

# **Answers to 100 FAQs on Foreign Investment in Beijing**

***Beijing Municipal Government  
“Green-Channel” for  
Foreign Investment Approval***

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For a printed and official version of the booklet, please contact the  
“Green Channel”.**

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## **Beijing Investment Promotion Bureau**

The Beijing Investment Promotion Bureau (BIPB) is an organization under the Beijing Municipal Government and in charge of investment reception and promotion.

The BIPB's aim is to improve Beijing's investment environment, to establish a good image for the Beijing economic development, and to bridge the gap between government and enterprise, by providing investors with a one-stop specialized service of international standards.

The BIPB is composed of the Beijing Municipal Government "Green-Channel" for Investment Project Approval, the Beijing Foreign Invested Enterprise Complaint Center, the Beijing Foreign Investment Service Center, the Beijing Foreign Invested Enterprise Association, the Beijing International Investment Promotion Association, and the Beijing Foreign Enterprise Service Center.

The BIPB has the following functional branch offices: Consulting Dept., Project Service Dept. (including Law Affair Office), Investment Promotion Office, Association Dept., Large Activity Dept., Liaison Dept., Investment Service Dept. (including News Center and Information Center), and Enterprise Administration & Service Dept. (including Labor/Job Service Center).

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## Foreword

Beijing is the capital of China.

Beijing is China's political, cultural and international exchange center.

Beijing is located at the center of the Bohai economic ring, a fast-growing and high economic potential zone located in northern China.

Beijing has highly-developed infrastructure, solid R&D power, an advanced education system and high-quality human resources.

Beijing provides enterprises with good development environment and huge market potential. In addition, the 2008 Olympics will be soon be held in Beijing, attracting more and more foreign investors seeking new investment opportunities.

In order to provide foreign investors with a convenient brief on the Beijing investment environment, we have compiled this brochure. It provides the basics of investment in China, including laws and regulations, investment policies, industry policies and tax policies related to foreign-invested enterprise (FIE), and requirements and procedures required to establish an enterprise. We hope this will answer most frequently asked questions (FAQ), and benefit all investors in China.

We present special thanks to the Foreign Investment Department of the Beijing Municipal Ministry of Commerce, Beijing Global Strategy Consulting Co., Ltd. and to the Ance International Commerce Consultant Co., Ltd. (Beijing) for their valuable input and assistance. Furthermore, this is our first attempt at compiling such a brochure, so we welcome any advice and suggestions.

## Part I. Environment

### 1. What are the key issues for foreign direct investment in China?

(1) Improve the industry guidance of foreign investment and enforce macro-economic measures. Further optimize the foreign-investment structure. Promote foreign investment in IT and other high and new technology related industries. Focus on advanced practical technology. Enforce HR training. Emphasize assimilation of imported technology and innovation, to increase self-reliance in regards to innovation power.

(2) Provide foreign-investment guidance based on regional differences in economic development and in foreign investment capacity. Provide guidance to foreign investors to allow them to fully coordinate with regional economic development.

(3) Improve the level of foreign investment administration. Make comprehensive studies on multinational investment trends and development and foreign investment strategies, to develop mid and long term plans to guide foreign investors.

(4) Improve the environment for foreign-investment. Maintain a sustainable and reliable policy for foreign investment. Improve transparency and predictability in regards to policy drafting and implementation.

(5) Reinforce and improve investment promotion. Increase research of international economic flows. Closely observe investment strategies in various countries, to improve the foundations of China foreign-investment policy decisions.

## **2. What are the geographic advantages for Beijing investment?**

Beijing is the capital of the People's Republic of China. It is also the heart of its political, cultural and economic exchange. With over 3000 years of history, including 850 years as capital of Northern China, it is a cultural city full of elegant oriental flavor and trendy fashion.

Beijing gathers extensive R&D resources. It has over 80 universities, including the internationally renowned Beijing University and Tsinghua University. Over half of Science and Engineer Academies in China are located in Beijing, and over a third of patents in China are approved in Beijing.

Beijing has advanced traffic, power, telecom, and energy resources infrastructure. It is a key hub of domestic airways, railways and road systems, and a busy node of international communications.

Zhongguancun, the so-called "silicon valley of China", and other famous R&D and industrial development zones, provide foreign investors with advanced investment environments and facilities over a geographic area of over 16,400 km<sup>2</sup>.

With more and more attention on International Property Rights (IPR), the government has greatly stepped up measures to protect IPR.

As the center of the fast developing Bohai zone, Beijing presents superior market conditions.

The Olympic Games in 2008 will further promote Beijing's economic development. It will present great market opportunities for Beijing venues and infrastructure, and will also lead to increased development of satellite cities.

## **3. What is Beijing's population and geographic area? How many districts and counties are there in Beijing?**

Beijing covers a geographics area of 16410.54 km<sup>2</sup>. It has a population of 14.93 million. It is composed of 2 counties: the Miyun and Yanqing counties, and 16 districts: Dongcheng, Xicheng, Congwen, Xuanwu, Chaoyang, Haidian, Fengtai, Shijingshan, Mentougou, Tongzhou, Shunyi, Huairou, Daxing, Changping, Pinggu, and Fangshan.

## **4. What are the main features of Beijing districts and counties?**

Beijing consists of 18 districts and counties. The Dongcheng, Xicheng, Congwen and Xuanwu districts represent Beijing's functional core. They serve the capital's functions in politics, culture and international exchange. They are also the main components of the capital's "Four services."

The Chaoyang, Haidian, Fengtai, and Shijingshan districts are downtown districts whose main purposes are to expand the capital's functions. Their development focuses mostly on services geared towards national and international finance, on promotion of technical innovation, and on the development of high and new technology industries.

The Tongzhou, Daxing, Shunyi, and Changping districts are new districts located in the outskirts of Beijing. Their development focuses on modern manufacturing industries and on modern agriculture destined for cities. They are also satellite cities destined to become new centers of economic development.

The Mentougou, Fangshan, Pinggu, and Huairou districts, and the Miyun and Yanqing counties, are mountainous districts surrounding Beijing. They are ecological reserves serving to preserve ecologic and water resources, and are key to Beijing sustainable development. While focusing on nature preservation and development, they

will gather populations and direct rationale use and development of natural resources. They will thus form an ecologic cover for the city, and a leisure space for city inhabitants.

## **5. What are the main industrial features of Beijing districts and counties?**

The Dongcheng district focuses on the development of the information service, finance and insurance, real estate, business service, modern transport, culture, and high and new technology industries.

The Xicheng district focuses on the development of the finance, business service, technical R&D, and information service industries.

The Congwen district focuses on the development of the real estate, pharmaceuticals, culture tourism, sports, and business service industries.

The Xuanwu district focuses on the development of the trade, finance, real estate, media, new commerce, and cultural tourism industries.

The Haidian district focuses on the development of the high and new technology, high technology agriculture industries, cultural education, and cultural tourism.

The Chaoyang district focuses on the development of the finance, trade, exhibition, cultural sports, agent, high and new technology, and in-town agriculture industries.

The Shijingshan district focuses on the development of the high and new technology, modern manufacturing, leisure entertainment tourism, and leisure entertainment industries.

The Fengtai district focuses on the development of the modern service, logistic/supply, tourism, high and new technology, and real estate industries.

The Shunyi district focuses on the development of the high and new technology, modern manufacturing, modern service, food/drinks, and modern agriculture industries.

The Changping district focuses on the development of the electronics, information, bio-pharmaceuticals, ecologic agriculture, and tourism development industries.

The Fangshan district focuses on the development of the petrol-chemicals, new material, new construction material, modern equipment manufacturing, bioengineering and new pharmaceuticals industries.

The Tongzhou district focuses on the development of the modern manufacturing, tourism, culture, exhibition service, trade, finance, and logistic/supply industries.

The Huairou district focuses on the development of the exhibition service, tourism, leisure entertainment, sports culture, modern logistic/supply and other town industries.

The Mentougou district focuses on the development of the modern, tourism, leisure entertainment, and ecologic agriculture industries.

The Daxing district focuses on the development of the bio-pharmaceuticals, new material, tourism, real estate, modern agriculture, printing, and packaging industries.

The Pinggu district focuses on the development of the auto parts/components, food/drinks, textile, whole clothes, tourism, entertainment, and fruit planting industries.

The Miyun County focuses on the development of the “green” agriculture, textile, food processing, leisure and tourism industries.

The Yanqing County focuses on the development of the modern agriculture, folklore tourism, textile, food, pharmaceuticals, machinery manufacturing, new construction material, and folklore industries.

## Part II. Policies

### **6. What is the situation of Beijing foreign investment in 2006? Which countries and regions are the main investors?**

As of April 2006, 24,388 foreign-invested enterprises have been approved in Beijing, with US\$56.2 billion in total contractual foreign investment, and US\$29.8 billion in actual direct foreign investment.

In 2005, 2,136 foreign investment companies were approved, representing an increase of 14.4% compared to the previous year. The city attracted US\$6.52 billion in total contractual foreign investment, and US\$3.53 billion in actual direct foreign investment.

From January to December 2005, the top countries and regions for foreign investment in Beijing are: (in million US\$)

1. Japan: 799
2. Hong Kong: 572
3. Cayman Islands: 562
4. British Virgin Islands: 386
5. South Korea: 258
6. Germany: 249

### **7. What are the main laws and regulations guiding foreign investment in Beijing?**

(1) “Law of the People’s Republic of China on Sino-Foreign Equity Joint Ventures” and implementation regulations.

(2) “Law of the People’s Republic of China on Sino-Foreign Cooperative Ventures” and its detailed rules for implementation.

(3) “Law of the People’s Republic of China on Foreign-Capital Enterprises” and its detailed rules for implementation.

(4) “Law of the People’s Republic of China on Foreign-Capital and Foreign Enterprises Income Tax” and its detailed rules for implementation.

(5) “Rules on Guiding Foreign Investment Direction” and “Catalogue Guiding Foreign Investment in Industry”.

Besides the above, there are a series of regional and industrial guides for foreign investment in China.

### **8. How should foreign-invested enterprises acquire land-use rights?**

FIEs are able to acquire land-use rights through land-use applications and payments. Acquiring existing rights can be made through three methods: contracts, bids or auctions. According to land transfer agreements, all resulting land-use rights can be legally transferred, leased or put into mortgage, but an application must be submitted to related authorities for approval, commerce and industry registration, and tax registration.

### **9. Can rights be acquired to use state-owned land within administrative regions,**

## **for commercial projects within Beijing?**

As of July 1<sup>st</sup> 2002, issuing of rights to use state-owned has been halted in the Beijing administration region. Existing land-use rights should be acquired in city and regional land markets via bidding, auction or nominal trading.

### **10. What are tender invitations for transfer of rights to use state-owned lands?**

They are announced and arranged by the city or district/county administration authorities, to invite designated or non-designated civilians, legal people and other organizations, to participate in bids for rights to use state-owned lands.

### **11. What are auctions for transfer of rights to use state-owned lands?**

They are announced by the land owner seeking to auction land-use permits. Participants offer bids in an open auction at an assigned time and location.

### **12. What are listings for transfer of rights to use state-owned lands?**

The land owner puts up conditions for sales of land-use rights. During the specified period, potential buyers put forward their purchase conditions at designated land trade markets. New conditions are put up according to the offers. The final buyer is designated according to price results at the end of the bid period.

### **13. According to the new “Corporate Law”, limited liability companies are required to inject their capital in full within two years after the establishment of the company by stockholders. However, according to the “Notice on Tightening of Control over the Examination and Approval of the Establishments of FIE and their Business Registration”, Joint Venture companies with total registration capital of less than US\$10 million must inject all capital within 3 years of obtaining its business license. The deadline for Joint Venture companies with a registration capital of over US\$10 million is determined by approval authorities according to the circumstances. Please clarify, which deadlines should be observed by JV companies?**

The registration capital submitted by the Foreign (not Chinese) party for a limited liability FIE (including one-person company) should actually be injected in full within the 6 months since the company establishment date, if the payment is made in one phase. However, if the registration capital is submitted in multiple phases, the first injection should be no less than 15% of the final amount, nor less than the minimum investment limit designated by law, and be made within the first 3 months since the issuance of the business license. The remaining capital should be injected according to relevant rules designated in the “Corporate Law” and in the “Regulations on Administration of Company Registrations”. Some other regulations require for the registration capital to be injected in full upon establishment of the company.

### **14. There are a series of company establishment rules in the new “Corporate Law.” What to do when these rules differ from previous FIE laws? Should the previous rules still be applied, or should they be revised according to the new “Corporate Law”?**

According to special provisions, FIE establishment should continue to abide by the “Law on Chinese-Foreign Equity Joint Ventures”, the “Law on Sino-Foreign Contractual Joint Ventures” and the “Law on Foreign-Invested Enterprises” (henceforth referred to as the “3 Laws on Foreign Investment”). For more details, please refer to “Application of Law Governing the Examination, Approval and Registration of Foreign-invested

Companies.”

**15. Is an enterprise with foreign investment of below 25% regarded as a “foreign-invested limited liability company” according to Article 218 of the new Corporate Law?**

According to the “Notice concerning the Relevant Issues on Strengthening the Approval, Registration, Foreign Exchange Control and Taxation Administration of Foreign-invested Enterprises,” jointly issued by the former Ministry of Foreign Economic Relations and Trade (MOFERT), the State Taxation Bureau, the State Bureau of Commerce, the Administration for Industry and Commerce and the State Foreign Exchange Administration in 2002, projects with a foreign investment ratio of below 25% must also comply with foreign investment Laws and related rules and regulations. Under such circumstances, an FIE certificate of approval will be issued the stamped notes: “Foreign Investment Ratio Below 25%”. However, the company will not enjoy any favorable FIE policies.

**16. Are following items of the new Corporate Law applicable to FIE?**

- (1) Canceling of the limit to industrial property investment ratio (the former ratio is 20%)
- (2) Shareholder can choose not to follow capital investment ratios in profit dispensation.
- (3) New rules on director responsibility.

According to applicable law principles, FIE should follow related foreign investment laws, and only apply the “Corporate Law” and other laws and regulations when the foreign-investment laws do not specify. On the issue of industrial property investment ratios, the “Law on Foreign Invested Enterprises” states that in the case of WOFEs, the cost of proprietary technologies should represent no more than 20% of registration capital. This law must still be implemented. The “Law on Cooperative Joint Ventures” state rules for profit dispensations that do not follow investment ratios. As for the responsibility of board members, there are no particular regulations according to foreign investment laws, so the “Corporate Law” should be implemented.

**17. The new Corporate Law has cancelled the rule confining foreign investment to less than 50% of net assets. Yet according to the “Provisional Rules on Domestic Investment for FIE”, the accumulated FIE foreign investment in China should represent no more than 50% of its net assets.” Which law fits an FIE?**

Currently, the Bureau of Commerce is revising the Provisional Rules on Domestic Investment for FIE to comply with the Corporate Law. Prior to its new publication, existing laws on FIE domestic investment should be followed.

### **Part III. Industry Policies**

**18. Which are the current investment domains encouraged by the State?**

- (1) New technology for the agricultural industry, overall development of agriculture and energy, communication, and key raw material industry.
- (2) High and new technology; advanced practical technology; new equipment or

materials that can increase product performance, improve of the efficiency of the technology economy, or are produced in insufficient quantities by domestic manufacturers.

(3) Industries that answer market demand, increase product grade, can enter a new market or increase international competitiveness.

(4) New technology or new equipment that can save energy or raw materials, make good overall usage of natural resource, use recycled resources and prevent environmental pollution.

(5) Industries that can make the best usage of labor and resources of middle and western China, thus meeting state industry policies.

(6) Other cases defined by laws and regulations.

#### **19. Which are the current investment domains limited by the State?**

(1) Obsolete technology.

(2) Industries not favorable for resource conservation and environmental protection.

(3) Search and exploitation of specific minerals under state protection.

(4) Industries that the State is gradually developing.

(5) Other cases defined by laws and regulations.

#### **20. Which are the current investment domains prohibited by the State?**

1) Industries that pose a thread to the national security or to the public interest

(2) Industries that cause pollution damage to the environment, that damage natural resources or that cause damage to human health

(3) Industries that use up large amounts of cultivated lands, or that do not benefit protection or development of natural resources

(4) Industries that disrupt the security or efficiency of military installations

(5) Industries that use crafts and techniques possessing national characteristics to manufacture products

(6) Other industries defined by other laws and regulations.

#### **21. Are there foreign investment domains other than the ones that are encouraged, limited or banned by the State?**

Foreign investment is generally allowed for projects other than those stated in the above three categories. However, some projects need to be approved by the Government or related industry authorities.

### **Part IV. Investment**

#### **22. What are the models for foreign investment?**

The main models in China are Chinese-Foreign Joint Ventures and Wholly-Owned Foreign Enterprises (WOFE). Other models include: establishment of a foreign-invested enterprise limited by share, investment corporations, cooperative development

enterprise, BOT etc.

### **23. What is a Sino-Foreign Equity Joint Venture?**

A Sino-Foreign Equity Joint Venture is defined as an enterprise established jointly by companies, enterprises or other economic organizations or individuals from outside China and those within China on the principle of equality and mutual benefit. Both the Chinese and foreign investors are involved in the operations of the enterprise and share risks and benefits according to their shares of contributions to the investment.

### **24. What is a Sino-Foreign Cooperative Joint Venture?**

A Sino-Foreign Cooperative Joint Venture is of a contractual nature. It is established in accordance with the terms and conditions of cooperation of both the Chinese and foreign parties. In a cooperative joint venture, such items as the investment amount, the terms of cooperation, the distribution of earnings or products, the sharing of risks and losses, the methodologies of business management and the ownership of property on the expiry of the contract term are all defined in a contract. In this arrangement, the distribution of earnings or products, sharing of risks and losses, the methodologies of business management and the ownership of property upon the expiry of the contract are not based on shareholding structure, but on what a contract says.

### **25. What is a Wholly-Owned Foreign Enterprise (WOFE)?**

A Wholly Owned Foreign Enterprise is defined as an enterprise established by companies, enterprises, other economic organizations or individuals from outside China exclusively with their own capital. The overall profits belong to the foreign-invested company.

It is a limited liability company, not including branches in the form of enterprises abroad or other economic organizations in China.

### **26. What is a Foreign-Invested Enterprise Limited by Share?**

It is defined as a company, other economic organization or individuals from outside China, cooperating with a Chinese company, enterprise or other economic organizations, by jointly holding a company within China through purchase of a fixed share ratio, under the principle of mutual benefit. The total capital of the Foreign-Invested Enterprise Limited by Share is composed by its shares. Each shareholder will assume responsibilities for the company according to the value of their shares. The company bears the responsibility of debts with the totality of its assets.

### **27. What is Sino-Foreign Cooperative Development?**

A Sino-Foreign cooperative exploration is a venture contract between a Chinese company and a foreign company, with the goal of land and sea, oil and mineral detection and exploitation. It is an international economic cooperation scheme widely used in the domain of natural resources. Its main characteristics are high risk, high investment, and high profits. Cooperative Development is usually composed of 3 stages: exploration, exploitation and production.

### **28. What is a BOT?**

The BOT scheme allows the investor to take responsibility for the building, operation, maintenance and transfer of an industrial or infrastructure project. The investor will be responsible for the operation of the facilities during a designated operation term, and is

allowed to recover investment, operation and maintenance costs during this time. After the operation term, the company transfers the project to related government departments. In China, companies set up using the BOT scheme are used in domains such as highways, power plants, and sewage treatment centers.

**29. Is a new company considered an FIE if the investment is profit generated by other FIE?**

According to provisions in the “Detailed Rules for the Implementation of Law of the People’s Republic of China on Foreign-Capital Enterprises”, such investment schemes can be submitted to related authorities for approval. Foreign investors can conduct investment using RMB generated by other FIE in China. It will also be regarded as FIE.

**30. What are the issues an FIE has to consider when completing forms for capital expansion or altering the registration capital?**

The procedure should be as following: the company must submit the agreement by the Board of Directors and the application forms signed by the chairman of board to the Beijing Municipal Ministry of Commerce. After review and approval, the company has to apply for registration alterations besides the Administration for Industry and Commerce according following related regulations.

The capital change should be suitable to the scale of the business and demands of the operation.

The registration capital is not allowed to decrease under one of the following circumstances:

(1) The sum of the registration capital after the change is less than the minimum registration capital limit assigned by related laws and regulations.

(2) The company is involved in an economic dispute, and is about to enter a judicial or arbitration procedure.

(3) The registration capital after the change will be less than the minimum requirement for production and operation assigned by contract or by rules and regulations.

(4) The Sino-Foreign cooperation contract allows the foreign party to retrieve the return on its investment in advance, and it has already done so.

**31. What is the total investment? What are the requirements for an FIE total investment?**

The total investment refers to the sum of fixed assets and liquid assets invested by the company during the production and operation stages. It is also named operation capital. The total investment changes according to the constantly changing scope of company production and operation. It is the total sum represented by the infrastructure funds and liquid production funds necessary for production and operation and defined in the cooperation contract.

If the FIE cannot reach the necessary sum, bank loans can be used as part of the investment. As such, the total FIE investment includes two parts: the registration capital (capital and stock), and debit/credit capital (liabilities).

**32. What are the regulations on the proportion of registered capital to the minimum amount of investment for foreign-invested projects?**

According to the “Provisional Regulations for the Proportion of Registered Capital to Total Amount of Investment of Joint Ventures Using Chinese and Foreign Investment” issued by the State Administration for Industry and Commerce, the requirements are as follow:

(1) When the total investment amount of the Sino-Foreign EJV is less than US\$3 million (US\$3 million included), the registered capital shall account for at least seven tenths of the total investment amount.

(2) When the total investment amount of the Sino-Foreign EJV is between US\$3 million and US\$10 million (US\$10 million included), the registered capital shall account for at least half of the total investment amount. When the total amount of investment is less than US\$4.2 million, the registered capital shall be no less than US\$2.1 million.

(3) When the total investment amount of the Sino-Foreign EJV is between US\$10 million and US\$ 30 million (US\$30 million included), the registered capital shall account for at least two fifths of the total investment amount. If the total amount of investment is less than US\$12.5 million, the registered capital shall be no less than US\$5 million.

(4) When the total investment amount of the Sino-Foreign EJV is over US\$30 million, the registered capital shall account for at least one third of the total investment amount. If the total amount of investment is less than US\$36 million, the registered capital shall be no less than US\$12 million.

If the FIE is unable to meet the above requirements, it can submit its case to the Ministry of Commerce and to the State Administration for Industry and Commerce for review and approval.

### **33. Which governmental agencies handle FIE approval? And what are the main functions for those agencies?**

The Beijing Municipal Development and Reform Commission is responsible for examination and approval. The Beijing Municipal Ministry of Commerce is responsible for enterprise establishment and alterations approvals. The Administration for Industry and Commerce is responsible for company registration. The Code Allocation Center of the Beijing Bureau of Quality and Technical Supervision is responsible for issuing the Organization Code.

The Beijing Municipal Development and Reform Commission is in charge of verifying project recommendations, project application forms, letters of intent signed by both parties of a JV cooperation, project proposals approved by the related Chinese authorities, and proof of funds by the foreign party. It then issues an official reply to the project application form. Examined materials include: the project application form signed by both parties and a copy of the documents submitted during the application.

The Ministry of Commerce is in charge of the examination of the contract, articles of association and other documents. Examined material include: the official reply to the project application form; the Sino-Foreign Industry and Commerce registration certificate and proof of funds; the contract and articles of association; and a name list of the appointed board members from each side. It then issues the approval documents and approval certificates.

The Administration for Industry and Commerce is in charge of registration. Examined material include: the approval documents and the approval certificates issued by the Beijing (or authorized district/county) Bureau of Commerce; the project proposal approved by the Development and Reform Commission; the application form; the contract and articles of association; and a name list of the board of directors. It then

issues a business license.

The Code Allocation Center of the Beijing Bureau of Quality and Technical Supervision is responsible for the approval of the Organization Code. It issues a registration code to the newly approved enterprise based on the approval documents issued by the commercial departments. The new enterprise can only obtain the certificate issued by commercial departments after obtaining this code.

#### **34. What are the procedures for establishing an EJV, a CJV, or a WOFE?**

In order to apply for the establishment of a JV or a WOFE, enterprise name pre-approval registration must first be completed at the Administration for Industry and Commerce. It will be sent to the Beijing Municipal Ministry of Commerce or to authorized district/county Ministries of Commerce for ratification according to the jurisdiction of the project. It is then forwarded to the Code Allocation Center of the Beijing Bureau of Quality and Technical Supervision to be issued a registration code. The commercial departments then issue a Certificate of Approval according to the registration code and to the approval documents. The company can then register its name and obtain a business license at the Administration for Industry and Commerce according to the Certificate of Approval.

#### **35. Which documents should be submitted when establishing an FIE?**

(1) The foreign investor's entity status or identity certificates, notarized by notary organ of the country where the investor is from, then certified by the Chinese embassy or consulate in that country. Investors from Hong Kong, Macau and Taiwan must submit entity status or identity certificates supported by notary papers issued by local notary organs.

(2) The application form for the establishment of an FIE, including business objectives, business scope, location and operation schedule. This application should be signed by the company's legal representative and bear the corporate seal.

(3) The FIE constitutions.

(4) The FIE project application reports, including a background presentation of the company's headquarters, and market analysis and economic appraisals.

(5) The original appointment letter of the board of directors signed by the board chairman or the general manager, the original letter of appointment of the FIE general manager and vice-general manager signed by the investor chairman of board.

(6) Resource certificates provided by the bank of the country of origin.

(7) The resume and proofs of identity of the members of the board of directors, or of the general manager and vice general manager. Hong Kong and Macao residents should provide a copy of their home visit permit.

(8) A copy of the letter of agreement for office rent location. The lease term should be at least one year.

Under special circumstances, related documents should be provided.

#### **36. Which works should be follow-up after an FIE established?**

The FIE should complete registration processes besides related authorities within 30 days of obtaining the business license, such as: obtaining the stamp approval besides the Public Security Bureau; obtaining the Code certificate besides the Organization Code departments; registering at the Foreign Exchange Bureau and applying for an

account in foreign currencies; registering at the Taxation Bureau; opening an account in foreign currencies and in renminbi; registering at the Customs Bureau, the Commodities Inspection Bureau, the Bureau of Finance and the Bureau of Statistics; complete recruitment forms besides the Bureau of Labor.

**37. How does the FIE confirm qualification for exemption or reduction of import taxes while purchasing equipment?**

A written application entitled "Application form for confirmation of Foreign-Invested Project Encouraged by the State" and bearing the company seal should be submitted to the Beijing Ministry of Commerce and to the Beijing Development and Reform Commission. The Beijing Ministry of Commerce and the Beijing Development and Reform Commission will each examine the application according to their own defined tasks, then issue a certificate for Foreign-Invested Project Encouraged by the State.

**38. What documents should the FIE submit in order to apply for purchase tax exemptions or tax reductions?**

- (1) "Certificate for Foreign-Invested Project Encouraged by the State".
- (2) Equipment list (plus 3 copies of each).
- (3) Enterprise approval certificate and business license (plus copy).
- (4) Fund verification reports (plus copy).
- (5) Latest annual audit report.
- (6) Enterprise contract, articles of association and ratifications.
- (7) Feasibility report and approval documents.
- (8) Other materials required by approval authorities.

**39. How does the FIE apply for tax exemptions or tax reductions besides customs authorities?**

Prior to importing the commodities, the FIE should submit the following documents to customs authorities to apply for approval of tax exemptions:

- (1) A ratified contract equipment list.
- (2) Receipts for the commodities and a duplicate or copy of the packing bills.
- (3) The Duty-free application form for import/export commodities.

Import permits should be submitted for commodities requiring verification. A "Commodity Import/Export Duty-Free Certificate" will then be issued. While the commodities are in the import process, the company must complete custom forms using the previously issued certificate.

**40. Is government approval required for a foreign-invested project? What are the basic approval rules? Which governmental departments are in charge of this process?**

The City Development and Reform Commission is responsible for the examination and approval of total investments (including capital surplus) of over US\$100 million for projects encouraged or allowed by the State, and total investments of over US\$50 million for projects prohibited by the State.

The City Development and Reform Commission is responsible for the approval of

total investments of under US\$50 million for projects prohibited by the State, and total investments of between US\$30 million and US\$100 million for projects encouraged or allowed by the State.

The City Development and Reform Commission is responsible for the approval of total investments of under US\$30 million for projects encouraged or allowed by the State and that are included in the "Beijing Foreign-Invested Project Approval Catalogue."

Local district/county Development and Reform authorities are responsible for the approval of all other projects.

#### **41. What are the main forms of foreign-invested mergers & acquisitions?**

According to Article 2 of "Temporary Provisions for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors", two models can be used for foreign-invested merger: stock mergers and acquisitions, and assets mergers and acquisitions.

#### **42. What are stock mergers & acquisitions?**

The foreign investors purchase domestic stocks non-held by FIE, or contribute to the company's capital increase. The domestic company thus becomes a FIE.

#### **43. Which issues should foreign investors consider during mergers & acquisitions?**

(1) The foreign investor making a merger & acquisition of a domestic enterprise should observe Chinese laws, administrative legislations and industry regulations. The deal should abide by the rules of fair-play, compensation and honest transactions. Excessive concentration, exclusion or restrictions on competition are prohibited to avoid damage to the social economic order or to the public interest.

(2) The foreign investor making a merger & acquisition of a domestic enterprise should satisfy the requirements set by Chinese laws, administrative legislations and industry regulations, on industry policies and qualifications.

(3) After a stock merger & acquisition, the foreign investor must assume all the debts and creditor rights of the purchased company. After an assets merger and acquisition, the domestic company making the sales will retain existing debts and creditor rights.

(4) Those involved in the merger and acquisition must set the transaction price according to evaluations of the worth of stocks or assets, by assets evaluation agencies. They can appoint a domestic asset evaluation agency legally established in China. Assets must be evaluated using internationally-accepted evaluation standards. When equity shares of state-owned assets are altered, or when the property rights of state-owned assets are transferred, price evaluations must be made according to provisions on management of state-owned assets. Sales of assets and equity shares at prices clearly below the evaluated prices and disguised diversion of capital to abroad are strictly prohibited.

(5) The foreign investor making a merger & acquisition of a domestic enterprise must issue the full payment for the stocks or assets within 3 months since the issuance of its FIE business license. If extensions are required, then after approval from related authority, over 60% of the payment must be issued within 6 months of the issuing of the license, and 100% of the payment should be issued within 1 year. Profits will be distributed according to the proportion of actual investment.

(6) For industries where the WOFE scheme is prohibited according to the "Catalogue

Guiding Foreign Investment in Industry”, the foreign investor is not allowed to hold 100% of the company stocks after a merger & acquisition. In industries where the Chinese party is required to hold a controlling share or a relative controlling share, the Chinese party must still retain these statuses after the merger & acquisition. Mergers & acquisitions are not allowed for industries where foreign investment is prohibited.

(7) Appropriate arrangements must be made for the original company staff.

(8) Total investment after a merger & acquisition should match operation requirements. Registration capital must verify required ratios to the total investment.

#### **44. What are assets mergers & acquisitions?**

It refers to the establishment of an FIE by foreign investors and the purchase and operation of assets from domestic enterprises through this FIE. Alternatively, foreign investors can purchase assets from domestic enterprises, then establish an FIE using the investment for these assets to operate these assets.

#### **45. What are the requirements for the total investment of FIE established by foreign-invested merger & acquisition?**

(1) For an enterprise with a registration capital of under US\$2.1 million, the total investment should not be over 10/7 of the registration capital.

(2) For an enterprise with a registration capital of US\$2.1 million to US\$5 million, the total investment should not be over 2 times the registration capital.

(3) For an enterprise with a registration capital of US\$5 million to US\$12 million, the total investment should not be over 2.5 times the registration capital.

(4) For an enterprise with a registration capital over US\$12 million, the total investment should not be over 3 times the registration capital.

#### **46. What are the limits on domestic enterprises for mergers & acquisitions?**

(1) Purchased companies are not limited to non-FIE. This includes purchasing stocks from Chinese parties in the same FIE.

(2) A company resulting from a stock merger & acquisition must be a regulated company. This includes limited liability companies and stock limited companies. For non stock-based enterprises such as non-corporate state-owned enterprises, collective enterprises and partnership enterprises, the foreign investor can proceed with the merger & acquisition after corporate reform.

#### **47. Is the “Rules of Mergers & Acquisitions” applicable to investment companies established in China?**

Merger & acquisition for Chinese investment companies is done in the name of the foreign investors. As such, the Rules of Mergers & Acquisitions apply. Investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region making mergers & acquisitions of enterprises from other regions should also participate in the handling of the provisions.

#### **48. Which documents should the investor submit for approval before transaction of a stock merger & acquisition?**

(1) The resolution reached by all stockholders of a domestic limited liability company agreeing to the stock merger & acquisition by the foreign investor, or the resolution

reached by the stockholders general assembly agreeing to the merger & acquisition of a domestic stock limited company by a foreign investor,

(2) The application form to alter the merger & acquisition company into an FIE, and the contract and articles of association of the resulting company,

(3) The agreement forms attesting to the foreign investor's intention to purchase stocks from the domestic company or to invest in its capital increase,

(4) The most recent yearly financial audit reports and the appraisal reports of the domestic company to be purchased,

(5) The investor's proof of identity or business license and proof of funds. The foreign investor's certificates shall be notarized by the notary organ of the country where the investor is from, then certified by the Chinese embassy or consulate in that country. Investors from Hong Kong, Macau and Taiwan must submit entity status or identity certificates supported by notary papers issued by the local notary organs

(6) Background information of the foreign investor performing a merger & acquisition of a domestic company,

(7) The business license (copy) of the foreign investor performing a merger & acquisition of a domestic company,

(8) Arrangement plans for the staff of the domestic company undergoing merger & acquisition,

(9) During the merger & acquisition, the foreign investor can renegotiate creditor's rights and debts with the domestic company and its creditors. However, this agreement must not harm a third party or the public interest. The new agreement should be submitted to related authorities for approval.

(10) During a merger & acquisition, the foreign investor should report to the Ministry of Commerce and to the Administration of Industry and Commerce under the following circumstances:

a) If the purchasing party has generated a turnover of over RMB1.5 billion that year in the Chinese market,

b) If the purchasing party has made mergers & acquisitions of over 10 domestic enterprises in related industries within one year,

c) If the purchasing party already has a market share in China of 20%,

d) If the merger & acquisition will enable the purchasing party to reach a market share of over 25% in China.

#### **49. Which documents should the investor submit during an assets merger & acquisition?**

(1) The resolution of sales of domestic enterprise assets by the holder of the property rights.

(2) The FIE establishment application.

(3) The contracts and constitutions of the FIE to be established.

(4) The assets purchase agreement signed between the FIE to be established and the domestic enterprise, or between the foreign investor and the domestic enterprise.

(5) The rules and business license (copy) of the domestic enterprise to be purchased.

(6) Proof of creditor notice and announcement of purchase of the domestic enterprise.

(7) The investor's proof of identity or business license and proof of funds. The foreign investor's identity certificates shall be notarized by the notary organ of the country where the investor is from, then certified by the Chinese embassy or consulate in that country. Investors from Hong Kong, Macau and Taiwan must submit entity status or identity certificates supported by notary papers issued by the local notary organs.

(8) Arrangement plans for the staff of the domestic company undergoing merger & acquisition.

(9) During the merger & acquisition, the foreign investor can renegotiate creditor's rights and debts with the domestic company and its creditors. However, this agreement must not harm a third party or the public interest. The new agreement should be submitted to related authorities for approval.

(10) During a merger & acquisition, the foreign investor should report to the Ministry of Commerce and to the Administration of Industry and Commerce under the following circumstances:

a). If the purchasing party has generated a turnover of over RMB1.5 billion that year in the Chinese market,

b). If the purchasing party has made mergers & acquisitions of over 10 domestic enterprises in related industries within one year,

c). If the purchasing party already has a market share in China of 20%,

d). If the merger & acquisition will enable the purchasing party to reach a market share of over 25% in China.

According to the previous section on performing a merger & acquisition and operating a domestic enterprise, other government departments might be concerned. All related application and appraisal documents should be submitted together.

When a foreign investor purchases assets from a domestic enterprise, it must establish an FIE based on those assets. Before the FIE is set up, development and operation of the assets is prohibited.

**50. A WOFE purchases assets from a domestic enterprise with the goal of operating these assets, while the domestic enterprise is still active. Are the "Temporary Provisions for Mergers & Acquisitions of Domestic Enterprises by Foreign Investors" still applicable?**

They are applicable in this case. According to Article 2 of "Temporary Provisions for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors", purchase of domestic non-FIE stock or contribution to the capital increase of a domestic enterprise by a foreign investor results in this enterprise being reclassified as an FIE. Alternatively, the foreign investor sets up a new FIE, and purchases and operates assets from domestic enterprises through this FIE. Also alternatively, the foreign investor can purchase assets from a domestic enterprise, then establish an FIE based on these assets to develop and operate them.

## **Part V. Industries**

## High-tech and R&D Center

### 51. What are the definitions for high and new technologies and product?

According to “Conditions and Measures on the Designation of High and New Technology Enterprises in National High and New Technology Industry Development Zones”, the current qualification are as following:

- (1) Microelectronics and electronic information technology;
- (2) Apace science and aerospace and aeronautical technology;
- (3) Optoelectronics and optical, mechanical and electronic integration technology;
- (4) Life science and biological engineering technology;
- (5) Material science and new materials technology;
- (6) Energy science and new energy, high efficiency energy and energy conservation technology;
- (7) Ecology and environmental science;
- (8) Earth science and ocean engineering;
- (9) Basic matter science and radiation science;
- (10) Medical science and bio-medical engineering;

The scope of high technology and new technology will be revised according to the continuous development of technology in China and abroad. The changes will be distributed by the State Ministry of Science and Technology.

### 52. What are the enterprise requirements for high and new technology qualification?

(1) The enterprise must be engaged in the R&D, production and operation of one or more of the high and new technologies and related products as defined above. It must not simply deal with the trade of the above.

(2) It must be self-reliant, implement independent accounting and assuming sole responsibility for its profits or losses.

(3) The corporate leaders and full-time staff should be specialists in the R&D, manufacturing and management of the company products.

(4) Over 30% of the technical personnel must have a higher-education diploma. Over 10% of the technical personnel must be engaged in research and development. For labor intensive high and new technologies, over 20% of the technical staff engaged in production or service must have a higher-education diploma.

(5) The enterprise must have funds of over RMB 100,000 as well as locations and facilities suitable to the business scope.

(6) Research and Development for high and new technologies and products should account for over 3% of annual revenues.

(7) Revenues from high and new technology enterprises usually consist of technological income, revenues from high and new technology products, revenues from ordinary technological products and technological trade. Technological income refers to the revenues generated by high and new technology consulting, transfer, stock listing, service, training, engineering design and contracting, export, and assimilation and

testing of imported technology. Technological income and revenues from high and new technology products should account for over 50% of the annual revenues.

(8) There must be transparent enterprise regulations and a stringent system for technological and accounting management.

(9) The operation term should be over 10 years

### **53. What documents should be submitted during the application for high and new technology enterprise status?**

(1) The “Application Form for Beijing Municipal High and New Technology Enterprise Authorization” (including CV of the legal person, the employee registration form, and the high and new technology and product application form).

(2) A copy of the enterprise business license.

(3) The enterprise constitution.

(4) A copy of the diplomas or proof of title of the technical staff.

(5) The business feasibility study report.

(6) Related certificates for high and new technology and products.

### **54. To which authority a high and new technology enterprise application should be submitted for approval?**

The application must be submitted at a Development Zone. After ratification, the high and new technology enterprise certificate is approved by the district/county level authorities.

Within the Beijing Municipal Development Zones, the Administrative Committees of the Zhongguancun Science Park, the Fengtai Science Park, Changping Science Park, the Electronic Zone and the Yizhuang Science & Technology Zone are in charge of approval of high and new technology enterprises in their precincts. Once the enterprise application has been approved, the Beijing Commission for Science and Technology issues a “High and New Technology Enterprise Qualification Certificate”.

In the case of industries located outside the Zhongguancun Science Park, the application must be submitted to the Commission of Science and Technology at the district or county where the enterprise is located. The Beijing Commission for Science and Technology will issue the “High and New Technology Enterprise Qualification Certificate” after successful application at the district/county commissions.

### **55. What is an R&D center? What are the models for a foreign-invested R&D center?**

R&D centers are organizations engaged in the research and development and in the experimenting (including tests related to R&D services) of natural sciences and related technological fields. Research includes fundamental science, product research, advanced technology and research for social good. They must exclude industries prohibited by the State as stated in the Catalogue Guiding Foreign Investment in Industry. They must not engage in the production or trade of technologies other than technologies related to the core R&D, save for testing services. R&D centers can transfer their R&D achievements. They can entrust research or form research partnerships with domestic R&D institutions. The R&D center does not include the training center. The model for the foreign-invested R&D center can be an EJV, a CJV or a WOFE legally set up by the foreign investor (including FIE set up by foreign investors).

It can also be an independent department or a branch company within such companies.

## **Culture, Publication, Performance**

### **56. What are the business models for foreign-invested enterprises engaged in the distribution of books, newspapers and periodicals?**

Foreign investors can establish EJV, CJV as well as WOFE enterprises for distribution of books, newspapers and periodicals.

### **57. Which authorities are in charge of the approval and supervision of FIE engaged in the distribution of books, newspapers, and periodicals?**

The State Council Press and Publication Administration department and the Commercial departments are in charge of approval and supervision of FIE engaged in the distribution of books, newspapers, and periodicals.

The Bureaus of Press and Publication and the Bureaus of Commerce of district/county level and above are in charge of this supervision in their respective administrative areas.

### **58. What are the requirements to establish a foreign-invested books, newspapers, and periodicals wholesale enterprise?**

(1) The Chinese and Foreign investors must be able to bear civil obligations independently and be capable of operating an enterprise engaged in the distribution of books, newspapers and periodicals, on the condition that they have not committed any criminal offense within the past 3 years.

(2) The legal representative or the general manager should have professional publication qualifications of at least mid-level. The publication staff should have at least primary-level publication qualifications.

(3) A suitable fixed location should be available for wholesale. The operation area should be at least 50 m<sup>2</sup>. If a business operation site has been set up independently, its area should be no less than 500 m<sup>2</sup>.

(4) The registration capital should be no less than RMB30 million.

(5) The business operation terms should be no more than 30 years.

### **59. What requirements should be satisfied during the establishment of a foreign-invested books, newspapers, and periodicals retail enterprise?**

(1) The Chinese and Foreign investors must be able to bear civil obligations independently and be capable of operating an enterprise engaged in the distribution of books, newspapers and periodicals, on the condition that they have not committed any criminal offense within the past 3 years.

(2) The legal representative or the general manager should have professional publication qualifications of at least mid-level. The publication staff should have at least primary-level publication qualifications.

(3) A suitable fixed location for business operation must be available.

(4) The Registration capital should be no less than RMB5 million.

(5) The business operation terms should be no more than 30 years.

**60. Prior to submitting an application to the Beijing Municipal Bureau of Commerce for the establishment of a foreign-invested books, newspapers and periodicals distribution enterprise, is the approval of the industry administration required? What documents should be submitted during the application?**

The application should be made at the Beijing Municipal Bureau of Press and Publication, while providing the following application documents:

(1) The application forms for the establishment of an FIE engaged in the distribution of books, newspapers and periodicals.

(2) The project proposal and the project application report written or approved by both parties and signed by the legal representative or the general manager of each party. The project proposal should include the following items:

a) The name and address of each party.

b) The name, legal representative, address, business scope, registration capital and total investment of the books, newspapers and periodicals distribution FIE.

c) The amount and the means of investment by each investor.

d) The business license or registration certificate and proof of capital for each investor, and valid certificates and professional credentials for the legal representative.

e) If the investment of the Chinese party in the case of an EJV or a CJV involves state-owned assets, a state-owned assets evaluation report and confirmation (or record) of the evaluation results should be provided.

**61. What are the requirements for foreign investors to establish a WOFE printing enterprise in China?**

The foreign party investor should fit at least one of following requirements:

(1) Ability to provide advanced international printing management models and experience.

(2) Ability to provide leading world-class printing technology and equipment.

(3) Ability to provide adequate capital.

**62. What are the registration capital requirements for a foreign-invested printing enterprise?**

The registration capital of a foreign-invested printing enterprise engaged in publication, packaging, and production of printing materials should be no less than RMB10 million. The registration capital for a foreign-invested printing enterprise engaged in other printing services should be no less than RMB5 million.

**63. What are the investment ratio requirements for each party in a Sino-Foreign cooperative printing enterprise engaged in publications, printing products or other printing activities?**

In this type of cooperative project, the Chinese party should be a holding partner or be in a leading position. The chairman of the board must be Chinese, and there must be more Chinese members at the board of directors than foreigners.

**64. Prior to submitting an application to the Beijing Municipal Bureau of Commerce for the establishment of a foreign-invested printing enterprise, is the approval of the industry administration required? What documents should be**

### **submitted during the application?**

The application should be made at the Beijing Municipal Bureau of Press and Publication, while providing the following application documents:

- (1) The application forms for establishing a foreign-invested printing enterprise.
- (2) The project proposal and the project application report signed by the legal representative of each party. The project proposal should include the following items:
  - a) The name and address of each party.
  - b) The name, legal representative, address, business scope, registration capital and total investment of the foreign-invested printing enterprise.
  - c) The amount and the means of investment by each investor.
  - d) The proof of registration for each party (copy), a proof of identity of the legal representative (copy) and proof of capital.
  - e) When state-owned assets are to be invested, confirmation of their evaluation results by departments in charge of state-owned assets must be provided.

### **65. What are the business models for the establishment of a foreign-invested entertainment venue?**

Foreign investors can cooperate with Chinese partners using an EJV or CJV scheme. However, WOFE entertainment venues are not allowed.

### **66. Is approval from industry administration authorities required for the establishment of a foreign-invested entertainment venue? Which application documents should be submitted?**

To establish an EJV or CJV entertainment venue, the application must be submitted at the Beijing Culture Bureau and the Public Security Bureau.

Applicants must provide evidence that the investors, legal representatives and other leading personnel do not verify the following:

- (1) Crimes involving organization, compelling, coercion, host and introduction of prostitution; manufacturing, sales and dissemination of obscene material; smuggling, peddling, transportation and manufacturing of drugs; rape; threat; harassment; gambling; money laundering; organization, participation and leading of Mafia activities.
- (2) Deprivation of political rights due to criminal activities.
- (3) Forced abstention because of drug abuse.
- (4) Forced civil custody for sales or purchase of prostitution.

### **67. Is the foreign investor allowed to legally establish an EJV or a CJV with a Chinese investor in China, for a performance agency or a studio agency? Are WOFE schemes allowed?**

Foreign investors are allowed to establish EJVs and CJVs in this industry. However, WOFEs are not allowed.

### **68. Are there restrictions on investment ratios when establishing a JV performance agency or a studio agency with a Chinese partner?**

The investment from the Chinese party should be no less than 51%. In the case of a CJV, the Chinese party should hold leading operation rights.

**69. Which government departments are in charge of the approval of EJVs and CJVs for performance or studio agencies?**

The application should be submitted to the Beijing **Bureau** of Culture. It should be completed according to relevant laws and regulations on foreign investment.

**70. What are the requirements when establishing an EJV or CJV engaged in the production of broadcasting content and television programs?**

(1) It must be in accordance with State development programs for broadcasting content and television programs.

(2) Each party must have qualifications as an independent legal entity. The Chinese party should include an agency holding a "Permit for Production of Broadcasting Content and Television Programs" or a "Permit for Film Production (Class A)." The foreign party should be a professional broadcast and television enterprise.

(3) The cooperative enterprise should be Limited Liability Company.

(4) The registration capital should be no less than US\$2 million or the equivalent in RMB. In the case of production of animated products, the registration capital should be no less than US\$1 million or the equivalent in RMB.

(5) The legal representative should be assigned by the Chinese party.

(6) An agency from the Chinese party should have no less than 51% stock.

(7) Each applicant should have no criminal or offensive records within the 3 years prior to application.

(8) The JV should possess an independent logo.

## **Education and Health**

**71. What are the economic models allowed for a foreign-invested medical institution?**

The foreign investor is allowed to establish a Chinese-Foreign EJV or CJV. However, WOFE medical institutions are still not allowed.

**72. What are the investment requirements for both parties for a JV medical institution?**

Both parties for the Chinese-Foreign EJV or CJV should have direct or indirect investment or management experience in health and hygiene. They should also satisfy at least one of the following conditions:

(1) Ability to provide advanced international management models, management experience and service models for medical institutions.

(2) Ability to provide leading world-class medical technology and equipment.

(3) Ability to complement or cover insufficiencies in local medical service capabilities, medical technology, funds and medical facilities.

**73. What are the requirements for a Chinese-Foreign EJV or CJV medical institution?**

(1) It must be an independent legal entity.

- (2) The total investment should be no less than RMB20 million.
- (3) The Chinese party in the Chinese-Foreign EJV or CJV should hold no less than 30% of stocks.
- (4) The cooperation term should be under 20 years.
- (5) Other requirements are defined by Hygiene Administration authorities above provincial level.

#### **74. What are the Sino-Foreign education collaborations encouraged by the State?**

The Chinese Government encourages collaborations between domestic and foreign education institutions with recognized academic levels and education quality. The Chinese Government also encourages collaborations in new and urgently-needed academic fields.

The Chinese Government also encourages the development of education partnerships in impoverished regions in Western and remote China.

#### **75. What are the Sino-Foreign education collaborations prohibited by the State?**

Projects presenting breach of public interests, of historical and cultural traditions and educations, or are contrary to the national and local education development requirements, are prohibited by the State. Institution providing education in some specialized fields such as compulsory education or military, police and political training are not allowed. Foreign religious organizations, agencies, institutions and personnel are not allowed to participate in education collaborations within the Chinese borders. The education collaboration institutions are not allowed to provide religious courses or hold religious activities. What's more, the Sino-Foreign education collaboration institution is not allowed to establish branch institutions or conduct other Sino-Foreign education collaboration institutions.

### **Logistics and Supply Industry**

#### **76. What is a foreign-invested logistic/supply enterprise?**

A foreign-invested logistic/supply enterprise is a Sino-Foreign EJV, CJV or a WOFE. It should be capable of satisfying market demands for links in the supply chain including cargo transportation, storage, loading and unloading, processing, packing, distribution, information processing, agent service for cargo and boats, import/export and other functions, thus providing users with a multi-function integrated service.

#### **77. Which business services are allowed for a foreign-invested cargo transportation enterprise?**

- (1) Cabin order (boat rental, plane chartering), shipment booking, storage and packing;
- (2) Supervision of loading/unloading, cargo assembly/disassembly for shipment container, cargo dispatch and transfer for container distribution via related short distance transportation;
- (3) Agent service for custom clearance, inspection clearance and cargo insurance;
- (4) Agent service for certificate and bill preparation, custom duty and other fee and tax clearances;

(5) Agent service for cargo transportation related to international exhibition items, private items and pass-through items;

(6) Agent service for international multi-transportation and packet-transportation (including cargo assembly for container);

(7) International express-mail (excluding private mail and official document mail for governmental and CCP agencies above county level);

(8) Consulting service and other agent service for international cargo transportation.

#### **78. What documents are required for a foreign-invested enterprise to establish an international cargo transportation enterprise?**

(1) The application forms;

(2) The feasibility study report;

(3) The contracts and constitutions for establishing foreign-invested agency of cargo transportation. If it is a WOFE, the constitutions are enough;

(4) The list of the board directors and assignments for each director;

(5) The company name approval documents provided by the Administration for Industry and Commerce;

(6) Certificates and documents certifying the investor's local business registration status and financial credit (the foreign investor's entity status or identity certificates shall be notarized by the notary organ of the country where the investor is from, then certified by the Chinese embassy or consulate in that country. Investors from Hong Kong, Macau and Taiwan must submit entity status or identity certificates supported by notary papers issued by the local notary organs).

#### **79. What is the minimum registration capital for a foreign invested international transportation agency?**

The minimum registration capital is US\$5 million for a foreign invested international transportation agency, with an additional US\$500,000 per branch agency. But if the registration capital is over US\$5 million, the excess part of this capital can be used for the establishment of branch agencies.

#### **80. Which road transportation business are open to foreign investment?**

(1) Sino-Foreign EJV in passenger road transportation.

(2) Sino-Foreign EJV or CJV for road cargo transportation, road cargo loading/unloading, road cargo storage and other road transportation related services and vehicle maintenance.

(3) WOFE investment for road cargo transportation, road cargo loading/unloading, road cargo storage and other road transportation related service and vehicle repair.

The development permission time for road transportation service is issued by the Ministry of Commerce and the Ministry of Transportation and listed in Article (3).

#### **81. What are the other requirements for foreign investment to run road passenger transportation services?**

(1) At least one of the main investor parties must be a domestic enterprise with over 5 years experience in road passenger transportation services in China.

- (2) Foreign investment should be no more than 49%.
- (3) More than 50% of the enterprise registration capital should be used for passenger transportation infrastructure construction and upgrade.
- (4) Invested vehicles should be passenger cars of mid-end level and above

## **Trade and Commerce Industry**

### **82. Which government departments are responsible for the approval of a commercial FIE?**

According to the "Notice of the Ministry of Commerce on Entrusting the Provincial Administrative Departments of Commerce to Examine, Approve and Administrate the Foreign-invested Construction Enterprises" issued by the Ministry of Commerce, as of March 1<sup>st</sup> 2006, provincial-level commercial authorities and national-level economic and technological development zones are entrusted with the approval process of most commercial FIE. This process covers the following retail enterprises: wholesale enterprises that don't deal with special commodities; retail enterprises composed of stores covering an area of under 5000 m<sup>2</sup> each, with fewer than 3 stores per city and fewer than 30 stores total; retail enterprises composed of stores covering an area of under 3000 m<sup>2</sup> each, with fewer than 5 stores per city and fewer than 50 stores total; and retail enterprises composed of stores of under 300 m<sup>2</sup>. These measures help simplify the verification process, and promote stable opening of the retail industry to foreign investment.

### **83. According to the "Procedures for Foreign-Invested Business Management," for manufacture FIE encouraged by the State, during expansion of business scope and capital, is the tax exemption status for imported equipment expanded?**

FIE encouraged by the State is qualified for tax exemption for import of equipment. After expansion of the distribution business scope, if the enterprise remains a manufacture enterprise whose distribution income represents less than 30% of the total enterprise revenues, then the enterprise can enjoy related preferential treatment. When capital increase is used in part on the distribution service, the tax exemption status for imported equipment cannot be expanded.

## **Real Estate**

### **84. Are "domestic sales" and "foreign sales" treated differently in commercial house pre-sales?**

As of September 1st, 2002, Beijing has canceled the differences between "domestic sale" and "foreign sale" for commercial housing. All commercial housing projects can now be issued a "Sale of Commercial Housing Permit". When an FIE is implementing pre-sales of Beijing real estate, it can sell or rent real estate to domestic or foreign enterprises, economic organizations or individuals, after obtaining approval and obtaining the license.

### **85. What are the main conditions for real estate services based on fee charge and**

## **management contracting? Is hotel management included?**

Real estate agency services refer to services such as real estate consulting, real estate value appraisal and real estate accounting.

The property management firm provides services and the property owner pays the relevant expenses according to the contract defining the property management services. Property management service usually includes items such as maintenance, sanitation and public security management for equipment and related sites of houses and apartment.

Currently, property management does not include hotel management.

## **86. Is WOFE allowed to run real-estate development, real estate agencies, and real estate management?**

According to the "Catalogue Guiding Foreign Investment in Industry", real estate development is limited to joint ventures. WOFEs are allowed for real estate agencies and real estate management however, as there are no conditions on stock ratios.

According to "CEPA", a Hong Kong WOFE service provider is allowed to provide high-standard real estate management services based on fee charge or contract.

### **Hotel, Restaurant**

## **87. Is chain restaurant business allowed for WOFE?**

According to the "Rules for Managing Licensed Business" (refer to Ministry of Commerce Instruction No. 25, 2004) and the "Catalogue and Appendix Guiding Foreign Investment in Industry", the foreign investor is allowed to set up a WOFE, then apply for a special operating rights to open a restaurant chain. Note: prior to this application, the applicant must have already established and operated two directly managed restaurants for over a year.

### **Consulting Service**

## **88. What is the definition for management consulting service?**

Consulting services include management consulting service, accounting consulting service (excluding taxation consulting), marketing consulting service, human resource consulting service, manufacture consulting service, and public relations consulting service and other management consulting services.

## **89. Is market research allowed for a WOFE consulting enterprise? What are the proper models for a foreign-invested market research enterprise?**

WOFE consultant agencies currently exclude market surveys. Market surveys are qualified as foreign-involved social surveys, so the "Overseas Investigation Permit" must be acquired first. Foreign investors obtain this certificate after setting up a Sino-Foreign JV, allowing it to engage in market surveys.

## **90. Which government authorities are in charge of the approval for the establishment of a foreign-invested employment service?**

To establish Sino-Foreign JV employment agency, the application should be made at the Beijing Bureau of Personnel for approval. It should also be reported to the Ministry of **Personnel** and Public Security for record registration. The Beijing **Ministry of Personnel** and **Bureau of Public Security**, the **Bureau of Commerce** and the Administration for Industry and Commerce are in charge of the examination, registration, management and inspection of Sino-Foreign JV employment agencies within their areas of administration.

**91. Which requirements should be satisfied when establishing a foreign-invested employment agency?**

(1) The Chinese party must be an employment agency with over 3 years of experience. The foreign party should be an enterprise or other economic organization with over 3 years of experience in employment agency services. Both parties must have good reputation.

(2) It must have a solid organization structure with a staff experienced in human resource management. 5 of the employees should be full-time staff with college diploma or above, as well as qualifications in employment agency services.

(3) Suitable location, capital and facilities should be available. Registration capital should be no less than US\$300,000. The foreign investment should be no less than 25% and the Chinese investment no less than 51%.

(4) There must be suitable organization constitutions, management systems and work regulations, as well as a clear business scope.

(5) It must be able to bear independent civil rights and liabilities.

(6) Requirements defined by other laws and regulations.

### **Travel Agency**

**92. Which requirements should be satisfied during the establishment of a foreign-controlled or a WOFE travel agency?**

When establishing a foreign-controlled travel agency, the following must be satisfied:

(1) It must be in line with tourism development plans.

(2) It must fit tourism market demand.

(3) The foreign party must satisfy the following requirements:

(a) It must be a travel agency or an enterprise mainly engaged in tourism

(b) The yearly travel operations should amount to over US\$40 million.

(c) It must be a member of the national (or regional) tourism association.

(d) It must have good international reputation and advanced experience in travel agency management.

(4) The registration capital should be no less than RMB4 million.

**93. Which requirements should a foreign investor satisfy during the establishment of a WOFE travel agency?**

(1) It must be a travel agency or an enterprise mainly engaged in tourism

- (2) The yearly travel operations should amount to over US\$40 million.
- (3) It must be a member of the national (or regional) tourism association.
- (4) It must have good international reputation and advanced experience in managing travel agencies.
- (5) It must observe related laws and regulations for the tourism industry in China.

## **Part VI. Taxation**

### **94. What taxes should the FIE pay?**

The main taxes for FIE, foreign enterprises and foreign individuals (including from Hong Kong, Macao and Taiwan) in China include the following: enterprise income tax, individual income tax, segment turnover tax (including VAT, consumption tax and business tax), land VAT, stamp tax, vehicle/vessel usage tax, city real estate tax, etc. Import/export tax and VAT is determined according to customs regulations related regulations.

### **95. Which FIE should pay income tax? What is the tax rate?**

FIE or organizations set up in China engaged in manufacturing and operating must pay an income tax rate of 30% on the total income. Local income tax rate is 3%.

### **96. Which FIE must pay VAT? What is the tax rate?**

Enterprises and individuals engaged in the sales of commodities or in processing, maintenance, decoration, tolls and import services are VAT taxpayers. The general VAT rate is 17% (or 13% for food products, vegetable cooking oil, tap water, books, magazines, newspapers, animal feed, fertilizer, pesticide, agriculture machinery and others).

### **97. Which FIE must pay business tax? What is the tax rate?**

Enterprises and individuals engaged in transportation, post and telecommunication, finance insurance, construction, cultural sports, entertainment, service industries, transfer of intangible assets or sales of real estate in China should pay business tax. There are 3 degrees to the business tax rate, from a minimum of 3% (for the transportation industry) to a maximum 20% (for the entertainment industry).

### **98. Which FIE must pay stamp tax? What is the tax rate?**

Enterprises engaged in the purchase, processing, contracting, property lease, cargo transportation, storage, loan, property insurance, technological contracting and transfer of property rights, accounting, and issuance of permits in China should pay stamp tax. The minimum stamp tax rate is 0.005%. The maximum is 0.01%. According to related rules, RMB 5 must further be paid for each issuance of permits or of accounting records (excluding yearly capital account records).

### **99. Which high and new technology FIE can benefit from the 15% tax rate?**

(1) FIE with high and new technology qualifications and established in New Technologies or Experimental Technologies Development Zones recognized by the State Council.

(2) FIE engaged in projects encouraged by the State and established in other regions defined by the State Council.

#### **100. What FIE can benefit from tax exemptions or reductions in regards to income tax?**

(1) FIE engaged in manufacturing and with an operation term of over 10 years will be exempted from enterprise income taxes for the first 2 years since becoming profitable, then enjoy a 50% tax reduction for the next 3 years.

(2) FIE engaged in advanced technology will enjoy a 2 years enterprise income tax exemption, then a 50% tax reduction for the following 6 years.

(3) Export-based FIE, will enjoy tax exemption in first 2 years since becoming profitable, then enjoy a 50% tax reduction in following 3 years. It will continue to benefit from a 50% tax reduction for any year where exports account for over 70% of sales (in all cases however, the income tax should be no less than 10% of revenues).

(4) FIE engaged in agriculture, forestry or stock-raising, or located in a remote or less developed region, will enjoy a 15% to 30% reduction on enterprise income tax for the 10 years following the first 5 years of tax exemptions and reductions, after approval by the State Taxation Bureau.

(5) FIE engaged in projects encouraged by the State in mid-China or western-China will enjoy a 15% tax reduction on enterprise income tax for 3 additional years after the first 5 years of tax exemption and reductions. This policy will last until 2010 in western regions.

(6) Tax reimbursement for re-investment. When the foreign investors of an FIE re-invests profits obtained by the FIE into the company, and if the operation term is no less than 5 years, then 40% of this re-investment will be reimbursed after approval by tax authorities. If the re-investment is used to establish an export business, the full enterprise income tax sum on the re-investment will be reimbursed.

(7) Profits the foreign investors obtain from the FIE are exempt from income tax.

(8) Local income tax exemptions and reductions can be made for FIE engaged in industrial projects encouraged by the State, after approval made by autonomous regions and cities directly under the Central Government Administration. Conditions are determined according to the situation.

(9) In the case of an FIE engaged in projects encouraged by the State, in R&D centers, in advanced technology, or in product exports, then during technological upgrades, the purchase of equipment or related technologies, spare-parts and components that cannot be produced or satisfied domestically, all of which comply with the originally-defined business scope, can receive reductions or exemptions in import duties and import VAT according to regulations.

(10) Imported equipment or related technologies, spare-parts and components can be exempt from import duties and import VAT when they are destined for products listed in the "China High and New Technology Product Catalogue."

(11) In the case of advanced technology listed in the "China High and New Technology Product Catalogue", foreign-paid software can receive reductions or exemptions in import duties and import VAT according to contract rules and regulations.

(12) In the case of an foreign-invested R&D center, purchase of equipment or related technologies, spare-parts and components that cannot be produced or satisfied

domestically, can receive reductions or exemptions in import duties and import VAT according to regulations.

(13) For products listed in the “China High and New Technology Product Export Catalogue”, when the export tax reimbursement rate is less than the tax rate, then after product export, and after approval from the State Taxation Bureau, tax reimbursement procedures can be enabled according to existing Rules of Export Tax Reimbursement Management.

(14) When the total investment of an FIE encouraged by the state includes domestically made equipment, then if this imported equipment is within the scope of exemption from import tax, the VAT import tax will be reimbursed in full.

(15) An FIE engaged in the upgrade or production of high and new technology products in compliance with State industrial policies can according to related rules receive enterprise tax reductions or exemptions when purchasing domestic equipment.

(16) When an FIE, foreign-invested R&D center, foreign enterprise or foreign individual is engaged in technology transfer, technology development, or related technical consulting and technical services, the resulting income can be exempt from business tax. If the FIE's technological development costs have experienced an increase of over 10% over the previous year, then with approval from tax authorities, the FIE can offset annual taxes with a 50% tax-reduction based on the actual technical development costs.

(17) When an FIE or foreign enterprise provides funds to non-related R&D institutions and/or colleges and universities, then according to donation taxation rules defined by the "The People's Republic of China, FIE and Foreign Enterprise Income Taxation Law", the donated sum can be reduced from due taxes.