

Investment Opportunities

投资机遇

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*Legal Aspects of Foreign Investment
in Energy Projects in China*

Regulatory Issues & Deal Structuring

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April 4, 2007

Key Elements of PRC National Energy Policy

Build up a Stable, Economical & Clean Energy Supply System

- Rely on Domestic Resources
- Focus on Coal Electricity
- Develop Diversified Energy Resources
 - New Energy: Solar, Wind, Biomass
 - Hydro-electric Power
 - Nuclear Power
 - Natural Gas & Petroleum

Regulatory Environment

- **Catalogue Guiding Foreign Investment in Energy Projects by Sub-categories**
- **Focus on Form of Entity and Foreign Investors Ownership %**
- **Approvals by Relevant Governmental Authorities Required for Foreign-invested Energy Projects**
- **Tax Benefits Available for Foreign-invested Energy Projects**

Catalogue Guiding Foreign Investment - Classification

- Encouraged
- Restricted
- Prohibited
- Unspecified - Permitted

Catalogue Guiding Foreign Investment - Encouraged Sectors

- **Electricity, Gas and Water Production & Supply**
 - **WFOE OK (*nuclear power station requires JV with PRC majority ownership*)**
 - ***Solar, wind, magnetic, geothermal, tide and biomass power stations permit WFOE***
- **Mining & Quarrying: 11 listed sub-categories**
 - **4 permit WFOE**
 - **5 require JV**
 - **2 require JV but permit WFOE for western projects**
- **Petroleum Processing & Coking**
 - **WFOE OK**
- **Technologies: energy - saving technology & technology for recycling and comprehensive utilization of resources**
 - **WFOE OK**



Catalogue Guiding Foreign Investment - Restricted Sectors

- **Mining & Quarrying: 6 listed sub-categories**
 - 4 permit WFOE
 - 1 requires JV
 - 1 requires JV with PRC majority ownership
- **Construction & Operation of Refineries**
 - WFOE OK
- **Smelting & Separation of Rare-earth Metal**
 - JV required
- **Construction & Management of Conventional Coal-fired Power Plants (whose single - machine capacity is less than 300,000 kw)**
 - WFOE OK



Catalogue Guiding Foreign Investment - Prohibited Sectors

- **Exploration, Mining & Selection of Radioactive Mineral Products**
- **Exploration, Mining & Selection of Rare-earth Metal**
- **Construction & Management of Electricity Network**
- **Smelting & Processing of Radioactive Minerals**

Relevant Approval Authorities

- **Ministry of Commerce (商务部/MOC)**
- **National Development and Reform Commission (国家发展和改革委员会/NDRC)**
- **Ministry of Land and Resources (国土资源部/MLR)**
- **State Administration of Environmental Protection (国家环保总局/SAEP)**
- **State Council (国务院)**

List of Potential Competent Authorities - Continued

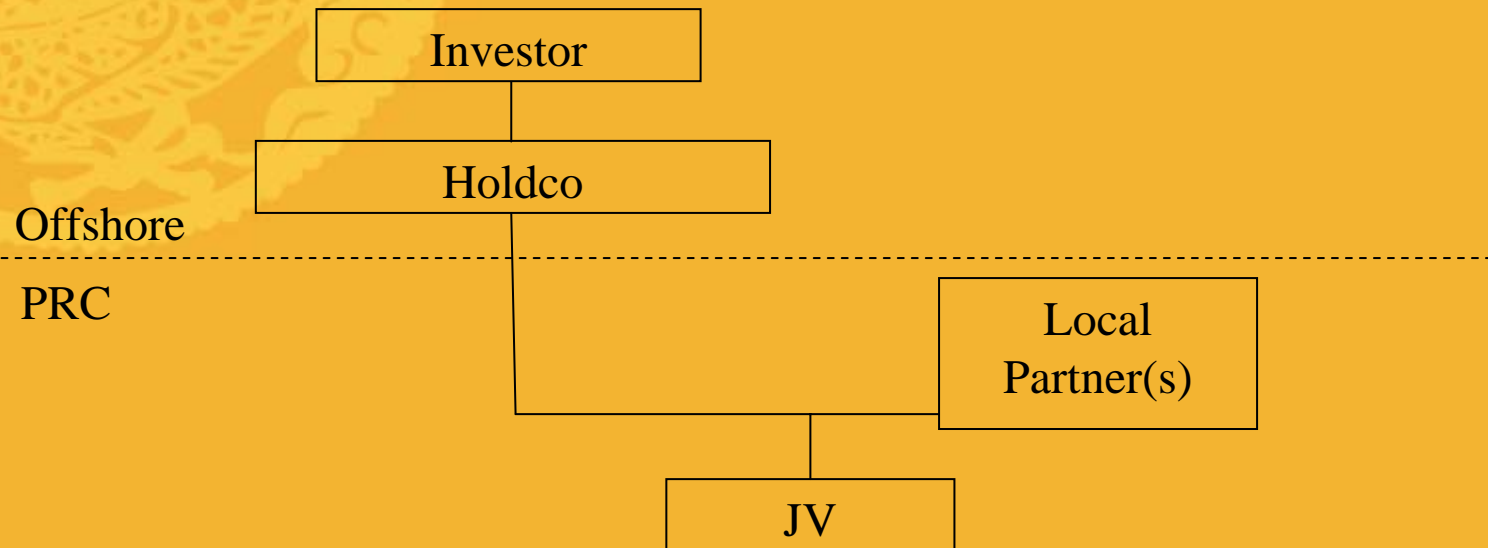
- **State Administration of Taxation (国家税务总局/SAT)**
- **State Administration of Foreign Exchange (国家外汇管理局/SAFE) – SAFE 75 registration if local founders participate in equity offshore**
- **State Administration of Industry and Commerce (国家工商行政管理局/SAIC)**



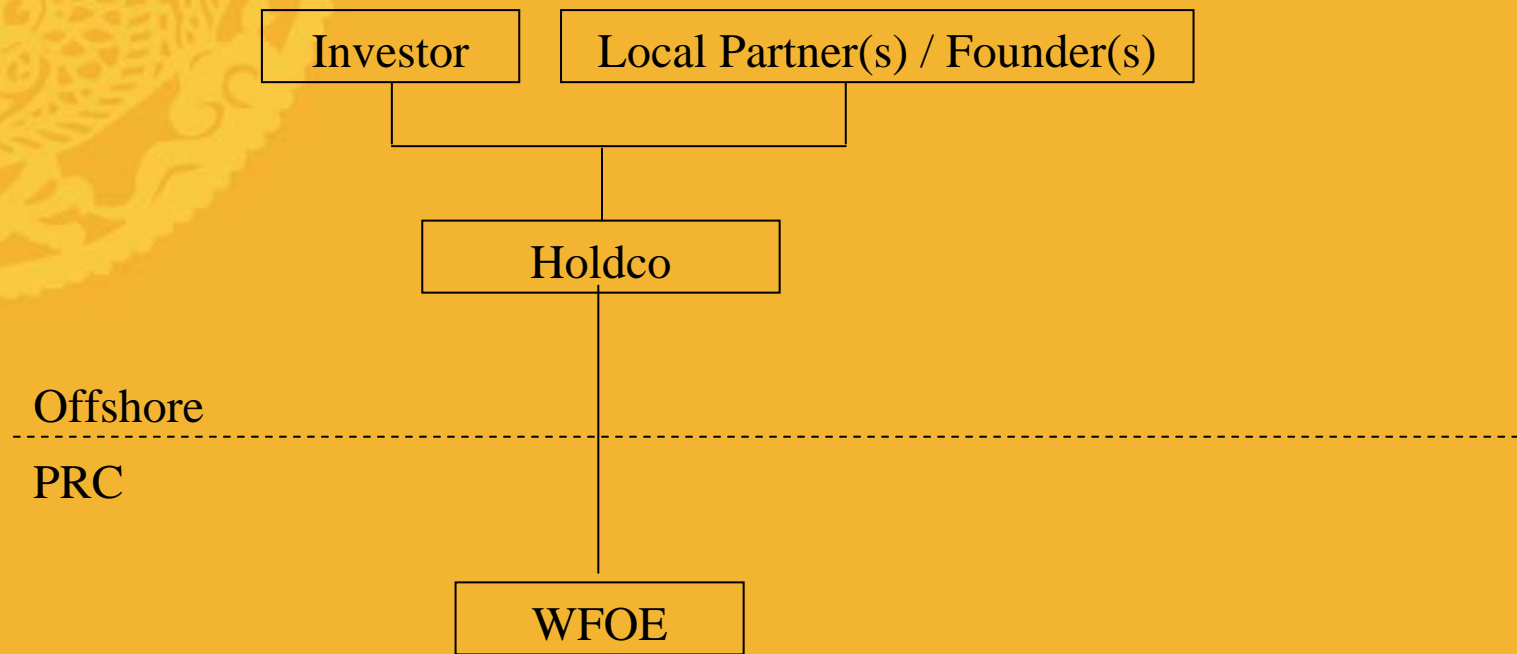
Import of Energy Resources

- **Net Importer of Energy Resources since 1993: National Policy Calls for More Reliance on Domestic Resources**
- **Imported Energy Resources Consist of Oil (87.1%), Coal (9.2%) and Gas (3.7%) in 2006**
 - **Import of Oil: Non-state-owned Importers Need to Apply for Quota**
 - **Import of Coal: Importers Need to Apply for Automatic Import Permit**
 - **Import of Gas: Importers Need to Apply for Automatic Import Permit**
- **Competent Authorities: Ministry of Commerce, Customs Authority; State Administration of Quality Supervision, Inspection and Quarantine**

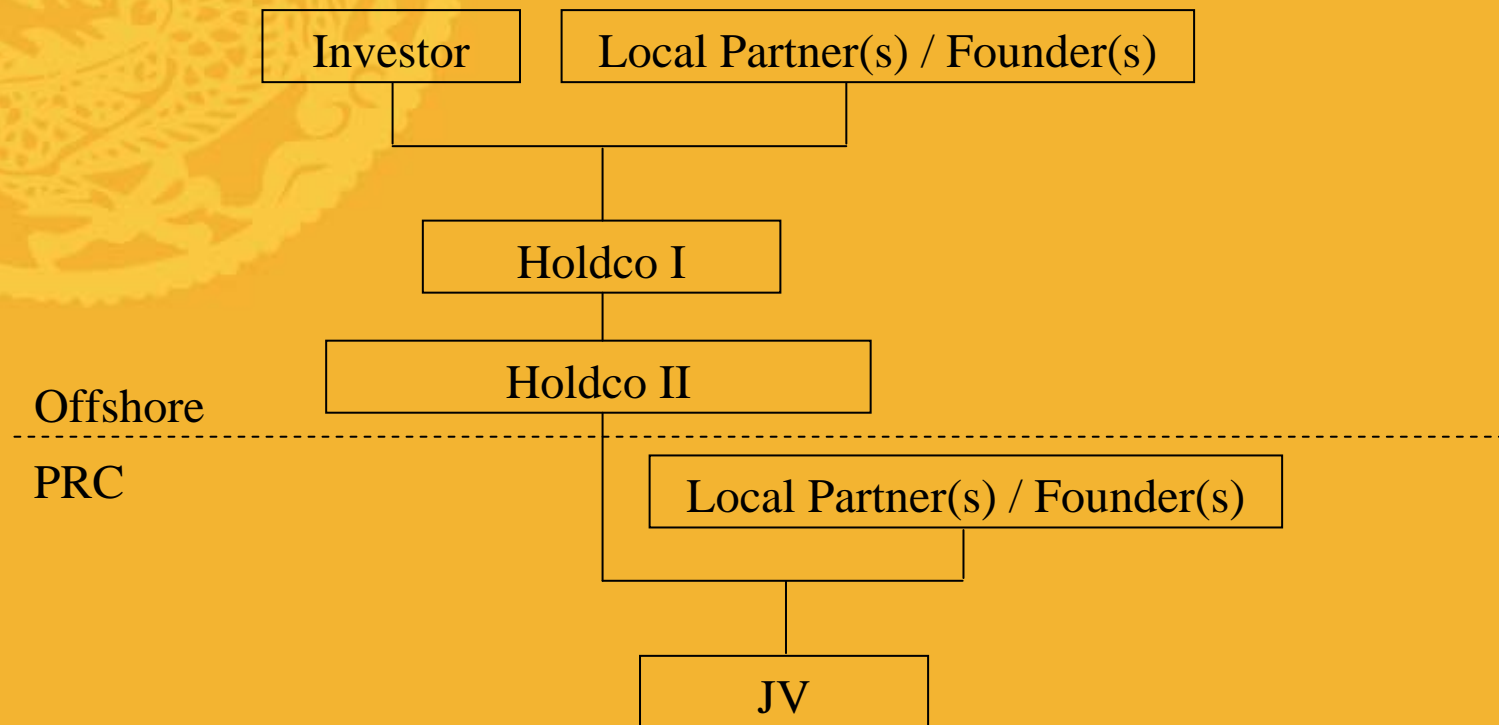
Deal Structuring – Onshore Structure



Deal Structuring – Offshore Structure



Deal Structuring – Hybrid Structure



Key Points for Investors – Control & Exit

- Approval Requirements/Veto Rights
- Liquidation Protection/Redemption/Put
- Anti-Dilution Protection
- Board Representation
- Ability to Migrate Onshore Ownership Offshore
- Management Continuity
- Stock Options
- Exit Methods

Investment Strategies

➤ **Foreign Direct Investment**

➤ **Mergers & Acquisitions**

➔ **Impact of New M&A Rules**

Key Aspects of the New M&A Rules

- **Central Ministry of Commerce Approval Now Required for Acquisition or Control of a PRC Enterprise which:**
 - **Involves a Key Industry**
 - **Has or May Have an Impact on National Economic Security**
 - **Owns a Well-known Trademark or a Historic Chinese Brand**

- **Role of Strategic Investors vs. Financial Investors**



Key Aspects of the New M&A Rules - Continued

- **Antitrust Review Requirements**
 - **Onshore Acquisitions of PRC Companies and Offshore Acquisitions of Non-PRC Companies with Significant Operations in China Subject to PRC Antitrust Reporting Obligations if Certain Thresholds are Triggered**

Thresholds that Trigger Anti-trust Review

Onshore Acquisitions

- Either party's revenues in China exceeding RMB1.5 billion per year;
- Acquiring party having acquired more than 10 enterprises in relevant industries in China within 1 year;
- Either party having 20% market share in China; or
- Acquisition resulting in either party having 25% market share in China.

Offshore Acquisitions

- Either party having onshore assets exceeding RMB3 billion;
- Either party's revenues in China exceeding RMB1.5 billion per year;
- Either party (with its onshore affiliates) having 20% market share in China;
- Acquisition resulting in either party (with its onshore affiliates) having 25% market share in China; or
- Acquisition resulting in either party (with its onshore affiliates) holding (directly or indirectly) equity interests in more than 15 FIEs in China.

Key Considerations for Foreign Investors

- **Pre-acquisition Restructuring**
 - **Has the Target Business Already Completed an Offshore Restructuring? If So, When?**
 - **If an Offshore Restructuring is Required, Critical to Identify Early all Required Approvals & Impact on Timing**

Key Considerations for Foreign Investors

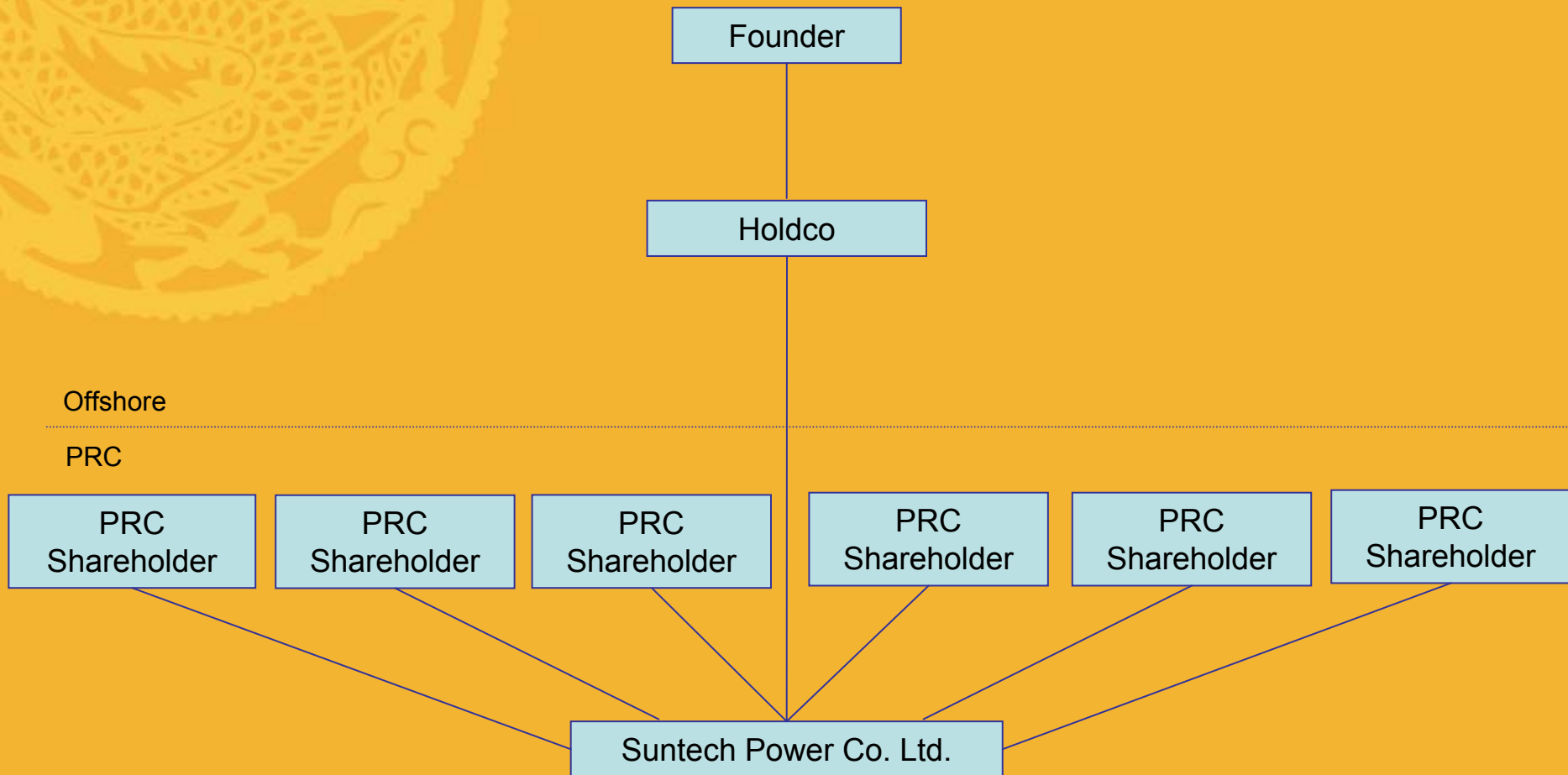
- **Will the Proposed Transaction Require Additional Regulatory Approvals by Virtue of:**
 - Involving a “Key Industry”?
 - Potentially Impacting “National Economic Security”?
 - Resulting in the Acquisition of a “Well-known Trademark” or “Historic Chinese Brand Name”?
 - Antitrust Issues?
 - Involving the Acquisition of State-owned Assets?

Case Study - Suntech Power (NYSE: STP)

- Consortium led by Goldman Sachs funded \$80M to Suntech Power 7 months prior to its global IPO and concurrent NYSE listing
- Financing enabled cashout of certain onshore domestic shareholders
(key financing closing conditions: SASAC confirmation of valuation by qualified valuation firm and executed equity transfer agreements)
- Simplified holding structure onshore
- Offshore structure to maximize management and investor value and facilitate liquidity
- Investor board representation and approval rights over defined operational matters
- Consensus on and incentives for desired exit

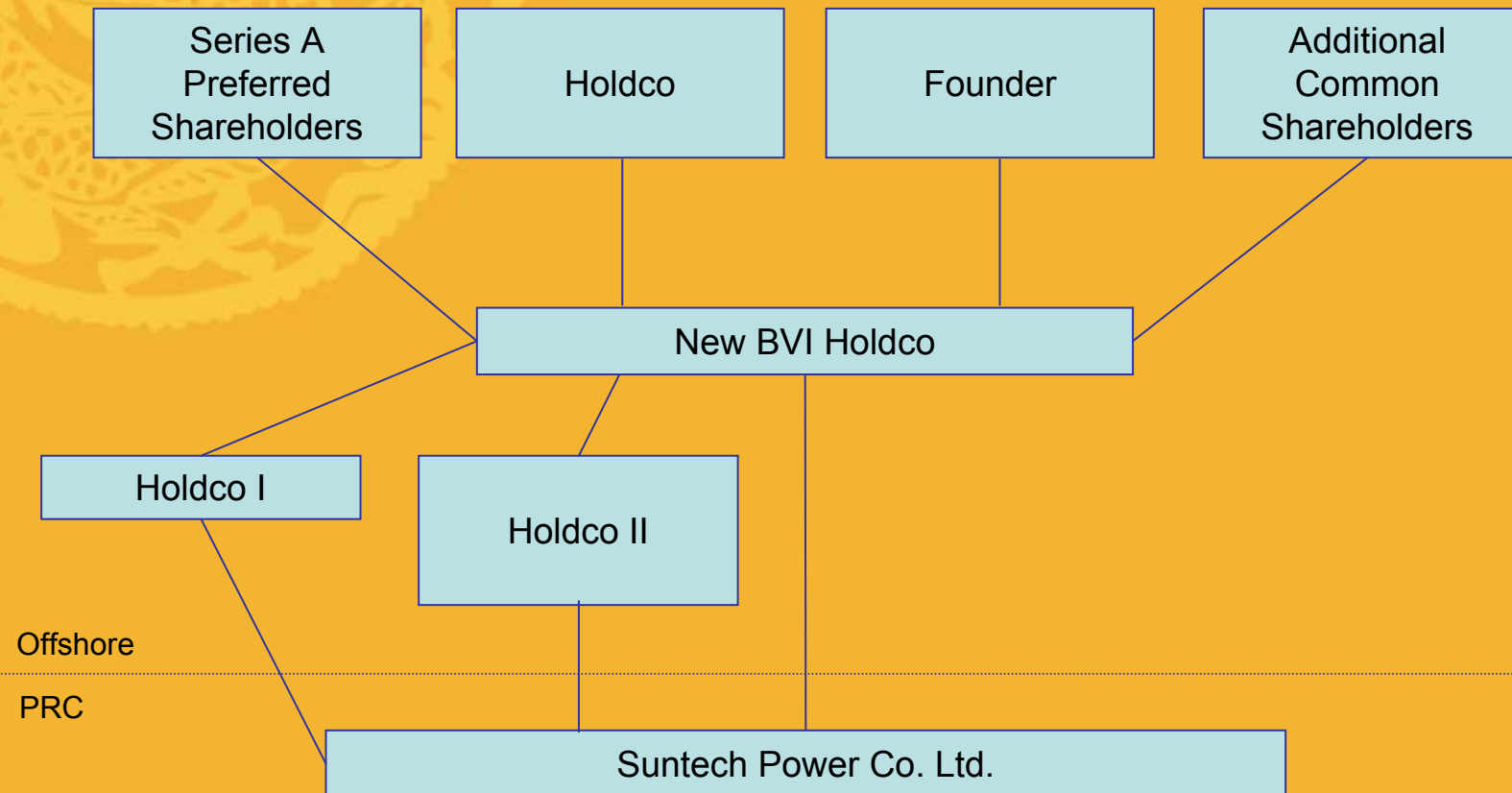
Case Study - Suntech Power (NYSE: STP)

Organizational Chart Prior to the Restructuring



Case Study - Suntech Power (NYSE: STP)

Organizational Chart Upon Completion of the Restructuring



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Government Structure & FDI Approval

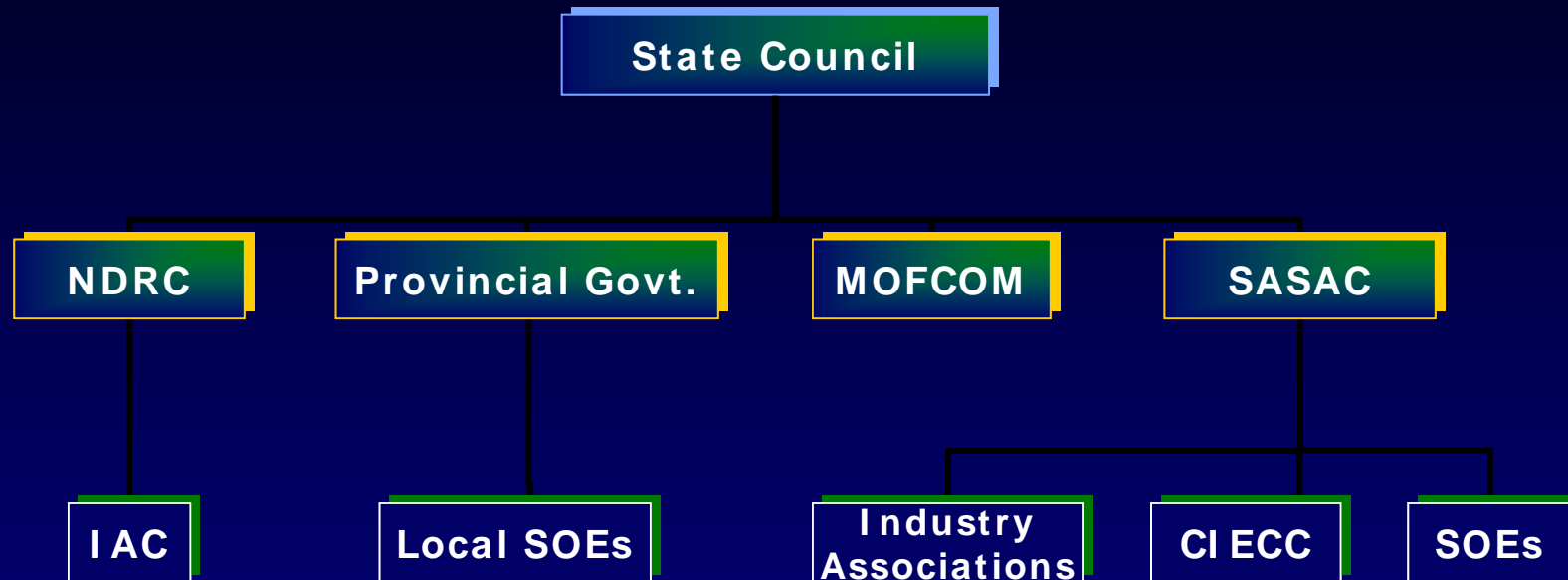
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March 2007

Government Structure & FDI Approval

- **Chinese Government Structure**
- **Roles of the Govt. Entities**
- **Foreign Investment Policies**
- **Approval Procedure: Investment Project**
- **Approval Procedure: Foreign Acquisition**

Chinese Government Structure



NDRC: National Development & Restructuring Commission, previously State Planning Commission

MOFCOM: Ministry of Commerce

SASAC: State-owned Assets Supervision & Administration Commission

SOE: State-owned Enterprise

CIECC: China International Engineering Consulting Corporation

IAC: Investment Association of China

Roles of the Govt. Entities

- NDRC

- Development planning
- Economic reform
- Economic operation
- Investment project approval
- Arranging Govt. Investment
- Price control

- MOFCOM

- International trade
- Domestic trade
- FDI approval
 - FDI Trading companies
 - FDI Certificates for NDRC approved projects

- SASAC

- Mgmt. of central Govt. owned SOEs
 - No financial function
- Supervising Industry Associations

- Industry Associations (Ministry grade)

- Representing the sector's interest
- Coordination within the sector
- Sector statistics

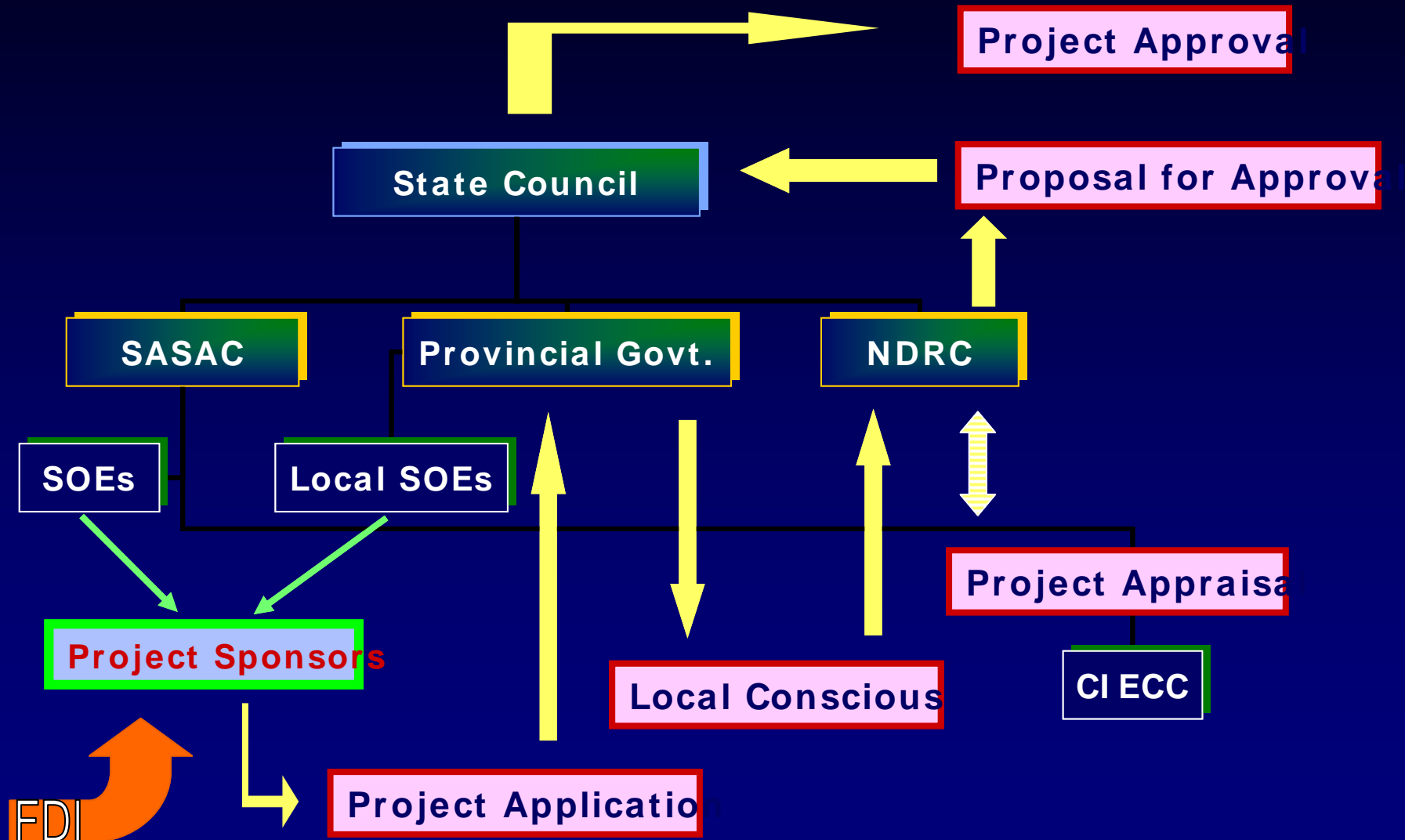
Foreign Investment Policies

- Preferential income tax for foreign equity > 25% (productive FDI)
 - 2 years of exemption, 3 years of half tax rate
 - 15% of income tax in coastal areas, vs. 30% for domestic enterprises
 - Local Govt. may offer additional preference from its own tax revenue
- 4 categories of FDI projects
 - Encouraged, easier approval
 - Allowed, WOFE allowed, except special restriction
 - Restricted, no controlling position for FDI
 - Prohibited, no FDI
- Approval authorities

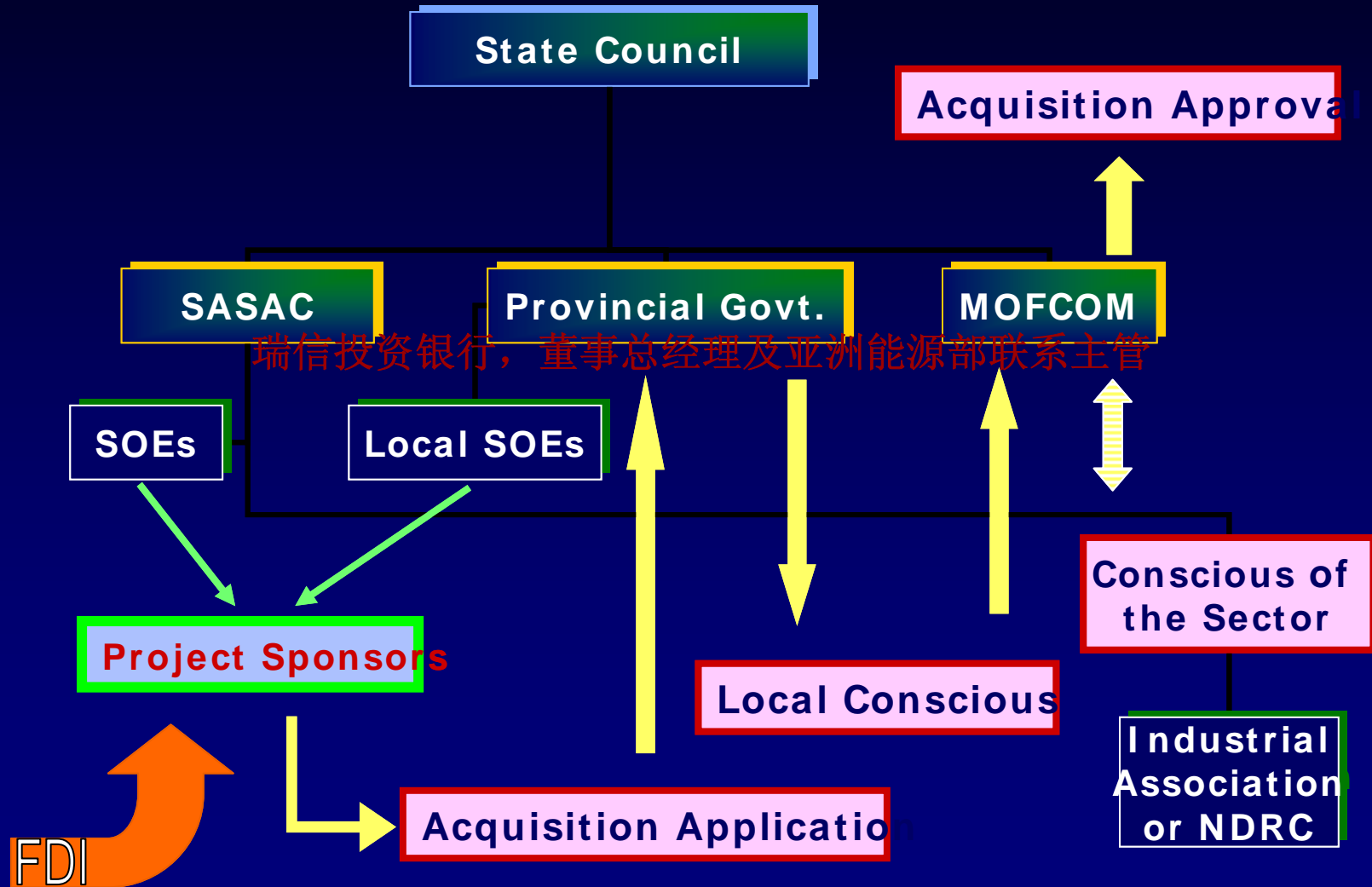
	Provincial & below	NDRC	State Council
Encouraged	Green	Yellow	Orange
Allowed	Green	Yellow	Orange
Restricted	Green	Yellow	Orange
	US \$50mm	US \$100mm	US \$500mm

Coal Mining & Power Projects need central government approval in general!

Approval Procedure: Investment Project



Approval Procedure: Foreign Acquisition



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China Investment - Opportunity & Restriction

Roman Shaw

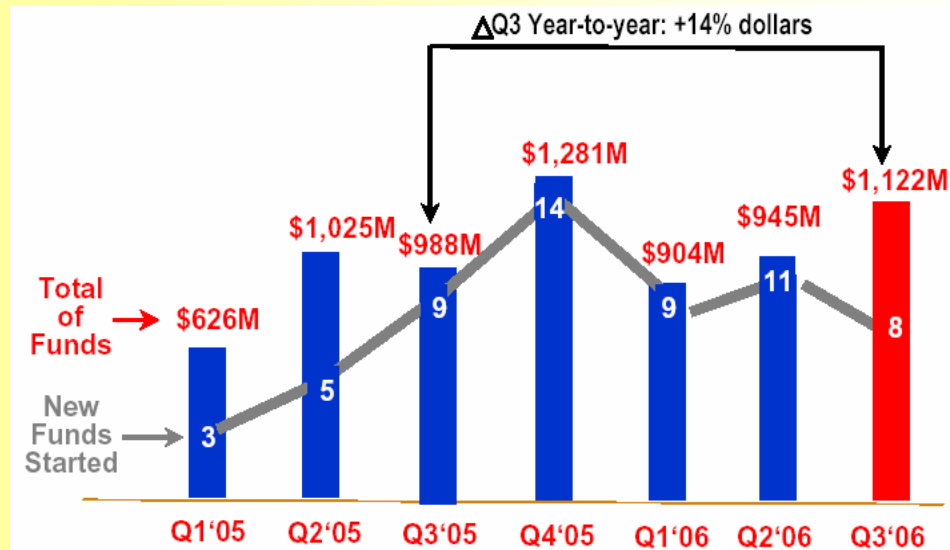


DT CAPITAL PARTNERS

China Investment - Opportunity & Restriction

China Investment – VC & PE fund raising

■ Fund Raising:



Resource: Zero2IPO

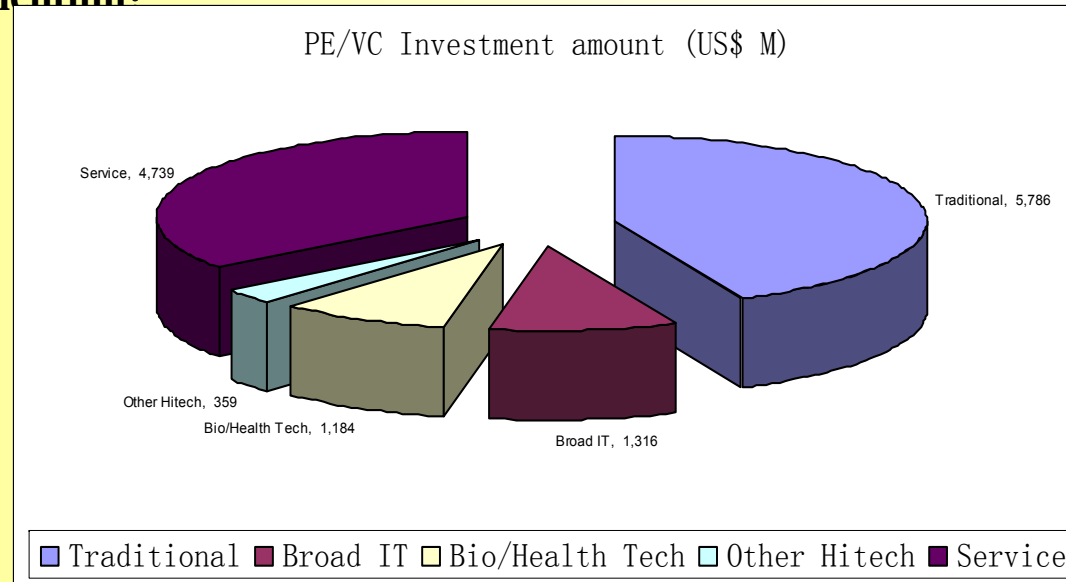


DT CAPITAL PARTNERS

China Investment - Opportunity & Restriction

China Investment - Diversification

- Investment is diversified with more traditional industry momentum.



Source: Zero2IPO



DT CAPITAL PARTNERS

China Investment - Opportunity & Restriction

China Investment - Opportunity

■ Solar Power – Different Life at Different Position in Value Chain

▹ Luo Gui, LDK, Wuxi Suntech

■ Wind Power – Bull Equipment Maker

▹ Jinfeng, Baoding HT

■ Oil Equipment – Import Substitution

▹ Shandong Mo Long, MSP, Jin Hu

■ Bio fuel & Other Alternative Gasoline – Non-grain Production More Reasonable



China Investment - Opportunity & Restriction

China Investment - Restriction

■ Buy side

- ↯ Limit access to “strategic” industry
- ↯ Domestic exit channel improved but still limited

■ Sell side

- ↯ Restriction of red chip company structure setup by P.R.C citizen
- ↯ IP issue





Closing Remarks

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