LEGAL AND ECONOMIC CONSIDERATIONS ON DOING BUSINESS IN THE PEOPLE'S REPUBLIC OF CHINA

> China's nearly one billion people, an agricultural sector technologically so backward that it employs 70 per cent of the labor force and industries using techniques that are 10 to 30 years out of date — these are the basic determinants of China's economic future, and they will impose strict limits on the pace of modernization.
>
> — Central Intelligence Agency Report

To counter these limitations, the Chinese have undertaken a drastic program of economic readjustment with the goal of making the People's Republic of China (PRC or China) a major economic power by the year 2000.[1] China's leaders hope to reach this ambitious target through the well-publicized Four-Modernizations policy, which stresses the modernization of agriculture, industry, science and technology, and defense. To succeed, China will need massive injections of foreign technology, foreign equipment, and foreign capital.[2]

The attitude of many countries, including the United States, toward the People's Republic of China has been compared to that of Narcissus, the youth in Greek mythology who fell in love with his own image in a pool of water.[3] When China permitted a few enterprises to experiment with setting prices and retaining profits, many United States businessmen saw the beginnings of a free market system. The same has been true in varying degrees among writers, academicians, the military, and even lawyers. Foreign investors, however, need to be aware of both positive and negative aspects of investing directly into the economy of the People's Republic of China. While China offers an attractive investment opportunity for many American businesses, euphoria must be tempered by an appreciation of the substantial obstacles faced by foreign investors.

Investors attracted to China need to consider numerous factors

1. *China's Slow Turn Toward a Free-market System*, BUS. WK., May 19, 1980, at 51.
2. *Id.* at 46.
3. *E.g.*, Schell, *Our Mistakes About China*, NEWSWEEK, Feb. 16, 1981, at 17.

unique to China as well as the investor's own expectations and resources. This Comment, therefore, will address economic and legal considerations relevant to investing in the Chinese economy.

This Comment will examine recent trends in China's political stability and economic development and how foreign investors have attempted to enter the Chinese market in forms other than trade. Attention will be paid to China's effort to provide incentives to foreign investment through commercial laws and regulations, giving special emphasis to joint venture laws and regulations.

Since the promulgation of China's Joint Venture Law[4] nearly three years ago, a number of substantive laws and regulations of interest to the foreign investor have appeared. In late 1980 regulations on labor management, joint venture registration procedures, and income tax laws on joint ventures and individuals, added to the legal framework in areas of foreign investment. Coupled with reforms in China's financial system, and in the financial work of enterprises, these legal developments represent a conscious effort by the Chinese to restructure their economy, at least in part, by attracting foreign investment.[5]

China's economic laws, however, have yet to be perfected.[6] A number of key areas such as contract and property law are still to emerge.[7] An investor interested in China, therefore, needs a practical analysis on both the legal incentives and the problems in China's commercial field. This Comment seeks to provide that analysis.

I. CHINA AND FOREIGN INVESTMENT

China, with a population of one billion, holds major attractions for foreign investors due to its large consumer market and source of labor.[8] After emerging from the political and economic chaos of the late 1960s, China has given modernization of the econ-

4. Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment (1979) as reported in BEIJING REV., July 20, 1979, at 24 [hereinafter referred to as JVL].

5. *Report on the Final State Accounts for 1980 and Implementation of the Financial Estimates for 1981*, BEIJING REV., Jan. 11, 1982, at 22.

6. *Id.*

7. Gelatt, *Doing Business With China: The Developing Legal Framework*, CHINA BUS. REV., Nov.-Dec. 1981, at 56.

8. *Development Trends in Chinese Population Growth*, BEIJING REV., Jan. 11, 1982, at 23.

omy the highest priority.[9] To succeed, the Chinese must use foreign capital and technology.[10] Thus, foreign investors and the Chinese have begun to find a common ground on which to do business.[11]

In recent years the Chinese have encouraged foreign investment[12] by adopting flexible practices commonly found in international trade.[13] The three most widely used are: (1) licensing agreements; (2) compensation trade arrangements; and, (3) joint venture companies.[14]

The past three years have witnessed a remarkable growth of Chinese interest in licensing agreements.[15] Under a licensing agreement, the foreign investor sells proprietary know-how in exchange for fees, royalties, and other forms of payment.[16] Most agreements specify a downpayment by the Chinese of ten to twenty per cent of the total purchase price, with remaining payments tied to production and the transfer of technology by the foreign inves-

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9. *China's Slow Turn Toward a Free-market System*, *supra* note 1, at 46. China may not, however, be free of political turmoil. At least one study, conducted by Business International, includes the PRC among the world's ten worst political risks. Another political-risk study, this one by Frost & Sullivan, does not. *Foreign Investment: The Post-Shah Urge in Political-Risk Studies*, BUS. WK., Dec. 1, 1980, at 69.

10. *Id.*, *supra* note 1, at 51-52.

11. American investors may, however, become unwittingly involved in the power dispute between China and Taiwan. *China: The Politics Behind the New Economics*, FORTUNE, Dec. 31, 1979, at 50. A potential threat to United States - China political and economic relations is the Taiwan Relations Act of April 10, 1979. 22 U.S.C.A.§§3301 *et. seq.* (West Supp. 1980). The PRC is especially sensitive to §3301(b)(4) which provides that U.S. policy considers any effort to determine Taiwan's future by nonpeaceful means to be a threat to security and of "grave concern to the United States." *U.S. 'Taiwan Relations Act'*, BEIJING REV., Jan. 12, 1981, at 9. The Chinese signaled a warning early in the Reagan Administration regarding the strengthening of United States ties with Taiwan. The Chinese demanded a reduction in diplomatic relations with Holland following the latter's sale of submarines to Taiwan. The Chinese protests were apparently timed to coincide with Reagan's inauguration as an example of the potential Chinese reaction to similar sales by the United States. *Cf. China: Indecision and Taiwan May Delay Oil Plans*, BUS. WK., Feb. 16, 1981, at 37.

12. The degree of encouragement varies, however, from industry to industry. Light industry, for example, receives considerable encouragement from the Chinese. JAPAN EXTERNAL TRADE ORGANIZATION, CHINA: A BUSINESS GUIDE 145-146 (1979) [hereinafter referred to as JETRO]. Chinese authorities give priority to light industry in six respects: (1) supplies of raw materials and energy, (2) construction of new projects, (3) imported technology, (4) bank loans, (5) renovation of existing enterprises, and (6) communications and transportation. Yun, *More Consumer Goods*, BEIJING REV., Nov. 24, 1980, at 20, 22.

13. *China's Import Commodities and Trade Practices*, CHINA'S FOREIGN TRADE, 1980, at 5, 6.

14. Weil, *Technology Transfers*, CHINA BUS. REV., Mar.-Apr. 1981, at 21.

15. *Id.*

16. *Id.*

tor.[17] A number of licensing arrangements utilize a "coproduction" concept in which a Chinese factory assembles imported products until it learns how to complete finished goods using domestic products.[18]

The second form of investment, compensation trade arrangements, has also been the subject of considerable activity.[19] In a compensation trade arrangement, the Chinese provide factory shells and most of the labor. The foreign investor provides raw materials, designs, know-how, and equipment, and is repaid with the project's output.[20] Arrangements of this nature require minimal capital investment by the foreign partner, but are seen by the Chinese as an excellent means of earning foreign exchange and acquiring technology.[21]

The third, and most discussed, form of investment is joint venture companies using Chinese and foreign equity contributions. The Chinese view joint venture companies as playing a major role in China's growth and thus have enacted a number of laws and regulations concerning the operation and management of joint ventures.[22]

A. Developments in China's Legal System

The laws discussed in this Comment do not exist in a vacuum. In almost every decision, a foreign investor will be forced to deal with any number of regulative agencies.[23] Guidelines for these contacts[24] and the appropriate law or regulation provided will be noted in the following discussions.

Startling developments outside substantive law, however, should also be noted by foreign investors. Two of these developments deserve particular attention; first, the role of the lawyer in

17. *Technology Transfer Via Licensing: The Options*, CHINA BUS. REV., Mar.-Apr. 1980, at 56.

18. Weil, *supra* note 14, at 21. Licensing agreements are particularly prevelent in the electric power machinery industry and metallurgical equipment. *Id.* at 21-22.

19. A number of so-called "joint ventures" are actually compensation trade arrangements. *Id.* at 22.

20. Price Waterhouse, *Information Guide - Doing Business in the People's Republic of China*, July 1979, at 11.

21. Weil, *supra* note 14, at 23. One of the most promising industries for compensation trade arrangements is consumer electronics. *Id.*

22. See discussion on joint ventures, in Section II, *infra*, text accompanying notes 68-239.

23. See discussion in this Section and Section II, *infra*, text accompanying notes 26-239.

24. *Id.*

China and second, and of greatest significance,[25] is the establishment since 1980 of over one thousand economic courts.

1. *Role of the Lawyer in China*. The lawyer in China, first and foremost, serves as the State's legal workers.[26] Lawyers, under the Provisional Regulations on Lawyers of the People's Republic of China, effective January 1, 1982,[27] "...serve the cause of socialism and interests of the people, act on the basis of fact , and take law as their criterion."[28] A lawyer, however, supposedly receives protection under the law from any organization or person who seeks to interfere with the lawyer's work.[29]

In any event, the usefulness of China's lawyers to a foreign investor may be marginal. The role of the lawyer in the commercial setting in China, unlike the United States' counterpart, is primarily as an aid to mediation.[30] The paucity of Chinese lawyers, little more than three thousand for a nation of one billion persons,[31] compounds the problem of receiving competent legal advice. One source of legal advice in China, however, is the Legal Counsel Office of the China Council for the Promotion of International Trade.[32] The office provides consultation relating to economic and commercial laws and practices.[33]

2. *Economic Courts*. Despite an acute lack of lawyers, the Chinese have sought to establish a number of economic courts empowered to handle domestic criminal and civil cases.[34] The new

25. Allen & Palay, *Economic Courts*, CHINA BUS. REV., Nov.-Dec. 1981, at 44.

26. *Two Important Regulations*, BEIJING REV., Oct. 6, 1980, at 20.

27. *Id.*

28. *Id.*

29. *Id.*

30. Rood, *China Turns Back to the Rule of Law*, 54 FLA. B. J. 662, 663 (1980).

31. Seitz, *Hopes and Dilemas of an Embryonic Legal System*, 54 Fla. B. J. 664, 665 (1980). The given figures, translates into one lawyer for every 320,000 Chinese citizens. This is close to the figure given by the Chinese themselves. *E.g. Need for More Lawyers*, BEIJING REV., Dec. 8, 1980, at 2. Paranthetically, an acute shortage of judges also plaques development of a legal system in China. Rood, *supra* note 30, at 663. Some 800 million of China's 950 million population are peasants. *Deng Xiaoping on Current Situation*, BEIJING REV., Jan. 26, 1981, at 8. To reach projections a rough calculation shows that China will need 15,000 lawyers in urban areas and 16,000 lawyers in rural areas for a total of 31,000 lawyers, ten times the current level. By 1985, the Chinese hope to have one lawyer per ten thousand urban residents and one lawyer per fifty thousand peasants. Allen & Palay, *supra* note 25. Meeting this goal will require a ten-fold increase in the number of lawyers.

32. The *Legal Counsel Office*, CHINA'S FOREIGN TRADE, 1980, at 6.

33. *Id.*

34. Allen & Palay, *supra* note 25, at 44.

courts are empowered to assert jurisdiction over insurance, foreign trade contracts, joint ventures, and environmental problems.[35] The new courts may, therefore, affect a foreign investor's business and legal strategy in China.[36]

Conceived primarily as a tool of domestic policy, the economic courts are available to foreign investors.[37] To date, however, no foreign company has appeared in an economic court.[38] This fact is not surprising given the Chinese preference for mediation and arbitration.[39] The lack of litigation may also be due to China's refusal to permit non-Chinese nationals to represent clients in economic courts.[40] The Chinese lawyer, of course, is a "seeker of truth" rather than an advocate for the foreign investor.[41]

Foreign investors, however, need advice on China's substantive commercial law. The bulk of China's commercial laws and regulations have been promulgated only since July, 1979, and have not been significantly interpreted. These laws and regulations, the most important of which are discussed below, do provide at least a framework for decision-making by the foreign investor.

B. Interim Regulations on Resident Offices

Regardless of the mode of investment, one Chinese regulation affects every organization desiring far-reaching commercial contacts with China. The interim Regulations on Resident Offices, promulgated by the State Council on October 30, 1980,[42] seek to encourage such contacts and represent an attempt to remove investment uncertainties. Before commencing business activities as a resident office, the foreign enterprise must apply to the appropriate Chinese organization for approval.[43] After approval, the enterprise

35. *Id.* at 47.

36. *Id.* at 44. The courts are authorized to dispose of, *inter alia*, business disputes involving foreign parties and a broad range of "economic crimes." Embezzlement, tax evasion, failure to treat industrial wastes, and neglect of worker saftey all fall under the category "economic crimes." *Id.*

37. *Id.* at 48.

38. *Id.*

39. *Id.* For a discussion of arbitration in China *see* Comment, *An Evaluation of the People's Republic of China's Participation in International Commercial Arbitration: Pragmatic Prospectus*, 12 CALIF. W. INT'L L.J. 128; Choo, *Arbitration*, CHINA BUS. REV., Nov.-Dec. 1981, at 48.

40. *Id.*

41. *Id.*

42. Interim Regulations Concerning the Control of Resident Offices of Foreign Enterprises (1980) as reported in BEIJING REV., Dec. 15, 1980, at 25-26.

43. *Id.*, art. 4. The relevant agencies and respective areas are: (1) Ministry of Foreign

submits a registration form and fees to the General Administration for Industry and Commerce to obtain a registration certificate.[44] At that point, the enterprise may obtain residence permission from the local security organ, set up an account with the Bank of China and begin operations under the protection of Chinese law.[45]

Registration of resident offices of foreign enterprises results in certain benefits. A registered firm may import an automobile and large office equipment.[46] Representatives may import one duty-free shipment of personal belongings and apply for long-term residence certificates which obviate the need for any visa extension.[47] The regulations also promise registered companies the protection of "the legitimate rights and interests of resident representative offices and their normal business activities."[48]

Though the meaning of the Resident Offices Regulation has been uncertain, the Chinese have made it clear that not only does registration confer certain benefits, but also, failure to register may result in penalties.[49] Many firms have not registered for fear of being made subject to Chinese corporate taxes.[50] Unregistered firms may face prohibitions of imports of office equipment and loss of accommodations with increased coordination in the Chinese bureaucracy.[51]

Trade — trader, manufacturer, shipping agent; (2) People's Bank of China — banking, insurance; (3) Ministry of Communications — maritime shipping operator; (4) General Adminstration of Civil Aviation — air transport; and (5) the appropriate commission, bureau or ministry for miscellaneous areas. *Id.* The following documents must be submitted with the application for registration: (1) application form signed by the chairman of the board of directors or the general manager of the enterprise setting forth the name of the resident office, name(s) of the responsible member(s), the scope of activity, duration, and site of the office; (2) capital credibility documents from the company's bank(s), and (3) creditionals and brief biographies of members of the resident office. Banking and insurance institutions submit annual reports in lieu of capital credibility documents. *Id.*, art. 7.

44. *Id.*, art. 5. Changes and modifications follow a procedure similar to the original registration. *Id.*, art. 7.

45. *Id.*, arts. 6, 8, & 12.

46. Seligman, *Opening Your Resident Office*, CHINA BUS. REV., July-Aug. 1981, at 53.

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 53-54. Some older tax laws can be read to include foreign corporations operating in China. These laws have not been enforced in this area. *Id.* In any event, a comprehensive new tax governing foreign enterprises other than joint ventures is expected to appear soon. *Id.* at 54.

51. *Id.* at 53.

C. Trademarks

Trademarks in China are a guarantee of a certain quality level as well as identification of the manufacturer. Any national of a country that has a reciprocal agreement with China for the registration of trademarks can obtain registration in China (although it is not obligatory to register a trademark).[52] The United States and China have an appropriate reciprocal agreement[53] and United States company wishing to do business in China may obtain registration through the Trademark Registration Agency of the China Council for the Promotion of International Trade.[54] Co-ownership of a trademark, however, is not permissible and licensing of trademarks is not presently possible.[55] Furthermore, if a wordmark is registered in Roman letter without a special registration of its Chinese translation, only the nontranslated version is protected.[56]

D. Future Laws and Regulations

Although a number of commercial laws and regulations have appeared in the past three years, substantial gaps remain.[57] Foreign investors are faced with a plethora of uncertain legal areas. Even those involved in joint ventures, the most detailed area of commercial law,[58] will find few laws protecting property, inventions, and contract rights.[59]

Patent law and other regulations protecting the transfer of technology do not exist.[60] Although numerous versions of a patent law have been drafted, none has been enacted.[61] A patent law will

52. *The Status of Industrial Rights in the People's Republic of China*, INT'L LAW. NEWSLETTER, Spring 1980, at 2-3.

53. *Id.*

54. The U.S.-Sino Trade Agreement, July 7, 1979, T.I.A.S. 9630, *reported in* 79 DEPT. STATE BULL. No. 2033-34 (1979), in art. VI(2), provides:

> Both Contracting Parties agree that on the basis of reciprocity legal or natural persons of either Party may apply for registration of trademarks and acquire exclusive rights thereto in the territory of the other Party in accordance with its laws and regulations.

55. *The Status of Industrial Rights in the People's Republic of China*, *supra* note 52, at 3.

56. *Id.*

57. Gelatt, *supra* note 7, at 56.

58. *Id.*

59. *Id.*

60. *Id.*

61. One draft would protect exclusive patent rights granted by the Chinese to foreign firms. Under this draft most patents would last fifteen or seventeen years. *China's Draft Patent Law*, CHINA BUS. REV., May-June 1981, at 39. Chinese personnel have received training from the United States Patent Office. *Technology Transfer Via Licensing: The Options,* supra *note 17 at 56.*

be perhaps the most difficult law to promulgate since the concept of patent protection is an anathema to the ideals of a Socialist State.[62] A workable patent law, however, will give foreign investors confidence in doing business in China.[63]

The Chinese are preparing a civil code and a code of civil procedure in the coming months.[64] The code of civil procedure, which governs China's civil and economic courts, should appear in the next several months.[65] A civil code including property law and other commercial statutes, however, is not expected to be enacted for some time.[66] Until the passage of a comprehensive code, the investor must rely on contractual provisions and internal guidelines of Chinese companies.[67]

II. JOINT VENTURES USING CHINESE AND FOREIGN INVESTMENT

A. *Joint Venture Law and Supplementary Regulations*

The 1979 Chinese Joint Venture Law[68] has become a landmark symbolizing China's interest in developing substantial economic associations with foreign entities.[69] The Joint Venture Law provides for the establishment of limited liability companies between Chinese entities and foreign corporations on the basis of "equality and mutual benefit."[70] Article 4 of the law also stipulates that foreign interests need to provide at least twenty-five per cent of the capital investment.[71] Foreign contributions to capital may be in the form of cash, materials or industrial property rights.[72] Theoretically, up to ninety-nine per cent may be foreign owned, but most joint ventures combine fifty-one per cent Chinese ownership with forty-nine per cent contributed and held by the foreign investor.[73]

The Joint Venture Law provides for the distribution of profits, risks, and losses of a joint venture in proportion to each party's

62. Gelatt, *supra* note 7 at 56. *See* U.S. DEPT. OF COMMERCE, INDUSTRY AND TRADE ADMINISTRATION, DOING BUSINESS WITH CHINA 19 (1979).
63. *China's Draft Patent Law*, *supra* note 61, at 39.
64. Gelatt, *supra* note 7.
65. *Id.*
66. *Id.*
67. *Id.*
68. JVL, *supra* note 4.
69. *China's New Joint Venture Law*, BUS. WK., Feb. 25, 1980, at 14.
70. JVL, *supra* note 4, art. 1.
71. *Id.*, art. 4, par. 2.
72. *Id.*, art. 5, par. 1.
73. *China: A Seller's Market*, NATION'S BUS., Apr., 1980, at 28, 33.

contributions to the registered capital.[74] The law also guarantees the right to repatriate after-tax profits, offers tax incentives to import up-to-date technology, and does not forbid the foreign management of any plant.[75]

The composition of the board of directors of a joint venture must be stipulated in the contracts and articles of association.[76] The Chinese participant appoints the Chairman of the Board and the foreign participant may appoint one or two vice chairmen.[77] The president and vice president (or general manager and assistant manager in a factory) "shall be chosen from the various parties to the joint venture."[78] Chinese officials have also announced informally that a foreigner may serve as chief operating officer of the venture.[79]

The board of directors is specifically empowered to discuss and act on matters affecting the venture including, but not limited to, expansion projects, the budget, distribution of profits, pay scales, hiring of officers, and the termination of the venture.[80] As in virtually all dealings between Chinese and foreign investors, important problems are to be handled by "consultation" on the basis of "equality and mutual benefit."[81]

With regard to the settlement of disputes, the legislation provides for arbitration as the principal method to be used.[82] The Chinese have been quite willing to allow arbitration in a neutral third country, particularly Sweden.[83] Arbitration, however, occurs only if consultation among the members of the boards of directors of the companies fails to resolve the dispute.[84] Thus, arbitration provisions should be detailed in the contract between the relevant

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74. *China Guarantee Brightens Joint Venture Chances*, Daily News Record, July 24, 1979, at 14, col. 1.

75. JVL, *supra* note 4, arts. 7 & 9.

76. *Id.* art. 6.

77. *Id.*

78. *Id.*

79. *China's New Joint Venture Law*, *supra* note 69.

80. JVL, *supra* note 4, art. 6. Distribution to foreign markets may be through direct channels, the venture's associated agencies, or China's foreign trade establishments. *Id.*

81. *Id.*, art. 1.

82. *Id.*, art. 14.

83. Arbitration in Sweden usually takes place in Stockholm under its Chamber of Commerce rules. Tao-Tai, *Sources of Law in the PRC: Recent Developments*, INT'L LAW., Winter 1980, at 25, 42. For the relevant arbitration rules *see* STOCKHOLM CHAMBER OF COMMERCE, ARBITRATION IN SWEDEN (1977).

84. JVL, *supra* note 4, art. 14.

parties.[85]

The Joint Venture Law also provides for breach of contract and heavy losses. Under Article 13 the breaching party bears the financial burden.[86] If a party fails to meet its obligation because of heavy losses or a *force majeure*, the joint venture agreement may be terminated by consultation and agreement between the parties and approval of the Foreign Investment Commission.[87] The Chinese concept of a *force majeure* does not extend to a labor strike.[88] The Chinese obviously regard the joint venture law as a set of general principles that will be supplemented by additional laws.[89]

Using the 1979 Joint Venture Law and "Regulations on Joint Ventures Using Chinese and Foreign Investment" promulgated October 8, 1980,[90] a relatively clear procedure for setting-up a joint venture may be ascertained. The first and perhaps most difficult step is the establishment of an agreement between a Chinese party and a foreign party.[91] According to the Joint Venture Law, foreign participants may include foreign "companies, enterprises, other economic entities or individuals." The Chinese participant may be any of these except private individuals.[92]

The agreement must then be authorized by the Foreign Investment Commission[93] Authorization or rejection of submitted documents occurs within three months after receipt. Once authorized, the joint venture "shall register with the General Administration for Industry and Commerce of the People's Republic of China and start operations under license."[94] This procedure is the extent of guidance under the 1979 law.

In October, 1980, the State Council filled several gaps in the 1979 law by promulgating regulations on the registration of joint ventures.[95] Under these new guidlines the joint venture must regis-

85. *China's New Joint Venture Law*, *supra* note 69, at 15 .

86. JVL, *supra* note 4, art. 13.

87. *Id.*

88. STARR & KAPLAN, *The Legal Framework of China Trade*, DOING BUSINESS WITH CHINA: AMERICAN TRADE OPPORTUNITIES IN THE 1970s, 385 (W . Whitson ed. 1974).

89. JVL, *supra* note 4, art. 9, par. 3.

90. *China's New Joint Venture Law*, *supra* note 69, at 15.

91. Regulations on the Registration of Joint Ventures Using Chinese and Foreign Investment (1980) as reported in *Supplementary Joint Venture Resolutions*, CHINA BUS. REV., Nov.-Dec. 1980, at 41-43 [hereinafter referred to as RRJV].

92. *See* Section V *infra*.

93. JVL, *supra* note 4, art. 1.

94. *Id.*, art. 3.

95. *Id.*

ter with the General Administration for Industry and Commerce within one month after receiving authorization of the Foreign Investment Commission.[96] In applying for registration, the joint venture must submit: the document of approval issued by the Foreign Investment Commission; the joint venture agreement and articles of association, which must be in both Chinese and foreign text and be submitted in triplicate; and, a duplicate of the license issued by the appropriate regional or national department.[97]

Along with the above documents, the venture must file a registration form, in triplicate; including: (1) the name of the venture; (2) the venture's address; (3) scope and form of the venture; (4) amounts of registered capital contributed by the participants; (5) the names of the chairman and vice chairman of the board of directors; (6) the names of the director and deputy director of any plant; (7) date of approval by the Foreign Investment Commission; (8) size of the venture's staff; and (9) the number of foreign workers and staff members to be employed.[98]

After registering, the joint venture must, by producing its license, open an accouont with the Bank of China (or a bank approved by the Bank of China) and register with the local tax authorities.[99] Major changes or termination of the agreement must be approved and registered in a manner similar to the registration process.[100] In all cases except termination, a registration fee, fixed by the General Administration for Industry and Commerce, must be tendered.[101]

B. Taxation

The Joint Venture Law anticipated income taxes on joint ventures and foreign employees.[102] On September 10, 1980, the National People's Congress enacted the expected income tax laws.[103] These laws, and regulations promulgated three months later by the Ministry of Finance, go far toward establishing a workable tax sys-

96. RRJV, *supra* note 91.
97. *Id.*, art. 2.
98. *Id.*, art. 3.
99. *Id.*, art. 4.
100. *Id.*, art. 6. An account with a bank approved by the Bank of China may serve as a substitution for the Bank of China. *Id.*
101. *Id.*, arts. 7 & 9.
102. *Id.*, art. 8.
103. *Cf.*, JVL *supra* note 4, art. 7 (foreign participant may apply for restitution of income tax on amounts reinvested in China), art. 11 (income earned by foreign individuals may be remitted after payment of income tax).

tem.[104] The two laws, one taxing the income of joint ventures and one taxing the income of individuals, will be examined along with the continuing effect of China's thirty year old Industrial and Commericial Consolidated Tax. Problems and ambiguities exist under the laws, however, and await resolution or clarification.

1. *Income Tax on Joint Ventures*. The Joint Venture Income Tax Law[105] passed by the National People's Congress in 1980 sets forth guidelines for the taxing of joint venture income. The Ministry of Finance regulations set forth under the Joint Venture Income Tax Law provide further guidance on the definitions of "taxable income" and "deductible expenses," and provide detailed accounting methods for determining taxable income.[106] The law and regulations apply only to foreign investment in the form of joint ventures. Income tax laws applying to non-joint venture modes of doing business in China await enactment.[107]

The Joint Venture Income Tax Law subjects entities organized pursuant to the Joint Venture Law to a tax on income, wherever gained.[108] Taxable income means "net income in a tax year after deduction of costs, expenses and losses in that year."[109] The tax rate is thirty per cent, with an additional ten per cent of the assessed income going to the local government.[110]

The first step in determining a joint venture's taxable income is to ascertain a gross income. Income includes "income derived from

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104. The Income Tax Law of the People's Republic of China Concerning Joint Venture with Chinese and Foreign Investment (1980) as reported in BEIJING REVIEW, Oct. 6, 1980, at 18 [hereinafter cited as JVITL]; *Individual Income Tax Law of the People's Republic of China* (1980) reported in CHINA BUS. REV., Nov.-Dec. 1980 [hereinafter referred to as IITL].

105. Gelatt, *supra* note 7, at 54.

106. JVITL, *supra* note 104.

107. *Regulations for the Implementation of the Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment* as reported in CHINA BUS. REV., Mar.-Apr. 1981, at 53 [hereinafter cited as JVITR].

108. A Foreign Enterprise Income Tax Law is being drafted and will apply to foreign enterprises doing business in forms other than joint ventures. Gelatt, *supra* note 7, at 55. The new law will likely tax income of foreign companies with subsidiaries or branches in China at graduated rates. There are predictions that companies without formal PRC represenation will be taxed at a twenty percent rate on income gained in China. *Id.* at 56. If these predictions prove true, a foreign company involved in a licensing arrangement would be taxed on royalties paid by the Chinese partner. *Id.*

109. JVITL, *supra* note 104, art. 1, par.2. The JVITL also applies to branches of the venture " within or outside the territory of China." *Id.*

110. *Id.*, art. 2. The regulations define a "tax year" as one beginning on January 1 and ending on December 31 of the Gregorian calendar. The regulations do not provide for a tax year at variance with this definition. JVITR, *supra* note 107, art. 7.

production, business and other sources." [111] The ambiguous phrase "and other sources" has been partially clarified by the Ministry of Finance. The Joint Venture Income Tax Regulations state that "income from others sources" includes dividends, bonuses, interest and income from lease or transfer of property, patent rights, ownership of trademarks, proprietary technology, and copyright.[112] This listing, however, cannot be considered exclusive because the regulation's definition of "income from other sources" also includes "other sources."[113]

The Joint Venture Income Tax Law reduces income by "costs, expenses, and losses," to determine taxable income.[114] Articles nine through eighteen of the Joint Venture Income Tax Regulations provide specific guidance concerning permissible costs, expenses and losses.[115] Unfortunately, a number of key terms such as "operating expenses" and "cost of sales" are left undefined.[116]

The regulation provides, however, a list of items not permitted as costs, expenses, or losses.[117] Many excluded items are predictable: penalties for illegal operations; income tax and local surtax payments; losses covered by insurance policies;[118] and, contributions other than for public welfare.[119] One point that raises concern is the nondeductibility of interest on capital.[120] A broad interpreta-

111. *Id*, art. 3, par. 1. The local surtax is computed according to the actual amount of income tax paid by the joint venture. *Id.* A reduction of the surtax may be made by local authorities "on account of special circumstances." *Id.*, at par. 2.

112. JVITR, *supra* note 107, art. 1, par. 1. Production and business extend to operations in industry, mining, communications, transportation, agriculture, forestry, animal husbandry, fisheries, poultry farming, commerce, tourism, food and drink, services, and other trades. *Id*, art. 2, par.2.

113. *Id.*, art. 2, par. 2

114. *Id.*

115. JVITL, *supra* note 104, art. 2. The regulations also permit an accounting for sales returns and allowances. JVITR, *supra* note 107, art. 8.

116. JVITR, *supra* note 107, arts. 9-18.

117. Gelatt, *supra* note 7, at 55.

118. JVITR, *supra* note 107, art. 9.

119. The People's Insurance Company of China offers a wide range of insurance to joint ventures and foreign businesses in China. Such average can include employer liability, product liability, automobile, and fire. Stepanek, *Insurance in China*, CHINA BUS. REV.., Mar.-Apr. 1981, at 37, 40.

120. *Id.* Of note, the regulations permit entertainment deductions up to certain limits, generally three-tenths percent of total sale income. *Id.* Significantly, expenditures on the purchase of fixed assets and intangible assets may not be deducted. *Id.* Fixed assets, however, may be depreciated in accordance with JVITR arts. 10-13. Under most circumstances, a straight line accounting method with residual value set at ten percent of original price must be used. JVITR, *supra* note 107 art. 12, par. 2. For example, if a joint venture purchases machinery valued at $10,000 with an expected useful life of ten years, a deduction of ten

tion of interest on capital would prohibit a deduction for interest payments of any kind.[121] A more likely interpretation would limit the "capital" to stockholder loans, which would be treated as non-deductible dividends.[122] Until further clarification, joint ventures should be reluctant to incur substantial debt.[123]

In addition to deductions of costs, expenses and losses, a joint venture may also be able to take advantage of one or more of the special rules under the Joint Venture Income Tax Law. These rules include tax exemptions for newly-established joint ventures,[124] carry-over losses,[125] tax reimbursements, joint ventures reinvesting profits in China,[126] and foreign tax credits.[127]

A new joint venture scheduled to operate for at least ten years may apply to the tax authorities for special consideration.[128] The tax authorities may then exempt the joint venture from payment of income taxes in the first profitable year and allow a fifty per cent reduction of the joint venture's income tax liability in the following two years.[129] The regulations define a joint venture's first profit-making year as the year in which initial operating losses have been recovered according to Article seven of the Joint Venture Income Tax Law.[130] The willingness of tax authorities to approve the exemption and reductions continues to be uncertain.[131]

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thousand dollars in the first year is not permitted. Instead, the proper deduction is ten thousand dollars less the residual value divided by ten years. Residual value is set at ten percent of the original purchase price of ten thousand dollars, or one thousand dollars. The annual deduction under the regulation, therefore, is computed as follows:

$$\frac{\$10{,}000 - \$1{,}000}{10 \text{ years}} = \$900/\text{year}.$$

An important caveat for the investor is the setting of minimum useful lives according to category by the Ministry of Finance. The regulations set minimum useful life at ten years for machinery, twenty years for buildings, and five years for electronic equipment and ground transportation other than trains. *Id.*, art. 13. Acceleration of depreciation is permitted only upon approval by local tax authorities. *Id.*

Similarly, intangible assets (*e.g.*, patent rights, technical expertise) and start-up costs may be amortized. *Id.* arts. 16-17. Generally, intangible assets are amortized over a period of ten years while start-up costs may be amortized in as few as five years. *Id.*

121. *Id.*, art. 9.
122. Gelatt, *supra* note 7, at 55.
123. *Id.*
124. *Id.*
125. JVITL, *supra* note 104, art. 5.
126. *Id.*, art. 7
127. *Id.*, art. 6
128. *Id.*, art. 16
129. *Id.*, art. 5, par. 1.
130. *Id.*
131. JVITR, *supra* note 107, art. 5.

The Joint Venture Income Tax Law gives a joint venture the right to carry losses to the subsequent tax year.[132] This carry-over provision permits each dollar of loss to decrease the following taxable year's income by one dollar.[133] If income gained in the subsequent tax year proves insufficient to delete the loss, further reductions of taxable income may continue to take into account the loss up to a period of five years.[134] No provision is made, however, for carrying losses back to previously profitible years.

One provision of the Joint Venture Income Tax Law seeks to encourage continued foreign investment through tax relief.[135] Upon reinvestment of its share of profit, a foreign investor may obtain a refund of forty per cent of the income tax paid on the reinvested amount.[136] The investor, however, must not remit the reinvested profit for a period of at least five years or the refund must be forfeited.[137] Several questions about the reinvestment provisions have surfaced. Although the Joint Venture Income Tax Law requires the reinvested profit merely be "in China," the regulations narrow the object of reinvestment to the joint venture in which the profit arose and "other joint ventures with Chinese and foreign investment."[138] A potentially greater problem is whether the reinvested amount must be from undistributed profits in China or whether a subsequent reinvestment of distributed profits will also qualify.[139]

The final special rule available under the Joint Venture Income Tax Law applies to income taxes paid by the joint venture in countries other than China.[140] Income taxes paid to foreign governments may be credited by the joint venture against income tax assessed under Chinese law.[141] The Joint Venture Income Tax Regulations limit use of this foreign tax credit in two ways. First,

132. Gelatt, *supra* note 7, at 55.

133. JVITL, *supra* note 104, art. 7.

134. *Id.*

135. *Id.*

136. *Id.*, art. 6

137. *Id.* The tax laws also provide a disincentive to investors planning to remit their share of profit out of China. A foreign investor is permitted to remit its profit but must pay an additional ten percent tax on the remitted amount. *Id.*, art. 4. Other nations often impose higher rates, fifteen to thirty percent. Rasmussen & Theroux, *China's New Tax Laws for Joint Ventures and Individuals*, CHINA BUS. REV., Nov.-Dec. 1980, 36,37.

138. JVITL, *supra* note 104, art. 6. Approval must also be obtained from the tax authorities. *Id.*

139. JVITR, *supra* note 107, art. 6.

140. Gelatt, *supra* note 7, at 55.

141. JVITL, *supra* note 104, art. 16, par. 1.

the income tax paid to foreign governments must be on income earned outside of China.[142] Secondly, the credit cannot exceed the income tax which would be levied according to China's rates.[143]

A foreign investor should also be aware of the authority given to tax authorities by the Joint Venture Income Tax Law and Regulations. The tax authorities, usually those in the same locality as the joint venture, may investigate the financial affairs and accounting books of any joint venture.[144] To facilitate this inspection, vouchers for accounting and reports used by the joint venture must be in the Chinese language.[145] A joint venture must retain these records for a minimum of fifteen years.[146] Although tax officials are directed to keep their findings confidential, no penalties are provided for unauthorized disclosure of a venture's financial affairs or tax situation.[147]

Tax authorities also have authority to impose penalties for underpayment[148] or withholding of information.[149] Joint ventures must pay disputed taxes prior to contesting the assessment.[150] If a dispute arises, the joint venture may appeal to higher tax authorities for reconsideration and, if unsatisfied, bring the matter to the attention of the local Economic Courts.[151]

2. *Industrial and Commercial Consolidated Tax*. Income tax is not the only tax a joint venture faces. Joint ventures must contend with China's Industrial and Commercial Consolidated Tax.[152] Application of this law to joint ventures has been uncertain but has received some clarification in the Regulations Regarding the Levying and Exemption of Industrial and Commercial Tax for Import and Export Commodities issued by the Ministry of Finance on De-

142. *Id.* No provision is made for credits on payments other than for income taxes. Furthermore, where an agreement between China and another country addresses the problems of double taxation, a joint venture foreign tax credit will be determined in accordance with such agreement. *Id.*, art. 16, par. 2.

143. JVITR, *supra* note 107, art. 32.

144. *Id.*

145. JVITL, *supra* note 104, art. 12.

146. JVITR, *supra* note 107, art. 25, par. 1. Alternately, the records may be kept in English and Chinese. *Id.*

147. *Id.*, art. 25, par. 2.

148. *Id.*, art. 27.

149. A penalty up to five times the underpayment may be assessed. JVITL, *supra* note 104, art. 14, par. 2.

150. *Id.*, art. 14, par. 1. The maximum fine is 5000 yuan. JVITR, *supra* note 107, art. 28.

151. JVITL, *supra* note 104, arts. 14-15.

152. *Id.*, art. 15.

cember 30, 1980.[153] The regulations exempt joint ventures from the consolidated tax levied on certain high technology imports.[154] An exemption also applies to imports which constitute part of the foreign investor's equity contribution to the venture.[155] The consolidated tax applies, however, to other imports and to sales and services proceeds.[156]

3. *Individual Income Tax*. Concurrent with the appearance of laws and regulations imposing income taxes on joint ventures, laws and regulaions subjecting individuals to an income tax were passed.[157] The law, utilizing progressive taxation,[158] applies to Foreign employees working in China for a joint venture as well as in any other position. In fact, the Individual Income Tax Law effectively excludes almost all Chinese due to a 800 Yuan a month exemption and apparently has its primary purpose the taxation of income earned by foreign nationals.[159]

As with the income tax law and regulations applying to joint

153. A turnover tax is levied on sales and services proceeds and on the amount of import purchases. *See generally*, Reynolds, *Doing Business with PRC: Tax Considerations*, INT'L L.., Winter 1980, at 49, 57. According to Professor Reynolds, the following rates apply under the Industrial and Commercial Consolidated Tax:

Area	*Tax Rate*
Industrial and Agriculture Products	1.5% (unbleached cotton cloth) to 69% (cigarettes)
Retail Sales	3%
Transportation and Communications	2.5%
Service Trades	3 to 7% income (gross?)

154. Gelatt, *supra* note 7, at 55.

155. *Id.*

156. *Id.*

157. *Id.* A joint venture may deduct payments of sales taxes when computing income taxes. JVITR, *supra* note 107, art. 8.

158. IITL, *supra* note 104, art. 1. Income includes wages and salaries, royalties, interest, dividends, income from lease of property and other specified by the Chinese Ministry of Finance. *Id.*, art. 2. Interest of savings deposited in Chinese banks, welfare benefits, certain prizes and awards, and survivor's pensions are exempt. *Id.*, art. 4.

159. *Id.*, art. 3. The appended tax rate table works as follows:

Grade	*Range of Income*	*Tax Rate*
1	*Monthly income of 800 Yuan and less*	*Exempt*
2	*That part of monthly income from 801 to 1,500 yuan*	*5%*
3	*That part of monthly income from 1,501 to 3,000 yuan*	*10%*
4	*That part of monthly income from 3,001 to 6,000 yuan*	*20%*
5	*That part of monthly income from 6,001 to 9,000 yuan*	*30%*
6	*That part of monthly income from 9,001 to 12,000 yuan*	*40%*
7	*That part of monthly income above 12,000 yuan*	*45%*

With the recent devaluation of Chinese currency, the foreign employee, to earn the equivalent amount in foreign currency, must earn 85 percent more than prior to the devaluation. Consequently, the progressively higher tax rates will apply to income compensating for the devaluation.

ventures, the individual income tax law and regulations leave several questions unanswered. Of particular concern to foreign employees is the definition of residency.[160] Individuals residing in China for less than ninety days need pay no income tax on compensation for work done in China where actual payments are made outside China.[161] Individuals residing in China between ninety-one days and one year are taxed on all income from "work within China."[162] Individuals residing in China for more than one year but less than five years also pay tax on income gained abroad which is remitted to China.[163] For residents of China exceeding five years all income is subject to taxation.[164] Residency, therefore, determines to a great extent the liability of a foreign employee, and recent interpretations of residency are disturbing.[165]

In a notice issued June 30, 1981, the Beijing office of the Foreign Tax Collection Office (FTCO) took the position that any foreigner who enters China with a visa valid for more than ninety days is presumptively a resident of China for more than ninety days.[166] Furthermore, the FTCO views all wage and salary income earned by a ninety-day-plus resident, regardless of source, as taxable.[167] Thus, despite the language of the Individual Income Tax Law, a foreign worker with a six month visa who works four months in China would be liable to Chinese income taxes on all income earned during the six months.[168] The extent to which the FTCO will seek to enforce its unique interpretation remains to be seen.[169]

4. *Future Tax Legislation*. The new tax laws and regulations provide foreign investors with only a framework. The Chinese admit that financial readjustment, including taxing provisions, remain in a trial stage and have yet to be perfected.[170] To perfect the financial system, the Chinese will be drafting separate statutes on

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160. *See* Gelatt, *supra* note 7, at 55.
161. *Id.*
162. IITL, *supra* note 104, art. 5.
163. Gelatt, *supra* note 7, at 55.
164. Regulations on the Implementation of the Individual Income Tax Law of the People's Republic of China [hereinafter IITR] as reported in CHINA BUS. REV., Mar.-Apr. 1981, at 55.
165. *Id.*, art. 3.
166. *Id.* Individuals, however, may receive a foreign tax credit on such amounts. *Id.*, art. 16, par. 2.
167. Gelatt, *supra* note 7, at 54.
168. *Id.*
169. *Id.*
170. *Id.*

bookeeping, production costs, depreciation of fixed assets, and further basic statutes concerning taxation. The Chinese plan to enact these new laws later this year.[171]

C. *Financial Considerations for Joint Ventures*

A lack of adequate capital to finance the ambitious, albeit scaled-down, projects and a scarcity of foreign exchange have forced the Chinese to seek both direct and indirect outside financing.[172] China's activities in the International Monetary Fund and World Bank[173] will have two main impacts on joint ventures. First, joint ventures will be forced to abide by strict foreign exchange controls necessary to ensure repayment of China's outstanding loans. Secondly, and more promising, partial financing of joint ventures by Chinese institutions will be possible.[174] However to repay these loans the Chinese need foreign exchange.

Foreign exchange transactions since March 1, 1981, fall under the unified management of the State General Administration of Exchange Control (SGAEC) and its branch offices as specified in the Provisional Regulations for Exchange Controls issued December 18, 1980.[175] Chapter V of the regulations governs exchange controls relating to joint ventures and associated personnel.[176] All foreign exchange receipts of joint ventures must be deposited in the venture's foreign exchange account with the Bank of China and all foreign exchange disbursements must be paid from this deposit account.[177]

Remittance of after-tax profits (permitted by the Joint Venture Law and the Income Tax Law on Joint Ventures) requires debiting the foreign exchange deposit account of the joint venture.[178] The law does not mention the means of debiting an account where the venture's income results not from exports but domestic sales. In

171. *Report on the Final State Accounts for 1980 and Implementation of the Financial Estimates for 1981*, *supra* note 5, at 14, 22.

172. *Id.*

173. De Arrigunaga, *Financing China's Modernization Drive*, U.S. AND CHINA: THE NEW RELATIONSHIP 14 (1979).

174. Berney & Jones, *China's Activities in the IMF and World Bank*, CHINA BUS. REV., Mar.-Apr. 1981, at 47.

175. Gelatt, *supra* note 7, at 53.

176. Provisional Regulations for Exchange Control of the People's Republic of China (1980) (effective March 1, 1981) arts. 3, 4, reported BEIJING REV., Jan. 26, 1981, at 25 [hereinafter referred to as PREC].

177. *Id.*

178. *Id.*, art. 22. Chapter V also requires "periodic" reports of foreign exchange business to be submitted to SGAEC. *Id.*

this situation the deposit account would have little or no foreign exchange! Chapter V permits foreign staff members and workers to remit their earnings but limits the amount to one-half of the employee's "net wages and other earnings."[179] Without remittance the foreign investor can obtain neither a return of profit nor the principal. Chapter V, consequently, needs clarification by the Chinese.

It appears that although the Chinese prefer investors to obtain financing from other sources, for example, the Chinese may be willing to contribute to crucial industries.[180] Banking and insurance are the two systems responsible for capital formation in China.[181] With investments reaching thirty per cent of GNP, the People's Republic of China has a high rate of domestic capital formation by any standards.[182] Both banking and finance in China are state monopolies operated by the People's Bank of China and the People's Insurance Company of China.[183] A new entity, the China Investment Bank, was established on December 31, 1981.[184] Specializing in raising funds abroad, the Investment Bank will provide funds for joint ventures and other economic entities independently of the Bank of China.[185]

One area of increasing activity by the Bank of China is joint venture financing.[186] Although a joint venture could "obtain funds from foreign banks directly,"[187] the Joint Venture Law made no reference to obtaining financing from Chinese institutions.[188] This situation changed with the Provision Regulations on the Bank of China's Handling of Loans to Joint Ventures Using Chinese and Foreign Investment, promulgated on March 13, 1981.[189] Several loans have been extended to joint venture companies with more financing to follow.[190]

Any joint venture, after registration and licensing, may apply

179. *Id.*, art. 24. Such remittance must be approved by SGAEC.

180. *Id.*, art. 25. "Net wages" is not defined.

181. De Arrigunaga, *supra* note 173, at 58.

182. B. SZUPROWICZW & M. SZUPROWICZW, DOING BUSINESS WITH CHINA 72 (1978). For a more complete discussion of financial institutions in China *see generally*, *China's Financial Institutions*, CHINA BUS. REV., July-Aug. 1980, at 15-18.

183. *Socialist Nations Have Economic Troubles Too*, BUS. WK., May 5, 1980, at 73.

184. SZUPROWICZW, *supra* note 182, at 72.

185. *China Investment Bank Set Up*, BEIJING REV., Jan. 4, 1982 at 8.

186. *Id.*

187. Gelatt, *supra* note 7, at 53.

188. JVL, *supra* note 4, art. 8, par. 3.

189. Gelatt, *supra* note 7, at 53.

190. *Id.*

to the Bank of China for loans.[191] The object of a loan may be to meet production and marketing needs, to finance capital expansion, or to provide funds during periods of low cash income.[192] Loans may be in Chinese or foreign currency. If foreign currency is used, principal and interest payments must be in the foreign currency.[193]

Several provisions of the regulations specify ways of ensuring repayment of loans. The joint venture must provide collateral or guarantees, although questions remain as to: (1) which form will be deemed appropriate by the bank of China in which cases; and, (2) what will constitute a sufficient collateral or guarantee.[194] In the event of a loan default, the bank has a right of set-off against the account of the defaulting joint venture.[195] Furthermore, upon a violation of the loan agreement by the joint venture, the Bank of China may take "such economic measures to protect its interest as suspending loan disbursements and accelerating repayment," according to "different circumstances."[196] A loan agreement, therefore, should set out the rights the bank reserves and the circumstances in which these rights may be exercised.[197]

D. Decision-Making and Labor Management

The foreign investor in a joint venture will be directly involved in production and labor management. There are striking differences between United States and Chinese enterprises in the degree of worker participation in decision-making at the factory level and the impotence of managers under the Chinese system. The foreign investor must be aware of its rights and responsibilites. Most factories have an employee-elected Worker's Congress which puts forth criticisms of management and proposals for improving work.[198] In addition, decentralization has resulted in a growth of many factory communist party committees to the extent that all major management decisions in these factories must now be cleared with the committee.[199] Managers also lack authority often taken for granted in

191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.* The Joint Venture Law requires all joint venture companies to open an account with the Bank of China or a bank approved by the Bank of China. JVL, *supra* note 4, art. 8, par. 1.
197. Gelatt, *supra* note 7, at 53.
198. *Id.*
199. *Some Questions on China's Trade Unions*, BEIJING REV., May 5, 1980, at 18, 26.

the United States[200] For example, except for experimental enterprises, managers are not permitted to deal directly with their own suppliers.[201]

"Business" in China is directed not toward maximizing profits by facilitating the natural flow of goods but rather toward implementation of "materials mobilization plans" formulated by the State Council.[202] Recently, however, some local factories have experimented with a new management system stressing local production planning and reinvestment of after-tax profits. The tremendous success of these factories assures expansion of this form of management, at least in the near future.[203]

China's trade unions, like those of many communist nations, operate not only as a mass organization of workers and staff but also as a "pillar of state power" with the avowed goal of developing the socialist economy.[204] unlike unions in America, any worker, including managers, may join. All but abolished during the Cultural Revolution, the trade unions are emphatically not supposed to demand better wages.[205] Even so, workers often use the union covertly to urge increases in benefits, particularly more living quarters. Although played down by the Chinese, strikes do occur in China, even against the bureaucracy itself.[206]

In hopes of avoiding the worst aspects of labor unrest, the Chinese enacted the Regulations on Labor Management in Joint Ventures.[207] Except for relatively small ventures permitted to sign contracts with employees individually, the joint venture and the trade union organization formed in the joint venture collectively sign a labor contract.[208] The contract contains agreement regarding dismissal, tasks, wages, working time, labor welfare, and discipline and requires approval by the local labor management department.[209] The regulations do not address situations requiring peri-

200. Stepanek, *Joint Ventures: Why U.S. Firms Are Cautious*, CHINA BUS. REV., July-Aug. 1980, at 33.

201. *Id.* at 32.

202. *Id.*

203. *New Management*, BEIJING REV., Oct. 31, 1980, at 5.

204. *Id.*

205. *Some Questions on China's Trade Unions*, *supra* note 199, at 18.

206. *Id.* at 22-26.

207. *Id.*

208. Reported in CHINA BUS. REV., Nov.-Dec. 1980, at 43. [hereinafter cited as LMR] The state council promulgated these regulations concurrently with regulations on registration of joint ventures discussed *supra*.

209. *Id.*, art. 2.

odic updates or modifications.

Several aspects of the regulations deserve particular mention. In a departure from the Iron Rice policy of guaranteed employment, Articles 4 and 5 permit dismissal of workers under certain circumstances.[210] The joint venture selects employees by examination from a pool of applicants recommended by local authorities, the labor management department, and where permitted, recruited by the joint venture.[211] The regulations require the venture to pay for labor insurance, cover all medical expenses, match government subsidies to state-owned enterprises, and be subject to safety inspections by the labor management department .[212]

Significantly, the wage level of workers and staff members must be twenty to fifty per cent above the wages of workers and staff members in local state-owned enterprises.[213] The venture's Board of Directors have the right to establish these wage standards,[214] although the standard must be well above that of similar trades in the locality.[215]

The regulations give the trade union the right to object to dismissals and punishments the union believes unreasonable.[216] The trade union may, at its discretion, send representatives to discuss the matter with the board of directors.[217] Labor disputes unresolved by the trade union and board of directors proceed to arbitration at the request of either party, or both parties.[218] Article 14 permits a party that disagrees with the arbitration decision to file suit in the local people's court.[219]

The most attractive feature of Chinese factories is the low wage rate, averaging $1.15 United States dollars per day (as of July 24, 1979).[220] Normal wages throughout the People's Republic of China are regulated by an eight-step scale dependent on skill, experience, and time on the job. Article 8 of the Regulations on Labor Management, however, stipulated that wages paid by joint ventures must be 120 to 150 per cent above comparable Chinese

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210. *Id.*
211. *Id.*, arts. 4-5.
212. *Id.*, art. 6.
213. *Id.*, art. 11.
214. *Id.*, art. 8.
215. *Id.*, art. 9.
216. *Id.*, art. 8.
217. *Id.*, art. 6.
218. *Id.*
219. *Id.*, art. 15.
220. *Id.*, art. 14.

enterprises.[221]

Other features of Chinese labor, however, are not as favorable to the foreign investor.[222] Labor productivity in key areas remains two to five times lower than that of developed nations. Absenteeism remains chronic and has appeared in some joint ventures already in business.[223]

Both poor productivity and absenteeism can be traced to a lack of incentives to reward superior performance,[224] a lack of penalties for poor performance, and the "Iron Rice" policy under which layoffs are forbidden and wages are paid regardless of actual work. Bonuses were largely cancelled during the Cultural Revolution but since criticism of the Gang of Four and the reinstatement of the principle "to each according to his work," the Chinese have moved toward recruiting workers through examination, renewed bonus plans, and promoting outstanding workers.[225] Progress, however, has been slow and a tendency to distribute bonuses without regard to merit appeared last year. The problem of nonmerit bonuses reached such an extreme in some factories that employees refused to do routine tasks without receiving bonuses.[226]

Skilled workers, necessary for many high technology ventures, are rare.[227] Though joint ventures have the legal right to hire and transfer workers, foreign investors should be aware of nonlegal obstacles to exercising that right.[228] The key nonlegal obstacle is the shortage of highly trained workers.[229] Due to this shortage, most enterprises in China have the major burden of training employees.[230]

Relatively low wages are extensively complemented by most factories with health-care, day-care centers, educational programs, and retirement benefits. Contrary to practice in the United States, individual enterprises in China provide the majority of health services. China's 1951 National Labor Insurance Regulations, which apply to joint ventures employing one hundred or more workers,

221. *China Guarantee Brightens Joint Venture Chances*, *supra* note 74, at 14, col. 2.

222. LMR, *supra* note 208, art. 8.

223. Berney, *China's Labor System*, CHINA BUS. REV. Sept.-Oct. 1981, at 46. Only one-half of one per cent of China's workers have a college education. *Id.* at 47.

224. *China Guarantee Brightens Joint Venture Chances*, *supra* note 74, at 14, col. 2.

225. *Where Does Labour Enthusiasm Come From?*, BEIJING REV., May 12, 1980, at 18.

226. *Id.*

227. *Id.*

228. Berney, *supra* note 223, at 46.

229. *Id.*

230. *Id.* at 47.

require enterprises to pay a three per cent monthly payroll tax.[231] Thirty per cent of the payroll tax goes to a general labor insurance fund with the remaining designated for a local labor insurance fund.[232] For example, the Third Textile Mill in Beijing employs 70 full-time medical personnel and has a 30-bed hospital to serve the needs of 6000 employees and their families.[233] Special protection is given to women workers during pregnancy and disabled workers often receive full pay during disability, even if for life.[234]

E. Status of Joint Ventures

The formation of enterprises under the Joint Venture Laws has proceeded at a moderate pace.[235] These ventures appear to fall into three general categories. This first type is distinguished mainly by its objective — the exploration for off-shore oil. Another type of venture, probably the purest form of the three, is equity joint ventures, in which both sides provide capital and management with a full sharing of profits.[236] The third and most popular form is the so-called contractual joint venture of small and medium projects.[237] Foreign participants in this third type of joint venture provide funds and equipment while the Chinese partner provides land, labor and management.[238] Profits are shared at an agreed ratio in a manner similar to compensation agreements.[239]

The Chinese, conscious that their drive toward modernization will require the help of foreign investors, have made significant efforts to create a more attractive business environment for foreign corporations. As experience is gained and a new commercial code is adopted, many of the questions about the Joint Venture Law will be settled.

231. *Id.* at 48.

232. Stepanek, *Insurance in China*, *supra* note 119 at 40.

233. *Id.* at 41.

234. SZUPROWICZW, *supra* note 182 at 413.

235. *Innovation Approach Benefits Plant Operations Workers*, AIR CONDITIONING, HEATING AND REFRIGERATION, May 5, 1979, at 32.

236. *See Joint Ventures: Press Reports Through...*, CHINA BUS. REV., May-June 1981, at 60; July-Aug. 1981, at 75; Sept.-Oct. 1981, at 84; Nov.-Dec. 1981, at 80. A survey of reported joint venture enterprise negotiations in the first nine months of 1981 show that investors from Hong Kong, Japan, and the United States lead investors from other nations in entering into joint ventures. Plans for joint ventures vary from a driving school in Canton and resort development to Chinese language computer software and energy exploration. *Id.*

237. *Joint Ventures*, BEIJING REV., Jan. 5, 1981, at 10.

238. *Cf., Id.* (Other types of ventures are few in number).

239. *Id.*

III. PRODUCTION AND DISTRIBUTION

A. *Impediments*

Two major impediments to efficient production and distribution of goods in China are the lack of transportation services and the staggering difficulties of securing an adequate supply of energy. Heavily dependent on an overburdened railway system, China's increasing demand for available transport space will be a key factor in obtaining raw materials and reaching distant markets.[240] China, rich in coal and oil reserves, has been hampered by backward technology and a substandard industrial infrastructure that threatens to make energy the most serious bottleneck in the development of China.[241]

1. *Transportation and Communications*. Of China's major freight transportation systems, the railway network predominates, carrying over one-half of the total volume of domestic freight.[242] Utilization of the railway system, however, has grown faster than its length, with only the Soviet Union experiencing a higher freight density.[243]

Critical to the export of goods from China is the ability of the Chinese to handle the increasing flow of cargo through their major ports. Plagued by relatively shallow depths and chronic congestion, major Chinese seaports with poor handling capacity often require loading and unloading delays of weeks or months.[244] Recently, the Chinese developed plans to build a container ship handling terminal at Tientsin, southeast of Beijing, in order to bypass the loading and unloading delays.[245]

Containers will not be an immediate answer to China's shipping congestion, however, due to a lack of container-handling facil-

240. *Id.*

241. *Energy: A Bottleneck in China's Industrial Drive*, BUS. WK., May 19, 1980, at 59.

242. *Id.*

243. *Communique on Fulfilment of China's 1979 National Economic Plan*, BEIJING REV., May 19, 1980, at 20 [hereinafter referred to as Communique II].

Area	*Use*	*1979 Increase*
Railway	558,800 MM ton-km	4.8%
Waterway	456,400	20.8
Air Freight	123	27.2
Pipelines	47,800	10.8
Road	26,800	- 2.2

244. SZUPROWICZW, *supra* note 182, at 302-306; *Communique II*, *supra* note 243, at 20-21.

245. SZUPROWICZW, *supra* note 182, at 327-328.

ities and inadequate highway networks.[246] The condition of the highways, combined with constant use by large numbers of pedestrians, bicycles, animal drawn transport, and slow-moving agricultural machinery, has forced predominately short haul transport by trucks moving at low travel speeds.[247] Also of serious concern is the low number of trucks currently available. In addition, because of the slow growth in the supply of oil and the low allocation of oil for the transportation industry (6 per cent),[248] China is not capable of handling a rapid expansion of highway transportation.[249]

One of the most useful indicators of the level of a nation's modernization is the telecommunications network, which is indispensible to the efficient operation of modern enterprises. In China there is only about one telephone for every 200 persons compared with one telephone per 1.4 persons in the United States. As recently as April 1980, installation fees ran as high as $1200. United States dollars.[250] This apparent lack of telephones does not mean a massive gap in communications since almost every telephone is for official use which includes use in factories and communes. However, the Chinese admit that "transport and communications at present still cannot meet the growing needs of national economy."[251]

2. *Energy*. As troubling as the transportation problem is with regard to obtaining raw materials and distributing products, it is the energy situation that will play the crucial role in China's efforts to modernize. China in 1979 increased coal and oil production by less than three per cent, far below governmental goals. In the first six months of 1980, coal and oil production made only modest gains.[252] Although electricity production was up ten per cent in 1979, supply could not keep up with the surging demand of both industry and residential customers.[253] This imbalance resulted in another year of power shortages and the enforcement of draconian conservation efforts to sustain industrial growth. For example, in Beijing the heat is turned off on March 15, even though outside

246. *Id.*
247. *Id.*, at 315-317.
248. *Id.*
249. *Id.*
250. *Id.* at 111.
251. *If You're Simulating a Duck, Don't Look Like an Airplane*, Wall St. J., May 23, 1980, at 30, col. 3.
252. *Communique II*, *supra* note 243, at 20.
253. *Industrial Protection Up*, BEIJING REV., July 21, 1980, at 3.

temperatures sometimes drop below 40 degrees.[254] Electrical production in 1981 increased by a mere two and one-half per cent.[255]

Crude oil production, once the panacea of China's hopes for earning foreign exchange, has also been a disappointment to the Chinese.[256] The latest predictions set 1985 as the earliest date that off-shore oil can be brought into production. In addition, crude oil output increased by a mere two per cent in 1979.[257] Petroleum targets in 1980, however, were met.[258]

An encouraging source of power is China's gigantic hydroelectric potential, a potential equal to the total installed electrical capacity of the United States.[259] Less than two per cent of this potential, however, is being exploited and seventy per cent of this in the southwest, primarily along the upper Brahmaputra River in Tibet and the upper Yangtze River.[260]

Despite the above problems, the Chinese have managed to more than double the yearly output of electricity in the past five years.[261] Yet the rate of increase is slowing, amounting to less than ten per cent in 1979. To compensate, the Chinese have embarked on a conservation drive in an effort to raise China's conversion efficiency, that is, the amount of useful work produced from energy consumed.[262] For the first time, the Chinese have installed electric meters in many factories and are stressing the need for strict conservation.[263] Maintaining an estimated four-to-one ratio between thermal and hydroelectric generating capacity, the Chinese in some areas continue to shut down factories one day per week in rotation to avoid voltage drops.[264]

Problems in transportation and energy will continue in the forseeable future. Industries vital to earning foreign exchange or producing energy will be given a priority in obtaining raw materials and energy.

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254. *Communique on Fulfilment of China's 1979 National Economic Plan*, BEIJING REV., May 12, 1980, at 12, 13.

255. *Energy: A Bottleneck in China's Industrial Drive*, *supra* note 241, at 59.

256. *Economic*, BEIJING REV., Jan. 18, 1982, at 7.

257. *Communique*, *supra* note 254, at 13.

258. *Id.*

259. *Coal and Petroleum Targets Met*, BEIJING REV., Jan. 12, 1981, at 7.

260. SZUPROWICZW, *supra* note 182, at 155.

261. *Socialist Nations Have Economic Troubles Too*, *supra* note 183, at 73.

262. Compare capacity estimate for 1975 of 121 billion kwh, SZUPROWICZW, *supra* note 182, at 147, with 282 billion kwh for 1979, *Communique*, *supra* note 254, at 13.

263. *Energy: A Bottleneck in China's Industrial Drive*, *supra* note 241, at 60.

264. *Id.*

B. Marketing

One of the most attractive features of China is the sheer size of its domestic market — nearly one billion consumers.[265] Low per capita income in China and China's desire to build up foreign exchange limit the possibilities of exporting to China large amounts of consumer goods. China's consumer market in the next several years will be based on one simple economic fact: although most peasants earn less than two hundred fifty dollars a year, some thirty million urban Chinese earn eight times that amount.[266] By the end of the century, however, seventy to eighty per cent of the population will still be poor.[267]

Domestically, the Chinese government establishes official price zones for all materials, goods, and services. The prices of major durable consumer goods are set by the State Council while provincial bureaus set price ranges for low importance industrial items.[268] One of the primary considerations for the Chinese government is to keep prices at a low, stable level.[269] Thus, the Chinese have two price systems — one for the domestic market and one for foreign trade. Differences in the two price systems are absorbed by the Chinese as profit or loss.[270]

China's experimental policy of allowing some enterprises to set their own prices has apparently fallen victim to inflation. A stagnating heavy industry, surges in pent-up consumer demand, and decentralization of price controls led to a general price increase of many products. While permitting some joint ventures a greater degree of local control, freeing prices also leads to price rises. Recently, the Chinese have switched back to a policy of centralized price controls.[271]

To succeed in marketing a product in China, advertising techniques should be tailored to the Chinese culture. Successful marketing in China may depend on regional production and distribution.[272] It has been suggested that United States cigarette

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265. SZUPROWICZW, *supra* note 182, at 152.

266. *Development Trends in Chinese Population Growth*, BEIJING REV., Jan. 11, 1982, at 23. Half of the total population is under the age of twenty. With an average age of twenty-six, China has the youngest population composition in the world. *Id.*

267. Bemy, *China's Growing Consumer Market*, CHINA BUS. REV., Mar.-Apr. 1981, at 18.

268. *Personal Incomes in China*, CHINA BUS. REV., Mar.-Apr. 1981, at 19.

269. *China: Rescinding Reforms in the Face of Inflation*, BUS. WK., Apr. 6, 1981, at 44.

270. *The New Threat to China's Economy: Inflation*, BUS. WK., Jan. 19, 1981, at 38.

271. *Id.*

272. *China: Rescinding Reforms in the Face of Inflation*, *supra* note 269, at 44.

companies, for example, utilize local production and Chinese advisors for billboard advertising.[273] Using Western distributing and advertising methods, modified to Chinese tastes, should also be beneficial to other consumer goods.[274]

IV. NEGOTIATIONS

Now that some of the early euphoria is fading, United States corporations are beginning to realize that obtaining access to China requires expertise in the peculiarities of negotiating with the Chinese. The United States corporation, likely to enter negotiations with only tentative expectations, will find that the success of any relationship with the Chinese depends to a great extent on the negotiating process. The remainder of this Comment will examine the role of Chinese negotiators and the need for an investor to develop a strategy tailored to the Chinese. Finally, this Comment will briefly describe the contents of a United States-China contract.

A. Chinese Negotiators and Strategy

The Chinese place a premium on trust in a relationship. Likewise, Chinese negotiators look for long-term business associations. Thus, a great amount of emphasis is placed on personal relationships and the Chinese like to deal with their "old friends," those who have long-standing relationships with China.[275]

The Chinese prefer to set the ground rules and establish the timetables. Negotiations tend to be extremely detailed with frequent recesses.[276] As the Chinese negotiators become more confident in dealing with Western businesses, negotiations should be less timeconsuming.[277]

A trend toward decentralization of negotiations appeared in 1979 with United States businessmen discussing joint ventures and licensing directly with regional factories instead of with the central trading corporations.[278] Unfortunately, overzealous lower-echelon officials signed letters of intent for billions of dollars worth of plants for which the PRC was unable to pay.[279] The degree of con-

273. Speech by Sherman Cochran at Wake Forest University (Oct. 19, 1980).
274. *Id.*
275. *Id.*
276. *Legality Without Law*, CHINA TRADER, Sept. 1980, at 15.
277. U.S. DEPT. OF COMMERCE, *supra* note 62, at 10.
278. *New Impetus for U.S. China Trade*, INDUSTRY WK., Mar. 17, 1980, at 22.
279. *The Inscrutable West*, FORBES, June 23, 1980, at 39.

trol the central government may reassert to avoid a repetition of this disaster will affect the make-up of the negotiating team on the Chinese side.

Before discussing contract terms, the Chinese relentlessly attempt to pry every technical detail possible from the Western business.[280] Some firms have faced a continuous barrage of questions seeking to exploit the technical knowledge of a corporation before beginning the give-and-take of contract negotiations.[281] Frequently, young Chinese who appear to be educating themselves about foreign technology join the official negotiators.[282] Once negotiations begin, Chinese negotiators try to play one competitor against another. Quick to label an offer "not competitive," the Chinese often use a strategy that leads to a subtle war of nerves in order to force concessions.[283] Such posturing is nonetheless polite and businesslike, and it is unlikely that the Chinese will hold a "Dutch auction."[284]

Although reportedly well-informed, Chinese officials appear to have difficulty in understanding the interaction in foreign nations between private enterprise and governments.[285] It is nearly impossible for the Chinese to believe that agreements with top United States buyers can be anything but a clear and coherent United States government policy.[286]

The termination of the sixth round of textile negotiations offers insights into Chinese negotations. The United States and Chinese negotiators had closed to positions within three and one-half per cent of one another.[287] The Chinese had planned to return to Beijing on Wednesday afternoon, May 14, 1980, and had set that as their own deadline. At noon, the Chinese decided that, despite a near agreement, it was time to return home.[288]

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280. *Special Report: World Economic Outlook*, BUS. WK., Mar. 17, 1980, at 73.

281. *China's Narrow Door to the West*, FORTUNE, Mar. 26, 1979, at 64.

282. *Tackling the China Challenge*, INDUSTRY WK., May, 28, 1979, at 40.

283. *China's Narrow Door to the West*, *supra* note 281, at 64.

284. *Id.*

285. In a Dutch Auction the bidding starts at a high figure which is lowered until someone buys.

286. *The Inscrutable West*, *supra* note 279, at 39.

287. *Id.*

288. *U.S. - China Textile Trade Agreement: Nearly There, Now Down the Drain*, TEXTILE WK., May 19, 1980, at 1. This episode has been confirmed to the author by a participant in the talks.

B. Foreign Investors

1. *Strategy*. The foreign investor must react to the above characteristics and strategy with patience and perseverance. The Chinese, tough negotiators themselves, expect their foreign counterparts to be equally tough.[289] Several companies have forced breakthroughs by threatening to go home after weeks of detailed negotiations that indicated no prospect of substantive progress.[290] Displays of anger, however, even for a calculated effect, should be avoided.

The investor should have a detailed strategy to maximize negotiating success. The Chinese will constantly be demanding technical and managerial information, and the investor should develop a plan on release of technical information. This plan could include a list of what information should be released, depending on the amount of progress, and a list of technical and managerial data that cannot be released until the successful conclusion of negotiations.

2. *Negotiators — Recommended Conduct and Caveats*. With regard to the specifics of proper conduct, a few examples are appropriate. Big and colorful marketing presentations do not impress Beijing. Instead, technical expertise and managerial ability should be stressed.[291] Jokes and frivilous remarks of any kind should be avoided at all formal occasions, including banquets and toasts, especially with reference to political leaders.[292] Import and export of the Yuan is forbidden. In China, first names are family names, and whenever possible, full names should be ascertained.[293] According to a negotiator for a United States company, one area never explored when negotiating with the Chinese is a bribe or a "grease payment."[294]

C. Contracts

Great care must be taken in the terms of an agreement because contract law in China remains largely custom. Because commercial law has not developed fully, all particulars should be included in the contract. This fact may mean an extremely detailed document.

289. *Id.*

290. *Tackling the China Challenge*, *supra* note 282, at 40.

291. *Id.*

292. *Id. A How-to Manual for Business in China*, Women's Wear Daily, Dec. 21, 1978, at 8, col. 1. *China's Narrow Door to the West*, *supra* note 281, at 68.

293. *Id.*

294. *Id.*

One United States company's contract with China, for example, turned out to be a sixty-two page document, whereas a similar contract negotiated in Nigeria needed only a single page.[295] Care should also be taken in drafting a document since the Chinese have "strict constructionist" attitudes. Adherence to the contract is the expected norm.[296] A United States corporation should try to protect itself against future Chinese laws before any contract is signed.[297]

Historically, contracts in China have not originated in the legal system.[298] Contracts have not been generally viewed as creating legal rights and obligations but as a planning instrument for the State.[299] In the West, by contrast, an extensive body of law governs the creation and enforcement of well-recognized contract rights.[300] Many companies have assumed a signed contract to be complete and binding only to find subsequently that the Chinese viewed the document merely as a statement of intent.[301] Until the development of domestic Chinese contract law, foreign investors must accurately ascertain the legally-binding nature of any negotiated document.[302]

V. CONCLUSION

The investor interested in doing business in the People's Republic of China needs to have an appreciation of recent economic and legal developments. A number of impediments exist within China to the economical production and marketing of goods. The Chinese recognize problems in labor, transportation, and energy, and seek to resolve impediments in conjunction with the general economic development of China.

The Chinese leadership, desiring foreign capital and technology, also recognizes the specific requirement of foreign investors for a stable commercial environment. Although licensing agreements, trade compensation arrangements, and joint ventures have been developed, the legal framework necessary for their widespread use

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295. *Id. Tackling the China Challenge*, *supra* note 282, at 39.

296. *Id.*

297. U.S. DEPT. OF COMMERCE, *supra* note 62, at 6.

298. *Legality Without Law*, *supra* note 276, at 15.

299. Herbst, *The Baoshan Dilemma: A Legal Viewpoint*, CHINA TRADER, June 1981, at 10 & 11.

300. *Id.*

301. *Id.* at 14.

302. *Id.*

has not emerged. Comprehensive laws on property, patents, trademarks, and contracts, will hopefully be enacted in the near future.

The most highly-developed of China's commercial laws regulate the formation, taxation, and management of joint ventures using Chinese and foreign investment. The laws and regulations to date provide extensive guidance for foreign investors interested in joint ventures. Nonetheless, the regulations, leave questions unanswered and thereby present some problems to investors.

Whichever form of doing business the investor selects, the arrangement of such business must be negotiated with and agreed upon by the Chinese. A knowledge of China's needs and proper conduct is essential to succesful negotiations. To succeed in doing business in China, however, the foreign investor must have an understanding of the rights created by an agreement and of China's commercial laws and regulations applicable to that agreement.[303]

W. David Edwards

303. *Id.*