



Contractual Joint Venture Fact Sheet

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Basic Characteristics

- A contractual joint venture (CJV) is a business entity jointly created by Chinese enterprises or organizations and foreign enterprises, organizations, or individuals.
- Profits, losses, risks, and management of a CJV are shared among investors according to the CJV contract terms.
- A CJV may operate without legal person status or as a limited liability company with legal person status.
- CJVs without legal person status subject contributing parties to full civil liability.
- CJVs with legal person status require a minimum foreign investment of 25 percent of the registered capital. Foreign investment thresholds for CJVs without legal person status are determined by the PRC Ministry of Commerce (MOFCOM).

Scope of Business

The CJV has been an important foreign-investment vehicle in certain sectors in China. CJVs – and their counterpart equity joint ventures (EJVs) – are the only structures that foreign companies may use to invest in many “restricted” sectors and industries, such as auto manufacturing, life insurance, and telecom. In many of these cases, the Chinese partner must have majority ownership of the CJV. (A complete list of restricted industries is available in the 2007 Catalogue Guiding Foreign Investment in Industry.) Since China loosened restrictions on wholly foreign-owned enterprises before joining the World Trade Organization, however, CJVs have fallen in popularity. In 2010, CJVs accounted for 1.5 percent of utilized non-financial foreign direct investment in China.

Foreign parties to CJVs enjoy considerable flexibility in negotiating with Chinese partners the details of the CJV – including profit sharing, management structure, and capital investment. This allows companies to structure investments that fit the needs of their business and industry. The lack of a fixed structure can be difficult for inexperienced foreign investors to navigate, however.

Approval Process

MOFCOM approval

Setting up a CJV requires the approval of MOFCOM or an authorized local authority. The approval authority issues a decision within 45 days of receiving the required application materials. If the CJV is approved, MOFCOM or the local government issues an approval certificate. Local-government approvals of CJVs should be reported to MOFCOM within 30 days.

The Chinese investor must submit to approval authorities:

- A written application for establishing the CJV;
- A feasibility study report jointly prepared by the Chinese and foreign investors, along with examination and approval documents from the “department in charge”;
- A joint venture (JV) agreement, contract, and articles of association signed by the representatives of both parties;
- Each investor’s business license or registration and credit certificates and the CJV’s legal representative’s identity documents (the foreign investor must provide certification documents of its identity, history, and credit if it is an individual);
- A list of candidates for chair, vice chair, and all directors of the CJV’s board of directors; and
- Other documents required by MOFCOM or the provincial-level authority.

All the above documents must be in Chinese except for the foreign partner’s identification documents. Applicants can submit additional foreign language versions of the feasibility study report; JV agreement, contract, and articles of association; and list of chair, vice chair, and director candidates.

MOFCOM will not approve a proposed CJV if

- It would be detrimental to China’s sovereignty or national interests;
- It would endanger state security;
- It would cause environmental pollution; or
- It would violate PRC laws, administrative regulations, or national industrial policies.

Most MOFCOM approvals are granted at the central level, but a proposed CJV may apply to the provincial commerce bureau if it meets the following requirements:

- Its business scope falls under the encouraged or permitted categories of the 2007 Catalogue Guiding Foreign Investment in Industry;
- Its total investment is less than \$300 million;
- It is self-financed and does not require state balancing for construction or production conditions;
- It does not affect foreign trade export quotas; and
- It does not require the state to allocate additional raw materials, including fuel, power sources, or transportation.

Provincial-level approval should be reported to MOFCOM.

Additional approval

Foreign investors must register with tax authorities and the relevant level of the PRC State Administration of Industry and Commerce (SAIC) within 30 days of receiving the approval certificate for a CJV business license. The issuance date of a CJV’s business license is considered the establishment date of the CJV.

Duration

CJV contracts must specify a fixed term of operation. The investors may extend the CJV’s term if they apply for and receive approval from the relevant authority at least 180 before the original term expires. The authority must render its decision within 30 days of receiving the application.

Capital Contributions

Timelines and form

- The CJV contract must stipulate each investor's amount of and timeline for capital contributions to the CJV. If a party fails to fulfill its contractual obligations, SAIC will set a new timeline for carrying out the obligations. If the party does not meet this timeline, SAIC and the CJV's approval authority (either MOFCOM or the relevant provincial government) will decide the next steps. A party that fails to fulfill its capital contributions may be charged with breach of contract.
- The investors may contribute to the CJV in cash, assets in kind, or rights to land use, industrial property, non-patent technology, or other property.

Registered capital

- Registered capital refers to the total amount of capital subscribed by each cooperative party as registered at SAIC to establish the CJV. The registered capital should be expressed in renminbi (RMB) or a convertible foreign currency agreed on by the parties.
- The CJV contract must lay out the amount of registered capital and the percentage share contributed by each investor. For CJVs with legal person status, the foreign investor must contribute at least 25 percent of the total registered capital, and registered capital must meet minimum thresholds and ratios dictated by the location and industry of the investment.
- A CJV may not reduce registered capital during its operation unless it is triggered by a change in total investment and scale of operation and has been approved by the relevant authority.

Corporate Governance

- A CJV's executive authority rests with its board of directors or joint management committee, either of which must consist of at least three members. The foreign and Chinese parties may negotiate the distribution of the number of members between the two parties.
- The board of directors or joint management committee member terms must be stated in the articles of association and may not exceed three years. Appointments or changes to representation on a CJV's governing body must be designated by the cooperative parties. The CJV agreement must designate the chair and vice chair, who must come from different parties.
- The CJV must receive unanimous approval from the board or joint management committee and sign a contract to entrust a third party with its operation and management. The CJV must then submit the contract and other supporting materials from the third party to the relevant authority for approval. The authority will issue a decision within 30 days of receiving the application materials.
- A CJV must receive unanimous consent of the board or joint management committee to amend its articles of association, mortgage assets, merge or dissolve the CJV, or change its registered capital amount.

Human Resources

- CJVs registered as legal persons may hire and compensate employees directly.
- CJV employees have the right to form trade unions in accordance with PRC labor laws and regulations. Such unions have the power to sign labor contracts with the CJV on behalf of employees.

Tax

- A CJV must pay taxes according to national PRC tax laws.
- Preferential tax rates, holidays, or refunds are available depending on the CJV's location and industry.

Major Applicable Laws and Regulations

- **State Council Opinions on Further Improving the Utilization of Foreign Investment (2010)**
English: www.uschina.org/members/documents/2010/04/sc_opinions_foreign_investment.pdf
Chinese: www.sdds.gov.cn/art/2010/4/19/art_1721_412148.html
- **Catalogue Guiding Foreign Investment in Industry (2007)**
English: www.uschina.org/members/documents/2007/11/foreign-investment-catalogue-translation.pdf
Chinese: www.ndrc.gov.cn/zcfb/zcfbl/2007ling/W020071107537750156652.pdf
- **PRC Company Law (2005)**
English: www.chinadaily.com.cn/bizchina/2006-04/17/content_569258.htm
Chinese: www.chinacourt.org/flwk/show1.php?file_id=105464
- **PRC Law on Sino-Foreign Contractual Joint Ventures (2000)**
English: <http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200703/20070304465781.html>
Chinese: www.gov.cn/banshi/2005-08/31/content_69772.htm
- **Implementing Rules for the PRC Law on Sino-Foreign Contractual Joint Ventures (1995)**
English: www.lehmanlaw.com/resource-centre/laws-and-regulations/foreign-investment/detailed-rules-for-the-implementation-of-the-law-of-the-peoples-republic-of-china-on-sino-foreign-cooperative-enterprises-1995.html
Chinese: www.ndrc.gov.cn/wzly/zcfg/wzzcqy/t20050715_36945.htm