industry.<sup>120</sup>

There is a lower ten percent maximum withholding tax on interest, dividends, royalties, and rents in the old urban areas of the coastal cities, and the city government may further reduce or even eliminate the withholding tax. The CICT benefits are the same as for the ETDZ's.<sup>121</sup>

#### D. *The Future*

The development of SEZ's, ETDZ's, and the coastal cities signals the increasing liberalization of China's foreign investment policy in the last few years. The favorable investment policy will probably spread to other places. To respond to the competition for foreign investment, the SEZ's, ETDZ's, and coastal cities must continue to improve their investment environment. The combination of these developments will probably lead to an improved climate for foreign investment in China.<sup>122</sup>

115. *Id.* at 198, 276. Tianjin and Shanghai have the authority to approve projects up to \$30 million; Guangzhou and Dalian may approve projects up to \$10 million; and the other ten coastal cities may authorize projects up to \$5 million. *Id.*

116. Note, *supra* note 13, at 140. The economically developed areas included Shanghai and Tianjin. *Id.*

117. '84 Tax Regs. chap. III, art. 1. China's law does not define "old urban area," but these areas refer in practice to metropolitan areas excluding the suburbs and various counties under the administrative control of the city government. Zheng, *supra* note 92, at 280-81.

118. '84 Tax Regs. chap. III, art. 1.

119. *Id.*

120. *Id.*

121. Zheng, *supra* note 92, at 280-81.

122. *Id.* at 296.

## VII. JOINT VENTURE FOREIGN EXCHANGE BALANCING PROVISIONS

The difficulty of earning enough foreign exchange to balance the foreign exchange account is one of the greatest problems facing an equity joint venture in China. This difficulty is caused by two factors. First, most equity joint ventures must import nearly all production materials, components, and equipment during the first few years. During that start-up phase, exports may not provide enough foreign exchange for the necessary imports and for repatriation of the foreign party's profits. Second, Chinese currency is not freely convertible, and the joint venture may therefore lack foreign exchange even if its products sell well inside China.<sup>123</sup> In response to the foreign exchange problem, China issued the Joint Venture Foreign Exchange Balancing Provisions in 1986.

If the foreign exchange account of a joint venture needs foreign exchange to balance, the local or central supervising authority may readjust the account with contributions from the reserves of other joint ventures in the same jurisdiction. The authority may also adjust an unbalanced foreign exchange account from its own reserves if the joint venture sells primarily to the domestic market in China.<sup>124</sup>

There is a limitation on readjustment of a joint venture's unbalanced foreign exchange account. If the joint venture fails to meet its export and foreign exchange earnings goals in the joint venture contract, the relevant authority will not offer readjustment of the joint venture's foreign exchange account.<sup>125</sup> Therefore, a foreign party in a joint venture should exercise caution in making export commitments in the joint venture contract. To get the greatest protection, the foreign party should set out in the joint venture contract the circumstances under which the government will readjust the foreign exchange account.<sup>126</sup>

The foreign exchange readjustment measure gives foreign parties in joint ventures security against China's strict accounting rules for foreign exchange. Nevertheless, readjustment is available only when many foreign enterprises in China have excess foreign exchange and will trade the excess for Chinese currency. In addition, the readjustment measure lacks detailed implementation provisions.<sup>127</sup>

## VIII. FOREIGN ENTERPRISE LAW

China's open door policy sought to integrate foreign technology and capital into China's economy through Sino-foreign partnerships. Under

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123. Yuqing, *supra* note 1, at 100.

124. *Id.* at 100-01. (discussing the JV Foreign Exchange Balancing art. 3).

125. *Id.* (discussing JV Foreign Exchange Balancing art. 7).

126. Yuqing, *supra* note 1, at 101.

127. *Id.* at 101.

the Foreign Enterprise Law (FEL), a foreign investor need not blend in Chinese investment. A wholly foreign-owned enterprise, however, is not eligible for some benefits to foreign companies in China.<sup>128</sup>

In August 1980, China's SEZ regulations vaguely implied permission for wholly foreign-owned enterprises.<sup>129</sup> In April 1986, the FEL provided a legal structure for foreign investors to invest throughout China without a Chinese partner.<sup>130</sup> The FEL shows the continuing importance that China places on foreign investment to aid in improving the domestic economy.<sup>131</sup>

China passed the FEL partly in response to a sudden downturn in foreign investment. The number of wholly foreign-owned enterprises established after passage of the FEL nevertheless declined by twenty-five percent, compared to the same period in 1985. The decline is probably more the result of a poor investment environment and foreign investor frustration than of inadequate legislation on wholly foreign-owned enterprises.<sup>132</sup>

China's officials prefer Sino-foreign joint ventures to wholly foreign-owned enterprises. An equity joint venture earns foreign exchange which China needs to pay for modernization. In an equity joint venture, China can directly influence a foreign partner while acquiring the technical knowledge, management training, and foreign investment that China needs.<sup>133</sup> Some Chinese officials also associate wholly foreign-owned enterprises with the humiliating foreign domination of China before 1949.<sup>134</sup>

The procedure to set up a wholly foreign-owned enterprise in China is relatively simple. First, one must submit an application to the proper authority (for example, MOFERT). After approval, submit an application to the Administrative Bureau of Industry and Commerce (ABIC) in order to obtain a business license. Finally, one must make the investment within the time frame approved by ABIC.<sup>135</sup>

Like equity joint ventures, a wholly foreign-owned enterprise must supply advanced technology or export most of the products, observe China's laws and regulations, and establish enterprises that will help

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128. Francis, *Taxation of Engineering and Construction Services in the People's Republic of China*, 23 WILLAMETTE L. REV. 771, 777 n.26 (1987).

129. Note, *supra* note 13, at 139-40.

130. *Id.* at 129.

131. *Id.* at 130.

132. *Id.* at 134.

133. *Id.* at 135.

134. *Id.* at 138.

135. *Id.* at 144-45. (discussing Foreign Enterprise Law arts. 6,7).

China.<sup>136</sup> A wholly foreign-owned enterprise that meets the legal requirements is a legal person.<sup>137</sup>

A wholly foreign-owned enterprise should consider using Chinese suppliers of materials rather than foreign sources.<sup>138</sup> Nevertheless, the available Chinese sources are sometimes either unreliable or unable to meet delivery schedules. This unreliability makes it necessary to import materials to secure a steady supply. Strict application of the law in those cases will disrupt the production schedules of the wholly foreign-owned enterprise.<sup>139</sup>

Regarding foreign exchange, the FEL repeats the general rule: a wholly foreign-owned enterprise is responsible for its own foreign exchange accounts.<sup>140</sup> A wholly foreign-owned enterprise may repatriate its "legitimate income" after paying taxes; however, the FEL does not define "legitimate income."<sup>141</sup>

The FEL does not say whether a wholly foreign-owned enterprise must use government labor agencies to hire workers. In some instances, government agencies act as a quasi-partner. These agencies charge very high rates but pay the workers only a small portion, a practice that defeats incentives to reward the better workers. Consequently, the implementing regulations need to address this issue.<sup>142</sup>

Foreign observers generally responded unfavorably to the Foreign Enterprise Law. The Foreign Enterprise Law does not propose any surprising concessions or encouragement to foreign investors. The law gives a loose legal structure for starting the operation of a wholly foreign-owned enterprise, but it does not provide detailed guidelines to protect the rights and to clarify the tax and foreign exchange requirements of a wholly foreign-owned enterprise.<sup>143</sup>

## IX. CIVIL CODE

The concept of a legal person in China's law is similar to the American concept of the corporation. A business organization that is a legal person has limited liability. If a business organization is not a legal person, it does not have the legal capacity to enter into contracts or to perform other legal acts.<sup>144</sup> Only natural and legal persons may perform

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136. *Id.* at 145. (noting Foreign Enterprise Law art. 3).

137. Zheng, *supra* note 71, at 556. (noting Foreign Enterprise Law art. 8).

138. Note, *supra* note 13, at 146. (discussing Foreign Enterprise Law art. 15).

139. *Id.*

140. *Id.* at 148. (discussing Foreign Enterprise Law art. 18).

141. *Id.* at 147. (discussing Foreign Enterprise Law art. 19).

142. *Id.* at 146-47.

143. *Id.* at 142.

144. Zheng, *supra* note 71, at 553.

civil legal acts.<sup>145</sup> The Civil Code defines legal person in article 36. A legal person is an organization that has the capacity to acquire civil rights, the competence to perform civil acts, and the ability to independently assume civil rights and bear civil liability.<sup>146</sup> A legal person must be lawfully established; must have the necessary property or funds; must have its own name, organizational structure, and residence; and must be capable of assuming civil liability independently.<sup>147</sup> A legal person need not have articles of association because administrative orders established most Chinese entities without articles of association.<sup>148</sup> Equity joint ventures, contractual joint ventures, and wholly foreign-owned enterprises may obtain the status of a legal person, but the appropriate department of the Administration of Industry and Commerce must approve and register the foreign enterprise as a legal person.<sup>149</sup>

An enterprise legal person ceases to exist when it is cancelled, is dissolved, or goes bankrupt. The satisfaction of the obligations of a foreign enterprise legal person comes from its assets. Limited liability will not apply to foreign enterprises if China's law so provides,<sup>150</sup> but no law yet requires a foreign enterprise legal person to bear liabilities beyond the amount of its assets.<sup>151</sup>

A legal representative is administratively in charge of a legal person and a legal representative may only be one of the following:

- (1) the chief executive (president, manager, or chairman of the board of directors);
- (2) the vice president, vice chairman, or vice manager (if the chief executive position is vacant); or
- (3) if all of the above are vacant, the persons who are really in charge of a legal person.<sup>152</sup>

Additionally, a legal representative may ordinarily act on behalf of a legal person even without its express authorization,<sup>153</sup> and a legal representative is personally responsible for the failure or wrongful acts of a legal person.<sup>154</sup> Article 49 of the Civil Code imposes administrative penalties or fines or both on a legal representative if a legal person violates

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145. *Id.* at 553 n.5. (noting Civil Code art. 54).

146. *Id.* at 554.

147. *Id.* (noting Civil Code art. 37).

148. *Id.*

149. *Id.* at 556. (discussing Civil Code art. 41).

150. *Id.* at 556-57. (discussing Civil Code art. 48).

151. *Id.* at 557.

152. *Id.* at 555. (discussing Opinions of the Supreme People's Court on Implementing the Civil Procedure Law (for Trial Use) in the Trial of Economic Cases, decision of Sept. 17, 1984).

153. *Id.* at 555. (noting Civil Code art. 38).

154. *Id.* (discussing Civil Code art. 49).

the law.<sup>155</sup>

## X. ENCOURAGEMENT LAW

The 1986 Encouragement Law tries to stimulate declining foreign investment<sup>156</sup> and to direct foreign investment into high-tech and export industries. The law is an effort to relieve foreign exchange shortages and to develop the most significant areas of the national economy. The Encouragement Law also deals with the problems of high cost and bureaucratic delay facing foreign investors in China.<sup>157</sup> The most important incentives are the tax preferences, the appeal procedure for unreasonable local costs, the ceiling on land use fees, and the time limit on responses by government authorities to project proposals by foreign enterprises.<sup>158</sup>

The Encouragement Regulations give special preferences to export enterprises and technologically advanced enterprises. An export enterprise is a production enterprise that has balanced foreign exchange and earnings and whose products are mostly for export. A technologically advanced enterprise is a production enterprise that uses advanced foreign technology to develop new products and to improve existing products in order to increase foreign exchange by exports or by import substitution.<sup>159</sup> The Encouragement Regulations exclude service enterprises from the special preferences. Despite this exclusion, hotels and other tourism-related service enterprises are able to earn foreign exchange surplus while other projects rarely can.<sup>160</sup>

Export and technologically advanced enterprises are exempt from payments to the government for most employee subsidies. The exemption excepts labor insurance, welfare costs, and housing subsidies.<sup>161</sup> Unfortunately, the provision does not define "subsidies" and does not address the twenty percent premium over prevailing wages, which Sino-foreign joint ventures must pay employees.<sup>162</sup>

Article 4 limits the land use fee for export and technologically advanced enterprises. Nevertheless, the limit on the land use fee does not apply to busy urban sectors of large cities, and rural areas that lack utilities, transportation, and skilled labor. Article 4 also gives local government agencies the discretion to grant land use fee exemptions for set

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155. *Id.* at n.17.

156. Han, *supra* note 76, at 557.

157. Zheng, *supra* note 92, at 287.

158. Han, *supra* note 76, at 566.

159. Han, *supra* note 76, at 561-62.

160. Han, *supra* note 76, at 561.

161. *Id.* at 562. (discussing State Council Regulations Concerning Encouragement of Foreign Investment [hereinafter Encouragement Regs.] art. 3).

162. *Id.*

periods of time, but the provision does not define a standard for the exercise of discretion.<sup>163</sup>

Export and technologically advanced enterprises have priority in obtaining utilities, transportation services, communication facilities, and short-term financing for production processes. The charges for utilities paid by these enterprises must be the same as the rate paid by local government enterprises.<sup>164</sup>

Foreign investors in export and technologically advanced enterprises may repatriate profits free of tax.<sup>165</sup> Export enterprises that export at least seventy percent of annual production reduce income taxes by fifty percent. The tax break is effective after other income tax reductions or exemptions expire.<sup>166</sup> A foreign investor who establishes or expands an export or technologically advanced enterprise by reinvesting distributed profits for at least five years receives a total income tax refund on the reinvested amount.<sup>167</sup>

Most export products are exempt from the CICT.<sup>168</sup> Imports which are necessary to perform an export contract do not go through the regular import procedures. If an enterprise later sells those imports in China or uses them in making products for sale in China, the regular import procedures apply.<sup>169</sup>

Foreign enterprises may mutually adjust foreign exchange surpluses and deficiencies.<sup>170</sup> Prior rules permitted foreign currency adjustments only between foreign enterprises with a common foreign partner,<sup>171</sup> but this concept has little practical effect since few foreign enterprises have any extra foreign exchange. Thus, China must establish vehicles of exchange to make the concept meaningful.<sup>172</sup>

Government departments and agencies must give foreign enterprises autonomy in their production plans, labor policies, purchase and sale of products, and raising of capital. The departments and agencies must also support foreign enterprises in their modern management methods.<sup>173</sup> This is a welcome statement of policy, but interpretation will determine

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163. *Id.* at 562-63.

164. *Id.* at 563. (discussing Encouragement Regs. arts. 5, 6).

165. *Id.* (discussing Encouragement Regs. art. 7).

166. *Id.* at 564. (discussing Encouragement Regs. art. 8).

167. *Id.* at 563-64. (discussing Encouragement Regs. art. 10).

168. *Id.* at 564. (discussing Encouragement Regs. art. 11). Crude oil, finished oil, and other export products subject to special government regulations are not eligible for the CICT exemption. *Id.* (noting Encouragement Regs. art. 10).

169. *Id.* (discussing Encouragement Regs. art. 13).

170. *Id.* at 564-65. (discussing Encouragement Regs. art. 14).

171. *Id.* at 564. (discussing JV Foreign Exchange Balancing art. 9).

172. *Id.* at 564-65.

173. *Id.* at 565. (discussing Encouragement Regs. art. 15).

its effectiveness.<sup>174</sup>

Under article 16, a foreign enterprise may refuse to pay unreasonable local charges. The enterprise may appeal the charges first to a local economic committee and ultimately to the State Economic Commission. Hopefully, the appeal is a useful alternative to court proceedings.<sup>175</sup>

Examination and approval authorities must respond to documents submitted by foreign enterprises within three months.<sup>176</sup> Before this provision, government authorities took much longer than three months to approve or to reject proposals of foreign enterprises.<sup>177</sup>

The Encouragement Regulations show a major change in attitude concerning foreign investment. Before the Encouragement Regulations, China seemed to feel that foreign investors should appreciate the mere opportunity to invest in China and should not have the audacity to intend to make a profit. China now appears to recognize that more foreign investment will come only from a favorable investment environment and that China competes for investment with other Asian nations. The Encouragement Regulations may be the prelude to other changes in favor of foreign investment.<sup>178</sup>

The Encouragement Regulations do have shortcomings. The foreign currency shortage continues to deny investors the ability to repatriate profits in order to make projects worthwhile. The relatively expensive workers often have little incentive to work and lack adequate training, but the provisions do not address this disturbing labor situation. Income taxes remain high for foreign enterprises that do not qualify as export or technologically advanced enterprises.<sup>179</sup> The Encouragement Regulations have many unclear and undefined terms, and the effectiveness of provisions with unclear terms depends on MOFERT's interpretation and on further regulations.<sup>180</sup>

## XI. CONCLUSION

The announcement of the open door policy in 1978 and the tremendous potential of China excited foreign investors at first. Unfortunately, the excitement often turned to disappointment when foreign investors began to see the reality of doing business in China.<sup>181</sup>

In some ways, the situation in China today is identical with the past.

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174. *Id.*

175. *Id.* at 564.

176. *Id.* at 565. (discussing Encouragement Regs. art. 17).

177. *Id.*

178. *Id.* at 566.

179. *Id.*

180. *Id.*

181. *Id.* at 569.

China clearly continues to be a communist nation with a predominant role for state planning in the economy. Nevertheless, China has developed a massive body of commercial laws and regulations since the 1978 announcement of the open door policy. There are still holes in the legal system that China needs to fill, but China appears to know of these needs. The commercial system for foreign enterprises is relatively new, and adjustments based on experience are a reasonable expectation.<sup>182</sup>

*Wil Armstrong*

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182. Hazen, *Good Business Sense: Changing Practices in the People's Republic of China*, 10 HASTINGS INT'L & COMP. L. REV. 583, 584-85 (1987).

