



PRC Business Structures for Foreign Investors



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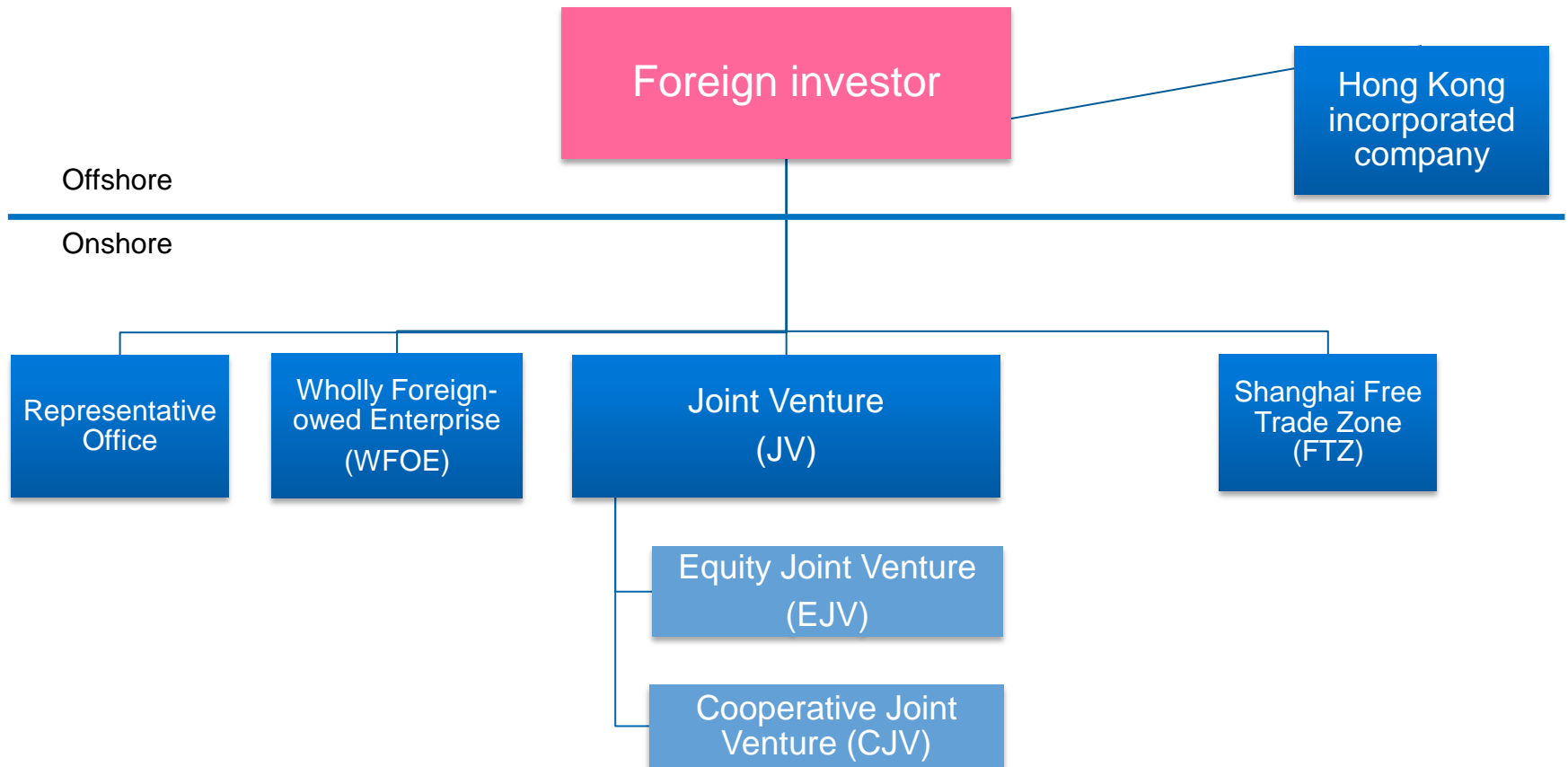
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➤ Overview

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 - Recent corporate regulatory approval reforms
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 - Hong Kong Incorporated Company
- Questions

› Business Structures Overview



› Foreign Investment Catalogue

- Catalogue of Industries for Guiding Foreign Investment (2011 version) (“Foreign Investment Catalogue”)
 - A key policy document for foreign investors;
 - Categorizes industries as “encouraged”, “prohibited” and “permitted” in terms of foreign investment; and
 - Defines the forms of business structures and investment caps applicable to foreign investment in certain industries

- Foreign investment in “*service institutions for the elderly*”
 - Listed in the “encouraged” industry; and
 - Not subject to any limitations regarding form of business structure or investment caps

➤ Foreign Investment in the Elderly Care Industry

30 December 1999: Interim Measures on the Administration of Social Welfare Institutions (*Ministry of Civil Affairs*)

- Foreign investment is restricted to sino-foreign equity/cooperative joint venture elderly care institutions.

30 January 2012: Foreign Investment Catalogue (*Ministry of Commerce, National Reform and Development Commission*)

- Wholly foreign-owned elderly care institution is allowed;
- Inconsistent with the MCA Interim Measures

17 February 2013: Notice on Establishment of For-profit Elderly Care Institutions and Disabled Service Institutions by Service Providers from Hong Kong and Macau (*Ministry of Commerce and Ministry of Civil Affairs*)

- WFOE is allowed for investment from Hong Kong and Macau

1 July 2013: Administrative Measures on Licensing for Establishment of Elderly Care Institutions and Administrative Measures on the Elderly Care Institutions (*Ministry of Civil Affairs*)

- Wholly foreign-owned elderly care institution is allowed;
- Consistent with the Foreign Investment Catalogue

› Foreign Investment in the Elderly Care Industry (contd)

Ministry of Civil Affairs (*MCA*)

- Licence for Elderly Care Institutions

State Food and Drug Administration (*SFDA*)

- Permit for Operating Food and Beverage Services

Ministry of Health (*MOH*)

- License for Medical Institutions

› Business Structures - *Representative Office*

- Simplest form of foreign business presence in China;
- Is not an independent legal entity and does not have its own capital;
- Provides a permanent base from which resident personnel may undertake indirect business activities such as market research, liaison, introducing products and services and trade name promotion;
- Unable to engage in “direct business operations”, ie it cannot directly enter into contracts with a view to making profits nor may it directly invest in China with a view to making profits;
- Cannot directly employ Chinese employees and instead must use the services of a designated Chinese labour service agency;
- Can employ 4 foreign representatives at most (including one Chief Representative).

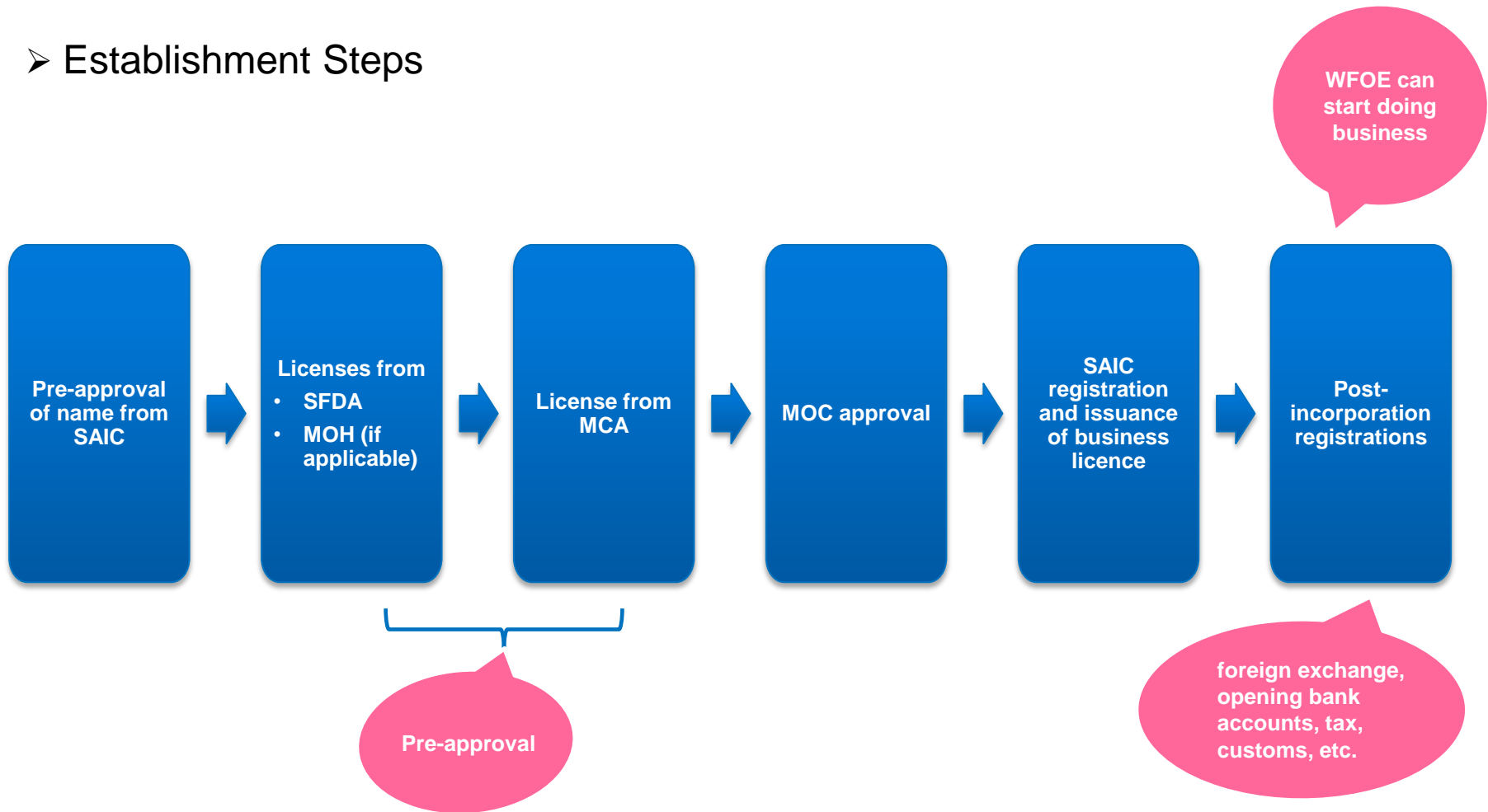
Business Structures - *Wholly Foreign-Owned Enterprises (WFOE)*

- 100% wholly foreign owned limited liability company with one or more foreign investors;
- Wholly foreign-owned elderly care institutions are permitted;
- Advantages and disadvantages

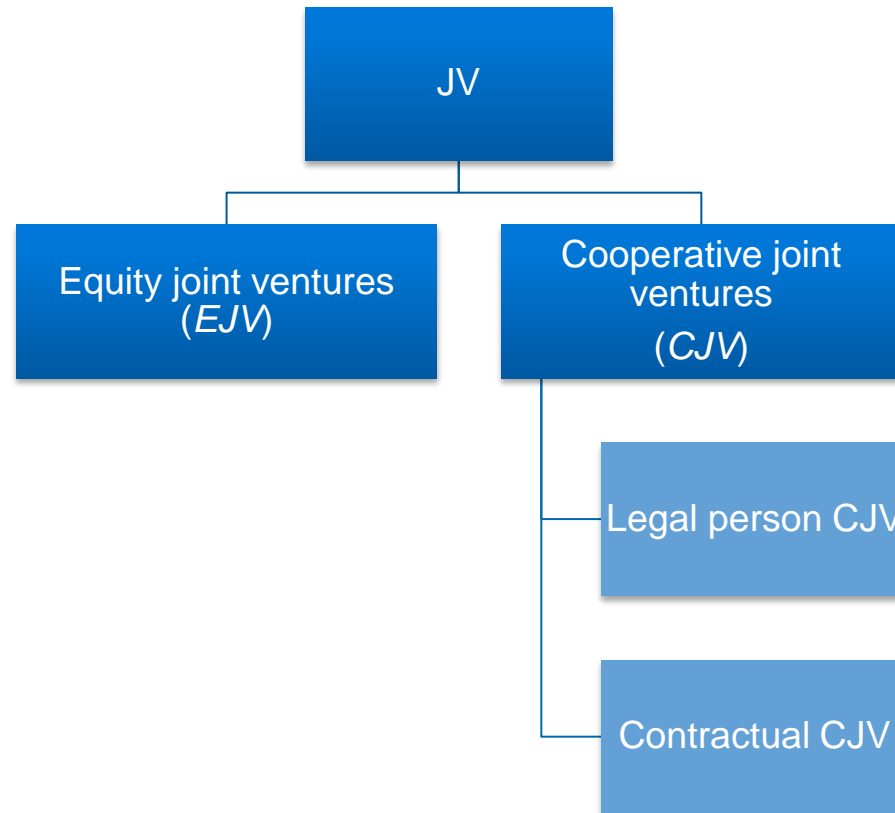


➤ Business Structures - *Wholly Foreign-Owned Enterprises (WFOE) (contd)*

➤ Establishment Steps



› Business Structures – *Joint Venture (JV)*



› Business Structures – *Joint Venture (JV)* (contd)

Requirements

- Foreign entities or individuals partnering with one or more Chinese entities;
- 25% minimum foreign ownership requirement

Characteristics

- **Incorporation documents:** EJV contract or CJV contract as well as articles of association;
- **Contribution:** in cash, in kind, in form of industrial property rights (EJC & CJV) or provision of “cooperative conditions” (CJV);
- **Profit sharing:** must be in proportion to the equity ownership held by each investor (EJV) or decided by the investors not strictly in proportion to the capital contributions (CJV);
- **Investment recoupment:** must be in proportion to the equity ownership held by each investor (EJV) or decided by the investors not strictly in proportion to the capital contributions (CJV).

Establishment process

- Similar to WFOE;
- An EJV/CJV contract must be signed with the Chinese partner before establishing the JV

› Business Structures – JV vs. WFOE

Pros:

- Chinese partner's connection with local market and local government authorities

Cons:

- Not straightforward entry and exit from the market - negotiation with Chinese partner;
- Restrictions on transfer of foreign party's equity stake;
- Does not guarantee 100% of business management by the foreign investor.
- Potential 'leakage' of IP

› Recent corporate regulatory approvals reforms

Requirement	Before	After
Minimum registered capital	<ul style="list-style-type: none"> • WFOE (with more than one investor)/EJV/legal person CJV: not less than RMB 30,000; • WFOE with one foreign investor: not less than RMB 100,000 	Requirement removed (except for certain companies in specified industries)
Initial registered capital contributions	Initial registered capital contribution of not less than 20% of the subscribed registered capital was required.	Requirement removed
Proportion of cash contribution	WFOE: at least 20% of the registered capital must be in cash (30% for a JV)	Requirement removed
Registration of paid-up capital	Registration of paid-up capital after each contribution is made	Requirement removed
Capital verification	Verification of capital contribution to be conducted after each contribution is made	Requirement removed

Business Structures – Shanghai Free Trade Zone (FTZ)



Officially launched on 29 September 2013

28.78 square kilometres

Highly streamlined company establishment process

More sectors opened up to foreign investment

› Business Structure – Hong Kong Incorporated Company

- Few regulatory approvals;
- Low tax rate;
- CEPA benefits.

› Questions

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