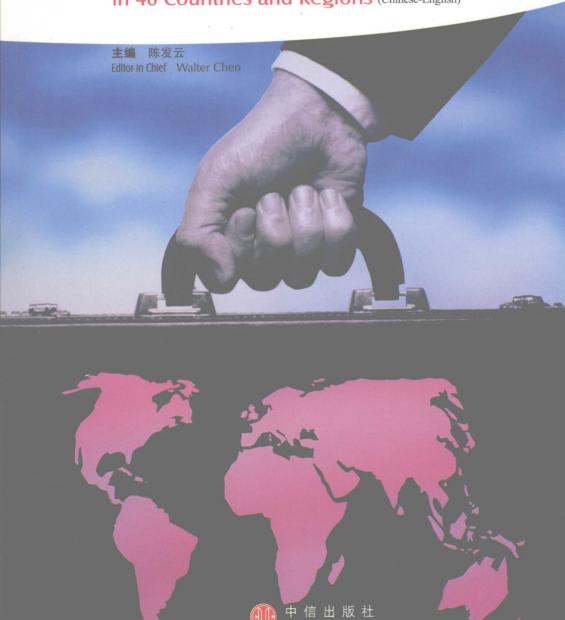


全球40个国家与地区

公司设立法律指南(中英文对照)

Legal Guidance for Establishing Corporations in 40 Countries and Regions (Chinese-English)



全球40个国家与地区 公司设立法律指南(中英文对照)

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About the Editor-in-Chief

Walter Chen is senior partner of Jin Ding Partners, Nanjing, China; Chair of the International Law & Practice Section, Jiangsu Bar Association, China; Chairman of the Legal Committee of Jiangsu Industrial Overseas Development & Planning Association, China; Adjunct Professor of Nanjing University of Science and Technology and Nanjing University of Information Science and Technology. He was a senior visiting scholar with the University of Maryland, and holds a master of laws degree (LLM) in International & European Law from the University of Liverpool, an undergraduate degree (LLB) in international economic law from the University of Fudan, and an undergraduate degree (B.A) in English language and literature from Anhui Normal University.

Walter Chen specializes and is extremely experienced in handling non litigation and litigation legal matters involving international elements including matters relating to English, EU and WTO Laws. Prior to legal practice, Walter Chen used to be a university lecturer, a research fellow in international business law at a provincial academy of social sciences. While practicing law, Walter Chen has been prolific in publishing English and Chinese legal articles in professional journals such as Chinese Lawyer, Chinese Lawyers Engaged in International Practices, China Law & Practice, International Lawyer, and European Law Review. He has co - authored a number of books, such as Selected Works of the International Symposium on WTO and Legal Services (2002), Financial Surveillance and Jurisdiction (1998), An Analysis on Contemporary Western Economy (1994), A General Survey of International Economic Practice (1993), and served as editor - in - chief of A Handbook on Laws and Regulations of Chinese Enterprises Cross Border Transactions (2007). He frequently sponsors and moderates large - scale legal seminars and conferences for Jiangsu Bar Association, governmental

entities and businesses across the entire country and is a much sought after speaker for international conferences, such as the American Bar Association Annual Meeting, Spring Meeting of International Law Section, American Bar Association.

Foreword (I)

At the beginning of 2008, cumulative foreign (outbound) investment by Chinese companies totaled about \$127.6 billion and some 120,000 firms have set up offices overseas. Reuters reports that China's FDI (foreign direct investment) exceeded \$20 billion in 2007, almost one third of the FDI received by China that year.

The Chinese Government encourages Chinese investors by loosening capital controls and providing "soft" loans, to thus facilitate the financing of overseas investments by Chinese companies. The new guidelines encourage Chinese investors overseas to explore in particular the heavy chemicals, telecommunications, transportation and consultancy sectors.

Whereas a recent report from the Economist Intelligence Unit "Domestic Companies in China" claims that so far China's ODI was primarily driven by politics and not for strategic business reasons, this will gradually change. Slowly, corporate management in China is going global.

Natural resources will likely continue to be favoured areas of Chinese ODI, as China's rapid economic growth will require enormous amounts of oil, gas and other primary materials the country lacks. However, real estate transactions, agriculture and industrial investment are likely to increase, in keeping with Chinese traditions and respect for tangible assets.

Chinese companies have found a plethora of countries in which they can invest. As their laws and regulations differ widely as regards investment models, incorporation, host country investment policy, tax and fiscal incentives and the issuance of work permits, Chinese investors and their lawyers need speedy advice on many issues, including the procedures and documentation required. This explains the usefulness of Walter Chen's compilation.

While the gathering of information in this field is by nature a continuous process, this substantial Legal Guidance for Establishing Corporations in 40

Countries and Regions, painstakingly compiled by a network of national experts under the directorship of a leading Chinese lawyer with international renown gives an overview, both in English and in Chinese, of the often complex regulations regarding incorporation of some 40 countries and regions, with many of the local terms provided. It covers both countries classified as "free economies" by the International Monetary Fund and countries whose economies are under various regimes of tighter control. The guidance also includes the pertinent sample incorporation documents from the United States for reference.

Clearly this is a useful tool for helping companies and countries worldwide to chose the best business and investment strategies available.

Walter Chen was my graduate law student at the University of Liverpool Law School in the mid nineties, and it is pleasing to see that he developed not just into a top lawyer but also someone who remains committed to the high standards required of a lawyer working in a changing international environment.

I congratulate Walter Chen in having achieved this and hope he will continue to keep up the good work.

Nanette Neuwahl
Professor of Law
The University of Montreal
Canada
September 2008

Foreword (II)

In the past three decades, the world has marveled at the transformation effected as a result of the economic miracle that began with the policies of 'reform and opening up' launched in China by Deng Xiaoping in the late 1970's. In this process, more than 422,000,000 people have been lifted out of poverty, estimates Joseph Stiglitz, former chief economist to the World Bank and winner of the 2001 Nobel Prize in Economics – more than in any one country in history.

A key tool in effecting those policies was the encouragement of foreign investment into China. In the past 20 years alone, an estimated total of US \$ 560 billion has been invested into China from overseas.

Today of course, China faces different challenges. With the growing strength of its currency, the desirability of participating in the world's fastest growing economy and the opportunity to sell in world's largest market, China faces almost an overabundance of foreign investment. In part to counter the potential policy problems the imbalance between currency flows creates and in part to take advantage of the new opportunities Chinese companies face to do business directly overseas, in recent years, the government has adopted a series of policies aimed at encouraging outward investment by Chinese companies.

Whether Chinese companies seek to source raw materials in Brazil or to establish a sales network in Central Europe and Russia, they will need to establish a formal legal presence. Chinese businesspeople and lawyers are of course familiar with China's system of establishing legal entities, but it bears significant features that make it distinctive from other systems in the world. As a result, a practical, professional resource is needed, which can aid Chinese lawyers and businesspeople in their planning by assessing the legal standards, the associated processes and the capital requirements for forming a business presence in other parts of the world.

Walter Chen has taken on the ambitious task of assembling and editing just such a reference tool for Chinese companies — whether large or small, state — owned or non — government owned, publicly traded or closely held — so long as they seek an opportunity to expand their business outside of China, this work will be useful for them.

In many ways, Walter reflects the same characteristics that make the part of China from which he hails so successful. Just as is the case with the many flourishing companies from the Yangtze River Delta, Walter knows how to succeed in his core market (or in his case, 'profession'), and he is also eager to pursue opportunities to reach out and establish new ties, new connections, new ways to work together.

Whether through his work with as Chairman of the International Law and Practice Section of the Jiangsu Bar Association, as Director of the Legal Committee of Jiangsu Industrial Overseas Development & Planning Association, as a Visiting Scholar at the University of Maryland or through his support for the American Bar Association's Section of International Law, Walter has demonstrated a commitment to growth and development of the Chinese legal profession, a furthering of international ties and a greater understanding of cross—border business and legal issues.

This work "Legal Guidance for Establishing Corporations in 40 Countries and Regions" ties together these various strands of his professional and personal interests and fills a need in the body of knowledge available to Chinese companies and their lawyers. Only someone with Walter's professional accomplishments and extensive professional network around the world would be in a position to assemble a group of experts from regions and countries spanning the globe, to integrate and produce such a comprehensive work! I am honored to have this opportunity to congratulate him on the publication of this valuable reference tool.

Amy L. Sommers

National Partner

Squire, Sanders & Dempsey L. L. P.

Past Co – chair, China Law Committee

American Bar Association

Washington D. C.

September 2008

Preface

"Go Global" is the catchword in China today with which the Chinese government, since 2000, has encouraged qualified enterprises to invest abroad. In December 2004, the Lenovo Group, China's largest computer manufacturer, successfully acquired the global PC businesses of IBM in a deal worth \$1.25 billion. Lenovo has subsequently announced that it is moving its headquarters to New York. Lenovo's acquisition has put China into the international limelight as a significant emerging global investor. According to the United Nations Conference on Trade and Development's (UNCATD) World Investment Report 2007, China is not only one of the largest receivers of foreign direct investment in the world but also is a major source of outgoing foreign direct investment. In this regard, recent statistics published by the Ministry of Commerce have revealed that, by the end of 2006, the outflow of non -finance foreign direct investment from China amounted to USD 73.3 billion, of which the year 2006 witnessed a boom totaling USD 21.16 billion. In comparison, the outflow of foreign direct investment in 2007 was USD 18.72 billion. With the implementation of China's 11th Five Year Plan (2006 -2010), in which a reinforced "Go Global" strategy figures prominently, the Chinese government projects that by 2010 the outflow of foreign direct investment should reach USD 60 billion, which amounts to a yearly growth rate of 20%. As a result, China's global ranking in outflow of foreign direct investment, per a research report by Deutsche Bank towards the end of 2006, will be moved up to 4th in 2011 from 15th in 2005. In relative terms this should put China on a nearly even footing with the UK and Germany, and close to the USA, by that year.

For Chinese businesses wishing to go global successfully, apart from being acquainted with the laws and rules foreign and domestic, the most important aspect is to learn the business forms of the host countries and regions,

such as proprietorship, partnership, corporation, limited liability company. Specifically, Chinese businesses must select the right vehicle most appropriate for their investments. Likewise, specific requirements in each host country and region such as registered capital, incorporation procedures, costs associated with registration, which are mandated by laws and rules of the host countries and regions need also to be borne in mind prior to making any substantial investment decision. So far, no clear and concise guidebook for these decisions is available on Chinese market. As an attorney in international business transactions, I have often been consulted by business clients large and small for incorporating businesses in certain countries and regions and helped numerous clients set up their businesses abroad, accumulating valuable experience in a number of countries. Building upon this experience I've decided to attempt to fill this gap and compile a reference source for Chinese outbound investment. Leveraging my legal experience and drawing upon the many international sources I have cultivated, I decided to compile an accessible handbook that could serve as a "roadmap" for Chinese businesses going global. Bearing this idea in mind, after some ordeal of research and balance, I set forth towards my goal with "Legal Guidance for Establishing Corporations in 40 Countries and Regions". Why 40 countries and regions, readers might ask? To be frank with you, I love the number 40 in the first place; secondly, the consideration of selecting 40 countries and regions to compile is that I wish to have a moderate size of book I can manage, first covering the 40 most common destination countries and regions. In addition, I wish to expand the book in future as other countries will be in demand.

In compiling such a book, the following factors have been thoroughly considered:

(a) In selecting countries and regions, we mainly referred to those recorded by the Industry Orientation Catalogues for Outbound Investment (Catalogues) jointly published by the Ministry of Commerce and Ministry of Foreign Affairs, meanwhile taking care of the levels of development and geographic allocation of the host countries and regions. The reason for selecting such Catalogues is because they are the main basis on which Chinese foreign trade and economic cooperation authorities at various levels direct and approve the outbound investment, and because it determines whether aspiring global investors

can enjoy preferential treatment as regards funding, foreign exchange, taxation, customs and entry and exit.

- (b) Due to considerations of space, we could not address all the countries and regions listed and encouraged by two ministries in the Catalogues, instead we confined ourselves to certain countries and regions, ultimately choosing to devote specific analysis to 40 countries and regions.
- (c) With regard to the contents of the book, I was mainly concerned with types of business organizations, procedures of incorporation, including specific registration requirements, time and costs involved, and business licenses and permits if relevant. Apart from corporations, a general overview of other types of business organizations is included so that other business forms can be selected if necessary. In practice, the most common form is the limited liability Company, though this varies greatly across the world, and may differ somewhat from what is understood in China by this term. Therefore, the details presented concerning registration formalities mainly zone in on limited liability companies. In addition, when operating a company, some licenses and permits may be involved, e. g. in the United States, if engaging in business of foodstuff and pharmacy, special permits need to be obtained prior to operation. Consequently, each chapter contains a brief overview of the license and permits which are necessary prior to starting business operation in the respective countries or regions covered.
- (d) As concerns the presentation of the data, it was felt that, in the interest of ready accessibility of the information, countries and regions were best arranged in alphabetical order rather than ranked according to development status or clustered according to geographic allocation.
- (e) To enhance the practicality of the book, a number of references are included. The book contains a selection of useful websites in relation to incorporation in different countries; furthermore, sample incorporation documents from the United States are included for reference. It is believed that with all these practical documents businesses going global can draw upon already existent best practices in accessing useful information in relation to incorporating a business, as well as model on those documents if necessary to make their own incorporation documentation.
 - (f) In compiling this guidance, to ensure the book being as precise,

professional and practical as possible, given the wide array of country and region specific information, I have invited over 40 renowned lawyers and partners from 40 countries and regions across the globe to contribute their intellectual input and local expertise. The participation of such a high profile pool of legal practitioners from across the globe has required painstaking efforts and relentless enthusiasm so as to come a book which is at the same time authoritative, informative and practical.

(g) Finally, though the book is mostly addressed to the businesses going global, the potential readers, including but not limited to governmental entities, colleges and universities, research institutions, legal and commercial professionals, might find it educational and useful. In order to attract the greatest audience and to be most useful, bilingual texts is an advantage; as a result, the English version of the book is matched by a Chinese equivalent.

Acknowledgments

A Guidance Book such as this is the work of collective efforts from legal practitioners across the world. It would not have been possible without the contribution of a team of lawyers from the Interlaw Ltd, a professional body based in Los Angeles, California, U. S. A and established since 1982, with nearly 5,000 attorneys in more than 119 cities worldwide. The Directory of Contributors provides the names and institutional affiliations of the more than forty persons whose scholarship, learning and erudition made this volume possible. I am grateful for the invaluable support given to me in the process of compilation by Mr. Jerry H. Biederman, Managing Partner of Neal Gerber Eisenberg LLP, Chicago, Illinois U. S. A. and also Board Member of the Interlaw Ltd.

I am also grateful to Ms. Amy L. Sommers, partner with the Shanghai Office of Squire, Sanders & Dempsey L. L. P., once co – chair of the China Law Committee of the American Bar Association Section of International Law and currently presiding or co – presiding several committees of the American Chamber of Commerce – Shanghai for her coordination efforts in encouraging her colleagues across different Squire offices around the world to contribute such chapters as Russia, Ukraine, Poland, Czech Republic, Brazil, Ireland and Saudi Arabia. Ms Sommers also wrote a foreword to this book.

Further, I would like to extend my heartfelt thanks to my former tutor, Professor Nanette Neuwahl, a renowned EU & International law expert, at the University of Montreal, Canada, who sharpened my insights on international legal issues when I was a postgraduate of international business law at the School of Law of the University of Liverpool in the 1990's. Without her good grace this compilation would not have been possible.

That an English version book without Chinese equivalent might be circulated in a non English – speaking country such as China is not unimaginable.

Therefore, I would like to extend special thanks to the following individuals for their hard translation work which made this Guidance Book presentable to Chinese readers: Xuelian Chen, Wenjie Yu, Yuhui Wei, Qing Xi, Guodong Lai, Hongjuan Jiang, Hengye Jiang, Ying Xi, Jicheng Qin, Jing Zhou, Yizhi Pi, and Zhigang Wu. This magnificent team of linguistic experts have marvelously come to grips with the pitfalls of translating terms that sometimes are very hard to transpose from one legal system to another, and so, their contribution to the success of this book cannot be overestimated.

In closing, I wish to thank the LexisNexis, which is a name known worldwide for excellence. Without its sponsorship, the book would have never been publishable. I also wish to thank the knowledgeable, talented and industrious crew at LexisNexis, who makes publication of such book possible.

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September 2008

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