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LAW AND POLICY OF CHINA'S SPECIAL ECONOMIC ZONES AND COASTAL CITIES

Henry R. Zheng

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LAW AND POLICY OF CHINA'S SPECIAL ECONOMIC ZONES AND COASTAL CITIES

HENRY R. ZHENG*

TABLE OF CONTENTS

I. INTRODUCTION ........................................... 196

II. LAW AND POLICY OF THE SPECIAL ECONOMIC ZONES ...... 199
   A. Special Economic Zones: An Introduction ................. 199
      1. Shenzhen SEZ ........................................ 199
      2. Zhuhai SEZ ......................................... 200
      3. Shantou SEZ ......................................... 201
      4. Xiamen SEZ ......................................... 202
   B. Development Policy and Role of the SEZs ................. 203
      1. Role of the SEZs in the Chinese Economy ............. 203
      2. Development Strategy of the SEZ and Related Policy Issues ........................................... 206
   C. Administration of the Special Economic Zones .......... 210
   D. Legal Structure of the SEZs: An Overview ............... 212

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E. Preferential Tax Policy of the SEZs .......................... 216
F. Approval and Registration of Foreign Investment Projects .......................... 220
G. Land Law ........................................ 224
   1. Procedures and Regulations .................................. 225
   2. Term of Land Use ........................................... 226
   3. Land-Use Fee ............................................. 227
   4. Recent Reforms ............................................ 231
H. Regulations of the SEZs on Foreign Banks .......................... 232
   1. Establishment of Foreign Banks, Foreign Bank Branches and Joint Venture Banks .................................. 232
   2. Capitalization Requirements .................................. 235
   3. Scope of Foreign Banking Business .................................. 237
   4. Deposit Taking .............................................. 237
   5. Loans .................................................. 238
   6. Investment ................................................ 239
   7. Interest Rate ............................................... 240
   8. Profit .................................................. 240
   9. Reporting Requirements and Administration of Foreign Banking Business .................................. 241
I. Bankruptcy Law of the Shenzhen SEZ .......................... 242
   1. Introduction ................................................ 242
   2. Bankruptcy Proceedings ....................................... 245
   3. Liquidation Committee ......................................... 245
   4. Creditors' Meeting ........................................... 246
   5. Conciliation Procedure ......................................... 247
   6. Declaration of Bankruptcy and Distribution ....................... 248
   7. Reorganization and Liquidation Under the Corporation Law .................................. 250
      a. Reorganization Under the Corporation Law 250
      b. Liquidation Under the Corporation Law 252
J. Customs Regulations and Border Control .......................... 254
   1. Control Lines of the SEZs and Entry and Exit From Inland Area .................................. 254
   2. Customs Regulations ........................................... 256
      a. Import and Export From Overseas .................................. 256
      b. Import and Export From Inland Area .................................. 258
   3. Entry and Exit ............................................... 260
III. The Legal Structure of Economic and Technological Development Zones .......................... 262
A. Introduction ................................................ 262
B. Legal Structure of the ETDZs ..................................... 264
C. Administration of the ETDZs ....................................... 267
1. Administrative Committee .............................. 267
2. Business Supporting Institutions ...................... 268
D. Preferential Tax Policy ................................ 269
E. Land Law .................................................. 272
IV. Coastal Cities and Open Regions .................... 276
A. Introduction .............................................. 276
1. Dalian .................................................... 277
2. Tianjin ................................................... 277
3. Shanghai .................................................. 278
4. Guangzhou ............................................... 279
5. Open Regions ........................................... 279
B. Preferential Tax Policies ............................... 280
C. Land Regulations ......................................... 281
1. Shanghai .................................................. 281
2. Tianjin ................................................... 283
3. Nantong .................................................. 283
4. Lianyungang ............................................. 283
5. Beihai ..................................................... 283
6. Qinhuangdao ............................................. 284
7. Zhanjiang ............................................... 285
V. Foreign Investment Incentives of SEZs, ETDZs and Coastal Cities Under the 1986 Foreign Investment Encouragement Program .............................. 285
A. Introduction .............................................. 285
B. Preferential Treatments for High-tech and Export Enterprises ....................................... 287
1. Qualifications .......................................... 287
2. Preferential Treatments for Charges for the Use of Land ............................................ 290
3. Tax Benefits ............................................ 291
C. Other Preferential Treatments .......................... 294
VI. Concluding Remarks ..................................... 295
I. INTRODUCTION

The development of foreign investment policy in the People's Republic of China (PRC) has always had distinctive geographical features. Because various geographical areas often have different levels of economic development, it is difficult for the government to adopt uniform investment policies that will accommodate the special needs and fit the special characteristics of various regions. The vastness of the PRC territory makes it unwise to blatantly implement a new policy without initial experiments in limited geographical areas. Limited economic resources also necessitate identifying development priorities in national economic planning not only on a sectoral basis but also taking into account the needs and development potential of various regions. All these factors have led to the emergence of Special Economic Zones (SEZs), Economic and Technological Development Zones (ETDZs), and special policies for coastal cities in the PRC.

The SEZ can be broadly defined as a specially allocated geographical area where more preferential foreign investment law and policy are implemented in order to attract foreign investment. The idea of establishing SEZs was initially conceived in 1978 when the PRC's open economic policy just started to take shape. Uncertainty about how the newly instituted foreign investment policy should be implemented and the success of hundreds of free trade zones in the world were factors underlying the creation of the SEZs. In April 1979, the Chinese Communist Party Central Committee held a working meeting under the auspices of Deng Xiaoping, which led to the decision of the Party Central Committee to establish special trade zones on an experimental basis. In July 1979, the Chinese Communist Party Central Committee and the State Council jointly issued "Document No. 50" which provided for allocating certain areas in Shenzhen, Zhuhai, Shantou of Guangdong Province, and Xiamen of Fujian Province to establish special zones as "a special form of attracting foreign investment." These special zones were initially designated "export processing zones" and on May 16, 1980, they were officially named "Special Economic Zones." To date, five SEZs have been established, all on the south coast of China. They include the Shenzhen, Shantou, Xiamen and

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1. Liang Xiang, *Shenzhen: Opening to the World*, BEIJING REV. Jan. 23, 1984, at 24. Mr. Liang was Mayor of Shenzhen and Vice-Governor of Guangdong Province. He wrote: "[s]pecial economic zones are an important part of China's policy of opening to the world. The idea was first put forward at the end of 1978. . . . ."
3. Id.
4. Id.
Zhuhai SEZs which were established in the late 1970's and the early 1980's, and the Hainan Island SEZ which was established in late 1987. The major feature of SEZs is their investment policy which is more preferential than that in other areas in terms of taxation, land, market and administration. SEZs also have a developed legal framework and infrastructure. These attractive features allow the SEZs to achieve unprecedented economic growth. Although operation of the SEZs over years has demonstrated problems, their overall success has been generally recognized.

As a continuity and outgrowth of the policy on the SEZs, in April 1984, the PRC government decided to expand existing SEZs while allocating certain areas in major coastal cities to establish Economic and Technological Development Zones that would implement a preferential foreign investment policy similar to that of the SEZs. Construction of the ETDZs started in 1985. By mid-1987 thirteen ETDZs were established in twelve major coastal cities. The total area allocated is about 117 square kilometers.

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5. For example in 1980 the total industrial output of the Shenzhen SEZ was 80 million yuan, and by 1985 the figure reached 2.5 billion. State revenue also increased 13.5 times during the same period. Li Hao, Nuli Kaichuang Tequ Jianshe De Xinjumian (Endeavor to Set New Stage for Developing Special Economic Zones), XINHUA YUBAO (XINHUA MONTHLY), (1986) No. 2, at 89 [hereinafter XINHUA MONTHLY]. (The author is the Mayor of Shenzhen as of this writing). Other SEZs have also experienced rapid growth.

6. Some of the problems of the SEZ, for example lack of adequate emphasis on production and export sectors, are discussed infra, at text accompanying notes 27-36. For a summary of opponents' views on the SEZs see Lu Li, Yige Shiwu Qianli De Shiyan (An Unprecedented Experiment), JINGJI DAOBAO (ECONOMIC REPORTER), Sept. 9, 1985, at 25 [hereinafter ECON. REP.].

7. In 1984, Chinese leader Deng Xiaoping visited Shenzhen and commented: "the development and experience at Shenzhen proved that our policy concerning the establishment of the Special Economic Zones was correct." Lu Li, supra, note 6. From May 1 to May 6 of 1987, Peng Zhen, Chairman of the Standing Committee of the National People's Congress went to Shenzhen and Zhuhai on an inspection tour. He concluded that these two SEZs are "successful," and "the direction of development is correct." Shenzhen Zhuhai Liangge Jingjiqu Bande Chenggong (Shenzhen and Zhuhai Special Economic Zones are Successful), People's Daily, May 9, 1987, at 1 (unless otherwise indicated, all cites of People's Daily refer to Renmin Ribao (overseas ed.).


9. See infra note 596 and accompanying text.

10. Wo Yanhai Jingji Kaifaqu Zengqiang Xiyinli (China's Coastal Economic and
In 1984, the PRC government also decided to designate fourteen major coastal cities as priority areas for implementing the open economic policy and allow these cities to apply preferential investment policy to selected projects and selected geographical areas.\textsuperscript{11} In November of that year, the State Council issued regulations which provide a specific preferential tax policy for the coastal cities.\textsuperscript{12} The development of the coastal cities proved effective in attracting foreign investment. In 1984, the year when the new preferential policy for the coastal cities was implemented, the number of foreign investment projects established in the Fourteen coastal cities together with the balance of foreign investment equaled the total investments of the previous five years.\textsuperscript{13}

The liberalization of foreign investment policy progressed in 1985. On January 17, 1985, reporting to the Standing Committee of the National People's Congress, Chinese leader Gu Mu indicated that the State Council was considering implementing the preferential investment policy on a much broader basis by opening up some large coastal areas to establish a foreign investment policy structure with three layers: SEZs, open coastal cities and open economic regions.\textsuperscript{14} Shortly thereafter, several "open economic regions" were established along the coast, each consisting of several dozen small cities and counties. Preferential policies similar to those adopted for the coastal cities have already been applied in some of these regions.

By the end of 1986, Mr. Gu Mu announced that a basic structure of foreign investment policy and priority was "preliminarily formed."\textsuperscript{15} Such a structure consists of SEZs, coastal open cities, coastal open economic regions and inland areas, each having different preferential treatments.

This article introduces Chinese investment laws and business regulations governing SEZs, ETDZs and coastal cities. Section II reviews policies and the development strategy of the SEZs and discusses the

\begin{thebibliography}{9}
\bibitem{1} Technology Development Zones Increases Attractiveness, People's Daily, Dec. 30, 1986, at 3 [hereinafter China's Coastal Zones].
\bibitem{11} Report, supra note 8, at 23.
\bibitem{13} Report, supra note 8, at 24.
\bibitem{14} Id.
\end{thebibliography}
laws and regulations of the SEZs in the areas of preferential tax policy, approval and registration of business establishments, land, banking, corporations and bankruptcy. Section III introduces laws and policies of the ETDZs. Section IV discusses major coastal cities and “open regions” and preferential investment policies in these areas. Section V reviews the new investment incentives of the SEZs, ETDZs and major coastal cities under China’s 1986 foreign investment encouragement program. Section VI is a short conclusion.

II. LAW AND POLICY OF THE SPECIAL ECONOMIC ZONES

A. Special Economic Zones: An Introduction

The five SEZs so far established in the PRC are Shenzhen, Xiamen, Shantou, Zhuhai and Hainan Island. The Shenzhen, Xiamen, Shantou and Zhuhai SEZs started to develop in the late 70’s or early 80’s and by 1987 they already established a basic legal, administrative and economic environment for foreign investment. In contrast, Hainan Island was officially established as a SEZ in late 1987 and as of this writing the construction of infrastructure and the establishment of the necessary administrative support has started. Hainan Island is a vast territory of almost 20,000 square kilometers. Although larger than all the other four SEZs together, its economy is comparatively undeveloped. Except for some special economic sectors such as agriculture or forestry, it will be some time before Hainan Island will develop an investment environment comparable to that in other SEZs. The following is a summary of major geographic and economic features of the Shenzhen, Xiamen, Shantou and Zhuhai SEZs.

1. Shenzhen SEZ

The Shenzhen SEZ is the largest SEZ with an area of 327.5 square kilometers. It is a narrow strip of land along the southern coast of China in Guangdong Province between Shenzhen City and the New Territories of Hong Kong. It has a population of 469,800. It is about 147 kilometers from Guangzhou and thirty-two kilometers from Kowloon which is about half an hour ride by train from Hong Kong. The Shenzhen SEZ has already built deep-water berths in Chiwan, Zing-gong and Skkekou with a total annual handling capacity of over three million tons, and two other deep-water berths are also under construc-

tion. The Shenzhen SEZ also has developed a telecommunications network. From Shenzhen one may dial directly most of the major Chinese cities, as well as Hong Kong and many foreign countries. The 120 million kilowatt Dongwan-Shajiao Power Plant and 180 million kilowatt Dayawan Nuclear Power Plant now under construction will constitute the major power supply. Shenzhen has successfully developed a Shekou Industrial Zone and is now building the "Overseas Chinese City."

The Shenzhen SEZ has been successful in attracting foreign investment. By the end of 1985, entities in Shenzhen entered into 4,708 agreements with foreign investors totaling $3.56 billion. Foreign investment enterprises comprise the major economic sector in that city. By the end of 1986, about 600 foreign investment enterprises were established in Shenzhen, 250 of which had commenced operation, representing sixty-three percent of the total industrial output of that city in 1986. Although some foreign investment enterprises sustained a loss, most are doing well. According to official Chinese statistics, in 1986 about seventy-one percent of the foreign investors in that city had profit. The average rate of return on investment, including those who lost as well as those who gained, was about seventeen percent.

In almost every sense, Shenzhen is the forerunner of the five SEZs. It has the most established legal framework among the SEZs. New economic policy is often experimented within Shenzhen before being implemented by other SEZs. Except for Hainan Island, it has the largest area among the SEZs, and this often leaves investors with more options in selecting investment sites and marketing their products within the zone. The Shenzhen government also often enjoys greater authority than other smaller SEZs in examining and approving investment projects.

2. Zhuhai SEZ

The Zhuhai SEZ is adjacent to Macao, on the west bank of the mouth of the Pearl River about sixty miles west of Hong Kong. It has a

18. Shenzhen Vaishang Touzi Qicheng Yingli (Seventy Percent of Foreign Investment Enterprises in Shenzhen are Profitable), People's Daily, May 18, 1987, at 3. The statistics are based on the loss and profit statement of one hundred seventy-nine foreign investment enterprises in the Shenzhen SEZ. Of these one hundred twenty-seven are profitable, creating a combined profit of more than 84 million yuan. Fifty-two enterprises sustained loss totaling about 10 million yuan. There were about one hundred enterprises already in operation, but these were not included in the statistics. About thirty of them were in operation less than half a year and the rest did not submit the requested information.
population of 20,000. On June 29, 1983, the Chinese government expanded the Zhuhai SEZ from its initially allocated area of 6.9 square kilometers to 15.16 square kilometers. Zhuhai is linked to Macao and Guangzhou by newly built highways. A port for passenger liners to Hong Kong and Macao, one freight dock and four 1,500 ton berths are already in service, while a 10,000 ton deep-water wharf is under construction. Zhuhai also has a heliport to provide helicopter service to Guangzhou and the South China Sea oil fields. Basic utility supply and telecommunication systems have also been established.

Zhuhai is the smallest of the five SEZs. Its industrial output is less than one-third of Shenzhen’s.

3. Shantou SEZ

The Shantou SEZ is located on the coast of the South China Sea in the eastern suburbs of Shantou City, Guangdong Province. Initially, the Shantou SEZ had an area of 1.6 kilometers. On November 29, 1984, the Chinese government expanded it to an area of 52.6 square kilometers. Shantou is a port city with freight service to about fifty countries and regular passenger liner service to Hong Kong, Singapore and Shenzhen. The Shantou SEZ consists of two development areas: Longhu and Guangao. The Longhu area consists of six industrial, agricultural and other sections. The successful agricultural section has an area of ten square kilometers. In 1985, agricultural exports alone gave rise to about $10 million in earnings. The Guangao area covers thirty square kilometers with a residential development area of ten square kilometers.

Shantou started to develop much later than Shenzhen. It was not until 1982 that Shantou began to build its first group of standard workshops designed for foreign investors. By July 1987, about seventy foreign investment enterprises were established in the Shantou SEZ. Shantou is a hometown for a large number of overseas Chinese. There are over six million natives of the Shantou area living in Hong Kong, Macao and Southeast Asia alone. While also encouraging other foreign investors, the Shantou SEZ has adopted special preferential treatments for investors who are overseas Chinese. They comprise a majority of investors in Shantou.

21. Id.
4. Xiamen SEZ

The Xiamen SEZ initially covered an area of 2.5 kilometers on the northwest coast of Xiamen Island, Fujian Province. In May 1984, it was expanded to the entire island and now includes an area of 131 square kilometers with a population of 349,165.22 The Xiamen SEZ maintains trade relations with over one hundred countries through its well developed water transportation system. In addition, the Yingtan-Xiamen railroad links Xiamen with the national railroad network. The Xiamen International Airport also provides services to Japan, Hong Kong, the Philippines and major Chinese cities. Xiamen has developed a communication and utility system. It provides direct dial telephone service to major Chinese cities, the United States, Japan and Hong Kong.

The Xiamen SEZ began to develop in October 1981.23 For many years, Xiamen was a front-line defense base against Taiwan across the strait. In the past few years, however, Xiamen developed rapidly as military preparation gave way to economic developments. By September 1985, the Xiamen government approved 225 foreign investment enterprises with a total investment of $870 million, of which 126 are now operating.24 In 1986, the industrial output of foreign investment enterprises in Xiamen was 435 million yuan, representing 17.6% of the total industrial output of that city.25 Unlike other SEZs, which were largely developed from scratch during the last several years, Xiamen had a traditional industrial base. An important task of the Xiamen SEZ is therefore to upgrade and improve the existing industries by importing foreign capital and technology. The Chinese government has already decided to allow Xiamen to adopt a “free port” policy which entails emphasis on the development of bonded warehouses, bonded factories and trans-shipping service.26

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B. Development Policy and Role of the SEZs

1. Role of the SEZs in the Chinese Economy

The SEZs have been a great influence in the development and implementation of the Chinese foreign economic policy. The SEZs have, from the very beginning, served as a testing ground for important new foreign economic policy and laws. Many national laws and policies that are currently effective were initially carried out on an experimental basis in the SEZs. Based on the experience accumulated and the overall circumstance of the national context, they were then rewritten into national laws and policies. The SEZs thus have always been in the forefront of the development of the PRC foreign economic policy and often represent the trend and direction of the national policy. For the same reason, the SEZs have developed a much more comprehensive legal framework in comparison with the other areas of the PRC.

The SEZs have led the PRC in economic development. Because of the large increase of foreign investment and a more liberal economic policy, the economic growth of the SEZs has been phenomenal. The SEZs, particularly the Shenzhen SEZ, have developed from small fishing villages into modern metropolitan cities. The rate of annual economic growth has averaged about fifty percent.

Another important role of the SEZ is to serve as a “window” for the advanced technology and management skills of developed foreign countries. The large number and high concentration of foreign investment enterprises in the SEZs, and the greater openness of the SEZs to the outside world enables Chinese entities and officials to have an easier and more direct access to the current developments of world tech-


28. See sources cited supra note 5. From 1980 to 1984, the gross national product of the Shenzhen SEZ increased 55.5% per year, and industrial output increased 115.3% annually. Id.

29. The concept of “window” was introduced by Chinese leader Deng Xiaoping. In 1984, after touring the Shenzhen SEZ, Deng Xiaoping commented “the Special Economic Zone is a window, a window for technology, a window for knowledge, a window for management, and a window for foreign policy.” See Lu Li, supra note 6, at 26.
ology and advanced foreign management skills. The SEZs also serve as a "window" for foreign business to see Chinese foreign economic policy. This "window" allows foreign investors and businesses to have a view of the contents, development and workability of Chinese foreign economic policy.

The SEZs have also been instrumental in the implementation of the Chinese political policy towards Hong Kong and Taiwan. The SEZs are located close to Hong Kong, Macao and Taiwan. A saying once popular in Shenzhen was "Hong Kong looks to Shenzhen and Taiwan looks to Hong Kong." The ability of the PRC government to maintain the stability and prosperity in the SEZs will help establish and strengthen the trust and confidence of the residents in Hong Kong and Macao in their political future and in the PRC government.

Overall, the SEZs have been a success, given the difficulties Chinese leaders had to deal with under the special circumstances of the PRC. The SEZs were a completely new development in the PRC. However, experience concerning their operation and development has gradually accumulated and, as with any other economic restructuring, not without cost. Many problems facing other countries developing similar zones often appeared in China in different forms. It is therefore difficult for the Chinese government to simply borrow ready-made solutions from other countries. For instance, the Chinese leaders have faced from the beginning the question of how to incorporate the SEZs into the overall economic planning. The Chinese economy is state planned, while the SEZs are mostly market oriented. The conflict of these two systems is reflected in several ways. For instance, the rapid growth of the SEZs is sometimes criticized because the resulting de-
mand for supplies causes shortages, and the increase in sales of the SEZs’ products in other parts of inland China result in the disruption of planned markets. The government also has to strike a balance between the role of the SEZs as a testing ground for national foreign economic policy and new experiments on the one hand and the need to maintain stability and certainty in protecting the interest of foreign investors in the SEZs on the other. In addition, it is often difficult for outsiders to distinguish the SEZs from a given specific policy. Without due regard to the role of the SEZs as a testing ground, one tends to attribute the failure or problems of a certain experimental policy to the SEZs and questions the validity of their existence. Moreover, the SEZs, as the forefront of the national foreign economic policy often have the burden of carrying out new policy which is sometimes not consistent with the existing views of socialist ideology. They therefore subject themselves to opposition. Some of the difficulties are further aggravated by the development of the ETDZs which have similar preferential investment policies and therefore dilute the competitive edge and distinctiveness of the SEZs.

The major features of the SEZs are three-fold: First, the SEZs have geographical locations adjacent to Hong Kong and Macao which allows foreign investors stationed in Hong Kong and Macao to have an easy access to their investment projects. They may reside in Hong Kong while managing their projects in the SEZs. The proximity to Hong Kong and Macao has greatly diminished the difficulties that investors in other areas commonly encounter, such as inadequate communication and transportation systems. It also allows the SEZs to keep abreast of new developments in the international markets and to promote exports.

Second, the SEZs have a special preferential investment policy. In terms of tax, investment projects in the SEZs enjoy better treatment than those in many other areas. Although the introduction of the ETDZs did undermine the competitive edge of the SEZs, the SEZs remain attractive investment sites in overall terms.

Third, the SEZs have the most well developed infrastructure in comparison with other areas. The SEZs’ small land areas and relatively longer history of dealings with foreign investors allow the government to have a better understanding of foreign investors’ problems and be more willing to accommodate investors’ needs. The SEZs have also de-

34. See supra text accompanying notes 16-21.
35. See infra text accompanying notes 91-127.
36. See infra text accompanying notes 449-508.
developed the most comprehensive legal framework in the country, and have more developed systems of energy, water, telecommunications and transportation.

2. Development Strategy of the SEZ and Related Policy Issues

The strategy of economic development in the SEZs has gradually developed as the PRC government has gained experience. By January 1986, when the State Council held the SEZs’ working conference, the determined development policy already had taken shape. The evolving development strategy of the SEZs has always been associated with defining the relationship between the SEZs and inland areas, between the SEZs and international markets, and between the commercial and production sectors within the SEZs.

The relationship of the SEZs to the inland area mainly concerns investment of inland enterprises in the SEZs and the impact on the inland area of a shift in resources. The SEZs originated from underdeveloped fishing villages, and during the earlier stages, the SEZs did not have adequate capital and resources for development. Without active support from the inland area, it was difficult for the SEZs to rapidly develop the basic infrastructure to attract foreign investors. As foreign investors increased in number, the SEZs also need to receive support from inland areas in terms of locating appropriate joint venture partners, raw material and labor suppliers. Furthermore, to allow the SEZs to function as a “window” to the international market and foreign business community, it is necessary to have some Chinese entities operate in the SEZs in order to improve their management and technological level through close contacts and direct competition with a large number of foreign investment establishments. Those entities will also enhance their export performance through direct contact and easy access to the international market. Although some complain that the development of the SEZs caused shortages of resources in other areas, the policy, affirmed by the State Council, is to continue to develop such an economic cooperation between the SEZs and inland areas.

The relationship between the SEZs and the international market has two facets: the absorption of foreign investment and the expansion


38. Conference Summary, supra note 37, para. 3.
of export capacity. The SEZs have achieved success in attracting foreign investment, in fact the tiny areas of the SEZs have had a disproportionately large amount of foreign investment. The total amount of foreign investment in the SEZs, however, remains insignificant compared to the state budgetary appropriation and investment from domestic sources. As a result, a new goal for the SEZs in the coming years is to have foreign capital exceed fifty percent of the total investment in the industrial sector of the SEZs.39

Whether the SEZs have succeeded in maintaining and expanding export capacity has been most controversial. Although on the average about forty percent of the products in the SEZs are exported,40 most of those exports are produced by foreign investment enterprises. According to 1984 statistics, 98.9% of the total exports in Shenzhen City were from foreign investment enterprises, whereas the Chinese enterprises located in that city only exported 1.1% percent.41 In that year, the imports by these Chinese enterprises were worth about $320 million, whereas the export revenue from industrial products was only about $2.2 million.42 Instead of importing raw materials from inland and manufacturing exportable products for foreign exchange, many of these enterprises spent foreign exchange to import components, and after some assembling, sold goods to inland areas for profit.43 These prac-

40. It is difficult to find a set of comprehensive statistics on all the SEZs. The official figure disclosed in Chinese newspapers indicated that during the first nine months of 1986, 40% of the industrial products of the Shenzhen SEZ were exported. Lin Qihui, Zhongguo Jingji Tequ Xingshi He Zhanwang (State and Development of China's Special Economic Zone), ECON. REP., Oct. 1, 1986, at 15. Although Shantou SEZ exported 75%, other SEZs were probably unable to export as much. Actually, by July 1987, the export earnings of Xiamen’s foreign investment enterprises was only 46.9% of their total gross revenue. Since Chinese entities in Xiamen had even lower export capacity, the average of export in the Xiamen SEZ is probably about 40% of the industrial products. See Waizi Qiye Chengwei Fujian Jingji Xin Zhizhu (Foreign Investment Enterprises Become New Support of the Fujian’s Economy), People's Daily, July 4, 1987, at 3.
41. Yu Guoyao, Woguo Yanhai Shisi Chengshi Kaifang Hou Dui Shenzhen Diweei De Zairenshi (Reconsideration of the Status of Shenzhen After Opening Up of the 14 Coastal Cities), XINHUA MONTHLY, 1986, No. 4, at 64.
42. Id.
43. In his discussion of the problems of the SEZs, an official of the Ministry of Foreign Economic Relations and Trade wrote:

For the past few years, SEZs, under the disguise of “speciality,” are [a] mishmash of good and bad. Many individuals, units, paper companies made use of all unjust means and methods of speculation and profiteering to pocket money to the detriment of the public interest. For instance, purchasing state-subsidized export at low price[s] and reselling for extraordinary profits . . . making many otherwise profitable commodities loosing [sic] money by reducing price and competing with each other, resulting in many of our long standing
tices were criticized at the 1986 SEZs’ working conference and were identified as an area where substantial reform is needed.44

The failure of the SEZs to expand their export capacity was a major disappointment to the central government. An editorial of the Chinese official newspaper “People’s Daily” called for SEZs to consider increasing exports and obtaining foreign exchange as “major objectives.”45 It stated that the “SEZ is ‘special’ not only because it has special policy, more importantly because it possesses greater capacity to export and obtain foreign exchanges . . . only when a SEZ develops an export-oriented economy can it have dynamics.”46 As a result, the major emphasis of the development strategy of the SEZs in coming years will be on the development of the “export oriented industrial sector.” The 1986 SEZs’ working conference required SEZs to export sixty percent of their industrial products during the seventh five-year plan.47 In 1986, however, Shenzhen only exported about forty percent of its industrial products; other SEZs maintained a similar export capacity.48 This means that existing enterprises, particularly Chinese enterprises, are required to significantly increase their export capacity. When translated into foreign investment policy, incoming establishments, including foreign investment projects, will be ordinarily required to export about sixty percent of their products.49 This basic policy is already reflected in practice. Of the thirty-four foreign investment projects set up in the Zhuhai SEZ in 1986, twenty-four have investment contracts which provide that seventy percent or more of their products should be exported.50

The relationship between commercial sectors and industrial sectors is the most controversial among the issues concerning the development of the SEZs. The Chinese government emphasizes that the SEZ is not merely a “free trade zone” or “export processing zone.”51 The SEZ economy must be based mainly on the development of industry

customers unable [sic] to conduct normal trade with us.

Chen Fangping, Guanyu Shenzhen Jingji Tequ Fazhan Zhanlue Wenti (On the Strategic Issues of Shenzhen SEZ’s Development), GUOJI MAOYI (INTERNATIONAL TRADE), 1986, No. 1, at 2 [hereinafter INT’L TRADE].

44. Conference Summary, supra note 37, para. 5.


46. Id.

47. Liu Guoguang, supra note 33, at 2.

48. See sources cited supra note 40.

49. Liu Guoguang, supra note 33, at 2.


51. Liu Guoguang, supra note 33, at 1.
and other production sectors. Criticism of the SEZs mainly concentrates on the past failure of the SEZs, particularly the Shenzhen SEZ, to adequately emphasize the development of the production sector. Until 1985, commercial and service sectors had a greater share in the total development and output of that city. The rapid development of the commercial sector in the SEZs is due to several factors. First, while the SEZs initially did not have a well developed industrial base, they did command advantageous geographical locations close to Hong Kong and Macao. This made it easier for the SEZs to engage in trade and commerce while experiencing difficulties in developing industry. Furthermore, during the early stage of development, it was necessary to establish a basic commercial and service network as part of the infrastructure for developing industry. In addition, the special economic structure in the PRC—imported products were highly priced in inland areas and the official exchange rate was far below that on the black market—also provided momentum for the rapid development of commerce and trade in the SEZs. Since enterprises in the SEZs enjoyed much greater economic freedom, many entities turned to the lucrative business of marketing imported consumer goods in inland areas. In order to obtain needed foreign exchange income for imports, these entities either illegally purchased foreign exchange from inland entities on the black market or purchased state regulated materials through various illegal channels and marketed them in Hong Kong and Macao. For a while, the PRC's regular exports to Hong Kong were significantly undermined by this unregulated trade. In 1985, the PRC took steps to curtail such unregulated trading and at the same time made it clear that the SEZs in the PRC should not become free trade zones, but mainly develop industries. Such a basic policy is reflected in the recent pattern of foreign investment establishments in the SEZs. For instance, thirty-three out of the thirty-four foreign investment projects established in the Zhuhai SEZ in 1986 were in the industrial sector.

At present, the strategy and direction of the SEZs' development are mainly reflected in the emphasis on export oriented and high-tech

52. Yu Guoyao, supra note 41, at 63.
53. Id.
54. Id.
55. Id. See also Chen Fangping, supra note 43, at 2.
57. Id.
58. One of the two major points emphasized by the People's Daily editorial for the development of the SEZs is the development of industries. Taking the Business Overseas, supra note 45, at 1.
59. Lin Qihui, supra note 40, at 29.
industrial projects.\textsuperscript{60} Priority will be given mainly to short term small or medium sized projects with quick returns.\textsuperscript{61} Commercial and service sectors will continue to develop, but will be on a very limited scale.

C. Administration of the Special Economic Zones

The administration of the SEZs is vested with the governments of the Guangdong and Fujian provinces, and are overseen by the central government. The administrative authority of the SEZs consists of three layers. At the central government level, the State Council has established an Office of Special Economic Zones,\textsuperscript{62} primarily responsible for coordinating the policies of various SEZs, monitoring the development of each SEZ, providing guidance for SEZs and assisting the central government in formulating uniform policies for the SEZs.

The second layer is at the level of the provincial government. The Guangdong provincial government established an Administrative Committee of the Special Economic Zones of Guangdong Province in August 1980.\textsuperscript{63} This Committee provided administrative support and policy guidance for the development of the three SEZs (Shenzhen, Zhuhai and Shantou) within Guangdong Province. Under the regulations governing SEZs in Guangdong Province, approved by the Standing Committee of the National People's Congress, the Administrative Committee of the SEZs of Guangdong Province is authorized to formulate and implement the development plan for the SEZs, review and approve investment projects, administer industrial and commercial registrations, and coordinate the operation of banks, insurance companies, tax authorities, customs, and postal services.\textsuperscript{64} Article 24 of the regulations provide that the Administrative Committee will directly operate the Shenzhen SEZ while establishing "necessary administrative authorities" to take charge of the Zhuhai and Shantou SEZs.\textsuperscript{65}

The third layer of administrative authority is comprised of the various authorities who directly operate the SEZs. The Zhuhai SEZ is operated by an Administrative Committee, established under the ad-
ministrative control of the Zhuhai city government. A similar authority, titled "Administrative Committee of Shantou SEZ," was also set up to operate the Shantou SEZ. Instead of directly operating the Shenzhen SEZ as provided by the above regulations, or establishing a similar administrative committee, the government of Guangdong province set up the "People's Government of Shenzhen SEZ of Guangdong Province" as the administrative authority for the Shenzhen SEZ. The People's Government of the Shenzhen SEZ has much broader authority than the administrative committees of the Zhuhai or Shantou SEZs. It is under the direct leadership of the provincial government and has the complete authority to manage the Shenzhen SEZ. Administrative committees of other SEZs have a much more limited authority; they are controlled by each city government, which is in turn subject to the administrative authority of the provincial government.

The Xiamen SEZ is led by an "Administrative Committee of Xiamen SEZ." The government of Fujian Province is responsible for the overall policy guidance through the Xiamen city government.

The Shekou Industrial Zone within the Shenzhen SEZ has its own administrative system. The Shekou Industrial Zone was established in January, 1979 when the State Council authorized the China Merchants Steam Navigation Co., Ltd., a Hong Kong corporation controlled by the Chinese government, to develop the Shekou area into an industrial zone mainly for exports. China Merchants Steam Navigation Co., Ltd. set up an administrative committee which was under the leadership of the Ministry of Communications. After the Shenzhen SEZ was officially established, the Administrative Committee of the Shekou Industrial Zone remained under the control of the China Merchants Steam Navigation Co., Ltd., but it is subject to the dual leadership of the People's Government of the Shenzhen SEZ and the Ministry of Communication. The Administrative Committee functions through its six offices to provide administrative guidance and sixteen affiliated service companies to furnish business support services and public utilities for foreign investment enterprises. In July, 1984, the government of Guangdong Province established an Administrative Bureau of Shekou District as the local government to exercise administrative control on behalf of the provincial government.

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66. Id.
67. ZHONGGUO JINGJI TEQU SHOUCE (HANDBOOK OF CHINA'S SPECIAL ECONOMIC ZONES) 127 (Dept. of Propaganda of Shenzhen City ed. 1984).
68. INVESTMENT GUIDE OF SHEKOU 10, 16 (China Merchants Shekou Industrial Zone ed. 1984).
69. Id. at 16.
70. Id. at 14.
administrative Bureau has strengthened the control of the provincial government and diminished the regulatory role of the Administrative Committee of the Shekou Industrial Zone. In June 1987, the Chinese government set up a “Shekou Industrial Zone Company, Ltd.” and substituted the Administrative Committee of Shekou Industrial Zone with an eleven member board of directors, four of whom are appointed by China Merchants Steam Navigation Co., Ltd., Hong Kong. The other seven are elected from the current managerial staff. The restructuring of the management is also part of the current economic reform designed to separate the governmental administrative function from its business function.

D. Legal Structure of the SEZs: An Overview

Since 1980, the legal framework of the SEZs has gradually evolved. Most laws and regulations currently in effect govern the SEZs in Guangdong province; the Xiamen SEZ only promulgated a small number of regulations. The laws and regulations governing the SEZs have at least three layers in terms of their authority and scope of application. First, there are a few national laws commonly applicable to the four SEZs. These laws directly reflect the policy of the central government towards the SEZs, often implicitly or expressly defining the scope of the regional government in enacting rules governing the SEZs and thus constituting the legal basis for many other related regional SEZ regulations. These regulations include Provincial Regulations on Reduction and Exemption of Enterprise Income Tax and Consolidated Industrial and Commercial Tax for the Fourteen Coastal Cities and the Special Economic Zones, Regulations of the General Administration of Customs of the People’s Republic of China Governing the Control of Goods, Means of Conveyance, Luggage and Postal Articles Entering or Leaving the Special Economic Zones, and Regulations of the People’s Republic of China Concerning the Administration of Foreign Banks and Sino-Foreign Joint Venture Banks. The Regulations of the Peo-

71. Shekou Dui Qiye Guanli Tizhi Jinxing Gaige; Gongsi Dongshihui Qudai Gongyangequ Guanweihui (Shekou Reforms Management Structure and Corporate Board of Directors Replaces the Administrative Committee of the Industrial Zone), People's Daily, June 14, 1987, at 1.
72. See supra note 12 and accompanying text.
74. Regulations of the People's Republic of China Concerning Administration of Foreign Banks and Sino-Foreign Joint Venture Banks in the Special Economic Zones (1985)
CHINA'S SPECIAL ECONOMIC ZONES

ple's Republic of China on Special Economic Zones in Guangdong Province, which though enacted by the provincial government, were expressly approved by the central government and can also be considered within this category.\textsuperscript{76}

The second layer consists of the regulations promulgated by the provincial government applicable to the three SEZs in Guangdong province. The authority of regional governments to issue laws and regulations governing the SEZs derives from a resolution adopted by the Standing Committee of the National People’s Congress on November 26, 1981. This authorized the governments of Guangdong and Fujian provinces to enact regulations for the SEZs “in accordance with the principles of the pertinent (national) laws, decrees and policies and the specific situation and actual needs of the SEZs.”\textsuperscript{76} Since these regional governments only have the authority to enact laws “in accordance with” the relevant national laws, these regulations represent the second level of authority in terms of their relationship with other similar national laws governing SEZs in Guangdong province. These regulations include:

- Provisional Regulations on the Registration of Enterprises in the Special Economic Zones of Guangdong Province;\textsuperscript{77}

- Provisional Regulations on Labor Management and Wages in the Enterprises in Special Economic Zones of Guangdong Province;\textsuperscript{78}

- Interim Entry and Exit Regulations for the Special Economic Zones in Guangdong Province;\textsuperscript{79}

- Regulations on Trade Unions in Enterprises in the Special

\textsuperscript{75} See supra note 63 and accompanying text.


\textsuperscript{77} Provisional Regulations on the Registration of Enterprises in the Special Economic Zones of Guangdong Province (1981), [hereinafter Guangdong Registration Regulations], \textit{reprinted in CCH Austl.}, supra note 12, ¶ 70-820.

\textsuperscript{78} Provisional Regulations on Labour Management and Wages in the Enterprises in Special Economic Zones of Guangdong Province (1981), \textit{reprinted in CCH Austl.}, supra note 12, ¶ 70-830.

\textsuperscript{79} Interim Entry and Exit Regulations for the Special Economic Zones in Guangdong Province (1981), \textit{reprinted in CCH Austl.}, supra note 12, ¶ 70-840.
Economic Zones in Guangdong Province;  

Regulations for the Control of Accounting of Foreign Related Enterprises in Special Economic Zones in Guangdong Province;  

Regulations on Foreign Related Corporations in the Special Economic Zones in Guangdong Province.

The third layer of the SEZs' legal framework are the regulations applicable only to each individual Special Economic Zone. Some of these regulations were enacted by the municipality where the SEZ is located and others were enacted by the provincial government. Of these regulations, about a dozen are applicable to the Shenzhen SEZ, six apply to the Xiamen SEZ and much fewer are applicable to the other three SEZs. The laws and regulations of the Shenzhen SEZ are the most innovative and cover a much broader area than those of other SEZs. The laws and regulations of the Xiamen SEZ are mostly modeled after those of Shenzhen. Major regulations in this area include the Bankruptcy Regulations of Foreign Related Corporations in the Shenzhen Special Economic Zone which is the only bankruptcy law in the PRC applicable to foreign investment enterprises, the Interim Provisions of the Shenzhen Special Economic Zone on Foreign Economic Contracts which is the first Chinese contract law governing foreign economic relations, and Provisions for Administration of Mortgage Loans in the Shenzhen Special Economic Zone.

The legal framework of the SEZs thus consists of both national laws and regional laws. The regional laws can further be divided into those promulgated by the provincial government and those promulgated by the city government, each of which represent different degrees of authority. This multilevel regulatory structure gives rise to the


81. Regulations for the Control of Accounting of Foreign Related Enterprises in Special Economic Zones in Guangdong Province, (Date) reprinted in CCH Austl., supra note 12, ¶ 70-858.


84. Provisions of the Shenzhen Special Economic Zone on Foreign Economic Contracts, supra note 27.

question of how to determine the governing rules when the national laws and regional laws, or various levels of regional laws conflict or differ.

The Constitution authorizes each regional people’s congress or its standing committees to enact regional laws and regulations effective within their respective jurisdiction.\(^8\) Regional laws and regulations so enacted must be reported to the Standing Committee of the National People's Congress for recording purposes.\(^7\) In resolving the problems pertaining to the legislative authority of regional governments, when regional laws differ from national laws on similar subjects, the guiding principle is Article 100 of the Constitution, which authorizes regional governments to enact regional laws only to the extent they do not conflict with national laws and regulations, thereby implying the supremacy of the national laws.\(^8\) This general rule, however, does not apply where the central government authorizes a regional government to enact regulations different from the corresponding national laws. These principles also apply to the relationship between various regional laws promulgated by the regional governments at different levels.

Difficulties often arise when laws or regulations are not clear or are worded too broadly without expressly indicating whether a regional government has the authority to so promulgate. Actually, the above mentioned resolution of the Standing Committee of the National People's Congress authorizing provincial governments to enact rules governing SEZs illustrates these difficulties.\(^9\) The substantive provisions of that resolution only contains two sentences. On the one hand, it states that regional laws enacted must conform to the “principles” of the pertinent laws and policy, thereby implying that the regional laws must conform to the national policy and laws. On the other hand, the resolution also emphasizes the need to enact laws and regulations to conform to the special needs of the SEZs, suggesting that the regional government has the authority to make rules different from national laws. The emphasis on conformity of regional laws with the “principles” of the national laws other than their specific provisions also indicates that regional laws may differ from national laws so long as they are consistent with the policy of the national law in overall terms. But this resolution does not clearly indicate whether the authority given by the resolution allows a regional government to enact a given law or

\(^{86}\) CHINA CONST. art. 100. reprinted in CCH Austl., supra note 12, ¶ 4-500.

\(^{87}\) Id.

\(^{88}\) Id.

\(^{89}\) See supra note 76 and accompanying text.
regulation. As yet, there have not been any authoritative administrative practices or written rules to provide solutions for such problems. The following guidelines, however, may be of assistance in ascertaining whether regional authority exists in some cases.90

First, when national laws or regulations are silent on a certain matter and a regional government has enacted written rules concerning it, such regional rules are ordinarily valid and should be followed. Second, when national laws or regulations only generally and broadly govern a certain matter, and regional legislation or regulations contain more detailed and specific rules on the same subject, then the regional rules are usually valid unless they specifically run contrary to the spirit of the corresponding national laws or regulations. Third, when national laws or regulations clearly conflict with subsequently promulgated regional laws or regulations, either national laws or the regional laws may prevail, depending on the following two factors. On the one hand, conflicting regional laws may be based on an express authority granted by the central government, but which is unknown to the general public. In such a case, the regional laws will be valid. On the other hand, such conflicting regional laws may also result from the failure of the regional government to take note of existing national laws or regulations. In this case, the national law would prevail.

Finally, when newly promulgated national laws conflict with existing regional laws, in most cases the national laws will prevail because the conflict has often resulted from the failure of a regional government to update its laws and bring them in conformity with new national policies. It is also possible, however, for a regional government to retain the authority to implement its own special rules, notwithstanding newer conflicting national laws.

These guidelines also apply to conflicts between regional laws at different levels.

E. Preferential Tax Policy of the SEZs

The most prominent feature of the SEZs is their more preferential treatment of foreign investors in comparison with the general foreign investment policy applicable nationwide. The preferential policy of the SEZs is mostly in the area of taxation. It was initially set forth in the Regulations of the Special Economic Zones of Guangdong Province in August 1980,91 and subsequently reflected in the 1984 State Council

90. These guidelines are based on this author's experience and research. Rules stated herein have supporting examples, however, they are not legal rules and should be consulted with caution.
91. Regulations of the Special Economic Zones of Guangdong Province, supra note
Tax Regulations for SEZs and Coastal Cities. The 1984 State Council regulations also extends the preferential tax policy of the SEZs to the foreign investment enterprises in Hainan Island which was officially converted into a SEZ in late 1987.

The preferential tax policy in the SEZs is mainly in the following areas. First, the SEZs apply a flat fifteen percent income tax rate on foreign investment enterprises, whether they are Sino-foreign equity joint ventures, contractual joint ventures or wholly foreign owned enterprises. This is in contrast with the thirty percent tax under the national tax law for equity joint ventures and even higher tax rates for wholly foreign owned enterprises. Under the 1980 regulations governing the SEZs in Guangdong Province, projects with an investment exceeding $500 million or involving advanced technology or a relatively long turn around period may enjoy special preferential treatment, implying an even lower tax rate. The 1984 State Council tax regulations, however, do not provide similar provisions. Other recent developments, however, indicate that this fifteen percent tax rate can be reduced under special circumstances.

Second, the five-year tax holidays provided for equity joint ventures under the national tax law, that is, two years tax exemption followed by three years of fifty percent reduction, apply to all foreign investment enterprises, including wholly foreign owned enterprises that otherwise would only have a three years tax holiday. This rule, however, applies only to the projects that operate more than ten years in the "production sector that engages in industry, communication,

63, arts. 12-18.
92. 1984 State Council Tax Regulations, supra note 12, I.
93. Id. I, 5.
94. Id. I, 1.
98. Under the 1986 Foreign Investment Encouragement Program, the income tax rate can be reduced to 10% for qualified high-tech or export foreign investment enterprises. See infra text accompanying notes 555-602.
99. Joint Venture Income Tax Law, supra note 95, art. 5. The tax holiday was initially three years and on Sept. 2, 1983, was extended to five years.
100. 1984 State Council Tax Regulations, supra note 12, I, 1.
101. Foreign Enterprise Income Tax Law, supra note 96, art. 5.
transportation, agriculture, forestry and husbandry." This tax benefit is not automatically granted; the taxpayer must make an application which is subject to approval by the tax authority. For the establishment in the service sector, however, the tax holiday remains three years; taxpayers enjoy tax exemption for the first profitable year and a fifty percent reduction for the second and third years. To qualify for this tax benefit, the project must operate more than ten years, and involve an investment of $5 million or more. Taxpayers must apply to the tax authority for approval.

Third, the ten percent withholding tax imposed under the national tax law on the share of profit repatriated abroad by a foreign party to an equity joint venture is waived.

Fourth, foreign businesses that do not have establishments in the PRC are subject to a ten percent tax rate, instead of a twenty percent rate under the national tax law, for their income from dividends, interest, rents or royalties derived from the SEZs. The governments of the SEZs also have discretion to reduce or exempt this ten percent tax if the terms of the transaction are beneficial to the PRC or if the project involves advanced technology.

Finally, there are special rules governing the imposition of the consolidated industrial and commercial tax on products or services manufactured or provided by the SEZs' establishments. The consolidated industrial and commercial tax is generally exempted for products marketed within the SEZs. However, products like mineral oil, cigarettes and liquor are subject to the consolidated industrial and commercial tax, but at half the regular tax rate. The city government has the discretion to impose the consolidated industrial and commercial tax on other products. Service, transportation, retail and wholesale sectors in the SEZs are not exempted from the consolidated industrial and commercial tax, but banking and insurance businesses may pay the

103. Id.
104. Id.
105. Id.
106. Id.
107. Joint Venture Income Tax Law, supra note 95, art. 4.
109. Foreign Enterprise Income Tax Law, supra note 96, art. 11.
111. Id.
112. Id. I, 7.
113. Id.
114. Id.
115. Id. I, 9.
CHINA'S SPECIAL ECONOMIC ZONES

consolidated industrial and commercial tax at a reduced rate of three percent,\textsuperscript{116} in comparison to the regular five to seven percent under the tax table for the consolidated industrial and commercial tax.\textsuperscript{117} These establishments may apply to the government of a SEZ for a special reduction or exemption during early years of their establishments.\textsuperscript{118}

In addition to the above general policy applicable to all SEZs, each SEZ often has its own special tax rules. The Shantou SEZ, for instance, provides for special treatment to overseas Chinese investors.\textsuperscript{119} It allows foreign investment enterprises established by overseas Chinese to enjoy a three-year income tax exemption and a four-year fifty percent reduction as opposed to the regular two-year exemption and three-year fifty percent reduction.\textsuperscript{120} After this seven-year tax holiday expires, overseas Chinese establishments may also enjoy a twenty percent reduction in the regular tax rate indefinitely.\textsuperscript{121} If they reinvest their profits in China, they will have an additional fifty percent tax refund for the profit invested instead of the regular forty percent refund.\textsuperscript{122} The Zhuhai SEZ provides for a five-year exemption of local tax beginning when the taxpayer becomes profitable.\textsuperscript{123} The Shenzhen SEZ, on the other hand, provides for special tax treatment to foreign banks. Until 1995 it will grant an exemption of the consolidated industrial and commercial tax to all foreign banks established in the Shenzhen SEZ.\textsuperscript{124} It also exempts income tax on the interest income of offshore depositers who maintain deposits with foreign banks in Shenzhen.\textsuperscript{125} Lending by offshore banks to foreign banks in Shenzhen is also exempted from income tax if the interest rate is the international inter-bank call rate.\textsuperscript{126} Similar rates also apply to interest payments by foreign bank branches in Shenzhen to their offshore head

\begin{itemize}
\item \textsuperscript{116} Id.
\item \textsuperscript{117} Regulations of the People's Republic of China on Consolidated Industrial and Commercial Tax (1958), reprinted in, CCH Austl., supra note 12, ¶ 31-500, see the tax table attached to the Regulations.
\item \textsuperscript{118} 1984 State Council Tax Regulations, supra note 12, I, g.
\item \textsuperscript{119} Shantou Tequ Dui Huaqiao Touzi Jianchang De Wuxiang Youhui (Five Preferential Treatments to Overseas Chinese Investors of Shantou Special Economic Zone), INFO. MATERIALS, 1987, No. 1, at 10.
\item \textsuperscript{120} Id. para. 1.
\item \textsuperscript{121} Id.
\item \textsuperscript{122} Id. para. 2.
\item \textsuperscript{123} Zhuhai Tequ Wei Waishang Touzi Tigong Youhui Cuoshi (Zhuhai SEZ Provides Preferential Treatments for Foreign Investors), INFO. MATERIALS, 1987, No. 1, at 11.
\item \textsuperscript{124} Supplementary Provisions of Shenzhen Special Economic Zone on Tax Reduction and Exemption (1986), reprinted in, CCH Austl., supra note 12, ¶ 73-527, art. 4.
\item \textsuperscript{125} Id.
\item \textsuperscript{126} Id. art. 6.
\end{itemize}
F. Approval and Registration of Foreign Investment Projects

To establish a foreign investment enterprise in an SEZ, an investor must first receive approval from the proper Chinese authority and then register with the Administration of Industry and Commerce for a business license. Under the current law, each SEZ may approve investment projects of up to $30 million without the need for an administrative review at a higher level.\(^\text{128}\) In early 1987, the Shenzhen SEZ promulgated an interim procedures for the examination and approval of investment projects.\(^\text{129}\) The procedures authorize the authorities of the Shekou Industrial Zone to examine and approve foreign investment projects involving $10 million or less. Authorities of various districts in the Shenzhen SEZ may also approve projects of up to $1 million.\(^\text{130}\) The authority of the newly established "Overseas Chinese City" extends to $5 million. The city government will consider and approve investment projects involving $30 million or less, but when the amount involved is much less than $30 million, each lower level authority may consider and approve it.\(^\text{131}\) Projects involving more than $30 million must be approved by the central government. When a given project is within the jurisdiction of the city government, it will be first reviewed and approved by a vice-mayor in charge of the specific industrial or commercial area before it is transferred to the Office of Foreign Investment Steering Group for reconsideration.\(^\text{132}\) After the project is approved, the government will stamp a seal on the investment contract and issue a certificate of approval.\(^\text{133}\)

After receiving approval, a foreign investment enterprise must register with the Administration of Industry and Commerce and obtain a business license within thirty days.\(^\text{134}\) The Guangdong government promulgated regulations governing the registration of foreign investment enterprises in the SEZs of Guangdong Province in November, 1984.\(^\text{135}\)

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127. Id. art. 7.
128. Report, supra, note 8, at 22.
130. Id.
131. Id.
132. Id.
133. Id.
134. Detailed Regulations for Administration of Enterprise Registration of the Shenzhen Special Economic Zone, art. 7 (1984), [hereinafter Shenzhen Registration Regulations], reprinted in CCH Austl., supra note 12, ¶73-513.
In February, 1984, the Shenzhen city government promulgated its implementing regulations. The Fujian province also promulgated similar regulations for the Xiamen SEZ in 1984.

To obtain a registration, an investor must fill out an application form in both Chinese and the foreign language setting forth the name, address and scope of the business of the project, registered capital and capital contribution of every party, and the names of senior executives including board members, presidents and vice-presidents. In addition, the investor must also file the certificate of approval issued by the government, the investment contract, articles of association, and the business license of the foreign investor issued by the authority of his home country or other documents evidencing the investor's credit standing. The investment contract, and articles of association must be in both Chinese and the foreign language. Under Article 3 of the Shenzhen registration regulations, the applicant must also file a statement of application for registration which must be signed by both the director and vice-director of the board or by both the president and vice-president. The Xiamen regulations do not contain similar requirements.

In addition to foreign investment enterprises, foreign businesses that intend to set up resident representative offices or provide construction service in the SEZs also must register with the Administration of Industry and Commerce following a registration procedure substantially similar to those governing foreign investment enterprises discussed above. The registration will entitle foreign businesses to obtain special certificates evidencing their legal status in the SEZs, and enable them to receive a residential permit to import the necessary equipment and open a bank account.

Registration allows the government to monitor the activities of various business entities. For this reason, the law also requires that a business entity or representative office must report to the government
and modify the registration if there are any subsequent changes in the address, ownership, corporate structure, capitalization, or other similar changes. The enterprises must report to the Administration of Industry and Commerce and process the modification of registration within thirty days after the changes are approved by the government. For a joint venture to modify prior registration, the applicant must present the written agreement of both parties to the joint venture and a statement of application for modification of registration signed jointly by both the chairman and vice-chairman of the board or both the president and vice-president. If one party transfers his share in a joint venture, the modification of prior registration must be based on an agreement signed by both the transferee and transferor and notarized by a notary public.

In Shenzhen, if an enterprise intends to suspend its operation for more than six months and up to one year, the enterprise must apply to the city government for approval one month prior to the suspension and report to the Administration of Industry and Commerce to modify the registration. The enterprise must also apply to the city government for approval one month before it resumes operation and report to the Administration of Industry and Commerce for registration. If the enterprise is unable to resume its operation after the suspension period expires, the Administration of Industry and Commerce will revoke the business license. An enterprise, however, may also apply to the city government for an extension of the suspension period. Apparently, an enterprise that suspends its operation in less than six months does not have to get an approval from the government and an enterprise that suspends its operation after a year may have to cancel its business license.

An enterprise must cancel its registration with the Administration of Industry and Commerce when terminating its operation. To do so, an enterprise must pay all debts, including the labor service fee and taxes due, and obtain certificates. It also must apply to the govern-

142. Xiamen Registration Regulations, supra note 137, art. 8; Shenzhen Registration Regulations supra note 134, art. 7.
143. Shenzhen Registration Regulations, supra note 134, art. 7. The Xiamen Registration Regulations do not contain this provision.
144. Id.
145. Shenzhen Registration Regulations, supra note 134, art. 9.
146. Id.
147. Id.
148. Guangdong Registration Regulations, supra note 77, art. 11; Xiamen Registration Regulations supra note 137, art. 11.
149. Shenzhen Registration Regulations, supra note 134, art. 10.
ment for approval. It must present all of these documents, and surrender the business license and other documents such as representative certificates.

The Administration of Industry and Commerce charges a registration fee. The maximum registration fee is 30,000 yuan and the minimum is 50 yuan. Within this general limit, if the registered capital is 10 million yuan or less, the registration fee is 0.1%. Where the registered capital exceeds 10 million yuan, the registration fee will be 0.05% of the registered capital exceeding 10 million yuan plus a fixed 10,000 yuan (0.1% of 10 million). The above rule also applies when increasing registered capital.

The charges for the registration of a resident representative office is a standard fee of 600 yuan. The registration certificate issued for a resident representative office is effective for one year, and renewable upon a payment of 300 yuan.

The laws of the SEZs provide penalties for violating the registration requirements. The Shenzhen regulations allow the government to impose a fine of up to 10,000 yuan if an entity opens a business without registering with the Administration of Industry and Commerce. If an enterprise fails to register after receiving a delinquent notice from the Administration of Industry and Commerce, the government may issue an injunction to terminate its business operation. Failure to obtain a registration or modify the registration on time, when necessary, will subject the enterprise to a fine of 10 yuan each day until the enterprise complies with the registration requirements. Misrepresentation in the registration application of the amount of capital or the number of employees may subject the enterprise to a fine of up to 5,000 yuan. The government may also terminate the business or issue warnings.

150. Id.
151. Id. art. 11. Xiamen Registration Regulations do not provide similar rules, but the Xiamen authorities follow similar standards in practice.
152. Shenzhen Registration Regulations, supra note 134, art. 11.
153. Id.
154. Id.
155. Id.
156. Id.
157. Guangdong Registration Regulations, supra note 77, art. 12; Xiamen Registration Regulations, supra note 137, art. 13.
158. Shenzhen Registration Regulations, supra note 134, art. 13, para. 1.
159. Id.
160. Id. art. 13, para. 2.
161. Id. art. 13, para. 4.
162. Id.
An enterprise must conduct its business within the scope permitted by law. If an enterprise conducts an "illegal" business operation beyond the scope of business approved by the government, the government will confiscate the "illegal income," or impose a fine of up to three times the amount of the illegal income.\textsuperscript{163} The law does not define "illegal business operation," nor does it specify "illegal income." "Illegal business operation" can have two interpretations: it can be viewed as any business operation that goes beyond the scope of business approved by the government or it can mean, more narrowly, business operations that actually violate the substantive law, for example, illegal trading of foreign exchange. The first interpretation apparently covers too extensive an area and does not appear appropriate, particularly in light of the severe penalties imposed and the pertinent provisions of the articles of association on the scope of business which are often broadly worded.

Shenzhen's regulations also impose penalties on foreign businesses or individuals that engage in business activities without registering as a resident representative office or although obtained appropriate registration, engage in "direct profit making" business.\textsuperscript{164} In either case, the government may fine the wrongdoer up to 20,000 yuan and terminate the business operation.\textsuperscript{165} Failure to register with the government when prior registered matters have changed will also subject the person or entity to a fine of 5,000 yuan or a revocation of its registration certificate and representative certificate.\textsuperscript{166}

Shenzhen's regulations allow parties to appeal the decision of the Administration of Industry and Commerce to a court or a higher level of the Administration of Industry and Commerce for review.\textsuperscript{167} Regulations governing other SEZs do not so provide.

**G. Land Law**

Land in China is either owned by the state or collectives. Chinese individuals or foreigners, including foreign business entities, may not own land in China.\textsuperscript{168} Foreign investment enterprises in the PRC must apply to the government for a permit to use land and pay a fee. Except for a few provisions governing equity joint ventures,\textsuperscript{169} China so far

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\textsuperscript{163} Id. art. 13, para. 3.
\textsuperscript{164} Id. art. 14.
\textsuperscript{165} Id.
\textsuperscript{166} Id.
\textsuperscript{167} Id. art. 16.
\textsuperscript{169} Regulations for Implementing the Law of the People's Republic of China on
does not have a uniform national law governing the use of land by foreign investment enterprises. Many regional governments, however, have promulgated regional land regulations. Of the four developed SEZs, Shenzhen and Xiamen have promulgated land regulations. Though Zhuhai and Shantou have not officially promulgated a land law, their governments publish some similar guidelines. The land law governing the SEZs governs three areas: procedures for obtaining a permit, charges for land use and duration of permit.

1. Procedures and Regulations

Foreign investors who need land to set up businesses in the SEZ must apply to the department of the government in charge of urban planning for a permit. The applicant must file the certificate of approval issued by the city government, contract or agreement if any and other related documents concerning the establishment of the project. After examining the application, the department will issue a "land use permit," which defines the area and gives the permit holder a right to use the land in accordance with the terms of the permit. The applicant must pay the first installment of the land use fee before a permit may be issued.

A land use permit merely entitles the holder to use the land for the purpose approved. The land user may not lease, sell or transfer without approval, nor may he exploit the underground resources. The Xiamen Land regulations, however, allow the holder of a valid land use permit to transfer the permit to another person subject to the


171. Preferential Treatments and Protection for Foreign Investment in the Zhuhai Special Economic Zone, reprinted in DUIHUA TOUZI BIDU (GUIDE TO INVESTMENT IN CHINA) 246-247 (Lu Yun ed. 1985); Preferential Treatments for Investment in the Shantou Special Economic Zone para. 1 (n.d.), [hereinafter Shantou Preferential Treatments], reprinted in id. at 247-248.

172. 1981 Shenzhen Land Regulations, supra note 170, art. 8; Xiamen Land Regulations, supra note 170, art. 4. In Xiamen, the appropriate authority in charge of land is the "Urban and Rural Construction Committee."

173. Id.

174. Id.

175. 1981 Shenzhen Land Regulations, supra note 170, art. 8. Xiamen Land Regulations, supra note 170, art. 3.

176. 1981 Shenzhen Land Regulations, supra note 170, art. 3.
approval of the appropriate authority. Such a transfer must be officially endorsed and registered; the transferee will be given a new land use permit.

After receiving a land use permit, the permit holder must commence the construction of the project within a time limit. Under the Shenzhen land law, the investor must put forth the project design and the construction and production plan within six months, and commence the project's construction within nine months after the permit takes effect. The Xiamen land law requires an investor to commence production within twelve months from the date of issuance of the permit. If an investor fails to comply with this requirement without justification, the appropriate authority may revoke his permit without refunding the land use fee already paid. An investor may apply to the authority for an extension, however, if his failure to comply with the requirements can be justified.

2. Term of Land Use

All of the SEZs impose time limits on the use of land, and these limits reflect, in part, the policy of the government towards various business sectors.

Land-use Terms (years)

<table>
<thead>
<tr>
<th>Industry: Commercial and Service</th>
<th>Shenzhen</th>
<th>Xiamen</th>
<th>Shantou</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tourism</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Real Estate</td>
<td>50</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Scientific Research and Education, Cultural, Health</td>
<td>50</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>Breeding, Husbandry, Planting</td>
<td>20</td>
<td>30</td>
<td>20</td>
</tr>
</tbody>
</table>

177. Xiamen Land Regulations, supra note 170, art. 9.
178. Id.
179. 1981 Shenzhen Land Regulations, supra note 170, art. 9.
180. Xiamen Land Regulations, supra note 170, art. 5.
181. 1981 Shenzhen Land Regulations, supra note 170, art. 9; Xiamen Land Regulations, supra note 170, art. 5.
182. Id.
183. 1981 Shenzhen Land Regulations, supra note 170, art. 15; Xiamen Land Regulations, supra note 170, art. 6; Shantou Preferential Treatments supra note 171, para. 1; the Zhuhai SEZ does not expressly provide for a land use term.
These limits are more indicative than mandatory; the permit holder may apply for an extension if he needs to continue to use the land after the initial period expires. In practice, the length of land use is usually identical to the duration of the joint venture or term of the investment contract.

3. Land-Use Fee

Charges for land use in the SEZs ordinarily consist of three fees: a land-use fee, a land-development fee (site-development fee), a land-expropriation fee and sometimes a fourth, land-management fee. A land-development fee is a lump sum payment charged on land users for developing the land into a useable area. A land-expropriation fee is also a lump sum payment, but it is used for resettling the residents and compensating land owners, which are often peasants in the guise of rural collectives. The land-use fee is an annual charge on land users similar to rent. The Shantou SEZ clearly charges a "land-management fee" in addition to the other three fees, but it is not clear what expenses this fee is intended to cover.

Early land regulations of the SEZs did not provide the standard for which to charge a land-development fee or land-expropriation fee. Guidelines promulgated in 1987 now provide the necessary criteria. In Shantou, land-development fees may be paid in a lump sum payment at the time when applying for a land-use permit or be paid annually with each payment from 15 to 18 yuan. The Zhuhai SEZ provides that the land-development fee is to be the amount of the cost incurred in developing the land. Shenzhen has a similar rule, but it requires

184. 1981 Shenzhen Land Regulations supra note 170, art. 15; Xiamen Land Regulations, supra note 170, art. 6.
185. The 1981 Shenzhen Land Regulations do not indicate any other charges other than the land-use fee. The 1984 Revised Land Regulations, however, clearly provide that a land-development fee and land-expropriation fee are imposed in addition to a land-use fee. Measures on Readjusting Land-Use Fees and Preferential Reduction of and Exemption From Land-Use Fees in Shenzhen Special Economic Zone ch. 3 (1984) [hereinafter 1984 Shenzhen Land Regulations] reprinted in, CCH Austl., supra note 12, ¶73-519. Although Xiamen and other SEZs do not indicate these charges, they adopted similar rules in practice. The 1986 regulations of the Shantou SEZ also indicate that there is "a land expropriation management fee." See Supplementary Provisions of the Shantou Special Economic Zone for Encouraging Foreign Investments, art. 7 (n.d.), reprinted in, INFOR. MATERIALS, 1987, No. 1, at 9.
186. Supplementary Provisions of the Shantou Special Economic Zone for Encouraging Foreign Investments, supra note 185, art. 7.
187. Id. art. 2.
188. Zhuhai Tequ Weiwaishang Touzi Tigong Youhui Cuoshi (Zhuhai Special Economic Zone Provides Preferential Treatments to Foreign Investments), INFOR. MATERIALS, 1987, No. 1, at 11, para. 1.
an additional payment of a profit.\textsuperscript{189} Shantou is the only SEZ that expressly provides for a payment of a "land-management fee," which is three percent of the land-expropriation fee.\textsuperscript{190}

The land-use fee is an annual charge, though a few of the SEZs encourage the investors to pay in advance for the entire investment period. For instance, under the guidelines promulgated by the Shantou SEZ, an investor who pays a lump sum payment for the land-use fee for the entire investment period is given a fifteen percent discount, and also will likely be immune from the impact of subsequent increases in the land-use fee.\textsuperscript{191} The Xiamen land law also provides preferential treatment to the land users who have paid three years of the land-use fee at once.\textsuperscript{192} The Shenzhen land law initially provided that investors may pay, within the first two years, the land-use fee due for the entire period of investment, or make an annual payment plus eight percent interest and any subsequent increase that the government may impose.\textsuperscript{193} In 1984, the government modified that provision and made it clear that the land-use fee must be paid annually and without interest charged.\textsuperscript{194}

Land laws of the SEZs also provide certain exemptions from the land-use fee under special circumstances. Usually, the land-use fee is reduced during the construction period. Under the Shenzhen land law, an investor may enjoy a twenty to eighty percent reduction during the construction period; ordinarily two years for industry and one year for other sectors, starting from the date when the permit is given.\textsuperscript{195} Enterprises in the industrial sector that require a longer construction period may apply to the government for special permission.\textsuperscript{196} Xiamen land law merely provides that the investor may enjoy a fifty percent reduction of the land-use fee during the construction period, but does not define how such a construction period is determined.\textsuperscript{197} The land laws of the SEZs also provide for exemption from the land-use fee for

190. See supra, note 186 and accompanying text.
191. Shantou Preferential Treatments, supra, note 171, para. 1.
192. Xiamen Land Regulations, supra note 170, art. 8. That article does not specify what kind of benefits are given to investors who paid three years of land-use fees at once. It merely authorizes the government to provide specific governing rules.
193. 1981 Shenzhen Land Regulations, supra note 170, art. 18.
194. 1984 Shenzhen Land Regulations, supra note 185, para. 2.
195. Id. para. 4(i).
196. Id.
197. Xiamen Land Regulations, supra note 170, art. 7.
certain types of projects. Under the Shenzhen land law, projects involving international advanced technology may enjoy an exemption of the land-use fee for the first five years and a fifty percent reduction for an additional three years.\footnote{198} Projects involving "particularly advanced" technology may enjoy a complete exemption.\footnote{199} The exemption and reduction of the land-use fee under this provision must be approved by the city government and the technology must also be first assessed by the Center for Scientific and Technological Development of the Shenzhen City.\footnote{200} Zhuhai and Xiamen also provide that certain projects may enjoy an exemption or reduction of the land-use fee.\footnote{201} Shantou provides for a ten to thirty percent reduction of the regular land-use fee if the investors are overseas Chinese.

The land-use fee, once determined, is subject to subsequent adjustment. The land laws of the SEZs, however, all provide that such adjustment may not be made more frequently than once every three years, and each adjustment may not exceed thirty percent of the original rates.\footnote{202} Under a national law, the rates of the land-use fee may not be adjusted during the first five years after the land is put into use.\footnote{203} The first Shenzhen land law was promulgated in November 1981.\footnote{204} Following this adjustment provision, the Shenzhen government, in November 1984, revised the schedule of the earlier land-use fee.\footnote{205} The adjusted rates, however, are significantly lower than the earlier rates (a reduction of about eighty percent), in order to compete with other regions in attracting foreign investment. Some other SEZs also made similar downward adjustments.\footnote{206}

Of the four developed SEZs, three, Shantou, Shenzhen and Zhuhai, have promulgated the fee schedule. Xiamen land law, however, merely provides that the Xiamen government will determine the

\footnote{198}{1984 Shenzhen Land Regulations, \textit{supra} note 185, para. 4(v).}
\footnote{199}{Id.}
\footnote{200}{Id.}
\footnote{201}{Xiamen Land Regulations, \textit{supra} note 170, art. 7 provides that the city government will determine the land-use fee on a "case-by-case" basis in accordance with the industry, land, and level of advancement of the technology involved. It thus indicates that projects involving advanced technology may be given credits in considering the rate of land-use fees. The Zhuhai SEZ will "grant preferential treatment, reduction, or exemption in terms of land-use fees in accordance with the different situations of investment projects. Preferential Treatment and Protection for Investment in the Zhuhai Special Economic Zone, \textit{supra} note 171, at 246.}
\footnote{202}{Xiamen Land Regulations, \textit{supra} note 170, art. 7.}
\footnote{203}{Regulations for Implementing the Joint Venture Law, \textit{supra} note 169, art. 51.}
\footnote{204}{See \textit{supra} note 170 and accompanying text.}
\footnote{205}{1984 Shenzhen Land Regulations, \textit{supra} note 185.}
\footnote{206}{See \textit{infra} note 208 and accompanying text.}
schedule "in accordance with special features of different sectors, the land and the level of the technology involved." The fee schedule of the Shantou SEZ was replaced in 1987 by a general guideline that the land-use fee would be reduced from 0.2-30 yuan to 0.1-15 yuan per square meter. The Shenzhen SEZ divides all the land into three classes, and imposes different levels of charges for each class. The current rates of land-use fees for the Shenzhen SEZ and Zhuhai SEZ are:

*Land-Use Fees (yuan per square meter)*

<table>
<thead>
<tr>
<th>Class Nos.</th>
<th>Shenzhen</th>
<th>Zhuhai</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1.6</td>
<td>0.5-1</td>
</tr>
<tr>
<td>2</td>
<td>1.3</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>1.0</td>
<td></td>
</tr>
</tbody>
</table>

The charges for the use of land are relevant mostly in the case of wholly foreign owned enterprises and equity joint ventures. In contractual joint ventures, the Chinese parties often use the land as their capital contribution. In that case, the value of the land is often negotiated in reference to the various charges that a land user would have to pay otherwise. In such cases, the Chinese party to the joint venture has to pay the land-use fee.

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207. Xiamen Land Regulations, *supra* note 170, art. 7.
208. Supplementary Provisions of Shantou Special Economic Zone for Encouraging Foreign Investments, *supra* note 185, para. 2.
209. 1984 Shenzhen Land Regulations, *supra* note 185, para. 1; Preferential Treatments and Protection for Foreign Investment in Zhuhai Special Economic Zone, *supra* note 171, at 246.
4. Recent Reforms

The present land regulatory system appears unsatisfactory from the points of view of both foreign investors and the Chinese government. While foreign investors often complain that various fees associated with the use of land are too high, the Chinese government feels that charges for land use far from suffice to compensate it for the amount it has invested in developing infrastructures. According to official Chinese statistics, the land-use fee that the government of the Shenzhen SEZ collected from its establishment in 1980 to mid-1987 was only about 38 million yuan, which was not even sufficient to pay for the cost of the interest payment that the Chinese government incurred for its 600 million yuan investment in the land development and infrastructure construction during the same period of time. The government of Shenzhen promulgated a reform program in 1987 which was intended to provide greater flexibility and increase the revenue of the government from licensing land use rights. Under the new program, the government grants land use rights through three methods: administrative appropriation, gongkai jingtou and bidding. The administrative appropriation is designed to satisfy the need for land use by governmental agencies, scientific and educational institutions, and military and health institutions. The users of the land appropriated by such administrative means only need to pay land-development fees.

Gongkai jingtou is similar to an auction. It allows potential land users to bid at a designated time and place for a right to use a specific piece of land. The government will license the land use right to the one that offers the highest price. Under the bidding practice, potential land users will submit written bids within a specified period of time for the right to develop and use a specific piece of land. The government will grant the right to develop and use the land to the most competitive bidder. These practices allow the Chinese government to charge a fee for the land use which is mainly determined by market factors and which can be either higher or lower than the presently fixed rate. These practices only aim to reform the fee structure for land use, without reforming the fundamentals of the present land administrative system. For instance, private companies, including foreign investors, may, as under the previous system, only acquire rights to use land without ownership. The land use is also based on a fixed term for a maximum of fifty years. The new program, however, expressly allows land users to transfer their land use right, along with their property rights to the

210. The discussion in this subsection is based on Shenzhen Tudi Guanli Tizhi Shixing Zhongda Gaige (Shenzhen Land Administration System Undergoes Significant Reforms), People's Daily, July 1, 1987, at 1.
fixtures or building on the land, for consideration.

This reform program is experimental at present, but will likely apply to other SEZs if proven successful.

H. Regulations of the SEZs on Foreign Banks

Foreign banks were previously allowed to maintain branches in Shanghai for limited direct banking business. This privilege, however, was limited to four foreign banks and based more or less on reciprocity considerations and on their "grandfather" presence in that city prior to the founding of the PRC.\textsuperscript{211} In early 1985, the Chinese government promulgated the Regulations Governing Foreign Banks and Sino-Foreign Joint Venture Banks in the Special Economic Zones, which officially permitted foreign banks to establish branches and bank subsidiaries in the four developed SEZs.\textsuperscript{212} Within a year, eighteen foreign banks set up branches in Shenzhen, Xiamen and the other SEZs.\textsuperscript{213}

1. Establishment of Foreign Banks, Foreign Bank Branches and Joint Venture Banks

To establish branches in the SEZs, a foreign bank must file an application with the People's Bank of China.\textsuperscript{214} The application must set forth the name of the branch to be established, the amount of operating funds allocated to it, and the type of banking business that will be transacted. The application shall also include the resumes of the key officers and a power of attorney.\textsuperscript{215} The application must be notarized and signed by the president or the chairman of the board of directors of the headquarters.\textsuperscript{216}

\textsuperscript{211} The four foreign banks are: (1) Hong Kong and Shanghai Banking Corporation; (2) Standard Chartered Bank (it operates in China under the name of "Chartered Bank"); (3) Bank of East Asia; and (4) Overseas-Chinese Banking Corporation. These banks were operating in China before 1949 and did not pull out when the PRC was founded. Standard Chartered Bank has been in China for 127 years. Two of the four banks are Hong Kong banks, one is a British bank, and the other is a Singapore bank. See P. Thorn, Banking Structure and Sources of Finance in the Far East in \textit{58 THE BANKER RESEARCH UNIT}, (1974). See also Alternative Financing Eyed to Attract Investment, \textit{J. COMMERCE}, Apr. 15, 1986, at 8C. The Bank of China has maintained branches in London, Hong Kong and Singapore since the founding of the PRC. Thus, mutuality and reciprocity are probably the reasons why these banks are given such a privilege.

\textsuperscript{212} Regulations of Foreign Banks, supra note 74.

\textsuperscript{213} More Room To Move—Not So Much To Develop, \textit{FAR EASTERN ECON. REV.}, Sept. 11, 1986, at 90. See Li Fang, \textit{Waizi Yinhang Zai Shenzhen Tequ (Foreign Banks in the Shenzhen Special Economic Zone)}, \textit{ECON. REP.}, Jun. 9, 1986, at 27.

\textsuperscript{214} Regulations of Foreign Banks, supra note 74, art. 5, para. 1.

\textsuperscript{215} Id.

\textsuperscript{216} Id.
The applicant must also submit the articles of association of its headquarters, a list of the directors' names, a copy of the business license issued by a competent authority of its home country, and a written guarantee from the head office regarding taxes and liabilities. In order for the People's Bank of China to ascertain the financial status of its applicants, the applicant must file balance sheets, profit and loss statements, and business reports for the three consecutive years prior to the application.

To establish wholly foreign owned banks with a head office in the SEZs, a foreign investor must file a written application with the People's Bank of China setting forth the name of the bank, the details of its registered capital and paid-in capital, the names of its key officers, and the types of banking activities to be conducted. The applicant must also submit, along with the application, the articles of associations, and the names of the proposed chairman, vice-chairman and other members of the board of directors. Finally, the applicant must file a notarized statement documenting its assets and liabilities.

The application procedure for establishing a Sino-foreign joint venture bank differ slightly. All of the parties to a joint venture bank must file: (1) an application with the People's Bank of China which sets forth the name of the joint venture bank; (2) names of the parties in the joint venture; (3) details of its registered capital and paid-in capital; (4) contributions of each party; (5) names of the key officers; and (6) types of banking activities to be conducted. The parties to the joint venture bank must also jointly prepare a feasibility study and submit it together with the application. The parties must then file the draft agreement of intent, the draft joint venture contract, the charter of the association, and the names of the chairman, vice chairman and members of the board of directors. Under Chinese law, a joint venture bank is a limited liability company; each party to a joint venture is liable only within the limit of its contributions. But the capital contribution of foreign parties must not be less than twenty-five percent of the total registered capital.

217. Id.
218. Id.
219. Id. art. 5, para. 2.
220. Id.
221. Id.
222. Id. art. 5, para. 3.
223. Id.
224. Id.
226. Article 4 of the Joint Venture Law provides that the proportion of the invest-
Upon the receipt of the application and other documents, the People’s Bank of China will review and approve the application in accordance with “the need of economic development in the SEZs and the principle of reciprocity.” The Chinese government has not promulgated detailed rules as to the criteria by which the People’s Bank of China approves or disapproves of an application. The People’s Bank of China appears to possess complete discretion in making decisions, and more importantly, its decision is final and not subject to judicial review or administrative reconsideration. Chinese law does not specify a time limitation within which the People’s Bank of China will decide on the application. Practice has so far indicated that the approval process by the People’s Bank of China is fairly expedient.

After obtaining the approval of the People’s Bank of China, the State Administration of Foreign Exchange will issue a special license allowing an applicant to engage in foreign exchange. The foreign bank or joint venture bank also needs to register with the State Administration of Industry and Commerce within thirty days after obtaining a business license. Finally, foreign banks or joint venture banks must begin operations within twelve months from the date of approval or the certificate of approval issued by the People’s Bank of China will automatically become void.

After commencement of operations, foreign banks and joint venture banks must register with the local tax bureau within thirty days of the starting date. Failure to process a tax registration may subject foreign banks to a fine of up to 5,000 yuan. The Ministry of Finance has issued special regulations governing tax registration of foreign enterprises in China. The regulations require foreign banks to submit to the Tax Bureau a copy of its original application filed with the People’s Bank of China, and either a copy of the certificate of approval issued by the People’s Bank of China or the business license issued by the foreign participants shall in general not be less than 25%. Id.

227. Regulations of Foreign Banks, supra note 74, art. 4.

228. According to an official Chinese newspaper report, within a two month period the People’s Bank of China gave approval to five foreign banks to establish branches in the Special Economic Zones, Waiguo Yinhang Zaihua Kaishe Fenhang Mugian Zhixianyu Tequ (Foreign Banks Presently Are Only Allowed to Open Branches in Special Economic Zones), People’s Daily, Oct. 8, 1985, at 1.

229. Regulations of Foreign Banks, supra note 74, art. 4.

230. Id. art. 8.

231. Id.

232. Id.

233. Foreign Enterprise Income Tax Law, supra note 96, arts. 35, 44.

the State Administration of Industry and Commerce. In addition, foreign banks need to fill out a standard registration form in triplicate in Chinese or in both Chinese and English. Any later changes concerning the name of the institution, the scope of business, or the geographical location must be communicated within fifteen days to the tax bureau together with documents evidencing the approval by the proper authority. The Tax Bureau will then proceed to complete all appropriate changes in the registration.

Foreign banks and joint venture banks located in China are allowed to establish additional branches within the Special Economic Zones. They must, however, file an application subject to the approval of the appropriate branch office of the People's Bank of China in the Special Economic Zone.

2. Capitalization Requirement

Joint venture banks and wholly foreign owned banks with head offices in a SEZ must maintain registered capital of no less than 80 million yuan, of which at least fifty percent must be paid-in capital. A foreign bank branch must have an operating fund allocated to it by the head office of no less than 40 million yuan. The capital required for foreign banks, joint venture banks, and branch offices must be maintained in the form of foreign currency. The paid-in capital of foreign banks and joint venture banks and the operating fund of the foreign bank branch offices must be made available within thirty days from the date that the establishment of the banks or branches is approved. The availability of the capital or funds also has to be verified by a public accountant registered in China.

This rigid capitalization requirement applies only to “banks” as such. Recent foreign banking practice shows, however, that the Chinese government demonstrates some flexibility in applying this capitalization requirement.

235. Provisions for Tax Registration, supra note 234, art. 3.
236. Id. art. 5.
237. Id. art. 6.
238. Regulations of Foreign Banks, supra note 74, art. 5, para. 4.
239. Id. art. 7.
240. Id.
241. Id. The Regulations of Foreign Banks do not specify the foreign currency of the capital required, nor do they provide whether the kind of currency should match the operating activities and foreign currency exposure of the bank, nor is it clear whether it is possible for a bank to switch part of the capital into different currencies depending on its foreign currency exposures. See China’s New Banking System, INT’L FINANCIAL L. REV., July 1985, at 33.
242. Regulations of Foreign Banks, supra note 74, art. 7.
243. Id.
tion requirement. For example, the China International Finance Co. Ltd. is reportedly capitalized with only $7 million, jointly provided by the Bank of China Shenzhen Branch, the Bank of East Asia, Nomura Securities Co. Ltd., Sumitomo Bank, and Security Pacific Corp. The China International Finance Co. Ltd. is apparently a joint venture financial institution, but the $7 million funding is far short of the 80 million yuan minimum capitalization required for joint venture banks. According to the joint venture agreement, the business to be conducted by the China International Finance Co. Ltd. includes “providing wholesale commercial banking services and investment banking services to government agencies, state owned enterprises located in the Shenzhen Special Economic Zone and other inland areas.” China’s official newspaper, People’s Daily, called the China International Finance Co. Ltd. a “Sino-foreign joint venture bank.” The same newspaper report also stated that “this bank, in addition to conducting regular banking services, gathers funding for China’s economic development.” These reports indicate that this joint venture financial company is not much different from a joint venture bank in terms of its business operations, but it is apparently not subject to the capitalization limit imposed on joint venture banks. This development of financial companies seems to provide a novel alternative in the foreign banking practice in China.

Foreign banks and joint venture banks taking deposits from customers must post a reserve with a branch office of the People’s Bank of China located in the Special Economic Zone. The same requirement is also made for domestic specialized banks that take deposits from customers, although Chinese law does not specify a rigid rule to determine the amount of the reserve. In the domestic banking context, the central bank may fix the reserve and adjust it from time to time as a means of controlling the circulation of currency.

245. Id.
247. Id.
248. Regulations of Foreign Banks, supra note 74, art. 11.
249. Id. art. 37.
250. Id. The amount of reserve that the People’s Bank of China actually requires from the specialized banks is not officially published. According to a report in the China Business Review, the Industrial and Commercial Bank of China was required to turn 20% of its enterprise deposits and 40% of its savings deposits over to the People’s Bank of China as reserves. Brotman, Reforming the Domestic Banking System, 12 CHINA BUS.
3. Scope of Foreign Banking Business

Chinese law specifies the types of businesses in which the foreign and joint venture banks may engage including loans and deposits, inward remittances and foreign exchange collections, export transactions, outward documentary bills, discounting bills, and foreign exchange. Other areas include security transactions, equity investment, guarantees, trust accounts, security deposit boxes, credit investigation, and consultation services. Most of the activities listed above may be transacted in both Chinese and foreign currencies.

Foreign and joint venture banks must specifically apply for the type of banking business they intend to pursue. This application should be filed with the initial application for the establishment of the bank or branch office. The People's Bank of China will review the application and may then permit foreign or joint venture banks to engage in some or all of the business activities listed above. Chinese law also makes it clear that the list is not exhaustive. In other words, foreign or joint venture banks may engage in other banking or related activities upon approval of the People's Bank of China.

Chinese foreign banking law and practice has developed only recently. Although foreign banks may now operate a variety of banking activities within limited geographical areas, a comprehensive body of law does not exist which corresponds to the complicated banking transactions taking place. Laws currently available govern only the major areas of foreign banking such as deposit taking, loans, investments, and interest.

4. Deposit Taking

Foreign and joint venture banks are currently allowed to take deposits from customers. Chinese law, however, limits the types of permissible deposit accounts. For example, foreign and joint venture banks may take deposits from enterprises located in the Special Economic Zones or abroad and which are owned by foreigners, overseas

\[\text{REV., Mar.-Apr. 1985, at 20.}\]

251. Regulations of Foreign Banks, supra note 74, art. 6.
252. Id.
253. Article 5 of the Regulations of Foreign Banks requires that foreign banks must specify the types of banking activities. Article 6 provides that the People's Bank of China will approve, in accordance with the application, some or all of the banking businesses as listed. Id.
254. Id.
255. Regulations of Foreign Banks, supra note 74, art. 6, para. 12.
256. Id. para. 10.
Chinese, or joint ventures. They may also take deposits from foreign individuals and overseas Chinese residing in both SEZs and in foreign countries. Foreign and joint venture banks, however, apparently may not take deposits from Chinese enterprises or individuals. Deposit taking from enterprises and individuals abroad may only be made in the form of foreign currency. In other words, foreign banks currently have not yet been allowed to transact in Chinese currency even though Chinese law clearly provides that in all other instances, deposit taking may be made in both Chinese and foreign currency.

The law does not clearly provide whether foreign banks may receive deposits from joint ventures, foreign enterprises, or individuals in other parts of China outside the SEZs. In one recent instance, the joint venture agreement of the recently established “China International Finance Co. Ltd.” which was approved by the Chinese government, clearly specifies that the bank’s scope of business extends to inland areas. This indicates that the banking business of foreign banks located in the Special Economic Zones may be allowed to reach joint ventures and foreign entities or individuals in other areas of China.

5. Loans

Foreign and joint venture banks are permitted to make loans to domestic and foreign enterprises or individuals in the SEZs or overseas. Chinese law however, does not specify whether foreign or joint venture banks may extend loans to businesses or individuals in other parts of China outside of the SEZs. Lending limits imposed by Chinese law generally provide that a

257. Id.
258. Id.
260. Regulations of Foreign Banks, supra note 74, art. 6, para. 11. See also More Room to Move—Not So Much to Develop, supra note 213, at 95.
261. See supra notes 244 and 246 and accompanying text.
262. Regulations of Foreign Banks, supra note 74, art. 6 provides for the types of businesses that foreign banks may be allowed to engage in. Paragraph 1 provides that “loans and bills may discount in both Chinese and foreign currencies.” Unlike the provisions regarding deposit taking this provision does not define the scope of customers. Presumably, foreign banks and joint venture banks may extend loans to both individuals and enterprises, including Chinese domestic enterprises and individuals. Furthermore, this provision fails to provide geographical limitations on the scope of permitted business. Since Paragraph 11 expressly allows foreign banks to extend loans to customers abroad, the question that remains unanswered is whether or not foreign banks may extend loans to the customers outside the SEZs in other parts of China.
263. Id.
foreign bank with its headquarters in China or a joint venture bank may not lend to one enterprise in the SEZ amounts exceeding thirty percent of its paid-in capital plus its retained reserve. This requirement apparently is intended to prevent overexposure to the credit risk of any one borrower. This lending limit also is substantially higher than those imposed in western countries, which usually require fifteen percent of a bank's capital funds. Under Chinese law, the lending limit is imposed with respect to loans made to a single enterprise. Presumably, loans to governmental agencies other than enterprises are not covered by this limit, and in any case, the banking law does not define what constitutes a "single enterprise." Moreover, it is unclear whether a wholly owned subsidiary is considered part of the parent enterprise for banking purposes. As is true in American banking law, a bank needs to aggregate the loans made to an enterprise with the loans made to all the subsidiaries which the enterprise owns or controls in order to be tested by the lending limit. This practice will become clearer as Chinese foreign banking practices develop. The wording of the present Chinese law suggests that the lending limit applies only to the enterprises located in the SEZs. Loans to offshore borrowers apparently will not be subject to this lending limit. The lending limit is imposed only on the joint venture banks or foreign banks with head offices in China. Foreign bank branches presumably will not be affected by the lending limit.

6. Investment

Foreign banks may directly invest in the Special Economic Zones. In fact, foreign banks have already directly participated in establishing leasing companies and other similar enterprises. Chinese law, however, imposes a ceiling on the aggregate investment of foreign banks or joint venture banks. It provides that the total investment of a foreign bank with the head office in the SEZ or joint venture bank in the SEZs

264. Id. art. 9.
266. Regulations of Foreign Banks, supra note 74, art. 9.
268. Regulations of Foreign Banks, supra note 74, art. 9.
269. Id.
may not exceed thirty percent of its paid-in capital plus retained reserves.271 This limitation does not apply to the foreign banks stationed overseas or to foreign bank branches located in China.

7. Interest Rate

Foreign banks and joint venture banks may set interest rates for deposits, loans, overdrafts and commercial instrument discounts. Chinese law provides that foreign or joint venture banks may fix interest rates with reference to rates specified by a branch office of the People's Bank of China in the SEZs.272 From the plain language of the law, it is clear that such a reference is not compulsory.273 Moreover, providing foreign banks with the freedom to set interest rates is consistent with overall Chinese banking policy, since banking laws permit Chinese domestic banks to maintain floating interest rates within certain limits so as to enhance competition.274

8. Profit

Chinese law distinguishes foreign bank branches from foreign banks or joint venture banks located in the SEZs with respect to the profit allocation. Foreign bank branches may remit post tax profits abroad without further obligations. Foreign banks and joint venture banks located in the SEZs, however, need to deduct from the post tax profit, the following funds: reserve fund,276 employee bonus and benefit fund, and the business expansion fund. Chinese banking law does not provide further guidelines as to the specific amounts or proportions of each described fund. These matters should be covered by the relevant parts of the Chinese Joint Venture Law and Foreign Enterprise Law.278

271. Regulations of Foreign Banks, supra note 74, art. 9.
272. Id. art. 10.
273. Id. Article 10 of the Regulations of Foreign Banks uses "may" instead of "shall."
274. Id. art. 42. Actually, in Shanghai, foreign bank branches are allowed to set their own interest rates with respect to loans and deposits to and from the cusotmers abroad, regardless of the rate set by the People's Bank of China. Shanghai Fangkuan Jinrong Zhengce Waizi Yinhang Ke Ziding Lilü (Shanghai Liberalizing Its Finance Policy, Foreign Banks May Set Interest Rates Of Its Own), People's Daily, Jan. 27, 1986 at 1.
275. Reserve funds are usually used to make up any losses and to increase capital. Regulations for Implementing the Joint Venture Law, supra note 169, art. 87.
276. The Foreign Enterprise Law does not contain specific provisions in this regard. The Implementing regulations to be enacted will probably address this question. According to article 87 of the Regulations for Implementing the Joint Venture Law, the amount of each fund required is to be determined by the board of directors. This provision applies to the joint venture banks. Id.
9. Reporting Requirements and Administration of Foreign Banking Business

The People's Bank of China is in charge of foreign banking and it has the authority to interpret the relevant Chinese foreign banking regulations.277 Foreign and joint venture banks are required to periodically file with the branch office of the People's Bank certain reports required by law in the SEZs.278 These reports must be submitted before the tenth of each month and include a monthly balance sheet effective at the end of the previous month.279 The reports must also include quarterly analytical statements setting forth deposits and loans, outward and inward remittances, settlements of import and export transactions, and investment items.280 These quarterly statements must be filed before the fifteenth of the first month of each quarter.281 In addition, foreign and joint venture banks shall submit, before the end of March of each year, the balance sheet, profit and loss statements, and the statement of the balances of accounting items for the previous year, along with an audit report by an accountant registered in the PRC.282

The People's Bank of China has extensive regulatory power over foreign banking business. The branch office of the People's Bank of China in the SEZs may examine the business and financial records of foreign banks and joint venture banks.283 It may issue orders requiring foreign banks or joint venture banks to submit banking related data and information.284 It may also send officers to investigate and examine the books and records of foreign or joint venture banks.285

In addition, the branch office of the People's Bank of China in the SEZs may issue warnings or impose fines in the event that foreign or joint venture banks violate Chinese banking or finance laws.286 Any foreign or joint venture banks affected may appeal to the People's Bank of China for a final determination.287 The People's Bank of China has the power to revoke the business license or dissolve a foreign or joint

277. Regulations of Foreign Banks, supra note 74, arts. 12, 18.
278. Id. art. 12.
279. Id.
280. Id.
281. Id.
282. Id.
283. Id. art. 13.
284. Id.
285. Id.
286. Id. art. 16.
287. Id.
venture bank that has seriously violated Chinese law. The law does not provide whether a bank that is affected by a People’s Bank of China’s decision may enjoy judicial review.

I. BANKRUPTCY LAW OF THE SHENZHEN SEZ

1. Introduction

China currently has two systems of bankruptcy law; one applies to state owned enterprises and the other applies to foreign investment enterprises located in the Shenzhen SEZ. The development of these two systems took place almost side by side.

While the changing economic pattern and economic policy in China has led Chinese lawmakers to consider drafting a bankruptcy law governing domestic state owned enterprises, they also realized the need to develop a similar framework for foreign investment enterprises. As in domestic enterprises, competition also made some foreign investment enterprises sustain losses on a continuing basis and become insolvent. Although the government did not have to shoulder the burden of direct financial support to them, these insolvent enterprises

288. Id.
290. Prior to the creation of a bankruptcy system, the state shouldered all the losses of the state owned enterprises through budgetary appropriation. Jing Xue, Jianli Qiye Pochan Zhidu Shizai Bixing (Establishing Enterprise Bankruptcy System Being Inevitable), People’s Daily, Aug. 10, 1986, at 3. Discussing the practice prevailing before the bankruptcy system came into being, the author stated:

Some enterprises inappropriately manage and operate their businesses and sustain significant loss. Their assets are exceeded by their debts and they already become bankrupt in fact. Under the old system, the policy was to ‘protect’ and ‘feed’ these enterprises. The loss of the enterprises was simply written off through the state budgetary appropriation. . . . In the past, some of the enterprises that sustained loss on a long term and consistent basis might be closed, terminated, merged, or changed in line of business (quan, ting, bing, zhuang) through administrative means. The workers continued to receive wages and bonus as usual . . . .

This practice is expressly confirmed by Chinese law. Under a State Council regulation promulgated in 1983, the state may close, terminate, merge or change the production of a state-owned enterprise if such an enterprise sustains economic loss for two years or more because of bad management and the reorganization does not bring about obvious improvement. The regulation also obligates the state to arrange for placement of the employees displaced. See Interim Regulations of State-owned Industrial Enterprises arts. 20, 21 (1983) reprinted in CCH Austl., supra note 12, ¶13-1500.
often had a serious adverse impact on other businesses dealing with them, particularly the creditors. If there were theoretical difficulties in forcing state owned enterprises into bankruptcy, no similar obstacle existed for foreign investment enterprises in a socialist economy. Even the most conservative socialist ideology recognizes that a foreign investment enterprise is founded on capitalist ownership and therefore may go bankrupt. Furthermore, creditors of a foreign investment enterprise located in China are mostly Chinese banks that provide credit and other Chinese entities that provide supplies. A bankruptcy system would serve to protect the economic interests of these Chinese entities.

The major policy concern in allowing a foreign investment enterprise to go bankrupt is the potential negative impact on the overall foreign investment environment—allowing an enterprise to go bankrupt could affect the general confidence of foreign investors in the profitability potential of investing in China. Actually, a foreign investment enterprise consistently sustaining losses would nonetheless affect the overall picture of the profitability of foreign investment in the PRC. Therefore, it would be wise to create a system to expediently terminate the existence of consistently unprofitable projects and thereby serve to improve the overall picture of the foreign investment performance in the PRC. A bankruptcy system could also give a fair opportunity for revival to an insolvent enterprise by protecting it from the harassment of creditors and allowing it to go through reorganization.

The need for a bankruptcy system governing foreign investment enterprises arose when foreign investment first began to appear in the PRC. Until recently, however, the size of the overall foreign investment had been small and most of the projects were still in the early stage of development, a time when most projects were expected to sustain loss. In the last couple of years, however, the number of foreign investment enterprises significantly increased and a considerable number of these enterprises began to operate at full capacity after completing

291. For many years, the basic doctrine was that socialist enterprises could not become bankrupt, and this was regarded as an attribute that made a socialist economy superior to its capitalist counterpart. Dong Fureng, Tongye Pochanzhi (Discussions on Enterprise Bankruptcy System), People's Daily, Oct. 10, 1986, at 2.

292. Foreign investment came to the PRC in the late 1970's. The first Sino-Foreign equity joint venture was set up in 1979. The large increase in foreign investment projects took place mainly after 1983, the year in which the PRC government promulgated the detailed implementing regulations for the earlier broadly-worded equity joint venture law. By the end of 1985, about 6,765 foreign investment enterprises were established in China, but only one-third were put into operation. The rest were still at the stage of construction and development. See CHINA INVESTMENT GUIDE supra note 16, at 329 (1986).
several years of construction and preparations. The time came when the profit potential of a business became clearer for both investors and creditors, and the earlier debt for investment projects matured. As the debtor and creditor relationship, particularly insolvency, became a practical problem, the need to establish a bankruptcy system increased. This was true particularly in the SEZs where a large number of foreign investment projects were situated.

The government of Guangdong Province began to draft a bankruptcy law in 1984, about one year before the central government embarked on drafting a national bankruptcy law. The drafting efforts were apparently put on hold during 1985 and the first half of 1986 when the central government began to draft a general bankruptcy law applicable nationwide in order to prevent duplicating legislation. In late August 1986, the central government decided to modify and narrow the scope of the national bankruptcy law to exclude the foreign investment enterprises. Since the upcoming national bankruptcy law would not resolve the problems of foreign investment enterprises in the SEZs, the drafting process of the Guangdong government resumed. On November 29, 1986, four days before the central government adopted the national bankruptcy law, the government of Guangdong province passed the Bankruptcy Regulations of the Shenzhen Special Economic Zone for Foreign Related Corporations (Shenzhen Bankruptcy Law).

The Shenzhen Bankruptcy Law consists of fifty-nine articles and eight

293. Shengrendachangwei Juxing Huiyi Shenxi Shenzen Tequ Shewai Gongsi Pochan Tiaoli (The Standing Committee of the Provincial People's Congress Holding Meetings to Consider Bankruptcy Regulations of Shenzhen Special Economic Zones for Foreign-Related Corporations), Shenzhen Tequbao (Daily of the Shenzhen Special Economic Zone), Nov. 27, 1986, at 1.

294. The Central Government began to draft the National Bankruptcy Law in early 1985.

295. The draft of the National Bankruptcy Law was initially intended to apply to all enterprises including foreign investment enterprises and collective enterprises, however, at a session held in late August 1986, the Standing Committee decided to rename the draft as “Bankruptcy Law of State-Owned Enterprises” and have it apply only to state-owned enterprises. XINHUA NEW AGENCY, WOGUO YOUBIYAO ZHIDING POUCHANFA (IT IS NECESSARY FOR OUR COUNTRY TO ENACT BANKRUPTCY LAW) (1986) This modification was due to the awareness of the significant difference between state-owned enterprises and other business entities. Id. Although the final version deleted “state owned” from the title, it added Article 2 which expressly limits the publication of the National Bankruptcy Law to state owned enterprises. The changes in the name from “Bankruptcy Law of State-Owned Enterprises” to “Enterprise Bankruptcy Law” contemplates the likelihood of future revision to extend the application of the National Bankruptcy Law to other enterprises.

296. Shenzhen Bankruptcy Law, supra note 83.
CHINA'S SPECIAL ECONOMIC ZONES

chapters, and took effect on July 1, 1987.\textsuperscript{297} Many of the principles and procedures of the Shenzhen Bankruptcy Law are substantially similar to those of the national bankruptcy law. The Shenzhen Bankruptcy Law, along with related provisions of the earlier corporation law for SEZs, constitute the bankruptcy framework for the Shenzhen SEZ.

2. Bankruptcy Proceedings

The Shenzhen Bankruptcy Law uses the assets and debts ratio as the test to determine whether a foreign investment enterprise may be declared bankrupt. It authorizes a court to declare a foreign investment enterprise bankrupt if all its assets do not cover its mature debts.\textsuperscript{298} Under this test, enterprises that become insolvent merely because of a shortage of cash would not be declared bankrupt, but the more strict standard of the national bankruptcy law allows the government to declare bankrupt an enterprise that has sustained a serious loss and is unable to pay off debts that mature.\textsuperscript{299} Thus, under the Shenzhen Bankruptcy Law, a creditor cannot apply to the court to declare a debtor bankrupt simply because the debtor is unable to pay the debts.

The Shenzhen Bankruptcy Law designates the Shenzhen Intermediate People's Court as the court with jurisdiction over bankruptcy cases.\textsuperscript{300} To apply to declare a debtor bankrupt, a creditor must file an application with the court stating the amount of claims and the evidence showing that the debtor is unable to pay off its mature debts. Upon receipt of the application, the court must decide in ten days whether to accept the case.\textsuperscript{301} The Shenzhen Bankruptcy Law also allows a debtor to petition the court for voluntary bankruptcy or for conciliation with the creditors.\textsuperscript{302} The debtor's petition, however, must be based on a resolution by the board or the shareholders, or as the case may be.\textsuperscript{303}

3. Liquidation Committee

Within ten days of accepting the case, the court will appoint a liquidation committee consisting of three to five members including a

\textsuperscript{297} Id. art. 59.
\textsuperscript{298} Id. art. 3.
\textsuperscript{299} National Bankruptcy Law, supra note 289, art. 3.
\textsuperscript{300} Shenzhen Bankruptcy Law, supra note 83, art. 6.
\textsuperscript{301} Id. art. 9.
\textsuperscript{302} Id. art. 7.
\textsuperscript{303} Id. art. 8.
Chinese accountant. The court will determine the compensation for the committee members which will be paid from the bankrupt estate before distribution. The committee supervises and implements the conciliation and bankruptcy proceedings under the leadership of the court. The committee has the authority to convene and preside over the meetings of creditors. When implementing a conciliation, it will supervise the business operation of the debtor, examine and verify lists of debtors and creditor, oversee the making of the conciliation plans and protect the creditors' interests. When the debtor is declared bankrupt, the committee will take over the bankrupt estate, including the accounts and documents of the bankrupt enterprise, propose the distribution plan, and then settle the claims.

4. Creditors' Meeting

At the meeting, the creditors have the authority to examine the claims, consider and approve conciliation and distribution plans, elect creditors' representative to participate in the activities of the liquidation committee and question the officers of the bankrupt enterprise. The Shenzhen Bankruptcy Law does not provide a quorum requirement, but it provides a procedural rule: only the creditors present at the meeting, representing fifty percent or more of the total unsecured claims may adopt a conciliation and distribution plan. This rule contrasts with a similar rule of the National Bankruptcy Law which requires that a resolution be adopted by a simple majority of creditors as well as by the creditors representing a certain amount of the claims. These voting rules of the Shenzhen Bankruptcy Law apply to the adoption of the resolution on both the conciliation and distribution plans. The Shenzhen Bankruptcy Law does not expressly provide procedures for the creditors' meeting to adopt other actions. The creditors also have veto power over the following actions of the liquidation committee: transfer of real estate, trademark, patents and negotiable instruments, borrowing, performance of contracts, abandonment of claims, and lawsuits concerning the dispute over the

304. Id. art. 12.
305. Id.
306. Id. arts. 14(i) and 15(i).
307. Id. art. 14.
308. Id. art. 15.
309. Id. art. 16.
310. Id. art. 18.
311. National Bankruptcy Law, supra note 289, art. 16.
312. Shenzhen Bankruptcy Law, supra note 83, art. 18.
bankruptcy estate.313

5. Conciliation Procedure

After the commencement of a bankruptcy proceeding or a filing of a petition for conciliation, the court will grant the conciliation if the debtor and creditors reach an agreement on the payment of debts.314 The court will make a public notice of the conciliation. The notice must state the time limit within which the debts must be reported, the date of the first meeting of creditors and the date when the claims must be investigated.315 The public notice must be delivered to all known creditors as well.316

The next step is to formulate and adopt the conciliation plan. A conciliation plan must provide the names of the debtor and creditors, the amount of the debts, the postponement of payment and the amount of debts forgiven, the reason for the loss and state of the business, and the plan and measures to improve the business performance.317 When considering the conciliation plan, the debtor or his legal representatives must attend the creditors' meeting and answer questions.318 The conciliation plan must be approved at the creditors' meeting.319 After the adoption of the conciliation plan, the court will determine, within fifteen days, whether or not to confirm the conciliation plan.320 Creditors that object to the adopted conciliation plan may petition the court to deny confirmation of the adopted conciliation plan within ten days of the adoption.321

While the conciliation plan is being implemented, the debtor may continue its business operations, but the court will void any transfer of property without consideration and prevent the entity from engaging in business activities beyond its ordinary scope.322 The court may revoke its confirmation of the conciliation plan and declare the debtor bankrupt if it discovers, within six months of the confirmation, that the debtor committed fraud in seeking the conciliation or if the debtor

313. Id. art. 42.
314. Id. art. 10. Under that article if debtor and creditor cannot reconcile, the court will declare the debtor bankrupt.
315. Id. art. 19.
316. Id.
317. Id. art. 21.
318. Id. art. 22.
319. Id. art. 25.
320. Id.
321. Id. art. 26(i).
322. Id. art. 24.
fails or is unable to implement the conciliation plan.\textsuperscript{323} In the latter situation, the court's decision must be based on a petition by creditors representing fifty percent or more of the total unsecured claims.\textsuperscript{324}

6. Declaration of Bankruptcy and Distribution

When declaring a debtor bankrupt, the court must post a public notice which must set forth the date of the first creditors' meeting and the date of the claims investigation.\textsuperscript{325} The notice must also be delivered to all known creditors.\textsuperscript{326} The bankruptcy proceeding shall not last more than 180 days after the day when the debtor is declared bankrupt, unless the court grants an extension.\textsuperscript{327}

After receiving notice from the court, the creditors must report their claims to the liquidation committee within the time limit specified in the notice.\textsuperscript{328} The report must set forth the amount of claims and the evidence. If a creditor fails to report his claim in time, it will not be recognized, unless such a failure to report was not due to its fault, but it must nonetheless report its claim before the distribution.\textsuperscript{329} After the creditors have reported their claims, the liquidation committee will convene a creditors' meeting to examine and investigate claims. The result of the investigation must be reported to the court for confirmation.\textsuperscript{330}

The liquidation committee then proposes a distribution plan to be considered and adopted at the creditors' meeting and confirmed by the court.\textsuperscript{331} The debtor's property will be distributed in the following order: (1) expenses incurred in taking care of the debtor's property and distribution; (2) litigation costs of the bankrupt proceeding; (3) salary and labor insurance of the employees; (4) tax; and (5) bankruptcy claims.\textsuperscript{332}

"Bankruptcy claims" refers to the unsecured debts of the debtor. They do not include: (1) interest for the claims accrued after the debtor was declared bankrupt; (2) litigation costs the creditor incurred in participating in the bankruptcy proceeding; or (3) damages and penalties the debtor owes because of its inability to perform contracts as a
result of the bankruptcy declaration.\textsuperscript{333} The bankruptcy claims do not include secured claims; the secured creditors will be paid out of the collateral prior to the distribution.\textsuperscript{334} A creditor may also offset the debts it owed to the debtor before the distribution.\textsuperscript{335}

The liquidation committee shall report the distribution results to the court after the distribution is completed.\textsuperscript{336} The court will make a decision confirming the termination of the bankruptcy proceeding and make a public notice.\textsuperscript{337} The decision of the court in this context is final and not subject to appeal.\textsuperscript{338}

The bankruptcy declaration invalidates certain actions taken prior to the commencement of the bankruptcy proceeding. Under Article 11 of the Shenzhen Bankruptcy Law, the following acts of a bankrupt debtor, if within 180 days prior to the commencement of the bankruptcy proceeding are void: concealment of property, unauthorized division or transfer of property without adequate consideration, allowing others to take possession of property without consideration, pledging property as security for debt previously unsecured, advancing payment for a debt that does not mature, and relinquishing claims.\textsuperscript{339} The property transferred thereby will be reclaimed and included in the bankrupt estate for distribution. This rule suggest that even in regular business dealings, parties should carefully consider the credit standing of their counterparts and the nature of the transaction to determine whether a court could void the transaction. Certain normal business transactions could be very close to these void actions. For instance, restructuring a debt by acquiring collateral to secure previously unsecured debt could be "providing security against the property for the debt not previously secured" as provided in Article 11, and invoking an acceleration clause in a loan agreement could be construed as "advance payment of debt not yet due."

Furthermore, as noted, the Shenzhen Bankruptcy Law allows property which is in the possession of the debtor but which does not belong to the debtor to be recovered prior to the bankruptcy liquidation.\textsuperscript{340} This rule clearly indicates that a rent-to-own transaction, which allows the lessor to retain the title until the purchase price of the property is fully paid in the form of rent, gives greater protection

\textsuperscript{333} Id. art. 34.
\textsuperscript{334} Id. art. 39.
\textsuperscript{335} Id. art. 40.
\textsuperscript{336} Id. art. 50.
\textsuperscript{337} Id.
\textsuperscript{338} Id.
\textsuperscript{339} Id. art. 11.
\textsuperscript{340} Id. art. 41.
to the creditor than a direct sale under the seller's financing.

7. Reorganization and Liquidation Under the Corporation Law

The Shenzhen Bankruptcy Law does not provide for reorganization. The Guangdong Corporation Law which took effect on January 1, 1987 contains chapters on reorganization and liquidation which apply, among other places, "where a corporation is on the verge of bankruptcy or is declared bankrupt." These rules constituted the only bankruptcy law in this area until the Shenzhen Bankruptcy Law became effective on July 1, 1987. These rules, particularly the chapter on the reorganization, apply concurrently with the Shenzhen Bankruptcy Law. The liquidation procedure of the Corporation Law, however, will be preempted by the Shenzhen Bankruptcy Law for bankruptcy cases in the Shenzhen SEZ. The liquidation procedures of the Guangdong Corporation Law, however, have much broader application than those of the Shenzhen Bankruptcy Law, since unlike the Shenzhen Bankruptcy Law, the Guangdong Corporation Law applies to all three SEZs in Guangdong Province. Furthermore, the liquidation procedure of the Guangdong Corporation Law also applies where a corporation voluntarily dissolves for reasons other than bankruptcy.

a. Reorganization Under the Corporation Law

The Guangdong Corporation law defines reorganization as adjustments made for a foreign-related corporation in financial difficulty and at the verge of bankruptcy to recover from difficulties and reestablish its normal business operations. Corporations that may undergo reorganization must meet one of four conditions: (1) equipment or technology of the corporation is advanced; (2) products are urgently needed in the society; (3) the project involves a large amount of investment and a comparatively long turn around period, or (4) bankruptcy may cause significant negative consequences. These requirements limit reorganizations only to those corporations whose survival is obviously beneficial to the national economy.

The reorganization must be approved by a department directly in charge of the corporations. To apply for reorganization, the appli-
cant must report the corporation's financial situation, including submitting a balance sheet and statement of losses and profits, explain the justification for the organization and propose a plan to carry it out.\textsuperscript{347} The reviewing department will render its decision within thirty days after receiving the application.\textsuperscript{348} The Corporation Law does not provide an opportunity for the creditors to have a say on whether a corporation should go through reorganization.

Within fifteen days after the approval of the reorganization the shareholders or the board of directors shall establish a reorganization group consisting of three to five persons.\textsuperscript{349} The board or the shareholders shall appoint the head of the group.\textsuperscript{350} Shareholders, directors and other outside specialists all may become members of the group.\textsuperscript{351} The reorganization group will take over the management of the corporation, including the power of the board, and represent the corporation in dealings with third parties.\textsuperscript{352}

The Guangdong Corporation Law provides that the department in charge and the creditors may each appoint one or two reorganization supervisors.\textsuperscript{353} The supervisors representing creditors are appointed by agreement of the creditors.\textsuperscript{354} If such an agreement fails, the creditors, representing a "comparatively larger amount" of debt have the right to make the appointment.\textsuperscript{355} The Guangdong Corporation Law, however, does not specify quantifiably "comparatively larger amount."

The reorganization supervisors participate in the reorganization on a regular basis. When the reorganization group disposes of corporate assets or rescinds contracts on behalf of the corporation it must obtain consent from the reorganization supervisors.\textsuperscript{356} Furthermore, the making and implementing of the reorganization plan must also be approved by the reorganization supervisors.\textsuperscript{357} If the reorganization supervisors cannot reach an agreement, the reviewing department shall

\begin{thebibliography}{9}
\bibitem{347} Id. art. 109.
\bibitem{348} Id. art. 110.
\bibitem{349} Id. art. 111. Whether the board or the shareholders have the power to elect the reorganization group depends on the articles of association and the pertinent provisions of the law. Ordinarily, for equity joint ventures, the board should have the authority to do so. For a Sino-Foreign stock company, the shareholders' meeting should have the authority.
\bibitem{350} Id.
\bibitem{351} Id.
\bibitem{352} Id. art. 113.
\bibitem{353} Id. art. 112.
\bibitem{354} Id.
\bibitem{355} Id.
\bibitem{356} Id. art. 113.
\bibitem{357} Id.
\end{thebibliography}
make the determination. Since one of the supervisors is actually appointed by the department, this rule in fact allows the opinion of the supervisor appointed by the department to prevail. The reorganization plan will provide for debt restructuring including the postponement of repayment and possibly the forgiveness of debts. Therefore, this procedure actually may lead to the modification of creditors' rights without their consent.

The reorganization plan shall provide the financial situation of the company, the modification of the creditors and shareholders' rights, the disposal of the assets, the recovery of the claims and payment of debts, the method of raising funds, the changes in the scale of production or service, modifications of the articles of association, adjustment in the management and in the number of employees, and other matters. The reorganization plan must be approved by the shareholders or the board as the case may be, and be filed with the reviewing department for recording purposes. The reorganization plan must be carried out within 180 days.

The persons in charge of the reorganization, including the reorganization supervisors, are liable if they violate laws, or are guilty of gross negligence resulting in economic loss to the corporation.

b. Liquidation Under the Corporation Law

Under the Guangdong Corporation Law, liquidation will take place if a corporation is declared bankrupt by a court order. Within thirty days after issuing the court order, the court must establish a liquidation group of three persons to take charge of the liquidation. The liquidation group has the power to convene meetings of the creditors and meetings of the board of directors or shareholders, take charge of the assets of the corporation, and prepare the balance sheet and the schedule of the assets. It also has the authority to continue to operate the business, prepare the liquidation plan, liquidate and dispose of

358. *Id.*
359. *Id.* art. 114.
360. *Id.*
361. *Id.* art. 115.
362. *Id.*
363. *Id.* art. 118.
364. *Id.* art. 127.
365. *Id.* art. 130.
366. *Id.* The liquidation group is appointed by the court only when the liquidation results from a court order, such as a bankruptcy order. This rule does not apply if the liquidation results from the voluntary dissolution.
367. *Id.* art. 133.
the company's assets, recover credits and pay off debts, distribute the assets, and represent the company in lawsuits and other activities. The liquidation group's decision-making is based on consensus, and if the liquidation group cannot reach a consensus, the court will make the decision.

Within ten days after the group is established, it must make a public notice about the liquidation in the local newspaper and notify the creditors in writing to report claims. The liquidation group shall propose a liquidation plan to be approved by the court. The creditors have the power to consider and comment on the plan, but unlike the National Bankruptcy Law, may not reject the plan.

The liquidated assets of a corporation are to be distributed in a priority similar to that of the National Bankruptcy Law: (1) expenses incurred during the liquidation, (2) employees' salary and social insurance, (3) tax, (4) debts, and (5) to shareholders or other parties holding equity interest. Where the assets are not sufficient for the distribution among the parties with the same priority, the payment must be pro rata. Shareholders and other parties holding an equity interest may receive a distribution only after all other expenses have been paid. The distribution among them can be made either in accordance with their shares of equity interest, or the preagreed proportion in a contract or the articles of association.

In the case of a "cooperative corporation," that is, a contractual joint venture, if the debts of the company exceed its assets, each party shall incur debts of the company by returning the cash distributed in accordance with the proportion by which the profits are shared. It is unclear to what extent the party needs to return the distributed cash. Since a cooperative corporation as a rule is a limited liability company, which means each party to the corporation is liable for the debts of the

368. Id.
369. Id. art. 134.
370. Id.
371. Id. art. 135.
372. Id. art. 138.
373. Id. art. 137. Article 137 merely requires the liquidation group to announce the liquidation plan for "comments" and listen to the creditors' "demands" at the creditors' meeting. The Article does not provide what the creditors' meeting can do on the liquidation plan. Cf. National Bankruptcy Law, supra note 289, arts. 15, 16.
374. Guangdong Corporation Law, supra note 82, art. 140.
375. Id.
376. Id. art. 141.
377. Id.
378. Id. art. 149.
corporation only to the extent of their capital contribution.\textsuperscript{379} The above rule probably refers only to the situation where the party has taken cash out of the corporation, so that the net worth of the company totals less than both sides' capital contributions.

After completing the liquidation, the liquidation group will report to the court.\textsuperscript{380} The liquidation group shall register the dissolution with the Administration of the Industry and Commerce within fourteen days after the liquidation report was approved by the court.\textsuperscript{381}

\textbf{J. Customs Regulations and Border Control}

1. Control Lines of the SEZs and Entry and Exit From Inland Area

The SEZs initially did not have a controlled physical border that separated them from inland areas. In 1982, the State Council decided to set up a barricade along the border between the Shenzhen SEZ and the inland area\textsuperscript{382} called the "control line" or "second line" (as opposed to the "first line" which refers to the border between Shenzhen and Hong Kong). This barricade was intended to prevent smuggling and tax evasion, control the inflow and outflow of the labor force, protect the industry in the inland area from damaging competition from the SEZs' businesses, and allow the government to further liberalize the SEZs' economic policy. The construction started in 1982 and by December, 1984 an eighty-four kilometer barricade was erected.\textsuperscript{383} The barricade consists of a patrol road along the border and on the inland side of the road, a barbed wire fence three meters high and about 109 kilometers long.\textsuperscript{384} There are twenty-nine entrances along the border controlled by the police and eight customs check points.\textsuperscript{385} The patrol


\textsuperscript{380} Guangdong Corporation Law, supra note 82, art. 142.

\textsuperscript{381} Id. art. 143.


\textsuperscript{383} Guowuyuan Tequ Bangongshi Fuzeren Guanyu Shenzhen Jingji Tequ Guanlixian De Jige Wenti Da Jizhewen (Responsible Persons of the Office of the SEZ Under the State Council Answer Questions of Reporters Concerning the Control Line of the Shenzhen Special Economic Zone) [hereinafter Answers on SEZ Control Line], XINHUA MONTHLY, 1986, No. 3, at 75.

\textsuperscript{384} Liang Wensen, supra note 382, at 26; \textit{Shenzhen Xiayue Shixing Erxian Guanli} (Shenzhen Implementing the Second Line Next Month), People's Daily, Mar. 19, 1986, at 1.

\textsuperscript{385} Regulations for Implementing the Provisions for Control of Persons Travelling between the Shenzhen Special Economic Zone and Inland Areas, arts. 7, 8 (1986) reprinted in, CCH Austl., supra note 12, ¶73-524.
road is exclusively used for patrol purposes by authorized vehicles, and other official vehicles may operate on the patrol road only with a special pass. Civilians, however, may continue to use the part of the patrol road that was a regular highway prior to the erection of the control line.

The control line was put into use on a trial basis in August 1984 and was officially enforced on April 1, 1986. The establishment of the control line proved effective. During the first year of its operation, the government seized smuggled items totaling 12 million yuan and levied taxes of 19 million yuan on the items transported to inland areas. Other SEZs have not established control lines, but are considering similar regulatory measures. Xiamen promises to establish a similar control line by 1988.

As the control line was put into use, the government enacted regulations governing the entry and exit between the inland area and the Shenzhen SEZ. These regulations set forth procedures by which the border control is enforced. These procedures indicate that the control line restricts primarily Chinese. Under the regulations, to enter a SEZ, Chinese from inland areas must hold a special pass issued for entering the border control area or "forbidden border area," with a special endorsement indicating that the pass holder's destination is the SEZ. Chinese in the SEZ must present a resident certificate for entry and exit. The regulations also designate some five other kinds of passes to enter the SEZ.

The regulations do not impose additional requirements for foreigners, including overseas Chinese, to enter or exit the SEZ. They only need to show regular entry or exit documents. Hong Kong or Macao Chinese residents who establish a business or purchase residential

386. Answers on SEZ Control Line, supra note 383, at 75.
387. Id.
388. Id.
389. Id.
392. Provisions of Control Line, supra note 389, art. 8(i). The passes refer to those previously used for entry into forbidden border areas.
393. Id. art. 8(iii).
394. Id. art. 8(ii), (iii), and (iv). For example, there are special passes for police, soldiers, officials, and peasants living in adjacent areas.
395. Id. art. 8(vi).
housing in the SEZ, however, must go to the check point at the border where they initially entered China to “process formalities” in order to enter the inland area from the SEZ. If they drive to the inland area from the SEZ, they must obtain an endorsement on their “home visit certificate” and possess a valid Chinese drivers license and license plate.

2. Customs Regulations

The most current customs regulations governing the SEZs were promulgated on March 25, 1986, just before the control line was officially put into operation. Shortly afterwards, the regional customs authority in charge of the Shenzhen SEZ also promulgated detailed implementing regulations. Other regional customs authorities in charge of SEZs are drafting similar regulations. The new customs regulations set up a SEZ customs area in conformity with the newly enforced “control line.” They authorize the customs authority in the SEZs to inspect and control all items that enter or leave the SEZs whether they were from or going to the inland areas or overseas. The persons who carry items to or from the SEZs must declare them to customs.

The regulations require that all transportation vehicles, ships, goods, luggage, and postal packages must enter or exit the SEZs from the railway stations, ports, airports, or postal service where the customs authority can thereby subject it to customs inspection. The owners or the persons in charge of these goods, transportation vehicles, luggage and postal packages must make a customs declaration.

a. Imports and Export From Overseas

To import items into a SEZ from overseas, an entity or an individual must present certain government documents. Under the Shenzhen Customs Regulations, a person intending to import items must apply to the city government for a “SEZ Import Approval Certificate” and

396. Id. art. 9.
397. Id.
398. SEZ Customs Regulations, supra note 73.
399. Implementing Regulations of the Kowloon Customs of the People’s Republic of China Concerning Supervision and Control over and Levying of and Exemption from Duties on Goods, Means of Transportation, Luggage and Postal Articles Entering or Leaving the Shenzhen Special Economic Zone (1986), [hereinafter Shenzhen Customs Regulations] reprinted in CCH Austl., supra note 12, ¶73-535.
400. SEZ Customs Regulations, supra note 73, art. 3.
401. Id.
402. Id. arts. 3, 14.
403. Id.
must entrust the companies that are authorized to engage in the import business to import the needed items.\textsuperscript{404} If the imports are for use inside the SEZ, after necessary approval by the proper authority, entities of the SEZ may enjoy exemption from customs duties and consolidated industrial and commercial tax.\textsuperscript{405} The exemption extends to the importation of machinery, equipment, components, parts, raw materials, fuel, vehicles, and beverages and foods used for construction or production in the SEZs.\textsuperscript{406} A reasonable quantity of office equipment and vehicles imported by the government agencies and enterprises are also exempted from customs duties and the consolidated industrial and commercial tax.\textsuperscript{407} The importation of items restricted by the state is not exempted, however, unless those items are for the entities' own use. The Shenzhen Customs Regulations designate twenty-four restricted items including vehicles, video recorders, copy machines, cameras, and computers.\textsuperscript{408} These restricted items are similar in other SEZs, and are subject to adjustment by the government from time to time.

All other items including tobacco products and liquor are subject to annual import quotas determined by the proper authority.\textsuperscript{409} Imports of these items within the quota levels may enjoy a fifty percent reduction of the regular rate of tax and duties.\textsuperscript{410} Imports beyond the quota levels are subject to regular import tax and duties.\textsuperscript{411} The regulations, however, do not provide guidelines about how such a quota system operates. It is unclear whether a quota for a given item is imposed on an across-the-board basis, issuing the permit on a first-come-first-served basis, or whether the government determines the quota level for each individual importer.

The SEZ products exported are exempted from export duties.\textsuperscript{412} "SEZ products" refer to products produced in the SEZ. Under the Shenzhen Customs Regulations, if an entity imports materials from the inland area for processing or manufacturing, the resulting products are considered "SEZ products" only if the materials have undergone "substantial" processing in the SEZ, resulting in at least a twenty percent

\textsuperscript{404} Shenzhen Customs Regulations \textit{supra} note 397, art. 4.
\textsuperscript{405} Id. art. 5.
\textsuperscript{406} Id.
\textsuperscript{407} Id.
\textsuperscript{408} Id. Annex 1.
\textsuperscript{409} Id. art. 5.
\textsuperscript{410} Id.
\textsuperscript{411} Id.
\textsuperscript{412} SEZ Customs Regulations, \textit{supra} note 73, art. 10.
increase in value.\textsuperscript{413}

The exempted imports must be used to produce items for exports, and unless specifically permitted by the state, may not be resold in the inland area.\textsuperscript{414} When such permission is given, the customs authority will levy the import tax and duties on the imported items or components. If the imported materials were converted into products to be sold in inland areas, the person making the customs declaration must clearly report the quantity, value and the name of the items used in the production;\textsuperscript{415} if not, the customs authority will tax the entire product.\textsuperscript{416}

b. Import and Export From Inland Area

To transport products produced in the SEZs to inland areas, the parties concerned must file a customs declaration. They must follow a specific approval procedure when importing into the inland area restricted products that consist entirely of imported components and materials. The owner or his agent must present to the customs authority a document evidencing that such an import is approved by the proper government authority.\textsuperscript{417} If the products are to be marketed within the Guangdong Province, the approval must be given by the provincial government.\textsuperscript{418} If the products are to be transported to other Provinces, a competent authority of the State Council must approve the shipment.\textsuperscript{419} For products not restricted by the State, however, the approval issued by the Shenzhen government will suffice to have the goods released.\textsuperscript{420}

For the restricted products made in part from imported materials or components and in part from domestic materials, the person who transported the goods or his agent need only present the customs authority with a certificate of approval issued by the “department specified by the State.”\textsuperscript{421} The law does not provide further details concerning such a department. It is clear, however, that to import these products, one does not have to follow a procedure as strict as that for the products completely made of imports.

To transport materials to the inland area for processing, the party

\begin{itemize}
\item \textsuperscript{413} Shenzhen Customs Regulations, \textit{supra} note 397, art. 6.
\item \textsuperscript{414} \textit{Id.} arts. 10, 11; SEZ Customs Regulations, \textit{supra} note 73, arts. 10, 11.
\item \textsuperscript{415} SEZ Customs Regulations, \textit{supra} note 73, art. 11.
\item \textsuperscript{416} \textit{Id.}
\item \textsuperscript{417} Shenzhen Customs Regulations, \textit{supra} note 397, art. 9(i).
\item \textsuperscript{418} \textit{Id.}
\item \textsuperscript{419} \textit{Id.}
\item \textsuperscript{420} \textit{Id.} art. 9(iii).
\item \textsuperscript{421} \textit{Id.} art. 9(ii).
\end{itemize}
concerned must first obtain approval from the proper department and then present the approval document and pertinent contract to the customs authority for registration. The customs authority will examine the documents and issue a "registration manual" to be used as an open license to record the materials entering the inland area and products returning to the SEZ. All products must be shipped back to the SEZ within the effective term of the contract. When the contract terminates the parties must report to the customs authority to cancel the earlier registration. Similar rules are also applicable to goods transported from the inland area to the SEZ for processing. In the latter situation, however, if the processed products have used imported components or materials, the party must pay the customs duties and tax.

The customs regulations permit the transport of SEZ products to the inland areas for exhibition. If the products contain imported materials or parts, the party must file a bond or a letter of guarantee as required by the customs authority and return the goods to the SEZ within six months.

Goods transported into the SEZs must also be declared to the customs for inspection. Goods imported from other parts of China which are later transported to the SEZ will not enjoy duty and tax refunds. When these goods are returned to the inland area, however, the customs authority will not impose a duty or tax if the party can submit the customs declaration endorsed when the goods were transported into the SEZ. If the party cannot file the required declaration or the goods are not the same items transported earlier, the customs authority will tax the goods as if they were imported items.

The customs regulations also require that all "transportation" vehicles of the SEZs be registered with the customs authority. The owners of these vehicles or ships must apply for approval from the proper authority and then obtain a registration from the customs authority. The customs authority will register the model, license number and the driver of the vehicle or ship. The regulations, however, do not define "transportation." It is thus unclear whether all the vehicles

422. Id. art. 16.
423. Id.
424. Id.
425. Id. art. 17.
426. Id.
427. Id. art. 18.
428. Id. art. 15.
429. Id.
430. Id.
431. SEZ Customs Regulations, supra note 73, art. 15.
432. Id.
of the SEZs must be registered with the customs authority or only those in the business of transportation. Furthermore, all the corporations in the SEZs that engage in import and export, whether these entities are special trading companies or simply importing materials for producing items for exports, must register with the customs authority. The customs authority may, if necessary, station its officers within these entities to supervise their business operation. These entities must provide the necessary office space and housing. The entities must also periodically report to the customs authority concerning the use, sale and storage of the imported items for inspection.

3. Entry and Exit

The regulations governing entry in and exit from the SEZs were promulgated on Nov. 17, 1981. The entry and exit procedure established by the regulations does not differ much from the regular procedures currently applicable in other Chinese cities. In fact, the regulations are largely superceded by a comprehensive national entry and exit statute.

In principle, foreigners must apply for a visa before entering the SEZs. Foreigners who enter China to negotiate contracts, participate in trade fairs, or resolve claims or disputes may request and receive visas from the visa departments of Zhuhai, Shenzhen and Xiamen's ports of entry without the need to apply for visas from Chinese consulates or embassies overseas. Those who set up factories or other businesses, purchase houses or live in the SEZs and who need to enter and exit on a regular basis may obtain multiple entry and exit visas if they can present a letter of proof from the SEZ development company. The regulations also allow issuance of group visas for foreigners or Chinese residents of Hong Kong and Macao who join tourist groups in Hong Kong and Macao to visit SEZs. Transport vehicles may travel be-

433. Id. art. 4.
434. Id.
435. Id.
436. Id.
439. Id. art. 1.
440. Entry and Exit Regulations, supra note 437, art. 3(i).
441. Id. art. 5.
tween the SEZs and Hong Kong or Macao upon receiving government approval and a pass issued by the security bureau.\textsuperscript{442}

Foreigners who work in the SEZs or have purchased housing there may receive a resident permit if they need to stay over a year, or temporary resident permit if they stay over half a year, but less than a year.\textsuperscript{443} Foreigners who apply to stay in China for one year or more must also submit a health certificate issued by an overseas health institution.\textsuperscript{444} Under the immigration rules enforced in the Shenzhen SEZ since April 1987, the health certificate must be issued by a publicly owned hospital or be notarized if issued by a privately owned hospital.\textsuperscript{445} The certificate must also clearly indicate various examinations particularly those for contagious diseases, veneral diseases and AIDS.

The establishment of the control line between the SEZs and inland areas allows the government to adopt more liberal entry and exit procedures for the SEZs, procedures not available in other Chinese cities. On May 25, 1987, the Zhuhai SEZ announced a new entry and exit rule which allows foreign passport holders to enter the Zhuhai SEZ without receiving visas from a Chinese consulate or embassy overseas.\textsuperscript{446} Under the new rule, foreigners who intend to visit Zhuhai may apply for a "SEZ tourist visa" from the visa section of the security bureau located at the Gongbei check point.\textsuperscript{447} To apply for such a special visa, foreigners do not need to fill out application forms, nor are they required to submit photos as is commonly required for visa applications. They only need to fill out a simplified entrance and exit form. The visa will entitle the visa holders to remain in Zhuhai city for three days. They may also apply to the security bureau for an extension or for an endorsement that will allow them to travel to other areas of China.\textsuperscript{448}

\begin{itemize}
  \item 442. \textit{Id.} art. 10.
  \item 443. \textit{Id.} art. 6.
  \item 444. Immigration Regulations, \textit{supra} note 438, art. 5(7).
  \item 445. \textit{Waiguoren Dao Shenzhen Jueliu Yinian Yishang Gonganjiguan Yaoqiu Tigong Jiankang Zhengming} (Security Authority Requires Foreigners Staying In Shenzhen One Year or More to Submit Health Certificates), People's Daily, July 13, 1987, at 4.
  \item 447. \textit{Id.}
  \item 448. \textit{Id.}
\end{itemize}
III. THE LEGAL STRUCTURE OF ECONOMIC AND TECHNOLOGICAL
DEVELOPMENT ZONES

A. Introduction

The Economic and Technological Development Zones represent a continuity and outgrowth of the Special Economic Zones, but were launched on a much broader basis and with legal and economic innovations. As of early 1987, thirteen ETDZs had been approved in twelve major coastal cities. * Most of the major ETDZs have promulgated a set of laws and regulations which, in addition to a few existing national laws and regulations specially applicable to the ETDZs, constitute the legal framework of the ETDZs.

The ETDZs are substantially similar to the SEZs. Similarity exists in the preferential treatment, regulatory and legislative framework, and administrative structure of the SEZs and ETDZs. This similarity reflects the Chinese government's general recognition of the success of the SEZs and its determination to expand the basic economic policy of the SEZs.

The ETDZs differ, however, from the SEZs in several important respects. The most prominent one is the emphasis of the ETDZs on developing production enterprises and scientific and technological research institutions which directly influence China's industrial modernization. A high ranking Chinese official distinguished ETDZs from SEZs as follows:

The SEZ is a comprehensive and diversified economic development zone. Investment may be made in all areas of industry, agriculture, animal husbandry, breeding, tourism, housing and building, high-tech research and manufacturing that bear significance in international economic cooperation and technological exchanges. Investment may also be made in other areas which our country and foreign business both find interesting. The ETDZ, on the other hand, places emphasis on production enterprises or scientific and technological research institutions with the purpose of exploring new technology, producing new products and developing new sectors of industry. * * *  

449. Yanhai Kaifang Chengshi Jian 13 Ge Kaifaqu Waishang Touzi Banchang Tiaojian Ritwen Wanshan (Coastal Open Cities Set Up 13 ETDZs; Environment for Foreign investors to Set Up Factories is Improving), People's Daily, Dec. 11, 1986, at 1.

The coastal cities that have established ETDZs are Dalian, Qinghuangdao, Tianjin, Yantai, Qingdao, Lainyungang, Nantong, Ningpo, Fuzhou, Guangzhou, Zhanjiang and Shanghai. Shanghai has two ETDSs, Minxing and Hongqiao. Among the fourteen open cities, Wenzhou and Beihai are the only two that have not set up ETDZs.

450. Gu Mu Tongzhi Tan Yanhai Kaifang Zhengce (Comrade Gu Mu Talks About
Accordingly, preferential treatment in the ETDZs is available only for production enterprises, whereas the SEZs give universal preferential treatment to both industry and services.451

Another difference between the ETDZs and the SEZs is that the ETDZs have an obvious geographical advantage. The SEZs are established in South China in the adjacent provinces of Guangdong and Fujian.452 Many of China's industrial bases and human resources are located in several large cities along the east coast, but to take advantage of the preferential treatment of the SEZs, an investor must locate its project in a limited area sometimes far away from markets and supplies. Because transportation and communication systems have not yet been well established in the PRC, location can be of great significance to the success of the business operation. Furthermore, when a project located in a SEZ in Guangdong Province depends on supplies and markets located in North China, many transactions must be done on an inter-provincial basis, which means more governmental bureaucracy and red tape. Since there are a greater number of ETDZs and they are spread among many cities along the coast where the transportation links and industrial infrastructure are, in most instances better developed than in other areas in China, the geographical limitations have been kept to a minimum.

Establishment of the ETDZs was approved by the central government in early 1984.453 In November of the same year, the State Council issued interim regulations outlining the basic preferential tax treatment effective in the ETDZs and prescribing the role of regional governments in the administration of the ETDZs.454 Regional governments are vested with discretion to regulate the ETDZs mainly in the area of local taxes. These and other areas where there are no compulsory or uniform national rules are where discrepancies in ETDZ laws arise.

The ETDZs are being developed gradually. The first phase of development commenced in late 1984 and early 1985 and involved a total of 117.15 square kilometers, with a starting development area of about 23.89 square kilometers.455 The primary goal of this early stage of de-
development was to build infrastructure and to provide energy and other basic public facilities necessary for the establishment of foreign investment. To this end, the government encouraged foreign investment early in the development process. The major ETDZs provided special preferential treatment for early investors, in order to accelerate the pace of foreign investment. By early 1987, foreign investors had already invested in over 300 projects in the ETDZs, an impressive number in light of the ETDZs’ small geographical area. The development of the ETDZs, however, is unbalanced, some major ones such as Tianjin, Dalian and Guangzhou have been very successful in attracting foreign investments, whereas others have been less so.

B. Legal Structure of the ETDZs

The creation and development of the ETDZs in the People’s Republic of China has led to the emergence of a new body of law. The leading ETDZs, such as those in Guangzhou, Dalian and Tianjin have promulgated diverse regulations governing areas such as administration, taxation, land, labor, technology transfer, foreign economic contract law, and enterprise registration. In early 1985, the Guangzhou ETDZ promulgated seven regulations. The Dalian ETDZ promulgated five regulations in 1985, most of which were completely revised

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456. Coastal Open Cities Set Up 13 ETDZs and Environment for Foreign Investors to Set Up Factories is Improving, supra note 449.

457. These seven regulations were promulgated by the city government of Guangzhou on April 9, 1985. They are: Interim Regulations on the Guangzhou Economic and Technological Development Zone [hereinafter Guangzhou Interim Regulations]; Interim Regulations of the Guangzhou Economic and Technological Development Zone for Technology Import [hereinafter Guangzhou RTI]; Tentative Procedures of the Guangzhou Economic and Technological Development Zone for Land Management [hereinafter Guangzhou Land Regulations]; Tentative Regulations of the Guangzhou Economic and Technological Development Zone for the Collection of Industrial and Commercial Taxes [hereinafter Tentative Guangzhou Tax Regulations]; Interim Regulations on Certain Matters Relating to Inland Associated Enterprises in the Guangzhou Economic and Technological Development Zone; Tentative Procedures for the Registration and Administration of Enterprises in the Guangzhou Economic and Technological Development Zone [hereinafter Guangzhou Registration Procedures]; and Tentative Procedures for Labor and Wage Management in Enterprises in the Guangzhou Economic and Technological Development Zone [hereinafter Guangzhou Labor Regulations]. The regulations are reprinted in 1 RULES AND REGULATIONS OF GUANGZHOU ECONOMIC AND TECHNOCAL DEVELOPMENT ZONE 2-55 (Administrative Commission of Guangzhou Economic and Technological Development Zone ed. 1985). The Guangzhou Interim Regulations were replaced in early 1987 by the Regulations of Guangzhou Economic and Technological Development Zone (1987) [hereinafter Regulations of Guangzhou ETDZ], reprinted in, China Economic News, April 6, 1987, at 8-10 and April 13, 1987, at 10-11.
and reenacted in 1987. The Tianjin ETDZ issued four regulations in mid-1985, as did the Ningpo ETDZ. Other ETDZs have also en-

458. These regulations were promulgated by the city government of Dalian on October 15, 1984. They include: Regulations of the Dalian Economic and Technological Development Zone on Preferential Treatment [hereinafter Dalian Preferential Treatment Regulations]; Procedures for the Registration of Enterprises in the Dalian Economic and Technological Development Zone; Regulations of the Dalian Economic and Technological Development Zone on Economic Contracts with Foreign Elements [hereinafter Dalian FECL]; Procedures for Labor and Wage Management in Enterprises in the Dalian Economic and Technological Development Zone [hereinafter Dalian Labor Regulations]; and Procedures of the Dalian Economic and Technological Development Zone for Land Use and Management [hereinafter Dalian Land Regulations]. These regulations are reprinted in GUIDE TO INVESTMENT IN DALIAN ECONOMIC & TECHNOLOGICAL DEVELOPMENT ZONE 50-61 (Administrative Committee of Dalian Economic and Technological Development Zone ed. 1985).

Except for the regulations on contracts, all other regulations were revised and reenacted in 1987. The new regulations are: Regulations for the Administration of the Dalian Economic and Technological Development Zone (1987) [hereinafter Dalian Administrative Regulations] reprinted in CCH Austl., supra note 12, § 83-015, (these regulations replaced the Dalian Preferential Treatment Regulations); Administrative Procedures of the Dalian Economic and Technological Development Zone Concerning the Registration of Foreign Investment Enterprises (1987), reprinted in CCH Austl., supra note 12, ¶ 83-003, (these regulations replaced the Procedures for the Registration of Enterprises in the Dalian Economic and Technological Development Zone); Administrative Procedures of the Dalian Economic and Technological Development Zone Concerning the Use of Land (1987) [hereinafter 1987 Dalian Land Regulations] reprinted in CCH Austl., supra note 12, ¶ 83-012, (these regulations replaced the Dalian Land Regulations); Administrative Procedures of the Dalian Economic and Technological Development Zone Concerning Labor Management in Foreign Investment Enterprises (1987), reprinted in CCH Austl., supra note 12, ¶ 83-009, (these regulations replaced the Dalian Labor Regulations).

459. These regulations were adopted on July 20, 1985, by the Standing Committee of the Tianjin City People's Congress. They include: Regulations for the Administration of Tianjin Economic-Technological Development Area [hereinafter Tianjin Administrative Regulations], Regulations for the Registration and Administration of Enterprises in Tianjin Economic-Technological Development Area [hereinafter Regulations of Tianjin ETDZ]; Regulations for Labor Management of Tianjin Economic-Technological Development Area [hereinafter Tianjin Labor Regulations]; Regulations for Land Management of Tianjin Economic-Technological Development Area [hereinafter Tianjin Land Regulations]. These regulations are reprinted in A BRIEF OF TIANJIN ECONOMIC-TECHNICAL DEVELOPMENT AREA 27-46 (Administrative Committee of the Tianjin Economic-Technological Development Area ed. 1985) [hereinafter TIANJIN BRIEF].

acted or are in the process of enacting similar regulations.\textsuperscript{461} These regulations, along with official policy guidance and relevant regulations promulgated by the central government, constitute the basic legal framework of ETDZs in the PRC.

The law governing ETDZs consists of three systems. First, there are the national regulations that allow special preferential treatment in the ETDZs. These include the State Council's regulations issued in late 1984 governing the reduction and elimination of the enterprise income tax and the consolidated industrial and commercial tax.\textsuperscript{462} The State Council regulations also delineate the basic preferential treatment given the ETDZs and the scope of each regional government's discretion in administering this treatment. These regulations constitute the foundation of the special legislative structure in the ETDZs and provide the legal basis for the emergence of many regional rules and regulations governing the ETDZs.

Second, most of the ETDZs have basic regulations which serve as constitutions. For example, there are the Regulations of the Guangzhou ETDZ\textsuperscript{463} and the Regulations for Administration of the Tianjin ETDZ.\textsuperscript{464} The scope of the regulations differs from one zone to another, but most include four basic chapters. Chapter One, typically called the General Principle Chapter, provides the basic policy of the ETDZ toward investment, the relationship of the special regulations of the ETDZ with the national laws, and other general matters. Chapter Two details the administration of the ETDZ, and focuses on the func-

\textsuperscript{461} In August 1986 the Yantai ETDZ was considering drafting thirteen regulations. See Yantai Kaifaqu Jubei Jiaohao Touzi Tiaojina (Yantai ETDZ Establishing Improved Investment Environment), People's Daily, Aug. 3, 1986, at 3. However, as of July 1987, these regulations had not yet been promulgated. Shandong Province, however, promulgated a few regulations governing both the Yantai and Qingdao ETDZs. See Interim Provisions of Land Management of Shandong Economic and Technological Development Zones [hereinafter Shandong Land Regulations], Interim Provisions Concerning Registration of Enterprises of Shandong Economic Technological Development Zones, and Interim Provisions of Shandong Economic and Technological Development Zone on Labor Management (copies of these laws were obtained from the Administrative Committee of Yantai Economic and Technological Development Zone). The copies do not indicate the authority of promulgations or adoption, nor do they indicate the date of adoption or effectiveness. Shanghai has also promulgated regulations governing ETDZs. See Provisions for Preferential Treatment to Foreign Investment in Minxing and Hongqiao Economic and Technological Development Zones (1986) [hereinafter Preferential Provisions of Minxing and Hongqiao ETDZs] reprinted in China Economic News, Apr. 13, 1987, at 4-5. Shanghai also enacted several other regulations which apply to the ETDZs as well as Shanghai city in general.

\textsuperscript{462} 1984 State Council Tax Regulations, supra note 12.

\textsuperscript{463} See Regulations of the Guangzhou ETDZ, supra note 457.

\textsuperscript{464} Tianjin Administrative Regulations, supra note 459.
tion and authority of the Administrative Commission. Chapter Three provides for preferential treatment, particularly through the tax benefits accorded foreign investors in the ETDZ. Finally, Chapter Four provides for the registration and regulation of business enterprises operating in the ETDZ. Some ETDZs also provide general regulations for labor, enterprise registration and other matters, while others prefer to enact separate regulations governing these matters. Most of the ETDZ regulations resemble the SEZ regulations promulgated in 1980 by the government of Guangdong Province.

Third, each ETDZ has several separate regulations governing specific fields. In Guangzhou, for example, there are six special regulations governing technology transfers, land, tax, joint ventures with inland businesses, registration of enterprises, and labor. The Tianjin ETDZ has four special regulations dealing with labor, trade unions, land, and the registration of enterprises. Once again, these special regulations bear great similarity to those enacted for the SEZs.

The similar legal frameworks of the ETDZs and SEZs result from their parallel economic and policy goals of attracting foreign investment through preferential treatment. The similarities are also due to historical reasons underlying the creation of the ETDZ's legal framework. As mentioned above, the mandate to set up the ETDZs came in late 1984 and the actual construction of the zones started in early or mid-1985. Most of the regulations in the leading ETDZs were promulgated in mid-1985, a time when only a small number of foreign investors did business there. Because of their inadequate experience in dealing with foreign investment in the ETDZs, the lawmakers naturally looked to the practice of the SEZs for guidance.

C. Administration of the ETDZs

The institutional structure for the administration of the ETDZs varies from zone to zone. Most of the ETDZs, however, have followed the general pattern established by the SEZs. Generally, the ETDZs have a set of regulatory institutions headed by an Administrative Committee in addition to a group of business supporting institutions.

1. The Administrative Committee

Every ETDZ has an Administrative Committee which acts as its regulatory authority. The Administrative Committee generally consists

465. Regulations of the People's Republic of China on Special Economic Zones in Guangdong Province, supra note 63.
466. See supra note 457 and accompanying text.
of a chairman, a vice-chairman and several commissioners. In most instances, it also has a chief accountant and a chief economist. The Committee is organized and controlled by the city government, and it exercises its power within the scope of authority delegated by the city government.\textsuperscript{467} The Committee is often given extensive quasi-legislative and administrative powers to govern the ETDZs.\textsuperscript{468} It may enact and promulgate administrative regulations for the ETDZs. It is also empowered to formulate the development plan of the ETDZ, and once the plan is approved by the city government, to implement it. The Committee has an exclusive power to administer the basic business supporting services, such as public utilities and other public facilities of the zone, and to set standards for fees and charges. The Committee is also responsible for the examination and approval of investment projects and the administration of export and import activities in the zone.

The Committee exercises its authority through a variety of departments under its leadership. The number and names of these departments vary among the ETDZs, though they are substantially similar in operation. In the Tianjin ETDZ, for example, eleven departments or offices under the Committee are responsible for the routine administration of the zone.\textsuperscript{469} They include the Tax Bureau, the Bureau for Administration of Industry and Commerce, the Finance Bureau, the Policy Studying Office, the Personnel Office, the Budget and Accounting Office, the Office for Enterprise Management, the Planning Office, and the Economic Contract Arbitration Committee. In the Dalian ETDZ, the departments under the Committee include the Administrative Office, the Planning Bureau, the Bureau for Administration of Industry and Commerce, the Finance and Tax Bureau, the Bureau for Service and Technology, the Public Security Bureau, and the Investigation and Research Office.\textsuperscript{470}

2. Business Supporting Institutions

Business supporting institutions of the ETDZ are quasi-official in nature and are considered to be independent business entities in their economic dealings. These institutions take the form of corporations

\textsuperscript{467} E.g. Regulations of Tianjin ETDZ, supra note 459 art. 10 and Regulations of Guangzhou ETDZ, supra note 457 arts. 8, 9.

\textsuperscript{468} Regulations of Tianjin ETDZ, supra note 459, art. 11; Regulations of Guangzhou ETDZ, supra note 457, art. 9.

\textsuperscript{469} See Regulations of Tianjin ETDZ, supra note 459.

\textsuperscript{470} Wang Qiang, Dalian Jingji Jishu Kaifaqu De Touzi Huanjing (Investment Environment of Dalian Economic and Technological Development Zone), ECON. REP., Apr. 1, 1985, at 11.
and are set up by the city governments. They operate primarily in the areas of power and water supply, highway and site construction, housing, and communications. They also provide consultation and liaison services for both domestic and foreign investors.

The organizational structure of these business-supporting institutions takes one of two forms. The ETDZs have established either: (1) a general corporation with several supporting subsidiaries providing service in each specific area; or (2) a few independent supporting corporations each specializing in a particular field.

The Tianjin ETDZ has used the first type of structure, and the Tianjin Economic-Technological Development Area Company (TEDAC) is in charge of the overall business development and operation of the zone. The TEDAC's major responsibilities include raising funds for constructing infrastructure, making investments, setting up enterprises and engaging in foreign trade. The board of directors of the TEDAC is appointed by the city government, while the president of the company is appointed by the board of directors. The TEDAC has set up nine subsidiaries directly responsible for TEDAC's business operations. They are the Tianjin TEDAC Construction Company, Industrial Investment Company, Import & Export Company, Labor Service Company, Public Utility Company, Material Supply and Marketing Company, Energy Company, New Technological Development Department, and the Seaside Architectural Design Institute.

The Dalian ETDZ, on the other hand, has set up independent supporting corporations such as the Economic Development Company, the Development and Construction Company, the Science and Technology Development Company, the Social Service Company and the Labor Service Company. Although the Dalian ETDZ lacks a general parent company similar to the TEDAC, the difference in approach is due to the local governments' business preferences, rather than to any specific policy reasons.

D. Preferential Tax Policy

Preferential tax treatment is the key element in the efforts of the ETDZs to attract foreign investment. The basic tax structure of the ETDZs is similar to that of the SEZs, except that the preferential treatment in the ETDZs applies only to industrial manufacturing and

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471. TIANJIN BRIEF, supra note 459, at 47.
472. Id.
473. Id.
474. Wang Qiang, supra note 470.
475. See supra text accompanying notes 62-71.
scientific or technological development projects. As with the SEZs, foreign investment enterprises in the ETDZs enjoy a fifteen percent flat tax rate and foreign parties to a Sino-Foreign joint venture enjoy an exemption from the regular ten percent tax on their profits remitted overseas.\textsuperscript{476} Foreigners who do not have establishments in the ETDZ enjoy a reduced ten percent withholding tax for interest, royalties, rent and dividends from the ETDZs.\textsuperscript{477} This ten percent can be reduced or exempted if the project involves advanced technology or favorable terms to the Chinese. The Consolidated Industrial and Commercial Tax (CICT) is also exempted for exports of unrestricted items, and for imports of production means, raw materials, components, transportation means, office equipment and a reasonable amount of personal belongings.\textsuperscript{478}

The basic tax policy is determined by the central government. The discretion of each ETDZ in granting tax privileges is limited to the areas of local tax, consolidated industrial and commercial tax, depreciation, and other less significant areas. Dalian formerly provided a local tax exemption for three years and a fifty percent tax reduction for five more years.\textsuperscript{479} This policy was modified to a general seven-year local income tax exemption starting with the first profitable year.\textsuperscript{480} Guangzhou initially provided a mandatory seventy percent local tax reduction and a complete exemption for selected projects.\textsuperscript{481} This policy was modified in 1987, and the new law provides that foreign investors "may apply to the government" for a tax reduction or exemption.\textsuperscript{482} The following is a summary of the tax benefits given by ETDZs not provided by national tax law:

\textbf{Dalian ETDZ:}\textsuperscript{483}

\begin{enumerate}
\item Eleven year local tax exemption;
\item CICT can be exempted or reduced if taxpayers have financial difficulties.
\end{enumerate}

\textbf{Qinhuangdao ETDZ:}\textsuperscript{484}

\begin{itemize}
\item \textsuperscript{476} 1984 State Council Tax Regulations, supra note 12, II, 1.
\item \textsuperscript{477} Id. II, 4.
\item \textsuperscript{478} Id. II, 5.
\item \textsuperscript{479} Dalian Preferential Treatment Regulations, supra note 458, art.12.
\item \textsuperscript{480} Dalian Xuanbu Guli Waishang Touzi Xin Guiding (Dalian Pronounced New Provisions for Encouraging Foreign Investment), China Economic News, Dec. 29, 1986, at 15.
\item \textsuperscript{481} Guangzhou Interim Regulations, supra note 457, art. 13.
\item \textsuperscript{482} Regulations of Guangzhou ETDZ, supra note 457, art. 28.
\item \textsuperscript{483} This summary is based on Section 4 of the Dalian Administrative Regulations, supra note 458.
\item \textsuperscript{484} Qinhuangdao ETDZ on Preferential Treatments ch. (v.)2 (1985) reprinted in
Enterprises operating ten years or more are given ten year local tax exemptions and may continue to enjoy exemption or reduction after the ten year period expires.

*Tianjin ETDZ:*\(^{485}\)

1. Accelerated depreciation upon approval;
2. Exemption or reduction of CICT for entities that have difficulties in the early stage of development,
3. Local tax exemption for projects established prior to 1990.

*Lianyungang and Nantong ETDZs:*\(^{486}\)
Complete local tax exemption.

*Shanghai (Minxing and Hongqiao) ETDZs:*\(^{487}\)

1. Complete local tax exemption for projects set up prior to 1995;
2. Exemption of taxes on house for five years;
3. Exemption or reduction of the CICT if taxpayers have financial difficulties.

*Fuzhou (Mawei) ETDZ:*\(^{488}\)

 Preferential treatments for overseas Chinese only: (1) five year income tax exemption from the first profitable year on and 30% reduction indefinitely thereafter, if projects operate ten years or more; or (2) three year income tax exemption and 50% tax reduction from the first profitable year on, if projects operate more than five years, but less than ten years.

*Zhanjiang ETDZ:*\(^{489}\)

1. Complete exemption of local tax;
2. One to three years of up to a 30% income tax reduction after the regular tax holiday expires.

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\(^{485}\) Regulations of Tianjin ETDZ, *supra* note 459, arts. 31, 28 and 34.


\(^{487}\) Preferential Provisions of Minxing and Hongqiao ETDZs, *supra* note 461, arts. 3, 4, and 5.

\(^{488}\) Preferential Treatments for Foreign Investment in Fuzhou, *reprinted in Guide to Investment in China*, *supra* note 171, at 278.

\(^{489}\) Preferential Treatments for Foreign Investment in Zhanjiang *reprinted in Guide to Investment in China*, *supra* note 171 at 286.
E. Land Law

Most major ETDZs have enacted land regulations which follow a pattern similar to those of the SEZs. The power to regulate and administer land use is often vested with the Administrative Committee of the ETDZ through its zoning office. To obtain the land use privilege, an entity must apply to the Administrative Commission or to the zoning office, as the case may be. The Commission or the zoning office will then issue a land use certificate which serves as the official license. Under the land regulations of Dalian, Ningpo and Guangzhou, once the application is approved, the zoning office will negotiate a land use contract with the applicant on behalf of the government. The contract must specify the area, location, use, and term of use of the land. It must also detail the requisite deposit, fees, and penalties. The Ningpo and Tianjin ETDZs require that the blueprint for construction be produced within six months of the effective date of the certificate and that actual construction begin within nine months of such date. Failure to meet this requirement may result in revocation of the certificate. These provisions are modeled after similar provisions in the land regulations of the SEZs. The land regulations of the Guangzhou ETDZ do not contain such express provisions but they require investors to submit the blueprint and commence the construction within the time limit specified by the land regulatory authority.

The substantive aspects of land regulations concern the term and price. Shanghai, Tianjin and Dalian do not provide for terms; it seems the term is to be determined on a case-by-case basis. Under the land regulations of other ETDZs, the maximum term for land use usually ranges from twenty to fifty years, depending on the nature of the business operation. Similar to the SEZs, educational and scientific establishments are treated most preferentially and are given a term of fifty years in all the major ETDZs. Service sector projects, on the other hand, may only have a twenty-year term. Upon expiration, the land use contract and certificate may be renewed with government approval. The following is a summary of land-use terms in major ETDZs:

490. See e.g., Tianjin Land Regulations, supra note 459, art. 4.
491. 1987 Dalian Land Regulations, supra note 458, art. 3; Guangzhou Land Regulations, supra note 457, art. 9; Implementing Procedures for Land Management of Sino-Foreign Equity Joint Ventures, supra note 460, art. 6.
492. Implementing Procedures for Land Management of Sino-Foreign Equity Joint Ventures, supra note 460, art. 8; Tianjin Land Regulations, supra note 459, art. 6.
493. See supra notes 170 and 171 and accompanying text.
494. Guangzhou Land Regulations, supra note 457, art. 8.
495. Id., art. 12; 1987 Dalian Land Regulations, supra note 458, art. 8; Shandong Land Regulations, supra note 461, art. 10.
Land-use Terms in Major ETDZs (in years)

<table>
<thead>
<tr>
<th></th>
<th>Guangzhou</th>
<th>Qingdao</th>
<th>Yantai</th>
<th>Ningpo</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>30</td>
<td>40</td>
<td>40</td>
<td>30</td>
</tr>
<tr>
<td>Storage</td>
<td>30</td>
<td>—</td>
<td>—</td>
<td>30</td>
</tr>
<tr>
<td>Commerce and Service</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Office Building</td>
<td>—</td>
<td>50</td>
<td>50</td>
<td>20</td>
</tr>
<tr>
<td>Tourism</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>20</td>
</tr>
<tr>
<td>Housing</td>
<td>50</td>
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<td>50</td>
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<tr>
<td>Science &amp; Technology</td>
<td>50</td>
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<td>50</td>
</tr>
<tr>
<td>Health</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Husbandry, Breeding</td>
<td>—</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
</tbody>
</table>

Many ETDZs follow the land regulations of the Xiamen SEZ and do not publish land-use fee schedules. Dalian, Guangzhou and several other ETDZs, however, have promulgated fee schedules. Tianjin merely provides a general guideline that the minimum land-use fee in a suburb is 5 yuan per square meter and 10 in an urban area.\(^496\) The following chart is a summary of land-use fees in several ETDZs:\(^497\)

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496. GUIDE TO INVESTMENT IN CHINA, supra note 171, at 266.
497. Measures Concerning Land Use Administration for Sino-Foreign Joint Venture Enterprises in Shanghai Municipality [hereinafter Shanghai Land Regulations], reprinted in, CCH Austl., supra note 12, ¶ 91-033 (see the attached table); Several Provisions Concerning Preferential Treatments in Qinhuangdao Economic and Technological Development Zone, ch. 2(ii)(2) (1985), reprinted in GUIDE TO INVESTMENT IN CHINA, supra note 171, at 277. [hereinafter Preferential Provisions of Qinhuangdao ETDZ] (see the attached table).
**Land-use Fees in Major ETDZs (yuan per square meter)**

<table>
<thead>
<tr>
<th></th>
<th>Shanghai Minxing ETDZ</th>
<th>Shanghai Hongqiao ETDZ</th>
<th>Yantai Qingdao</th>
<th>Qinghuangdao</th>
<th>Guangzhou</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>3-9</td>
<td>30-70</td>
<td>1-1.3</td>
<td>1-1.2</td>
<td>2</td>
</tr>
<tr>
<td>Storage</td>
<td>3-9</td>
<td>30-70</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Housing</td>
<td>6-10</td>
<td>35-70</td>
<td>4-6</td>
<td>3-6</td>
<td>8</td>
</tr>
<tr>
<td>Office Building</td>
<td>6-10</td>
<td>35-70</td>
<td>4-6</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Tourism</td>
<td>-</td>
<td>-</td>
<td>11-15</td>
<td>-</td>
<td>9</td>
</tr>
<tr>
<td>Commerce &amp; Service</td>
<td>8-15</td>
<td>40-80</td>
<td>11-15</td>
<td>10-14</td>
<td>12</td>
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<tr>
<td>Recreation</td>
<td>2-6</td>
<td>20-40</td>
<td>0.3-0.4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Education</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
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<tr>
<td>Science &amp; Technology</td>
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<td>-</td>
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<tr>
<td>Health</td>
<td>2-5</td>
<td>12-25</td>
<td>-</td>
<td>-</td>
<td>2</td>
</tr>
<tr>
<td>Husbandry, Breeding</td>
<td>-</td>
<td>-</td>
<td>0.3-0.4</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Similar to the land regulations of the SEZs, the land regulations of the ETDZs also provide for limitations on the range of land-use fees in order to maintain stability. As a rule, each time the fee is adjusted it must remain within thirty percent of the previous level.498 The government may not make adjustments during the first five years of the receipt of the land-use certificate or more frequently than once every three years.499

In addition to the land-use fee, ETDZs also impose a lump sum duty called the site development fee. Under the earlier land regulations of the Dalian ETDZ, for example, the site development fee included land expropriation fees, rehabilitation fees, and costs incurred to provide the basic support facilities for land users.500 The site development fee, however, did not include costs that the land user may incur in connecting the on site facilities to the public gas and power facilities located off site. The same regulations provided that the site development fee ranged from 165 to 190 yan per square meter depending on the area and nature of the business establishment involved.501 The new land regulations promulgated in 1987 do not provide for a site development fee. The new regulations, however, significantly increased the

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498. For example Dalian Land Regulations, *supra* note 458, art. 15.
499. *Id.*
500. *Id.* art. 16.
501. *Id.*
land-use fees. For example, fees increased from 1-1.3 yuan per square meter for industry under the earlier regulations to 6-7 yuan, which far exceeds the thirty percent limit of adjustment that the government self-imposed. Such an increase of land-use fees probably reflects the exemption of the site development fee under the new regulations. The site development fee in the Qinhuangdao ETDZ ranges from 100-180 yuan per square meter.\textsuperscript{502} The Tianjin, Qingdao, Yantai and Ningpo ETDZs also expressly require such a similar site development fee, but do not provide for general standards.\textsuperscript{503}

Preferential treatment for foreign investors is an important part of the ETDZ land regulations. Several land regulations grant exemptions from land-use fees to educational, scientific, cultural, and medical establishments in addition to other nonprofit establishments set up for the benefit of the general public.\textsuperscript{504} To accelerate the development of the ETDZs, some land regulations encourage investors to participate in public utility or business support construction in exchange for preferential terms for land use. For instance, under the land regulations of the Tianjin ETDZ, a foreign investment enterprise may be given a reduction of or an exemption from land-use fees for five to ten years if the project is in the areas of the supply of water, gas, electricity or heat, or the construction of drainage systems or roads.\textsuperscript{505} The earlier land regulations of the Dalian ETDZ contained a more generous fifteen-year exemption, but such a provision was not in the new regulations.\textsuperscript{506} The Quingdao and Yantai ETDZs allow an exemption from the land-use fee when foreign investment enterprises encounter financial difficulties.\textsuperscript{507} These two ETDZs also provide for an exemption or reduction of the land-use fee for projects that involve “exceptionally advanced technology” or that are urgently needed by China.\textsuperscript{508}

\textsuperscript{502} Preferential Provisions of Qinhuangdao ETDZ, \textit{supra} note 497, ch. 2(i)(2), Guangzhou Land Regulations, \textit{supra} note 497.

\textsuperscript{503} Regulations of Tainjin ETDZ, \textit{supra} note 459, art. 23; Shandong Land Regulations, \textit{supra} note 461, art. 13; Ningpo Land Regulations, \textit{supra} note 460, art. 11.

\textsuperscript{504} See, e.g., Tianjin Land Regulations, \textit{supra} note 459, art. 11; Preferential Provisions of Qinhuangdao ETDZ, \textit{supra} note 497, ch. 2(iii)(3).

\textsuperscript{505} Tianjin Land Regulations, \textit{supra} note 459, art. 11.

\textsuperscript{506} Dalian Land Regulations, \textit{supra} note 458, art. 17.

\textsuperscript{507} Shandong Land Regulations, \textit{supra} note 461, art. 23.

\textsuperscript{508} \textit{Id.} art. 19.
IV. COASTAL CITIES AND OPEN REGIONS

A. Introduction

Since 1984, the Chinese government extended preferential tax treatment to foreign investments in the coastal cities. The preferential tax policy initially covered fourteen coastal cities and later extended to a large adjacent area in southern China. At present, most cities along the Chinese coast are part of the preferential area. Since 1985, rumors have circulated that the Chinese government decided to "close" some of the coastal cities that were just opened. These statements, however, have never been officially confirmed. Moreover, the Chinese government stated that the new policy was to give priority to the economic development of some of the cities, instead of "closing" others. The Chinese government expressly stated that it will give priority to the projects established in Dalian, Guangzhou, Tianjin and Shanghai in allocating resources and foreign exchange. Dalian, Guangzhou, Shanghai and Tianjin enjoy greater authority than other cities in reviewing and approving foreign investment projects. Under a State Council decision issued in June 1984, Tianjin and Shanghai may review and approve investment projects involving up to $30 million without the need for further authorization by the central government. The authority of Guangzhou and Dalian extends to projects of up to $10 million. Ten other coastal cities may consider and approve projects involving up to $5 million. These rules, however, apply only to production projects which do not need the help of the central government to provide "overall balance or support" and do not need the central government to provide marketing support or export quotas.

Chinese coastal cities traditionally have been industrial centers. Many Chinese industrial and scientific bases, universities and research institutions are located in major coastal cities. Skilled workers and well trained technical and managerial work forces also concentrate in the major coastal cities. In addition, the major coastal cities have the most well established communication and transportation networks in the

509. See supra note 11 and accompanying text.
510. See supra note 14 and accompanying text.
512. Id.
513. GUIDE TO JOINT EQUITY VENTURES 174 (External Services Dept. of Economic Daily, Economic Information & Consultancy Co. ed. 1985).
514. Id.
515. Id.
The fourteen coastal cities are (from the north to the south): Dalian, Qinhuangdao, Tianjin, Yantai, Qingdao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Fuzhou, Guangzhou, Zhanjiang and Beihai. The following is a brief introduction of four major coastal cities and the three “open regions.”

1. Dalian

Dalian is located at the southern tip of the Liaodong Peninsula in Liaoning Province in northeast China. Dalian has an area of 12,574 square kilometers and a population of 426,000. Dalian is rich in agricultural and aquatic resources. Its apple production represents one seventh of the country’s total. Dalian is the center for transshipping and foreign trade in northeast China. It has the second largest deep-water port with forty-eight berths, of which twenty-three are for 10,000-ton ships. It handles thirty-five million tons of cargo annually. Dalian has an established communication and transportation network; the telephone system, sea routes and railroad link Dalian with all major Chinese cities and many foreign countries. The Dalian airport serves thirteen domestic routes and recently established direct flights to Tokyo and Hong Kong. Dalian also is a center for ship building and locomotive industries. Dalian is commonly known as the “door and window” for northeast China, an important industrial and agricultural base of China. Dalian thus has easy access to various minerals and raw materials. The central government also has given increasing importance to the economic development of Dalian.

The Dalian government has been known for its efficiency and willingness to accommodate foreign investors’ needs. By early 1987, there were about one hundred foreign investment enterprises established in Dalian.

2. Tianjin

Tianjin has an area of 11,305 square kilometers, and with a population of over eight million it is the third largest city in China. Located on the Bohai coast about 120 kilometers east of Beijing, Tianjin has the largest container wharf in China, handling up to 400,000 containers annually, and a port with thirty-eight docks which can serve ships of

516. Unless otherwise indicated, the following discussion in this section is based on sources cited supra note 16.

up to 30,000 tons. The railroad and air transportation networks connect Tianjin to many major Chinese cities. Tianjin also established a telecommunications network that links it with more than fifty foreign countries and many Chinese cities. Tianjin is one of the most important industrial bases in China. It has established light, chemistry and machinery industries. Tianjin is also one of the three "zhixiashi" (a city under the direct administration of the central government). It enjoys a status similar to that of a province in terms of its relationship with the central government.

Tianjin has been successful in attracting foreign investment. By mid-1987, Tianjin had approved 199 foreign investment enterprises, of which one hundred were in operation. The Chinese government recently authorized Tianjin to absorb up to one billion dollars in foreign investment outside the overall state planning for the next five years. As part of the package, Tianjin would be given increased authority in approving investment projects, and be allowed to adopt a more preferential policy to attract foreign investment.

3. Shanghai

As the largest industrial city in China, Shanghai has been the most important financial, trade and commercial center for years. Located at the mouth of the Yangtze River, it has an area of more than 6,000 square kilometers and a population of over twelve million. With forty-eight deep-water berths for ships of over 10,000 tons, the Shanghai port handled 12.5 million tons in 1986 and is the largest freight port in China and fourth largest in the world. The water transportation network connects it with many foreign countries and major Chinese cities along the coast and Yangtze River. It also has a well established railroad and telecommunications systems. It has the second largest international airport in China, which provides flights to many major Chinese cities and about eighteen foreign countries. Shanghai's industrial output exceeds the combined industrial output of Tianjin, Dalian, and Guangzhou. Shanghai has the most well developed machinery, textile, and chemical industries in the country.

Shanghai is also one of the three cities under the direct administration of the central government. It is the only city that has set up

518. Tianjin Duiwai Kaifang Shiliqiang Houjinzhu (Tianjin Has Strength in Opening Up to Foreign Countries), People's Daily, June 10, 1987, at 1.
520. Shanghaigang Yuejuwei Shijie Disi Dagang (Shanghai Port Becomes the Fourth Largest Port in the World), People's Daily, June 16, 1987, at 1.
two ETDZs. Shanghai has promulgated about a dozen laws and regulations governing foreign investment, and except for the Shenzhen SEZ, Shanghai has established the most comprehensive legal framework for foreign investment enterprises. Shanghai’s residents are well known for their sophistication and proficiency in business and commerce. Although some foreign businessmen find their Shanghai counterparts tough negotiators, many find it comfortable to deal with Shanghai people who often more readily understand their terms and needs. The Shanghai government approved 250 foreign investment enterprises by April 1987, investments which totaled about $161 million.

4. Guangzhou

Located on the southern end of the Pearl River Delta on the coast of the South China Sea, Guangzhou has an area of over 16,600 square kilometers and a population of over seven million. Guangzhou has well established communications and transportation networks as compared to other regions. Its port has eighty-seven berths, of which thirty-five can harbor ships of 1,000 tons. The airport has thirty-two air routes serving all major Chinese Cities and southeast Asian countries. It also has railroads and highways extending to the three SEZs of Guangdong Province, and to many other parts of China. Guangzhou has one of the largest ship building, rubber and machinery industries in the country.

Guangzhou is close to Hong Kong and to the three SEZs in Guangdong Province. It is one of the largest trading and economic centers in South China.

5. Open Regions

In January 1985, the Chinese government decided to open up three areas adjacent to Shanghai, Guangzhou and Xiamen in order to attract foreign investments and develop a balanced economic structure. Foreign investment enterprises in these regions enjoy preferential treatment similar to those in effect in the coastal cities. The opening of these areas was seen as a step forward towards further liberalization of Chinese foreign investment policy.

These three regions are the Pearl River Delta Region, the Yangtze Delta Region and the South Fujian Region. The Pearl River Delta Re-

521. These two ETDZs are Minxing ETDZ and Hongqiao ETDZ.
523. See supra note 14 and accompanying text.
524. *Id.*
Region is a large area of over 2,100 square kilometers in Guangdong Province adjacent to the Shenzhen and Zhuhai SEZs in the south and Guangzhou in the north. It has a population of nearly ten million. The South Fujian Region consists of thirteen counties and towns adjacent to the Xiamen SEZ.\textsuperscript{526} The Yangtze River Delta Region is in Jiangsu Province adjacent to Shanghai. These regions have been traditionally viewed as the "home of rice and fish," and well known for their richness in agricultural and related produce. These regions also have some light industry. The Pearl River delta and South Fujian Region are also bases of export processing and compensation trade.

B. Preferential Tax Policies

The preferential tax rules governing the fourteen coastal cities also apply to the foreign investment enterprises in the urban areas of Xiamen, Shantou and Zhuhai.\textsuperscript{528} These preferential treatments apply only to foreign enterprises established in the "old urban areas."\textsuperscript{527} Chinese law does not define "old urban area," but in practice, these areas refer to the metropolitan areas excluding suburbs and various counties under the administrative control of the city government.

The preferential tax treatment is mainly in the following three areas. First, selected foreign investment projects, whether they are joint ventures or wholly foreign owned enterprises, may enjoy a reduced fifteen percent income tax, identical to the tax rate effective for the SEZs and the ETDZs.\textsuperscript{528} Unlike the tax rules in the SEZs and ETDZs, however, a foreign investment enterprise qualifying for tax benefits must: (1) involve intensive technology or "knowledge" (zhishi); (2) develop energy, transportation, or ports; or (3) have an investment exceeding $30 million with a low profit margin.\textsuperscript{529} The grant of this benefit is also subject to approval by the Ministry of Finance.\textsuperscript{530} The law does not define "technology-intensive" or "knowledge-intensive" projects.

Second, a foreign investment enterprise that does not meet these requirements may still enjoy a twenty percent reduction over the regular tax due if the enterprise is in one of the following sectors: (1) machinery manufacturing or electronic industries; (2) metalurgical, chemical, or building material industries; (3) light industry, including textiles

\textsuperscript{526} 1984 State Council Tax Regulations, supra note 12, III, 1.
\textsuperscript{527} Id.
\textsuperscript{528} Id.
\textsuperscript{529} Id.
\textsuperscript{530} Id.
and packaging; (4) medical machinery and pharmaceutical industries; (5) agricultural, forestry, husbandry, breeding and processing industries related to the above sectors; or (6) the construction industry. 531 Once again, the qualifications for tax benefits have to be approved by the Ministry of Finance.

Third, similar to the tax rules effective in the SEZs and ETDZs, the twenty percent withholding tax applicable nationwide to foreign businesses in the PRC on their Chinese sourced income such as interest, dividends, royalties, and rents is reduced to a maximum of ten percent, which can be reduced or completely exempted at the discretion of the city governments. 532 Finally, the tax benefits on the consolidated industrial and commercial tax are identical to those for the ETDZs. 533

C. Land Regulations

Land regulations and land-use terms of coastal cities closely resemble those of the ETDZs or SEZs. Differences exist mainly in the rates of land-use fees. Several cities have published their fee schedules. The following charts summarizes land use fee rates published by a few cities.

1. Shanghai:

Shanghai divides all its land into several classes and imposes different levels of land-use fees: 534

Shanghai provides an exemption or reduction of land-use fees for non-profit businesses in the areas of culture, education, science, and public utility construction. 535 Joint ventures that have difficulty in paying land-use fees because of a force majeure may also apply for an exemption, reduction or postponement of the payment of the land-use fee. 536 Shanghai also allows investors to pay a maximum of five percent of the gross revenue as a land-use fee instead of following this schedule. 537 In such a case, the land-use fee is not subject to adjustment throughout the effective term of the investment contract.

531. Id.
532. Id. I, 3.
533. See supra note 624 and accompanying text.
534. Shanghai Land Regulations, supra note 497 (see the attached table).
535. Id. art. 16.
536. Id. art. 18.
537. Id. art. 8.
### Shanghai Land-use Fees (yuan per square meter)

<table>
<thead>
<tr>
<th>Type of Business</th>
<th>TOP</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCE, TOURISM, FINANCE</td>
<td>60-100</td>
<td>50-90</td>
<td>40-80</td>
<td>30-60</td>
<td>20-30</td>
<td>12-20</td>
<td>3-15</td>
<td>6-10</td>
<td>3-8</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>INDUSTRY, STORAGE COMMUNICATION</td>
<td>60-100</td>
<td>60-90</td>
<td>30-70</td>
<td>15-30</td>
<td>5-20</td>
<td>4-12</td>
<td>3-9</td>
<td>2-6</td>
<td>0.8-3</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>DE LUXE</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>RATES TO BE SET SEPARATELY</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>APARTMENTS FOR SALE, OFFICE BUILDINGS</td>
<td>50-90</td>
<td>45-80</td>
<td>35-70</td>
<td>20-50</td>
<td>12-30</td>
<td>8-14</td>
<td>6-10</td>
<td>4-8</td>
<td>2-6</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CULTURE AND RECREATION</td>
<td>30-60</td>
<td>25-50</td>
<td>20-40</td>
<td>12-25</td>
<td>8-15</td>
<td>5-9</td>
<td>2-6</td>
<td>1-4</td>
<td>0.6-2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ORDINARY APARTMENTS, OFFICES, SCIENTIFIC RESEARCH, EDUCATION AND HEALTH, ETC.</td>
<td>30-40</td>
<td>15-30</td>
<td>12-25</td>
<td>10-20</td>
<td>5-12</td>
<td>1-7</td>
<td>2-5</td>
<td>1-3</td>
<td>0.5-1.5</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2. Tianjin:

Tianjin has not published a fee schedule. It merely states that the minimum charges for land use are five yuan/m² in a suburban area and ten in an urban area. The maximum is 200 yuan/m². Low profit or high-tech projects may also apply for reduction. 538

3. Nantong:

Nantong exempts from land-use fees for early investors, projects in the area of science, technology, education, culture and health, nonprofit projects, or high-tech projects. 539 Other projects are subject to the following schedule:

Industry: 5-25 yuan/per square meter; commerce: 40-50 yuan/per square meter; housing: 20-50 yuan/per square meter, tourism: 40-80 yuan/per square meter. 540

4. Lianyungang:

Projects in the area of science, education, culture, and health may enjoy "preferential treatment" in terms of a land-use fee. High-tech or nonprofit businesses may be exempted. 541 Other projects are subject to the following rates:

Industry: 1-5 yuan/per square meter; commerce: 9-14 yuan/per square meter; housing: 4-8 yuan/per square meter; tourism: 5-10 yuan/per square meter.

5. Beihai:

Projects in the areas of science, education, health, culture, and social welfare are exempted from land-use fees. 542 High-tech projects or projects with an investment exceeding $5 million are given "preferential treatment." 543 Overseas chinese investors enjoy a ten to fifteen percent reduction of land use and site development fees. 544 Beihai provides that land-use and site development fees may only be adjusted

538. GUIDE TO INVESTMENT IN CHINA, supra note 171, at 266.
539. Id. at 269.
540. Id.
541. Id. at 268.
542. Id.
543. Interim Provisions of Beihai for Preferential Treatment for Economic and Technological Development Zone art. 23 (1985), reprinted in GUIDE TO INVESTMENT IN CHINA, supra note 171.
544. Id. art. 22.
545. Id. art. 24.
within a range not exceeding twenty percent of prior rates,\textsuperscript{546} instead of the thirty percent in other cities and SEZs. It also provides detailed rates for the site development fee. It classifies all of the land into three classes and provides different rates:\textsuperscript{547}

\textbf{Beihai Land-use and Site-development Fees (yuan per square meter)}

<table>
<thead>
<tr>
<th></th>
<th>Class 1</th>
<th></th>
<th>Class 2</th>
<th></th>
<th>Class 3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Site</td>
<td>Development</td>
<td>Site</td>
<td>Development</td>
<td>Site</td>
</tr>
<tr>
<td></td>
<td>Land</td>
<td>Fee</td>
<td>Land</td>
<td>Fee</td>
<td>Land</td>
</tr>
<tr>
<td></td>
<td>Use</td>
<td></td>
<td>Use</td>
<td></td>
<td>Use</td>
</tr>
<tr>
<td>Industry/storage:</td>
<td>1 60</td>
<td>0.8 56</td>
<td>0.6 45</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commerce/service:</td>
<td>5 90</td>
<td>4 78</td>
<td>3 68</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Housing/Office Buildings:</td>
<td>3 75</td>
<td>2.5 65</td>
<td>2 59</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tourism:</td>
<td>4 78</td>
<td>3 68</td>
<td>2.5 58</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Open air Amusement park:</td>
<td>0.30 50</td>
<td>0.3 45</td>
<td>0.2 33</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planting, breeding and animal husbandry:</td>
<td>— —</td>
<td>— —</td>
<td>0.2 33</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. Qinhuangdao:

Projects in the area of education, science, technology, health, and other nonprofit projects are exempted from a land-use fee.\textsuperscript{548} Qinhuangdao charges an annual land-use fee and a lump sum "development and facilities fee" which is similar to the site development fee charged by other cities. Investors who develop the land and set up their own basic public utility system for the project will be given an exemption or reduction of the site development fee and enjoy an exemption of the land-use fee for five to fifteen years.\textsuperscript{549} The land-use fee rates are:\textsuperscript{550}

\textsuperscript{546} Id. art. 19.
\textsuperscript{547} Id. arts. 18, 19.
\textsuperscript{549} Id. ch. 2(i).
\textsuperscript{550} Id. ch. 2(i)(1).
Qinhuangdao Land-use Fees (yuan per square meter)

<table>
<thead>
<tr>
<th></th>
<th>Class 1</th>
<th>Class 2</th>
<th>Class 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>storage:</td>
<td>1.8</td>
<td>1.4</td>
<td>1</td>
</tr>
<tr>
<td>Commerce/</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>service:</td>
<td>14</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Tourism:</td>
<td>15</td>
<td>12</td>
<td>9.0</td>
</tr>
<tr>
<td>Villa:</td>
<td>10</td>
<td>8.0</td>
<td>6.0</td>
</tr>
<tr>
<td>Open air amusement</td>
<td>0.6</td>
<td>0.4</td>
<td>0.2</td>
</tr>
<tr>
<td>park, parking lot,</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>breeding, animal</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>husbandry:</td>
<td></td>
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</tbody>
</table>

7. Zhanjiang:

Projects in the areas of science, culture, technology, education, health, and nonprofit businesses or high-tech projects may enjoy an exemption from the land-use fee. Projects in the areas of science, culture, technology, education, health, and nonprofit businesses or high-tech projects may enjoy an exemption from the land-use fee. Overseas Chinese investors investing $5 million or more may enjoy a reduction of the land-use fee. When a Chinese party uses land as a capital contribution, as is often the case in contractual joint ventures, the land is valued within the range of 1,000 to 4,000 per square meter. Other projects are subject to the following rates:

Industry: 5-20 yuan/per square meter; commerce and service: 30-100 yuan/per square meter; housing: 15-40 yuan/per square meter; tourism: 30-70 yuan/per square meter.

V. FOREIGN INVESTMENT INCENTIVES OF SEZs, ETDZs AND COASTAL CITIES UNDER THE 1986 FOREIGN INVESTMENT ENCOURAGEMENT PROGRAM

A. Introduction

Foreign investors doing business in China, particularly during the first half of the 1980's, often faced difficulties in three areas: foreign exchange shortages, high operational costs and bureaucratic inefficiency. These problems affected the overall picture of foreign invest-

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551. GUIDE TO INVESTMENT TO CHINA, supra note 171, at 287.
552. Id.
553. Id.
554. Id.
555. The Chinese government recognized these problems. On Aug. 7, 1986, at a meeting with a group of foreign businessmen, Chinese leader Zhao Ziyang stated:
ment in China in two major aspects: the growth of foreign investment in the late half of 1985 and early 1986 slowed down noticeably, and many of the foreign investments concentrated on medium and small projects, particularly those in the service sector. Projects such as hotels, without the need for large scale raw material supplies, can generate quick short term profits. These projects, however, often do not fall within the priority of the national economic development. To ac-

China's foreign exchanges are not adequate, resulting in a lack of adequate capacity of international payment. Therefore, Sino-foreign equity and contractual joint ventures and wholly foreign-owned enterprises all encounter a problem of how to repatriate profits. We hope both parties study the problem and think of the way to resolve it.


On the problem of high cost, a commentary of the International Business Journal, reprinted in the official Chinese newspaper, People's Daily, states:

currently, some entities look at foreign investment establishments as a piece of 'delicious meat,' and give a bite and impose a charge as long as there is an opportunity. These entities care only for their own interest and lead to the high cost of the products produced by foreign investment establishments, which are difficult to export. In this way, who is going to come and invest?

The commentary called on Chinese entities and governments to stop doing similar things and provide conditions for foreign investors to invest and make money in China. Jiuzheng Zhigui Xiaoli Ziduan Shengguo Zuoqia (Stopping Sacrificing Long Term Interest for Small Benefit and Providing Conditions for Foreign Investors to Invest and Make Money in China), People's Daily, June 16, 1986, at 3.

With respect to the bureaucratic inefficiency, a high-ranking Chinese official of the Foreign Investment Steering Group of the State Council stated, "... on the Chinese side, major problems are lack of experience, inadequacy of infrastructure plus some defects in the administrative structure and bureaucratic working style of slowness and inefficiency. This has made it difficult for foreign investors to do business." Zhongguo Wei Liyong Waizi Caiqu Zhongyao Buzhou (China Is Taking Important Steps to Attract Foreign Investments), People's Daily, Oct. 13, 1986, at 1. See also Ji Chongwei, Lun Zhongguo Touzi Huanjing De Qianjing (Future Prospect of Chinese Investment Environment), People's Daily, Feb. 20, 1987, at 2.

During the first half of 1985, there were over five hundred equity joint ventures established in China. See Chu Baotai, Zhongwai Hezi Qiyefa Shishi De Liunian (The Six Years' Implementation of Sino-Foreign Joint Venture Law), People's Daily, Aug. 25, 1985, at 2. During the first half of 1986, there were 304 equity joint ventures established, about a 40% decrease from 1985. See Zhongwai Hezi Qiye Juedaduoshu Yingli (Most of Sino-Foreign Joint Ventures Are Profitable, People's Daily, July 26, 1986, at 1. Another Chinese publication states that there were 687 equity joint ventures approved during the first half of 1985. See Wen Zing, Zhongguo Duiwai Jingji Maoyi Zai Kaijiang He Gaige Zhong De Zhongda Jinzhan (Significant Progress of China's Foreign Trade and Economic Relations under the Open-door Policy and Economic Reform), ECNO. Rep., Oct. 1, 1985, at 40. As far as wholly foreign owned enterprises are concerned, the Chinese government approved twenty during the first half of 1985, and ten during the same period of 1986. Id.

557. Chu Baotai, supra note 556.
celerate the inflow of foreign investment and rationalize the foreign investment structure, the Chinese government has taken steps to help foreign investors deal with these practical problems and to encourage foreign investment in priority sectors. In January 1986, the Chinese government promulgated the Provisions on Foreign Exchange Balance to help ease the foreign exchange difficulties of joint ventures. As a continuation of this basic policy, the State Council on October 11, 1986 promulgated the Provisions for Encouragement of Foreign Investment. The Provisions for Encouragement of Foreign Investment attempts to channel foreign investments into high-tech industry and export sectors in order to ease the foreign exchange problems, and also to direct foreign investments into the areas that are most significant for the development of the national economy. The Provisions for Encouragement of Foreign Investment were also intended to resolve problems of high cost and bureaucratic red tape facing foreign investors in China.

The Provisions for Encouragement of Foreign Investment were followed by various implementing regulations covering specific areas that are broadly outlined in the Provisions for Encouragement of Foreign Investment and various regional regulations promulgated by the governments of the SEZs and coastal cities. The Provisions for Encouragement of Foreign Investment and these related regulations represent an overhaul of the existing foreign investment regulatory framework and clearly mark a new stage in the development of Chinese foreign investment law. This section discusses special incentives provided by the SEZs and coastal cities under this new foreign investment encouragement program.

B. Preferential Treatments for High-Tech and Export Enterprises

1. Qualifications

The Provisions for Encouragement of Foreign Investment and related regional regulations provide preferential treatment to "export enterprises" and "high-tech enterprises." Article 2 of the Provisions for Encouragement of Foreign Investment defines an "export enterprise" as a "production enterprise which produces products primarily for export and which has a foreign exchange surplus after deducting its foreign exchange expenditures and foreign exchange profits repatriated.


abroad by the foreign investors from the total foreign exchange earnings of the enterprise." Thus, to qualify, an enterprise must be in the production sector as opposed to service sector, and must generate a foreign exchange surplus. A separate regulation promulgated by the Ministry of Foreign Economic Relations and Trade (MOFERT) defines the "export enterprise" in quantifiable terms: (1) it must produce products for export; (2) its products must be mainly for export, that is, the total earnings from exports of its products must exceed fifty percent of its total revenues; and (3) it must have a balance of foreign exchange receipts and expenditures or have foreign exchange surplus in a given year. The formula to determine whether foreign exchange receipts and expenditures are balanced compares the total foreign exchange earnings of a given year, plus the foreign exchange surplus from the previous year, with the foreign exchange expenditures of the same year.

Article 2 of the Provisions for Encouragement of Foreign Investment defines "high-tech enterprises" as "enterprises to which foreign investors provide advanced technology to explore the production of new products, or upgrade and replace products, in order to increase export and foreign exchange earnings or substitute imports." A separate regulation promulgated by the MOFERT provides more detailed standards for determining a "high-tech enterprise": (1) the technology, process and main equipment adopted are advanced and practically applicable and the projects are in the areas where foreign investment is encouraged; (2) the technology, process and equipment are scarce or do not exist in the PRC, or their products are newly developed, or they can upgrade and replace similar existing domestic products and increase exports or import substitutes. The emphasis is clearly on the requirement for advanced technology, but export performance and foreign exchange earnings are also factors to be taken into account. In terms of export performance, however, there is not a quantifiable requirement as in the case of "export enterprises." In this context, emphasis is probably on the potential of enterprises to export products manufactured with the advanced technology.

Under Article 18 of the Provisions for Encouragement of Foreign Investment, whether an enterprise is qualified to be a "export enterprise" or a "high-tech enterprise" is determined by the department in charge of foreign economic relations and trade of the provincial gov-

561. Id.
562. Id. art. 4.
ernment or the government of the SEZ. If, however, the foreign investment enterprise is sponsored by departments of the State Council, the MOFERT has the authority to make the determination. The proper department must make a decision within thirty days of receiving an application.

To apply for qualification, a foreign investment enterprise needs to file a standard application form provided by the MOFERT, a duplicate of the contract, the pertinent approval certificate issued by the competent authority, a feasibility study of the project and the approval document. If an application is approved, the approving authority will issue a certificate to the applicant and will also report to the MOFERT for recording purposes.

The requirements for export and high-tech enterprises have been applied flexibly. During the first few months after the Provisions for Encouragement of Foreign Investment were promulgated, thirty percent of foreign investment enterprises in the coastal cities and SEZs were considered qualified for preferential treatments either as “export enterprises” or as “high-tech enterprises.” For instance, during the first two weeks after the Provisions for Encouragement of Foreign Investment were promulgated, the Commission of Foreign Economic Relations and Trade of Tianjin City granted export enterprise status to forty-three foreign investment enterprises, or about twenty-five percent of the total 184 foreign investment enterprises in that city, which is also more than fifty percent of the seventy-seven establishments that had already started operations. In Shanghai, the first group of foreign investment enterprises that were granted either high-tech or export enterprise status amounted to sixty-nine, over thirty percent of the total 203 foreign investment enterprises established then in that city. Other coastal cities and SEZs also apply similar approval ratios.

Eligibility for an “export enterprise” or “high-tech enterprise” is

563. Id. art. 6.
564. Id.
565. Id. art. 7.
566. Id. art. 6.
567. Id. art. 7.
569. Shanghai Xiang 69 Jiawaishang Touzi Qiye Fazheng (Shanghai Issued Certificates to 60 Foreign Investment Enterprises), People’s Daily, Oct. 27, 1986, at 3.
570. In Xiamen, by Oct. 23, 1986, less than two weeks after the Provisions for Encouragement of Foreign Investment were promulgated, the government approved forty-two export enterprises and twelve high-tech enterprises, about 40% of the total of 132 foreign investment enterprises. See Economic Daily, Oct. 23, 1986, at 2.
re-examined annually in accordance with export performance.\textsuperscript{571} If an export enterprise that enjoyed preferential treatments fails to maintain a positive foreign exchange balance in a given year, it must surrender the tax and other benefits it received.\textsuperscript{572} A regulation promulgated by the MOFERT provides that the certificate for qualification will be revoked if an enterprise fails to meet the requirements for three consecutive years.\textsuperscript{573}

2. Preferential Treatments for Charges for the Use of Land

The Provisions for Encouragement of Foreign Investment impose a ceiling on the charges for the use of land by high-tech or export enterprises. This ceiling provides that the combined land use and land development fees may range from five to twenty yuan per square meter.\textsuperscript{574} Where the land-development fee is a lump sum payment, or where an enterprise develops the site on its own, the annual land-use fee may not exceed 3 yuan per square meter.\textsuperscript{575} These limits, however, do not apply to metropolitan areas of large cities.

Within the above limits, regional governments were given discretion to reduce the charges or to extend a complete exemption of the land-use fee for a specified period of time.\textsuperscript{576} The following tables represent investment incentives in terms of the land-use fees effective in major coastal cities, SEZs and ETDZs under this 1986 foreign investment encouragement program.

SHANGHAI: (including Minxing ETDZ and Hongqiao ETDZ)\textsuperscript{577}

Three year exemption; a general 50 percent reduction of regular rates, with a ceiling of 2.5 yuan per square meter.

QINGDAO and YONTAI: (including Qingdao ETDZ and Yontai ETDZ)\textsuperscript{578}

Five year exemption subject to approval.

\textsuperscript{571} Provisions for Encouragement of Foreign Investment, supra note 559, art. 18.
\textsuperscript{572} Id.
\textsuperscript{573} Procedures for Determining and Examining High-tech and Export Foreign Investment Enterprises, supra note 560, art. 11.
\textsuperscript{574} Provisions for Encouragement of Foreign Investment, supra note 559, art. 4.
\textsuperscript{575} Id.
\textsuperscript{576} Id.
\textsuperscript{577} Several Provisions of Shanghai City for Encouragement of Foreign Investment, art. 4 (1986) [hereinafter Provisions of Shanghai for Encouragement of Foreign Investment], reprinted in, CCH. Austl., supra note 12, ¶ 91-030.
\textsuperscript{578} Procedures of Shandong Province for Encouragement of Foreign Investment (n.d) reprinted in Dazhong Ribao (Dazhong Daily), Oct. 15, 1986, at 1.
NINGPO: 579
5-20 yuan per square meter.

NINGPO ETDZ: 580
5-6 yuan per square meter.

YANGTZE RIVER DELTA REGION, LIANYUNGANG and NANTONG: (including Lianyungang ETDZ and Nantong ETDZ) 581
Five-year exemption from the date the investor acquires the land-use right and 50 percent reduction for the following five years.

DALIAN: (including Dalian ETDZ) 582
Exemption of site-development fee;* land-use fee is imposed to a maximum of three yuan per square meter; “high-tech enterprises” which can export 70 percent of its products may enjoy exemption of land-use fee for three to five years.

GUANGZHOU: 583
Maximum land-use fee of 2.5 yuan per square meter.

ZHUHAI: (including Zhuhri SEZ) 584
Five year exemption and five year 50 percent reduction for “high-tech enterprises” or “export enterprises” which exports 70 percent or more of its products.

SHANTOU SEZ: 585
Land development fee is reduced to the cost of the land development or 5-12 yuan per square meter annual charge.

*This exemption applies only if the enterprises do not need to expand the existing utility supply capacity.

3. Tax Benefits

Article 8 of the Provisions for Encouragement of Foreign Investment classifies export enterprises into two categories: those with a foreign exchange surplus and those with a surplus exceeding seventy per-

580. Id.
584. Zhuhai Dingchu Youhui Cuoshi (Zhuhai Enacted Preferential Treatments), Guangzhou Daily, Nov. 6, 1986, at 3.
585. Supplementary Provisions of Shantou Special Economic Zone for Encouraging Foreign Investment, supra note 185, art. 2.
cent of their gross revenue. Export enterprises with a foreign exchange surplus less than seventy percent do not receive a special tax benefit. Enterprises with a surplus of seventy percent or more may enjoy, after their tax holidays under other laws expire, a fifty percent tax reduction or a ten percent reduced tax rate, whichever is higher. Similar export enterprises located in SEZs, ETDZs or the coastal cities that were previously subject to a flat fifteen percent income tax will enjoy a flat ten percent income tax rate.

Tax benefits for high-tech enterprises are limited to an extended tax holiday. Article 9 of the Provisions for Encouragement of Foreign Investment provides that after the tax holiday provided in the existing laws expires, high-tech enterprises may enjoy a fifty percent tax reductions for three more years. Existing foreign investment enterprises that have already had their tax holidays under other law may still enjoy this three-year tax holiday starting from the time when they qualify as high-tech enterprises. The fifty percent reduction, however, will not apply if, as with the case of SEZs and ETDZs, the reduction results in an effective tax rate of less than ten percent, in which case the applicable tax rate shall be a ten percent flat rate.

Article 7 of the Provisions for Encouragement of Foreign Investment provides an exemption from the ten percent withholding tax on the part of profit they remit abroad for foreign parties to both export and high-tech enterprises. Since the SEZs, ETDZs and coastal cities have already granted such an exemption to all foreign investment enterprises, this rule does not provide added benefits to investors in these areas.

Following the Provisions for Encouragement of Foreign Investment, governments of the SEZs and coastal cities provided for further tax incentives for high-tech and export enterprises mostly in the area of local tax. The following is a summary of these tax incentives currently in effect in selected regions.

DALIAN: (including Dalian ETDZ) Exemption of local tax for one to five years upon approval

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586. Provisions for Encouragement of Foreign Investment, supra note 559, art. 8.
588. Id. art. 3(i).
589. Id. art. 3(iii).
590. Provisions for Encouragement of Foreign Investment, supra note 559, art. 7.
SHANGHAI: (including Minxing and Hongqiao ETDZs)\(^{592}\)
(1) Complete exemption of local tax when enjoying tax holiday given by tax laws;
(2) Additional three year exemption and three more years' fifty percent reduction;
(3) Complete exemption for every year when exports exceed seventy percent of the gross revenue.

GUANGZHOU: (including Guangzhou ETDZ)\(^{593}\)
Complete exemption of local tax.

NINGPO: (Including Ningpo ETDZ)\(^{594}\)
(1) Five year exemption of local tax; or
(2) Seven year exemption of local tax if exports exceed seventy percent of the gross income.

YANGTZE RIVER DELTA REGION, NANTONG and LIANYUN-GANG: (including Nantong and Lianyungan ETDZs)\(^{595}\)
(1) Complete exemption of local tax while enjoying tax holiday given by tax laws;
(2) Three more years' exemption; and
(3) Three additional years fifty percent reduction.

YANTAI: (including Yantai ETDZs)\(^{596}\)
(1) Eleven-year complete exemption of local tax if exports exceed seventy percent of gross revenue;
(2) Eight year complete exemption of local tax for high-tech enterprises.

QINGDAO: (including Quingdao ETDA)\(^{597}\)
Ten year complete exemption of local tax.

\(^{592}\) Provisions of Shanghai for Encouragement of Foreign Investments, supra note 577, arts. 2, 3.
\(^{593}\) Implementing Procedures for Encouragement of Foreign Investment, supra note 583, art. 3.
\(^{595}\) Several Provisions of Jiangsu Province for Encouragement of Foreign Investment, supra note 581, art. 1.
\(^{596}\) Procedures of Shandong Province for Encouragement of Foreign Investment, supra note 578, arts. 4, 5.
\(^{597}\) INFO. MATERIALS, 1987, No. 1. at 14.
C. Other Preferential Treatments

Articles 5 and 6 of the Provisions for Encouragement of Foreign Investment give export and high-tech enterprises priority to obtain credit from the Bank of China and to obtain public utility support such as water and electricity, and transportation and communication, subject to the same charges as for state owned enterprises.

The Provisions for Encouragement of Foreign Investment also calls on Chinese government agencies at all levels to coordinate their cooperation and enhance efficiency. They require departments of the State Council in charge of examination and approval of agreements, contracts and articles of the foreign investment enterprises to render their decisions within three months from the date when they receive all the documents.

Most governments of the SEZs and coastal cities promulgated regulations implementing these policies. For the most part, the regulations reiterate the general rules embodied in the Provisions for Encouragement of Foreign Investment. In the area of examination and approval procedures, however, a few regional regulations significantly shortened the ninety day time limit.

<table>
<thead>
<tr>
<th>Examination/Approval of Investment Contracts</th>
<th>Response to Other Inquiries</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZHUHAI SEZ(^{600})</td>
<td>30</td>
</tr>
<tr>
<td>YANGTZE RIVER DELTA REGION, NANTONG and LIANYUNGAN(^{601}) (including Nantong &amp; Lianyungan ETDZs)</td>
<td>30</td>
</tr>
<tr>
<td>SHANGHAI(^{602}) (including Minxing &amp; Hongqiao ETDZs)</td>
<td>30</td>
</tr>
<tr>
<td>XIAMEN SEZ(^{603})</td>
<td>30</td>
</tr>
</tbody>
</table>

\(^{598}\) Provisions for Encouragement of Foreign Investment, supra note 559, art. 17.  
\(^{599}\) Id.  
\(^{600}\) INFO. MATERIALS, 1987, No. 1, at 11.  
\(^{601}\) Several Provisions of Jiangsu Province for Encouragement of Foreign Investment, supra note 581, art. 10.  
\(^{602}\) Provisions of Shanghai For Encouragement of Foreign Investment, supra note 577, art. 13.  
\(^{603}\) INFO. MATERIALS, 1987, No. 1 at 6.
VI. CONCLUDING REMARKS

The development of SEZs, the ETDZs and coastal cities have created new business opportunities for foreign investors. In comparison with other regions, these open areas provide for preferential tax incentives to increase the profitability of foreign investors; they have better developed infrastructures to most likely match the business needs of foreign investors; they have more resources to engage in business ventures with foreign investors; and their governments and people are more open minded and more prepared to work with foreign businessmen. Although the increasingly liberalized national investment policy gradually diluted their competitiveness by allowing other regions to adopt similar preferential policies, the SEZs, ETDZs and the fourteen coastal cities remain the overall best investment sites for foreign business in China.

The comparatively better developed investment environment in the SEZs, ETDZs and coastal cities, however does not mean that these areas are the best locations for all investment projects. An investor should also consider the drawbacks of these areas when selecting a site for his investment project. For instance, these areas usually have a more competitive business environment which, in some instances, may increase the difficulties of business operations. Furthermore, the scarcity of land in these areas can mean a higher cost of space, and the lack of an adequate transportation system in China makes these areas less desirable locations for projects that heavily depend on supplies of raw material, particularly mineral resources, that are located in the remote inland areas.

The special preferential investment policy in the SEZs, ETDZs and coastal cities does not preclude foreign investors doing business in other areas, particularly in remote or under developed inland areas, from enjoying similar benefits. Chinese leaders expressly confirm that special preferential treatments will be extended on a case-by-case basis for development projects or projects involving high-tech or a high rate of return in inland areas.\textsuperscript{604} One reason for developing these coastal cities or regions along the coast is the limitation of national resources. To develop an attractive environment, the state must commit significant resources to set up a basic business supporting network. The coastal cities with their established industrial bases could develop such an environment within a relatively short time without substantial additional financial commitment. As a Chinese leader noted, "... it is not easy to open an area; there must be a good transportation and commu-

\textsuperscript{604} China Is Marching Towards Greater Opening, supra note 511, at 9.
communications system, and a certain investment environment. All of these have certain costs. In light of the financial situation of our country and other subject limitations, it is wise to gradually open up.^{605}

The development of the SEZs, ETDZs and coastal cities also reflects the growing liberalization of the Chinese foreign investment policy during the past few years. In the coming years, the special preferential investment policy of the SEZs and coastal cities will likely extend to other areas. In response, the SEZs, ETDZs and coastal cities must continue to improve their investment environment in order to maintain their competitive edge in attracting foreign investments. All these developments will likely lead to an overall improved foreign investment environment.

605. _Id._