

OVERVIEW OF CONTENTS

INTRODUCTION	1
PART I	
DEVELOPMENT OF CHINA'S LEGAL AND ECONOMIC SYSTEM SINCE THE 1978 REFORM	3
CHAPTER 1	REFORM ERA - 1978 TO PRESENT - AN OVERVIEW
	3
CHAPTER 2	Legislative Structure in the Foreign Investment Context
	56
CHAPTER 3	China's Administrative System in the Foreign Investment Context.....
	66
PART II	
Introduction of the Laws Relevant to Foreign Investment Introduced under the Open Door Policy - Overview of Traditional Investment Vehicles.....	73
CHAPTER 4	Laws on Encouragement of Foreign Investment.....
	74
CHAPTER 5	Regulations on Directing Foreign Investment.....
	78
CHAPTER 6	Laws on Traditional Foreign Investment Enterprises - Outline of Traditional Investment Vehicles
	88
PART III	
Alternative Forms of Foreign Direct Investment.....	97
CHAPTER 7	Foreign Direct Investment Vehicles Under the PRC Company Law and Related Legislation.....
	97
CHAPTER 8	Limited Liability Company
	140
CHAPTER 9	FIE Joint Stock Limited Company
	164
CHAPTER 10	Restructuring Foreign Investment Enterprises
	222
CHAPTER 11	Restructuring State-Owned Enterprises by Using Foreign Investment.....
	242
CHAPTER 12	Holding Company.....
	263
CHAPTER 13	Conclusion
	287
INDEX.....	291

TABLE OF CONTENTS

INTRODUCTION.....	1
PART I DEVELOPMENT OF CHINA'S LEGAL AND ECONOMIC SYSTEM SINCE THE 1978 REFORM.....	3
CHAPTER 1 REFORM ERA - 1978 TO PRESENT - AN OVERVIEW.....	3
1 1978 Socialist Modernisation.....	3
1.1 Open Door Policy.....	7
1.2 Industrial State Sector Reform under the Four Modernisations Programme.....	9
1.3 Private Enterprises	13
2 Post-1989 Area	13
3 Deng's "Southern Journey" Speech in 1992 and the Development of a Socialist Market Economy.....	15
4 Emerging Stock Markets	18
5 1994 PRC Company Law.....	20
5.1 First Step towards a Level Playing Field for Domestic and Foreign Investment	20
5.2 Corporatisation of SOEs	21
6 15 th Communist Party Congress 1997 - Continuation of Deng Xiaoping Theory	23
6.1 Re-enforcement of SOE Reform	24
6.2 SOE Reorganisation with Foreign Investment.....	27
6.3 Acceleration of Stock Market Development.....	30
7 9 th National People's Congress 1999 - Confirmation of Private Enterprises and Re-acceleration of SOE Reform	34
7.1 Confirmation of Private Enterprises	34
7.2 Re-Acceleration of SOE Reform	35
7.3 Tenth Five-year Plan (2001-2005).....	36
8 Development 2001 - in Anticipation of China's WTO Entry	38
8.1 Initiatives for Eliminating Corruption.....	38
8.2 Beijing Awarded the 2008 Olympics.....	40
8.3 APEC Forum in Shanghai.....	41
8.4 Initiation of Revision of 2,300 Laws and Regulations.....	41
9 WTO Entry	42
9.1 China 143 rd Member to the WTO	42
9.2 Agreement on Trade Related Investment Measures	44
10 Development 2002 - China in a Changed World Economy	48
11 Economic Statistics	51
11.1 Gross Domestic Product, Import and Export, Foreign Exchange Reserves	51

11.2	Committed and Utilised Foreign Direct Investment.....	53
11.3	Foreign and Domestic Investment Enterprises	55
CHAPTER 2	Legislative Structure in the Foreign Investment Context	56
1	Civil Law System.....	56
2	Bifurcated Legal System.....	57
3	Monistic System with Several Levels.....	58
4	Sources of Legal Rules	58
4.1	Constitution.....	59
4.2	Local Level	62
4.3	Regulations on Special Economic Zones	63
4.4	Judicial Interpretation	63
4.5	International Treaties	64
4.6	Internal Regulations.....	64
5	Prevailing Rule.....	65
CHAPTER 3	China's Administrative System in the Foreign Investment Context.....	66
1	Examination and Approval Process	66
2	Key Government Organisations and Investment Approval Authorities.....	67
2.1	Project Approval Authorities.....	67
2.2	Other Approval Authorities	71
2.3	Administration of Foreign Exchange.....	72
3	Negotiating Foreign Investment in China.....	72
PART II	Introduction of the Laws Relevant to Foreign Investment Introduced under the Open Door Policy - Overview of Traditional Investment Vehicles.....	73
CHAPTER 4	Laws on Encouragement of Foreign Investment	74
1	General Regulatory Framework.....	74
2	Preferential Treatment.....	74
2.1	FIE Preferential Treatment	75
2.2	Export-Oriented and Technologically Advanced Enterprises	76
2.3	Additional Preferential Treatment	77
CHAPTER 5	Regulations on Directing Foreign Investment	78
1	Directing of Foreign Investment Tentative Provisions and Guiding Catalogue	78
1.1	Objectives of Guiding Provisions and Catalogue	78
1.2	Industry Categories for Foreign Investment	80
1.3	Halt of Redundant Construction Projects	83
2	Restrictions on WFOEs.....	84
2.1	Exclusion of WFOEs	84

2.2	Controlling Interest of State Assets	86
3	Chinese-Chinese Foreign Joint Ventures	87
CHAPTER 6	Laws on Traditional Foreign Investment Enterprises -	
	Outline of Traditional Investment Vehicles.....	88
1	PRC Equity Joint Venture Law and Equity Joint Venture.....	88
2	PRC Co-Operative Joint Venture Law and the CoJV	91
3	PRC Wholly Foreign-Owned Enterprise Law and the Wholly Foreign-Owned Enterprise	91
4	PRC Company Law.....	93
4.1	Relation to Bifurcated Legal System	93
4.2	Controversy over a Modern Enterprise System under the Socialist Market Economy.....	94
5	PRC Securities Law	95
PART III	Alternative Forms of Foreign Direct Investment.....	97
CHAPTER 7	Foreign Direct Investment Vehicles Under the PRC Company Law and Related Legislation	97
1	Starting Point.....	97
2	Laws and Regulations on Foreign Direct Investment Related to PRC Company Law.....	98
3	Legal Person	101
3.1	Legal Person Status.....	101
3.2	FIE as Legal Person	102
3.3	Relevant Features of Legal Person Status.....	104
4	Company Forms	106
4.1	Non-Exclusive Enumeration of Available Company Forms	106
4.2	Classification of Types of Enterprises	107
5	Foreign Investment Enterprises.....	108
5.1	The 25-Percent Rule.....	108
5.2	Vehicles for Foreign Investment Enterprises.....	110
6	PRC Domestic Enterprises	114
6.1	State-owned Enterprises.....	114
6.2	Collectively-owned Enterprises	115
6.3	Town and Township Enterprises.....	116
6.4	Limited Liability Companies	116
6.5	Joint Stock Limited Companies	116
6.6	Private Enterprises	117
7	Foreign Investment in Non-FIE Domestic Enterprises	119
7.1	Foreign Investment in Non-FIE Domestic Limited Liability Companies	119

7.2	Foreign Investment in Non-FIE Domestic Joint Stock Limited Companies.....	120
7.3	Mergers with and Acquisition of Domestic Enterprises by Foreign Investors	122
7.4	Excursus - Promotion of Domestic Joint Ventures by Shanghai Municipality.....	128
8	Foreign Investment Enterprises as Investors in Domestic Entities	129
8.1	Non-Applicability of Company with Investment Nature Status	129
8.2	Restrictions	130
8.3	Options for Further Development.....	135
9	State-owned Assets	136
9.1	Who Owns the State-Owned Assets after Corporatisation?	136
9.2	Disclosure of State-owned Assets	137
9.3	State-Owned Shares.....	138
CHAPTER 8	Limited Liability Company	140
1	Limited Liability Company under the Provisions of the PRC Company Law	140
1.1	Starting Point	140
1.2	Foreign Investment in PRC Company Law Limited Liability Company.....	140
1.3	PRC Company Law Limited Liability Company and FIE Preferential Treatment.....	141
2	Establishment	142
2.1	Promoters	142
2.2	Liability for Capital Contribution	143
2.3	Procedure	143
3	Capital	146
3.1	Capital Structure	146
3.2	Changes in the Capital Structure	147
3.3	Transfer of Participation in Registered Capital	150
3.4	Contribution in Registered Capital and Shareholders' Rights	151
4	Governance Structure.....	151
4.1	Shareholders' General Meeting.....	151
4.2	Executive Bodies	154
4.3	Supervisory Board	157
4.4	Labour Unions	158
5	Comparison PRC Company Law Limited Liability Company and FIE Limited Liability Company.....	159
5.1	Company Capital Structure.....	159
5.2	Transfer of Capital Contribution	161

5.3 Liability.....	162
5.4 Governance Structure	162
5.5 Minority Shareholders' and Parties' Rights	163
CHAPTER 9 FIE Joint Stock Limited Company	164
1 Joint Stock Limited Company under the Provisions of the PRC Company Law	164
1.1 Starting Point.....	164
1.2 PRC Company Law and Related Legislation governing FIE Joint Stock Limited Companies.....	166
1.3 Excursus: Local Regulations.....	166
1.4 Wholly Foreign-Owned Joint Stock Limited Company?	167
2 Establishment	168
2.1 Promoters	168
2.2 Procedures	170
3 Capital	176
3.1 Capital Structure	176
3.2 Changes in the Capital Structure.....	192
3.3 Transfer of Shares	195
4 Governance Structure	198
4.1 Shareholders' General Meetings	198
4.2 Supervisory Board.....	202
4.3 Company Office	203
5 Restructuring of Corporate Form - Conversion into Joint Stock Limited Company.....	204
5.1 Establishment of FIE Joint Stock Limited Company by Conversion of Sino-foreign Equity Joint Venture, Sino- Foreign Cooperative Joint Venture or Wholly Foreign- Owned Enterprise	204
5.2 Establishment of Foreign Investment Joint Stock Limited Company by Conversion of Joint Stock Limited Company	211
6 Comparison PRC Joint Stock Limited Company with Equity Joint Venture	212
6.1 Limited Liability	212
6.2 Shareholders	213
6.3 Subscription Rights in Share Capital Increase.....	213
6.4 Decrease of Share capital.....	213
6.5 Transfer of Participation	213
6.6 Separate Organs	214
6.7 Management.....	214
6.8 Resolutions.....	214
6.9 Branches and Subsidiaries	215
6.10 Case Studies	216

CHAPTER 10	Restructuring Foreign Investment Enterprises.....	222
1	Conversion of Equity Joint Venture and Co-Operative Joint Venture into Wholly Foreign-Owned Enterprise	222
1.1	Starting Point.....	222
1.2	Prerequisites for Conversion.....	227
1.3	Conversion Procedure.....	229
2	Mergers and Divisions of FIEs	235
2.1	Starting Point	235
2.2	Prerequisites.....	236
2.3	Mergers	238
2.4	Divisions	240
CHAPTER 11	Restructuring State-Owned Enterprises by Using Foreign Investment.....	242
1	Starting Point.....	247
2	Regulatory Framework	248
3	Prerequisites for Restructuring SOEs by Using Foreign Investment.....	250
3.1	Qualification of Foreign Investor	250
3.2	Preconditions	250
3.3	Approval Procedures	251
3.4	State-owned Asset Appraisal and Registration.....	252
4	Structuring Options	254
4.1	Merger.....	254
4.2	Acquiring Shares in State-Owned Companies	256
4.3	Acquiring SOE Assets	261
4.4	Direct Acquisition of SOEs by Foreign Investors	262
CHAPTER 12	Holding Company.....	263
1	Starting Point.....	263
2	Company with Investment Nature	264
2.1	Regulatory Framework	264
2.2	Establishment.....	267
2.3	Characteristics.....	269
2.4	Cases Requiring Guarantee by Foreign Investor	276
2.5	Foreign Finance Company.....	278
2.6	Bayer Case - Holding Company Structure	279
2.7	Shanghai Municipality - Encouraging Regional Headquarters.....	280
3	Excursus: Foreign-funded Venture Investment Enterprises	283
CHAPTER 13	Conclusion.....	287
INDEX.....		291