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Carolyn P. Casey

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INTRODUCTION

When the People’s Republic of China (China) initiated the open door policy in 1979, investors fled to its enormous domestic market.
with expectations of earning huge profits.\(^2\) As the realities of doing business under the nascent legal system\(^3\) in China emerged, however, investor complaints grew,\(^4\) reaching a peak in 1986.\(^6\) The State Council,\(^6\)

2. See Prybyla, *The Value of the China Connection*, 5 INT'L TRADE L.J. 45, 45-46 (1979) (discussing the illusion of the early views that foreign investors would derive huge profits on investments in the Chinese market); Sterba, *China Turning Foreign Investors Bitter*, Asian Wall St. J., July 18-19, 1986, at 1, col. 4 (stating that when the doors to China opened, many investors were eager to tap the vast supply of customers and cheap labor).

3. See infra notes 21-25 and accompanying text (discussing the evolution of the legal system in China).

4. See Cheng, *supra* note 1, at 88 (reporting that foreign business people blame the poor investment environment in China on bureaucratic inefficiency, excessive costs, inadequate legal protection, lack of access to the domestic market, and difficulty in converting renminbi-earned profits into foreign currency); Fung, *Peking Tackles Foreign Investors' Fears*, Asian Wall St. J., Oct. 13, 1986, at 1, col. 4 [hereinafter Foreign Investors' Fears] (discussing foreigners' problems with bureaucratic inefficiency, costly operations, and foreign exchange shortages); Burns, *Why Investors are Sour On China*, N.Y. Times, June 8, 1986, at F7, col. 1 (describing investor doubts concerning access to Chinese markets, due to foreign exchange problems, contract interpretation disputes, and problems in dealing with the Chinese bureaucracy); Sterba, *supra* note 2, at 1, col. 4 (noting that the investment climate has gone from bad to worse and that many foreigners are threatening to pull their investments out of China).


6. See Wik, *Navigating the Bureaucracy*, in *HOW TO DO BUSINESS WITH THE PEOPLE'S REPUBLIC OF CHINA* 112-13 (1984) (explaining that the State Council is the highest ranking organ of state power and economic authority in China). The Communist Party, the State Council, and the military dominate the government in China. *Id.* The State Council oversees central government agencies and ministries and has the power to issue law. *Id.*
concerned about a twenty percent decline in investment in the first half of 1986\(^7\) promulgated The Provisions to Encourage Foreign Investment (Provisions) in October 1986.\(^8\) The ability of China to compete with neighboring Asian economies is a second concern underlying the provisions.\(^9\)

Enactment of the Provisions indicates that the highest-ranking state leaders in China\(^{10}\) are aware that foreign investors\(^{11}\) are dissatisfied with the present investment climate.\(^{12}\) Concern about the deterrent ef-
fect that investor discontent has on new investors also underlies the Provisions. The Provisions are the long awaited response to what Chinese leaders perceive as a serious threat to the viability of China to act as a host country for foreign investment.

To encourage foreign investment, the new Provisions grant special benefits to projects that qualify as "export enterprises" and "technologically advanced enterprises." Enterprises not within the two new categories also receive incentives in various articles of the Provisions. The Provisions address a significant number of investor concerns ranging from high operation costs to bureaucratic entanglement. The Provisions, however, leave some important issues unaddressed. For example, the enormous problems associated with the foreign exchange shortage in China receive only modest attention. In addition, the Provisions do not address dispute resolution problems.

Another sign of the attempts of China to improve its international trade relationships is its decision to apply to join the General Agreement on Trade and Tariffs (GATT). See China Files Membership Application, Council Hears U.S. Farm Trade Charges Against Japan, 3 Int'l Trade Rep. (BNA) 910, 915 (1986) (indicating that China wants to expand its economic and trade relations with other nations).

Sterba, supra note 2, at 1, col. 3 (stating that new investors are staying away due to current investor problems).

Provisions, supra note 8, art. 2. The Provisions encourage foreigners to establish Chinese-foreign equity joint ventures, Chinese-foreign cooperative ventures and wholly foreign-owned enterprises within China. Id.; see also infra notes 49-51 and accompanying text (explaining the qualifications for export and technologically advanced enterprises).

See Provisions, supra note 8, arts. 10-17 (confering benefits on all enterprises involving foreign investment regardless of export and technologically advanced enterprise qualification); see also id. art. 19 (stating that all enterprises using funds received from foreign investors receive benefits, except where articles expressly refer only to export or technologically advanced enterprises).

Id. arts. 3, 17.

See Gelatt, The Foreign Exchange Quandary, CHINA BUS. REV., May-June 1986, at 28 (stating that the foreign exchange shortage is the thorniest problem facing investors). Investors experience difficulty repatriating earnings and buying equipment abroad because China has a nonconvertible currency. Id.; see also infra notes 160-76 and accompanying text (discussing foreign exchange problems facing foreigners in China). The low foreign exchange reserves in China are a serious deterrent to increased foreign investment. See Berthelsen, Asian Economies Predicted to Expand 3.5% in 1987, Asian Wall St. J., Dec. 23, 1986, at 8, col. 1 (stating that large trade and current accounts deficits from 1984 to 1986 drained the foreign exchange reserves in China, prompting Chinese leaders to seek assistance from the International Monetary Fund).

Provisions, supra note 8, art. 14 (allowing foreign exchange adjustments among foreign enterprises under supervision of the foreign exchange control department regardless of co-ownership); see infra notes 162-65 and accompanying text (discussing the incomplete solution for foreign exchange problems resulting from article 14).

See Frisbee, The Investment Treaty Impasse, CHINA BUS. REV., Sept.-Oct. 1986, at 41 (discussing problems arising due to the Chinese insistence that investors settle their disputes according to Chinese law, rather than through the use of an inter-
This Comment analyzes the extent to which the new Provisions resolve the problems foreign investors experienced under prior law. The discussion concentrates on the effect the Provisions will have on equity joint ventures, the most common form of investment in China. Part I provides a brief overview of the evolving investment laws in China. Part II examines the new Provisions that target export and technologically advanced enterprises for special treatment, and analyzes the impact these Provisions have on the troubled investment environment. Part III analyzes the Provisions that affect all foreign investment enterprises. This section also evaluates the effect of these broadly encompassing Provisions on the overall business climate in China. This Comment determines that many of the cost-cutting measures contained in the Provisions are significant improvements for foreign investors. Overall, the Provisions are a step in the right direction, but cannot correct all the problems plaguing foreign investors in China. After placing the Provisions and foreign investment in the context of the political conditions in China, this Comment concludes that the newly appointed Chinese leadership will enforce the new Provisions, and guide the evolution of Chinese foreign investment law toward more openness.
I. INTRODUCTION TO THE EVOLVING FOREIGN INVESTMENT LAW IN CHINA

Traditional China did not rely on law and legal concepts to order society.21 During the first half of the twentieth century, the Nationalist government22 introduced the rule of law and respect for legal institutions into Chinese society.23 After the Communist Revolution, China attempted to expand the role of legal institutions and legal concepts in Chinese society.24 The Cultural Revolution, however, destroyed most of these efforts.25 Since launching an ambitious effort to modernize26

21. See V. Li, LAW WITHOUT LAWYERS: A COMPARATIVE VIEW OF LAW IN CHINA AND THE UNITED STATES 13 (1978) (explaining that rulers in traditional Chinese society governed by means of virtue rather than law). Reliance on law and legal concepts represented a loss of virtue and a breakdown in the educational system. Id. See generally D. BODDE & C. MORRIS, LAW IN IMPERIAL CHINA 6-15 (1967) (describing the Confucian basis of traditional Chinese law and the interaction of li, rules of proper conduct facilitating a harmonious social order, and fa, written laws and administrative rules imposed by a superior authority in the traditional Chinese legal system). Early Chinese legal codes were overwhelmingly penal in nature and did not provide protection for most individual rights. Id. at 49.

22. See R. QUESTED, SINO-RUSSIAN RELATIONS 98 (1984) (stating that Jiang Kaishek declared the establishment of the Nationalist government in 1928). The Nationalists governed China until they were defeated in the Communist Revolution in 1949. Id. at 115.


24. Lubman, New Developments in Law in the People's Republic of China, 1 NW. U.J. INT'L L. & BUS. 122, 122-24 (1979). From 1949 to 1957 China experimented with developing a legal system modeled in part on the legal system of the Soviet Union and in part on the experience of the Chinese Communist Party while it controlled areas of China prior to its victory over the Nationalist forces in 1949. Id. at 123. During these early years, China did not consistently apply objective legal standards. Id. Instead, subjective judgments of administrative officers prevailed. Id. The anti-rightist movement that followed the "Hundred Flowers Campaign" from 1956 to 1957 precipitated attacks on legal specialists and halted the attempts to codify legal norms and develop a court system. Id. at 124.

25. See id. (describing attacks on the formal legal system during the Cultural Revolution). Mao Zedong spurred the Cultural Revolution to purge counterrevolutionary elements from the Communist Party bureaucracy. See generally H. LEE, THE POLITICS OF THE CHINESE CULTURAL REVOLUTION 47-63 (1978) (noting some activities that occurred during the Cultural Revolution). The Cultural Revolution was a time of uninterrupted upheaval in Chinese society, as the leadership of the Communist Party encouraged the general population, and students in particular, to seize power from institutions of authority. Id. During this decade of destruction, the People's Liberation Army destroyed the nascent police, court, and procuratorial systems. Hsia, SOURCES OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA: RECENT DEVELOPMENTS, 14 INT'L LAW. 25, 27 (1980). During the Cultural Revolution, Mao's forces viewed legal specialists as servants of the bourgeoisie whose work concealed injustice at the expense of workers and peasants. Id. The Red Guard publicly humiliated legal specialists in criticism sessions, and sent them to work in the countryside. Id. Many Chinese virtually abandoned the practice of law during this period. Id.

26. See Lussenburg, Joint Venture Investment in The People's Republic of China:
through the introduction of foreign capital, technology, and know-
how,\textsuperscript{27} China has promulgated an array of laws to provide incentives and protection to foreign investors.\textsuperscript{28}

The 1979 Joint Venture Law (JVL)\textsuperscript{29} was the first major law covering foreign investment\textsuperscript{30} and will continue to govern various aspects of equity joint ventures\textsuperscript{31} that qualify as export enterprises\textsuperscript{32} or technologically advanced enterprises.\textsuperscript{33} The JVL contains fifteen skeletal articles that broadly define terms for foreign investment.\textsuperscript{34} In 1983, the State Council issued implementing regulations (JVL Regulations)\textsuperscript{35} to estab-

\textit{A Continuing Challenge}, 63 \textsc{Can. Bar Rev.} 545, 545-46 (1985) (discussing the four modernizations plan in China that stresses agriculture, industry, defense, and technology).

China now recognizes individual merit and economic incentives as necessary evils of achieving modernization. \textit{Id.} The landmark 1984 Central Committee Decision explicitly states that wages should reflect productivity and quality of work and that prosperity will never mean absolute egalitarianism. \textit{Id.} at 546; Decision of the Central Committee of the Communist Party of China on Reform of the Economic Structure of October 20, 1984, \textit{reprinted in} Beijing Rev., October 19, 1984, at 4-7. Despite the introduction of some market incentives, China retains its centrally planned economy. \textit{See generally G. Chow, The Chinese Economy 53-59 (1983) (analyzing the development from a centrally planned economy in China to a mixed economy with an emphasis on central planning).}

27. \textit{See} Bullitt, \textit{An Exclusive Interview with Rong Yiren}, \textsc{China Bus. Rev.}, Sept.-Oct. 1979, at 4-5 (head of the China International Trade and Investment Corporation (CITIC)) (stating that China must import foreign capital, technology, and know-how to achieve its four part modernization); \textit{see also} C. Schlyter & A. Sebelius, \textit{supra} note 11, at 3 (explaining that China encourages foreign investment to obtain the capital and technology necessary to develop the Chinese economy).

28. \textit{See} Lussenburg, \textit{supra} note 26, at 546 (stating that China decided to make its internal economic and legal structures more attractive to foreigners); Perkins, \textit{The Prospects For China's Economic Reforms}, in \textsc{Modernizing China: Post-Mao Reform and Development} 46-47 (A. Barnett & R. Clough ed. 1986) (stating that at this time prospective investors were cautious in approaching China due to the absence of a legal framework). \textit{See generally Moser, Foreign Investment in China: The Legal Framework in Foreign Trade, Investment and the Law in the People's Republic of China, \textit{supra} note 1, at 106-42 (detailing the recent development of foreign investment law in China).}


30. \textit{See} Lussenburg, \textit{supra} note 26, at 546 (stating that the JVL is the beginning of a series of laws aimed at encouraging foreign investment).

31. \textit{See supra} note 20 (distinguishing equity joint ventures from other forms of investment).

32. \textit{See infra} note 53 and accompanying text (providing the definition of export enterprises).

33. \textit{See infra} note 54 and accompanying text (providing the definition of technologically advanced enterprises).

34. JVL, \textit{supra} note 29.

lish requirements for *inter alia* joint venture approval and registration, governance and control, labor management, and foreign exchange and banking. Chinese investment law has evolved in this manner: implementing regulations follow the issuance of the basic law. Implementing regulations determine how initial laws are put into effect and are therefore of central concern to investors. The forthcoming implementing regulations for the 1986 Provisions will provide details on how central government authorities will interpret and implement the new measures. The impact of the new measures will emerge by the State Council on Sept. 20, 1983, *reprinted* in 22 I.L.M. 1033 (1983) [hereinafter JVL Regulations].

36. *Id.* art. 33.
37. *Id.* art. 73.
38. *Id.* art. 91.
39. *Id.* arts. 73-79.

41. *See* Sullivan, supra note 5, at 8 (reporting that foreign investment did not increase in China until after the release of the 1983 JVL implementing regulations).
42. *See* Cheng, supra note 1, at 89 (reporting that the Chinese government was preparing to promulgate 16 to 20 sets of regulations to supplement the Provisions).

as investors gain experience with the Provisions coupled with the implementing regulations.\textsuperscript{43}

In theory, the detailed regulations provide specific guidelines for implementing the laws. In practice, however, local officials rarely follow them.\textsuperscript{44} Recalcitrant local and middle level officials, perceiving national directives as encroachments on their authority, often disregard central government regulations.\textsuperscript{45} Local officials’ disregard of earlier national measures has created skepticism among foreign observers about local implementation of the Provisions.\textsuperscript{46} Along with the Provisions, however,

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\textsuperscript{43} See Sullivan, supra note 5, at 8 (stating that the foreign business community will have a better opportunity to evaluate the impact of the Provisions after the Chinese government releases detailed implementing regulations); Cheng, supra note 1, at 89 (discussing the importance of the forthcoming regulations in clarifying the Provisions); see also Lecture by Zhang Yuejiao, Deputy Section Chief, Treaties and Law Dep’t, Ministry of Foreign Economic Relations and Trade of the People’s Republic of China (MOFERT), Fourth U.S.-China Joint Legal Seminar, at the United States Department of Commerce, in Washington, D.C. (Nov. 12-13, 1986) [hereinafter Zhang] (stating that implementing regulations defining the two new enterprises are forthcoming).

In 1982, China established the Ministry of Foreign Relations and Trade (MOFERT) to oversee foreign trade through consolidation of the Ministry of Foreign Trade, the Ministry of Foreign Economic Relations, the Foreign Investment Commission, and the State Import-Export Commission. Horsley, supra note 1, at 9. MOFERT is responsible for a wide range of areas including the formulation of national foreign trade plans in conjunction with the State Planning Commission, management of the foreign trade system, negotiations of international trade agreements, participation in relevant international organizations, and other foreign trade matters. Id. at 9-10.

\textsuperscript{44} See Provisions To Encourage: Look Closely—There’s Promise in the Promises, BUS. CHINA, Oct. 20, 1986, at 153 [hereinafter Provisions to Encourage] (stating that foreign investors have encountered obstinacy, outright opposition, and disregard of central government directives from local officials).

\textsuperscript{45} Id.

\textsuperscript{46} See id. (stressing that past experience has created skepticism concerning the effectiveness of the new measures).
the State Council established the “Working Group on Foreign Investment,” also known as the Leading Group.\textsuperscript{47} The Leading Group is charged with overall foreign investment policy making and problem solving,\textsuperscript{48} and is responsible for monitoring regional compliance with the Provisions.\textsuperscript{49} Creation of the Leading Group increases the likelihood that middle and local level bureaucrats will implement the new measures targeting export and technologically advanced enterprises for special benefits.\textsuperscript{50} Local governments released regulations shortly following the release of the national measures, that are consistent with the Provisions.\textsuperscript{51} This activity indicates that local governments are cooperating in the implementation of the new national measures.

The Provisions create two new types of enterprises.\textsuperscript{52} Export enterprises are companies that export a large percentage of their products, thereby generating a foreign exchange surplus within the company.\textsuperscript{53} Technologically advanced enterprises are production enterprises whose foreign partners export advanced technology to China.\textsuperscript{54} These enterprises must use this advanced technology to develop new products and upgrade and replace existing products in an effort to increase foreign exchange earnings.\textsuperscript{55} Investment projects that qualify under either of


\textsuperscript{48} Id.

\textsuperscript{49} Salem, supra note 7, at 170.

\textsuperscript{50} See Newsmakers: He Chunlin on Foreign Investment, CHINA BUS. REV., Nov.-Dec. 1987, at 6 (discussing the establishment of local Leading Groups designed to assist the national Leading Group in overseeing the implementation of the Provisions).

\textsuperscript{51} See Eliasoph, Shanghai Responds, CHINA BUS. REV., Jan.-Feb. 1987, at 16-18 (detailing Shanghai's regulations and new administrative organs to encourage foreign investment and reporting that eleven cities, eleven provinces, and three Special Economic Zones (SEZs) passed such regulations).

\textsuperscript{52} Provisions, supra note 8, art. 2.

\textsuperscript{53} Id. art. 2(1). The Provisions calculate “foreign exchange surplus” by deducting the annual foreign exchange production and operation expenditures from an enterprise's total annual foreign exchange revenues. Id.

\textsuperscript{54} Id. art. 2(2). The implementing regulations will clarify ambiguities in the definition of technologically advanced enterprises. Zhang, supra note 43; see Rules of Implementation Measures of the Ministry of Foreign Economic Relations and Trade Concerning the Confirmation and Assessment of Export Enterprises and Technologically Advanced Enterprises with Foreign Investment, supra note 42 (providing the particular attributes of the two new types of enterprises).

\textsuperscript{55} Provisions, supra note 8, art. 2(2).
the new categories will receive official certification of their status.66

II. PROVISIONS GRANTING SPECIAL BENEFITS TO EXPORT AND TECHNOLOGICALLY ADVANCED ENTERPRISES

A. IMPROVED ACCESS AND PRICING FOR UTILITIES

The Provisions grant export and technologically advanced enterprises priority access to water, electricity, transportation services, and communication facilities required for production and operation.67 The Provisions also stipulate that state-owned suppliers will charge the two new types of enterprises the same prices charged to state-owned enterprises.68 Prior law already required state-owned suppliers to charge Sino-foreign and state-owned enterprises the same prices.69 Therefore, the priority access is new law, while the rule on utility prices merely restates old law.

Cost problems and difficulties in obtaining access to utilities plagued foreign investors under prior law. For example, electric utility supplies "guaranteed" in contracts were often cut off in the middle of production, causing production cost increases.60 In addition, despite stipulations on equal pricing, foreign ventures often paid higher utility rates than state-owned enterprises.61

Under prior law, businesses also faced delays in the installation of

66. Rules of Implementation Measures of the Ministry of Foreign Economic Relations and Trade Concerning the Confirmation and Assessment of Export Enterprises and Technologically Advanced Enterprises with Foreign Investment, supra note 42; see also Cohen & Chang, supra note 5, at 110. Beijing and Shanghai have already certified those projects in their respective jurisdictions that qualify as export or technologically advanced enterprises. Eliasoph, supra note 51, at 17.

67. Provisions, supra note 8, art. 5; Salem, supra note 7, at 17.

68. Provisions, supra note 8, art. 5; see also Salem, supra note 7, at 170 (stating that fees will equal those charged to state-run enterprises); Peking Announces Regulations, supra note 7, at 17, col. 5 (discussing the fee incentive plan to encourage foreign investment).

69. JVL Regulations, supra note 35, art. 65(3). These expenses are paid in renminbi. Id.

70. C. SCHLYTER & A. SEBELIUS, supra note 11, at 56-58 (describing a year long production delay, due to problems with water and electricity supply); see also Morrow, Power Shortages Major Headache, FAR E. Econ. Rev., Mar. 19, 1987, at 92-97 (explaining that China is experiencing the worst power shortage in its history). A solution to the power shortage is not expected until the end of the century. Id.; cf. Southerland, Tenants of Chinese Building Witness Beijing Bureaucracy, Wash. Post, Nov. 10, 1987, at F2, col. 1 (reporting that Chinese officials cut off the heating in a new high-rise office building when the Canadian manager refused to pay a one-time fee of $438,221 for heating services, not included in the original contract).

71. See Foreign Investors' Fears, supra note 4, at 1, col. 4 (stating that Sino-foreign joint ventures paid more for utilities than state-owned enterprises).
telephone and telex systems due to poor networking and unpredictable cargo-space allocations from transportation services. Moreover, on the rare occasions when communication services were available, prices were exorbitant. These access problems and high prices in telecommunications and transportation services also increased production costs and reduced product competitiveness on the international market.

The new grant of priority access and the renewed commitment to decreased prices for communication, transportation, and utility services is a significant step toward improving the business environment in China. Priority access to utility, transportation, and communication services will provide predictability to investors whose production schedules and costs were upset in the past due to sudden service shortages and overpricing. The Provisions, therefore, are likely to curtail production cost increases previously associated with utility supply uncertainty. The benefits, however, are limited to ventures qualifying as export or technologically advanced enterprises.

It is unlikely, however, that the utility measures will have as extensive an effect as originally thought. China has a severe power shortage that is likely to last through the next century. The shortage may undermine the value of a priority in the allocation of electrical power. If electrical power is unavailable, a priority allocation system is useless.

The priority access to communications services suffers from a similar problem. China is still developing its telecommunications systems. As a result, priority access to an unsophisticated communications network, though helpful, may not extensively benefit foreign investors. Despite the limited benefits of these Provisions, the grants of priority access to services basic to successful business operations and the reiteration that foreign investors will pay the same prices as state-owned enterprises are meaningful improvements for foreign investors.

63. Cheng, supra note 1, at 89; see Cohen & Chang, supra note 5, at 11-12 (stating that in China, the success of a foreign enterprise depends on its ability to secure basic services, such as timely cargo space).
64. Cohen & Chang, supra note 5, at 12.
65. Lussenburg, supra note 26, at 560 (noting foreign investors' concerns about the effect that supply shortages and artificially high prices have on profits and international competitiveness).
66. See Morrow, supra note 60, at 92 (discussing the severity of the current power shortage and potential solutions).
67. See Cohen & Chang, supra note 5, at 11-12 (describing the underdeveloped communications system in China).
CHINESE INVESTMENT PROVISIONS

B. STANDARDS FOR LOWER LAND RENTS

The Provisions address land rent, or site use fees. Article 4 of the new Provisions lowers the valuation standards for site use fees for both export and technologically advanced enterprises. The new standards are expressed in renminbi (RMB). The standards are RMB 5 to RMB 20 per square meter per year. Where there is a one-time charge or where the enterprise intends to develop the site on its own, the new standards set a limitation of RMB 3 per square meter per year.

Foreigners cannot legally own land in China. Investors, therefore, must acquire the right to use a site from the local government. Under prior law, local governments had broad discretion to establish site use fees according to geographical and other conditions. This broad discretion allowed local officials to impose exorbitant land rents. Internal guidelines failed to provide meaningful standards to limit the discretion.

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68. Provisions, supra note 8, art. 4; see also Foreign Investment Regulations Viewed as a Welcome but Modest Step, CHINA BUS. & TRADE, Oct. 23, 1986, at 3 (hereinafter Foreign Investment Regulations) (describing the reduction of land use fee rates); Peking Announces Regulations, supra note 7, at 17, col. 5 (explaining that the regulations, in part, are designed to reduce land use fees). Article 4 applies only to export and technologically advanced enterprises not located in busy urban sectors of large cities. Provisions, supra note 8, art. 4.

69. Provisions, supra note 8, art. 4. Renminbi is the Chinese currency. Perkins, supra note 28, at 46. As of November 1987, RMB 3.70 was equivalent to U.S. $1.00. Id.

70. Provisions, supra note 8, art. 4; see also Salem, supra note 5, at 170 (reporting the new standards of RMB 5 to RMB 20). Local officials may grant exemptions from site use fees at their discretion. Provisions, supra note 8, art. 4.

71. See Salem, supra note 7, at 170 (reporting the new lower standard for investors who are developing sites on their own).


73. JVL Regulations, supra note 35, art. 47. The right to use a site is not assignable. Id. art. 53.

74. Id. art. 49. The People's governments at the provincial, municipal, and autonomous region levels have authority to establish site use fees according to the purpose of use, environmental conditions, expenses for requisition, and other requirements regarding the infrastructure needs of the proposed venture. Id.

75. Land Use Fees Arranged On Sliding Scale, Foreign Broadcast Information Service, Daily Report: China, Aug. 19, 1986, at K7; China Adopts Measures, supra note 9, at 5, col. 1. In 1986, the annual fee for unfurnished office space in Beijing was $360 per square meter; in Guangzhou, $360 to $480 per square meter; and in Tianjin, $600 per square meter. Id.; cf. id. (stating that office space in Hong Kong rents for $431 per square meter annually, office space in Singapore rents for $237 annually, and in Sydney office space rents for $338 annually). Id.
of local officials. The absence of precise guidelines for determining land value also permitted Chinese investors to inflate artificially the value of the land they contributed to ventures.

In comparison to the exorbitant fees charged under the old system, the new site use fee range will substantially reduce land rents for qualifying enterprises. The new precise standards will also prevent Chinese partners from inflating the value of their land contributions. Enterprises that are not categorized as export or technologically advanced enterprises, however, will continue to face higher rents because local officials retain discretionary authority.

C. REDUCED LABOR COSTS

In addition to reducing land rents, the new Provisions reduce labor costs. Article 3 of the Provisions exempts export and technologically advanced enterprises from having to pay many staff and worker subsidies. Joint ventures, however, must continue to pay for labor insurance, welfare costs, and housing subsidies.

Although China claims to offer low labor costs, foreign investors often discover that inefficient workers and high labor costs make the production of certain products in China more expensive than in the

76. See Provisional Regulations Concerning the Use of Land for Construction by Joint Ventures Using Chinese and Foreign Investment, art. 2, issued by the State Council on July 26, 1980, reprinted in 1 Com. Bus. & Trade L., supra note 8, Booklet 3, at 143 [hereinafter 1980 Site Use Fee Regulations] (listing the site use fee range from RMB 5 to RMB 300 per annum). This was equivalent to between $10 and $600. Id. These provisions were originally internal rules known as neibu. See infra note 218 (explaining the Chinese use of neibu). Article 2 further stipulates that fees in districts located on the outskirts of large and medium sized cities are set at a minimum of RMB 10. 1980 Site Use Fee Regulations, supra, art. 2. The lack of standards defining "large" and "medium" sized cities presents obvious problems. Although fees are paid annually, the total fees for the first calendar year are reduced. Id. art. 52.

Prior to the enactment of these Provisions, some provincial and municipal governments issued new laws with lower price ranges. Land Use Fees Arranged On Sliding Scale, supra note 75, at K7. The new fee standards account for a renter's intended use of the land. Id.

77. Moser, supra note 28, at 121-22. Chinese participants already possessing a site use right may contribute this right to the venture. JVL, supra note 29, art. 48.

78. See supra notes 53-54 and accompanying text (discussing the qualifications of technologically advanced and export enterprises).

79. See JVL Regulations, supra note 35, art. 49 (noting that officials in provincial, municipal, and regional levels may establish site use fees).

80. Provisions, supra note 8, art. 3; see also Salem, supra note 7, at 170 (discussing the exemption from staff subsidies other than labor and welfare outlays).

81. Provisions, supra note 8, art. 3.

United States. As a result of the subsidization requirements, employees of joint ventures receive wages two to three times the amount paid to employees of state-owned enterprises. These high labor costs have prompted many investors to turn to neighboring Asian economies where labor costs are lower.

The reduced labor costs offered in the Provisions are significant benefits. Investors cited high labor costs as primary factors in investor dissatisfaction. The savings resulting from lower labor costs, therefore, will positively affect foreign perceptions of the investment environment in China. The reductions in labor cost provided under article 3, however, apply only to export and technologically advanced enterprises. Ventures that do not qualify will continue to retain artificially high labor costs.

D. Loan Priority

The new Provisions grant export and technologically advanced enterprises priority in obtaining short-term loans for production, distribution, and other credit needs. Under the Joint Venture Loan Regulations (JV Loan Regulations), ventures have permission to borrow both foreign and renminbi funds to finance operations in China. The Bank

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83. See Sterba, supra note 2, at 3 (reporting that Roger Sullivan, President of the National Council for U.S.-China Trade, stated that because Chinese labor is neither cheap nor productive, it costs Nike more to produce shoes in China than in Maine); Burns, supra note 4, at F7, col. 1 (stating that dismal productivity rates make it cheaper to produce some products in Western Europe and the United States than in China).
84. Moser, supra note 28, at 127.
85. See China Adopts Measures, supra note 9, at 3 (stating that investors looking for cheap production costs are studying conditions in neighboring countries); see also Sterba, supra note 2, at 3 (stating that Chinese wages are higher than those in most Asian economies).
86. Zhang, supra note 43 (noting that exemptions from labor subsidies will reduce costs and help make Chinese products more competitive on the international market).
87. See Cheng, supra note 1, at 88 (stating that high labor costs are a primary concern of foreign investors).
88. See China Adopts Measures, supra note 9, at 5 (explaining that the decline in investment was partly due to rising dissatisfaction with artificially high labor costs).
89. Provisions, supra note 8, art. 3.
90. See supra notes 53-54 and accompanying text (discussing the qualifications of two new investment enterprises in the Provisions).
91. Provisions, supra note 8, art. 6; see also China Adopts Measures, supra note 9, at 5 (stating that foreigners will have priority in receiving bank loans under the new Provisions); Peking Announces Regulations, supra note 7, at 17, col. 5 (stating that the new regulations grant enterprises priority access in obtaining loans).
of China provides three types of business loans: self-liquidating loans for production and marketing costs, loans to cover accounts receivable prior to the time the accounts are collected, and loans for long-term investments in fixed assets or advanced technology. Despite the JV Loan Regulations, obtaining loans for operating expenses has become a major problem for many projects. Tight credit controls in 1986 restricted Chinese partners participating in proposed ventures from obtaining funds. In addition, cash starved enterprises have found themselves unable to secure long-term financing from foreign banks because China does not have national mortgage and bankruptcy laws. In light of these recent problems, the new banking provisions are significant changes. Priority access to short-term loans will help export and technologically advanced enterprises that previously were unable to obtain sufficient funds for their business activities. Priority access to these funds, however, is again limited to export and technologically advanced enterprises.

E. TAX INCENTIVES

The new Provisions offer tax incentives to export and technologically

Com. Bus. & Trade L., supra note 8, Booklet 3, at 137 [hereinafter JV Loan Regulations]. Ventures require the approval of MOFERT or the local government to become eligible for loan applications. Id.

93. See Chu, Banking and Finance in China Trade, in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA, supra note 1, at 232 (explaining that the Bank of China is the most important Chinese entity involved in international banking and finance). It is the state-owned foreign exchange bank of China. Id. The People's Bank of China is the central bank of China and supervises the administration of the Bank of China. Id. at 230-32.

94. JV Loan Regulations, supra note 92, art. 3; see also Lussenburg, supra note 26, at 571-72 (describing three types of loans envisaged under the JV Loan Regulations).

95. China Adopts Measures, supra note 9, at 5.

96. Cheng, supra note 1, at 88. Foreign currency controls also contributed to the problems plaguing foreign investors. China Adopts Measures, supra note 9, at 5.


98. See China Adopts Measures, supra note 9, at 5 (stating that obtaining loans for operating expenses had become a major problem for some investors).

99. Provisions, supra note 8, art. 6. But see Eliasoph, supra note 51, at 16 (reporting that Shanghai plans to adopt a liberal definition of what constitutes an export or technologically advanced enterprise).
advanced enterprises. For example, income taxes for export enterprises with exports equalling seventy percent of their total sales for a year, are cut in half after their standard tax holidays expire. Similarly, following the expiration of the standard tax holidays, technologically advanced enterprises may enjoy a fifty percent reduction in income taxes for an additional three years. Article 7 of the new Provisions also exempts export and technologically advanced enterprises from the ten percent tax on profits remitted abroad.

Under the Joint Venture Income Tax Law, the basic income tax rate is thirty percent. This tax is coupled with a surtax of ten percent of the base income tax paid, for a total tax of thirty-three percent.

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100. Provisions, supra note 8, arts. 8, 9, & 10.
101. Id. at 8. Export firms in the Special Economic Zones that pay taxes at a rate of 15% will pay 10% under the new provisions. Id.; see also Foreign Investment Regulations, supra note 68, at 3 (reporting 50% reductions for export enterprises selling at least 70% of their production abroad). This reduction is available when the standard exemption or reduction of income tax ends. Provisions, supra note 8, art. 8.
102. Decision of the Standing Committee of the National People's Congress Regarding the Amendment of "The Joint Venture Income Tax Law of the People's Republic of China Concerning Joint Ventures Using Chinese and Foreign Investment," passed by the Second Session of the Standing Committee of the Sixth National People's Congress on Sept. 2, 1983, reprinted in 1 Com. Bus. & Trade L., supra note 8, Booklet 5, at 33 [hereinafter Amendment]. The Amendment enables newly established joint ventures to apply for a full tax exemption during their first two profit-making years, and a 50% reduction for the next three years. Id. To qualify, investors must schedule the ventures to operate for at least 10 years. Id.; Gelatt & Pomp, China's Tax System: An Overview and Transnational Analysis, in FOREIGN TRADE, INVESTMENT AND THE LAW IN THE PEOPLE'S REPUBLIC OF CHINA, supra note 1, at 44.
Local officials determine who qualifies for specific tax reductions and exemptions.

The Income Tax Law of the People's Republic of China Concerning Joint Ventures Using Chinese and Foreign Investment, passed by the Third Session of the Fifth National People's Congress on Sept. 10, 1980, art. 5, reprinted in 1 Com. Bus. & Trade L., supra note 8, Booklet 5, at 15 [hereinafter JV Income Tax Law]. The JV Income Tax Law defines "the first profit making year" as the first year the company begins to make a profit after accounting for any loss carryovers. JV Income Tax Law, supra, art. 5; JV Income Tax Regulations, supra note 40, art. 5; Gelatt & Pomp, supra, at 44. Certain types of ventures receive further tax reductions. For instance, joint ventures in "low profit" operations such as farming or forestry, or ventures located in remote, underdeveloped areas may apply for a 15 to 30% reduction in income tax over a 10 year period. JV Income Tax Law, supra, art. 5.
103. Provisions, supra note 8, art. 9; see also Foreign Investment Regulations, supra note 68, at 3 (reporting a 50% reduction and exemption for three years granted to technologically advanced enterprises). This reduction is available only at the end of the enterprise's initial tax holidays. Provisions, supra note 8, art. 9.
104. Provisions, supra note 8, art. 7; Salem, supra note 10, at 170.
105. JV Income Tax Law, supra note 102, art. 3; JV Income Tax Regulations, supra note 40, art. 3; Gelatt & Pomp, supra note 102, at 44.
106. JV Income Tax Law, supra note 102, art. 3; JV Income Tax Regulations, supra note 40, art. 3.

107. JV Income Tax Law, supra note 102, art. 3; JV Income Tax Regulations, supra note 40, art. 3; Gelatt & Pomp, supra note 102, at 44.
An amendment to the Joint Venture Income Tax Law provides a full tax exemption to newly established firms for their first two profit-making years, and a fifty percent reduction for the following three years. To qualify, investors must schedule their enterprises to operate for ten years. In addition, a prior law imposed a ten percent tax on venture participants that remit profits abroad.

It is unlikely that the new tax incentives will have a major impact on investor perceptions of the business climate in China because prior tax rates and holidays were not a source of foreign investor complaints. In general, tax breaks in China are of limited value because few firms make enough money to generate significant tax bills. The extension of the fifty percent tax reduction for export enterprises, however, could make a difference over time because this reduction apparently continues indefinitely. Profitable technologically advanced enterprises may also benefit from an additional three years of a fifty percent reduction in their tax rate. The exemption from the remitted profits tax is a significant improvement over the earlier ten percent tax.

**F. SUMMARY OF THE PROVISIONS GRANTING SPECIAL BENEFITS TO EXPORT AND TECHNOLOGICALLY ADVANCED ENTERPRISES**

Overall, the benefits provided for export and technologically advanced enterprises under the new Provisions should improve the foreign investment climate in China. With the caveats about the power shortage in China and the less developed communications network, priority in communications, transportation, and utility services will provide predictability for ventures operating on tight production schedules.

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108. [JV Income Tax Law, supra note 102, art. 3; JV Income Tax Regulations, supra note 40, art. 3; Gelatt & Pomp, supra note 102, at 44.]
109. [Amendment, supra note 102, art. 1; see also Gelatt & Pomp, supra note 102, at 104 (stating that a subsequent law extended the exemptions for two, and then three years after the first profit-making year).]
110. [JV Income Tax Law, supra note 102, art. 5; see also Gelatt & Pomp, supra note 102, at 44 (stating that investors must schedule their enterprises to operate for at least 10 years to qualify for the tax exemptions).]
111. [JV Income Tax Law, supra note 102, art. 4; JV Income Tax Regulations, supra note 40, art. 4.]
112. See supra note 4 and accompanying text (listing investor complaints that did not include discontent with the tax system in China).
113. [Salem, supra note 7, at 170 (reporting that lack of profits has made taxation a moot point); see also infra notes 164-66 and accompanying text (stating that ventures have had trouble generating sufficient foreign exchange in China).]
114. [Zheng & Kwan, Foreign Investment Provisions Lay Groundwork for Improved Chinese Investment Climate, EAST ASIAN REP., Dec. 1986, at 9 (stating that the tax holidays in the Provisions are significant); see also supra note 104 and accompanying text (explaining a 10% tax on profits remitted abroad).]
The measures will reduce, and possibly eliminate, increases in production costs due to delays in these basic services. Similarly, the reduced land rents and labor costs will reduce production costs in China. The tax measures do not resolve any existing investor complaints, but they do offer benefits investors are unlikely to reject. Although close scrutiny of each of the articles reveals some inherent flaws, these Provisions should significantly improve the investment environment in China.

III. PROVISIONS CONFERRING BENEFITS ON ALL FOREIGN ENTERPRISES

A. MANAGEMENT AUTONOMY GRANTED

Article 15 of the Provisions guarantees all foreign investment enterprises management autonomy and the right to use "advanced scientific methods." The grant of management autonomy provided under the Provisions affords investors the right to make policy and economic plans without state interference. These are sensitive issues for foreign joint venture partners.

Under the JVL Regulations, local planning and administrative departments could not issue directives on production and operating plans to joint ventures. Despite this proviso, before the Provisions were enacted, local officials often interfered in the policy making and economic planning of joint ventures, treating them as if they were state-owned enterprises. Despite this history, investor skepticism about local and provincial compliance should decrease because the Leading Group now monitors the implementation of the Provisions.

115. Provisions, supra note 8, art. 15; see also Foreign Investment Regulations, supra note 68, at 3 (stating that the Provisions allow export and technologically advanced enterprises management in "accordance with international advanced scientific methods").

116. See JVL Regulations, supra note 35, art. 33 (stating that the board of directors is the highest decision-making authority in a venture).

117. Id. art. 56.

118. Cohen & Chang, supra note 5, at 13; see also Pattison, supra note 72, at 116 (stating that given the nature of the Chinese economic and political systems, the supervisory industrial departments and local party committees exerting control over collectives and state-run factories, will involve themselves in ventures' policy making and economic planning). One of the most startling examples of local official interference occurred in Hubei province, when a local administrator fired the manager and deputy manager of a joint venture while on an "administrative check." Cohen & Chang, supra note 5, at 13. The Provincial government subsequently reinstated the managers and castigated the local department for its interference. Id.

119. See supra notes 47-50 and accompanying text (discussing the creation of the Leading Group on foreign investment).

120. See supra notes 47-50 and accompanying text (discussing past experiences with local officials who ignore national directives on foreign investors' rights, and the
Governmental interference, however, is not the only constraint placed on foreign managers. Chinese adherence to the principle of “equality and mutual benefit” also inhibits foreign participants from effectively using their management and technical expertise in management and broad decision-making. This principle underlies the requirement that foreign managers reach an agreement with their Chinese deputies on every management decision and greatly limits foreign managers’ ability to make independent decisions. This principle also is the reason why Chinese partners insist that half the board of directors be composed of foreigners and half be composed of Chinese. This voting structure results in frequent deadlock votes, with the Chinese members voting one way and the foreigners voting the other way. These constraints on decision making are a source of great frustration for foreign investors.

Despite the new grant of management autonomy, it is unlikely that the Provisions will temper the Chinese commitment to the principle of

resulting skepticism of investors about prospects for local compliance with the new Provisions).

121. See JVL, supra note 29, art. 6 (stating that the principle of “equality and mutual benefit” will govern important board decisions). Rong Yiren, from the China International Trust and Investment Corporation (CITIC) explained the principle of “equality and mutual benefit” as applied to joint venture governance as follows:

In an enterprise no matter whether the amount of the capital is big or small, matters can be decided only by unanimous consultation of both parties. Consequently, we provided in our joint venture law that decisions will be made by the Board of Directors through the method of consultation, and not in proportion to the stock or to the amount of the investment.

122. See Moser, supra note 28, at 125 (discussing board and daily management decision-making problems associated with board membership and consultation requirements).

123. Id.

124. Pattison, supra note 72, at 114 (reporting that the principle of “equality and mutual benefit” is the spirit behind the Chinese insistence that board membership not correlate with equity ownership); see also Moser, supra note 28, at 125 (indicating that Chinese negotiators insist on an equal number of seats on the board of the venture).

125. Moser, supra note 28, at 125.

126. See Pattison, supra note 72, at 115 (stating that questions of control and management continue to concern investors); Sterba, supra note 11, at 3 (noting that foreigners are frustrated in their attempts to implement new management techniques); see also Department of Commerce Telegram from the American Consulate in Shanghai to Washington (Jan. 24, 1984) (available at the National Council for U.S.-China Trade, Washington, D.C.) (stating that the Chinese accept new management techniques in principle, but have difficulty instituting these new ideas). Cultural traits such as “saving face” impede the efficient identification and solution of problems. Id.
“equality and mutual benefit.” Adherence to this principle requires the consultative decision-making style that now inhibits foreign board members and managers from making efficient and independent management decisions within their individual ventures. Autonomous decision making inside ventures, therefore, may still elude foreign participants.

B. STEPS TOWARD RESOLVING PERSONNEL AND PRODUCTIVITY PROBLEMS

The Provisions also provide foreign managers increased control over the selection and dismissal of Chinese workers. For example, all enterprises have the right to recruit and employ local personnel and to dismiss workers, by filing a report with the local labor and personnel department. In addition, article 15 provides enterprises with the authority to determine wages and to institute incentive systems.

Prior to the new Provisions, trade unions and local government labor departments played major roles in labor management. The JVL Regulations required both the venture and the trade union, if one was formed, to sign employment contracts. The old law required the local labor department to approve every signed labor contract. Joint ventures may now hire workers that the local labor department recommends, or workers that the venture recruits itself, with the consent of the local labor department. All individuals hired must pass a qualify-

127. See supra note 121 (discussing the principle of “equality and mutual benefit”). Leaders in China firmly believe that the principle will protect their sovereignty and prevent foreign dominance. See Note, CHINA, MODERNIZATION, AND SINO-UNITED STATES TRADE: WILL CHINA SUBMIT TO ARBITRATION?, 10 CAL. W. INT’L L.J. 53, 57-59 (1980) (describing the Chinese commitment to self-reliance as a product of foreign oppression experienced during the Opium Wars from 1830 to 1842).

128. See supra note 125 and accompanying text (describing how the “principle of equality and mutual benefit” results in deadlocked voting structures and requires consultative decision-making).

129. Provisions, supra note 8, art. 15; Peking Announces Regulations, supra note 7, at 17, col. 5.

130. Provisions, supra note 8, art. 15.

131. JVL Regulations, supra note 35, arts. 95-97. To protect their democratic rights and material interests, staff and workers in a joint venture have the right to set up a trade union, with the assistance of the venture. Id.

132. JV Labor Management Regulations, supra note 40, art. 2. The regulations provide an exception for small businesses, allowing them to sign labor contracts with individuals instead of a union. Id.

133. Id.; see also Moser, supra note 28, at 126 (stating that the labor management department of local governments must approve contracts); Lussenburg, supra note 26, at 563 (stating that the labor management department must approve signed labor contracts).

134. JV Labor Management Regulations, supra note 40, art. 3; see also Moser,
ing examination.\footnote{138} The regulations also allow foreign investors to dis-

Despite prior laws and regulations permitting foreigners to select and
recruit employees,\footnote{137} in practice the Chinese participants and the For-
eign Enterprise Service Corporation (FESCO)\footnote{138} usually provide the
staff for the venture.\footnote{139} Chinese partners frequently induced foreign
partners to accept personnel that Chinese officials recommended and
usually did not actively select workers on their own.\footnote{140} The workers
ventures employ often prove unsatisfactory to foreign participants.\footnote{141}

Foreign managers rarely exercise their right to fire unsatisfactory
workers due to procedural barriers in the JV Labor Management Reg-
ulations.\footnote{142} Before a venture can dismiss a worker, the local labor
department must approve the dismissal and the trade union must have
the opportunity to proffer an objection to the venture's board of direc-
tors.\footnote{143} If this does not resolve the issue, the aggrieved party may then
seek conciliation\footnote{144} or arbitration in a Chinese arbitral body.\footnote{145} In prac-

\footnote{135} JV Labor Management Regulations, supra note 40, art. 3.
\footnote{136} Id. art. 4; see also JVL Regulations, supra note 35, art. 39 (stating that the
general manager, usually a foreigner, has the power to appoint and dismiss subordi-
nates). Dismissal must follow the guidelines stated in the labor contract, and the em-
ployee must receive compensation. JV Labor Management Regulations, supra note 40,
art. 4; see also Moser, supra note 28, at 127 (stating that the local labor department
arranges alternative employment for the dismissed worker); Pattison, supra note 72, at
132 (asserting that dismissed workers are entitled to unspecified compensation from
the venture and will receive new work assignments from the local authorities).

\footnote{137} See supra notes 134-36 and accompanying text (discussing the law governing
ventures and the local labor department's recruitment of workers).

\footnote{138} Horsley, Business Regulation in China, CHINA BUS. REV., Mar.-Apr. 1984, at
24, 30. The FESCO is the organization in Beijing authorized to provide personnel for
Sino-foreign enterprises. Id.

\footnote{139} Moser, supra note 28, at 126.
\footnote{140} Id.
\footnote{141} See Pattison, supra note 72, at 131 n.226 (stating that because workers know
that contract dismissal provisions are meaningless, they work at low levels of effi-
ciency); Burns, supra note 4, at F7, col. 1 (highlighting the concern about dismal pro-
ductivity rates); Sterba, supra note 2, at 1 (stressing investors' dissatisfaction with un-
qualified local personnel).

\footnote{142} See JV Labor Management Regulations, supra note 40, arts. 5-6 (detailing
procedures for dismissal and discipline of workers). Poorly negotiated contract provi-
sions covering the hiring and firing of employees can also cause problems with subse-
cquent dismissals. See Pattison, supra note 72, at 131 (stating the importance of fastidi-
ous attention to selection and labor provisions in contracts).

\footnote{143} JV Labor Management Regulations, supra note 40, arts. 5-6.
\footnote{144} Id. art. 14; JVL supra note 29, art. 14.
\footnote{145} JV Labor Management Regulations, supra note 29, art. 14. The parties can
tice, these procedural requirements make it very difficult to fire a worker.\textsuperscript{146}

The JV Labor Management Regulations also grant limited discretion to the board of directors to establish wage standards and bonus systems.\textsuperscript{147} The regulations require ventures to pay workers 120 to 150 percent of the real wages that state-owned enterprises in the same industry and locality pay their workers.\textsuperscript{148} Because FESCO sets wages in foreign ventures without regard to individual productivity, workers have no economic incentive to work efficiently.\textsuperscript{149}

The new grant of power to hire and fire workers strips away the procedural and practical barriers that existed under prior law.\textsuperscript{150} Investors previously dissatisfied with workers that local labor departments and FESCO\textsuperscript{151} assigned to them, or those that their Chinese partners selected, will welcome the opportunity to select their own workers. Foreign partners formerly blocked from dismissing undesirable workers will also applaud the freedom to fire unsatisfactory workers. The possibility of implementing capitalist wage incentives is another major improvement to the Chinese investment environment.

\textsuperscript{146} Moser, \textit{supra} note 28, at 127.

\textsuperscript{147} JV Labor Management Regulations, \textit{supra} note 40, art. 9.

\textsuperscript{148} \textit{Id.} art. 8; Moser, \textit{supra} note 28, at 127; Lussenburg, \textit{supra} note 26, at 564.

\textsuperscript{149} See Horsley, \textit{Chinese Labor}, \textit{supra} note 82, at 27 (stating that because workers are paid indirectly through the Foreign Enterprise Service Corporation, FESCO, which siphons off a portion of the wages, incentives are undermined); Pattison, \textit{supra} note 72, at 130 (reporting that ventures are unsure that they can derive incentives from paying higher wages than state-owned enterprises because ventures are unable to verify how much is ultimately paid to the worker). The introduction of labor contracts in state-owned enterprises signals an acknowledgement of Chinese worker productivity problems. \textit{Id.}; see Salem, \textit{Reforms Urgently Needed to Avert Decline}, \textit{Far E. Econ. Rev.}, Mar. 19, 1987, at 76 (reporting that the labor-contract system addresses the roots of productivity problems in China). Among the leading problems is the “iron rice bowl mentality;” an individual’s belief that because everyone eats from the same giant rice bowl, he or she can be less efficient at work without affecting the amount of rice he or she receives from the giant bowl. \textit{Id.}

\textsuperscript{150} See \textit{supra} notes 134-50 and accompanying text (discussing the practical realities of hiring and firing workers).

\textsuperscript{151} See \textit{supra} notes 134-43 and accompanying text (discussing the role of labor departments and the FESCO in the selection of workers). FESCO’s practice of screening applicants for their political suitability exacerbates the investor’s labor problems. Horsley, \textit{supra} note 82, at 27.
C. MEASURES ERODING BUT NOT ELIMINATING THE FOREIGN EXCHANGE QUANDARY

Article 14 of the new Provisions permits all enterprises to mutually adjust their foreign exchange imbalances.\(^{152}\) Local foreign exchange control departments must supervise these transactions.\(^{153}\) Article 14 also proposes a cash security service that will permit ventures with a foreign exchange surplus to use foreign exchange as collateral for renminbi loans, and then to reclaim the foreign currency upon repayment in renminbi.\(^{154}\) In addition, article 14 authorizes foreign enterprises to borrow renminbi.\(^{155}\)

The heart of the foreign exchange problem in China is the nonconvertibility of Chinese currency.\(^{156}\) To prevent ventures from taking scarce foreign exchange out of China, the 1979 JVL "encouraged" ventures to export their products to generate the foreign currency needed to repatriate profits and make purchases abroad.\(^{157}\) The burden of gen-

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152. Provisions, supra note 8, art. 14. Adjustments are made under the supervision of the foreign exchange control departments. Id.; see also Cheng, supra note 1, at 1 (citing the new provision that allows joint ventures to adjust foreign exchange imbalances among themselves).


154. Id.; see also Cohen & Chang, supra note 5, at 13 (explaining the cash security system created pursuant to article 14).


156. Gelatt, supra note 17, at 28.

157. JVL, supra note 29, art. 9; see also Moser, supra note 28, at 131 (stating that the effect of the regulations on foreign exchange is to require joint ventures to generate all foreign currency necessary for purchasing and distributions). Foreign purchases include purchases of equipment and raw materials required for operation. JVL, supra note 29, art. 9.

Article 75 of the JVL Regulations specifically requires joint ventures to balance their foreign exchange expenses and income. JVL Regulations, supra note 35, art. 75. The JVL Regulations allow joint ventures producing import substitutes or products China urgently needs, to sell primarily on the domestic market. Id. art. 61. Article 75 further provides that the foreign exchange imbalances of joint ventures will be corrected through the use of foreign exchange surpluses of the local government, or, if local governments are unable to correct the deficiency, the problem will be corrected through the use of national government reserves. Id. To qualify for government assistance in correcting foreign exchange imbalances, the investor must anticipate the imbalance and include it in his or her feasibility study and contract. Lecture by Qi Ruijing, Section Chief, Treaties and Law Department, MOFERT, Fourth U.S.-China Joint Legal Seminar, at United States Department of Commerce in Washington, D.C. (Nov. 12-13, 1986) [hereinafter Lecture by Qi]. A few investors were able to obtain clauses for
erating all necessary foreign currency forces most investors to export all but a small portion of their products.\textsuperscript{168} The initial dreams of access to the huge domestic market therefore remain nothing more than dreams.\textsuperscript{169} Joint ventures have not earned sufficient foreign currency to enable them to sell extensively in China.\textsuperscript{160}

In January 1986, the State Council issued foreign exchange measures designed to assist troubled joint ventures balance their foreign exchange.\textsuperscript{161} The Provisions to Encourage Foreign Investment specifically alter article 9 of the Foreign Exchange Measures. Article 9 allowed foreign investors who owned several ventures to adjust foreign exchange imbalances among themselves.\textsuperscript{162} The local government foreign exchange departments approved and executed such transactions

government assistance in resolving imbalances in their feasibility studies and contracts in 1984. Gelatt, \textit{supra} note 17, at 28. Since then, however, these contract provisions have been impossible to negotiate. \textit{Id.} Therefore, the assistance offered in correcting foreign exchange imbalances under the existing law has not alleviated the problems of firms with foreign exchange deficiencies.

Qi Ruijing also announced that the provision for resolving foreign exchange imbalances covers only foreign investors from countries that have a bilateral investment treaty with China. Lecture by Qi, \textit{supra}. This new prerequisite is clearly aimed at inducing the United States Trade Representative (USTR) and the State Department to concede on issues that have blocked the completion of a United States-China bilateral investment treaty. \textit{See} Frisbee, \textit{supra} note 19, at 41 (outlining the four major issues preventing completion of a United States-China bilateral investment treaty as of 1987).

158. Moser, \textit{supra} note 28, at 131-32; \textit{see} Gelatt, \textit{supra} note 17, at 28 (stating that foreign firms interested in penetrating the Chinese market have confronted repatriation problems).


160. \textit{See} Burns, \textit{supra} note 4, at F1, col. 1 (reporting that foreign exchange deficiencies plague all but a small number of projects, and that only the hotel projects receiving foreign currency from tourists are free from this problem); \textit{see also} Cheng, \textit{supra} note 1, at 88 (reporting that interruptions in the American Motors Corporation Beijing Jeep venture's production due to insufficient foreign exchange to purchase needed imports, has become a symbol of the foreign exchange quagmire in China).


162. \textit{Id.} art. 9. Methods offered in the 1986 foreign exchange measures that the Provisions do not affect include: (1) taking advantage of foreign investor's sales contracts to export Chinese-made products, \textit{id.} art. 6; (2) reinvesting in other Chinese enterprises that generate additional foreign exchange, \textit{id.} art. 10; (3) selling joint venture products in China for payment in foreign currency, \textit{id.} art. 8; (4) having the department that approved the joint venture contract resolve the imbalance, \textit{id.} art. 3; (5) selling joint ventures' import substitutes to Chinese enterprises for payment in foreign currency, \textit{id.} art. 5; and (6) producing technologically advanced products that are of superior quality and competitive on the international market, to gain special access to the domestic market. \textit{Id.} art. 4.
and all parties including the Chinese partners had to concur. For example, if a foreign investor was a partner in two ventures and one venture had a foreign exchange deficit and the other had a surplus, article 9 allowed the investor to adjust the foreign exchange balances of the two ventures provided the Chinese partner agreed. Investors therefore could trade renminbi from their foreign exchange poor venture for renminbi from their foreign exchange rich venture.

These Foreign Exchange Measures, however, have not had a significant effect on the foreign exchange problem. The omission of a financial incentive in article 9 for Chinese partners to agree to the adjustment transaction thwarts the measure. A financial incentive was necessary because under the Foreign Exchange Measures, only the foreign participant, who owns both ventures, benefits. The Chinese partner in the exchange-rich venture does not benefit, and therefore does not have an incentive to agree to the transaction because his or her company does not receive a gain. The Chinese government could create an incentive by establishing a higher exchange rate for transactions between ventures selling foreign currency to a co-owner's exchange-poor ventures. As of 1987, however, the government had not provided an exchange rate incentive.

Since passage of article 14 of the new Provisions, however, reports indicate that ventures may bargain to establish the exchange rate applicable to these transactions. This bargaining element provides the financial incentive for Chinese partners to agree to the adjustment transaction absent in the Foreign Exchange Measures. The incentive should result in more transactions that help ventures balance their foreign exchange accounts. Although it will have a positive effect on investors, it is unlikely that it will generate enough foreign currency to resolve completely the foreign exchange quagmire.

Article 14 of the Provisions also permits foreign exchange trade between companies that different foreign partners own, thereby increasing the number of foreign exchange rich ventures with which a foreign

163. Id. art. 9.
164. See id. (providing that an owner of two ventures may adjust foreign exchange imbalances between two companies he or she owns).
165. Id.
166. See Gelatt, supra note 17, at 30 (describing inadequacies in the 1986 foreign exchange measures).
167. Id.
168. Id.
169. Id.
171. Id.
exchange poor venture may trade foreign currency. In addition, the exchange requires only the supervision of the foreign exchange department, thereby eliminating the Foreign Exchange Measure stipulation that the foreign exchange control departments approve and execute the transactions. Access to a larger number of trading partners enlarges the pool of hard currency available, thereby creating more opportunities for ventures to balance their foreign exchange accounts.

The Provisions also offer a new scheme for using foreign exchange as collateral on renminbi loans. Article 14 no longer requires foreign investors to sell their foreign exchange to banks for renminbi loans. Instead, foreign investors can use their foreign currency as collateral for renminbi loans and retrieve it when they repay the loan. Preserving the future use of this foreign exchange will eliminate one drain on investors' reserves.

Although article 14 of the Provisions does not solve the huge foreign exchange problems in China, it does offer creative approaches for increasing the amount of foreign exchange available for joint ventures doing business in China. The alteration to article 9 of the Foreign Exchange Measures enlarges the pool of foreign currency available to ventures that require foreign exchange. The ability to preserve the future use of foreign currency as collateral in loans also enlarges the pool of foreign exchange available to Sino-foreign companies. The reduction of the activities of the foreign exchange departments from approval and execution of transactions to supervision eliminates other cumbersome procedures. Overall, these changes are likely to erode the foreign exchange problem, but not end the foreign exchange quandary.

D. Measures Providing Tax Breaks For All Enterprises

Article 10 of the new Provisions provides a full tax rebate to all enterprises reinvesting profits to establish or expand export or technologically advanced enterprises. Article 11 of the Provisions exempts most

172. See supra note 152 and accompanying text (describing the new provision for mutual adjustment).
174. Provisions, supra note 8, art. 14; Cohen & Chang, supra note 5, at 13; see 1986 FX Regulations, supra note 161, art. 9 (requiring the approval of the state department for foreign exchange control).
175. See supra note 153 and accompanying text (discussing the new loan collateralizing scheme).
177. See Berthelsen, supra note 17, at 8, col. 1 (discussing the depleted foreign exchange reserves in China).
178. Provisions, supra note 8, art. 10. The newly established export or technologi-
export products\(^{179}\) from the consolidated industrial and commercial tax (CICTA).\(^{180}\) Under prior law, foreign partners who reinvested their share of profits for at least five consecutive years received forty percent of the income tax paid on those funds as a rebate.\(^{181}\) The exemption from the CICTA and, presumably from customs duties for export products are helpful, but not significant benefits.\(^{182}\) Although the full rebate for reinvesting in export or technologically advanced enterprises provides some incentives for such investment, it will not substantially ameliorate the larger deficiencies associated with the business environment in China.\(^{183}\)

Article 16 of the new Provisions mandates implementation of the “Circular of the State Council Concerning Firmly Curbing the Indiscriminate Levy of Charges on Enterprises,”\(^{184}\) previously applicable only to state-owned enterprises.\(^{185}\) Article 16 also directs provincial governments to formulate specific methods to supervise implementation of these new guidelines.\(^{186}\) Foreign investors may refuse to pay unreasonable\(^{187}\) charges and appeal such charges to local economic committees.\(^{188}\) If redress is not obtained at the local level, investors may then

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\(^{179}\) Provisions, supra note 8, art. 11. Crude oil, finished oil, and other products subject to special state provisions are not exempted. Id.

\(^{180}\) Id.; see also Foreign Investors’ Fears, supra note 4, at 1, col. 4 (listing the exemption from consolidated industrial and commercial tax).

The CICTA, a broad-based turnover tax, is applied at each stage of production when taxable goods or services are transferred from entity to entity. Pomp, Gelatt & Surrey, The Evolving Tax System of the People’s Republic of China, 16 Tex. Int’l L.J. 11, 19 (1981); Gelatt & Pomp, supra note 102, at 41. The tax is also levied at the retail level when the goods are sold to the ultimate user. Id.

\(^{181}\) JV Income Tax Law, supra note 102, art. 6; Lussenburg, supra note 26, at 581-82.

\(^{182}\) See Cohen & Chang, supra note 5, at 13 (stating that other export license benefits are more significant).

\(^{183}\) See supra note 113 and accompanying text (asserting that taxation is a moot point for ventures that have not yet earned a profit).

\(^{184}\) Cohen & Chang, supra note 5, at 13-14 (explaining that the Circular, aimed at ending indiscriminate taxation, previously applied only to state-owned enterprises).

\(^{185}\) Id. at 14.

\(^{186}\) Provisions, supra note 8, art. 16.

\(^{187}\) Id. Article 16 does not define “unreasonable.” Id. The forthcoming implementing regulations will address this question. Zhang, supra note 43.

\(^{188}\) Provisions, supra note 8, art. 16; see also China Adopts Measures, supra note 9, at 5, col. 1 (reporting on the instructions to curb indiscriminate charges, and the granting of a right to refuse to pay and to appeal such charges).
seek review first at the provincial level, and later at the national level before the State Economic Commission.¹⁸⁹

Foreign investors complain that the prior law gave local officials unlimited discretion to determine tax exemptions and to impose arbitrary taxes.¹⁹⁰ In an attempt to curb indiscriminate tax charges, article 16 of the Provisions allows foreign investors to challenge the validity of taxes levied against them through an appeal procedure.¹⁹¹ The benefits of article 16 will become more apparent when the implementing regulations detail the procedures involved in the appeal of tax charges.¹⁹² Investors should view the appeal process with cautious optimism because it could easily become another bureaucratic conundrum.¹⁹³

E. Measures To Facilitate Imports and Exports

Under the new Provisions, materials and parts imported for use in manufacturing goods for export are exempt from import licensing.¹⁹⁴ Article 12 of the Provisions states that export licenses expire after six months and that ventures do not have to export exclusively through government trade corporations.¹⁹⁵ Under prior law, export licenses expired after six months,¹⁹⁶ while import licenses remained in effect for one year.¹⁹⁷ Before the new Provisions, ventures could export products

¹⁸⁹. Provisions, supra note 8, art. 16.
¹⁹⁰. Sterba, supra note 2, at 3, col. 4; see supra note 113 (stating that local officials have discretionary power to determine tax exemptions and reductions under JV Income Tax Regulation article 4).
¹⁹¹. Provisions, supra note 8, art. 16.
¹⁹². See Zhang, supra note 43 (stating that the forthcoming implementing regulations will detail the appeal procedures).
¹⁹³. See infra notes 207-17 and accompanying text (describing commonplace problems with bureaucratic inefficiency).
¹⁹⁴. Provisions, supra note 8, art. 13. If the imported materials are used for products sold domestically, the exemption does not apply. Id.
¹⁹⁵. Id. art. 12.

In general, China implements the following import guidelines: (1) China will not import goods hazardous to individuals' health; (2) if domestic products do not satisfy
on their own or through government trading corporations. In addition, approved ventures were exempt from import licensing requirements for goods within the scope of their contract, but still had to obtain licenses for designated controlled and prohibited goods.

The article 13 import license exemption for export products is a significant benefit for investors. It is important because many of the raw materials and much of the equipment that ventures must import for production are controlled or restricted. Eliminating the import license requirement for these raw materials and equipment makes China more attractive for export processing. The exemption also implicitly exempts these particular products from custom duties and the CICTA, thus reducing red tape inconveniences at the border.

With regard to export licenses, article 12 confirms that they expire after six months and that foreign investors have the right to export without using expensive government trading corporations. Article 12, therefore, does not extend prior law.

F. EFFICIENT AND COORDINATED BUREAUCRACIES?

Article 17 of the Provisions calls for all levels of the government to strengthen their coordination of work, to improve efficiency, and to examine and approve matters that foreign enterprises bring to their attention. Completion of the approval process for joint venture projects demand, China may import a limited number of comparable goods; (3) imports of important raw materials and semi-finished materials that China does not produce are encouraged; (4) priority is given to the sophisticated technology and equipment that is necessary for Chinese modernization; and (5) China will permit importation of materials processed or assembled for export in China. Interview with Sun Chung, China Economic News, Oct. 12, 1981, at 2, cited in Horsley, supra note 1, at 17 & n.50.

198. JVL Regulations, supra note 35, art. 62.
199. Horsley, supra note 1, at 17.
200. See id. (stating that authorized import corporations have a general license to import commodities they are authorized to handle). Specially designated controlled and prohibited goods are not within the scope of these general licenses. Id.
201. See Bangsberg, China Eases Foreign Firm's Import Laws, J. COM., Dec. 1, 1986, at 1, col. 1 (reporting that general machinery, vehicles used in production, and raw materials that ventures previously were required to obtain licenses for, are now exempt under the new Provisions).
202. Id.
203. Id.
204. Cheng, supra note 1, at 89.
205. JVL Regulations, supra note 35, art. 62.
207. Provisions, supra note 8, art. 17; see Provisions to Encourage, supra note 44, at 153 (stating that the Provisions give investors a mallet with which to coax foot-dragging bureaucrats); Salem, supra note 7, at 170 (stating that the regulations will reduce bureaucratic inefficiency if implemented); Peking Announces Regulations, supra note 4, at 9, col. 4 (stating that the Provisions promise reductions in bureaucratic
must not take more than three months from the date of submission.\textsuperscript{208} These articles attempt to reduce the cumbersome approval process, as well as to urge all levels of the government to be responsive to investor concerns.

Prior to the Provisions, approval of equity joint ventures required the submission of an application that included a feasibility study and a contract\textsuperscript{209} to the Ministry of Foreign Trade and Economic Relations\textsuperscript{210} (MOFERT) and its provincial, autonomous region or municipal branches.\textsuperscript{211} In theory, the authorities were required to complete the approval process within three months of submission.\textsuperscript{212}

\textsuperscript{208} Provisions, supra note 8, art. 17; Salem, supra note 7, at 170; see also Peking Announces Regulations, supra note 4, at 9, col. 4 (reporting that the previously long approval processing is now within a three month schedule).

\textsuperscript{209} JVL Regulations, supra note 35, art. 9; see also Archer, The Role of Agencies in Regulating Joint Ventures in China, 21 STAN. J. INT'L L. 195, 199-203 (1985) (listing the documents that ventures submit and emphasizing the importance of developing a close working relationship with the local officials who give preliminary and final approval). Although in many instances local officials have approval authority, the final review powers and the issuance of a certificate rests with MOFERT. Moser, supra note 28, at 123.

\textsuperscript{210} See supra note 43 (discussing the function of MOFERT).

\textsuperscript{211} Lussenburg, supra note 26, at 552 n.32 (explaining that as part of a decentralization drive, MOFERT gave approval authority to the local levels of government for certain investment projects). Local branches may approve joint venture projects falling within set dollar limits, as well as those not in conflict with state raw material allocation plans, national fuel and transportation plans, or foreign trade quotas. Id. at 552. Various dollar figures and conditions for determining local level approval authority are listed in informal guidelines. Id. A 1984 study reported that the Shanghai and Tianjin branches had authority to approve projects costing up to $30 million, while the Dalian branch had a $10 million limit. Xingfen, The Coastal Cities Stride Ahead, INTERTRADE, Aug. 1984, at 47-48, cited in Lussenburg, supra note 26, at 552 n.32. The figures for 1987 indicate a $30 million approval limit for the Shanghai branch, a $10 million limit for the Beijing, Dalian, and Guongzhou branches, and a $5 million limit for most other provinces, municipalities, and autonomous regions. Zhang, supra note 43. Most projects are now approved at the local level and MOFERT expects this decentralization trend to continue. Id.

Despite overtures China has made to foreign capitalist investors, the Chinese leadership remains firmly committed to a planned socialist economy. Moser, supra note 28, at 106. The approval process is designed to integrate acceptable investment projects into the national economic plan. Id.

\textsuperscript{212} JVL Regulations, supra note 35, art. 10. Within one month of a grant of approval the joint venture must register with the local branch of the General Administration for Industry and Commerce (GAIC), which has the authority to issue a business license. Id. art. 11. Issuance of the license formally establishes the joint venture. Id.
The approval process, however, was extremely lengthy and unpredictable. Procedures were burdened with delays, ambiguities, unexpected special fees, and arbitrary decisions. In addition, decision-making procedures were based on neibu, internal rules unknown to foreigners. Confusion also often arose over which government level had approval authority.

The mandate in article 17 of the Provisions for improved bureaucratic coordination and efficiency in regard to foreign investor problems is a welcome overture to investors frustrated by frequent bureaucratic entanglements. Article 17 alone, however, will not bring about implementation. The three month approval deadline merely reiterates existing JVL article 3, and is intended to encourage local official compliance with the earlier deadline.

G. No Relief For Raw Material And Equipment Purchasing Problems

Article 15 of the new Provisions grants all foreign enterprises the
authority to purchase production materials within the scope of their contracts and to determine operation and production plans. Prior to the new Provisions, ventures could purchase raw materials and equipment needed for production abroad or in China, provided they gave priority to purchasing within China when conditions were comparable among suppliers. Prior law also permitted ventures to determine their operation and production plans.

Despite the authority to purchase materials under prior law, the supply of raw materials has become a serious problem for ventures in China. Even when available, some materials are of such poor quality that they are useless. Moreover, foreigners currently pay more for supplies than Chinese state-owned enterprises. High prices and difficulties in obtaining materials make the price of finished products less

221. Provisions, supra note 8, art. 15.
222. Id.
223. JVL, supra note 29, art. 9; JVL Regulations, supra note 35, art. 57; see also Moser, supra note 28, at 129 (explaining that where conditions between foreign and Chinese sources are equal, joint ventures are to give priority to Chinese supplies); Lussenburg, supra note 26, at 560 (stating that the JVL and the JVL Regulations provide that, all other things being equal, joint ventures should give priority to Chinese sources).

Purchasing procedures required of state-owned enterprises also govern joint ventures. JVL Regulations, supra note 35, art. 58; Moser, supra note 28, at 129. Gold, silver, platinum, petroleum, coal, and timber, the six raw materials used to manufacture export products, are priced according to international standards that the State Administration of Foreign Exchange Control or foreign trade departments provide. JVL Regulations, supra note 35, art. 65(1). Prices for coal and oil used to manufacture domestically sold products, and for materials other than the six raw materials are the same as those for state-owned enterprises. Id. at 65(3).

Foreign exchange shortages inhibit the joint venture manager's ability to purchase materials abroad. See supra notes 156-60 and accompanying text (discussing the difficulties attributable to insufficient foreign exchange including problems with foreign purchases). The Foreign Economic Contract Law (FECL) in China went into effect on July 1, 1985. Wei Jiaju, Law On Economic Contracts Involving Foreign Interests, 3 CH NA L. REP. 166, 169 (1986). The FECL governs all contracts relating to trade, investment, and commercial transactions. Id. at 166. Venture contracts to purchase equipment and materials abroad are negotiated and executed according to the FECL. Id. at 166-69.

225. Cohen & Chang, supra note 5, at 12; see also China Adopts Measures, supra note 9, at 1 (reporting that artificially high operating costs and an inability to obtain needed parts and materials partially caused the 1986 investment decline).
226. See C. SCHLYTER & A. SEBELIUS, supra note 11, at 55 (describing Shanghai-Squibb's receipt of glass bottles that could not withstand machine processing, even though samples sent earlier survived the process).
227. Lussenburg, supra note 26, at 561; Peking Announces Regulations, supra note 7, at 17, col. 5; cf. C. SCHLYTER & A. SEBELIUS, supra note 11, at 55 (stating that prices of raw materials and intermediate products are three times higher in China than the Chinese export prices for some products).
competitive\textsuperscript{228} and tarnish the investment image of China.\textsuperscript{229} The absence of a directive to charge joint ventures the same prices as state-owned enterprises and the failure to grant them a priority for access to raw materials are conspicuous shortcomings of the Provisions.\textsuperscript{230}

H. \textbf{SUMMARY OF PROVISIONS CONFERRING BENEFITS ON ALL FOREIGN ENTERPRISES}

The possibility of improving the productivity of Chinese workers with wage incentives is an important breakthrough for foreign managers discontented with the productivity of Chinese workers. In addition, the grant of management autonomy appears to eliminate many of the limitations of operating under the JVL and its regulations. The measures to erode bureaucratic inefficiency will also help cure investor problems. The lack of a grant of priority and price improvements for raw materials and supplies, however, is significant deficiencies in the measures.\textsuperscript{231}

Moreover, the Provisions will not resolve the foreign exchange quandary. Although two of the new measures increase the pool of foreign exchange available to joint ventures, they are unlikely to generate sufficient foreign currency to solve the huge foreign exchange problem.\textsuperscript{232} The repatriation and foreign purchase problems arising from foreign exchange deficiencies in China will therefore remain the primary impediment to investor contentment.\textsuperscript{233}

\textbf{RECOMMENDATION}

Because investors will not come to China if they cannot make money

\textsuperscript{228} See Lussenburg, supra note 26, at 560-61 (discussing the concern that higher prices for materials ultimately harm the international competitiveness of many products); C. Schlyter & A. Sebelius, supra note 11, at 54-57 (explaining that prices of materials and parts increase when foreigners press for quality improvement in the available materials).

\textsuperscript{229} See China Adopts Measures, supra note 9, at 1 (describing high prices and scarcity of raw materials as factors in the worsening investment climate in China).

\textsuperscript{230} See Cohen & Chang, supra note 5, at 12 (commenting that a guarantee of priority in raw materials supply is a conspicuous omission in the Provisions). \textit{But cf.} Cheng, supra note 1, at 89 (reporting that although the Provisions do not guarantee priority in access to raw material supplies, several cities including Beijing, Canton, Tianjin, and Shanghai have established special companies to procure materials and equipment for foreign investment enterprises).

\textsuperscript{231} See supra notes 225-29 and accompanying text (citing increased costs and harm to product price competitiveness resulting from supply access and pricing problems).

\textsuperscript{232} See supra notes 157-60 and accompanying text (analyzing the impact of the new foreign exchange measures).

\textsuperscript{233} See supra notes 173-79 and accompanying text (explaining the constraints on successful business operation that foreign currency restrictions impose).
and send profits home, Chinese leaders must go beyond the foreign exchange measures contained in the Provisions and devise new solutions to resolve this overarching investment problem. The Taiwan Statute for Investment by Foreign Nationals\(^234\) provides a model that China should consider as a possible solution. Under this approach, projects meeting certain criteria qualify to convert local currency into foreign exchange for repatriating profits and investing capital.\(^235\) In addition, the 1987 Chinese Import Substitution Regulations\(^236\) will provide another significant source of foreign exchange for Sino-foreign ventures\(^237\) by allowing technologically advanced enterprises to sell products replacing imports on the domestic market and receiving payment in foreign exchange.\(^238\) The leadership should consider extending this benefit to all types of foreign enterprises in China.

Chinese policy makers might also set the renminbi exchange rate closer to the market rate. The pool of available foreign exchange would then increase as the price of American dollars is allowed to rise freely.\(^239\) Sino-foreign enterprises could then more easily convert their renminbi earnings into foreign currency for repatriation and foreign purchases. Until China takes these or similar measures, the Provisions alone will not provide sufficient incentives for large inflows of foreign investment.

CONCLUSION

From a broader perspective, the impact of the Provisions hinges on the political and economic policies that the Chinese leadership chooses to pursue, and on its attitude toward Western influences. Challenges to the policy of opening to the West, such as the power struggle in early

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\(^{234}\) Statute for Investment by Foreign Nationals, promulgated on July 14, 1954 (unpublished presentation available at Library of Congress, Far Eastern Law Division); see also Cohen & Chang, supra note 5, at 11 (suggesting that the Taiwan Statute provides a model for China to use).

\(^{235}\) See Statute for Investment by Foreign Nationals, supra note 234, arts 13, 14 & 17 (providing the procedures for investors to apply for exchange settlements against the yearly income of net profit or interest accruing from their investment).

\(^{236}\) Import Substitution Measures, supra note 42, at 3, col. 1. China also issued import substitution regulations for technologically advanced enterprises. Import Substitution Regulations for Machinery and Electronics, supra note 42, at 3, col. 1.

\(^{237}\) Cohen & Chang, supra note 5, at 14.

\(^{238}\) Import Substitution Regulations, supra note 42, art. 9 (stating that a joint venture selling a product approved for import substitution may receive payment from a domestic buyer in foreign exchange). The foreign exchange control authorities must approve the transaction. Id.

\(^{239}\) See Chow, Development of a More Market-Oriented Economy in China, Science Jan. 16, 1987, at 298 (stating that any exchange rate closer to the market rate will lessen the need for strict control of foreign exchange).
1987 that led to the ouster of then Secretary General Hu Yaobang, can have a chilling effect on foreign investment. Foreigners fear that such political instability may affect the viability of their capitalist operations in China. Therefore, the impact of laws such as the Provisions ultimately depends on the existence of political and economic policies that inspire investor confidence in a stable investment environment in China.

The results of the Thirteenth Communist Party Congress in November 1987 provide some certainty that investment conditions in China will continue to improve. Newly appointed General Secretary of the Communist Party Zhao Ziyang who, like his predecessor Deng Xiaoping, recognizes the need in China for foreign technology, capital, and know-how, announced plans to pursue market-oriented reforms. Investors therefore can expect the new leadership to enforce the 1986 Provisions to Encourage Foreign Investment, and to guide the evolution of Chinese investment laws toward more openness to the West.

240. See supra note 1 (discussing the open door policy and the efforts in China to modernize through the introduction of foreign capital, technology, and know-how).

241. See Cheng, supra note 1, at 88 (stating that the foreign business community has become cautious in the wake of the political turmoil of early 1987 and is hesitant to invest further until implementation of the Provisions becomes apparent and political stability returns); see also Southerland, supra note 1, at 88 (stating that foreigners were concerned about the open door policy in China after the fall of Hu Yaobang).

242. See Gargan, More Change Due In China's Economy, N.Y. Times, Oct. 26, 1987, at A1, col. 1 (reporting that Zhao Ziyang stated that China will accelerate the introduction of Western capitalistic economic and financial methods into the Chinese economy); see also Gargan, Chinese Premier Wins Appointment, supra note 1, at A1, col. 4 (stating that the new Politburo is expected to pursue Deng Xiaoping's program aimed at freeing the Chinese economy from "the constraints of orthodox socialist planning"). Zhao reaffirmed the commitment to socialism, and indicated that China can and will make use of expanded markets, technology, and the issuance of stocks and bonds to develop its economy. Gargan, More Change Due in China's Economy, supra, at A1, col. 1. China will also pursue a price reform program. Id.

At the Thirteenth Communist Party Congress Deng Xiaoping and numerous other veterans of the Long March stepped down from the Central Committee and the Politburo, the highest organs of the Communist Party. Id. The Congress elected Zhao as the head of the Party, and elevated four additional newcomers to the five-member Standing Committee. Id. They include Li Peng, Hu Qili, Qiao Shi, and Yao Yilin. Id. Hu is the only newcomer in the Standing Committee who consistently supported economic change associated with Zhao. Id. Diplomats report that the other three support the overall direction of Zhao's policies. Gargan, Chinese Premier Wins Appointment, supra note 1, at A8, col. 1. Deng's and Zhao's ability to persuade the conservative elders to step down with Deng, after the turmoil surrounding the ouster of former Party General Secretary Hu Yaobang in early 1987, indicates that the reformers regained control in 1987. China's New Style, supra note 1, at A1, col. 2. Deng's retirement also signals that he is confident that Zhao will lead the country further along in the reforms that Deng started in 1978. Id.