

Setting up in China

At the crossroads of finance, tax and accounting, our clients count on us to look out for their best interests. To develop and deliver the most relevant solutions to suit your particular goals, we work together with the finest lawyers and financial experts. With our roots in banking and a large international network, we have the global reach and local knowledge to help you succeed.

As China's economy grew vibrantly in recent decades, the country has become a powerful magnet for foreign investors who wish to diversify their investments in the Far East. With a population exceeding 1.3 billion and a constant impressive GDP growth for the past years, China is undoubtedly an excellent location for investment and business expansion.

With a vast consumer market, even despite the recent global financial turmoil, many foreign investors with shrinking markets locally are considering China as a wonderful alternative for future expansion. To facilitate this expansion, having a presence in China is of interest to many.

The most direct way to penetrate the China market is to set up a local presence. There are various forms of investment vehicles available for foreign investors to suit different business objectives and operations:

- ▶ Wholly Foreign-Owned Enterprise ("WFOE")
- ▶ Foreign Invested Commercial Enterprise ("FICE")
- ▶ Holding Company ("HC")
- ▶ Joint Venture ("JV")
- ▶ Foreign Invested Partnership ("FIP")

Wholly Foreign-Owned Enterprise

A Wholly Foreign-Owned Enterprise ("WFOE") is 100% owned by foreign investors. The establishment of a WFOE is governed by the Foreign Enterprise Law.

WFOEs are now permitted in all areas of industry unless the foreign investment catalogue stipulates that only Joint Ventures ("JV") are permitted. WFOEs allow for greater control than JVs.

Foreign Invested Commercial Enterprise

Foreign investors can also set up a Foreign Invested Commercial Enterprise ("FICE") for commercial activities, such as retail and wholesale, commission agency and franchising business, except for those activities which require special approval.

Holding Company

Mega foreign investors with large investments or having investments spread across the whole of China can set up a Holding Company.

If your group has already established a number of FIEs and is poised to make further investments in China, you may consider establishing a Chinese Holding Company to centralise management, provide shared services and consolidate the distribution of goods produced by your FIEs in China.

Joint Ventures

Other than the above, one can set up joint ventures in 2 different forms in China.

An Equity Joint Venture ("EJV") is a limited liability Chinese legal entity formed by one or more Chinese parties and one or more foreign parties under the Sino-Foreign Equity Joint Venture Enterprise Law. Basically, at least 25% of the joint venture's shareholding has to be held by foreign investor(s). The Joint Venture will be managed by a board of directors with appointees from both sides. Investors in an EJV share profits and losses strictly in accordance with their respective contributions to the registered capital of the venture.

A Co-operative Joint Venture ("CoJV") is sometimes referred to as a Contractual Joint Venture. The establishment of a CoJV is governed by the Sino-Foreign Co-operative Joint Venture Enterprise Law. It may be formed as a separate legal entity with limited liability or an entity similar to a partnership. Investors in a CoJV share profits and losses in accordance with the provisions in the co-operative contract.

Foreign Invested Partnership

Effective 1 March 2010, foreign investors are allowed to set up a Foreign Invested Partnership ("FIP"), which can be 100% owned by foreign partners or jointly with Chinese partners, either corporations or individuals. A FIP is required only to register with the local branch of the State Administration of Industry and Commerce ("SAIC"), except for those FIPs which invest in industries that require special approval. The FIP structure is flexible in profit sharing and undertaking of liability, which can be agreed upon among partners.

Alternatively, a Representative Office ("RO") can be set up by a foreign company but the RO is restricted to performing business liaison, conducting market survey, providing business information, and other services of a preparatory or ancillary in nature for its head office. It is important to point out that a RO is not allowed to carry on profit making business operations such as negotiation of contracts or issuance of invoices. It is also important to note that the recent released circulars strictly regulate the registration and maintenance of the RO, such as the head office must have at least a 2-year track record before registering the RO.

How should I go about setting up?

Setting up a representative office has been the simplest way to get into China and gain in-the-market experience. If your investment involves a Chinese partner, you should probably consider either a Sino-Foreign Equity Joint Venture or a Cooperative Joint Venture. Otherwise, a Wholly Foreign-Owned Enterprise will allow greater management control and flexibility.

Before setting up in China, you should review your current investments and future business plans, including structure and transaction flows, to determine the optimal investment vehicle to set up in accordance with the current Chinese investment

regulations, free trade arrangements such as the Closer Economic Partnership Arrangement ("CEPA"), the Hong Kong / China Double Tax Arrangement ("HK / China DTA") and regulation changes according to commitments to WTO accession.

Our China Services

Intertrust's wide range of professional services has been designed to meet the needs of local and international clients for their investments in China. Our services are tailored both to assist you and to simplify the procedures involved in setting up or expanding in the country. Our services include pre-investment consultation, documentation and contract review,

outsourcing accounting, treasury and payroll services as well as tax compliance.

As China businesses join the global economy and international companies seek to enter the China market. Intertrust's blend of international expertise and local knowledge makes us well positioned to serve our clients in this constantly evolving, but exciting, market.

Please feel free to contact our China team for further assistance.

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