

## **INTRODUCTION TO WFOE**

The Wholly Owned Foreign Enterprise (WFOE) is a Limited liability company wholly owned by the foreign investor(s). In China, WOFEs were originally conceived for encouraged manufacturing activities that were either export orientated or introduced advanced technology. However, with China's entry into the WTO, these conditions were gradually abolished and the WFOE is increasingly being used for service providers such as a variety of consulting and management services, software development and trading as well.

## **ADVANTAGES OF WFOE**

The advantages of establishing a WFOE include:

- (1) Independence and freedom to implement the worldwide strategies of its parent company without having to consider the involvement of the Chinese partner;
- (2) Ability to formally carry on business rather than just a representative office function and capable of issuing invoices to their customers in RMB (Chinese Currency) and receive revenues in RMB;
- (3) Capable of converting RMB profits to US dollars for remittance to their parent company outside China;
- (4) Protection of intellectual know-how and technology;
- (5) Greater efficiency in its operations, management and future development.

## **BUSINESS SCOPE**

One of the most important issues covered in the project documentation is the business scope of the WFOE. Business scope is narrowly defined for all businesses in China and the WFOE can only conduct business within its approved business scope, which ultimately appears on the business license. Any amendments to the business scope require further application and approval. Inevitably, there is a negotiation with the approval authorities to approve as broad a business scope as is permitted.

General business scope usually includes, investment consulting, international economic consulting, trade information consulting, marketing and promotion consulting, corporate management consulting, technology consulting, manufacturing, etc.

### GENERAL TAX INFORMATION

The corporate tax rates range from 15% to 31%, depending on the places where the company is registered. Shenzhen is among the lowest in the region. All enterprises are required to report to the Tax Administration Department monthly. You are welcome to contact us for more information.

### ANNUAL RETURN

Any limited companies in Shenzhen should submit annual return to the relevant authorities. The annual fee is about USD300. Any company will be subject to a fine if the Annual Return is not submitted in a timely manner.

### TERM AND TERMINATION

In China, terms of 15 to 30 years are typical for a manufacturing WFOE (although some may have a longer term). It is also possible to obtain extensions of the WFOE 's duration. For projects in which the amount of investment is large, or the construction period is long and the return on investment low, projects producing sophisticated products using advanced or key technology provided by the foreign partner, or for projects producing internationally competitive products, the term of WFOE may be extended to 50 years. With special approval from the State Council, the term may be even longer than 50 years.

The WFOE may be terminated under certain conditions. For example, the inability of the WFOE to operate due to heavy losses or in the occurrence of an event of force majeure, etc.

### PROCEDURE FOR ESTABLISHING A WFOE

#### 1 Reservation of the WFOE Company Name

Prior to any of the following applications, the investor(s) should reserve a name for its prospective WFOE with the local Administrative Bureau for Industry and Commerce ("**SAIC**"). This is called "Name Pre-registration" in China.

SAIC requires that a proposed name and two alternative names be provided.

#### 2 Project Proposal and Approval

According to the PRC WFOE Law and its Implementing Rules as amended in April 2001, there should be a Project Proposal Approval stage before the final examination and approval. In practice, however, these two stages have been combined as one.

##### 2.1 Project Proposal

The foreign investor is required to submit a Project Proposal to the local approval authority ("**Approval Authority**") where it intends to establish the WFOE. Generally, the Project Proposal should cover the following points:

## **2.1 Project Proposal – Cont'd**

- (a) the purpose of the WFOE, production plan and market forecasting;
- (b) the scope and scale of the business, the products to be produced / services to be provided (a 4-5 line description should suffice);
- (c) financing, financial forecasts and evaluations;
- (d) the technology and equipment to be used;
- (e) land-use requirements (including the area), selection of sites;
- (f) personnel and wages; and
- (g) any requirements for public facilities (water, electricity, coal, gas or other energy source).

## **2.2 Examination and Approval**

The following documents should be also be submitted to the local Approval Authority:

- (a) a written application for the establishment of the WFOE;
- (b) a Feasibility Study Report. Based on our experience, this is generally a 20 page document;
- (c) the Articles of Association of the proposed WFOE;
- (d) a list of the proposed chairperson and the members of the WFOE board of directors, and appointment letters;
- (e) the incorporation document of the WFOE investor;
- (f) a credit certificate of the WFOE investor issued within 3 months;
- (g) lease agreement for the premises. Based on our experience, an actual executed lease agreement is not required and it is generally acceptable and common for the WFOE investor to merely show an intention to enter into a lease agreement by entering into a space reservation agreement with the landlord;
- (h) the reply of pre-registration of name approved by the relevant SAIC; and
- (i) such other documents as may be required by the Approval Authority.

As for the timing of approval, Approval Authorities are required to make its decision within 90 days from receipt of all the documentation. However, many local Approval Authorities are able to give its decision within 5 to 15 working days upon receiving all the required documentation.

**3 Registration for Business License**

Within 30 days after obtaining the approval certificate, the foreign investor will need to register and apply for a business licence for the WFOE from the local SAIC. As part of this step, the foreign investor will need to submit similar documentation to the approval documentation for SAIC filing purposes. This is purely a procedural step and the local SAIC must issue the Business License within 30 days, but in our experience SAIC will usually issue the Business Licence within 5-10 days after receiving all the required documentation.

Once the business license is issued, the WFOE is deemed to be a legal person duly organised and existing under PRC law and will have full operational rights to operate a business in China within the scope of its Business Licence.

**4 Registrations with other Government Authorities**

Registration is also required with other government authorities such as tax bureau, Foreign Exchange Control and Customs and so on.

**5 Estimated Time Frame**

The estimated time frame for each of the steps are summarised as follows:

No.	Step	Estimated Time Frame
1.	Preparation of Approval Documentation	Approximately 1½ months; in practice, documents can be prepared in 5 days.
2.	Applying for Approval Certificate from Approval Authority	Up to 90 days. Although, generally this can be obtained in 15 working days
3.	Registration for Business Licence	Up to 30 days. Although, generally this can be obtained in 10 working days
4.	Registrations with other Government Authorities	Approximately 10 working days
		<b>Approximately 2-3 months</b>

From our experience, the whole registration process usually takes less than 28 days.

**6 Documents and Information Required**

If you would like us to go ahead with preparing the approval documentation, we will require the following information:

- (a) the name, address and place of registration of the investor(s);
- (b) the name, nationality and position of the legal representative of the investor(s);
- (c) the investor's incorporation evidence and its credit standing;
- (d) the name and address of the WFOE. Please provide the proposed name and 2 alternatives (see paragraph 1.1 above);

**6 Documents and Information Required – Cont'd**

- (e) a summary of the proposed scope of the business, the types of products and the scale of production;
- (f) the total amount of investment in the WFOE, including:
- (g) the registered capital. The amount of registered capital will depend on the location of the WFOE and generally, a minimum amount of USD120,500 is required;
  - (i) sources of funds; and
  - (ii) method and time limit of contribution of capital;

Note the amount of capital can be contributed in 2 or 3 instalments and each of the instalments must not be less 15% of the amount of capital.

- (h) the form of organisation, management structure (including directors) and legal representative of the WFOE;
- (i) the main equipment to be used and the age of such equipment;
- (j) the level and source of the production technology and production processes to be used;
- (k) the targeted buyers and areas of sale of the products, including sales channels and methods of sale;
- (l) the arrangements which will be put in place for the receipt and expenditure of foreign exchange.
- (m) the establishment and staffing of the structure;
- (n) the details of land to be used (ball park details of lease or space reservation agreement including the total area);
- (o) please confirm our understanding that minimal energy or raw materials will be needed for the operation of the business and that there will be no construction (of premises or other facilities);
- (p) a time line for implementation of the project (is it to be established as soon as all necessary approvals are obtained?); and
- (q) the proposed term of operation for the WFOE. In order for the WFOE to be able to apply for a tax holiday, the term should be more than 10 years. The standard term is generally 30 years.

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**CHINA COMPANY FORMATION (WFOE)**

For information, assistance or incorporation, please contact:

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