

INTRODUCTION • THE LEGAL SYSTEM

Introduction

China at a glance	¶1-000
Land and population.....	¶1-010
History.....	¶1-110
Government and politics	¶1-200
Economy and foreign trade.....	¶2-100
Forms of doing business	¶3-100

The legal system

Introduction.....	¶4-100
Laws and law-making.....	¶4-200
Legal institutions	¶4-400
Legal profession	¶4-600
Notary public.....	¶4-800
Legal aid.....	¶4-950

INTRODUCTION

China at a glance

[1-000] China at a glance

Population: 1.34495 billion (including Hong Kong, Macau and Taiwan), with a total population of 1.31448 billion in Mainland China.

Area: 9,562.904 km²

Borders: North Korea, Russia, Mongolia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bhutan, Burma (Myanmar), Laos, Vietnam

Climate: varies from sub-tropical in the south to sub-arctic in the North

Currency: Renminbi (RMB), literally the people's currency, divided into yuan, jiao and fen.

1 yuan = 10 jiao

1 jiao = 10 fen

The exchange rate used to be fixed daily, but from 2005 it was floated within a certain range set by the People's Bank of China. Currently the exchange rate is at around 7 RMB (yuan) to one US dollar, 10.1 RMB (yuan) to one Euro, and 15 RMB (yuan) to one Sterling pound.

Language: Chinese. Official spoken version is called Putonghua or Mandarin. Also Yue, Wu, Hakka, Gan, Minnan, Minbei.

Government: Communist state

Head of State: President Hu Jintao

Head of Government: Wen Jiabao

Hong Kong: reverted from British to Chinese sovereignty on July 1 1997. Hong Kong has a separate legal and economic system (including currency) from mainland China. Visas, customs and taxes are all dealt with under a separate system.

Macau: reverted from Portuguese to Chinese sovereignty on 20 December 1999. Macau has a separate legal and economic systems (including currency) from Mainland China. Visas, customs and taxes are all dealt with under a separate system.

Taiwan: Taiwan is declared by the Mainland Chinese government as a part of China, but its official status is yet to be resolved.

Calendar: Gregorian, although a traditional Lunar calendar is used to set movable holidays such as Chinese New Year.

Time: The whole of China, including Hong Kong, is set to Beijing Time. It is eight hours ahead of Greenwich Mean Time.

At midday in China it will be:

2 pm in Sydney and Melbourne (AEST)

4 am in London (GMT)

11 pm the day before in New York (EST)

midday in Kuala Lumpur, Singapore, Manila, and Taiwan.

1 pm in Seoul and Tokyo

11 am in Jakarta and Bangkok

9.30 am in Bombay

3 pm the day before in Los Angeles

1 pm in Berlin

Office hours: 8 am to 5 pm, Monday to Friday

Public holidays:

New Year's Day (1 January): one day

Chinese New Year (new Lunar Year's Eve and first and second days of the new Lunar Year): three days

Qingming Festival (fourth or fifth day of the Fourth Lunar Month): one day

Labour Day (1-3 May): three days

Duanwu Festival (fifth day of the Fifth Lunar Month): one day

Mid-Autumn Festival (fifteenth day of the Eighth Lunar Month): one day

National Day (1-3 October): three days

Other national holidays include:

Woman's Day (8 March, half day for women)

Youth Day (4 May, half day for 14-year plus youths)

Children's Day (1 June, half day for children under 13 years old)

Army Day (1 August, half day for service persons)

Ethnic minority holidays are to be decided by various local governments.

LAND AND POPULATION

Geography	¶1-010
Climate	¶1-020
Population	¶1-030
Nationalities	¶1-040
Language	¶1-050
Weights and measures	¶1-060

¶1-010 Geography

The People's Republic of China (PRC) comprises a total land area of 9,562,904 square kilometres (3,692,244 square miles), making it the third largest country in the world. It borders North Korea, Mongolia, Russia, Kazakhstan, Kyrgyzstan, Tajikistan, Afghanistan, Pakistan, India, Nepal, Bhutan, Myanmar (Burma), Laos and Vietnam.

China's eastern coastline stretches for more than 5,774 kilometres (3,588 miles). From north to south, the coastline touches the Yellow and East China Seas, the Bohai Gulf, and the South China Sea.

The nation's territory also includes thousands of offshore islands. The largest is Hainan Island, lying off the southeast coast. Other islands claimed by the PRC as part of its territory are the Pratas (Dongsha), the Paracels (Xisha) and the Spratley (Zhongsha and Nansha) Island groups. Several of China's neighbors (including Vietnam and the Philippines) have laid claim to some of these islands as well. Taiwan and the Pescadores (Penghu) Islands are also claimed by China as integral parts of the PRC.

Since 1945 Taiwan and the Pescadores Islands have been governed by the Nationalist Chinese authorities as the Republic of China. Until July 1, 1997, the territory of Hong Kong was governed as a British Crown Colony. It reverted to Chinese sovereignty on that day. The southern coastal enclave of Macau was administered by Portugal, and reverted to China on December 20, 1999.

¶1-020 Climate

China's climate is extremely variable due to the extensive reach of the country's land mass and its diverse topography.

In North China winters are long and harsh with mean January temperatures ranging from 14-35°F (-10-1.7°C) in Beijing and 2-20°F (-16.7-6.6°C) in Shenyang. Summer months in the north are hot and dry.



Annual temperature difference in China's major cities

Cities	Average January temperature	Average July temperature	Annual temperature difference
Beijing	-4.8°C	25.8°C	30.6°C
Shanghai	3.5°C	28°C	24.5°C
Qingdao	-1.10°C	23.7°C	24.8°C
Guangzhou	13.70°C	28.3°C	14.6°C
Wuhan	2.7°C	29.1°C	26.4°C
Urumqi	-15.8°C	23.9°C	39.70°C
Shenyang	-13°C	24.9°C	37.9°C

Source: *China: A General Survey*, Foreign Language Press, 1983.

The climate in most of central China is sub-tropical; temperatures in the Yangtze Valley average between 32° and 46.4°F (0° and 8°C) and rainfall is moderate to heavy, permitting year-round cultivation.

The southeastern provinces enjoy a tropical climate which is influenced by the summer monsoon. Typhoons are a frequent occurrence in the southern coastal areas during the summer.

Harsh climatic conditions prevail in the western regions of Inner Mongolia and Xinjiang which are marked by arid plains and deserts. The Tibetan plateau, bordered on the south by the Himalayas, the world's highest mountains, is legendary for its inhospitable climate.

¶1-030 Population

China's population is the largest of any country in the world. According to the latest population census carried out by the National Bureau of Statistics on 1 November 2000, the Chinese population (including that of Hong Kong, Macau and Taiwan) stands at 1.29533 billion, with a total population of 1.26583 billion in Mainland China.

China's population is unevenly distributed, with more than 90% of the nation's inhabitants crowded on less than half of the land area. It is estimated that approximately 80% of the population live in rural areas, the remainder residing in China's numerous cities.

¶1-040 Nationalities

China's constitution declares that the PRC is a multi-national state. Approximately 93% of the population is of the Han nationality, commonly referred to as "ethnic Chinese". The remainder of the population belongs to one of China's 55 "national minority groups" which possess distinctive cultural and linguistic traits. The major groups include the Tibetans, Uyghurs, Mongols, Zhuang, Miao and Hui. The national minorities reside primarily in five autonomous regions, 29 autonomous prefectures (*Zhou*), and 69 autonomous counties.

¶1-050 Language

China is characterised by a high degree of linguistic diversity. Although the vast majority of the population speaks "Chinese", the language itself comprises a wide variety of regional dialects and subdialects. The official language is *putonghua*, or the common language, which is a variant of the dialect spoken in the national capital, Beijing. *Putonghua* is taught in school and is the dialect used most widely in the media and in government offices and business. It is often referred to as Mandarin in the West. The major regional dialects are the Wu dialect, spoken in the Shanghai area; the Min dialect, prevalent in Fujian Province and in Taiwan; and Cantonese, spoken in Guangdong Province and other areas of southern China. Although regional dialects are often mutually incomprehensible, written Chinese is for the most part uniform. The national minorities continue to maintain their own linguistic traditions, although many educated members of minority groups also speak *putonghua*.

¶1-060 Weights and measures

Weights and Measures Conversion Table

	Chinese system	Metric system	British system
Length	1 chi	= 33.33 cm	= 1.0936 ft
	1 li	= 500.00 m	= 0.3107 mile
	(li = 1,500 chi)		
Area	1 mu	= 0.0666 hectares	= 0.1647 acres
Weight	(1 dan = 100 jin = 1,000 liang)		
	1 liang	= 50 grammes	= 1.7638 ounces
	1 jin	= 500 grammes	= 1.1023 pounds
	1 dan	= 50 kilogrammes	= 110.23 pounds
		= 0.05 metric tons	= 0.0551 short tons
Capacity	(10 sheng = 1 dou)		
	1 sheng	= 1 litre	= 0.22 Imp. gallon
			= 0.26 US gallon
	1 dou	= 10 litres	= 2.20 Imp. gallon
		= 2.64 US gallon	

Source: *Guidebook on Trading with the People's Republic of China*

Under the Provisions, a party whose residence, usual place of dwelling, or executed property is in mainland China, may apply to the intermediate people's court in the place where the applicant's residence, usual place of dwelling or the executed property is located, for recognition of a civil judgment by a Taiwan court. However, the civil judgment submitted by the applicant for recognition must not show any content which violates the principle of One China.

If the application accords with the requirements of the Provisions, the people's court will accept and hear the case within seven days after the receipt of the application. After the acceptance, parties concerned can no longer lodge a law-suit with the people's court on the basis of the same facts. Cases are heard by a collegiate panel consisting of judges. If a civil judgment rendered by a Taiwan court falls into one of the following categories, it will not be recognized:

- (1) the effectiveness of the civil judgment concerned has not yet been determined;
- (2) the civil judgment concerned was made in a situation where the defendant was absent from the court and had not been legally summoned or where the defendant lacked the capacity to litigate and did not obtain proper legal counsel;
- (3) the case comes within the exclusive jurisdiction of the people's court;
- (4) the parties to the case conclude an arbitration agreement;
- (5) the case has already been decided by a people's court or by a foreign court or ruled by a foreign arbitration organ and the judgment or ruling has already been recognized by the people's court; or
- (6) the civil judgment concerned violates fundamental principles of the state law or harms the social and public interest.

Application for recognition of a civil judgment must be made within one year from the date that the judgment takes effect. An applicant who fails in obtaining recognition from the people's courts is not allowed to resubmit the same application, but he/she may bring an action in the people's court on the basis of the same case facts.

Once a civil judgment of the Taiwan court is recognized by the people's court, it may be enforced in accordance with the procedures provided by the Civil Procedure Law of the PRC.

BILATERAL INVESTMENT TREATIES

Introduction.....	¶45-010
Main features.....	¶45-110
Comparative tables	¶45-310
Closer economic partnership arrangement between China and Hong Kong/Macao	¶45-500

¶45-010 Introduction

The People's Republic of China has entered into bilateral agreements with more than 80 countries for the encouragement and reciprocal protection of interests. These countries are: Albania, Algeria, Argentina, Australia, Austria, Azerbaijan, Bangladesh, Barbados, Belgium-Luxembourg Economic Union, Belarus, Bolivia, Botswana, Bulgaria, Cambodia, Cameroon, Chile, the Congo, Cuba, the Czech Republic, Slovakia, Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Gabon, Georgia, Greece, Hungary, Iceland, Indonesia, Israel, Italy, Jamaica, Japan, Kazakhstan, Kyrgyzstan, Kuwait, Laos, Lebanon, Lithuania, Malaysia, Mauritius, Moldova, Mongolia, Morocco, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, the Philippines, Poland, Portugal, Romania, Saudi Arabia, Singapore, South Korea, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syria, Tajikistan, Thailand, Turkey, Turkmenistan, the Ukraine, the United Arab Emirates, the United Kingdom, Uruguay, the USA, Uzbekistan, Vietnam, Germany, Yemen, Yugoslavia, Zambia, Zimbabwe.

Investments made by nationals of the above countries in China receive various types of benefits specified in the treaty, in addition to those provided by Chinese domestic law and the terms of the investment contract.

The following is a list of countries having a treaty with China and the date of signature:

Country	Date Signed
USA	30 October 1980
Sweden	29 March 1982
Romania	10 February 1983
Germany	7 October 1983
France	30 May 1984
Belgium-Luxembourg Economic Union	4 June 1984
Finland	4 September 1984
Norway	21 November 1984
Italy	28 January 1985
Thailand	12 March 1985
Denmark	29 April 1985
Netherlands	17 June 1985
Austria	12 September 1985
Singapore	21 November 1985
Kuwait	23 November 1985
Sri Lanka	13 March 1986
United Kingdom	15 May 1986

Country	Date Signed
Switzerland	12 November 1986
Australia	11 July 1988
Poland	7 June 1988
Japan	29 August 1988
Malaysia	21 November 1988
New Zealand	22 November 1988
Pakistan	12 February 1989
Bulgaria	27 June, 1989
Turkey	13 November 1990
Hungary	29 May 1991
Mongolia	26 August 1991
The Czech Republic and Slovakia	4 December 1991
Portugal	3 February 1992
Spain	6 February 1992
Uzbekistan	13 March 1992
Bolivia	8 May 1992
Kyrgyzstan	14 May 1992
Greece	25 June 1992
The Philippines	20 July 1992
Kazakhstan	10 August 1992
South Korea	30 September 1992
Ukraine	31 October 1992
Saudi Arabia	5 November 1992
Argentina	5 November 1992
Moldova	6 November 1992
Turkmenistan	21 November 1992
Vietnam	2 December 1992
Belarus	11 January 1993
Laos	31 January 1993
Albania	13 February 1993
Tajikistan	9 March 1993
Georgia	3 June 1993
United Arab Emirates	1 July, 1993
Estonia	2 September 1993
Lithuania	8 November 1993

Country	Date Signed
Uruguay	2 December 1993
Azerbaijan	8 March 1994
Chile	23 March 1994
Iceland	31 March, 1994
Egypt	21 April 1994
Peru	9 June 1994
Romania	12 July 1994
Indonesia	18 November 1994
Morocco	27 March 1995
Israel	10 April, 1995
Cuba	24 April 1995
Yugoslavia	18 December 1995
Saudi Arabia	29 February 1996
Mauritius	4 May 1996
Zimbabwe	21 May 1996
Ecuador	21 March 1996
Lebanon	13 June, 1996
Zambia	21 June, 1996
Cambodia	19 July 1996
Bangladesh	12 September 1996
Algeria	17 October 1996
Syria	9 December 1996
Cameroon	10 May 1997
Gabon	9 May 1997
Nigeria	12 May 1997
Sudan	30 May 1997
Congo	18 December 1997
South Africa	30 December 1997
Yemen	16 February 1998
Ethiopia	11 May 1998
Barbados	20 July 1998
Congo	20 March 2000
Botswana	12 June 2000

MAIN FEATURES

Introduction.....	¶45-110
Protection upon expropriation.....	¶45-130
Arbitration.....	¶45-150
Most favoured nation treatment.....	¶45-170
Transfer or repatriation of proceeds related to investments.....	¶45-190
Other matters.....	¶45-210

¶45-110 Introduction

Bilateral investment treaties are designed to provide additional benefits and security to foreign investors with the aim to mutually encourage business activities between the signatory states. In the case of China, the treaties often provide more favorable benefits than are available under Chinese domestic law. Some of the main issues addressed in the treaties to which China is a signatory are discussed in the sections which follow.

¶45-130 Protection upon expropriation

Chinese joint venture laws and regulations are silent on the issue of expropriation. All of the investment agreements deal with this issue in detail.

Many treaties determined the amount of compensation by the value of the investment immediately before such expropriation measures took effect, were announced or were executed. Treaties with Kuwait and Great Britain appear to be the most detailed. For example, they provide for interest compensation and a mechanism for market value determination of the value of an investment. In relation to the right of review of the expropriation decision, some agreements allow for a review to determine the legality of the expropriation decision while others do not.

Some treaties offer compensation for losses that are not limited to those caused by breach of contract. Chinese foreign investment laws and regulations make no mention of compensation for losses caused other than for breach of contract.

Lastly, many of the treaties provide that compensation payments are to be made without undue delay and that they be freely transferable.

¶45-150 Arbitration

Chinese laws and regulations generally provide for arbitration as a means to settle disputes between the parties to the contract. They do not, however, cover disputes between a foreign investor and the host country government concerning compensation. In this regard, many of the treaties establish a framework for such arbitration.

¶45-170 Most favoured nation treatment

Chinese laws and regulations do not ensure equal treatment for all investors regardless of nationality. For this reason, foreign parties often suggest that a "most favored nation" clause be included in the joint venture contract.

All of the treaties allow for most favored nation treatment. However, note that most agreements do not provide for "full national treatment", ie that foreign investors should enjoy the same treatment as domestic investors. This reflects the Chinese position that foreign investments should not be treated the same as China's domestic state-owned enterprises.

¶45-190 Transfer or repatriation of proceeds related to Investments

Under Chinese investment laws and regulations, repatriation in a foreign currency of profit, principal and interest payments, capital gains, dividends and fees is subject to the provisions of China's regulations on foreign exchange control and external debt registration rules. Under the regulations, repatriation of foreign currency investments, profit and other funds is usually subject to the restrictions that the foreign exchange must come from the foreign exchange account of the foreign investment enterprise and that the repatriation be subject to the approval of the bank with which the enterprise maintains an account. In all cases, repatriation is also made subject to the approval of the state foreign exchange control authorities.

Provisions in the treaties allowing for free transfer or repatriation of proceeds related to investment are, therefore, noteworthy. Note also, however, that when China does not have sufficient foreign exchange for the transfer it may or may not be obligated to permit the conversion of local currency into convertible currency, depending on the specific treaty and the nature of the investment.

¶45-210 Other matters

The treaties also deal with the following matters:

- (1) assignment and subrogation;
- (2) guaranteed rates of exchange upon transfer or remittance; and
- (3) definitions of "investment" and "returns".

In relation to assignment and subrogation, the treaties guarantee recognition of assignment and subrogation rights which a government agency may obtain as a result of an indemnity provided to a foreign investor in China, in the event that such government agency seeks recourse in China. Some treaties limit these assignment and subrogation rights to payments under non-commercial risk financial guarantees.

COMPARATIVE TABLES

Introduction.....	¶45-310
Protection upon expropriation, nationalization or other measures having similar effect.....	¶45-330
Arbitration of disputes between investors of a contracting party and the other contracting party over the amount of compensation for expropriation or over investment made.....	¶45-350
Arbitration of disputes concerning treaty interpretation between contracting parties.....	¶45-370
Most favored nation treatment (guarantee of treatment no less favorable than that accorded to a third country).....	¶45-390
Transfer or repatriation of proceeds related to investments.....	¶45-410
Recognition of assignment and subrogation rights arising from indemnity of investors.....	¶45-430
Guaranteed rates of exchange upon transfer or remittance.....	¶45-450
Definitions of investments and returns.....	¶45-470

¶45-310 Introduction

This section provides a comparison of the treatment afforded under selected treaties with respect to eight main issues. These issues are:

- (1) Protection upon expropriation, nationalization or other measures having similar effect.
- (2) Arbitration of disputes between investors of a Contracting Party and the other Contracting Party over the amount of compensation for expropriation or over investment made.
- (3) Arbitration of disputes concerning treaty interpretation between Contracting Parties.
- (4) Most favored nation treatment.
- (5) Transfer or repatriation of proceeds related to investments.
- (6) Recognition of assignment and subrogation rights arising from indemnity of investors.
- (7) Guaranteed rates of exchange upon transfer or remittance.
- (8) Definitions of investments and returns.

¶45-330 Protection upon expropriation, nationalization or other measures having similar effect

Notes: 1. Preconditions

2. Right of review

3. Compensation for expropriation or other losses

AUSTRIA

1. Must be for a public purpose, in accordance with legal procedure and with compensation.
2. The legality of expropriation; the amount of compensation.
3. Compensation or expropriation, or other measures having similar effect equivalent to the value of the investment immediately before expropriation is announced. If investors of one Contracting Party suffer losses owing to war, other armed conflict, state of national emergency or other similar events, the Contracting Party taking such measures shall accord to such investors no less favourable treatment than that accorded to investors of a third country.

**THE FEDERAL
REPUBLIC OF
GERMANY**

1. Must be for public interests, in accordance with legal procedure and with compensation.
2. The legality of expropriation; the amount of compensation if no agreement within six months of negotiations.
3. Compensation for expropriation, nationalization or other measures having similar effect on investments shall be equivalent to the value of the investment immediately before expropriation was announced. The amount of compensation shall be negotiated between the investor and the other Contracting Party in accordance with the above principle.

If investors of one Contracting Party suffer losses in respect of joint ventures in which they have participated in the territory of the other Contracting Party due to war, other armed conflict, state of national emergency or other similar incidents, the latter Contracting Party shall not take discriminatory measures against the former.

- THE NETHERLANDS**
1. Must be for public interests and in accordance with legal procedure, not discriminatory and with compensation.
 2. Amount of compensation.
 3. Compensation for expropriation, nationalization or other measures having similar effect on investments shall be equivalent to the value of the investment at the time when expropriation is announced including and with interest up to

the date of payment. If investors of one Contracting Party suffer losses in investments in the territory of the other Contracting Party due to war, other armed conflict, state of national emergency or other similar events, the Contracting Party taking such measures shall accord to such investors no less favorable treatment than that accorded to investors of a third country.

SWEDEN

1. Must be liable for public interest, in accordance with appropriate equal procedure and with compensation.
2. Not specified.
3. The purpose of compensation for expropriation, nationalization or other measures having similar effect on investments made in the territory of the other Contracting Party shall be to place the investor in the same financial position as that in which the investor would have been if expropriation had not taken place. There is no provision for other losses suffered due to war, other armed conflict, state of national emergency or other similar incidents.

SWITZERLAND

1. Must be for public interests, not discriminatory, in accordance with legal requirements and with compensation.
2. Amount of compensation or as agreed.
3. Compensation for expropriation, nationalization, deprivation measures or other measures having similar effect on investments made in the territory of the other Contracting Party shall be appropriate, ie equivalent to the value of the investment immediately before such expropriatory measures become executed or take effect. There is no provision for other losses suffered due to war, other armed conflict, state of national emergency or other similar incidents.

**BELGIUM-
LUXEMBOURG
ECONOMIC UNION**

1. Must be for security requirement or public interests, in accordance with domestic legal procedure, not discriminatory and with compensation.
2. Amount of compensation.
3. Compensation for expropriation, nationalization or other measures having similar effect on investments made in the territory of the other Contracting Party shall be equivalent to the value of the investment on the day before expropriation or on the day of announcement of expropriation. The above also applies to expropriation of the assets and property of certain enterprises in which

the Chinese Patent Office has issued the announcement (Chinese version) of the application concerned, or applying to the Hong Kong SAR Intellectual Property Department for filing the application within six months from the date of receiving the notice of the state application code issued by the Chinese Patent Office, where the application is announced in the Chinese language by the international bureau. Secondly, the applicant has to apply to the Hong Kong SAR Intellectual Property Department for approval and registration of the patent within six months after the date that the patent rights are granted by the Chinese Patent Office.

In cases where an international application is made for a Chinese patent for a utility model and for short-term protection in Hong Kong, the applicant must apply to the Hong Kong SAR Intellectual Property Department for the short-term patent within six months after the international application reaches the Chinese stage or from the date of the issuance of the notice of the state application number by the Chinese Patent Office.

[¶60-917] International application

The Patent Law allows Chinese entities and individuals to apply for an international patent in accordance with relevant international treaties to which China is a party. Detailed provisions on the matter are set out in the newly revised Implementing Rules in a separate chapter. These provisions govern the conditions and procedures for international patent applications which reach the Chinese national stage, when such applications are to be submitted under the Patent Co-operation Treaty and where the applications are designated to be processed in China. Matters not covered by the relevant chapter will still be regulated by the Patent law and other chapters of the Implementing Rules. The Chinese Patent Office is responsible for acceptance of international patent applications.

Date of commencement of application procedures

A patent application commences from the date on which the application is received by the Patent Office. This date is regarded as "the date of application". In cases of an international application, a patent application is deemed to have been submitted to the Patent Office where the date of international application is determined in accordance with the Patent Co-operation Treaty and where the application is designated to be processed in China. If at the international stage an international application or the designation of China in an international application is withdrawn or deemed to have been withdrawn, the effects of the said international application inside China are terminated.

Procedures for application

When an international application enters the domain of Chinese national procedures, the applicant is required to complete prescribed formalities with the Patent Office within 30 months from the 'date of the priority claim' (as defined in Art 2 of the Patent Co-operation Treaty). These will include the following:

- (1) submitting a written declaration stating that the international application enters the domain of Chinese national procedures. The declaration must indicate the international application number, the type of patent applied for, the name of the invention/creation, the name or title of the applicant, address of the applicant and the name of the inventor. All these contents must be the same as in the records of the International Bureau and must be written in the Chinese language.

- (2) the payment of application fees and fees for printing for publication;
- (3) submitting a Chinese version of the international application and abstract of the original description, claims and attached illustrations if an international application is submitted in a foreign language; or submitting a copy of the abstract of the internationally published documents if the international application is to be submitted in the Chinese language.
- (4) submitting copies of illustrations where illustrations are attached to the international application; or submitting internationally published illustrations of the abstract, where the international application is to be submitted in Chinese.

Termination of an application

When an applicant fails to complete the formalities described above within the time limit, he/she may still save the case by paying an extension fee and obtaining a two-month extension. If not, the application will be deemed terminated. Termination of an international application may also occur where an application involves one of the following circumstances by the expiry of the aforesaid time limit:

- (1) the international application number is not indicated in the declaration for entering the domain of Chinese national procedures;
- (2) the application fees, fees for printing of publications, and extension fees are not paid;
- (3) an international application is submitted in a foreign language and Chinese translations of the description and claims of the initial international application are not submitted.

Withdrawal of an application

In some other circumstances an applicant will be notified by the Patent Office to provide a supplement or corrections within a specified time limit. If the applicant fails to do what is requested within the time limit the application will be deemed to have been withdrawn. These circumstances are:

- where the Chinese translation of the abstract or copies of the abstract are not submitted;
- where copies of the illustrations or abstracted illustrations are not submitted;
- where, in the declaration for entering the domain of Chinese national procedures, an applicant fails to indicate in Chinese the name of the invention/creation, or the name and address of the applicant, or the name of the inventor;
- where the contents or format of the declaration for entering the domain of Chinese national procedures do not comply with regulations;
- where the name of the inventor is neither indicated in an international application nor indicated in the declaration for entering the domain of Chinese national procedures; and
- where a change of applicant has been made with the International Bureau at the international stage and the new applicant does not provide evidence to prove that he/she has the application rights.

Alterations to and corrections of an application

Where an applicant requests one or more priority claims at the international stage and the request continues to be valid when entering the domain of Chinese national procedures, it will be deemed that a written declaration has been submitted. In such cases, if there are errors in the wording in a priority claim the applicant needs to make corrections and pay a fee for the corrections, or, where the application number of the former application is not provided, to provide the number when going through the formalities to enter the domain of Chinese national procedures.

For an international application for the patent rights of a utility model the applicant may submit a request for a correction of the description, attached drawings or claims to the Patent Office within one month from the date of commencing the formalities for entering the domain of Chinese national procedures.

In the case of an application for the patent rights for an invention, the applicant may amend the application on his/her own initiative from the date of making a request for a substantive examination, or within three months from the date on which a notice is issued by the Patent Office indicating that the application has entered the stage of substantive examination.

Any error found in the Chinese translations of the submitted specifications, claims, or text in the attached drawings may also be corrected before the Patent Office's preparation work for national publication is completed, or within three months from the date of receiving the notice of the Patent Office advising that the application for patent rights has entered the stage of substantive examination. A fee for the correction of the translation must be paid.

¶60-920] Categorization

Applications submitted to the Patent Office must specify the type of patent — invention, utility model or design — which is being applied for. The Patent Office may reject applications for subject matter which has been wrongly categorized and require that the application be resubmitted in the appropriate category. This primarily occurs in the case of invention patent applications which, after initial review, are not found to meet the standards for such patents and are deemed more appropriately categorized as utility models. The Patent Office does not consider categorizations accepted in other jurisdictions as determinative.

Any amendment to a patent application for an invention or utility model may not exceed the scope described in the original application. Amendments to design patents may not exceed the scope shown in the original drawings accompanying the application.

¶60-930] Separate application rule

Applicants are required to submit a separate application for each invention, utility model or design for which a patent is being sought. Where the Patent Office believes that the subject matter in the application includes more than one patentable item, it may require the applicant to submit additional applications. Prior to the publication of the application, the applicant itself may likewise submit a request to the Patent Office for a division of the application.

An exception to the "separate application" rule exists where one or more inventions or utility models are part of a single "overall concept of invention". Where the Patent Office deems that these conditions have been met, a single application covering the various inventions or utility models may be permitted. In the case of designs, a single application may be submitted to cover multiple designs used for products of the same classification where the products are sold or used as a single set.

¶60-935] Irregular application

Patent applicants and agents of patent applicants must comply with the application procedures provided by law and must not engage in any irregular patent application activity.

Irregular applications, according to the *Several Provisions on Standardising Patent Applications* (issued by the State Intellectual Property Bureau ("SIPB") on 27 August 2007 and effective from 1 October 2007), refers to one of the following situations:

- where an entity or individual submits or instructs others to submit multiple patent applications of obviously similar contents;
- where an entity or individual submits or instructs others to submit multiple patent applications involving obviously plagiarised technologies or designs; or
- where a patent agent submits such applications as described above.

Although such applications may still be handled by the patent authority, offenders will be subject to various punitive measures from the SIPB according to the circumstances of the case. The punitive measures include the following:

- no reduction of patent fees or deferral of payment of patent fees will be granted, or where fees have been reduced or deferred they shall be recovered fully or partly;
- a public announcement of the irregular application activities on the SIPB's official website and in the *China Intellectual Property Rights News*;
- the exclusion of the irregular patent application from the patent application statistics of SIPB;
- a recommendation to the local patent administrative authorities not to provide financial assistance or incentives to the patent applicants;
- a recommendation to the All-China Patent Agents Association to apply self-discipline measures to patent agencies or agents who engage in irregular patent application activities and, where necessary, a recommendation to the Patent Agents Disciplinary Committee to take corresponding action pursuant to the *Disciplinary Rules for Patent Agents (Provisional)*; and
- transferring the case to the relevant authorities to pursue criminal liability, where financial assistance or incentives are fraudulently obtained through irregular application activities and where the case constitutes a criminal offence.

Before any of the punitive measures mentioned above is imposed, the parties concerned shall have the opportunity to represent their case.

[¶60-940] Document checklist: invention and utility model patent applications

When applying for patents for inventions and utility models the applicant is required to submit the following documents:

(1) "Letter of Request" (qingqiu shu)

A letter of request must be submitted which includes the following information:

- (a) the title of the invention or utility model;
- (b) the name and address of the inventor or creator;
- (c) the name and address of the applicant;
- (d) the nationality of the applicant;
- (e) where the applicant is an enterprise or organization, the name of the entity and the country in which the applicant maintains its principal business office;
- (f) the name and address of the patent agent;
- (g) the name and legal address of the applicant, where the applicant is a legal entity;
- (h) if the application claims priority by virtue of an earlier application, this should also be stated clearly, along with the priority filing date and corresponding serial numbers;
- (i) the signature or seal of the applicant (not necessary for foreign applicants which entrust an official agent pursuant to an executed power of attorney);
- (j) a list of the documents included in the application; and
- (k) a list of all appendices to the application.

(2) Description (shuoming shu)

This document contains a description of the invention or utility model. The description should set forth the following information:

- (a) the title of the invention or utility model appearing in the letter of request;
- (b) the technical field to which the invention or utility model relates;
- (c) an indication of the prior art which, to the extent that such is known to the applicant, can be regarded by the Patent Office as useful for the understanding, searching and examination of the invention or utility model, including citations to relevant documents reflecting such art;
- (d) a specific description of the task which the invention or utility model is designed to carry out;
- (e) a disclosure of the invention or utility model in such a way as to enable the patent examiners to understand the main technical features or new solution of the item;
- (f) a statement of the special merits or results of the invention or utility model when compared with prior art;
- (g) a detailed description of the method contemplated by the applicant for carrying out the invention or utility model.

In drafting the description, all measures used in the application should be those prescribed by the Chinese State Bureau of Metrology. Chemical and mathematical equations may be included in the description, but these should be clear and concise. Language of a promotional nature such as "most up to date", language with vague meanings such as "approximately" or "nearly", as well as any derogatory remarks about other inventions, should be avoided.

(3) Drawings

Drawings may be included as supplements to the description and constitute a part thereof. Drawings may be in the form of a frontal view, side view, cut-away view or in

the form of a schematic diagram, depending on which method best illustrates the contents of a description.

The scale of drawings must be such that they are capable of linear reduction to two-thirds of the original size while still being clearly distinguishable. The drawings must be made in black ink by means of drafting instruments. Drawings made with pencil, fountain pen or ball pen are not acceptable. Drawings may not be submitted in color and may not be substituted by photographs or mimeographs.

Each drawing should be paginated separately. The drawings should not contain any other explanatory notes, but should refer to corresponding paragraphs in the text of the description.

(4) Abstract (*zhai yao*)

The abstract should provide a brief introduction to the contents of the description so as to enable patent examiners to undertake a search of patent documents. The abstract itself has no legal effect.

In general, the abstract should contain no more than 200 words. It should indicate the title of the invention or utility model, the technical field to which it relates, the technical problem which it purports to solve, as well as the essential technical features and use or uses of the invention or utility model. The abstract may contain chemical or mathematical formulae, but only one main drawing may be included.

(5) Claims or "Request for Rights" (*quanli yaoqiu shu*)

The claims are an integral part of the patent application, since the extent of protection of the patent is determined by the contents of the approved claims.

In general, the claims should set out in a clear and concise manner the scope of protection sought for the invention or utility model in terms of its technical features. If several claims are to be included, these should be numbered consecutively in Arabic numerals. The technical terminology used in the claim should be consistent with that set forth in the description. Chemical and mathematical formulae may be included, but drawings may not. Nor should the claims include any citation to the description or any drawings appended thereto.

In drafting claims, the independent claim should be stated before dependent claims relating to the same invention or utility model are stated. The independent claim should be set forth in two sections. The first, the preamble portion, should indicate both the technical field to which the invention or utility model relates and the technical features of the prior art which are relevant to the subject matter of the invention or utility model. The second section, the characterizing section, indicates the technical features of the invention or utility model.

Dependent claims may be stated following the statement of independent claims. These are also to be set forth in two sections. The first, the reference portion, indicates the serial number of the claims referred to. The second, the characterizing section, sets forth the additional technical features of the invention or utility model.

In certain circumstances, such as where two inventions are inseparable from one another, a combined application may be submitted. However, even in such cases, one of the claims should be stated as the dominant claim and should be characterized as the first independent claim. The second independent claim should be set forth immediately after the first.

(6) Power of Attorney

Foreign applicants are required to submit a power of attorney entrusting the patent agent to file the application on its behalf.

(7) Special rules for microbiological processes or products

Where an application for an invention patent relates to a microbiological process or product, the applicant must also fulfill the following requirements:

- (a) a sample of the microorganism must be deposited with an institution designated by the Patent Office on or before the application filing date;
- (b) a description must be set forth in the application document providing relevant information on the characteristics of the microorganism; and
- (c) the patent request must indicate the scientific (and Latin) name of the microorganism, the name of the depository institution, the date on which the sample of such microorganism was deposited, together with the file number of the deposit and a photocopy of the deposit receipt.

(8) Priority documents

Where the applicant claims a priority right, it must submit to the Patent Office within three months of the date of the application copies of the documents relating to the earlier application, certified by the relevant authorities in the country where the application was filed. In addition, the Patent Office may require the applicant to furnish a Chinese translation of the original application document. The original application number issued by the country of the first application must also be supplied to the Patent Office within 15 months of the filing date of the original application.

The official patent agents may require foreign applicants to provide various documents well before deadlines prescribed in the Patent Law and Implementing Regulations in order to have time to process application materials.

(9) Prior disclosure documents

Where an invention or utility model has been made known to the public under circumstances in which the Patent Law deems that novelty is not destroyed, the documents relating to such publication must generally be provided together with the application documents.

¶60-950 Document checklist: design patents

Applicants for design patents must submit the following documents:

- (1) a letter of request, including a statement of the product using the design and the classification specified by the Patent Office to which it belongs;
- (2) one or more photographs or drawings depicting the design at different angles; these must be of a size between 3 cm x 8 cm and 19 cm x 27 cm; and
- (3) an executed power of attorney entrusting the official agent to file on the applicant's behalf.

It should be noted that where an application for a design patent seeks protection of the design in a specific color, the applicant is required to submit a drawing or photograph of the design in black and white, accompanied by a statement specifying the colors for which protection is sought. The Patent Office may also require the applicant to submit a sample or model of the product incorporating the design for which the application has been filed.

¶60-960 Documentary formalities

The following documentary formalities should be borne in mind when filing an application for a patent:

(a) Copies

Two copies each of the letter of request, description, abstract, claims and drawings must be submitted. Duplicate copies may be printed, typed or photocopies. Carbon copies are not acceptable.

(b) Typeface and format

The typeface used should be that consistent with No. 4 Sung Dynasty typeface when submitted in Chinese and in standard block-type when submitted in English. Writing by hand in color-fast black ink is acceptable; however, the size of the characters should be between 3 to 4 mm.

All printing should appear on only one side of the paper. Writing should be made horizontally from left to right with a margin of 25 millimetres reserved on the left and top-hand of the paper and a margin of 15 millimetres on the right and bottom of the paper.

(c) Paper

Paper used for drawings should be 16-MO (260 mm x 185 mm) for applications for inventions or utility models. Drawings relating to design applications should be on A4 paper (297 mm x 210 mm). The quality of the paper should be not lower than that of offset paper. The paper should be clear white stock.

(d) Language

All application documents must be submitted in the Chinese language. Attachments in a foreign language should be submitted together with a Chinese translation. Chinese language documents must be in conformity with the simplified Chinese characters mandated by the Reform Committee of the Chinese Writing System of the Ministry of Culture and the Ministry of Education.

¶60-970 Priority rules

Where two or more applicants file for a patent covering the same subject matter, the Patent Office will generally grant priority to the application which was filed first. As a consequence, determining the date of the application is often of crucial importance.

The basic rule established by the Patent Law is that the date on which the Patent Office receives the application documents shall be deemed the date of the application. However, there are exceptions to this rule. Where, for example, the application documents are submitted by post, the date of the postmark on the application is deemed to be the date of application. If the postmark is illegible, the actual date of receipt by the Patent Office is presumed to be the filing date. This presumption may be rebutted if the applicant can prove the actual date of mailing.

The law contemplates that in certain circumstances one or more applications may be filed on the same day, in which case the Patent Office may notify the applicants and require them to consult with one another to decide which of the parties shall take priority.