

Outline of the procedure for setting up an equity joint venture in China

Prepared by Robin Nunley
Business Development International
Tel +44 (0) 1948 780515
Email: robin.nunley@gmail.com

Outline of the procedure for setting up an equity joint venture in China

The procedure for establishing a joint venture in China is set out below. Please note that not all the steps detailed below are required by the Chinese examination and approval authorities but they should be taken as part of a commercially prudent approach.

Pre-negotiation considerations

- Evaluate the market
- Establish partner criteria
- Identify and select the partner(s)
- Identify and select location (where appropriate)
- Decide on total investment required and equity proportions
- Identify deal breakers
- Formulate negotiating strategy

The negotiations

Negotiations normally commence with the partner but it is advisable to introduce the project jointly, at an early stage, to the appropriate examination and approval authority. The main stages of the negotiation are below;

- Letter of Intent (Memorandum of Understanding)
- Project proposal (responsibility of the Chinese partner)
- Approval of project proposal
- Due diligence on partner's contributions
- Preparation of feasibility study
- Negotiation of joint venture agreement and articles of association
- Submission of feasibility study for approval
- Contract finalisation
- Final approval of joint venture contract and articles of association
- Issue of approval certificate
- Application for and issue of the business licence

Items that will need to be finalised during the negotiations include:

- Capital contributions and financing
- Land and buildings
- Construction and design
- Foreign exchange
- Taxation and accounting
- Labour and management
- Technology transfer and intellectual property issues
- Business operations
- Marketing and distribution in China

- Environmental protection
- Termination, dissolution and liquidation

All agreements have to be consistent. The process is not always a straightforward linear one, especially for a larger joint venture. Negotiations with partners and the preparation of documents often take place at the same time as the opinions of the approval authorities are being sought.

The negotiation of a joint venture can be complex, especially if the investment is large. Depending upon complexity, the time required to negotiate the agreement and obtain approval from the examination and approval authorities can be as short as three months, extending to 24 months or longer for a large, complex joint venture.