



Equity Joint Venture Fact Sheet

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Basic Characteristics

- An equity joint ventures (EJV) consists of at least two investors – one Chinese and one foreign – that hold joint operation and ownership of a limited liability corporation and agree to a proscribed format for the foreign investors’ participation, management, and division of risk.
- Profits, losses, and risks of an EJV are shared among investors according to their respective registered capital contributions.
- The foreign investors’ equity interests in an EJV must amount to at least 25 percent of the registered capital.
- EJVs are considered independent legal persons registered in China with limited liability under PRC law.

Scope of Business

The EJV has been a traditional investment vehicle for foreign capital in China, in part because it was the first available vehicle for foreign investment in China and in part because China has a well-established regulatory regime that governs EJVs. Since China loosened restrictions on wholly foreign-owned enterprises before joining the World Trade Organization, EJVs – and their counterpart, contractual joint ventures – have fallen in popularity. In 2010, EJVs accounted for 21 percent of utilized non-financial foreign direct investment in China.

The EJV structure still brings some advantages for foreign investors, such as access to a Chinese partner’s distribution network, market know-how, or market share. Importantly, joint ventures (JVs) are the only structures that foreign investors 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 EJV. (A complete list of restricted industries is available in the 2007 PRC Catalogue Guiding Foreign Investment in Industry.)

Approval Process

MOFCOM approval

Setting up an EJV requires the approval of the PRC Ministry of Commerce (MOFCOM), which issues a decision within three months of receiving the required application materials. If the EJV is approved, MOFCOM issues an approval certificate.

The Chinese and foreign investors must submit to approval authorities:

- A written application for establishing the EJV;
- A feasibility study report jointly prepared by the Chinese and foreign investors;
- A JV agreement, contract, and articles of association signed by the representatives of both parties;

- A list of candidates for chair, vice chair, and all directors of the EJV's board of directors; and
- Other documents required by MOFCOM or the provincial-level authority.

All the above documents must be in Chinese. Applicants can submit additional foreign language versions of any of the above documents except for the written application. The approval authority may request applicants to make revisions within a limited period if it finds the documents are improper.

MOFCOM will not approve a proposed EJV if

- It would be detrimental to China's sovereignty;
- It would violate PRC law;
- Its purpose is not in line with the requirements for developing China's national economy;
- It would cause or contribute to environmental pollution; or
- Its agreements, contracts, or articles of association include obvious inequalities.

Most MOFCOM approvals are granted at the central level, but a proposed EJV 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 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 approvals of EJVs should be reported to MOFCOM.

Additional approval

Foreign investors must register with the relevant level of the PRC State Administration of Industry and Commerce (SAIC) within one month of receiving the approval certificate for an EJV business license. The issuance date of an EJV's business license is considered the establishment date of the EJV.

Duration

EJVs in the following industries must have a specific operating duration:

- Services (such as consulting, entertainment, food, maintenance and repair, real estate, or taxi services);
- Land development;
- Exploration for and exploitation of natural resources;
- Industries in which China restricts foreign investment; and
- Industries for which relevant laws or regulations require fixed terms.

EJVs engaged in other industries in which China encourages or permits foreign investment are not required to stipulate a term of operation in their contracts. An EJV contract without a fixed term of operation must contain provisions for the EJV's termination.

A fixed-term EJV may extend its term if both parties agree and obtain approval from the relevant authority. The extension application must be submitted six months before the original term expires. The authority must render its decision within one month of receiving the application.

Capital Contributions

Registered capital—thresholds and increase approvals

The ratio of the registered capital to the total investment in an EJV must conform to ratio provisions set by relevant PRC laws and regulations.

Current PRC Ratio Requirements for Equity Joint Ventures (EJVs)

Total Investment in the EJV	Registered capital
\$3 million or less	At least 70 percent of total EJV investment
More than \$3 million and up to and including \$10 million	At least 50 percent of total EJV investment or \$2.1 million (whichever is greater)
More than \$10 million and up to and including \$30 million	At least 40 percent of total EJV investment or \$5 million (whichever is greater)
More than \$30 million	At least 33.3 percent of total EJV investment or \$12 million (whichever is greater)

Source: PRC State Administration for Industry and Commerce (SAIC)

Notes: Registered capital refers to the total amount of capital registered with the relevant level of SAIC to establish the EJV. Total investment refers to the total amount of funds needed to establish the EJV (total registered capital plus additional funds – borrowed or otherwise – required for production).

Related considerations

- Registered capital must be paid in accordance with the time limits stipulated in the EJV contract. If special circumstances make it impossible for an EJV investor to contribute at the prescribed pace and ratio, the matter must be submitted to and approved by the original examination and approval authority, and profits must be distributed in proportion to the amount of capital actually paid.
- An EJV's controlling investor may not make final decisions with regard to the enterprise or include its interest and assets in the enterprise in its own financial statements until the EJV's prescribed capital contributions are made in full.
- The investors may contribute to the EJV in renminbi (RMB), foreign currency, or assets in kind – including buildings, premises, equipment or other materials, industrial property rights, proprietary technologies, or land-use rights – subject to approval by the relevant authorities.
- An EJV 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.
- An EJV may increase its registered capital if its overall investment increases. The registered capital increase must be submitted to the EJV's original approval authorities for approval.

Corporate Governance

- An EJV is led by a board of directors of at least three individuals. The board's composition is determined collectively by the parties to the EJV.
- Each director serves a renewable four-year term.
- Amendments to the articles of association, termination and suspension of the EJV, mergers and acquisitions, and changes to registered capital levels require unanimous consent of the board.

- In accordance with the PRC Company Law and under SAIC oversight, all foreign-invested enterprises – including EJV – must establish boards of supervisors or individual supervisors to inspect company finances and supervise directors and managers on behalf of shareholders.

Human Resources

- EJV may hire and compensate employees directly. The compensation of high-ranking managers must be determined by the board of directors.
- EJV 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 EJV on behalf of employees.

Tax

- An EJV must pay taxes according to national PRC tax laws.
- Preferential tax rates, holidays, or refunds are available depending on the EJV's location and industry.
- Though customs regulations only provide for duty exemptions on imported machinery and equipment for projects under the "encouraged" section of the Catalogue Guiding Foreign Investment in Industry, reductions or exemptions on imported machinery and equipment may be available.

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
- **The Implementing Rules for the PRC Law on Sino-Foreign Equity Joint Ventures (2001)**
English: www.uschina.org/members/programs/2001englishrevision.pdf
Chinese: www.fdi.gov.cn/pub/FDI/zcfg/zh/wstzfg/P020060619556685939182.pdf
- **PRC Law on Sino-Foreign Equity Joint Ventures (2001)**
English: www.uschina.org/members/articles/ejvenglish.pdf
Chinese: www.gov.cn/banshi/2005-08/31/content_69775.htm
- **Certain Provisions on Capital Contributions by Parties to Sino-Foreign Equity Joint Ventures (1987)**
English: www.novexc.cn/capital_contrib_eq_jv.html
Chinese: www.people.com.cn/zixun/flfgk/item/dwjif/falv/2/2-2-01.html
- **Interim Provisions on the Ratio between the Registered Capital and the Total Amount of Investment in Sino-Foreign Equity Joint Ventures (1987)**
English: www.lehmanlaw.com/resource-centre/laws-and-regulations/foreign-investment/provisional-regulations-of-state-administration-for-industry-and-commerce-on-the-ratio-between-the-registered-capital-and-the-total-amount-of-investment-of-sino-foreign-equity-joint-ventures-1987.html
Chinese: www.ndrc.gov.cn/wzly/zcfg/wzzcqy/t20050715_36953.htm