

INCORPORATION OF A FOREIGN-INVESTED LIMITED LIABILITY COMPANY IN
PEOPLE'S REPUBLIC OF CHINA

(A) Who can set up a foreign-invested limited liability company in PRC?

In principle, any foreign investor (company or individual) can incorporate a foreign-invested limited liability company in PRC.

(B) What business for a foreign-invested limited liability company can be permitted in PRC?

These are some certain limited industries that foreign investors should follow special management measures for access, and it is stipulated by the Special Administrative Measures (Negative List) for the Access of Foreign Investment ("Negative List") and the Negative list is updated annually¹.

Negative List uniformly set forth the ownership requirements, requirements for senior executives, and other special administrative measures for the access of foreign investment. Fields not on the Negative List shall be administered under the principle of equal treatment to both domestic and foreign investment.

(C) How to set up a foreign-invested limited liability company in PRC

A foreign-invested limited liability company shall be established by filing in the administrative authority named the Administration for Market Regulation. The shareholders (or their authorized representative) shall have an office (or a Virtual Registered Office), as the registered address first and then submit required relevant documents to the Administration for Market Regulation where the office (or the Virtual Registered Office) is located for the incorporation in PRC.

Normally, any company is required to have an existing office before its registration i.e., a lease agreement must be executed in advance to establishment. However, a lot of companies - especially the start-up companies - may not wish to expense an office cost from the beginning, plus it takes considerable amount of time to locate a suitable venue. Therefore, it can choose

¹ The latest version is the Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020) and you can find more details in annex.

to adopt Virtual Registered Office, which allows it to register the company first without having a physical space. The cost of virtual office differs in different cities.

(D) Which documents are needed?

Once the registered address is ascertained, the government requires proper executed documents by the investors. If the investor is a foreign entity, the documents of this foreign entity/individual needs to be notarized and legalized in advance to submit to the Chinese authorities. The notarization of the required documents shall be done by the local notary office and the legalization of the required documents shall be done by the Chinese Embassy in the country where the shareholder is located.

1. The shareholder(s):
 - a) if the shareholder is a natural person, it is required to provide:
 - i. copy of the passport;
 - ii. original notarized and legalized document of the passport.
 - b) if the shareholder is a company, it is required to provide:
 - i. copy of the business license (i.e., certificate of incorporation);
 - ii. original notarized and legalized document of the business license (i.e., certificate of incorporation);
 - iii. original notarized and legalized document of POA (authorizing a particular person to sign the documents for the incorporation of the company in PRC);
 - iv. shareholder structure traced back to the natural person level (disclose any individual shareholder who holds more than (or equal to) 20% shares);
 - v. copy of the passport and contact information (email address and telephone number) of the actual controller.
2. The legal representative, director(s), supervisor(s), general manager, and financial officer:
 - a) the legal representative, director(s) and supervisor(s) of the Company shall be a natural person, it is required to provide:
 - i. copy of the passport;
 - ii. original notarized and legalized document of the passport;
 - iii. contact information (email address and telephone number);
 - iv. original appointment letters of general manager and financial officer.

b) the general manager and financial officer of the Company shall be a natural person, it is required to provide:

- i. copy of the passport;
- ii. contact information (email address and telephone number);
- iii. original appointment letters of general manager and financial officer.

3. The Company to be incorporated:

a) the Company is required to provide:

- i. original Articles of Association;
- ii. original office lease agreement;
- iii. original company registration application form;
- iv. original resolution of shareholder(s) for the incorporation.

(E) Further information needed for the preparation of the incorporating documents

1. Company Name: In practice, 3 - 10 desired company names are submitted for approval and the company name must be in Chinese. The English name could be registered but serves as a translation purpose only. Please note that this is a crucial step of the procedure as once the name is approved, it would be locked up for a period of time.
2. Business Scope: In PRC, A business scope must be selected when making the registration and the operation of the Company shall not exceed the selected business scope.
3. Registered Capital: The registered capital is subscribed, and the company does not need to pay at the time of registration, and the contribution deadline can be agreed in the Articles of Association by the shareholder(s).
4. Application of other required License: When the company registration is finished, the Business License, the chops of company will be provided by the related government. Please be noted, in China, for certain business, you may need to apply for other Licenses separately.

(F) Incorporation timing and costs

The procedure above will take nearly 1 month starting from the first submission of the documents to the Administration for Market Regulation. The cost shall be estimated in the range of EUR 4,000-EUR 7,000 according to the specific industry and the number of the shareholders.

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Annex: Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020)

Order of the National Development and Reform Commission of the People's Republic of China and the Ministry of Commerce of the People's Republic of China (No. 32)

Notes:

I. The Special Administrative Measures (Negative List) for the Access of Foreign Investment (hereinafter referred to as the "Negative List") uniformly set forth the ownership requirements, requirements for senior executives, and other special administrative measures for the access of foreign investment. Fields not on the Negative List shall be administered under the principle of equal treatment to both domestic and foreign investment.

II. The Negative List includes the transitional periods for access restrictions to be canceled or relaxed in certain fields, at the expiry of which such restrictions shall be canceled or relaxed as scheduled.

III. An overseas investor may not engage in investment or operation as an individual industrial and commercial household, proprietorship investor, or member of a specialized farmers' cooperative.

IV. Where an overseas investor proposes to invest in a field on the Negative List without complying with the provisions of the Negative List, the relevant department shall, in the process of performing its duties in accordance with the law, decline to handle any matter concerning licensing and enterprise registration, among others, and any matter concerning confirmation, if the confirmation of a fixed investment project is involved. For investment in a field subject to ownership requirements, no foreign-funded partnership enterprise may be established.

V. Upon examination and submission for approval to the State Council by the relevant department of the State Council, a specific foreign investment may be exempt from the provisions on the relevant field of the Negative List.

VI. Where a domestic company, enterprise, or natural person acquires by merger any domestic company having affiliation thereto through a company legally established or controlled overseas by the domestic company, enterprise, or natural person, the provisions on foreign

investment, overseas investment, and foreign exchange administration, among others, shall apply.

VII. Measures relating to administrative approval, qualifications, and national security, among others, in culture, finance, and other fields shall, if not on the Negative List, be governed by the provisions currently in force.

VIII. The Mainland and Hong Kong Closer Economic Partnership Arrangement and its supplementary agreements, the Mainland and Macao Closer Economic Partnership Arrangement and its supplementary agreements, the Cross-Straits Economic Cooperation Framework Agreement and its supplementary agreements, and the international treaties and agreements entered into or acceded to by China shall apply, if they have established more favorable provisions on the access treatment of overseas investors. If a pilot free trade zone or any other special economic zone provides any more favorable opening measures for qualified investors, the relevant provisions shall apply.

IX. The Negative List shall be subject to interpretation by the National Development and Reform Commission and the Ministry of Commerce in conjunction with relevant departments.

Special Administrative Measures (Negative List) for the Access of Foreign Investment (2020)

SN	Special Administrative Measures
I. Agriculture, forestry, animal husbandry, and fishing	
1	The Chinese party shall have a stake of not less than 34%, in the case of selection and cultivation of new wheat varieties or production of seeds, or a controlling stake, in the case of selection and cultivation of new corn varieties or production of seeds.
2	Investment in the research, development, and raising or cultivation of any valuable or fine variety which is rare and peculiar to China or the production of relevant propagation

	materials (including fine genes in planting, animal husbandry, or aquaculture) shall be prohibited.
3	Investment in the selection and cultivation of a genetically modified variety of any crop, breeding stock, or brood stock or the production of genetically modified seeds (offspring) of it shall be prohibited.
4	Investment in the harvesting of aquatic products in the territorial waters or inland waters of China shall be prohibited.
II. Mining	
5	Investment in the exploration, mining, or beneficiating of rare earth, radioactive minerals, and tungsten shall be prohibited.
III. Manufacturing	
6	For printing of publications, the Chinese party shall have a controlling stake.
7	Investment in the application of steaming, frying, roasting, calcining, or other processing technology for prepared Chinese medicinal herb slices or the manufacturing of patented traditional Chinese medicine based on a classified formula shall be prohibited.
8	For the manufacturing of complete automobiles other than special-purpose vehicles, new energy vehicles, and commercial vehicles, the Chinese party shall have a stake of not less than 50%, and the same foreign investor may establish not more than two equity joint ventures manufacturing the same line of complete automobiles in China. (In 2022, the restriction on foreign stake for the manufacturing of passenger vehicles and the restriction that the same foreign investor may establish not more than two equity joint

	ventures manufacturing the same line of complete automobiles in China will be canceled)
9	Manufacturing of satellite television broadcast ground receiving facilities and critical components.
IV. Electric power, heat, gas, and water generation and supply	
10	For the building or operation of a nuclear electric power plant, the Chinese party shall have a controlling stake.
V. Wholesale trade and retail trade	
11	Investment in the wholesale or retail trade in leaf tobacco, cigarettes, redried tobacco, or any other tobacco products shall be prohibited.
VI. Transportation, warehousing, and postal service	
12	The Chinese party shall have a controlling stake in a domestic water transportation company.
13	The Chinese party shall have a controlling stake in a public air transportation company, in which the investment of a foreign investor and its affiliate(s) shall not exceed 25% and whose legal representative shall be a Chinese citizen. The legal representative of a general aviation company shall be a Chinese citizen, general aviation companies for agriculture, forestry, or fishing shall be restricted to equity joint ventures, and the Chinese party shall have a controlling stake in a general aviation company for any other field.
14	For the building or operation of a civil airport, the Chinese party shall have a relatively controlling stake. A foreign party shall not participate in the construction and operation of an air traffic control tower.

15	Investment in a post company or domestic express mail delivery services shall be prohibited.
VII. Information transmission, software, and information technology service	
16	Telecommunications carriers: limited to the opening of telecommunications services in the commitments made by China upon WTO accession. The foreign stake in a value-added telecommunications service may not exceed 50% (except e-commerce, domestic conferencing, store-and-forward, and call center services), and the Chinese party shall have a controlling stake in basic telecommunications.
17	Investment in Internet news information services, Internet publication services, Internet video and audio program services, Internet cultural business (except music), and Internet social networking services (save the part of such services already opening up in the commitments of China made upon WTO accession) shall be prohibited.
VIII. Leasing and commercial services	
18	Investment in Chinese legal affairs (except the provision of information on the implications of China's legal environment) shall be prohibited, and a foreign investor may not be a partner in a domestic law firm.
19	Market survey shall be restricted to equity joint ventures, and for broadcast media rating services, the Chinese party shall have a controlling stake.
20	Investment in social survey shall be prohibited.
IX. Scientific research and technical services	

21	Investment in the development and application of human stem cells and genetic diagnosis and therapy shall be prohibited.
22	Investment in research institutions of humanistic and social sciences shall be prohibited.
23	Investment in geodetic surveying, hydrographic surveying and mapping, aerial photography for surveying and mapping, ground movement measurement, and administrative region boundary surveying and mapping; the preparation of relief maps, political maps of the world, national political maps, political maps at or below the provincial level, classroom national maps, classroom regional maps, true-3D image maps, and navigation electronic maps; and regional geological mapping, minerals and geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disaster, remote sensing geology, and other surveying shall be prohibited (a mining right holder that conducts work to the extent of its mining right shall be exempt from the special administrative measure).
X. Education	
24	A preschool, a regular senior secondary school, or a higher education institution shall be restricted to Chinese-foreign contractual joint venture, under the control of the Chinese party (the principal or the chief executive shall be a Chinese citizen, and the council, board of directors, or joint management committee shall consist of members from the Chinese party accounting for not less than one half of the total number of members).
25	Investment in a compulsory educational institution or a religious educational institution shall be prohibited.
XI. Human health and social work activities	

26	Medical institutions shall be restricted to equity joint ventures.
XII. Culture, sports, and entertainment	
27	Investment in news organizations (including without limitation news agencies) shall be prohibited.
28	Investment in the editing, publishing, and production of books, newspapers, periodicals, audiovisual recordings, and electronic publications shall be prohibited.
29	Investment in radio stations, television stations, radio and television channels (frequencies), and radio and television transmission coverage networks (transmitting stations, relay stations, radio and television satellites, satellite uplink stations, satellite receiving and relay stations, microwave stations, monitoring stations, and cable radio and television transmission coverage networks) shall be prohibited, and engaging in radio and television video-on-demand services or installation services for ground receiving facilities for television broadcasting by satellite shall be prohibited.
30	Investment in a radio and television program making or operation (including import business) company shall be prohibited.
31	Investment in a motion picture production company, distribution company, theater company, or motion picture import business shall be prohibited.
32	Investment in a cultural relics auction company, a cultural relics store, or a state-owned cultural relics museum shall be prohibited.
33	Investment in a performing arts group shall be prohibited.