

1.1 Application Procedures for Establishment of Sino-Foreign Equity JV and Contractual JV Enterprises (in the case of Guangdong)

Step 1: Application for Establishment

Upon reaching agreement by the parties to an equity or contractual JV after negotiation, the Chinese party should submit the project proposal to the local foreign trade and economic cooperation department. For projects under the encouraged and permitted categories with an investment exceeding US\$100 million as well as projects under the restricted category with an investment exceeding US\$50 million, report has to be made to the local development and reform commission, and projects that require approval from the relevant industry department have to be reported to that industry department also.

Documents required: Project proposal approved by the competent Chinese authorities; preliminary feasibility study report; letter of intent or agreement signed by the parties to the JV; and credit report on the foreign party.

Step 2: Submission of Feasibility Studies for Approval

After the project proposal is approved, parties to the JV should work together to compile a feasibility study report for submission to the local foreign trade and economic cooperation department by the Chinese party for approval. For projects under the encouraged and permitted categories with an investment exceeding US\$100 million as well as projects under the restricted category with an investment exceeding US\$50 million, report has to be made to the local development and reform commission, and projects that require approval from the relevant industry department have to be reported to that industry department also.

Documents required: Application letter to the competent Chinese authorities; feasibility study report duly signed by all parties to the JV; JV agreement or draft contract; proof of the Chinese party's source of funds; and credit report on the foreign party prepared by the bank.

Step 3: Submission of Contract and Articles of Association for Approval

After the feasibility study report is approved, parties to the JV should sign the contract, articles of association and other relevant legal documents for establishing the JV. The Chinese party should then submit the documents to the local foreign trade and economic cooperation department where the JV is located for approval.

Documents required: Application letter to the competent Chinese authorities; feasibility study report and approval documents for the project; application for registration of the name of the enterprise approved by the provincial or municipal administration for industry and commerce; written comments on the project by various government departments such as environmental protection, fire services, health and land administration; business licences of the parties concerned and certificates of their legal representatives; contract and articles of association duly signed by the legal representatives of the JV parties; and list of board of directors.

Step 4: Application for Approval Certificate

After the contract and articles of association are approved, the Chinese party should apply to the provincial or municipal foreign trade and economic cooperation department for an approval certificate.

Documents Required: Ratification documents (on project proposal, feasibility study report, contract and articles of association) from the relevant authorities; project proposal, feasibility study report, contract, articles of association and list of directors duly approved by the competent authorities.

Step 5: Registration

Upon collection of the approval certification issued by the relevant authority, an application for business licence should be filed with the provincial or municipal administration for industry and commerce within 30 days. Subsequently, the JV should complete such procedures as applying for official seal and enterprise code, opening bank account, and registering for tax

payment and customs declaration with the local public security, technical supervision, taxation, Customs, finance, foreign exchange administration, banking, insurance and commodity inspection departments.

Notes:

- 1. The above procedures are applicable to both production enterprises and service providers.*
- 2. Guangdong currently practises a system under which project proposals, feasibility study reports, contracts and articles of association for national and provincial level foreign investment projects under the non-restricted category are examined and approved together.*