China

Capital City	Beijing
Major Financial Center	Shanghai
Population (2020)	1.439 billion
Location	Eastern Asia, between North Korea and Vietnam
Major Languages	Standard Mandarin (spoken), Simplified Chinese (written)
Legal System	Civil Law
Square Miles	3,704,427 sq mi
Gross Domestic Product (2020)	USD 15.2 trillion
Major Exports	machinery, electronics, electric plastics, furniture
Currency	Renminbi (RMB or CNY)
U.S. Dollar Exchange Rate (as of January 2021)	USD 1 = RMB 6.46
Euro Exchange Rate (as of January 2021)	EUR 1 = RMB 7.88

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Chapter 7

What Type of Entity Should We Use to Set Up Our Business?

One of the first issues faced by prospective investors in China is choosing the appropriate type of legal structure through which to operate their business. With the new Foreign Investment Law that took effect on January 1, 2020, foreign investors are granted the same legal treatment as domestic investors except for categories of business listed in the "Negative List", i.e. Special Administrative Measures (Negative List) for Admission of Foreign Investment. The existing joint ventures and Wholly Foreign Owned Enterprises (WFOEs) (the two most common types of limited companies utilized by foreign investors before the Foreign Investment Law), are required to change their organization form, structure and operating rules in accordance with Foreign Investment Law before January 1, 2025.

EXAMPLE: A Swedish furniture company is established as a WFOE in 2010. This company has until January 1, 2025 to change its organization form in order to comply with the new Foreign Investment Law.

Under the new Foreign Investment Law, foreign investors can choose from the following types of legal structures: limited liability company, joint stock limited company partnership enterprise, representative office and branch.

When choosing the structure that is appropriate for your business you should consider a number of factors, including

i. the intended activities to be pursued, i.e. operational activities or non-operational activities
ii. familiarity with the Chinese market and business culture
iii. industry entry policies and restrictions
iv. capital requirements
v. liability issues
vi. tax treatment

Limited Liability Company

The limited liability company (also called limited company) in China is similar to a limited liability company (LLC) structure in the US and is the most utilized type of legal entity in China.

Generally, a limited liability company must have minimum of 1 and no more than 50 shareholders. The liability of a company is limited to its entire assets and the liability of each shareholder is limited to its subscribed registered capital contribution. The shareholders' meeting is the highest authority of the company. The shareholders elect the board of directors to manage the company, which usually has 3 to 13 members, however, if the company's scale is relatively small, it may have only one executive director instead of a board of directors. They may hire managers to manage the company. In addition, the company must also establish a board of supervisors comprised of not less than three members, or appoint 1 to 2 supervisors instead of having a board of supervisors, if it is a small business.

Generally, the directors, supervisors and senior management personnel all owe fiduciary duties towards the company.

Shareholder voting rights are usually based on the ratio of capital contribution, but shareholders can agree on more flexible voting schemes.

EXAMPLE: A UK company seeks to cooperate with a Chinese company to establish a limited liability company in China. The registered capital of the proposed company is RMB 1 million. Even if the subscribed capital contribution of the UK company is RMB 0.4 million while the subscribed capital contribution of the Chinese company is RMB 0.6 million, they may stipulate in the articles of association that the UK company has 51% voting rights and the Chinese company has 49% voting rights.

Unlike a branch and representative office, a limited liability company is treated under Chinese law as a stand-alone legal entity.

EXAMPLE: If a multinational wishes to establish a subsidiary in China, it will likely do so as a privately held company. If individual investors wish to establish a stand-alone business to generate income in China, they will most likely do so as a company.

EXAMPLE: Suppose a multinational establishes a wholly owned subsidiary in China as a limited company. That new limited company then executes a contract with another Chinese company to supply electronic components, but then fails to supply those components. In this situation, the Chinese purchaser would generally be limited to suing the Chinese subsidiary for the breach of contract, not its headquarters overseas.

Joint Stock Limited Company

Joint stock limited company, also called a company limited by shares, is a limited liability company with its capital divided into shares of equal value. Generally, the primary reason for investors to choose this company form is that they expect the company to be listed on one of China's stock exchanges, e.g. Shanghai stock exchange or Shenzhen stock exchange, in the near future.

EXAMPLE: A German energy company seeks to establish a legal presence in China and then shortly after do an initial public offering on the Shanghai stock exchange. In this situation, the German company will likely register in China as a joint stock limited company

A joint stock limited company usually has larger scale than LLCs and has higher standards on corporate governance. In order to set up a joint stock limited company, at least 2 and no more than 200 promoters, (a majority of which must be domiciled in China), are required. The shareholders of a joint stock limited company are liable to the company to the extent of the value of the shares they have subscribed for. The shareholders elect a board of directors, which shall range in number from 5 to 19. In addition, the company shall also set up a board of supervisors which shall have at least 3 members. The directors, supervisors and senior management personnel all owe fiduciary duties towards the company.

Partnership Enterprise

A partnership enterprise is usually established by at least two partners (natural persons, legal persons and other organizations) based on their partnership agreement. They jointly contribute capital, and share profits and risks. Partnership enterprises can be divided into general partnership enterprises and limited partnership enterprises. A general partnership enterprise refers to an enterprise in which all of its partners are general partners. A limited partnership enterprise refers to an enterprise in which there are both general partners (minimum one) and limited partners. The general partners shall bear unlimited joint and several liability for the debts of the partnership enterprise. The limited partners are liable for the enterprise's debts within the limit of their capital contribution. Usually, general partners are responsible to execute the enterprise affairs while a limited partner does not have the right to do so.

Generally, compared to limited liability companies, the disadvantage of partnership enterprises is that some partners are required to bear unlimited joint and several liability to the debt, which poses a risk on their personal property. The advantage of partnership enterprises is that they are not subject to corporate income tax. The partners shall pay individual income tax based on the distributed profit.

EXAMPLE: A Chinese national and a Korean national form a general partnership enterprise to engage in a real estate brokerage business in China. Under this structure, the partnership would not be subject to corporate income tax as the 2 partners would be subject to personal income tax on the revenue realized directly.

Under China laws, foreign investment partnerships are not allowed to be used in sectors where there are equity ratio requirements set out in the Negative List such as construction and the operation of civil airports.

Branch and Representative Office

Many times, however, foreign investors will not want to operate as a limited company. This is most likely to be true when a multinational company seeks to establish a presence in China, but does not wish to establish a separate legal entity. For accounting, tax, and other reasons, the multinational company may instead want the China office to function as a part of the head office overseas. If that is the case, the multinational will normally choose to establish a representative office or branch office, not a company limited.

Chinese law treats each of these two entities as extensions of the head office overseas, not as separate legal entities. Their activities are the activities of the head office.

Representative Office

A representative office can act as a local liaison for the head office overseas and engage in product promotion, market research, exchange of technology, and other non-operational activities permitted in China, (such as display and publicity activities related to the products and/or services of the head office, liaison activities related to the head office's sale of products, provision of services, domestic procurement, as well as domestic investment). A representative office is not allowed to engage in any profit making activities in China unless international treaties or agreements in which China is a party provide otherwise. For a foreign investor, the main advantage of establishing as a representative office is that it is simpler and cheaper to establish than a LLC.

Since a representative office is not considered an independent legal entity, but rather an extension of its parent company, it cannot enter into contracts in its own name, issue tax invoices, or hire employees directly. Therefore, all business contracts must be entered into in the name of the parent company, and all local employees must be hired through local staffing companies.

Consulting companies and trading companies may find the representative office particularly useful, as their business usually only needs some office space and a few employees and usually does not need to purchase manufacturing equipment and raw materials.

EXAMPLE: A Swiss sourcing company establishes a representative office in China. The representative office performs the following activities:

i. Acts as a liaison between the head office in Switzerland and suppliers and clients in China.
ii. Carries out import and export trading through an import and export agent and markets products.
iii. Selects source suppliers.
iv. Engages in quality control of functions.
v. Performs market research and general facilitation. etc.

EXAMPLE: A Korean consulting company establishes a representative office in China and engages in market research and establishing contacts with prospective customers and partners; provides data and promotional materials to clients; conducts research and marketing surveys; liaises with local contacts in China on behalf of the head office overseas; and acts as a coordinator for the parent company's activities in China and other non-revenue generating business activities.

A representative office is not allowed to directly engage in revenue generating activities, unless otherwise permitted by certain bilateral treaties between China and other countries, or by regulations applicable to special industries.

EXAMPLE: According to the Sino-US Civil Aviation Transportation Agreement, representative offices established by American civil airlines may sell civil air transportation services provided by American civil airlines, as well as engage in administration, inquiry, and other business activities.

EXAMPLE: Representative offices of foreign accounting firms are allowed to provide accounting, tax, and other services to foreign clients who come to invest or do businesses in China, and provide information, international tax, and other consulting services to Chinese clients.

Establishment of a representative office is easier than the establishment of other business presences. Normally, the investor can directly register its representative office with the Administration for Market Regulation Office in the province where the representative office is located. However, if the representative office is to participate in such sectors as banking and insurance, it must first obtain approval from competent government agencies. The usual steps to set up a representative office are:

i. collect relevant incorporation and credit certification documents of the head office and apply for notarization and legalization;
ii. obtain prior-approval (if applicable based on the industry sector) from China Banking and Insurance Regulatory Commission or other relevant government agencies depending on the specific industry of the head office;
iii. submit required documents to the Administration for Market Regulation office.

Generally speaking, the entire process to establish a representative office takes about three to six weeks, depending on the specific circumstances of preparation work and the governmental authority.

Branch

In general, Chinese law allows foreign companies to set up branches in China. In practice, however, the government seldom grants approval for setting up a branch of a foreign company, due to the lack of implementing regulations regarding its establishment. As a result, it is possible for foreign companies to get approval to establish a branch in China only in specific industries, such as banking and insurance.

Capital Required

There are no minimum capital requirements for a limited liability company or a representative office, except for 27 industries which are closely related to the financial industry, but the company needs to make sure that it has sufficient working capital for its business operation.

EXAMPLE: A German investor seeks to register a limited liability company in China to engage in manufacturing. He may set the company capital at $1 US.

EXAMPLE: US registered company seeks to establish a representative office in China. The US company has a registered capital of $1 US. The amount of the head office's registered capital should not be an obstacle to the registration of the representative office in China.

For a branch, however, the amount of capital required varies in different industries. Branches of foreign banks and foreign insurance companies must have adequate working capital of not less than RMB 200 million.

Official Fees

There are no longer official fees for registration of a limited company, joint stock limited company, partnership enterprise, representative office, and branch.

Chapter 8

What are the Legal Issues Associated with the Start-Up of a Company?

This chapter sets forth the rules associated with company start up China. For the rules specifically relating to the operation of a foreign invested enterprise (FIE) please see Chapter 9.

Company registration can normally be completed within 7 to 20 working days depending upon the particulars of the situation.

1. Company Name

According to applicable law, each company shall have an official name registered in its business license, and the company name shall use Chinese characters which comply with national standards and constitute of four parts, i.e. "administrative region" + "business name" + "industry" + "company organization form".

i. "Administrative region": This shall be the name of the administrative region of county or city where the company is located, such as Beijing, Shanghai or Hangzhou.

ii. "Business name": This is the name to be chosen by the company to distinguish itself from other companies and shall comprise of two or more Chinese characters in compliance with national standards. Certain kinds of words or contents are not allowed be used in a company name such as industry name, organization form, domestic and overseas administrative region name, occupation or academic description, words such as "State level" or "highest level", other company's well-known trademark, etc.

iii. "Industry": The industry description in an enterprise name shall be consistent with the description of the enterprise's principal activities, such as trading, real estate, technology development, etc.;

iv. "Company organization form": The company organization form description is the company' form, such as "limited liability company" or "company limited by shares".

EXAMPLE: A wholly-owned subsidiary set up by a Japanese company XYZ in Shanghai to conduct outsourcing activities in China may be named as Shanghai XYZ Trading Co. Ltd., except the name has to be registered in Chinese language.

The company's name in a foreign language (if any) is not required to be submitted and registered, and there is no requirement for the non-Chinese language counterpart names to be strictly consistent with their Chinese names. However, many foreign investors use Chinese names which are similar to or related with the foreign names in pronunciation or meaning.

EXAMPLE: The Chinese name used by Volkswagen is "**大众汽车（中国）投资有限公司**", meaning Folks Auto (China) Investment Co. Ltd. The Chinese characters "**大众**" means the masses or the folks, which is close to the meaning of "Volks" in German language.

2. Company Address

In principle, companies in China are required to have a physical address, i.e. to own or lease an office or plant to be registered as the company's address and shall have only one registered address.

3. Business Scope and Business License

The business scope refers to the range of business activities a company may engage in. Each company is required to specify its business scope by referring to the "National Economic and Industrial Classification" and choosing one or more categories to describe its business and specify each of them in its Articles of Association and register them in its business license.

The business license is the legal certificate for establishment of a company, and a company is considered as legally established only after it obtains the business license. The business license is a very important registration document of the company, as it also sets forth the company's organization number, taxation registration, social insurance registry and corporate statistics registration.

4. Registered Capital and Total Investment

Under Chinese laws, registered capital is the total amount of capital committed for the establishment of a company. With the exception of a few special industries such as banking, China has adopted a registered capital subscription system for most companies, under which there is:

i. no minimum requirement of registered capital, and the company can determine the amount of registered capital on its own;
ii. no minimum requirement on amount of paid-in capital; and
iii. no requirement on capital contribution period, and it can be agreed by the shareholders in the company's AOA.

EXAMPLE: Danish investors wish to establish a company in Guangzhou to engage in trading of industrial equipment. Generally, this company can be established with a registered capital of the equipment of $1 US.

In addition, shareholders may contribute registered capital in cash or in-kind or use appraisable and transferable non-cash assets such as intellectual property, land use right etc. as capital contribution.

EXAMPLE: Same facts as above, but the investors want the company to have a registered capital which is the equivalent of $500,000 US, but wish to contribute trucks with an appraised value of $500,000 US instead of contributing cash. This should be permissible.

However, if the company is foreign held and is to receive foreign loans, different rules apply.

The notion of Total Investment applies only to a foreign-invested company and refers to the sum of registered capital and allowed quota for foreign loans calculated according to the formula below under China's foreign exchange control regime.

Total Investment Amount	Required "Minimum Registered Capital Amount"
Above US$30,000,000	1/3 of Total Investment or US$12,000,000 whichever is higher
US$10,000,001 to US $30,000,000	2/5 of Total Investment or US$5,000,000 whichever is higher
US$3,000,001 to US $10,000,000	1/2 of Total Investment or US$2,100,000 whichever is higher
US$3,000,000 or below	7/10 of Total Investment

EXAMPLE: A U.S. company establishes a wholly owned subsidiary in China and designates US$20 million as its registered capital. In this situation, the company can set US$60 million as its Total Investment as a foreign-invested company, so that it can legally borrow US$40 million foreign loans (including shareholder loans) for its operations after the registered capital of US$20 million has been fully paid-up.

EXAMPLE: A UK company and a Chinese company seek to establish a foreign-invested company and set the total investment in the foreign-invested company at US$5 million. In this situation, the minimum registered capital amount would be US$2.5 million and the other US$2.5 million can be injected as foreign loans.

5. Articles of Association

Under Chinese laws, the Articles of Association (AOA) is the basic corporate document of a company which sets forth information concerning notice requirements for board of director and shareholder meetings, composition of board of directors, etc. AOA must be formulated in accordance with the laws, and filed with company registration authorities.

6. Legal Representative

A company in China must have a legal representative, who shall be the chairman of the board of directors, the executive director (for smaller companies without a board of directors) or the (general) manager of the Company.

The legal representative may be a foreign or Chinese national who represents the company in conducting business activities according to the provisions of the laws and the AOA of the company and is the most powerful position in the company because this person can legally bind the company with his or her signature (even without approval from the company's board of directors). When the legal representative engages in business operation in the name of the company, the legal consequences shall be borne by the company.

In some circumstances, the legal representative, as the official representative of the company, may be held personally liable if the company is found by a court to have violated the laws. In such cases, the legal representative may be listed as a discredited person and may be restricted from leaving China.

7. Shareholders

As of 2020 the shareholders of a foreign-invested company may be either foreign or Chinese individuals or entities.

Shareholders' meeting has the power to decide on important matters of company including but not limited to deciding on the business direction and investment plans, electing and removing directors and supervisors, reviewing and approving the annual financial budget and financial accounting plan, reviewing and approving the profit distribution plan and loss recovery plan, resolving on increase or reduction of registered capital of the company, resolving on issue of corporate bonds, resolving on merger, division, dissolution, liquidation or change of company structure, amending the articles of association of the company.

8. Directors

A board of directors or an executive director (in the case of smaller companies without a board of directors) are elected by shareholders. The directors shall be accountable to the board of shareholders and exercise the following duties and power under Chinese Company Law:

i. convene shareholders' meetings and report to the board of shareholders;
ii. carry out resolutions passed by shareholders' meetings;
iii. decide on the business plans and investment schemes of the company;
iv. formulate the annual financial budget and financial accounting plan of the company;
v. formulate the profit distribution plan and loss recovery plan of the company;
vi. formulate the plan for increase or reduction of registered capital and issue of corporate bonds;
vii. formulate the plan for merger, division, dissolution or change of company structure;
viii. decide on the set-up of internal management organization of the company;
ix. decide on appointment or dismissal of company managers and their remuneration, and decide on appointment or dismissal of deputy managers and finance controller of the company based on the nomination by the managers;
x. formulate the basic management system of the company; and
xi. other duties and powers stipulated by the articles of association of the company.

9. Supervisors

A board of supervisors or a supervisor (in the case of smaller companies without a board of supervisors) is the supervisory authority in the company. The board of supervisors is usually composed of shareholder representatives and employee representatives, who shall not concurrently serve as directors or managers. The board of supervisors is responsible for monitoring the company's financial situation, the performance of the company's senior management personnel, and other supervisory duties prescribed in the company's articles of association.

10. Company Seals

In China, each company must engrave a number of company seals, which are widely and routinely used instead of signatures on company documents, banking paperwork, regulatory filings, and other business activities.

The company seals mainly include the following three types:

i. Official common seal: this is the most important company seal which represents the company. It is often required to be affixed on company's important documents such as contracts, government filings and notices to employees, etc.
ii. Financial seal: it is used for banking and financing purposes, such as the issuance of company checks, bills, banking documents, etc.
iii. Seal of the legal representative: It is used in lieu of the signature of legal representative for specific purposes, such as on company checks, tax returns and government filings etc.

Apart from these three main seals, some larger companies also engrave a special Contract Seal to be affixed on all contracts signed by the company and a special Invoice (Fa-piao) Seal to be affixed on all official receipt (Fa-piao) issued by the company.

In view of the importance of the company seals, especially the official common seal, the foreign investors should take special care to implement control mechanisms to prevent misuse of the company chops and avoid the inadvertent creation of unknown and unwanted liabilities.

Chapter 9

What are the Legal Issues Associated with Operating as a Foreign-Held Company?

After establishment of a Foreign Invested Enterprise (FIE) (see Chapter 8), the investors will have many issues to consider regarding the operation of the company. This chapter discusses the rules related to two of the most important of these. access control on foreign investment and common foreign exchange control issues in China.

1. Access Control on Foreign Investment

According to the Negative List (see Chapter 8), foreign investment activities can be classified as prohibited, restricted, and others.

China has recently made substantial reforms to its legal rules governing foreign investment and start-up of a foreign-invested company since Jan 1, 2020. National treatment and negative list policies have been adopted to regulate foreign investment activities. Foreign investors and their investment shall be granted treatment no less favorable than that granted to domestic investors except for the industries listed in the Negative List. The Negative List actually consists of two lists: National Negative List, which applies to the whole country, and Free Trade Zone Negative List, which only applies to enterprises located in Free Trade Zones. Usually the Negative List is updated annually and the Chinese government has been trying to shorten the Negative List each year.

It is illegal for foreign investors to engage in prohibited activities specified in the Negative List, which may endanger national security or harm the public interest, pollute or damage the environment, harm natural resources or pose threats to human health, or endanger the security of military installations and their effective use, etc. More specifically, the prohibited industries listed in Negative List (2020 version) include investment in postal companies and domestic express courier business, internet news services, online publishing services, online audio-visual program services, internet culture operations (excluding music), social survey, etc.

Notable changes to the Negative List 2020, (as compared to the 2019 version,) are foreign ownership restrictions in brokerage firms, futures companies and life insurance companies have been removed, which means foreign companies can now set up 100% owned subsidiaries in the financial industry and the ban on foreign investment in air traffic control is lifted in the transportation sector.

EXAMPLE: A US brokerage firm seeks to invest in the insurance industry in China. It can now establish as a wholly foreign owned subsidiary to do so.

Unlike prohibited activities, foreign investors may engage in restricted activities if some requirements are met. The requirements are stipulated in the Negative List, which usually include the equity ratio requirement and/or the nationality of senior management personnel.

EXAMPLE: A German company seeks to engage in public air transport sector in China. According to the law, it is required that a foreign investor and its affiliates shall not hold more than 25% of equity of the company and the Chinese party shall have the controlling stake. Also, the legal representative shall be a Chinese citizen.

2. Foreign Exchange Control

China exercises comprehensive foreign exchange control. Overseas organizations and individuals making direct investments in China shall, upon approval by the relevant authorities in charge, process registration formalities with the foreign exchange control authorities, i.e. State Administration of Foreign Exchange.

a. Current or Capital Accounts in Foreign Exchange

FIEs are allowed to open bank accounts in RMB and in foreign exchange. Foreign exchange accounts can be divided into domestic/overseas accounts and current/capital accounts based on their usage and purposes.

A current account in foreign exchange is for receipts and payments based on true and legitimate trading and commercial transactions such as payments for goods, services, commissions, royalties, insurance premiums, donations, reimbursement of expenses, etc.

A capital account in foreign exchange is for receipts and payments of equity investment, foreign debts and loans, proceeds from sale of stocks, etc.

b. Outward Remittance

Foreign investors may, according to relevant laws and regulations, freely remit into or out of China, in Renminbi or any other foreign currency, their capital contribution, profit distribution, capital gains, incomes from assets disposal, intellectual property royalties, lawfully acquired compensation, indemnity or liquidation incomes, etc.

Chapter 10

What is the Process to Obtain a Work Permit?

In general, all foreigners are required to obtain a work permit and residence permit in order to legally work and live in mainland China (China). The work permit is the permission to work in China. The residence permit is the permission to reside in China. The applicant must obtain both in order to work and live in China. The work permit and residence permit are normally valid for a period of one year and both must be renewed before expiration.

The application process consists of two applications:

i. An application to receive a work permit from the designated Administration of Foreigner Experts Affairs; and
ii. An application for a residence permit from the designated Exit-Entry Administration Division of the Public Security Bureau office.

Employee Categories

Foreign employees are divided into three categories: Class A (foreign top talents), Class B (foreign professionals) and Class C (other foreign employees). Keep in mind that the application and procedure to obtain a work permit and residence permit may vary depending upon the province in China where the applications are submitted and the category the foreign employee falls into. The information set forth in this chapter is mainly based on the practice in Shanghai and the requirements for applying for a work permit for more than 90 days. The requirements for applying for a work permit for no more than 90 days will be simpler.

Note that some foreigners with special status are exempted from obtaining a work permit in China. Such status includes:

i. a specialized technical or managerial expert directly engaged by the Chinese government agencies or institutions, who hold a Foreign Expert Certificate issued by the State Administration of Foreign Experts Affairs;

ii. a labor worker who holds a Permit for Foreigners Undertaking Off-shore Petroleum Operation in China and engages in an off-shore petroleum operation, which has no need to be onshore and possesses special skills;
iii. a foreigner who has been approved by the Ministry of Culture to conduct for-profit theatrical performance in China by virtue of his/her Permit of Temporary For-Profit Performance.

Furthermore, note that different rules apply to persons from Taiwan, the Hong Kong Special Administrative Region, and the Macao Special Administrative Region seeking work and residence in China, which are not covered in this chapter.

Qualifications of Foreign Employees

The following are the general requirements applicable to foreign individuals seeking to work and reside in China:

i. Must be at least 18 years of age and in good health;
ii. Engage in urgently needed jobs in China and can make contribution to China's economic and social development;
iii. Possess the requisite professional skills and work experience needed for the position;
iv. Have no criminal record;
v. Have a confirmed employer in China; and
vi. Possess a valid passport or equivalent international travel document.

Restricted Professions

Employers in China may only employ foreigners for those positions in which special skills are required and the position cannot be filled by domestic Chinese employees, and such employment shall not violate any other relevant regulations.

Application Process

The following authorizations are required when applying to obtain a work permit and residence permit.

Authorization Required	**Estimated Processing Time**
Online Registration of Employer	N/A
Applying for and obtaining Health Certificate	Depends on the local health care institution recognized by the Chinese inspection and quarantine institution. *Note: If the Applicant is not able to provide such health certificate before he/she enters into China, he/she may make a statement of his/her health condition. Under such circumstance, the Applicant shall have a medical examination at the designated hospital after he/she arrives in China and submit the health certificate when applying for the Foreigner Work Permit.*
Applying for and obtaining Notification Letter of Foreigner's Work Permit	15 working days
Applying for and obtaining Employment Visa (Z Visa)	Depends on the circumstances
Applying for and obtaining Temporary Residence Certificate	1 working day
Applying for and obtaining Health Certificate (if the Applicant has not obtained and submitted the Health Certificate before he/she entering China)	5 working days
Applying for and obtaining Foreigner Work Permit	10 working days
Applying for and obtaining Residence Permit	7 working days

1. Online Registration of Employer

In order for the foreign employee to receive a Notification Letter of Foreigner's Work Permit, his/her Chinese employer shall register at Service System for Foreigners Working in China (http://fwp.safea.gov.cn/) ("Service System") and submit relevant supporting documents, such as:

i. Employer Registration Form stamped with the official seal of the entity;
ii. Business Registration Certificate;
iii. Identity Certificates of the Department Head and the Handler (and the Letter of Authorization of the Handler). The Department Head and the Hander shall be staff of the employer;
iv. Industry License. For pre-approval by the industry competent authority by law, an approval document of the industry competent authority is re quired;
v. Approval Certificates issued by the relevant government authorities. E.g. Approval Certificate for Enterprises Funded by Investors from Taiwan, Hong Kong and Macao, and replies from high-tech enterprises and headquarters of multinational companies in Shanghai;
vi. Letter of Authorization of the employer. If a professional service agency is entrusted by the employer to handle the procedure, an Authorization Letter is required.

2. Applying for and Obtaining Notification Letter of Foreigner's Work Permit Before Entering China

After the online registration is completed, the employee shall apply for the Notification Letter of Foreigner's Work Permit through the Service System and submit relevant supporting documents, such as:

i. Application form for Foreigner's Work Permit;
ii. Identification Documents as a Foreign Talent. Provide the required credentials according to the Classification Criteria for Foreigners Working in China;
iii. Work Qualification Certificate. The certificate shall be issued by the former employer of the Applicant certifying that the Applicant used to do a job similar to his/her current job;
iv. Certificate of the highest degree (academic qualification) or relevant approval document(s), professional qualification certificates;
v. Certificate of non-criminal record;

vi. Health certificate issued by the Chinese inspection and quarantine institution or an overseas health care institution recognized by the Chinese inspection and quarantine institution. The health certificate shall have been issued for no more than 6 months. If the applicant is not able to provide such health certificate before entering China, he/she can make a commitment of his/her health condition. Under such circumstance, the Applicant shall submit a health certificate issued by China inspection and quarantine authority when applying for the Foreigner Work Permit after he/she enters China;
vii. Employment contract or employment certificate;
viii. Passport or international travel certificate;
ix. Photos;
x. Relevant materials of accompanying family members (if any);

Basically, the Notification Letter of Foreigner's Work Permit will valid for 3 months from the date of issue. Please note that this letter is not a visa and may not be used in place of a visa.

The applicant will then be required to enter China and submit his/her online application for a work permit (see below) within 15 days after he/she arrives in China.

EXAMPLE: An employer in Shanghai seeks to employ a Dutch national. In this situation, the employer would be required to register on the Service System and apply for and obtain the Notification Letter of Foreigner's Work Permit on behalf of the Dutch national before the Dutch national would be allowed to enter China and continue the process. After entering the country, the Dutch national would be required to submit a work permit application within 15 days after he arrives in China.

3. Applying for and Obtaining the Employment Visa (Z visa)

The foreign employee is required to send the Notification Letter of Foreigner's Work Permit, the application for the Z visa, and other relevant documents to the appropriate Chinese embassy or consulate in the foreigner's home country before the expiration of the Letter.

EXAMPLE: A US national accepts a position to work for a company located in Shanghai and seeks to obtain the necessary government authorizations to do so. The employer applies for and obtains the Notification Letter of Foreigner's Work Permit on behalf of the foreigner and sends it to the US employee. The US employee then sends the Letter, a completed Z visa application form, and required supporting documents to the Chinese embassy in the US within the valid period of the Letter.

If the foreign employee's dependents' information is included in the Letter, those dependents may apply for the S1 Visa (Foreigners who intend to go to China to visit the foreigners working or studying in China to whom they are spouses, parents, sons or daughters under the age of 18 or parents-in-law, or to those who intend to go to China for other private affairs and intended duration of stay in China exceeds 180 days).

EXAMPLE: Using the same facts as above, the US employee would be required to send the following documents to the Chinese Embassy in the US in order to receive the Z visa:

i. Passport;
ii. Application form;
iii. Photo;
iv. Notification Letter of Foreigner's Work Permit;

4. Temporary Residence Certificate

After the foreign employee and dependents (if any) arrive in China, they are required to obtain a temporary residence certificate within twenty-four hours of their arrival.

The temporary residence certificate may be issued by the hotel (if the foreign employee and dependents stay in a hotel) or the competent local police station (if the foreign employee and dependents are accommodated in a rented flat or house).

This temporary resident certificate will be a necessary supporting document for the residence permit application.

5. Health Certificate

The foreign employee and dependents (if any) are required to have a medical examination at the designated hospital (in Shanghai, it is Shanghai International Travel Healthcare Center) and obtain the health certificate after their arrival in China. This document will be a necessary supporting document when applying for the work permit.

6. Work Permit

Within fifteen days after the entry of the foreign employee with a Z visa, the foreign employee is required to apply for the Foreigner Work Permit through the Service System. Documents required are:

i. Application Form;
ii. Valid Visa or residence permit;
iii. Employment contract;
iv. Health certificate issued by the Chinese inspection and quarantine institution. (if the Applicant has not provided a health certificate when applying for the Notification Letter of Foreigner's Work Permit). The health certificate shall be issued within 6 months.

7. Residence Permit

After the foreign employee obtains a work permit, he is required to apply for a residence permit for himself and his dependents (if any, including children under 18 years old) with the Exit-Entry Administration Division of the Public Security Bureau within thirty days of his arrival in China.

Supporting documents required are mainly as follows:

i. Passport(s) with Z visa (for employee) and/S1 or S1 visa (for dependents, if any)
ii. Temporary residence registration document issued by a hotel or other residence;
iii. Application form;
iv. Health certificate (of the employee and the dependents under 18 year old)
v. Official Letter issued by the employer;
vi. Written Application;
vii. Duplicate business license of the employer;
viii. Work permit;
ix. Statement of relative relationship issued by the foreign employee;
x. Certification for relative relationship (e.g. marriage certificate and/or birth certificate);
xi. Additional supporting materials if apply for Resident Permit for more than 1 year.

If this is the first time the foreign employee and dependents (if any) aged from 16 to 60 have applied for a residence permit they are required to go to the Exit-Entry Administration Division of the Public Security Bureau in person to make the application. Their passports will be kept in the Public Security Department for seven working days. During this period, they will be required to remain in China.

8. Applicable Government Fees

Applicable government fees payable during the process to obtain a work permit and other authorizations required may vary among areas in China. The following is the list of fees for Shanghai:

i. Fee for Notification Letter of Foreigner's Work Permit: free.
ii. Fee for employment visa: depends on the stipulation by the Chinese embassy.
iii. Fee for work permit: free.
iv. Fee for residence permit: RMB 800/person/year (Resident Permit for 1-3 years).

EXAMPLE: Using the same facts as above, a summary of the complete procedure for applying for a work permit and residence permit for the US employee and his dependent spouse would be as follows:

Step 1 The US employee provides his Chinese employer with the copies of documents and information which are required to apply for the Notification Letter of Foreigner's Work Permit.
Step 2 The US employee's Chinese employer registers on Service System for Foreigners Working in China and applies for the Notification Letter of Foreigner's Work Permit before he and his spouse enter China.
Step 3 The US employee's Chinese employer delivers the Notification Letter of Foreigner's Work Permit to him.
Step 4 The US employee and his spouse apply to the Chinese embassy in the US for Z Visa and S1 visa.
Step 5 The US employee and his spouse enter China by holding Z visa and S1 Visa
Step 6 The US employee and his spouse obtain a temporary residence certificate within twenty- four hours of their arrival in China.
Step 7 The US employee's Chinese employer applies for his work permit within fifteen days of his arrival in China.
Step 8 The US employee and his spouse apply for a residence permit within thirty days of their arrival in China.

9. Extension of Work Permit and Residence Permit

The employer must apply for an extension of the work permit thirty days prior to the expiration of his/her work permit. Supporting documents required for the work permit renewal application are:

i. Application form for the extension;
ii. Employment contract or other employment certificate;
iii. Passport or international travel certificate;
iv. Visa resident permit;

After the renewal of the work permit is approved, the foreign employee then applies for the extension of his residence permit. Supporting documents required for the residence permit renewal are the same as documents required for application of the residence permit for the first time, except for the health certificate, which is not required for the renewal of the residence permit. However, if the residence permit has expired for more than 3 months, a new health certificate shall be submitted.

Chapter 11

What Incentives are Available to Foreign Investors by the Government?

Depending on the industries concerned, the Chinese government bureaus that are responsible for reviewing and approving applications for investment promotion and granting investment incentives include but not limited to the Taxation Administration, Ministry of Finance, Ministry of Commerce, National Development and Reform Commission, Ministry of Science and Technology.

There are various types of investment incentives offered to foreign investors and foreign investment enterprises (FIE) with qualifying projects in China such as tax incentives, land grants and government subsidiaries. One of the most important incentives is corporate income tax exemption or reduction. China has eliminated nationwide tax holidays for FIEs, however, China still offers preferential tax incentives for FIEs and foreign investors in order to encourage foreign investment in hi-tech and other promoted sectors. This chapter discusses the tax incentives available to FIEs and foreign investors in China.

1. Tax Exemptions and Reductions

The standard corporate income tax rate is 25%, but the tax rate may be reduced to 15% for qualifying projects engaging in activities promoted by the China government. The following industries and activities are potentially eligible for tax incentives:

a. Research and Development Activities

A tax deduction is offered to foreign businesses engaging in the research and development of new technology and new products and/or new processes (R&D).

Generally, if no intangible assets are created and included in the company's balance sheet then an additional 50% of the actual expense may be deducted. If intangible assets are created and included on the company's balance sheet then an additional 150% of the actual expenses may be amortized annually during the amortization period which is at least 10 years as required by the law. According to the latest policy, the government raised this abovementioned percentage 50% or 150% to 75% or 175% from January 1, 2018 to December 31, 2020 to further encourage research and development activities.

EXAMPLE: Suppose a Japanese company operating in China spends RMB 1 million in the research phrase on new product development but no patent for the technology developed is filed and the new technology created is not included on the company's balance sheet. An expense of 1.75 million may be deducted from applicable tax.

EXAMPLE: Same facts as above but, the Japanese company spends RMB 10 million in the development phrase, then a patent is filed and eventually approved and the new technology is included on the company's balance sheet. In this situation, the company could amortize 1.75 million expenses during the amortization period, which shall be no less than 10 years.

b. Industry of Agriculture, Forestry, Husbandry and Fishery

The income of an enterprise derived from the following projects shall be exempted from corporate income tax:

i. cultivation of vegetables, cereals, potatoes, fuels, beans, cotton, linen, sugar, fruit, nuts;
ii. breeding of new crop varieties;
iii. cultivation of Chinese medical herbs;
iv. cultivation of forest trees;
v. livestock husbandry and poultry farming;
vi. gathering of forest products;
vii. agricultural, forestry, husbandry and fishery projects such as irrigation, primary processing of agricultural products, veterinarian, promotion of agricultural technology, operations and repair and maintenance of agricultural machinery etc..; and
viii. ocean fishing.

The income of an enterprise derived from the following projects shall be subject to 50% reduction of Corporate Income Tax:

i. cultivation of flowers, teas and other beverage crops and spices crops; and
ii. mariculture and inland aquaculture.

c. Investment In and Operation of Key Public Infrastructure Projects

If an enterprise invests in or operates key public infrastructure projects stipulated in the Catalogue of Corporate Income Tax Preference for Public Infrastructure Projects, such as ports, docks, airports, railways, highways, urban public transportation, electric power, water conservancy, the income derived from the projects shall be exempted from corporate tax from the first to third year starting from the first profit-making year and shall be granted 50% reduction of CIT from the fourth to sixth year.

d. Qualified Environmental Protection, Energy Conservation and Water Conservation Projects

Enterprise income from projects listed in the "Environmental Protection, Energy Saving and Water Saving Projects Corporate Income Tax Preferential Catalogue" shall be exempt from corporate tax for the first to third years starting from the first profit-making year, and granted 50% reduction of tax from the fourth to sixth year.

e. Qualified Technology Transfer Projects

Within a tax year, the portion of the technology transfer income of an enterprise that does not exceed 5 million yuan is exempted from corporate tax while the portion that exceeds 5 million yuan will be granted 50% reduction of tax.

f. Integrated Circuit and Software Industry

Eligible enterprises in integrated circuit and software industry may enjoy different levels of tax incentives based on their operation terms, products, and investment amount. The corporate tax rate of an integrated circuit manufacturing enterprise with an investment of more than 8 billion yuan or producing line widths less than 0.25 microns, tax rate is reduced to 15%. More details can be found in Catalogue of Corporate Income Tax Preference Management.

g. High-tech Industry

Qualified high-tech enterprises qualify for a reduced corporate tax rate of 15%. For high-tech enterprises established in Special Economic Zone and Shanghai Pudong New District, tax shall be exempted in the first and second year starting from the first profit generating year and tax is halved at the statutory tax rate of 25% for the third to fifth year.

h. Manufacturing Industry

Manufacturing industry companies qualify for accelerated depreciation of fixed assets. For newly purchased fixed assets, the depreciation period can be shortened, or an accelerated depreciation method may be utilized.

i. Advanced Technology Service Industry

Qualifying advanced technology services enterprises qualify for a reduced corporate tax rate of 15%.

2. Other Tax Incentives

The following are additional tax incentives specifically offered to FIE's and foreign investors.

a. Catalogue of Encouraged Foreign Investment Industries

The China government has formulated the Catalogue of Encouraged Foreign Investment Industries to guide foreign investment by giving preferential treatment to specific industries and regions. The catalogue consists of two sub-catalogues. One sub-catalogue contains the encouraged industries applicable to FIEs nationwide ("National Catalogue"), and the other one contains the encouraged industries only applicable to central and western regions and northeast regions ("Regional Catalogue"), which are considered relatively undeveloped areas and more investments are needed to boost the local economy.

The preferential treatment for encouraged industries in the Catalogue mainly includes:

i. For the encouraged foreign investment projects, the import of equipment for self-use within the total investment shall be exempted from customs duty.
ii. Foreign investment projects in the Regional Catalogue shall enjoy reduced corporate tax rate of 15%.
iii. The land for encouraged foreign investment projects of intensive use can be offered with priority. The base price of land transfer fee can be further reduced to no lower than 70% of the corresponding lowest national standard price for industrial-use land.

b. Tax Incentives for Reinvestment

Foreign investors shall be granted temporary waiver of withholding income tax for the profits distributed from an FIE if the distributed profits are invested into non-prohibited projects by foreign investors. Note that foreign investors only refer to foreign enterprises, not foreign nature persons.

The "direct investment" usually means the following activities:

i. Increase or conversion of paid-up capital or capital reserve of a domestic resident enterprise in China;
ii. Investment and establishment of a new domestic resident enterprise in China;
iii. Acquisition of equity of a domestic resident enterprise in China from a non-related party;

However, the "direct investment" does not exclude new subscription, transfer or acquisition of shares in listed companies, except for eligible strategic investments.

If a foreign investor is eligible for this tax incentive, it shall report and provide the required documents and information to the FIE, i.e. the profit distribution enterprise. If the profit distribution enterprise considers that the foreign investor is qualified for the tax incentive, after proper review, it may temporarily hold the withholding income tax and conduct record filing with the tax authority.

3. Government Subsidies

The central government allows local governments to offer certain local incentives to attract foreign investment. According to guidelines and policies issued the State Council, the provincial government may provide incentives such as financial subsidies or land grant fee reductions within their power to local FIEs and foreign investors based on their local circumstances. The following are some preferential policies in Beijing, Shanghai, and Guangzhou.

Beijing:

To encourage multinational corporations to establish or relocate regional headquarters in Beijing, Beijing government grants subsidies for regional headquarters newly registered and established in Beijing or newly relocated to Beijing after 1 January 2009 based on their paid-in capital. Also, rent subsidy for the office space leased will be provided for three consecutive years. Regional headquarters with annual operating income exceeding RMB 100 million for the first time will be rewarded based on their operating income.

Also, to promote the development of high-tech industries, Beijing enhances the support of intelligence introduction projects, granting a maximum of 500,000 yuan for general intelligence introduction projects for one year, and granting no less than 500,000 yuan to key intelligence introduction projects for three consecutive years.

The government will provide convenience in terms of talent visas (R visas), work permits and permanent residence in China for overseas scientists with significant original innovation capabilities, overseas technology leaders with significant technological innovation capabilities, overseas investors who promote the transfer and transformation of scientific and technological achievements, overseas professional managers who improve the level of project operation and management, overseas innovation and entrepreneurship service teams, etc..

Shanghai:

To encourage multinational corporations to establish or relocate Regional Headquarters in Shanghai, any regional headquarters established in the form of an investment company in Shanghai after July 7, 2008 with paid in registered capital of over USD 30 million and ten or more employees, may enjoy a subsidy of five million yuan. Also, rental subsidy will be granted to qualified regional headquarters. Besides, if the annual turnover exceeds 500 million yuan, the regional headquarters may get reward from the government.

Foreign-funded R & D centers may also be granted startup subsidy and rental subsidy abovementioned as regional headquarters.

Guangzhou:

Guangdong Province also provides local incentives to foreign investment. Foreign investors investing in non-financial economic projects, and establishing headquarters or regional headquarters in Guangdong to a certain scale will be rewarded according to the investment amount up to RMB100 million.

The land for self-built office properties of the world's top 500 companies and global industry leaders or regional headquarters for manufacturing, or foreign-invested projects with actual investment over 1 billion yuan "should be guaranteed". At the same time, Guangdong strongly supports R & D and innovation. Foreign-funded R & D institutions identified as provincial-level new R & D institutions may receive financial subsidy up to RMB10 million from Guangdong Province.

Chapter 12

What are the Legal Issues Associated with Foreign Ownership of Land?

The private ownership of land is generally not allowed in mainland China by either foreigners or Chinese nationals. This is because urban land is owned by the central government and rural land is owned by farm collectives.

Chinese law does, however, allow qualifying foreign individuals and foreign companies to acquire a right to use (not own) land for a period of time specified in the law and even transfer that right of use to third parties in some situations. This right is comparable in many respects to a leasehold.

Also, qualifying foreign individuals and foreign companies are legally allowed to purchase and own buildings, houses, condominiums, and other immovable property during the period of land use, subject to certain conditions described below.

1. Land Use Right

China has a system under which land ownership is separated from land use rights (with both Chinese nationals and foreigners only afforded land use right). Under this system, urban land is generally owned by the government (State Land) and rural land is generally owned by farm collectives (Collective Land).

Normally, foreigners (individuals and foreign registered entities) can only buy the right to use State Land, not Collective Land.

The maximum period of use of State Land is prescribed by law, depending upon the legal classification of the purchaser's intended use.

Intended Use		Use Period
Residential use (including condominiums)	→	70 years
Industrial use	→	50 years
Public health, educational, or athletic use	→	50 years
Cultural, scientific, or technological use	→	50 years
Business, tourist, and recreational use	→	40 years
Comprehensive use, or other uses	→	50 years

Chinese law states that land used for residential purpose is automatically renewable at the end of the term. However, it is also stipulated that the payment of additional charges, reduction of or exemption from the renewal fee shall be handled in accordance with the future provisions of laws and administrative regulations. Therefore it is uncertain how such land use right can be "automatically" renewed upon expiration.

On the other hand, land use for non-residential property would be renewable if application for renewal is submitted at least one year before the expiry date; unless the plot of land is to be recalled in view of public interest, approval shall be granted. Upon approval of renewal, a new land use right assignment contract shall be concluded and land use right assignment fee shall be paid pursuant to the legal provisions. Upon expiry of such land use term stipulated in the land use right assignment contract, the land use right shall be recalled by the State without compensation if the land user does not apply for renewal or if the application is not approved.

EXAMPLE: A Korean businessman purchases a seventy-year land use right to land and a house in 2005. Under the current status of the law, since the use of this land is for residential purposes, upon its expiration in the year 2075 that land use right should be "automatically" renewable, except that he may have to pay additional land use right fees according to the laws of that time.

EXAMPLE: An Australian company purchases office space in 2003. Under the current status of the law, in the year 2053 that land use right can be renewed by the Australian company; however, they will need to pay additional land grant fee payable to the government.

2. Purchase for Self Use

Chinese law allows certain types of foreign parties to purchase land use and/or immovable property for self use.

Foreign companies with branch offices or representative offices, WFOEs, and JVs in China are allowed to purchase a right to use land and own immovable property (during the period of use) for self use according to their actual needs, without requesting additional permission from the government to do so.

EXAMPLE: A Finnish company with a branch office already registered in China seeks to purchase office space for self use in Beijing. This should be permissible under the law.

EXAMPLE: Same facts as above, except the Finnish company wishes to purchase the office for the purpose of leasing the property out to third parties. This purchase would not be permissible under this rule.

EXAMPLE: A US company in the process of establishing a representative office in Shanghai seeks to purchase office space for self use. This would not be allowed until the representative office is properly established in China according to the law.

Foreign individuals who wish to purchase immovable property are only allowed to purchase one piece of residential property in China for self use if they are working or studying in China. In some cities, they must prove that they have worked or studied in the city for more than one year. It should be noted that such policies are updated and modified frequently depending on the real estate market and should be checked and confirmed before making a decision to purchase a property in China.

EXAMPLE: A German engineer who has worked for a Chinese company for three months seeks to purchase a condominium in Guangzhou. This may be permissible even though the German has not yet worked or studied in China for one year. He should check with a local agent and confirm local restrictions in Guangzhou on foreigners purchasing residential properties.

3. Purchase for Business or Other (Non-Self Use) Purpose

Chinese law requires that foreign companies and foreign individuals that wish to acquire a land use right for land and/or immovable property for a purpose other than self use must establish a special purpose legal entity called a Foreign Invested Real Estate Enterprise (FIREE) (see applicable financing rules below).

A FIREE is a foreign owned enterprise registered in China to engage in real estate investment, development, or business operations.

After the Chinese government changed the management of foreign investment from approval to filing system, registering a FIREE does not need to get the special pre-approval from Chinese authorities, and it can be established directly at company registration. This is referred to in China as the rule of business presence, which means that any foreign investment in real estate for a purpose other than self use must be in the form of establishing a foreign invested-enterprise.

EXAMPLE: A US real estate company seeks to purchase a condominium building in Xiamen for the purpose of converting the building into a hotel. Chinese law would require the US company to first apply to establish a FIREE with the Chinese government to operate the building under the FIREE.

4. Financing and Foreign Exchange Controls

Chinese law regulates how the purchase price for land use and/or immovable property are paid for by the foreigner, both in terms of the source of funds and where the funds are paid.

Qualifying foreign individuals and foreign companies, as described above, purchasing land use and/or immovable property in China may pay the purchase price either from an offshore source, from a foreign currency account in China or in RMB (if payment is to made in RMB proof of the source of the funds is required).

If the purchase is by a foreign individual or company, the following documents are required to be presented to the Chinese bank responsible for converting the foreign currency payment to RMB:

i. Sale or pre-sale contract for the property.
ii. Approval and registration certificate of the foreign company's onshore branch or representative office.
iii. Registration of the purchase with a competent property administration authority.
iv. Written declaration that the purchased property will be for self use.

If the money for the purchase of a house is paid from a foreign exchange account within China, an application shall be presented to the designated bank of foreign exchange together with the four documents listed above. After the authenticity of the documents has been examined and verified by the designated foreign exchange bank, the money for the house purchase may be directly transferred to the RMB account of the real estate development enterprise after it is settled.

EXAMPLE: A Danish company with a representative office in China seeks to purchase office space in Beijing for self use and wishes to wire in Euros from a source outside China to make the payment. Before the Danish company would be allowed to convert the Euros into RMB, the Danish company would be required to present the above four listed documents to the Chinese bank, including a declaration that the property is for self use only.

If the purchase is by a foreign individual, no matter the money is remitted from abroad or from a foreign exchange account in China, the following documents are required to be presented to the Chinese bank responsible for converting the foreign currency into RMB:

i. Sale or pre-sale contract for the property.
ii. Written proof of personal identity such as passport or identity card.
iii. Registration of the purchase with a competent property administration authority.
iv. Notarized power of attorney if the foreign individual entrusts others to handle the formalities.
v. Other documentation may be required by the converting bank.

EXAMPLE: A Canadian student studying the Chinese language seeks to purchase a house in Shanghai and successfully negotiates the terms of the deal with the owners. Before the Canadian would be allowed to convert the purchase price from foreign currency to RMB, he would be required to present the above documentation to the converting bank.

EXAMPLE: Same facts as above, but the purchaser is from Taiwan instead of Canada. In this situation, the purchaser would be required to provide the bank with the same documentation as stated above.

The law requires the sale proceeds be paid by the foreign purchaser into the seller's RMB bank account.

EXAMPLE: A German company with a representative office in China seeks to buy office space in Shanghai for self use. The seller requests that the German company pay 50% of the purchase price in RMB into a Chinese bank account and the other 50% into an account offshore in foreign currency. This would not be permissible as the payment does not comply with the above requirement.

5. Primary and Secondary Markets

There are basically two sources of land in China: land in the primary market (which is held by the government) and land in the secondary market (which was formerly owned by the government, but has subsequently been sold to a third party).

In order for foreigners to obtain a land use right for land in the primary market a very strict (and many times very time consuming) bidding or auction procedure must be followed; therefore, many times, foreigners interested in acquiring rights to land prefer to do so from the secondary market, where the requirements are more easily met (as generally set forth in this chapter.)

6. Title Search

It is very important that any prospective purchaser of land use and/or immovable property in China conduct a thorough title search prior to closing. By conducting a title search, a prospective purchaser can obtain basic information concerning the property's precise location, borders, and usage, and whether any liens, mortgages, or leases are registered on the title.

The prospective purchaser should also review documents such as the property ownership certificate (the landowner's primary evidence of ownership), and if the landowner does not have the property ownership certificate, he should review the following documents:

i. Construction land planning permit.
ii. Construction planning permit.
iii. Construction permit.
iv. Certificate for land use right (for state owned land).
v. Property pre-sale permit
(commonly referred to as the "five permits").
vi. Other relevant documents.

Note that in some provinces the local land offices have data bases to assist interested persons in obtaining information concerning properties located in those provinces.

Note too, that the original registration documents may also be available for search by the owners, persons authorized by the owners, land registration agencies, judicial authorities (such as the courts and procurators), and other government agencies.