Summary of Contents

Foreword ................................................................. xxix
About the Author ...................................................... xxxi
List of Abbreviations ............................................... xxxiii

Chapter 1
Introduction: Trade, Politics, and the Business Climate in China .... 1

Chapter 2
Development of the Chinese Legal System ......................... 41

Chapter 3
Legislating, the Judiciary, and Lawyers in China ................. 61

Chapter 4
FIE Organizational Structure and Approval Procedures .......... 89

Chapter 5
Foreign Investment Guidelines and Industry-Specific Regulations ........................................... 163

Chapter 6
Information Technology, Telecommunications, and Software Development ........................................... 223

Chapter 7
Contract Law ............................................................... 289
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Tender Law and Government Procurement</td>
<td>353</td>
</tr>
<tr>
<td>9</td>
<td>Taxation Law</td>
<td>383</td>
</tr>
<tr>
<td>10</td>
<td>Labor and Employment Law</td>
<td>417</td>
</tr>
<tr>
<td>11</td>
<td>Financial Regulation</td>
<td>469</td>
</tr>
<tr>
<td>12</td>
<td>Insurance Law and Regulation</td>
<td>563</td>
</tr>
<tr>
<td>13</td>
<td>Consumer Protection</td>
<td>595</td>
</tr>
<tr>
<td>14</td>
<td>Intellectual Property</td>
<td>665</td>
</tr>
<tr>
<td>15</td>
<td>Customs and Trade Regulation</td>
<td>741</td>
</tr>
<tr>
<td>16</td>
<td>Securities Regulations</td>
<td>805</td>
</tr>
<tr>
<td>17</td>
<td>Property Rights, Land Use, and Natural Resources</td>
<td>889</td>
</tr>
<tr>
<td>18</td>
<td>Environmental Protection</td>
<td>921</td>
</tr>
<tr>
<td>19</td>
<td>Mergers, Acquisitions, and Divisions</td>
<td>963</td>
</tr>
<tr>
<td>20</td>
<td>Enterprise Liquidation, Reorganization, and Bankruptcy</td>
<td>1009</td>
</tr>
</tbody>
</table>
Summary of Contents

Chapter 21
Mediation and Arbitration ........................................... 1043

Chapter 22
Litigation in the People’s Court ...................................... 1095

Chapter 23
Criminal Liability for FIE Activities ............................... 1127

Chapter 24
Special Zones and Regional Development Initiatives of the PRC ...................................................... 1163

Index ........................................................................ 1189
Contents

Foreword ................................................................. xxix
About the Author .................................................... xxxi
List of Abbreviations ................................................. xxxiii

Chapter 1
Introduction: Trade, Politics, and the Business Climate in China .... 1
A. China/WTO Agreements .......................................... 6
   1. China’s Commitment: Tariff Reductions .................. 9
   2. China’s Commitment: Market Access for Services .......... 9
      a. Automobiles and Automotive Industry .................. 10
      b. Banking and Financial Institutions ...................... 11
      c. Construction and Engineering ............................ 11
      d. Distribution, Trading Rights, and Retail Services ...... 11
      e. Health Care: Medical and Dental Services ............ 12
      f. Insurance Services .......................................... 13
      g. Foreign-Produced Films .................................... 13
      h. Pharmaceuticals .............................................. 13
      i. Professional Services: Law Firms and Accounting Firms . 14
      j. Telecommunications Services .............................. 14
   3. China’s Commitments: Treaty Obligations ................. 14
      a. Agreements on Trade in Goods ............................ 14
      b. Agreements on Trade Facilitation ......................... 15
      c. Protocol of Accession: Matters Specific to China ...... 15
B. China’s WTO Compliance Record .......................... 19
C. U.S./China Trade and Political Relations .................. 26
   1. Valuation of the Renminbi: Chinese Currency Issue .... 28
   2. U.S./China Trade Deficit .................................... 30
D. Political Reform and Participatory Government 31
E. Business Climate and Meeting the Challenges 32

Chapter 2
Development of the Chinese Legal System 41
A. Philosophical Influences of Chinese Law 42
   1. Confucianism 42
   2. Daoism 44
   3. Legalism 45
B. External Influences on the Development of Contemporary Chinese Law 47
   1. Extraterritorial Privileges and Foreign Demands for Legal Reform 47
   3. Influence of Foreign Investment Post-1978 59

Chapter 3
Legislating, the Judiciary, and Lawyers in China 61
A. Legislative Institutions 62
   1. National People’s Congress 62
   2. President of the PRC 65
   3. State Council 65
   4. Local People’s Congresses 71
   5. Language and the Hierarchy of the Law 72
   6. Review of the Legislative Process 73
B. Judicial System 75
   1. Supreme People’s Court 75
   2. People’s Procuratorates 78
   3. Legal Profession 79
   4. Rule of Law in China 85

Chapter 4
FIE Organizational Structure and Approval Procedures 89
A. Operations without Partners 89
   1. Representative Office 90
   2. Wholly Foreign-Owned Enterprise 93
      a. General Principles 93
      b. Application Procedures for WFOEs 95
<table>
<thead>
<tr>
<th>Contents</th>
<th>xi</th>
</tr>
</thead>
<tbody>
<tr>
<td>c. Investment Contributions for WFOEs</td>
<td>97</td>
</tr>
<tr>
<td>d. WFOE Operational Issues</td>
<td>99</td>
</tr>
<tr>
<td>B. Operations Involving Chinese Partners</td>
<td>101</td>
</tr>
<tr>
<td>1. Joint Venture Enterprises (JV)</td>
<td>101</td>
</tr>
<tr>
<td>a. Profit Distribution</td>
<td>102</td>
</tr>
<tr>
<td>b. Management Structure</td>
<td>103</td>
</tr>
<tr>
<td>c. Contributions</td>
<td>105</td>
</tr>
<tr>
<td>d. Technology Transfer</td>
<td>109</td>
</tr>
<tr>
<td>e. Land-Use Rights</td>
<td>110</td>
</tr>
<tr>
<td>f. Special Issues in Contract Negotiations</td>
<td>111</td>
</tr>
<tr>
<td>g. Use of Form JV Contracts and Articles of Association</td>
<td>114</td>
</tr>
<tr>
<td>2. Equity Joint Venture Trading Company</td>
<td>114</td>
</tr>
<tr>
<td>3. Partnership Enterprise</td>
<td>115</td>
</tr>
<tr>
<td>a. Partnership Contract and Approval Procedures</td>
<td>118</td>
</tr>
<tr>
<td>b. Partnership Property and Partner Contribution</td>
<td>119</td>
</tr>
<tr>
<td>c. Management of Partnership Affairs</td>
<td>120</td>
</tr>
<tr>
<td>C. Special Function Operations</td>
<td>122</td>
</tr>
<tr>
<td>1. Processing Trade Contract</td>
<td>122</td>
</tr>
<tr>
<td>2. Maintenance and Technical Service Operations</td>
<td>124</td>
</tr>
<tr>
<td>3. Branch Offices/Subsidiary Companies</td>
<td>124</td>
</tr>
<tr>
<td>4. Holding Company</td>
<td>125</td>
</tr>
<tr>
<td>5. Foreign-Invested Venture Capital</td>
<td></td>
</tr>
<tr>
<td>Investment Enterprises (FIVCE)</td>
<td>130</td>
</tr>
<tr>
<td>6. BOT; Build, Operate, and Transfer</td>
<td>136</td>
</tr>
<tr>
<td>7. FIE Research and Development (R&amp;D) Centers</td>
<td>137</td>
</tr>
<tr>
<td>D. Equity Investments</td>
<td>140</td>
</tr>
<tr>
<td>1. The Company Law</td>
<td>140</td>
</tr>
<tr>
<td>a. Limited Liability Company</td>
<td>141</td>
</tr>
<tr>
<td>b. Company Limited by Shares</td>
<td>142</td>
</tr>
<tr>
<td>2. Equity Investment in an SOE</td>
<td>143</td>
</tr>
<tr>
<td>E. Procedures for Establishment of a Foreign-Invested Enterprise</td>
<td>145</td>
</tr>
<tr>
<td>1. Articles of Association</td>
<td>149</td>
</tr>
<tr>
<td>2. Feasibility Study</td>
<td>151</td>
</tr>
<tr>
<td>F. Assignment of Investor Interests</td>
<td></td>
</tr>
<tr>
<td>and Modification to Capital Contributions</td>
<td>152</td>
</tr>
<tr>
<td>1. Assignment and Transfer</td>
<td>152</td>
</tr>
<tr>
<td>2. Adjustments to Capital Contributions</td>
<td>154</td>
</tr>
<tr>
<td>G. Special Rules for Headquarters Operations</td>
<td>155</td>
</tr>
</tbody>
</table>
Chapter 5
Foreign Investment Guidelines and Industry-Specific Regulations .......... 163
A. Catalogue Guiding Foreign Investment ......................... 163
B. Regulation of the Services Sector .............................. 168
  1. Accountants and Accounting Firms ......................... 168
  2. Advertising Agencies ........................................... 170
  3. Asset Appraisal Enterprises ................................. 171
  4. Chambers of Commerce and International Foundations .... 171
  5. Construction Industry Services ............................ 173
  6. Convention and Exhibition Companies ..................... 176
  7. Direct Marketing Operations .................................. 176
  8. Educational Institutions and Certification Organizations ... 179
  9. Employment Agencies .......................................... 180
      a. Film Co-Production ......................................... 182
      b. Importing/Distributing Foreign Films .................. 184
      c. Foreign Investment in Theater Construction/Management 184
      d. Production/Importation of Audiovisual Products .......... 186
      e. Broadcasting and Television ............................. 187
 11. Express Mail and Package Delivery Companies ................. 188
 12. Financial Services .............................................. 191
 13. Franchise, Retail, Wholesale, and Commission-Based Agency Operations ......................... 191
 14. Freight Transport Agencies, Logistics Enterprises, Ocean Shipping, and Railway Cargo Transportation .......... 197
      a. Freight Transport Agencies and Logistics Enterprises .... 197
      b. Ocean Shipping .............................................. 201
      c. Railway Cargo Transportation ............................. 203
 15. Hospitals and Clinics ............................................ 204
 16. Information Technology, Telecommunications, and Software Services ......................... 204
 17. Insurance Services .............................................. 204
 18. Journalists and Foreign News Agencies ....................... 205
 19. Lawyers and Law Firms ....................................... 206
 20. Leasing Companies ............................................. 209
 21. Outsourcing .................................................... 210
 22. Procurement Centers .......................................... 211
 23. Travel Agencies and Tour Operators ......................... 211
### Contents

C. Regulation of Technology, Industrial, and Manufacturing Sectors ............ 212
   1. Automotive Industry .................. 212
   2. Aviation and Airport Infrastructure Development ........... 215
   3. Chemicals and Petrochemicals Processing ................. 217
   4. Energy and Power Generation .................. 217
   5. Food Industry and Agriculture .................. 218
   6. Mineral Resources Exploration and Exploitation ........... 218
   7. Petroleum Exploration and Exploitation .......... 219
   8. Port Administration and Infrastructure Development .... 219
   9. Publishing ................................ 220

Chapter 6

Information Technology, Telecommunications, and Software Development ............ 223

A. Telecommunications and Internet .................. 226
   1. Permit Procedures for Telecommunication Services ........ 228
   2. Telecommunication Internetwork Connection ............. 230
   3. Fees for Telecom Services ........................ 232
   4. Telecommunication Resources and User Fees ............. 232
   5. Standards for Telecom Service Operators and Users .... 233
   6. Telecommunication Construction .................... 234
   7. Permits for Telecommunication Terminal Equipment .... 236
   8. Telecommunication Security Standards .................. 237
   9. Penalties .................................. 240
  10. FIE Telecom Regulations ........................ 241
  11. Regulation of the Intranet ...................... 245
  12. Regulation of Internet Operations .................. 246
      a. Internet Information Services ................ 246
      b. Internet Publishing ...................... 254
      c. Regulation of Internet Cafés .............. 258
      d. Internet E-mail Services and Anti-Spam Standards 259
  13. Domain Name Registration in China ................. 260
  14. Information and Data Privacy .................... 262

B. Software Enterprises and Software Products .................. 266
   1. Policies to Encourage Software Enterprises ............. 266
   2. Standards for Key Software Enterprises .................. 269
   3. Software Product Standards and Regulation ............. 271
      a. Registration of Software Products ............. 273
      b. Manufacture of Software Products ............. 273
c. Sale of Software Products ........................................ 274
d. Encryption Product Regulations .......................... 275
e. Information Security Product Regulations ............... 277
C. Integrated Circuits Industry ............................................... 280

Chapter 7
Contract Law ................................................................. 289
A. Contract Law ............................................................... 291
   1. Contract Formation .............................................. 292
   2. Validity of Contracts ........................................... 298
   3. Performance of Contracts .................................... 300
   4. Amendment and Assignment of Contract .................. 303
   5. Termination of Contract ....................................... 303
   6. Remedies for Breach............................................ 305
   7. Choice of Law/Forum .......................................... 307
   8. Statute of Limitations .......................................... 309
B. Specialized Contracts .................................................. 310
   1. Purchase and Sales of Goods Contracts .................. 311
   2. Electricity, Water, Gas, and Heat Power Supply
      and Usage Contracts ....................................... 315
   3. Loan Contracts .................................................. 315
   4. Lease Contracts .................................................. 316
   5. Finance Lease Contracts ...................................... 319
   6. Contracts for Hire of Work .................................. 320
   7. Construction Project Contracts ............................ 321
   8. Agency Contracts ............................................... 324
   9. Technology Contracts .......................................... 325
      a. Technology Development Contracts ................... 328
      b. Technology Transfer Contracts ......................... 329
      c. Technical Consulting Contracts and Technical
         Service Contracts ........................................ 331
      d. Technology Import Registration Procedures .......... 332
      e. Tort Claims for Misuse of Technology Subject
         to Contract .................................................. 335
   10. Foreign Trade Agency Contracts .......................... 336
   11. Insurance Contracts ........................................... 337
C. Secured Interests Contracts .......................................... 338
   1. Guarantee .......................................................... 339
      a. Relationship between Guarantee and Guarantor .... 339
      b. Guarantee Contract ......................................... 340
      c. Liability for Breach of Guarantee ...................... 341
Contents

2. Mortgage ................................................................. 342
   a. Mortgage and Mortgaged Property .......................... 342
   b. Mortgage Contract and Registration Procedures .... 344
   c. Mortgage Rights ............................................... 345
   d. Satisfaction of Mortgagee-Creditor’s Claims .......... 346
3. Pledge Contracts ....................................................... 347
   a. Pledge of Movable Property ................................. 347
   b. Pledge of Title ................................................ 348
4. Lien Contract ............................................................ 349
5. Deposit ................................................................. 350

Chapter 8
Tender Law and Government Procurement ........................... 353
A. Tender Law ............................................................... 356
   1. Tendering Methods .............................................. 359
   2. Submission of Tenders ......................................... 362
   3. Tendering Agents ............................................... 365
   4. Evaluation of Tender Proposals and Contract Awards .. 365
B. Government Procurement Law ......................................... 370
   1. Government Procurement Procedures ..................... 374
   2. Supplier Contracts .............................................. 377
   3. Appeals, Inquiries, and Complaints ....................... 378
   4. Legal Liability and Penalties ................................. 378

Chapter 9
Taxation Law ............................................................... 383
A. Turnover Taxes .......................................................... 384
   1. Business Tax .................................................... 385
      a. Scope of Taxation ............................................. 385
      b. Exclusions from Business Tax Turnover .............. 386
      c. Exemptions from Business Tax .......................... 387
      d. Payment of Business Tax .................................. 387
   2. Value-Added Tax .................................................. 388
      a. Scope of VAT ............................................... 388
      b. VAT Exemptions and Reductions ....................... 389
      c. Payment of VAT ............................................. 391
   3. Consumption Tax .................................................. 393
B. Enterprise Income Tax ................................................ 394
C. Tax Issues for Specific Industry Sectors ......................... 401
D. Individual Income Tax ............................................... 403
E. Tax Issues for Representative Offices ........................... 406
F. Other Applicable Taxes ....................................................... 408
G. Prohibition on Unauthorized Fees Assessed against FIEs .................. 410
H. Penalties and Administrative/Judicial Review ............................... 410

Chapter 10

Labor and Employment Law ............................................... 417
A. Enterprise Employment .................................................. 420
   1. Labor Contracts ...................................................... 423
   2. Recruitment .......................................................... 430
   3. Vocational Training ................................................. 431
   4. Equal Employment Opportunity .................................... 432
   5. Social Insurance and Welfare ....................................... 433
   6. Protection of Minors and Female Workers ......................... 436
   7. Workplace Health and Safety ...................................... 440
   8. Termination ........................................................... 443
   9. Wage and Hour Regulation .......................................... 447
  10. Penalties for Violations of Labor Laws ................................. 449
  11. Dispute Resolution .................................................... 451
      a. Labor Mediation .................................................. 452
      b. Labor Arbitration ............................................... 453
      c. Litigation ............................................................ 455
B. Representative Office Employment ....................................... 456
C. Mergers and Acquisitions: Employment Concerns ....................... 458
   1. Regulations on the Merger and Division of FIEs ................. 459
   2. Provisional Regulations on Utilizing Foreign Investment in Restructuring State-Owned Enterprises .................. 459
   3. Provisional Regulations on Foreign Investors Merging with or Acquiring Domestic Companies .......................... 460
D. Employment of Foreigners in China .................................... 460

Chapter 11

Financial Regulation ......................................................... 469
A. Banking Regulation ...................................................... 469
   1. PRC Bank Law ....................................................... 472
   2. Commercial Bank Law .............................................. 474
      a. Approval Procedures for Commercial Banks ................. 476
      b. Commercial Bank Operational Standards .................... 478
   3. FIE Financial Institutions ......................................... 489
      a. Establishment and Registration ............................... 490
      b. Scope of Operations for FIE Financial Institutions ...... 495
Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>c. Reserve Funds and Liquidity Requirements</td>
<td>498</td>
</tr>
<tr>
<td>d. Reporting and Audits</td>
<td>499</td>
</tr>
<tr>
<td>e. Management Personnel</td>
<td>500</td>
</tr>
<tr>
<td>f. Liquidation</td>
<td>501</td>
</tr>
<tr>
<td>g. Supervision and Penalties</td>
<td>501</td>
</tr>
<tr>
<td>4. Foreign Investment and Equity Participation in Chinese Financial Institutions</td>
<td>502</td>
</tr>
<tr>
<td>B. Foreign Exchange Regulation</td>
<td>503</td>
</tr>
<tr>
<td>1. Application for an FERC</td>
<td>505</td>
</tr>
<tr>
<td>2. Opening a Foreign Exchange Account</td>
<td>506</td>
</tr>
<tr>
<td>3. Control over Foreign Exchange Transactions</td>
<td>508</td>
</tr>
<tr>
<td>4. Project Financing</td>
<td>511</td>
</tr>
<tr>
<td>5. Domestic Enterprises and Foreign Exchange Control</td>
<td>513</td>
</tr>
<tr>
<td>6. Foreign Exchange Held by Individuals</td>
<td>515</td>
</tr>
<tr>
<td>7. Foreign Exchange Operations of Financial Institutions</td>
<td>516</td>
</tr>
<tr>
<td>8. Nontrade FOREX Transactions for Multinationals</td>
<td>516</td>
</tr>
<tr>
<td>9. Activities Subject to Penalties</td>
<td>517</td>
</tr>
<tr>
<td>C. Trade Finance</td>
<td>518</td>
</tr>
<tr>
<td>D. Group Finance, Financial Leasing, and Automotive Finance Companies</td>
<td>519</td>
</tr>
<tr>
<td>1. Enterprise Group Finance Companies</td>
<td>519</td>
</tr>
<tr>
<td>2. Financial Leasing Companies</td>
<td>520</td>
</tr>
<tr>
<td>3. Automotive Finance Companies</td>
<td>523</td>
</tr>
<tr>
<td>4. Consumer Finance Enterprises</td>
<td>525</td>
</tr>
<tr>
<td>E. Trusts, Trust Property, and Trust Administration</td>
<td>528</td>
</tr>
<tr>
<td>1. Trust Property</td>
<td>530</td>
</tr>
<tr>
<td>2. Parties to a Trust</td>
<td>531</td>
</tr>
<tr>
<td>3. Changes to and Termination of a Trust</td>
<td>533</td>
</tr>
<tr>
<td>4. Charitable Trusts</td>
<td>534</td>
</tr>
<tr>
<td>5. Trust and Investment Institutions</td>
<td>535</td>
</tr>
<tr>
<td>F. Accounting, Auditing, and Joint Annual Inspection</td>
<td>539</td>
</tr>
<tr>
<td>1. Accounting System for Enterprises</td>
<td>540</td>
</tr>
<tr>
<td>a. Accounting Reports</td>
<td>543</td>
</tr>
<tr>
<td>b. Financial Reports and Public Disclosure</td>
<td>544</td>
</tr>
<tr>
<td>2. Auditing Procedures</td>
<td>548</td>
</tr>
<tr>
<td>3. Enterprise Annual Inspection</td>
<td>550</td>
</tr>
<tr>
<td>a. Review Questionnaire</td>
<td>551</td>
</tr>
<tr>
<td>b. Documents Required</td>
<td>552</td>
</tr>
</tbody>
</table>
Chapter 12
Insurance Law and Regulation ........................................ 563
A. Conditions for Operation ........................................... 566
   1. Solvency Requirements ............................................ 567
   2. Approval Procedures .............................................. 568
      a. Preparatory Establishment Stage ......................... 568
      b. Business Commencement Stage ......................... 569
      c. Branch Office Approval Standards .................. 570
B. Scope of Operations ................................................ 571
C. Administration of Insurance Funds ............................... 574
   1. Guarantee Funds ................................................. 574
   2. Reserve Funds .................................................. 575
   3. Accumulation Fund ............................................. 575
   4. Public Welfare Fund .......................................... 575
D. Reinsurance Requirements ......................................... 576
E. Internal Control, Reports, Record Keeping, and Inspection .......... 577
F. Insurance Contracts ............................................... 578
   1. Mandatory Contract Language .............................. 578
   2. Exclusions ..................................................... 579
   3. Property Insurance Contracts .............................. 579
G. Insurance Premium Rates ........................................... 580
H. Insurance Agents and Brokers .................................... 581
I. Claims Procedures .................................................. 582
J. Regulation of Foreign-Invested Insurance Companies ................. 584
   1. Registration and Establishment ......................... 585
   2. Scope of Business, Supervision, and Administration .... 588
   3. Termination and Liquidation ............................... 589
   4. Legal Liabilities .............................................. 590
K. Insurance Asset Management Companies .......................... 591

Chapter 13
Consumer Protection .................................................. 595
A. Product Quality ..................................................... 595
   1. Product Quality Standards .................................... 596
   2. Product Certification and Industry Standards ............ 597
   3. Product Liability ............................................... 600
   4. Counterfeit Products .......................................... 601
   5. Administrative and Judicial Remedies ................... 602
Contents

B. Consumer Protection ........................................ 604
   1. Standards under the Consumer Protection Law ............ 605
   2. Administrative and Judicial Remedies ...................... 609

C. Standards for Advertisers .................................. 610
   1. General Standards for Advertisers ......................... 611
   2. Rules Governing Specific Industries ....................... 613
      a. Pharmaceuticals and Medical Devices ................. 613
      b. Chemical Fertilizers ............................... 613
      c. Tobacco Products ................................. 614
      d. Food, Alcohol, and Cosmetics ..................... 614
      e. Real Estate Sales and Promotions ................. 614
   3. Advertising Activities .................................. 615
   4. Administrative and Judicial Remedies .................... 616

D. Unfair Competition ........................................... 616
   1. Standards for Unfair Competition ......................... 617
   2. Administrative and Judicial Remedies .................... 619

E. Pricing Standards ............................................ 620
   1. Market-Oriented Standards under the Pricing Law ......... 620
   2. Exception for Government-Guided Prices ................. 621
   4. Monopolistic Pricing Practices ......................... 623

F. Food Processing ............................................... 624
   1. Food Safety Risk Monitoring and Assessment .............. 627
   2. Development of Food Safety Standards .................... 627
   3. Food Production and Food Service Operations .......... 628
   4. Food Inspection ....................................... 635
   5. Food Imports and Exports .............................. 636
   6. Management of Food Safety Incidents .................... 637
   7. Supervision and Legal Liability ......................... 638

G. Pharmaceuticals ............................................... 642
   1. Standards for Drug Manufacturers ....................... 643
   2. Standards for Drug Wholesalers and Retailers ........... 645
   3. Importation of Pharmaceuticals ......................... 647
   4. Packaging of Pharmaceuticals ........................... 648
   5. Pricing of Pharmaceuticals ............................. 648
   6. Drug Advertising ...................................... 650
   7. Supervision and Examination ............................ 651

H. Medical Devices and Instruments .......................... 652

I. Tort Law ....................................................... 653
Chapter 14

Intellectual Property ........................................ 665
A. Trademark Law ........................................... 670
   1. General Principles of China’s Trademark Law ........ 673
   2. Application Procedures ................................. 679
      a. Trademark Application Formalities ............... 679
      b. Objections to Preliminary Approval of Trademark ... 682
      c. Registration of a Trademark ....................... 683
   3. Application for Renewal of Registered Trademark ...... 683
   4. Application for Assignment of Registered Trademark ... 683
   5. Licensing of Registered Trademarks .................. 684
   6. Objections to Registered Trademark .................. 684
   7. Administration of Trademarks in Foreign Trade .......... 685
   8. Certification and Protection of Well-Known Trademarks ... 686
   9. Enforcement of Trademark Rights ..................... 687
  10. Cancellation of a Registered Trademark and Supervision by Trademark Office ....................................... 691
  11. Judicial Remedies ....................................... 693
  12. Criminal Penalties for Trademark Infringement .......... 694
B. Copyright Law ............................................. 695
   1. General Principles of China’s Copyright Law .......... 696
   2. Standards for Copyright Infringement ................ 703
   4. License and Assignment of Copyright .................. 704
   5. Rules for Specific Types of Works ...................... 705
      a. Software ............................................... 705
      b. Book Publishers ...................................... 710
      c. Performances ......................................... 711
      d. Audiovisual Recordings ............................... 711
      e. Broadcasts ........................................... 711
   6. Administrative Remedies for Copyright Infringement .... 712
   7. Judicial Remedies ....................................... 715
   8. Criminal Penalties for Copyright Infringement ......... 717
C. Patent Law ................................................ 718
   1. Application and Approval of Patents .................... 723
   2. Novelty Requirement and Exceptions ................... 727
   3. License/Assignment of Patent Rights ................... 728
   4. Compulsory Licensing .................................... 728
   5. Duration of Patent Rights ................................ 729
6. Cancellation/Invalidation Proceedings ........................................ 729
7. Enforcement of Patent Rights ..................................................... 730
8. Administrative/Judicial Remedies ............................................... 733
9. Criminal Penalties for Patent Infringement .................................. 734
D. Customs Protection of Intellectual Property Rights ......................... 734

Chapter 15
Customs and Trade Regulation ...................................................... 741
A. Customs Regulatory System ........................................................ 743
B. Import/Export Procedures ............................................................ 744
  1. Inward- and Outward-Bound Means of Transport .......................... 744
  2. Inward- and Outward-Bound Goods .......................................... 745
     a. Declaration and Examination .............................................. 745
     b. Valuation of Goods, Assessment, and Payment of Duties ............ 747
     c. Tariff Classification ....................................................... 757
     d. Tariff Levels, Reductions, and Exemptions ............................ 758
     e. Rules of Origin ............................................................ 760
     f. Excluded and Restricted Merchandise .................................. 761
     g. FIE Import Control Standards ........................................... 763
  3. Customs Rules on Processing Trade, Bonded Warehouses, and Factories ........................................ 765
     a. Processing Trade ........................................................... 765
     b. Bonded Warehouses, Factories, and Zones ............................ 766
  4. Passengers and Personal Use Articles ........................................ 768
C. Enforcement of Customs Laws .................................................... 769
  1. Customs Audits and Records Inspections .................................... 780
  2. Administrative and Judicial Remedies ....................................... 781
D. Customs Protection of Intellectual Property Rights .......................... 782
E. China Customs Compliance Strategies ......................................... 784
F. Trade Remedies: Anti-Dumping, Anti-Subsidy, and Safeguard Regulations ........................................ 785
  1. Anti-Dumping ................................................................. 785
  2. Anti-Subsidy Regulations .................................................... 791
  3. Trade Safeguard Measures ..................................................... 793

Chapter 16
Securities Regulations ................................................................. 805
A. Securities Regulatory System ...................................................... 807
B. Company Law ........................................................................... 813
  1. Establishment of a Company Limited by Shares .......................... 814
2. Record-Keeping/Articles of Association .......................... 817
3. Shareholders’ Meetings .................................................. 818
4. Board of Directors ....................................................... 820
5. Supervisory Committee .................................................. 822

C. Securities Law and Regulations ........................................ 823
   1. Supervision of Public Offerings ...................................... 824
      a. Application Procedures for Public Offering .................. 825
      b. Sponsors/Underwriters ........................................... 828
      c. Stock Listing: Main Board and GEM Board Criteria ........ 829
      d. Secondary Offerings by Listed Companies .................... 834
      e. Disclosure Requirements ....................................... 836
      f. Limitations on Share Ownership/Transfer ..................... 839
      g. Corporate Governance Standards ............................. 841
      h. China Securities Investor Protection Fund
         Corporation (SIPF) ................................................ 843
      i. Penalties and Investigations ................................. 844
   2. Supervision of Overseas Listing of Domestic Shares ............ 847
   3. Foreign Capital Shares Listed in China Regulations:
      B-Shares ............................................................. 850
   4. Foreign-Invested Enterprise Limited by Shares ................ 854
   5. Regulation of Brokerage and Trading Firms ..................... 857

D. Foreign Investment in State Shares and A-Shares .................. 860
   1. Foreign Investment in State Shares ............................... 861
   2. Investment in A-Shares by Qualified Foreign
      Institutional Investors (QFIs) ..................................... 862
   3. Qualified Domestic Institutional Investors (QDIs) ............. 867

E. FIE Securities Companies, FIE Fund Management Companies, 
   and Securities Investment Funds ..................................... 868

F. Arbitration and Litigation of Securities-Related Disputes ....... 871

G. Securities-Related and Financial Criminal Liability ............. 874

Chapter 17

Property Rights, Land Use, and Natural Resources .................. 889

A. Property Rights .......................................................... 890
   1. General Principles .................................................. 890
   2. Expropriation of Property Rights ................................... 893
   3. Common and Joint Ownership ..................................... 894
   4. Adjoining or Adjacent Owners .................................... 894
   5. Lost, Mislaid, or Abandoned Property ............................ 895
   6. Easement Rights ..................................................... 895
   7. Pledge, Lien, and Possession Rights ............................. 896
Contents

8. Right to Use Land for Construction Purposes .......... 897
9. Utilization and Protection of Land .................. 897
   a. Transfers of Land-Use Rights .................... 900
B. Real Estate Development and Real Estate Transactions ...... 912
C. Petroleum and Mineral Resources ..................... 915
D. Preservation of Cultural Resources ................... 917

Chapter 18

Environmental Protection ...................................... 921
A. Environmental Protection Law ......................... 929
   1. Environmental Protection Responsibility System ......... 930
   2. Control of Chemicals/Radioactive Materials .............. 930
   3. Control of Construction-Related Pollution ............... 931
   4. Control of Agricultural-Related Pollution ............... 932
   5. Inspection, Remedial Action, and Penalties ............... 932
   6. Judicial Remedies .................................... 934
B. Control of Solid Waste Pollution ....................... 934
   1. Product Packaging and Recycling ...................... 935
   2. Storage and Transportation of Solid Waste .............. 935
   3. Control of Solid Waste in Construction Projects ...... 938
   4. Control of Industrial Solid Waste ................... 938
   5. Inspection, Remedial Action, and Penalties ............... 939
   6. Judicial Remedies .................................... 939
   7. China RoHS and WEEE Regulations .................. 940
C. Control of Marine Pollution ............................. 943
   1. Control of Land-Originating Pollutants ................. 943
   2. Control of Pollution by Vessels ...................... 944
   3. Control of Pollution by Offshore Oil Operations ...... 945
D. Control of Air Pollution .................................. 946
   1. Control of Construction-Related Air Pollution .......... 947
   2. Control of Air Pollution from Coal Burning .......... 947
   3. Control of Industry-Related Air Pollution ............. 947
   4. Control of Vehicle Emissions ....................... 947
   5. Reporting Requirements, Inspection, and Penalties ..... 948
E. Standards for the Importation of Pollutants .............. 948
F. Energy Conservation ...................................... 949
G. Control of Toxics in the Workplace .................... 951
H. Environmental Impact Assessment Reporting Requirements .. 952
I. Clean Production Law .................................... 955
J. Environmental Planning and Strategies for Foreign Investors .. 957
Chapter 19
Mergers, Acquisitions, and Divisions ................................. 963
A. Acquisition of Domestic Enterprises by Foreign Investors...... 964
B. Merger and Division of Foreign-Invested Enterprises ......... 970
C. Strategic Investments by Foreign Investors in Listed Companies.. 978
D. Public Company Takeover ........................................... 980
E. Antimonopoly and Competition Law Issues in China M&A .... 985
   1. Prohibition on Monopolistic Agreements ..................... 986
   2. Prohibition against Abuse of a Dominant Market Position .. 988
   3. Investigations and Private Rights of Action .................. 989
   4. Regulation of Enterprise Concentration ...................... 991
      a. Coca-Cola/Huiyuan ........................................... 997
      b. InBev/Anheuser-Busch ...................................... 998
      c. Mitsubishi Rayon/Lucite ................................... 998
      d. GM/Delphi .................................................... 998
      e. Pfizer/Wyeth ................................................ 999
      f. Panasonic/Sanyo ............................................ 999
      g. Google/Motorola Mobility .................................. 1000
      h. Glencore/Xstrata ............................................ 1001
      i. Marubeni/Gavilon .......................................... 1001

Chapter 20
Enterprise Liquidation, Reorganization, and Bankruptcy ....... 1009
A. Liquidation ............................................................... 1009
   1. Liquidation Proceedings ......................................... 1014
      a. Establishment of Liquidation Committee .................... 1014
      b. Notice of Liquidation: Creditors ............................ 1016
      c. Creditor’s Claims .............................................. 1017
      d. Payment of Debts .............................................. 1017
   2. Alternatives to Liquidation ...................................... 1022
B. Bankruptcy Protection and Creditors’ Remedies ............... 1024
   1. Petition and Case Acceptance .................................. 1026
   2. Bankruptcy Estate Administrator ............................... 1028
   3. Bankruptcy Estate: Property and Assets of the Debtor ...... 1032
   4. Bankruptcy Expenses ........................................... 1033
   5. Claims Procedures .............................................. 1033
   6. Creditors’ Meetings and Committees .......................... 1034
   7. Restructuring and Reorganization ............................. 1036
   8. Settlement and Compromise .................................... 1037
9. Bankruptcy Liquidation ............................................. 1038
10. Legal Liability ...................................................... 1039

Chapter 21
Mediation and Arbitration ............................................. 1043
A. Informal Dispute Resolution: Consultation and Mediation .......................... 1043
   1. Mediation in China .................................................... 1044
   2. Mediation During Arbitration ...................................... 1045
   3. Mediation During Litigation ...................................... 1047
   4. Joint Mediation ...................................................... 1048
B. China’s Arbitration System .......................................... 1048
   1. Scope of Arbitration and Jurisdiction .................................. 1049
      a. Nature of Claims: International Dimension ...................... 1054
      b. Pendant Claims .................................................... 1055
   2. Arbitration Agreements ............................................. 1056
      a. Validity of an Arbitration Clause .................................. 1058
      b. Choice of Law ..................................................... 1059
      c. Choice of Forum .................................................. 1060
   3. CIETAC Procedures .................................................. 1061
      a. Arbitration Application ............................................ 1061
      b. Appointment of Foreign Counsel in Arbitration .................. 1063
      c. Arbitrator Appointment .......................................... 1064
      d. Case Hearings ..................................................... 1066
      e. Discovery, Investigation, and Presentation of Evidence ........ 1068
      f. Expert Witnesses and Appraisers .................................. 1069
      g. Awards .............................................................. 1070
      h. Consent Awards .................................................... 1074
      i. Summary Proceedings ........................................... 1074
      j. CIETAC Financial Dispute Arbitration Rules ..................... 1075
   4. Prearbitration and Interim Protection of Property and Evidence .................. 1077
   5. Cancellation of Arbitration Awards .................................. 1079
   6. Award Enforcement Standards and Procedures .............................. 1080
      a. New York Convention Awards .................................... 1080
      b. Foreign-Related Awards .......................................... 1081
      c. Domestic Awards .................................................. 1083
      d. Enforcement Procedures ........................................ 1084
      e. Obstacles to Enforcement ....................................... 1086
   7. Drafting an Arbitration Clause in China .................................. 1087
Chapter 22

Litigation in the People’s Court ............................................. 1095
A. Court Structure: Supreme People’s Court ................................ 1095
   1. Procedural Issues in the People’s Court .............................. 1099
      a. Jurisdictional Issues .............................................. 1099
      b. Participants in Civil Proceedings ............................... 1104
      c. Service of Process .............................................. 1105
      d. Limitations of Actions ........................................... 1107
      e. Pleading Rules .................................................. 1107
      f. Discovery and Evidentiary Rules ................................ 1108
      g. Trial Procedure and Supervision ............................... 1116
B. Enforcement of Judgments .............................................. 1120
C. Administrative Litigation .............................................. 1122

Chapter 23

Criminal Liability for FIE Activities ...................................... 1127
A. Director and Officer Liability ........................................... 1129
   1. Crimes Involving FIE Registration ................................. 1129
   2. Criminal Liability for Industrial Accidents ....................... 1130
   3. Crimes Involving Stock Transactions ................................ 1131
      a. Insider Trading .................................................. 1131
      b. Market Manipulation ............................................ 1132
      c. Issuance of Shares without Approval .......................... 1133
      d. False Information in Stock Transactions ..................... 1133
      e. Breach of Fiduciary Duties ..................................... 1134
   4. Miscellaneous Economic Crimes ..................................... 1134
      a. Crimes Involving Corporate Decisions in Violation of the Law .......................... 1134
      b. Crimes Involving Falsification of Corporate Records and Documents ................... 1135
      c. Collusion .......................................................... 1137
      d. Interested Party Transactions ................................... 1137
B. Crimes Involving Intellectual Property Infringement ...................... 1138
   1. Criminal Trademark Infringement ................................ 1138
   2. Criminal Patent Infringement ..................................... 1139
   3. Criminal Copyright Infringement ................................ 1139
   4. Unlawful Disclosure of Trade Secrets/State Secrets .................. 1140
C. Criminal Liability for Environmental Crimes .......................... 1141
D. Corruption and Bribery .............................................................. 1142
  1. China’s Rules on Corruption and Gift Giving ...................... 1142
     a. General ................................................................. 1142
     b. Official Bribery ...................................................... 1146
     c. Gifts to State Functionaries ....................................... 1149
     d. Commercial Bribery ................................................. 1150
  2. U.S. Foreign Corrupt Practices Act ................................. 1152

Chapter 24
Special Zones and Regional Development Initiatives of the PRC ........................................ 1163
A. SEZs, Open Cities, and Coastal Areas ................................. 1164
   1. SEZ Regulations ....................................................... 1167
   2. Coastal Zone Regulations .......................................... 1168
   3. Regulations Concerning the Encouragement of Foreign Investment ........................................ 1169
   4. Regulations Promulgated by Particular Zones, Cities, and Provinces ........................................ 1170
   5. Western and Northeast Development Initiatives, Regional Development, and Industry-Specific Foreign Investment Guidelines ........................................ 1171
B. Hong Kong Special Administrative Region (HKSAR) .......... 1172
   1. Joint Declaration ..................................................... 1173
   2. Basic Law of the HKSAR ............................................ 1175
      a. Political Rights of Hong Kong Residents ...................... 1175
      b. Economic Rights of Hong Kong Residents .................... 1177
      c. Political Structure of the HKSAR .............................. 1178
      d. Judicial System of the HKSAR ................................. 1179
   3. China Market Access under CEPA .................................... 1182

Index .................................................................................. 1189