



The Limited (有限责任公司) in China

By J&J Law Firm

Establishing a company in a foreign country can be challenging in terms of designing the legal structure and organising a streamlined and efficient incorporation process. Alliuris member firms provide corporate legal services, in particular for the formation of companies in their home country.

This article provides a brief overview of the legal form of a limited company in China. Germany.

Limited

With the new Foreign Investment Law, which came into force on January 1, 2020, foreign invested enterprises in China can take the form of a Limited Liability Company, also known as a Limited, a company listed by shares (similar to a joint-stock corporation) or of a partnership. Nevertheless, the Limited remains the preferred form for small and medium-sized enterprises, as it is easier to set up and maintain. As a juridical person, the Limited is characterized by the limitation of liability. As a matter of principle, while the company is liable with all its assets, the liability of the shareholders is limited to their capital contribution.

Choice of Seat



While a Limited can be incorporated in any province or city of China, a careful choice of the seat of the company is key to its success. In first tier cities like Beijing and Shanghai, the legal system is commonly more transparent. On the other hand, it may be easier to obtain the necessary permits in smaller

cities due to the ambition of local government to attract foreign investment, and the salaries there are lower. There are also special zones, such as the Special Economic Zones,

or the Economic and Technological Development Zones, that offer incentives to foreign firms.

Shareholder

A Chinese Limited can be founded as a one-person company as well as multi-person company. Shareholder can be a natural person or a legal entity, foreigners can also be shareholders of a Limited. A maximum of 50 shareholders is allowed. A natural person may only establish a single one-man Limited. This one-man Limited established by a natural person may not establish another one-man Limited.

Management

The statutory bodies of a Limited are the shareholders' meeting, the board of directors and the supervisory board. The board of directors usually consists of 3 to 13 members, who are appointed by the shareholders. However, a small Limited may appoint an executive director instead of a board of directors. The board of directors is responsible for the general meeting of shareholders and for the management of the company. The board (or the executive director) appoints a general manager, who is responsible for the day-to-day operations of the company. The chairman of the board (or the executive director) or the general manager can be appointed as legal representative of the company. One person can act as the legal representative, director and general manager at the same time. A foreigner can be appointed as a legal representative, director, general manager or a supervisor. If a foreigner is appointed as a general manager or other position which requires to reside in China on a daily basis, the foreigner shall apply for work permit and Z visa (i.e. employment visa).

Formation

Since January 1, 2020, the establishment of foreign investment enterprises has not been required to be pre-approved by the Department of Commerce before registration, unless such enterprise is to invest in the industries within the scope of the Negative List issued by the government. In other words, foreign investment enterprises are generally treated the same as domestic companies. In addition, thanks to the promotion of e-government, the most part of registration can be done online, so the registration time has been reduced a lot.

For example, in Shenzhen, the government promises that an investor only needs to apply to one official for registration one time to get all things done (such as business license, company seals, bank account, tax registration, and so on).

To process the registration, the investor shall first work out several proposed names of the company because some of them have been occupied by other companies or may not be available for other reasons. The investor must also prepare the Articles of Association (which must entail, among other: the business' purpose and scope, the total investment, the registered capital, the way of contribution and the domicile of the company as well as other documents. These include the appointment of the director or

board of directors, of the supervisors and of the legal representative. After all these documents are prepared, the investor (or someone they designated) may submit the relevant documents online for pre-review. If the application documents are satisfying, the applicant can make an appointment with the competent official so that they can submit the original documents on site. The government promises that the registration procedures will be finished within 20 workdays. After the company has been established, it must draw up a list of shareholders, which must include the name, place of residence, contribution amount of the shareholders and the serial numbers of the contribution certificate. Only shareholders who are recorded in the list may exercise his rights.

Share Capital

Under the Chinese Company Law, there is generally no minimum capital requirement to register a Limited. Since 2020, this also applies to foreign-invested companies. However, a minimum capital may be required for specific industrial and financial sectors. Although there is no statutory requirement for minimum capital, the shareholder(s) shall contribute capital enough to maintain and develop the proposed business. The undercapitalization of the company and mingling of the assets of the company and the shareholders can cause a pass-through of the liability. The registered capital can be contributed cash or in kind.

Further registration requirements

In China, company seals function as a signature of the legal representative. Pursuant to Article 490 of the Civil Code, a contract concluded in the form of a written agreement is formed at the time when the parties all sign it, stamp it, or put their fingerprints thereon. The seals must be applied for at the ministry of Public Security. Once obtained, they must be registered with the Public Security Bureau, the Administration Bureau for Industry and Commerce and the Customs Bureau. Social security registration, statistical registration and organizational code are obtained through the “all-in-one” license and must not be filed separately. A registration with further national or local authorities, such as a forex registration, may be necessary depending on the business.

Tax Registration

With the new “three-in-one” license, the business license, the tax registration certificate, and the organization code certificate for the Limited are consolidated into one certificate. Foreign residents who obtained a Chinese business license must apply to be registered as taxpayer (including VAT registration) within 30 days.

Anti-money laundering measures

All financial institutions and some non-financial institutions are obliged to perform anti-money laundering measures, such as customer identification, record keeping of

customers' identity information and transactions, and reporting of large-value and suspicious transactions.

Due to anti-money laundering measures, it is required that the legal representative shows on-site to open a bank account for the company and process some other matters. Thus, if a foreigner wants to be a legal representative, he or she shall be available to visit China at any time, or they may consider appointing a Chinese person as the legal representative to process all matters related to the establishment, making it much easier. Afterwards, a change of the legal representative can be applied for.

Foreign Investment Control

Although China is progressively opening up to foreign investment, several restrictions still apply. The so-called "Negative List" (Special Administrative Measures for Foreign Investment Access) is issued jointly by the MOFCOM and the NDRC, and currently entails 31 items either prohibited for foreign investment or restricted. A different list, with less prohibited and restricted activities, applies to the Free Trade Zones. Prohibited activities include i.e., film and TV production, tobacco wholesale and retail, stem cells and genetic treatments and social surveys. Restricted items are for example transportation, energy, banks and financial institutions and agriculture. To conduct a restricted activity, a foreign invested business requires the approval of the competent institution. Furthermore, a joined venture with a Chinese party (often holding a controlling interest) is required.

Additionally, a foreign investment will be subject to a review if it "effects or may effect national security". The review applies to the military sector, major agricultural products, infrastructure, transportation services, energy and resources, key technologies, and key equipment manufacturing. If a foreign investment is likely to pose national security concerns, the MOFCOM must be notified. If a national review is indeed needed, the MOFCOM and the NDRC decide on the issue within 100 to 120 days.

Customs (Export / Import)

Companies operating in the field of import and export must obtain a China customs registration certificate from the local custom branch. An import and export licenses are additionally required for many types of goods.

Bank Account

A Chinese corporate bank account is not necessary for the incorporation process, but it must be opened once completed. Normally, the account has to be set up within China, otherwise the approval of the foreign exchange authority is needed.

Accounting

A Limited must prepare financial statements and keep suitable financial records. Corporate income tax (CIT) must be pre-paid quarterly and the actual tax amount will be

settled annually at the first quarter of the next year. The Chinese accounting system follows the Chinese Accounting Standards (CAS). These standards are gradually being aligned with the International Financial Reporting Standards (IFRS) but some differences remain. For example, while the IFRS values fixed assets by historical cost or by revaluation of assets, the CAS adopts only the historical cost principle.

Formation Expenses

Experience shows that the total budget for a company start-up in China is listed as follows:

- Company registration procedure: RMB 10,000 (approx. EUR 1400). In special economic zones, the company registration procedure may cost RMB 20,000 (approx. EUR 2800). The success of the registration in the special economic zones cannot be guaranteed because they may have higher requirements regarding the investment's amount and the investments project.
- Legal advice costs for the draft of the standard formation documents are around RMB 10,000 (approx. EUR 1400)
- General manager contract: about RMB 15,000 (approx. EUR 2100)

In the event that individual changes to the formation documents are necessary, costs are calculated on the basis of hourly rates (usually not exceed EUR 1400).

Corporate Tax

The standard corporate income tax for a Chinese Limited amounts currently to 25% of taxable income. A lower rate is available on a national basis for small enterprises and for specific sectors/industries, such as high-tech. Furthermore, lower rates apply to encouraged enterprises in some regions and Special Economic Zones.

China adopts a double taxation system, which means that the shareholders shall pay income tax on the dividends received. The standard dividend income tax is at the rate of 20%. If the shareholder is a foreign company or individual, the company who pays dividend is obliged to withhold tax before it wires out the dividend to its foreign shareholders. Under such circumstance, the tax rate is 10%. If the shareholders are citizens or legal persons of certain countries or regions, such as Singapore or Hong Kong, the withholding tax rate is as low as 5%.

Real Estate Tax and Turnover Tax

A real estate tax is levied annually on land and buildings used for commercial purposes. The standard rate is 1.2% of the original value of the buildings. The regular VAT rate in China is currently 17%. A variety of reduced rates apply to certain products and goods.

Staff

If necessary, we can use our connections to recruit suitable employees or managers for your company. The appointment of directors, supervisors and manager must take place before the incorporation process starts.

Domiciliation and Tax Agent Service

Leasing a local office is mandatory if the Limited does not have its own premises. The rent agreement is required for the incorporation process. Domiciliation services and collective registrations are generally not permitted. In certain areas, such as the Shanghai free trade zone, approved domestic law firms can provide registered address. However, such restrictions are loosening, so it is advisable that the client check with their local agents before they make the decision.

J & J has connections with institutions that provide domiciliation and tax agent services in China. We are happy to help foreign investors to rent offices or retain an accountant firm and we will charge on an hourly basis. We are providing the following information for your reference:

- Renting an office for self-use and registration: the rent usually ranges from RMB 60 to RMB 500 (approx. EUR 8.5 to EUR 71) per square meter per month, depending on the location and level of the building (the quotation excludes luxury offices);
- Renting a room from a collective office: the rent for one room ranges from RMB 420 to RMB 20,000 (approx. EUR 60 to EUR 2831) per month, depending on the service, location, and level of the building.
- Tax Agent Service: including tax registration, tax deduction agreement, preparing the financial statements, tax and social security declaration, financial and tax risk advising etc. The service fee depends on the annual business revenue of the taxpayer. Please refer to the below quotation for reference (further discussion upon the actual conditions will be needed):

	Annual Company Revenue	Service Fee (per month)
1.	under RMB 10,000,000 (approx. EUR 1,400,000)	RMB 2,000 (approx. EUR 280)
2.	from RMB 10,000,000 (approx. EUR 1,400,000) to RMB 20,000,000 (approx. EUR 2,800,000)	RMB 3,500 (approx. EUR 500)
3.	beyond RMB 30,000,000 (approx. EUR 4,200,000)	RMB 8,000 (approx. EUR1100)

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