

## Introduction

### Our Location Offer

China's biggest advantage to attract foreign investment lies in the domestic stable political environment, sustained high speed economic growth and sound legal environment. Its industrial supporting capabilities are another one of the attractiveness to foreign investment. Furthermore, with the continuously improved quality of labour and rich labour resources in the central and western regions, it provides abundant labour forces, with which investment can enjoy competitive advantage in abundant labour resources.

In recent years, China's infrastructure has been improved greatly. The infrastructure in transportation, communication, and water supply, electricity and natural gas is almost complete. The ability of supply and quality of energies, raw materials and components has been improved obviously, which provides foreign investors excellent external conditions in production and operation.

Since the reform and opening-up, China's manufacturing industry has enjoyed a fast development and its general scale has ranked into top places in the world. At present, as the pillar industry of the national economy of China, the manufacturing industry serves as the dominant sector for economic growth and basis for economic transformation. As an important basis for the economic and social development, the manufacturing industry is the main channel for employment in cities and towns.

Meanwhile, service industry plays an increasing role in the development of China's economy. It's envisaged that the share of service industry will continue increasing in the national economy, and will become a major industry for employment.

### Introduction to investment regime

Reform and opening up is China's basic national policy, and utilization of foreign investment is an important part of the opening up policy. The introduction of foreign investment, together with the advanced technologies and managerial expertise, has played a positive role to China's economy by upgrading industries and promoting technologies. Foreign investment enterprises have become important part of the national economy. The government makes great efforts to attract high quality foreign investment, which would make positive contribution to boost scientific and technological innovation, industrial upgrading, and coordinated development of different regions of the country. The priority policies of attracting foreign investment at present stage are to optimize structure of foreign investment, improve its regional distribution by guiding foreign investment to China's mid-west regions, enhance more variety of forms of foreign investment, intensify the regulatory reform on administration and create a fair environment for foreign investment.

### Investment priority plan/equivalent policy

According to the needs of economic development, the Chinese government drafts and revises Industrial Catalogue Guiding Foreign Investment taking into account the national industrial development plans. The present priorities for foreign investment are: upstream manufacturing; industries with high and new technologies; advanced services sectors; and industries with new energies, energy-saving and environmental protections. Foreign investment is also encouraged to go to the central and western regions of China for balanced economic development nation-widely.

### More information

## Regulation of foreign investment

### Process for foreign entities/nationals to invest in our economy

The process for foreign entities/nationals to invest consists of 3 steps:

- \* project examination and approval;
- \* approval of contracts and articles of association; and
- \* registration.

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The approval authorities at central and local levels are:

- \* National Development and Reform Commission or its local branches;
- \* Ministry of Commerce or its local branches;
- \* National Industrial and Commercial Administration Bureau or its local branches.

Investment below USD 300 million under "encouraged category" and "permitted category", and below USD 50 million under "restricted category" as listed in Industrial Catalog Guiding Foreign Investment are approved at local level. All other investment in service sectors are approved by local governments, except for financial sector, telecommunication sector, and those with specified regulation.

**Does this apply to all investment or, are there differential treatment?**

Yes, the above process applies to all foreign investment.

### Conditions of investment

For conditions imposed upon different types of foreign investment, please refer to the major foreign investment laws and regulations as below:

- a) The law of P.R. C on Chinese-Foreign Equity Joint Ventures and its implementation regulations;
- b) The law of P.R. C on Chinese-Foreign Contractual Joint Ventures and its implementation regulations;
- c) The law of P.R. C on Wholly Foreign-Owned Enterprise and its implementation regulations;
- e) Industrial Catalogue Guiding Foreign Investment; Provisions on Guiding Foreign Investment Direction;
- d) Catalogue of Advantageous Sectors for Foreign Investment in Central and Western Regions;
- f) The law of P.R. C on Protection of Taiwan Compatriots' Investment.
- g) Provision on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors and its supplementary provisions
- h) Interim Provision on Foreign Invested Stock-holding Companies

China also implements online application and approval mechanisms for different industries for a more transparent, easier and faster application and approval process.

### Investment promotion and facilitation

Response:

National and local Investment Promotion Agencies (IPAs) are established together with their representative offices overseas. There are 7 major functions which are performed, namely:

- \* To design national and regional profile;
- \* To bridge communication platform;
- \* To publish study report;
- \* To provide consulting service;
- \* To recommend investment project;
- \* To connect government-business relations; and
- \* To guide industrial development.

The services which are provided cover information exchanges, investment directions, investment completion, business operation, expiration and liquidation. Therefore, 4 priority service platforms are constructed for investment promotion, namely:

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- \* Information service platform focusing on "Invest in China" website;
- \* Direct communication platform focusing on large-scale investment promotion activities such as investment symposia and fairs;
- \* Legal service platform focusing on coordination for complaints by foreign investment enterprises; and
- \* Coordinating platform for joint meetings of all nation-wide IPAs.

**More information about the process of investing in our economy**

## Investment protection

### Protection of property rights and conditions for expropriation

The inviolability of private property is recognized in the Constitution and Real Right Law of the People's Republic of China. The Constitution emphasises that citizen's lawful private property is inviolable and The State protects the rights of citizens to private property and to its inheritance. Private property is also protected by the Real Right law by providing the mechanism of protection of real right in Chapter III.

The government reserves the right to expropriate property according to the Constitution. But the expropriation shall only be carried out in order to meet the demands of public interests and in accordance with law and shall be compensated for the private property expropriated or requisitioned. And the Real Right Law sets out the circumstances under which land or other realties can be expropriated, and the compensation for the private property.

### More information

Constitution and Real Right Law, accessible from: [www.gov.cn/flfg/index.htm](http://www.gov.cn/flfg/index.htm)

### Protection of IPRs

China has an effective and comprehensive intellectual property (IP) system. China is a member of important intellectual property treaties, such as Berne Convention, Paris Convention, and Madrid Agreement and its Protocol. After its accession to the WTO in 2001, China amended its law and regulations to meet the IP protection standards provided in TRIPs.

The State Intellectual Property Office, State Administration for Industry and Commerce, State Copyright Bureau, Ministry of Commerce, Ministry of Public Security, General Administration of Customs, Supreme People's Court, and Supreme People's Procuratorate are the key agencies that have the duty to protect IP rights. To strengthen IPR protection, in 2004, China has established the State IPR Protection Task Force, headed by a vice-premier of the State Council, which is responsible to supervising and coordinating the IPR protection work throughout the country.

China affords a two-track parallel protection mode to enforce IPRs, namely, the administrative and judicial protections both at the central and local level.

Under China's law, China affords protection to patents, trademarks, copyrights, layout designs of integrated circuits, and new varieties of plants.

#### Patents

Patents include inventions, utility models, and designs. An application of patent may be submitted to the State Intellectual Property Office or its local Patent Representative Offices. The duration of patent right for inventions shall be twenty years, and that for utility models and designs is ten years, from the date of filing.

#### Trademarks

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Trademark is defined as any visual sign capable of distinguishing the goods or service of one natural person, legal entity or any other organization from that of others, including any word, design, letters of an alphabet, numerals, three-dimensional symbol, combinations of colours, and their combinations. Registered trademarks include trademarks, service marks, collective marks and certification marks. China provides advanced protection to well-known marks that has good reputation among the relevant public in China. A trademark application should be filed with the Trademark Office of State Administration for Industry and Commerce. A right holder has exclusive rights to the registered trademark. A registered trademark shall not be used without proper authorization.

### Copyrights

A work shall enjoy copyright automatically upon its creation, whether the work is published or not. The term "work" includes works in forms of written works, oral works, musical, dramatic, quyi choreographic and acrobatic works, works of fine art and architecture, photographic works, cinematographic works, drawings of engineering designs and product designs, maps, sketches and other graphic and model works, and computer software. The term "copyright" embraces a wide variety of personal and economic rights.

### Layout Designs of Integrated Circuits

Layout designs shall be registered with the State Intellectual Property Office to receive protection. The term of protection of exclusive rights of layout design is 10 years, either from the date of application for registration or the date on which the lay out design is put into commercial utilization for the first time at any place in the world, whichever earlier.

### New Varieties of Plants

New varieties of plants refer to varieties of plants that are bred artificially or developed from natural plants discovered and that possess novelty, speciality, homogeneity, and stability and are duly denominated. An application for variety rights may be filed with the Office of the Protection of New Varieties of Plants in the Ministry of Agriculture or the State Forestry Administration. The term of protection for vines, forest trees, fruit trees and ornamental trees is twenty years, and that for other plants is fifteen years from the date of grant.

### Anti-Unfair Competition

China also attacks unfair competitions in various forms, including theft of business secrets. The inspecting and supervising agency is the Fair Trade Office of State Administration for Industry and Commerce.

## More information

State Intellectual Property Office: [www.sipo.gov.cn](http://www.sipo.gov.cn).

State Administration for Industry and Commerce: [www.saic.gov.cn](http://www.saic.gov.cn).

Supreme People's Court: [www.court.gov.cn](http://www.court.gov.cn).

National Copyright Administration: [www.ncac.gov.cn](http://www.ncac.gov.cn).

## Flow of funds

Since July 2005, China launched the reform of the RMB exchange rate regime and moved into a managed floating exchange rate regime based on market supply and demand with reference to a basket of currencies.

And if managed, under what circumstances or purposes does your government/central bank intervene?

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While furthering the exchange rate regime reform provides a great deal of potential for future benefits, efforts would also be needed to minimize possible negative impacts. First, it is important to avoid any sharp and massive fluctuations of RMB exchange rate. Second, in the self-initiated process, the orderly floating of RMB exchange rate should reflect China's economic fundamentals and meet the needs of macroeconomic management. While a floating RMB exchange rate will promote a more balanced BOP account in general, it does not address bilateral trade imbalance with any particular country. Third, the RMB currency reform is to maintain an orderly process of industrial upgrading, maintain the international competitiveness of Chinese enterprises and provide more jobs in the service sector. Fourth, supervision and regulation on short-term capital speculation would need to be strengthened to protect China's financial system from major external shocks.

Are there any restrictions on the repatriation of funds related to a foreign investment (e.g. profits, dividends, royalties, loan payments)?

There is no approval requirement for foreign-funded enterprises to repatriate the profits. The purchase and payment of foreign exchange can be handled in the designated banks with relevant authentic evidentiary materials. For the incomes of capital reduction, share transfers and liquidation, the foreign-funded enterprises can handle the procedures of the purchase and payment of foreign exchange with the approval of local foreign exchange department.

Regarding repaying the capital with interest for the registered foreign debts, the purchase and payment of foreign exchange can be done with the approval of local foreign exchange department.

### Mechanisms to review decisions, and settle disputes

Where an investor considers that his lawful rights and interests have been infringed upon by a specific administrative act, he may file an application for administrative reconsideration. If a citizen considers the provisions of rules and regulations as the basis of a specific administrative act of an administrative organ to be illegal, he may file an application to the administrative reconsideration organ for reviewing the said provisions when filing an application for the specific administrative act.

If the investor refuses to accept the administrative reconsideration decision, he may, in accordance with the provisions of Administrative Procedure Law of the People's Republic of China, bring an administrative lawsuit before a people's court. The ruling from the people's court is final.

What, if any, mechanism do you have for foreign investors to settle disputes?

For legitimate foreign investors, all disputes are subject to the same legal framework as is afforded domestic investors. This includes access to a range of dispute resolution mechanisms, such as arbitration, mediation and conciliation, and access to the National Court. Besides, foreign investors may submit the disputes with the government to international arbitration.

### ICSID

China signed the ICSID Convention on February 9, 1990 and ratified it on January 7, 1993. The Convention entered into force for China on February 6, 1993. As reserved by China, only disputes over compensation resulting from expropriation or nationalization could be submitted to the jurisdiction of ICSID. However, in some BITs and FTAs signed by China, there is no such reservation for the submission of claims to ICSID.

To date, China has not as yet been involved in any arbitral proceedings before the ICSID.

### More information

#### International investment agreements

With;

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Albania; Algeria; Argentina; Armenia; Australia; Austria; Azerbaijan; Bahrain; Barbados; Belarus; Belgium; Bulgaria; Cambodia; Cape Verde; Chile; Croatia; Cuba; Cyprus; Denmark; Ecuador; Egypt; Equatorial Guinea; Estonia; Ethiopia; Finland; France; Gabon; Georgia; Germany; Ghana; Greece; Guyana; Hungary; Iceland; India; Indonesia; Iran, Islamic Republic of; Israel; Italy; Jamaica; Japan; Kazakhstan; Korea, Republic of; Kuwait; Kyrgyzstan; Lao, People's Democ. Rep.; Lebanon; Lithuania; Macedonia, FYR; Madagascar; Malaysia; Mali; Mauritius; Moldova, Republic of; Mongolia; Morocco; Myanmar (ex-Burma); Netherlands; New Zealand; Nigeria; Norway; Oman; Pakistan; Papua New Guinea; Peru; Philippines; Poland; Portugal; Qatar; Romania; The Russian Federation; Saudi Arabia; Serbia; Singapore; Slovakia; Slovenia; South Africa; Spain; Sri Lanka (ex-Ceylon); Sudan; Sweden; Switzerland; Syrian Arab Republic; Tajikistan; Thailand; Trinidad & Tobago; Tunisia; Turkey; Turkmenistan; Ukraine; United Arab Emirates; United Kingdom; Uruguay; Uzbekistan; Viet Nam; Yemen; Zimbabwe;

Please provide a brief description of these IIAs, or your IIAs in general.

China has concluded more than 100 international investment agreements.

While the detail of these agreements varies, there are several common conditions across these agreements.

\* Most Chinese BITs ensure fair and equitable treatment to the investments by investors and contain a most-favoured-nation clause (MFN) entitling foreign investors to treatment no less favourable than that accorded by the host state to nationals of third countries.

\* Expropriation or nationalizing or any other similar measure in regard to an investment made in its territory by an investor is not allowed, except in the public interest, under due process of law and against compensation.

\* Disputes between the Contracting States concerning the interpretation or application of agreements shall be settled through consultations between the Governments of the two Contracting States. If the dispute cannot thus be settled, it may be submitted to an arbitral tribunal.

### More information

## Movement of persons

### Treatment of foreign nations or personnel of foreign firms

The Implementation Provision of the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure (revised on April 24th, 2010) regulates entry and stay for foreign nationals or personnel of foreign firms.

1. Diplomatic visa, courtesy visa, official visa and ordinary visa are issued to foreigners coming to China according to their identities and types of passports. Ordinary visas shall be marked with different Chinese phonetic letters and issued to foreigners according to their stated purposes of visit to China.

1) Visa D is issued to foreigners who are to reside permanently in China ;

2) Visa Z is issued to foreigners who come to China to take up posts or employment and to their accompanying family members ;

3) Visa X is issued to foreigners who come to China for study or Job-training for a period of six months or more ;

4) Visa F is issued to foreigners who are invited to China on a visit or on a study , lecture or business tour , for scientific technological or cultural exchanges , for short - term refresher course or for Job - training , for a period not more than six months ;

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5) Visa L is issued to foreigners who come to China for sightseeing , visiting relatives or other private purposes(A group visa may be issued to a group of nine or more aliens on a sightseeing trip to China) ;

6) Visa G is issued to foreigners passing through China ;

7)Visa C is issued to train attendants , air crew members and seamen operation.

8)Visa J - 1 is issued to foreign correspondents residing in China ; visa J - 2 is issued to foreign correspondents who make short trip to China on reporting tasks .

2. Foreigners holding visas D , Z , X or J - I shall , with in 30 days of entry into China , obtain residence cards or temporary residence cards for foreigners from the local public security bureaus . The period validity of the aforementioned certificates is the duration of the holders with permission to stay in China .

3. Residence card for foreigners is issued to those who stay in China for over one year.

4. Temporary residence cards for foreigners are issued to those who stay less than one year in China .

5. Foreigners holding visas F , L , G , C or J - 2 may stay in China for the period prescribed in their visas without obtaining residence certificates.

6. Durations of residence card for foreigners can vary from 1 to 5 years. Municipal or county public security bureaus may decide according to reasons for application by foreigners.

7. Foreigners fit in with article 14 of the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure, public security authorities may issue certificate for 1-5 year residence. Certificate for permanent residence could be issued to foreigners with remarkable achievements.

8. Foreigners exempt from visas under agreements signed between the Chinese and foreign Governments and wishing to stay in China for 30 days and upward , shall apply upon entry into China for residence certificates in accordance with Articles 16 and 17 of the above implementation provisions .

9. Foreigners leaving China shall submit for scrutiny, valid passport and other effective documents as well as visas permitting to stay in China or certificate for residence.

10 . The Chinese government authority in the Law of the People's Republic of China on Administration over Foreigners' Entry and Departure refers to Ministry of Human Resources and Social Security of the People's Republic of China.

### More information

<http://www.mohrss.gov.cn/Desktop.aspx?PATH=rsbww/sy>

<http://www.mps.gov.cn/n16/index.html>

## Taxation

### Taxation of foreign nationals and foreign firms

#### Company profits

A Chinese resident company regardless of domestic or foreign investment is currently subject to tax at a rate of 25 per cent of its taxable income, effective from 1 January 2008. Taxable income is assessed on the basis of assessable business income less allowable business deductions. A company is resident in China for income tax purposes if it is incorporated in China or, if not incorporated in China, its effective management is located in China. Except as otherwise regulated by the State Council, China does not allow consolidated returns of enterprises for income tax purposes, and they must file separate tax returns.

#### Capital Gains Tax



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In General, capital gains and losses are treated in the same manner as other taxable income and losses in China. Capital Gains Tax (CGT) applies to the disposal of assets acquired (or deemed to have been acquired). A net capital gain arises if the capital gain made by a taxpayer in a year of income exceeds the capital loss made by the taxpayer in that year or carried forward from previous years. Very broadly, a capital gain arises to a taxpayer on a disposal of an asset if the proceeds received on its disposal exceed the cost base of that asset to the taxpayer.

Foreign residents who are individuals, corporations or other organizations are subject to CGT on disposals of: (1) immovable property located in China; (2) movable property if they have establishment or place in China; (3) equity investment if the invested enterprise is located in China.

### Personal income/profits

\* Under Chinese Individual Income Tax Law, the taxpayers are classified into the following two types: (1) individuals who have domicile in China or who, though without domicile in China, have resided in China for one year or more; (2) individuals who are neither domiciled nor resident in China or who do not have domicile and are resident for less than one year in China shall pay individual income tax on their income from sources within China.

\* The taxable items of Individual Income Tax are 11. Monthly wages and salaries are subject to a nine-grade progressive rates schedule arranging from 5% to 45% after total deduction of RMB 4800 yuan for foreign individuals. For Chinese resident individuals, monthly wages and salaries are subject to a nine-grade progressive rates schedule arranging from 5% to 45% after total deduction of RMB 2000 yuan.

### Repatriation of profits

\* According to the State Administration for Foreign Exchange (SAFE) instructions, remittances of after-tax profits or dividends to foreign investors must be supported by written resolutions of the board of directors and by audited financial statements, and may not be made until a tax clearance is issued by the tax authorities. They must be made from foreign exchange accounts; otherwise, conversion and payment must take place at designated foreign-exchange banks.

Dividends paid to non-residents shareholders are subject to withholding tax.

Is the basis for taxation economy or global? If the basis for taxing is global, with whom do you have tax treaties?

Corporate residents of China are taxed on their worldwide income, including business operations, investment and other sources. A foreign tax credit is allowed for income tax paid in other countries with some limitations. As some economies tax on a global basis, this can lead to double taxation of the activities undertaken in China. To eliminate the possible double taxation and to provide certainty for investors, China has entered into 93 Double Taxation Agreements (DTAs) and 89 of them effective currently. The general effect of a tax treaty is to limit China's taxing rights when china is on a source State status.

China generally requires tax to be withheld on interest, dividends, royalties and capital gains paid or deemed to be paid to non-residents of China. The general rate of withholding tax is 10 per cent. However, China's tax treaties provide for reduced withholding rates and some withholding tax exemptions treatments.

### More information

Introductory level information can be obtained from Ministry of Commerce at [www.mofcom.gov.cn](http://www.mofcom.gov.cn).

More detailed information can be obtained from the State Administration of Taxation at [www.chinatax.gov.cn](http://www.chinatax.gov.cn).