

Foreign Investment and IP Protection in China

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Foreign Investment In China

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Foreign Investment in China Overview:

- One of the premier destinations for foreign investment
- Overall foreign direct investment (“FDI”) to China rose by nearly 13.8% in 2007 over 2006
- Estimate for China’s inbound FDI in 2008: growth in 4% - 6% range
- Top foreign investors: HK the first; US the sixth
- Top FDI destination: eastern region – 81.9%
- Hot sectors: manufacturing (57.7%) and real estate (11.9%)

FDI in China

FDI in China (Total and US) 1998-2007										
Source: Ministry of Commerce (MOFCOM)										
* MOFCOM stopped reporting contracted foreign investment figures by country in December 2005. Beginning in 2005, the number of contracts refers to the number of projects and the contracted value refers to actual investment levels.										
**Beginning in 2006, FDI statistics explicitly include financial and non-financial FDI; the cited figure incorporates both categories.										
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Total Foreign Direct Investment (FDI)										
No. of Contracts*	19,799	16,918	22,347	26,139	34,171	41,081	43,664	44,019	41,485	37,888
Amt. Contracted (\$ billion)	52.10	41.22	62.38	69.20	82.77	115.07	153.48	189.07	200.17	NA
Amt. Utilized (\$ billion)	45.46	40.32	40.72	46.88	52.74	53.51	60.63	60.33	69.47**	82.66**
US Direct Investment										
No. of Contracts	2,238	2,028	2,609	2,594	3,363	4,060	3,925	3,741	3,205	2,627
Amt. Contracted (\$ billion)	6.48	6.02	8.00	7.51	8.20	10.16	12.17	NA*	NA*	NA*
Amt. Utilized (\$ billion)	3.90	4.22	4.38	4.86	5.40	4.20	3.94	3.06	3.00	2.62
US Share of Utilized Investment										
	8.50%	10.47%	10.76%	10.37%	10.24%	7.85%	6.50%	5.07%	4.12%	3.50%

Foreign Direct Investment by Vehicle Type, 2006 and 2007						
Note: FDI=foreign direct investment; EJV=equity joint ventures; CJV=cooperative joint ventures; WFOEs=wholly foreign-owned enterprises						
	Number of Projects			Utilized FDI Value (\$ billion)		
	2006	2007	% Change	2006	2007	% Change
Total FDI	41,473	37,871	-8.69	65.82	74.77	13.59
EJVs	10,223	7,649	-25.18	14.83	15.60	5.13
CJVs	1,036	641	-38.13	1.99	1.42	-28.77
WFOEs	30,164	29,543	-2.06	48.56	57.26	17.92
Foreign-invested shareholding ventures	50	38	-24.00	0.44	0.49	

Source: The US- China Business Council

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Issues to Watch in 2008

- Economic protectionism
- Product safety
- New rules on foreign investment
 - Enterprise Income Tax Law
 - Labor Contract Law
 - Antimonopoly Law
 - Catalogue Guiding Foreign Investment in Industry

Chinese Government Wants:

Encouraged Sectors:

- Services
- New and high-technology
- Energy and the environment
- Healthcare

Chinese Government Doesn't Want

Restricted or Banned Sectors:

- Real estate
- Media and publishing
- Solely devoted to export
- China mastered or high usage of resources or energy

Traditional Investment Vehicles

Direct Entry Methods:

- Wholly-foreign-owned enterprises (“WFOEs”)

- Joint ventures (“JVs”)
 - Equity joint venture
 - Cooperative joint venture

WOFE v. JV

WOFE

■ Pros

- No Chinese partner or JV contract
- Full control over management and production
- Better IP protection

■ Cons

- Legal and regulatory restrictions
- Lack of existing sales and distribution network
- No production site and workforce
- Lack of local “Guanxi”

JV v. WFOE

JV

■ Pros

- Greater range of investment areas
- Easier government approval
- Operational facilities in place and skilled staff
- Existing supply chain

■ Cons

- Misunderstanding possible
- IP protection concerns
- Complicates exit strategies

Traditional Investment Vehicles

Indirect Entry Methods:

- Enter into licensing agreements with local companies

- Representative office

Other Investment Vehicles

- Mergers and Acquisitions (“M&A”)
 - Growth factors for M&A Investments
 - New Foreign M&A regulations
- Special Situation Investments including Non-performing Loans

IP Protection In China

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IP Rights in China

- Treaties, legislation and special courts to safeguard IP rights
- Poor enforcement
- Counterfeiters and infringers being more sophisticated

Intellectual Property Enforcement

- China IP Legal Enforcement
 - Dual Track System

- Administrative Enforcement
 - Special enforcement task forces in administrative agencies

- Judicial Enforcement
 - Civil litigation
 - Criminal prosecution

IP Protection: Practical Strategies

- Early filing – “First to File” principle
 - Trademarks
 - Patents
 - Copyright
 - Trade secrets
- Create and enforce a clear IP protection strategy throughout the organization

IP Protection: Practical Strategies

- Control the production process
- Strengthen the workplace safety
 - Background checks on key hires
 - Non-compete and non-disclosure agreements
- Conduct careful due diligence on potential partners
- Keep a close eye on competitors

IP Protection: Practical Strategies

- Engage with the legal system while reducing dependence on it
- Conduct surveillance of suppliers and distributors
- Enlist political/media support

Thank You!

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