

**Columbia University School of Law – Class Information – Spring 2008**

**International Business and Investment Transactions with China**

**L8343**

**Adjunct Professor: Owen D. Nee, Jr.**

**Room 646 JGH**

The purpose of the course is to introduce students from a common law background to international business and investment transactions with the People's Republic of China. The course covers all forms of commercial and investment transactions with China from international sales contracts to the formation of domestic businesses. The focus of the course is a detailed examination of the principal Chinese laws regulating such business.

Students will learn how one country, China, has moved from a State planned economic system to a system where the market mechanism plays the primary role in regulating commercial activities, while allowing a continuing role for the prevalent political forces in the country. The likely future course of economic regulation in China will be studied at the end of the term, including corporate governance reforms, stock market regulation, antitrust and bankruptcy law developments.

There are no prerequisites for this course. Knowledge of Chinese is not required, although students with Chinese language or a familiarity with China are encouraged to participate in order to enliven the debate.

In order to obtain credit, students must

- based on a list of assigned issues, write one short outline of negotiation points (two to three pages) to be used in a simulated negotiation of an investment transaction in China and present those points orally during the negotiation exercise; and
- submit an acceptable paper during the examination period on a subject to be pre-agreed with the instructor.

The final paper will count for minor writing credit only.

Please note that your attendance is required for a half day (either morning or afternoon) in March to participate in a mock investment negotiation session at which you will practice your negotiating skills. The short outlines referred to above of negotiation points are due prior to that all day session.

The textbook for the course is O. NEE, Shareholder Agreements and Joint Ventures in China (Sweet & Maxwell, 2005). Copies are available at the bookstore. One additional copy will be placed on reserve in the library for the use of those students that do not wish to purchase the text. Additional reading materials will be distributed as

photocopied materials for the course and these are also available at the bookstore. All such materials should be available before January 8, 2007, the first day of class.

Should students wish to do preparatory reading, I recommend **Mr. China** by Tom Clissold (HarperCollins Publishers, Inc., New York, 2004) for a description of some of the problems one will learn how to avoid in this class. Copies are available on Amazon for less than \$9.00. Another, less expensive source of contemporary business problems in China can be found in the daily *New York Times, Business Section* and students are encouraged to read their frequent articles about China.

I enjoy meeting students and will be available each Monday afternoon at the Law School for personal consultations. I can also be reached by email at any time at [onee@jonesday.com](mailto:onee@jonesday.com).

Owen D. Nee, Jr.

## Columbia Law School – Class Schedule

### International Business and Investment Transactions with China L8343

Adjunct Professor Owen D. Nee, Jr.

Spring 2008

Monday: 4:05 p.m. – 5:55 p.m.

Room: 646 JGH

<u>Date</u>	<u>Assignment</u>	<u>Page in Supplement</u>
January 14, 2008	<b>Foreign Involvement in the Transformation of China from a State planned to market economy</b>  Reading Assignment: Chapters 1 and 2 NEE, Joint Ventures Supplement <ul style="list-style-type: none"><li>▪ <i>China: In Pursuit of Economic Modernization</i> (CIA National Foreign Assessment Center, Dec. 1978);</li><li>▪ <i>China: How Sustainable is growth?</i> (OECD, Sept. 2005);</li><li>▪ <i>How Profitable and Competitive are Companies in China?</i> (OECD, Sept. 2005)</li><li>▪ <i>Coudert Brothers Cover for Materials for CCPIT</i> (March 1979)</li><li>▪ <i>The 3Com Deal, Behind the Security Flap</i> (Caijing Magazine, Nov. 2007)</li></ul>	1 10 24 32 33
January 21, 2008	Martin Luther King Holiday (no classes)	
January 28, 2008	<b>The Contract Law and the Functioning of a Market Economy</b>  Reading Assignment: Supplement <ul style="list-style-type: none"><li>▪ <i>Contract Law of the People's Republic of China</i> (NPC, March 15, 1999); p. 45 to p. 89</li><li>▪ <i>Dalian Far East House Development Company Limited v. Liaoning Jinli House Industrial Company and Liaoning Ao Jinli Real Estate Development Company Limited</i> (Civil Ruling: Supreme People's Court, No. 95 [2005] May 29, 2006).</li><li>▪ <i>Xinjiang Yakun Commercial Trade Co., Ltd. v. Xinjiang Jinghe Kangrui Cotton Processing Co., Ltd.</i> (Civil Judgment: Supreme People's Court, No. 111 [2006] Sept. 12, 2006).</li></ul>	45 152 168

February 4, 2008	<ul style="list-style-type: none"> <li>▪ <b>Establishing a Business Presence in China: Compensation Trade, Processing, the Representative Office, the Consulting Company, Franchising, Wholesale and Retail.</b></li> </ul>	
	Reading Assignment: Supplement	
	<ul style="list-style-type: none"> <li>▪ <i>Compensation Trade Contract</i> (Bryan Goff, Spring 2006).</li> </ul>	183
	<ul style="list-style-type: none"> <li>▪ <i>General Guidelines for Registration and Operation of a Representative Office in Shanghai</i> (Coudert Brothers, July 2001)</li> </ul>	196
	<ul style="list-style-type: none"> <li>▪ <i>The Measures on the Management of Foreign-Invested Commercial Enterprises</i> (Ministry of Commerce Notice No. 8 [2004], April 16, 2004).</li> </ul>	216
	<ul style="list-style-type: none"> <li>▪ <i>Ministry of Commerce: Application Procedures for Foreign Investment in Commercial Projects</i> (Ministry of Commerce, Aug. 16, 2005).</li> </ul>	223
	<ul style="list-style-type: none"> <li>▪ <i>China Newsletter: Editorial December 2004</i></li> </ul>	226
	<ul style="list-style-type: none"> <li>▪ <i>Franchising on slow boat to China</i> Coudert Brothers 2004</li> </ul>	227
February 11, 2008	<ul style="list-style-type: none"> <li>▪ <b>Equity Joint Venture Contracts in China and the Balancing of Conflicting Dreams</b></li> </ul>	
	Reading Assignment: Chapter 3 NEE, Joint Ventures and Annex 1 Model Joint Venture Contract;	
	Review: Supplement p.	
	<ul style="list-style-type: none"> <li>▪ <i>Law of the People's Republic of China on Sino-foreign Equity Joint Venture</i> (NPC, July 1, 1979, amended April 4, 1990, March 15, 2001;</li> </ul>	228
	<ul style="list-style-type: none"> <li>▪ <i>Regulations for the Implementation of the Law of the People's Republic of China on Sino-foreign Equity Joint Ventures</i> (State Council, Sept. 20, 1983, amended Jan. 15, 1986, Dec. 21, 1987, and July 22, 2001).</li> </ul>	234
	<ul style="list-style-type: none"> <li>▪ <i>Administration of the Verification of Foreign-invested Projects Tentative Procedures</i> (NDRC, Oct. 9, 2004).</li> </ul>	258
February 18, 2008	<ul style="list-style-type: none"> <li>▪ <b>The Articles of Association of a Joint Venture and its Implications for Management, Control and Operation of the Enterprise</b></li> </ul>	
	Reading Assignment: Chapter 4 NEE, Joint Ventures	

February 25, 2008	<p><b>Other Forms of Investment: the Cooperative Joint Venture, the Wholly-Foreign Owned Enterprise, a Regional Headquarters, or Holding Company.</b></p> <p>Reading Assignment: Chapters 5 and 9 NEE, Joint Ventures,  Review: Supplement</p> <ul style="list-style-type: none"> <li>▪ <i>Regulations on the Establishment of Investment Companies for Foreign Investment Enterprises</i> (MOFCOM Order No. 22 [2004] Nov. 17, 2004). 263</li> <li>▪ <i>Supplementary Regulations on the Establishment of Investment Companies for Foreign Investment Enterprises</i> (MOFCOM Order No. 3 [2006] May 26, 2006). 277</li> </ul>
March 3, 2008	<p><b>Technology Transfer, Trademark Licensing and Intellectual Property Protection in China</b></p> <p>Reading Assignment: Chapters 6 and 8, NEE, Joint Ventures</p>
March 10, 2008	<p><b>China's Company Law and Corporate Governance</b></p> <p>Reading Assignment: Chapter 10 NEE, Joint Ventures  Review: Supplement</p> <ul style="list-style-type: none"> <li>▪ <i>The Company Law of the People's Republic of China</i> (NPC Standing Committee Dec. 29, 1993 and amended Dec. 25, 1999, Aug. 28, 2004, Oct. 27, 2005 and Jan. 1, 2006). 281</li> <li>▪ <i>Implementing Opinions concerning the Application of the Law in the Administration of the Examination, Approval and Registration of Foreign – invested Companies</i> (SAIC, MOFCOM, GAC and SAFE Document No. 81 [2006] April 24, 2006). 328</li> </ul> <ul style="list-style-type: none"> <li>▪ [Spring Break March 17 -- 21]</li> </ul>
March 24, 2008	<p><b>Mergers and Acquisitions in the United States</b></p> <p>Guest Lecturer: John Riley – former Partner, Simpson, Thatcher &amp; Bartlett</p> <p>Reading Assignment: To be posted on the Courseweb</p>
March 31, 2008	<p><b>Mergers and Acquisitions in China</b></p> <p>Reading Assignment: Chapter 12: NEE, Joint Ventures  Review Supplement</p>

- *Provisions on Merger and Acquisition of Domestic Enterprises by Foreign Investors* (MOFCOM Order No. 10 [2006] Sept. 8, 2006).

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April 4, 2008 Friday	<b>Negotiating an Acquisition in China</b> (simulated exercise 9:30 a.m./12:00 and 1:30 p.m./4:00 p.m. at Columbia)	
April 7, 2008	<b>Liquidation and Bankruptcy of Chinese Enterprises</b>  Reading Assignment: Chapter 14, NEE, Joint Ventures  Review: Supplement	367
	<ul style="list-style-type: none"> <li>▪ <i>Enterprise Bankruptcy Law of the People's Republic of China</i> (NPC, Aug. 27, 2006, eff. June 1, 2007).</li> </ul>	
April 14, 2008	<b>Dispute Settlement in China</b>  Reading Assignment: Chapter 15, NEE, Joint Ventures	
April 21, 2008	<b>Labor Law in the Workers' Paradise</b>  Reading Assignment: Supplement	
	<ul style="list-style-type: none"> <li>▪ <i>Ensuring Compliance with China's New Labor Laws</i> (Speech Owen Nee, Dec. 11, 2007 at Mergers &amp; Acquisitions in China Conference).</li> <li>▪ Video in class: <i>Mardi Gras: Made in China</i></li> </ul>	407
April 28, 2008	<b>Predictions as to the Course of Chinese Commercial Law</b>  Reading Assignment: Supplement	
	<ul style="list-style-type: none"> <li>▪ <i>Anti-Monopoly Law of the People's Republic of China</i> (NPC Standing Committee, Aug. 30, 2007, eff. Aug. 1, 2008).</li> <li>▪ <i>Guidelines on Anti-Monopoly Filings for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors</i> (Office of Anti-Monopoly Investigations, Department of Treaty and Law, MOFCOM, Mar. 8, 2007).</li> </ul>	430  444

A paper will be due by May 5, 2008 during the examination period. It is suggested that students choose to write on one of the weekly discussion topics, providing greater detail of the subject. A list of possible topics will be handed out in the second week of the course. Alternatively, students can suggest their own topics, but these must be approved in advance by the instructor. Papers should be not more than 10 pages and contain proper citations. Papers for minor writing credit should be approximately 20 pages and permission for the topic and writing credit should be given by the instructor.

Reading assignments should be read prior to class. Material for "Review" should be skimmed for general familiarity prior to class and sections mentioned in class should be studied after class in detail.