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Setting Up Wholly Owned Foreign Enterprise in Shanghai

Foreign enterprises can establish Wholly Owned Foreign Enterprises (WOFE) in Shanghai upon application and approval.

Characteristics of a WOFE

Wholly Owned Foreign Enterprise (WOFE) is a limited liability company, the establishment of which is governed both by the Company Law of the People's Republic of China (PRC) and Law of the PRC on Enterprises Operating Exclusively with Foreign Capital (外資企業法).

A WOFE can engage itself in approved business activities and issue tax invoices on its own. It is a corporation and a tax resident. All shareholders of WOFE should not be Chinese nationals, save for Hong Kong and Macao residents.

Name

The name of the WOFE is governed by "Regulations on the Management of name of Enterprises" (企業名稱登記管理規定). The proposed name should contain 4 components: (1) location; (2) enterprise name; (3) industry; (4) company limited. Please note that if over 50% Registered capital come from foreign investors, the name can be formed as "enterprise name" + "industry" + "location" + "company limited", for example: ABC Trading (Shanghai) Company Limited.

There are certain restrictions on the use of company names

1. It should be in Chinese.
2. Arabic numerals, foreign characters or alphabets are not allowed.
3. It should not have content which contradicts national policies, damages social ethics, religions and culture.
4. It should not have content which damages fair competition and misleads the public
5. Unless special approval is obtained, it should not contain the following restricted words : 中國 (China) 、中華 (Chinese) 、全國 (National) 、國家 (State) 。國際 (International) is a restricted word unless it is used to designate the industry in which the company is operating, e.g. ABC International Trading Company Limited (XXX 國際貿易有限公司).

The proposed name of WOFE must be approved by the Administrative Bureau for Industry and Commerce (工商局) before registration.

Approval Authorities

The Ministry of Commerce of the PRC (中華人民共和國商務部) is the ultimate approving authority of foreign investments. Different cities have different requirements, regulations and threshold for approval. Taking Shanghai as an example, the following table illustrates the specific criteria in the approval of foreign investments in Shanghai:

	Amount of Investment	Category	Location	Approving Authorities
1	Less than USD 30,000,000	Encouraged	Unrestricted	District or County Government
	Less than USD 10,000,000	Permitted	Unrestricted	
	Less than USD 30,000,000	Encouraged and Permitted	Located in municipal Industrial Area	
2	Less than USD 30,000,000	All included, except Restricted	Pudong New Area	Government of Pudong New Area
			Waigaoqiao Free Trade Zone	Administrative Commission of Waigaoqiao Free Trade Zone
			Zhangjiang High-tech Park	Zhangjiang High-tech Park Office
			Jinqiao Export Processing Zone	Administrative Commission of Jinqiao Export Processing Zone
			Shanghai Chemical Industry Park	Administrative Commission of Shanghai Chemical Industry Park
			Linhai New Urban District	Administrative Commission of Linhai New Urban District
3	Less than USD 100,000,000	Encouraged and Permitted (the above two categories are not included)	Unrestricted	Shanghai Foreign Investment Commission
	Less than USD 50,000,000	Restricted	Unrestricted	
4	More than USD100,000,000 /Projects specially approved by the State	All included, except Prohibited	Unrestricted	Minister of Commerce and National Development and Reform Commission (Central Government in Beijing)

Maninvest will provide you with the latest information regarding the approval criteria of the city/ district where your WOFE is located. The Chinese government has produced a list of “Approved Investment Projects”, which categorizes investment projects into four categories: encouraged, permitted, restricted and prohibited. Please note that the high-tech industry, electronic industry, and service industry are all encouraged for foreign investments.

Application

Application is a three -step procedure.

Step one: Application for intended name to be used by the WOFE with the Shanghai Administrative Bureau for industry and Commerce

Step two: Application for the approval of the proposed investment in China from Foreign Economic Relation & Trade with submission of the approval of feasibility study, constitution (memorandum and articles of association)

A feasibility study will be prepared covering financing, site selection, technological process, equipments, raw material supply, market survey, economic results, foreign exchange, infrastructure facilities, etc.

Articles of Association should be prepared and submitted to the examination and approval authority. The examination and approval authority shall reply within 30 days on receipt of the feasibility study report and articles of association.

After the feasibility study report and articles of association have been approved, the applicant shall apply to the examination and approval authority, which shall issue the Approval Certificate within 3 days after receiving the application.

Step three: Registration with the Administration Bureaus for Industry and Commerce.

The company may then register with Shanghai Administrative Bureau for Industry and Commerce within 30 days after receiving the Approval Certificate and apply for the business licence. Shanghai Administrative Bureau for Industry and Commerce shall issue the business licence within 10 working days to those projects approved by the examination and approval authority of Shanghai. The enterprise is deemed as established on the date when the business licence is issued.

The foreign enterprise may engage an agent authorized by Shanghai Municipal Foreign Economic Relations and Trade Committee to handle its application on its behalf.

Registered Address and Business Address

Registered address is the official and legal address of a WOFE, which is attached to one of the administrative and tax district in Shanghai. It must be located in a non-residential building. A WOFE is not required to operate at its registered office. It can operate at another business address.

Legal Representative

Legal representative is the only representative of the company in Shanghai, appointed by the board of directors. Local representative is not required. Normally, if the legal representative does not intend to stay and work in Shanghai for over 90 days (within a year), no employment visa is needed. In case that the legal representative is a foreigner and intends to stay in China for over 90 days in a year, employment visa is needed.

Capital and Shareholders

A minimum of one shareholder, either a corporation or a natural person, who must not be Chinese national, is required. Capital must be of private nature, public offering of capital is not allowed.

China adopts a registered capital system. All registered capital has to be paid up in cash, physical assets or intangible assets. If injection of capital is not in the form of cash,

valuation by a local “valuation professional” is needed, according to the regulations relating to the particular industry.

Strict capital injection requirement should be fulfilled. “Capital” includes not only registered capital but also promissory loans from the investor, parent company or financial institutions. Different regulations for different industries govern the minimum capital requirements and 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 licence and certificate granted may be withdrawn.

Directors

A board of directors is not always required. For a small company, the general manager or legal representative is the CEO of the company and shall be treated as having the power of the directors of the company. There is no residential requirement for the directors.

Status of the Parent Company

The Shanghai Government works on an “approval system” instead of a “registration system”, that means, the application may be rejected without giving any reason. It is therefore important that the necessary requirements should be fulfilled and documents required by the government must be fully and accurately submitted. Some of the requirements are:

1. If the company documents are not in Chinese, certified translation by approved translator is required.
2. Notarization of statutory documents of the parent company may be required.

Documents required for application

The applicant should complete “Form for Establishing Wholly Owned Foreign Enterprise” and submit together with the following documents:

1. An application duly signed by the chairman of the board or general manager of the foreign enterprise with the following details: name of the WOFE, name of the legal Representative, scope of business, duration and address, etc;
2. Statutory documents of the parent company issued by the authorities of the country or region of origin; e.g. Constitution, Certificate of Incorporation, Business Certificate, Tax Certificate
3. A letter issued by a bank which has business relations with the applicant certifying its financial and credit standing;
4. The list of Legal Representatives and their curriculum vitae.
5. A feasibility report

Post-establishment Registration Procedures

Upon issuance of the Registration Certificate, the applicant is required to complete post-establishment registration procedures which mainly consist of:

1. Opening bank accounts
2. Registration with the tax department
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 Visa (For foreign representative)

Time Required

It normally takes 60 days from receiving instructions and full particulars and necessary documents from the applicant to issue the Approval Certificate. Thereafter, the Post-establishment Registration procedures take about 60 days.

Annual Examination

Annual examination is a system that is peculiar to corporations in China. The Shanghai Administrative Bureau for Industry and Commerce, together with other departments concerned (e.g. tax authority, customs, foreign trade) are authorised by law to conduct an annual examination of the enterprise. In brief, the objective of the examination is to investigate whether the enterprise abides to the laws, regulations and the conditions for granting its licences. In particular, the examination will concentrate on the following areas:

1. Registered capital – whether the capital has been paid up according to the constitution and conditions for application and in the proposal.
2. Operations – whether the company is still operating within the approved activities, at the approved location and within the approved scale and employees.
3. Registration details – whether there are any changes in registration details.
4. Financial details – whether the company is still a profitable enterprise, whether necessary tax and customs duties are paid and whether foreign exchange is used according to government policies and regulations.

The examination is in the form of a report to be completed by the enterprise concerned annually (together with the payment of an annual fee). The Shanghai Administrative Bureau for Industry and Commerce will examine the report and make necessary enquiries.

The annual examination will be conducted from March to June every year. Those enterprises unable to fulfill the requirements of the annual examination may have their business licences revoked.

Audit and Accounting

Accounting records are required to be kept in Chinese or in another language with Chinese translation. Annual audit by a local auditor is required.

The Role of Maninvest

Maninvest 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, Maninvest shall follow through the establishment process and save investors time and trouble.

How Maninvest Can Help You

The directors and management of Maninvest 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.

Maninvest 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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