

COMMITTEE INSIGHTS

People's Republic of China*

Having placed behind it the 1990 XI Asian games, China now enters a very crucial transitional period that deserves close observation by foreign investors.

I. General Background

Historically, China's long-term attractiveness to foreign investors, while often tarnished by varying degrees of political instability, has not depended on political stability alone. Nevertheless, in today's very competitive and increasingly high-technology oriented global economies, socio-political instability will often negatively impact investor confidence as comparable alternatives to investment exist more frequently than a decade ago.

The events of Tiananmen Square in June 1989, and the subsequent aftershocks, brought to a quick close the euphoric tranquility of the ten-year period 1979-1989—a period that witnessed significant growth in foreign trade and investment in China. With the “Six Deaths”¹ massacre in and around Tiananmen Square, Chinese leadership lost precious international confidence, which credibility is crucial to sustaining investment and economic growth.

Realizing the impact of “Beijing Spring,”² Deng Xiao Ping appears to have begun another “midcourse” correction designed to restore stability. For example, Deng has elevated the moderate techno-bureaucrat, former Electronics Minister and Shanghai Mayor, Jiang Zimin, to the highest party position. Deng may be behind recent veiled attacks on several political hard-liners that have appeared

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1. A common play on words in Beijing of the mandarin for “June 4.”
2. Another common term used to describe the events leading to June 4.

in the China press. All the while, he has continued with legislative reforms concerning foreign trade and investment. The next twelve months can be expected to see the cards more fully played, especially as the succession struggle intensifies. However, while the potential for continued instability exists, and along with it some possible bloodshed, it is unlikely that China's leadership will undertake to dismantle reforms directed towards improving the environment for foreign investors. That being said, domestic economic retrenchment will continue to impact significantly direct foreign investment.

II. The Human Rights Issue

International attention, especially that of the U.S. Congress, will continue to focus on China's human rights practices. Foreign scrutiny and public criticism of China as an international pariah should offset much of the positive publicity generated by favorable investment-related legislative and legal developments.

During October 1990, the U.S. House of Representatives voted resoundingly in favor of two bills that sought to withdraw most favored nation (MFN) status extended to China by the Bush administration.³ One bill, H.R. 4939, sought to make renewal of MFN contingent on China's making some significant changes and giving certain assurances in the area of human rights.⁴ Deliberation on the House floor saw emotions straining their limits in spite of attempts at moderation such as that sponsored by the Emergency Committee for American Trade.⁵

Despite the House votes, the bills never became law as the Senate failed to consider the legislation prior to the election break. Nevertheless, China's treatment of human rights will be a major issue to be addressed by the 102nd Congress in 1991 and will likely further strain Sino-American trade and investment relations unless China makes a conscientious attempt to address the concerns and criticisms of the international community.

III. Recent Legislation

A. COPYRIGHT LAW

Progress continues to be made by China in the area of protecting intellectual property rights. The long-awaited copyright law was enacted by the National

3. The votes were 247 to 174 and 384 to 30.

4. The "Pease Bill" would have required, *inter alia*:

- (a) Reversing "the pattern within the People's Republic of China of gross violations of internationally recognized human rights . . .";
- (b) Termination of marital laws throughout the PRC, including Tibet;
- (c) Accounting for and release of detained citizens during and after June 3, 1989;
- (d) Easing of PRC restrictions on free speech and press; and
- (e) Termination of harassment and intimidation of Chinese in the U.S.

5. *See, for example*, a letter dated September 27, 1990, from Allen F. Jacobson, ECAT Chairman and Chairman of 3M.

People's Congress Standing Committee on September 7, 1990.⁶ The passage of the Copyright Law will help to alleviate one area of concern in Sino-American trade relations and may help to remove China from the "Priority Watch List" established pursuant to section 301 of the 1988 Omnibus Trade and Competitiveness Act.

The Copyright Law codifies copyright protection for Chinese and foreign authors for literary, artistic, scientific, and computer software works. With the exception of rights pertaining to movie, television, video, and photographic works, the period of protection is life of author plus fifty years. In the case of the previously mentioned media, the right is fifty years after first publication (with some restrictions). (Article 21)

Unfortunately, the new law is not as neutral politically as was the 1990 draft. Also, several provisions, such as that on first publication, arguably give limited protection to foreign works in China and therefore make the new law in conflict with the Berne and UCC Conventions. On the other hand, the "integrity" of the work is protected and employees have greater rights to ownership than found in the U.S. Copyright Act.

Further clarification of the law is awaited in implementing regulations, most particularly in the area of software regulations.⁷ The major issue deserving close observation will be, as in the case of Taiwan, the commitment and ability of PRC leadership to enforce the law so as to prevent counterfeiting of copyright protected works.

B. EQUITY JOINT VENTURE AMENDMENTS

The Third Session of the Seventh National People's Congress enacted several long-awaited revisions to the law on Sino-Foreign Joint Equity Enterprises.⁸ The most significant revisions can be summarized as follows:

1. A long-awaited guarantee against nationalization or expropriation, except under such "special circumstances" as may be necessary to "meet public interest requirements," but subject to "appropriate compensation." (Article 2)
2. The duration of a joint venture is now without legislative restriction, being more open to specific factual situations and negotiations of the parties. In some cases, it may be permissible for the parties to provide for an indefinite duration. Although certain Chinese officials had been allowing terms of twenty-five to fifty years before passage of the amendment,

6. Copyright Law of the People's Republic of China, promulgated by the Standing Committee (15th Session) of the Seventh National People's Congress. The Copyright Law will become effective on June 1, 1991. It has fifty-six articles.

7. Implementing Regulations are not expected for at least one year.

8. Amended on April 4, 1990. The original law was adopted on July 1, 1979, by the Second Session of the Fifth National People's Congress.

this amendment is a significant change and should further alleviate certain concerns of foreign investors. (Article 12)

3. The Chairman of an equity joint venture is no longer required to be appointed by the Chinese partner. (Article 6) In many cases, the practical effect may not be significant. However, in projects dealing with certain high technology matters, or where corporate policies require foreign management control, this amendment takes an important step in making the investment environment more attractive to foreign investors.

Unfortunately, other issues plaguing equity joint ventures, such as capital availability/acquisition, employment/labor practices, access to domestic markets, and certain structural/organizational matters, have not been addressed in the final legislation.⁹

C. ENVIRONMENTAL PROTECTION

On December 26, 1989, the Eleventh Session of the Standing Committee of the Seventh National People's Congress officially promulgated the Environmental Protection Law of the People's Republic of China, replacing and expanding upon the former Provisional Regulations.

The law extends to the "totality of all the natural and artificially transformed natural factors which affect humankind's existence and development." (Article 2) Among other requirements, the new law establishes that all construction project managers must prepare environmental impact reports assessing the amount of pollutants likely to be produced and their effect on the whole environment. The impact reports must prescribe prevention and control measures to be implemented during the life of the project. The commencement of construction cannot begin until after the impact report has been approved. (Article 13)

Also, all enterprises that discharge pollutants must make a declaration to that effect and register the declaration with appropriate agencies. (Article 27) If the amount of pollution discharged exceeds state or local pollutant discharge standards, the enterprise will be given a specific period within which to correct the problem. (Article 28)

Pollutant discharge "excess" fees are authorized by the law. Furthermore, all businesses can face additional fines and can be ordered to suspend or terminate operations for failing to implement measures to correct an excess pollutant discharge problem within a specific period of time.

Finally, to address a Bhopal-type accident, or another catastrophic situation, the law provides:

Article 43: If a violation of the provisions of this law results in a major environmental pollution accident which causes significant loss of public or private property or serious

9. In all fairness, attempts were made by the legislative assistants to tackle several of these problems, which provisions were deleted by higher officials before promulgation.

injury or loss of life, the criminal liability of the parties directly responsible shall be pursued in accordance with the law.

Article 44: If a violation of the provisions of this law results in the damage of resources such as land, forests, grasslands, water, minerals, fishery resources, wild animals or plants, legal liability shall be borne in accordance with relevant legislation.

Compensation claims for damages from environmental pollution must be lodged within three years of the date on which the claimant becomes aware of the damage (or within three years of the date on which it should have been aware of the damage). Future implementing legislation and organizational changes are anticipated.

