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*V&E China Practice Group*

## Rules Governing Electric Vehicle Investment and Production in China

The Chinese government has been vigorously promoting the development of electric vehicles for the purpose of China carving a niche for itself in the global electric vehicle market. Under the new 12th Five-Year Plan for China's auto industry, developing electric vehicles will become the nation's foremost priority over the next five years, with the aim of achieving annual electric vehicle sales of one million units by 2015.

According to the recently-issued "State Council's Decision to Accelerate the Development of Strategic Emerging Industries," alternative-energy technologies, in the aggregate, should account for 8 percent of China's GDP. The electric vehicle industry will play a leading role in the country's economy in the next 10 years.

In light of the foregoing economic development goals, the Chinese government has established incentives for foreign investment in electric vehicle technology. Most notably, in certain technology fields, foreign investors may establish wholly-owned foreign enterprises and manufacture auto-parts, without the need for Chinese partners and without any equity participation restraints. In addition, while local partners are required in certain other technology fields related to electric vehicles, the foreign investor may maintain a controlling interest in the resulting joint venture. This memorandum provides a general overview on the current legal framework governing foreign investments in the electric vehicle industry of the People's Republic of China (the "PRC"). The first section of the memorandum summarizes the current state of PRC law and regulations (PRC Law) with respect to equity participation and qualification requirements. The second section of the memorandum summarizes the rules and procedures for establishing various business entities in China in the electric vehicle industry.

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## I. Rules Regarding Equity Participation and Qualification Requirements for Doing Business in China's Clean-Energy Automobile Industry

The primary sources of PRC law governing equity participation and qualification requirements for doing business in China's electric vehicle industry are:

- (1) The New Energy Auto Industry Development Plan, expected to be promulgated by the Ministry of Industry and Information Technology (the "MIIT") in 2011;
- (2) The Qualification Requirements for New Energy Automobile Manufacturers and Automotive Products Manufacturing, promulgated by the MIIT in 2009; and
- (3) The Catalog of Industries for Guiding Foreign Investment, promulgated by the Ministry of Commerce (the "MOC") in 2007.

### 1. Equity Participation

Even with the continued opening of China's markets to international investment, the PRC government still regulates, and in some cases restricts or even prohibits, foreign investment. With regard to the production of electric vehicles and components, foreign direct investment may enjoy more favorable regulation than other industries.

#### (i) The 2007 Investment Catalogue

The Provisions for Guiding the Direction of Foreign Investment (the "2002 FDI Law"), first promulgated on 11 February 2002 and subsequently amended, classifies categories of industry in which foreign investment is encouraged, permitted, restricted, or prohibited. Under the 2007 Investment Catalogue to the 2002 FDI Law, different incentives and requirements apply to different categories. For instance, local government authorities may have greater discretion to approve foreign investments in "encouraged" sectors, whereas investments in "restricted" sectors may require approval from the MOC and other central government authorities. Moreover, for investments in certain industrial sectors, the regulations require that an investment be structured as a joint venture (rather than wholly-foreign owned) and that the Chinese partner must hold a majority ownership interest. In other words, the equity participation by a foreign investor is limited to a certain percentage, which is usually under 50 percent.

According to the 2007 Investment Catalogue, while the auto industry is an industry where foreign investment is encouraged, an equity participation restriction is applied to automobile production. Under the 2007 Investment Catalogue, the proportion of foreign capital in automobile final assembly must be less than 50%. However, foreign equity participation may be up to 100 percent in the following investments in the auto industry:

1. The construction of automobile research and development facilities;
2. The production of, and construction of engine refurbishment and R&D facilities for: gasoline engines with an output of 50kw or above; diesel engines whose output is at least 40kw, with a displacement of 3 liters or less; diesel engines whose output is at least 30kw, with a displacement of 3 liters or more; and

engines using alternative power sources such as fuel cells and ethanol fuel mixtures;

3. R&D and production of key automobile components and technologies such as the: disk brake assembly, drive axle assembly, automatic gear box, diesel engine fuel pump, engine air-intake superchargers, viscous junction box (for four-wheel drive), fluid pressure tappet, electronic integrating instrument, crankshafts, and other connective linkages for vehicles with diesel engines of at least 8 liters, anti-lock brake system, electronic stability program (ESP), electronic braking, electronic brake force distribution system (EBD), traction control, gas generator for air-bags, electronic diesel fuel injection systems, common rail fuel injector technology (maximum pressure >1600psi), variable geometry turbocharging technology (VGT), variable nozzle turbocharging technology (VNT), discharge control devices for engines reaching stage-IV pollutant discharge standards of China, intelligent torque management systems, coupler assemblies, power steering, diesel engine exhaust scrubbers, intelligent engine cylinders, and special rubber accessories for automobiles;
4. R&D and production of automotive electronics such as: control systems and key components for engines and chassis, automotive information systems and navigation systems, components for electronic control system input (sensor and sampling systems) and output (actuator), electrically controlled air springs, electronically controlled suspension systems, electronic engine valves, electronic accelerators, integrated electronic motors and their associated control system, electronic wheel hub motors, fuel cell racks and their components, hydrogen storage system for automobiles, and monitoring systems for testing and maintaining automobiles and motorcycles.

However, the following R&D and production-related investments must be undertaken using an equity joint venture: electronics networking technology; power steering technology; nickel-hydrogen and lithium-ion batteries and their control systems; and multi-functional control boards. Both equity joint ventures and cooperative joint ventures are allowed to engage R&D and production-related investment with respect to embedded electronic integration systems. While a Chinese partner is required, the foreign investor may remain as the controlling shareholder in such equity joint ventures and cooperative joint ventures. Thus, the maximum permitted percentage of foreign participation in these categories may be high (up to 99 percent), but should be verified on a case-by-case basis.

(ii) [Potential Equity Participation Restraints under the New Energy Auto Industry Development Plan](#)

In 2010, the MIIT circulated two drafts of the New Energy Auto Industry Development Plan among the major automobile manufacturers in the PRC for comment. The plan seeks to meet the State Council's Energy Savings and Emission Reduction requirements, as well as the State Council's strategy for Strategic Development of New Industry. If promulgated, the plan will govern foreign investments in the electric vehicle industry. While the official version of this new plan has not been issued yet, comparison

of the two released drafts yields an interesting change of language regarding equity participation under the New Energy Auto Industry Development Plan.

As provided in the first draft, the Chinese party to a joint venture must hold at least 51 percent of the shares, regardless of whether the joint venture is for the production of automobiles or for only the production of critical auto components. However, such language was deleted in the second draft issued on 9 September 2010, such that the 2007 Investment Catalogue becomes controlling for investments in the electric vehicle industry. Under the 2007 Investment Catalogue, only automobile final assembly requires the Chinese partner to hold a majority ownership interest, as noted above. The production of automotive parts is therefore not subject to a restriction on foreign majority ownership (although certain investments require either an equity joint venture or a cooperative joint venture of which the Chinese partner must own at least a non-controlling interest, as also noted). Moreover, pending the implementation of the New Energy Auto Industry Development Plan, the 2007 Investment Catalogue currently remains controlling over foreign investment in this area.

## 2. Qualification Requirements for New Energy Automobile Manufacturers and Automotive Products Manufacturing

The Qualification Requirements for New Energy Automobile Manufacturers and Automotive Products Manufacturing (the “Qualification Requirements”) promulgated by the MIIT establishes: (i) the classification of electric vehicles and their corresponding means of R&D and production; (ii) the rules and standards that manufacturers must abide by; and (iii) the disclosures required by the application to produce electric vehicles and components.

### (i) Classification

Under the Qualification Requirements, any enterprise established in China for the purpose of manufacturing electric vehicles and automotive parts must obtain the applicable approval from the MIIT. Electric vehicles are defined as hybrid vehicles, battery-driven electric vehicles (BEV, including solar powered vehicles), fuel cell electric vehicles (FCEV), hydrogen engine vehicles, and vehicles utilizing other alternative-energy sources (such as dimethyl-ether). Electric vehicles and automotive parts are classified into three technical stages: the **starting stage**; the **developing stage**; and the **mature stage**. The classification determines the manner in which their R&D and production is conducted. The factors determining the technical stage of an electric vehicle product are: the maturity of the car’s technology; the advanced state of the technologies for the car in the aggregate and the advanced state of its key components; the maturity of relevant state and industry standards; and how soon before the product is ready for mass production.

Vehicles or auto components classified in the **starting stage** refer to electric vehicle products that operate under technology that is yet to be realized, with no relevant state and industrial standards. Electric vehicle products classified under the starting stage are far from ready for mass production. Products in the starting stage may only be manufactured in small batches. Demonstrations of the product’s technology must be conducted only in approved regions, within an approved scope and under approved

conditions. The operating characteristics of the product during such demonstrations must be monitored in real-time.

Vehicles or auto components classified in the **developing stage** refer to electric vehicle products whose technology and means of production are basically determined and practicable. However, the relevant state and industrial standards for the product need further development and refinement. Products in the developing stage have only preliminarily satisfied the requirements for mass production. Batch production is allowed for products at the developing stage, and such products may only be distributed and used in approved regions, within a prescribed time limit, and under predetermined conditions, and the operation of at least 20 percent of such products shall be under real-time monitoring.

Vehicles or auto components classified in the **mature stage** refer to electric vehicle products with established and thoroughly-tested technology and production methods. The relevant state and industrial standards for the product's technology and production have been finalized. Electric vehicles or auto components in the mature stage may enter mass production and be produced in the same fashion as conventional vehicles and auto components. The guidelines for the sale and distribution of electric vehicles and parts are the same as those for conventional motor vehicles and parts.

(ii) **Production Requirements**

Pursuant to the Qualification Requirements (which apply to all stages of development), in order to produce electric vehicles and parts, a manufacturer must:

1. Abide by state laws, regulations, state industrial policies, and the PRC's macroeconomic control policies;
2. Be an automobile manufacturing enterprise or an enterprise manufacturing refitted commercial vehicles. Newly established automobile manufacturers or an existing automobile manufacturer which will begin production of electric vehicles must handle approval or filing formalities, in accordance with the provisions of the Policy on the Development of the Automotive Industry;
3. Have adequate production capacity;
4. Have the capacity to design and develop automobile products;
5. Have the capacity to guarantee the consistency of the production of electric vehicles;
6. Have the capacity to market and sell products and provide customer service;
7. Have the capacity to establish a procurement system for necessary parts and materials for electric vehicle products; and
8. Conform any automobiles manufactured with the relevant state standards and provisions governing: the procedures for conducting experiments to finalize the design of vehicles; and the testing requirements.

In addition, any automotive products manufactured shall:

1. Pass any required inspection administered by MIIT-designated institutes;
2. Not violate any third-party intellectual property rights;
3. Comply with applicable safety, environmental, energy-saving, and anti-theft laws.

The MIIT implemented four new technical regulations governing electric vehicles in China. These technical guidelines promulgated by the MIIT detail the specifications that must be met by electric vehicles and components. The regulations are the following: (i) Requirements for Electric Vehicle Conductive Charge Couplers; (ii) General Requirements for Electric Vehicle Charging Stations; (iii) Communication Protocols Between Battery Management System and Off-Board Charger for Electric Vehicles; and (iv) Test Methods for Energy Consumption of Light-Duty Hybrid Electric Vehicles.

(iii) **Application Checklist**

When applying to manufacture clean-energy automotive products, an enterprise must submit the following materials to MIIT:

- The Application Form for Being Admitted to Manufacture New Energy Automobiles;
- A description of the enterprise's capability as to designing, manufacturing, and marketing electric vehicles and components; its customer service program; its parts/materials procurement system; and ability to maintain consistent production capacity;
- A self-evaluation report made by the enterprise in accordance with the requisites of the Qualification Requirements for New Energy Automobile Manufacturers and Automotive Products Manufacturing;
- Approvals from any applicable agency with regard to any applicable investment management rules for newly-established automobile manufacturers and existing automobile manufacturers that intend to produce electric vehicles and components;
- A description of the enterprise that includes the business name, legal representatives, major shareholders, registered trademark, place of registration, and place of manufacturing;
- A description explaining the new technologies involved;
- All information required by the MIIT's "Automobile Manufacturers and Products Announcement";
- A description of the automotive product's major technical parameters, a list of main design configurations, and the testing regimen;
- The schedule for mandatory inspections of automotive products;
- An inspection report by the inspecting authorities for electric vehicle products; and

- Inspection norms (which state the testing method, judging rules, characteristics to be inspected, a performance assessment of the vehicle as compared to the control vehicle provided by the MIIT, highway conditions, mileage distribution, etc.) of the product (including the vehicle and its power, driving, and control systems).

If the clean-energy automotive product is a product at the starting stage or the developing stage, the following materials must also be submitted as part of the package:

- An after-sale customer service commitment (which shall at least state its product quality assurance commitment, coverage area of its sale, and after-sale services), status report about its after-sale network construction, training program for after-sale service workers, after-sale service scope, spare parts program, quality guarantee period, recycling program for the vehicle and its parts (such as the battery), claims settlement process, feedback process for problems discovered in the course of providing after-sale services, and recall process for defective products;
- An introduction to the planned sales territory, and the approval document for the region of operation issued by the competent department of the provincial people's government for each region where the product is to be used; and
- Agreements concluded with entities that will use the product, the operating rules of the entities for using the product, and a statement of the quantity of the product to be used by the purchasing entities (which applies only to products classified in the starting stage).

## II. Rules and Procedures for Establishing Business Entities for Doing Business in China's Clean-Energy Automobile Industry

This section provides an overview of PRC corporate law governing the creation of business vehicles for foreign direct investment. The most relevant laws are the PRC Company Law, as amended on 27 October 2005 and effective on 1 January 2006 (the "Company Law"), and the laws governing the following three frequently adopted business vehicles available for foreign investment in the PRC: (i) the Sino-foreign equity joint venture or "EJV," (ii) the Sino-foreign contractual joint venture or "CJV," and (iii) the wholly foreign-owned enterprise or "WFOE."

### 1. The Company Law

The Company Law is applicable to all domestic companies including foreign investment enterprises. According to Article 218 of the Company Law, where there are no specific provisions applicable under the Equity Joint Venture Law, the Cooperative Joint Venture Law, or the WFOE Law, the Company Law governs.

Under the Company Law:

- The minimum registered capital of a company has been lowered to RMB 30,000 (approximately US\$4,554), while the threshold for companies having only one shareholder is RMB 100,000 (approximately US\$15,179);

- Thirty percent of the registered capital must be paid in the form of cash, while the remaining 70 percent of the registered capital may be paid in other forms; and
- The shareholders of a company shall be jointly liable for the company's debts if they intentionally misuse the company's status of independent legal person for the purpose of evading its liabilities or in order to seriously impair the rights and/or benefits of the company's creditors.

## 2. Foreign Invested Enterprises: EJVs, CJVs, and WFOEs

The three primary Foreign Invested Enterprises (FIEs) available under PRC law are: Sino-foreign Equity Joint Ventures, Sino-foreign Cooperative Joint Ventures, and Wholly Foreign-owned Enterprises. The primary difference between the three is that with the WFOE, the foreign company owns 100 percent of the business and would be in complete control of management. In contrast, a Chinese partner is required in order to establish either of the other two types of FIEs (which will result in certain management and control issues).

### (i) The EJV: Sino-foreign Equity Joint Ventures

A Sino-foreign equity joint venture is a Chinese limited liability company established jointly by foreign and Chinese entities or individuals. The parties share the profits, risks, and losses of the joint venture proportionate to their contribution of registered capital. The foreign party must contribute at least 25 percent of the venture's registered capital. Contributions can take the form of cash or property, such as buildings, machinery, property titles, specialized technologies, and land usage rights. However, at least 30 percent of the total registered capital of an EJV must be in the form of cash, as this requirement applies to all companies in China, in accordance with Company Law.

#### 1. Applicable Law

The primary legislation for equity joint ventures in the PRC consist of the following two laws:

- The Law of the PRC on Sino-foreign Equity Joint Ventures (the "Equity Joint Venture Law"), promulgated on 1 July 1979 and first revised on 4 April 1990, and further revised on 15 March 2001, and
- The Regulations for the Implementation of the Equity Joint Venture Law (the "Equity Joint Venture Regulations"), promulgated on 20 September 1983, revised on 15 January 1986 and again on 21 December 1987 and most recently on 22 July 2001.

Additionally, there are other specific laws and regulations related to equity joint ventures governing such matters as taxation, registration, labor, accounting, foreign exchange, minimum equity requirements, and contributions of registered capital.

#### 2. Nature and Legal Status of Equity Joint Ventures

Both the Equity Joint Venture Law and the Equity Joint Venture Regulations require that equity joint ventures take the form of a "limited liability company,"

incorporated and registered in the PRC. The legislation provides that “each party to the joint venture is liable to the joint venture within the limits of the capital subscribed by it” and that “the profits, risks and losses of a joint venture shall be shared by the parties to the joint venture in proportion to their contributions of registered capital.”

The Equity Joint Venture Regulations provide that equity joint ventures are “Chinese legal persons.” According to the General Principles of Civil Law of the PRC, promulgated on 2 April 1986 and effective on 1 January 1987, Chinese legal persons have the following rights: (i) the right to own, use, reap benefit from, and dispose of property; (ii) the right to carry on management and production independently; and (iii) the capacity to sue and be sued in a court of law. According to the Administrative Regulations of the PRC on the Company Registration, promulgated on 24 June 1994 and effective on 1 July 1994 (the “Registration Regulations”), an equity joint venture is granted legal person status upon registration with the State Administration for Industry and Commerce (SAIC) or local Administration for Industry and Commerce (AIC).

### 3. Approval Procedures: Documentation Requirements and Timeframe

For most joint venture projects, the Chinese partners submit a project proposal and a feasibility study to the State Development and Reform Commission (the “SDRC”) for its approval, prior to conducting form negotiations with their foreign partners over the joint venture agreement or articles of association. After the SDRC approves the project proposal and feasibility study, the Chinese party applies to the MOC or the MOC’s local branch (the “Approval Authority”) for approval of the proposed joint venture. In connection with this application, the Chinese party is required to submit the following documents to the Approval Authority:

- A formal application for approval;
- A copy of the executed feasibility study;
- Executed copies of the joint venture agreement (if any), the joint venture contract, and the articles of association;
- A list of the names of the members of the board of directors of the joint venture; and
- Other documents as required by the Approval Authority.

The Approval Authority has the right to require the parties to amend any aspect of the application that it deems improper and may deny approval if the required amendments are not made. Under the Equity Joint Venture Regulations, the Approval Authority must notify the parties within three months of its disposition with respect to the application. Local incentive provisions can reduce this period to as short as one month.

#### 4. Registration Procedures: Documentation Requirements and Timeframe

Under the Registration Regulations, an enterprise that is to receive foreign investment must apply for the registration of its name prior to the execution of the joint venture contract and articles of association. The application must be filed with the SAIC or local AIC (collectively known as the “Registration Authority”), whichever the case may be. The Registration Authority shall decide whether to approve or reject the name within 30 days of acceptance of the application. If the name is approved, the Registration Authority will then issue a formal notice indicating its approval.

Under the Equity Joint Venture Regulations, joint ventures shall apply for registration with the Registration Authority within one month of receiving the formal approval certificate from the Approval Authority. In connection with this application, the joint venture is required to submit the following documents:

- An application for registration;
- The joint venture contract and articles of association, as well as the approval document and approval certificate issued by the Approval Authority;
- The project proposal and feasibility study and the approval documents;
- Certificates attesting to the lawful commencement of business by the joint venture partners;
- Bank reference letter certifying the financial credibility of the joint venture partners;
- A list of the names of the joint venture’s board members, general manager, and deputy general manager(s); and
- Other relevant documents.

The Registration Authority has 30 days to review the application documents and issue a business license to the joint venture, provided that the application documents are complete.

#### (ii) The CJV: Sino-foreign Cooperative Joint Ventures

A Sino-foreign cooperative joint venture, often referred to as a contractual joint venture, is a PRC limited liability company established jointly by foreign and Chinese parties in which terms such as the investment amount, the terms of the cooperation, the distribution of earnings or products, the sharing of risks and losses, the methodologies of business management, and the ownership of property on the expiration of the contract term are all negotiated and defined in the joint venture contract. As a result, unlike an equity joint venture, profits, risks, and losses of the joint venture are dealt with in the contract and need not be shared by the parties proportionate to their contributions of registered capital.

As with an equity joint venture, the proportion of registered capital contributed by the foreign party of a cooperative joint venture must be at least 25 percent. Contributions can take the form of cash or other property such as buildings, machinery, property titles, specialized technologies, and land usage rights. Upon expiration of the contract, all assets of the enterprise belong to the Chinese investor(s). Again, at least 30 percent of the total registered capital of an EJV must be in the form of cash, as stipulated by the PRC Company Law.

#### 1. Applicable Law

The primary legislation for cooperative joint ventures in the PRC are the following two laws:

- The Law of the PRC on Sino-foreign Cooperative Joint Ventures Enterprises (the “Cooperative Joint Venture Law”), promulgated on 13 April 1988 and revised on 31 October 2000; and
- The Detailed Rules for the Implementation of the Cooperative Joint Venture Law (the “CJV Implementing Rules”), promulgated on 4 September 1995.

However, in cases where the Cooperative Joint Venture Law and CJV Implementing Rules do not cover a specific issue, the rules governing equity joint ventures may be applied, either directly or by inference. Additionally, while the Cooperative Joint Venture Law and CJV Implementing Rules are the primary statutory authority relating to cooperative joint ventures, there are also other rules and regulations covering various aspects of the operation and management of a cooperative joint venture.

#### 2. Form of Cooperative Joint Venture

Under the Cooperative Joint Venture Law and CJV Implementing Rules, a cooperative joint venture may take one of two different forms — a legal person cooperative joint venture or a non-legal person cooperative joint venture. Where a cooperative joint venture is established as a separate legal person, the liability of contracting parties with respect to the cooperative joint venture is generally limited to their capital contributions, and the structure of the entity is similar to that of an equity joint venture. In the case of a cooperative joint venture that does not have a separate legal person status, the entity will be treated as a partnership under Chinese law, and the parties will bear joint liability with respect to the obligations of the cooperative joint venture.

#### 3. Approval Procedures: Documentation Requirements and Timeframe

The documentation and procedures required to secure approval for the establishment of a cooperative joint venture are essentially the same as those outlined above with respect to equity joint ventures. Additionally, the Approval Authority is required to decide within 45 days whether to approve or reject applications for the establishment of cooperative joint ventures.

#### 4. Registration Procedures: Documentation Requirements and Timeframe

The registration procedures, documentation requirements, and timeframe for a cooperative joint venture are identical to those in connection with the equity joint ventures outlined above.

#### (iii) The WFOE: Wholly Foreign-owned Enterprises

A wholly foreign-owned enterprise, or WFOE, is a limited liability company with PRC legal person status established in China by a foreign party exclusively with their own capital. Any profits earned by the enterprise belong wholly to the foreign investor(s).

##### 1. Applicable Law

The primary legislation for WFOEs in the PRC are the following two laws:

- The Law of the PRC on Enterprises with Sole Foreign Investment (the “WFOE Law”), promulgated on 12 April 1986 and revised on 31 October 2000; and
- The Detailed Rules for the Implementation of the WFOE Law (the “WFOE Rules”), promulgated on 12 December 1990 and revised 12 April 2001.

##### 2. Nature and Status of a WFOE

A WFOE may have one or more foreign investors/shareholders. It may also be converted from a single investor/shareholder structure to a multiple investor/shareholder structure upon amendment of its articles of association, execution of a shareholders agreement/contract, and receipt of relevant governmental approvals. The shareholders share the profits, losses, and risks of the WFOE in accordance with the terms of the shareholders agreement and the company’s articles of association. The WFOE is liable for all its debts and obligations to the extent of its own property and assets, but the WFOE’s creditors have no recourse to the assets or property of its shareholders. Each shareholder is liable for the debts of the WFOE only to the extent of such shareholder’s contribution to the registered capital of the WFOE.

The organizational structure and rules of operation of a WFOE are set forth in its articles of association. A WFOE with multiple shareholders is governed by a Board of Directors, whereas the decision-maker for a WFOE with a single shareholder is an executive director or general manager. A WFOE may have one or more branches in China subject to any necessary governmental approvals (such approvals are generally procedural in nature).

##### 3. Approval Procedures, Documentation Requirements, and Timeframe

The approval procedures are similar to those required for setting up an equity joint venture. In the approval process for a WFOE, the documents required for submission to the Approval Authority vary slightly by district or region. As an example, the following documents are required to be submitted to the Beijing

Municipal Bureau of Commerce, Chaoyang Branch (the “Chaoyang Branch Approval Authority”) for setting up a WFOE in the Chaoyang District of Beijing:

- Commitment Letter (certifying that the submitted documents are authentic and truthful) and the Application Form (which shall be obtained from the Chaoyang Branch Approval Authority);
- Name Pre-Approval Notice;
- Lease Agreement for the Office Building and Lessee’s Certificate of Ownership for the Office Building;
- Feasibility Study Report;
- Articles of Association;
- Appointment Letter of the proposed WFOE’s Directors, List of the Directors, and ID/Passport of the Directors (or, in the event that the WFOE only has one executive director, the appointment letter for the proposed executive director); or Appointment Letter of the proposed WFOE’s Legal Representative and General Manager;
- The foreign investor’s Certificate of Incorporation; passport of the foreign investor’s Legal Representative; list of the foreign investor’s Shareholders and Directors; Power of Attorney for authorizing a representative to execute relevant documents on behalf of the foreign investor;
- Bank Reference Letter certifying the satisfactory financial status of the foreign investor;
- Power of Attorney signed by the authorized representative of the foreign investor for authorizing a qualified filing agent to file the registration for the proposed WFOE; copy of the ID Card of the person handling the registration; and
- Other documents the Chaoyang Branch Approval Authority may require.

The Chaoyang Branch Approval Authority must decide whether to approve or reject the application within five working days from the date of receipt of all application documents. If the application is approved, it will issue an Official Approval Letter upon its decision. Subsequently, an Approval Certificate will be issued within three days. However, the Chaoyang Branch Approval Authority, similar to approval authorities in other areas, may request additional documents and thereby extend the approval period.

#### 4. Registration Procedures, Documentation Requirements, and Timeframe

The registration procedures, documentation requirements, and timeframe for a WFOE are substantially the same as those outlined above in connection with equity joint ventures.

(iv) AIC Registration

Where the MOC or the local MOC approves the application, the foreign investor is obligated to file the registration with the Registration Authority within one month after receipt of the approval certificate.

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*Please note that the legal information contained in this memorandum and our analysis thereof are based on publicly available translations of PRC legislation and regulations, secondary sources such as commentaries, conversations with PRC officials and practitioners of PRC law, and our reasoned reflection in light of our experience with similar projects and transactions. Please also note that the PRC Ministry of Justice does not permit foreign law firms to practice PRC law, and nothing contained herein should be interpreted as rendering a legal opinion on PRC law.*

## ANNEX

### ADMINISTRATIVE AGENCIES

- **Administration for Quality Supervision, Inspection and Quarantine (AQSIQ)**, China's standard setting agency, is primarily tasked with ensuring PRC product quality and standards. It also handles infringements of registered trademarks when the infringing products are inferior or poor quality goods.

General Administration of Quality Supervision Inspection and Quarantine  
 10A Chaowai Dajie  
 Beijing, China 100020  
 Tel: 86-10-6599-3922  
 Fax: 86-10-6599-4421  
 Websites: <http://www.aqsiq.gov.cn/> (Chinese)  
<http://english.aqsiq.gov.cn/> (English)

- **Ministry of Industry and Information Technology (MIIT)**, at the national level, is responsible for the administration of industry and information technology.

Ministry of Industry and Information Technology  
 No 13 West Chang'an Street  
 Beijing, China 100804  
 Tel: 86-10- 6820-5006  
 Website: <http://www.miit.gov.cn/> (Chinese)

- **National Development and Reform Commission (NDRC)**, at the national level, is responsible for the implementation of strategies of national economic and social development, annual plans, medium and long-term development plans.

National Development and Reform Commission  
 No 38 South Yuetan Street  
 Beijing, China 100824  
 Tel: 86-10- 6850-3333  
 Websites: <http://www.ndrc.gov.cn/> (Chinese)  
<http://en.ndrc.gov.cn/> (English)

- **Ministry of Commerce (MOC)**, at the national level, is responsible for the administration of commerce in China.

Ministry of Commerce  
 No 2 Dong Chang'an Avenue  
 Beijing, China 100731  
 Tel: 86-10- 5165-1200  
 Fax: 86-10-6567-7512  
 Websites: <http://www.mofcom.gov.cn/> (Chinese)  
<http://english.mofcom.gov.cn/> (English)

For further details or advice concerning this memorandum, please contact a V&E lawyer listed below:

Paul C. Deemer

Tel: (86 10) 6410 6391

(86 21) 6196 8088

E-mail: [pdeemer@velaw.com](mailto:pdeemer@velaw.com)

Xiao Yong

Tel: (86 10) 6410 6392

(86 21) 6196 8088

E-mail: [xyong@velaw.com](mailto:xyong@velaw.com)

David M. Blumental

Tel: (86 10) 6196 8091

E-mail: [dblumental@velaw.com](mailto:dblumental@velaw.com)

**V&E Beijing Office**

20/F Beijing Silver Tower  
No. 2 Dong San Huan Bei Lu  
Chaoyang District  
Beijing 100027, China  
Tel: (86 10) 6410 6300  
Fax: (86 10) 6410 6360

**V&E Shanghai Office**

3/F, The Center  
989 Chang Le Road  
Shanghai, 200031 China  
Tel: (86 21) 6196 8088  
Fax: (86 21) 6196 8099

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