WEST EAST Corporation

Your PARTNER to CHINA

Guidelines for investing in China

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Contents

Introduction

Since 1978 China has launched a process of profound renewal in terms of legislation, to promote the development of its economy.

The ability to attract foreign investment has undoubtedly played an important role in the economic growth of China, which sought to build a regulatory framework that encourages the inflow of foreign capital. Access to the World Trade Organization in 2001 has forced the country's further opening up the foreign investor.

China has thus become the protagonist of an amazing economic growth and today it is among the first three economy in the world.

The attractiveness of the country, first for low costs, is now found in its market potential in terms of demand for products and services.

Several opportunities are granted to foreign investor to establish his presence in China.

Surely, the first thing to do to invest in China is knowing China's market situation and the investment policies by Chinese Government.

This guide will present the country's economic situation, and then will describe the areas of economy where foreign investment is encouraged, allowed, restricted or prohibited.
After that, the various forms in which it can achieve will be exhibited.

1. Chinese economy overview

China has enjoyed, in recent years, a sustained economic development at a pace so as to make it become one of the strongest contribution to the formation of world product.
Chinese economy over the past quarter century has, in fact, registered an average growth rate of 9%.
The history of China's economic development can ideally be divided into two periods: a first phase, until the early '70s, characterized by a "forced growth", in line with the dictates of economic Maoist conception and a second stage "export and investment – led", which began in the late '70s and now in progress. This strategy is to promote the production of goods for sale in foreign markets: international trade is seen as the source of growth and the main cause of economic development. The transformation implemented by China is also an example of systematic and institutional change, which makes the transition from one system (economy plan) to another one (market economy).
This process occurred gradually, giving priority to the pursuit of domestic macroeconomic stability and, only then, expanding out of the country.
The change began with the reforms of 1978 and was further encouraged by the access of China to the World Trade Organization (WTO) in 2001.
In the early eighties, the first four "Special Economic Zones" were introduced, in the southern region, with the aim of attracting foreign investment by granting special tax breaks. Later, they were inaugurated "Economic and Technological Development Zones" (ETDZs), small-size industrial parks in different areas of the country, with the intent to promote a more harmonious economic development in geographical terms; later, were introduced "Export Processing Zones" (EPZs) and "University Science Parks" (USPs), respectively dedicated to supporting exports and to the development of applied research for companies. These ones were the first attempts to initiate the economic growth of China. Access to the WTO has subsequently given new impetus to the process, requiring the country's greater openness to foreign investors.
As result of all these reforms, China has become the 3rd economy of the world, according to World Bank ranking, by 2008 Gross Domestic Product (GDP).

Table 1.1, ***World Bank Top Ten Economies 2008***

Ranking	Economy	GDP 2008 (millions of US$)
1	United States	14,093,310
2	Japan	4,910,840
3	China	4,326,996
4	Germany	3,649,494
5	France	2,856,556
6	United Kingdom	2,674,057
7	Italy	2,303,079
8	Russian Federation	1,679,484
9	Spain	1,604,235
10	Brazil	1,575,151

Source: World Bank, 2010.

Table 1.2 shows the main figures of Chinese economy today.

Table 1.2, ***Chinese economy main figures***

Item	Aggregate Data					Indices and Growth Rates (%)		
						Average Annual Growth Rate		
	1978	1990	2000	2007	2008	1979-2008	1991-2008	2001-2008
Population *(10 000 pers.)*								
Population at Year-end	96,259	114,333	126,743	132,129	132,802	1.08	0.84	0.59
Urban	*17,245*	*30,195*	*45,906*	*59,379*	*60,667*	*4.28*	*3.95*	*3.55*
Rural	*79,014*	*84,138*	*80,837*	*72,750*	*72,135*	*-0.30*	*-0.85*	*-1.41*
Employment *(10 000 pers.)*								
Employment	40,152	64,749	72,085	76,990	77,480	2.22	1.00	0.91
National Accounting *(100 million yuan)*								
Gross Domestic Product (constant prices)	3,645	18,668	99,215	257,306	300,670	9.80	10.32	10.19
Primary Industry	*1,028*	*5,062*	*14,945*	*28,627*	*34,000*	*4.61*	*4.00*	*4.24*
Secondary Industry	*1,745*	*7,717*	*45,556*	*124,799*	*146,183*	*11.40*	*12.54*	*11.31*
Tertiary Industry	*872*	*5,888*	*38,714*	*103,880*	*120,487*	*10.79*	*10.44*	*10.75*
Domestic Trade								
Total Retail Sales of Consumer Goods (100 million yuan)	1,559	8,300	39,106	89,210	108,488	15.19	15.35	13.60
Foreign Trade								
Total Value of Exports and Imports (USD 100 million)	206	1,154	4,743	21,737	25,633	17.44	18.80	23.48
Exports	*98*	*621*	*2,492*	*12,178*	*14,307*	*18.09*	*19.04*	*24.42*
Imports	*109*	*534*	*2,251*	*9,560*	*11,326*	*16.74*	*18.50*	*22.38*
Actually Utilization of Foreign Capital								
Foreign Direct Investments (USD 100 million)	-	35	407	748	924	-	19.97	10.79
Other Foreign Investments (USD 100 million)	-	3	86	36	29	-	14.05	-12.92
Financial Intermediation								
Deposits of National Banking System (100 million yuan)	1,155	13,943	123,804	389,371	466,203	22.14	21.53	18.03
Loans of National Banking System (100 million yuan)	1,890	17,511	99,371	261,691	303,395	18.45	17.17	14.97
Wages of Welfare								
Average Wage of Staff and Workers (yuan)	615	2,140	9,371	24,932	29,229	13.74	15.63	15.28

Source: National Bureau of Statics of China, 2010.

Measured by the amount of value-added industrial output, manufacturing is China's biggest industry: fueled by foreign investment and local manufacturers’ development , China has started to emerge as the world's largest factory after over 30 years of reform.

The fast industrialization and urbanization of the country have also given a strong contribution to construction and mining sectors.
Other important industries include financial intermediation, real estate, power, oil and gas.
Table 1.3 shows top ten sectors by percentage of value added in 2007.

Table 1.3, ***Value-Added by sector 2007 (Top Ten)***

Ranking	Sector	VA (%)
1	Manufacturing	34.0
2	Agriculture, Forestry, Animal Husbandry and Fishery	11.1
3	Wholesale and Retail Trades	7.3
4	Transport, Storage and Post	5.8
5	Construction	5.5
6	Mining	5.2
7	Financial intermediation	5.2
8	Real Estate	4.8
9	Production and Supply of Electricity, Gas and Water	3.7
10	Public Management and Social Organizations	3.4

Source: National Bureau of Statistics of China, 2010.

To further boost its production capacity and develop infrastructure, China has been investing hugely in fixed assets.
Regarding relations with the rest of the world, as reported above, WTO commitments further accelerated the integration of China with foreign economies. Statistics about exports and imports and foreign direct investments confirm it.
In 2008, US was China's largest trade partner, accounting for 13% of China's total.
Table 1.4 shows top ten trade partners of China in 2008.

Table 1.4, ***Top Ten Trade Partner 2008***

Ranking	Country	Volumes (US$ 10 000)			% on Total		
		Total	*Exports*	*Imports*	Total	*Exports*	*Imports*
1	United States	33,374,348	25,238,355	8,135,993	13.0	17.6	7.2
2	Japan	26,673,250	11,613,245	15,060,004	10.4	8.1	13.3
3	Hong Kong	20,364,488	19,072,903	1,291,585	7.9	13.3	1.1
4	Korea Rep.	18,606,991	7,393,199	11,213,792	7.3	5.2	9.9
5	Germany	11,499,888	5,920,895	5,578,993	4.5	4.1	4.9
6	Russia	5,690,861	3,307,585	2,383,276	2.2	2.3	2.1
7	Singapore	5,247,707	3,230,581	2,017,126	2.0	2.3	1.8
8	India	5,184,427	3,158,538	2,025,889	2.0	2.3	1.8
9	Netherlands	5,121,800	4,591,858	529,942	2.0	3.2	0.5
10	United Kingdom	4,561,452	3,607,274	954,178	1.8	2.5	0.8

Source: National Bureau of Statistics of China, 2010.

Italy is on the 11th of the list. Europe as a whole is the 2nd trade partner for China, accounting about 20% of total (the 1st is Asia, with 53% and the 3rd is North America, with 14%).
Behind the ascendance of China to its position in world economy is the huge influx of Foreign Direct Investment (FDI). Manufacturing has the major investments (accounting about 54% of total). Table 1.5 provides details by sector.

Table 1.5, ***Foreign Direct Investment (FDI) by Sector 2008***

Ranking	Sector	Number of Projects (unit)	Investment Actually Utilized (US$ 10 000)
1	Manufacturing	11,568	4,989,483
2	Real Estate	452	1,858,995
3	Leasing Business Services	3,138	505,884
4	Wholesale and Retail Trades	5,854	443,297
5	Transport, Storage and Post	523	285,131
6	Information Transmission, Computer Services and Software	1,286	277,479
7	Production and Supply of Electricity, Gas and Water	320	169,602
8	Scientific Research, Technical Service	1,839	150,555
9	Agriculture, Forestry, Animal Husbandry and Fishery	917	119,102
10	Construction	262	109,256
10	Other	1,331	327,119

Source: National Bureau of Statistics of China, 2010.

Table 1.6 presents Top Ten Countries for FDI in 2008.

Table 1.6, ***Top Ten Countries for FDI 2008***

Ranking	Country	Investment Actually Utilized (US$ 10 000)
1	Hong Kong	4,103,640
2	Virgin Islands	1,595,384
3	Singapore	443,529
4	Japan	365,235
5	Cayman Islands	314,497
6	Korea Rep.	313,532
7	United States	294,434
8	Samoan	254,975
9	Taiwan	189,868
10	Mauritius	149,371

Source: National Bureau of Statistics of China, 2010.

From the top 10 list, it is apparent that Asian countries are the major sources of FDI. Among European countries, the main investor is Germany. High investments also by Netherlands, France and Italy.
The most used form for FDI is Wholly Foreign-Owned Enterprise (WFOE).

China is expected to remain one of the top choices for multinational corporations in the future.
Macroeconomic data seem, also, to confirm China's ability to emerge from the recent economic and financial crisis with an economy stronger than ever, with a National Gross Domestic Product in 2010 (annual percentage of change, constant prices) expected to have a + 10.04% of change in comparison with previous year.
Especially, China will become more and more attractive because of its potential as market with high demand of goods and services.

2. Investment industries

The Chinese Government has divided its industrial projects for investment into four categories classified as encouraged, permitted, restricted and prohibited. They are indicated in *the Catalogue for the Guidance of Foreign Investment Industries* (last amended in 2007, on force by December 1st, 2007). The document is available at www.fdi.gov.cn.
Referring to the Catalogue should be one of the first steps when selecting which foreign investment vehicle to use.
The Catalogue also identifies activities and sectors for which a Chinese partner is required: in some cases, the Chinese partner must have either a controlling interest (51% interest) or a relative controlling interest (the cumulative interest of the Chinese parties must be greater than any one foreign investor).

2.1 Encouraged

Encouraged activities and sectors largely involve energy and raw material-saving technology, promote agriculture or something needed for China's economic development.
The Foreign Investment Catalogue sets out over 250 encouraged activities in the following 12 sectors:

a. Farming, Forestry, Animal Husbandry and Fishery Industries
b. Mining and Quarrying Industries
c. Manufacturing Industries
d. Production and Supply of Power, Gas and Water
e. Communication and Transportation, Storage, Post and Telecommunication Services
f. Wholesale and Retail Trade Industry
g. Rent and Business Services
h. Scientific Research, Technology Service and Geological Exploration
i. Water, Environment and Public Facility Management Industry
j. Education
k. Public Health, Social Security and Social Welfare
l. Culture, Sports and Entertainment.

Table 2.1 provides some examples.

Table 2.1, ***Encouraged industries***

• Construction and operation of coal power stations using clean burning technology • Construction and operation of urban water supply plants • Construction of thermal power stations with power production capacity of 300,000 kW or more • Design and manufacture of civil aircraft and satellites (Chinese party to hold a controlling interest) • Development and construction of ordinary residential premises • Development and manufacture of software products • Development of technologies to monitor and mitigate environmental pollution • Development of various agricultural technologies • Integrated circuit design and large-scale production of integrated circuits with a line width of 0.35 micron or less • Manufacture of digital televisions, digital camcorders, digital recorders and digital audio equipment • Manufacture of digitally controlled tooling and high-performance welding robots • Manufacture of systems for computer assisted design • Manufacture of various key motor vehicle parts and components • Processing and storage of various food products • Production of engineering plastics and plastic alloys • Production of new types of construction materials • Production of precision dies and moulds • Research and development centres • Services to the elderly and disabled • Wholesale and retail trade (restrictions exist on some products) • Services to the elderly and disabled

Source: *Catalogue for the Guidance of Foreign Investment Industries*, 2007.

2.2 Restricted

Restricted activities and sectors largely involve those ones using outdated technologies, harmful to the environment or in protected sectors of the national economy.
The Foreign Investment Catalogue sets out over 80 restricted activities by the following 15 sectors:

a. Farming, Forestry, Animal Husbandry and Fishery Industries
b. Mining and Quarrying Industries
c. Manufacturing Industries
d. Production and Supply of Power, Gas and Water
e. Communication and Transportation, Storage, Post and Telecommunication Services
f. Wholesale and Retail Trade Industry
g. Banking and Insurance Industries
h. Real Estate Industry
i. Leasing and Commercial Services Industry
j. Scientific Research and Technical Services Industry, Geological Prospecting
k. Irrigation, Environment and Public Utilities Management
l. Education
m. Public Health, Sports and Social Welfare Industries
n. Art, Sports and Entertainment Industries
o. Other industries restricted by the State or international treaties that China has concluded or taken part in.

Table 2.2 provides some examples.

Table 2.2, ***Restricted industries***

• Certain domestic and international telecommunication services (foreign investor limited to a to 49% interest) • Construction and operation of oil refineries • Production of chemicals that can be used in narcotics production • Development and production of grains (Chinese party to hold a controlling interest) • Exploration and mining of gold, silver and platinum • Foreign trade companies • Franchising operations • Insurance (foreign investor limited to 50% interest for life insurance, WFOE permitted for non-life insurance) • Insurance brokerages (foreign investors currently limited to 51% interest, WFOEs permitted by 11 December 2006) • Mobile and data telecommunication services (foreign investor limited to 49% interest) • Printing of publications (Chinese party to hold a controlling interest, except in printing of packaging) • Production and distribution of radio and television programmes, and the production of films (Chinese party to have a controlling interest) • Production of cigarettes and filter tips • Production of foreign-brand carbonated beverages • Production of small and medium-sized ordinary bearings • Securities companies (foreign investor limited to a one-third interest) • Securities investment fund management companies (foreign investor limited to a 49% interest) • Value-added telecommunication services (foreign investor limited to 50% interest) • Water transportation (foreign investor limited to a 49% interest)

Source: *Catalogue for the Guidance of Foreign Investment Industries*, 2007.

2.3 Prohibited

Prohibited activities and sectors are largely those ones endangering national security, harming the public interest, causing harmful pollution, damaging natural resources with misuse.

The Foreign Investment Catalogue sets out about 40 prohibited activities in the following 12 sectors:

a. Farming, Forestry, Animal Husbandry and Fishery Industries
b. Mining and Quarrying Industries
c. Manufacturing Industries
d. Production and Supply of Power, Gas and Water
e. Communication and Transportation, Storage, Post and Telecommunication Services
f. Leasing and Commercial Services Industry
g. Scientific Research and Technical Services Industry, Geological Prospecting
h. Irrigation, Environment and Public Utilities Management
i. Education
j. Art, Sports and Entertainment Industries
k. Other industries endangering the safety and performance of military facilities
l. Other industries restricted by the State or international treaties that China has concluded or taken part in.

Table 2.3 provides some examples.

Table 2.3, ***Prohibited industries***

• Arms and munitions manufacturing • Construction and operation of power grids • Distribution of motion pictures • Gaming industry • Institutions for compulsory education • Processing of green teas using traditional Chinese processes • Production and development of transgenic plant seeds • Radio and television broadcasting

Source: *Catalogue for the Guidance of Foreign Investment Industries*, 2007.

- **Permitted**

These ones include all activities and sectors not mentioned in the Catalogue.

3. Investment vehicles

Foreign investors have several instruments for establishing in China.
First of all, they must choose between entering the Chinese market by setting up an enterprise or through other forms of establishment; then, they must choose whether to have a Chinese partner or not. If they choose to setup an enterprise, the following corporate vehicles are available: joint venture (JV), wholly foreign-owned enterprise (WFOE) and foreign-invested commercial enterprise (FICE). WFOEs and FICEs as a whole, are referred to as Foreign Invested Enterprises (FIEs), that are "*enterprises established in China by foreign investors, exclusively with their own capital, in accordance with relevant Chinese Law*" (Law of the People's Republic of China on Foreign-Invested Enterprises, art. 2). If they choose to enter the market with other forms, they can establish a representative office (RO).
Each structure has its own specific legal implications, as briefly underlined in the next paragraphs.

3.1 Joint Venture (JV)

A *joint venture* is a limited liability legal entity that should represent a good solution for investor who wants to benefit from existing facilities, workforce and exiting sales' distribution channels, when Chinese Government restrictions require a local partner.

More precisely, a JV can be in two forms: *Equity JV* (EJV), which provides for equity participation of foreign partners and local, or *Cooperative JV* (CJV), that is a flexible collaboration agreement between foreign and local partners. It can give rise to a company with partners' responsibility and profits' distribution limited to share) or remain a cooperation agreement (with unlimited partners' responsibility). CJVs are otherwise known as *contractual operative enterprises*. The most significant difference between EJVs and CJVs is the allocation of profits and liabilities: in an EJV, profits and liabilities are allocated according to the ratio of the capital contributions by the partners. In contrast, CJV allows for greater flexibility in the agreement between the joint venture parties: profit sharing is generally prescribed by the joint venture agreement.

In the absence of specific laws, practice sets the minimum share capital to approximately RMB 1,000,000. However, the law establishes a ratio of total investment and registered capital. Members can contribute with technology, machinery and buildings, as well as currency. The parties may choose to pay the capital in a lump, within 6 months after registration or to pay in different solutions. In this case, however, the partners have the obligation to pay at least 15% of the shares within 90 days of the issuance of the business license. Members must pay all the capital in a period between one and three years from the date of issue of the Business Licence, based on the amount of registered capital.

The establishment of an EJV requires, among others:

- a contract between the parties;
- an article of association;

- the approval of PRC Ministry of Commerce (MOFCOM);
- the registration at the State Administration for Industry and Commerce (SAIC).

A formal business plan, setting out the nature of operations, corporate information of investors and financial expectations (*feasibility study*), has to be submitted to the approval authorities.

Preparing these documents may be quite long, so the practice is to conclude a letter of intent between the parties, setting times and ways to implement the project.
From the moment the company gets the Business Licence, the directors are required to meet many different burdens with local authorities.

A big issue of this form could be partners' reliability, specially because certain decisions (including increases or reductions of registered capital, termination and dissolution) need unanimous board consent.

3.2 Wholly Foreign-Owned Enterprise (WFOE)

A *wholly foreign-owned enterprise* is a limited liability legal entity, with an industry specific minimum capital investment. WFOE is subject to the *Law of the People's Republic of China on Wholly Foreign-Owned Enterprises*. The document is available at www.fdi.gov.cn.

In some sectors it is not allowed foreign companies to invest in form of WFOE; so, before deciding, it should be checked the *Catalogue for the Guidance of Foreign Investment Industries*, which lists the industrial sectors where foreign investment is encouraged, restricted or prohibited (See "Investment industries" paragraph in this document). In some cases, investment is allowed only in the form of JV.

WFOE is quite flexible in business scope, permits 100% ownership and control by foreigners and allows to convert RMB in foreign currency for profit repatriation.

A WFOE can take two main forms: *Limited Liability Company* (responding to social obligations only with its capital) and *One-Person Limited Liability Company* (with only one member).
The limit for registered capital is 30,000 RMB for a Limited Liability Company WFOE and 100,000 RMB for One-Person Limited Liability Company WFOE, for all sectors.
Based on MOFCOM's requirements, lump sum payments of registered capital must be made within six months of business licence issuance. An initial payment of 15% registered capital within 90 days of business licence issuance is required if registered capital will be paid in instalments. In this last case, different time limits will be applied for full payment of registered capital, depending on registered capital amount (the period varies from 1 to 3 years form issuance of business license).

The law establishes a ratio of total investment and registered capital, as for JVs (Table 3.1).

Table 3.1, ***Registered Capital-Total Investment Ratio***

Total Investment	Registered Capital (% of Total Investment)
Up to US$ 3 million	At least 70%
Over US$ 3 up to US$ 10 million	At least 50% (minimum of US$ 2.1 million)
Over US$ 10 up to US$ 30 million	At least 40% (minimum of US$ 5 million)
Over US$ 30 million	At least 1/3 (minimum of US$ 12 million)

To set up a WFOE many steps are required; main of these ones are:

- name pre-registration with SAIC;
- approval by MOFCOM;
- approval of article of association and issue of approval certificate by SAIC;
- issue of business licence by SAIC;
- tax registration;
- bank account opening;
- customs registration.

A formal business plan, setting out the nature of operations, corporate information of investors and financial expectations (*feasibility study*), has to be submitted to the approval authorities.

The complete procedure usually needs 3-4 months from commencement to license issuance, depending on industries.

Investors tend to prefer WFOE to avoid difficulties and potential conflicts related to the presence of a local partner as in JV.

3.3 Foreign-Invested Commercial Enterprise (FICE)

As part of its WTO accession process, China ratified regulations to permit foreign establishment as fully operational WFOE retail and trading companies. These rules, effective form June 1, 2004, are in the *Measures for the Administration of Foreign Investment in the Commercial Sector*. The full text of the document is available at www.mofcom.com.cn.

A *foreign-invested commercial enterprise* is an independent and limited liability legal entity, with a minimum capital investment of US$ 4,420.

It is a good solution for foreign investors that want to import and export goods, buy and sell goods, trade or offer consulting services.

FICE can be formed either as a joint venture and as a WFOE, by foreign companies, corporations or other economic organizations and individuals operating in China.

It is required capital in line with the provisions of the Company Law (100,000 RMB for wholesale and retail enterprises); it can therefore be required an higher capitalization depending on kind of business.

The term of operation of a foreign-funded commercial enterprise shall not exceed 30 years in general, except in central and western regions where the term of operation of a foreign-funded commercial enterprise shall not exceed 40 years in general

Main steps to set up a FICE, similar to WFOE's set up ones, are the following:

- name pre-registration with SAIC;
- approval by MOFCOM;
- issue of business licence by SAIC.

The complete procedure usually needs 3-4 months from commencement to license issuance.

FICE permits to remit profit back to overseas.

3.4 Foreign-Invested Partnership (FIP)

The State Council of the People's Republic of China on November 25, 2009 promulgated the administrative Measures for establishing partnership enterprises in China, to open up partnership as a new structure for foreign investment in China. The document is available at www.saic.gov.cn.

The Measures have been formulated for the purpose of regulating the establishment of partnership business by foreign enterprises or individuals in China and facilitating foreigners to invest in China in the form of partnership to expand international economic cooperation and technical exchanges.

As the Measures became effective, on March 1, 2010, foreign investment in China could be made in this new way, a new road in comparison to the others, joint ventures or wholly foreign owned enterprises.

Non-Chinese entities and individuals, alone or with Chinese individuals, legal persons and other organizations, are allowed to set up *foreign invested partnerships* ("FIPs").
FIP can be made of two or more companies or foreign individuals or one or more foreign companies or individuals in partnership with one or more companies or individuals in China.

Publicly-listed enterprises, State-Owned Enterprises, Government-sponsored public welfare institutions, other social institutions involved in public welfare, both foreign and Chinese, can not be partner of a FIP.

A FIP may be established without the approval of the PRC Ministry of Commerce or its local counterparts, as required for JVs or WFOEs; a FIP can be registered with the State Administration of Industry and Commerce (SAIC) directly. MOFCOM or its local counterparts need only be informed of the registration. MOFCOM prior approval in compulsory just when FIP's business scope is defined as restricted according to Foreign Investment Industrial Guidance Catalogue.

There isn't a minimum for FIP's registered capital.
The Measures permit capital contributions other than in currency: partners of FIPs may make capital contributions in the form of cash or other assets, including labour. Capital contributions in the form of services are not allowed in the case of JVs or WFOEs.
Contributions to FIPs are not subject to statutory time limits, while capital contributions to JVs and WFOEs must be made within time limits specified by law.
In addition, partners may make capital contributions to FIPs in freely convertible non-Chinese currencies or RMBs legally obtained in China.

This new road to invest in China has also a favourable Chinese tax treatment, according to the *Partnership Enterprise Law*: it is exempted from corporate income tax. Enterprise partners themselves are subject to 25% corporate income tax.

About bearing liability by partners, *limited partners* bear liability according to capital contributions; *general partners* bear joint and several liability of partnership debt. General partners conduct business on behalf of FIP, while limited partners can not do this.

Table 3.2 provides a comparison among the different forms for foreign invested enterprises: JV, WFOE, FICE and FIP.

Table 3.2, ***Comparing the alternatives***

	EJV	CJV	WFOE	FICE	FIP
Legal entity	Yes	Investor's choice	Yes	Yes	Yes
Ownership	Proportional to equity contribution.	As in the CJV contract.	Wholly foreign.	Depends on the form (JV or WFOE).	Depends on the form.
Liability	Limited.	Depends on investor's choice.	Limited.	Limited.	Depends on the form (limited or general partners FIP).
Management control	Subject to % ownership. Unanimous resolutions of Board about some matters, as required by Law.	Subject to contract and % ownership. Unanimous resolutions of Board about some matters, as required by Law.	Full managerial and operational control.	Depends on the form (JV or WFOE).	Depends on the form (limited or general partners FIP).
Business scope	In same cases, just JV is allowed.	In same cases, just JV is allowed.	Flexible but with restriction by *Catalogue for the Guidance of Foreign Investment Industries*.	Depends on Form (JV or WFOE).	In same cases, just JV is allowed.
Main set-up requirements	Feasibility study. A contract between parties. Article of association. Approval by MOFCOM. Registration at SAIC. Many different burdens with local authorities.	Depends on investor's choice.	Feasibility study. Name pre-registration with SAIC. Approval by MOFCOM. Approval by SAIC. Approval certificate by SAIC. Business licence by SAIC. Tax registration. Bank account. Customs registration.	Name pre-registration with SAIC. Approval by MOFCOM. Business licence by SAIC.	Registration at SAIC directly. MOFCOM needs only be informed about it.

3.5 About taxation

China continues to use preferential tax treatment as an important strategy to attract foreign investment.

Currently, the main taxes applicable to FIEs include:

1. *Corporate Income Tax (CIT):* the standard CIT rate is 25%. It is reduced to 20% for small-scale and thin-profit enterprises and to 15% for high/new technology enterprises that require support from the State.

2. *Personal Income Tax (PIT)*: China does not adopt a flat tax system. Instead, there are 9 marginal tax rates, form 5% to 45% .

3. *Value Added Tax*: there are three kinds of rates for VAT (0%, 13% or 17%), according to the type of goods imported/exported.

4. *Business Tax*: generally, this tax is applicable to companies in the service industries, with rates from 3% to 20%.

5. *Stamp duties*: activities involving purchases and sales, processing, contracting, leasing, transportation, storage, loan lending, property insurance, technology contract and property transfer vouchers, business account books and licenses are subject to stamp duty. The minimum rate is 0.005% and the maximum 0.3%.

6. *Consumption Tax*: consumption tax is charged on the sale of goods and covers 11 taxable items and 25 tax rates, with 3% as the minimum and 45% as the maximum rates.

4. Other business structure

For foreign companies wishing to start a business in China also some other solutions could be suitable. For example, they could adopt some special arrangements as processing and assembly arrangements, distribution or manufacturing arrangements. Besides, they could conclude management contracts to provide certain services in return for a fee.

If foreign investors decide not to entering the Chinese market by setting up an enterprise, but through other forms of establishment, they could also establish a representative office (RO).

4.1 Representative Office (RO)

A *representative office* has no legal personality but it is inexpensive to set up, so it should be a good solution "to explore the market" by foreign investors.

Representative offices often engage in market research and establish contacts with prospective customers and partners; it may only engage in non-profit making activities.

Its registration became more difficult with the issuance of New regulations about in 2009, to further strengthen the administration of registration and permanent representative offices of foreign enterprises in China. The Circular aims to stop false applications for the establishment of Representative Offices, tightening the requirements on the entry thresholds of Representative Offices of foreign companies. The document is available at www.saic.gov.cn.

Stricter documentation requirements for registration, amendments and extensions of certificates for representative offices are required: upon the establishment, or when filing for a change of name, a representative office must submit the certificate of incorporation for its offshore parent company, indicating that the offshore company has existed for no less than two years.
Besides, the representative office must submit a capital credit certification issued by a financial institution in a relationship with the offshore company. Both the certificate of incorporation and the capital credit certification must be notarized by a notary office in the country where the offshore company is registered and legalized by a PRC consular post .
When applying for an extension of a registration certificate, the representative office must also submit current proof of the existence of the offshore company.
According to the Measures, registration certificates for any representative office will only be valid for one year.

The number of representatives (including the chief representative) at a representative office is now limited to four.

The local Administration of Industry & Commerce offices ("AICs") conduct on-site inspections of representative offices within three months after the issuance of registration certificates.

Conclusions

China represents an investment opportunity very attractive to the foreign investor.

The national government has tried, over the time, to encourage the foreign presence in the Chinese market; today, several solutions are available to anyone who is interested in investing in it.

For the success of an investment it is necessary to plan it carefully, paying attention to sectors and geographical areas where it is encouraged and finding the best way to implement it, enjoying maximum privileges and preferences.

Investment required amount, bureaucracies, tax treatment, permitted activities vary, in fact, significantly from sector to sector.

This document has intended to provide just some basic guidelines for a successful approach to do business in China. Then, each project should be structured keeping into account the regulations that governing the specific area of activity.

Regulatory references

- *Administrative Measures for the Registration of Foreign-invested Partnership Enterprises*. Available at www.saic.gov.cn.

- *Catalogue for the Guidance of Foreign Investment Industries* (last amended in 2007, on force by December, 1st). Available at www.fdi.gov.cn.

- *Law of the People's Republic of China on Wholly Foreign-Owned (Foreign-Invested) Enterprises*. Available at www.fdi.gov.

- *Measures for the Administration of Foreign Investment in the Commercial Sector*. Available at www.mofcom.com.cn

- *Notice of the State Administration for Industry and Commerce and the Ministry of Public Security on Further Strengthening the Administration on Registration of Resident Representative Offices of Foreign Enterprises.* Available at www.saic.gov.cn.