



Wholly Foreign-Owned Enterprise Fact Sheet

May 2011

Definition

- A wholly foreign-owned enterprise (WFOE) is an investment vehicle that is solely owned and operated by a foreign investor or combination of foreign investors in China.
- Foreign investors in a WFOE receive all profits and bear all risks.
- WFOEs are usually structured as limited liability companies with legal person status, but they may also take other forms (such as a company limited by shares or a partnership). Approval is required if the enterprise takes any form other than a limited liability company.

Business Scope

WFOEs offer unique challenges and opportunities for foreign investors. Investors should consider their operational goals, sector-specific laws, and the overall regulatory environment before deciding on a company structure. Basic advantages and disadvantages of the WFOE structure follow:

Advantages

- Tighter control of proprietary technology;
- Exclusive management control over all decisions and profits; and
- Sole recipient of investment vehicle profits.

Disadvantages

- Limitations on scope of business, as WFOEs are not permitted to conduct business in sectors listed in the prohibited section and specific sectors in the restricted section of the Catalogue Guiding Foreign Investment in Industry;
- Lack of a Chinese partner to tap for a trained workforce, established sourcing and distribution networks, or preferred site location and infrastructure; and
- Lengthy start up time and costs related to land, deployment of capital equipment, facility construction, and materials supply.

Registration Procedures

Approval of new WFOEs may take place at the central or provincial level, depending on the proposed amount of investment and business scope. Applicants are allowed to apply at the provincial level if the proposed WFOE:

- Operates in a permitted or encouraged industry, as laid out in the Catalogue Guiding Foreign Investment in Industry.
- Includes a total investment of less than \$300 million; and
- Does not require government-allocated raw or processed materials; and
- Does not unfavorably influence the national balance of communications, energy resources, and transportation, or export quotas for foreign trade.

Central-level approval

The foreign investor must submit an initial report to the local government at or above the county level in the place where the WFOE is to be established. The report must include the purpose of the WFOE, the scope and scale of business, the products to be produced, and other relevant details. The local government will write to the foreign investors within 30 days of receipt of the report on whether it approves the proposed WFOE.

Once the local government ascertains the applicants' qualifications, it will help to submit the required documents to the PRC Ministry of Commerce (MOFCOM). MOFCOM will grant or refuse approvals within 90 days of receipt of the required documentation and will issue an approval certificate if it approves the WFOE.

Provincial-level approval

After receiving MOFCOM approval, foreign investors may apply to establish a WFOE. The application package of foreign investors applying at the provincial-government level must include:

- An application to establish a WFOE (in Chinese);
- A feasibility study (in investor's language accompanied by Chinese translation);
- Articles of association (in Chinese);
- The name of the proposed legal representative in China, or the names of the members of the board of directors if no single legal representative is named (in investor's language accompanied by Chinese translation);
- A legal certification and a certificate of good credit (in investor's language accompanied by Chinese translation);
- A written reply from the PRC government at or above the county level of the intended place of establishment;
- A list of materials that must be imported; and
- Other documents that may be required by local authorities.

The provincial authority must notify the investor of its decision within 90 days of receiving all application materials and must notify MOFCOM within 15 days.

Additional approvals

After receiving approval to establish a WFOE, the enterprise must:

- Apply to the relevant level of the State Administration of Industry and Commerce (SAIC) within 30 days of receipt of the approval certificate to obtain a business license. (The approval certificate will expire if the WFOE is not registered with SAIC within 30 days.) The issue date of the business license is the establishment date of the WFOE.
- Register with the Land Administration Department at the county or higher level within 30 days of establishment.
- Register with the tax bureau within 30 days of establishment.

Duration

No duration is specified. Foreign investors must propose the business duration, subject to approval by MOFCOM or the local government.

Capital Contribution

- The minimum capital requirement to establish a WFOE is either RMB 30,000 (\$4,594) for a single shareholder company or RMB 100,000 (\$15,313) for a multiple shareholder company. A foreign

investor's capital contribution may be in the form of:

- Convertible foreign currencies;
 - Industrial property rights, machinery and equipment, or proprietary technologies; or
 - An RMB dividend obtained from the investor's other foreign-invested enterprises in China if the relevant authority approves.
- When a foreign investor uses industrial property rights or proprietary technologies as capital contributions, the value assigned to those rights or technologies must not exceed 20 percent of the WFOE's registered capital.
 - If the registered capital of a WFOE is not contributed at the same time, the payment schedule will be set in the WFOE's articles of association.
 - Foreign investors may pay the capital via installment, but the first payment should be more than 15 percent of the total and paid within 90 days of the license issue date, and the whole payment must be made within 3 years.
 - WFOEs are generally not permitted to reduce the registered capital during the duration of its operation unless it obtains the relevant authority's approval for the reduction. Also, the increase and assignment of its registered capital must be approved by the relevant authority.
 - A WFOE is prohibited from merging with companies or dividing within itself before its foreign investors complete their capital contributions as stipulated in the articles of association.

Taxation

- WFOEs are subject to a 25 percent national income tax unless they qualify for and receive other tax benefits.
- Preferential tax rates or tax holidays are available depending on the industry, location, profitability, and size of the WFOE.
- WFOEs are also subject to business, consumption, and value-added taxes, and import and export taxes (where applicable).

Major Applicable Laws

- **State Council Opinions on Further Improving the Utilization of Foreign Investment (2010)**
English: http://fdi.gov.cn/pub/FDI_EN/News/Investmentupdates/t20100415_120416.htm
Chinese: www.sdds.gov.cn/art/2010/4/19/art_1721_412148.html
- **PRC Enterprise Income Tax Law (2007)**
English: www.chinalawandpractice.com/Article/1690278/Search/PRC-Enterprise-Income-Tax-Law.html?Keywords=Transitional+Preferential+Enterprise+Income+Tax+Policies
Chinese: www.gov.cn/zwggk/2007-12/11/content_830645.htm
- **Catalogue Guiding Foreign Investment in Industry (2007)**
English: www.uschina.org/members/documents/2007/11/foreign-investmentcatalogue-translation.pdf
Chinese: www.fdi.gov.cn/pub/FDI/zcfg/law_ch_info.jsp?docid=88026
- **PRC Company Law (revised in 2005)**
English: www.chinadaily.com.cn/bizchina/2006-04/17/content_569258.htm
Chinese: www.chinacourt.org/flwk/show1.php?file_id=105464
- **The Detailed Implementing Rules for the Law of the PRC on Wholly Foreign-Owned Enterprises (2001)**
English: [www.chinalawandpractice.com/Article/1969515/Search/PRC-Wholly-Foreign-owned-Enterprise-Law-Implementing-Rules.html?Keywords=PRC+wholly+foreign+owned+enterprise+law+implementing+rules+\(revised\)](http://www.chinalawandpractice.com/Article/1969515/Search/PRC-Wholly-Foreign-owned-Enterprise-Law-Implementing-Rules.html?Keywords=PRC+wholly+foreign+owned+enterprise+law+implementing+rules+(revised))
Chinese: <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=35346>

- **The Law of the People's Republic of China on Wholly Foreign-Owned Enterprises (2000)**
English: www.china.org.cn/english/features/investment/36754.htm
Chinese: <http://law.chinalawinfo.com/newlaw2002/SLC/SLC.asp?Db=chl&Gid=31468>