



THE GCSL GROUP OF COMPANIES LIMITED

Guide to Formation of a Wholly Foreign Owned Enterprise (WFOE) in China

INTRODUCTION

A Wholly Foreign Owned Enterprise ("WFOE") is the most popular choice for foreign companies doing business in China for international trading, manufacturing, processing, assembling and other profit making activities. It is a Chinese limited liability company formed under the laws of China and financed with 100% foreign capital and is completely under the control of the foreign investor.

BUSINESS SCOPE

A WFOE's operations, including what it is permitted and not permitted to do, capital structure as well as its financial and accounting practices are governed by the articles of incorporation. Foreign companies intending to sell to the China market should be aware that the authorities in China group foreign goods and services into three categories - "encouraged", "limited" and "prohibited". Under each category there are requirements and regulations that define the permitted activities of WFOEs.

REGISTERED CAPITAL

Based on the latest Chinese Enterprise Act, the minimum registered capital is Renminbi (RMB) 30,000. However, for a WFOE, the practical approval minimum registered capital, which has to be paid up within 24 months of the date on Business Registration License, is USD100,000. This amount varies depending on the industry, city, and place where the WFOE is registered and also on the business nature of the WFOE and can be significantly higher for certain heavily regulated industries. The registered capital can be paid up with a combination of equipment and cash. A minimum of 20% of registered capital initially must be deposited in cash from the parent company into the WFOE's capital bank account within 90 calendar days. The balance of registered capital must follow within 24 months of approval of the WFOE registration.

TAXATION

The applicable tax rates vary according to where a WFOE is registered. In general, there are three categories: 1. Business Tax (Service industry), 2. Enterprise Income Tax (General) and 3. Value Added Tax (Trading Industries). A WFOE is subject to a business tax of 5% for selling goods or services in China and profits tax payable to the provincial and city governments is 25%. WFOEs formed before enactment of the new laws, i.e. April 2007, will continue to enjoy the special terms previously granted until the terms expire.

Currently, there are still some tax incentive offered to High Tech and certain industries. Special economic zones in ChongQin still offer 15% Enterprise Income Tax incentive to foreign Investment, but this offer will expire in 2010.

Many cities offer local incentives, such as tax breaks, to WFOEs primarily engaged in High Tech and certain favored business activities. The applicable tax rates and terms vary from zone to zone and from city to city. Certain businesses, such as technology, manufacturing and agriculture, are generally favored. Due to recently enacted laws, tax incentives will only be available to "encouraged" industries, i.e. biotechnology.

BANKING

A WFOE must have a foreign currency bank account (capital account) and a RMB bank account (operating account). The company's bank accounts can be setup once the WFOE is officially established.

DOCUMENTS REQUIRED FOR APPLICATION

A company seeking to set up a WFOE must submit evidence it has been legally registered in its home country for no less than 12 months. All documents filed with the licensing authority must be translated into Simplified Chinese. Corporate documents have to be notarised, apostilled and authenticated by a China embassy. GCSL can assist with the preparation of these documents, and will provide a quote for the same upon request.



Required Documents Checklist		
1.	GCSL WFOE Order Form	Completed and Signed
2.	Business License or Certificate of Incorporation - For Consultancy WFOE - For Trading, Manufacturing, etc. WFOE	1 notarized, apostilled and China Embassy authenticated copy 2 notarized, apostilled and China Embassy authenticated copies
3.	Resolution of Board of Directors from Parent Company concerning WFOE establishment (<i>in Simplified Chinese</i>)	3 notarized, apostilled and China Embassy authenticated copies
4.	Credibility Statement issued by Bank / Bank Reference Letter (<i>in Simplified Chinese or translated into Simplified Chinese</i>) (The bank letter is a short credibility or reference letter from the bank with which the company has a business relationship. The Letter should have the name of the company, account number, average balance per half year or year, and an assessment comment by the bank)	1 original
5.	Projected Financial Report, i.e. projected revenue, gross profit, expenses and net profit/(loss) (prepared by client with assistance from GCSL)	1 original
6.	Legal Representative(s) of WFOE: i. Passport Copy ii. CV (<i>in Simplified Chinese</i>) iii. Passport size color photo	1 notarized, apostilled and China Embassy authenticated copy in the country of origin of the Legal Representative 1 original 12 originals
7.	Power of Attorney for the selected authorized contact person dealing with the application (prepared by GCSL)	3 originals
8.	Business Scope on Parent Company and detailed information on WFOE (<i>translated into Simplified Chinese</i>)	1 original
9.	Registered Office in China: i. Lease/Purchase Agreement ii. Certificate of Property Right OR Land Use Right Transfer Agreement (<i>Depending on the building and location of the office, the Lease Agreement and Certificate of Property might need to be notarized in China and filed with the Property Registry</i>)	3 originals 3 copies with seal of owner
NOTE: The authorities may require additional documents depending on the City and the Regulations applied to the applicant's industry.		

PROCEDURE AND TIMING

Setup Plant/Office

GCSL can introduce and liaise with real estate agents to locate plant/office. We can assist with negotiating lease/purchase agreement and seeking legal advice when necessary. Additional assistance with set up or other commercial support is also available on request.

Name Registration

Minimum of three proposed names must be submitted for approval. The name should be comprised of four parts: location + company name + industry + type of entity. For example: Shanghai + XYZ + Trading + Wholly Foreign Owner Enterprise Limited. GCSL will assist in converting the names into simplified Chinese characters. Name registration and approval process will take about 5 working days. An "Approval on the Company Name in Advance" will have to be issued by the relevant authorities prior to processing the rest of the documents.



Application

By completing and signing GCSL's WFOE Order Form, you will have provided GCSL with enough information to complete the Official Chinese documents (including the Feasibility Study Report and Memorandum and Articles of Association) for the formation of WFOE in China. The completed application documents together with the Application Letter/Form and Official Appointment Letters for Legal Representative will be sent to you to sign before submitting to the licensing authority. To speed up the process, you may want to authorize someone in China to sign on your behalf. In the alternative, these documents will be sent to you by courier for signature.

The decision whether or not to approve an application is solely at the discretion of the relevant authorities. The approval process usually takes 30 working days after receiving all the signed and required documents (see list above).

Approval Certificate

Once the WFOE documents are approved, GCSL will apply for the Approval Certificate. This usually takes 5 working days to issue.

Pre-Registration Permit Application

Depending on the specific project, industry or Chinese regulations then in force, a Pre-registration permit might be needed before submitting a Business License registration, (i.e. medical equipment, food and beverage). This is usually submitted simultaneously with the application for Approval Certificate.

Business License

Upon receipt of the Approval Certificate from the Foreign Economic Relations & Trade Commission and Pre-Registration Permit, if required, an official Business License application must be submitted to the government authorities. Issuance of the Business License normally takes 10 working days.

Follow-up Registrations

Follow-up Registrations must be finalized as soon as possible. GCSL can also organize all these registrations, which include the following:

- 1 Engraving of 3 official rubber seals,
- 2 Obtaining approval permit from the local police department,
- 3 Enterprise Code Registration,
- 4 State and Local Tax Registrations,
- 5 Financial Bureau Registration Certificate,
- 6 Statement from State Administration of Foreign Exchange Registration, and
- 7 The opening of corporate bank accounts.

Capital Injection Certificate

Once the bank accounts are setup, the parent company must deposit a minimum of 20% of the registered capital in cash to the company's bank account within 90 calendar days. An audited Financial Report on Capital Inspection for each injection of the registered capital must be prepared from an authorized accounting firm in order to obtain the Capital Injection Certificate. According to the latest regulation, this process can take minimum 14 working days. GCSL can assist with these matters. Upon receipt of the minimum registered capital, all the licenses and certificates must be renewed as soon as possible. GCSL can assist with these matters.

Working Visa

If the applicant needs to apply for working visas for its expatriates, then at least 15% of registered capital in cash must be injected into the WFOE. The Business License and related certificates must be changed to be permanent in this case.



Additional Registrations

Depending on the specific project, industry, or Chinese regulations then in force, further registrations or special approvals from other government authorities may be required for the WFOE to be fully operational in China. However, the WFOE is officially established on the date of issuance of the Business License.

Industry/Business	Additional Registration with:
Trading (import/export)	Customs
Manufacturing	Fire and Safety
Financial Institute	Central Bank

TERM AND RENEWAL OF REGISTRATION

The term of registration for a WFOE, depending on the business activities and industry, is usually good for 20 years. However, annual renewals of licenses and certificates, regardless of the date the WFOE was registered, must be made on or before June 30 every subsequent year. The following renewals must be done to keep the WFOE in good standing:

- 1 Foreign Economic Relationship & Trade Commission Certificate renewal
- 2 Tax Certificate renewal
- 3 Financial Certificate renewal
- 4 State Administration of Foreign Exchange Certificate renewal
- 5 Business License renewal.

In addition to Tax Certificate renewal, the tax authority usually issues a tax return notice (Enterprise income tax return) in February and filing of the same should be done on or before April 30th, every year. For WFOE that has VAT status, there is additional VAT filing to be done every year on or before April 30th.

Annual audited financial statements and report also must be completed and submitted for Foreign Economic Relationship & Trade Commission, and tax authority renewal.

For further information, please contact Johnson Chien at Johnson@gcsll.info

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