

Establishment of a Joint Venture. Memorandum. Doc

In order to establish a Joint Venture in China, the first step shall be to find a qualified and agreeable Chinese partner. In this regard, it should be borne in mind that Chinese laws often (expressly or by implication) provide for qualification requirements on the Chinese partner to a joint venture. Therefore, when seeking a joint venture partner, it is essential to ensure that the Chinese partner has the legal capacity to act as an investor in an equity joint venture by entering into a joint venture contract.

Approval of NDRC and the “department in charge”

If the Chinese partner is a State-owned enterprise and the proposed project will involve government investments in certain critical industries, the approval of National Development and Reform Commission (“NDRC”) or/and its local branches on the proposed project is needed.

With respect to each State-owned enterprise in China, there will be a “department in charge” (zhuguan bumen in Chinese) which is responsible for administration and supervision over that enterprise. As a result, the consent to the co-operation with foreign investor from such department in charge of the Chinese partner (to the extent that the Chinese partner is a State-owned enterprise or does have a “department in charge” in practice) is fundamental to the proposed co-operation between the Chinese and foreign parties.

Letter of Intent

After the Chinese partner and the foreign partner have reached an agreement on establishing a joint venture, they should conclude a letter of intent. Despite the non-binding effect, the letter of intent normally sets out the principal terms for the co-operation (such as the proposed business scope, total investment and constitution of the board of directors of the joint venture) as well as other procedure-related matters.

Project Proposal

Following the execution of the letter of intent regarding establishment of a joint venture, the Chinese partner should be responsible for preparing a project proposal (xiangmu jianyi shu in Chinese). The project proposal should contain the statements covering the major aspects of the future venture, such as the total investment and registered capital, capital contribution, supply of raw material, estimate of foreign exchange income and economic benefit.

The approval authority will make a decision as to whether or not to approve the project listing/project proposal within 20 working days of acceptance of the above-listed application documents. This project proposal and project listing procedure may not be needed in some provinces or cities in China.

Registration of Enterprise Name

Within 30 days of approval for the project listing/project proposal, the enterprise name registration procedure should be conducted with the relevant local branch of the AIC.

By completing the foregoing procedure, the proposed name could be registered with the registration authority to prevent third parties from using the same enterprise name, regardless of the fact that at the time of enterprise name registration, the JV is yet to be formed.

Feasibility Study

Upon the approval for project listing/project proposal, the Chinese partner and foreign partner should jointly prepare the feasibility study for the equity joint venture, detailing the feasibility of market, funds, technology, raw material, site, etc. of the joint venture. In the event of any issue or dispute arising out of the preparation for feasibility study, the Chinese partner and foreign partner may turn to the approval authority from time to time for co-ordination.

Joint Venture Contract and Articles of Association

Simultaneously with preparation for the feasibility study, the Chinese partner and foreign partner may begin to draw up the joint venture contract and articles of association. The joint venture contract and articles of association will compose the main part of the constitutional documents in respect of the joint venture. As a common practice, certain documents will be attached to the joint venture contract and articles of association, which may include details of capital contributions of each partner, technology transfer/license contract (if any).

Location of Joint Venture

Simultaneously with preparation for the feasibility study, the joint venture contract and the articles of association, the Chinese partner and foreign partner may begin to decide the location of the proposed joint venture and to sign the relevant site usage contract (for instance, land use rights granted contract, site lease contract, and so on).

Establishment of Joint Venture

Once the feasibility study, the joint venture contract and articles of association are in place, the Chinese partner may apply to the approval authority for approval for the establishment of the proposed joint venture.

The approval authority will make a decision as to whether or not to approve the establishment of the joint venture within 30 to 45 working days. In the case of a positive approval, the approval authority will issue a formal approval letter (pifu in Chinese) in favor of the joint venture. If the approval authority refuses to grant the approval, as a

matter of practice, it will raise comments on the documentation concerning the joint venture and withhold the approval until the documents have been amended to its satisfaction.

Enterprise Code

After issuance of the formal approval letter, the Chinese partner should apply for and obtain an enterprise code for the joint venture by presenting the formal approval letter to the relevant authority in charge.

Issuance of Approval Certificate

After the procedure for enterprise code has been fulfilled, an application to the approval authority shall be made for issuance of approval certificate by completing and submitting certain documents in standard form as required by the approval authority. An approval certificate will be issued by the approval authority in the name of the joint venture within 10 days. The approval certificate certifies the “substantial” establishment of the joint venture in the sense that the matters following the issuance of approval certificate are of purely procedural nature.

Issuance of business License

Within 30 days of issuance of approval certificate, the Chinese and foreign partners should go through the registration procedure with the registration authority for issuance of business license.

Within 30 days of acceptance of the corresponding documents, the registration authority will make a decision on whether or not to register the joint venture. In practice, it is not common for the registration authority to refuse to register the joint venture in that the joint venture has been duly approved by the approval authority.

Upon the completion of the registration, the registration authority will issue a business license in the name of the equity joint venture, whereby the equity joint venture is ultimately formally established.

Other on-going registration

Following the formal establishment of the joint venture with the issuance of business license, the joint venture is required to further go through registrations with tax authority (i.e. the State Taxation Bureau and the Local Taxation Bureau), foreign exchange authority (i.e. the State Administration of Foreign Exchange), the Customs, etc., and to obtain the relevant certificates for its business operation.

For further details on the procedures and documents required for the establishment of a JV please see Annex 1.

ANNEX 1 Application Procedures for Establishment of Joint Venture

STEP	RELEVANT GOVERNMENT AGENCY AND REQUIRED DOCUMENTS	REMARKS
Enter into Letter of Intent		
Approval for Project Proposal	Development and Reform Commission	
<u>Pre-registration of the name of JV</u>	Local Administration for Industry and Commerce	
	<u>Documents:</u>	
	1. Application form including Power of Attorney to authorize appointed person to arrange reservation of JV's company name	<ul style="list-style-type: none"> • Such Form can be obtained AIC.
	2. Certificate of Incorporation or Memorandum of Association of the Oversea Investor. These copies must be: (a) certified as a true copy by a notary public; and (b) legalized by an Chinese Embassy, Consulate General or Representative Office (if there is no Embassy) closest to Oversea Investor. Business License of Chinese Investor.	
	3. ID card or passport page with photo of Legal Representative of JV	<ul style="list-style-type: none"> • 1 copy with clear and authentic signature of the Legal Representative • Normally, Legal Representative under Chinese Laws shall be Chairman, Executive Director or General Manager of JV. Such person will be appointed by both Chinese and Oversea investors.

Enterprise Certificate Code	Bureau of Quality and Technical Supervision	
<u>Application for Approval of JV</u>	MOC's Local counterpart ("the Examination and Approval Authority")	
	<u>Documents:</u>	
	1. A completed standard application Letter with the common seal of Chinese and Oversea Investors (if any) and original signature of CEO, President, or Director of Chinese and Oversea Investors .	<ul style="list-style-type: none"> CEO, President, or Director of Parent means person who should be responsible for signing all papers for JV establishment process.
	2. A resolution by the board of directors of Chinese and Oversea Investors authorizing the establishment of JV	
	3. Bank Letter including Capital Balance and Credit Status of Chinese and Oversea Investors issued by bank of Chinese and Oversea Investors .	
	4. Certificate of Incorporation or Memorandum of Association of Chinese and Oversea Investors. These copies must be: (a) certified as a true copy by a notary public; and (b) legalized by an Chinese Embassy, Consulate General or Representative Office (if there is no Embassy) closest to Chinese and Oversea Investors.	
	5. Articles of Association of JV	
	6. Project Proposal	
	7. ID card or passport page with picture of CEO, President, or Director of Chinese and Oversea Investors	<ul style="list-style-type: none"> copies with clear and authentic signature of such person
	8. ID card or passport page with	<ul style="list-style-type: none"> with clear and authentic

	picture of Legal Representative of JV	signature of the Legal Representative
	9. The résumé of JV's legal representative.	
	10. Photos of JV's legal representative	<ul style="list-style-type: none"> • Passport-sized
	11. Appointment Letters appointing Legal Representative, all the members of the board of directors (or the Executive Director), General Manager of JV	
	12. A list including Legal Representative, all directors (or Executive Directors), and General Managers of JV	<ul style="list-style-type: none"> • Must be signed by CEO, President, or Director of Chinese and Oversea Investors
	13. ID card or passports of JV's all directors including the Chairman and/or Vice Chairman and/or Executive Director and General Managers plus each person's résumé	
	16. A brief introduction of Chinese and Oversea Investors, consisting of biographical details, provided by Chinese and Oversea Investors	
	17. Feasibility Study Report signed by Chinese and Oversea Investors	
	18. Audit Report of Chinese and Oversea Investors for the most recent fiscal year	
	19. JV's name reservation notice	<ul style="list-style-type: none"> • It should have been obtained at the first stage.
	20. Assets Evaluation Report	<ul style="list-style-type: none"> • Required only if there will be in-kind contribution
	21. Lease Agreement	
	22. Record Certificate of the Lease Agreement with Real Estate Exchange Center	<ul style="list-style-type: none"> • Some local AIC may require Lease Agreement to be filed with local Real

		<p>Estate Exchange Center. Therefore, such record will be a pre-requisite.</p> <ul style="list-style-type: none"> • The filing shall be arranged by both Landlord and Tenant.
	23. Property Ownership Certificate of the business premises of JV	<ul style="list-style-type: none"> • The copies with company seal of landlord on each page • Need to get help from Landlord.
	24. Qualification Certificate of Fire Protection for leased premises	<ul style="list-style-type: none"> • Need to get help from Landlord.
	25. Environmental Impact Assessment Report and its approval	<ul style="list-style-type: none"> • Need to be prepared by qualified Environmental Agency
	26. Project Location Proposal and Permission of Land Use issued by City Planning Department	
	27. Power of Attorney authorizing the execution of organizational documents for JV	<ul style="list-style-type: none"> • It shall be signed by Chinese and Oversea Investors
	28. Power of Attorney for law firm	<ul style="list-style-type: none"> • It shall be signed by Chinese and Oversea Investors
	29. Power of Attorney for lawyer	<ul style="list-style-type: none"> • It shall be signed by Chinese and Oversea Investors
	30. Power of Attorney for the Service of Legal Documents	<ul style="list-style-type: none"> • It shall be signed by Chinese and Oversea Investors
<u>Application for Registration of JV with Administration for Industry and Commerce</u>	Administration of Industry and Commerce (“AIC”)	
	<u>Documents:</u>	

	1. Registration Application Form	<ul style="list-style-type: none"> From relevant AIC They should be signed by both JV and Chinese and Oversea Investors
	2. JV's Certificate of Approval	<ul style="list-style-type: none"> It should have been obtained at the second stage.
	3. Original of Duplicate 1 of the Certificate of Approval	<ul style="list-style-type: none"> It should have been obtained at the second stage.
	4. Original of Official Reply from the Examination and Approval Authority which agreed the establishment of JV	<ul style="list-style-type: none"> It should have been obtained at the second stage.
	5. Application Cover Letter in Chinese	
	6. Copies of all the documents submitted at the above two stages	
Post-Registration with AIC	Relevant Government Authority	Remarks
<ul style="list-style-type: none"> Obtain Company chop 	Public Security Bureau	
<ul style="list-style-type: none"> Obtain FOREX Certificate 	State Administration of FOREX Local Branch	
<ul style="list-style-type: none"> Obtain Tax Registration Certificate 	Foreign Taxation Department of Taxation Bureau	
<ul style="list-style-type: none"> Obtain Statistic Registration Certificate 	Statistic Bureau	
<ul style="list-style-type: none"> Customs Registration Certificate 	Customs Bureau	
<ul style="list-style-type: none"> Open social security account 	Local Labor and Social Security Bureau	

