

## 1 ☐ **International Business Law**

Chinese Chapter From Comparative Perspective

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## 2 ☐ **Strategies for Doing Business Globally**

- Little presence in foreign nations:
  - Exporting and Importing
  - Licensing and Franchising
- More intense involvement in foreign nations
  - Branches and Subsidiaries (JVs, Corporations)
  - General partnerships / Limited Partnerships
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## 3 ☐ **Multinational Organization: the subordinate structure**

- A representative office
- An agent
- A branch
- A subsidiary
- A joint venture
- A holding company
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## 4 ☐ **Business Forms**

- Civil Law States
  - Companies – association of capital
  - Partnerships – association of persons
- Common Law States
  - Companies (private corporation v. public corporation)
  - Partnerships (limited partnership v. general partnership)
  - Business Trusts

## 5 ☐ **Multinational Organization**

- A national multinational enterprise
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- An international multinational enterprise
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## 6 ☐ **Foreign Direct Investment – FDI**

- FDI:
  - Investment by an enterprise from one country in an enterprise from another, involving a long term relationship and a significant degree of control by the foreign investor.
  - More than 10% of the capital stock of a foreign enterprise
- Forms of Foreign Investment

- Greenfield investment
- Acquisition
- Portfolio investment

## 7 ☐ **Laws Governing FDI**

- Domestic laws
  - Domestic investment law
  - Restrictions on investment in specific sectors of the economy
  - Incentives on investment
- Bilateral investment treaties (BITs)

## 8 ☐ **Restrictions on Foreign Investment**

### 9 ☐ **Forms of restrictions**

- Limitations on foreign equity
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  - Sectoral limitations
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  - Geographic limitations

### 10 ☐ **Main Considerations for JVs**

- Identifying the party
- Establishment
- Valuation of capital contribution
- Control
- Technology transfer
- Dispute resolution
- Exit

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#### **Establishment of an Operation Abroad**

Protection of FDI / IBTs and NAFTA

### 13 ☐ **Protection of Foreign Investment**

- FCNs (Friendship, Commerce, and Navigation Treaties)
  - MFN treatment – most-favored nations
  - National treatment
  - Protection required by international law
  - Just compensation for expropriation

- BITs (Bilateral Investment Treaties)
  - Focusing on investment
  - Between developed and developing countries
  - 2,857 BITs and 339 other international Investment Agreements by the end of 2012

14 ☐ **NAFTA Ch. 11: Substantive Protections (1102-09)**

- National treatment
- MFN treatment
- Protection from performance requirements (e.g., export req't)
- The freedom to appoint senior management without respect to nationality
- The freedom to transfer the profits and proceeds of an investment
- Minimum standard (1105):
  - Each Party shall accord to investments of investors of another Party treatment in accordance with international law, including fair and equitable treatment and full protection and security.

15 ☐ **Exceptions to National Treatment**

- Each Party may maintain a list of domestic laws not subject to the national treatment rule (1108)
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- Environmental concerns (1114)
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16 ☐ **NAFTA Ch.11: Expropriation (1110)**

- No expropriation allowed except:
  - For a public purpose;
  - On a non-discriminatory basis;
  - In accordance with due process of law and article 1105(1); and
  - On payment of compensation
- Compensation:
  - Fair market value of the expropriated investment immediately before the expropriation took place

17 ☐ **NAFTA Ch. 11: Dispute Resolution (1116-23)**

Three sets of rules may be chosen by the investor:

- The ICSID Convention
- The ICSID Additional Facility Rules
- The UNCITRAL arbitration rules
- Procedure:
  - Disputing parties first try to settle a claim through consultation or negotiation
    - 6-month cooling period
    - 90-day prior notice
  - Statute of limitations
  - Investor must choose to pursue damages in the domestic courts of the host country, or in a Ch. 11 arbitration.
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