

## Doing Business in China

# Doing business in China: from contracts to a business establishment



**Zhixiong Liao** explains how to set up a company or a liaison business office in China

**T**here are two basic ways for a New Zealand company (or other business organisation) to do business in China. One is to enter into contracts with business partners in China to purchase and/or export your products and services to China. The other is to set up in China a business establishment, either a company or a liaison office, to deal or assist with the business.

The most common way for the latter option to occur is to set up a 'foreign-invested' company in China, which generally has the full capacity of a company. Such a company will be a separate legal entity with limited liability. It may import goods/services from its associated companies or other companies overseas and sell them in China and/or worldwide. It may also manufacture products or provide services using materials/labour purchased from overseas or the Chinese market.

A liaison business office is not a separate legal entity in China. It is not entitled to operate in its own right. It cannot enter into contracts or issue invoices, but can only collect information and help with market-promotion activities. It may only lease an office within designated buildings, and the registration of such an office will be current for no more than three years. The only advantage is that the cost of setting up such an office is much cheaper than a company. Where an overseas company is not sure about the future of its products/services in the Chinese market, a liaison office is a good way to help with 'testing the water'.



Whereabouts in China to set up your company may also make a difference. A foreign-invested company in the so-called 'Western China' region is more likely to be entitled to some preferential tax treatments, such as a tax holiday or lower tax rates. Registering your company somewhere in the 'Western China'

products/services in the Chinese market, a liaison office is a good way to help with 'testing the water'.

An overseas investor/business operator may set up three types of foreign-invested companies in China, namely, the "wholly foreign-invested company", "Sino-foreign equity joint venture company", and "Sino-foreign contractual joint venture company". A wholly foreign-invested company is a company with its shares 100 per cent owned by overseas investors. For a Sino-foreign equity joint venture company, the combination of shares owned by overseas investors must be less than 100 per cent, but not less than 25 per cent. A Sino-foreign contractual joint venture company is to a large extent a combination of partnership and limited liability company, which provides the parties with considerable flexibility in defining the relationship between them. The rights and/or obligations of the parties (the overseas investors and the Chinese investors) are not necessarily proportionate to their respective contributions to the registered capital, but based on the 'contract' of the parties and the constitution of the company. For this reason, it is unnecessary for the contributions from the parties to be evaluated and converted into money amounts. A Sino-foreign contractual joint venture enterprise can be registered as either a limited liability company or merely a 'co-operative project'. The latter is very rare in practice, because a 'co-operative project' has an obvious disadvantage, that is, it is not a legal entity separate from the investors, and the parties are jointly and severally liable for any debts and faults of the project, not dissimilar to partners to a partnership.


For the time being, the foreign investment policy may treat different types of foreign-invested companies differently. Generally speaking, a Sino-foreign equity joint venture company or a Sino-foreign contractual joint venture company for a particular project is more likely to obtain the required overseas investment approval than a wholly foreign-invested company. Furthermore, they are more likely to be granted exemptions from customs duty for imported equipment for self-use. For specific information on this, you should check with the current *Catalogue for the Guidance of Foreign Investments Industries*, which is jointly issued by the Committee of National Development and Reform and the Ministry of Commerce, and is subject to review from time to time. For New Zealand companies, the Free Trade Agreement between China and New Zealand, which provides New Zealand investors more preferential treatments than the general regime, should also be looked to in the course of your decision making.


likely to be entitled to some preferential tax treatments, such as a tax holiday or lower tax rates. Registering your company somewhere in the 'Western China' region does not mean your company can only do business within that region.

### Coming into being

The three types of foreign-invested companies share a very similar procedure of setting up. There are four basic stages in the procedure, namely, preliminary registration stage, overseas investment approval, incorporation registration, and after-incorporation registrations. In the preliminary registration stage, the investor(s) or their agents go to the Industry and Commerce Administration Bureau to register a company name, and then go to the Standardisation Authority to obtain a corporation ID code pre-registration notice.

In the second stage, the investors submit the signed contract, constitution, feasibility report, name list of directors, and other required documents to the foreign investment authority (similar to New Zealand's Overseas Investment Office) for approval. The foreign investment authority may also require an assessment report on the environmental effects of the proposed business if it might have industrial waste or pollution.

Once the investor(s) obtain the foreign investment approval, they should go to the Industry and Commerce Administration Bureau for incorporation registration within 30 days. After the incorporation registration, the company should register its ID code with the Standardisation Authority, open bank accounts, register with both the State Tax Bureau and the Local Tax Bureau, and register with Customs, the Foreign Exchange Administration, the Financial Department, the Statistics Bureau, the Quality Supervision, Inspection and Quarantine Administration, etcetera. Whether you should go to the government agencies at the national, provincial, or municipal level depends on the proposed amount of investment. Most overseas investments will go through the municipal level governmental agencies. Setting up companies in different regions may require different periods of time. For example, an overseas investment approval in Shenzhen City requires only up to five working days, whereas in Changchun City, north-east China, a similar approval may need up to 90 days! Therefore, it is important to check the agencies' websites of the region where your new company will be. 

 Dr Zhixiong Liao is a lecturer in the Faculty of Law at the University of Waikato who previously practised law in both China and New Zealand (in commercial law, tax law, and overseas investment regulation). He has been the chief director of a Chinese local government department in charge of overseas investment approval.