
Wenhua Shan

with the assistance of Peng Wang

Brussels, October 2015
REPORT ON THE COMPATIBILITY OF CHINESE LAWS AND REGULATIONS WITH THE ENERGY CHARTER TREATY

By Wenhua Shan*
Fellow, Energy Charter Secretariat, Belgium
Dean and Chair, Xi’an Jiaotong University Law School, China
Professor of Law, University of New South Wales Faculty of Law, Australia
Senior Fellow, University of Cambridge Lauterpacht Centre for International Law, UK

With the assistance of Peng Wang
Intern, Energy Charter Secretariat, Belgium
PhD Candidate, Xi’an Jiaotong University Law School, China
Silk Road Scholar, University of Cambridge Lauterpacht Centre for International Law, UK

October 2015

* The Author would like to thank Dr. Alejandro Carballo Leyda for his insightful comments and suggestions on earlier drafts of the report. He would also like to thank other colleagues at the Energy Charter Secretariat particularly Secretary-General Ambassador Dr. Urban Rusnák, Steivan Defilla, Denis Westerhof and Matteo Barra for the very helpful discussions on the topic and for their friendship. Special thanks should go to Ms Han WANG and Professor Yufeng YANG for their friendship and their insightful comments on this and other relevant research outcomes. Special thanks should also go to Lesley Johnstone, Yves Rayeur and Vlatka Anic for their very kind administrative support during the stay.
TABLE OF CONTENTS

List of Abbreviations .......................................................................................................................... i
Foreword .............................................................................................................................................. vi
1. **General aspects** .......................................................................................................................... 1
   1.1 Constitutional and other rules in relation to international treaties ........................................... 2
   1.2 Current situation of market reforms ......................................................................................... 5
   1.3 Membership in international economic or environmental organisations or integration
economic agreements, custom unions or free trade areas and relations with other major
international organisations or groupings ....................................................................................... 8
   1.4 International aid ......................................................................................................................... 8
   1.5 The "One Belt, One Road" Initiative .......................................................................................... 12
2. **Articles 3, 4 and 29 - International markets and trade** .......................................................... 13
   2.1 Legal basis: Foreign Trade Law, Energy Law and other related laws ..................................... 13
   2.2 Foreign trade regimes with a particular focus on the energy sector ......................................... 17
   2.3 Customs regulations .................................................................................................................. 19
   2.4 Free trade zones; Domestic Pilot Free Trade Zone ................................................................... 21
   2.5 Trade agreements ....................................................................................................................... 22
3. **Article 5 - Trade-related investment measures** ........................................................................ 24
   3.1 Applicable trade-related investment measures; relevant legislation ....................................... 24
   3.2 Plans and measures suggested for their termination ................................................................ 25
4. **Article 6 - Competition** .......................................................................................................... 25
   4.1 Legislative framework - general and specific for energy industries ....................................... 25
   4.2 Enforcement of the competition rules ....................................................................................... 26
   4.3 Monopolies; mergers; dominant positions - policies and practices applied in the energy sector
and national security review ......................................................................................................... 27
   4.4 State aid; subsidies other than on exportation .......................................................................... 30
   4.5 Pricing of energy materials and products; subsidies ................................................................. 31
   4.6 ECT requirements under Article 6 ......................................................................................... 33
5. **Article 7 - Transit** ...................................................................................................................... 34
   5.1 Legislative framework for transit - general and applicable for the energy materials and
products ............................................................................................................................................. 34
   5.2 Access terms and conditions to transit networks (oil, gas, electricity) .................................... 35
   5.3 Environmental and other regulations affecting the construction of transit networks ............. 37
11.3 Restrictions on foreign exchange transfers applicable to nationals and foreigners ........................................ 81

11.2 Securities ................................................................................................................................. 80

11.1 Foreign exchange regulations .................................................................................................. 79

11. Article 14 - Transfers .................................................................................................................. 79

10.5 ECT requirements under Articles 12 and 13 ......................................................................... 78

10.4 Recourse or appeal procedures ................................................................................................. 77

10.3 Transparency and the evaluation methods for expropriation payments .................................. 75

10.2 Procedures and forms for granting a compensation ................................................................. 74

10.1 Legislative basis: Constitution, Foreign investment law, Property law, State compensation law .................................................................................................................................................. 73

10. Articles 12 and 13 - Compensation for losses, expropriation .................................................. 73

9.3 ECT requirements under Article 11 ......................................................................................... 72

9.2 Definitions, forms and differences in the residence status ....................................................... 71

9.1 Conditions for entry, stay and work of foreign natural persons generally and in relation to investments .............................................................................................................................................. 69

9. Article 11 - Key personnel .......................................................................................................... 69

8.5 ECT requirements under Article 10 ......................................................................................... 67

8.4 General legislation relevant to investment .................................................................................. 59

8.3 Formal requirements for the purposes of the Energy Charter Supplementary Treaty ........... 58

8.2 Exceptions to national treatment .............................................................................................. 56

8.1 Legal Framework for foreign investment: the draft foreign investment law and other relevant laws and regulations ........................................................................................................................................... 53

8. Article 10 - Investment ............................................................................................................... 53

7.4 ECT requirements under Article 9 ............................................................................................ 52

7.3 Conditions for domestic traders or investors making foreign currency loans ....................... 51

7.2 Conditions for granting credits to foreign traders or investors ............................................... 49

7.1 General legislation regulating access to capital; discriminatory elements ............................. 48

7. Article 9 - Access to capital ....................................................................................................... 48

6.3 ECT requirements under Article 8 ............................................................................................ 47

6.2 Legislation regulating intellectual property rights; membership in relevant international conventions .......................................................................................................................................... 40

6.1 Foreign trade regime regarding energy technology; access and transfer; discriminatory non-tariff measures ........................................................................................................................................ 38

6. Article 8 - Transfer of technology .............................................................................................. 38

5.4 ECT requirements under Article 7 ............................................................................................ 37

5. Article 7 - Foreign trade regime and conditions for entry, stay and work in relation to energy technology ........................................................................................................................................... 34
11.4 Regulations on transfers of returns in kind ................................................................. 82
11.5 ECT requirements under Article 14 ........................................................................ 82
12. Article 15 - Subrogation .............................................................................................. 83
  12.1 Rules or policies governing the recognition of subrogation in relation to foreign investors and their investments ................................................................. 83
  12.2 Rules and policies for the provision of state guarantees to investments of national investors abroad ........................................................................................................ 85
  12.3 Rules on insurance of investments and companies .................................................. 86
  12.4 ECT requirements under Article 15 ECT ............................................................... 87
13. Article 18 - Sovereignty over natural resources ............................................................ 87
  13.1 General legal framework .......................................................................................... 87
  13.2 Ownership of energy resources .............................................................................. 89
  13.3 Systems and published criteria for allocating authorisations, licences, concessions or contracts for the exploration and exploitation of energy resources .............................................. 90
  13.4 Fiscal instruments connected with the exploration and exploitation of energy resources .... 93
  13.5 State policies for the depletion and recovery of natural resources ....................... 94
  13.6 ECT requirements under Article 18 ....................................................................... 96
14. Article 19 - Environmental aspects ............................................................................ 96
  14.1 Legislative and institutional framework ...................................................................... 96
  14.2 International agreements to which China is a party .................................................. 97
  14.3 General environmental policies and the impact of the energy sector ...................... 97
  14.4 Policies and measures adopted or proposed in relation to “polluter pays” and “fuller reflection of the environmental cost in energy prices” principles .................................. 101
  14.5 ECT requirements under Article 19 ECT ............................................................... 102
15. Article 20 - Transparency .......................................................................................... 102
  15.1 Legislation regulating the publishing of laws and other legal acts ............................ 102
  15.2 Subjects of the publishing ...................................................................................... 103
  15.3 Information centres .................................................................................................. 104
  15.4 Designation of the enquiry point for the Treaty purposes ....................................... 105
  15.5 ECT requirements under Article 20 ........................................................................ 105
16. Article 21 - Taxation .................................................................................................. 107
  16.1 Legal framework on taxation .................................................................................. 107
  16.2 Taxation of corporations ......................................................................................... 108
  16.3 Taxation of foreign corporations ............................................................................. 110
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.4 Taxation of shareholders</td>
<td>110</td>
</tr>
<tr>
<td>16.5 Other indirect taxes for energy</td>
<td>111</td>
</tr>
<tr>
<td>16.6 Tax treaties</td>
<td>112</td>
</tr>
<tr>
<td>16.7 Accounting system</td>
<td>112</td>
</tr>
<tr>
<td>16.8 ECT requirements under Article 21</td>
<td>113</td>
</tr>
<tr>
<td>17. Article 22 - State and privileged enterprises</td>
<td>113</td>
</tr>
<tr>
<td>17.1 State (public) enterprises according to energy sub-sectors</td>
<td>113</td>
</tr>
<tr>
<td>17.2 Legally protected monopolies on national, regional or municipality levels</td>
<td>114</td>
</tr>
<tr>
<td>17.3 Legal basis and the prerequisites for the establishment of state or privileged enterprises; nationality or control requirements</td>
<td>116</td>
</tr>
<tr>
<td>17.4 ECT requirements under Article 22</td>
<td>117</td>
</tr>
<tr>
<td>18. Article 23 - Observance by sub-national authorities</td>
<td>118</td>
</tr>
<tr>
<td>18.1 Competence of sub-national authorities (governments)</td>
<td>118</td>
</tr>
<tr>
<td>18.2 Enactment of international treaties at sub-national levels</td>
<td>120</td>
</tr>
<tr>
<td>18.3 General measures for ensuring the observance at sub-national levels</td>
<td>121</td>
</tr>
<tr>
<td>18.4 ECT requirements under Article 23</td>
<td>121</td>
</tr>
<tr>
<td>19. Article 26 - State to Investor disputes</td>
<td>122</td>
</tr>
<tr>
<td>19.1 Requirements for listing in Annex ID</td>
<td>122</td>
</tr>
<tr>
<td>19.2 Policies, practices and conditions not allowing an investor to resubmit the same dispute to international arbitration at a later stage</td>
<td>122</td>
</tr>
<tr>
<td>19.3 ECT requirements under Article 26</td>
<td>124</td>
</tr>
<tr>
<td>20. Article 27 - State to State disputes</td>
<td>125</td>
</tr>
<tr>
<td>21. Conclusion and Outlook</td>
<td>126</td>
</tr>
<tr>
<td>21.1 The Chinese legal framework on energy regulation</td>
<td>126</td>
</tr>
<tr>
<td>21.2 Compatibility of Chinese laws with ECT provisions</td>
<td>127</td>
</tr>
<tr>
<td>21.3 Safeguard and flexibility mechanisms of the ECT for Chinese accession</td>
<td>128</td>
</tr>
<tr>
<td>21.4 Prospects of Chinese accession to the ECT</td>
<td>130</td>
</tr>
<tr>
<td>Annexes</td>
<td>131</td>
</tr>
<tr>
<td>Annex 2.1 Quota and Licensing of Import and Export in China</td>
<td>131</td>
</tr>
<tr>
<td>Annex 2.2 International Legal Relations of China with Contracting Parties of ECT</td>
<td>132</td>
</tr>
<tr>
<td>Annex 2.3 China’s Free Trade Agreements</td>
<td>134</td>
</tr>
<tr>
<td>Annex 4.1 Competition policy legislation and enforcement authorities in China</td>
<td>135</td>
</tr>
<tr>
<td>Annex 8.1 Some specific Administrative Measures (Negative List) on Foreign Investment Access in Pilot Free Trade Zones (2015) (Excerpt of ECT-related measures)</td>
<td>137</td>
</tr>
</tbody>
</table>
Annex 8.2 Special Administrative Measures for the Access of Foreign Investment in the China (Shanghai) Pilot Free Trade Zone (Negative List) (2013) relevant for issues covered by the ECT

Annex 8.3 Comparison of Investment Rules of the Energy Charter Treaty and China’s Recent BITs

Annex 8.4 China’s Bilateral Investment Treaty (by region)

Annex 8.5 China’s Bilateral Investment Treaty (by country)

Annex 8.6 China’s Other Investment Agreements

Annex 8.7 Other Investment Related Instruments of China

Annex 12.1 Products and Service of the SINOSURE

Annex 13.1 Resource Tax Taxable Items and Tax Amount Range Table

Annex 13.2 Table for Rates of Mineral Resources Compensation

Annex 14.1 List of International Environmental Agreements to which China is a Party

Annex 16.1 Taxes in China

Annex 16.2 Avoidance of Double Taxation Treaty

Annex 16.3 Exchange of Tax Information Treaty
**List of Abbreviations**

AIIB – Asian Infrastructure Investment Bank  
AML – Anti-Monopoly Law  
APC – Asia-Pacific Economic Cooperation Organization  
APEC – Asia-Pacific Economic Cooperation  
AQSIQ – General Administration of Quality Supervision, Inspection and Quarantine  
ASBE – Accounting Standards for Business Enterprises  
ASEAN – Association of Southeast Asian Nations  
BIT – Bilateral Investment Treaty  
BOT – Build-Operate-Transfer  
CBRC – China Bank Regulatory Commission  
CCP or CPC – Chinese Communist Party  
CFC – Controlled Foreign Company  
CIRC – China Insurance Regulatory Commission  
CNOOC – China National Offshore Oil Corporation  
CNPC – China National Petroleum Corporation  
CR – Concentration Ratio  
CSPFTZ – China Shanghai Pilot Free Trade Zone  
DPRK – Democratic People’s Republic of Korea  
DRC – Development and Reform Commission  
ECC – Energy Charter Conference  
ECT – Energy Charter Treaty  
FAO – Food and Agriculture Organization of the United Nations  
FDI – Foreign Direct Investment  
FIE – Foreign Invested Enterprise  
FIT – Feed-In Tariff  
FOCAC – Forum on China-Africa Cooperation  
FTA – Free Trade Agreement  
FTAAP – Asia-Pacific Free Trade Agreement  
FYP – Five-Year Plan
G20 – Group of 20
GACC – General Administration of Customs of the People’s Republic of China
GATS – General Agreement on Trade in Services
GATT – General Agreement on Tariffs and Trade
HCFI – Holding Companies with Foreign Investment
HHI – Herfindahl-Hirschman Index
IAEA – International Atomic Energy Agency
IEA – International Energy Agency
IEF – International Energy Forum
IFRs – International Financial Reporting Standards
IMF – International Monetary Fund
IP – Intellectual Property
IPR – Intellectual Property Right
JI – Judicial Interpretation
JV – Joint Venture
LDC – Least Developed Country
M&A – Merger and Acquisition
MAA – Minority Autonomous Area
MFN – Most Favoured Nation
MHRSS – Ministry of Human Resources and Social Security
MOC – Ministry of Communication
MOFCOM – Ministry of Commerce
NCAC – National Copyright Administration of China
NDRC – National Development and Reform Commission
NEA – National Energy Administration
NIPSO – National Intellectual Property Strategy Office
NPC – National People’s Congress
NSRF – New Silk Road Fund
NT – National Treatment
OBOR – One Belt, One Road
OPEC – Organization of Petroleum Exporting Countries
PBC – People’s Bank of China
PCA – Permanent Court of Arbitration
PCT – Patent Cooperation Treaty
PEFI – Provisions for Encouraging Foreign Investment
PRC – People’s Republic of China
QDII – Qualified Domestic Institutional Investor
R&D – Research & Development
RCEP – Regional Comprehensive Economic Partnership
RMB – Renminbi
RQFII – RMB Qualified Foreign Institutional Investor
SAEC – State Administration for Exchange Control
SAFE – State Administration of Foreign Exchange
SAFEA – State Administration of Foreign Experts Affairs
SAIC – State Administration for Industry and Commerce
SAR – Special Administrative Region
SCFI – Stock Companies with Foreign Investment
SCNPC – Standing Committee of the National People’s Congress
SCO – Shanghai Cooperation Organization
SEA – State Energy Administration
SEI – Strategic Emerging Industries
SERC – State Electricity Regulatory Commission
SEZ – Special Economic Zones
Sinopec – China Petrochemical Corporation
SINOSURE – China Export & Credit Insurance Corporation
SIPO – State Intellectual Property Office
SOCB – State-owned Commercial Bank
SOE – State-Owned Enterprise
SPC – State Power Corporation
SPC – Supreme People’s Court
TAZARA – Tanzania-Zambia Railway
TMO – State Trademark Office
TRIMs – Trade-Related Investment Measures
UN – United Nations
UNDP – United Nations Development Programme
UNESCO – United Nations Educational, Scientific, and Cultural Organization
UNFCC – United Nations Framework Convention on Climate Change
UNFPA – United Nations Fund for Population Activities
UNICEF – United Nations Children’s Fund
UNIDO – United Nations Industrial Development Organization
VIE – Variable Interest Entity
WEC – World Energy Council
WFOE – Wholly Foreign-Owned Enterprise
WFP – United Nations World Food Programme
WGO – World Health Organization
WIPO – World Intellectual Property Organization
WTO – World Trade Organization
The origins of the Energy Charter go back to the early 1990s, to the fall of the Berlin Wall and the subsequent dissolution of the Soviet Union which brought fundamental change in European and world politics. As a reaction to such events, the European Energy Charter of 1991 represents a political commitment to cooperation in the energy sector between the then OECD countries (including USA, Australia, the European Communities and Japan) and those of the former Soviet Union. The Charter envisaged joint activities such as coordination of energy policies, facilitation of exchange of technology information, energy efficiency and environmental protection, as well as development of renewable energy sources. The Charter of 1991 also emphasised the need for the establishment of an appropriate international legal framework for energy cooperation between the participants. The Energy Charter Treaty was thus signed in 1994. The Treaty, which established the Energy Charter Conference, is a legally binding agreement on energy trade, transit and investment.

China was granted Observer Status to the Energy Charter Conference in 2001. Since then, co-operation between the Energy Charter and China has steadily developed and been mutually beneficial. The Secretariat has benefited greatly from the secondment of more than six experts from China. The programme has also allowed Chinese officials to learn about the Energy Charter. All of this resulted in the formal signature of the International Energy Charter by Mr. Nuer Baikeli (Vice Chairman of the National Development and Reform Commission and Administrator of the National Energy Administration) on behalf of China in May 2015 in The Hague. On that occasion Mr. Baikeli stated, ‘China will further develop energy communication and deepen the cooperation with member countries, observing countries and international organizations with the aid of Energy Charter.’

The need for China to look beyond its borders for energy supplies in order to reduce its reliance on coal makes it all the more necessary for China to cooperate with the rest of the world. Moreover, China’s sheer economic weight and its potential impact on global energy governance issue means that cooperation with China is considered as a priority for many states. Modern geo-political complexities require that all states look to the potential benefits of participating in multi-lateral organisations and forums. The Energy Charter is such a forum, and the adoption of the new International Energy Charter in 2015 was an important step for China on that path.

Shortly after his inauguration as the leader of the People’s Republic of China, Chairman Xi Jinping paid his first formal visit to four Central Asian countries who are all members of the ECT (Kazakhstan, Kyrgyzstan, Turkmenistan, and Uzbekistan). That visit, gave further impetus to long-term multilateral cooperation in the fields of transportation, energy, communication and agriculture. Chairman Xi outlined his vision of the ‘New Silk Road Economic Belt’, which extends from China’s north-west to the seaboard of the Mediterranean. One essential element of such multilateral cooperation is the area of energy, where the Energy Charter is an important global player. In fact, in May 2015, Mr. Baikeli invited the Energy Charter to participate the ‘One Belt One Road’ process together with China and relevant countries.
China increasingly secures its energy needs by pipeline and through other infrastructure projects. But there are potential risks. The legal protections stipulated in existing Chinese bilateral intergovernmental agreements or multilateral cooperative mechanisms are insufficient to ensure stable energy flows through existing and planned pipelines. Meanwhile, the ECT embraces freedom of transit and the principle of non-discrimination, which might secure uninterrupted hydrocarbon transits from Central Asia to China. The Contracting Parties under the ECT undertake not to place obstacles in the way of new capacities being established in the event that transit of “Energy Materials and Products” cannot be achieved on commercial terms by means of energy transport facilities. Moreover, the ECT includes two unique and effective instruments that can be a valuable source of uniform dispute settlement for China regarding transit in Central Asia: (i) an early warning mechanism to be used with signatories of the International Energy Charter and (ii) a conciliation procedure to deal specifically with disputes over transit that may be invoked by contracting parties, which is faster and less formal than taking a dispute to arbitration.

Furthermore, many of China’s investments are protected by first-generation bilateral investment treaties, some provisions of which now seem rather conservative and less investor-oriented. A more efficient and comprehensive international legal framework, as provided by the Energy Charter Treaty, is required to ensure the security of energy flows to China. The provisions of the ECT regarding foreign investments are considered to be the cornerstone of the treaty. It is important to mention that the ECT does not demand open access to resources or require certain market structures, but, once an energy investment is made, the treaty provides a stable interface between the foreign investor and the host government.

Finally, while China (as a WTO member) has already assumed the trade obligations contained in the ECT in its relationships with many of the ECT contracting parties, China would benefit from applying a WTO regime in its energy trade relationship with non-WTO member states that are ECT members (which critically include Kazakhstan, Turkmenistan and Uzbekistan).

The Energy Charter offers a transformative way for China to fulfil its deeper involvement in global energy governance. The implementation of the ‘New Silk Road Economic Belt’ strategy launched by the leadership of China could also be a potential initiative of high interest to the Energy Charter, since most of the countries in that economic belt are member states of the Charter.

It is therefore my great pleasure to present to you this useful report. I am confident that it will contribute to deeper involvement by China within the Energy Charter Process.

Dr. Urban Rusnák
Secretary General
Energy Charter Secretariat
REPORT ON THE COMPATIBILITY OF CHINESE LAWS AND REGULATIONS WITH THE ENERGY CHARTER TREATY

1. General aspects

China’s domestic legal system generally follows the pattern of civil law countries, emphasising formal legislation. However, China is yet to adopt a comprehensive or basic law on energy. A draft Energy Law was released in late 2007 for public consultation but is yet to be adopted. As a result, energy issues are regulated by a combination of various specialised and general laws and regulations, including the Electricity Law (1995), the Coal Law (1996), the Energy Conservation Law (1997), and the Renewable Energy Law (2005). Of great relevance are also some general legislations concerning such aspects as environmental protection, natural resources conservation, and the administrative approval system in the energy sector.

Similarly, the regulatory and policy making authority in the energy sector is scattered among several departments, including the National Development and Reform Commission (NDRC, especially the National Energy Administration [NEA] since 2003), the Ministry of Land and Resources, the Ministry of Commerce (MOFCOM), and the State Administration of Work Safety. Such a fragmented regulatory framework does not match the challenges faced by the energy sector.

The increasing need for energy and its associated environmental concerns have shaped China’s energy policy. Traditionally, Chinese energy policy had focused mainly on ensuring an adequate supply of fossil fuels to meet the growing domestic demand. However, due to China’s increasing reliance on imports to supply domestic demand and the growing concern about environmental issues, recent policies have also focused on diversifying energy sources, developing renewable energy sources, reducing the energy intensity of the economy and safeguarding the environment.

---

2 The drafting group comprising experts and officials from 15 different government entities, including SERC, NDRC and the Legislative Affairs Office of the State Council, was set up on 24 January 2006. The full text of draft Energy Law is available at the website of the State Council, http://www.gov.cn/gzdt/2007-12/04/content_824569.htm (accessed 15 August 2015).
Despite its critical role in the world’s energy consumption market, China’s involvement in global energy governance remains limited. As a strong supporter for the United Nations (UN), China has participated in a few UN initiatives, including UNFCCC and the Kyoto Protocol. However, China is not an active player in international organisations devoted to energy issues. In fact, while China has been an observer for some time to both the Energy Charter Conference and the International Energy Agency (IEA), it is yet to become a formal member. The Energy Charter Conference aims at promoting the rule of law on energy issues by providing a legally binding multilateral instrument for energy-related investment, transit and trade, whilst the International Energy Agency primarily engages in energy market statistics and analysis, technical cooperation, policy analysis as well as the establishment of best practice and emergency management. China’s cooperation with the IEA is limited to policy and technology research and information exchange.

The National People’s Congress of the People’s Republic of China (NPC) is the supreme organ of state power. The NPC exercises legislative power; it has a term of five years, meets in session once a year and is convened by its Standing Committee, which is its permanent body. The 12th NPC was elected in 2013. The State Council (the Central People’s Government) is the executive body and the highest organ of state administration. Chaired by a premier, the State Council is composed of Vice-Premiers, State Councillors, Ministries and Commissions, the Auditor-General and the Secretary-General. A new cabinet took office in 2013.

1.1 Constitutional and other rules in relation to international treaties

*De jure* and *de facto* status of international treaties in China’s domestic legal system

The *Constitution* (1982) does not directly address the issue regarding the legal status of international treaties under China’s municipal legal system, apart from the provisions regarding the allocation of power concerning the signature and ratification of

---

15 Energy Research Institute of National Development and Reform Committee & Grantham Institute of Imperial College London, *Supra*, 21.
19 Available at https://www.iea.org/aboutus/whatwedo/ (accessed 15 August 2015).
international treaties among different constitutional organs. The Standing Committee of the National People’s Congress (SCNPC) is responsible for (i) the ratification or abrogation of international treaties and important agreements concluded with foreign states, as well as (ii) the interpretation of laws and the annulment of local regulations or decisions of the organs of provinces, autonomous regions, and municipalities directly under the Central Government that contravene the Constitution, other laws or administrative regulations.\(^2\) Pursuant to the *Law on the Procedure of the Conclusion of Treaties*, important agreements include treaties and agreements which contain stipulations inconsistent with the laws of the PRC, among others.\(^3\)

**Enforcement of international treaties in China**

There is no clear-cut general rule in China regarding the relationship between international treaties and domestic legislation.\(^4\) The direct application of international treaties remains issue-specific. However, the general practice is that international treaties are enforced in China primarily through transformation into domestic legislations.

Specific provisions concerning the application of international treaties to which China is a Contracting Party are found in some laws.\(^5\) The *Civil Procedural Law (1982)*\(^6\) was the first law that included a provision on the application and enforcement of international treaties in China:

\(^2\) Article 67 of the *Constitution*.

\(^3\) Article 7 of the *Law on the Procedure of the Conclusion of Treaties* (1990):

The ratification of treaties and important agreements shall be decided upon by the Standing Committee of the National People's Congress.

The treaties and important agreements referred to in the preceding paragraph are as follows:

(1) treaties of friendship and cooperation, treaties of peace and similar treaties of a political nature;
(2) treaties and agreements relating to territory and delimitation of boundary lines;
(3) treaties and agreements relating to judicial assistance and extradition;
(4) treaties and agreements which contain stipulations inconsistent with the laws of the People's Republic of China;
(5) treaties and agreements which are subject to ratification as agreed by the Contracting Parties; and
(6) other treaties and agreements subject to ratification.

After the signing of a treaty or an important agreement, the Ministry of Foreign Affairs or the department concerned under the State Council in conjunction with the Ministry of Foreign Affairs shall submit it to the State Council for examination and verification; the State Council shall then refer it to the Standing Committee of the National People's Congress for decision on ratification; the President of the People's Republic of China shall ratify it in accordance with the decision of the Standing Committee of the National People's Congress.

After the ratification of a bilateral treaty or an important bilateral agreement, the Ministry of Foreign Affairs shall execute the formalities for the exchange of the instruments of ratification with the other Contracting Party. After the ratification of a multilateral treaty or an important multilateral agreement, the Ministry of Foreign Affairs shall execute the formalities for the deposit of the instrument of ratification with the depositary State or international organization. The instrument of ratification shall be signed by the President of the People's Republic of China and countersigned by the Minister of Foreign Affairs.


\(^5\) *Law on the Administration of Tax Collection*, Article 91:

Where the provisions of treaties or agreements on taxation concluded between the People’s Republic of China of China and other countries differ from those of this law, the provisions of such treaties or agreements shall apply.

"If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations." 27

A similar provision could also be found in the General Principles of Civil Law (1984), 28 namely Article 142:

"The application of law in civil relations with foreigners shall be determined by the provisions in this chapter; If any international treaty concluded or acceded to by the People's Republic of China contains provisions differing from those in the civil laws of the People's Republic of China, the provisions of the international treaty shall apply, unless the provisions are ones on which the People's Republic of China has announced reservations." 29

Similar provisions could also be found in other civil and commercial legislations, for instance in Article 95 of the Negotiable Instruments Law (1995, 2004 amended). 30 According to these domestic laws, it is possible to directly apply provisions of international treaties to which China is a party. However, this seems to be confined to civil and commercial areas and cannot be extended to other areas such as international trade or investment, as discussed below.

**Applicability of international investment and trade treaties before China’s domestic courts**

It seems that international treaties and agreements concerning investment and trade affairs may not be directly invoked and applied in China by its courts.

A regulation of the Supreme People’s Court (SPC) provides that when adjudicating administrative cases involving international trade, Chinese courts should apply only Chinese laws and regulations. 31 The explanations of the regulation clarify that it also applies to international investment administrative cases. 32 Such a regulation is said to be compatible with the commitments that China made in the course of its accession

---

27 Article 189 of the Civil Procedural Law.
29 Article 142 of the General Principles of Civil Law.
30 Available at [http://www.cietac.org/index/references/Laws/47607e1c65769b7f001.cms](http://www.cietac.org/index/references/Laws/47607e1c65769b7f001.cms) (accessed 15 August 2015): If any international treaty concluded or acceded to by the People’s Republic of China contains provisions differing from those of this Law, the provisions of the international treaty shall apply; however, provisions on which the People’s Republic of China has announced reservations shall be excepted. International practices may be applied to matters for which no provisions are contained in this Law or in any international treaty concluded or acceded to by the People’s Republic of China.
32 Articles 7 and 8 of the Trade Cases Provisions.
negotiations to the World Trade Organization (WTO).\(^{33}\) It is therefore clear that, at least from a judicial point of view, international trade and investment agreements to which China is a party must be transformed into Chinese laws before they can be applied and implemented. Nonetheless, the regulation also requires that domestic laws and regulations implementing international trade and investment treaties should be interpreted in a manner consistent with international treaties.\(^{34}\)

1.2 Current situation of market reforms

Since 1979, China had been progressively reforming its economic system, making it more and more compatible with market economy. In early 1990s, it was determined that the goal of the economic reform was to establish a “Socialist Market Economy with Chinese Characteristics”. By end of 2001, when China joined the WTO, China had enacted 240 laws, over 700 administrative regulations and 8600 local regulations, covering all aspects of social life and preliminarily forming a "Legal System with Chinese Characteristics".\(^{35}\) The WTO accession significantly boosted China's market oriented economic reform, with hundreds of thousands of pieces of laws and regulations being modified or abolished to meet WTO requirements.

The newly-elected Chinese Government has determined to take comprehensive in-depth reform based on the rule of law,\(^{36}\) and opening up as its fundamental development policy. It intends to implement reform across all spectrum of the economic and social development, with an aim to promote development, transformation and to improve people’s livelihood with reform, and accordingly to advance healthy and sustainable economic and social development.

The economic system is the priority subject area of such comprehensive reform. The core issue is to better address the relationship between the government and the market. The Chinese Government promotes market-oriented reform of great width and depth, in an active and orderly manner, further push ahead the transformation of government functions, and promote resources allocation by respecting market rules, market prices and market competition to maximise the benefits and optimise efficiency. The main responsibility and role of the government is to maintain the stability of macro-economy, to improve public services, to safeguard fair competition, to strengthen oversight of the market, to maintain market order, to promote sustainable development and common prosperity, and to intervene in situations of market failure.

Meanwhile, the Chinese Government pushes forward a new round of high standard opening up, particularly in the services sector, which includes capital market liberalisation. China will focus on unifying laws and regulations on domestic and foreign


\(^{34}\) Ibid.


investment, exploring a regulatory model based on a negative list approach, and creating a fair and competitive business environment for both domestic and foreign investors. China will further the development of inland and border areas, seizing the opportunity presented by global industry restructuring, promoting coordinated development of trade, investment and technological innovation in inland and border areas, accelerating the construction of infrastructure connecting China with neighbouring countries and regions, and the work to build the Silk Road Economic Belt and the 21st Century Maritime Silk Road, so as to formulate a new pattern of all-round opening. For this purpose, the Chinese Government has opened up the China (Shanghai) Pilot Free Trade Zone to accumulate experiences before applying them to the entire country.

It should be noted that the current round of reforms is not confined to the economic area but carries far broader and more profound implications. One of the most important ones is the reform of the governance model by promoting the rule of law. On 23 October 2014, the Central Committee of the Chinese Communist Party (CPC) issued the Decision Concerning Several Major Issues in Comprehensively Advancing Rule of Law, aiming at achieving comprehensive rule of law as well as good governance in China under the leadership of the CPC.

In the energy sector, China is actively promoting market-oriented reforms by giving full play to the fundamental role of the market in the allocation of resources. All projects listed in the national energy programme, unless forbidden by laws or regulations, are open to private capital. The Chinese government encourages private capital to participate in the exploration and development of energy resources, oil and natural gas pipeline network construction and the electric power industry, encourages the involvement of private capital in coal processing and oil refining, and supports the entry of private capital into the new energy and renewable energy fields. The Chinese government plans to intensify and regulate the administration of coal exploration and development rights, to gradually eliminate the double-track price system for contracted coal supply and market coal supply, and to create a mechanism to balance the development of coal and coal-bed gas. The government intends to press on with institutional reform in the power sector and steadily carry out trials to separate power transmission from power distribution. Proactive efforts will be made in the pricing mechanism of electricity to gradually let the market decide the prices of electricity generated and marketed, while the prices of transmission and distribution are to be decided by the government. The state regulates the prices of coal for electricity generation and prices of electricity marketed, and explores ways to set up a renewable energy trading mechanism. It has successfully implemented the price, tax and fee reform

---


of refined oil products and guides the public's rational energy consumption through tax means. It intends to continuously rationalise the price of refined oil and form a pricing mechanism, and start the experimental reform of natural gas pricing mechanism. It plans to improve the market system for energy and develop more forms of trade, including spot trade, long-term contracts and futures trade.40

China is an active participant in international energy cooperation, and it has established bilateral dialogue and cooperative mechanisms in the field of energy with the US, the EU, Japan, Russia, Kazakhstan, Turkmenistan, Uzbekistan, Brazil, Argentina and Venezuela among others. China has also strengthened dialogues, exchanges of and cooperation with these countries, on oil, natural gas, coal, electric power, renewable energy, technology, equipment and energy policy. China is also a member of, or an important participant in, many multilateral organisations and mechanisms. In international energy cooperation, China assumes a wide range of obligations and plays an active and constructive role.41

China upholds a policy of opening to the rest of the world in the field of energy. To provide a favourable environment for foreign investment and protect the legitimate rights and interests of investors, China has promulgated a series of laws and regulations. It has also framed such policy documents as the Catalogue of Industries for Guiding Foreign Investment and the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions. The Chinese government encourages foreign investment to engage in the exploration and development of oil, natural gas and unconventional oil and gas resources, such as shale gas and coal-bed gas, by way of cooperation; it invites foreign investment in the building of new energy power stations, hydroelectric power stations, clean combustion power stations, and nuclear power stations as long as the Chinese partners have control; and it supports multinational energy corporations to set up R&D centres in China.42

China’s energy policy is largely aimed at self-sufficiency, evidently by encouraging state-owned enterprises to invest in energy-rich countries and more recently the establishment of strategic oil reserves to stabilise domestic supply and prices. China considers energy as a strategic commodity and is committed to further reform and open up its energy products markets as part of the comprehensive reform and opening up agenda.43

Relevant references:


1.3 Membership in international economic or environmental organisations or integration economic agreements, custom unions or free trade areas and relations with other major international organisations or groupings

After becoming a member of the UN, China also joined most UN affiliated agencies, as well as the World Bank and the International Monetary Fund (IMF). Under the policy of opening up to the outside world beginning in the late 1970s, China started to accept economic and technical assistance from such agencies as the UN Development Programme, which was a significant departure from its previous stress on self-reliance. In 1986, China renewed its application to regain its seat as one of the founding members of the General Agreement on Tariffs and Trade (GATT). By the late 1980s, China became a member of several international and regional organisations of major significance to world affairs, including the International Atomic Energy Agency (IAEA) and the World Intellectual Property Organization (WIPO). Most remarkably, China became a WTO member in 2001.

The website of the Ministry of Foreign Affairs keeps an updated and detailed list of China’s membership in international organisations. For a list of international environmental agreements, please see the website of the Ministry of Environmental Protection.

As stated above, China is a member of, or an important participant in, many multilateral organisations and mechanisms, including the energy working group of the Asia-Pacific Economic Cooperation Organization (APC), the Group of 20 (G20), the Shanghai Cooperation Organization (SCO), the World Energy Council (WEC) and the International Energy Forum (IEF). It is also an observer of the Energy Charter Conference (ECC) after having signed the 2015 International Energy Charter, and maintains close relations with such international organizations as the International Energy Agency (IEA) and the Organization of Petroleum Exporting Countries (OPEC).

China has Free Trade Agreements (FTAs) in force with ASEAN, Chile, Costa Rica, New Zealand, Pakistan, Peru, Singapore, Switzerland, and Iceland. China has also signed FTAs with South Korea and Australia, which are yet to enter into force. In addition, China is currently negotiating several FTAs including the Regional Comprehensive Economic Partnership Agreement (RCEP) and the Asia-Pacific Free Trade Agreement (FTAAP).

1.4 International aid

History and Practice of international aid

China’s foreign aid began in 1950, when it provided material assistance to the Democratic People’s Republic of Korea (DPRK) and Vietnam, two neighbouring
countries maintaining friendly relations with China.\footnote{For overview of China’s foreign aid activities and policies, please refer to the website of Department of Foreign Aid, Ministry of Commerce of the People’s Republic of China, available at \url{http://yws.mofcom.gov.cn/} (accessed 15 August 2015).} Following the Asian-African Conference in Bandung, Indonesia, in 1955, the scope of China’s aid extended from socialist countries to other developing countries, along with the improvement of China’s foreign relations. In 1956, China began to provide aid to African countries. In 1964, the Chinese government declared the Eight Principles for Economic Aid and Technical Assistance to Other Countries, the core content of which featured equality, mutual benefit and no strings attached. In October 1971, China established relations of economic and technical cooperation with more developing countries and funded the Tanzania-Zambia Railway (TAZARA) and other major infrastructure projects. In this period, China overcame its own difficulties, and provided the maximum assistance it could afford to other developing countries in their efforts to win national independence and to develop national economy.

In the 1990s, China took a series of measures to reform its foreign aid mechanism, focusing on diversifying the sources and means of funding. In 1993, the Chinese government set up the Foreign Aid Fund for Joint Ventures and Cooperative Projects with parts of the interest-free loans repaid to China by developing countries. The fund was mainly used to support Chinese small and medium-sized enterprises to build joint ventures or conduct cooperation with the recipient countries in the production and operation spheres. In 1995, China began to provide medium and long-term low-interest loans to other developing countries through the Export-Import Bank of China (Eximbank), effectively expanding funding sources of its foreign aid. Meanwhile, it attached greater importance to supporting the capacity building of recipient countries, and kept enlarging the scale of technical training. Officials from recipient countries receiving training in China became an important part in the cooperation of human resources development between China and those countries. In 2000, the Forum on China-Africa Cooperation (FOCAC) was initiated, and became an important platform for dialogue between China and friendly African countries, as well as an effective mechanism for pragmatic cooperation in the new circumstances. Through reforms in this period, China further expanded its foreign aid with more notable effects.

China’s foreign aid policy is intended to suit both China’s actual conditions and the needs of the recipient countries. China has been constantly enriching, improving and developing the Eight Principles for Economic Aid and Technical Assistance to Other Countries — the guiding principles of China’s foreign aid put forward in the 1960s. On 10 July 2014, China’s Information Office of the State Council issued a white paper on China’s foreign aid,\footnote{China’s Foreign Aid (2014), Information Office of the State Council, July 2014, available in English at \url{http://www.china.org.cn/government/whitepaper/node_7209074.htm} (accessed 15 August 2015).} systematically summarising China’s policy and practice concerning foreign aid. When providing foreign assistance, China adheres to the principles of not imposing any political conditions, not interfering in the internal affairs of the recipient countries and fully respecting their right to independently choose their own paths and models of development.
China is the world's largest developing country. In its development, it has endeavoured to integrate the interests of China with other countries, providing assistance to the best of its ability to other developing countries within the framework of South-South cooperation to support and help other developing countries, especially the least developed countries (LDCs), to reduce poverty and improve livelihood. China has proactively promoted international development and cooperation and played a constructive role in this aspect.\textsuperscript{49} From 2010 to 2012, China appropriated 89.34 billion Yuan (14.41 billion U.S. dollars) in total for foreign assistance in three ways:\textsuperscript{50} (i) grants are mainly offered to help recipient countries build small or medium-sized social welfare projects, and to fund human resources development cooperation, technical cooperation, material assistance and emergency humanitarian aid;\textsuperscript{51} (ii) interest-free loans are mainly used to help recipient countries construct public facilities and launch projects to improve people's livelihood;\textsuperscript{52} (iii) concessional loans are mainly used to help recipient countries undertake manufacturing projects and large and medium-sized infrastructure projects with economic and social benefits, or for the supply of complete plants, machinery and electronic products.\textsuperscript{53}

China lays great emphasis on strengthening group consultation with recipient countries through regional cooperation mechanisms and platforms, such as the Forum on China-Africa Cooperation (FOCAC) and the China-ASEAN Summit. It has, on more than one occasion, announced assistance packages in response to the development needs of various regions.

China is also an active participant in assistance programmes initiated by multilateral organisations. From 2010 to 2012, China contributed a total amount of 1.76 billion Yuan to the United Nations Development Programme (UNDP), the United Nations Industrial Development Organization (UNIDO), the United Nations Fund for Population Activities (UNFPA), the United Nations Children's Fund (UNICEF), the United Nations World Food Programme (WFP), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Educational, Scientific, and Cultural Organization (UNESCO), the World Bank, the International Monetary Fund (IMF), the World Health Organization (WHO) and the Global Fund to Fight AIDS, Tuberculosis and Malaria, to support other developing countries in poverty reduction, food security, trade development, crisis prevention and reconstruction, population development, maternal and child healthcare, disease prevention and control, education and environmental protection.\textsuperscript{54}

**Legal regime of international aid**

Foreign aid expenditure is part of the state expenditure, under the unified management of the Ministry of Finance in its budgets and fiscal accounts system. The


\textsuperscript{50} Ibid, Article 12.

\textsuperscript{51} Ibid, Article 3.

\textsuperscript{52} Ibid, Article 12.

\textsuperscript{53} Ibid, Articles 12 and 21.

\textsuperscript{54} Part V of China's Foreign Aid (2014).
Ministry of Commerce and other departments under the State Council are jointly responsible for the management of foreign aid and handle financial resources for foreign aid in their own departments in accordance with their respective jurisdictions. Each of these departments draws up a budget for foreign aid projects every year and submits it to the Ministry of Finance for examination, and then to the State Council and the NPC for approval and implementation. Each department controls and manages its own funds for foreign aid projects in its budget. The Ministry of Finance and the National Audit Office supervise and audit the implementation of foreign aid budget funds of these departments based on relevant state laws, regulations and financial rules. Concessional loans are raised by the Export-Import Bank of China on the market. As the loan interest is lower than the benchmark interest released by the People's Bank of China, the difference is made up by the state as financial subsidies.

The Measures for the Administration of Complete Foreign Aid Projects (For Trial Implementation) (26 December 2008) and the Measures for the Administration of Foreign Aid (For Trial Implementation) (15 November 2014) were promulgated by the Ministry of Commerce to improve the administration of China’s foreign aid.

According to the Measures for the Administration of Foreign Aid, the main recipients of Chinese foreign aid are developing countries that have already established diplomatic relations with China and that are in need of foreign aid; as well as international or regional organisations with the majority of membership being developing countries (Article 3). China’s foreign aid should adhere to the principles of respect for recipient countries’ national sovereignty and non-interference into recipient countries’ internal affairs. Foreign aid should be committed to reducing and eliminating poverty, improving livelihood and the ecological environment, promoting economic development and social progress, strengthening capacity for self-development and consolidating and developing friendly and cooperative relations with recipient countries.

The MOFCOM shall be responsible for foreign aid work, including drafting and implementing policy and programmes, developing foreign aid plans, selecting foreign aid projects and organizing the implementation, administering the use of aid funds and conducting aid projects on international exchange and cooperation.

The MOFCOM shall organize the implementation of foreign aid through governmental channels. The main foreign aid modality shall be project aid. In cases of emergency or under special circumstances such as humanitarian assistance, cash contributions to the recipient are permitted.
1.5 The "One Belt, One Road" Initiative

Recently, China released a new action plan outlining key details of Beijing’s “Silk Road Economic Belt” and “21st Century Maritime Silk Road” (“One Belt, One Road”) initiative.\(^{62}\) They were first introduced by President Xi in the fall of 2013 during visits to Kazakhstan and Indonesia, and have become a centerpiece of both the foreign policy and domestic economic strategy of China. According to the action plan, the Silk Road Economic Belt aims at bringing together China, Central Asia, Russia and Europe (the Baltic); linking China with the Persian Gulf and the Mediterranean Sea through Central Asia and West Asia; and connecting China with Southeast Asia, South Asia and the Indian Ocean. The 21\(^{st}\) Century Maritime Silk Road is designed to go from China’s coast to Europe through the South China Sea and the Indian Ocean in one route, and from China’s coast through the South China Sea to the South Pacific in the other.

The action plan, jointly released by the NDRC and the Ministries of Foreign Affairs and Commerce, highlights that the scope of the initiative extends well beyond infrastructure construction, and includes promotion of enhanced policy coordination across the Asian continent, financial integration, trade liberalisation, and people-to-people connectivity. New regional institutions, such as the Asian Infrastructure Investment Bank (AIIB) and the New Silk Road Fund (NSRF), are also designed in part to complement and support the initiative.

The plan is also notable for its combination of traditional Chinese diplomatic language (e.g., emphasising sovereignty and non-intervention) with newer emphasis on adherence to high standards and international norms as well as on the “decisive” role of the market and industry in driving the initiative, which echoes the pledge made by China’s new leadership at the November 2013 Third Plenum to “give the market a decisive role in resource allocation”.\(^{63}\)

China’s efforts to implement this initiative is likely to have a significant impact on the region’s economic architecture—patterns of regional trade, investment, infrastructure development—and in turn have strategic implications for China, the United States, and other major powers. Understandably, energy is among the most important areas of cooperation as highlighted in the action plan.

Indeed, it is noted that the "One Belt, One Road" initiative generally coincides with the geographic coverage of the Energy Charter and its proposed expansion. More specifically, the "Belt" countries are already mostly included in the Energy Charter membership, whilst many of the countries along the "Road" are potential candidates of the Charter. Such coincidence suggests that close cooperation between China and the Energy Charter is likely to lead to a "strategic win-win" situation bringing tremendous benefits to both sides as well as the rest of the world.


Useful references:

White Paper on China's Foreign Aid (State Council, 2014)
White Paper on China's Foreign Aid (State Council, 2011)
China's Foreign Aid and Government-Sponsored Investment Activities (Rand Corporation research report, 2013)

2. Articles 3, 4 and 29 - International markets and trade

2.1 Legal basis: Foreign Trade Law, Energy Law and other related laws

Before China adopted the reform and opening up policy in 1978, its foreign trade was governed by mandatory planning, and the state absorbed both the profits and the losses of enterprises. Since the reform and opening up policy was initiated in 1978, China's foreign trade system has completed the transformation from mandatory planning to giving full play to the fundamental role of the market - from state monopoly to full openness, and from indiscriminate egalitarianism to giving enterprises discretionary management power and making them responsible for their own profits and losses. Since the negotiations over the restoration of its GATT membership and its accession to the WTO, China has gradually adopted international trade practices, and established a unified, open foreign trade system compatible with multilateral trade rules.

In the first stage, China's foreign trade system reform focused on the transformation of its unitary planning, transfer of management and operation power in foreign trade to lower levels, implementation of the system of allowing enterprises to retain a certain portion of foreign exchange earnings, and establishment of a foreign exchange coordination market. China absorbed foreign direct investment to introduce foreign-invested enterprises as new business entities in its foreign trade sector, breaking the monopoly of state-owned foreign trade enterprises. China then introduced a responsibility system in conducting foreign trade, gradually replacing mandatory planning with guided planning. The state also set up an export tax rebates system in line with the general practice of international trade.

In October 1992, China clarified the goal of the reform towards a socialist market economy. A comprehensive reform of the financial, tax, banking, foreign trade and foreign exchange systems was carried out accordingly. In January 1994, the Chinese government discontinued all export subsidies, making all import and export enterprises

---

fully responsible for their own profits and losses. The official and market-regulated exchange rates of China's currency, the Renminbi (RMB), coexisted in a unitary and managed floating exchange rate system based on market demand and supply. Foreign trade enterprises were incorporated, and pilot programmes for the import and export agency system were carried out. In the same year, the Foreign Trade Law was promulgated (it was revised in 2004). In December 1996, China realized current account convertibility for the RMB. Meanwhile, China voluntarily made significant tariff cuts, and reduced non-tariff measures such as quotas and licenses. These reform measures helped China in establishing a foreign trade administration and regulation system based on market economy, giving full play to such economic levers as the exchange rate, taxation, tariffs and finance.

On 11 December 2001, after 16 years of negotiations, China became the 143rd WTO member. To honour its commitments upon acceding to the WTO, China expanded its opening up in the fields of industry, agriculture and the services trade, and accelerated trade and investment facilitation and liberalization. Meanwhile, the state deepened the reform of its foreign trade system, reduced trade barriers and administrative intervention, rationalized government responsibilities in foreign trade administration, made government behaviour more open, more impartial and more transparent, and promoted the development of an open economy to a new stage.

By 2010, all of China's commitments made upon entry into the WTO had been fulfilled. China's earnest efforts were commended by the majority of the WTO members. The Chinese government received three trade policy reviews from the WTO in 2006, 2008 and 2010, respectively. The WTO's basic principles, such as non-discrimination, transparency and fair competition, had been included in China's laws, regulations and related systems. A deeper understanding of concepts such as market orientation, opening up, fair competition, the rule of law and intellectual property rights had been achieved by promoting the further opening up of the national economy and more improvements of market economy.

As the most significant recent development, the Third Plenary Session of the 18th National Congress of the Communist Party of China (CPC), held in November 2013, approved a Decision on Major Issues Concerning Comprehensively Deepening Reforms. The Decision calls for the construction of a united and open market system with orderly competition playing a decisive role in allocating resources. The Decision also demands the reform of state-owned enterprises and sets new rules and targets to encourage private ownership, the goal of which is to modernise the entrepreneurial environment and diversify ownership. In addition, during the session it was decided to set up a monitoring system to promote ecological progress, fight environmental pollution and improve the use of natural resources. The Decision also seeks to promote the acceleration of reforms in the social sector including education, employment, income distribution, social security and public health, and for deepening the judicial system reform. The Decision requires

---


the establishment of fair, open and transparent market rules, the elimination of rules which hamper market unification and fair competition, and the punishment of all kinds of illegal anti-competitive behaviour and actions.

A National Leading Group for Comprehensive Deepening Reform was established as result of the Plenary Session’s decision. It is tasked with the responsibility of setting a roadmap for the reform. With regard to the trade and commercial policy reform, different departments of MOFCOM are in charge. Specific policy areas include: promoting a reform of the domestic trading and circulation system through a reform of trading regulations and the strengthening of the legal environment for business; a reform of the investment regime (inward and outward) to make it more open, transparent and predictable; an acceleration of the implementation of free-trade agreements; the acceleration of the development of the China (Shanghai) Pilot Free Trade Zone; and the acceleration of reform geared to open up inland and border areas.

The goal of China (Shanghai) Pilot Free Trade Zone (CSPFTZ) is to be a showcase for the reform of trade investment and financial services. Foreign investment is subject to simplified procedures: filing is required only for projects in sectors not included in a Negative List, and approval procedures (which in the past were the main way of establishment of incorporations) only apply to the sectors included in the Negative List.\(^67\)

It is also the goal of CSPFTZ to unleash the benefits of reform and opening up through innovation in the governmental administration system, including changing the functions of government, reforming investment areas, and facilitating trade and reforming finance sectors. The aim of launching the pilot programme is to provide replicable and expandable experience for the new round of reforms to the entire country. The CSPFTZ issues a Negative List (also known as Special Administrative Measures on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone (2013))\(^68\) for foreign investment. Activities not included in the Negative List are subject only to filing procedures instead of approving procedures for investors in accordance with the Procedure on the Filing Administration of Foreign Investment Projects within the China (Shanghai) Pilot Free Trade Zone (2013).

The Chinese Government has committed itself to building a new type of open economy and starts to accelerate its steps in building new advantages in international competition. It promotes the balanced development of trade and investment from a strategic perspective, and actively explores the feasibility of a new system of rules and regulation patterns for cross-border trade and investment through establishing the China (Shanghai) Pilot Free Trade Zone. While continuing to implement the strategy of Going Global, China proposed the abovementioned "One Belt, One Road" initiative and opened inland and border areas wider to the outside world with a view to forming a new pattern of all-round opening up.

\(^{67}\) An enterprise is required to report to relevant authorities for verification only when it invests in fixed assets listed in the Catalogue of Investment Projects Subject to Government Verification (2013 Edition). All other investment projects not listed in the Catalogue are subject to filling procedures.

\(^{68}\) Available at the website of CSPFTZ, [http://www.china-shftz.gov.cn/Homepage.aspx](http://www.china-shftz.gov.cn/Homepage.aspx) (accessed 15 August 2015).
On energy, the National Energy Administration (NEA) made public on 4 December 2007 the Energy Law, which however remains a draft.\textsuperscript{69} Article 6 of the Draft requires the Government to use the market mechanism as the primary resource allocating mechanism, encouraging all investments in the energy market. Article 112 of the Draft expressly stipulates that the Government should strengthen bilateral and multilateral trade cooperation in the field of energy, as well as to take comprehensive measures to prevent and respond to international energy market risks.

To provide a favourable environment for foreign investment and protect the legitimate rights and interests of investors, China has promulgated a series of laws and regulations, such as the Law on Sino-foreign Equity Joint Ventures (1979, amended in 1990 and 2001),\textsuperscript{70} the Law on Sino-foreign Cooperative Joint Ventures (1998, amended in 2000),\textsuperscript{71} and the Law on Foreign Investment Enterprises (1986, amended in 2000).\textsuperscript{72} The government framed such policy documents as the Catalogue for the Guidance of Foreign Investment Industries (amended 2001)\textsuperscript{73} and the Catalogue of Advantageous Industries for Foreign Investment in the Central and Western Regions.

China intends to further improve its energy-related legal regime to regulate the energy market, to protect the ecological environment and to guarantee energy security. China attaches great importance to energy legislation and will continue further improvement of the legal system related to the energy sector. As a result, the legal system of energy-related laws has been strengthened, and a number of laws and regulations have been amended and published in the past few years, including the Coal Industry Law (1996),\textsuperscript{74} the Electric Power Law (1995),\textsuperscript{75} the Energy Conservation Law (2007),\textsuperscript{76} the Renewable Energy Law (2005, amended 2009),\textsuperscript{77} the Circular Economy Promotion Law (2008),\textsuperscript{78} the Law on the Protection of Oil and Natural Gas Pipelines (2001),\textsuperscript{79} the Regulations on Energy Conservation in Civil Buildings, and the Regulations on Energy Conservation by Public Institutions. Also, China has been making efforts to promote the enactment of an energy law, as well as several administrative regulations on oil reserves, protection of submarine oil and natural gas pipelines, and nuclear power station management.

\textsuperscript{70} Available at \url{http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200301/20030100062855.shtml} (accessed 15 August 2015).
\textsuperscript{71} Available at \url{http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200301/20030100065891.shtml} (accessed 15 August 2015).
\textsuperscript{72} Available at \url{http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200301/20030100062858.html} (accessed 15 August 2015).
\textsuperscript{73} Available at \url{http://english.mofcom.gov.cn/article/policyrelease/aaa/201203/2012030827837.shtml} (accessed 15 August 2015).
\textsuperscript{74} Available at \url{http://www.npc.gov.cn/englishnpc/Law/2007-12/11/content_1383585.htm} (accessed 15 August 2015).
\textsuperscript{75} Available at \url{http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383731.htm} (accessed 15 August 2015).
\textsuperscript{76} Available at \url{http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471608.htm} (accessed 15 August 2015).
\textsuperscript{77} Available at \url{http://english.mofcom.gov.cn/article/policyrelease/questions/201312/20131200432160.shtml} (accessed 15 August 2015).
\textsuperscript{78} Available at \url{http://www.fdi.gov.cn/1800000121_39_597_0_7.html} (accessed 15 August 2015).
\textsuperscript{79} Available at \url{http://www.npc.gov.cn/englishnpc/Law/2007-12/14/content_1384219.htm} (accessed 15 August 2015).
2.2 Foreign trade regimes with a particular focus on the energy sector

China insists that the multilateral trade system should play a central role in trade liberalisation and supports the mutually enforced development and cooperation through bilateral, regional, sub-regional and multilateral channels.

The market mechanism is playing an increasingly important role in resource allocation. Investors in the energy field are diversified and private investment keeps growing. Market competition has been introduced into the production and distribution of coal. In the electric power sector, government administrative functions and enterprise management have been separated, as well as power production from power transmission, and a supervisory system has taken shape. The energy pricing mechanism is gradually improving. Relevant policies and measures for the sustainable development of the coal industry have been tried out. The state has also established a feed-in tariff (FIT) system for wind and photovoltaic power generation, and a renewable energy development fund.

According to the 2014 WTO trade policy review, as of 1 January 2014, unilateral preferential tariffs were offered to the 40 least developed countries, including two that graduated from the list in February 2013 (Vanuatu and Equatorial Guinea). Some 90% of national tariff lines on imports from the Lao People’s Democratic Republic, Cambodia and Myanmar were eliminated unilaterally by China under the China-ASEAN FTA Framework. In accordance with the Notice of the Tariff Commission of the State Council (No. 15 of 21 June 2013), duties on 95% of tariff lines have been lowered to zero for imports from LDCs that have diplomatic ties and have an exchange of notes with China.

China prohibited or restricted the importation of certain commodities, including weapons, ammunition and explosives, narcotic drugs, poisons, obscene materials and those foodstuffs, medicines, animals and plants which are inconsistent with China's technical regulations on food, medicines, animals and plants. None of them seems to be energy products. Only the central government was able to issue regulations on non-tariff measures and these measures would be implemented or enforced only by the central government or sub-national authorities with the authorisation of the central government. Sub-national authorities had no right to formulate non-tariff measures.

On import licensing, the State Council promulgated in 1984, the Interim Regulations on Licensing System for Import Commodities, and MOFTEC (now MOFCOM) and Customs issued "Detailed Rules for the Implementation of the Interim Regulations on Licensing System for Import Commodities", which is replaced by the Regulation of the People’s Republic of China on the Administration of the Import and Export of Goods (2003). Concerning the granting and administration of import licences, Applications for import licences could be submitted to the Quota and Licence Administrative Bureau of MOFTEC (now MOFCOM), or Special Commissioner Offices in 16 provinces, or

---


81 Available at [http://english.customs.gov.cn/Statics/d30338b4-2f6a-47ea-a008-cff20ec0a6d2.html](http://english.customs.gov.cn/Statics/d30338b4-2f6a-47ea-a008-cff20ec0a6d2.html) (accessed 15 August 2015). For the list of laws and regulations concerning export and import license and quota in China, please visit the website of Quota & License Administrative Bureau Ministry of Commerce of the People’s Republic of China, available at [http://www.licence.org.cn/list/zcfg/1/cateinfo.html](http://www.licence.org.cn/list/zcfg/1/cateinfo.html) (accessed 15 August 2015).
Commissions of Foreign Economic Relations and Trade of various provinces, autonomous regions, and municipalities directly under the control of the central government and those with independent budgetary status. Licensing agencies authorised by MOFTEC (now MOFCOM) could issue import licences on the basis of import documents submitted by the applicants, approved by the competent departments. A licence could not be bought, sold or transferred, and was valid for one calendar year. Import licences could be extended once for up to three months.

China applied its export licence system to certain agricultural products, resources and chemicals. China's export licensing system was administered in accordance with the *Interim Procedures for the Export Licensing System*. China prohibited the export of narcotic drugs, poisons, materials containing State secrets, precious and rare animals and plants. The main criteria used in determining whether a product was subject to export licensing, as set down in the *Foreign Trade Law*, were: (1) maintenance of national security or public interests; (2) protection against shortage of supply in the domestic market or exhaustion of natural resources; (3) limited market capacity of importing countries or regions; or (4) obligations stipulated in international treaties. Export licensing was also used for statistical purposes.

China applied three types of export licences: (i) export quota licences, (ii) export quota bidding licences and (iii) export licences.\(^{82}\) The different types of licences applied according to the restriction placed on the goods. It can be noted that some energy products such as coal, coke, crude and processed oil were subject to export quota and/or licensing. For the list of goods subject to quota and licensing, please refer to Annex 2.1 Quota and Licensing of Import and Export in China.

Upon accession to the WTO, China ceased all pre-existing export subsidy programmes and promised to make no further payments or disbursements, nor forego revenue or confer any other benefit, under such programme.

Under the *Foreign Trade Law*, the State may subject certain goods to state trading. The reasons for maintaining state trading for certain products in China include: ensuring stable supply and prices of the products concerned; safeguarding China's food security; and protecting exhaustible and non-recyclable natural resources and the environment. Imports subject to state trading continue to comprise: grain (including wheat, maize, and rice), sugar, cotton, chemical fertilisers, tobacco, crude oil, and processed oil.\(^{83}\) According to Article 11 of the *Foreign Trade Law*, in principle, goods subject to state trading can be imported (and exported) only by authorised enterprises.\(^{84}\) However, products subject to tariff-rate quotas (grain, cotton, sugar, and certain chemical fertilisers) may also be imported by non-state-trading enterprises. Tobacco is the only state-traded product that can be traded solely by authorised enterprises. The non-state-trading portion of these goods is allocated either by the NDRC, in the case of grains and cotton, or by the

---


\(^{83}\) Imports subject to state trading do not seem to have changed since 2003, when China provided its last notification regarding state trading (WTO document G/STR/N/9/CHN/Add.1, 14 July 2003).

\(^{84}\) Article 11 of the *Foreign Trade Law*. 

MOFCOM for the other products. The NDRC and the MOFCOM issue on a yearly basis the criteria for an enterprise to acquire trading rights for these products, the volumes they can import and the allocation method.

2.3 Customs regulations

The Customs Tariff of China was a fee imposed on imported goods. The purpose of levying tariffs was twofold: (a) to regulate imports so as to promote and support domestic production; and (b) to serve as an important source of revenue for the treasury of the central government. China's tariff policy was to promote economic reform and opening of the economy.

The basic principles for establishing duty rates were as follows: duty-free or low duty rates were applied to imported goods that were needed for the national economy and the people's livelihood but which were not produced sufficiently domestically. Import duty rates on raw materials were generally lower than those on semi-manufactured or manufactured products. For parts or components of machinery, equipment and instruments which were not produced domestically, or at a sufficiently high standard, the import duty was lower than the duty on finished products. Higher duty rates were applied to products which were produced domestically or which were considered non-essential for the national economy and people's livelihood. A higher duty was applied to imported products, the equivalent of which were produced domestically and the local manufacturer of which needed protection.

There were two columns of import duty rates: general rates and preferential rates. The preferential rates applied to imports originating in countries and regions with which China had concluded reciprocal tariff agreements, whereas the general rates applied to imports from other sources.

Customs procedures are regulated by: the Customs Law (issued in 1987 and amended in 2000 and 2013), the Provisions on the Customs Administration of Declarations for the Import and Export of Goods (GACC Decree No. 103 of 2003); and the Customs Rules on Administration of the Levy of Duties on Imports and Exports (GACC Decree No. 124 of 2005). The General Administration of Customs of the People's Republic of China (GACC), the national authority responsible for customs administration in China, issues administrative customs ordinances and announcements to introduce and enforce changes in customs procedures. Between January 2012 and October 2013, the GACC issued a total of 138 Announcements and nine Decrees, which have focused, inter alia, on issues such as: paperless procedures, the harmonisation of

85 For rules and regulations concerning customs and tariffs, please refer to the website of General Administration of Customs, available at http://www.customs.gov.cn/publish/portal0/ (accessed 15 August 2015).
customs procedures throughout the country, the imposition of anti-dumping duties, and tariff classification. The decrees issued since January 2012 are related to issues such as: procedures to manage imports from LDCs which are subject to special preferential tariff treatment; the implementation of free trade agreements; and the implementation of new supervision procedures in special customs controlled areas and of comprehensive experimental customs zones.

The tariff exemption policy of China was developed and implemented in accordance with the Customs Law and the Regulations on Import and Export Duties. The coverage of specific tariff reduction or exemption was provided for by the State Council. All the tariff reductions and exemptions were applied on an MFN basis.

Importers (and exporters) must register as foreign trade operators with the Ministry of Commerce (MOFCOM) or its authorised bodies before filing customs declarations. Foreign-invested enterprises (FIEs) may also register as foreign trade operators; FIEs require a copy of the certificate of "approval of foreign-invested enterprises" to register. Import (and export) declarations must be made in paper and electronic format or totally paperless, and can be made either by a natural person or by a customs declaration enterprise.

Customs value continues to be determined on the basis of the transaction value, including the cost of transport and other charges associated therewith, and the cost of insurance. If the transaction value method cannot be used, the customs authorities, after obtaining relevant information and consulting over price with the importer, determine the customs value by applying the following methods in sequential order: (a) transaction value of identical goods; (b) transaction value of similar goods; (c) deductive value; (d) computed value; and (e) reasonable means. At the request of the importer, the order of application of methods (c) and (d) could be reversed. According to the authorities, in 2012 and 2013 some 99% of all imports were valued according to the transaction value.

Import prohibitions, restrictions, and licensing

China has three categories of imports: (i) not restricted, (ii) restricted and (iii) prohibited. Most imported goods fall under the category of permitted; however, even these imports may be subject to automatic licences to monitor their volume for statistical purposes. The MOFCOM and the GACC jointly issue an annual Catalogue of Goods subject to Automatic Licensing.

Restricted goods are administered through non-automatic licences and/or quotas. Import restrictions are maintained because of public security and welfare, and to protect exhaustible natural resources. The MOFCOM together with the GACC and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), issue on an annual basis a "Catalogue of Import Goods Subject to Licensing". In 2013 there were 86 lines at the HS 8-digit level subject to non-automatic import licensing. There are a few products (i.e. machinery and electrical equipment) that are subject to both non-automatic and automatic import licensing. There is an additional "Catalogue of Restricted Imports for Solid Waste" that can be used as raw materials in China; the last Catalogue was issued in 2009.

Under the Foreign Trade Law, China maintains import prohibitions on the following grounds: state security; public morality; human, animal and plant health; environmental protection; balance-of-payments reasons; and compliance with international commitments. Prohibited products are listed in the "Catalogue of Commodities Subject to Import Prohibitions", issued by the MOFCOM and other relevant ministries and bodies, such as the GACC and the AQSIQ. The list of imports subject to restriction or prohibition can be adjusted as necessary, and imports of goods that are not included in the Catalogue can be restricted or prohibited on a temporary basis by the relevant authorities. China's legislation also allows authorities to restrict imports to allow for the establishment of a particular domestic industry or to accelerate its development. Imports of agricultural, animal and fish products may also be restricted if the circumstances so require. According to the authorities, this provision has never been used.

2.4 Free trade zones; Domestic Pilot Free Trade Zone

On 17 August 2013, the State Council officially approved the establishment of the China (Shanghai) Pilot Free Trade Zone (CSPFTZ) in accordance with the Circular of the State Council on Printing and Distributing the Overall Plan for China (Shanghai) Pilot Free Trade Zone (Guofa [2013] No.38).

---

96 According to the Chinese authorities, this conclusion is incorrect. They indicated that it might appear that machines require both licenses because at the HS 8-digit level there is no differentiation between used and new machinery; used machinery is subject to non-automatic licensing while new machinery is subject to automatic licenses. However, the difference for "old" and "used" machinery is clearly made in the Catalogue for Automatic Licensing but not in the Catalogue on Import Licensing.
97 Supra.
98 Article 16 of the Foreign Trade Law.
99 Ibid.
The launch of the Pilot Free Trade Zone is a national strategy to deepen the overall reform agenda. More liberalized policies will be explored and tested to serve as a showcase for further trade and investment liberalisation nationwide. Authorities also indicated that Shanghai was chosen because it had traditionally been at the forefront of China's reform experiments. The CSPFTZ is meant to expand and open up the service sectors and to reform the investment administration mechanism, push forward trade transformation, deepen the opening up of financial services, and create a new mode of supervision and service.

The CSPFTZ is actually the deepening of a process that started in 1990 with the establishment of bonded areas. The Waigaoqiao Free Trade Zone, the first bonded area in China, was approved by the State Council in June 1990. The second step was taken in December 2003, when the State Council approved the establishment of the Waigaoqiao Bonded Logistics Park. The Yangshan Free Trade Port Area, the first of its kind in China, was approved in June 2005; and finally in July 2009, the State Council approved the creation of the Pudong Airport Free Trade Zone, which was expanded in 2012. The purpose of these measures was to facilitate trade. A further step in this direction was the establishment in November 2009 of the Shanghai Free Trade Zones Administration, to oversee the functioning of the first three areas mentioned above (except Pudong Airport).

One of the CSPFTZ's most important features is that it grants pre-establishment national treatment for FIEs on a trial basis. For the first time, with the exception of some bilateral agreements negotiated by China, a Negative List approach is used for investors. The "Special Administrative Measures (Negative List) on Foreign Investment Access to the China (Shanghai) Pilot Free Trade Zone (2013)" (the "Negative List"), is mainly based on the "Framework Plan for the China (Shanghai) Pilot Free Trade Zone," and the "Catalogue of Industries for Guiding Foreign Investment (2011 Amended Version)". It sets out administrative measures applicable to foreign investment projects and establishment of FIEs in the CSPFTZ where "national treatment" is not granted. The Negative List is compiled according to the "Classification and Codes of National Economic Industries (2011)" and includes 18 sectors or industries. The Negative List will be adjusted when deemed appropriate.

For areas falling outside the Negative List (except those domestic investment projects requiring verification as stipulated by the State Council), prior approval is no longer required for foreign investment projects. It is sufficient to file the investment contract and the articles of association of the FIE. The Negative List also applies to investments in the CSPFTZ by investors from Hong Kong, China; Macao, China; and Chinese Taipei. If more favourable treatment is available for qualified investors according to the "Mainland and Hong Kong/Macao Closer Economic Partnership Agreements" and their supplements, the "Cross-Straits Economic Cooperation Framework Agreement" and the follow-up "Cross-Straits Agreement on Trade in Services", and other free trade agreements signed by China, such treatment prevails over the Negative List.

### 2.5 Trade agreements

As Annex 2.2 shows, China maintains close economic relations with most of the ECT members. China and all but seven ECT members are already Members of the WTO,
which means their trade transactions are already subject to WTO rules. Also, all but one ECT member (Liechtenstein) have signed investment agreements with China, making sure that their mutual investments are protected and promoted. Such close legal links between China and existing ECT members facilitates a potential Chinese accession to the ECT. For more details on the list of treaties China signed with ECT Contracting Parties, please refer to Annex 2.2 International Legal Relations of China with Contracting Parties of ECT.

Beyond the WTO, Chinese Government considers Free Trade Agreements (FTAs) as a new platform to further opening up to the outside and speeding up domestic reforms, an effective approach to integrate into global economy and strengthen economic cooperation with other economies, as well as an important supplement to the multilateral trading system.¹⁰¹

As stated in the 12th Five Year Plan, China intends to accelerate the implementation of its Free Trade Area Strategy; strengthen economic linkages with major trading partnership; and deepen cooperation with emerging markets and developing countries. China has been a member of the Asia-Pacific Economic Cooperation (APEC) forum since 1991, and a member of the Asia-Europe Meeting since its inception in 1996. China acceded to the Asia-Pacific Trade Agreement in 2001 and China’s FTA with the Association of Southeast Asian Nations came into effect in 2005.¹⁰²

In 2003, China signed *Close Economic Partnership Arrangements with Hong Kong, China and Macao, China*, the latest supplementary agreement to which was signed in 2013. China also has FTAs in force with ASEAN, Chile, Costa Rica, Iceland, New Zealand, Peru, Pakistan, Singapore and Switzerland. China has signed FTAs with South Korea and Australia (which are yet to enter into force). In addition, China is currently negotiating FTAs with ASEAN (upgrade), Gulf Cooperation Council countries, Norway, Japan, Pakistan (Phase II) and Sri Lanka. Negotiations for a Regional Comprehensive Economic Partnership (RCEP) between ASEAN members, Australia, China, India, South Korea, Japan, and New Zealand were launched at the 21th ASEAN Summit in 2012.¹⁰³

For a list of Chinese FTAs, please refer to Annex 2.3 China’s Free Trade Agreements.¹⁰⁴

It can be seen that China has made significant efforts to bring its laws and regulations in conformity with WTO rules. As a result, Chinese laws and regulations are, in general terms, compatible with WTO requirements. Since the ECT trade disciplines are contingent on WTO rules,¹⁰⁵ it can also be said that Chinese laws and regulations generally satisfy the trade requirements of the ECT. In addition, China has been proactive in entering into free trade agreements with a view to further improving the conditions of international trade, including trade in energy products.

---


¹⁰⁴ Source: China FTA Network.

¹⁰⁵ Article 4 of the ECT.
3. Article 5 - Trade-related investment measures

3.1 Applicable trade-related investment measures; relevant legislation

As part of its undertakings for the accession to the WTO, China committed to comply fully with the TRIMs Agreement, without recourse to Article 5 thereof, and to eliminate: foreign-exchange balancing and trade balancing requirements, local content requirements and export performance requirements. In addition, China undertakes that the allocation, permission or rights for importation and investment shall not be conditional upon performance requirements set by national or sub-national authorities, or subject to secondary conditions covering, for example, the conduct of research, the provision of offsets or other forms of industrial compensation including specified types or volumes of business opportunities, the use of local inputs or the transfer of technology. Also, permission to invest, import licences, quotas and tariff rate quotas would be granted without regard to the existence of competing Chinese domestic suppliers. To effectuate such commitments, in Annex 1A of the Protocol of China’s Accession to WTO (“Information to Be Provided by China in the Context of the Transitional Review Mechanisms”), China further committed to notify the Committee on Trade-Related Investment Measures, among others, the elimination and cessation of enforcement of trade and foreign exchange balancing requirements, local content and export performance offsets and technology transfer requirements made effective through laws, regulations or other measures.

It is notable that such commitments not only fully comply with, but have gone beyond, the requirements of the TRIMs Agreement. The additional undertakings by China, which is often termed the "WTO Plus" obligations is evidenced, for instance, by China’s commitment that the permissions for investment will not be conditional on any performance requirements or the existence of competing Chinese domestic suppliers.106

Since the requirements contained in Art. 5 ECT are based on the TRIMs, it can be said that Chinese commitment under the WTO has already exceeded the ECT requirements.

Useful references:


3.2 Plans and measures suggested for their termination

As China has committed to eliminate trade related investment measures upon accession, the country systematically reviewed and revised its relevant laws and regulations before formally acceding to the WTO. As a result, the current Chinese investment regime is fully compatible with the TRIMs Agreement and the requirements contained in Art. 5 ECT.

4. Article 6 - Competition

4.1 Legislative framework - general and specific for energy industries

China’s competition legal framework consists of laws, administrative regulations and ministerial rules. The laws concerning competition include the *Anti-Monopoly Law* (AML, of 2007), the *Law against Unfair Competition* (1993), the *Regulations for Merger and Acquisition of Domestic Enterprises* (2006) and the *Pricing Law* (1997).

The AML does not take precedence over other legislation related to competition. The AML’s main objectives are to safeguard fair and market competition, and to improve economic efficiency, while protecting consumer and public interest. The AML focuses on preventing, analysing and combating three kinds of monopolistic conduct: (i) the conclusion of monopoly agreements; (ii) the abuse of a dominant market position; and (iii) concentrations of undertakings that have or are likely to have the effect of eliminating or restricting competition. The AML covers monopolistic operations that have an effect on the Chinese market (which include operations within China as well as activities outside the territory of China that have eliminative or restrictive effects on competition in China’s domestic market).

Pursuant to the *Guide of the Anti-Monopoly Committee of the State Council for the Definition of Relevant Market* (issued on 24 May 2009), the main regulations dealing with competition policy issues include:

- Rules on Prohibiting Below-Cost Dumping (SDPC Order [1999] No. 2)
- Rules on Prohibiting Price Frauds (SDPC Order [2001] No. 15)
- Provisions on Prohibition of Price Monopoly (NDRC Order [2010] No. 7)
- Provisions on the Administrative Procedures for Law Enforcement against Price Fixing (NDRC Order [2010] No. 8)

---

4.2 Enforcement of the competition rules

The Anti-monopoly Committee of the State Council is responsible for organizing, coordinating and guiding anti-monopoly work. The Committee, whose general office is
within the MOFCOM, also coordinates the work of three different state agencies responsible for competition policy implementation and enforcement:

- The MOFCOM’s Anti-Monopoly Bureau is in charge of conducting anti-trust reviews.
- The NDRC and the SAIC (State Administration for Industry and Commerce)\(^{112}\) deal with specific issues related to the surveillance of monopoly agreements, abuse of market dominance, and abuse of administrative power. The Price Supervision and Anti-Monopoly Bureau of the NDRC is responsible for price-related violations of the rules in these areas, while the Anti-Monopoly and Anti-Unfair Competition Enforcement Bureau of the SAIC deals with the remaining issues.

Each authority has issued a series of ministerial rules in their own area of responsibility. These authorities may impose administrative penalties, and cease-and-desist orders. Parties injured by violations of anti-monopoly provisions may resort to courts. For details on relevant authorities, please refer to Annex 4.1 Competition policy legislation and enforcement authorities in China.

### 4.3 Monopolies; mergers; dominant positions - policies and practices applied in the energy sector and national security review

The Anti-Monopoly Law and the subsequent set of implementing regulations, most of which entered into force on 1 February 2011, including the NDRC Provisions on Prohibition of Price Monopoly (NDRC Decree 2010/7), the SAIC Provisions on the Prohibition of Monopoly Agreements (SAIC Decree 2010/53), and the SAIC Provisions on the Prohibition of Abuse of Dominant Market Positions (SAIC Decree 2010/54), provide definitions of dominant market positions and include a list of the types of agreement that are prohibited.

The AML defines horizontal and vertical monopoly agreements, and identifies six types of horizontal agreements (those among competitors)\(^{113}\) and three types of vertical agreements (those among counterparties)\(^{114}\) as prohibited practices. These prohibitions apply not only to written or verbal monopoly agreements, but also to concerted behaviours among firms, without explicit written or verbal agreement.

The AML defines dominant market position as one that permits a firm to control output, set prices, and impose conditions in a relevant market, or allows it to limit the entry of other firms into that market. A firm that has been deemed to have a dominant market position is forbidden to engage in certain types of conduct that may lead to abuse of its dominant position. For instance, they are prohibited from selling products at unreasonably high prices, purchasing products at unreasonably low prices, selling products at a price below cost without valid reasons, or imposing unreasonable trading conditions. There is no list of enterprises considered to have a dominant market position. The NDRC and the SAIC carry out investigations to identify whether an enterprise shall

---


\(^{113}\) AML, Article 13.

\(^{114}\) Ibid, Article 14.
be considered to have a dominant market position on a case-by-case basis according to related laws and regulations. Dominant firms are obliged to grant competitors access to essential facilities they might hold on reasonable conditions.

In accordance with the AML, Article 9 of the NDRC Provisions on Prohibition of Price Monopoly, and Articles 9-10 of the SAIC Provisions on the Prohibition of Monopoly Agreements, industrial associations are prohibited from organising or facilitating monopoly agreements among their members. Violations are punishable by fines of up to RMB 500,000 (roughly €70,000) or, where the circumstances are serious, by ordering the de-registration of the association by the registration authority.

Both the AML and the Pricing Law prohibit price fixing and quantitative restrictions, such as cartels. The surveillance of activities to fix or attempt to fix either prices or quantities of commodities is the responsibility of the Price Supervision and Anti-Monopoly Bureau of the NDRC. However, in accordance with the NDRC Provisions on Procedures for Administrative Enforcement of Prohibition of Price Monopoly (NDRC Decree 2010/8), the relevant provincial level authorities, including the provincial Development and Reform Commissions (DRCs) may be delegated by the NDRC to act as the anti-price monopoly enforcement agency within their administrative territories. The provincial DRCs may delegate the investigation to local price-supervision departments, hierarchically one level below.

**Review Process**

According to Chapter 4 of the AML, all concentrations above certain thresholds must be notified to the Administrative Department of the State Council. They are then subject to a prior anti-trust review conducted by the MOFCOM, and require its approval to proceed.\(^\text{115}\) The AML defines concentration as one of the following cases: (a) merger; (b) acquisition of shares or assets giving control over other business operators; (c) control obtained by business operators over other operators by way of a contract; or (d) the ability to exert a decisive influence over other operators.


\(^{115}\) Apart from MOFCOM, other agencies involved in merger reviews include SAIC, and sectorial regulators.

When conducting an anti-trust review, the MOFCOM considers the effect of the merger on market competition, not only in terms of controlling the market and influencing prices, but also in terms of the effect on other associated markets along the value chain leading to the production of the relevant goods or services. Indexes such as the Herfindahl-Hirschman Index (HHI) and Concentration Ratios (CRs) are used in assessing the impact of concentrations on competition. The same criteria are applied to all businesses, including SOEs. In anti-trust reviews of transnational mergers and acquisitions, the MOFCOM is entitled to exchange information with competition authorities of other jurisdictions if it considers that such exchange is necessary for its investigations. As the result of a review, the MOFCOM may approve, reject, or approve the concentration with conditions. The conditions may include: divestment of certain assets or business; the opening of infrastructure to the public; the licensing of key technologies; or terminating exclusive agreements. Although Anti-Monopoly Law covers all types of enterprises, Article 7 of the AML allows the exercise of exclusive activities of state-owned enterprises (SOEs) that are considered vital to the Chinese economy and to safeguard national security or that have been granted legally exclusive production and sales rights. In accordance with the AML, the State will supervise and regulate these enterprises’ operations and the prices of the goods and services they supply.

National Security Review of Concentration

In accordance with Article 31 of the AML, in addition to anti-trust reviews, acquisitions by foreign investors of domestic enterprises considered to be related to national security must undergo a national security review. In these cases, national security review clearance is required as a prerequisite for any other administrative procedures, including anti-trust reviews. If a proposed merger case is not granted national security clearance, the MOFCOM must, jointly with other relevant authorities (such as the NDRC), terminate the merger transaction or take action to eliminate the negative impact on national security caused by the merger.

The scope of the regulated activities is contained in the Provisions on Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, as last revised in the MOFCOM Decree 2009/6. In accordance with China's normative rules, mergers and acquisitions of domestic enterprises by foreign investors are defined as: (a) when a foreign investor's equity investment exceeds 25% of a domestic company's registered capital; (b) when foreign investors set up FIEs in order to acquire and operate assets of domestic enterprises; or (c) the acquisition by foreign investors of assets of domestic enterprises and setting up of FIEs based on the acquired assets.

National security reviews are conducted by the Inter-Ministerial Joint Conference on National Security Review of Acquisitions of Domestic Enterprises by Foreign Investors, led by the NDRC and the MOFCOM. The procedures to conduct national security reviews are contained in the MOFCOM Rules on Implementing the National Security Review Mechanism for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (MOFCOM Announcement No. 2011/53), which entered into force on 1

---

117 Article 11 of the Measures on the Examination of Concentrations of Undertakings.
118 Available at http://english.mofcom.gov.cn/article/policyrelease/Businessregulations/201303/20130300045825.shtml
119 Similar arrangement could also be found in the Draft Foreign Investment Law (2015).
September 2011. In accordance with the newly revised *National Security Law*\(^{120}\) which was promulgated on 1 July 2015, departments at the central governmental level are responsible for the implementation of the national security review and issue the review decisions or opinions within their authorities\(^{121}\) while local governments at the provincial level are responsible for the implementation of the national security review of issues within corresponding administrative regions.\(^{122}\) The matters subject to national security review include foreign investment, key items and technology, network information technology products and services, and construction projects that have or may have adverse impacts on national security.\(^{123}\)

In accordance with the *Circular on the Establishment of a National Security Review of Acquisitions of Domestic Enterprises by Foreign Investors* (Guo Ban Fa 2011/6), which entered into force on 5 March 2011, the instances where mergers and acquisitions of domestic enterprises by foreign investors must be subject to national security review are: defence related activities, which include the acquisition of defence or defence-affiliated enterprises, as well as the purchase of enterprises located near defence facilities; and the acquisition of, and gaining control over, enterprises related to national security engaged in the production of key agricultural products, energy and natural resources, as well as key infrastructure, transportation, and machinery manufacturing. If a merger falls within the scope of activities mentioned in the Circular, foreign investors must request that the MOFCOM conducts a national security review; the request may also come from other ministries or government agencies, industrial associations, or enterprises in the same industry or along the value chain.

National security reviews are subject to specified timelines. The first stage of the review, known also as general review, must be completed within 30 working days. If the MOFCOM is satisfied that the national security conditions are met at this stage, the concentration operation may proceed without the need to engage in further review. However, if the application is not successful, a second stage of review, known as special review, will be conducted; this special review must be completed within 60 working days.

### 4.4 State aid; subsidies other than on exportation

The Ministry of Finance is responsible for the subsidies other than those on exportation. Current state aid available is financial subsidies on agriculture and preferential tax on industries and projects that are supported and encouraged by the State. In 2014, the Government has subsidised over 15 billion Renminbi to crop products and over 100 billion Renminbi to agricultural materials.\(^{124}\) The relevant legislation includes: the *Fiscal Measures for Management of Subsidy Funds for Agricultural Resources and Ecological Protection* (CaiNong [2014] 32) and the *Subsidy Policy of Development and Utilization of Shale Gas* (CaiJian [2012] 847).


\(^{121}\) *National Security Law*, Articles 39 and 60.

\(^{122}\) Ibid, Articles 40 and 61.

\(^{123}\) Ibid, Article 59.

Pursuant to the *PRC Corporate Income Tax Law*, the State implements preferential tax policies with respect to the industries and projects which have the major support of, and the development of which is encouraged by, the State.¹²⁵ The following income of an enterprise shall be income exempted from tax: income from interest on government bonds; income from equity investment, such as dividends and bonuses, between qualified resident enterprises; income from equity investment, such as dividends and bonuses, which is received from a resident enterprise by a non-resident enterprise that has institutions or establishments in China, and which is actually relevant to the said institutions or establishments; and income of a qualified non-profit organisation.¹²⁶

Tax on the following income of an enterprise may be exempted or reduced:¹²⁷ income earned from projects of farming, forestry, animal husbandry, and fisheries; income from investment in, and operation of, infrastructure projects which have the major support of the State; income earned from qualified projects of environmental protection or energy and water conservation; income from qualified technology transfer; and income as specified in the third paragraph of Article 3 of this Law. With respect to a qualified small enterprise earning low profits, the tax levied on its income shall be reduced to a rate of 20 percent. With respect to a high and new technology enterprise that needs key support by the State, the tax levied on its income shall be reduced to a rate of 15 percent.¹²⁸

**4.5 Pricing of energy materials and products; subsidies**

There are three types of prices in China: (i) government-set price, (ii) government-guided price and (iii) market prices. China applies price controls to commodities and services deemed to have a direct impact on the national economy and people's livelihoods. Article 18 of the *Pricing Law* provides that, when necessary, government-guided prices or government-set prices can be applied to commodities that have significant bearing on national economic development and people's livelihood, that are rare or are a natural monopoly, or are considered key public utilities or public services.¹²⁹ Price controls are set by the government price-management bodies, namely the NDRC at the central level, and the Bureau of Commodity Pricing in each province.

Price controls are implemented in accordance with NDRC Announcement No. 11 of 2001. In their implementation, price controls may take the form of "government-set prices" (fixed prices set by the authorities) or "government-guided prices" (prices can fluctuate within a certain range determined by the government). There is a *Central Government Pricing Catalogue*, as well as *Local Government Pricing Catalogues* compiled at the level of provinces, autonomous regions and municipalities, which must be approved by the State Council.

¹²⁵ *Corporate Income Tax Law*, Article 25.
¹²⁷ Ibid, Article 27.
¹²⁸ Ibid, Article 28.
¹²⁹ In accordance with the *Pricing Law*, the determination of prices shall be in line with the law of value, prices of most commodities and services shall be market-determined and only the prices of an "extremely small" number of commodities and services shall be government-guided or government-set prices.
Government-set prices are applied to items subject to state monopoly, such as tobacco and salt, and to public interest items, such as educational material. Government-guided prices are applied to refined oil, fertilisers, and natural gas. Products classified as the State's key reserve materials (grain, cotton, sugar, silkworm cocoons, crude oil, processed oil, and chemical fertilisers), are included in the Government Pricing Catalogue released in 2001 and, according to the Catalogue, could be subject to government-set prices. The authorities have noted that this is not the case in practice, since China does not directly set the prices of reserve materials. Since reserve materials procurement is generally conducted through auctions, prices are the result of competitive bidding.

The NDRC is in charge of implementing price controls at the central level for tobacco, edible salt, natural gas, electric power, rail and civil aviation transport, and post and telecom services. Price controls on health-related services and passenger transport by road are implemented by provincial governments. Additionally, minimum procurement prices for rice and wheat remain in place for main grain-producing areas. The Pricing Law defines a number of unfair price acts: (1) manipulation of market prices in collusion; (2) dumping (including predatory dumping); (3) speculation over price increases; (4) using falsified or misleading prices; (5) practising price discrimination; (6) procuring, selling commodities or providing services at prices increased or lowered in disguised form by adopting such means as raising or lowering the grade or quality of a good; (7) seeking exorbitant profits; and (8) other unfair price acts prohibited by laws and administrative regulations.

**NDRC Government or government-guided prices (2013) (energy materials and related products)**

**Refined oil**

The retail price is government-guided. Managed prices are determined on the basis of the price of crude oil on the international market plus the average processing fee, taxes and reasonable transportation fees in China. The rationale is the lack of adequate market competition.

**Natural gas**

The factory price of onshore gas is central government-guided while the pipeline transportation price is central government-set. The sales price of gas is controlled by the local government and is generally set by the latter. The rationale for maintaining price controls is that natural gas is considered a crucial public utility and the need to complete a full reform of the electricity system before liberalising prices.

**Military products**

Military products are subject to factory government-set price, with a given rationale of defence and national security.

**Electricity**

---

The price of electricity is mainly set by the government and monitored by the competent price authority. The price of electricity generated by power grids across provinces, autonomous regions and municipalities directly under the competent authority of the State Council at the central government level and provincial-level power grids is approved by the competent price authority of the State Council. The price of electricity generated by independent power grids below the provincial level is monitored by the governments of the provinces, autonomous regions and municipalities. The rationale for maintaining price controls is the nature of electricity prices as a crucial public utility price, as well as the lack of a fully completed reform of the electricity system.

Water

Urban water prices are subject to price control by local governments. The rationale for maintaining this price control is that water supply is a natural monopoly.

Charges of some construction projects

Land expropriation administrative charges and house ownership registration charges are set by the central government. The rationale is that they are administrative affairs charges.

Railway transportation fares

Railway passenger and cargo transportation fares and miscellaneous charges are mainly government-set or government-guided prices. The rationale is that railway transport closely relates to national economic and social development and people's livelihoods and is to some extent a natural monopoly.

4.6 ECT requirements under Article 6

Article 6 of the ECT provides for best effort of Contracting Parties on competition in the energy sector, requiring Contracting Parties (i) to work to alleviate market distortion and barriers to competition in the energy sector and (ii) to ensure that within their jurisdiction they have and enforce such laws as are necessary and appropriate to address unilateral and concerted anti-competitive conduct in Economic Activity in the Energy Sector. The ECT also envisages "good will" cooperation between Contracting Parties on technical assistance and in the enforcement of competition rules by consulting and exchanging information.

If a Contracting Party considers that any specified anti-competitive conduct carried out within the area of another Contracting Party is adversely affecting an important interest relevant to the purposes identified, the Contracting Party may notify the other Contracting Party and may request that its competition authorities initiate appropriate enforcement action. The notified party may consult with the competition authorities of the notifying party and shall accord full consideration to the request of the notifying party in deciding whether or not to initiate enforcement action with respect to alleged anti-competitive conduct. The notified party may, if it wishes, inform the notifying party of the grounds for its decision. Nothing in the ECT shall require the provision of information contrary to its law regarding disclosure of information, confidentiality or business secrecy.
Such good will and best efforts requirements concerning competition cooperation impose only soft law obligations on the Contracting Parties. Although Chinese competition laws do not directly deal with international cooperation on competition policies, Chinese competition authorities have been active in engaging in international cooperation. In May 2015, for instance, the MOFCOM signed an MOU on anti-monopoly cooperation with the Competition Bureau of Canada. During the last year, the head of the MOFCOM Anti-Monopoly Bureau have visited the USA, Thailand and Indonesia to foster exchange and cooperation in competition policy operations. It should therefore be expected that China should not find it difficult to fulfil the requirements under Article 6 of the ECT.

5. Article 7 - Transit

5.1 Legislative framework for transit - general and applicable for the energy materials and products

Most of China’s exports and imports are transported by sea. The regulatory system for maritime transport is under the authority of the Ministry of Communications (MOC) which formulates shipping and port policies with a view to: establishing a competitive maritime transport market; building up an internationally competitive commercial fleet; and forming a multifunctional port system, taking into consideration economic development and security concerns.

The Maritime Code and the Regulation on International Maritime Transportation provide the general regulatory framework. Examination and verification by the MOC is required for an international shipping operator to engage in international liner services which is also covered by the Regulation. In accordance with the Maritime Code, shipping and towing between domestic ports must be undertaken by ships flying the national flag of China, unless otherwise stipulated by laws or administrative rules and regulations. The Maritime Code includes provisions on multi-modal contracts and operators and their responsibilities. The Government encourages enterprises to expand multi-modal transport, including by: investing in deep-water container dock construction and improving the road, railway, coastal, and freshwater transport system; establishing an internationally competitive container fleet; developing container transport information technology, including electronic data interchange and other electronic business systems; and improving the legal structure for multi-modal transport.

Article 32 of the *Maritime Transportation Regulations* provides a general regulatory framework for FDI and detailed regulations are provided in the *Administrative Rules on Foreign Investment in the International Maritime Transportation Industry* (2004). The MOC and the MOFCOM are responsible for granting approval for the establishment of FIEs operating in international maritime transport. There are no financial subsidies or cargo preferences for domestic shipping companies; domestic and foreign companies enjoy equal market access with regard to maritime transport services.\(^\text{136}\)

China’s rail transport system is undergoing a major reform. In March 2013, the first session of the 12th National People's Congress considered and passed the *Institutional Reform and Transformation of Government Functions* proposed by the State Council. Regarding railways, the reform is based on the principle of separation between regulation and operation. The main features of this reform are the suppression of the Ministry of Railways, which was an integrated body in charge both of regulation and operation, and the re-allocation of its functions to different entities.

The Ministry of Transport will be in charge of macro-regulation and notably of railway development planning and policies. It therefore becomes responsible for the overall planning of developments in rail, road, waterways and civil aviation, so as to accelerate construction of a comprehensive transportation system. The National Railways Administration, a newly established organ subordinated to the Ministry of Transport, will be in charge of sectoral regulation, i.e. drafting railway technical standards and supervising and administering railway safety production, quality of transportation services and quality of railway construction.

Transport system is regulated by the following laws and regulations: the *Regulations of the Customs of the PRC on the Supervision and Administration of Transit Goods; Oil and Natural Gas Pipeline Protection Law of the People's Republic of China; Regulations on the Control of Nuclear Materials; Regulations on the Protection of Power Facilities.*

5.2 Access terms and conditions to transit networks (oil, gas, electricity)

The electricity sector is regulated by the *Electricity Law* (1995),\(^\text{137}\) the *Regulations for Administration of Electricity Industry* (2005), the *Regulation on Electricity Supervision* (2005),\(^\text{138}\) and the *Electric Power Regulations* (2005).

The State Electricity Regulatory Commission (SERC), and the National Energy Administration (NEA) of the NDRC continue to be responsible for regulating the electricity sector. The NEA formulates the development plan for the sector, while the SERC is in charge of regulating the electricity market, formulating laws and regulations, proposing tariffs and adjustments to the NDRC, as well as ensuring orderly and fair competition in the sector.

Generation, transmission and distribution of electricity continue to be dominated by state-owned enterprises even though China has been trying to increase competition in power generation since 2002. The separation of transmission and distribution has not yet

---


taken place. There are six state-owned regional networks in charge of transmission and distribution, all subsidiaries of the State Grid power Company (except the one covering Southern China). The Southern Power Grid Company\(^{139}\) covers five provinces in the south and is linked with Hong Kong, China and Macao, China. All power grids are state-owned and the State Grid Company is responsible for the operation and development of interregional grids.

Under each of the regional grid companies, there are provincial grid companies that own and operate their own transmission lines and distribution networks and are responsible for supplying electricity to end users. They continue to have monopolies over distribution and electricity sales within a specified area in accordance with the *Electricity Law*.

Electricity trading in China remains low and is mainly carried out under the direction of the Government, which approves prices and amounts traded. Most of the trading continues to take place between the generators and the provincial electricity companies, which act as single buyers and own most of the transmission and part of the distribution grids within the provinces.

With regard to the gas network, China’s largest natural gas reserves are located in its western and northern provinces. However, demand for natural gas is rapidly growing in eastern and southern parts of China. Hence, one of the industry’s major challenges is to build new pipelines and upgrade existing ones so that natural gas can be transported across provinces. The West-East Pipeline Project from Xinjiang to Shanghai became operational in 2004.\(^{140}\)

The natural oil and gas sector in China is dominated by the three large state-owned oil and gas holding companies: China National Petroleum Corporation (CNPC),\(^{141}\) China Petrochemical Corporation (Sinopec),\(^{142}\) and China National Offshore Oil Corporation (CNOOC).\(^{143}\) CNPC operates primarily through its chief subsidiary PetroChina, and all the companies operate numerous local subsidiaries. CNPC is the largest natural gas player, in terms of production and sales.


---

139. [http://eng.csg.cn](http://eng.csg.cn)


5.3 Environmental and other regulations affecting the construction of transit networks

Three quarters of the electricity generated in China is based on the use of coal, and the electricity industry has long been a major polluter. The environmental problems attributed to the use of coal as a source of fuel have become more apparent to authorities. In 2007, to further encourage the use of clean and renewable energy, the State Council approved a document stipulating a schedule to access the grid. Access will be granted to generating companies according to stipulated energy conservation standards, environmental protection standards and economic principles. For example, companies using wind, power and biofuels as sources of energy could be given priority to access the grid.


5.4 ECT requirements under Article 7

Regulation of energy transit is a unique feature of the ECT regime. The ECT aims at establishing a secured, neutral, depoliticised transit system in the energy sector. However, Article 7 of the ECT does not cover maritime transport. Under Article 7 ECT, each Contracting Party shall take the necessary measures to facilitate transit of energy materials and products. The obligation to facilitate transit should be consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such energy materials and products or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restriction or fees. Paragraph 6 stipulates that, in the event of a dispute, Contracting Parties shall not interrupt, reduce, or allow any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of energy materials and products prior to the conclusion of the dispute resolution procedures, unless otherwise specifically provided for in an agreement governing such transit or permitted by a conciliator’s decision.

Under this article, Contracting Parties are required to treat energy materials and products in transit in no less favourable a manner than they treat such materials and products originating in, or destined for, its own area, unless an existing international agreement provides otherwise. However, it does not oblige Contracting Parties to permit the construction or modification of Energy Transport Facilities, or to permit new or additional Transit through existing Energy Transport Facilities, which it demonstrates to

⁴¹⁴⁷ Available at http://www.npc.gov.cn/englishnpc/Law/2007-12/06/content_1382122.htm (15 August 2015)
the other Contracting Parties concerned would endanger the security or efficiency of its
energy systems, including the security of supply.

The ECT provides a special dispute settlement mechanism. In consultation with
parties to the dispute and other Contracting Parties concerned, the Secretary-General shall,
within 30 days of receipt of notification, appoint a conciliator who is not a national or
citizen of, or permanently resident in, a disputing party. The conciliator shall recommend
a resolution and decide the interim tariffs and other terms. It is, however, worth noting
that this conciliation mechanism has not been initiated so far.

The transportation system in China is regulated by several subsector legislations and
under the authority of different Ministries. The Ministry of Transport is responsible for
the overall planning of developments in rail, road, waterways and civil aviation, so as to
accelerate construction of a comprehensive transportation system. The Maritime Code
and the Regulation on International Maritime Transportation provides the general
regulatory framework of maritime transport. The MOC and the MOFCOM are
responsible for granting approval for the establishment of FIEs operating in international
maritime transport. There are no financial subsidies or cargo preferences for domestic
shipping companies; domestic and foreign companies enjoy equal market access with
regard to maritime transport services.

None of the existing domestic rules in the PRC seem to contradict the ECT transit
rules. Although by acceding to the ECT China would commit not to stop transit of energy
materials and products through its area, since China will normally be a consuming
country (not a transit country), Art. 7 ECT could be considered as a beneficial instrument
for its energy security of supply.

6. Article 8 - Transfer of technology

6.1 Foreign trade regime regarding energy technology; access and transfer;
discriminatory non-tariff measures

There is no special regime governing the transfer of energy related technology.
Energy trade is subject to the general trade regime (for policy and practice of China’s
trade regime please refer to Part 2.2 with a particular focus on the energy sector).

Foreign trade regime, including energy related technology transfer, is primarily
regulated by the Foreign Trade Law, and the Regulations on Technology Import and
Export Administration of the PRC. Some specialised legislations are also related to the
transfer of technology, e.g., the Measures on Administration of Prohibited and Restricted
Technology Export, the Measures for the Administration of Dual-use Goods and
Technology Import and Export License, the Regulations on Nuclear Export Control, the
Regulations on Export Control of Dual use Nuclear Goods and Technologies, the
Regulations on Export Control of Missiles and Missile-related Goods and Technologies,

148 Available at http://english.mofcom.gov.cn/article/policyrelease/internationalpolicy/200705/20070504715845.html
(15 August 2015).
the Regulations on Export Control of Dual-use Biological Goods and related Equipment and Technologies, and the Regulations on Chemical Control, Regulations on Precursor Chemicals.

According to the Foreign Trade Law, the State permits free import and export of goods and technologies\(^\text{149}\) as a principle, except when otherwise provided for in laws and administrative regulations.\(^\text{150}\) The department for foreign trade under the State Council may, based on the need to monitor imports and exports, publish and implement the catalogue of automatic import and export licensing system for certain goods subject to free import and export. The contracts concerning the importing or exporting of technologies thereof shall be registered with the Department of Foreign Trade under the State Council or the authority it entrusts with such registration.\(^\text{151}\)

The State may restrict or prohibit the import or export of relevant goods and technologies for reasons listed in the Foreign Trade Law, including (1) safeguarding of state security, and public interests and ethics; (2) protection of human health or safety, the lives or health of animals and plants, or the environment; (3) implementing the measures related to the import and export of gold and silver; (4) short supply on domestic market or for effective conservation of exhaustible natural resources; (5) limited market capacity of the importing country or region; (6) serious chaos in export order; (7) establishing or speeding up the establishment of a particular domestic industry; (8) necessary to restrict the import of agricultural, animal husbandry and fishery products of any form; (9) maintaining the State’s international financial position and the balance of international receipts and payments; (10) other goods the import or export of which needs to be restricted or prohibited, as required by laws and administrative regulations; or (11) other goods the import or export of which needs to be restricted or prohibited in accordance with the provisions of international treaties or agreements signed or acceded to by the PRC.\(^\text{152}\) The Department of Foreign Trade under the State Council shall, in conjunction with other departments under the State Council, formulate, adjust and publish the catalogue of goods and technologies that are restricted or prohibited for import or export.\(^\text{153}\) With the approval of the State Council, the department for foreign trade under the State Council or the said department in conjunction with other relevant departments under the State Council may, within the scope specified by the provisions in Article 16 and 17 of the Foreign Trade Law, decide on temporary restriction or prohibition on the import or export of specific goods and technologies other than the ones listed in the catalogue.

\(^{149}\)In accordance with Article 2 of the Regulations on Technology Import and Export Administration of the PRC (2001), the import and export of technology refers to acts of transferring technology from outside into the territory of the PRC or visa versa by way of trade, investment, or economic and technical cooperation, including assignment of the patent right, assignment of the patent application right, licensing for patent exploitation, assignment of technical secrets, technical services and transfer of technology by other means.

\(^{150}\)Foreign Trade Law, Article 14.

\(^{151}\)Ibid, Article 15.

\(^{152}\)Ibid, Article 16.

\(^{153}\)Ibid, Article 18; and Articles 31 and 32 of the Regulations on Technology Import and Export Administration of the PRC.
It is of special relevance that the State may, based on conservation of exhaustible natural resources as well as short supply on domestic market, restrict the export of relevant goods and technologies. With regard to the import and export of goods and technologies related to fissile and fusion material or the substances from which such material is derived, and the imports and exports related to arms, ammunition, or other military supplies, the State may adopt any necessary measures to safeguard State security. In times of war or for the purpose of preserving international peace and security, the State may adopt any necessary measure respecting international trade in services.

Technology restricted from export shall be subject to license administration and shall not be exported without a license under the State Council. Freely exportable technology shall be subject to the contract registration administration. A contract for exporting a technology takes effect from the time when the contract is established according to law without taking the registration thereof as a condition for the contract to be effective.

Any dealer who imports or exports the goods the import and export of which are prohibited or, without authorisation, imports or exports the goods import and export of which are restricted shall be dealt with and penalised by Customs in accordance with the provisions of relevant laws and administrative regulations; if its act constitutes a crime, it shall be investigated for criminal responsibility according to law.

6.2 Legislation regulating intellectual property rights; membership in relevant international conventions

The Inter-Ministerial Joint Conference for the Implementation of National Intellectual Property Strategy, established in October 2008, is in charge of coordinating the implementation of intellectual property policy and regulations across relevant ministries and agencies in China. The Inter-Ministerial Conference is chaired by the Commissioner of the State Intellectual Property Office (SIPO) and its tasks are executed by the National Intellectual Property Strategy Office (NIPSO), situated in the SIPO. The Conference issues a Promotion Plan for the Implementation of the National Intellectual Property Strategy annually, with specific actions to be carried out during the year in question to attain the goals of the strategy. In 2013, the strategic themes/actions identified were grouped under eight main goals: enhancing intellectual property (IP) creation by raising the quality of intellectual property rights (IPRs), as well as innovation efficiency; strengthening IP in key industries; promoting the use of IP; strengthening IPR protection; enhancing IP management capacity; development of IP services; strengthening the public’s IP culture through education, public campaigns, and by combating IPR infringements in advertising; improving the organization and implementation of the IP strategy.

---

154 Foreign Trade Law, Article 17.
155 Ibid, Article 27.
156 Articles 33 and 34 of the Regulations on Technology Import and Export Administration of the PRC.
157 Ibid, Article 39.
158 Foreign Trade Law, Article 61.
159 Information (in Chinese only) on China's intellectual property strategy at the national, regional, and industrial level and NIPSO's activities can be found on the website of the Office (http://www.nipso.cn).
Patents

The institution in charge of patent administration nationwide in China is the State Intellectual Property Office (SIPO), under the State Council. The State Patent Office, under SIPO, is responsible for receiving and processing patent applications and granting patents. Local IPR administrative offices deal with hearing and settling controversies with respect to patents.


Patents are granted for 20 years from the date of filing for inventions, and 10 years from filing for utility models and industrial designs. Patent applications are made to SIPO, which screens them for compliance with the requirements of the Patent Law. In case of conformity, SIPO must publish the application within 18 months of the date of filing. The applicant must then submit a request for substantive examination by the SIPO. The request must be submitted within three years of the date of filing; otherwise, the application is considered to have been withdrawn. Article 62 of the Rules for the Implementation of the Patent Law stipulates that, if the Board of Patent Appeals and Review finds that SIPO's decision does not comply with the provisions of the Patent Law and its accompanying rules and regulations, it may revoke the decision and ask SIPO to continue the patent examination.

The acceptance of applications for a foreign or international patent for an invention or utility model in which the "substantial content" of the technical solution was generated within the Chinese territory or resulted from R&D activities of major national projects is subject to a preliminary national-interest clearance. A "confidentiality examination" must be conducted before an application can be filed. There is no definition of substantial content in the Implementing Regulations of the Patent Law. IPRs obtained from major national projects must first be non-exclusively licensed within the territory of mainland China. The eventual licensing or transfer of these rights to foreign parties is subject to the provisions of the Regulations on the Administration of Technology Import and Export, as revised in December 2010.

160 WTO documents IP/N/1/CHN/3, 15 December 2010; and IP/N/1/CHN/P/2, 21 December 2010. For the text of the Patent law in English http://english.sipo.gov.cn/laws/lawsregulations/201101/t20110119_566244.html (accessed 15 August 2015).
161 WTO documents IP/N/1/CHN/4, 24 August 2011; and IP/N/1/CHN/P/3, 26 August 2011.
163 Major national projects have been identified in the 2006 Medium and Long-term Plan for Science and Technology; they are projects in 16 fields, coordinated by the Ministry of Science and Technology, which aim at fostering the development of core technologies and social and economic development.
China's patent law provides for compulsory licensing of patents. Compulsory licences may be granted in the public interest, or in the event of a national emergency or any extraordinary state of affairs. A compulsory licence may also be granted if the patent owner, without justification, has failed to sufficiently exploit the patent rights for three years or uses the rights in a manner that eliminates or restricts competition. This is understood to mean that the exploitation of the patent by the right-holder or licensee is not able to satisfy the domestic demand for the patented product or patented know-how. Compulsory licences for patented inventions or utility models may also be granted if the patent-holders are found to restrict/limit competition through the abuse of their IPRs. The Anti-Monopoly Law (AML) does not, however, provide a definition of abuse of IPRs. A compulsory licence may also be granted under certain circumstances for patented pharmaceutical products in accordance with the amendment to the Patent Law introduced in 2009 to give effect to the WTO General Council Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.\(^1\)

### Trademarks

The Trademark Law (last amended in 2013), its implementing rules (promulgated in 2002) and other relevant laws, administrative regulations and rules issued by SIAC,\(^2\) constitute the existing legal framework regulating trademarks in China. The objective of these laws and regulations is to provide protection to trademark right-holders in line with international conventions and prevailing practices regarding intellectual property rights (both on substance and procedures). In order to protect the exclusive rights of the trademark owner, China's Trademark Law contains not only civil and criminal liabilities but also provides for administrative punishment of trademark infringers. This "double-track system" for the protection of exclusive trademarks rights can prevent trademark infringements in a timely and effective manner and protect the legitimate rights and interests of the owners of these exclusive rights. In recent years, China's judicial and administrative bodies have enhanced their efforts to protect exclusive trademark rights within their respective authority. They have settled a large number of cases that were influential, domestically and abroad, and have received a positive response from domestic and foreign right-holders.

The responsibility for the examination of applications, registration and administration of trademarks lies with the State Trademark Office (TMO), under the State Administration for Industry & Commerce of the PRC (the SAIC). At the provincial level and below, local enforcement authorities are responsible for the administration of trademarks. The Trademark Review and Adjudication Board is in charge of the settlement of disputes concerning trademarks. It is also responsible for reviewing decisions made by the TMO and ruling on disputed cases on trademarks. The review period of trademark registration was 10 months as of mid-2013, down from 12 months in 2010.

---

\(^1\) Articles 22 and 33 of the Measures for Exercising Patent Compulsory Licenses regulate the administration of compulsory licensing of patented drugs.

Trademarks are protected for ten years and renewable for ten years, indefinitely. Chinese applicants can submit their applications for trademark registration either themselves or through an agent recognized or designated by SAIC. Foreign applicants, who do not have residence or business premises in China, must register their trademarks through an agent. The *Decision of the Standing Committee of the National People’s Congress on Amending the Trademark Law* was adopted on 30 August 2013, to come into force on 1 May 2014.

Registration with the TMO is a prerequisite for protection under the *Trademark Law*. Foreign applicants must file applications on the basis of reciprocity between their country of origin and China, or of any international treaty to which both countries are parties unless an agreement has been concluded between their country of origin and China. Registration may be rejected if the mark involves a copy, imitation, or translation of well-known brands that have not been registered in China for the same or similar goods and services, and it easily creates ambiguity or if the mark involves a copy, imitation, or translation of well-known brands that have been registered in China for goods and services that are not deemed identical or similar to the goods and services in question. If the TMO refuses to register a trademark, the applicant may appeal the decision before the Trademark Review and Adjudication Board; the appeal must be presented within 15 days of receipt of the notification of the decision.

SAIC's *Rules on Recognition and Protection of Well-known Brands*, promulgated in April 2003, define "well-known brands" as trademarks that are widely known and enjoy a high reputation among the relevant public in China. China's third amendment to the *Trademark Law* provides more detailed guidelines for the identification of well-known trademarks. However, the Law does not set time limits for the identification process.

Several regulations have been introduced to enforce trademark protection in e-commerce. SAIC’s *Circular of Opinions on Extending Cross-Provincial Enforcement to Commodities Trading on the Internet and its Related Services* facilitates the procedures for cross-provincial investigations regarding IPR violations through the Internet. The *Interim Measures on Administration of Commodities Trading on the Internet and its Related Services*, SAIC Decree No. 2010/49, which entered into effect on 1 July 2010, requires the operator of the Internet trading platform to take the necessary actions against trademark infringement, and makes the operator responsible for disciplining users of the platform, as well as liable for any damage caused by misuse of the platform. A judicial interpretation (JI) issued by the Supreme People's Court on the liability of Internet intermediaries, effective as of 1 January 2013, clarifies some enforcement issues by specifying that those who facilitate online infringement will be held jointly liable for that conduct.

**Copyrights and related rights**

---

166 (Gong Shang Shi Zi 2011/11), issued on 27 May 2011.
167 Rules of Supreme Court on Several Issues Concerning the Application of Law in Adjudication of Civil Disputes Related to Infringement of the Right of Communication through Information Networks.
The *Copyright Law* (1990, last revised in 2010)\(^{168}\) established the basic copyright protection system in China together with the *Implementing Rules of the Copyright Law* (30 May 1991, last reviewed in 2010), the *Provisions on the Implementation of the International Copyright Treaty* (25 September 1992) and accompanying regulations, such as the *Regulations for the Protection of Computer Software*, the *Regulation on the Collective Administration of Copyright*, and the *Regulations on Protection of the Right of Communication through Information Networks*. In principle, this system was in compliance with international IPR treaties and practices. Upon accession to the WTO, China's copyright regime including the *Regulations for the Implementation of the Copyright Law* and the *Provisions on the Implementation of the International Copyright Treaty* has been amended so as to ensure full consistency with China's obligations under the TRIPS Agreement.

Copyright registration and enforcement is carried out at both the central and provincial levels. The National Copyright Administration of China (NCAC), under the State Council, administers copyright on a national scale. At the provincial level, registration and administration is carried out by the respective local administration offices.

The term of protection for natural persons is life plus 50 years.\(^{169}\) The term of protection in respect to a work of a legal entity or other organization or a work which is created in the course of employment and the copyright (except the right of authorship) of which is held by a legal entity or other organization, is 50 years. The term of protection for cinematographic and photographic works is 50 years, and for typographical designs, 10 years. Software copyright exists from the date on which its development is completed. Audio and video productions, broadcasting, and public performances are granted protection for 50 years from the first day of production, broadcasting, or performance.\(^{170}\)

Chinese citizens, legal entities or other organizations enjoy copyright protection automatically on their works,\(^{171}\) whether published or not. In China, registration is voluntary and is not necessary for protection. Regardless of their nationality, foreigners whose works are first published in the territory of China enjoy copyright protection in accordance with the law. In addition, works of foreigners who are citizens or residents of countries or territories that have signed bilateral copyright protection agreements with China and/or are also parties to the same relevant international conventions on copyright as China, are protected under the *Copyright Law*, provided their copyrights have been recognized according to the above-mentioned relevant bilateral agreements or international conventions. Protection under Chinese law may be granted to works of persons who are not citizens or residents of countries or territories as defined above, as long as their works are first (or simultaneously) published in country(ies) or territory(ies) party to the same relevant international conventions on copyright as China.


\(^{169}\) *Copyright Law*, Article 21.

\(^{170}\) Ibid, Articles 39, 42 and 45.

\(^{171}\) Under the *Copyright Law*, works are understood as: written works; oral works; musical, dramatic, quyi, choreographic and acrobatic works; works of the fine arts and architecture; photographic works; cinematographic works; graphic works such as drawings of engineering designs and product designs, maps and sketches, and model works; computer software; and other works as provided for in laws and administrative regulations.
In accordance with the Copyright Law, copyright includes the following personal and property rights: publication; authorship; revision; integrity (the right to protect a work against distortion and mutilation); reproduction; distribution; rental; exhibition; performance; presentation; broadcasting; communication through information networks; cinematography; adaptation; translation; compilation; and other rights to be enjoyed by copyright owners. Copyright owners or owners of related rights may authorize collective non-profit copyright administration organizations to exercise their rights.

**Layout-designs of integrated circuits**

Layout-designs of integrated circuits are protected under the Regulations on the Protection of Layout-Designs of Integrated Circuits (promulgated by Decree No. 300 of the State Council in 2001, and effective as of 1 October 2001) \(^{172}\) and under the Rules for Implementing the Regulations on the Protection of Layout-Designs of Integrated Circuits (promulgated by Decree No. 11 of the Commissioner of the State Intellectual Property Office of the PRC on 18 September 2001, and effective as of 1 October 2001). Where any application for registration of layout-designs contains confidential information, the copy or drawing of the layer of layout-designs, layout-designs are protected for 10 years from the date of filing or the date of first commercial exploitation anywhere in the world, whichever expires earlier; the maximum duration of protection is 15 years from the date of creation.

**Undisclosed information and trade secrets**

Undisclosed information and trade secrets are covered under a number of laws and regulations, including the Criminal Law, the Law against Unfair Competition, the Labour Law, and regulations issued in accordance with these laws. The People's Courts exercise their judicial power to try civil and criminal cases related to undisclosed information and the protection of trade secrets. The Public Security Agency is responsible for criminal investigations in serious cases that infringe upon undisclosed information or trade secrets, while SAIC is in charge of the administrative enforcement of the law in this regard.

Article 10 of the Law against Unfair Competition provides that a business operator must not infringe upon trade secrets. Under the same article, obtaining, using or disclosing another's trade secrets by a third party who clearly knew or ought to have known that the case fell under the unlawful acts listed was deemed infringement upon trade secrets. Trade secrets referred to any technology, information, or business operation information which was unknown to the public and could bring about economic benefits to the obligee, had practical utility, and about which the obligee had adopted secret-keeping measures. Article 219 of the Criminal Law had similar definitions on trade secrets.

**Enforcement of Intellectual Property Rights**

Enforcement of IPRs in China is done at the administrative and judicial levels. Administrative actions are taken by the responsible governmental agencies. Judicial actions are taken through the public security authorities, procuratorial organs, and the

courts. All public security authorities above the prefecture and city levels in China have established IPR crime coordinating activities, and lead organizations to arrange and coordinate action to crack down on infringement and counterfeiting activities. The Ministry of Public Security has also concluded coordination and cooperation agreements with other agencies, including the industrial and commercial authorities, Customs and quality inspection authorities. This arrangement will facilitate the timely reporting of IPR infringements and prompt early intervention by the public security authorities.

Article 118 of the General Principles of Civil Law provides that if the rights of authorship (copyrights), patent rights, rights of exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or juridical persons were infringed upon by such means as plagiarism, alteration or imitation, they had the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated. The Trademark Law, the Patent Law and the Copyright Law had similar provisions.

The Civil Procedure Law contains provisions on property preservation. However, no explicit stipulations had been adopted authorizing the people's court to take measures for the prevention of infringements prior to the formal institution of a lawsuit.

The Trademark Law provides that in case of infringement of the right to the exclusive use of a registered trademark, the infringed right holder could request the administrative department for industry and commerce at or above the county level for disposition. The relevant administrative department for industry and commerce has the power to order the infringer to stop the infringement immediately and to compensate the infringed right holder for their losses. SAIC and its local agencies above the county level could also impose a fine upon the infringer. The Patent Law provides that the patentee and interested party could request the administrative authority for patent affairs to handle the infringing act. The administrative authority could order the infringer to stop the infringing act immediately and mediate on damages at the request of the parties concerned. The Copyright Law provided that the copyright administration department could subject anyone who committed acts of infringement to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine.

Relevant agencies, including the State Administration for Industry and Commerce, the State General Administration of the PRC for Quality Supervision and Inspection and Quarantine, and the Copyright Office, now have the authority to confiscate equipment used for making counterfeit and pirated products and other evidence of infringement. These relevant agencies would be encouraged to exercise their authority to seize and preserve evidence of infringement such as inventory and documents. Administrative authorities would have the authority to impose sufficient sanctions to prevent or deter further infringement and would be encouraged to exercise that authority. Appropriate cases, including those involving repeat offenders and wilful piracy and counterfeiting, would be referred to relevant authorities for prosecution under criminal law provisions.

Articles 213 to 220 of the Criminal Law (Crimes of Infringing on Intellectual Property Rights) provide that whoever seriously infringes the right-holders' rights of registered trademarks, patents, copyrights or trade secrets would be sentenced to fixed-term imprisonment and also fined.
China has been pursuing a long-term development strategy that pivots to innovation. The Chinese Government is committed to further promoting synergy between scientific innovation and economic development, expediting the establishment of a new technological innovation system that is business-centred, market-oriented and facilitates the combination of industry, academia, and research and development institutions. China will continue to relentlessly promote the protection of intellectual property rights and make great efforts to foster a favourable market environment and an effective system that drives China’s innovation.

China’s newly-elected government retained the National Leading Group on the Fight Against IPR Infringement and Counterfeiting headed by a vice premier of the State Council. The government is also pushing forward an initiative to incorporate the outcomes of IPR protection against infringements and counterfeiting into government performance evaluation system at different administrative levels.

On 1 January 2013, the Regulations on Several Issues Concerning the Laws Applicable to the Trial of Civil Cases of Dispute on the Infringement of the Right of Communication through Information Network, promulgated by the Supreme People’s Court, took effect. China amended a series of laws, regulations and rules concerning intellectual property right such as the Trademark Law, the Regulations on the Protection of Computer Software, the Regulations on the Protection on the Right of Implementation of the Copyright Law, the Regulations on the Protection on the Right of Communication through Informational Network, and the Regulations on the Protection of New Plant Varieties.

China is a member of the World Intellectual Property Organization (WIPO), and a Contracting Party to various international conventions and treaties. China has continued to increase the number of IPR protection applications through international treaties, particularly in the area of patents. In 2012, Chinese citizens filed 18,614 applications through the Patent Cooperation Treaty (PCT) system, an increase of 13.5% over 2011, and triple the number of applications filed in 2008. There were 2,100 trademark applications filed through the Madrid system in 2012, slightly less than in 2011, but a third more than in 2008.

6.3 ECT requirements under Article 8

The primary commitments under Article 8 of the ECT (transfer of technology) require Contracting Parties to promote access to and transfer of energy technology on a commercial and non-discriminatory basis to assist effective trade and investment. For this purpose, the ECT also requires the contracting states to eliminate, to the extent necessary, existing obstacles, and create no new ones, to the transfer of technology subject to non-

---

174 WIPO statistics, available at http://www.wipo.int/ipstats/en/statistics/country_profile/countries/en.html. The ten main users of the PCT system in 2012 were: ZTE Corporation (3,906 applications); Huawei Technologies Co. Ltd. (1,801); Shenzhen China Star Optoelectronics Technology Co. Ltd. (204); Huawei Device Co. Ltd. (200); China Academy of Telecommunications Technology (171); Institute of Microelectronics of the Chinese Academy of Sciences (161); Tencent Technology (Shenzhen) Co. Ltd. (122); Hunan Sany Intelligent Control Equipment Co. Ltd. (94); Peking University (92); and Da Tang Mobile Communications Equipment Co. Ltd. (82).
proliferation and other international obligations. It is required that Contracting Parties shall refrain from interfering in the operation of market-oriented technology transfer.

There is no special regime governing the transfer of energy-related technology in China. Energy trade is subject to the general trade regime. China permits free import and export of goods and technologies as a principle, except otherwise provided for in laws and administrative regulations. The State may restrict or prohibit the import or export of relevant goods and technologies for listed reasons under the Foreign Trade Law, and formulate, adjust and publish the catalogue of goods and technologies thereof. Technology restricted from export shall be subject to license administration, and shall not be exported without a license under the State Council. Freely exportable technology shall be subject to the contract registration administration. It is of special relevance to the transfer of energy-related technology that the State may restrict the export of relevant goods and technologies based on reasons of conservation of exhaustible natural resources, short supply on the domestic market, and national security. Property rights are generally well protected. No PRC law imposes compulsory transfer of technology related to specific energy trade or investment.

7. Article 9 - Access to capital

7.1 General legislation regulating access to capital; discriminatory elements

The main legislation regulating the banking sector includes: the Law on the People’s Bank of China, the Law on Commercial Banks, the Law on Regulation and Supervision of the Banking Sector, the Law on Negotiable Instruments, the Insurance Law, the Securities Law, and the Law on Funds for Investment in Securities. The Chinese Government continues to adhere to a prudent, stable and consistent monetary policy. It also endeavours to make the policy more targeted, flexible and forward-looking. Commercial banks are subject to a multi-layered regulatory framework, involving the People’s Bank of China (for fixing interest rates, and regulating and supervising interbank transactions), the China Banking Regulatory Commission (for most aspects of banking activities), the China Securities Regulatory Commission (for conducting fund custodian business), the China Insurance Regulatory Commission (for conducting bank-assurance business) and the State Administration of Foreign Exchange (SAFE, for regulating dealing with foreign exchange businesses). The China Banking Regulatory Commission is the primary authority responsible for the regulation and supervision of banking institutions, as well as overseas operation of local institutions. The People’s Bank of China (PBC) is responsible not just for formulating and implementing monetary policy but also for maintaining financial stability, and therefore the PBC has kept some broad supervisory powers beyond the normal macro-prudential control of financial sector.

Banks lending and receiving deposits have been deregulated since 2004, but some constraints remain. For lending, the Law on Commercial Banks requires commercial

banks to take into consideration “the needs of the national economic and social development”, and follow the “guidance of the industrial policies of the State”. Accordingly, the PBC and other administrative authorities encourage commercial banks to adapt their lending to specific borrowers in light of relevant government policies.

In accordance with the Law on Commercial Banks, interest rates are also to be set by commercial banks “in accordance with the upper and lower limits for interest rates prescribed by the People’s Bank of China”. Interest rates for RMB-dominated loans and deposits were historically set by the PBC, which has gradually liberalised interest rates since 2004, allowing banks wider discretion in determining interest rates on RMB-dominated loans. Market-based interest rates are allowed in the money and bond markets, and commercial banks may charge lending rates above the benchmark (but not below 90% of the benchmark) and offer deposit rates below (but not above) the benchmark.

Since 2004, foreign strategic investors have acquired shares of the five largest State-owned Commercial Banks (SOCBs). The year 2006 marked a key step in the further opening up of the banking sector. The State Council promulgated the Regulation on the Administration of Foreign-founded Banks in November 2006, followed by the Implementing Rules of the China Bank Regulatory Commission (CBRC). As a result, geographic and customer restriction on RMB business as well as other non-prudential restrictions on foreign bank operations were lifted on 11 December 2006.

7.2 Conditions for granting credits to foreign traders or investors

On 24 April 1987, the Bank of China promulgated the Regulations of the Bank of China on Providing Loans to Enterprises with Foreign Investment. According to its article 2, the Bank of China grants loans to enterprises with foreign investment to finance their construction and operation, with priority to export-oriented products and advanced technology in line with the state policy and under its business principle of safety, benefit and service.


Pursuant to the Law on Commercial Banks, commercial loans are operated by commercial banks purely on the basis of commercial concerns and subject to no interference from any unit or individual. Foreign investors are subject to same conditions and treatment concerning access to loans under the Law on Commercial Banks. Article 4 of the Law on Commercial Banks stipulates that “the business operations of commercial banks shall be governed by the principles of safety, liquidity and efficiency. Commercial banks shall make their own decisions regarding their business operations, take responsibility for their own risks, assume sole responsibility for their profits and losses and exercise self-restriction. Commercial banks shall, pursuant to the law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property.”

---

177 Law on Commercial Banks, Article 4.
The provisions of the *Law on Commercial Banks* shall be applicable to foreign-invested commercial banks, commercial banks of Chinese-foreign equity joint venture and branches of foreign commercial banks. When other laws and administrative regulations provide otherwise, the provisions of those laws and administrative regulations shall prevail. Other relevant legislation includes the *Regulation on the Administration of Foreign-funded Banks* (11 December 2006) and the *Banking Supervision Law* (1 February 2004).

On 29 May 2001, the State Council decided to establish the China Export & Credit Insurance Corporation (SINOSURE), which began operations on 18 December 2001. Presently, SINOSURE has formed a nationwide service network. Its business guideline is “by means of insurance service for foreign trade and investment, fully supporting the development of foreign trade and economic cooperation and promoting the economic growth, the employment and the equilibrium of international balance of payment”.

The China Export & Credit Insurance Corporation is a solely state-owned policy-oriented insurance corporation engaged in the policy export and credit insurance business. The Corporation is operated according to the *Scheme on Establishment of the China Export Credit Insurance Company and the Articles of Association of the China Export Credit Insurance Company*. The major tasks of the Corporation are: supporting the export of goods, technologies and services, etc, especially the export of capital goods such as mechanical and electrical products of advanced technology and high added value, vigorously developing overseas markets, providing guarantee against the risk in collecting foreign exchange and promoting the healthy development of national economy according to the state policies on diplomacy, foreign trade, industry, finance, banking, etc, and by the means of government export and credit insurance.

SINOSURE is regulated by the China Insurance Regulatory Commission according to the state policies on export and credit insurance. The Central Financial Working Committee shall be responsible for the management of the leaders and managers, and the relations of the Corporation with the CPC. The Ministry of Finance, the Ministry of Foreign Trade and Economic Cooperation, the Ministry of Foreign Affairs, the China Insurance Regulatory Commission and other departments shall study and present the export and credit insurance policies on the state risk classification, state quota, insurance rate, etc, and shall carry them out upon the approval of the State Council.

SINOSURE’s main products include Medium and Long-Term Export Credit Insurance, Overseas Investment (Leasing) Insurance & Inbound Investment

---

178 Ibid, Article 92.
181 Article 1 of the *Notice of the State Council on Establishing the China Export & Credit Insurance Corporation*.
182 Article 4(1) of the *Notice of the State Council on Establishing the China Export & Credit Insurance Corporation*.
183 Medium and long-term export credit insurance is designed to encourage Chinese exporters to participate actively in international competitions, especially those involving exports of mechanical and electronic products featuring high-tech and high added value, and complete plant equipment packages, as well as to contract for overseas projects. This insurance is also calculated to support financial organizations, such as banks, to provide exporters with financing.
Insurance,\textsuperscript{184} Short-Term Export Credit Insurance,\textsuperscript{185} Bond and Guarantee, Credit Rating Service, Debt Collection, and other products and service approved by the Government. Since SINOSURE’s foundation, the role of export credit insurance in supporting China’s foreign trade and economic cooperation has become more and more evident. By the end of 2013, SINOSURE had supported export, domestic trade and investment with a total value of USD 1484.65 billion. Its policies covered thousands of exporters and hundreds of medium and long term projects concerning high technology export, large electromachinery and complete set equipment export, overseas engineering contracts, etc. In the meantime, SINOSURE has facilitated the lending of CNY 1.8 trillion by 190 banks.

7.3 Conditions for domestic traders or investors making foreign currency loans

According to the \textit{Notice of the State Administration of Foreign Exchange on Issuing the Provisions on the Foreign Exchange Administration of the Overseas Direct Investment of Domestic Institutions} (No.30 [2009] of the State Administration of Foreign Exchange, SAFE), domestic institutions may make overseas direct investment with their own foreign exchange funds, domestic foreign exchange loans meeting the relevant requirements, foreign exchange purchased with RMB funds, tangible assets, intangible assets and other sources of foreign exchange assets approved by the foreign exchange authorities. Domestic institutions may retain the profits made from overseas direct investment outside China for their overseas direct investments (Article 4). Domestic institutions should make overseas loans and guarantees with regard to the \textit{Regulations of the PRC on Foreign Exchange Administration}, which was revised and adopted on 1 August 2008 and promulgated on 5 August 2008.

Chapter III of the \textit{Regulations of the PRC on Foreign Exchange Administration} regulates the administration of foreign exchange for “capital account transaction”, which refers to the transaction items in the balance of payments leading to changes in external assets and liabilities, including capital transfers, direct investments, portfolio investments, derivatives, loans, etc.

Direct investments within the territory of the PRC by foreign entities or individuals shall be registered with the exchange administration agencies after being approved by the

\textsuperscript{184} Investment insurance is a policy business that is intended to provide the insured with risk guarantee when they suffer economic losses because of war, currency exchange ban, requisition, or breach of contract by the government in countries where the insured have made investments. It is designed to support and promote Chinese companies and financial organizations in making overseas investments, and to encourage and advance overseas investors to make investments in the Chinese Mainland. Overseas investment insurance is designed to support and encourage Chinese enterprises and financial organizations to make investments overseas. It obligates the insurer to underwrite an investor's economic losses in overseas investment and profits caused by political risks of a host country. It consists of equity insurance and liability insurance. Inbound investment insurance is designed to encourage and promote investors from foreign countries and Hong Kong, Macao, and Taiwan to make investments in the Chinese Mainland. It obligates the insurer to underwrite all economic losses of overseas investors incurred in their investments and profits because of political risks in China. It consists of equity insurance and liability insurance.

\textsuperscript{185} Short-term export credit insurance provides exporters with guarantees for payment risk in doing export or re-export from China by the way of L/C, D/P, D/A, or OA; all bearing a term of one year.
relevant departments. Overseas direct investments or overseas issuances or transactions of securities or derivatives by domestic entities or individuals shall be registered in accordance with the provisions of the foreign exchange administration department of the State Council. Where prior approval or maintenance for the record by the relevant department is required by the provisions of the State, the approval or recording procedures shall be completed prior to the registration of the foreign exchange.

The source of foreign exchange for overseas investment by domestic entities shall be reviewed by the exchange administration agencies before the application for such investments is filed for approval by the relevant government agencies. If approval is granted, remittance of funds shall then take place in accordance with the regulations on overseas investment issued by the State Council. External guarantee shall only be offered by qualified financial institutions and enterprises meeting the government requirements and subject to the approval by the exchange administration agencies.

7.4 ECT requirements under Article 9

Article 9 ECT requires that each Contracting Party shall endeavour to promote conditions for access to its capital market on a basis of NT and MFN for the purpose of financing trade in Energy Materials and Products and for the purpose of Investment in Economic Activities in the Energy Sector. The ECT does not prevent financial institutions from applying their own lending practices based on market principles and prudential considerations. Similarly it does not prevent a Contracting Party from taking measures for prudential reasons, or to ensure integrity and stability of its financial system and capital markets.

Requirements under Article 9 ECT are best-efforts types of obligations. According to the Law on Commercial Banks, commercial loans are operated by commercial banks purely on the basis of commercial concerns and subject to no interference from any unit or individual. Foreign commercial banks and foreign founded commercial banks are subject to largely the same conditions and treatment concerning access to loans under the Law on Commercial Banks unless otherwise provided for by other laws and regulations. In other words, foreign investors generally enjoy national and MFN treatment in access to capital. Therefore, there is no discrepancy with current Chinese legislation and Article 9 ECT.

---

186 Regulations on Foreign Exchange Administration, Article 16.
187 Ibid, Article 17.
188 Ibid, Article 21.
189 Ibid, Article 24.
190 According to Article 92 of the Law on Commercial Banks, the provisions of the Law on Commercial Banks are applicable to wholly foreign funded commercial banks, commercial banks of Sino-foreign equity joint venture and branches of foreign commercial banks. Where laws and administrative regulations provide otherwise, the provisions thereof shall prevail.
8. Article 10 - Investment

8.1 Legal Framework for foreign investment: the draft foreign investment law and other relevant laws and regulations

The legal framework governing foreign investment in China is normally divided into three levels: constitutional provisions, national laws and regulations and sub-national regulations. Article 18 of the Constitution stipulates that the PRC permits foreign organisations and individuals to invest in China and enter into cooperation with Chinese economic organisations. The rights and benefits of all foreign enterprises and Chinese-foreign joint ventures in the Chinese territory are protected by PRC’s law. Obviously these constitutional provisions are fairly brief. Nevertheless, they are an assurance for foreign investors, as the protection of FIEs has been specifically addressed in the basic law of the State. Other constitutional laws also contain provisions related to FIEs. For instance, the Legislation Law maintains that the expropriation of non-state-owned properties must be laid down in the form of “Law” (Falu), which means it must be formulated by the National People’s Congress or its Standing Committee.

National laws and regulations on FIEs come under the Constitution. These laws and regulations comprise a substantial part of the FIE law system and are in the form of Laws (Falu), Administrative Regulations (Xingzhen Fagui) or Departmental Rules (Bumen Guizhang). They may be classified into two general categories: FIE-specific laws and FIE-related laws.

FIE-specific laws are laws specifically addressing FIE issues. There are two sub-categories within FIE-specific laws: basic FIE laws and supplementary FIE laws. To date, China has not had a unified law for all forms of foreign investment. Instead, there are a few basic laws on different forms of FIEs, which may be called “basic FIE laws”. The core regulation is contained in the Law on Sino-foreign Equity Joint Ventures, the Law on Sino-foreign Cooperative Joint Ventures and the Law on Wholly Foreign-Owned Enterprises and their respective implementing regulations. There are, in addition, regulations on the joint exploitation of onshore and offshore petroleum resources and some other individual regulations on what the Chinese government calls “new forms of foreign investment” including Build-Operate-Transfer (BOT) investment, holding

---

192 Article 18 paragraph 1 of the Constitution.
193 At the same time, they are required to abide by the law of China. Article 18 paragraph 2 of the Constitution.
196 Article 8 of the Legislation Law.
197 Ibid, Article 7.
198 Indeed, since these laws deal with the most important aspects of the three basic forms of FIEs, they can be regarded as “Chinese FDI laws” in a narrow sense.
199 Including Regulations on the Exploitation of Offshore Petroleum Resources in Co-operation with Foreign Enterprises (REOFF), and the Regulations on the Exploitation of Onshore Petroleum Resources in Co-operation with Foreign Enterprises (REON).
companies with foreign investment (HCFI), stock companies with foreign investment (SCFI) and merger and acquisition (M&A).

There are many FIE-specific laws to supplement these basic FIE laws and regulations. These laws cover such aspects as the entry, registration, operation, employment and tax of FIEs in China. Among them, the Guidance on the Direction of Foreign Investment (the Investment Guidance)\(^\text{200}\) and its attached Guiding Catalogue of Industries for Foreign Investment (Guiding Catalogue), the Foreign Invested Enterprises and Foreign Enterprises Income Tax Law (FIEs and FEIs Income Tax Law)\(^\text{201}\) and its Implementing Regulations, State Council Provisions for Encouraging Foreign Investment (hereinafter “PEFI”)\(^\text{202}\) and the Opinions on Further Encouraging Foreign Investment are of the most importance.\(^\text{203}\)

In China, sub-national authorities, including People’s Congresses and their Standing Committees of Provinces, Special Economic Zones (SEZ) and Minority Autonomous Areas (MAAs),\(^\text{204}\) can promulgate Provincial Regulations (Difangxing Fagui), SEZ Regulations or MAA Regulations.\(^\text{205}\) Provincial governments, in turn, can promulgate Provincial Governmental Rules (Difangxing Xingzhen Guizhang).\(^\text{206}\) Since economic construction is the central function of local governments and attracting FDI is one of the most important components of that function, a large proportion of these regulations and rules apply to FIEs. They cover business registration, labour management, border management, land management, technology transfer, tax, foreign exchange, loan, banking, etc.\(^\text{207}\) Among them, a considerable number of regulations and rules target FIEs in special economic areas within their localities, including SEZs, MAAs, border economic cooperation regions, open coastal cities, economic and technical development zones and other areas where special regimes for tariff, taxes and regulations are established.\(^\text{208}\)

---


\(^\text{202}\) It is sometimes called the “21 Articles” as it has 21 articles.


\(^\text{204}\) MAAs exist at different levels, from provincial to township. As long as there is a substantial or dominant ethnic minority group(s) in a specific area there can be a MAA as approved by the central or local government. However, only Provincial MAAs’ Peoples’ Congresses and Governments have the authority to lay down MAA Regulations while other levels of MAAs may make rules of their MAAs according to the law (Article 66 of the *Legislation Law*).

\(^\text{205}\) For details, see Chapter 4 of the *Legislation Law*.

\(^\text{206}\) Ibid.

\(^\text{207}\) Meizhen Yao, supra, at 34.

The current Chinese FDI law system has three major features: “foreign”, “enterprise”-oriented and unsystematic. In the first place, the current Chinese FDI law system has a special set of norms for “foreign” investment, which is, by and large, separated from the legal system governing “domestic” investment. Secondly, the current Chinese FDI legal system is a set of “enterprise” or company-oriented laws and regulations. As a result, most of these laws and regulations deal with issues of corporate governance, rather than with government management and supervision of foreign investment. Finally, the current Chinese FDI legal system is unsystematic, with repetitions, loopholes and contradictions. These facts show that the Chinese FDI law system is still underdeveloped and needs to be consolidated and further reformed.

In order to attract FDIs, China took measures aimed at simplifying rules and easing restrictions on the use of capital for direct investments. In December 2013, China introduced changes to the examination and approval procedures for categories of investment projects depending on their required modality of registration: projects subject to verification, and projects subject to filing. The Catalogue of Investment Projects Subject to Government Verification lists the fixed-asset investment projects subject to verification. For projects not listed in the Catalogue, only filing is required.

On 19 January 2015, the Ministry of Commerce released the Draft Foreign Investment Law, which marks a major change to China’s investment regulatory regime. Once coming into effect, the draft Foreign Investment Law would consolidate the existing FIE laws and unify the corporate legal requirements for both foreign and domestic investments in China. Foreign invested corporations of all kinds, including WFOEs, foreign-invested equity JVs and contractual JVs would be subject to the unified regulatory system, enjoying same treatment as domestic companies. The most significant changes of the Draft Foreign Investment Law would be the pre-establishment of national treatment on a basis of a negative list and national security review mechanisms.

According to the Draft Foreign Investment Law, the State Council will publish a negative list of industries in which foreign investment is restricted or prohibited. Investments in the restricted industries need to be pre-approved at the provincial level or by the State Council. The draft law also lists the factors considered in the approval, such as compliance with international treaties, foreign influence on production, impact on the environment, production safety, use of natural resources, etc.

With regard to the National Security Review of Foreign Investment, the National Development and Reform Commission will host the National Security Review for Foreign Investment, together with other ministries, including the MOFCOM. This body will assess whether foreign investment poses or may pose a threat to national security.


According to the Draft *Foreign Investment Law*, a foreign investor can voluntarily request a review. The State Council may commence an investigation of its own as well. The Draft law states a number of grounds for a review, such as telecom and internet security, influence on economic stability, control by a foreign government or access to technology crucial to national security. The list is open-ended, saying the State Council may investigate “other factors it deems necessary.” Following a review, the State Council may decide to approve the investment, set conditions or prohibit the investment. Note that the National Security Review is not a requirement for setting up a company, and you can voluntarily apply for one. However, the government maintains the liberty to carry out a review on its own accord, so in case of doubt, applying for a review would give certainty to the investor. The investor cannot challenge the decision. According to the *National Security Law*, departments at the central governmental level are responsible for the implementation of the national security review and issue review decisions or opinions within their authorities, while local governments at the provincial level are responsible for the implementation of the national security review of issues within corresponding administrative regions. The matters subject to national security review include foreign investment, key items and technology, network information technology products and services, and construction projects that have or may have adverse impacts on national security.

The China (Shanghai) Pilot Free Trade Zone is another on-going pilot project for liberalising China’s investment regulatory regime, which is established to test the further liberalisation of trade in services and capital account transactions by simplifying investment procedures, and to grant on a trial basis, the pre-establishment of the MFN treatment for foreign invested enterprises. Further details of this and other FTZs are discussed below.

### 8.2 Exceptions to national treatment

#### Description of measures discriminating foreign investors or their investments (NT, MFN, reciprocity requirements)

In the *WTO Accession Protocol*, China has undertaken to accord foreign individuals, enterprises and foreign-funded enterprises: treatment no less favourable than that accorded to other individuals and enterprises; the procurement of goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other


213 *National Security Law*, Articles 39 and 60.

214 Ibid, Articles 40 and 61.

215 Ibid, Article 59.

utilities and factors of production; right to trade; the distribution of import and export licences and quotas; and the provision of border tax adjustments.\textsuperscript{217}

Regarding the Pre-Establishment National Treatment and Negative List,\textsuperscript{218} the Draft FIL proposes a default norm of "national treatment" for foreign investment, which allows foreign investors to make investments on the same terms as Chinese investors, without additional approvals or restrictions except as otherwise required by law. In addition, the Draft abolishes the general requirement of government approval for all foreign investments, which currently include pre-approval from the MOFCOM and/or the NDRC.

However, if the underlying business of a foreign-invested enterprise falls within the “negative list” or the investment exceeds a certain amount, market entry clearance by the MOFCOM or its local counterparts would be required. The “negative list” sets forth “restricted” and “prohibited” investments and will be issued separately by the State Council. Under the Draft, all foreign investment will use one of the general statutory vehicles for business associations allowed under China’s \textit{Companies Law}, such as a limited liability company. The current corporate forms for foreign investments, including equity joint venture, contractual joint venture and the wholly foreign-owned enterprise, will no longer be used. If the Draft is enacted in its current form, existing joint ventures or wholly owned foreign entities will have three years to convert into a new corporate form under the new regulatory regime. In short, foreign investments in China are generally expected to follow the \textit{Companies Law} in terms of corporate formality.

The national wide negative list is currently being drafted by the State Council while the \textit{Trial foreign investment negative list concerning free trade zones in Shanghai and Tianjin municipalities, and Guangdong and Fujian provinces}\textsuperscript{219} was promulgated on 20 April 2015.\textsuperscript{220} The list contains 119 types of foreign investment projects in 49 areas that will not fall under the scope of national treatment and require special management. It also contains three areas of restrictions that apply to foreign investment in various types of businesses. The 49 industries listed include oil and gas, as well as nuclear power. Also, foreign investors in the free trade zones should abide by special management measures stipulated in other regulations, if their investment involves national security, public order, public culture, financial prudence, government purchase, subsidy and taxation. For more details, please refer to Annex 8.1 Some specific Administrative Measures (Negative List) on Foreign Investment Access in Pilot Free Trade Zones (2015) (Excerpt of ECT-related measures).\textsuperscript{221}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{217}WTO, Protocol on the Accession of the PRC, WT/L/432, 2001, p.4, 6, 7.
\item \textsuperscript{220}State Council issues FTZ foreign investment negative list, 20 April 2015 http://english.gov.cn/policies/latest_releases/2015/04/20/content_281475092520699.htm (accessed 15 August 2015).
\item \textsuperscript{221}Ibid.
\end{enumerate}
\end{footnotesize}
Foreign investment that involves the issue of national security should be investigated according to the National Security Law and the Trial Procedures of National Security Investigation into Foreign Investment issued by the State Council as well as the Provisions of the Ministry of Commerce on the Implementation of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors. Other kinds of foreign investment in the free trade zones should enjoy the same treatment as domestic investment. Investment in the free trade zones from China’s Hong Kong, Macao and Taiwan should follow the special measures and restrictions set out in the negative list.

As the first Pilot Free Trade Zone, the China (Shanghai) Pilot Free Trade Zone promulgated the first Special Administrative Measures for the Access of Foreign Investment in the China (Shanghai) Pilot Free Trade Zone (Negative List) in 2013 in accordance with the laws and regulations on foreign investment, the Framework Plan for the China (Shanghai) Pilot Free Trade Zone and the Catalogue of Industries for Guiding Foreign Investment (2011 Revision). This trial negative list was relatively comprehensive, setting forth access measures, inconsistent with national treatment, etc. The Negative List was prepared in categories according to the National Economic Industrial Classification and Codes (2011), containing 18 industrial sectors. Two industrial sectors, S (public administration, social security and social organizations) and T (international organizations), shall not apply the Negative List. The Negative List was adjusted and shortened in 2014 according to the laws and regulations on foreign investment and the development requirements of the FTZ. For more details, please refer to Annex 8.2 Special Administrative Measures for the Access of Foreign Investment in the China (Shanghai) Pilot Free Trade Zone (Negative List) (2013) (Excerpt of ECT-related measures).

8.3 Formal requirements for the purposes of the Energy Charter Supplementary Treaty

The Supplementary Treaty aims to oblige each Contracting Party to accord to investors of other parties, as regards the making of investment in its area, the treatment which is no less favourable than that which it accords to its own investors or to investors of any other Contracting Party or any third state, whichever is the most favourable. In short, the Supplementary Treaty stipulates the scope and condition of National Treatment and/or Most Favoured Treatment on investment admission. Given that China is now moving towards a negative list approach in international investment treaties practice, the potential supplementary treaty seems to be compatible with China’s investment policy.

---


8.4 General legislation relevant to investment

Definitions and forms of investment

The Draft Foreign Investment Law defines the term Foreign Investment as: setting up a company in China; acquiring shares, equity, property shares or voting rights in a Chinese entity; providing financing for over one year to an entity; acquiring and exercising the rights to exploiting natural resources or develop and exploit infrastructure; acquiring land use rights, house ownership or other rights to immovable property; acquiring rights to, and control over, a Chinese-owned entity through contracts, trusts or in any other manner. Additionally, when a transaction done outside of China results in a foreign investor acquiring control over a Chinese entity, this will be deemed foreign investment as well.

It is worth mentioning that the Draft FIL introduces the principle of “actual control” in determining whether a company should be treated as an FIE. The Draft specifically provides that entities established in China but “controlled” by foreign investors will be treated as FIEs, whereas an entity set up in a foreign jurisdiction would nonetheless be, upon market entry clearance by the MOFCOM, treated as a PRC domestic investor, if such entity is “controlled” by PRC entities and/or citizens. “Control” is broadly defined in the Draft to cover the following: (i) holding 50 percent or more of the voting rights or similar equities of the subject entity; (ii) holding less than 50 percent of the voting rights or similar equities of the subject entity but having the power to secure at least 50 percent of the seats on the board or other equivalent decision-making bodies, or having the voting power to exert material influence on the board, the shareholders’ meeting or other equivalent decision-making bodies; or (iii) having the power to exert decisive influence, via contractual or trust arrangements, over the subject entity’s operations, financial matters or other key aspects of business operations. The criteria for determining the “material influence” or “decisive influence” may be specified in the Entrance Approval Guidance for Foreign Investments, which is to be separately issued by the MOFCOM.

The so-called “variable interest entity” (VIE) structure has been adopted by many PRC-based companies incorporated offshore to obtain necessary licenses and permits in the industries that currently are subject to foreign investment restrictions in China. Under the Draft, variable interest entities that are controlled via contractual arrangements could also be deemed as FIEs if they are ultimately “controlled” by foreign investors. Therefore, for a company with a VIE structure in an industry that is on the “negative list,” the VIE structure may be deemed legitimate if the ultimate controlling person(s) is/are of PRC nationality (either PRC entities or PRC citizens). Conversely, if the actual controlling person(s) is/are of foreign nationalities, then the variable interest entities may be treated as FIEs and, as such, operation in the industry on the “negative list” may require market entry clearance.

With respect to the existing VIE structure used by many China-based companies listed overseas or controlled by foreign investors, the Draft does not propose a new set of rules. Instead, the MOFCOM provides three potential solutions that are being evaluated in its explanation note: (i) existing FIEs exercising control through VIE structures may retain such structure and continue business activities if they can report to and show the State Council that they ultimately are controlled by PRC entities and/or citizens; (ii)
existing FIEs exercising control through VIE structures shall apply to the State Council to verify that they are ultimately controlled by PRC entities and/or citizens, and upon confirmation by the State Council, they may retain such structure and continue business activities; or (iii) existing FIEs exercising control through VIE structures shall apply to the State Council for market entry permission, and the State Council shall discuss the application with relevant departments, consider various factors and determine the actual ultimate control of such FIEs.

If an existing VIE structure falls in an industry on the “negative list,” it is unclear whether the Foreign Investment Law will have a grandfather clause that exempts such existing VIE structure from the new law. Although the release of the Draft is seen as a welcome change, it is unclear when the MOFCOM will submit the final version of the proposed Foreign Investment Law to China’s National People’s Congress for review and adoption and whether the version to be submitted will be significantly different from the Draft.226 It also raises other issues, such as how to deal with the transition from the old to the new legal regime in a smooth fashion and how to address pre-existing corporate structures and related issues.

Establishment of enterprises (differences between establishment of national and foreign companies)

According to the Draft FIL, most foreign investment, including setting up a new company, will no longer need pre-approval from the State Council. The only exception is where a foreign party intends to invest in one of the restricted industries on the "negative list" – likely to be based on the Catalogue of Restricted and Prohibited Industries for Foreign Investment – or the investment amount exceeds the level set by the State Council.

Instead, all foreign investors need to submit a report upon making an investment. This includes setting up a company. After making the investment, the investor needs to submit an annual report. This report needs to be submitted to the local department tasked with handling foreign investment. The initial investment report needs to provide basic details about the foreign investor (name, domicile, organisation form, main business etc.) and the investment itself (amount, source, time, ratio to other investors etc.). For investment into a domestic entity, it must also include basic information about the company, such as name, location, registered capital, investment amount, equity structure etc. A new report has to be issued every year. All reports must provide the information about the foreign investor and the investment. Apart from all the information in the initial report, investors of a domestic entity must also provide operational information about the entity. This includes financial statements, tax paid, imports and exports, major legal cases and the domestic entity’s dealings with the foreign investor and its affiliates (among other things, to inform the government of transfer pricing practices).

Entrepreneurship and corporate law

For a very long time, foreign invested enterprises were regulated in a separate regime, because when foreign investment was first invested in China, there was no

comprehensive corporate law. In 1993, a comprehensive *Company Law* was promulgated, which covers all kinds of corporation in China, including foreign invested enterprises. In case of any conflicts between the *Company Law* and other specialised legislations concerning foreign investment enterprises, the latter shall prevail.

The Draft *Foreign Investment Law* should change the scenario altogether, as it will focus on governmental rather than corporate governance on foreign investment. The *Company Law* shall apply to all the FIEs under the Draft law.

**Legislation on land/immovable property/real estate acquisition by foreigners (natural persons and legal persons)**

There exists no specialised legislation concerning the conditions and procedure for acquisition of property rights for foreigners, including the immovable property and/or real estate. With regard to foreign investment access to real estate market, the Ministry of Construction, the Ministry of Commerce, the National Development and Reform Commission, the People’s Bank of China, the State Administration for Industry and Commerce, and the State Administration of Foreign Exchange jointly issued an opinion to standardise the access to, and administration of, foreign investment in the real estate market on 11 July 2006[^228] which is still effective.

With regard to foreign investment access to the real estate market, only ratified and registered overseas institutions or individuals may engage in the related business, following the principles of commercial presence.

With regard to house purchasing by foreign institutions and persons, a branch or representative office established in China by an overseas institution (except for an enterprise that has been approved to engage in real estate operation) or a foreign individual that has worked or studied in China for more than 1 year may purchase a commercial house according to his/her actual needs for self-use or self-accommodation, yet shall not purchase any commercial house not for self-use or self-accommodation. An overseas institution without any branch or representative office in China or a foreign individual that has not yet worked or studied for more than 1 year in China may not purchase any commercial house. A Hong Kong, Macao or Taiwan resident or an overseas Chinese may purchase a certain area of a commercial house for self-accommodation within China in line with his/her needs. Overseas institutions and individuals that meet the relevant provisions shall adopt a real-name system to purchase commercial houses for self-use or self-accommodation, and, upon the effective certification (an overseas institution shall hold the certification issued by the relevant Chinese departments on the establishment of China-based branch, a foreign individual shall hold the relevant approval certification for his work and study in China issued by the Chinese party, similarly hereinafter), may make registration of land use rights and house property rights in administrative departments of land and real estate. The administrative department in


charge of the registration of property rights shall, in strict accordance with the principles of self-use and self-accommodation, handle the relevant registration of property rights of the overseas institutions and individual and shall not register any house that fails to meet the relevant conditions. 229

According to the Land Administration Law of the PRC (adopted on 25 June 1986; latest amended in 2004), 230 ownership of, and right to, use the land are separated in China. Land in the urban areas of cities is owned by the State while land in rural and suburban areas is owned by peasant collectives, except for those portions of land which belong to the State as provided by law; house sites and private plots of cropland and hilly land are owned by peasant collectives (Article 8). State-owned land and land owned by peasant collectives may be lawfully determined to be used by units or individuals. Units and individuals that use land shall have the obligation to protect and manage the land and make rational use of it (Article 9).

State-owned land to be lawfully used by units or individuals shall be registered with, and recorded by, people’s governments at or above the county level, which shall, upon verification, issue certificates to confirm their right to use such land. The specific organs for registration and issue of certificates for State-owned land to be used by central or State organs shall be determined by the State Council (Article 11). Ownership or the right to use forest land or grassland and the right to use water surfaces or tidal flats for aquaculture, shall be confirmed respectively in accordance with the relevant provisions of the Forestry Law, the Grassland Law and the Fisheries Law of the PRC.

Land owned by peasant collectives shall be operated under a contract by units or individuals who do not belong to the economic organisations of the said collectives, with the agreement of at least two-thirds of the members of the villagers assembly or of the representatives of villagers, and the matter shall be submitted to the township (town) people’s government for approval (Article 15).

In accordance with the Property Law of the PRC (promulgated on 16 March 2007), 231 the property right of the State, the collectives, the individual persons and other obligees are protected by law, and no units or individuals shall encroach on it (Article 4). No units or individuals shall be allowed to acquire ownership of the immovables and movables which are exclusively owned by the State as are provided by law (Article 41). For public interests, land owned by the collectives, and the houses and other immovables of units and individuals may be expropriated within the limits of power and in compliance with the procedures provided by law (Article 42). An enterprise legal person has the right to possess, use, benefit from, and dispose of, his/her immovables and movables in accordance with laws and administrative regulations as well as the articles of association. The rights enjoyed by legal persons other than enterprise legal persons with respect to their immovables and movables shall be governed by the provisions of relevant laws and administrative regulations as well as the articles of association (Article 68).

229 Ibid.
The Law on the Administration of the Urban Real Estate was promulgated by Order No.29 on 5 July 1994. The obligee of real estate transfers his real estate to another person through sale, donation or other legal means. Besides, the government could expropriate the real estate for public interests against compensation.

**Legislative framework for privatisation**

The administration and transfer of State-Owned Assets is regulated by the *Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises* (adopted on 13 May 2003) and the *Interim Measures for the Management of the Transfer of the State-owned Property Right of Enterprises* (promulgated on 1 February 2004).

According to the *Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises*, the state-owned assets in enterprises belong to the state. The state shall apply the administration system of state-owned assets in which the State Council and the local people's governments shall, on behalf of the state, perform the contributor's duties and enjoy the owner's rights and interests, the rights shall be associated with the obligations and responsibilities, and the administration of assets shall be combined with the administration of personnel and affairs. The main duties of a state-owned assets supervision and administration body include: performing the contributor's duties and protecting the owner's rights and interests in accordance with the Company Law of the PRC and other laws and regulations as well as directing and promoting the reform and restructuring of the state-owned and state controlling enterprises.

The transfer of the state-owned property right of an enterprise shall be operated in line with the *Interim Measures for the Management of the Transfer of the State-owned Property Right of Enterprises*. The transfer of the state-owned property right of an enterprise shall be openly completed in a property transaction institution established in accordance with the law and shall not be subject to limitations on the basis of geographical location, capital contribution or subordination. If it is otherwise provided for in the laws and in the administrative regulations, the relevant laws and administrative regulations shall prevail (Article 4). The transfer of the state-owned property right of an enterprise may be completed by auction, bidding, agreement or other means (Article 5). The ownership of the to-be-transferred state-owned property right of an enterprise shall be clear. The state-owned property right of an enterprise shall not be transferred if its ownership is ambiguous or under dispute. The transfer of the state-owned property of an enterprise used as guarantee shall be in line with the relevant provisions of the *Guarantee Law* of the PRC (Article 6).

**Sectoral laws**

233 *Law on the Administration of the Urban Real Estate*, Article 36.
234 Ibid, Article 6.
235 Article 4 of the *Interim Measures for the Supervision and Administration of State-Owned Assets of the Enterprises*.
236 Ibid, Article 13.
China defines its broad economic goals through five-year macro-economic plans. The most significant of these for foreign investors is China's Five-Year Plan (FYP) on Foreign Capital Utilization. The 12th FYP for Utilization of Overseas Capital and Investment Abroad, which is the current plan issued by the National Development and Reform Commission (NDRC), promises to: guide more foreign direct investment (FDI) to an identified set of strategic and newly emerging industries (SEIs) namely, energy efficiency and environmental technologies, next-generation information technology, biotechnology, advanced equipment manufacturing, new energy sector, new materials, and new-energy vehicles, while “strictly” limiting FDI in energy and resource-intensive and environmentally damaging industries; to encourage foreign multinationals to set up regional headquarters and research and development (R&D) centres in China; to encourage foreign investment in production services such as modern logistics, software development, engineering design, vocational skills training, information consulting, technology, and intellectual property (IP) services; to “steadily open up” banking, securities, insurance, telecom, fuel, and logistics industries; to “gradually open up” education and sports; to guide foreign capital to enter healthcare, culture, tourism, and home services; and to encourage foreign capital to enter creative design.

A major goal of China's investment policies, stated in the 12th FYP, is to encourage the domestic development of technological innovation and know-how. Investment projects that involve the transfer of technology or the potential for “indigenous innovation” tend to be favourably received by China's investment authorities. China seeks to promote investment in higher value-added sectors, including high technology research and development, advanced manufacturing, clean energy technology, and select modern services sectors.

China also seeks to spread the benefits of foreign investment beyond its relatively wealthy coastal areas by encouraging foreign companies to establish regional headquarters and operations in Central, Western, and North-eastern China. China publishes and regularly revises a Catalogue of Priority Industries for Foreign Investment in the Central-Western Regions, which outlines incentives to attract investment in targeted sectors to those parts of China.

Concession/licensing regimes, including definitions of terms

As mentioned above, the Draft Foreign Investment Law provides for the pre-establishment of national treatment on the basis of a negative list and national security review mechanisms. According to the Draft Foreign Investment Law, the State Council will publish a negative list of industries in which foreign investment is restricted or prohibited. It will also set limits on the investment amount. Investments exceeding the limit will need to be pre-approved by the State Council itself. This includes investments in instalments. Investments in the restricted industries need to be pre-approved on the provincial level or the State Council. The draft law also lists the factors considered in the approval, such as compliance with international treaties, foreign influence on production, impact on the environment, production safety, use of natural resources etc.

The former Ministry of Coal Industry (now State Administration of Coal Mine Safety under the State Council) promulgated the *Measures for Examination and Approval of Coal Mining Enterprise* in 1997, which stipulate that the licensed foreign investor may invest in the coal mining industry through the Sino-foreign equity joint venture or Sino-foreign cooperative joint venture after acquiring approval from relevant departments of the State Council.\(^{238}\)

**Pipeline/transit regulations**

The main legislations concerning construction, operation and protection of pipelines and power grids are the *Oil and gas pipeline protection law* (2010) and the *Electric Power Law* (1996, amended in 2009).

With regard to oil and gas pipelines, the energy administrative department of the State Council shall administer the protection of pipelines throughout the country, be responsible for organizing the preparation and execution of national plans on the development of pipelines, make an overall planning and coordinate the coherence between national plan on the development of pipelines and other specialised plans and coordinate the major issues in the protection of pipelines across different provinces, autonomous regions and municipalities directly under the Central Government. Other relevant departments of the State Council shall, under the relevant laws and administrative regulations, take charge of the relevant work on the protection of pipelines within their respective jurisdictions.\(^{239}\)

A pipeline enterprise shall work out a pipeline construction plan according to the national plan on the development of pipelines and submit its pipeline construction route selection scheme determined for the pipeline construction plan to the urban and rural planning administrative department of the people's government at or above the county level where the pipelines are to be constructed. If the said pipeline route selection conforms to the urban and rural plan, it shall be integrated into the latter. The purpose of the pipeline construction land integrated into the urban and rural plan shall not be changed without approval.\(^{240}\)

A pipeline enterprise shall have essential personnel and technical equipment for the protection of pipelines, research, development and application of the advanced and practical pipeline protection technologies, to ensure the necessary operating funds for the protection of pipelines and to reward the units and individuals who have made outstanding contributions to the protection of pipelines.\(^{241}\) For a conduct endangering the safety of pipelines, any entity or individual has the right to report it to the pipeline protection administrative department or any other relevant department of the local people's governments at or above the county level. The department which receives the report shall deal with it within the scope of its functions and in a timely manner.\(^ {242}\)


\(^{239}\)Article 4 of the *Oil and Natural Gas Pipeline Protection Law*.

\(^{240}\)Ibid, Article 12.

\(^{241}\)Ibid, Article 24.

\(^{242}\)Ibid, Article 8.
According to the *Electric Power Law*, enterprises engaged in construction and generation of electric power or operation of power networks shall make their own managerial decisions and be responsible for their own profits and losses in conformity with legal provisions, and they shall subject themselves to supervision by the electric power administration departments.\(^{243}\)

Plans for the construction and rebuilding of power networks in urban areas shall be included in the overall plans for urban areas. The people’s governments in urban areas shall arrange to provide land for transformation facilities, transmission line corridors and cable passages in accordance with the plans. Illegal occupation by any units or individuals of land for transformation facilities, transmission line corridors or cable passages shall be forbidden.\(^ {244}\)

Regarding access and operation of power grids, centralised dispatching and level-by-level administration shall be exercised in the operation of power networks. No units or individuals may illegally intervene in the dispatching of power networks.\(^ {245}\)

According to Article 22 of the *Electricity Power Law*, the State encourages the merger of power generating enterprises with power networks and of networks with networks. Requests by power generating enterprises in the status of qualified independent legal persons to incorporate the power they generate into a network shall be accepted by the enterprise that operates the network. Operation of the merged power networks shall meet the standards of the State or of the power industry.\(^ {246}\)

The two parties involved in the merger shall, in accordance with the principles of centralized control, level-by-level administration, equality, mutual benefit and agreement to be reached through consultation, sign an agreement, in which they shall stipulate the rights and obligations of each party; where the two parties fail to reach an agreement, a decision shall be made by the electric power administration department at or above the provincial level through coordination.

**Bilateral investment treaties (list of agreements on the protection and promotion of foreign investments)**

By 2014, China has concluded over 130 bilateral investment protection and promotion agreements (BITs), including investment chapters in Free Trade Agreements. China has been negotiating bilateral investment treaties that include far-reaching substantive and procedural investment protection. There have been several generations of China’s BITs and the on-going BIT negotiation between China and US marks the most recent policy re-calibration.\(^ {247}\)

\(^{243}\) Ibid, Article 7.

\(^{244}\) Ibid, Article 11.

\(^{245}\) Ibid, Article 21.

\(^{246}\) Ibid, Article 22.

Most BITs signed by China after the late 1990s provide comprehensive investor-state dispute settlement mechanisms for any disputes concerning investment as well as post-establishment national treatment. Compared to China’s recent International Investment Agreements (IIAs), such as the China-Japan-South Korean BIT (2012), the China-Canada BIT (2012) and the Investment Chapter in the China-South Korea FTA (2015). The obligations of the Energy Charter Treaty do not particularly exceed current obligations committed to by China in international investment agreements, especially if compared to some recently signed BITs.

For a detailed comparison between investment rules of the Energy Charter Treaty and Chinese recent BITs practices, please refer to Annex 8.3 Comparison of Investment Rules of the Energy Charter Treaty and China’s Recent BITs.

For a brief overview of Chinese BITs practices, please refer to Annex 8.4 China’s Bilateral Investment Treaty (by region)\(^{248}\) and Annex 8.5 China’s Bilateral Investment Treaty (by country).\(^ {249}\) For a brief overview of Chinese other IIAs practices, please refer to Annex 8.6 China’s Other Investment Agreements\(^ {250}\) and Annex 8.7 Other Investment Related Instruments of China.\(^ {251}\)

### 8.5 ECT requirements under Article 10

The ECT incorporates most common provisions of IIAs with a broad coverage of protection, such as a comprehensive definition of investment, fair and equitable treatment, national treatment, umbrella clause, expropriation and compensation, and considerable entitlement to private investors, such as direct access to investor-state dispute settlement. Compared to China’s recent BITs, the obligations under the ECT regarding investment protection are not overburdening for China.

The ECT incorporates a broad definition of investment and investor. Under the ECT regime, “investment” means every kind of asset, owned or controlled directly or indirectly by an investor, inter alia, claims to money and claims to performance pursuant to contracts having an economic value and associated with an investment, whilst “investor” means a natural person as well as a company or other organisation structured in accordance with the law applicable in that Contracting Party.\(^ {252}\) The definitions of investment and investor in ECT follow common practices in international investment agreements, though some more specific definitions and limitations on investment could be found in China’s recent IIAs: e.g. both the China-Japan-South Korean BIT (2012)\(^ {253}\) and the China-South Korean FTA Investment Chapter (2015)\(^ {254}\) require the covered investment to have the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. The

---

\(^{248}\) Source: MOFCOM.

\(^{249}\) Source: UNCTAD.

\(^{250}\) Source: UNCTAD.

\(^{251}\) Source: UNCTAD.

\(^{252}\) Article 1 ECT.

\(^{253}\) Article 1 of the China-Japan-South Korean BIT (2012).

China-Canada BIT (2012) limits the protection to certain forms of investment: e.g. loans to, or debt securities issued by, a financial institution are considered as protected investment only where the loan or debt security is treated as regulatory capital by the Contracting Party; it also does not provide protection to claims to money that arise solely from commercial contracts for the sale of goods or services, or the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered.\(^{255}\)

With regard to standards of treatment, the ECT provides the post-establishment National Treatment and Most-Favoured Nation Treatment as well as the (abstract) Fair and Equitable Treatment.\(^{256}\) Trends of China’s recent IIAs are mixed. Some BITs continue to broaden the scope of protection to investors, such as the China-Canada BIT (2012), which extends the MFN Treatment to the pre-investment phase,\(^ {257}\) and the China-US BIT negotiation, which incorporates NT to the pre-investment phase.\(^ {258}\) At the same time, other recent Chinese IIAs attempt to specify/clarify the traditionally abstract provision, such as combining Fair and Equitable Treatment with customary international law,\(^ {259}\) or with generally accepted rules of international law.\(^ {260}\)

The ECT also incorporates some forward-looking and advanced provisions such as environmental issues\(^ {261}\) and a taxation clause.\(^ {262}\) Inclusion of similar provisions can be witnessed in China’s recent IIAs.\(^ {263}\) It is particularly worth noting that the ECT incorporates some unique provisions on energy investment protection and regulation, such as the provision of Sovereignty over Natural Resources\(^ {264}\) and the clause on state and privileged enterprise (SOE),\(^ {265}\) which could supplement rather than contradict China’s recent IIAs.\(^ {266}\)

With regard to domestic legislation, the Draft *Foreign Investment Law* reduces barriers to foreign investment significantly and increases scrutiny of foreigners trying to evade regulations on investment in restricted industries.\(^ {267}\) Upon coming into effect, the draft *Foreign Investment Law* would consolidate the existing *Sino-Foreign Equity Joint Venture Law*, the *Wholly Foreign-Owned Enterprise Law* and the *Sino-foreign

---

255 Article 1 (Definitions) of the China-Canada BIT (2012).
256 Article 10 ECT.
257 Article 5 (Most-Favored-Nation Treatment) of the China-Canada BIT (2012).
260 Article 5 of the China-Canada BIT (2012).
261 Article 19 ECT.
262 Article 21 ECT.
264 Article 18 ECT.
265 Article 22 ECT.
266 Article 2 of the China-Canada BIT (2012) and Article 1 of the China-Japan-South Korean BIT (2012).
**Contractual Joint Venture Law** into one uniform statutory regime and unifying the corporate legal requirements for both foreign and domestic investments in China. Foreign invested corporations of all kinds would be subject to the unifying regulatory system, enjoying the same treatment as domestic companies. The most significant changes of the Draft **Foreign Investment Law** would be the pre-establishment national treatment on a basis of a negative list and national security review mechanisms.

In the **Protocol on the Accession to WTO**, China has undertaken to accord foreign individuals and enterprises and foreign-funded enterprises treatment no less favourable than that accorded to other individuals and enterprises in respect of: the procurement of inputs and goods and services necessary for production and the conditions under which their goods are produced, marketed or sold, in the domestic market and for export; the prices and availability of goods and services supplied by national and sub-national authorities and public or state enterprises, in areas including transportation, energy, basic telecommunications, other utilities and factors of production; right to trade; the distribution of import and export licences and quotas; the provision of border tax adjustments.  

9. Article 11 - Key personnel

9.1 Conditions for entry, stay and work of foreign natural persons generally and in relation to investments

As a general policy, China encourages mobility of the following types of foreign persons: senior technicians, managers, academic research personnel and people with special expertise. To that effect, Chinese authorities have developed a complete management system and provide facilitation services to such foreigners. This policy and its implementation regimes apply to all employing units within the territory of China, including employment in non-services sectors and employment of foreigners by Chinese companies or entities.

There are two "tracks" or two regimes under which these foreign persons can work in China:

a) for general foreign workers, managed by the Ministry of Human Resources and Social Security (MHRSS). The basic rules are contained in the **Rules on the Management of Employment of Foreign Personnel in China** (issued by the Ministry of Labour on 22 January 1996 and revised by Decree No. 7 of the Ministry of Human Resources and Social Security on 12 November 2010).  

It sets out the corresponding conditions, market tests, qualification requirements and procedures;


b) for high-level and urgently-needed foreign experts, managed by the State Administration of Foreign Experts Affairs (SAFEA). The rules set forth and implemented by the SAFEA are contained in the following three documents issued on 30 September 2004: the Regulations on Working Licences for Foreign Experts in China; the Regulations on Qualification Approval of the Units Employing Foreign Experts; and the Regulations on Qualification Approval of the Overseas Units Introducing Foreign Culture and Education Experts to Work in China.

A new Law on Entry and Exit in the National Territory (promulgated by the State Council on 30 June 2012, entered into force on July 2013), supplemented by the Regulation of the PRC on the Administration of the Entry and Exit of Foreign Nationals (promulgated on 12 July 2013 as Decree No. 637 of the State Council and effective as of 1 September 2013), has created, inter alia, a new visa category for highly-skilled individuals whose expertise is in demand in China (R visa), as well as a new M visa, to be used for commercial trading visits (different from the F "business visitor" visa). The R visa is issued to “high-level and urgently-needed special foreign talents” identified by the competent departments of the Chinese Government. This law confirms the previously existing regime stipulating that foreigners wishing to work in China shall first obtain work permits and residence permits.

In addition, the two administrations (MHRSS and SAFEA) are jointly drafting the implementation rules for that legislation, which will amend the present management rules with a view to stepping up efforts to introduce high-level and urgently-needed special foreign talents. Other departments involved in the administration of foreigners working in China, including the Ministry of Foreign Affairs and the Ministry of Public Security, are formulating the supporting regulations and policies. However, the date of inception and the precise content of the revised rules are not yet known. The new regime will probably merge the two present regimes. The draft measures will be submitted to the State Council for examination and approval and issued in the form of administrative regulations.

The basic criterion for admission is that no Chinese nationals are available to fill the vacancy, except in cases where China has undertaken GATS commitments where no such economic needs tests apply. The conditions that foreign applicants must fulfil are the following: they should be over 18 years of age, healthy and have no criminal record; they should have the skills and experience for the job; and, they should have an employer to hire them.

For intra-corporate transfers, and in accordance with GATS commitments, the maximum duration of the residence permit is three years. The maximum duration of a labour contract being five years, the foreign person can, after three years, ask for an extension of the residence permit. For non-intra-corporate transferees, the extension can be granted if a new examination proves that there is still a need for the talents of the person concerned. The qualification requirements are defined at the sector/industry level. For instance, pilots have to take the corresponding Chinese examination. China applies the national treatment principle to those qualification requirements.

No quotas are set in the management rules for the employment of foreign nationals in China, but there are some quotas at the sector/industry level. Those quotas are set in
proportion to the number of Chinese nationals employed. So far, these quotas only exist in a limited number of industries/sectors but new quotas may be introduced in other sectors/industries in the future, while the level of the quotas themselves will be raised.

There are no restrictions on the type of sectors in which the foreign experts can work. In terms of qualifications, a bachelor's degree and five years' professional experience are the minimum requirements. There are no labour market tests and no quotas. Again, the national treatment principle is applied for these qualification requirements. The duration of stay is decided by the SAFEA after an examination of the work contract with the employer. The extension of the residence permit falls within the purview of the Public Security Ministry.

With the expansion of international exchanges, China decided to encourage further foreign experts and talents to work in China and in 2012, for instance, the four administrations concerned (Ministry of Social Security and Human Resources, the State Administration of Foreign Experts Affairs, the Ministry of Foreign Affairs and the Ministry for Public Security) published a joint policy document allowing these “high-level foreign talents” to apply for multiple-entry visas and two to five years' residence.

**Employment of foreigners**

In general, foreigners may be hired only where there is a demonstrated need and where approval is obtained from the local labour authorities. Foreigners must comply with a licensing system before they can start working. The system requires an employment certificate, professional visas and residence permits.

The term “work” under the immigration rules is defined as carrying out activities with a remunerative nature. “Work in the PRC” means performing employment duties in the PRC pursuant to an employment contract. Employment permits and residence permits are generally valid for the shorter of one year, the remaining validity of the passport, the term of the employment in China or the remaining validity of the local employer's business license. Certain groups of foreigners may apply for five years maximum residence permit. Foreigners who are eligible for long term residence permits include consultants and advisers to the Chinese government, those who take up a position of vice general manager level or above, and those who are seconded as management or professionals to a Chinese company with foreign investment of more than USD 3 million.

All foreigners require visas to enter China. It is recommended that a passport be valid for at least six months from the date of arrival in the country. Generally, a transit visa is required for a stop in China, except in certain cases. An F/M (business) visa must be sponsored by a qualifying government entity in China. With a visa notification form, the applicant can apply for an F visa at a Chinese consular post overseas.

**9.2 Definitions, forms and differences in the residence status**

Article 15 of the *Regulations on Administration of the Entry and Exit of Foreigners* (effective as of 1 September 2013) regulates the different types of residence permits.

According to Article 16, a foreigner applying for a residence permit shall submit his or her passport or other international travel documents, qualified photos, and material relating to the purpose of application; he/she will go through the relevant formalities in
person with the exit and entry administration authority of the public security organ of the local people’s government at or above the county level in the proposed places of his or her residence; and provide biometric identification information such as fingerprints thereto.

To apply for a residence permit for work, the applicant shall submit such certification documents as a work permit; in the case of a person of high talent who is needed or, a specialist who is urgently needed, by the State, the applicant shall submit relevant certification documents in accordance with relevant provisions.

To apply for a residence permit for reunion, the applicant shall submit proof of family relationship and certification documents relating to the purpose of application; if the applicant needs to reside in China for fosterage or other purposes, he or she shall submit such certification documents as a power of attorney.

When applying for a residence permit valid for more than 1 year, a foreigner shall, in accordance with relevant provisions, submit his or her health certificate. A health certificate is valid for six months from the date of issue.

The scope and measures for issuance of diplomatic, courtesy and official visas shall be specified by the Ministry of Foreign Affairs. Ordinary visas are divided into several categories and shall be marked with corresponding letters in the Chinese phonetic alphabet. Among them, the D visa is issued to persons who come to China for permanent residence; the M visa is issued to persons who come to China for commercial trade activities; the R visa is issued to foreigners of high talent who are needed, or specialists who are urgently needed, by the State; and the Z visa is issued to persons who apply for work in China.

9.3 ECT requirements under Article 11

Article 11 ECT (Key personnel) stipulates that Contracting Parties shall examine in good faith requests by investors and key personnel employed by investors to enter and remain temporarily to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant investments.

Requirements under Article 11 ECT are best-efforts type of obligations. Furthermore, this Key Personal clause is common in IIAs and the contents thereof are not substantially different from the China-Canada BIT (2012) or the China-Japan-South Korean BIT (2012).

For example, under the China-Canada BIT (2012), a Contracting Party shall, according to its laws, regulations and policies relating to the entry and sojourn of non-citizens, permit natural persons who have the citizenship or status of permanent resident of the other Contracting Party and are employed by any enterprise that is a covered investment of an investor, or a subsidiary or affiliate thereof, to enter and remain temporarily in its territory in a capacity that is managerial, executive or that requires specialized knowledge.  Similary, under the China-Japan-South Korean BIT (2012), each Contracting Party shall endeavour, to the extent possible, in accordance with its

---

270 Article 7 of the China-Canada BIT (2012).
applicable laws and regulations, to facilitate the procedures for the entry, sojourn and residence of natural persons of another Contracting Party who wish to enter the territory of the former Contracting Party and to remain therein for the purpose of conducting business activities in connection with investments.\(^\text{271}\)

10. **Articles 12 and 13 - Compensation for losses, expropriation**

10.1 Legislative basis: Constitution, Foreign investment law, Property law, State compensation law

Property rights are protected under China’s legal system. The Government may expropriate private property for public purposes in accordance with relevant laws and regulations against compensation.

The State, in accordance with the law, protects the rights of citizens to private property,\(^\text{272}\) as well as socialist public property.\(^\text{273}\) The State may, in the public interest and in accordance with the law, expropriate or requisition private property for its use and make compensation for the private property expropriated or requisitioned.\(^\text{274}\)

It is worth noting that land in the cities is owned by the State, while land in the rural and suburban areas is owned by collectives, except for those portions which belong to the State as prescribed by law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives. The State may, in the public interest and in accordance with the law, expropriate or request land for its use in exchange of compensation. The right to use land may be transferred according to the law. All organisations and individuals using land must ensure its rational use. The *Draft Foreign Investment law* reaffirms that the Government will not expropriate foreign investment unless it is necessary to fulfil public interest demands. In that case, the expropriation will be processed under legal procedure and compensation will be provided. Foreign investors and foreign invested enterprises that have suffered losses as a result of infringement of their civic rights by any State organ or functionary have the right to compensation.\(^\text{275}\)

According to the *Property Law*, the property rights of the State, the collectives, the individual persons and other obligees are protected by law. No units or individuals shall encroach on it.\(^\text{276}\) A legal person has the right to possess, use, benefit from and dispose of its immovables and movables in accordance with the laws and administrative regulations as well as its articles of association.\(^\text{277}\)

\(^{271}\) Article 8 of the China-Japan-South Korean BIT (2012).
\(^{272}\) Article 13 of the *Constitution*.
\(^{273}\) Ibid, Article 12.
\(^{274}\) Ibid, Article 13.
\(^{275}\) Article 113 of the *Draft Foreign Investment law*.
\(^{276}\) Article 4 of the *Property Law*.
\(^{277}\) Ibid, Article 68.
10.2 Procedures and forms for granting a compensation

The *Property Law* and the *Law on State Compensation*\(^{278}\) provide the conditions and procedures for compensation in case of expropriation. According to the *Property Law*, land owned by the collectives, and the houses and other immovables of units and individuals may be expropriated for public interests within the limits of power and in compliance with the procedures provided by law. Similar provisions could be found in the *Law on the Administration of the Urban Real Estate* (1994, amended on 30 August 2007).

Compensation may also be provided by the Governments if the properties of units or individuals are requisitioned in compliance with the laws and regulations in order to meet such urgent needs as rushing to rescue or providing disaster relief and the properties are damaged or lost thereafter.\(^{279}\)

Under the *Law on State Compensation*, the victim shall have the right to compensation if an administrative organ, or an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, in the exercise of its functions and powers, commit an act infringing upon the right of the person. The state compensation law provides two sets of procedures for administrative and criminal compensation respectively.

The victim shall have the right to compensation if an administrative organ or its functionaries, in exercising their functions and powers, commit any of the following acts infringing upon property rights:\(^{280}\)

1. Illegally inflicting administrative sanctions such as imposition of fines, revocation of certificates and licences, ordering suspension of production and business, or confiscation of property;
2. Illegally implementing compulsory administrative measures such as sealing up, distraining or freezing property;
3. Expropriating property or apportioning expenses in violation of the provisions of the State; or
4. Other illegal acts causing damage to property.

Under Article 5 of the *State Compensation Law*, the State shall not be liable for compensation in any of the following circumstances:\(^{281}\)

1. Individual acts of a functionary of an administrative organ, which have nothing to do with the exercise of his functions and powers;
2. Damage arisen from acts done by citizens, legal persons or other organisations themselves; or

\(^{279}\) Ibid, Article 44.
\(^{280}\) Article 4 of the *Law on State Compensation*.
\(^{281}\) Ibid, Article 5.
(3) Other circumstances provided by law.

Similarly, the victim shall have the right to compensation if an organ in charge of investigatory, procuratorial, judicial or prison administration or its functionaries, infringe upon property rights in any of the following circumstances:

1. Unlawfully taking measures such as sealing up, distraining, freezing or recovering a property; or

2. Innocence is found in a retrial held in accordance with the procedure of trial supervision, but the fine or confiscation of property in the original sentence has already been executed.

10.3 Transparency and the evaluation methods for expropriation payments

Some BITs provide rules on conditions and procedures for compensation in case of expropriation, as well as for losses or damages caused by war, armed conflict or civil disturbance.

China usually commits to provide national treatment and most favoured nation treatment for investors regarding the compensation for losses or damages due to war, state of emergence, civil disturbance or alike. For example, under the China-Japan-South Korean BIT (2012), each Contracting Party shall accord to investors of another Contracting Party that have suffered loss or damage relating to their investments in the territory of the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the territory of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors, to investors of the third Contracting Party or to investors of a non-Contracting Party, whichever is more favourable to the investors of another Contracting Party.

With regard to conditions for expropriation, under several Chinese BITs, no Contracting Party shall expropriate or nationalise investments in its territory of investors of another Contracting Party or take any measure equivalent to expropriation or nationalisation except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with its laws and international standard of due process of law; and (d) upon compensation.

The compensation should normally be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or

---

282 Ibid, Article 18.
283 Similar under Article 11 of the China-Canada BIT (2012), Investors of one Contracting Party who suffer losses in respect of covered investments owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded treatment by the other Contracting Party, in respect of restitution, indemnification, compensation or other settlement, no less favourable than it accords in like circumstances, to its own investors or to investors of any third State.
when the expropriation occurred, whichever occurs earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time, from the time of expropriation to the time of payment. It shall be effectively realisable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Contracting Party of the investors concerned, and into freely usable currencies.

Under Chinese internal legislation, the forms and assessments of compensation are stipulated under Chapter IV of the State Compensation Law. State compensation shall mainly take the form of payment of damages. If the property can be returned or its original condition can be restored, the property shall be returned or its original condition restored. If freedom of the person of a citizen is infringed, compensatory payment for each day shall be assessed in accordance with the State average daily pay of staff and workers in the previous year.

Infringement of property right of a citizen, a legal person, or other organisations, resulting in damage being caused, shall be dealt with in accordance with the following provisions:

1. If fines, recovery or confiscation of property have been ordered, or monies and chattels have been expropriated and expenses apportioned in violation of the provisions of the State, the properties shall be returned;

2. If properties have been sealed up, distrained or frozen, the restraints shall be lifted; for properties thus damaged or missing, compensation shall be paid in accordance with the provisions of Items 3 and 4 of this Article;

3. If the property to be returned is damaged, it shall be restored to its original condition if such restoration can be done; if not, corresponding compensation shall be paid in accordance with the extent of the damage;

4. If the property to be returned is missing, corresponding compensation shall be paid;

5. If the property has been sold by auction, the proceeds of the auction shall be returned;

6. If the certificate and licence have been revoked and suspension of production and business has been ordered, compensation shall be paid for necessary overhead expenses for the period of such suspension; and

7. If other damage is done to property rights, compensation shall be paid for the direct losses.

---

285 Ibid.
286 Ibid
287 Articles 11 and 12 of the China-Japan-South Korean BIT (2012).
288 Article 32 of the State Compensation Law.
289 Ibid, Article 33.
290 Ibid, Article 36.
With regard to expropriation of, and compensation for, urban real estate, the building expropriation department shall draft an expropriation and compensation plan and report it to the people's government at the city or county level. The people's government at the city or county level shall organize the relevant departments to formulate the expropriation and compensation plan and publish it for public opinions. The period for solicitation of public opinions shall be no less than 30 days. The people’s government at the city or county level shall, after making a decision on building expropriation, announce it to the public in a timely manner. The announcement shall state the expropriation and compensation plan, rights to administrative reconsideration and administrative lawsuit and other matters.

The compensation for production or business interruption losses resulting from building expropriation shall be determined on the basis of the proceeds from the building before expropriation, duration of production or business interruption and other factors. The specific measures shall be formulated by a province, autonomous region or municipality directly under the Central Government.

Under Article 47 of the Land Administration Law, land expropriated shall be compensated for on the basis of its original purpose of use; compensation for expropriated cultivated land shall include compensation for land, resettlement subsidies and compensation for attachments and young crops on the expropriated land. Land compensation for expropriated cultivated land shall be six to ten times the average annual output value of the expropriated land, calculated on the basis of three years before the expropriation. Resettlement subsidies for expropriated cultivated land shall be calculated according to the agricultural population that needs to be resettled. However, the maximum resettlement subsidies for each hectare of the expropriated cultivated land shall not exceed fifteen times its average annual output value calculated on the basis of three years before such expropriation.

If land compensation and resettlement subsidies paid are still insufficient to enable the farmers that need to be resettled to maintain their original living standards, the resettlement subsidies may be increased upon approval by the people’s government of a province, autonomous region or municipality directly under the Central Government. However, the total of land compensation and resettlement subsidies shall not exceed 30 times the average annual output value of the expropriated land calculated on the basis of three years before such expropriation. The State Council may, in light of the level of social and economic development and under special circumstances, raise the rates of land compensation and resettlement subsidies for expropriation of cultivated land.

**10.4 Recourse or appeal procedures**

Under the Law on State Compensation, the victim shall have the right to compensation if an administrative organ or an organ in charge of investigatory, procuratorial, judicial or prison administration work, or its functionaries, in the exercise
of its functions and powers, commit an act infringing upon the right of the person. The procedures for administrative compensation and criminal compensation are slightly different and so are the recourse and appeal procedures.

With regard to administrative compensation, a claimant who demands administrative compensation shall first apply to the organ liable for the compensation, or may make demands for it simultaneously when applying for administrative reconsideration of the case or when bringing an administrative action. The organ liable for compensation shall, within two months from the date of receiving the application, pay the compensation. If payment has not been made within this period, or if the claimant is not satisfied with the amount of compensation, he may bring a suit in a people's court within three months from the date of expiration of the period.

With regard to criminal compensation, a claimant to criminal compensation shall first apply to the organ liable for compensation. An organ liable for compensation shall pay compensation within two months from the date of receiving the application. If payment is not made within the period, or if the claimant to compensation is not satisfied with the sum of compensation, he may apply for reconsideration to an organ at the next higher level within thirty days from the date of expiration of the period. An organ undertaking the reconsideration shall decide the matter within two months from the date of receiving the application. A claimant to compensation who refuses to accept the outcome of the reconsideration, may, within thirty days from the date of receiving the decision, apply for a decision on compensation to the compensation commission of the people's court at the same level in the locality where the organ that attended to the reconsideration is situated; if the latter organ has made no decision within the period prescribed, the claimant to compensation may, within thirty days from the expiration of the period, apply for a decision to the compensation commission of the people's court at the same level in the locality where the organ undertaking the reconsideration is situated.

Under Article 14 of the Regulation on the Expropriation of Buildings on State-owned Land and Compensation, an owner may apply for administrative reconsideration or file an administrative lawsuit against a building expropriation decision made by the people’s government at the city or county level.

10.5 ECT requirements under Articles 12 and 13

The ECT requires Contracting Parties to provide prompt, adequate and effective compensation in case of nationalisation, expropriation and for loss owing to war, armed conflict, national emergency or civil disturbance. The compensation shall amount to fair market value at the time immediately before expropriation. The compensation should normally be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred,

295 Article 9 of the State Compensation Law.
296 Ibid, Article 14.
297 Ibid, Article 22.
298 Ibid, Article 23.
299 Ibid, Article 25.
whichever occurs earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.\(^{300}\) The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time from expropriation to payment.\(^{301}\) It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Contracting Party of the investors concerned, and into freely usable currencies.\(^{302}\) Contracting Parties should provide investors judicial or administrative review for decisions of valuation of investment and payment of compensation.

The Chinese domestic legal system already provides for such obligation. In addition, those expropriation and compensation clauses are common provisions in recent IIAs entered into by China. E.g. the obligations contained in the ECT are not so different compared to those contained in the China-Canada BIT (2012) and the China-Japan-South Korean BIT (2012): China will not expropriate or nationalise investments in its territory of investors of another Contracting Party or take any measure equivalent to expropriation or nationalisation except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with its laws and international standard of due process of law; and (d) upon compensation.\(^{303}\)

With regard to compensation for losses and damage due to war, civil disturbance or alike, China has promised in some existing BITs to accord national treatment and most favoured nation treatment to foreign investors.\(^{304}\)

11. **Article 14 - Transfers**

11.1 **Foreign exchange regulations**

In early 1994, the official RMB exchange rates were unified with market rates. The banking exchange system was adopted and a nationwide unified inter-bank forex market was established, with conditional convertibility of the Renminbi on current accounts. Since 1996, foreign invested enterprises ("FIEs") were also permitted into the banking exchange system, and the remaining exchange restrictions on current accounts were eliminated. On 1 December 1996, China formally accepted the obligations of Article VIII of the IMF's Agreement, removing exchange restrictions on current account transactions. Accordingly, since then the Renminbi had been fully convertible on current accounts. It

\(^{300}\) Ibid.
\(^{301}\) Ibid.
\(^{302}\) Articles 11 and 12 of the China-Japan-South Korean BIT (2012).
\(^{304}\) Article 12 of the China-Japan-South Korean BIT (2012). Similarly, under Article 11 of the China-Canada BIT (2012), Investors of one Contracting Party who suffer losses in respect of covered investments owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded treatment by the other Contracting Party, in respect of restitution, indemnification, compensation or other settlement, no less favourable than it accords in like circumstances, to its own investors or to investors of any third State.
was confirmed by the IMF in its Staff Report on Article IV Consultations with China in 2000 that China had no existing forex restrictions for current account transactions.\textsuperscript{305}

The most relevant laws are the \textit{Regulations on the Exchange System}\textsuperscript{306} and the \textit{Regulations on the Sale and Purchase of and Payment in Foreign Exchange}.

The People’s Bank of China maintains a Managed Floating exchange rate regime, taking a basket of currencies as reference. In June 2010, China began a reform of the RMB exchange rate mechanism with a view to gaining more flexibility. The goal of the overall exchange rate regime is to enhance the flexibility of the RMB exchange rate, while preventing large fluctuations and maintaining the exchange rate around its equilibrium level.\textsuperscript{307} Since the launching of the exchange rate reform in 2005 and up to the end of 2013, the RMB has experienced a substantial appreciation, both in nominal and in real terms. For example, the central parity of the RMB/US$ exchange rate has gone up 35.8\% during this period.\textsuperscript{308}

11.2 Securities

The \textit{Law on Securities} was adopted on 27 October 2005 and came into effect as of 1 January 2006.\textsuperscript{309}

The securities regulatory authority under the State Council exercises centralised and unified regulation over the securities markets nationwide. The securities regulatory authority may establish local offices according to its needs, which shall perform regulatory functions as authorised.\textsuperscript{310} Subject to the centralised and unified regulation of the State over the issuing and trading of securities, an association of the securities industry shall be formed pursuant to the law implementing self-regulatory governance.\textsuperscript{311} The State audit authority shall exercise auditing supervision over the stock exchanges, securities companies, securities registrar and clearance institutions and securities regulatory authorities.\textsuperscript{312}

With regard to the issuing of securities, the conditions set forth by laws or administrative regulations must be satisfied in the public issuance of securities, and such issuance must, pursuant to the law, be submitted to the securities regulatory authority under the State Council or the departments authorised by the State Council for examination and approval.\textsuperscript{313} To apply for public issuance of corporate bonds, a company

\begin{footnotes}
\footnotetext[306]{Available at http://english.mofcom.gov.cn/article/policyrelease/internationalpolicy/200705/20070504715760.html (in English) (accessed 15 August 2015).}
\footnotetext[308]{WTO Secretariat, Trade Policy Review - China, WT/TPR/S/300/Rev.1, China, p.25.}
\footnotetext[309]{Available at http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384125.htm (in English) (accessed 15 August 2015).}
\footnotetext[310]{Article 7 of the \textit{Law on Securities}.}
\footnotetext[311]{Ibid, Article 8.}
\footnotetext[312]{Ibid, Article 9.}
\footnotetext[313]{Ibid, Article 10.}
\end{footnotes}
shall submit the following documents to the department authorised by the State Council or the securities regulatory authority under the State Council: (1) the business license of the company; (2) the articles of association of the company; (3) the method for raising funds through issuance of corporate bonds; (4) the reports of asset valuation and investment verification; and (5) such other documents as may be so prescribed by the department authorised by the State Council or the securities regulatory authority under the State Council. Where a company engages a sponsor in accordance with the provisions of this Law, it shall also submit the instrument of sponsorship for issuance produced by such sponsor.

Direct or indirect issuance of securities abroad by domestic enterprises, or listing and trading of securities abroad by such enterprises, shall be subject to approval given by the securities regulatory authority under the State Council in accordance with the regulations of the State Council.

11.3 Restrictions on foreign exchange transfers applicable to nationals and foreigners

Currently, the RMB is fully convertible for current account transactions, and partly convertible for some capital account transactions. In the 12th Five-Year Plan, the Chinese Government put forth a policy of gradually making the RMB convertible for capital account transactions that aim to proactively and steadily push forward the RMB convertibility for capital account transactions. This is intended to further facilitate the operations of enterprises “going global” and to “advance the internationalisation of China’s capital market”. China intends to enhance the degree of RMB convertibility for some short-term capital account transactions, establish a foreign debt and capital flow management system, improve its risk control system, improve cross-border capital flow monitoring, and implement an early-warning system.

A number of steps to liberalise the capital account have been adopted. In 2011, China launched the RMB Qualified Foreign Institutional Investors (RQFII) system and raised the total RQFII quota several times. By end of 2013, 228 QFIIIs with a domestic securities investment quota of US$ 49.7 billion and 115 Qualified Domestic Institutional Investors (QDIIs) with an offshore securities investment quota of US$84.3 billion had been approved. In 2012, China removed the restrictions it placed on the opening of foreign exchange accounts and the use of capital. It has also applied a policy of supplying foreign exchange according to the demand for offshore direct investments.

Pilot capital liberalisation measures are currently being tried in the China (Shanghai) Pilot Free Trade Zone, which started operations in August 2013. In accordance with the Policies and Measures on the Capital Market for Supporting and Promoting the China (Shanghai) Pilot Free Trade Zone (2013), foreign investors may participate in domestic futures trading, qualified entities and individuals in the CSPFTZ may make investment in foreign and domestic securities and future markets, and foreign parents of enterprises in the CSPFTZ may issue RMB bonds in domestic markets, among others.

314 Ibid, Article 17.
315 Ibid, Article 238.
The process of RMB convertibility under capital account advanced steadily. On 19 November 2012, the State Administration of Foreign Exchange published the Notice on Further Improving and Adjusting the Policy on the Administration of Foreign Exchange in Foreign Direct Investment in Foreign Direct Investment and announced that the administration of foreign exchange in foreign direct investment would be greatly simplified from December 2012.

11.4 Regulations on transfers of returns in kind

China has gradually widened the scope for capital flows, but the non-FDI capital account remains subject to considerable restrictions. Portfolio investment is controlled by quotas, and can only be done through QFIIs. Foreign borrowing is subject to a ceiling or approval requirements (for long-term borrowing), but lending abroad by banks and affiliated companies is largely unrestricted.\(^{316}\)

Foreign-invested enterprises in China do not need pre-approval to open foreign exchange accounts and are allowed to retain income as foreign exchange or convert it into Renminbi without quota requirements. Foreign exchange transactions on China’s capital account no longer require a case-by-case review by the SAFE. Instead, designated foreign exchange banks review and directly conduct foreign exchange settlements. The Chinese government registers all commercial foreign debt and limits foreign firms’ accumulated medium and long-term debt from abroad to the difference between total investment and registered capital. However, China has been gradually liberalising foreign exchange controls, and in April 2014, announced new rules (the Regulations on Forex Capital Pooling Operations and Management of Multinational Companies) that provide greater flexibility in transferring foreign currency for large domestic and foreign multinational firms. Foreign firms must report their foreign exchange balance once a year.

The following operations do not require the SAFE’s approval: purchase and remittance of foreign exchange as a result of capital reduction, liquidation, or early repatriation of an investment in a foreign-owned enterprise, or as a result of the transfer of equity in a foreign-invested enterprise to a Chinese domestic entity or individual where lawful income derived in China is reinvested. This would include profit, proceeds of equity transfer, capital reduction, liquidation, and early repatriation of investment.\(^{317}\)

11.5 ECT requirements under Article 14

Article 14 ECT provides that Contracting Parties shall guarantee freedom of transfer of related investments, in a freely convertible currency, including the initial capital returns, payments under a contract, unspent earnings and other remuneration, proceeds from sale or liquidation of all or any part of an investment, payment arising out of the settlement of a dispute. This type of transfer clause is common in recent IIAs entered into by China and the obligations thereunder are not overburdening compared to the China-Canada BIT (2012) and the China-Japan-South Korean BIT (2012).


\(^{317}\) USTR, 2014 Investment Climate Statement-China, 13.
As a principle, in its BITs China normally permits all transfers relating to a covered investment to be made freely and without delay. The transfers include (a) contributions to capital; (b) profits, capital gains, dividends, interest, royalties including payments in relation to intellectual and industrial property rights, fees, returns-in-kind or other income derived from the investment; (c) proceeds obtained from the total or partial sale of the covered investment, or from the partial or complete liquidation of the investment; (d) payments made under a contract entered into by an investor, or its covered investments, including those pursuant to a loan agreement. The transfer can normally be made in freely usable currencies at the market exchange rate prevailing on the date of each transfer. In the event that the market rate of exchange does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of currencies concerned into Special Drawing Rights.318

China’s BITs often allow Contracting Parties to limit transfer for prudential reasons. For example, under the China-Japan-South Korean BIT (2012), a Contracting Party may delay or prevent such transfers through the equitable, non-discriminatory and good faith application of its laws relating to:319 (a) bankruptcy, insolvency or the protection of the rights of creditors; (b) issuing, trading or dealing in securities, futures, options or other derivatives; (c) criminal or penal offenses; (d) ensuring compliance with orders or judgments in adjudicatory proceedings; or (e) reports of transfers of currency or other monetary instruments.

Currently, the RMB is fully convertible for current account transactions, and partly convertible for some capital account transactions. China has gradually widened the scope for capital flows, but the non-FDI capital account remains subject to considerable restrictions. Foreign-invested enterprises in China do not need pre-approval to open foreign exchange accounts and are allowed to retain income as foreign exchange or convert it into Renminbi without quota requirements. Foreign exchange transactions on China's capital account no longer require a case-by-case review by SAFE.

12. Article 15 - Subrogation

12.1 Rules or policies governing the recognition of subrogation in relation to foreign investors and their investments

The insurance market is regulated by the China Insurance Regulatory Commission (CIRC), under the State Council. The CIRC is responsible for registering new insurance providers, as well as new products and activities. The main legislation administering insurance services is the Insurance Law (1995, updated in October 2014). It regulates all commercial insurance activities in China (excluding social security insurance). In addition, the CIRC has issued several rules and regulations governing the conduct of insurance activities. All insurance companies providing insurance services in China must

---

319 Article 13(3) of the China-Japan-South Korean BIT (2012).
be registered and all legal persons or organizations in China requiring coverage in China must purchase insurance services from an insurance company registered and established in China.\textsuperscript{320} The establishment and operation of foreign insurance companies are governed by the \textit{Regulations on Administration of Foreign-founded Insurance Companies} and the \textit{Detailed Rules for Implementation of Regulations on Administration of Foreign-funded Insurance Companies}.

After the occurrence of the insured event, if the insurer pays in full the sum insured which is equal to the insurable value, the insurer shall retain all rights pertaining to the lost or damaged subject matter of insurance; if the sum insured is less than the insurable value, the insurer shall obtain partial rights pertaining to the lost or damaged subject matter of insurance pro rata of the sum insured to the insurable value.\textsuperscript{321}

When the occurrence of the insured event results from the loss or damage to the subject matter of insurance caused by a third party, the insurer may, from the date when indemnity is paid to the insured, exercise by subrogation the right of the insured to demand indemnification against the third party up to the amount of indemnity paid. After the occurrence of the insured event, the insurer may, when paying indemnity, deduct therefrom a corresponding amount, which the insured has received as indemnity from the third party. The right to indemnity by subrogation exercised by the insurer in accordance with the first paragraph shall in no way affect the insured’s right to indemnity against the third party for the portion un-indemnified.\textsuperscript{322}

If the insured waives the right to indemnity against the third party after the occurrence of the insured event and before the insurer pays the indemnity, the insurer shall bear no obligation for indemnity. If the insured, without the insurer’s consent, waives the right to indemnity against the third party after indemnity is paid by the insurer, the waiver shall be invalid. The insurer may deduct a corresponding sum from the amount of indemnity if it is not able to exercise the right to indemnity by subrogation due to the fault of the insured.\textsuperscript{323}

When the insurer exercises the right to indemnity by subrogation against a third party, the insured shall provide the insurer with necessary documents and relevant information known to him.\textsuperscript{324}

An insurance company that intends to establish a branch office within or outside the territory of the PRC shall need to obtain the approval of the insurance supervision and control authority and to obtain a license to carry on insurance business for such branch office. The branch offices of an insurance company do not possess the status of a legal person; and their civil liability shall be borne by the insurance company.\textsuperscript{325} Approval by the insurance supervision and control authority is required for the establishment of any

\textsuperscript{320} Article 7 of the \textit{Insurance Law}.

\textsuperscript{321} Ibid, Article 59.

\textsuperscript{322} Ibid, Article 60.

\textsuperscript{323} Ibid, Article 61.

\textsuperscript{324} Ibid, Article 63.

\textsuperscript{325} Ibid, Article 79.
representative office of an insurance company inside or outside the territory of the PRC.\textsuperscript{326}

Similar subrogation provisions could also be found in the \textit{Provisions of the Supreme People's Court on Several Issues about the Trial of Cases Concerning Marine Insurance Disputes} and in the \textit{Interpretation II of the Supreme People's Court on Several Issues concerning the Application of the Insurance Law of the PRC} (2013).

\textbf{12.2 Rules and policies for the provision of state guarantees to investments of national investors abroad}

An insurance company wishing to establish a branch inside or outside China must seek the approval of the CIRC and obtain a licence to carry on insurance business for such branch office. Any change in an insurer’s activities must first be approved by the CIRC.\textsuperscript{327}

Established in 2001, the SINOSURE is the only state-owned insurance company providing policy insurance covering oversea investment. Investment insurance intends to provide the insured with risk guarantee when they suffer economic losses because of war, currency exchange ban, requisition, or breach of contract by the government in countries where the insured have made investments. It is designed to support and promote Chinese companies and financial organizations in making overseas investments, and to encourage and advance overseas investors to make investments in the Chinese Mainland. The SINOSURE now operates two major kinds of insurance in this regard: overseas investment insurance and inbound investment insurance.\textsuperscript{328} For an overview of the products and services provided by SINOSURE, please refer to Appendix 12.1 Products and Service of the SINOSURE.\textsuperscript{329}

According to the \textit{Administration of the Provision of Security to Foreign Entities by Domestic Institutions Procedures}, the People's Bank of China empowers the State Administration for Exchange Control and its subdivisions (hereinafter referred to as the SAEC) to be responsible for the examination, approval, administration and registration of guarantees made overseas.\textsuperscript{330} Under the \textit{Administration of the Provision of Security to Foreign Entities by Domestic Institutions Procedures Implementing Rules} (effective as of 1 January 1998), the provision of security to foreign parties shall be subject to approval by the Administration of Foreign Exchange, except where these Rules provide other restrictions.\textsuperscript{331}

\textsuperscript{326} Ibid, Article 80.

\textsuperscript{327} Changes in activities include the formation of branch offices, a change in the name of the company or the business premises, and changes in registered capital, scope of the business or in investors holding more than 10% of the company’s shares.


\textsuperscript{330} Article 3 of the \textit{Administration of the Provision of Security to Foreign Entities by Domestic Institutions Procedures}.

\textsuperscript{331} Ibid.
12.3 Rules on insurance of investments and companies

According to the *Insurance Law*, the scope of business of an insurance company may cover: (1) property insurance, which includes insurance against loss or damage to property, liability insurance and credit insurance which could cover investments and companies; (2) insurance of the person which includes life insurance, health insurance and accident and injury insurance.\(^{332}\) No insurer may concurrently engage in both the business of property insurance and insurance of the person; however, an insurance company engaged in the business of property insurance may, upon approval by the insurance supervision and control authority, operate the short-term business of health insurance and accidental injury insurance.

The scope of business of an insurance company is subject to the approval of the insurance supervision and control authority. No insurance company may concurrently engage in the business other than that provided by law or administrative rules and regulations.

The insurer must be notified of the assignment of the subject matter of insurance, and, after the consent of the insurer to continue the insurance, the original insurance contract shall be altered according to the law, except in case of cargo insurance contracts and those contracts otherwise specified.\(^{333}\) Where an applicant requests termination of the contract prior to commencement of the insurance liability, the applicant shall pay service charges to the insurer and the insurer shall then refund the premiums paid. If the applicant requests termination of the contract subsequent to commencement of the insurance liability, the insurer may retain the premiums for the period from the commencement of insurance liability to the date of termination of the contract, and shall refund the balance of the premiums to the applicant.\(^{334}\)

The insurable value may be agreed by the applicant and insurer and specified in the contract; or it may be determined, at the occurrence of the insured event, on the basis of the actual value of the subject matter of the insurance. The sum insured shall not exceed the insurable value; and the part in excess shall be null and void. Where the sum insured is less than the insurable value, the insurer shall bear obligation for indemnity pro rata of the sum insured to the insurable value, unless otherwise stipulated in the contract.\(^{335}\) In the event of double insurance, the applicant shall notify concerned insurers any relevant information with respect to such double insurance. Where the amount in aggregate of the sum insured by double insurance exceeds the insurable value, the total amount of indemnity paid by all insurers concerned shall not exceed the insurable value. Unless specified otherwise in the contract, the insurers concerned shall undertake their respective obligation for indemnity in the proportion, which the sum insured by each of them bears to the total amount of the sum insured. Double insurance means such insurance wherein an applicant enters into separate insurance contracts with two or more insurers on the

\(^{332}\) Article 95 of the *Insurance Law*.
\(^{333}\) Ibid, Article 49.
\(^{334}\) Ibid, Article 54.
\(^{335}\) Ibid, Article 55.
same subject matter of insurance, the same insurable interests and the same insured event.\textsuperscript{336}

When the occurrence of the insured event results from the loss or damage to the subject matter of insurance caused by a third party, the insurer may, from the date when indemnity is paid to the insured, exercise by subrogation the right of the insured to demand indemnification against the third party up to the amount of indemnity paid. After the occurrence of the insured event referred to in the preceding paragraph, the insurer may, when paying indemnity, deduct therefrom a corresponding amount, which the insured has received as indemnity from the third party. The right to indemnity by subrogation exercised by the insurer shall in no way affect the insured’s right to indemnity against the third party for the portion un-indemnified.\textsuperscript{337}

12.4 ECT requirements under Article 15 ECT

Article 15 ECT provides that if a Contracting Party or its designated agency makes a payment under an indemnity or guarantee in respect of a protected investment in the area of another Contracting Party, the latter shall recognise the assignment of all the rights and claims in respect of such protected investment and the right of the indemnifying party to exercise all such rights and enforce such claims by virtue of subrogation.

A similar subrogation clause can be found not only in the Chinese \textit{Insurance Law},\textsuperscript{338} but also in the China-Canada BIT(2012), which stipulates: “If a Contracting Party or its Agency makes a payment to one of its investors under a guarantee or contract of insurance it has granted to a covered investment of that investor, the other Contracting Party shall recognize the transfer of any right or claim of that investor to the first mentioned Contracting Party or its Agency. The subrogated right or claim shall not be greater than the original right or claim of the said Investor. Such right may be exercised by the Contracting Party or any agent thereof so authorized.”\textsuperscript{339}

13. Article 18 - Sovereignty over natural resources

13.1 General legal framework

Natural resources are governed by specialised legislations, including the \textit{Law on Mineral Resources}, the \textit{Rule for the Implementation of the Mineral Resource Law}, the \textit{Water Law}, the \textit{Fisheries Law}, the \textit{Grassland Law} and the \textit{Land Administration Law}.

According to the \textit{Law on Mineral Resources} (1986),\textsuperscript{340} all mineral resources shall be owned by the State. State ownership of the mineral resources, either near the earth’s surface or underground, shall not change with the ownership of the land or the right to the

\begin{footnotesize}
\begin{enumerate}
\item[Ibid, Article 56.]
\item[Ibid, Article 60.]
\item[Article 59 of the \textit{Insurance Law}.]
\item[Article 13 of the China-Canada BIT (2012).]
\item[Available at http://english.mofcom.gov.cn/aarticle/lawsdata/chineselaw/200211/20021100053795.html (in English) (accessed 15 August 2015).]
\end{enumerate}
\end{footnotesize}
use of the land to which the mineral resources are attached. The State Council shall exercise the ownership of the mineral resources on behalf of the State. The competent department in charge of geology and mineral resources under the State Council is authorised by the State Council to exercise a centralised administration over the allocation of the mineral resources. Anyone wishing to explore or mine mineral resources, shall separately make an application according to law and shall register after obtaining the right of exploration or mining upon approval, with the exception of the mining enterprises that have, in accordance with the law, applied for, and obtained, the right of mining and are conducting exploration within the designated mining area for the purpose of their own production. The State protects the right of exploration and of mining from encroachment and protects the order of production and other work in the mining and exploration areas from interference and disruption. Anyone engaged in exploring and mining of mineral resources shall meet the prescribed qualifications.\textsuperscript{341}

Pursuant to the \textit{Water Law} (1988),\textsuperscript{342} water resources are owned by the State. The State Council, on behalf of the State, exercises the right of ownership of water resources. The water of ponds belonging to rural economic collectives, while the water of reservoirs built and managed by such collectives shall be used by the collectives respectively.\textsuperscript{343} Any unit or individual that takes water and uses water resources directly from a river or lake or from the underground shall apply to the administrative department for water resources or the river basin authority for a water-taking license and pay water resources fees.\textsuperscript{344}

Similarly, according to the \textit{Grassland Law},\textsuperscript{345} grasslands are owned by the State, with the exception of the grasslands owned by collectives as provided by law. With respect to the State-owned grasslands, the State Council shall exercise the right of such ownership on behalf of the State.\textsuperscript{346} No unit or individual may take illegal possession of, trade in or illegally transfer in other forms, the grasslands. The State-owned grasslands may, in accordance with the law, be assigned for use to the units under the ownership by the whole people and to collective economic organisations. All units that use the grasslands shall fulfil the duty of protecting, developing and rationally using the grasslands.\textsuperscript{347} The right of ownership and the right of use of the registered grasslands shall be protected by law, and no unit or individual may infringe upon such ownership or right.\textsuperscript{348} The grasslands owned by collectives or the State-owned grasslands which have been assigned for use to collective economic organisations may be contracted for management by households individually or jointly within the said collective economic organisations.\textsuperscript{349}

\textsuperscript{341} Article 3 of the \textit{Mineral Resource Law}.
\textsuperscript{342} Available at \url{http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200211/20021100053796.shtml} (in English) (accessed 15 August 2015).
\textsuperscript{343} Article 3 of the \textit{Water Law}.
\textsuperscript{344} Ibid, Article 48.
\textsuperscript{345} Available at \url{http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383951.htm} (in English) (accessed 15 August 2015).
\textsuperscript{346} Article 9 of the \textit{Grassland Law}.
\textsuperscript{347} Ibid, Article 10.
\textsuperscript{348} Ibid, Article 12.
\textsuperscript{349} Ibid, Article 13.
13.2 Ownership of energy resources

According the Constitution, all mineral resources, waters, forests, mountains, grasslands, unclaimed land, beaches and other natural resources are owned by the State, that is, by the whole people, with the exception of forests, mountains, grasslands, unclaimed land and beaches that are owned by the collective as prescribed by law. The State ensures the rational use of natural resources and protects rare animals and plants. Appropriation or damaging of natural resources by any organisation or individual by whatever means is prohibited.\(^{350}\)

With regard to the ownership of traditional mineral resources, the Law on Mineral Resources stipulates that all mineral resources shall be owned by the State. The State shall adopt a license system for the exploration and exploitation of the mineral resources. Anyone who intends to explore mineral resources shall apply for registration in accordance with the law, draw an exploration license and obtain the exploration right. Anyone who intends to exploit mineral resources shall apply for registration in accordance with the law, draw an exploitation license and obtain the mining right. The block defined by longitude and latitude is the basic unit in determining both the scope of exploration and exploitation areas of the mineral resources. The specific methods shall be formulated by the competent department in charge of geology and mineral resources under the State Council.\(^{351}\)

According to Article 6 of the Law on Mineral Resources, exploration and mining rights may not be transferred. However, the explorer shall be entitled to conduct the approved exploration operations within the defined exploration area and to enjoy priority in the acquisition of the mining right in the area. He may transfer his exploration right to another person with lawful approval, provided that the minimum investment in the exploration has been made as required; in the event of the merger or division of enterprises, or joint investment or joint operation with others, or in the event of a sale of assets or other changes in assets property which need change in the owner of the mining right, a mining enterprise vested with the mining right may transfer its right to another person for mining with lawful approval; the State Council shall formulate the specific measures and implementation procedures for the provisions in the preceding paragraph.

With regard to the ownership of the sources of renewable energy which refer to non-fossil energies, such as wind energy, solar energy, hydro energy, bio energy, geothermal energy and ocean energy, etc., under Chinese legal system, the State has the ownership unless otherwise provided by laws and regulations.\(^{353}\)

\(^{350}\)Article 9 of the Constitution.

\(^{351}\)Article 5 of the Mineral Resources Law.


\(^{353}\)Article 3 of the Water Law. Article 3 of the Forest Law. Article 13 of the Grassland Law.
13.3 Systems and published criteria for allocating authorisations, licences, concessions or contracts for the exploration and exploitation of energy resources

There is a unified registration system for mineral exploration areas. The department in charge of geology and mineral resources under the State Council shall be responsible for registering the exploration of mineral resources. The State Council may authorise relevant departments to handle registration of the exploitation of special kinds of mineral ores. The procedures for registration of mineral exploration areas shall be formulated by the State Council.\textsuperscript{354}

Anyone who intends to establish a mining enterprise shall be qualified as required by the state, and the approval authority shall examine his/her application as to the limits of the mining area, design or mining plan, production technique and safety and environmental protection measures in accordance with the law and relevant state provisions. Approval shall be granted if the enterprise meets these requirements.\textsuperscript{355}

The exploitation of mineral resources shall be subject to the approval of the department in charge of geology and mineral resources under the State Council and a mining licence shall be issued upon approval. The exploitation of special kinds of minerals such as petroleum, natural gas and radioactive minerals may be approved by the relevant departments authorised by the State Council and a mining licence shall be issued upon approval.\textsuperscript{356}

The competent department in charge of geology and mineral resources under the State Council is responsible for the supervision and administration over exploration and exploitation of the mineral resources throughout the country. Other competent departments concerned under the State Council shall assist the competent department in charge of geology and mineral resources under the State Council to conduct the supervision and administration of exploration and exploitation of mineral resources according to their functions and powers granted by the State Council.\textsuperscript{357}

The competent departments in charge of geology and mineral resources under the people's governments of provinces, autonomous regions and the municipalities directly under the Central Government are responsible for the supervision and administration over the exploration and exploitation of the mineral resources within their respective administrative areas. The other competent departments concerned under the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall assist the competent departments in charge of geology and mineral resources at the same level to conduct the supervision and administration of exploration and exploitation of mineral resources.

The municipal people's governments with administrative districts, the people's governments of autonomous prefectures and the people's governments of counties as well as their departments in charge of mineral resources shall be responsible for conducting

\textsuperscript{354} Article 5 of \textit{Mineral Resource Law}.
\textsuperscript{355} Ibid.
\textsuperscript{356} Ibid, Article 6.
\textsuperscript{357} Ibid, Article 8.
supervision and management over the State-owned mining enterprises approved by them. They are also responsible for conducting supervision and administration over the collective-owned mining enterprises, the private-owned mining enterprises, individual miners as well as the units and individuals who undertake the exploration within their respective administrative areas according to the law, and shall protect the lawful rights and interests of the exploration licenses and the concessionaires pursuant to the law. The competent departments in charge of geology and mineral resources at higher levels are authorised to redress or revoke the illegal or improper administrative behaviours over the exploration and exploitation conducted by the competent departments in charge of geology and mineral resources at lower levels.

The State shall programme in a unified manner the exploration of mineral resources. The competent department in charge of geology and mineral resources under the State Council shall organize and map out the national medium and long term programmes over the mineral exploration under the guidance of the competent department in charge of planning under the State Council, in accordance with the national economic and social development programmes, and on the basis of the exploration programmes adopted by the relevant competent departments under the State Council. The national annual mineral exploration plan and the annual mineral exploration plan of provinces, autonomous regions and municipalities directly under the Central Government shall be made respectively by the competent department in charge of geology and mineral resources under the State Council and the competent departments in charge of geology and mineral resources under the people's governments of provinces, autonomous regions and municipalities directly under the Central Governments with other competent departments concerned, in accordance with the national exploration programmes. The said plans shall be approved by the competent departments in charge of planning under the people's governments at the same level, and then be carried out.  

According to the Measures for the administration of transfer of mineral exploration right and mining right (promulgated by Decree No.242 of the State Council on 12 February 1998), Mineral exploration rights and mining rights must not be transferred except in the following cases:

- a person with mineral exploration rights has the right to conduct specified exploration and survey operations within the delimited exploration and survey operations area(s) and has the right to obtain the mineral exploration right of mineral resources within the exploration and survey operations areas on a priority basis. A person with mineral exploration rights may, upon fulfilment of the prescribed minimum exploration and survey input and approval in accordance with law, transfer the mineral exploration right to another person.

- a mining enterprise having obtained the mining rights may, subject to approval in accordance with law, transfer the mining rights to another person for exploitation as a result of enterprise amalgamation, separation, engaging in a joint venture or cooperative venture with another person, or as a result of the

358 Ibid, Article 15.
sale of the enterprise assets as well as other circumstances that change the property rights of the enterprise assets necessitating a change in the main body of the mining rights.

The competent department of geology and mineral resources under the State Council and the competent departments of geology and mineral resources of people’s governments of the provinces, autonomous regions and municipalities directly under the Central Government shall be the organs for the administration of examination and approval of the transfer of mineral exploration right and mining right. An evaluation must be carried out in the transfer of mineral exploration right and mining right formed by state-contributed exploration and survey. Evaluation of the transfer of mineral exploration right and mining right shall be carried out by evaluation agencies certified by the competent department of geology and mineral resources under the State Council in conjunction with the department of state assets management under the State Council.

The administrative department of energy of the State Council shall conduct unified administration of the development and utilization of renewable energy throughout the country. Other relevant departments of the State Council shall, according to their respective functions and duties, conduct administration of the development and utilisation of the relevant renewable energy.

With regard to the administration of forest resources, State-owned and collective-owned forests, woods and forest lands, individual-owned woods and individual-used forest lands shall be registered by local people's governments at or above the county level and rosters compiled and certificates issued confirming the ownership or right to use. The State Council may authorize the competent department of forestry under the State Council to register and compile rosters of forests, woods and forest lands of the key state-owned forest regions determined by the State Council, issue certificates and notify the local people's governments concerned. Legitimate rights and interests of owners and users of forests, woods and forest lands are protected by law upon which no unit or individual shall infringe. For any collectively owned forest, wood or forest land, the owner shall submit a registration application to the competent forestry authority of the local people's government at or above the county level, which shall prepare a register, issue a certificate after making examination, and confirm the ownership. The right of use of the forests, woods and forest lands may be transferred in accordance with the law. There can also be equity participation in terms of evaluation or be treated as conditions of contribution and cooperation for joint venture, cooperative afforestation and timber management.

Grasslands under ownership by the whole people may be assigned to collectives for long-term use. With respect to grasslands used by units under ownership by the whole people, the local people's governments at the county level or above shall register such

---

360 Ibid, Article 4 of the Measures for the administration of transfer of mineral exploration right and mining right.
361 Ibid, Article 9.
363 Article 3 of the Forest Law.
365 Article 15 of the Forest Law.
grasslands, issue certificates to the said units after verification thus establish their right to use such grasslands. With respect to grasslands under collective ownership and those under ownership by the whole people that are assigned to collectives for long-term use, the local people’s governments at the county level shall register such grasslands, issue certificates to the collectives after verification and thus establish their right of ownership of the grasslands or their right to use them.\(^{366}\)

The State applies the system of licensing for water-taking and the system of compensation for the use of water, except for water of the ponds and reservoirs belonging to rural economic collectives that is used by such collectives and their members. The administrative department for water resources under the State Council is responsible for making arrangements for implementing the system of licensing for water-taking and the system of compensation for use of water throughout the country.\(^{367}\) The administrative departments for water resources under the local people's governments at or above the county level shall, within the limits of their specified powers, be responsible for unified management of and supervision over the water resources.\(^ {368}\)

The Chinese Government gives priority to the development and utilisation of renewable energy and promotes the establishment and development of the renewable energy market by setting an overall target for the development and utilization of renewable energy and adopting corresponding measures. The Chinese Government encourages economic subjects of different ownership to participate in the development and utilisation of renewable energy and shall protect the legitimate rights and interests of those who develop and utilise renewable energy.\(^ {369}\)

13.4 Fiscal instruments connected with the exploration and exploitation of energy resources

All units and individuals engaged in the exploitation of mineral products as prescribed in the Regulations are taxpayers of Resource Tax and shall pay it in accordance with the Provisional Regulations on Resource Tax (13 December 1993; in force as of 1 January 1994).\(^ {370}\)

The taxable items and tax amounts of the Resource Tax shall be determined in accordance with the Resource Tax Taxable Items and Tax Amount Range Table attached to the Regulations as well as the relevant stipulations of the Ministry of Finance.\(^ {371}\)

For taxpayers exploiting or producing taxable products under different taxable items, the assessable volume of the taxable products under different taxable items shall be accounted for separately. If the assessable volume of the taxable products under different taxable items has not been accounted for separately or cannot be accurately provided, the

\(^{366}\) Article 9 of the Grassland Law.  
\(^{367}\) Article 7 of the Water Law.  
\(^{368}\) Ibid, Article 12.  
\(^{369}\) Article 4 of the Renewable Energy Law.  
\(^{371}\) Article 2 of the Provisional Regulations on Resource Tax.
higher tax amount shall apply.\textsuperscript{372} For details on resource tax, please refer to Annex 13.1 Resource Tax Taxable Items and Tax Amount Range Table.

The Government provides certain preferential policies to renewable energy development. For example, the on-grid electricity prices for projects of electricity generation by using renewable energy shall be determined by the administrative department of price of the State Council in light of the conditions of different areas and the characteristics of electricity generation by using renewable energy of different types, and according to the principle of helping to promote the development and utilisation of renewable energy as well as the principles of economy and rationality, and be adjusted in a timely manner by the same department in light of the development of the renewable energy resource utilisation technology. On-grid electricity prices shall be published.\textsuperscript{373} Access cost and other relevant expenses reasonably incurred to an electricity grid enterprise due to its purchase of electricity generated by using renewable energy may be reckoned in its electricity transmission cost and be recoverable from the selling price of electricity.\textsuperscript{374}

With regard to charges on use of water resources, any unit or individual that takes water and uses water resources directly from a river or lake or from the underground, shall, in accordance with the regulations of the licensing system of the State for water-taking and the system for compensated use of water resources, apply to the administrative department for water resources or the river basin authority for a water-taking license and pay water resources fees, in order to acquire the right to take water, except where only a small amount of water is taken for domestic use or for drinking by poultry and livestock reared outdoors or in pens. Specific measures for implementing the licensing system for water-taking and for collecting fees for management of water resources shall be formulated by the State Council.\textsuperscript{375} The water pricing system shall be applied under which a fee shall be charged on the basis of the amount of water used and a progressive higher price shall be charged for the amount that exceeds the quota.\textsuperscript{376}

13.5 State policies for the depletion and recovery of natural resources

The mineral resources compensation shall be paid, in accordance with the \textit{Provisions on Administration of Collection of Mineral Resources Compensation Fees} (Decree No. 150 of the State Council, 27 February 1994, effective as of 1 April 1994),\textsuperscript{377} for mining mineral resources within the territory of the PRC and the sea areas under the jurisdiction of the PRC. Where laws or other administrative regulations provide otherwise, their stipulations shall apply.\textsuperscript{378}

The mineral resources compensation shall be paid by concessioners. The mineral resources compensation shall be settled in the currency used in the sales of mineral

\begin{itemize}
\item \textsuperscript{372} Ibid, Article 4.
\item \textsuperscript{373} Article 19 of the \textit{Renewable Energy Law}.
\item \textsuperscript{374} Ibid, Article 21.
\item \textsuperscript{375} Article 48 of the \textit{Water Law}.
\item \textsuperscript{376} Ibid, Article 49.
\item \textsuperscript{377} \url{http://www.lawinfochina.com/display.aspx?lib=law&id=12168&C_gid=}
\item \textsuperscript{378} Article 2 of the \textit{Provisions on Administration of Collection of Mineral Resources Compensation Fees}.
\end{itemize}
products; where the mineral products are processed by concessioners themselves, the settlement shall be made in the currency used in sales of the end products.\textsuperscript{379}

The mineral resources compensation shall be collected by the competent departments in charge of geology and mineral resources together with the departments of finance. Where a mining district is within a county-level administrative region, the administrative department in charge of geology and mineral resources under the people’s government at the county level of the place where the mining district is located shall be responsible for collecting the mineral resources compensation. Where a mining district extends across more than one administrative region at or above the county level, the administrative department in charge of geology and mineral resources under the people's government at the next higher level of all the administrative regions involved shall be responsible for collecting the mineral resources compensation.\textsuperscript{380} For details on rates for mineral resources compensation, please refer to Annex 13.2 Table for Rates of Mineral Resources Compensation.

With regard to the recovery of land during exploration and exploitation of natural resources, the land and resources department of the State Council is responsible for the supervision and administration of land reclamation of the whole country. The land and resources departments of the local people’s governments at or above the county level are responsible for the supervision and administration of land reclamation of their respective administrative regions.\textsuperscript{381} When handling the application for a piece of construction land or handling the application formalities for the right to exploitation, an obligor of land reclamation shall submit the plan for land reclamation along with other relevant materials for approval. Where an obligor of land reclamation fails to formulate a plan for land reclamation or his plan for land reclamation does not meet the relevant requirements, the people's government with the approval authority shall not approve his use of land for construction, and the land and resources department with the approval authority shall not issue a mining license to him.\textsuperscript{382}

With regard to protection of forest resources, the State establishes the forest ecological benefit compensation fund to be used for the planting, tending, protection and management of the forest resources and woods for shelter forests and special-purpose forests either of which generate ecological benefit. The forest ecological benefit compensation fund must be used for the said special purpose and must not be used for other purposes.\textsuperscript{383} Destruction of forest for reclamation and destruction of forest for quarrying, sand gathering and earth gathering as well as other acts of forest destruction are prohibited.\textsuperscript{384} The competent department of forestry under the State Council and people's governments of the provinces, autonomous regions and municipalities directly under the Central Government should delimit nature reserves and step up protection and administration in typical forest ecological regions, forest regions wherein rare and precious animals and plants grow and breed (multiply), natural tropical rain forest regions

\textsuperscript{379} Ibid, Article 4.
\textsuperscript{380} Ibid, Article 7.
\textsuperscript{381} Article 5 of the \textit{Regulation on Land Reclamation} (State Council, 5 March 2011).
\textsuperscript{382} Ibid, Article 13.
\textsuperscript{383} Article 8 of the \textit{Forest Law}.
\textsuperscript{384} Ibid, Article 23.
and other natural forest regions with special value of protection in different natural belts. Similar arrangement of ecological compensation fund for grassland recovery could also be found.

13.6 ECT requirements under Article 18

Article 18 ECT recognizes state sovereignty and sovereign rights over energy resources. The ECT reaffirms that these rights must be exercised in accordance with and subject to the rules of international law. The ECT shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources, without affecting the objectives of promoting access to energy resource and exploration and development on a commercial basis. Each state continues to hold in particular the rights to decide the geographical areas to be made available for exploration and development of its energy resources, the optimisation of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments by virtue of such exploration/exploitation, and to participate in such exploration/exploitation. However, it is worth mentioning that the ECT requires Contracting Parties to facilitate access to energy resources, *inter alia*, by allocating in a non-discriminatory manner on the basis of published criteria authorization, license, concessions and contracts to prospect and explore for or to exploit or extract energy resources.

This declaratory type of obligation is consistent with China's proposition on state sovereignty over natural resources.

14. Article 19 - Environmental aspects

14.1 Legislative and institutional framework

According to the *Constitution*, the State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards. The State organizes and encourages afforestation and the protection of forests.

Environmental protection is expressly included in Article 4 of the *Environmental Protection Law* (Order No.22 of the President of the PRC, of 26 December 1989). The plans for environmental protection formulated by the state must be incorporated into national economic and social development plans. The state shall adopt economic and technological policies and measures favourable for environmental protection so as to coordinate the work of environmental protection with economic construction and social development. The competent department of the environmental protection administration under the State Council shall, in accordance with the national standards for environment

---

385 Ibid, Article 24.
386 Article 39 of the *Grassland Law*.
387 Article 26 of the *Constitution*.
quality and the country's economic and technological conditions, establish national standards for the discharge of pollutants. The people's governments of provinces, autonomous regions and municipalities directly under the Central Government may establish their local standards for the discharge of pollutants for items not specified in the national standards; with regard to items already specified in the national standards, they may set local standards which are more stringent than the national standards and report the same to the competent department of environmental protection administration under the State Council for the record.  

The Government encourages the development of education in the science of environmental protection, strengthens the study and development of the science and technology of environmental protection, raises the scientific and technological level of environmental protection and popularizes scientific knowledge of environmental protection (National 12th Five-Year Plan for Environment Protection).  

14.2 International agreements to which China is a party

For a list of the most relevant international environmental agreements to which China is a party see Annex 14.1 List of International Environmental Agreements to which China is a Party.

14.3 General environmental policies and the impact of the energy sector

The increasing need for energy and environmental concerns has shaped China's energy policy. Traditionally, Chinese energy policy focused mainly on ensuring an adequate supply of fossil fuels to meet the growing domestic demand. However, more recently, due to China's increasing reliance on imports to supply domestic demand and the growing concern about environmental issues, energy policies have also focussed on diversifying energy sources, developing renewable energy sources, reducing the energy intensity of the economy, and safeguarding the environment. The Renewable Energy Law, which entered into force on 1 January 2006, provides for a series of incentives such as subsidies, tax incentives, and low-cost loans for the development of renewable energy projects. The Eleventh Five-Year Plan (2006-10), sets compulsory targets, requiring the entire country to reduce energy intensity by 20% by 2010. Energy consumption standards have also been set for each province. In 2004, the NDRC had already formulated a Medium and Long Term Energy Conservation Plan to encourage energy conservation and reduce pollution. The Energy Conservation Law of 1998 is under review.

389 Article 13 of the Environmental Protection Law.
Pursuant to the *Environmental Protection Law*, units constructing projects that cause pollution to the environment must observe the state provisions concerning environmental protection for such construction projects. The environmental impact statement on a construction project must assess the pollution that the project is likely to produce and its impact on the environment and stipulate the preventive and curative measures; the statement shall, after initial examination by the authorities in charge of the construction project, be submitted by specified procedure to the competent department of environmental protection administration for approval. The department of planning shall not ratify the design plan descriptions of the construction project until after the environmental impact statement on the construction project is approved.

Installations for the prevention and control of pollution at a construction project must be designed, built and commissioned together with the principal part of the project. No permission shall be given for a construction project to be commissioned or used, until its installations for the prevention and control of pollution are examined and considered up to the standard by the competent department of environmental protection administration that examined and approved the environmental impact statement. Installations for the prevention and control of pollution shall not be dismantled or left idle without authorization. If it is really necessary to dismantle such installations or leave them idle, prior approval shall be obtained from the competent department of environmental protection administration in the locality.

According to the *Law on Appraising of Environment Impacts* (2002), the term “appraising environmental impacts” refers to the methods and institutions for analysing, predicting and appraising the impacts of programs and construction projects that might incur after they are carried out so as to propose countermeasures for preventing or mitigating the unfavourable impacts and make follow-up monitoring. The state encourages relevant entities, experts and the general public to participate in the appraisal of the environmental impacts in appropriate ways. The report of the environmental impacts shall include the following elements: a) An analysis, prediction and appraisal of the environmental impacts that might occur if the program is implemented; b) The countermeasures for predicting or mitigating the unfavourable environmental impacts; c) The conclusion of the appraisal upon the environment.

In case a program may cause unfavourable environmental impacts or directly involve the environmental interests of the general public, the organ that works out the special programs shall, prior to submitting the draft of the programs for examination and approval, seek the opinions of the relevant entities, experts and the general public about the draft of the report about the environmental impacts by holding demonstration meetings or hearings or by any other means, except it is provided by the state that it shall be kept confidential. The drafting organ shall take the opinions of the relevant entities,
experts and the general public about the draft report of environmental impacts into careful consideration, and shall attach a remark whether the opinions are adopted or refused to the report of environmental impacts to be submitted for examination and approval.\textsuperscript{401}

The report of the environmental impacts of a construction project shall include the following elements: a) An introduction of the construction project; b) The surrounding environment of the construction project; c) An analysis, prediction and appraisal of the environmental impacts that may be caused by the construction project; d) The measures for protecting the environment of the construction project as well as a technical and economical demonstration; e) An analysis of the economic gains and losses of the environmental impacts that may be caused by the construction project; f) Suggestions for carrying out environmental monitoring over the construction project; g) Conclusion of appraisal of the environmental impacts. For a construction project that involves water conservancy, there shall be a plan of water conservancy examined and approved by the administrative department of water. The contents and format of the report form of environmental impacts and the registration form of environmental impacts shall be formulated by the administrative department of the State Council in charge of environmental protection.\textsuperscript{402}

Conservation of resources is a fundamental State policy. The State implements an energy development strategy under which energy is conserved and exploited simultaneously, while the first priority is given to conservation.\textsuperscript{403} The State applies a system of responsibility for achieving the goals set for energy conservation and a system for assessing energy conservation, and includes achievements in energy conservation in assessments of the local people’s governments and their leading persons. The people’s governments of provinces, autonomous regions and municipalities directly under the Central Government report to the State Council on the performance of their responsibilities in respect of the goals for energy conservation.\textsuperscript{404}

The State encourages industrial enterprises to use equipment that is highly efficient and energy-saving, employs combined heat and power generation, makes use of residual heat and pressure, uses clean coal, and adopts advanced technologies in monitoring and controlling the use of energy.\textsuperscript{405} Power grid enterprises shall, according to the regulations formulated by the relevant departments under the State Council on the control of energy-saving power generation, merge the heat and power co-generating units, which operate in a clean and efficient way and conform to relevant regulations, the generating units, which make use of residual heat and pressure, and other generating units, which conform to the regulations governing multipurpose utilization of resources with power grids for synchronized operation, and the rates of network electricity shall be paid in accordance

\begin{footnotesize}
\begin{enumerate}
\item Ibid, Article 11.
\item Ibid, Article 17.
\item Article 4 of the Energy Conservation Law.
\item Ibid, Article 6.
\item Ibid, Article 31.
\end{enumerate}
\end{footnotesize}
with the relevant regulations of the State.\textsuperscript{406} The building of new coal-fired or gasoline-fired generating units or new coal-fired thermal power generating units is prohibited.\textsuperscript{407}

The State encourages and promotes cleaner production. The \textit{Cleaner Production Promotion Law} (2002) stipulates that the State Council and the local people's governments at or above the county level shall incorporate cleaner production into their plans for national economic and social development and plans for environment protection, resources utilization, industrial development, regional development, etc.\textsuperscript{408} With respect to outdated production technologies, techniques, equipment and products which cause waste of resources and serious pollution of the environment, the State applies a system of elimination within a time limit. The administrative department for the economy and trade under the State Council shall, together with the other related administrative departments under the State Council, compile and publish catalogues of technologies, techniques, equipment and products to be eliminated within a time limit.\textsuperscript{409}

For new construction, reconstruction and expansion projects, their impact on the environment shall be assessed, the use of raw materials, consumption and comprehensive use of resources, generation and disposition of pollutants shall be analysed and expounded and employment of technologies, techniques and equipment for cleaner production, which serve to make highly effective use of resources and generate less pollutants, shall be given first priority.\textsuperscript{410} In prospecting and exploiting mineral resources, the methods, techniques and technologies that are conducive to rational use of resources, environmental protection and prevention of pollution shall be adopted for better use of resources.\textsuperscript{411} The State establishes a commendation and award system for cleaner production. The people's governments shall commend and award units and individuals that achieve remarkable successes in their efforts to bring about cleaner production.\textsuperscript{412} Projects designed for research, demonstration and training in cleaner production, key technological updating projects of the State for cleaner production, and other technological updating projects clearly stated in the agreements on voluntary reduction of pollutants discharged shall be included in the projects for which special funds are arranged by the State Council and the finance department at the same level as the local people's government at or above the county level in support of their technological updates.\textsuperscript{413}

The \textit{Law on the Coal Industry} was promulgated by Order No.75 of the president of the PRC on August 29, 1996. According to it, anyone who exploits or utilises coal resources shall abide by the laws and regulations governing environmental protection, prevent and control pollution and other public hazards, and protect the ecological environment.\textsuperscript{414} In coal mines, coal exploitation and environmental control shall be

\textsuperscript{406} Ibid, Article 32.
\textsuperscript{407} Ibid, Article 33.
\textsuperscript{408} Article 4 of the \textit{Cleaner Production Promotion Law}.
\textsuperscript{409} Ibid, Article 12.
\textsuperscript{410} Ibid, Article 18.
\textsuperscript{411} Ibid, Article 25.
\textsuperscript{412} Ibid, Article 32.
\textsuperscript{413} Ibid, Article 33.
\textsuperscript{414} Article 11 of the \textit{Law on the Coal Industry}.
synchronized. The facilities for environmental protection of a coal mine construction project must be designed, constructed, checked and accepted, and put into use simultaneously with the main project.\footnote{Ibid, Article 21.} The State shall develop and disseminate clean coal technology. The State shall adopt measures to ban coke making by indigenous methods. The construction of kilns for making coke with indigenous methods shall be forbidden, and the existing kilns for making coke with indigenous methods shall be renovated within a time limit.\footnote{Ibid, Article 36.}

Environmental protection is an important public policy of China. All units and individuals shall have the obligation to protect the atmospheric environment and shall have the right to report on or file charges against units or individuals that cause pollution to the atmospheric environment.\footnote{Article 5 of the Law on the Prevention and Control of Atmospheric Pollution.} Any unit that, as a result of an accident or any other exigency, discharges or leaks toxic or harmful gas or radioactive substances, thereby causing or threatening to cause an accident of atmospheric pollution and jeopardize human health, must promptly take emergency measures to prevent and control the atmospheric pollution hazards, make the situation known to such units and inhabitants as are likely to be endangered by the atmospheric pollution hazards, report the case to the local environmental protection department and accept its investigation and disposal. Under the urgent circumstances of a severe atmospheric pollution incident that jeopardizes human health and safety, the local people's government must take compulsory emergency measures, including ordering the pollutant discharging units concerned to stop the discharge of pollutants.\footnote{Ibid, Article 14.}

When coal, gangue, coal cinder, coal ashes or lime is stored in densely inhabited areas, fire and dust prevention measures must be taken in order to prevent atmospheric pollution.\footnote{Ibid, Article 21.} Units that discharge sulphide-bearing gas in the process of refining petroleum, producing synthetic ammonia or coal gas, coking fuel coal and smelting non-ferrous metal shall be equipped with desulphurising installations or shall adopt other measures for desulphurization.\footnote{Ibid, Article 24.}

14.4 Policies and measures adopted or proposed in relation to “polluter pays” and “fuller reflection of the environmental cost in energy prices” principles

The Polluter Pays principle is best exemplified in Article 41 of the Environmental Protection Law:

- A unit that has caused an environmental pollution hazard shall have the obligation to eliminate it and make compensation to the unit or individual that suffered direct losses.
- A dispute over the liability to make compensation or the amount of compensation may, at the request of the parties, be settled by the competent department of environmental protection administration or another department invested by law

\footnotesize
\begin{itemize}
\item \footnote{Ibid, Article 21.}
\item \footnote{Ibid, Article 36.}
\item \footnote{Article 5 of the Law on the Prevention and Control of Atmospheric Pollution.}
\item \footnote{Ibid, Article 14.}
\item \footnote{Ibid, Article 21.}
\item \footnote{Ibid, Article 24.}
\end{itemize}
with power to conduct environmental supervision and management. If a party
refuses to accept the decision on the settlement, it may bring a suit before a
people's court. The party may also directly bring a suit before the people's court.

- If environmental pollution losses result solely from irresistible natural disasters
which cannot be averted even after the prompt adoption of reasonable measures,
the party concerned shall be exempted from liability.421

The limitation period for prosecution with respect to compensation for
environmental pollution losses shall be three years, counted from the time when the party
becomes aware of or should become aware of the pollution losses.422

14.5 ECT requirements under Article 19 ECT

Article 19 ECT stipulates that each Contracting Party shall strive to minimize in an
economically efficient manner harmful environmental impacts within the energy cycle in
its area. The ECT adopts the Polluter Pay principle under which the polluter should in
principle bear the cost of pollution, including trans-boundary pollution with due regard to
the public interest and without distorting investment in the energy cycle or international
trade. The ECT also provides a specific Dispute resolution Mechanism under which (if no
other appropriate international for a exists), at the request of a Contracting Party, disputes
concerning environment aspects shall be reviewed by the Charter Conference aiming at a
solution.

The environmental provision of the ECT is a best-efforts type of obligation, and the
specific diplomatic Dispute resolution Mechanism seems to be politically acceptable for
China. Besides, international obligations on energy efficiency might function as
incentives for domestic reform. In addition, as mentioned before, Chinese domestic
legislation has already codified the Polluter Pays principle.

15. Article 20 - Transparency

15.1 Legislation regulating the publishing of laws and other legal acts

mandates governments at central and local levels to: establish the process for
informational disclosure; formulate guides and catalogues on the information to be
disclosed; and improve the publication of information and systems concerning
performance review, public comments, annual reporting, and accountability. The
Government has identified problems of administrative disclosure including
implementation, comprehensiveness of disclosure, procedural issues, and the balance
between information disclosure and confidential information.424

---

421 Article 41 of the Environmental Protection Law.
422 Ibid, Article 42.
424 Circular of Opinions on Deepening Administrative Disclosure and Strengthening Administrative Service (issued by
The Regulations on Trials in Administrative Litigation Cases Concerning Government Information Disclosure state that the People’s Courts must register litigation claiming that the Government did not provide appropriate information in time in response to the applicant’s request.

### 15.2 Subjects of the publishing

In accordance with the Legislation Law and its relevant regulations, i.e., the Regulations on Procedures for Formulation of Administrative Regulations (State Council Decree 321), and the Regulation on Procedures for Formulation of Departmental Rules (State Council Decree 322), the opinions of relevant authorities, other organizations, and citizens must be solicited when administrative regulations, rules of the State Council ministries and local governments are drafted.

In accordance with the Regulations on Procedures for Enacting Administrative Regulations and the Regulations on Procedures for Enacting Rules, public opinion may be gathered in various forms such as panel discussions, feasibility study meetings, hearings, etc. Chinese authorities have continued organizing experts’ discussions on draft laws and administrative regulations, including with the participation of foreign experts and the representatives of foreign enterprises and international organizations. Any citizens, organs, or other organizations may file appeals with a view to preventing and correcting specific administrative acts that are deemed illegal or improper, within 60 days of the occurrence of the administration action that they believe has damaged their legitimate rights.

Complaints from foreign-invested enterprises are handled by the Complaint Coordination Office for Foreign-invested Enterprises and the National Complaint Centre for Foreign-invested Enterprises, both under MOFCOM. Similar provisions could also be found in the Draft Foreign Investment Law.

The Regulation on the Disclosure of Government Information stipulates the type of information the Government should disclose. An administrative organ shall voluntarily disclose the government information satisfying any of the following basic requirements:

- Information concerning the vital interests of citizens, legal persons or other organizations;
- Information that should be widely known by the general public or concerns the participation of the general public;
- Information reflecting the structural establishment, duties, procedures for handling affairs and other situation of the administrative organ;
- Other information that shall be voluntarily disclosed by the administrative organ as prescribed by laws, regulations and the relevant state provisions.

The people's governments at or above the county level and their departments shall, within their respective scope of duties, determine the specific government information to

---

426 Article 9 of the Regulation on the Disclosure of Government Information.
be voluntarily disclosed and lay stress on the disclosure of the following government information:\footnote{427}

- Administrative regulations, rules and normative documents;
- Development planning for the national economy and social development, special planning, regional planning and the relevant policies;
- Statistical information on the national economy and social development;
- The fiscal budget report and final report;
- The items, charging basis and charging rates of administrative fees;
- The catalogue of centralized government procurement items, including standards and implementation;
- Issues subject to administrative license, the corresponding basis, requirements, quantity, procedures, time limit and list of all the materials that shall be submitted for purposes of administrative license, and the progress of processing;
- Situation on the approval of great construction projects and their implementation;
- Polices and measures for relieving poverty, education, medical care, social security and promoting employment, etc., and their implementation;
- Emergency plans, early warning information and responding situations for unexpected public incidents;
- Situation on the supervision and inspection of environmental protection, public health, safe production, food and drugs and product quality.

The information of the people's governments of the district cities, the county people's governments and their departments, which are on top of the list for disclosure, shall include the following contents:\footnote{428}

- Major issues on urban and rural construction and administration;
- Situation on the construction of social public welfare establishments;
- Situation on the requisition or use of lands, demolition of houses and corresponding compensations, and the grant and use of subsidies;
- Situation on the management, use and distribution of funds for emergency and disasters, funds for giving special care to disabled servicemen and to family members of revolutionary martyrs and servicemen and funds contributed to society.

15.3 Information centres

The website of China’s Legislative Information Network System\footnote{429} under the Legislative Affairs Office of the State Council publishes mainly the Central Government’s trade-related laws and regulations, as well as some trade-related departmental rules by the Central Government agencies, in Chinese and English.\footnote{430} Since 2008, all draft administrative regulations have been published on the website of China’s
Legislative Information Network System for public comments.\footnote{WTO document S/C/M/92, 12 December 2008, para.24.} In accordance with the Legislation Law and its relevant regulations, a 30-day period for public comments for draft laws is provided except in the case of laws that are required to be kept confidential. The recent judicial decisions important and judicial interpretations could be found in the website of Judicial Opinions of China.\footnote{The website of Judicial Opinions of China \url{http://www.court.gov.cn/zgcpwsw/} (accessed 15 August 2015).} The website of the Ministry of Commerce also publishes several laws and regulations in English.

15.4 Designation of the enquiry point for the Treaty purposes

Upon accession to the WTO, China established the enquiry point for WTO/TBT obligations at the Ministry of Commerce. The MOFCOM enquiry point consists of highly qualified personnel and is equipped with advanced office infrastructure, strictly adhering to TBT Committee rule, and sets rules and procedures for daily work. The work done by the WTO enquiry point includes:

- Technical Check of TBT Notifications from China: 59 TBT notifications sent to WTO;
- Receive TBT Notifications from other Members: 500 – 800/year sent by WTO;
- TBT Enquiry Services;
- Comments on TBT Notifications from other WTO Members;
- Popularize significance of the TBT commenting system: organize training courses for export enterprises; organize expertise workshops; and check final wording of comments.

15.5 ECT requirements under Article 20

Article 20 ECT requires that laws, regulations, judicial decisions and administrative rulings of general application which affect trade in energy materials and products are among measures subject to the transparency disciplines of GATT and relevant instruments as well as, inter alia, investment-related matters covered. Contracting Parties shall publish the above promptly, in such a manner as to enable Contracting Parties and investors to become acquainted with them. The transparency requirement also extends to any other area covered by the ECT such as investment or energy transit. However, a Contracting Party does not need to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest, or would prejudice the legitimate commercial interests of any Investor. The transparency requirement under the ECT is in conformity with the WTO Regime and Chinese domestic legislation.

There is a trend of incorporation of transparency provisions in China’s BITs. In the China-Australia BIT (1998), each Contracting Party is required to make public and readily accessible relevant laws and policies that pertain to or affect investments in the territory of nationals of the other Contracting Party and, if requested, consult with and provide copies of specified laws and policies to the other Contracting Party.\footnote{Article 6 of the China-Australia BIT (1998).} The China-Latvia BIT (2004) further specifies that each Contracting Party shall promptly publish or otherwise make publicly available its laws, regulations, administrative rulings
and judicial decisions of general application as well as international agreements which may affect the investment of investors of the other Contracting Party in the territory of the former Contracting Party.\footnote{Article 10 of the China-Latvia BIT (2004).} The transparency Provisions of the China-Latvia BIT also incorporate a subparagraph to clarify the relationship of the obligation of transparency provision with confidential information concerning investor or investment, the disclosure of which would impede law enforcement or be contrary to its law protecting confidentiality. The China-Canada BIT (2012) emphasizes the importance of information on admission, registration and approval procedures, requiring each Contracting Party to ensure that its laws, regulations and policies pertaining to the conditions of admission of investments, including procedures for application and registration, criteria used for assessment and approval, timelines for processing an application and rendering a decision, and review or appeal procedures of a decision, are administered in a manner that enables investors of the other Contracting Party to become acquainted with them.\footnote{Article 17(2) of the China-Canada BIT (2012).}

The China-Japan-South Korean BIT (2012) provides the most detailed and comprehensive transparency provision so far in Chinese BITs, covering issues of scope, promptness, the interval between new laws and old ones, responding to requests, publication of laws in accordance with a country’s laws and regulations, and an exemption clause.\footnote{Article 10 of the China-Japan-South Korean BIT (2012): 1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party and which pertain to or affect investment activities. The Government of each Party shall make easily available to the public, the names and addresses of the competent authorities responsible for such laws, regulations, administrative procedures and administrative rulings. 2. When a Party introduces or changes its laws or regulations that significantly affect the implementation and operation of this Chapter, the Party shall endeavor to provide a reasonable interval between the time when such laws or regulations are published or made publicly available and the time when they enter into force, except for those laws or regulations involving national security, foreign exchange rates or monetary policies and other laws or regulations the publication of which would impede law enforcement. 3. Each Party shall, on the request by the other Party, within a reasonable period of time and through existing bilateral channels, respond to specific questions from, and provide information to, the latter Party with respect to any actual or proposed measure of the former Party, which might materially affect the interests of the latter Party and its investors under this Chapter. 4. Each Party shall, in accordance with its laws and regulations: (a) make public in advance regulations of general application that affect any matter covered by this Chapter; and (b) provide a reasonable opportunity for comments by the public for those regulations related to investment and give consideration to those comments before adoption of such regulations. 5. The provisions of this Article shall not be construed so as to oblige any Party to disclose confidential information, the disclosure of which: (a) would impede law enforcement; (b) would be contrary to the public interest; or (c) could prejudice privacy or legitimate commercial interests.} It is therefore reasonable to conclude that in terms of extent of obligations, the China-Japan-South Korean BIT (2012) outweighs those of the ECT.

Since the ECT covers trade, investment, transit, competition, taxation and other energy related issues, MOFCOM and NEA are both ideal forums for ECT enquiries. The
structure and working procedures could be based on the experience of WTO enquiry point.

16. Article 21 - Taxation

16.1 Legal framework on taxation

During the last two decades China has established a fiscal management system compatible with the principles of a market economy. The relevant legislation includes: the Enterprise Income Tax Law, the Individual Income Tax Law, the Audit Law, the Law on Anti-money Laundering and the Administrative Measures on the General Anti-Avoidance Rule (Trial). With respect to fiscal revenue, a taxation system with a value-added tax as the main element had been established since the taxation reform of 1994.

The 2008 Enterprise Income Tax Law applies to both domestic and foreign-invested enterprises, generally at the same rate, with special rates applying in certain cases. In addition China levies a number of turnover taxes, such as value added tax, business tax, consumption tax and customs duties. There is also a resource tax, land appreciation tax, social security contributions, stamp duty, etc. China does not levy branch profits tax, excess profits tax or an alternative minimum tax.

China’s VAT and BT systems currently are in transition. The pilot VAT reform program launched in Shanghai in 2012 and expanded nationwide in 2013 aims to transition service industries from liability to BT to liability to VAT. The pilot program initially applied to the non-railway transportation industry and certain modern service sectors. The goals of the pilot are to eliminate double taxation issues arising under the prevailing indirect tax system.

Tax law and policy are developed jointly by the State Administration of Taxation (SAT) and the Ministry of Finance. The SAT is the body charged with collecting tax and enforcing compliance. It is assisted by the state and local tax bureaus at the provincial level and below. Each locality in China has a state tax bureau under the SAT and a local tax bureau under both the SAT and the local government. The SAT and state tax bureau are mainly responsible for the collection and administration of taxes that generate revenue for the central government or revenue that is shared between the central and local governments. For an overview of taxes in China, please refer to Annex 16.1 Taxes in China.

Central-Local Government Income Allocation System

The levy is shared by the central and local governments in China. The funds used for VAT export rebates should be paid from the central treasury uniformly, the local income affected by such exemptions and offsets should be transferred to the local treasury from the central treasury in full, and the portions to be shared by the local governments should be settled and handed over to the central government at the end of each year. In 2012, the

Ministry of Finance, the State Administration of Taxation and the People’s Bank of China jointly amended the *Measures for the Allocation of the Income Tax paid by Enterprises with Headquarters and Subsidiaries (Branches) in Different Provinces and Municipalities.*

16.2 Taxation of corporations

**Taxable income and rates**

Corporate income tax is imposed on the worldwide income of a resident enterprise, while a non-resident enterprise is subject to tax on China-source income and income effectively connected with an establishment in China. A company is deemed to be resident in China if it is established in China or its effective management is in China. Effective management is defined as substantial and overall management and control over manufacturing and business operation, human resources, and financial and property aspects of the entity. The definition of establishment is broad and does not include an exemption for an independent agent. If a foreign company has an establishment in China, it will be subject to Chinese taxation on all income effectively connected with that establishment. Investors from the Hong Kong SAR and Macao SAR are taxed as non-residents provided such investors are not effectively managed from mainland China. The normal corporate income tax rate is 25%. Special rates apply to small and thin-profit enterprises (20%) and state-encouraged new high-technology enterprises (15%).

The taxable income of a company is the amount remaining from its gross income in a tax year, after the deduction of allowable expenses and losses. All documented costs related to the generation of taxable income are deductible unless the law specially provides otherwise. Business-related interest is deductible if the amount is reasonable, but is subject to restrictions under the thin capitalization rules. Non-deductible items include mainly the following: dividends and other distributions with respect to equity interests paid to investors; management fees; late payment surcharges and fines incurred on various tax payments; fines for unlawful operations and losses sustained as a result of the confiscation of property; unverified provisions; and certain donations and sponsorship fees.

**Capital gains taxation**

There is no separate capital gains tax; capital gains and losses of companies generally are combined with other operating income and taxed at the normal enterprise income tax rate. Gains on real property, net of development costs, are subject to the land appreciation tax.

**Double taxation relief**

If a resident entity receives income from a country that has not concluded a tax treaty with China, the resident is entitled to a tax credit for foreign income tax actually

---

paid. The foreign tax may be credited against Chinese tax on the same profits, but the credit is limited to that amount of payable Chinese tax on the foreign income.

**Tax treaties**

As showed in Annex 16.2, China has a broad tax treaty network, the aim of which is to eliminate double taxation and to provide for reduced rates of withholding tax on dividends, interest and royalties. Most of China’s tax treaties are based on the OECD model treaty, providing for relief from double taxation on all types of income, limiting the taxation by one country of companies resident in the other and protecting companies resided in one country from discriminatory taxation in the other.

**Value added tax**

VAT is a national tax, with a single rate imposed regardless of the location of the VAT payer. Chinese VAT generally is levied on any person engaged in the sale of goods or the provision of processing, repair or replacement services within China, as well on the importation of goods into China. There are two types of VAT payers: general payers and small-scale payers (entities engaged in manufacturing or providing VAT-taxable with sales not exceeding RMB 0.5 million per year, and firms engaged in wholesale retail trade with sales not exceeding RMB 0.8 million per year).

The VAT rate for a general VAT payer is 17%, which is applicable to the provision of processing, repair or replacement services and the value of products at importation. A reduced rate of 13% applies to certain food, goods, books and utilities. Rates of 6% and 11% apply to general VAT payers for non-services. Small-scale VAT payers pay VAT at a rate of 3%, but there is no import VAT credit.

**Business Tax (BT)**

The BT used to be a turnover tax imposed on the sale of immovable property, and on sales of intangible goods and certain services subject to VAT. Under the VAT reform program, various industries are in transition from BT to VAT. BT is collected by the local tax bureau and remitted to the local government. Tax payable generally should be filed each calendar month, and submitted before the 15th day of the following month. A 3% rate applies to the provision of construction services, cultural and athletic activities, while a 5% rate applies to services, interest, the sale of land use right and immovable property.

**Consumption tax**

Consumption tax applies to prescribed nonessential, luxury, or resource-intensive goods. It mainly affects companies involved in producing or importing these goods. The tax is calculated based on the sales value of the goods, the sales volume or a combination of the two. The proportional consumption tax rate is from 1 to 56% on the sales revenue of the goods.

**City maintenance and construction tax / education surcharge**

The city maintenance and construction tax and national education surcharge apply to entities and individuals who are subject to VAT, BT or consumption tax. FIEs, foreign
enterprises and foreign individuals were exempt from the surcharges before 1 December 2010. The two surcharges are calculated as a percentage of the VAT, BT and consumption tax due.

16.3 Taxation of foreign corporations

A Chinese resident shareholder may be taxed on their proportionate share of undistributed profits of Controlled Foreign Companies (CFCs) located in certain low tax jurisdictions where there are no valid business reasons for the decision not to distribute the profits. A CFC is defined as a non-Chinese company controlled by Chinese tax residents (both companies and individuals, each of which must hold 10% or greater voting shares and jointly own 50% or more of the shares) through direct or indirect share ownership. To be a CFC, the company must be incorporated in a country or region where the effective tax rate is 50% or less than China’s statutory EIT rate.

A Chinese resident enterprise is required to file an annual reporting form on overseas investment along with its annual tax return. The competent tax authorities will issue a confirmation notice where a CFC is identified based on a review of the reporting information.

16.4 Taxation of shareholders

Personal income tax is levied on both Chinese and foreign individuals, albeit with varying allowances. Expatriate employees of FIEs, resident representatives of foreign business and other individuals who hold residence permits normally must register with the tax authorities if subject to individual income tax in China.

China-domiciled individuals are subject to individual income tax on their worldwide income; non-domiciled individuals are subject to tax depending on the source of income. Taxable income comprises employment income, production and business income, income derived from contracting for, or leasing operations of, enterprises or institutions, dividends and bonuses, interest income, royalty income, contingency income and other income specified by the finance department of the State Council.

Tax rates can be progressive or flat. Seven progressive tax rates, ranging between 3 and 45%, are levied on wages and salaries. Tax is withheld by the employer each month and paid to the tax authorities. The same progressive rate schedule applies to both Chinese citizens and foreigners. Dividends, interest, royalties, income from leasing of property, income from transfer or assignment of property and contingency income are taxed at 20%. Individual income tax is collected generally via withholding at source. If Chinese sourced income is not covered by the withholding procedure, the individual must file a return.

Dividends

A 10% withholding tax on dividends paid to a non-resident company was introduced in 2008; dividends paid by a Chinese company with at least 25% foreign participation were exempt. It should be noted, however, that dividends paid out of pre-2008 earnings continue to be exempt from withholding tax. The 10% withholding tax may be reduced under an applicable tax treaty.
**Interest**

Interest generally is subject to a 10% withholding tax unless the rate is reduced under a tax treaty. Interest from certain loans made to the Chinese government or state banks is exempt. A 5% BT also applies to interest payments.

**Royalties**

The withholding tax rate on royalties and fees arising from the licensing of trademarks, copyrights and know-how as well as related technical service fees is generally 10%. Royalties are usually subject to a 6% VAT, except for payments made in connection with the use of technology, where an exemption may be granted.

**Wage tax / social security contributions**

The employer must withhold individual tax on behalf of the employee and remit the correct amount to the tax authority.

The employer must contribute approximately 20% of basic payroll to the state-administered retirement scheme. The employer also must contribute to a medical insurance fund, maternity insurance, unemployment insurance and work-related injury insurance. The total employer contribution can be up to about 40% of the employee’s base monthly salary, although the rates can vary across the country. The employee is required to contribute a certain percentage of the monthly salary to the above funds, subject to a threshold set by the local authorities.

Foreign individuals legally working in China (including both locally hired individuals and those seconded from abroad to work in China) are required to participate in the same social security scheme as described above, unless an exemption is provided under an applicable bilateral social security totalization agreement. However, enforcement may vary in different cities.

**16.5 Other indirect taxes for energy**

The natural resource tax is levied on enterprises and individuals engaged in the exploitation of mineral products or the production or sale within territory of and waters under the jurisdiction of China. A nationwide reform of the resource tax was launched in 2011, changing the tax basis from volume to selling price for certain categories of taxable resources, i.e. crude oil and natural gas. For most other taxable resources, the tax still is calculated based on the volume of products sold or self-used, at revised tax rates. The resource tax is payable to local authorities at the place of production or exploitation.

The legal regime for energy tax and compensation consists of the *Provisional Regulations on Resource Tax* (State Council, amended in 2011); the *Notice of the State Council on Implementing the Price and Tax Reform of Refined Oil* (No. 37 [2008]); the *Decision of the State Council on the Collect of Special Petroleum Proceeds* (No. 13 [2006]); and the *Measures for the Administration of the Collection of Special Petroleum Proceeds* (Ministry of Finance, on 25 March 2006).

---


16.6 Tax treaties

By the end of 2014, China has signed 99 treaties for the avoidance of double taxation; of which 97 treaties have come into force. China signed the *Convention on Mutual Administrative Assistance in Tax Matters* on 27 August 2013. For a list of relevant taxation treaties to which China is a party, please refer to Annex 16.2 Avoidance of Double Taxation Treaty\(^\text{442}\) and Annex 16.3 Exchange of Tax Information Treaty.

16.7 Accounting system

Accountancy is regulated by the *Accounting Law*\(^\text{443}\) and the *Law on Certified Public Accountants* (CPA).\(^\text{444}\) The national CPA qualification—obtained through a national examination—is required in order to provide auditing services. Holders of the national CPA examination who have been engaged in auditing services in China for more than two years can register as CPAs. Foreigners are accorded national treatment in regard to the issuance of a Chinese CPA certificate based on the principle of reciprocity. According to the *Interim Measures for the Examination, Approval and Supervision of Accounting Firms* (Order No.24 of the Ministry of Finance), any Chinese certified public accountant may apply to establish a partnership accounting firm or a limited liability accounting firm.

Under the *Law on Certified Public Accountants*, public accounting firms may undertake statutory audit services of certified public accountants, including examining companies’ statements of accounts and producing audit reports; producing capital certification reports; and audit services in regard to mergers, divisions or liquidations. With permission from the Ministry of Finance, foreign public accounting firms can establish resident representative offices and undertake professional services temporarily in China, but they may not undertake statutory audit service of certified public accounts.

According to the *Provisional Regulations on Resident Offices of Overseas Public Accounting Firms*, the business scope of resident offices of foreign public accounting firms includes providing accounting, tax, and other services to foreign clients that invest or do business in China and providing information on international taxation and other consulting services to Chinese clients.

Under the *Company Law* and relevant regulations, companies are required to prepare financial statements at each calendar year-end and be audited by a certified public accounting firm registered in China. Audited financial statements regularly are required for annual enterprise income tax settlement with the relevant tax authorities. FIEs may prepare financial statements in accordance with other accounting standards or in other languages for global consolidation purposes. However, Chinese authorities will only recognize and accept accounts in Chinese that are prepared based on Chinese accounting standards.


Chinese Accounting Standards for Business Enterprises become mandatory for listed Chinese Enterprises as from 1 January 2007. Other Chinese enterprises are encouraged to apply the Accounting Standards for Business Enterprises (ASBEs), which are substantially in line with IFRs, except for certain modifications that reflect China’s circumstances and environment. China is committed to convergence with International Financial Reporting Standards (IFRs). Other relevant legislation concerning the accounting system in China includes: The Audit Law and the Regulation for the Implementation of Audit law.

16.8 ECT requirements under Article 21

Article 21 ECT includes a Taxation clause, stipulating that nothing in the ECT shall create rights or impose obligations with respect to taxation measures, while article 7(3) (transit), article 10(2) and (7) (NT MFN in investment), article 13 (Expropriation), and article 26 (ISDS) and article 27 (G2G) may apply to some taxation measures (excluding those on income or on capital). The investor may submit some taxation disputes to an international arbitral tribunal provided that the investor has first submitted the dispute to the competent tax authority. The international arbitral tribunal may take into account any conclusions arrived at by competent tax authorities.

The taxation exception clause could be found in recent Chinese IIAs. For example, the China-Japan-South Korean BIT (2012) specifies in Article 21 (taxation) that Article 11 (expropriation and compensation) and Article 15 (ISDS) should be applicable to taxation measures. There is also a joint determination clause as a prerequisite for ISDS proceedings in the China-Japan-South Korean BIT (2012).

17. Article 22 - State and privileged enterprises

17.1 State (public) enterprises according to energy sub-sectors

State-owned enterprises have been reformed by a clear definition of property rights and responsibilities, a clear separation of government from enterprise, and scientific management. A modern enterprise system has been created for the state-owned sector, and the latter is gradually getting on the track of growth through independent operation, responsible for its own profits and losses. Financial policy has been separated from commercial operations of the central bank, which now focuses on financial regulation and supervision. The market now plays a much more significant role in boosting supply and meeting demand.

In May 2010, the State Council promulgated Several Opinions on Encouraging and Guiding the Healthy Development of Private Investment and specifically proposed that private capital would be encouraged to enter industries and sectors that were not explicitly prohibited by laws, regulations and rules.

China’s state-owned enterprises have integrated themselves into the market economy. In natural monopoly industries in which state-owned enterprises continue to be the controlling shareholder, China will carry out reform focusing on separation of
government administration from enterprise management, separation of government administration from state assets management, franchise operation, and government oversight, and will separate networks from operations and decontrol competitive business based on the characteristics of different industries. China has gradually allowed non-state capital to participate in a number of projects in areas such as banking, petroleum, electric power, railway, telecommunication, resource exploitation and public utilities. As of 2013, the number of state-owned enterprises for which the State-Owned Assets Supervision and Administration Commission of the State Council performed the responsibility of an investor was 113.\(^{445}\)

Since 1998, about 33,000 small coal mines have been closed, as the central government decided to focus its attention on the control of large mines while local governments implemented plans for energy conversion from coal to natural gas. Production of coal in 2000 reached 951 million tons, 55 of which was achieved by the major state-owned coal mines. Since that year, the 520 state-owned coal mines have been merging into less than 10 major conglomerates, while most of the 50,000 small-scale and inefficient ones have been closed.\(^{446}\)

In 1998, China reformed the petroleum industry to separate regulatory and administrative functions from ownership and operation. Most state-owned oil and gas assets were reorganized into two vertically integrated firms, the China National Petroleum Corporation (CNPC) and the China Petrochemical Corporation (Sinopec). Before restructuring, CNPC was engaged mainly in oil and gas exploration and production, while Sinopec was engaged in refining and distribution. This reorganization created two regionally focused firms, CNPC in the north and the west, and Sinopec in the south, although CNPC is still tilted towards crude oil production and Sinopec towards refining. Other major state sector firms in China include the China National Offshore Oil Corporation (CNOOC), which handles offshore exploration and production, and accounts for more than 10% of China’s domestic crude production; and China National Star Petroleum, created in 1997. Regulatory oversight of the industry is now under the responsibility of the State Energy Administration (SEA), which was created in early 2003.\(^{447}\)

The national authorities are in the early stages of formulating a fundamental long-term restructuring of their electric power sector, embodied in the National Power Industry Framework Reform Plan (Dianli tizhi gaige fangan) promulgated by the State Council in April 2002. The State Power Corporation (SPC) divested most of its generating assets and was split into 11 regional transmission and distribution companies in December 2002.

17.2 Legally protected monopolies on national, regional or municipality levels

In accordance with the Anti-Monopoly Law, with respect to the industries controlled by the state-owned economy and concerning the lifeline of the national economy and

\(^{445}\) Juan Antonio Fernandez & Leila Fernandez-Stembridge, China’s State-Owned Enterprise Reform (Routledge 2007), 113.

\(^{446}\) Ibid, at 114.

\(^{447}\) WTO working party report, Para.70.
national security or the industries lawfully enjoying exclusive production and sales, the State shall protect these lawful business operations and shall supervise and control them and the prices of the commodities and services provided by these business operators, so as to protect the consumer interests and facilitate technological advancement. The business operators mentioned in the previous paragraph shall operate according to law, be honest, faithful and strictly self-disciplined, and accept public supervision, and shall not harm consumer interests by taking advantage of their controlling or exclusive dealing position.448

According to the Law on the State-Owned Assets of Enterprise (in force since 1 May 2009) the state shall take measures to promote the centralization of state-owned capital to the important industries and key fields that have bearings on the national economic lifeline and state security, optimize the layout and structure of the state-owned economy, promote the reform and development of state-owned enterprises, improve the overall quality of the state-owned economy, and strengthen the control force and influence of the state-owned economy.449

Construction and operation of infrastructure and public utilities is under a franchise regime. According to the Measures for the Administration on Franchising of Infrastructure and Public Utilities (effective as of 1 June 2015), the Government chooses the investors or managers for municipal public utilities through a market competition mechanism in accordance with the relevant laws and regulations, clarifying that they may deal in certain products of municipal public utilities or provide certain services within a certain period of time and scope. Areas covered include the energy sector, public transportation, water supply, environment protection and other public utilities. The bidders taking part in the competitive bidding of franchise rights shall meet the following requirements: 1) Being a legally registered enterprise legal person; 2) Having corresponding registered capital and establishments or equipment; 3) Having good bank credit, financial status and corresponding debt repayment capabilities; 4) Having corresponding practicing experiences and outstanding achievements; 5) Having corresponding number of employees in such key posts as technology, finance and management, etc.; 6) Having practical and feasible management plans; and 7) Having other conditions as prescribed in the local rules and regulations.

On 18 November 2014 the State Council issued the Catalogue of Investment Projects Approved by the Government (2014 Version) (hereinafter the "New Catalogue") amending the Catalogue by the same name promulgated on 2 December 2013. In an explanation of the changes made, an official at the NDRC highlighted three types of changes to the system of approvals, recording filing and supervision for investments: (1) the cancellation of certain approval requirements, (2) the delegation of certain approvals, and (3) the enhancement of supervision.

Investment in 15 areas, including steel, non-ferrous metals, fertilizer, vessels, urban water supply and other urban infrastructure is no longer subject to any approval. Instead, investments in these areas need only be filed for the record. Additionally, approval for investment in 23 areas has been delegated to the provincial or local governments. These

448 Article 7 of the Anti-Monopoly Law.
449 Article 7 of the Law on the State-Owned Assets of Enterprise.
areas include heat power stations, thermal power stations, pump-storage power stations, new ports, general airports, the expansion of airports for military and civil uses, the expansion of oil refinery projects, the exploration of iron mines, new ethylene projects, and so on.

The New Catalogue emphasized the importance of supervision both during and after the development of a project, and strengthened the coordination of supervision among various departments. In particular, the New Catalogue stated that the Environmental Protection Agency should categorize all projects as either high or low polluting and subject the high polluting projects to stricter examination and approval procedures. In addition, all departments shall accelerate the development of an online platform for approval and supervision which will enable them to share information and further collaborate. Thus, except for projects involving sensitive countries and regions or sensitive industries, outbound investments need only file for the record with the competent department of investment under the State Council instead of seeking the department’s approval.

17.3 Legal basis and the prerequisites for the establishment of state or privileged enterprises; nationality or control requirements

In accordance with the Regulation on the Transformation of Operational Mechanism of the Industrial Enterprises Owned by the Whole People (promulgated on 13 April 1988), the establishment of a state-owned enterprise must conform to the law and the relevant provisions of the State Council, and the application for the establishment must be submitted to the government or the competent department of the government for examination and approval. The enterprise shall obtain the status of a legal person after it is approved by, registers itself with and receives a business license from the administrative authorities for industry and commerce and shall carry out its productive and operational activities within the approved and registered scope of operation. The merger of such enterprises or the division of an enterprise shall be subject to approval by the government or the competent department of the government in accordance with the provisions of the laws and administrative rules and regulations.

A state-owned enterprise must meet the following qualifications for its establishment in Article 17:

(1) Its products are needed by society;

(2) It has access to the required energy sources, raw and processed materials, and communication and transportation facilities;

(3) It possesses a name of its own and premises for production and operation;

(4) It possesses funds in conformity with state provisions;

(5) It possesses its own organizational structure;

450 Article 16 of the Regulation on the Transformation of Operational Mechanism of the Industrial Enterprises Owned by the Whole People.
451 Ibid, Article 18.
452 Ibid, Article 17.
(6) It has a definite scope of operation; and
(6) Other qualifications as provided by laws and regulations.

The State Council and the local people's governments shall, in accordance with laws and administrative regulations, perform respectively the contributor's functions for state-invested enterprises and enjoy the contributor's rights and interests on behalf of the state. The State Council shall, on behalf of the state, perform the contributor's functions for the large-sized state-invested enterprises that have bearings on the national economic lifeline and state security determined by the State Council and the state-invested enterprises in such fields as important infrastructures and natural resources. The local people's governments shall, on behalf of the state, perform the contributor's functions for other state-invested enterprises. The State Council and the local people's governments shall, according to law, perform the contributor's functions, based on the principles of separation of government bodies and enterprises, separation of the administrative functions of public affairs and the functions of the state-owned assets contributor, and non-intervention in the legitimate and independent business operations of enterprises.

The state-owned assets supervision and administration commission of the State Council performs the contributor's function in state-owned enterprises. The state-owned assets and administration commissions suggest the appointment or removal of the following personnel of a state-invested enterprise: 1) appointing and removing the president, vice-presidents, person in charge of finance and other senior managers of a wholly state-owned enterprise; 2) appointing and removing the chairman and vice-chairmen of the board of directors, directors, chairman of the board of supervisors, and supervisors of a wholly state-owned company; and 3) Proposing the director and supervisor candidates to the shareholders' meeting or general assembly of shareholders of a company in which the state has a stake, whether controlling or non-controlling. The directors and supervisors of a state-invested enterprise who shall be employee representatives are elected democratically by employees according to the relevant laws and administrative regulations.

17.4 ECT requirements under Article 22

Article 22 ECT requires a Contracting Party to ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party's obligations under Part III of the Treaty. No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party's obligations under other provisions of the Treaty. If entrusted with any regulatory, administrative or other governmental authority, the state enterprise shall exercise that authority in a manner consistent with the obligations of the Contracting Party under the ECT. In short, Article 22 ECT requires the state enterprise to conduct in a

---

453 Article 4 of the Law on the State-Owned Assets of Enterprise.
454 Ibid, Article 6.
455 Ibid, Article 22.
manner consistent with the ECT obligations regardless whether the state enterprise has been entrusted any governmental authority or not. The ECT does not make direct reference to internal governance structure of SOE and CPC's involvement in SOEs.

The requirements contained in Article 22 ECT are compatible with Chinese internal policy as showed by the 2011 Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities, which requests Central SOEs to set an example in legal and honest business operations, complying with all laws and international treaties and resource saving and environment protection measures.\(^{456}\)

18. **Article 23 - Observance by sub-national authorities**

18.1 **Competence of sub-national authorities (governments)**

The Constitution provides that all levels of administration are subordinated to the State Council. Where the division of responsibilities between the central and local governments is not clear, delegation from the central executive is the most common manner of policy implementation.

In accordance with the Constitution and the Legislation Law, the National People's Congress (NPC) is the highest organ of state power. NPC and its permanent body, the Standing Committee, exercise the legislative power of the State. The legislation adopted by the NPC or its Standing Committee is promulgated by the President, who does not have the power to veto it.

The State Council is the highest executive body and is entrusted with the power to formulate administrative regulations. The ministries, commissions and other competent departments (collectively referred to as "departments") of the State Council can issue departmental rules within the jurisdiction of their respective departments and in accordance with the laws and administrative regulations.

The provincial people's congresses and their standing committees adopt local regulations. NPC and its Standing Committee have the power to annul administrative regulations that contradict the Constitution and laws, as well as the local regulations that contradict the Constitution, laws and administrative regulations. The State Council has the power to annul departmental rules and local government rules that are inconsistent with the Constitution, laws or administrative regulations.

Regarding Special Administrative Regions, the Basic Law of the Hong Kong Special Administrative Region (Order No. 26 of the President of the PRC of 4 April 1990, and effective as of 1 July 1997) outlines the basic framework of relations between Central Government and Local Governments of the Special Administrative Region (SAR). The NPC authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including

that of final adjudication, in accordance with the provisions of this Law. The Hong Kong SAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.

The Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong SAR but authorizes the Hong Kong SAR to conduct relevant external affairs on its own in accordance with the Law. Accordingly, the Hong Kong SAR may, on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

The question of application to the Hong Kong SAR of international agreements to which the PRC is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Region, and after seeking the views of the government of the Region. International agreements to which the PRC is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong SAR.

The Central People's Government shall, as necessary, authorize or assist the government of the SAR to make appropriate arrangements for the application to the Region of other relevant international agreements. Similar arrangements apply to the Macao SAR. For example, according to the 2008 China-Mexico BIT, “the Governments of Hong Kong and Macao Special Administrative Regions authorized by the Central Government of the PRC, can separately negotiate and sign the Agreement on the Promotion and Reciprocal Protection of Investments with the Government of the United Mexican States by themselves.”

As another special regional arrangement, the Law on Regional National Autonomy (promulgated by Order No.13 of the President on 31 May 1984, and effective as of 1 October 1984) stipulates the status of ethnic minority autonomous regions. Different from special administrative region, governments of regional national autonomy cannot enter into any international agreements.

The organs of self-government of national autonomous areas shall exercise the functions and powers of local organs of the state, as specified in Section 5 of Chapter III of the Constitution. At the same time, they shall exercise the power of autonomy within the limits of their authority as prescribed by the Constitution, by this law and other laws, and implement the laws and policies of the state in the light of existing local conditions. The organs of self-government of national autonomous areas must uphold the unity of the country and guarantee that the Constitution and other laws are observed.

Footnotes:

457 Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, Article 2.
458 Ibid, Article 12.
460 Ibid, Article 151.
461 Ibid, Article 153.
463 Article 4 of the Law on Regional National Autonomy.
and implemented in these areas. The people's congresses of national autonomous areas shall have the power to enact regulations on the exercise of autonomy and separate regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned. The regulations on the exercise of autonomy and separate regulations of autonomous regions shall be submitted to the Standing Committee of the NPC for approval before they go into effect.

China’s Domestic Pilot Free Trade Zone is an experimental project of further deepening liberalization. It is hardly possible that the liberalizing measures adopted by pilot free trade zone would be inconsistent with obligations of the ECT.

18.2 Enactment of international treaties at sub-national levels

The Constitution prevails over any other legislation. It is followed by laws, administrative regulations (issued by the State Council), local regulations (enacted by the NPC and its Standing Committee at the following level: provincial, autonomous region, municipal directly under the central government, comparatively larger city, or municipal in that order), ministerial administrative rules (enacted by ministries or departments exclusively at the Central Government level) and local rules (enacted by the People’s Government at the provincial, autonomous region and municipal levels directly under the Central Governments).

Laws are passed, amended and enacted by the NPC and its Standing Committee. The Standing Committee of the NPC passes and amends legislation other than the laws that must be enacted by the NPC which generally includes most of the trade or customs related legislations. The State Council promulgates administrative national regulations, which are signed normally by the Premier and published through an Order or Decree of the State Council.

For the implementation of laws, regulations, and national policies, the People’s Congress and its Standing Committee at the provincial, autonomous region, municipal directly under the Central Government and large city levels may enact local regulations with effect within their local administrative territories. Local regulations may vary across regions, reflecting the different local features and interests. Special economic zones may also develop regulation that can be applied in their jurisdictions. The Legal Affairs Office of the State Council reviews local regulations and rules to ensure policy coherence that the Constitution and other relevant statutes clarify that local regulation must yield to regulations of higher status.

According to the Constitution and the Law on the Procedures of Conclusion of Treaties, the WTO Agreement falls within the category of "important international agreements" subject to the ratification by the Standing Committee of the NPC. China would ensure that its laws and regulations pertaining to or affecting trade were in conformity with the WTO Agreement and with its commitments so as to fully perform its international obligations. For this purpose, China systematically revised its relevant domestic laws. Therefore, the WTO Agreement would be implemented by China in an

---

464 Ibid, Article 5.
465 Ibid, Article 19.
effective and uniform manner through revising its existing domestic laws and enacting new ones fully in compliance with the WTO Agreement.

Local regulations, rules and other measures are issued by local governments at the provincial, city and county levels acting within their respective constitutional powers and functions and applied at their corresponding local level. However, sub-national governments have no autonomous authority over issues of trade policy to the extent that they are related to the WTO Agreement and the Protocol.

18.3 General measures for ensuring the observance at sub-national levels

International law is enforced in China primarily through transformation, rather than through direct application. Normally, laying down new laws or revising existing laws is the main approach of enforcing international obligations.

Upon accession to the WTO, China has established an annual monitoring report of observance of international obligations. In the WTO, the representative of China stated that sub-national governments had no autonomous authority over issues of trade policy to the extent that they were related to the WTO Agreement and the Draft Protocol. The representative of China confirmed that China would in a timely manner annul local regulations, government rules and other local measures that were inconsistent with China's obligations.\(^\text{466}\) The representative of China also confirmed that the provisions of the WTO Agreement, including the Protocol, would be applied uniformly throughout its customs territory, including in SEZs and other areas where special regimes for tariffs, taxes and regulations were established and at all levels of government.\(^\text{467}\) The representative of China further stated that local regulations, rules and other measures were issued by local governments at the provincial, city and county levels acting within their respective constitutional powers and functions and applied at their corresponding local level.

18.4 ECT requirements under Article 23

Article 23 ECT requires Contracting Parties to take reasonable measures to ensure the observance of the ECT by their regional and local governments. Any breach of the ECT by measures of governments or authorities at any levels may trigger the dispute settlement mechanisms provided by the ECT. Article 23 aims at securing observance of local governments with the ECT obligations, without imposing any additional obligation on the Contracting Parties.

China is a unitary state. Sub-national governments have no autonomous authority over issues of trade policy. In the Draft Foreign Investment Law (2015), departments of the State Council responsible for supervision and inspection work concerning foreign investment guide and monitor, according to the need for organization, the competent departments of local governments to carry out the inspection work.

Similar obligations are also contained in recent BITs signed by China. As an example, the China-Canada BIT (2012) requires that “each Contracting Party shall take

---

\(^\text{466}\) WTO working party report, Para.71.
\(^\text{467}\) Ibid, Para.73.
all necessary measures in order to ensure observance of the provisions of this Agreement by provincial governments”. 468

19. Article 26 - State to Investor disputes

19.1 Requirements for listing in Annex ID

Annex ID to the ECT lists Contracting Parties not allowing an investor to resubmit a dispute, which has been previously submitted by the investor to the courts or administrative tribunals of the Contracting Party, to international arbitration at a later stage.

Article 26 ECT allows the foreign investor to submit the dispute to any of the following dispute settlement mechanisms, namely (i) local courts or administrative tribunals of the Contracting Party that is a party to the dispute, (ii) any mechanism previously agreed by the disputing parties, and (iii) international conciliation and arbitration.

It may happen that the investor first submits a dispute to local court and gets an unsatisfying court judgement, and then tries to resubmit the same dispute to international arbitration for the purpose of getting a more satisfying decision. The resubmission may accidentally place the international arbitration as a sort of “appealing” forum, which may be considered by some Contracting Party as an infringement to the principle of sovereignty.

To relieve such concerns, Article 26.3.b.i states that a Contracting Party listed in Annex ID does not give its unconditional consent to the submission of a dispute to international arbitration or conciliation where the investor has previously submitted the dispute to the local courts or to any previously agreed dispute settlement mechanism. The Annex is a typical ‘Fork in the Road’ clause under which an investor’s choice of dispute settlement mechanism is final, reducing the risk of overlap between international arbitration and domestic courts. States listed in Annex ID shall provide a written statement of its policies, practices and conditions in this regard to the Secretariat. In their communication some states allow investors to start international arbitration as far as they withdraw from existing local proceedings before there is a final decision.

19.2 Policies, practices and conditions not allowing an investor to resubmit the same dispute to international arbitration at a later stage

China’s policy concerning investors’ resubmission of a dispute is mixed. Some national legislation provides that some disputes should be exclusively submitted to domestic court unless disputing parties agree otherwise. Under Article 26 of the Regulations concerning the Exploitation of On-Shore Petroleum Resources in Cooperation with Foreign Enterprise (2011 amendment), any dispute between the parties to a contract for the cooperative exploitation of on-shore petroleum resources that arises

468 Article 2 of the China-Canada BIT (2012).
from the implementation of the contract shall be resolved through consultations or mediation. If the parties are not willing to resolve the dispute through consultations or mediation, or if consultation or mediation is unsuccessful, the dispute may be submitted for arbitration by a Chinese arbitration institution or another arbitration institution in accordance with the arbitration clause in the contract or a written arbitration agreement entered into subsequently. If the parties have neither included an arbitration clause in their contract nor reached a subsequent written arbitration agreement, proceedings may be instituted in a People's Court of China. Likewise, the dispute settlement mechanisms for offshore petroleum exploitation allows investors to submit dispute to arbitration body of the PRC, or any other arbitration body upon which the disputing parties may agree.

Policies and practices in China’s BITs concerning dispute settlement mechanisms are also divergent. Normally Chinese BITs allow investors to choose as a forum domestic courts, international arbitration and any other agreed dispute settlement forum.

Some Chinese BITs provide that exhaustion of local administrative remedies and procedures is a prerequisite for investor’s access to international arbitration concerning certain disputes. As an example, Article 9(4) of the China-India BIT stipulates that “Notwithstanding paragraph 2, the Contracting Party may require the investor to exhaust the local administrative review procedure before the submission of the dispute to international arbitration. The provision of this paragraph shall not apply if the investor has resorted to the procedure specified in paragraph 10 of this Article.”

Some Chinese BITs stipulate that the investor may resubmit the same dispute to international arbitration only on the condition that it withdraws its case from the domestic court. For example, Article 10, Paragraph 2, of the China-Netherlands BIT provides “an investor may decide to submit a dispute to a competent domestic court. In case a legal dispute concerning an investment in the territory of the PRC has been submitted to a competent domestic court, this dispute may be submitted to international dispute settlement, on the condition that the investor concerned has withdrawn its case from the domestic court”.

A similar provision is contained in Article 14.5 of the China-ASEAN investment chapter:

“In case a dispute has been submitted to a competent domestic court, it may be submitted to international dispute settlement, provided that the investor concerned has withdrawn its case from the domestic court before a final judgement has been reached in the case. In the case of Indonesia, Philippines, Thailand, and Viet Nam, once the investor has submitted the dispute to their respective competent courts or administrative tribunals or to one of the arbitration procedures stipulated in Sub-paragraphs 4(b), 4(c), 4(d) or 4(e), the choice of the procedure is final.”

The third type of practice in China’s BITs is the strict Fork in the Road clause. As an example, Article 15 of the BIT between China, Japan and South Korea states:

---

469 Article 9(4) of the China-India BIT.
470 Article 10(2) of the China-Netherlands BIT.
“5. Once the disputing investor has submitted an investment dispute to the competent court of the disputing Contracting Party or to one of the arbitrations set out in paragraph 3, the choice of the disputing investor shall be final and the disputing investor may not submit thereafter the same dispute to the other arbitrations set out in paragraph 3.

6. Notwithstanding paragraphs 3 and 4, no claim may be submitted to the arbitration set out in paragraph 3 unless the disputing investor gives the disputing Contracting Party written waiver of any right to initiate before any competent court of the disputing Contracting Party with respect to any measure of the disputing Contracting Party alleged to constitute a breach referred to in paragraph 1.”

19.3 ECT requirements under Article 26

The dispute settlement mechanism provided under Article 26 ECT for resolution of investment disputes is not strange compared to Chinese policy in BITs. In fact, several BITs entered into by China follow a similar structure.

However, it is worth mentioning that when signing the Convention on the Recognition and Enforcement of Foreign Arbitration Award (New York, 10 June 1958), China made two reservations. The commercial reservation provides that the New York Convention only applies to disputes concerning contractual or non-contractual commercial relations, which includes any economic rights and obligations relation arising out of any contracts, tort or other situations stipulated by the laws. The commercial reservation expressly stipulates that the contractual or non-contractual commercial relations do not include disputes between foreign investors and host state government. However, Article 26.5.b ECT states that claims submitted to arbitration under Article 26 ECT shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention. Therefore, arbitral awards under Article 26 ECT would be enforceable in China under the New York Convention.

Another point to be mentioned is that Article 26.3.c also allows a Contracting Party (listed in Annex IA) not to give its unconditional consent to the submission of a dispute to international arbitration or conciliation in case it arises out of an obligation entered into with the investor (Article 10.1, last sentence, ‘umbrella clause’). That is, Article 26.3.c allows excluding contractual obligations from investment arbitration under the ECT. There is at least one case in which the tribunal lacked jurisdiction regarding contractual disputes because the defendant state (Hungary) was listed in Annex IA.

It should also be remarked that the Energy Charter is working hard in facilitating the good offices of the Secretariat and the improvement of an effective investment mediation framework.

---

471 Article 15(5) and (6) of the China-Japan-South Korea BIT (2012).
20. Article 27 - State to State disputes

Article 27 ECT contains a specific dispute resolution mechanism (ad hoc arbitration or any other dispute settlement mechanism agreed by the parties if diplomatic channels fail) for disputes concerning the application or interpretation of the ECT except:

(i) TRIMs or trade disputes – which, unless agreement to the contrary, should be solved through WTO bodies if both parties are WTO members or through the special mechanism contained in Annex D of the ECT (very similar to the WTO dispute settlement mechanism) if one of the parties is not a WTO member;

(ii) competition or environmental disputes.

If the parties to the dispute do not agree on the applicable rules, the arbitration Rules of UNCITRAL should apply. Unless agreement to the contrary, The Hague should be the seat of the arbitration, using the premises of the Permanent Court of Arbitration (PCA).

Annex P to the ECT is a special sub-national dispute procedure for a measure of a regional or local government or authority of a Contracting Party which is not in conformity with a provision of the ECT. It may be invoked by any party to the dispute who is listed in such Annex P.

The arbitral award under Article 27 ECT shall be final and binding upon the Contracting Parties. It shall be deposited with the Secretariat which shall make it generally available.

In addition, it should be mention that the ECT contains a particular conciliation mechanism for solving transit disputes (Article 7.7 ECT) in a smooth and fast way. This is very unique to the ECT and its not covered by other international instruments.

State to state arbitration is a common provision in recent Chinese IIAs and the ECT obligations are not overburdened compared to the China-Canada BIT (2012) and the China-Japan-South Korean BIT (2012).

Under the China-Japan-South Korean BIT (2012), any Contracting Party may request in writing consultations with another Contracting Party and, if failed, initiate inter-state arbitration under the UNCITRAL Arbitration Rules to resolve any dispute relating to the interpretation or application of the Agreement, covering Intellectual Property Right (Article 9), Transfer (Article 13), Prudential Measures (Article 20) and Environmental Measures (Article 23), but not including Taxation disputes.

With regard to the arrangement for special sub-national or local governments, Chinese recent BITs usually incorporate a kind of observance provision, such as under the China-Canada BIT (2012), “each Contracting Party shall take all necessary measures...

---

473 Article 15 of the China-Canada BIT (2012).
474 Article 17 of the China-Japan-South Korean BIT (2012).
475 Ibid, Article 17.
in order to ensure observance of the provisions of this Agreement by provincial governments." \(^{476}\)

21. Conclusion and Outlook

21.1 The Chinese legal framework on energy regulation

Since 1979, China has been progressively reforming its economic system, with a view to establishing and improving a "socialist market economy". Accordingly, China has been actively promoting market-oriented reform in the energy sector by giving more relevance and effect to the fundamental role of the market in the allocation of resources.

**Domestic laws**

China is yet to adopt a comprehensive or basic Energy Law (despite its Draft *Energy Law* in 2007). In the meantime, energy is regulated in various specialized legislations, as well as in some general legislations, while energy issues are regulated by several governmental authorities (including NDRC, NEA, MOFCOM, and the Ministry of Land and Resources).

**International treaties**

The ECT covers all aspects related to energy, though its main focus is trade, transit and investment.

On trade and transparency issues, the ECT regime is compatible with the WTO (including TRIMs), of which China became a member in 2001. To deliver its WTO commitments, China has systematically amended or abolished relevant laws and regulations that were incompatible with WTO obligations. Therefore trade issues with both WTO members and non-WTO who are parties to the ECT would be regulated by the WTO regime.

On investment, China has been very active entering into several IIAs. Since the first BIT with Sweden in 1982, China has signed 130 BITs, among which 100 have entered into effect. While the first generations of BITs signed by China had a limited scope of protection (including a limited resort to international arbitration), recent BITs signed by China (after 1998, when the Chinese government decided to implement a "Going Abroad" strategy focusing on investing abroad) provide comprehensive access to investor-state dispute settlement mechanisms and substantial post-admission national treatment commitments. Moreover, with negotiations with the USA and the EU making good progress, the fourth generation of Chinese investment treaties is taking shape, featuring concrete market access commitments, clarified and balanced substantive rules, detailed and decommercialised procedural rules, and complimentary social clauses.

\(^{476}\) Article 2 of the China-Canada BIT (2012).
21.2 Compatibility of Chinese laws with ECT provisions

**Trade**

China has made tremendous efforts to fully comply with its WTO commitments. As a result, the Chinese trade regime is deemed to be WTO compliant, and thus also in harmony with ECT trade obligations. It includes also transparency requirements, similar to Article 20 ECT.

**Investment**

The ECT investment regime is similar to recently signed Chinese investment treaties, such as the China-Canada BIT (2012). Indeed, China has committed to pre-establishment national treatment on a negative list approach, which actually goes beyond the existing ECT obligations.

China’s domestic FDI regulatory system is currently under transformation. On 19 January 2015, the Ministry of Commerce released the Draft *Foreign Investment Law* for public consultation, which marks a major change to China’s investment regulatory regime. Once coming into effect, the Foreign Investment Law would consolidate the existing EJVL, CJVL and WFEL into one uniform statutory regime whilst unifying the corporate legal requirements for both foreign and domestic investments in China. Also, the Draft *Foreign Investment Law* would incorporate the pre-establishment national treatment plus a negative list approach, whilst devising a national security review mechanism.

As a result, the Chinese investment protection regime should in general be considered compatible with the framework of the ECT.

**Transit**

The ECT regime contains a unique transit provision prohibiting the transit country from interrupting flows of energy materials and products, as well as providing for a fast conciliator-centred dispute settlement mechanism for transit disputes. The obligation to facilitate transit is consistent with the principle of freedom of transit and without distinction as to the origin, destination or ownership of such energy materials and products, or discrimination as to the pricing on the basis of such distinctions, and without imposing any unreasonable delays, restriction or charges. It also stipulates that contracting states shall not interrupt or reduce, permit any entity subject to its control to interrupt or reduce, or require any entity subject to its jurisdiction to interrupt or reduce the existing flow of energy materials and products prior to the conclusion of the dispute resolution procedures, in the event of a dispute.

The transportation system in China is regulated by several subsector legislations and under the authority of different Ministries. The Ministry of Transport is responsible for the overall planning of developments in rail, road, waterways and civil aviation, so as to accelerate construction of a comprehensive transportation system. There is no specialized legislation regulating the freedom of transit with distinctions as to the origin, destinations or ownership of energy materials and products. The *Maritime Code* and the *Regulation on International Maritime Transportation* provides the general regulatory framework of maritime transport. There are no financial subsidies or cargo preferences for domestic
shipping companies-domestic and foreign companies enjoy equal market access with regard to maritime transport services. None such Chinese legislation seems to contradict relevant ECT obligations.

**Other energy related commitments**

Other best-efforts obligations covered by the ECT are also compatible with current domestic Chinese legislation. As an example:

- China made significant progress in improving access to capital (Article 9 ECT) particularly by making the Chinese currency fully convertible in current account transactions. China is also making efforts to realise RMB convertibility in capital accounts.

- China has also established an advanced legal and institutional system on competition (Article 6 ECT) and its competition authorities are actively cooperating with relevant authorities of other states. Also, China is further reforming its SOEs, making sure that they operate more fully on a commercial basis and in full compliance with any international commitment of the state (Article 22 ECT).

- China has already adopted the principle of Polluter Pays (Article 19 ECT) and is developing an extensive regulation regarding environmental impact.

**21.3 Safeguard and flexibility mechanisms of the ECT for Chinese accession**

The Energy Charter Treaty is a comprehensive constellation of rules concerning international energy regulation and cooperation. The ECT provides both State-State Dispute Mechanisms and Investor-State Dispute Mechanisms for investment disputes as well as a unique set of rules concerning transit and the settlement of pertinent disputes.

The ECT is a legally binding international Treaty which means that by acceding to the ECT, China would be legally obliged to fulfil its commitments and obligations thereunder and take international responsibility for any breach thereof.

Among others, it is of particular significance for China to note that:

1. Claims submitted to arbitration under Article 26 ECT shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention. Therefore, arbitral awards under Article 26 ECT would be enforceable in China under the New York Convention;

2. China shall be subject to a unique mechanism for protecting the flow of energy, including a fast dispute resolution mechanism.

However, the ECT is equipped with several safeguard and flexibility mechanisms for any contracting states to individually tailor its obligations according to its own diverse and specific policy preferences and development stages. These safeguard and flexibility mechanisms enable contracting states to better balance the competing interests, policies
and values underlying international energy cooperation and regulation, to retain and reserve enough policy space of legitimate public objectives while actively participating in the comprehensive international governance system concerning energy.

**Safeguard Mechanism: available Exception and Filter provisions**

It should be borne in mind that by acceding to the ECT, China still can take measures which it considers necessary for the protection of its essential security interests (including those taken in time of war, armed conflict or other emergency in international relations), protect human/animal/plant life or health, or for the maintenance of public order, (Article 24 – Exceptions) as far as they do not restrict energy transit and do not constitute expropriation. For similar measures affecting trade, the WTO regime applies.

To discourage parallel proceedings, China could opt-in and refer to Annex ID (“fork in the road”) which prohibits resubmission to international arbitration of a dispute already submitted to local courts or to other agreed dispute settlement mechanisms.

Similarly, according to Article 17 (denial of benefits), China could deny investment protection to investors with no substantial business activities in the Contracting Party in which it is established, if they are owned or controlled by a national of a non-member to the ECT.

**Flexibility Mechanisms: available Carve-out and Opt-in provisions**

If China considers some obligations are over-burdensome or premature to accept instantly, it can limit its obligations, when joining the ECT, by:

1. **Annex IA (exclusion of the “umbrella clause”):** not allowing investment arbitration in relation to disputes arising out of contractual obligations with the investor. It should be noted that if China opts in, other Contracting Parties may choose to refuse to extend treaty protection to Chinese investors concerning contract disputes as well.

2. **Annex P: specific procedure for state to state disputes when a tribunal finds that a measure of a regional or local government or authority is not in conformity with the ECT.** China should consider and make clear in its accession report whether the ECT will apply to Hong Kong SAR and/or Macao SAR. Given Hong Kong SAR and Macao SAR are authorised to initiate economic agreements with other states and international organizations according to the respective Basic Law, Chinese central government could decide to exclude both SARs from its commitments under the ECT or otherwise, after consulting the respective SAR government. Given that both Hong Kong and Macau have entered into only a few investment treaties and that a significant amount of Chinese overseas investment are made via Hong Kong, it might be more sensible to make sure that China ECT commitments extended to the two SARs.
21.4 Prospects of Chinese accession to the ECT

As can be seen from above, Chinese domestic legal framework and international commitments are already generally compatible with the ECT. This suggests that there are little legal costs for China to join the ECT. On the contrary, the ECT should be able to help improve the investment and trade conditions for Chinese investors in existing ECT member states, particularly in countries that have not yet joined the WTO or countries that still stick to the earlier generation of more conservative investment regimes. It would also facilitate energy transit issues with neighbour countries. Besides, China could join and lead some of the efforts of modernisation currently underway at the Energy Charter. Among other things, China could consider limiting and clarifying the scope of some traditional investment treatments, e.g., Fair and Equitable Treatment, in order to have a clear understanding of the circumstances under which the government will be liable, establishing a transparent and inclusive appellate mechanism for the ISDS system, as well as promoting a high standard, balanced and sustainable Multilateral Framework for Investment.

From the Energy Charter's perspective, China's accession should be more than welcomed. As the largest energy consumer and the second largest economy in the world, China's accession to the ECT would not only significantly expand the geographical, economical and political reach of the Charter, but has the potential to provide vital momentum and support for the Charter as it implements the Second Phase of its Modernisation plan.

Indeed, Chinese accession to the ECT could well create a "strategic win-win" situation for both the Energy Charter and China: (i) the globalisation plan of the energy Charter coincides with the recently adopted "One Belt, One Road (OBOR)" initiative of China, while (ii) the Modernisation Phase II of the Energy Charter also resonates with recent Chinese treaty practices. The OBOR is the most significant international initiative put forward by President Xi Jinping and the current leadership. The proposed "Belt", the Silk Road Economic Belt, covers countries that are mostly members of the ECT, whilst the proposed "Road", the 21st Century Maritime Silk Road, extends to Asian, African and Pacific countries that are also targets of ECT membership expansion. With such significant shared interest, the two sides have every reason to closely work together to construct a "Energy Silk Road" that provides better international energy governance for the benefit of not only the two sides, but also the rest of the world.
Annexes

Annex 2.1 Quota and Licensing of Import and Export in China

<table>
<thead>
<tr>
<th>Goods subject to quota and licensing</th>
<th>Type</th>
<th>Administrative Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rice, maize, wheat, cotton, coal.</td>
<td>Export quota licensing</td>
<td>The quota is allocated by the NDRC.</td>
</tr>
<tr>
<td>Live cattle, swine and chicken (for export to Hong Kong and Macao SARs -Special Administrative Regions-); maize flour; rice flour; wheat flour; sawn timber; coke; crude oil; processed oil; rare earth; antimony and articles thereof; tungsten and articles thereof; zinc ore; tin and articles thereof; silver; indium and articles thereof; molybdenum; and phosphorus ore.</td>
<td>Export quota licensing</td>
<td>The quota is allocated by the MOFCOM.</td>
</tr>
<tr>
<td>Chinese iris and its products; talc lump (powder); magnesium ore; and liquorice and its products.</td>
<td>Export quota bidding</td>
<td>The quota is allocated by the MOFCOM.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Goods subject to licensing</th>
<th>Type</th>
<th>Administrative Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Live cattle, swine and chicken (for markets other than Hong Kong or Macao SARs); beef, pork and chicken meat; paraffin wax; platinum (through processing trade only); automobiles (including completely knocked down) and chassis; motorcycles (including all terrain motorcycles) and their engines and frames; vitamin C; industrial salts of penicillin; disodium sulphate; coke; carborundum; bauxite; fluorspar and some other metals and their products (excluding ferroalloy).</td>
<td>Export licence</td>
<td>A licence is granted if the exporter has the relevant export contract</td>
</tr>
<tr>
<td>Substances depleting the ozone layer; natural sands (including standard sands); molybdenum products; and citric acid.</td>
<td>Export licence</td>
<td>An export permit is required before applying for a licence.</td>
</tr>
</tbody>
</table>
### Annex 2.2 International Legal Relations of China with Contracting Parties of ECT

<table>
<thead>
<tr>
<th>Contracting Party to the ECT</th>
<th>Date of signing the ECT</th>
<th>Member of the WTO</th>
<th>International Investment Agreements with China</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>19/01/2013</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Australia</td>
<td>17/12/1994 (not ratified yet)</td>
<td>1/01/1995</td>
<td>11/07/1988</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>17/12/1994</td>
<td>Observer</td>
<td>08/03/1994</td>
</tr>
<tr>
<td>Belarus</td>
<td>17/12/1994 (Prov. application)</td>
<td>Observer</td>
<td>11/01/1993</td>
</tr>
<tr>
<td>Belgium</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>04/06/1984, 06/06/2005</td>
</tr>
<tr>
<td>Bosnia &amp; Herzegovina</td>
<td>14/06/1995</td>
<td>Observer</td>
<td>26/06/2002</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>17/12/1994</td>
<td>1/12/1996</td>
<td>27/06/1989</td>
</tr>
<tr>
<td>Croatia</td>
<td>17/12/1994</td>
<td>30/11/2000</td>
<td>07/06/1993</td>
</tr>
<tr>
<td>Cyprus</td>
<td>17/12/1994</td>
<td>30/07/1995</td>
<td>17/01/2001</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>08/06/1995</td>
<td>1/01/1995</td>
<td>08/12/2005</td>
</tr>
<tr>
<td>Denmark</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>29/04/1985</td>
</tr>
<tr>
<td>Finland</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>04/09/1984</td>
</tr>
<tr>
<td>France</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>30/05/1984</td>
</tr>
<tr>
<td>Georgia</td>
<td>17/12/1994</td>
<td>14/06/2000</td>
<td>03/06/1993</td>
</tr>
<tr>
<td>Germany</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>07/10/1983, 01/12/2003</td>
</tr>
<tr>
<td>Hungary</td>
<td>27/02/1995</td>
<td>1/01/1995</td>
<td>29/05/1991</td>
</tr>
<tr>
<td>Iceland</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>31/03/1994</td>
</tr>
<tr>
<td>Italy</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>28/01/1985</td>
</tr>
<tr>
<td>Japan</td>
<td>16/06/1995</td>
<td>1/01/1995</td>
<td>27/08/1988</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>17/12/1994</td>
<td>Observer</td>
<td>10/08/1992</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>17/12/1994</td>
<td>20/12/1998</td>
<td>14/05/1992</td>
</tr>
<tr>
<td>Latvia</td>
<td>17/12/1994</td>
<td>10/02/1999</td>
<td>15/04/2004</td>
</tr>
<tr>
<td>Liechtenstein</td>
<td>17/12/1994</td>
<td>1/09/1995</td>
<td>No</td>
</tr>
<tr>
<td>Lithuania</td>
<td>05/04/1995</td>
<td>31/05/2001</td>
<td>08/11/1993</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>04/06/1984, 06/06/2005</td>
</tr>
<tr>
<td>Malta</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>22/02/2009</td>
</tr>
<tr>
<td>Norway</td>
<td>16/06/1995 (not ratified yet)</td>
<td>1/01/1995</td>
<td>21/11/1984</td>
</tr>
<tr>
<td>Country</td>
<td>Date of Application</td>
<td>Date of Ratification</td>
<td>Accession Date</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>---------------------</td>
<td>----------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Poland</td>
<td>17/12/1994</td>
<td>1/07/1995</td>
<td>07/06/1988</td>
</tr>
<tr>
<td>Portugal</td>
<td>17/12/1994</td>
<td>1/07/1995</td>
<td>03/02/1992</td>
</tr>
<tr>
<td>Spain</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>06/02/1992, 14/11/2005</td>
</tr>
<tr>
<td>Sweden</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>29/03/1982</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>17/12/1994</td>
<td>2/03/2013</td>
<td>09/03/1993</td>
</tr>
<tr>
<td>The Former Yugoslav Republic of Macedonia</td>
<td>26/03/1998</td>
<td>31/05/1995</td>
<td>09/06/1997</td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>17/12/1994</td>
<td>No</td>
<td>21/11/1992</td>
</tr>
<tr>
<td>Ukraine</td>
<td>17/12/1994</td>
<td>16/05/2008</td>
<td>31/10/1992</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>17/12/1994</td>
<td>1/01/1995</td>
<td>15/05/1986</td>
</tr>
<tr>
<td>Uzbekistan</td>
<td>05/04/1995</td>
<td>Observer</td>
<td>13/03/1992, 19/04/2011</td>
</tr>
</tbody>
</table>
## Annex 2.3 China’s Free Trade Agreements

<table>
<thead>
<tr>
<th>FTA signed</th>
<th>FTA under negotiation</th>
<th>FTA under feasibility study</th>
</tr>
</thead>
<tbody>
<tr>
<td>China-ASEAN FTA</td>
<td>China-GCC (Gulf Cooperation Council) FTA</td>
<td>China-India Regional Trade Arrangement</td>
</tr>
<tr>
<td>China-Pakistan FTA</td>
<td>China-Pakistan FTA Phase II</td>
<td>China-Columbia FTA</td>
</tr>
<tr>
<td>China-Chile FTA</td>
<td>China-Norway FTA</td>
<td>China-Maldives FTA</td>
</tr>
<tr>
<td>China-New Zealand FTA</td>
<td>China-Sri Lanka FTA</td>
<td>China-Georgia FTA</td>
</tr>
<tr>
<td>China-Singapore FTA</td>
<td>China-Japan-Korea FTA</td>
<td>China-Moldova FTA</td>
</tr>
<tr>
<td>China-Peru FTA</td>
<td>Regional Comprehensive Economic Partnership, RCEP</td>
<td></td>
</tr>
<tr>
<td>Mainland and Hong Kong Closer Economic and Partnership Arrangement</td>
<td>China-ASEAN FTA Upgrade Negotiations</td>
<td></td>
</tr>
<tr>
<td>Mainland and Macau Closer Economic and Partnership Arrangement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China-Costa Rica FTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China-Iceland FTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China-Switzerland FTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China-Korea FTA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>China-Australia FTA</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: China FTA Network.
### Annex 4.1 Competition policy legislation and enforcement authorities in China

<table>
<thead>
<tr>
<th>Authority</th>
<th>Laws, Administrative Regulations and Ministerial Rules</th>
<th>Enforcement</th>
</tr>
</thead>
</table>
| Administrative Punishment in relation to Prices.  
4. Provisions on the Administrative Procedures for Law Enforcement against Price Fixing. | To investigate and punish price-related violations in accordance with the law.  
To investigate and punish arbitrarily charged administrative fees in accordance with the law. |
| SAIC  
AML; Law against Unfair Competition  
1. SAIC Procedural Provisions on Prohibition of the Abuse of Administrative Power to Exclude or Restrain Competition.  
2. SAIC Provisions on the Prohibition of Monopoly Agreement.  
5. SAIC Provisions on Investigating and Handling Cases Concerning Monopoly Agreements and Abuse of Dominant Market Positions. | Responsibility  
1. Sanctions against non-price related monopolistic agreements.  
2. Regulation on non-price related market dominant abuses.  
3. Sanctions against administrative monopolies. |
### Annex 8.1 Some specific Administrative Measures (Negative List) on Foreign Investment Access in Pilot Free Trade Zones (2015) (Excerpt of ECT-related measures)

<table>
<thead>
<tr>
<th>No.</th>
<th>Fields</th>
<th>Specific Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>B. Mining</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Exploration and exploitation of exclusive economic zone and continental shelf</td>
<td>7. Approval of the Chinese Government is required before foreign investors may engage in exploration and development activities of natural resources in China's exclusive economic zones and continental shelves, or engage in drilling activities for any purpose in China's continental shelves.</td>
</tr>
<tr>
<td>(3)</td>
<td>Oil and natural gas exploitation</td>
<td>8. The exploration and development of oil and natural gas (including oil shale, oil sands, shale gas, coalbed methane and other unconventional oil and natural gas) shall be limited to the forms of Sino-foreign equity and cooperative joint ventures.</td>
</tr>
<tr>
<td>(4)</td>
<td>Rare earth and rare mineral exploitation</td>
<td>9. Foreign investment in the exploration, exploitation and ore dressing of rare earth is prohibited. Without permission, foreign investors are prohibited from entering rare earth mining areas or obtaining geological data of mines, ore samples and production processes and technologies. 10. Foreign investment in the exploration and exploitation of tungsten, molybdenum, tin, antimony and fluorite is prohibited. 11. Foreign investment in the exploration, exploitation and ore dressing of radioactive minerals is prohibited.</td>
</tr>
<tr>
<td>(5)</td>
<td>Mental and non-mental mineral exploitation and beneficiating operation</td>
<td>12. The exploration and exploitation of precious metals (in the groups of gold, silver and platinum) fall under the categories where foreign investment is restricted. 13. The exploitation and dressing of lithium ores fall under the categories where foreign investment is restricted. 14. The exploration and exploitation of graphite fall under the categories where foreign investment is restricted.</td>
</tr>
<tr>
<td></td>
<td><strong>C. Manufacturing</strong></td>
<td></td>
</tr>
</tbody>
</table>
| (12) | Minerals smelting and processing | 26. The smelting of tungsten, molybdenum, tin (excluding tin compounds), antimony (including antimony trioxide and antimony sulphide) and other rare metals falls under the categories where foreign investment is restricted. 27. The smelting and separation of rare earth fall under the categories where foreign investment is restricted, and shall be
limited to the forms of Sino-foreign equity and cooperative joint ventures.

28. Foreign investment in the smelting and processing of radioactive minerals is prohibited.

### D. Electricity, heat, gas and water production and supply

<table>
<thead>
<tr>
<th>No.</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>Nuclear power</td>
<td>32. The construction and operation of nuclear power plants shall be controlled by Chinese shareholders.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>33. The production, operation and import and export of nuclear fuels, nuclear materials, uranium products and related nuclear technologies shall be exclusively run by qualified centrally-administered enterprises.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>34. Only State-owned or State-controlled enterprises are allowed to engage in the disposal of solid radioactive waste.</td>
</tr>
<tr>
<td>16</td>
<td>Pipeline and network facilities 3</td>
<td>35. The construction and operation of urban gas, heat and water supply and drainage pipelines and networks for cities with an urban population of 500,000 or more fall under the categories where foreign investment is restricted, and shall be controlled by Chinese shareholders.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>36. The construction and operation of power grids shall be controlled by Chinese shareholders.</td>
</tr>
</tbody>
</table>

### E. Wholesale and retail

<table>
<thead>
<tr>
<th>No.</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>Monopoly and franchising</td>
<td>38. Central grain (oil) reserves shall be subject to monopoly operations. The China Grain Reserves Corporation shall be specifically in charge of the purchase, storage, business operations and management of central grain reserves (including central oil reserves).</td>
</tr>
</tbody>
</table>

### F. Transportation, warehousing and postal services

<table>
<thead>
<tr>
<th>No.</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>19</td>
<td>Railway transport</td>
<td>42. The construction and operation of networks for truck railway lines shall be controlled by Chinese shareholders.</td>
</tr>
<tr>
<td>20</td>
<td>Water transport</td>
<td>44. Water transport companies (excluding international shipping enterprises established within the China (Shanghai) Pilot Free Trade Zone) fall under the categories where foreign investment is restricted. As such they shall be controlled by Chinese shareholders, and shall not engage in any of the following businesses: (a) Domestic waterway transport business in Mainland China, including waterway transport business carried out in disguised forms such as by chartering vessels of Chinese nationality or their shipping space; or, (b) Domestic ship management, waterway passenger transport agency and waterway freight transport forwarding.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>45. Foreign investors shall not hold more than 51% of the shares of ship agency projects.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>46. Ocean shipping tally falls under the categories where foreign investment is restricted, and shall be limited to the forms of Sino-foreign equity and cooperative joint ventures.</td>
</tr>
</tbody>
</table>
| (21) | Public air transport | 47. Waterway transport business operators shall not use vessels of foreign nationalities to engage in domestic waterway transport business, except under special circumstances permitted by the Chinese Government.  
48. Maritime transport and towage between Chinese ports shall be operated by vessels hanging the national flag of the People's Republic of China. Approval of the Chinese Government is required before vessels of foreign nationalities may engage in maritime transport and towage between Chinese ports. |
| (22) | General aviation | 49. Public air transport enterprises shall be controlled by Chinese shareholders, and the investment by a single foreign investor (including its affiliated enterprises) shall not exceed 25%.  
50. The chairman of the board of directors and the legal representative of a public air transport enterprise shall be served by Chinese citizens.  
51. Business operators of foreign aircrafts shall not engage in the business operation of transportation between two points within Mainland China.  
52. Only China-designated carriers may operate in the bilateral air transport markets determined in the bilateral transportation agreements signed by and between China and other signatory parties.  
53. Foreign investors are allowed to invest in general aviation enterprises specializing in agricultural, forestry and fishing operations in the form of Sino-foreign equity joint ventures. All the other general aviation enterprises shall be controlled by Chinese shareholders.  
54. The legal representative of a general aviation enterprise shall be served by a Chinese citizen.  
55. Aircrafts of foreign nationalities or foreign nationals are prohibited from engaging in general aviation for aerial photographing, remote sensing and mapping, mineral resources exploration and other important fields of expertise. |
| (23) | Civil airports and air traffic Control | 56. Foreign investors are prohibited from investing in, and running the business operations of, air traffic control systems.  
57. The construction and operation of civil airports shall be subject to relative control by Chinese shareholders. |
<p>| H. Financial services | Requirements on the types of foreign investors that | 64. Overseas investors that invest in banking financial institutions shall be financial institutions or institutions of a particular type. Specific requirements are as follows: (a) The shareholders of wholly foreign-owned banks, and the foreign shareholders of Sino-foreign equity joint venture banks shall be financial institutions, and the sole foreign shareholder or controlling/major foreign |</p>
<table>
<thead>
<tr>
<th>can serve as shareholders of banking institutions</th>
<th>shareholders shall be commercial banks; (b) Overseas investors that invest in Chinese-funded commercial banks and trust companies shall be financial institutions; (c) Overseas investors that invest in rural commercial banks, rural cooperative banks, rural credit (cooperation) cooperatives, and township/village banks shall be overseas banks; (d) Overseas investors that invest in financial leasing companies shall be financial institutions or finance leasing companies; (e) Overseas investors that are main capital contributors to consumer finance companies shall be financial institutions; (f) Overseas investors that invest in currency brokerage companies shall be currency brokerage companies; (g) Overseas investors that invest in financial asset management companies shall be financial institutions, and such investors may not participate in the establishment of financial asset management companies by promotion; and (i) In the absence of explicit provisions under laws and regulations, overseas investors that invest in banking financial institutions shall be financial institutions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirements on banking qualifications</td>
<td>65. Overseas investors that invest in banking financial institutions shall comply with the requirements on a certain amount of total assets. Specifically, such investors include: (a) The parent banks of the sole foreign shareholders or controlling/major foreign shareholders of foreign-funded banks that are qualified as legal persons, or the branches of foreign banks; (b) Overseas investors of Chinese-funded commercial banks, rural commercial banks, rural cooperative banks, rural credit (cooperation) cooperatives, township/village banks, trust companies, financial leasing companies, loan companies and financial asset management companies; and (c) Overseas investors of other banking financial institutions that are not explicitly exempted under laws and regulations. 66. Overseas investors that invest in currency brokerage companies shall satisfy specific conditions such as the length of relevant business, the global network of outlets, information communication networks, etc.</td>
</tr>
<tr>
<td>Requirements on the percentages of foreign shareholdings in banking investment</td>
<td>67. Overseas investors that invest in the shares of Chinese-funded commercial banks, rural commercial banks, rural cooperative banks, rural credit (cooperation) cooperatives, financial asset management companies and other banking financial institutions shall be bound by the restrictions on the percentage of shares that may be held by a single overseas shareholder and the total percentage of shares that may be jointly held by all overseas shareholders.</td>
</tr>
<tr>
<td>Foreign-</td>
<td>68. In addition to meeting the requirements on the types of foreign investors that may be shareholders of banking institutions and</td>
</tr>
</tbody>
</table>
funded banks | relevant qualification requirements, foreign-funded banks are also bound by the following conditions: (a) The branches of a foreign bank shall not engage in the business of "agency issuance, agency redemption and underwriting of government bonds", "agency collection and payment of funds" and "bank card business" allowed under the Law of the People’s Republic of China on Commercial Banks, and shall not engage in RMB business for domestic Chinese citizens except for taking fixed deposits of not less than RMB one million per transaction from domestic Chinese citizens; (b) The branches of a foreign bank shall have their operating funds allocated free of charge by the head office of the foreign bank, and a portion of the operating funds shall exist in a particular form and be in compliance with relevant management requirements; (c) The branches of a foreign bank shall meet the requirements on the adequacy of RMB operating funds (8%); and (d) A foreign-funded bank shall meet the requirements on the minimum period of business operations before being approved to engage in RMB business.

| (31) Futures companies | 69. Futures companies fall under the categories where foreign investment is restricted, and shall be controlled by Chinese shareholders. |
| (32) securities companies | 70. Securities companies fall under the categories where foreign investment is restricted, and foreign investors shall not hold more than 49% of the shares of securities companies. 71. A single overseas investor shall not hold more than 20% of the shares of a listed Chinese-funded securities company (including both direct holding and indirect control). All overseas investors shall not hold more than 25% in total of the shares of a listed Chinese-funded securities company (including both direct holding a indirect control). |
| (33) Securities investment fund management companies | 72. Securities investment fund management companies fall under the categories where foreign investment is restricted, and foreign investors shall not hold more than 49% of the shares of such companies. |
| (34) Securities and futures trading | 73. Foreign investors shall not become ordinary members of stock exchanges and members of futures exchanges. 74. Foreign investors shall not apply for opening A-share securities accounts and futures accounts. |
| (35) Establishment of insurance institutions | 75. Insurance companies fall under the categories where foreign investment is restricted (foreign investment in life insurance companies shall not exceed 50%), and domestic insurance companies shall hold at least 75% in total of the shares of insurance asset management companies. 76. Foreign insurance companies that apply for establishing
| (36) | Insurance business | foreign-funded insurance companies, and overseas financial institutions that invest in the shares of insurance companies (except by purchasing the shares of listed insurance companies via stock exchanges) shall satisfy the conditions on operation period, total assets, etc. prescribed by China's insurance regulatory authorities. 77. Unless approved by China's insurance regulatory authorities, a foreign-invested insurance company shall neither act as a ceding company nor as a reinsurer with regard to reinsurance business with its affiliated enterprises. |
| (40) | Other business services | 86. The legal representative of an intermediary providing services for entry and exit due to private reasons shall be a Chinese citizen who has both a Mainland permanent household register and full civil capacity. |
| (41) | Professional technical services | 87. Foreign investment in geodesy, ocean surveying and mapping, aerial photographing for mapping, surveying and mapping of administrative boundaries, the preparation of topographic maps, world political district maps, maps of national administrative divisions, maps of administrative divisions at and below the provincial level, national teaching maps, local teaching maps and true three-dimensional maps, the preparation of navigation electronic maps, regional geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters, remote geological sensing and other surveys is prohibited. 88. Surveying and mapping companies fall under the categories where foreign investment is restricted, and shall be controlled by Chinese shareholders. 89. Foreign investment in the development and application of human stem cells and genes diagnosis and treatment technologies is prohibited. 90. Foreign investors are prohibited from establishing and running humanities and social sciences research institutes. |
| (42) | Protection of animal and plant Resources | 91. Foreign investment in the development of wild animal and plant resources that are originated from and protected by China is prohibited. 92. Foreign investors are prohibited from collecting or purchasing wild plants enjoying priority protection by the State. |
| (50) | All industries | 120. Foreign investors shall not engage in business activities in the capacity of industrial and commercial sole proprietors, investors of sole proprietorship enterprises, or members of specialized farmers’ |
cooperatives.

121. Foreign-invested partnership enterprises shall not be established for the categories where foreign investment is prohibited under the Catalogue for the Guidance of Foreign Investment Industries, as well as for projects thereunder that shall "be limited to the form of Sino-foreign equity joint venture", "be limited to the form of Sino-foreign cooperative joint venture", "be limited to the forms of Sino-foreign equity and cooperative joint ventures", "be controlled by Chinese shareholders", "be subject to relative control by Chinese shareholders", or be subject to requirements on the percentages of foreign investment.

122. Foreign investment projects and matters of the establishment and changes of enterprises that are involved in the merger and acquisition of domestic enterprises by foreign investors, the strategic investment by foreign investors in listed companies, and the capital contribution made by overseas investors with their holdings of the equities of Mainland enterprises shall be governed by prevailing provisions.
Annex 8.2 Special Administrative Measures for the Access of Foreign Investment in the China (Shanghai) Pilot Free Trade Zone (Negative List) (2013) relevant for issues covered by the ECT\textsuperscript{478}

<table>
<thead>
<tr>
<th>Sector (Code and Name)</th>
<th>Category (Code and Name)</th>
<th>Sub-Category (Code and Name)</th>
<th>Special Administrative Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mining Industry</td>
<td>B06 Coal mining and washing</td>
<td></td>
<td>It is restricted to invest in the mining of special and scarce coal types (Chinese parties as controlling shareholders).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the exploitation of coal-bed gas and the utilisation of mine gas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the exploitation of petroleum and natural gas.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the exploitation of oil and gas deposits (fields) with low osmosis.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the improvement of the recovery of crude oil and the development and application of relevant new technologies.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the development and application of new technologies for prospecting and exploitation of petroleum, such as geophysical prospecting, well drilling, well logging and down-hole operation.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the exploitation of oil shale, oil sands, heavy oil, extra heavy oil and other unconventional oil resources.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Equity or contractual joint venture is required for investment in the exploitation of shale gas, seabed gas hydrate and other unconventional gas resources.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B09 Non-ferrous metal mining and beneficiation</th>
<th>It is restricted to invest in the mining of szaibelyite, the mining and beneficiation of lithium ores, and the mining of precious metals (gold, silver, and platinum families). It is prohibited to invest in the mining of wolfram, molybdenum, tin and antimony and the mining and beneficiation of rare earth and radioactive minerals.</th>
</tr>
</thead>
<tbody>
<tr>
<td>B10 Non-metal mining and beneficiation</td>
<td>It is restricted to invest in the mining of szaibelyite iron ore.</td>
</tr>
<tr>
<td>B11 Mining auxiliary activities</td>
<td>It is restricted to invest in the mining of szaibelyite iron ore.</td>
</tr>
<tr>
<td>C25 Petroleum processing and coking and nuclear fuel processing</td>
<td>It is restricted to invest in atmospheric and vacuum oil refining at 10 million tons or less per year, catalytic cracking at 1.5 million tons or less per year, continuous reforming at 1 million tons or less per year (including aromatics extraction) and hydrocracking production at 1.5 million or less.</td>
</tr>
<tr>
<td>C26 Manufacturing of chemical raw materials and chemical products</td>
<td>It is restricted to invest in the production of benzidine, pigment and paint.</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>C265</td>
<td>Manufacturing of synthetic materials</td>
</tr>
<tr>
<td>C266</td>
<td>Manufacturing of special chemical products</td>
</tr>
<tr>
<td>C267</td>
<td>Manufacturing of explosives, pyrotechnics and fireworks</td>
</tr>
<tr>
<td>C28</td>
<td>Chemical fibre manufacturing</td>
</tr>
<tr>
<td>C32</td>
<td>Non-ferrous metal smelting and rolling processing</td>
</tr>
<tr>
<td></td>
<td>C323 Uncommon rare earth metal smelting</td>
</tr>
<tr>
<td>C34</td>
<td>General equipment manufacturing</td>
</tr>
<tr>
<td>Code</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>-------------</td>
</tr>
<tr>
<td>C345</td>
<td>Manufacturing of bearings, gears and transmission components</td>
</tr>
<tr>
<td>C351</td>
<td>Manufacturing of special-purpose equipment for mining, metallurgy and construction</td>
</tr>
<tr>
<td>C352</td>
<td>Manufacturing of chemical, wood and non-metal processing equipment</td>
</tr>
<tr>
<td>C359</td>
<td>Manufacturing of environmental protection, social and public service and other special-purpose equipment</td>
</tr>
</tbody>
</table>
| C371 | Railway transportation equipment manufacturing | Equity or contractual joint venture is required for investment in track transportation equipment: research and development, design, and manufacturing of vehicles and key parts and components (traction drive
<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>C372</td>
<td>Urban track transportation equipment manufacturing</td>
<td>System, control system, and brake system of transportation equipment for high-speed railway, special lines for railway passenger transportation, intercity railway, trunk railway, and urban track transportation; research and development, design, and manufacturing of service facilities and equipment for high-speed railway, special lines for railway passenger transportation, intercity railway, and urban track transportation; design and research and development of relevant information systems during information technology development; research and development, design, and manufacturing of track and bridge facilities for high-speed railway, special lines for railway passenger transportation and intercity railway; research and development, design, and manufacturing of track transportation signal systems; manufacturing of electrified railway equipment and apparatus, research and development of railway noise and vibration control technology, manufacturing of waste discharge equipment for railway passenger trains, and manufacturing of railway transportation safety monitoring equipment.</td>
</tr>
<tr>
<td>C373</td>
<td>Manufacturing of vessels and relevant devices</td>
<td>Equity or contractual joint venture is required for investment in the design of luxury cruise ships, the design of low- and medium-speed diesel engines of vessels and their spare parts, and the design and manufacturing of yachts. Chinese parties shall be controlling shareholders for investment in the manufacturing of low- and medium speed diesel engines and vessels and curved axles. Chinese parties shall be relatively controlling shareholders for investment in the design and manufacturing of cabin machinery of vessels. It is restricted to invest in the design and manufacturing of vessels (including sections) (Chinese parties as controlling shareholders).</td>
</tr>
<tr>
<td>C381</td>
<td>Electric machinery manufacturing</td>
<td>Equity or contractual joint venture is required for investment in the manufacturing of key auxiliary equipment used for one million-kilowatt ultra-supercritical thermal power</td>
</tr>
<tr>
<td>manufacturing units: safety valves and control valves. Equity or contractual joint venture is required for investment in the manufacturing of power transmission and transformation equipment: amorphous alloy transformers, operating gears for high-voltage switches of 500 kilowatts or more, arc-control devices, large disc insulators (1,000 KV, 50 KA or more), outlet devices and sleeves used for 500 KV or more transformers (500, 750 and 1,000 KV AC and all specifications for DC), voltage regulating switches (on-load or no-load voltage regulating switches of 500, 750 and 1,000 KV AC), dry-type smoothing reactors for direct current transmission, converter valves for +800 KV direct current transmission (water coolers and DC field equipment), contact materials for electrical appliances in conformity with EU RoHS Directives, and Pb-free and Cd-free solders. Equity or contractual joint venture is required for investment in the manufacturing of large pumped power storage units with rated power of 350MW or more (limited to Chinese-Foreign equity or contractual joint ventures): pump-turbines and speed controllers, large variable speed reversible pump-turbine units, generator-motors, and excitation, starters and other ancillary equipment.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Equity or contractual joint venture is required for investment in the repair of civil aircraft and utility aircraft, aircraft engines and their spare parts, and aircraft auxiliary power systems. Chinese parties shall be controlling shareholders for investment in the repair of civil aircraft for trunk lines and regional aircraft. Chinese parties shall be controlling shareholders for investment in the repair of civil aircraft for trunk lines and regional aircraft.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>It is prohibited to invest in the manufacturing of open (i.e., acid mist directly coming out) lead-acid batteries, mercury-containing silver oxide button batteries, mercury-containing alkaline zinc-manganese button batteries, pasted zinc-manganese batteries, and nickel-cadmium batteries.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C43 Repair of metal products, machinery and equipment</td>
<td>C433 Repair of special equipment</td>
<td></td>
</tr>
<tr>
<td>Power, Gas and Water Production and Supply Industries</td>
<td>D44 Electric and heating power production and supply</td>
<td>Chinese parties shall be controlling shareholders for investment in the construction and operation of nuclear power stations. It is restricted to invest in the construction and operation, within small grids, of power plants using coal-fired and steam condensation thermal generator sets with a single generator capacity of 300,000 kilowatts or less and thermoelectric power stations using coal-fired, steam condensation and extraction thermal generator sets with a single generator capacity of 100,000 kilowatts or less. It is restricted to invest in the construction and operations of grids (Chinese parties as controlling shareholders) and pipeline networks for gas, heat, and water supply and sewage in cities with a population of more than 500,000 (Chinese parties as controlling shareholders). It is prohibited to invest in the construction and operation, outside small grids, of power plants using coal-fired and steam condensation thermal generator sets with a single generator capacity of 300,000 kilowatts or less and thermoelectric power stations using coal-fired, steam condensation and extraction thermal generator sets with a single generator capacity of 100,000 kilowatts or less.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>D45 Gas production and supply, D46 Water production and supply</td>
<td>It is restricted to invest in the construction and operations of pipeline networks for gas, heat, and water supply and sewage in cities with a population of more than 500,000 (Chinese parties as controlling shareholders).</td>
<td></td>
</tr>
<tr>
<td>Construc tion Indust</td>
<td>E48 Civil engineering construction</td>
<td>E481 Construction of railway, road, Equity or contractual joint venture is required for investment in the construction and operation of branch railway lines, local</td>
</tr>
<tr>
<td>Wholesales and Retail Industries</td>
<td>F51 Wholesale</td>
<td>F511 Wholesale of agriculture, forestry and husbandry products</td>
</tr>
<tr>
<td>Wholesales and Retail Industries</td>
<td>F51 Wholesale</td>
<td>F516 Wholesale of minerals, construction materials and chemical products</td>
</tr>
<tr>
<td></td>
<td>F518 Trade brokerage and agency</td>
<td>F518 Trade brokerage and agency</td>
</tr>
<tr>
<td>F52 Retail</td>
<td>F521 General retail</td>
<td>F521 General retail</td>
</tr>
<tr>
<td></td>
<td>F526 Special retail of automobiles, motorcycles, fuel and spare parts</td>
<td>F526 Special retail of automobiles, motorcycles, fuel and spare parts</td>
</tr>
<tr>
<td>G53 Railway transportation</td>
<td>G531 Railway passenger transportation</td>
<td>It is restricted to invest in railway passenger transport companies (Chinese parties as controlling shareholders).</td>
</tr>
<tr>
<td>----------------------------</td>
<td>-------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>G532 Railway freight transportation</td>
<td>It is restricted to invest in railway freight transport companies (limited to equity or contractual joint venture).</td>
</tr>
<tr>
<td>G54 Road transportation</td>
<td>G542 Road passenger transportation</td>
<td>It is restricted to invest in road passenger transport companies (limited to equity joint venture), and the foreign investment proportion shall not be more than 49% and one of the major investors shall be an enterprise engaged in road passenger transportation in China for more than 5 years.</td>
</tr>
<tr>
<td></td>
<td>G543 Road freight transportation</td>
<td>It is restricted to invest in cross-border automobile transport companies.</td>
</tr>
<tr>
<td>G55 Water transportation</td>
<td>G551 Water passenger transportation, G552 Water freight transportation</td>
<td>It is restricted to invest in water transportation companies (Chinese parties as controlling shareholders); Chinese parties shall be the controlling shareholders for investment in scheduled or non-scheduled international marine transportation services.</td>
</tr>
<tr>
<td></td>
<td>G553 Auxiliary activities for water transportation</td>
<td>Investment in international maritime cargo handling, international maritime container station and yard services is limited to equity or contractual joint venture. It is restricted to invest in vessel agencies (Chinese parties as controlling shareholders). It is restricted to invest in ocean shipping tally companies (limited to equity or contractual joint venture).</td>
</tr>
<tr>
<td>G56 Air transportation</td>
<td>G561 Air passenger and freight transportation</td>
<td>For investment in air transport companies, Chinese parties shall be controlling shareholders, and the operating period shall not exceed 30 years; for investment in public air transport companies, the investment proportion of a foreign company (including its affiliates) shall not exceed 25%, and the legal representative shall be a Chinese citizen.</td>
</tr>
<tr>
<td></td>
<td>G562 General airline services</td>
<td>Equity or contractual joint venture is required for investment in general airline companies for agriculture, forestry and fishery.</td>
</tr>
<tr>
<td>G563 Auxiliary activities for air transportation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chinese parties shall be controlling shareholders for investment in general airline companies engaged in business flights and air tours and services industry. It is restricted to invest in general airline companies for photography, prospecting, industry, etc. (Chinese parties as controlling shareholders). For general aviation enterprises, the operating period shall not exceed 30 years and the legal representative shall be a Chinese citizen.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Other than Hong Kong and Macao service providers, if any investor of any other country or region invests in air transport auxiliary services, it shall meet the requirements for foreign investment proportion, and the operating period shall not exceed 30 years. Chinese parties shall be controlling shareholders for investment in aircraft maintenance (undertaking international aftermarket services) and aviation fuel projects. Except that the domestic enterprise shall be a controlling shareholder if any Hong Kong or Macao service provider invests in civil aviation computer reservation systems, the investor of any other country or region is prohibited to invest in civil aviation computer reservation systems. Chinese parties shall be relatively controlling shareholders for investment in the construction and operation of civil airports. Except that a Hong Kong or Macao service provider can establish a wholly-owned air transport sales agency, if the investor of any other country or region invests in air transport sales agency, equity and contractual joint venture is required. It is prohibited to invest in air traffic control companies. |

<table>
<thead>
<tr>
<th>Finance Industry</th>
</tr>
</thead>
<tbody>
<tr>
<td>J66 Monetary and financial services, J67 Capital market services, J68</td>
</tr>
<tr>
<td>Code</td>
</tr>
<tr>
<td>-------</td>
</tr>
<tr>
<td>J69</td>
</tr>
<tr>
<td>J664</td>
</tr>
<tr>
<td>J671</td>
</tr>
<tr>
<td>J672</td>
</tr>
<tr>
<td>J673</td>
</tr>
<tr>
<td>J679</td>
</tr>
<tr>
<td>J683</td>
</tr>
<tr>
<td>J689</td>
</tr>
<tr>
<td>J692</td>
</tr>
<tr>
<td>J699</td>
</tr>
</tbody>
</table>

In the case of life insurance companies, the proportion of foreign investment shall not exceed 50%, insurance intermediaries (including insurance brokerage, agency, and assessment companies), and insurance asset management companies. It is restricted to invest in securities companies (with the proportion of foreign investment not exceeding 49%; at the beginning of incorporation, the business scope is limited to the underwriting and sponsorship of stocks (including RMB ordinary stocks and foreign stocks) and bonds (including government and corporate bonds), the brokerage of foreign stocks, and the brokerage and self-operation of bonds (including government and corporate bonds); expansion of business scope can be applied for if the enterprise continues operations for more than 2 years and meets relevant conditions), securities investment fund management companies (with the proportion of foreign investment not exceeding 49%), securities investment consulting agencies (limited to Hong Kong and Macao service providers, with the proportion of shares not exceeding 49%), and futures companies (limited to Hong Kong and Macao service providers, with the proportion of shares not exceeding 49%).

Investment in small-amount loan companies and financing guarantee companies shall comply with relevant regulations.

The total assets of the foreign investor investing in the finance leasing company shall not be less than USD 5 million; the company’s registered capital shall not be less than USD 10 million, and senior managers shall have appropriate professional qualifications and relevant experience of no less than 3 years.
<table>
<thead>
<tr>
<th>Scientific Research and Technical Service Industries</th>
<th>financial services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>M73 Research and test development</strong></td>
<td><strong>M731 Natural scientific research and test development</strong></td>
</tr>
<tr>
<td>It is prohibited to invest in the development and application of human stem cell technologies.</td>
<td></td>
</tr>
<tr>
<td><strong>M744 Surveying and mapping services</strong></td>
<td><strong>M745 Technical services for quality inspection</strong></td>
</tr>
<tr>
<td>It is restricted to invest in surveying and mapping companies (Chinese parties as controlling shareholders). It is prohibited to invest in geodetic surveying, marine charting, aerial photography for surveying and mapping purposes, administrative boundary surveying and mapping, topographic map compilations and general map compilations, and compilations of electronic maps for navigation purposes.</td>
<td></td>
</tr>
<tr>
<td><strong>M747 Geological survey</strong></td>
<td><strong>M747 Geological survey</strong></td>
</tr>
<tr>
<td>Equity or contractual joint venture is required for investment in the exploration of coal-bed gas, the risk evaluation of petroleum and gas, the exploration of oil shale, oil sand, heavy crude oil, extra-heavy crude oil and other unconventional oil resources, and the exploration of shale gas, seabed gas hydrate and other unconventional gas resources. It is restricted to invest in the exploration of precious metals (gold, silver and platinum group) and diamonds, high-aluminium fireclay, wollastonite, graphite, and other important non-metallic minerals. It is restricted to invest in the exploration of barites (limited to equity or contractual joint venture). It is restricted to invest in the exploration of special and rare kinds of coal (Chinese parties as controlling shareholders). It is prohibited to invest in the exploration of tungsten, molybdenum, tin, stibonium, fluorite, rare earth and radioactive minerals.</td>
<td></td>
</tr>
<tr>
<td>Water Conservancy, Environmental, and Public Facility Management Industries</td>
<td>M749 Other professional technical services</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Water Conservancy</td>
<td>N762 Water resource management, N763 Natural water collection and distribution</td>
</tr>
<tr>
<td>Public Facility Management Industries</td>
<td>N771 Ecological protection</td>
</tr>
</tbody>
</table>
## Annex 8.3 Comparison of Investment Rules of the Energy Charter Treaty and China’s Recent BITs

<table>
<thead>
<tr>
<th>Main Rules and Obligations of ECT on Investment</th>
<th>Highlights of China’s Recent BITs Practices</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Article 1 - Definitions</strong></td>
<td>China-Canada BIT (2012)</td>
</tr>
<tr>
<td>(4) “Energy Materials and Products”, based on the Harmonized System of the Customs Co-operation Council and the Combined Nomenclature of the European Communities, means the items included in Annex EM</td>
<td><strong>ARTICLE 1 Definitions</strong></td>
</tr>
<tr>
<td>(6) “Investment” means every kind of asset, owned or controlled directly or indirectly by an Investor and includes:</td>
<td>1. “investment” means:</td>
</tr>
<tr>
<td>(a) tangible and intangible, and movable and immovable, property, and any property rights such as leases, mortgages, liens, and pledges;</td>
<td>(a) an enterprise;</td>
</tr>
<tr>
<td>(b) a company or business enterprise, or shares, stock, or other forms of equity participation in a company or business enterprise, and bonds and other debt of a company or business enterprise;</td>
<td>(b) shares, stocks and other forms of equity participation in an enterprise;</td>
</tr>
<tr>
<td>(c) claims to money and claims to performance pursuant to contract having an economic value and associated with an Investment;</td>
<td>(c) bonds, debentures, and other debt instruments of an enterprise;</td>
</tr>
<tr>
<td>(d) Intellectual Property;</td>
<td>(d) a loan to an enterprise</td>
</tr>
<tr>
<td>(e) Returns;</td>
<td>(i) where the enterprise is an affiliate of the investor, or</td>
</tr>
<tr>
<td>(f) any right conferred by law or contract or by virtue of any licences and permits granted pursuant to law to undertake any Economic Activity in the Energy Sector.</td>
<td>(ii) where the original maturity of the loan is at least three years;</td>
</tr>
<tr>
<td>A change in the form in which assets are invested does not affect their character as investments and the term “Investment” includes all investments, whether existing at or made after the later of the date of entry into force of this Treaty for the Contracting Party of the Investor making the investment and that for the Contracting Party in the Area of which the investment is made (hereinafter referred to as the “Effective Date”)</td>
<td>(e) notwithstanding sub-paragraphs (c) and (d) above, a loan to or debt security issued by a financial institution is an investment only where the loan or debt security is treated as regulatory capital by the Contracting Party in whose territory the financial institution is located;</td>
</tr>
<tr>
<td>(g) an interest in an enterprise that entitles the owner to share in the income or profits of the enterprise;</td>
<td>(f) an interest in an enterprise that entitles the owner to share in the income or profits of the enterprise;</td>
</tr>
<tr>
<td>(h) interests arising from the commitment of capital or other resources in the territory of a Contracting Party to economic activity in such territory, such as under</td>
<td>(g) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution;</td>
</tr>
<tr>
<td>(i) contracts involving the presence of an investor’s property in the territory of the Contracting Party, including turnkey or construction contracts, or concessions to search for and extract oil and other natural resources, or</td>
<td>(h) interests arising from the commitment of capital or other resources in the territory of a Contracting Party to economic activity in such territory, such as under</td>
</tr>
<tr>
<td>(ii) contracts where remuneration depends substantially on the production, revenue or profits of an enterprise;</td>
<td>(i) contracts involving the presence of an investor’s property in the territory of the Contracting Party, including turnkey or construction contracts, or concessions to search for and extract oil and other natural resources, or</td>
</tr>
</tbody>
</table>
provided that the Treaty shall only apply to matters affecting such investments after the Effective Date. “Investment” refers to any investment associated with an Economic Activity in the Energy Sector and to investments or classes of investments designated by a Contracting Party in its Area as “Charter efficiency projects” and so notified to the Secretariat

(7) “Investor” means:
(a) with respect to a Contracting Party:
(i) a natural person having the citizenship or nationality of or who is permanently residing in that Contracting Party in accordance with its applicable law;
(ii) a company or other organization organized in accordance with the law applicable in that Contracting Party;
(b) with respect to a “third state”, a natural person, company or other organization which fulfils, mutatis mutandis, the conditions specified in subparagraph (a) for a Contracting Party.

Note:
1. Energy materials and products based on harmonized system of Customs Cooperation Council and the Combined Nomenclature of the European Communities, in Annex EM.
2. Investment means every kind of asset, owned or controlled directly or indirectly by an investor, inter alia, claims to money and claims to performance pursuant to contract having an economic value and associated with an investment.
3. Investor means a natural person and a company or other organization organized in accordance with the law applicable in that Contracting Party.

(i) intellectual property rights; and
(j) any other tangible or intangible, moveable or immovable, property and related property rights acquired or used for business purposes;

but “investment” does not mean:
(k) claims to money that arise solely from
(i) commercial contracts for the sale of goods or services, or
(ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
(l) any other claims to money, that do not involve the kinds of interests set out in sub-paragraphs (a) to (j);

2. “investor” means with regard to either Contracting Party:
(a) any natural person who has the citizenship or status of permanent resident of that Contracting Party in accordance with its laws and who does not possess the citizenship of the other Contracting Party;
(b) any enterprise as defined in paragraph 10(a) of this Article; that seeks to make, is making or has made a covered investment;

China-Japan-South Korean BIT (2012)
Article 1 Definitions
(1) the term “investments” means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that investments may take include:
(a) an enterprise and a branch of an enterprise;
(b) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
(c) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
(d) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
(e) claims to money and claims to any performance under contract having a financial value associated with investment;
(f) intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
(g) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and
(h) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;

Note: Investments also include the amounts yielded by investments, in particular, profit, interest, capital gains, dividends, royalties and fees. A change in the form in which assets are invested does not affect their character as investments.

(2) the term “investor of a Contracting Party” means a natural person or an enterprise of a Contracting Party that makes investments in the territory of another Contracting Party;

China-South Korean FTA Investment Chapter (2015)
Article12.1 Definitions
Covered investment means, with respect to a Party, an investment in its territory of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired, or expanded thereafter;
Investments means every kind of asset that an investor owns or controls, directly or indirectly, which has the characteristics of an investment, such as the commitment of
capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that investments may take include:
(i) an enterprise and a branch of an enterprise;
(ii) shares, stocks or other forms of equity participation in an enterprise, including rights derived therefrom;
(iii) bonds, debentures, loans and other forms of debt, including rights derived therefrom;
(iv) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;
(v) claims to money and claims to any performance under contract having a financial value associated with investment;
(vi) intellectual property rights, including copyrights and related rights, patent rights and rights relating to utility models, trademarks, industrial designs, layout-designs of integrated circuits, new varieties of plants, trade names, indications of source or geographical indications and undisclosed information;
(vii) rights conferred pursuant to laws and regulations or contracts such as concessions, licenses, authorizations and permits; and
(viii) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens and pledges;
Investor of a Party means a natural person or an enterprise of a Party that makes investments in the territory of the other Party;

<table>
<thead>
<tr>
<th>Article 10 – Investments</th>
<th>China-Canada BIT (2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Each Contracting Party shall, in accordance with the provisions of this Treaty, encourage and create stable, equitable, favourable and transparent conditions for Investors of other Contracting Parties to make Investments in its Area. Such conditions shall include a commitment to accord at all times to</td>
<td>ARTICLE 4 Minimum Standard of Treatment</td>
</tr>
<tr>
<td></td>
<td>1. Each Contracting Party shall accord to covered investments fair and equitable treatment and full protection and security, in accordance with international law.</td>
</tr>
<tr>
<td></td>
<td>2. The concepts of “fair and equitable treatment” and “full protection and security”</td>
</tr>
</tbody>
</table>
Investments of Investors of other Contracting Parties fair and equitable treatment. Such Investments shall also enjoy the most constant protection and security and no Contracting Party shall in any way impair by unreasonable or discriminatory measures their management, maintenance, use, enjoyment or disposal. In no case shall such Investments be accorded treatment less favourable than that required by international law, including treaty obligations. Each Contracting Party shall observe any obligations it has entered into with an Investor or an Investment of an Investor of any other Contracting Party.

(3) For the purposes of this Article, “Treatment” means treatment accorded by a Contracting Party which is no less favourable than that which it accords to its own Investors or to Investors of any other Contracting Party or any third state, whichever is the most favourable.

(4) A supplementary treaty shall, subject to conditions to be laid down therein, oblige each party thereto to accord to Investors of other parties, as regards the Making of Investments in its Area, the Treatment described in paragraph (3).

Note
1. FET, FPS, Umbrella Clause.
2. to-be-negotiated Supplementary treaty on accession of investment based on NT and MFN.
3. post-establishment NT, MFN.
4. Not applicable to protection of intellectual property.

in paragraph 1 do not require treatment in addition to or beyond that which is required by the international law minimum standard of treatment of aliens as evidenced by general State practice accepted as law.

ARTICLE 5 Most-Favoured-Nation Treatment
1/2. Each Contracting Party shall accord to investors/investment of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Contracting Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

3. For greater certainty, the “treatment” referred to in paragraphs 1 and 2 of this Article does not encompass the dispute resolution mechanisms, such as those in Part C, in other international investment treaties and other trade agreements.

ARTICLE 6 National Treatment
1/2. Each Contracting Party shall accord to investors/investment of the other Contracting Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the expansion, management, conduct, operation and sale or other disposition of investments in its territory.

China-Japan-South Korean BIT (2012)

Article 3 National Treatment
1. Each Contracting Party shall in its territory accord to investors of another Contracting Party and to their investments treatment no less favourable than that it accords in like circumstances to its own investors and their investments with respect to investment activities.

2. Paragraph 1 shall not apply to non-conforming measures, if any, existing at the date of entry into force of this Agreement maintained by each Contracting Party under its laws and regulations or any amendment or
modification to such measures, provided that the amendment or modification does not decrease the conformity of the measure as it existed immediately before the amendment or modification.

**Article 4 Most-Favored-Nation Treatment**

1. Each Contracting Party shall in its territory accord to investors of another Contracting Party and to their investments treatment no less favourable than that it accords in like circumstances to investors of the third Contracting Party or of a non-Contracting Party and to their investments with respect to investment activities and the matters relating to the admission of investment in accordance with paragraph 2 of Article 2.

**Article 5 General Treatment of Investments**

1. Each Contracting Party shall accord to investments of investors of another Contracting Party fair and equitable treatment and full protection and security. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond any reasonable and appropriate standard of treatment accorded in accordance with generally accepted rules of international law. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not ipso facto establish that there has been a breach of this paragraph.

2. Each Contracting Party shall observe any written commitments in the form of an agreement or contract it may have entered into with regard to investments of investors of another Contracting Party.

**Article 9 Intellectual Property Rights**

1. (a) Each Contracting Party shall, in accordance with its laws and regulations, protect intellectual property rights.

(b) Each Contracting Party shall establish and maintain transparent intellectual property rights regimes, and will, under the existing
consultation mechanism on intellectual property, promote cooperation and communications among the Contracting Parties in the intellectual property field.

**China-South Korean FTA Investment Chapter (2015)**

**Article 12.3: National Treatment**
1. Each Party shall in its territory accord to investors of the other Party and to covered investment treatment no less favourable than that it accords in like circumstances to its own investors and their investments with respect to investment activities

**Article 12.4: Most-Favoured-Nation Treatment**
1. Each Party shall in its territory accord to investors of the other Party and to covered investments treatment no less favourable than that it accords in like circumstances to investors of any non-Party and to their investments with respect to investment activities and the matters relating to the admission of investment in accordance with paragraph 2 of Article 12.2.

**Article 12.5: Minimum Standard of Treatment**
1. Each Party shall accord to covered investments treatment in accordance with *customary international law*, including fair and equitable treatment and full protection and security.
2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.
   (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle
<table>
<thead>
<tr>
<th>Article 11 - Key personnel</th>
<th>China-Canada BIT (2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) A Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by Investors of another Contracting Party, and key personnel who are employed by such Investors or by Investments of such Investors, to enter and remain temporarily in its Area to engage in activities connected with the making or the development, management, maintenance, use, enjoyment or disposal of relevant Investments, including the provision of advice or key technical services. (2) A Contracting Party shall permit Investors of another Contracting Party which have Investments in its Area, and Investments of such Investors, to employ any key person of the Investor’s or the Investment’s choice regardless of nationality and citizenship provided that such key person has been permitted to enter, stay and work in the Area of the former Contracting Party and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key person. <strong>Note:</strong> Contracting parties shall examine in good faith requests by investors and key personnel employed by investors.</td>
<td></td>
</tr>
<tr>
<td><strong>China-Japan-South Korean BIT (2012)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ARTICLE 8 Entry of Personnel</strong></td>
<td></td>
</tr>
<tr>
<td>Each Contracting Party shall endeavour, to the extent possible, in accordance with its applicable laws and regulations, to facilitate the procedures for the entry, sojourn and residence of natural persons of another Contracting Party who wish to enter the territory of the former Contracting Party and to remain therein for the purpose of conducting business activities in connection with investments.</td>
<td></td>
</tr>
<tr>
<td><strong>China-South Korean FTA Investment Chapter (2015)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>N/A</strong></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles 12 and 13 - Compensation for losses, expropriation</th>
<th>China-Canada BIT (2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>12(1) Except where Article 13 applies, an Investor of any Contracting Party which</td>
<td><strong>ARTICLE 10 Expropriation</strong></td>
</tr>
<tr>
<td>of due process of law; and (b) “full protection and security” requires each Party to provide the level of police protection required under customary international law.</td>
<td>1. Covered investments or returns of investors of either Contracting Party shall not</td>
</tr>
</tbody>
</table>
suffers a loss with respect to any Investment in the Area of another Contracting Party owing to war or other armed conflict, state of national emergency, civil disturbance, or other similar event in that Area, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, treatment which is the most favourable of that which that Contracting Party accords to any other Investor, whether its own Investor, the Investor of any other Contracting Party, or the Investor of any third state.

13(1) Investments of Investors of a Contracting Party in the Area of any other Contracting Party shall not be nationalized, expropriated or subjected to a measure or measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “Expropriation”) except where such Expropriation is:
(a) for a purpose which is in the public interest;
(b) not discriminatory;
(c) carried out under due process of law; and
(d) accompanied by the payment of prompt, adequate and effective compensation.

Such compensation shall amount to the fair market value of the Investment expropriated at the time immediately before the Expropriation or the Valuation Date.

**Note:**
1. Prompt, adequate and effective compensation in case of nationalization, expropriation and for loss owing to war, armed conflict, national emergency, civil be expropriated, nationalized or subjected to measures having an effect equivalent to expropriation or nationalization in the territory of the other Contracting Party (hereinafter referred to as “expropriation”), except for a public purpose, under domestic due procedures of law, in a non-discriminatory manner and against compensation. Such compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation, or before the impending expropriation became public knowledge, whichever is earlier, shall include interest at a normal commercial rate until the date of payment, and shall be effectively realizable, freely transferable, and made without delay. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

**ARTICLE 11 Compensation for Losses**

Investors of one Contracting Party who suffer losses in respect of covered investments owing to war, a state of national emergency, insurrection, riot or other similar events, shall be accorded treatment by the other Contracting Party, in respect of restitution, indemnification, compensation or other settlement, no less favourable than it accords in like circumstances, to its own investors or to investors of any third State.

**China-Japan-South Korean BIT (2012)**

**Article 11 Expropriation and Compensation**

1. No Contracting Party shall expropriate or nationalize investments in its territory of investors of another Contracting Party or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Agreement as “expropriation”) except:
disturbance.
2. Compensation shall amount to fair market value at the time immediately before expropriation.
3. Judicial or administrative review for decision of valuation of investment and payment of compensation.

(a) for a public purpose;
(b) on a non-discriminatory basis;
(c) in accordance with its laws and international standard of due process of law; and
(d) upon compensation pursuant to paragraphs 2, 3 and 4.

2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.

3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Contracting Party of the investors concerned, and into freely usable currencies.

Article 12 Compensation for Losses or Damages
1. Each Contracting Party shall accord to investors of another Contracting Party that have suffered loss or damage relating to their investments in the territory of the former Contracting Party due to armed conflict or a state of emergency such as revolution, insurrection, civil disturbance or any other similar event in the territory of that former Contracting Party, treatment, as regards restitution, indemnification, compensation or any other settlement, that is no less favourable than that it accords to its own investors, to investors of the third Contracting Party or to investors of a non-Contracting Party, whichever is more favourable to the investors of another Contracting Party.
Any payments as a means of settlement referred to in paragraph 1 shall be effectively realizable, freely transferable and freely convertible at the market exchange rate into the currency of the Contracting Party of the investors concerned and into freely usable currencies.

China-South Korean FTA Investment Chapter (2015)
Article 12.9: Expropriation and Compensation
1. Neither Party shall expropriate or nationalize a covered investment or take any measure equivalent to expropriation or nationalization (hereinafter referred to in this Chapter as “expropriation”) except: (a) for a public purpose; (b) on a non-discriminatory basis; (c) in accordance with its laws and international standard of due process of law; and (d) upon compensation pursuant to paragraphs 2 through 4.
2. The compensation shall be equivalent to the fair market value of the expropriated investments at the time when the expropriation was publicly announced or when the expropriation occurred, whichever is the earlier. The fair market value shall not reflect any change in market value occurring because the expropriation had become publicly known earlier.
3. The compensation shall be paid without delay and shall include interest at a commercially reasonable rate, taking into account the length of time from the time of expropriation to the time of payment. It shall be effectively realizable and freely transferable and shall be freely convertible, at the market exchange rate prevailing on the date of expropriation, into the currency of the Party of the investors concerned, and into freely usable currencies.

<table>
<thead>
<tr>
<th>Article 14 - Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Each Contracting Party shall with respect to Investments in its Area of another Contracting Party's Area of Competence, permit the transfer of investment performance over which the Contracting Party has reasonable control.</td>
</tr>
</tbody>
</table>

China-Canada BIT (2012)
ARTICLE 12 Transfers
1. A Contracting Party shall permit all
Investors of any other Contracting Party guarantee the freedom of transfer into and out of its Area, including the transfer of:
(a) the initial capital plus any additional capital for the maintenance and development of an Investment;
(b) Returns;
(c) payments under a contract, including amortization of principal and accrued interest payments pursuant to a loan agreement;
(d) unspent earnings and other remuneration of personnel engaged from abroad in connection with that Investment;
(e) proceeds from the sale or liquidation of all or any part of an Investment;
(f) payments arising out of the settlement of a dispute;
(g) payments of compensation pursuant to Articles 12 and 13.
(2) Transfers under paragraph (1) shall be effected without delay and (except in case of a Return in kind) in a Freely Convertible Currency.

Note
Contracting parties shall guarantee freedom of transfer.

transfers relating to a covered investment to be made freely and without delay. Such transfers include:
(a) contributions to capital;
(b) profits, capital gains, dividends, interest, royalties including payments in relation to intellectual and industrial property rights, fees, returns-in-kind or other income derived from the investment;
(c) proceeds obtained from the total or partial sale of the covered investment, or from the partial or complete liquidation of the investment;
(d) payments made under a contract entered into by an investor, or its covered investments, including those pursuant to a loan agreement;
(e) payments made pursuant to Articles 10 and 11 and arising under Part C; and
(f) earnings of nationals of a Contracting Party who work in connection with an investment in the territory of the other Contracting Party.

2. Each Contracting Party shall permit transfers relating to a covered investment to be made in a freely convertible currency at the market rate of exchange prevailing on the date of transfer. In the event that the market rate of exchange does not exist, the rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of currencies concerned into Special Drawing Rights.

China-Japan-South Korean BIT (2012)

Article 13 Transfers
1. Each Contracting Party shall ensure that all transfers relating to investments in its territory of an investor of another Contracting Party may be made freely into and out of its territory without delay. Such transfers shall include, in particular, though not exclusively:
(a) the initial capital and additional amounts
to maintain or increase investments;
(b) profits, capital gains, dividends, royalties, interests, fees and other current account incomes accruing from investments;
(c) proceeds from the total or partial sale or liquidation of investments;
(d) payments made under a contract including loan payments in connection with investments;
(e) earnings and remuneration of personnel from the latter Contracting Party who work in connection with investments in the territory of the former Contracting Party;
(f) payments made in accordance with Articles 11 and 12; and
(g) payments arising out of the settlement of a dispute under Article 15.
2. Each Contracting Party shall further ensure that such transfers may be made in freely usable currencies at the market exchange rate prevailing on the date of each transfer.
3. Notwithstanding paragraphs 1 and 2, a Contracting Party may delay or prevent such transfers through the equitable, non-discriminatory and good faith application of its laws relating to:
(a) bankruptcy, insolvency or the protection of the rights of creditors;
(b) issuing, trading or dealing in securities, futures, options or other derivatives;
(c) criminal or penal offenses;
(d) ensuring compliance with orders or judgments in adjudicatory proceedings; or
(e) reports of transfers of currency or other monetary instruments.

China-South Korean FTA Investment Chapter (2015)
1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers include:
(a) contributions to capital, including the initial contribution;
(b) profits, dividends, capital gains, and
proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
(c) interest, royalty payments, management fees, and technical assistance and other fees;
(d) payments made under a contract, including a loan agreement;
(e) payments made pursuant to Articles 12.5.4, 12.5.5 and 12.9;
(f) payments arising out of a dispute; and
(g) earnings and remuneration of a national of a Party who works in connection with a covered investment in the territory of the other Party.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

Article 15 – Subrogation

(1) If a Contracting Party or its designated agency (hereinafter referred to as the “Indemnifying Party”) makes a payment under an indemnity or guarantee given in respect of an Investment of an Investor (hereinafter referred to as the “Party Indemnified”) in the Area of another Contracting Party (hereinafter referred to as the “Host Party”), the Host Party shall recognize:
(a) the assignment to the Indemnifying Party of all the rights and claims in respect of such Investment; and
(b) the right of the Indemnifying Party to exercise all such rights and enforce such claims by virtue of subrogation.

Note
All rights and claims in respect of concerned investment are subrogated by the Contracting Party which makes a payment.
payment under an indemnity or guarantee given in respect of an investment of an investor.

China-Japan-South Korean BIT (2012)
Article 14 Subrogation
1. If a Contracting Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to investments of that investor in the territory of another Contracting Party, the latter Contracting Party shall:
   (a) recognize the assignment, to the former Contracting Party or its designated agency, of any right or claim of the investor that formed the basis of such payment; and
   (b) recognize the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation such right or claim to the same extent as the original right or claim of the investor.
2. If a Contracting Party or its designated agency has made a payment to its investors and thereby entered into the rights of the investor, the investor may not make a claim based on these rights against another Contracting Party without the consent of the former Contracting Party or its designated agency making the payment. For greater certainty, the investor shall continue to be entitled to exercise its rights that have not been subrogated pursuant to paragraph 1.
3. Articles 11, 12 and 13 shall apply mutatis mutandis as regards payment to be made to the Contracting Party or its designated agency referred to in paragraph 1 by virtue of such assignment of right or claim, and the transfer of such payment.

China-South Korean FTA Investment Chapter (2015)
Article 12.11: Subrogation
1. If a Party or its designated agency makes a payment to any of its investors pursuant to an indemnity, guarantee or insurance contract, pertaining to investments of that investor in the territory of the other Party, the latter
Article 17 - Non-Application of Part III in certain circumstances
Each Contracting Party reserves the right to deny the advantages of this Part to:
(1) a legal entity if citizens or nationals of a third state own or control such entity and if that entity has no substantial business activities in the Area of the Contracting Party in which it is organized; or
(2) an Investment, if the denying Contracting Party establishes that such Investment is an Investment of an Investor of a third state with or as to which the denying Contracting Party:
(a) does not maintain a diplomatic relationship; or
(b) adopts or maintains measures that:
(i) prohibit transactions with Investors of that state; or
(ii) would be violated or circumvented if the benefits of this Part were accorded to Investors of that state or to their Investments.

China-Canada BIT (2012)
ARTICLE 16 Denial of Benefits
1. A Contracting Party may, at any time including after the institution of arbitration proceedings in accordance with Part C, deny the benefits of this Agreement to an investor of the other Contracting Party that is an enterprise of that other Contracting Party and to covered investments of that investor:
(a) if investors of a non-Contracting Party own or control the enterprise; and
(b) the denying Contracting Party adopts or maintains measures with respect to the non-Contracting Party:
(i) that prohibit transactions with the enterprise; or
(ii) that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its covered investments.

China-Japan-South Korean BIT (2012)
Article 22 Denial of Benefits
1. A Contracting Party may deny the benefits of this Agreement to an investor of another Contracting Party that is an enterprise of the
<table>
<thead>
<tr>
<th>Contracting party reserves the right to deny advantages of ECT to (1) a legal entity controlled by nationals of third state and having no substantial business activities; (2) an investment controlled by investor of third state which does not maintain a diplomatic relationship.</th>
</tr>
</thead>
<tbody>
<tr>
<td>latter Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party and the denying Contracting Party: (a) does not maintain normal economic relations with the non-Contracting Party; or (b) adopts or maintains measures with respect to the non-Contracting Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investments.</td>
</tr>
<tr>
<td>2. A Contracting Party may deny the benefits of this Agreement to an investor of another Contracting Party that is an enterprise of the latter Contracting Party and to its investments if the enterprise is owned or controlled by an investor of a non-Contracting Party or of the denying Contracting Party, and the enterprise has no substantial business activities in the territory of the latter Contracting Party.</td>
</tr>
</tbody>
</table>

**China-South Korean FTA Investment Chapter (2015)**

**Article 12.15: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the latter Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party and the denying Party: (a) does not maintain normal economic relations with the non-Party; or (b) adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of the latter Party and to its investments if the enterprise is owned or controlled by an investor of a non-Party or of the denying Party, and the enterprise has no substantial business activities in the territory of the latter Contracting Party.
substantial business activities in the territory of the latter Party.

| Article 18 - Sovereignty over natural resources | China-Canada BIT (2012)  
N/A  
China-Japan-South Korean BIT (2012)  
N/A  
China-South Korean FTA Investment Chapter (2015)  
N/A |
|-------------------------------------------------|-------------------------------------------------|
| (1) The Contracting Parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law.  
(2) Without affecting the objectives of promoting access to energy resources, and exploration and development thereof on a commercial basis, the Treaty shall in no way prejudice the rules in Contracting Parties governing the system of property ownership of energy resources.  
Note  
Contracting parties recognize state sovereignty and sovereign rights over energy resources. They reaffirm that these must be exercised in accordance with and subject to the rules of international law. | China-Canada BIT (2012)  
ARTICLE 33General Exceptions  
2. Provided that such measures are not applied in an arbitrary or unjustifiable manner, or do not constitute a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Contracting Party from adopting or maintaining measures, including environmental measures:  
(a) necessary to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement;  
(b) necessary to protect human, animal or plant life or health; or  
(c) relating to the conservation of living or non-living exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic |
Parties, should, in principle, bear the cost of pollution, including transboundary pollution, with due regard to the public interest and without distorting Investment in the Energy Cycle or international trade.

**Note**
1. Each Contracting Party shall strive to minimize in an economically efficient manner harmful environmental impacts within energy cycle in its area.
2. Polluters pay principle.
3. Specific DSM: at request of Contracting Party, disputes concerning environment aspects shall be reviewed by the Charter Conference aiming at a solution.

<table>
<thead>
<tr>
<th>China-Japan-South Korean BIT (2012)</th>
<th>Article 23 Environmental Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Contracting Party recognizes that it is inappropriate to encourage investment by investors of another Contracting Party by relaxing its environmental measures. To this effect each Contracting Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion of investments in its territory.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Party recognizes that it is inappropriate to encourage investment by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for the establishment, acquisition or expansion of investments in its territory.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Article 20 – Transparency</th>
<th>China-Canada BIT (2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Laws, regulations, judicial decisions and administrative rulings of general application which affect trade in Energy Materials and Products are, in accordance with Article 29(2)(a), among the measures subject to the transparency disciplines of the GATT and relevant Related Instruments.</td>
<td></td>
</tr>
<tr>
<td>(2) Laws, regulations, judicial decisions and administrative rulings of general application made effective by any Contracting Party, and agreements in force between Contracting Parties, which affect other matters covered by this Treaty shall also be published promptly in such a manner as to enable Contracting production or consumption.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICL E 17 Transparency of Laws, Regulations and Policies</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Each Contracting Party shall, with a view to promoting the understanding of its laws and policies that pertain to or affect a covered investment:</td>
</tr>
<tr>
<td>(a) make such laws and policies public and readily accessible;</td>
</tr>
<tr>
<td>(b) if requested, provide copies of specified laws and policies to the other Contracting Party; and</td>
</tr>
<tr>
<td>(c) if requested, consult with the other Contracting Party with a view to explaining specified laws and policies.</td>
</tr>
<tr>
<td>2. Each Contracting Party shall ensure that its laws, regulations and policies</td>
</tr>
</tbody>
</table>
Parties and Investors to become acquainted with them. The provisions of this paragraph shall not require any Contracting Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any Investor.

**Note**

Laws, regulations, judicial decisions and administrative ruling of general application which affect trade in energy materials and products are among measures subject to transparency disciplines of GATT and relevant instruments.

<table>
<thead>
<tr>
<th>China-Japan-South Korean BIT (2012) Article 10 Transparency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Each Party shall promptly publish, or otherwise make publicly available, its laws, regulations, administrative procedures and administrative rulings and judicial decisions of general application as well as international agreements to which the Party is a party and which pertain to or affect investment activities. The Government of each Party shall make easily available to the public, the names and addresses of the competent authorities responsible for such laws, regulations, administrative procedures and administrative rulings.</td>
</tr>
<tr>
<td>2. When a Party introduces or changes its laws or regulations that significantly affect the implementation and operation of this Chapter, the Party shall endeavour to provide a reasonable interval between the time when such laws or regulations are published or made publicly available and the time when they enter into force, except for those laws or regulations involving national security, foreign exchange rates or monetary policies and other laws or regulations the publication of which would impede law enforcement.</td>
</tr>
<tr>
<td>3. Each Party shall, on the request by the other Party, within a reasonable period of time and through existing bilateral channels, respond to specific questions from, and provide information to, the latter Party with respect to any actual or proposed measure of the former Party, which might materially affect the interests of the latter Party and its investors under this Chapter.</td>
</tr>
</tbody>
</table>
4. Each Party shall, in accordance with its laws and regulations:
(a) make public in advance regulations of general application that affect any matter covered by this Chapter; and
(b) provide a reasonable opportunity for comments by the public for those regulations related to investment and give consideration to those comments before adoption of such regulations.

5. The provisions of this Article shall not be construed so as to oblige any Party to disclose confidential information, the disclosure of which: (a) would impede law enforcement; (b) would be contrary to the public interest; or (c) could prejudice privacy or legitimate commercial interests.

**China-South Korean FTA Investment Chapter (2015)**
Article 12.8: Transparency

Same as Article 10 Transparency of China-Japan-South Korean BIT (2012)

<table>
<thead>
<tr>
<th>Article 21 - Taxation</th>
<th>China-Canada BIT (2012)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Except as otherwise provided in this Article, nothing in this Treaty shall create rights or impose obligations with respect to Taxation Measures of the Contracting Parties. In the event of any inconsistency between this Article and any other provision of the Treaty, this Article shall prevail to the extent of the inconsistency.</td>
<td><strong>ARTICLE 14 Taxation</strong></td>
</tr>
<tr>
<td><strong>Note</strong></td>
<td><strong>1. Except as provided in this Article nothing in this Agreement shall apply to taxation measures.</strong></td>
</tr>
<tr>
<td>1. Article 7(3) (transit), article 10(2) and (7) (NT MFN), article 29(2) (transitional provisions), article 39 (Expropriation), and article 26 (ISDS) and article 27 (G2G) shall apply to taxation measures.</td>
<td>2. Nothing in this Agreement shall affect the rights and obligations of the Contracting Parties under any tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall apply to the extent of the inconsistency.</td>
</tr>
<tr>
<td>2. Competent tax authority review as prerequisite procedure for ISDS and G2G, and the tribunal may take into account any conclusions arrived at by competent tax authorities.</td>
<td>3. Nothing in this Agreement shall be construed to require a Contracting Party to furnish or allow access to information the disclosure of which would be contrary to the Contracting Party’s law protecting information concerning the taxation affairs of a taxpayer.</td>
</tr>
<tr>
<td>4. The provisions of Article 10 shall apply to taxation measures.</td>
<td>4. No claim may be made by an investor</td>
</tr>
</tbody>
</table>
pursuant to paragraph 4 unless:
(a) the investor provides a copy of the notice of claim to the taxation authorities of the Contracting Parties; and
(b) six months after receiving notification of the claim by the investor, the taxation authorities of the Contracting Parties fail to reach a joint determination that the measure in question is not an expropriation.

6. The taxation authorities referred to in this Article shall be the following until otherwise notified by a Contracting Party:
(a) for Canada: the Assistant Deputy Minister, Tax Policy, of the Department of Finance Canada;
(b) for China: the Ministry of Finance and State Administration of Taxation or an authorized representative of the Ministry of Finance and State Administration of Taxation.

7. The Contracting Parties shall notify each other promptly by diplomatic note of the successors to the tax authorities identified in sub-paragraphs 6(a) and (b).

China-Japan-South Korean BIT (2012) Article 21 Taxation
1. Nothing in this Agreement shall apply to taxation measures except as expressly provided for in paragraphs 3, 4 and 5.
2. Nothing in this Agreement shall affect the rights and obligations of any Contracting Party under any tax convention. In the event of any inconsistency between this Agreement and any such convention, that convention shall prevail to the extent of the inconsistency.

Note: In resolving issues relating to taxes, the competent authorities of each Contracting Party under the relevant tax convention shall determine whether or not such convention governs such issues.
3. Article 11 shall apply to taxation measures.
4. Article 15 shall apply to disputes under paragraph 3.
5. (a) No investor may invoke Article 11 as the basis for the submission of an investment dispute to the arbitration set out in paragraph 3 of Article 15, where it has been determined pursuant to subparagraph (b) the taxation measure in question is not an expropriation.

(b) The disputing investor shall refer the issue, at the time of the submission of a written request for consultation to the disputing Contracting Party under paragraph 2 of Article 15, to the competent authorities of the Contracting Party of the disputing investor and the disputing Contracting Party to determine whether such measure is not an expropriation. If the competent authorities of both Contracting Parties do not consider the issue or, having considered it, fail to determine that the measure is not an expropriation within six months from the date on which the written request for consultation is submitted to the disputing Contracting Party under paragraph 2 of Article 15, the investor may submit its claim to the arbitration set out in paragraph 3 of Article 15.

(c) For the purposes of subparagraph (b), the term “competent authorities” means: (i) in the case of the People’s Republic of China, the Ministry of Finance and State Administration of Taxation or their authorized representatives; (ii) in the case of Japan, the Minister of Finance or his or her authorized representatives, who shall consider the issue in consultation with the Minister for Foreign Affairs or his or her authorized representatives; and (iii) in the case of the Republic of Korea, the Deputy Minister for Tax and Customs Office of the Ministry of Strategy and Finance or his or her authorized representatives.

China-South Korean FTA Investment Chapter (2015)
N/A
(1) Each Contracting Party shall ensure that any state enterprise which it maintains or establishes shall conduct its activities in relation to the sale or provision of goods and services in its Area in a manner consistent with the Contracting Party’s obligations under Part III of this Treaty.

(2) No Contracting Party shall encourage or require such a state enterprise to conduct its activities in its Area in a manner inconsistent with the Contracting Party’s obligations under other provisions of this Treaty.

(3) Each Contracting Party shall ensure that if it establishes or maintains an entity and entrusts the entity with regulatory, administrative or other governmental authority, such entity shall exercise that authority in a manner consistent with the Contracting Party’s obligations under this Treaty.

Note
SOE shall be construed to conduct in a manner consistent with the ECT obligations.

1. This Agreement shall apply to measures adopted or maintained by a Contracting Party relating to investors of the other Contracting Party and covered investments.

2. A Contracting Party’s obligations under this Agreement shall apply to any entity whenever that entity exercises any regulatory, administrative or other governmental authority delegated to it by that Contracting Party, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Contracting Party shall take all necessary measures in order to ensure observance of the provisions of this Agreement by provincial governments.

China-Japan-South Korean BIT (2012)
Article 1 Definition
(4) the term “enterprise of a Contracting Party” means any legal person or any other entity constituted or organized under the applicable laws and regulations of that Contracting Party, whether or not for profit, and whether private-or government-owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association or organization;

China-South Korean FTA Investment Chapter (2015)
Article 12.1 Definition
Enterprise of a Party means any legal person or any other entity constituted or organized under the applicable laws and regulations of that Party, whether or not for profit, and whether private or government-owned or controlled, and includes a company, corporation, trust, partnership, sole proprietorship, joint venture, association or organization;
Article 24 – Exceptions
(1) This Article shall not apply to Articles 12, 13 and 29.
(2) The provisions of this Treaty other than
(a) those referred to in paragraph (1); and
(b) with respect to subparagraph (i), Part III of the Treaty shall not preclude any Contracting Party from adopting or enforcing any measure
(i) necessary to protect human, animal or plant life or health;
(ii) essential to the acquisition or distribution of Energy Materials and Products in conditions of short supply arising from causes outside the control of that Contracting Party, provided that any such measure shall be consistent with the principles that
(A) all other Contracting Parties are entitled to an equitable share of the international supply of such Energy Materials and Products; and
(B) any such measure that is inconsistent with this Treaty shall be discontinued as soon as the conditions giving rise to it have ceased to exist; or
(iii) designed to benefit Investors who are aboriginal people or socially or economically disadvantaged individuals or groups or their Investments and notified to the Secretariat as such, provided that such measure
(A) has no significant impact on that Contracting Party’s economy;
(B) does not discriminate between Investors of any other Contracting Party and Investors of that Contracting Party not included among those for whom the measure is intended,

Note
1. No exceptions to compensation for loss, expropriation and interim provision on trade related matters.
2. General public health exception; short

China-Canada BIT (2012)
ARTICLE 8 Exceptions
1. Article 5 does not apply to:
(a) treatment by a Contracting Party pursuant to any existing or future bilateral or multilateral agreement:
(i) establishing, strengthening or expanding a free trade area or customs union;
(ii) relating to aviation, fisheries, or maritime matters including salvage;
(b) treatment accorded under any bilateral or multilateral international agreement in force prior to 1 January 1994.
2. Articles 5, 6 and 7 do not apply to:
(a) (i) any existing non-conforming measures maintained within the territory of a Contracting Party; and
(ii) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government’s equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, prohibits or imposes limitations on the ownership or control of equity interests or assets or imposes nationality requirements relating to senior management or members of the board of directors;
(b) the continuation or prompt renewal of any non-conforming measure referred to in sub-paragraph (a); or
(c) an amendment to any non-conforming measure referred to in sub paragraph (a), to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 5, 6 and 7.
3. Articles 5, 6 and 7 do not apply to any measure that a Contracting Party has reserved the right to adopt or maintain pursuant to Annex B.8.
4. In respect of intellectual property rights, a Contracting Party may derogate from Articles 3, 5 and 6 in a manner that is
supply exception; aboriginal and disadvantaged exception; essential security interest exception; nuclear non-proliferation exception; public order exception.

consistent with international agreements regarding intellectual property rights to which both Contracting Parties are parties.

5. Articles 5, 6 and 7, do not apply to:
   (a) procurement by a Contracting Party;
   (b) subsidies or grants provided by a Contracting Party, including government-supported loans, guarantees and insurance.

### China-Japan-South Korean BIT (2012)

#### Article 18 Security Exceptions
1. Notwithstanding any other provisions in this Agreement other than the provisions of Article 12, each Contracting Party may take any measure:
   (a) which it considers necessary for the protection of its essential security interests;
      (i) taken in time of war, or armed conflict, or other emergency in that Contracting Party or in international relations;
      (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;
   (b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

#### Article 20 Prudential Measures
1. Notwithstanding any other provisions of this Agreement, a Contracting Party shall not be prevented from taking measures relating to financial services for prudential reasons, including measures for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by an enterprise supplying financial services, or to ensure the integrity and stability of the financial system.
2. In cases where a Contracting Party takes any measure, pursuant to paragraph 1, that does not conform with the obligations of the provisions of this Agreement other than the provisions of Article 12, that Contracting Party shall not use such measure as a means of avoiding its obligations.

### China-South Korean FTA Investment
Chapter (2015)  
Article 12.14: Security Exceptions  
1. Notwithstanding any other provisions in this Chapter other than the provisions of Article 12.5.4 each Party may take any measure:  
(a) which it considers necessary for the protection of its essential security interests;  
(i) taken in time of war, or armed conflict, or other emergency in that Party or in international relations; or (ii) relating to the implementation of national policies or international agreements respecting the non-proliferation of weapons;  
(b) in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.  
ANNEX 12-C TRANSFERS  
1. Nothing in this Chapter, Chapter 8 (Trade in Services), or Chapter 9 (Financial Services) shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payments and capital movements: (a) in the event of serious balance of payments or external financial difficulties or threat thereof; or (b) where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in either Party.  

Article 26 - Settlement of Disputes between an Investor and a Contracting Party  
(1) Disputes between a Contracting Party and an Investor of another Contracting Party relating to an Investment of the latter in the Area of the former, which concern an alleged breach of an obligation of the former under Part III shall, if possible, be settled amicably.  
(2) If such disputes can not be settled according to the provisions of paragraph (1) within a period of three months from

China-Canada BIT (2012)  
ARTICLE 20 Claim by an Investor of a Contracting Party  
1. An investor of a Contracting Party may submit to arbitration under this Part a claim that the other Contracting Party has breached an obligation:  
(a) under Articles 2 to 7(2), 9, 10 to 13, 14(4) or 16, if the breach is with respect to investors or covered investments of investors to which sub paragraph (b) does not apply, or  
(b) under Article 10 or 12 if the breach is with respect to investors of a Contracting
the date on which either party to the
dispute requested amicable settlement,
the Investor party to the dispute may
choose to submit it for resolution:
(a) to the courts or administrative
tribunals of the Contracting Party to the
dispute;
(b) in accordance with any applicable,
previously agreed dispute settlement
procedure; or
(c) in accordance with the following
paragraphs of this Article.
(3) (a) Subject only to subparagraphs (b)
and (c), each Contracting Party hereby
gives its unconditional consent to the
submission of a dispute to international
arbitration or conciliation in accordance
with the provisions of this Article.
(b) (i) The Contracting Parties listed in
Annex ID do not give such unconditional
consent where the Investor has previously
submitted the dispute under subparagraph
(2)(a) or (b).
(ii) For the sake of transparency, each
Contracting Party that is listed in Annex
ID shall provide a written statement of its
policies, practices and conditions in this
regard to the Secretariat no later than the
date of the deposit of its instrument of
ratification, acceptance or approval in
accordance with Article 39 or the deposit
of its instrument of accession in
accordance with Article 41.
(c) A Contracting Party listed in Annex
IA does not give such unconditional
consent with respect to a dispute arising
under the last sentence of Article 10(1).

Note
1. ISDS is available for investors under
ECT as well as local remedy and
contracting DSM.
2. Contracting parties in Annex ID do not
give consent to ISDS where investors
have previously resorted to local or
contractual remedy.
3. Contracting parties in Annex IA do not give consent with respect to breach of umbrella clause.

The domestic administrative review procedure shall not exceed four months from the date on which an application for the review is filed. If the procedure is not completed by the end of the four months, it shall be deemed to be completed and the disputing investor may submit the investment dispute to the arbitration set out in paragraph 3. The investor may file an application for the review unless the four months consultation period as provided in paragraph 3 has elapsed.

China-South Korean FTA Investment Chapter (2015)
Article 12.12: Settlement of Investment Disputes between a Party and an Investor of the Other Party
1. For the purposes of this Article, an investment dispute is a dispute between a Party and an investor of the other Party that has incurred loss or damage by reason of, or arising out of, an alleged breach of any obligation of the former Party under this Chapter with respect to the investor or its covered investments in the territory of the former Party.
4. Each Party hereby gives its consent to the submission of an investment dispute by a disputing investor to the arbitration set out in paragraph 3 in accordance with the provisions of this Article.
5. Once the disputing investor has submitted an investment dispute to the competent court of the disputing Party or to one of the arbitrations set out in paragraph 3, the choice of the disputing investor shall be final and the disputing investor may not submit thereafter the same dispute to the other arbitrations set out in paragraph 3.

China-Canada BIT (2012)
ARTICLE 15 Disputes between the Contracting Parties
1. Any dispute between the Contracting
or interpretation of this Treaty through diplomatic channels.

(2) If a dispute has not been settled in accordance with paragraph (1) within a reasonable period of time, either party thereto may, except as otherwise provided in this Treaty or agreed in writing by the Contracting Parties, and except as concerns the application or interpretation of Article 6 or Article 19 or, for Contracting Parties listed in Annex IA, the last sentence of Article 10(1), upon written notice to the other party to the dispute submit the matter to an ad hoc tribunal under this Article.

Note

G2G under UNCITRAL Rule is applicable for disputes concerning interpretation or application of ECT, except article 6 (competition), article 9 (environment aspects) and in Annex IA, article 10(1) (umbrella clause).

Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled by consultation through diplomatic channels.

2. If a dispute cannot thus be settled within six months, it shall, upon the request of either Contracting Party, be submitted to an ad hoc arbitral tribunal.

3. Such tribunal shall be comprised of three arbitrators. Within two months from the date on which either Contracting Party receives the written notice requesting arbitration from the other Contracting Party, each Contracting Party shall appoint one arbitrator. Those two arbitrators shall jointly select a third arbitrator, who shall be a national of a third State which has diplomatic relations with both Contracting Parties. The third arbitrator shall be appointed by the two Contracting Parties as Chairman of the arbitral tribunal within two months from the date of appointment of the other two arbitrators.

China-Japan-South Korean BIT (2012)

Article 17 Settlement of Disputes among Contracting Parties

1. Any Contracting Party may request in writing consultations with another Contracting Party to resolve any dispute relating to the interpretation or application of this Agreement. The former Contracting Party (hereinafter referred to in this Article as “the complaining Party”) shall at the time of the request deliver to the third Contracting Party a copy of that request. Where the third Contracting Party considers that it has a substantial interest in the dispute, it shall be entitled to participate in such consultations.

2. (a) Where the consultations referred to in paragraph 1 do not satisfactorily resolve the dispute within six months after the date of receipt of the request referred to in that paragraph, the complaining Party or the Contracting Party to which such request was addressed (hereinafter collectively referred to
in this Article as “the disputing Parties”) may, upon written request to the other disputing Party, submit the dispute to an arbitral tribunal.

(b) The disputing Party that submits the dispute to an arbitral tribunal under subparagraph (a) shall deliver to the third Contracting Party a copy of the request for arbitration under that subparagraph.

(c) The third Contracting Party may make submissions to the arbitral tribunal referred to in subparagraph (a) on a question of the interpretation of this Agreement, upon written notice to the disputing Parties.

(d) Where the third Contracting Party considers that it has a substantial interest in the dispute, it shall be entitled to participate in the arbitration proceedings by joining either of the disputing Parties on delivery of a written notice of its intention to participate to the disputing Parties and to the arbitral tribunal referred to in subparagraph (a). Such written notice shall be delivered to the disputing Parties at the earliest possible time and in any event no later than seven days after the date of delivery of the copy of the request under subparagraph (b).

3. Unless otherwise provided for in this Article, or in the absence of an agreement by the disputing Parties to the contrary, the UNCITRAL Arbitration Rules shall apply mutatis mutandis to the proceedings of the arbitral tribunal. However, these rules may be modified by the disputing Parties or modified by the arbitrators appointed pursuant to paragraph 4, provided that none of the disputing Parties objects to the modification. The arbitral tribunal may, for its part, determine its own rules and procedures.

4. Within sixty days from the date of receipt of the request under subparagraph 2(a), each disputing Party shall appoint an arbitrator. The two arbitrators shall, in consultation with the disputing Parties, select a third arbitrator as the chairperson, who shall be a national of
a non-Contracting Party. The UNCITRAL Arbitration Rules applicable to appointing members of three-member panels shall apply mutatis mutandis to other matters relating to the appointment of the arbitrators of the arbitral tribunal provided that the appointing authority referenced in those rules shall be the President of the International Court of Justice. If the President is a national of any Contracting Party or otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also is a national of any Contracting Party or otherwise prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of any Contracting Party shall be invited to make the appointment.

5. Unless otherwise agreed by the disputing Parties, all submissions of documents shall be made and all hearings shall be completed within a period of one hundred and eighty days from the date of selection of the third arbitrator. The arbitral tribunal shall render its award, in accordance with the provisions of this Agreement and the rules of international law applicable to the disputing Parties, within sixty days from the date of the final submissions of documents or the date of the closing of the hearings, whichever is the later. Such award shall be final and binding upon the disputing Parties.

6. The third Contracting Party that is not participating in the arbitration proceedings in accordance with subparagraph 2(d) shall, on delivery of a written notice to the disputing Parties and to the arbitral tribunal, be entitled to attend all hearings, to make written and oral submissions to the arbitral tribunal and to receive a copy of the written submissions of the disputing Parties to the arbitral tribunal.

7. Unless otherwise agreed by the disputing Parties, expenses incurred by the chairperson
and other arbitrators, and other costs of the proceedings, shall be borne equally by the disputing Parties.

China-South Korean FTA Investment Chapter (2015)

Article 20.1: Cooperation
The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation when a dispute occurs.

Article 20.3: Choice of Forum
1. Where a dispute arises under this Agreement and under the WTO Agreement or any other agreement to which both Parties are party, the complaining Party may select the forum in which to settle the dispute.

Article 20.6: Establishment of Panel
1. If the consultations referred to in Article 20.4 fail to resolve a matter within 60 days after the date of receipt of the request for consultations or within such other period as the Parties may agree, the complaining Party may deliver a written request to establish a panel to the other Party.
2. The complaining Party shall indicate in the request whether consultations were held, identify the specific measure at issue and provide a brief summary of the legal basis for the complaint sufficient to present the problem clearly.
3. A panel shall be established upon the date of receipt of the request referred to in paragraph 1.
## Annex 8.4 China’s Bilateral Investment Treaty (by region)\(^{479}\)

<table>
<thead>
<tr>
<th>No.</th>
<th>Continent</th>
<th>Country</th>
<th>Signed on</th>
<th>Effective from</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>EUROPE</td>
<td>SWEDEN</td>
<td>1982/3/29</td>
<td>1982/3/29</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>EUROPE</td>
<td>SWEDEN</td>
<td>2004/9/27</td>
<td>2004/9/27</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>EUROPE</td>
<td>GERMANY</td>
<td>1983/10/7</td>
<td>1985/3/18</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>EUROPE</td>
<td>GERMANY</td>
<td>2003/12/1</td>
<td>2005/11/11</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>5</td>
<td>EUROPE</td>
<td>FRANCE</td>
<td>1984/5/30</td>
<td>1985/3/19</td>
<td>TERMINATED</td>
</tr>
<tr>
<td>6</td>
<td>EUROPE</td>
<td>FRANCE</td>
<td>2007/11/26</td>
<td>2010/8/20</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>7</td>
<td>EUROPE</td>
<td>Luxembourg</td>
<td>1983/10/7</td>
<td>1985/3/18</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>8</td>
<td>EUROPE</td>
<td>Luxembourg</td>
<td>2003/12/1</td>
<td>2005/11/11</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>9</td>
<td>EUROPE</td>
<td>Sweden</td>
<td>1984/9/4</td>
<td>1986/1/26</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>EUROPE</td>
<td>Finland</td>
<td>2004/11/15</td>
<td>2006/11/15</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>11</td>
<td>EUROPE</td>
<td>U.K.</td>
<td>1984/11/21</td>
<td>1985/7/10</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>EUROPE</td>
<td>Italy</td>
<td>1985/1/28</td>
<td>1987/8/28</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>EUROPE</td>
<td>The Netherlands</td>
<td>1985/6/17</td>
<td>1987/2/1</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>EUROPE</td>
<td>The Netherlands</td>
<td>2001/11/15</td>
<td>2004/8/1</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>16</td>
<td>EUROPE</td>
<td>Austria</td>
<td>1985/9/12</td>
<td>1986/10/11</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>EUROPE</td>
<td>U.K.</td>
<td>1986/5/15</td>
<td>1986/5/15</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>EUROPE</td>
<td>Switzerland</td>
<td>1986/11/12</td>
<td>1987/3/18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>EUROPE</td>
<td>Switzerland</td>
<td>2009/11/12</td>
<td>2010/4/13</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>20</td>
<td>EUROPE</td>
<td>Poland</td>
<td>1988/6/7</td>
<td>1989/1/8</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>EUROPE</td>
<td>Bulgaria</td>
<td>2007/6/26</td>
<td>2007/11/10</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>EUROPE</td>
<td>Russia</td>
<td>2006/11/9</td>
<td>2009/5/1</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>EUROPE</td>
<td>Hungary</td>
<td>1991/5/29</td>
<td>1993/4/1</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>EUROPE</td>
<td>Poland</td>
<td>1991/12/4</td>
<td>1992/12/1</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>EUROPE</td>
<td>Slovakia</td>
<td>2005/12/7</td>
<td>2007/5/25</td>
<td>PROTOCOL</td>
</tr>
<tr>
<td>27</td>
<td>EUROPE</td>
<td>Portugal</td>
<td>2012/2/3</td>
<td>1992/12/1</td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>EUROPE</td>
<td>Portugal</td>
<td>2005/12/9</td>
<td>2008/7/26</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>29</td>
<td>EUROPE</td>
<td>Spain</td>
<td>1992/2/6</td>
<td>1993/5/1</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>EUROPE</td>
<td>Spain</td>
<td>2005/11/24</td>
<td>2008/7/1</td>
<td>RENEGOTIATED</td>
</tr>
<tr>
<td>31</td>
<td>EUROPE</td>
<td>Greece</td>
<td>1992/6/25</td>
<td>1993/12/21</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>EUROPE</td>
<td>Ukraine</td>
<td>1992/10/31</td>
<td>1993/5/29</td>
<td></td>
</tr>
<tr>
<td>33</td>
<td>EUROPE</td>
<td>Moldova</td>
<td>1992/11/6</td>
<td>1995/3/1</td>
<td></td>
</tr>
<tr>
<td>34</td>
<td>EUROPE</td>
<td>Belarus</td>
<td>1993/1/11</td>
<td>1995/1/14</td>
<td></td>
</tr>
<tr>
<td>35</td>
<td>EUROPE</td>
<td>Albania</td>
<td>1993/2/13</td>
<td>1995/9/1</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>EUROPE</td>
<td>Croatia</td>
<td>1993/6/7</td>
<td>1994/7/1</td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>EUROPE</td>
<td>Estonia</td>
<td>1993/9/2</td>
<td>1994/6/1</td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>EUROPE</td>
<td>Slovenia</td>
<td>1993/9/13</td>
<td>1995/1/1</td>
<td></td>
</tr>
</tbody>
</table>

\(^{479}\) Source: MOFCOM of China.
<table>
<thead>
<tr>
<th>No.</th>
<th>Region</th>
<th>Country</th>
<th>Start Date</th>
<th>End Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>EUROPE</td>
<td>LITHUANIA</td>
<td>1993/11/8</td>
<td>1994/6/1</td>
</tr>
<tr>
<td>29</td>
<td>EUROPE</td>
<td>ICELAND</td>
<td>1994/3/31</td>
<td>1997/3/1</td>
</tr>
<tr>
<td>30</td>
<td>EUROPE</td>
<td>ROMANIA</td>
<td>1994/7/12</td>
<td>1995/9/1</td>
</tr>
<tr>
<td>31</td>
<td>EUROPE</td>
<td>YUGOSLAVIA</td>
<td>1995/12/18</td>
<td>1996/9/12</td>
</tr>
<tr>
<td>32</td>
<td>EUROPE</td>
<td>MACEDONIA</td>
<td>1997/6/9</td>
<td>1997/11/1</td>
</tr>
<tr>
<td>33</td>
<td>ASIA</td>
<td>THAILAND</td>
<td>1985/3/12</td>
<td>1985/12/13</td>
</tr>
<tr>
<td>34</td>
<td>ASIA</td>
<td>SINGAPORE</td>
<td>1985/11/21</td>
<td>1986/2/7</td>
</tr>
<tr>
<td>35</td>
<td>ASIA</td>
<td>KUWAIT</td>
<td>1985/11/23</td>
<td>1986/12/24</td>
</tr>
<tr>
<td>36</td>
<td>ASIA</td>
<td>SRI LANKA</td>
<td>1986/3/13</td>
<td>1987/3/25</td>
</tr>
<tr>
<td>37</td>
<td>ASIA</td>
<td>JAPAN</td>
<td>1988/8/27</td>
<td>1989/5/14</td>
</tr>
<tr>
<td>38</td>
<td>ASIA</td>
<td>MALAYSIA</td>
<td>1988/11/21</td>
<td>1990/3/31</td>
</tr>
<tr>
<td>39</td>
<td>ASIA</td>
<td>PAKISTAN</td>
<td>1989/2/12</td>
<td>1990/9/30</td>
</tr>
<tr>
<td>40</td>
<td>ASIA</td>
<td>TURKEY</td>
<td>1990/11/13</td>
<td>1994/8/19</td>
</tr>
<tr>
<td>41</td>
<td>ASIA</td>
<td>MONGOLIA</td>
<td>1991/8/25</td>
<td>1993/11/1</td>
</tr>
<tr>
<td>42</td>
<td>ASIA</td>
<td>UZBEKISTAN</td>
<td>1992/3/13</td>
<td>1994/4/12</td>
</tr>
<tr>
<td>42</td>
<td>ASIA</td>
<td>UZBEKISTAN</td>
<td>2011/4/19</td>
<td>2011/9/1</td>
</tr>
<tr>
<td>43</td>
<td>ASIA</td>
<td>KYRGYZSTAN</td>
<td>1992/5/14</td>
<td>1995/9/8</td>
</tr>
<tr>
<td>44</td>
<td>ASIA</td>
<td>ARMENIA</td>
<td>1992/7/4</td>
<td>1995/3/18</td>
</tr>
<tr>
<td>45</td>
<td>ASIA</td>
<td>THE PHILIPPINES</td>
<td>1992/7/20</td>
<td>1995/9/8</td>
</tr>
<tr>
<td>47</td>
<td>ASIA</td>
<td>KOREA</td>
<td>1992/9/30</td>
<td>1992/12/4</td>
</tr>
<tr>
<td>48</td>
<td>ASIA</td>
<td>KOREA</td>
<td>2007/9/7</td>
<td>2007/12/1</td>
</tr>
<tr>
<td>49</td>
<td>ASIA</td>
<td>TURKMENISTAN</td>
<td>1992/11/21</td>
<td>1994/6/6</td>
</tr>
<tr>
<td>50</td>
<td>ASIA</td>
<td>VIETNAM</td>
<td>1992/12/2</td>
<td>1993/9/1</td>
</tr>
<tr>
<td>51</td>
<td>ASIA</td>
<td>LAOS</td>
<td>1993/1/31</td>
<td>1993/6/1</td>
</tr>
<tr>
<td>52</td>
<td>ASIA</td>
<td>TAJIKISTAN</td>
<td>1993/3/9</td>
<td>1994/1/20</td>
</tr>
<tr>
<td>53</td>
<td>ASIA</td>
<td>GEORGIA</td>
<td>1993/6/3</td>
<td>1995/3/1</td>
</tr>
<tr>
<td>54</td>
<td>ASIA</td>
<td>UAE</td>
<td>1993/7/1</td>
<td>1994/9/28</td>
</tr>
<tr>
<td>55</td>
<td>ASIA</td>
<td>AZERBAIJAN</td>
<td>1994/3/8</td>
<td>1995/4/1</td>
</tr>
<tr>
<td>56</td>
<td>ASIA</td>
<td>INDONESIA</td>
<td>1994/11/18</td>
<td>1995/4/1</td>
</tr>
<tr>
<td>57</td>
<td>ASIA</td>
<td>OMAN</td>
<td>1995/3/18</td>
<td>1995/8/1</td>
</tr>
<tr>
<td>58</td>
<td>ASIA</td>
<td>ISRAEL</td>
<td>1995/4/10</td>
<td>2009/1/13</td>
</tr>
<tr>
<td>59</td>
<td>ASIA</td>
<td>SAUDI ARABIA</td>
<td>1996/2/29</td>
<td>1997/5/1</td>
</tr>
<tr>
<td>60</td>
<td>ASIA</td>
<td>LEBANESE</td>
<td>1996/6/13</td>
<td>1997/7/10</td>
</tr>
<tr>
<td>61</td>
<td>ASIA</td>
<td>CAMBODIA</td>
<td>1996/7/19</td>
<td>2000/2/1</td>
</tr>
<tr>
<td>62</td>
<td>ASIA</td>
<td>SYRIA</td>
<td>1996/12/9</td>
<td>2001/11/1</td>
</tr>
<tr>
<td>63</td>
<td>ASIA</td>
<td>YEMEN</td>
<td>1998/2/16</td>
<td>2002/4/10</td>
</tr>
<tr>
<td>64</td>
<td>ASIA</td>
<td>KATAR</td>
<td>1999/4/9</td>
<td>2000/4/1</td>
</tr>
<tr>
<td>65</td>
<td>ASIA</td>
<td>BAHRAIN</td>
<td>1999/6/17</td>
<td>2000/4/27</td>
</tr>
<tr>
<td>66</td>
<td>ASIA</td>
<td>IRAN</td>
<td>2000/6/22</td>
<td>2005/7/1</td>
</tr>
<tr>
<td>67</td>
<td>ASIA</td>
<td>MYANMAR</td>
<td>2001/12/12</td>
<td>2002/5/21</td>
</tr>
<tr>
<td>68</td>
<td>ASIA</td>
<td>KOREA</td>
<td>2005/3/22</td>
<td>2005/10/1</td>
</tr>
<tr>
<td>69</td>
<td>ASIA</td>
<td>INDIA</td>
<td>2006/11/21</td>
<td>2007/8/1</td>
</tr>
<tr>
<td>70</td>
<td>OCEANIA</td>
<td>AUSTRALIA</td>
<td>1988/7/11</td>
<td>1988/7/11</td>
</tr>
<tr>
<td>Country</td>
<td>Region</td>
<td>Start Date</td>
<td>End Date</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>--------</td>
<td>------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Papua New Guinea</td>
<td>Oceania</td>
<td>1991/4/12</td>
<td>1993/2/12</td>
<td></td>
</tr>
<tr>
<td>Ghana</td>
<td>Africa</td>
<td>1989/10/12</td>
<td>1990/11/22</td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>Africa</td>
<td>1994/4/21</td>
<td>1996/4/1</td>
<td></td>
</tr>
<tr>
<td>Mauritius</td>
<td>Africa</td>
<td>1996/5/4</td>
<td>1997/6/8</td>
<td></td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>Africa</td>
<td>1996/5/21</td>
<td>1998/3/1</td>
<td></td>
</tr>
<tr>
<td>Algeria</td>
<td>Africa</td>
<td>1996/10/17</td>
<td>2003/1/28</td>
<td></td>
</tr>
<tr>
<td>Gabon</td>
<td>Africa</td>
<td>1997/5/9</td>
<td>2009/2/16</td>
<td></td>
</tr>
<tr>
<td>Nigeria</td>
<td>Africa</td>
<td>1997/5/12</td>
<td>Terminated</td>
<td></td>
</tr>
<tr>
<td>Nigeria</td>
<td>Africa</td>
<td>2001/8/27</td>
<td>2010/2/18 Renegotiated</td>
<td></td>
</tr>
<tr>
<td>Sudan</td>
<td>Africa</td>
<td>1997/5/30</td>
<td>1998/7/1</td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>Africa</td>
<td>1997/12/30</td>
<td>1998/4/1</td>
<td></td>
</tr>
<tr>
<td>Cape Verde</td>
<td>Africa</td>
<td>1998/4/21</td>
<td>2001/10/1</td>
<td></td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Africa</td>
<td>1998/5/11</td>
<td>2000/5/1</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>Africa</td>
<td>2004/6/21</td>
<td>2006/7/1</td>
<td></td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Africa</td>
<td>2005/10/20</td>
<td>2006/11/15</td>
<td></td>
</tr>
<tr>
<td>Madagascar</td>
<td>Africa</td>
<td>2005/11/21</td>
<td>2007/7/1</td>
<td></td>
</tr>
<tr>
<td>Bolivia</td>
<td>America</td>
<td>1992/5/8</td>
<td>1996/9/1</td>
<td></td>
</tr>
<tr>
<td>Argentine</td>
<td>America</td>
<td>1992/11/5</td>
<td>1994/8/1</td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
<td>America</td>
<td>1993/12/2</td>
<td>1997/12/1</td>
<td></td>
</tr>
<tr>
<td>Ecuador</td>
<td>America</td>
<td>1994/3/21</td>
<td>1997/7/1</td>
<td></td>
</tr>
<tr>
<td>Chile</td>
<td>America</td>
<td>1994/3/23</td>
<td>1995/8/1</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>America</td>
<td>1994/6/9</td>
<td>1995/2/1</td>
<td></td>
</tr>
<tr>
<td>Jamaica</td>
<td>America</td>
<td>1994/10/26</td>
<td>1996/4/1</td>
<td></td>
</tr>
<tr>
<td>Cuba</td>
<td>America</td>
<td>1995/4/24</td>
<td>1996/8/1</td>
<td></td>
</tr>
<tr>
<td>Cuba</td>
<td>America</td>
<td>2007/4/20</td>
<td>2008/12/1 Renegotiated</td>
<td></td>
</tr>
<tr>
<td>Barbados</td>
<td>America</td>
<td>1998/7/20</td>
<td>1999/10/1</td>
<td></td>
</tr>
<tr>
<td>Trinidad &amp; Tobago</td>
<td>America</td>
<td>2002/7/22</td>
<td>2004/12/7</td>
<td></td>
</tr>
<tr>
<td>Guyana</td>
<td>America</td>
<td>2003/3/27</td>
<td>2004/10/26</td>
<td></td>
</tr>
<tr>
<td>Malta</td>
<td>Europe</td>
<td>2009/2/22</td>
<td>2009/4/1</td>
<td></td>
</tr>
<tr>
<td>Cyprus</td>
<td>Europe</td>
<td>2001/1/17</td>
<td>2002/4/29</td>
<td></td>
</tr>
<tr>
<td>Mali</td>
<td>Asia</td>
<td>2009/2/12</td>
<td>2009/7/16</td>
<td></td>
</tr>
<tr>
<td>Japan and Korea</td>
<td>Asia</td>
<td>2012/5/13</td>
<td>2014/5/17</td>
<td></td>
</tr>
<tr>
<td>Tanzania</td>
<td>Africa</td>
<td>2013/3/24</td>
<td>2014/4/17</td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>America</td>
<td>2012/9/9</td>
<td>2014/10/1</td>
<td></td>
</tr>
</tbody>
</table>

192
Annex 8.5 China’s Bilateral Investment Treaty (by country)\textsuperscript{480}

<table>
<thead>
<tr>
<th>No.</th>
<th>Short title</th>
<th>Parties</th>
<th>Date of</th>
<th>No.</th>
<th>Short title</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Albania</td>
<td>In force</td>
<td>13/02/1993</td>
<td>01/09/1995</td>
<td>Full text: en</td>
</tr>
<tr>
<td>2</td>
<td>Algeria</td>
<td>In force</td>
<td>17/10/1996</td>
<td>28/01/2003</td>
<td>Full text: fr</td>
</tr>
<tr>
<td>3</td>
<td>Argentina</td>
<td>In force</td>
<td>05/11/1992</td>
<td>01/08/1994</td>
<td>Full text: en</td>
</tr>
<tr>
<td>4</td>
<td>Armenia</td>
<td>In force</td>
<td>04/07/1992</td>
<td>18/03/1995</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Austria</td>
<td>In force</td>
<td>12/09/1985</td>
<td>11/10/1986</td>
<td>Full text: de</td>
</tr>
<tr>
<td>7</td>
<td>Azerbaijan</td>
<td>In force</td>
<td>08/03/1994</td>
<td>01/04/1995</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Bahamas</td>
<td>Signed (not in force)</td>
<td>04/09/2009</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Bahrain</td>
<td>In force</td>
<td>17/06/1999</td>
<td>27/04/2000</td>
<td>Full text: en</td>
</tr>
<tr>
<td>10</td>
<td>Bangladesh</td>
<td>In force</td>
<td>12/09/1996</td>
<td>25/03/1997</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Barbados</td>
<td>In force</td>
<td>20/07/1998</td>
<td>01/10/1999</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Belarus</td>
<td>In force</td>
<td>11/01/1993</td>
<td>14/01/1995</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Benin</td>
<td>Signed (not in force)</td>
<td>18/02/2004</td>
<td></td>
<td>Full text: en</td>
</tr>
<tr>
<td>14</td>
<td>BLEU (Belgium-Luxembourg Economic Union)</td>
<td>Terminated</td>
<td>04/06/1984</td>
<td>05/10/1986</td>
<td>Full text: en</td>
</tr>
<tr>
<td>15</td>
<td>BLEU (Belgium-Luxembourg Economic Union)</td>
<td>In force</td>
<td>06/06/2005</td>
<td>01/12/2009</td>
<td>Full text: en</td>
</tr>
<tr>
<td>16</td>
<td>Bolivia, Plurinational State of</td>
<td>In force</td>
<td>08/05/1992</td>
<td>01/09/1996</td>
<td>Full text: en</td>
</tr>
<tr>
<td>17</td>
<td>Bosnia and Herzegovina</td>
<td>In force</td>
<td>26/06/2002</td>
<td>01/01/2005</td>
<td>Full text: en</td>
</tr>
<tr>
<td>18</td>
<td>Botswana</td>
<td>Signed (not in force)</td>
<td>12/06/2000</td>
<td></td>
<td>Full text: en</td>
</tr>
<tr>
<td>19</td>
<td>Brunei Darussalam</td>
<td>Signed (not in force)</td>
<td>17/11/2000</td>
<td></td>
<td>Full text: en</td>
</tr>
<tr>
<td>20</td>
<td>Bulgaria</td>
<td>In force</td>
<td>27/06/1989</td>
<td>21/08/1994</td>
<td>Full text: en</td>
</tr>
<tr>
<td>21</td>
<td>Cambodia</td>
<td>In force</td>
<td>19/07/1996</td>
<td>01/02/2000</td>
<td>Full text: en</td>
</tr>
<tr>
<td>22</td>
<td>Cameroon</td>
<td>Signed (not in force)</td>
<td>10/09/1997</td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Canada</td>
<td>In force</td>
<td>09/09/2012</td>
<td>01/10/2014</td>
<td>Full text: en</td>
</tr>
<tr>
<td>24</td>
<td>Cape Verde</td>
<td>In force</td>
<td>21/04/1998</td>
<td>01/01/2001</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Chad</td>
<td>Signed (not in force)</td>
<td>26/04/2010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Chile</td>
<td>In force</td>
<td>23/03/1994</td>
<td>01/08/1995</td>
<td>Full text: en</td>
</tr>
<tr>
<td>27</td>
<td>Colombia</td>
<td>In force</td>
<td>22/11/2008</td>
<td>02/07/2013</td>
<td>Full text: en</td>
</tr>
<tr>
<td>28</td>
<td>Congo, Democratic</td>
<td>Signed (not in force)</td>
<td>18/12/1997</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{480} Source: UNCTAD.
<table>
<thead>
<tr>
<th></th>
<th>Republic of the Democratic Republic of the</th>
<th>force</th>
<th>Signed (not in force)</th>
<th>11/08/2011</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>Congo</td>
<td>Signed (not in force)</td>
<td>20/03/2000</td>
<td>Full text: fr</td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>Congo</td>
<td>Signed (not in force)</td>
<td>24/10/2007</td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>Costa Rica</td>
<td>Signed (not in force)</td>
<td>30/09/2002</td>
<td>Full text: en</td>
<td></td>
</tr>
<tr>
<td>32</td>
<td>Côte d’Ivoire</td>
<td>Signed (not in force)</td>
<td>07/06/1993</td>
<td>01/07/1994</td>
<td>Full text: en</td>
</tr>
<tr>
<td>33</td>
<td>Croatia</td>
<td>In force</td>
<td>24/04/1995</td>
<td>01/08/1996</td>
<td>Full text: en</td>
</tr>
<tr>
<td>34</td>
<td>Cyprus</td>
<td>In force</td>
<td>08/12/2005</td>
<td>01/09/2006</td>
<td>Full text: en</td>
</tr>
<tr>
<td>35</td>
<td>Denmark</td>
<td>In force</td>
<td>17/01/2001</td>
<td>29/04/2002</td>
<td></td>
</tr>
<tr>
<td>36</td>
<td>Djibouti</td>
<td>Signed (not in force)</td>
<td>18/08/2003</td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Ecuador</td>
<td>In force</td>
<td>21/03/1994</td>
<td>01/07/1997</td>
<td>Full text: es</td>
</tr>
<tr>
<td>38</td>
<td>Egypt</td>
<td>In force</td>
<td>21/04/1994</td>
<td>01/04/1996</td>
<td>Full text: en</td>
</tr>
<tr>
<td>39</td>
<td>Equatorial Guinea</td>
<td>Signed (not in force)</td>
<td>20/10/2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td>Estonia</td>
<td>In force</td>
<td>02/09/1993</td>
<td>01/06/1994</td>
<td>Full text: en</td>
</tr>
<tr>
<td>42</td>
<td>Finland</td>
<td>In force</td>
<td>30/05/1984</td>
<td>06/11/1999</td>
<td>Full text: fr</td>
</tr>
<tr>
<td>44</td>
<td>Gabon</td>
<td>In force</td>
<td>09/05/1997</td>
<td>16/02/2009</td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Georgia</td>
<td>In force</td>
<td>03/06/1993</td>
<td>01/03/1995</td>
<td>Full text: en</td>
</tr>
<tr>
<td>46</td>
<td>Germany</td>
<td>In force</td>
<td>01/12/2003</td>
<td>11/11/2005</td>
<td>Full text: en</td>
</tr>
<tr>
<td>47</td>
<td>Germany</td>
<td>Terminated</td>
<td>07/10/1983</td>
<td>18/03/1985</td>
<td>Full text: de</td>
</tr>
<tr>
<td>49</td>
<td>Greece</td>
<td>In force</td>
<td>25/06/1992</td>
<td>21/12/1993</td>
<td>Full text: en</td>
</tr>
<tr>
<td>50</td>
<td>Indonesia</td>
<td>In force</td>
<td>18/11/2005</td>
<td>26/12/2004</td>
<td>Full text: en</td>
</tr>
<tr>
<td>51</td>
<td>Hungary</td>
<td>In force</td>
<td>27/03/2003</td>
<td>26/10/2004</td>
<td>Full text: en</td>
</tr>
<tr>
<td>52</td>
<td>Iceland</td>
<td>In force</td>
<td>29/05/1991</td>
<td>01/04/1993</td>
<td>Full text: en</td>
</tr>
<tr>
<td>53</td>
<td>India</td>
<td>In force</td>
<td>31/03/1994</td>
<td>01/03/1997</td>
<td>Full text: en</td>
</tr>
<tr>
<td>54</td>
<td>Indonesia</td>
<td>In force</td>
<td>21/11/2006</td>
<td>01/08/2007</td>
<td>Full text: en</td>
</tr>
<tr>
<td>55</td>
<td>Iran, Islamic Republic of</td>
<td>In force</td>
<td>18/11/1994</td>
<td>01/04/1995</td>
<td>Full text: en</td>
</tr>
<tr>
<td>56</td>
<td>Israel</td>
<td>In force</td>
<td>22/07/2000</td>
<td>01/07/2005</td>
<td>Full text: en</td>
</tr>
<tr>
<td>57</td>
<td>Italy</td>
<td>In force</td>
<td>10/04/1995</td>
<td>13/01/2009</td>
<td></td>
</tr>
<tr>
<td>58</td>
<td>Jamaica</td>
<td>In force</td>
<td>28/01/1985</td>
<td>28/08/1987</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Country</td>
<td>Status</td>
<td>In Force 1</td>
<td>In Force 2</td>
<td>Full Text</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------</td>
<td>------------------</td>
<td>------------</td>
<td>------------</td>
<td>-------------</td>
</tr>
<tr>
<td>65</td>
<td>Japan</td>
<td>In force</td>
<td>27/08/1988</td>
<td>14/05/1989</td>
<td>en</td>
</tr>
<tr>
<td>66</td>
<td>Jordan</td>
<td>Signed (not in force)</td>
<td>15/11/2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>68</td>
<td>Kenya</td>
<td>Signed (not in force)</td>
<td>16/07/2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>69</td>
<td>Korea, Dem. People's Rep. of</td>
<td>In force</td>
<td>22/03/2005</td>
<td>01/10/2005</td>
<td>en</td>
</tr>
<tr>
<td>70</td>
<td>Korea, Republic of</td>
<td>Terminated</td>
<td>30/09/1992</td>
<td>04/12/1992</td>
<td></td>
</tr>
<tr>
<td>71</td>
<td>Korea, Republic of</td>
<td>In force</td>
<td>07/09/2007</td>
<td>01/12/2007</td>
<td></td>
</tr>
<tr>
<td>72</td>
<td>Kuwait</td>
<td>In force</td>
<td>23/11/1985</td>
<td>24/12/1986</td>
<td>en</td>
</tr>
<tr>
<td>73</td>
<td>Kyrgyzstan</td>
<td>In force</td>
<td>14/05/1992</td>
<td>08/09/1995</td>
<td></td>
</tr>
<tr>
<td>74</td>
<td>Lao People's Democratic</td>
<td>In force</td>
<td>31/01/1993</td>
<td>01/06/1993</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Republic</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>75</td>
<td>Latvia</td>
<td>In force</td>
<td>15/04/2004</td>
<td>01/02/2006</td>
<td></td>
</tr>
<tr>
<td>76</td>
<td>Lebanon</td>
<td>In force</td>
<td>13/06/1996</td>
<td>10/07/1997</td>
<td></td>
</tr>
<tr>
<td>77</td>
<td>Libya</td>
<td>Signed (not in force)</td>
<td>04/08/2010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>78</td>
<td>Lithuania</td>
<td>In force</td>
<td>08/11/1993</td>
<td>01/06/1994</td>
<td></td>
</tr>
<tr>
<td>79</td>
<td>Macedonia, The former</td>
<td>In force</td>
<td>09/06/1997</td>
<td>01/11/1997</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yugoslav Republic of</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>80</td>
<td>Madagascar</td>
<td>In force</td>
<td>21/11/2005</td>
<td>01/06/2007</td>
<td>fr</td>
</tr>
<tr>
<td>81</td>
<td>Malaysia</td>
<td>In force</td>
<td>21/11/1988</td>
<td>31/03/1990</td>
<td></td>
</tr>
<tr>
<td>82</td>
<td>Mali</td>
<td>In force</td>
<td>12/02/2009</td>
<td>16/07/2009</td>
<td></td>
</tr>
<tr>
<td>83</td>
<td>Malta</td>
<td>In force</td>
<td>22/02/2009</td>
<td>01/04/2009</td>
<td></td>
</tr>
<tr>
<td>84</td>
<td>Mauritius</td>
<td>In force</td>
<td>04/05/1996</td>
<td>08/06/1997</td>
<td></td>
</tr>
<tr>
<td>85</td>
<td>Mexico</td>
<td>In force</td>
<td>11/07/2008</td>
<td>06/06/2009</td>
<td></td>
</tr>
<tr>
<td>86</td>
<td>Moldova, Republic of</td>
<td>In force</td>
<td>06/11/1992</td>
<td>01/03/1995</td>
<td></td>
</tr>
<tr>
<td>87</td>
<td>Mongolia</td>
<td>In force</td>
<td>25/08/1991</td>
<td>01/11/1993</td>
<td></td>
</tr>
<tr>
<td>88</td>
<td>Morocco</td>
<td>In force</td>
<td>27/03/1995</td>
<td>27/11/1999</td>
<td>fr</td>
</tr>
<tr>
<td>89</td>
<td>Mozambique</td>
<td>In force</td>
<td>10/07/2001</td>
<td>26/02/2002</td>
<td></td>
</tr>
<tr>
<td>90</td>
<td>Myanmar</td>
<td>In force</td>
<td>12/12/2001</td>
<td>21/05/2002</td>
<td></td>
</tr>
<tr>
<td>91</td>
<td>Namibia</td>
<td>Signed (not in force)</td>
<td>17/11/2005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>92</td>
<td>Netherlands</td>
<td>Terminated</td>
<td>17/06/1985</td>
<td>01/02/1987</td>
<td></td>
</tr>
<tr>
<td>93</td>
<td>Netherlands</td>
<td>In force</td>
<td>26/11/2001</td>
<td>01/08/2004</td>
<td></td>
</tr>
<tr>
<td>94</td>
<td>New Zealand</td>
<td>In force</td>
<td>22/11/1988</td>
<td>25/03/1989</td>
<td></td>
</tr>
<tr>
<td>95</td>
<td>Nigeria</td>
<td>Signed (not in force)</td>
<td>12/05/1997</td>
<td></td>
<td></td>
</tr>
<tr>
<td>96</td>
<td>Nigeria</td>
<td>Signed (not in force)</td>
<td>27/08/2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>97</td>
<td>Norway</td>
<td>In force</td>
<td>21/11/1984</td>
<td>10/07/1985</td>
<td></td>
</tr>
<tr>
<td>98</td>
<td>Oman</td>
<td>In force</td>
<td>18/03/1995</td>
<td>01/08/1995</td>
<td></td>
</tr>
<tr>
<td>99</td>
<td>Pakistan</td>
<td>In force</td>
<td>12/02/1989</td>
<td>30/09/1990</td>
<td></td>
</tr>
<tr>
<td>100</td>
<td>Papua New Guinea</td>
<td>In force</td>
<td>12/04/1991</td>
<td>12/02/1993</td>
<td></td>
</tr>
<tr>
<td>Country</td>
<td>Status</td>
<td>In Force Date 1</td>
<td>In Force Date 2</td>
<td>Full text</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------------------</td>
<td>----------------</td>
<td>----------------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Peru</td>
<td>In force</td>
<td>09/06/1994</td>
<td>01/02/1995</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Philippines</td>
<td>In force</td>
<td>20/07/1992</td>
<td>08/09/1995</td>
<td>es</td>
<td></td>
</tr>
<tr>
<td>Poland</td>
<td>In force</td>
<td>07/06/1988</td>
<td>08/01/1989</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>Terminated</td>
<td>03/02/1992</td>
<td>01/12/1992</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Portugal</td>
<td>In force</td>
<td>09/12/2005</td>
<td>26/07/2008</td>
<td>pt</td>
<td></td>
</tr>
<tr>
<td>Qatar</td>
<td>Terminated</td>
<td>09/04/1998</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Qatar</td>
<td>In force</td>
<td>09/04/1999</td>
<td>01/04/2000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Romania</td>
<td>In force</td>
<td>12/07/1994</td>
<td>01/09/1995</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Russian Federation</td>
<td>In force</td>
<td>09/11/2006</td>
<td>01/05/2009</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>In force</td>
<td>29/02/1996</td>
<td>01/05/1997</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Serbia</td>
<td>In force</td>
<td>18/12/1995</td>
<td>13/09/1996</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seychelles</td>
<td>Signed (not in force)</td>
<td>10/02/2007</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>Signed (not in force)</td>
<td>16/05/2001</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>In force</td>
<td>21/11/1985</td>
<td>07/02/1986</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovakia</td>
<td>In force</td>
<td>04/12/1991</td>
<td>01/12/1992</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Slovenia</td>
<td>In force</td>
<td>13/09/1993</td>
<td>01/01/1995</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Africa</td>
<td>In force</td>
<td>30/12/1997</td>
<td>01/04/1998</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>Terminated</td>
<td>06/02/1992</td>
<td>01/05/1993</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>In force</td>
<td>14/11/2005</td>
<td>01/07/2008</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>In force</td>
<td>13/03/1986</td>
<td>25/03/1987</td>
<td>es</td>
<td></td>
</tr>
<tr>
<td>Sudan</td>
<td>In force</td>
<td>30/05/1997</td>
<td>01/07/1998</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sweden</td>
<td>In force</td>
<td>29/03/1982</td>
<td>29/03/1982</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>Terminated</td>
<td>12/11/1986</td>
<td>18/03/1987</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Switzerland</td>
<td>In force</td>
<td>27/01/2009</td>
<td>13/04/2010</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Syrian Arab Republic</td>
<td>In force</td>
<td>09/12/1996</td>
<td>01/11/2001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tajikistan</td>
<td>In force</td>
<td>09/03/1993</td>
<td>20/01/1994</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tanzania, United Republic of</td>
<td>Signed (not in force)</td>
<td>24/03/2013</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Thailand</td>
<td>In force</td>
<td>12/03/1985</td>
<td>13/12/1985</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>In force</td>
<td>22/07/2002</td>
<td>07/12/2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>In force</td>
<td>21/06/2004</td>
<td>01/07/2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>In force</td>
<td>13/11/1990</td>
<td>20/08/1994</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Turkmenistan</td>
<td>In force</td>
<td>21/11/1992</td>
<td>04/06/1994</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uganda</td>
<td>Signed (not in force)</td>
<td>27/05/2004</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ukraine</td>
<td>In force</td>
<td>31/10/1992</td>
<td>29/05/1993</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>In force</td>
<td>01/07/1993</td>
<td>28/09/1994</td>
<td></td>
<td></td>
</tr>
<tr>
<td>United Kingdom</td>
<td>In force</td>
<td>15/05/1986</td>
<td>15/05/1986</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uruguay</td>
<td>In force</td>
<td>02/12/1993</td>
<td>01/12/1997</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>Status</td>
<td>In Force From</td>
<td>In Force To</td>
<td>Full text:</td>
</tr>
<tr>
<td>---</td>
<td>---------------</td>
<td>-------------------------</td>
<td>---------------</td>
<td>--------------</td>
<td>------------</td>
</tr>
<tr>
<td>139</td>
<td>Uzbekistan</td>
<td>Terminated</td>
<td>13/03/1992</td>
<td>12/04/1994</td>
<td></td>
</tr>
<tr>
<td>140</td>
<td>Uzbekistan</td>
<td>In force</td>
<td>19/04/2011</td>
<td>01/09/2011</td>
<td></td>
</tr>
<tr>
<td>141</td>
<td>Vanuatu</td>
<td>Signed (not in force)</td>
<td>07/04/2006</td>
<td></td>
<td></td>
</tr>
<tr>
<td>142</td>
<td>Viet Nam</td>
<td>In force</td>
<td>02/12/1992</td>
<td>01/09/1993</td>
<td>Full text:</td>
</tr>
<tr>
<td>143</td>
<td>Yemen</td>
<td>In force</td>
<td>16/02/1998</td>
<td>10/04/2002</td>
<td></td>
</tr>
<tr>
<td>144</td>
<td>Zambia</td>
<td>Signed (not in force)</td>
<td>21/06/1996</td>
<td></td>
<td></td>
</tr>
<tr>
<td>145</td>
<td>Zimbabwe</td>
<td>In force</td>
<td>21/05/1996</td>
<td>01/03/1998</td>
<td></td>
</tr>
</tbody>
</table>
Annex 8.6 China’s Other Investment Agreements

<table>
<thead>
<tr>
<th>No.</th>
<th>Short title</th>
<th>Parties</th>
<th>Date of signature</th>
<th>Date of entry into force</th>
<th>Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>China-Korean FTA</td>
<td>Korea, Republic of</td>
<td>1/6/2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>China-Australia FTA</td>
<td>Australia</td>
<td>17/6/2015</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>China-Switzerland FTA</td>
<td>Switzerland</td>
<td>06/07/2013</td>
<td>01/07/2014</td>
<td>Full text: en</td>
</tr>
<tr>
<td>4</td>
<td>China-Iceland FTA</td>
<td>Iceland</td>
<td>15/04/2013</td>
<td>01/07/2014</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>China-Japan-Korea trilateral investment agreement</td>
<td>Japan, Korea, Republic of</td>
<td>13/05/2012</td>
<td>17/05/2014</td>
<td>Full text: en</td>
</tr>
<tr>
<td>6</td>
<td>China-Taiwan Framework Agreement</td>
<td>Taiwan Province of China</td>
<td>29/06/2010</td>
<td>01/09/2010</td>
<td>Full text: en</td>
</tr>
<tr>
<td>7</td>
<td>China-Costa Rica FTA</td>
<td>Costa Rica</td>
<td>01/04/2010</td>
<td>01/08/2011</td>
<td>Full text: en Investment ch.: en</td>
</tr>
<tr>
<td>8</td>
<td>APTA Investment</td>
<td>Bangladesh, Korea, Republic of, Lao People's Democratic Republic, Sri Lanka</td>
<td>15/12/2009</td>
<td></td>
<td>Full text: en</td>
</tr>
<tr>
<td>9</td>
<td>ASEAN-China Investment Agreement</td>
<td>ASEAN (Association of South-East Asian Nations)</td>
<td>15/08/2009</td>
<td>01/01/2010</td>
<td>Full text: en</td>
</tr>
<tr>
<td>10</td>
<td>China-Peru FTA</td>
<td>Peru</td>
<td>28/04/2009</td>
<td>01/03/2010</td>
<td>Full text: en Investment ch.: en</td>
</tr>
<tr>
<td>11</td>
<td>China-Singapore FTA</td>
<td>Singapore</td>
<td>23/10/2008</td>
<td>01/01/2009</td>
<td>Investment ch.: en</td>
</tr>
</tbody>
</table>

Source: UNCTAD.
<table>
<thead>
<tr>
<th>No.</th>
<th>Agreement Name</th>
<th>Country/Countries</th>
<th>Start Date</th>
<th>End Date</th>
<th>Full text:</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>China-New Zealand FTA</td>
<td>New Zealand</td>
<td>07/04/2008</td>
<td>01/10/2008</td>
<td>en en</td>
</tr>
<tr>
<td>13</td>
<td>China-Pakistan FTA</td>
<td>Pakistan</td>
<td>24/11/2006</td>
<td>01/07/2007</td>
<td>en</td>
</tr>
<tr>
<td>14</td>
<td>Chile-China FTA</td>
<td>Chile</td>
<td>18/11/2005</td>
<td>01/10/2006</td>
<td>en</td>
</tr>
<tr>
<td>15</td>
<td>Australia-China Framework Agreement</td>
<td>Australia</td>
<td>24/10/2003</td>
<td>24/10/2003</td>
<td>en</td>
</tr>
<tr>
<td>16</td>
<td>China-Macao Partnership Agreement</td>
<td>Macao, China SAR</td>
<td>17/10/2003</td>
<td>01/01/2004</td>
<td>en</td>
</tr>
<tr>
<td>17</td>
<td>China-Hong Kong Partnership Agreement</td>
<td>Hong Kong, China SAR</td>
<td>29/06/2003</td>
<td>29/06/2003</td>
<td>en</td>
</tr>
<tr>
<td>18</td>
<td>ASEAN-China Framework Agreement</td>
<td>ASEAN (Association of South-East Asian Nations)</td>
<td>04/11/2002</td>
<td>01/07/2003</td>
<td>en</td>
</tr>
<tr>
<td>19</td>
<td>China-EC Trade and Cooperation Agreement</td>
<td>EU (European Union)</td>
<td>21/05/1985</td>
<td>22/09/1985</td>
<td>en</td>
</tr>
</tbody>
</table>
Annex 8.7 Other Investment Related Instruments of China\textsuperscript{482}

<table>
<thead>
<tr>
<th>No.</th>
<th>Short title</th>
<th>Date of adoption</th>
<th>Level</th>
<th>Type</th>
<th>Files</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>China Model BIT</td>
<td>1994</td>
<td>National</td>
<td>Model agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>2</td>
<td>Fifth Protocol to GATS</td>
<td>1997</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>3</td>
<td>Fourth Protocol to GATS</td>
<td>1997</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>4</td>
<td>TRIPS</td>
<td>1994</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>5</td>
<td>TRIMS</td>
<td>1994</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>6</td>
<td>GATS</td>
<td>1994</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>7</td>
<td>MIGA Convention</td>
<td>1985</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>8</td>
<td>ICSID Convention</td>
<td>1965</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>9</td>
<td>New York Convention</td>
<td>1958</td>
<td>Multilateral</td>
<td>Intergovernmental agreements</td>
<td>Full text: en</td>
</tr>
<tr>
<td>10</td>
<td>UN Code of Conduct on Transnational Corporations</td>
<td>1983</td>
<td>Multilateral</td>
<td>Draft instruments</td>
<td>Full text: en</td>
</tr>
<tr>
<td>11</td>
<td>UN Guiding Principles on Business and Human Rights</td>
<td>2011</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>Full text: en</td>
</tr>
<tr>
<td>12</td>
<td>ILO Tripartite Declaration on Multinational Enterprises</td>
<td>2006</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>Full text: en</td>
</tr>
<tr>
<td>13</td>
<td>Doha Declaration</td>
<td>2001</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>Full text: en</td>
</tr>
</tbody>
</table>

\textsuperscript{482}Source: UNCTAD.
<table>
<thead>
<tr>
<th></th>
<th>Document Title</th>
<th>Year</th>
<th>Type</th>
<th>Full text:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>ILO Tripartite Declaration on Multinational Enterprises</td>
<td>2000</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>15</td>
<td>Singapore Ministerial Declaration</td>
<td>1996</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>16</td>
<td>Pacific Basin Investment Charter</td>
<td>1995</td>
<td>Non-governmental</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>17</td>
<td>APEC Non-Binding Investment Principles</td>
<td>1994</td>
<td>Regional/Plurilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>18</td>
<td>World Bank Investment Guidelines</td>
<td>1992</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>19</td>
<td>ILO Tripartite Declaration on Multinational Enterprises</td>
<td>1977</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>20</td>
<td>New International Economic Order UN Resolution</td>
<td>1974</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>21</td>
<td>Charter of Economic Rights and Duties of States</td>
<td>1974</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
<tr>
<td>22</td>
<td>Permanent Sovereignty UN Resolution</td>
<td>1962</td>
<td>Multilateral</td>
<td>Guidelines, principles, resolutions and similar</td>
<td>en</td>
</tr>
</tbody>
</table>
## Annex 12.1 Products and Service of the SINOSURE

| Eligible Investors | Enterprises and financial institutions registered and having its principal place of business in Mainland China, excluding those controlled by foreign, Hong Kong, Macau and Taiwan enterprises, institutions and citizens
| | Financial institutions that provide financing for overseas investments by the enterprises mentioned above |
| Eligible Investments | Direct investments (including equity investments, shareholder loans etc.)
| | Loans
| | Other types of investments as approved by the SINOSURE |
| Insured Interests | Loss of capital and realized earnings directly caused by the insured risks
| | Loss of capital and accrued interests directly caused by the insured risks |
| Insured Risks | Expropriation
| | Restriction on transfer and conversion
| | War damage
| | Inability to operate due to war
| | Breach of undertaking |
| Products | Equity insurance policy
| | Shareholder loan policy
| | Financial institutions loan policy |

Annex 13.1 Resource Tax Taxable Items and Tax Amount Range Table

<table>
<thead>
<tr>
<th>Resource tax taxable items</th>
<th>Tax amount range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crude Oil</td>
<td>5%-10% of total sale</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>5%-10% of total sale</td>
</tr>
<tr>
<td>Coal</td>
<td>¥ 8-20 per ton</td>
</tr>
<tr>
<td>Other non-metal ores</td>
<td>¥ 0.5-20 per ton for the ordinary ores; or ¥0.5-20 per kilogram for the rare ores</td>
</tr>
<tr>
<td>Solid salt</td>
<td>¥ 10-60 per ton</td>
</tr>
</tbody>
</table>

Source: Detailed Rules for the Implementation of the Provisional Regulation of the PRC on Resource Tax (2011).
Annex 13.2 Table for Rates of Mineral Resources Compensation

<table>
<thead>
<tr>
<th>Minerals</th>
<th>Rate ( % )</th>
</tr>
</thead>
<tbody>
<tr>
<td>petroleum</td>
<td>1</td>
</tr>
<tr>
<td>natural gas</td>
<td>1</td>
</tr>
<tr>
<td>coal, coal-related gas</td>
<td>1</td>
</tr>
<tr>
<td>uranium, thorium</td>
<td>3</td>
</tr>
<tr>
<td>stone coal, oil sand</td>
<td>1</td>
</tr>
<tr>
<td>natural bitumen</td>
<td>2</td>
</tr>
<tr>
<td>geothermal resources</td>
<td>3</td>
</tr>
<tr>
<td>oil shale</td>
<td>2</td>
</tr>
<tr>
<td>iron, manganese, chromium, vanadium, titanium</td>
<td>2</td>
</tr>
<tr>
<td>copper, lead, zinc, bauxite, nickel, cobalt, tungsten, tin, bismuth, molybdenum, mercury, antimony, magnesium</td>
<td>2</td>
</tr>
<tr>
<td>gold, silver, platinum, palladium, ruthenium, osmium, iridium, rhodium</td>
<td>4</td>
</tr>
<tr>
<td>niobium, tantalum, beryllium, lithium, zirconium, strontium, rubidium, cesium</td>
<td>3</td>
</tr>
<tr>
<td>lanthanum, cerium, praseodymium, neodymium, samarium, europium, yttrium, gadolinium, terbium, dysprosium, holmium, erbium, thulium, ytterbium, lutetium</td>
<td>3</td>
</tr>
<tr>
<td>ion-type rare earths</td>
<td>4</td>
</tr>
<tr>
<td>scandium, germanium, gallium, indium, thallium, hafnium, rhenium, cadmium, selenium, tellurium,</td>
<td>3</td>
</tr>
<tr>
<td>gemstone, jade, gem diamond</td>
<td>4</td>
</tr>
<tr>
<td>graphite, phosphorus, natural sulphur, pyrite, sylvite, boron, crystal (piezoelectric crystal, smelting crystal, optical crystal, craft crystal), corundum, kyanite, sillimanite, andalusite, tabular spar, nitratite, talc, asbestos, crocidolite, mica, feldspar, garnet, pyrophyllite, diopside, tremolite, vermiculite, zeolite, alumstone, mirabilite (including glauberite)</td>
<td>2</td>
</tr>
<tr>
<td>diamond, gypsum, anhydrite, barite, witherite, natural alkali, calcite, Iceland spar, magnesite, fluorite (including common fluorite and optical fluorite), topaz, tourmaline, agate, mineral pigments (ochre, pigment loess), limestone (for use in</td>
<td>2</td>
</tr>
</tbody>
</table>

- calcium carbide, manufactured soda, fertilizers, flux, glass, cement, construction stone, mortar, and facing), marl, chalk, rock containing potassium, dolomite (for use in metallurgy, fertilizers, glass, and construction), quartz (for use in metallurgy, glass, and fertilizers), sandstone (for use in metallurgy, glass, or as cement ingredient, or for use in brick, fertilizers, casting moulds, and ceramics), natural quartz sand (for use in glass, casting moulds, construction, or as cement ingredient or standard sand in cement, or for use in bricks), vein quartz (for use in metallurgy and glass), powdered quartz, natural oilstone, potassium-bearing shale, diatomite, shale (including ceramsite shale, shale used for bricks, and shale used as cement ingredient), kaolin, ceramic clay, refractory clay, clay for convexo-concave rod, sepiolite clay, illite clay, rectorite clay, bentonite, iron alum, miscellaneous clays (including clay for use in casting moulds, brick, and ceramsite, clay used as cement ingredient, red clay used as cement ingredient, yellow clay used as cement ingredient, mudstone used as cement ingredient, and insulating clays), peridotite (for use in fertilizers and construction), serpentine (for use in fertilizers, flux, and facings), basalt (for use in stone casting and asbestos), diabase (for use in cement, stone casting, facings, and construction), andesite (including andesite for use in facings, andesite for use in construction, and andesite porphyrite for use in cement mixers), diorite (for use in cement mixers and construction), granite (for use in construction and facings), medical stone, perlite, obsidian, pitch stone, pumice stone, trachyte (for use in cement and stone casting), nepheline syenite, tuff (for use in glass, cement, and construction), volcanic ash, volcanic slag, marble (for use as facing, and construction, cement, and glass), slate (for use as facing and cement ingredient), gneiss, amphibole, peat, magnesium salt, iodine, bromium, arsenium

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>lake salt, rock salt, natural brine</td>
<td>0.5</td>
</tr>
<tr>
<td>carbon dioxide, hydrogen sulphide, helium, radon</td>
<td>3</td>
</tr>
<tr>
<td>mineral spring water</td>
<td>4</td>
</tr>
</tbody>
</table>
Annex 14.1 List of International Environmental Agreements to which China is a Party

Agreements concerning the control of hazardous waste

Agreements concerning the international trade of hazardous chemicals

Agreements concerning the safety and environmental management of hazardous chemicals

Agreements concerning the Protection of Ozonic Layer

Agreements concerning Climate Change

Agreements concerning Biological Diversity
3. Statutes of the International Centre for Genetic Engineering and Biotechnology, Madrid, 1983

For the list of International Environmental Treaties to Which China is a Contracting Party, see the website of the Ministry of Environment Protection of the PRC. http://gjs.mep.gov.cn/gjhjhz/200310/t20031017_86645.htm (accessed 15 August 2015).

Agreements concerning wetland conservation and desertification control
1. Convention on Wetlands of International Importance Especially as Waterfowl habitat, Ramsar, 1971

Agreements concerning Animal Trade

Agreements concerning Ocean Environmental Protection
2. International Convention on Civil Liability For Oil Pollution Damage, Brussels, 1969

Agreements concerning Fishery Resources Protection
5. Agreement on the Network of Aquaculture in Asia and the Pacific, Bangkok, 1988

**Agreements concerning Nuclear Protection**
2. Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Vienna, 1986

**Agreements concerning Protection of Antarctic**

**Agreements concerning Protection of the World Cultural and Natural Heritage**

**International Law concerning Environmental Right**
2. International Covenant on Civil and Political Rights, New York, 1966

**Other Environment Related Agreements**
## Annex 16.1 Taxes in China

<table>
<thead>
<tr>
<th>Tax Type</th>
<th>Rate/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate income tax rate</td>
<td>25</td>
</tr>
<tr>
<td>Branch tax rate</td>
<td>25</td>
</tr>
<tr>
<td>Capital gains tax rate</td>
<td>25</td>
</tr>
<tr>
<td>Basis</td>
<td>Worldwide</td>
</tr>
<tr>
<td>Participation exemption</td>
<td>No</td>
</tr>
<tr>
<td>Double taxation relief</td>
<td>Yes</td>
</tr>
<tr>
<td>Tax consolidation</td>
<td>No</td>
</tr>
<tr>
<td>Transfer pricing rules</td>
<td>Yes</td>
</tr>
<tr>
<td>Thin capitalization rules</td>
<td>Yes</td>
</tr>
<tr>
<td>Controlled foreign company rules</td>
<td>Yes</td>
</tr>
<tr>
<td>Tax year</td>
<td>Calendar year</td>
</tr>
<tr>
<td>Advance payment of tax</td>
<td>Yes</td>
</tr>
<tr>
<td>Withholding tax</td>
<td></td>
</tr>
<tr>
<td>Dividends</td>
<td>10</td>
</tr>
<tr>
<td>Interest</td>
<td>10</td>
</tr>
<tr>
<td>Royalties</td>
<td>10</td>
</tr>
<tr>
<td>Social security contributions</td>
<td>Up to about 4% of employee base salary</td>
</tr>
<tr>
<td>Deed tax</td>
<td>3-5</td>
</tr>
<tr>
<td>Land appreciation tax</td>
<td>30-50% of gains on transfer</td>
</tr>
<tr>
<td>Business tax</td>
<td>3-20</td>
</tr>
<tr>
<td>VAT</td>
<td>3, 6, 11, 13, 17</td>
</tr>
<tr>
<td>Consumption tax</td>
<td>1-56</td>
</tr>
</tbody>
</table>
Annex 16.2 Avoidance of Double Taxation Treaty

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Jurisdiction</th>
<th>Signed on</th>
<th>Effective from</th>
<th>Applicable since</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>JAPAN</td>
<td>1983.9.6</td>
<td>1984.6.26</td>
<td>1985.1.1</td>
</tr>
<tr>
<td>2</td>
<td>U.S.A.</td>
<td>1984.4.30</td>
<td>1986.11.21</td>
<td>1987.1.1</td>
</tr>
<tr>
<td>3</td>
<td>FRANCE</td>
<td>1984.5.30</td>
<td>1985.2.21</td>
<td>1986.1.1</td>
</tr>
<tr>
<td></td>
<td>FRANCE</td>
<td>2013.11.26</td>
<td>2014.12.28</td>
<td>2015.1.1</td>
</tr>
<tr>
<td>5</td>
<td>BELGIUM</td>
<td>1985.4.18</td>
<td>1987.9.11</td>
<td>1988.1.1</td>
</tr>
<tr>
<td></td>
<td>BELGIUM</td>
<td>2009.10.7</td>
<td>2013.12.29</td>
<td>2014.1.1</td>
</tr>
<tr>
<td>6</td>
<td>GERMANY</td>
<td>1985.6.10</td>
<td>1986.5.14</td>
<td>1985.1.1/7.1</td>
</tr>
<tr>
<td></td>
<td>GERMANY</td>
<td>2014.3.28</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>MALAYSIA</td>
<td>1985.11.23</td>
<td>1986.9.14</td>
<td>1987.1.1</td>
</tr>
<tr>
<td>8</td>
<td>NORWAY</td>
<td>1986.2.25</td>
<td>1986.12.21</td>
<td>1987.1.1</td>
</tr>
<tr>
<td>9</td>
<td>DENMARK</td>
<td>1986.3.26</td>
<td>1986.10.22</td>
<td>1987.1.1</td>
</tr>
<tr>
<td></td>
<td>DENMARK</td>
<td>2012.6.16</td>
<td>2012.12.27</td>
<td>2013.1.1</td>
</tr>
<tr>
<td>10</td>
<td>SINGAPORE</td>
<td>1986.4.18</td>
<td>1986.12.11</td>
<td>1987.1.1</td>
</tr>
<tr>
<td></td>
<td>SINGAPORE</td>
<td>2007.7.11</td>
<td>2007.9.18</td>
<td>2008.1.1</td>
</tr>
<tr>
<td>11</td>
<td>CANADA</td>
<td>1986.5.12</td>
<td>1986.12.29</td>
<td>1987.1.1</td>
</tr>
<tr>
<td></td>
<td>FINLAND</td>
<td>2010.5.25</td>
<td>2010.11.25</td>
<td>2011.1.1</td>
</tr>
<tr>
<td>13</td>
<td>SWEDEN</td>
<td>1986.5.16</td>
<td>1987.1.3</td>
<td>1987.1.1</td>
</tr>
<tr>
<td>15</td>
<td>THAILAND</td>
<td>1986.10.27</td>
<td>1986.12.29</td>
<td>1987.1.1</td>
</tr>
<tr>
<td>16</td>
<td>ITALY</td>
<td>1986.10.31</td>
<td>1989.11.14</td>
<td>1990.1.1</td>
</tr>
<tr>
<td>17</td>
<td>THE NETHERLANDS</td>
<td>1987.5.13</td>
<td>1988.3.5</td>
<td>1989.1.1</td>
</tr>
<tr>
<td></td>
<td>THE NETHERLANDS</td>
<td>2013.5.31</td>
<td>2014.8.31</td>
<td>2015.1.1</td>
</tr>
<tr>
<td>19</td>
<td>POLAND</td>
<td>1988.6.7</td>
<td>1989.1.7</td>
<td>1990.1.1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No.</th>
<th>Country</th>
<th>From</th>
<th>To</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>BOSNIA AND HERZEGOVINA)</td>
<td>1989.11.6</td>
<td>1990.5.25</td>
<td>1991.1.1</td>
</tr>
<tr>
<td>23</td>
<td>BULGARIA</td>
<td>1989.11.15</td>
<td>1989.12.27</td>
<td>1989.1.1/7.1</td>
</tr>
<tr>
<td>25</td>
<td>SWITZERLAND</td>
<td>1990.7.6</td>
<td>1991.9.27</td>
<td>1990.1.1</td>
</tr>
<tr>
<td></td>
<td>SWITZERLAND</td>
<td>2013.9.25</td>
<td>2014.11.15</td>
<td>2015.1.1</td>
</tr>
<tr>
<td>26</td>
<td>CYPRUS</td>
<td>1990.10.25</td>
<td>1991.10.5</td>
<td>1992.1.1</td>
</tr>
<tr>
<td>27</td>
<td>SPAIN</td>
<td>1990.11.22</td>
<td>1992.5.20</td>
<td>1993.1.1</td>
</tr>
<tr>
<td>28</td>
<td>ROMANIA</td>
<td>1991.1.16</td>
<td>1992.3.5</td>
<td>1993.1.1</td>
</tr>
<tr>
<td>29</td>
<td>AUSTRIA</td>
<td>1991.4.10</td>
<td>1992.11.1</td>
<td>1993.1.1</td>
</tr>
<tr>
<td>30</td>
<td>BRAZIL</td>
<td>1991.8.5</td>
<td>1993.1.6</td>
<td>1994.1.1</td>
</tr>
<tr>
<td>33</td>
<td>MALTA</td>
<td>1993.2.2</td>
<td>1994.3.20</td>
<td>1995.1.1</td>
</tr>
<tr>
<td></td>
<td>MALTA</td>
<td>2010.10.18</td>
<td>2011.8.25</td>
<td>2012.1.1</td>
</tr>
<tr>
<td>34</td>
<td>UNITED ARAB EMIRATES</td>
<td>1993.7.1</td>
<td>1994.7.14</td>
<td>1995.1.1</td>
</tr>
<tr>
<td>35</td>
<td>LUXEMBOURG</td>
<td>1994.3.12</td>
<td>1995.7.28</td>
<td>1996.1.1</td>
</tr>
<tr>
<td>36</td>
<td>KOREA</td>
<td>1994.3.28</td>
<td>1994.9.27</td>
<td>1995.1.1</td>
</tr>
<tr>
<td>37</td>
<td>RUSSIA</td>
<td>1994.5.27</td>
<td>1997.4.10</td>
<td>1998.1.1</td>
</tr>
<tr>
<td></td>
<td>RUSSIA</td>
<td>2014.10.13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td>PAPUA NEW GUINEA</td>
<td>1994.7.14</td>
<td>1995.8.16</td>
<td>1996.1.1</td>
</tr>
<tr>
<td>39</td>
<td>INDIA</td>
<td>1994.7.18</td>
<td>1994.11.19</td>
<td>1995.1.1</td>
</tr>
<tr>
<td>40</td>
<td>MAURITIUS</td>
<td>1994.8.1</td>
<td>1995.5.4</td>
<td>1996.1.1</td>
</tr>
<tr>
<td>41</td>
<td>CROATIA</td>
<td>1995.1.9</td>
<td>2001.5.18</td>
<td>2002.1.1</td>
</tr>
<tr>
<td>42</td>
<td>BELARUS</td>
<td>1995.1.17</td>
<td>1996.10.3</td>
<td>1997.1.1</td>
</tr>
<tr>
<td>43</td>
<td>SLOVENIA</td>
<td>1995.2.13</td>
<td>1995.12.27</td>
<td>1996.1.1</td>
</tr>
<tr>
<td>44</td>
<td>ISRAEL</td>
<td>1995.4.8</td>
<td>1995.12.22</td>
<td>1996.1.1</td>
</tr>
<tr>
<td>45</td>
<td>VIETNAM</td>
<td>1995.5.17</td>
<td>1996.10.18</td>
<td>1997.1.1</td>
</tr>
<tr>
<td>46</td>
<td>TURKEY</td>
<td>1995.5.23</td>
<td>1997.1.20</td>
<td>1998.1.1</td>
</tr>
<tr>
<td>48</td>
<td>ARMENIA</td>
<td>1996.5.5</td>
<td>1996.11.28</td>
<td>1997.1.1</td>
</tr>
<tr>
<td>49</td>
<td>JAMAICA</td>
<td>1996.6.3</td>
<td>1997.3.15</td>
<td>1998.1.1</td>
</tr>
<tr>
<td>50</td>
<td>ICELAND</td>
<td>1996.6.3</td>
<td>1997.2.5</td>
<td>1998.1.1</td>
</tr>
<tr>
<td>51</td>
<td>LITHUANIA</td>
<td>1996.6.3</td>
<td>1996.10.18</td>
<td>1997.1.1</td>
</tr>
<tr>
<td>52</td>
<td>LATVIA</td>
<td>1996.6.7</td>
<td>1997.1.27</td>
<td>1998.1.1</td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>Start Date</td>
<td>End Date</td>
<td>Date of Entry</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------</td>
<td>------------</td>
<td>----------</td>
<td>------------------------</td>
</tr>
<tr>
<td>53</td>
<td>UZBEKISTAN</td>
<td>1996.7.3</td>
<td>1996.7.3</td>
<td>1997.1.1</td>
</tr>
<tr>
<td>54</td>
<td>BANGLADESH</td>
<td>1996.9.12</td>
<td>1997.4.10</td>
<td>China: 98.1.1, Bangladesh: 98.7.1</td>
</tr>
<tr>
<td>55</td>
<td>YUGOSLAVIA (SERBIA AND MONTENEGRO)</td>
<td>1997.3.21</td>
<td>1998.1.1</td>
<td>1998.1.1</td>
</tr>
<tr>
<td>56</td>
<td>SUDAN</td>
<td>1997.5.30</td>
<td>1999.2.9</td>
<td>2000.1.1</td>
</tr>
<tr>
<td>57</td>
<td>MACEDONIA</td>
<td>1997.6.9</td>
<td>1997.11.29</td>
<td>1998.1.1</td>
</tr>
<tr>
<td>59</td>
<td>PORTUGAL</td>
<td>1998.4.21</td>
<td>2000.6.7</td>
<td>2001.1.1</td>
</tr>
<tr>
<td>60</td>
<td>ESTONIA</td>
<td>1998.5.12</td>
<td>1999.1.8</td>
<td>2000.1.1</td>
</tr>
<tr>
<td>63</td>
<td>THE PHILIPPINES</td>
<td>1999.11.18</td>
<td>2001.3.23</td>
<td>2002.1.1</td>
</tr>
<tr>
<td>65</td>
<td>SOUTH AFRICA</td>
<td>2000.4.25</td>
<td>2001.1.7</td>
<td>2002.1.1</td>
</tr>
<tr>
<td>66</td>
<td>BARBADOS</td>
<td>2000.5.15</td>
<td>2000.10.27</td>
<td>2001.1.1</td>
</tr>
<tr>
<td>67</td>
<td>MOLDOVA</td>
<td>2000.6.7</td>
<td>2001.5.26</td>
<td>2002.1.1</td>
</tr>
<tr>
<td>68</td>
<td>KATAR</td>
<td>2001.4.2</td>
<td>2008.10.21</td>
<td>2009.1.1</td>
</tr>
<tr>
<td>69</td>
<td>CUBA</td>
<td>2001.4.13</td>
<td>2003.10.17</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>71</td>
<td>NEPAL</td>
<td>2001.5.14</td>
<td>2010.12.31</td>
<td>2011.1.1</td>
</tr>
<tr>
<td>72</td>
<td>KAZAKHSTAN</td>
<td>2001.9.12</td>
<td>2003.7.27</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>73</td>
<td>INDONESIA</td>
<td>2001.11.7</td>
<td>2003.8.25</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>74</td>
<td>OMAN</td>
<td>2002.3.25</td>
<td>2002.7.20</td>
<td>2003.1.1</td>
</tr>
<tr>
<td>75</td>
<td>NIGERIA</td>
<td>2002.4.15</td>
<td>2009.3.21</td>
<td>2010.1.1</td>
</tr>
<tr>
<td>76</td>
<td>TUNIS</td>
<td>2002.4.16</td>
<td>2003.9.23</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>77</td>
<td>IRAN</td>
<td>2002.4.20</td>
<td>2003.8.14</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>78</td>
<td>BAHRAIN</td>
<td>2002.5.16</td>
<td>2002.8.8</td>
<td>2003.1.1</td>
</tr>
<tr>
<td>79</td>
<td>GREECE</td>
<td>2002.6.3</td>
<td>2005.11.1</td>
<td>2006.1.1</td>
</tr>
<tr>
<td>80</td>
<td>KYRGYZSTAN</td>
<td>2002.6.24</td>
<td>2003.3.29</td>
<td>2004.1.1</td>
</tr>
<tr>
<td>81</td>
<td>MOROCCO</td>
<td>2002.8.27</td>
<td>2006.8.16</td>
<td>2007.1.1</td>
</tr>
<tr>
<td>82</td>
<td>SRILANKA</td>
<td>2003.8.11</td>
<td>2005.5.22</td>
<td>2006.1.1</td>
</tr>
<tr>
<td>83</td>
<td>TRINIDAD AND TOBAGO</td>
<td>2003.9.18</td>
<td>2005.5.22</td>
<td>2005.6.1, and 2006.1.1 for different taxes respectively</td>
</tr>
<tr>
<td>84</td>
<td>ALBANIA</td>
<td>2004.9.13</td>
<td>2005.7.28</td>
<td>2006.1.1</td>
</tr>
<tr>
<td>85</td>
<td>BRUNEI</td>
<td>2004.9.21</td>
<td>2006.12.29</td>
<td>2007.1.1</td>
</tr>
<tr>
<td>86</td>
<td>AZERBAIJAN</td>
<td>2005.3.17</td>
<td>2005.8.17</td>
<td>2006.1.1</td>
</tr>
<tr>
<td>87</td>
<td>GEORGIA</td>
<td>2005.6.22</td>
<td>2005.11.10</td>
<td>2006.1.1</td>
</tr>
<tr>
<td>88</td>
<td>MEXICO</td>
<td>2005.9.12</td>
<td>2006.3.1</td>
<td>2007.1.1</td>
</tr>
<tr>
<td>89</td>
<td>SAUDI ARABIA</td>
<td>2006.1.23</td>
<td>2006.9.1</td>
<td>2007.1.1</td>
</tr>
<tr>
<td>90</td>
<td>ALGERIA</td>
<td>2006.11.6</td>
<td>2007.7.27</td>
<td>2008.1.1</td>
</tr>
<tr>
<td>91</td>
<td>Tajikistan</td>
<td>2008.8.27</td>
<td>2009.3.28</td>
<td>2010.1.1</td>
</tr>
<tr>
<td>92</td>
<td>ETHIOPIA</td>
<td>2009.5.14</td>
<td>2012.12.25</td>
<td>2013.1.1</td>
</tr>
<tr>
<td></td>
<td>Country</td>
<td>Date 1</td>
<td>Date 2</td>
<td>Date 3</td>
</tr>
<tr>
<td>---</td>
<td>---------------</td>
<td>--------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td>93</td>
<td>TURKMENISTAN</td>
<td>2009.12.13</td>
<td>2010.5.30</td>
<td>2011.1.1</td>
</tr>
<tr>
<td>94</td>
<td>CZECH</td>
<td>2009.8.28</td>
<td>2011.5.4</td>
<td>2012.1.1</td>
</tr>
<tr>
<td>95</td>
<td>ZAMBIA</td>
<td>2010.7.26</td>
<td>2011.6.30</td>
<td>2012.1.1</td>
</tr>
<tr>
<td>96</td>
<td>SYRIA</td>
<td>2010.10.31</td>
<td>2011.9.1</td>
<td>2012.1.1</td>
</tr>
<tr>
<td>97</td>
<td>UGANDA</td>
<td>2012.1.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>98</td>
<td>BOTSWANA</td>
<td>2012.4.11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>99</td>
<td>ECUADOR</td>
<td>2013.1.21</td>
<td>2014.3.6</td>
<td>2015.1.1</td>
</tr>
</tbody>
</table>
Annex 16.3 Exchange of Tax Information Treaty

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Jurisdiction</th>
<th>Signed on</th>
<th>Effective from</th>
<th>Applicable since</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Bahamas</td>
<td>2009-12-01</td>
<td>2010-08-28</td>
<td>2010-08-28</td>
</tr>
<tr>
<td>2</td>
<td>the British Virgin Islands</td>
<td>2009-12-07</td>
<td>2010-12-30</td>
<td>2010-12-30</td>
</tr>
<tr>
<td>3</td>
<td>the Isle of Man</td>
<td>2010-10-26</td>
<td>2011-08-14</td>
<td>2011-08-14</td>
</tr>
<tr>
<td>4</td>
<td>Guernsey</td>
<td>2010-10-27</td>
<td>2011-08-17</td>
<td>2012-01-01</td>
</tr>
<tr>
<td>5</td>
<td>Jersey</td>
<td>2010-10-29</td>
<td>2011-11-10</td>
<td>2011-11-10</td>
</tr>
<tr>
<td>6</td>
<td>Bermuda</td>
<td>2010-12-02</td>
<td>2011-12-31</td>
<td>2011-12-31</td>
</tr>
<tr>
<td>7</td>
<td>Argentina</td>
<td>2010-12-13</td>
<td>2011-09-16</td>
<td>2011-09-16</td>
</tr>
<tr>
<td>8</td>
<td>Cayman</td>
<td>2011-09-26</td>
<td>2012-11-15</td>
<td>2012-11-15</td>
</tr>
<tr>
<td>9</td>
<td>San Marino</td>
<td>2012-07-09</td>
<td>2013-04-30</td>
<td>2013-04-30</td>
</tr>
</tbody>
</table>