

Coudert Brothers LLP
Global Legal Advisers



**Accelerating Global Business Development
Legal Issues and Opportunities**

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China - Overview

- **1998 Total Foreign Trade: US\$380 Bn**
- **2003 Total Foreign Trade: US\$760 Bn**
- **Av. 9% growth for 20 years:**
 - demand for commodities (metal, oil, cement) and consumer goods
 - Building the equivalent of one major U.S. city a month
- **400 of the world's top 500 companies**
- **Still waiting for a PRC multinational**

China

Legal Strategy Issues

- **Cultural Issues / Negotiations**
- **Limits on Legal Protections**
- **Government Controls & Approvals**

China Legal Strategy

- **Negotiations in China**
 - Multiple Negotiators
 - Raising of “Detail” Issues
 - Arrive with a Clear Plan of Goals and Priorities
 - Prepare Backup Plan
 - Be Able to Walk Away
 - Take Your Time

China Legal Strategy

Types of Legal Protections In China

- **The Law:** Legal System Now Substantially Complete: Comprehensive Tax, Customs, Investment, Intellectual Property, and Contract Laws But Enforcement is Unreliable
- **Public Policy and Publicity:** Need for Localities to Continually Improve Business Climate
- **Political Protection:** U.S. Government and Diplomatic Channels
- **World Trade Organization:** WTO international trade regime

China Legal Strategy

- **Government Approvals and Consents**
 - Technically, All Investment Transactions Require Government Approvals
 - Determine Required Approvals at an Early Stage
 - Government Approval Authority has the Right to Comment upon the Terms of the Transaction and to Require Amendments in the Contracts

Doing Business In China

- **Representative Office**
- **Joint Ventures**
- **Wholly Foreign Owned Enterprises**
- **Holding Companies**
- **M&A and Other Forms of Investment**
- **Licensing Arrangements**

Doing Business In China

- **Representative Office**

Relatively easy to set up and maintain

Use as a local base to reach customers, receive inquiries, conduct market research and develop contacts with Chinese government officials

May not engage in direct business activities

Quarterly tax returns

Apply for renewal every three years

Foreign and/or local Chinese employees may staff a representative office

Doing Business In China

- **Joint Ventures**

- “Equity” Joint Venture

- “Co-operative” Joint Venture

- Chinese Legal Person

- JVs may Sign Contracts and Hire Employees
Directly

- Due Diligence is Essential

- Difficult to Control

- Greater Risks For Intellectual Property

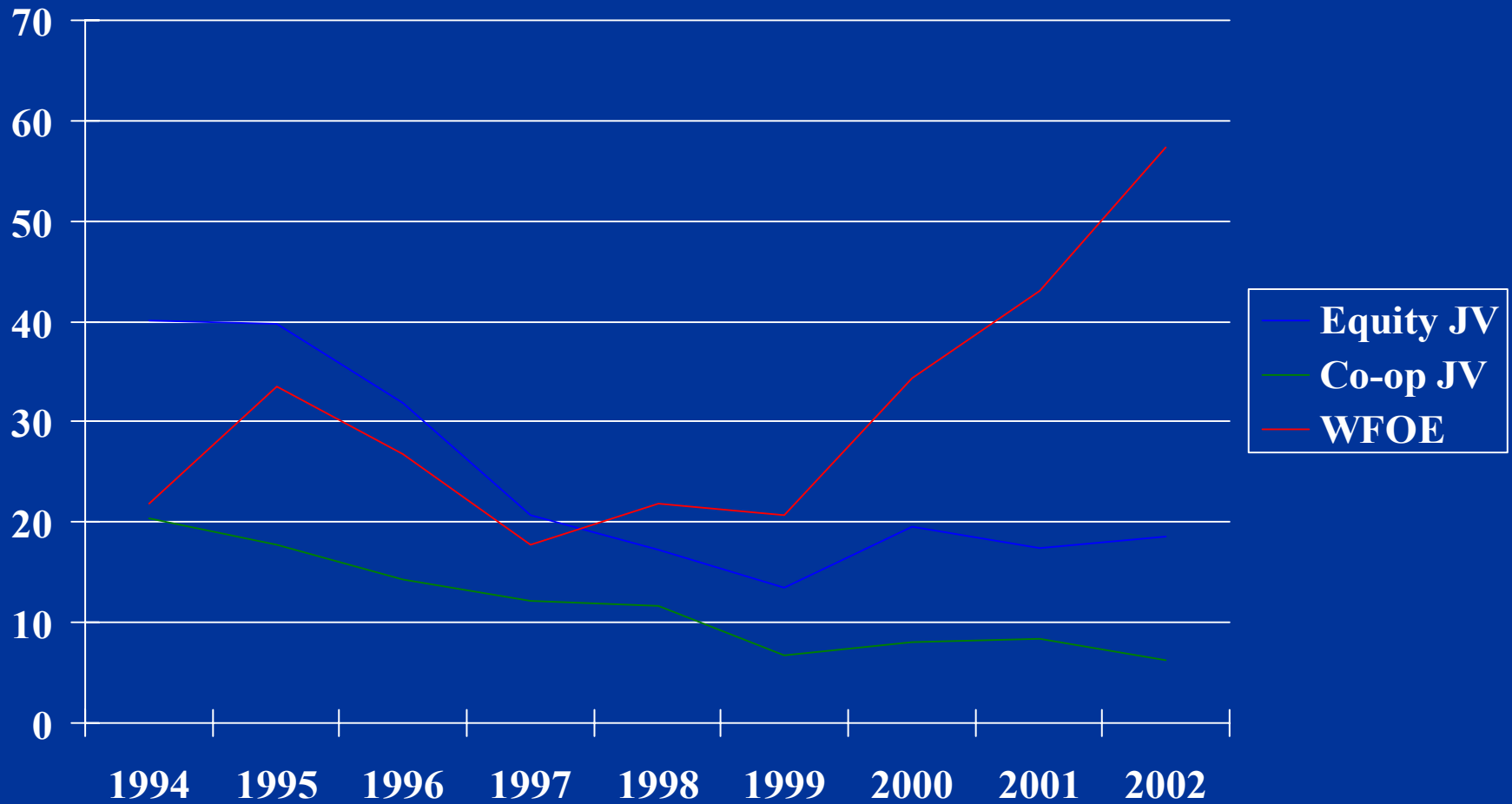
Doing Business In China

- **Wholly Foreign Owned Enterprises (WOFES)**
 - Permitted in Almost All Industries
 - Straightforward Management Structure not Dependent on Interests of Local Partner
 - No Need to Take Over the Existing Operations of a Local Partner
 - Now Most Common Form of Foreign Investment Vehicle

Woofies on the Rise!

JVs and WFOEs

Contract Values in USD billions



Doing Business In China

- **Licensing Arrangements**

License Technology to a Local Chinese Company

Quality Control and Confidentiality Issues

Laws Governing Intellectual Property Protection

Restrictions on Payment of Royalties

Registration Can Be Done Over the Internet

Key Issues in China Deals

- **Size and Scope of Investment**
- **Capitalization and Financing**
- **Intellectual Property**
- **Real Property Issues**
- **Management Issues**
- **Labor Matters**
- **Foreign Exchange**
- **Environmental Issues**
- **Term of the Venture**
- **Dispute Resolution**

Is China a Bubble?

- **Centralized Economy Defects**
/ **Faulty Lending Practices**
- **Political Risk - Totalitarian Tendencies**
- **Business Corruption**
- **Unreliable Legal Protections**

- **Commodity and Power Shortages**
- **Overbuilding / Overinvestment**
- **Interest Rate Increases**
- **Limits on Freedom of Information / Movement / Entrepreneurship**
- **Political / Economic Disparities**
- **Health and Environmental Risks**

India versus China

Population & Per Capita Income

India: 1.033 billion - \$450

China: 1.272 billion - \$890

Foreign Direct Investment

India: \$2.3 billion

China: \$52.7 billion

- **Indian Attributes**

English Language

Open Political System

Bureaucracy / Overprotection / Exits

Software & IT outsourcing strengths

European Union Enlargement

1 May 2004 - Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

- **Opportunities:**

- Infrastructure Funding from EU

- Requirements to Conform to EU regulations & directives

- Barriers on Free Movement of Workers

- Opportunities for Multinationals

- Public/ Private Opportunities

- Local Market Opportunities - vary by country

- Issues: Funding Demands / IP protection /**

- Competition**

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