

Guideline for Establishing a wholly foreign-owned enterprise in China (WFOE)

When foreign investors hope to set up a company in China, the company can be established in one of the below 4 forms in relation to its shareholder and management situation:

- ✓ Wholly foreign-owned enterprise (WFOE)
- ✓ Foreign-invested Companies Limited by Shares (FICLS)
- ✓ Sino-Foreign Equity Joint Ventures
- ✓ Sino-Foreign Cooperative Joint Ventures

This article describes how to establish a wholly foreign-owned enterprise (WFOE) in China.

1. Name of the company

With the foundation of the company, the exact enterprise name must be set.

An enterprise's name shall be composed of the name of its:

- ✓ Administrative division (e.g. 'Shanghai');
- ✓ Identifier (Brand Name);
- ✓ Industrial sector (e.g. 'Trading');
- ✓ Organizational form (Basically it's 'Company Limited')

It should be mentioned that certain words such as 'China', 'Chinese', 'National', 'State', or 'International' can only be used under limited circumstances. When the enterprise's name doesn't contain the administrative division or the industrial sector, it is subject to special approval.

2. Organizational Form

Basically, the organizational form of a WFOE should be a limited liability company (LLC), but it may also be another form of liability when subject to special approval.

3. Legal representative

The legal representative of a WFOE is an individual who has the responsibility for and the power to represent the enterprise in accordance with its Articles of association.

4. Registered Capital

After reforming the previous "paid-in" registered capital registration system to the subscribed registered capital registration system in the year 2014, except for some special industries like financial industry, currently there is no minimum shareholder capital restriction for setting up a LLC in China. In other words, "1 RMB company" is possible in China. However, you still need to decide a proper registered capital for your company and take into consideration the legal responsibility, financing needs and your customer group. The legal representative of a WFOE



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5. Legal address

The exact location of the company needs to be found and be registered as the legal address. If it's a lease, a rental period of at least 12 months is required. The lease contract should be made with correct formatting and registered with the local real estate authority. To ensure the legitimacy of the property, certificates of land rights should also be obtained from the landlord. Artax Rufil Consulting can assist you in finding location and legal address registration in China.

6. Business Scope

China prohibited private entities from engaging in industries like mining, education, hospital for 100%. Also, in some other industries the establishment of WFOEs is prohibited or restricted. We suggest you to make sure your business scope in China is not restricted or prohibited, or subject to the special administration measures for foreign investment access.

7. Required procedure for a Start-up

The Start-up procedures of a “WFOE” comprise the following steps:

7.1 MOFTEC (Ministry of Foreign Trade and Economic Cooperation) approval

The Ministry of Foreign Trade and Economic Cooperation(MOFTEC) carries out the examination and approval of applications to establish WFOEs, the below documents must be submitted to the MOFTEC for obtaining a MOFTEC approval.

- ✓ Commitment letter by all investors or their representatives;
- ✓ Pre-approval documents for the name of the WFOE;
- ✓ Power of attorney appointing the representatives and the identify paper of the representatives;
- ✓ Certificate or identify document of investors and legal representative for the application.

7.2 Five-in-one business license

After receiving the MOFTEC approval certificate, the registration and application for a Five-in-one business license can be made to the local AIC. The Five-in-one business license contains a standardized national credit number, which covers:

- ✓ Social security registration certificate;
- ✓ Statistical registration certificate;
- ✓ Business license;
- ✓ Organization code;
- ✓ Tax registration certificate.

8. After the registration of the company

The following steps must be taken to complete the foundation of the company:



- ✓ Creation of the company's stamps; (Including the Company Stamp, the Legal Representative Stamp, the Contract Stamp, the Financial Stamp, the Fapiao Stamp)
- ✓ Legal representative identity verification in tax authority;
- ✓ Opening of the foreign exchange and RMB bank account;
- ✓ Import and export registration(only for trading WFOE);
- ✓ General VAT taxpayer related procedures(If the company hopes to gain general taxpayer status).

Taxpayers in China are divided into 2 categories in relation to VAT: General Taxpayer and small-scale taxpayers. The latter are taxpayers offering VAT-taxable services with maximum annual sales of 5 million RMB, all other taxpayers are under the general classification. Despite lower VAT rates for small-scale taxpayers, general taxpayers can deduct input VAT from output VAT, reducing the overall tax burden of the company. To gain general taxpayer status, an application form and tax registration certificate must be submitted to the local tax authorities.

9. Deadlines and required documents

The registration itself is usually completed within 30 working days after submission of all documents. The entire preparation and establishment of a "WFOE" until the opening of bank accounts generally takes up to six weeks.

For the foundation of a WFOE, the following information and documents are needed:

- ✓ Full and abbreviated name of the company in Chinese and English;
- ✓ Chinese Address of the company with a telephone number;
- ✓ Business scope of the company;
- ✓ Full name of the legal representative, passport details (scanned copy of the passport and), address and telephone number;

Documents needed:

- ✓ Photocopies of qualification certificates of all investors;
- ✓ "Power of Attorney in Respect of Service of Legal Document" signed by the foreign investors (authorizer) and the legal documents recipient on the territory of China (authorizee).
- ✓ Application for Registration of a Foreign-invested Enterprise signed by the Legal Representative;
- ✓ Contract & articles of association;
- ✓ Contract of house leasing (lease for more than one year), and real estate certificate;
- ✓ Reference letter of foreign investors' banking credibility;
- ✓ Appointment letter of the members of Board of Directors & their valid ID copies;

The commercial license issued outside China needs an apostille. The necessary translations of the documents listed above, are to be made in China. The apostille must be prepared in your country, at the competent authority. We ask you to provide us with scanned copies via E-mail in advance and then send the originals by a specialized document courier service.

Also, the Chinese authorities might require the shareholders and legal representative to be in present in some certain points during the registration procedure. *(Stanley: This is a new requirement from AIC in China and is changing, might need to be revised.)*



10. Accounting accompaniment in China

All companies registered in China, including representations of foreign companies, are legally obliged to keep an account and report to the authorities regularly. This obligation also exists if the company is not or not yet commercial. When assigning an accountancy mandate, we recommend that the responsible accountant be a Chief Accountant certified in China and speaks fluent English.

We provide accounting outsourcing services to international companies in China.

11. Work permit in China

A foreign employee requires a work permit to be able to work in a company in China. The processing of a high-qualified work-permit application through the Chinese Labor authority usually takes between 25 and 30 days.

Closing words:

This brochure is a summary and partly schematic overview of the rules and requirements provided by the legislation in China. It is for informational purposes only and does not offer any legal advice. It is recommended to receive an individual consultation on the matter before making a transaction.

We at Artax Rufil Consulting solve problems, provide solutions and optimize international tax and corporate strategies. Therefor we break new ground, set new standards and improve the quality of life for our clients, employees and investors!

If you have any questions, please do not hesitate to contact our office in Shanghai/ China

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As of: August 2018

