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Business Entities in China

General

The principal forms of business entities available to foreign investors in Shanghai are:

1. Foreign Investment Commerce Enterprises (FICE)

- a) Equity Joint Venture (EJV)
- b) Cooperative Joint Venture (CJV)
- c) Wholly Owned Foreign Enterprise (WOFE)

2. Foreign Enterprises

- a) Representative Office (Rep. Office)
- b) Branches of Foreign Enterprise
- c) Enterprises other than those listed above that have establishments or places of business in China and engage in production or business operations, e.g. factory, places for exploitation of natural resources, contracted project sites.

Laws and Regulations Relating to Formation of Business Entities

When choosing among different forms of business entities, it should be noted that not all types of entities are available for all kinds of industries. The formation, organisation, management of most of these entities are governed by their respective laws and regulations, which are special laws relating to the particular form of business entities in question. In 1994, the first company law of China, which is a "general law" was enacted. Briefly speaking, special law should be used and general law should only be relied upon in circumstances when there is no provision in special law.

The new company law of the People's Republic of China (PRC) took effect in January 2006. The new law brought about many changes to the old company law and aimed at improving commercial and corporate governance.

The following laws are applicable when setting up business entities in China:

General Law

Company Law of the PRC (中華人民共和國公司法)

Special Law

Law of the PRC on Chinese Foreign Equity Joint Ventures (中外合資經營企業法)

Law of the PRC on Chinese Foreign Cooperative Joint Ventures (中外合作經營企業法)

Law of the PRC on Enterprises Operating Exclusively with Foreign Capital (外資企業法)

Different Forms of Business Entities Available to Foreign Investors

	EJV	CJV	WFOE	Rep. Office	Branch
Special Law	Law of the PRC on Chinese Foreign Equity Joint Venture	Law of the PRC on Chinese Foreign Cooperative Joint Ventures	Law of the PRC on Enterprises Operating Exclusively with Foreign Capital	Law of the PRC on Enterprises Operating Exclusively with Foreign Capital	No special law applicable, Governed only by Company Law
Legal Person (corporation)	Yes, Limited Liability Company	Yes, Limited Liability Company unless specified on the constitution	Yes, Limited Liability Company but can be in other forms upon application and approval	No	No
No of Owner	Minimum 2 of which one must be Chinese national	Minimum 2 of which one must be a Chinese national	Minimum 1	N/A	N/A
Board of Directors	Yes, at least 3 persons	Yes, at least 3 persons	Yes – at least 3 persons. For small scale company, no board of directors (BOD) is required, but there is a requirement of at least 1 executive director in the company. The executive director will be the legal representative of company.	N/A	N/A
Capital Required	The minimum amount required by that industry. At least 25% must be contributed by foreign parties.	No minimum contribution is required from foreign party initially	The minimum amount required by that industry.	No capital requirement	[See below]
Audit	Required	Required	Required	Required	[See below]
Profit and Loss Sharing	In accordance with the proportion of capital contribution	In accordance with the contract of the CJV	Solely borne by the foreign investor	N/A – a representative office should not conduct business in China	Solely borne by the foreign parent

Branch

In theory, branches of foreign companies can be registered under the Company Law but practically, since there is no implementation regulation relating to the registration and administration of branches in China, only certain industries are allowed to set up branches in China and only in certain locations. Currently, the only industries allowed to set up branches in China are:

1. Branches of foreign banks, which are governed by a special set of regulations implemented by the People's Bank of China (the Central Bank) and
2. Branches of foreign companies operating in one of the designated districts in Beijing, which are engaged in high-technology industry. Separate regulations promulgated by local government apply.

Company Law of the PRC

The company law of the PRC permits two types of corporate entities are:

1. Limited Liability Companies (LLC)
2. Companies Limited by Shares (Joint Stock Company) (JSC)

	LLC	JSC
No. of Shareholders	Minimum 1	At least 5 promoters. The majority of the promoters must be domiciled within China. Established by promotion – promoters must subscribe to all the shares Established by share offer – promoters must subscribe to at least 35% of the shares. The remaining shares shall be offered to the public.
Minimum Registered Capital	RMB 30,000 dependent on the industry. More capital may be required for particular businesses due to specific requirements under the law	RMB5,000,000 dependent on the industry. More capital may be required for particular businesses due to specific requirements under the law
Capital Contributions	Includes cash, tangible assets, industrial property, non-patented technology, or land-use rights. Industrial property and non-patented technology should not exceed 20% of the registered capital, except otherwise required by law	Promoters can contribute in the form of cash, tangible assets, industrial property, non-patented technology, and land-use rights. Industrial property and non-patented technology should not exceed 20% of the registered capital, except otherwise required by law
Share Transfers	Requires the consent of the majority of shareholders if transfer to non-shareholders	Must be made through a securities exchange. Promoter shares may not be transferred within 3 years of the establishment of the company. Directors, supervisors and management should not transfer their shares during their term of office
Board of Directors	3 to 13 directors (with some exceptions)	5 to 19 directors
Supervisory Committee	Required: <ul style="list-style-type: none"> • For small scale company: 1-2 • For large company, not less than 3 	Not less than 3 persons.

EJV, certain CJV and WOFE are limited liability companies. Foreign investors cannot set up solely owned Joint Stock Company but they may set up Joint Stock Company with Chinese partners. Joint Stock Company can be established through promotion or share offering. Currently, PRC government encourages the setting up of JSC only in high-technology production industries. The minimum capital requirement is RMB10 million and the foreign investor should not own less than 25% of the registered capital.

General Procedures for Setting up Business Entities

Application procedures for different types of Business Entities are different. Please refer to our respective Fact Sheets. In general, it is a two-step procedure:

1. **Approval** - applicant should obtain approval from the Ministry of Commerce of the PRC (中华人民共和国商务部) and the Administration Bureau of Industry and Commerce (国家工商管理局).
2. **Registration** - registration at the respective authorities. The foreign enterprise may engage an agent authorized by the Shanghai Administration of Industry and Commerce to handle the application on its behalf.

Approval Authorities

Approval authorities are distributed among various State Council Departments (国务院) and are delegated to their local offices. Please refer to our Fact Sheets for information. Please note that the Central Government works on an “approval system” instead of a “registration system”.

Criteria for Granting Approval

Please note that the Shanghai Government works on an “approval system” instead of a “registration system”, that is, the application may be rejected without any reason given. Nevertheless, Shanghai has been reckoned as having the most liberal policies in approving establishment of business in the country. However, the following criteria have been considered beneficial to the City and therefore approval is more likely to be secured:

- The enterprise will use advanced technology and equipment
- The enterprise will use advanced management technique and has proven management experience, as reflected by the status of its parent company.
- The enterprise will export all or most of its produced products.

Moreover, it is important that the necessary requirements be fulfilled and documents required by the government be fully and accurately submitted. Some of the requirements are:

1. The parent company/investor should have at least one to three years of operating results.
2. A business address (for commercial operations) located in a building, which is approved by the government to house foreign enterprises, is required. For manufacturing concerns, the factory should be located at a site approved by the government.
3. For non-Chinese documents, certified translation by approved translator are required.
4. Notarization of statutory documents of the parent company may be required.

Capital Requirement

China adopts a registered capital system. All registered capital must be paid up in cash, physical assets or intangible assets. If the capital is not in the form of cash, then valuation according to regulations relating to the particular industry by a local “valuation professional” is required.

Strict capital injection requirement must be fulfilled. “Capital” includes not only registered capital but also promissory loans from the parent company or financial institutions. Different regulations for different industries govern the minimum capital requirements and the schedule of injection. Local auditors should be engaged to issue audit report on capital injection.

If capital is not injected according to the schedule, business license and certificate granted may be withdrawn.

Name

The foreign enterprises operating in Shanghai has to submit their proposed names to their respective government departments for approval.

Business Address

The requirement is that the office/ factory must have a separate business address and must be located in commercial buildings (i.e. non-residential buildings) or sites approved by the government.

Post Establishment Registration Procedures

Upon the issuance of a business license, the applicant is required to complete post-establishment registration procedures which mainly involve:

1. Opening of bank accounts
2. Registration with the Inland Revenue
3. Application of a “Enterprise Code” (企業代碼)
4. Preparation of statutory stationery, including company chops
5. Registration with the State Statistics Bureau
6. Registration with the Customs Office.
7. Application for employment visas (for expatriate staff)
8. Capital injection and Verification of capital

Time Required

In general, it takes around 3 months to complete the necessary registration of entities in China. However, some special industrial entities may require different pre-establishment licenses from the relevant authorities. The length of application time of these licenses will depend on the project size. For details, please refer to respective fact sheets.

The Role of Manivest

Manivest can help investors to:

1. Prepare pre-establishment documents (minutes, power of attorney etc.), arrange translation, notarization and certification from various authorities.
2. Engage Registration Agent and supervise the registration work.
3. Draft the necessary project proposal and feasibility study report.
4. Engage auditors for the examination of capital injection and annual examination.
5. Locate suitable business address and arrange for leasing, set up office, including arranging telephone, fax and broadband, acquisition of office machine and furniture.
6. Employ local staff and complete formalities in accordance with labour laws.
7. Post -establishment registration work and open bank accounts.
8. Annual Joint Inspection Report.

Through our offices and staff in Shanghai and Hong Kong, Manivest shall follow through the establishment process and save investors time and trouble.

How Manivest Can Help You

The directors and management of Manivest are professionals in the offshore industry having served the Asia market for over 22 years. Through our offices in Hong Kong, Shanghai and Macao as well as our associates in other Asia cities, we offer a full range of comprehensive value-added services to professional advisors and their clients.

Manivest offers the following services:

- Formation of corporate and business structures in Shanghai
- Incorporation of companies/structures in other onshore/offshore jurisdictions
- Full corporate management services
- Registered office, business office, mail redirection and business centre
- Accounting and re-invoicing services
- Tax and asset planning services
- Asset protection and preservation advisory services
- Business establishment services
- Market exploration services

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