

# 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 GDP growth of 10+% for the past 20 years until 2008, 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")
- ▶ Representative Office ("RO")
- ▶ Holding Company ("HC")
- ▶ Joint Venture ("JV")

## 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 now set up a Foreign Invested Commercial Enterprise ("FICE"), to undertake commercial activities, such as retail and wholesale without geographical limitation and at a lower capital requirement. Starting from 2006, the power of approving some of the procedures has also been devolved to the provincial-level commerce departments, the administrative committees of state-level economic and technological development zones, which translates into faster approval in certain circumstances.

Enacted on 1 January 2006, the revised Company Law of China further relaxed certain criteria for setting up legal entities in China and decreased the minimum registered capital requirements. We recommend clients take this opportunity to re-evaluate their current investment structure and take advantage of the revised law.

## Representative Office

A Representative Office ("RO") can be set up by a foreign company to render services such as liaison, negotiation, co-ordination, market survey and provision of consultancy services on behalf of its home office. It is important to point out that a RO is not allowed to carry on profit generating activities.

## 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 investment 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.

### How should I go about the 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. For details about CEPA and the HK / China DTA, please refer to our circulars.

### Our China services

Intertrust's wide range of professional services has been designed to meet the needs of local and international clients. Our services are tailored both to assist you and to simplify the procedures involved in setting up or expanding in

China. Our services include pre-investment consultation, business registration or incorporation, documentation and contract review, outsourcing accounting, treasury and payroll services as well as tax compliance and advisory services.

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 increasingly complex, but exciting, market.

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

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