

**"Doing Business in China"**

# **APPROVAL PROCEDURE FOR JOINT VENTURE ("JV") IN CHINA**

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**MAJOR RESPONSIBILITIES AT VARIOUS STAGES**

PROCEDURES	Chinese/JV Party	Foreign JV Party	Legal Consultancy and Other Consultancy Firms	Governing Authority	REMARKS
<p><b>1. Develop, Identify and Qualify Investment Opportunities</b></p>	<p>Provide JV project information including information needed to evaluate the project's strengths and weaknesses and the local environment and operating conditions. Provides information on capabilities and track record.</p>	<p>Either in conjunction with local JV Partner or alone as foreign JV Partner:</p> <ol style="list-style-type: none"> <li>1. Establish investment project goals (operational, financial, risks, etc.) and criteria and initiate project requests, examination and options; conduct due diligence regarding choice of cities, comparison of costs of land, construction, etc., logistical and supply chain realities, availability of local financing and working capital credit lines and terms and preferential tax treatment, etc.</li> <li>2. Establish detailed and disciplined project goals and criteria to evaluate and compare alternative projects.</li> <li>3. Identify criteria for selection of Chinese JV partner and strengths and weaknesses and how to address and balance both against project success requirements.</li> <li>4. Partner selection process evaluating criteria, weighting of needs and insuring project success probabilities. How to select and reject and stay friends.</li> <li>5. Project selection process based on items 1-4 above as well as senior management review coupled with local team review and outside consultants.</li> </ol>	<ol style="list-style-type: none"> <li>1. Retain legal firm.</li> <li>2. Coordinate with legal and business teams on corporate goals and risk considerations.</li> <li>3. Coordinate with legal and business teams on specific project goals. Determine whether the JV should be an "equity JV" or a "cooperative/contract JV".</li> <li>4. Coordinate with legal and business teams and assist to establish the criteria to evaluate projects and partners.</li> <li>5. Legal audit and analysis of project details and recommend suitable options and risk for the legal and business teams to evaluate and decide. Evaluate level of foreign ownership permitted and the changes permitted over time with WTO accession. Assess purchase options, calls or management contracts or other alternative structures on degree of legal control over major decisions, management, financial and operational control.</li> <li>6. Onshore and offshore corporate structuring and tax planning utilizing tax treaty analysis and local and national incentives.</li> <li>7. Structure intellectual property protection and royalty streams for technology, know-how, patents, trade secrets, software and trademarks. Use "back to front" and "crown jewel" analysis for termination, liquidation priority, payment priority, positive or negative exit strategies.</li> <li>8. Retain consultants, if needed.</li> </ol>	<p>N/A</p>	<p>Depending on the structure and internal approval process of the foreign investor and the need to compare opportunities with goals and the need to evaluate potential projects and partners, each step may take 1-2 months; different tasks can be processed simultaneously and different projects can be evaluated simultaneously.</p>

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<p><b>2. Preliminary Feasibility Study Stage Letter of Intent or Memorandum of Understanding/Undertaking</b></p> <p>* Preliminary feasibility study (PFS)</p> <p>* Submit project proposal for project approval/set up</p> <p>* Non-binding Letter of Intent (“LOI”), non-binding Memorandum of Understanding or Memorandum of Undertaking (binds parties to negotiate in good faith) (“MOU”)</p>	<p>Assist in the preparation of a PFS, as needed.</p> <p>1. Sign a LOI or MOU.</p> <p>2. Coordinate with foreign party to submit project proposal to relevant authorities on behalf of the JV partners.</p>	<p>1. Present project purpose.</p> <p>2. Delegate PFS work to feasibility study team and to the extent needed, possibly outside consultants and/or local partner.</p> <p>3. Depending on the needs of the foreign party, select equity joint venture (“EJV”) or cooperative joint venture (“CJV”) as the appropriate type of legal entity.</p> <p>4. Sign a LOI or MOU.</p>	<p>1. Arrange discussion/visiting group, as needed.</p> <p>2. Undertake PFS, as needed.</p> <p>3. Prepare the LOI or MOU which will set forth the basic deal points to insure a common understanding of the parties’ roles, duties, capital and in-kind, contributions, profit/loss allocations and distribution as well as corporate structures and voting, operational control and governance. LOI’s and MOU’s are generally prepared in bilingual versions.</p>	<p>In case of highly regulated industries, the project proposal and LOI will be reviewed by the government agency supervising the industry concerned first and then by MOFCOM, otherwise by MOFTCOM alone. In order to proceed, an LOI requires a “li xiang” approval.” from the planning authority or government agency supervising the industry concerned for highly regulated industries.</p>	<p>Depending on the project and the support that is required from local authorities and whether it is a priority project, each step takes 1-6 months; different projects can be processed simultaneously (excluding review/approval period).</p> <p>Approved project to proceed in China.</p> <p>In many localities, no project proposal or letter of intent is required for small projects.</p>

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<p><b>3. Feasibility Study Stage</b></p> <p>* Feasibility Study</p> <p>Some companies opt for a pro forma abbreviated approach especially with small projects.</p> <p>Multinational companies and large projects will almost always conduct detailed analysis of supply chain, sales, competition, risk management, operational issues, engineering issues, environmental compliance, human resources management, tax planning, financial modeling etc to insure maximum chance of business success</p> <p>* Evaluation, approval and decision-making on feasibility study report</p>	<ol style="list-style-type: none"> <li>JV partners to engage own internal teams and consultants to proceed on feasibility study.</li> <li>Both JV parties appoint consultants, as needed, to begin on the feasibility study..</li> </ol>	<ol style="list-style-type: none"> <li>JV partners to engage own internal teams and consultants to proceed on feasibility study.</li> <li>Both JV parties appoint consultants as needed, to begin on the feasibility study.</li> <li>Can begin negotiations on technology introduction, equipment purchase and long lead items.</li> </ol>	<ol style="list-style-type: none"> <li>Undertake project feasibility study.</li> <li>Independent consultant or internal evaluation team appointed to evaluate project against all criteria.</li> <li>Law firm evaluation.</li> <li>Develop checklists for site visit, human resources, financial models, technical checklists, regulatory and environmental checklists.</li> </ol>	<p>In case of highly regulated industries, the feasibility study report will be first reviewed by the government agency supervising the industry concerned and then by MOFCOM, otherwise by MOFCOM alone.</p>	<p>Depending on the complexity of the project, the size of the project, whether it requires State Economic Development Planning Council approval. The feasibility studies take months to prepare and review.</p> <p>Foreign party is required to submit copies of business certificate of its country of operation, certificate of authorized representatives.</p> <p>In some localities, small projects are exempted from feasibility study report nowadays.</p> <p>Project negotiation and signing following approval.</p> <p>Minimum investment required for normal projects range from USD100, 000 to USD200, 000 depending on localities. Projects in certain special industries have different minimum capital requirements.</p>

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<b>4. Environmental Impact Study Stage (For Manufacturing Projects)</b>	1. JV partners to engage consultants to proceed on environmental study.	1. JV partners to engage consultants to proceed on environmental study.	1. Undertake environmental impact study. 2. Independent consultant or internal evaluation team appointed to evaluate project against all criteria. 3. Law firm evaluation.	In case of major projects, the environmental impact study needs examination and approval by the environmental protection agency and the government agency supervising the industry concerned, otherwise by the environmental protection agency alone.	Environmental impact study is only required for those project of a manufacturing nature. Depending on the anticipated environmental impact, either a full-blown study or a simple “environmental impact evaluation” form will be required. In many locations, the study must be conducted by an organization recognized by the Chinese authorities.

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<p><b>5. Negotiation, Signing, Submission for Approval Stage</b></p> <p>* Negotiation and contract signing</p> <p>* Documentation review and approval including JV Agreement, Articles of Association, Labor Agreements and Company Operational Work Rules Manual, Technology License, Trademark License, Tax Incentives, Land Use Rights, <i>Customs Arrangements, State Administration for Foreign Exchange Approvals, Assorted Agreements, etc.</i> <b>The italicized items to be done in the post-establishment period</b></p> <p>* Establishment of JV Company and Capital Contribution Verifications</p> <p>* Registrations with government agencies in charge of <i>SAIC, Forex, Public Security, Technical Supervision, Tax, Customs and Finance, etc.</i></p>	<p>1. JV agreement negotiation and documentation.</p> <p>2. Joint submission of signed documents.</p> <p>3. JV forms board of directors, seek certificate of approval and business license.</p>	<p>1. JV agreement negotiation and documentation.</p> <p>2. Joint submission of signed documents.</p> <p>3. JV forms board of directors, seek certificate of approval and business license.</p>	<p>Legal teams support in the preparation, negotiation and submission of the relevant legal documents including securing all licenses and approvals required.</p>	<p>1. Review and approve documentation by MOFCOM and other relevant agencies.</p> <p>2. Projects with total investment less than USD30 million, or with total investment more than USD30 million but which fall within the encouraged category and not subject to overall state planning are to be approved by local MOFCOM. All other projects require approval of MOFCOM in Beijing.</p>	<p>Each step takes 1-2 months (excluding time for approval).</p> <p>JV company commences its official operation on the date of receipt of its business license.</p>

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<p><b>6. Project Construction Stage (Construction Period)</b></p> <ul style="list-style-type: none"> <li>* Land Use Rights Acquisition</li> <li>* Negotiations with Contractors/Designers</li> <li>* Some companies require tailored and specialized facilities. Some can contract for land use rights and use an existing facility.</li> <li>* Construction, equipment installation, inspection and acceptance of construction/installation work, application for a variety of operation-related permits, such as safety, health, fire-protection, waste discharge, etc.</li> </ul>	<p>JV company sets up working group to handle duties as listed on the left column. Sometimes the land purchase and the construction or the lease rental agreement is negotiated before the JV has been established.</p>	<p>Same as left column.</p>	<p>Legal team can support the JV partners to document the needs for construction or land use rights as well as turn key BOT or contractor works.</p>	<p>Review and approve design of large projects.</p>	<p>Time depends on the project construction realities. Will vary based on size, BOT or available construction teams for Greenfield or move in “spec” facilities or sub-leasing others facilities.</p> <p>Incurrence of design fees.</p>

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<p><b>7. Trial Stage (Preliminary Production Period)</b></p> <p>* New Product Design Modeling</p> <p>* Trial Manufacturing in Small Quantities</p>	Team with Foreign Partner.	Team with Local Partner.	Legal team to verify warranty and services of suppliers and service providers if needed.	N/A	
<p><b>8. Normal Production (Operation) Stage</b></p>	Team with Foreign Partner.	Team with Local Partner.	<p>1. Can undertake agency advisory service for product management.</p> <p>2. Ongoing legal services.</p>	N/A	Manage raw materials, labor, sales, tax, environmental.
<p><b>9. Product (Operation) Expansion Stage</b></p> <p>* Capital injection, quality, quantity and product upgrading</p>	Team with Foreign Partner.	Team with Local Partner.	<p>Can undertake feasibility study, legal amendment and dilution issues.</p> <p>In the event that foreign share is allowed to increase, generally best to negotiate such rights in advance at the LOI or MOU state and reflect such rights in the JV Agreement. Call options, pre-signed purchase agreement options, etc. signed in advance are advisable.</p>	<p>If increase capital, will need to amend licenses and record the increase in capital with official agencies. Any increase of capital must be pre-approved by the Approval Authority first.</p> <p>Bank financing, equipment leasing, export/import credit, a/r financing and trade/purchase order financing to be negotiated and arranged.</p>	Some JV companies will not expand production (operation) facilities.



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<p><b>10. Termination Stage of JV Company. Can also consider sale of business or division or listing options as possible exits.</b></p>	<ol style="list-style-type: none"> <li>1. Same as right column.</li> <li>2. Same as right column.</li> <li>3. Same as right column.</li> <li>4. Same as right column.</li> <li>5. Same as right column.</li> </ol>	<ol style="list-style-type: none"> <li>1. Determine wind-down procedures in accordance with JV Agreement and Articles of Association.</li> <li>2. Determine asset allocation and priority asset allocation e.g. intellectual property or systems or know-how and disposition and future use or license rights and scope of use.</li> <li>3. Labor severance benefits.</li> <li>4. Dispute settlement if any by arbitration or local courts.</li> <li>5. Filings with various agencies to wind-down.</li> </ol>	<p>Legal Team to support all tasks in left column.</p>	<p>Various agencies handling company registration, labor, tax, etc.</p>	