



## **Australian Consulate-General**

Visa Office

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Wanchai, Hong Kong

# **GUIDE TO DOCUMENTATION REQUIREMENTS FOR BUSINESS INNOVATION AND INVESTMENT VISA APPLICATIONS FROM THE PEOPLE'S REPUBLIC OF CHINA (PRC)**

**July 2012**

**The contents in this document were prepared based on the law enforceable and information available at the time of writing and are intended for informational purposes only. Given the changing nature of laws, rules and regulations, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future.**

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## **INTRODUCTION**

1. This document aims to provide guidelines on documentation requirements for Business Innovation and Investment visa applications lodged by applicants from the People's Republic of China (PRC). It covers both residents of the PRC who are applying on the basis of their ownership interest in PRC business entities as well as those applicants who, while not PRC residents, rely on a PRC business entity to meet the criteria for the grant of a Business Innovation and Investment visa.
2. This document serves to provide supplementary information which should assist applicants in assessing their ability to meet the requirements of the Business Innovation and Investment program. This document does not replace the Migration Act 1958, the Migration Regulations 1994 nor is it a substitute for the Procedures Advice Manual 3 (PAM3).
3. The Business Skills program has been replaced by the Business Innovation and Investment program on 1 July 2012. The Business Innovation and Investment program introduced some key reforms that were recommended by a comprehensive review of the Business Skills program. For details regarding the key changes, please refer to information available at: <http://www.immi.gov.au/skilled/business/business-skills-program-reforms-1jul12.htm>
4. The number of visa subclasses has reduced from 13 to 3 under the new program. This document mainly covers the Stage 1 processing arrangements and should be used as a guide for applications lodged under the following subclasses:

Business Talent (Class EA) (Permanent) (Subclass 132)

- permanent residence visa

Business Innovation and Investment (Class EB) (Provisional) (Subclass 188)

- 4 year temporary visa

The Subclass 188 visa is the first step towards being granted a permanent Business Innovation and Investment (Class EC) (Permanent) (Subclass 888) visa.

5. Each visa subclass under the new program comprised of several 'streams'. For example, the previously separate business owner and investor visa subclasses are amalgamated as streams of single visa subclasses (e.g. Subclass 188 comprised of a Business Innovation stream and an Investor stream).
6. Visa applicants under the Business Innovation and Investment program require State/Territory nominations. The nominations are recorded electronically and prescribed paper forms are no longer required.

## **BACKGROUND**

7. The Hong Kong Business Skills Processing Centre commenced processing of PRC business skills applications in December 1995. In the face of the complexity of business regulations in the PRC, the compilation of a guide on business and asset ownership documentation is considered useful to assist in the preparation of business skills

applications from the PRC. Information contained in this document represents outcomes of wide ranging consultations with relevant government officials, legal and accounting professionals and the experience gained by this office in the handling of this caseload.

## **PROCESSING OF APPLICATIONS**

8. Applications under the Business Innovation and Investment program are to be made electronically. Additionally, in relation to the Subclass 188 and Subclass 132 visas, an application for the visa could only be made after a prospective applicant has received an invitation to apply through the SkillSelect system.
9. A prospective applicant may start the process by completing an electronic Expression of Interest (EOI) form online through SkillSelect. They may be nominated by a State/Territory government to apply for a particular stream of the Subclass 188 or Subclass 132 visa, subsequent to which they will be invited to lodge an application for a visa in that stream of that visa subclass. Those invited must then lodge an application within 60 days from the time of invitation, a second invitation will be sent upon expiry of the 60 days period if no application is made. If two invitations have been sent but no valid visa applications are made as a result of either invitation, the EOI will be removed from the SkillSelect database and another EOI will have to be formally resubmitted to be considered for further invitations.
10. Applicants are expected to provide to the department all the information and documentation they consider relevant to support their application. It is expected that documentation to support the claims made by applicants in the EOI be available at the time of the submission of the EOI. This is because an invitation to make a visa application may be issued soon after the submission of an EOI and there may be limited time for the submission of a complete visa application.
11. Supporting documentation is to be provided directly to the appropriate processing centre depending on the applicant's country of usual residence. For applicants residing in the PRC, supporting documentation is to be provided to the Hong Kong Business Skills Processing Centre. The documentation should be provided at the same time or immediately after the lodgement of the visa application.
12. Well documented applications can be processed more promptly in the assessment process. Documentation checklists for the Subclass 132 and Subclass 188 visas for PRC applicants have been developed and are attached to this document. The checklists, in conjunction with this document, will enable applicants to better present their cases.
13. Applicants who have not provided threshold documentary evidence to support their eligibility may have their cases decided on the basis of the information provided without further information requests.
14. Where additional information is required, applicants will, in general, be given the statutory 28 days to provide the information in accordance with s494C of the Migration Act 1958 and Regulation 2.15. Please note that no follow-up or reminder letters will be sent. Where the information has not been provided within the prescribed time frame,

and no extension has been granted, the application will be decided based on the information on hand.

15. When supporting documents are provided in response to our request, we may proceed to make a decision based on what is presented. We may not further correspond with applicants should we find the documents deficient in meeting the relevant requirements.
16. This document serves to offer suggestions on a range of documents considered acceptable to this office, the list is by no means exhaustive or mandatory. Applicants are advised to present their cases as best they can with the help of this document. In circumstances where applicants do not have the necessary supporting documentation, a signed statement outlining the reason(s) is required. Alternative evidence pertaining to the individual circumstances of the case may be acceptable.
17. Where applicants or their representatives are aware of other applications lodged by business partners we would appreciate the assistance in notifying us of these relationships at the time of application. Applicants' business premises may be visited by a Departmental Officer at any time during the assessment process.
18. Please note that the authenticity of documentation submitted with the application may be subject to verification with the relevant issuing authority. Where an applicant is found to have supplied a bogus document or information that is false or misleading in a material particular to the Department, the application may be refused and applicants included in the application subject to a three year bar which may prevent the grant of a further visa to which Public Interest Criterion 4020 applies. Further, please be advised that s109 of the Migration Act 1958 provides for visa cancellation where the visa holder gives incorrect information or bogus documents to the Department or fails to notify the Department of a change in circumstances.

### **Processing times**

19. The processing times below apply to applications lodged with complete documentation. Processing times vary depending on 'high risk' or 'low risk' country requirements. Low risk countries are Electronic Travel Authority (ETA) eligible. High risk countries are those not on the ETA list. The PRC is not on the ETA list.

75% of Business Innovation and Investment visa applications are expected to be finalised within:

- 9 months, if the applicant is from a low risk country; or
- 28 months, if the applicant is from a high risk country.

### **Health processing**

20. Applicants will be notified by the visa processing office of their e-health reference number (HAP ID). Applicants are to bring this reference number with them to their medical examination. A list of panel doctors in the applicant's region can be found at [www.immi.gov.au/contacts/panel-doctors](http://www.immi.gov.au/contacts/panel-doctors). However, in view of the application processing time and that medical clearances have limited validity period, applicants should not have their visa medical examination until they have been formally requested to do so by this office.

## **PRC BUSINESS OWNERSHIP**

21. The PRC is an economy in transition. The determination of personal ownership of assets in the PRC can be complicated when legal title to an asset may not always confer a right to control or transfer the asset. Australian legal concepts are to be used when deciding ownership of assets in a foreign jurisdiction when applying the Migration Regulations. Therefore, decision makers must make decisions based on a reasonable degree of satisfaction that the ownership is proven in the conceptual sense as understood under Australian law.
22. In the following discussion, we will focus on four main groups of business structures in the PRC – Private Enterprises, Foreign Investment Enterprises, State Investment Enterprises and Social Enterprises – and seek to clarify their characteristics as well as advise on their status in relation to the Australian Business Innovation and Investment visa requirements.

### **PRIVATE ENTERPRISES**

#### **Individual Business Owner (个体工商户)**

23. An individually owned business is not accorded separate legal person status. By PRC business regulations, it could be formed either by an individual with full civil rights or by his/her family as a whole. In actual practice, only an individual would be registered as the owner of the business as reflected on the business licence. This form of business registration normally applies to small scale businesses in certain stipulated industries. Prior to the corporatisation of business entities in the PRC, this was a very common form of private business ownership.
24. As far as the genuinely registered owner of an individually owned business is concerned, this is an acceptable form of ownership of business assets in accordance with Australian legal concepts.

#### **Individual Proprietorship Enterprise (个人独资企业)**

25. An individual proprietorship enterprise (IPE) in the PRC is also not accorded separate legal person status. It is established under the Law of the People's Republic of China on Individual Proprietorship Enterprises (中华人民共和国个人独资企业法) effective from 1 January 2000 as a business operating entity solely funded by an individual with full civil rights and he/she assumes the position of investor (投资人) to the IPE. This investor is stipulated to be the sole owner of all assets of the IPE and also assumes all liabilities of the IPE on an unlimited basis to the extent of all his/her personal assets. For the sake of increasing the credibility of an IPE upon its establishment, it can be specially registered where the investor of the IPE is to assume all liabilities of the IPE on an unlimited basis to the extent of all the family assets (and not just those personal assets) of the investor.
26. As far as the registered investor of an IPE is concerned, this is an acceptable form of ownership of business assets in accordance with Australian legal concepts.

27. For the establishment of an IPE, the Law of the People's Republic of China on Individual Proprietorship Enterprises also requires registration of the total amount of capital funds to be injected into the IPE and stipulates the forms in which such funds are to be made available to the IPE.

### **Partnership (合伙企业)**

28. As in Australia, partnerships in the PRC are not accorded legal person status. As far as a partner to the partnership is concerned, this is an acceptable form of proportional ownership of the business assets of the partnership.
29. The Law of the People's Republic of China on Partnerships (合伙企业法) which came into effect on 1 August 1997 and was last amended on 27 August 2006 prescribes conditions for the establishment of partnerships in the PRC. On applying for registration as a partnership in the PRC, it is mandatory that it comprises at least two partners and that a partnership agreement in written form is submitted for consideration. The partnership agreement formalises the major arrangements of the partnership, including the partnership's name, its major operating location, objectives and scope of business, names and addresses of respective partners, amounts and forms of capital funds to be contributed by each partner, profit and loss sharing ratios, how the partnership business is to be conducted, entry into and exit from the partnership, how disputes are to be resolved, liquidation and dissolution of the partnership, liabilities for breach of contract, etc.
30. There are 2 types of partners to a partnership, general partners and limited partners. Whilst general partners would assume unlimited responsibility towards the liabilities of the partnership, the liabilities of a limited partner towards the partnership would be limited to the amount of capital funds committed to be contributed into the partnership. When a partnership contains 1 or more limited partners, the partnership would be referred to as a limited partnership. State-owned enterprises, listed companies, institutions for public services (事业单位) and social organisations (社会团体) cannot act as a general partner in any partnerships.

### **Limited Companies (有限公司)**

31. Limited Companies are incorporated entities. As a separate legal entity, the company has a legal and financial status separate and distinct from that of its shareholders (股东) or promoters (发起人). The current legislation applicable for regulating the affairs of private limited companies (有限责任公司) and joint stock limited companies (股份有限公司) is the Companies Law of the People's Republic of China which came into effect on 1 January 2006.
32. The major features of a private limited company in the PRC include the following:
- shareholding is transferable among shareholders; transfer of shares to external parties must be approved by 50% or more of the other shareholders
  - there is a restriction to the numbers of shareholders (less than or equal to 50)



- each shareholder enjoys rights and bears obligations in proportion to the shareholder's investment
  - shareholders can be the State, various forms of economic entities and individuals; shareholders in a limited liability company are liable to the company to the extent of the capital contributed or agreed to be contributed
  - the minimum registered capital requirement for limited liability company (except for one-person limited liability company) is RMB30,000
  - the minimum registered capital requirement for one-person limited liability company is RMB100,000
  - the actual amount of registered capital varies according to the nature of the proposed business, contribution of registered capital to a limited liability company must be verified by an authorised examining body (normally a certified public accountants firm).
33. The major features of a joint stock limited company in the PRC include the following:
- it can issue shares and investment certificates
  - the minimum capital is RMB5 million
  - its shares are transferable
  - there is a restriction to the number of promoters (from 2 to 200)
  - shareholders in a company limited by shares are liable to the company according to the number of shares subscribed in the company, and
  - shareholders can be the State, various forms of economic enterprises and individuals.
34. In order to have the necessary legal capacity to conduct the targeted business, limited companies would normally have to register with the appropriate level (national, provincial, city or county) government corresponding to the company's territorial/catchment base. Once registered, companies will be issued with a business licence. The commencement date as stated on the business licence is the date of establishment of the company.

### **FOREIGN INVESTMENT ENTERPRISES (外商投资企业)**

35. Foreign investment vehicles permissible in the PRC are wholly foreign owned enterprises, representative offices and branches, joint ventures and foreign investment joint stock limited companies. The establishment of all foreign investment enterprises requires the approval of the Ministry of Commerce (MOC) (previously known as the Ministry of Foreign Trade and Economic Co-operation (MOFTEC)) and/or its subordinating authorities.
36. Investors (投资方) in these vehicles must include foreign nationals or corporations, whose total percentage of shareholding in the company must not be less than 25%.

### **Wholly Foreign Owned Enterprises (WFOE) (外商独资企业)**

37. Normally a WFOE would take the form of a limited company with all its investment capital to be sourced (directly or indirectly) from outside of the PRC. It cannot include a shareholder who is a Chinese national, a domestic limited company or a state-owned enterprise.
38. This is an acceptable form of ownership of business assets.

#### **Representative Offices and Branches (常驻代表机构和分行)**

39. Both of these business structures refer to permanent establishments of foreign enterprises in the PRC (外国企业在华的常设机构). Representative offices are allowed to undertake non-income generating liaison and servicing functions for their foreign head offices in the PRC. As the activities of representative offices are limited to the provision of services that do not give rise to any earnings, this form of business structure will therefore not be considered a qualifying business. Branches that are allowed to be registered in the PRC are currently exclusively restricted to foreign banks and financial institutions. As such, ownership claims by individuals are unlikely.

#### **Sino Foreign Joint Ventures (JV) (中外合资/合作经营企业)**

40. In the PRC context, JV's can take two forms, equity joint ventures (EJV's) (中外合资经营企业) and co-operative joint ventures (CJV's) (中外合作经营企业). The key difference between these 2 types of business entities lies in the terms regarding the distribution of profits. Whilst distribution of profits from an EJV must be in proportion to the percentages of equity investment of the respective investors in the EJV, the same restriction does not apply to a CJV which can be made totally different by reference to the terms of the co-operative joint venture contract agreed by all parties beforehand.
41. Contributions of registered capital to the joint venture by the investors may be by cash or in kind, or may include the right of use of land, industrial property rights, patent or non-patent technology or other property rights. In CJV's, the foreign party (外方) is typically required to provide the entire registered capital investment while the PRC party (中方) typically arranges for land and buildings, and facilitates the smooth operation of the joint venture. Where there is no monetary value placed on these types of contribution in kind by the PRC party, his/her share of equity in the CJV cannot then be established.
42. The investment made to JVs through a private enterprise, a foreign investment enterprise or a wholly foreign owned enterprise would be acceptable in terms of Australian legal concepts of ownership. However, the investment made to JVs through a state-owned enterprise would remain the property of the State and therefore, this type of investment is not an acceptable form of ownership for visa purposes.

#### **Foreign Investment Joint Stock Limited Companies (外商投资股份有限公司)**

43. In January 1995, the then MOFTEC (now renamed as MOC) promulgated provisions for the establishment of foreign invested joint stock limited companies. The minimum amount of registered capital must be RMB30 million with a minimum holding of 25%

by foreign enterprises. This is the common vehicle that is used by foreign investment enterprises targeting for listing on the Chinese stock exchanges.

## **STATE INVESTMENT ENTERPRISES**

### **State Owned Enterprises (SOE) (国有企业)**

44. State-owned enterprises would include state-owned proprietary companies (国有独资公司), state-owned holding companies (国有控股公司), special legal enterprises (特殊法人企业) and state-owned joint stock companies (国有参股企业).
45. State-owned enterprises cannot be considered as equivalent to private ownership and thus cannot be considered as an acceptable form of ownership as required by the Migration Regulations of Australia. While we note that it is possible for PRC nationals to have certain minority investment in certain types of state-owned enterprises, applicants will have to provide credible evidence to prove their share of ownership interest.

### **Collective Enterprises (集体企业)**

46. PRC's laws on collective enterprises are neither comprehensive nor clear. The basic rule about ownership of collective enterprises is that the source of the equity investment determines ownership. Whilst the bulk of the equity investment in a collective enterprise would normally come from collective funds of social organisations or institutions for public services, state-owned enterprises, private enterprises or PRC nationals may also be allowed to make equity investment in the "urban" type of collective enterprises.
47. Collective enterprises have been granted the status of legal persons. There are two types of collective enterprises, "rural" and "urban" and they are governed by completely different sets of regulations. Rural collectives do not have the capacity to encompass private ownership and accordingly this is not an acceptable vehicle of ownership as required by the Migration Regulations.
48. We are also aware of the existence of the "red-hat" affiliation phenomenon in the PRC whereby private enterprises are legally registered as collective enterprises with the approval of local authorities in return for paying a "management fee" to the authorities. The true reasons for such arrangement of affiliation registration would include political protection, facilitation of business, tax exemption, better access to banking loans etc. Since 1996, these privately funded collective enterprises have been under government directives to convert into private enterprises so that this form of business structure is not common nowadays.
49. Generally speaking, applicants whose business is in the form of collective enterprises find themselves unable to provide sufficient evidence to prove their ownership interests required under the Migration Regulations. In the case where a business had been registered as a privately funded collective enterprise, ownership claims may be acceptable where restructuring to a private enterprise has already taken place and official recognition of the private investment of the applicant as issued by the relevant

regulatory authority can be presented as evidence. Such official recognition of an applicant's private investment in the business must cover the whole period during which ownership claims are made.

### **Contract Management (承包经营)**

50. Contract management was once a popular mode of enterprise management prevailing in the first 20 years when the PRC commenced to adopt economic reform and open door policies. The word "contract" here simply refers to an undertaking taken out by a contractor (may be an individual or a legal corporate) for delivering a certain level of targeted profitability to the owner of a business which the contractor would manage for and on behalf of the owner on a day to day basis.
51. The following describes the general characteristics of contract management:
  - a) an individual or a limited company contracts for the management and operational rights of a then loss incurring business, typically owned by a state-owned or collective enterprise in return for providing to the owner of the business an agreed management fee. This contractor of the business would either be entitled to the net balance of the operating profits of the business (after deducting the guaranteed profits payable to the owner), or in cases where the actual profits are less than the guaranteed profits, subsidise the owner out of the contractor's own funds to the extent of guaranteed profits payable to the owner. It is our understanding that contract management was introduced to provide incentives to contractors to improve the operational efficiencies of businesses previously operated by the state-owned or collectively-owned enterprises without profits.
  - b) the contractor would operate the business for and on behalf of its original owner using the business licence and qualifications of the owner.
  - c) where the targeted level of profitability (or other parameters) has not been achieved, it is likely that the contractor would be suffering an operating loss together with the possibility of early termination of contract by the owner.
52. Although having the operating and management rights of the business, the contractor has no claims against the title of the assets of the business. As such, an applicant, in his/her capacity as contractor of a business from either a state-owned or collective enterprise, would not be able to claim effective ownership against the assets of the business under his/her contract management.

## **SOCIAL ENTERPRISES**

### **Civilian-Run Non-Enterprise Unit (民辦非企業)**

53. Civilian-run non-enterprise units (CRNEU) have been established under the legal framework of "Interim Regulations for Registration and Administration of Civilian-Run Non-Enterprise Units" as promulgated by the State Council on 25 October 1998. Their day-to-day operations are being supervised by the Ministry of Civil Affairs for the purposes of providing various social services (in such fields as education, hygiene, culture, science and technology, sports, labour, civil administration, agency and legal services) but on a non-profit making basis. Tax exemption would be granted with

respect to their qualified tax exempt income (for example, financial aids from the government, various fees collected under governmental approved fee scales, donations from the society, etc.) This kind of enterprise would not generally be considered a qualifying business which, by Migration Regulation definition, is an enterprise that is operated for the purpose of making a profit. Where an entity is registered as 'non-profit' or 'not-for-profit', this is a strong indicator that the entity has not been established for the purpose of making a profit. In addition, given the tax exemptions in place, applicants will unlikely be able to provide corroborating evidence of turnover of a CRNEU to satisfy the turnover requirement prescribed in the Migration Regulations

### **Informal Employment Organisation (非正规就业劳动组织)**

54. The concept of informal employment organisation has been introduced in the PRC since 1996 for the purposes of organising unemployed and large-scale laid off workers from state-owned enterprises into small-scale work units for providing regional community services in such fields as repair and maintenance, real estate management, retails and distribution, etc. so that these workers would be able to secure basic income and social protection. Tax incentives such as 3 years exemption from Business Tax, Individual Income Tax, Enterprise Income Tax, etc. have been provided by the government as incentives.
55. Informal Employment Organisations are organised and supervised on a day-to-day basis by local bureaus under the Ministry of Human Resources and Social Security without any intervention from any offices under the State Administration for Industry & Commerce (SAIC) and as such the evidentiary requirements of business ownership for visa purposes will generally not be met. In addition, given the tax exemptions in place, applicants will unlikely be able to provide corroborating evidence of turnover to satisfy the turnover requirement prescribed in Migration Regulations of Australia.

### **LAND**

56. The PRC maintains the principle of socialist public ownership of land. Under this principle all land is owned either by the State (国有土地) or farm collectives (农民集体土地). The State owns the land in urban areas, while farm collectives own the land in rural and suburban areas. Lands owned by farm collectives can be converted into State-owned lands via the process of expropriation as executed by the appropriate State authorities for public interest reasons. Private ownership of land in the PRC is prohibited.
57. Under the law in the PRC, individuals and businesses may obtain the right to use land, and these are called "land use rights". In a manner similar to Hong Kong's system of Crown Leases, the law allows the grant of "land use rights" for a period of up to 70 years upon payment of a premium. It also regulates the assignment and mortgage of the "land use rights" as if they were a kind of leasehold interest. These land use rights, but not the land per se, may be transferred.
58. Under normal circumstances, the land premium will be levied on a lump sum basis for the grant of the land use rights and, upon full settlement of the land premium, a "Certificate for the Use of State-owned Land" will be issued. The land user (e.g. a real

estate developer) is also required to pay public utilities services charges and resettlement compensation to the existing occupiers residing on site. Upon completion of the development, the local land administration authorities will issue Real Estate Title Certificates certifying the use of the land and ownership of the building.

59. We note that there are two types of "land use rights" for State-owned lands:
- a) Allocated Land Use Rights (划拨土地使用权) – These are land use rights that have been administratively allocated by the State to a land user without consideration (transfer premium) being paid for the land use rights. However, a land user may have been required to pay the respective compensations and resettlement expenses before securing the particular land use right. For allocated land use rights, the government does not set a fixed term of land use, but it also means that the government has the right to recover land use rights so allocated at any time. Allocated land use rights are normally only applicable to charitable or key government construction projects and the use of allocated land is also subject to limitations against leasing, mortgaging and transfer of the rights.
  - b) Transferred Land Use Rights (出让土地使用权) – These are land use rights for particular purposes and of particular durations that have been obtained from the State, whether via the process of agreement, tender or auction, by the respective land users who have paid the respective considerations (in the form of monetary sums) for the transferred land use rights. The Law specifically stipulates that transferred land use rights as acquired by individuals, private enterprises or foreign investment enterprises, are able to be further sold, exchanged, donated, leased or mortgaged. The maximum durations for transferred land use rights are: 70 years for land of residential purposes, 40 years for land of commercial purposes and 50 years for those of composite purposes.
60. With the enactment of the Urban Real Estate Administration Law of the PRC (中华人民共和国城市房地产管理法) since 1 January 1995, any entity holding an allocated land use right may legally seek to convert it into a transferred land use right.

## **FOREIGN EXCHANGE CONTROL**

61. Applicants for a Subclass 188 visa in the Investor stream are required under clause 188.246 to demonstrate that the funds used to purchase a designated investment of AUD1,500,000 were unencumbered and accumulated from their qualifying business and eligible investment activities. As such, the funds proposed for the purchase of the designated investment must be able to be trailed back to the relevant sources as claimed by applicants.
62. Current foreign exchange guidelines allow PRC residents to convert Renminbi yuan into foreign currency of up to USD50,000 or its equivalent per annum by application at foreign exchange banks in person with their identity cards. This annual ceiling of USD50,000 may be exceeded if the applicant can provide proper documentation for the required amount to be examined by foreign exchange banks under the supervision of the S.A.F.E. (State Administration of Foreign Exchange) authorities.

63. It is therefore expected that applicants for a Subclass 188 visa in the Investor stream will go through a lawful way for outbound transfer of their legitimate personal assets from the PRC for the purchase of the designated investment. The funds that are applied for outward transfer should be sourced from the legal assets belonging to the applicants and indisputable in terms of ownership. Applicants should present sufficient evidence to prove their lawful source.
64. Where sufficient funds are already held outside the PRC at the time of application, it is expected that applicants will be able to clearly demonstrate that such funds were accumulated from their qualifying business and eligible investment activities and were transferred out of the PRC through legal channels.
65. Applicants for a Subclass 188 visa in the Investor stream will be asked to provide a statement detailing the steps they will take to transfer their funds from the PRC to Australia before they will be invited to make a designated investment. Request for transfer of funds to Australia to make a designated investment will only be made when an applicant has satisfied all other criteria. Following the transfer bank documents will be examined to ensure that the funds were legally transferred out of the PRC as per the proposed steps.
66. For the Business Innovation stream in subclass 188 and other subclasses where funds have to be evidenced as part of business and personal net assets, applicants are required to demonstrate that the funds to be used for business and settlement purposes in Australia are lawfully acquired and available for transfer to Australia within two years after the visa grant. There is however no need to evidence the transfer of funds at the time of visa grant.

## **PREPARATION OF DOCUMENTATION**

### **BUSINESS ASSETS DOCUMENTATION**

67. All applicants need to provide the relevant business licences together with the corresponding duplicates (副本) for the nominated years. From the business licences, it can be ascertained whether the business is a corporate legal enterprise (企业法人) or non-corporate legal enterprise (非企业法人).
68. For non-corporate legal enterprises, the business operator (负责人) only has the right to operate the business and does not possess civil responsibility towards its liabilities which would all be borne by its supervisory enterprise (normally the head office of this non-corporate legal enterprise or the individual owner of the business in case of a proprietorship or a partnership).
69. The legal representative (法定代表人) as named on the business licence of a corporate legal enterprise would only mean that he/she have the capacity to represent and act for and on behalf of the corporate legal enterprise but does not mean that he/she would have vested equity interest in the enterprise per se. As such, a business licence is not an acceptable form of evidence to support business ownership.

70. All enterprises including foreign investment enterprises and domestic enterprises (private enterprises, state-owned enterprises and collective enterprises) in the PRC are required to go through an annual inspection by the SAIC or one of its subordinating bureaus before the end of June every year. The inspection system is to ensure that the enterprise is properly in existence and that all its statutory and operating data are updated. An SAIC stamp will be affixed onto the duplicate copy of the enterprise's business licence once the enterprise has passed this annual inspection. An enterprise cannot pass the annual inspection of the SAIC for the current year without the annual inspection of all previous years being cleared first.
71. A business licence of a particular business/enterprise in the PRC also contains information on the authorised scope of business (经营范围) for that particular business/enterprise. Business turnover attributed to business activities outside the legal scope of the business/enterprise cannot be counted for Business Innovation and Investment visa purposes.
72. All applicants should provide full copies of the documents that have been submitted to their supervising Administration for Industry & Commerce (AIC) office for business registration and subsequent amendments, as certified (or "chopped") by that authority. These should include the Articles of Association of the enterprise or the partnership agreement (where applicable), bank confirmations of injection of the registered capital and the capital verification report(s), etc. For cases involving foreign investment enterprises, the originals of the Certificates of Approval as issued by the MOC (or MOFTEC) office will be required. An up-to-date company search as conducted through the supervising AIC office will also be required.

**a) Capital verification report (验资报告)**

The Company Law in the PRC requires a capital verification report to be filed with the supervising AIC office after all shareholders of a company have contributed funds towards the registered capital of the company. The auditor verifies the existence and legality of the paid-up registered capital and also identifies who have contributed to the registered capital to become shareholders of the company.

The Company Law also specifies that, in any case, a private limited company must have a minimum registered capital of not less than RMB30,000, subject to special specifications as provided in other laws and regulations (for example, the minimum registered capital for a one-person limited company is RMB100,000, the minimum registered capital for a joint stock limited company is RMB5 million, etc). In the case of a foreign investment enterprise, the registered capital of the enterprise cannot fall below a certain specified percentage of the expected total investment (投资总额) of the enterprise. Depending on the size of the expected total investment and on an inverted proportional scale, this can range from 100% to 25%.

Capital verification is required when an enterprise is newly established, or when the registered capital of an enterprise has been changed. Capital verification is a special audit in the PRC with its practice being regulated by rules and regulations as announced and enacted by the Ministry of Finance ("MOF"), the SAIC and the



S.A.F.E (for those involving foreign investment enterprises) from time to time. In cases where an applicant claims indirect ownership of a business, all links must be satisfactorily evidenced through capital verification reports.

Capital verification reports should be lodged complete with all relevant attachments, for example, valuation of assets contributed in kind, business balance sheet where additional capital is funded by reinvestment of business profits.

**b) Bank confirmations of injection of the registered capital**

This refers to bank confirmation of the applicant's capital contribution into the capital injection bank account of the business/enterprise. This is usually filed as an attachment to the capital verification report.

**c) Up-to-date company search (最新企业资料查询)**

Where available, applicants should provide an up-to-date company search which is an extract of the company records printed from the database of the supervising AIC office and should bear the stamp from the authority as well.

73. A capital verification exercise only verifies the existence and legality of registered capital as contributed by the applicant at a point in time. Registered capital can be withdrawn by the owners or returned to the shareholders at any point in time via share transfers or reduction of the registered capital of the enterprise, and the shareholders' equity is ever changing because of the continuous operating activities of the enterprise. It is therefore important that ownership for the periods under consideration are supported by capital verification report(s), share transfer agreements and up to date company search with historical record detailing all ownership changes. All of these documents should bear the original stamp (chop) of the supervising AIC office.

## **FINANCIAL DOCUMENTATION**

74. PAM3 (Generic Guidelines M) states that financial statements compiled and provided by persons certified by a recognised accounting body acting to international/Australian accounting standards will generally be regarded as sufficient.
75. In the PRC due to the accounting and tax regulations in place, there is scope for assets in the balance sheet of a PRC enterprise to be over-stated, and the liabilities under-stated. For example:
- a) PRC income tax rules would impose upper limits on the size of bad debts unless with special approvals, therefore provisions for bad and doubtful debts are uncommon;
  - b) As the write-down in inventory value is not an expense deductible for tax purposes, PRC accounting treatments generally do not adopt the measurement rule of "lower of cost and net realisable value" for inventories;
  - c) Long term investments are usually measured using the historical cost method so that unrealised losses in the value of long term investments would not be recognised; and

- d) PRC income tax rules would normally impose upper limits on depreciation rates unless the company obtains prior approvals. As such, the carrying amounts of fixed assets would normally be overstated due to insufficient depreciation.
76. In addition to the above major departures from international/Australian accounting standards, reports prepared by PRC accountants/auditors also may not have sufficient notes to the accounts or comments on material items which would form the basis of Business Innovation and Investment visa decision making.
77. As a result of the above, applications based on PRC business or investment activities must include reports prepared in accordance with either International Standard on Review Engagements ('ISRE') 2400 Engagements to Review Financial Statements (a review report) or International Standard on Related Services ('ISRS') 4400 Engagements to Perform Agreed-Upon Procedures regarding Financial Information (a special purpose report), as applicable. These standards replaced ISA 910 and ISA 920 respectively and are the responsibility of the International Auditing and Assurance Standards Board (for more information see [www.ifac.org/IAASB](http://www.ifac.org/IAASB)).
78. The reports must be issued by accountants who belong to one of the following groups who hold a Public Practice Certificate and have relevant PRC experience:
- Hong Kong Institute of Certified Public Accountants;
  - the Institute of Chartered Accountants in Australia;
  - CPA Australia; or
  - the National Institute of Accountants in Australia.
- A copy of the Public Practice Certificate of the accountant who issued the review report or special purpose report must be attached to the report.
79. Review reports and special purpose reports that are issued by the 'Big 4' international accounting firms (i.e. PricewaterhouseCoopers, Deloitte Touche Tohmatsu, Ernst & Young and KPMG) operating in the PRC will also be accepted.
80. We expect the reporting accountants to perform their duties with impartiality, that is, without bias. The reports must be prepared by qualified accountants who are independent of the applicants and any businesses included in the visa application concerned and for this purpose, the accountants are not considered independent if they have a material direct or indirect financial interest in the subject matter. An obvious example will be the practice of contingent fee arrangement relating to either an assurance engagement or a non-assurance service provided to a client, a matter of which constitutes an identified threat to independence. To address the above, a reporting accountant is required to submit an independence declaration set out on page 33 to be attached to all review reports and special purpose reports provided to this office. In addition, the accountant should inform this office as soon as possible should they become aware of a change to the information contained in the declaration.
81. The table that follows sets out the required financial documentation pertaining to each stream in the visa subclasses of Stage 1 Business Innovation and Investment visa processing. A discussion of the procedures and matters requiring comments by the reporting accountant follows in the next section.

## Financial Documentation Requirement Table

ISRE 2400 Review Report	ISRS 4400 Special Purpose Report On Turnover	ISRS 4400 Special Purpose Report On Investment Activity
Subclass 188 visa in the Business Innovation Stream <sup>1</sup>	Subclass 188 visa in the Business Innovation Stream <sup>2</sup>	
Subclass 188 visa in the Investor Stream <sup>3</sup>	Subclass 188 visa in the Investor Stream <sup>4</sup>	Subclass 188 visa in the Investor Stream <sup>5</sup>
Subclass 132 visa in the Significant Business History Stream		

*Notes:*

1. *A Review Report is required where net business assets are claimed as part of the net assets available for transfer to Australia or where the applicant wishes to use net business assets to claim points under 'Part 7A.7 Financial asset qualifications'*
2. *Where a review on the financial statements of the nominated business for the nominated years have been conducted in accordance with ISRE2400, a Special Purpose Report on Turnover would not be required*
3. *A Review Report is required where an ownership interest in a business is claimed as an eligible investment for the purposes of clause 188.244(b); where the net assets of a qualifying business is nominated to meet clause 188.245; and/or where the applicant wishes to use net business assets to claim points under 'Part 7A.7 Financial asset qualifications'*
4. *A Special Purpose Report on Turnover is required where the applicant wishes to use turnover of a main business to claim points under 'Part 7A.8 Business turnover qualifications'. Where a review on the financial statements of the main business has been conducted in accordance with ISRE2400 (note 3 above), a Special Purpose Report on Turnover would not be required*
5. *A Special Purpose Report on Investment Activity is required where stocks and bonds are claimed as eligible investments*

### **Review Report**

82. A review on the financial statements (balance sheet and profit & loss statement) of a qualifying business conducted in accordance with ISRE2400 may be required for Business Innovation and Investment visa purposes as outlined above.
83. The objective of a review of financial statements is to enable the reporting accountant to state whether, on the basis of a set of procedures performed, anything has come to the reporting accountant's attention that causes them to believe that the financial statements are not prepared, in all material respects, in accordance with an identified financial reporting framework (negative assurance). For Business Innovation and

Investment visa purposes, international/Australian accounting standards are the identified financial reporting framework.

84. The review must be conducted by an accountant referred to at paragraphs 78 and 79. The review report should contain a clear written expression of negative assurance or express a qualification of the negative assurance where there is a departure from international/Australian accounting standards. In the latter case, the reporting accountant should outline possible adjustments to the financial statements such that the financial statements would provide a true and fair view in accordance with international/Australian accounting standards. Where adjustments are made to the financial statements prepared in accordance with the PRC accounting principles and policies, the reporting accountant should disclose by way of a table setting out the pre-adjusted, adjustment and post-adjusted figures, as well as comment on the basis for such adjustments.
85. In accordance with ISRE 2400, for the purpose of expressing a negative assurance in the review report, the reporting accountant should obtain sufficient appropriate evidence primarily through inquiry and analytical procedures to be able to draw conclusions. ISRE 2400 sets out procedures ordinarily included for the review of financial statements and Appendix 2 of ISRE 2400 provides an illustrative list of procedures which are often used.
86. In the review report, the reporting accountant is expected to state the date and location of the site visit conducted, outline procedures applied in obtaining the relevant evidence (see paragraph 85 above) and provide information on the business gained from the site visit including:
  - a) a detailed breakdown of items on the accounts, e.g. receivables, payables and etc;
  - b) the nature of business, staffing and organisation structure;
  - c) the product range;
  - d) the full address of the operating location(s) (preferably in both Chinese and English);
  - e) whether the business has a broad customer/supplier base, comment on economic dependency on one or two customers/suppliers, if applicable; and
  - f) details of other businesses operating from the same premises.
87. In addition, the reporting accountant should provide separate comments on business turnover as follows:
  - a) outline the accounting principles and practices for sales (both cash and credit) and the type of records kept;
  - b) breakdown of business turnover by activity, e.g. commissions, sales, consultancy fees;
  - c) details of sales with related parties;
  - d) advise and provide an explanation where business turnover and net profit reported in the profit & loss statement vary from those declared for tax (please also include the basis of tax assessment). For each of the relevant years, the following tax documents should be attached with the report:

- a certified true copy of tax registration certificates;
  - profits/enterprise income tax returns filed with the relevant tax bureau and payment receipts;
  - business/value added tax returns filed with the relevant tax bureau and payment receipts. Where there are a large number of tax payment receipts, it may not be practical for all tax payment receipts to be attached to the review report. A selection of tax payment receipts may be provided with advice that remaining tax payment receipts are available on request; and
  - summary schedules reconciling tax payments against turnover/profit claimed
88. Where an applicant wishes to claim points under the Business Innovation and Investment Points Test using a main business for which a review report is being prepared in meeting other visa criteria, evidence to support the eligibility of the main business for points may be provided in the form of separate comments in the review report in relation to the specific requirements under consideration (for details please refer to the below sections under 'Business Innovation and Investment Points Test').
89. Separate comments are also required in the report on:
- a) the ownership and use of building/s included in the balance sheet;
  - b) any loans to/from the business in relation to each individual shareholder and their related parties (e.g. family relatives/businesses);
  - c) any intercompany loans, their nature and recoverability;
  - d) the carrying value of investments and subsidiary interests;
  - e) any significant changes in the owners' equity;
  - f) any dividend distributions to equity holders;
  - g) events/commitments/uncertainties that have arisen subsequent to the balance sheet date that would have a material effect on the financial statements under review; and
  - h) any legal actions, threatened, pending or in process and the effect thereof on the financial statements under review.
90. Where a number of companies come under the umbrella of a group company, the option is available for the best performing two to be nominated as main businesses. In this case, the applicant must provide a declaration on the profitability or otherwise of the remaining companies in the group. The reporting accountant must also highlight all intercompany transactions.
91. A set of the PRC financial statements of the business (balance sheet and profit & loss statement) should also be enclosed with the review report for each of the relevant years/period.
92. It is noted that a proposed revision of ISRE 2400 is currently in progress.

## **Special Purpose Report of Factual Findings on Turnover**

93. The objective of a special purpose report is for the reporting accountant to report on factual findings based on agreed-upon procedures performed on agreed financial information, without providing an assurance. Therefore, the cost for a special purpose report is expected to be substantially less than a review report. Where work has commenced on a review of financial statements (balance sheet and profit & loss statement), applicants have the option to provide a review report in place of a special purpose report.
94. The special purpose report on turnover must be prepared by an accountant satisfying the requirements stated in paragraphs 78 and 79. The reporting accountant is expected to perform the following agreed-upon procedures regarding the business turnover of the applicant's nominated business:
- a) carry out substantive testing of sales transactions in accordance with the audit guidelines set out in the International Standards on Auditing (ISA) and comment on any misstatements;
  - b) detail the method of accounting for sales (both cash & credit) and the type of records kept;
  - c) provide a breakdown of business turnover by activity, e.g. commissions, sales, consultancy fees;
  - d) advise details of sales with related parties; and
  - e) advise and provide an explanation where business turnover and net profit reported in the profit & loss statement vary from those declared for tax (please also include the basis of tax assessment). For each of the relevant years, the following tax documents should be attached with the report:
    - a certified true copy of tax registration certificates;
    - profits/enterprise income tax returns filed with the relevant tax bureau and payment receipts;
    - business/value added tax returns filed with the relevant tax bureau and payment receipts. Where there are a large number of tax payment receipts, it may not be practical for all tax payment receipts to be attached to the special purpose report. A selection of tax payment receipts may be provided with advice that remaining tax payment receipts are available on request; and
    - summary schedules reconciling tax payments against turnover/profit claimed.
95. Where an applicant wishes to claim points under the Business Innovation and Investment Points Test using a main business for which a special purpose report is being prepared in meeting other visa criteria, evidence to support the eligibility of the main business for points may be provided in the form of separate comments in the special purpose report in relation to the specific requirements under consideration (for details please refer to the below sections under 'Business Innovation and Investment Points Test').
96. The report should outline the procedures applied in obtaining the relevant audit evidence and include the date and location of site visit conducted.

97. In addition, the report should provide information on the business gained from the site visit including:
- a) the nature of the business, staffing and organisation structure;
  - b) the product range;
  - c) the full address of the operating location(s) (preferably in both Chinese and English);
  - d) whether the business has a broad customer/supplier base, comment on economic dependency on one or two customers/suppliers, if applicable; and
  - e) details of other businesses operating from the same premises.
98. A set of the PRC financial statements of the business (balance sheet and profit & loss statement) should also be enclosed with the special purpose report for each of the relevant years. Where adjustments have been made to the business turnover figures as recorded in the financial statements prepared in accordance with the PRC accounting principles and policies, the reporting accountant should disclose by way of a table setting out the pre-adjusted, adjustment and post-adjusted figures, as well as comment on the basis for such adjustments.

#### **Special Purpose Report of Factual Findings on Investment Activity**

99. Applicants for provisional investor visas who have stocks and bonds as eligible investments should provide an investment activity report prepared by an accountant referred to at paragraphs 78 and 79. The reporting accountant is expected to perform agreed-upon procedures regarding the applicant's investment activity in accordance with ISRS 4400 and attach to the report the following documentation:
- a) a confirmation from the securities company detailing the amount of cash and quantity and market value of stocks/bonds held by the applicant and/or the applicant's spouse/de-facto partner as at 31 December of each of the last 3 years immediately before the time of invitation to apply for the visa. The following details should be included on the confirmation for each of the relevant points in time:
    - Basic account information including Client Account No., Client Name, ID Card No., Capital Account No., Trading Account No. and Account Status;
    - Net assets information including date of portfolio, currency, cash balance, market value of the stocks/bonds portfolio, total asset balance;
    - Detailed stock information including stock name, stock code, quantity, unit price, and total market value of each stock as at the statement date; and
    - Details of the loans provided by the financial institution against this Client Account No. in the relevant three years.
  - b) the Securities Account Holdings Statement(投资者记名证券持有数量) issued by the China Securities Depository and Clearing Corp Ltd (中国证券登记结算有限公司), both Shanghai and Shenzhen branches, with details of the stocks held by the applicant and the applicant's spouse/de-facto partner as at 31 December of

each of the last 3 years immediately before the time of invitation to apply for the visa. Please provide a table detailing the market value of each individual stock on the reporting date using the published market unit price on the stock exchange website, and provide the total assets balance respectively for the relevant reporting date.

- c) historical transaction records of all the applicant's securities accounts covering the three relevant years; and
- d) historical bank statements as corroborating evidence of the in-and-out cash entries as stated on the historical transaction records of the securities accounts for the three relevant years. Please provide a table detailing the funds injected into the nominated securities account/s, the funds transferred out from the nominated securities account/s, and provide the total balance for cash injected in and cash withdrawn out from the nominated securities account/s respectively for the relevant 3 years.

100. The investment activity report should include the following agreed upon procedures:

- a) compare information contained in the confirmation from the securities company against the historical daily transaction records and the movement statements of the capital account and advise of any material misstatement for each of the three relevant years;
- b) provide a detailed profit analysis report on the realised gain or loss incurred on stock disposal to establish that sufficient funds for the Designated Investment had been generated by stock trading activity. Separate profit/loss computation is required for each stock disposed;
- c) outline the realised gain/loss calculation method used in the investment activity report;
- d) report the effect of stock splits, bonus share issues etc on any stocks purchased or sold during the periods under examination; and
- e) identify and comment on unusual pattern of trading e.g. occasions where applicants made substantial profit from an individual stock within a relatively short period of time; constant buying and selling of the same stock through a number of securities accounts not registered in the applicant's name but were controlled by him/her at the same time; any stock transfer, in and out of the securities account, with no dollar value recorded against them.

### **Balance Date**

101. Regulation 1.03 defines fiscal year in relation to a business or investment as:

- a) if there is applicable to the business or investment by law an accounting period of twelve months - that period; or
- b) in any other case - a period of twelve months approved by the Minister in writing for that business or investment.

102. In the PRC, a fiscal year is considered to be a calendar year, therefore reports prepared in accordance with ISRE 2400 and ISRS 4400 should use the balance date 31



December. The commencement date as shown on the business licence is the date upon which a business is deemed to have established.

## **TAXATION**

103. In the course of legitimately accumulating his/her net business and personal assets applicable to the Business Innovation and Investment visa application, it is expected that an applicant would have paid the relevant taxes in accordance with the prevailing tax laws and regulations. Major tax applicable to PRC businesses may be summarised as follows:
- a) Value Added Tax (增值税) – Applicable to units (whether be enterprises or other organisations) or individuals who sell tangible goods or provide processing or repairs services for valuable consideration. Some businesses (with heavy input VAT burden on its operation costs) which were traditionally subject to Business Tax have now been changed to paying VAT thereby allowing greater flexibility for deducting their input VAT paid. The change will first be applied to certain service industries e.g. transport and other modern services in pilot scheme areas such as Shanghai.
  - b) Business Tax (营业税) – Applicable to units (whether be enterprises or other organisations) or individuals who provide stipulated services or transfer intangible assets or sell immovable properties for valuable consideration.
  - c) Enterprise/Corporate Income Tax (企业所得税) – Applicable to all enterprises (but explicitly excluding sole proprietorships and partnerships) against the overall annual profits.
  - d) Individual Income Tax (个人所得税) – Applicable to individuals (also including individuals behind sole proprietorships and partnerships) against various types of income at various tax rates, summarised as follows:
    - i) Wages and salaries, bonus and commission income;
    - ii) Production and operational income (profits) arising from engagement in industrial and commercial activities;
    - iii) Individuals undertaking contractual operations or lease operations;
    - iv) Contracts for service (freelancing);
    - v) Author's remuneration;
    - vi) Royalties and property lease income;
    - vii) Property transfer income;
    - viii) Interest, dividends, incidental income and other income.
  - e) Land Appreciation Tax (土地增值税) – Applicable to units (whether be enterprises or other organisations) or individuals against the value added amounts secured from transfer of land use rights of state-owned land, the attached buildings or structures.
  - f) Deed Tax (契税) – Applicable for all transfers, buy and sell, swap, gift of land use rights of state-owned land and the attached buildings and structures.

104. Time frames for tax filings and payments with respect to various types of taxes may differ as follows:
- a) Value Added Tax and Business Tax – Normally on a monthly basis, exceptions would be uncommon;
  - b) Enterprise/Corporate Income Tax – Provisional filing and payment would have to be made on a quarterly basis with an annual final settlement to be done on or before 31 May of the following year;
  - c) Individual Income Tax – Vary depending on the types of income as follows:
    - i) For wages and salaries – on a monthly basis;
    - ii) For production and operational income and individuals undertaking contractual operations or lease operations – tax filings and payments would normally be on a monthly basis;
    - iii) Others – At the beginning of the month immediately following the month in which the income arises;
  - d) Land Appreciation Tax – Except for Guangzhou, would be at the beginning of the month immediately following the month in which the value added amount is secured.
  - e) Deed Tax – As and when the tax charge is accrued.

#### **Deemed Tax**

105. To our current understanding, private enterprises such as individually or privately owned businesses, sole proprietorships and private limited companies in certain industries may, under certain circumstances and upon application to the tax authorities, be required to regularly pay their respective tax charges, including value added tax, business tax, enterprise/corporate income tax and/or individual income tax, as the case may be, on a deemed basis.
106. Deemed tax payments can be determined on the basis of directly deeming a certain amount of tax payable (定额征收) by the business or deeming the taxable profit ratio against either the actual gross income or the actual stipulated costs (such as raw material costs or fuel and power costs) (核定征收). The amount of tax payable under these arrangements therefore may not bear correlation to the turnover level or actual profits of the business and may not be relied upon as corroborating evidence of turnover/profits as declared.
107. Furthermore, businesses subject to deemed tax arrangements are usually of a smaller scale and would most likely not keep their books of account or source documents to the standards as required by the tax authorities as in cases subject to audited method of taxation (查账征收). Such cases would invariably be examined in more details, particularly with reference to the contents of the “deeming notice” (核定通知书) as issued by the tax authorities from time to time (mostly on an annual basis), in order to ascertain turnover/profits levels.

## **NET ASSETS DOCUMENTATION**

108. Net assets of the applicant and/or their spouse/de-facto partner are the value of their assets, after deducting any liabilities, and comprised both personal and business assets. A statement of all the assets and liabilities of the applicant and/or their spouse/de-facto is required as at a date within the 3 months immediately before the time of invitation to apply for the visa. By using the same date, the possibility of double-counting is eliminated. This statement should disclose all assets and liabilities including those in business and other investments. However, only the value of those personal and business assets required to satisfy the net assets requirement need evidencing.

### **Business Assets**

109. Where an applicant nominates net business assets for consideration, the value of the net business assets is to be supported by a review on the financial statements of the business in accordance with ISRE 2400. A valuation of the net business assets should be provided as at a date within the 3 months immediately before the time of invitation to apply for the visa. Where an ISRE 2400 includes the value of buildings in the calculation of net business assets, the review report must include evidence of the existing land use rights.

### **Property**

110. Where an applicant nominates a property for consideration, the market value of the property needs to be included. For property in the PRC, the valuation must be undertaken by one of the following firm/individual with relevant experience in the PRC:
- an international valuation firm
  - a qualified member of Royal Institute of Chartered Surveyors
  - a Hong Kong registered professional surveyor with a valid Certificate of Registration issued by the Surveyors Registration Board.
111. The valuer must comment on:
- a) the outcome of property inspection undertaken;
  - b) land use rights;
  - c) title to the property (please provide certified copies of all pages of the title deed);
  - d) encumbrances against the property (please provide certified copies of evidence of all encumbrances as at the date of valuation or evidence that mortgages have been discharged);
  - e) market value of the property on a date within the 3 months immediately before the time of invitation to apply for the visa;
  - f) valuation methodologies.
112. Additionally, the applicant should provide a certified copy of the purchase/tax invoice for the property to demonstrate the acquisition cost of the property.

### **Cash on deposit**

113. Where applicants intend to include cash on deposit in the calculation of net assets, a bank pro-forma stamped by the relevant bank is to be provided. If cash is held in more than one account, all balances must be evidenced on the same date. Applicants will be asked to demonstrate the source of substantial cash deposits.
114. As bank deposits can be withdrawn prior to the agreed maturity date, the certification issuance date is considered to be the valuation date.

### **SOURCE OF FUNDS**

115. In establishing the claims to business ownership, business and personal assets of the applicant and/or their spouse/de-facto partner, decision makers may inquire into the source of their claimed assets in order to reach a proper degree of satisfaction that they are the legal owner of the assets and that the assets are “net”.
116. The PRC economy was, and is, in transition to a market economy. There have been dramatic changes involving the gradual privatisation of state owned enterprises and much reporting on the stripping of state assets. Nominating others to hold assets including business assets and cash assets without formal recognition is not uncommon. In this business environment, it is prudent to take a cautious approach in the determination of personal and legitimate ownership of funds for business investment and personal assets
117. The onus is on the applicant to provide relevant and reliable documentation to evidence how they accrued their funds. Relevant documents that may provide evidence of the source of net assets and the accumulation of assets over a period of time may include:
  - taxation records/documents, including but not limited to Personal Income Tax returns and receipts; Enterprise Income Tax returns and receipts;
  - business accounts/financial statements of previous businesses, to be corroborated by Enterprise Income Tax returns and receipts where available;
  - historical bank statements or bank records indicating gradual accumulation of wealth; and/or
  - official documents for sale of assets, such as Deed Tax payment receipt or records from offices of China Equity Exchange (产权交易所).
118. Applicants who fail to provide the requisite evidence may have the criterion in question assessed as not met on the basis that the officer cannot be satisfied:
  - that the claimed level of funds or assets exists; or
  - that the claimed ownership interests or funds belong to the applicant

### **BUSINESS INNOVATION AND INVESTMENT POINTS TEST**

119. Applicants of the Subclass 188 visa in both the Business Innovation and the Investor streams are required to meet the pass mark of the Business Innovation and Investment

Points Test. The Business Innovation and Investment Points Test criteria are to be satisfied at the time of the invitation to apply for the visa.

### **Education qualifications**

120. To evidence bachelor qualifications attained in the PRC, applicants are expected to provide:
- i) A notarial certificate of their bachelor certificate (学位证) and certificate of graduation (毕业证);
  - ii) A credentials report (认证报告) issued by China Academic Degrees & Graduate Education Development Centre (“CDGDC”) (教育部学位与研究生教育发展中心) in relation to the bachelor qualification; and
  - iii) Academic transcripts in relation to the bachelor qualification.
121. CDGDC is an institution directly under the Ministry of Education and is authorised by the Academic Degrees Committee of the State Council and Ministry of Education to certify individuals’ academic degrees and records. A credentials report provides information on the qualification attained by the applicant and whether the educational institution issuing the qualification is recognised as a higher education institution by the Ministry of Education. The credentials report could be verified with the file number (认证报告完成号) and application number (认证申请号) via the online tool available at: <http://www.cdgdc.edu.cn/rzgl/apply/reportSearch.jsp>
122. Details on the application procedures for a credentials report are available at <http://cqy.chinadegrees.cn/cn/>
123. To evidence bachelor qualifications attained elsewhere than in the PRC, applicants are expected to provide:
- i) A certified true copy of the relevant award certificate; and
  - ii) The associated academic transcripts.
124. A bachelor qualification is considered to be one awarded by ‘an education institution that is of a recognised standard’ where it is equivalent to the corresponding Australian qualification. Claims of equivalence may be verified by reference to the AEI-NOOSR Country Education Profile at <http://www.aei.gov.au> . In Australia a bachelor degree is one requiring not less than 3 years of full-time study, or the equivalent period of part-time study.

### **Registered patents / registered designs (design patents) (注册专利)**

125. There are 3 types of patents in the PRC, namely, the invention patents (发明专利), the utility model patents (实用新型专利) and the design patents (外观设计专利).
126. To evidence a patent registered in the PRC (发明专利/实用新型专) held by the applicant or their main business, applicants are expected to provide documents issued

by, or printed from the web-based electronic databases of, the State Intellectual Property Office (国家知识产权局) in relation to the patent, with the following details:

- i) Identification numbers – application number and/or grant (publication) number
- ii) Title – brief description of the invention
- iii) Abstract – summary of the invention
- iv) Dates – application date, priority date and/or grant date
- v) Inventor – person who invented the product/process
- vi) Applicant (of the patent) – person/entity that applied for the registration of the invention
- vii) Owner - person/entity that holds the set of exclusive rights in relation to the invention

127. To evidence a design registered in the PRC (or a design patent as known in the PRC 外观设计专利) held by the applicant or their main business, applicants are expected to provide documents issued by, or printed from the web-based electronic databases of, the State Intellectual Property Office in relation to the patent, with the following details:

- i) Identification numbers – application number and/or grant (publication) number
- ii) Product – product to which the design is applied
- iii) Drawings – visual images of the design as applied to the product
- iv) Explanation of the design – brief explanation of the design
- v) Dates – application date, priority date and/or registration date
- vi) Creator - person who created the design
- vii) Applicant (of the design registration) - person/entity that applied for the registration of the design
- viii) Owner - person/entity that holds the set of exclusive rights in relation to the design patent

128. Information on registered patents (including design patents) are verifiable using the web-based electronic database with search facilities maintained by the State Intellectual Property Office available at <http://www.sipo.gov.cn/zljs/>

### **Registered trademarks (注册商标)**

129. To evidence a trademark registered in the PRC held by the applicant or their main business, applicants are expected to provide documents issued by, or printed from the web-based electronic databases of, the Trademark Office of the SAIC (国家工商行政管理总局商标局) in relation to the trademark, with the following details:

- i) Identification numbers – application number and/or registration number
- ii) Representation of the trademark - in word, image, or other relevant formats
- iii) Classification - the class of goods or services in relation to which the trademark is registered

- iv) Dates - application/filing date, acceptance date, publication date, registration date, date of renewal
  - v) Applicant/owner - person/entity that holds the set of exclusive rights in relation to the registered trademark
  - vi) Status - whether the trademark is, for example, applied for, published, registered, revoked or expired
130. Information on registered trademarks are verifiable using the web-based electronic database with search facilities maintained by the Trademark Office of the SAIC available at <http://sbj.saic.gov.cn/sbcx/>

### **Joint venture agreements (合营合同)**

131. A joint venture (合营) is a commercial undertaking entered into by two or more parties, usually in the short term, for the purpose of a particular activity. The relationship between parties to a joint venture (合营者) is governed by a written 'joint venture agreement' (合营合同) which establishes for the joint venturers joint control (共同控制权) over the joint venture.
132. To evidence that a main business of an applicant is a party to a joint venture which operated in accordance with a formal joint venture agreement, applicants are expected to provide:
- i) The joint venture agreement between the main business of the applicant and other business/es; and
  - ii) Evidence that the joint venture had operated in accordance with the joint venture agreement e.g. contracts with external parties, accounts of the joint venture; and
  - iii) A detailed statement on how the applicant utilised their skills in actively participating at a senior level in the day to day management of the joint venture business (evidence to support claims made in the statement should be made available)

### **Export trade (出口貿易)**

133. Where either a review report or a special purpose report is being prepared in relation to a main business of the applicant as part of meeting other visa criteria and it has a level of export sales for the relevant years that is eligible for points under Part7A94, evidence of export trade of that main business may be provided in the form of separate comments in the review report or special purpose report in relation to the value of export sales generated by the main business during the relevant years, and the basis of determination. Documentation to support the claimed level of export trade should be made available as part of the review report or special purpose report.
134. Where neither reports are required in relation to the main business of the applicant which has a level of export sales for the relevant years that is eligible for points under Part7A94 (where the main business nominated for the purposes of other visa criteria is different to the main business nominated for points under Part 7A94), the applicant is expected to provide the VAT returns filed with the relevant taxation bureau showing

the cumulative turnover and export sales of that business for the relevant years, and representative samples of the associated customs declarations (出口货物报关单) and/or underlying export transaction documents.

#### **Gazelle Business (瞪羚企业)**

135. Where either a review report or a special purpose report is being prepared in relation to a main business of the applicant as part of meeting other visa criteria and the main business is eligible for points under Part 7A95 as a 'gazelle business', the applicant may provide supporting evidence in the form of additional comments in the reports on the turnover of the main business for a further year and the number of its full time employees for the relevant period. Documentation to support the claimed level of turnover and number of employees should be made available as part of the review report or special purpose report.
136. Where neither reports are required in relation to the main business of the applicant which is eligible for points under Part 7A95 (where the main business nominated for the purposes of other visa criteria is different to the main business nominated for points under Part 7A95), the applicant is expected to provide the financial statements of the main business with associated Enterprise Income Tax returns and receipts for the relevant period and business records such as taxation, insurance or superannuation records identifying employees of the business by name and their employment basis, for the relevant period.

#### **Government Grants (政府资助)**

137. In the PRC, government grants may take various forms. A government grant under Part 7A96 is envisaged to be monetary assistance provided by the government to the applicant or their main business, and there was a transfer of the grant money to the applicant or their main business. As such, government assistance in other forms such as the provision of guarantees, tax incentives, low interest/interest free loans, free services or free advice are not considered to be government grants for the award of points under Part 7A96.
138. Further, the government grant must have been awarded for the purposes of early phase start up of a business, product commercialisation, business development or business expansion, and not for non-business purposes such as those in relation to arts, education, disaster relief, community development, agricultural assistance or environmental protection.
139. To evidence the receipt of a government grant, applicants are expected to provide :
  - i) the grant letter issued by the relevant PRC government authority outlining the basis of the grant; and
  - ii) bank records showing the transfer of the grant money from the government to the applicant or their main business.

#### **Venture Capital Funding (创业投资资金)**



140. Venture capital is finance provided to entrepreneurs or companies that have very high growth potential but are in the very early stages of developing their business or commercialising their idea, in return for an equity stake in the business (股权投资).
141. Venture capital firms (创业投资企业) are the investment fund managers that act as an intermediary between the capital providers and companies in need of capital. Only those companies with the greatest growth potential are selected by venture capital firms for investment due to the high risk associated with investing in the early stages of a company's development. Upon acquisition of an equity interest in the investee company, a representative of the venture capital firm usually joins the board of the investee company and works with the investee company during the investment period. The objective of the venture capital firm is to grow the investee company to a point where it could be sold at a profit.
142. Where the capital is sourced from an entity that is a member of a professional private equity and venture capital association (for example, member of China Venture Capital Association 中华股权投资协会会员), evidence of the capital provider's membership is prima facie evidence that finance provided by the entity is venture capital, unless there is evidence to suggest the contrary in which case further evidence regarding the nature of the entity's business activities may be requested. In other cases, applicants are expected to provide evidence that the capital provider is a venture capital firm.
143. To evidence the receipt of venture capital funding, applicants should also provide :
- i) the final contract entered with the venture capital firm (法律合同), accompanied by a plain English letter to explain how much venture capital will be received and for what purposes; and
  - ii) documents in relation to the transfer of capital into the investee company (被投资企业), including but not limited to a capital verification report and the shareholders' agreement of the investee company.

## **PERSONAL DOCUMENTATION**

### **Hospital birth certificate (出生医学证明)**

144. Birth certificates in the PRC are not issued by a central authority like the Births and Deaths General Register Office in Hong Kong, or the Registry of Births, Deaths and Marriages in most States in Australia. The registration of birth is not standardised and is left to the discretion of individual hospitals. It is expected that persons born in the 1990's and thereafter would have a hospital birth certificate issued at the time of their birth.

### **Notarial certificate of birth (出生公证书)**

145. Notarial certificate of birth is the most common evidence of birth. However, while Chinese notaries affix their signatures and office seal to certificates that attest to the probity of claims made by the applicants, the certificates can be based upon primary evidence, secondary evidence, testimony of the applicant or other parties, or investigation by the notary. Notarial certificates rarely cite the basis for their issuance.

146. Thus a notarial certificate in itself may not be adequate evidence of the facts claimed, and is best used in conjunction with primary and contemporaneous secondary evidence. For most notarial certificates of birth, the primary underlying documentation is the household register.

### **Household register or Hukou (居民戶口簿)**

147. The relationship of all members of the household in relation to the principal is stated in the household register. If a child included in the visa application is not listed in the household of either parent, an explanatory statement should be provided. As the one-child family policy applies in the PRC, second and subsequent births will need to be supported by supplementary evidence such as evidence of grounds for exemptions; payments of fines imposed or social maintenance fees (超生罰款/社會扶養費征收/繳納證明書). This level of evidence is required to confirm parentage and protect the interest of the child.
148. The household register also provides additional information of personal particulars such as alias, educational level, occupation, work unit, previous residence, marital status, etc. All these are relevant to an assessment of the applicant's eligibility for the Business Innovation and Investment visa.

It is expected that applicants will provide all of the above to facilitate the determination of relationship claims. If any of the aforementioned documents cannot be made available, please provide an explanatory statement.

## **OTHER PERSONAL DOCUMENTS**

### **Divorce certificate and agreement**

149. In the event that an applicant has gone through a divorce, a divorce certificate should be provided and the associated divorce agreement which sets out the custody arrangements for minor children, if any, should also be made available.

### **Adoption**

150. For applications including an adopted child, a formal adoption certificate issued by the Civil Affairs Bureau (民政局) must be submitted. The household register should also indicate the adoptive parent-child relationship. If the adopted child is not included in the household register, an explanatory statement should be provided.

### **Dependent child**

151. For a minor child (under 18 years of age) included in an application not accompanied by both parents, a notarised statement of consent signed by the non-migrating parent for the settlement of the child in Australia will be required.
152. Please be reminded that dependents (either spouse or children) of visa applicants, irrespective of whether they are included in the application, are required to undergo medical examination and meet the health requirements.

## **CONCLUSION**

153. The content of this document is based on our understanding of the relevant PRC law and practice at the time of writing. While every effort has been made to provide an accurate and current explanation of documentation available to support Business Innovation and Investment visa applicants from the PRC, Chinese law is constantly evolving and is subject to varied practices in different localities. Accordingly, this is a document subject to periodic review. We value feedback from users of this document to further enhance its comprehensiveness.
  
154. The application checklists summarise the documentation required for the visa subclasses under the Business Innovation and Investment program processed by this office. Please make use of the checklist in the preparation of an application.

Hong Kong Business Skills Processing Centre  
Australian Consulate-General Hong Kong SAR  
July 2012

## **REPORTING ACCOUNTANT'S INDEPENDENCE DECLARATION**

To: Hong Kong Business Skills Processing Centre  
Australian consulate-General, Hong Kong SAR

We, [insert name of accounting firm], are the reporting accountants (the "Firm") appointed by [insert name of principal applicant] (the "Applicant") to prepare the [special purpose report / review report (delete where appropriate)] in support of his / her visa application lodged under the Business Innovation and Investment program (the "Report").

We hereby declare that, *to the best of our knowledge*, we are independent of the Applicant, any other persons covered in his / her visa application and the company / companies for which the Report is issued to the same extent as that required of a professional accountant in accordance with the guideline on independence issued by [Hong Kong Institute of Certified Public Accountants / the Institute of Chartered Accountants in Australia / CPA Australia / the National Institute of Accountants in Australia (delete where appropriate)].

We also confirm that we have not entered into agreement of whatsoever nature with any parties in relation to the fee charged for our services being contingent on the result of the visa application lodged by the Applicant under the Business Innovation and Investment program.

Should we become aware of any changes to the information provided in this declaration, we undertake to notify your office immediately.

Signature : \_\_\_\_\_

Name : \_\_\_\_\_ [*insert name of partner-in-charge*]

For and on behalf of : \_\_\_\_\_ [*insert name of Firm*]

Dated : \_\_\_\_\_