

# JUNHE SPECIAL REPORT



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## “Doing Business in a Re-opened China” E1:S2: How to set up a business entity in China

### Introduction

Since the economic reform of the late 1970s, China has been increasingly opening up to the outside world and the country has now become one of the most popular destinations for foreign investment. According to the Ministry of Commerce, China’s actual use of foreign capital in 2021 reached US\$180.96 billion, 21.2% higher than 2020 and the highest in history. 48,000 new foreign-invested enterprises (“**FIEs**”) were established in 2021, 23.5% higher than in 2020.<sup>1</sup> Growth also continued in the difficult year of 2022. The actual use of foreign capital in 2022 reached RMB 1232.68 billion, a 6.3% growth compared to 2021 (equivalent to US\$189.13 billion, at 8% growth against 2021)<sup>2</sup>.

The legal regime regarding foreign investment keeps evolving in China. On March 15, 2019, the Second Session of the Thirteenth National People’s Congress adopted the Foreign Investment Law of the People’s Republic of China

(the “**Foreign Investment Law**”), which became effective on January 1, 2020. The Foreign Investment Law replaced three pivotal foreign investment laws enacted during 1979 and 1990, being the Sino-Foreign Equity Joint Ventures Law, the Sino-Foreign Contractual Joint Ventures Law and the Wholly Foreign-Owned Enterprises Law, and ushered China into a new era of foreign investment regulations. In the second chapter of our “Doing Business in a Re-opened China” series, we summarize some of the most frequently asked legal and practical questions on how to set up a business operation in China following the introduction of the Foreign Investment Law.

### I. What type of Business entities can a Foreign Investor establish in China<sup>3</sup>?

A foreign individual, company or organization can set up a business in China. A foreign investor may set up any of the following types of businesses in China:

<sup>1</sup> Data from China Foreign Investment Report 2022; for more information please refer to <http://images.mofcom.gov.cn/wzs/202301/20230104194934606.pdf>

<sup>2</sup> Data from the Ministry of Commerce website; for more information, please refer to <http://www.mofcom.gov.cn/article/xwfb/xwsj/fzr/202301/20230103379768.shtml>

<sup>3</sup> China refers to mainland China. The laws and practices differ for mainland China, Hong Kong, Macau and Taiwan. The discussions in this chapter only apply to mainland China.

Types of Entity <sup>①</sup>	Character of Entity <sup>②</sup>	Restrictions on Business <sup>③</sup>	Liability of Foreign Investors	Recruitment Restrictions
Foreign-invested limited liability company ("FILLC")/Foreign-invested joint-stock company ("FIJSC") <sup>④</sup>	<ul style="list-style-type: none"> <li>• → Independent legal person<sup>⑤</sup></li> <li>• → An FILLC shall have no more than 50 shareholders. A FIJSC shall have 2-200 initial shareholders, among which more than 50% shall have domiciles in China.<sup>⑥</sup></li> </ul>	Except for certain businesses which have foreign equity ceilings in the Negative List <sup>⑦</sup> or are otherwise required by law, a foreign investor can set up either an FILLC, FIJSC or FFP to engage in most businesses. As FILLC/FIJSC enjoys independent legal person status, most FIEs are FILLC/FIJSC types of businesses. <sup>⑧</sup>	The liability of a foreign shareholder to the FILLC/FIJSC is limited to the amount of capital the shareholder is committed to the FILLC/FIJSC. <sup>⑨</sup>	No special restrictions, subject to the Negative List requirements (if applicable) <sup>⑩</sup>
Foreign-funded Partnership ("FFP") <sup>⑪</sup>	An unincorporated organization, which is not a legal person but is able to conduct civil activities in its own name in accordance with the law. <sup>⑫</sup>		A general partner shall be jointly and severally liable for the debts of the partnership, while a limited partner, if any, shall be liable for the debts of the partnership up to its committed capital contribution. <sup>⑬</sup>	
Representative office of a foreign parent enterprise in China ("RO") <sup>⑭</sup>	<ul style="list-style-type: none"> <li>• → Not an independent legal person<sup>⑮</sup></li> <li>• → Cannot engage in profit-making activities.<sup>⑯</sup></li> </ul>	An RO may only carry out market research, display and promotion activities that are related to the products or services of the foreign parent enterprise, and liaison activities that are related to product sales, service provision, domestic procurement and domestic investment by the foreign parent enterprise (subject to permitting requirements, if any). <sup>⑰</sup>	The foreign parent enterprise shall bear the liability of its RO in China. <sup>⑱</sup>	<ul style="list-style-type: none"> <li>• → Recruitment of employees shall be through local foreign enterprise service agencies.<sup>⑲</sup></li> <li>• → The foreign parent enterprise shall appoint a chief representative and may appoint 1-3 representatives based on its business needs.<sup>⑳</sup></li> </ul>
Branch of a foreign parent enterprise in China <sup>㉑</sup>	<ul style="list-style-type: none"> <li>• → May engage in approved business in China<sup>㉒</sup></li> <li>• → Not an independent legal person<sup>㉓</sup></li> </ul>	<ul style="list-style-type: none"> <li>• → Exploration and exploitation of onshore and marine petroleum and other mineral resources.<sup>㉔</sup></li> <li>• → Contracting for construction and decoration of housing and civil projects, or installation of cabling, pipelines and equipment</li> <li>• → Contracting for or accepting entrustment for operation and management of FIEs<sup>㉕</sup></li> <li>• → Serving as branches of foreign banks in China; and<sup>㉖</sup></li> <li>• → Other production and operation activities approved by the State (uncommon in practice)<sup>㉗</sup></li> </ul>	The foreign parent enterprise shall bear the liability of its branch company in China. <sup>㉘</sup>	No express restrictions. <sup>㉙</sup>

Generally speaking, except for any special restrictions provided in the relevant business scope or permits, the above entities may carry out businesses in all provinces, autonomous regions and centrally administered municipalities in mainland China.

An FILLC is the most popular type of business for FIEs in China, due to the convenience of setting up the business, independent legal person status, direct access to local employees, and minimum restrictions on its business operations, foreign equity ownership and remittance of profit abroad. Take Beijing and Shanghai for example, as of December 2022, there were 55,299 FILLCs, 3,661 FFPs and 1,524 FIJSCs in Beijing, and 58,053

FILLCs, 6,892 FFPs and 1,014 FIJSCs in Shanghai<sup>4</sup>. In the following sections, we will focus our discussions on FILLCs.

## II. What are the prerequisites (approval, registration, qualification and license) for setting up an FILLC?

For most industries, establishing an FILLC only requires a registration with the competent State Administration for Market Supervision or its local counterparts (“AMR”). For a limited amount of industries and fields, special administrative procedures may be applicable. The following are some of the scenarios where special administrative procedures may apply:

Industries or Fields	Regulatory Authority
Restricted industries listed on the Negative list <sup>5</sup> , such as printing of publications, nuclear power plant construction, water and air transportation, etc.	the Ministry of Commerce of the People’s Republic of China or its local counterparts (“MOFCOM”).
Industries subject to special licenses or permits, including without limitation: (1) opening a school, which requires a school-running license; (2) establishing a medical institution, which requires a medical institution practice license; (3) engaging in insurance business, which requires an insurance permit; and (4) engaging in the telecommunication business, which requires a telecommunications license.	Competent regulatory authorities governing the relevant industries
A field that requires a national security review, such as (1) investing in military and other related industries that may affect national security and investing in the neighboring regions of a military facility or military industry; and (2) investing in sectors which are important for national security and acquiring de facto control of the investee.	The working mechanism for national security reviews on foreign investment, the office of which is set up under the National Development and Reform Commission (“NDRC”)
Fixed-assets investment projects, such as investing in a manufacturing line.	NDRC or its subordinates

<sup>4</sup> Please refer to website: <https://x.qianzhan.com/datav/wailaitouzi/?area=11>, foreign investment statistics counted the number of foreign enterprises with registered capital of no less than RMB10 million.

<sup>5</sup> The latest version of the Negative list is *Special Administrative Measures (Negative List) for the Admission of Foreign Investment (2021)*.

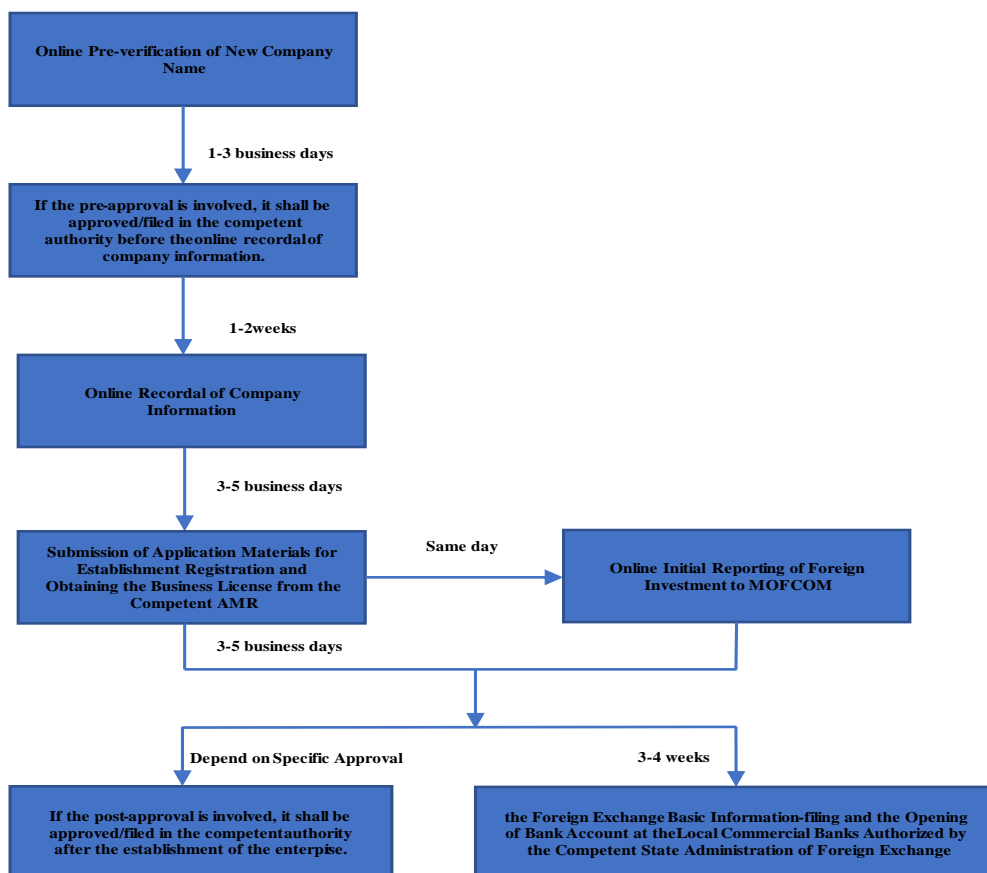
With respect to a foreign-invested joint venture, depending on the background of the joint venture parties and the governance structure of the joint venture, it may be necessary to examine whether a merger control filing is required under PRC law. If a merger control filing is applicable, it needs to be completed before the establishment of the joint venture.

### III. What are the usual governmental procedures required for setting up an FILLC? What are the time requirements and costs?

#### (1) Establishment Procedures

The general procedures are illustrated in the flowchart below, which include: online pre-verification of the company name through the enterprise registration system of the local AMR

(the “Enterprise Registration System”), online recordal of company information through the Enterprise Registration System, submission of application materials for company establishment and obtaining the business license from the competent AMR, online initial reporting of foreign investment to MOFCOM, and foreign exchange information filing and bank account opening at local commercial banks. If pre-establishment or post-establishment approvals are involved, pre-establishment approval shall generally be obtained from relevant authorities after online pre-verification of the new company name but before the online recordal of company information, and post-establishment approval shall be obtained from relevant authorities after the establishment of the FILLC. An FILLC is formally established and becomes a legal person on the date it completes the establishment registration with the competent AMR and obtains its business license.



## (2) Timetable

The time needed to complete the aforesaid procedures and establish an FILLC depends on the nature of the enterprise and the practice of the local authorities. For most industries not subject to pre-establishment approvals, it usually takes about 15 days to set up an FILLC and obtain a business license if the application materials are complete. It should be noted that a foreign investor will usually be required to provide its incorporation documents and have such documents notarized and legalized. This may take weeks or even months to complete. Therefore, it is advisable to start the preparations early and take into account the time considerations.

## (3) Costs and expenses

The costs and expenses for the establishment of an FILLC are mainly the costs for purchasing or leasing office premises to be used as the registered address, legal fees and the filing agent fees. There are no material governmental charges.

Purchase or lease costs of office premises varies depending on the localities of registration. Some development zones may offer free office premises or certain financial and/or tax preferential policies. For more information, please contact us at [China\\_Business\\_Support@junhe.com](mailto:China_Business_Support@junhe.com).

## IV. What documents will be required at the time of application for establishment and what information will be made public?

The main application documents for setting up an FILLC include standard application forms, the notarized and legalized incorporation documents of the investors, and charter documents of the FILLC, such as its articles of association (the "AoA"). If the FILLC is a joint venture, the joint venture parties will usually enter into a joint venture contract or shareholders' agreement, but such legal document is usually not required to be

submitted to the government authority.

After the establishment of the FILLC, the basic registration information will be accessible to the public on the National Enterprise Credit Information Publicity System (<https://www.gsxt.gov.cn/index.html>), including the company name, shareholders information, registered capital, business scope, legal representative, directors, general manager, history of change in registration, equity pledges/freezes/auctions and administrative penalties. As discussed in our previous chapter - "[How to Conduct Due Diligence on Chinese Suppliers](#)", a lawyer may apply to the AMR to review the entire filing archives of any company.

According to the Foreign Investment Law and its implementing regulations, where materials and information involving trade secrets are required to be disclosed to the administrative authorities, the administrative authorities shall require such materials and information on a need to know basis, keep such materials and information in strict confidence, and assume liabilities for leakage.

## V. How does a foreign investor provide capital to an FILLC? Are there any minimum amount or contribution timing requirements on the registered capital?

Foreign investors may fund an FILLC by contributing its registered capital or providing shareholder loans.

Generally speaking, there is no minimum capital contribution amount or statutory capital contribution timeline requirements for the contribution of registered capital, although limited industries may be subject to special regulatory requirements. The amount of the registered capital shall be registered at the establishment of the FILLC (which may be increased or decreased

later), and the shareholder shall contribute the registered capital according to the timeline provided in the AoA of the FILLC in one lump-sum or in installments.<sup>6</sup>

The provision of shareholder loans to the FILLC shall comply with the relevant regulations on foreign exchange and foreign debts, including a limitation on the maximum amount linked to the paid in capital or net assets of the FILLC, and shall be subject to foreign debt registration with the foreign exchange authority.

An FILLC may borrow loans from financial institutions or other third parties, and raise funds through equity financing and IPO, just like other companies in China.

#### **VI. What kind of routine reporting and filing are required to be made by an FILLC each year and what are the costs?**

The FILLC shall submit its annual report through the National Enterprise Credit Information Publicity System from January 1 to June 30 each year. Such report mainly includes basic information of the company, its shareholders and ultimate beneficial owners, operations and assets and liabilities status, and where the restrictions under the Negative List are applicable, the FILLC shall also submit information on relevant licenses, permits or approvals. The aforementioned information will be publicly available through the Foreign Investment Information Reporting System Platform (<https://wzxxbg.mofcom.gov.cn/gsp/>). While the FILLC must provide information on its business, assets and liabilities status in its annual report, it may elect whether to make such information publicly available. The FILLC shall submit its first annual report from the second year of its establishment. Where there is a change in

registration or filing during its business operation, the FILLC shall file a report for change with the Enterprise Registration System.

During its business operations, an FILLC shall also comply with tax filing and payment obligations in relation to corporate income tax (“**CIT**”), value-added tax (“**VAT**”) and other taxes. CIT shall be prepaid on a monthly or quarterly basis and shall be settled annually on or before May 31 of each year. The tax period of VAT is determined by the competent tax authorities according to the amount of tax payable of such taxpayer. In practice, general taxpayers usually pay VAT on a monthly basis, while small-scale taxpayers usually pay VAT on a quarterly basis.

With respect to the reporting and filing above, the FILLC is not required to pay any significant governmental charges. However, it will usually require external accountants and lawyers to complete such work.

#### **VII. What are the main channels for funds to be remitted abroad? Is there any limitation for the inbound and outbound remittance of foreign exchange?**

An FILLC may remit funds abroad to discharge its payment obligations under international commercial transactions, such as the payment for goods, services and royalties. Foreign shareholders may also receive funds from its Chinese subsidiaries through the distribution of dividends, capital reduction, equity transfer, and liquidation. Cross border payments under capital account transactions, such as payments arising from capital reduction, equity transfer or liquidation will be subject to company change registrations with the AMR and foreign exchange filing, which could be time-consuming. It is more

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<sup>6</sup> In practice, under special circumstances, the capital contribution schedule of the shareholder may be accelerated, e.g., (1) the company is subject to judicial enforcement in a case in which the people’s court has taken all enforcement measures but there is no property available for enforcement and the company meets the conditions for bankruptcy but fails to apply for bankruptcy; or (2) the capital contribution schedule is extended by resolutions made by a company’s shareholders’ meeting or by other means after the incurrence of the company’s debts.



straightforward to make cross-border payments under current account transactions, such as a payment for goods, services, royalties and dividends.

### **VIII. What types of assistance can external lawyers provide?**

A full-service Chinese law firm with an international vision and local expertise is well positioned to provide cost-effective legal services on foreign investment in China. We provide the following services for a client intending to establish a presence in China:

- before the commencement of regulatory filing, advising clients on China’s legal and business framework, and assisting clients to formulate appropriate investment structures, strategies and plans;

- assisting clients to negotiate with development zones, joint venture partners, regulatory authorities and other stakeholders;
- assisting foreign investors to obtain the requisite approvals, registrations and filings and obtain the requisite licenses and permits; and
- providing ongoing legal support to the Chinese entity to mitigate its legal risks and ensure its compliance with the law.

JunHe offers both standard and tailor-made services to meet the needs of our clients. For inquiries about our rates and track record, please email us at [China\\_Business\\_Support@junhe.com](mailto:China_Business_Support@junhe.com).

In our next chapter, we will discuss “Commercial and legal considerations for setting up joint ventures in China”.

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# 君合专题研究报告



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## “再开放、话外资”专题系列 E1:S2：如何在中国设立商业实体

### 引言

自上世纪 70 年代末改革开放以来，随着中国对外开放程度不断提高，利用外资规模逐步扩大，外资成为中国经济发展的重要力量。2021 年中国全年实际使用外资达到 1809.6 亿美元历史最高水平，增速达 21.2%。新设外资企业 4.8 万家，同比增长 23.5%<sup>7</sup>。在充满挑战的 2022 年，全国实际使用外资金额 12,326.8 亿元人民币，按可比口径同比增长 6.3%（折合 1891.3 亿美元，增长 8%）<sup>8</sup>，仍保持稳定增长。

中国的外商投资法律框架也在不断变革。2019 年 3 月 15 日，第十三届全国人民代表大会第二次会议通过了《中华人民共和国外商投资法》（以下简称“《外商投资法》”）。《外商投资法》于 2020 年

1 月 1 日正式生效。该部法律取代了在 1979 至 1990 年间颁布的外商投资领域的三部现行法律，即《中外合资经营企业法》、《中外合作经营企业法》和《外资企业法》。《外商投资法》及后续配套法规的颁行对中国现行外商投资法律和实践产生了重大影响。在“再开放、话外资”专题系列的第二篇中，我们将总结和归纳在《外商投资法》出台后，外国投资者最为关心的一些有关在中国设立商业实体的法律和实操问题。

### 1. 外国投资者在中国<sup>9</sup>可以设立哪些类型的商业实体？

外国的自然人、企业或者其他组织均可以在中国设立商业实体。可设立实体的主要类型包括：

<sup>7</sup> 数据来源于《中国外商投资报告 2022》，<http://images.mofcom.gov.cn/wzs/202301/20230104194934606.pdf>

<sup>8</sup> 数据来源于商务部网站，<http://www.mofcom.gov.cn/article/xwfb/xwsjfr/202301/20230103379768.shtml>

<sup>9</sup> 本文所述的中国指中国大陆。中国大陆、中国香港、中国澳门和中国台湾的法律和实践存在不同，文中的讨论仅适用于中国大陆。



实体类型	实体特点	业务限制	外国投资者需要承担的责任	招聘限制
外商投资有限公司/外商投资股份公司	<ul style="list-style-type: none"> <li>→ 独立法人</li> <li>→ 有限公司由五十个以下股东出资设立；股份公司，应当有二人以上二百人以下发起人，其中须有半数以上的发起人在中国境内有住所</li> </ul>	除了负面清单 <sup>①</sup> 有股比限制的业务或者法律另有要求外，各类业务均可采用公司制 <sup>②</sup> 或者合伙制 <sup>③</sup> 。由于公司制企业为独立法人，绝大多数外商投资企业采用公司制。 <sup>④</sup>	外国投资者仅以其认缴的注册资本或认购的股份为限承担有限责任 <sup>⑤</sup> 。	无特定限制，需符合负面清单要求（如适用） <sup>⑥</sup> 。
外商投资合伙企业	非法人组织（不具有法人资格，但是能够依法以自己的名义从事民事活动的组织） <sup>⑦</sup>		普通合伙人对合伙企业债务承担无限连带责任，有限合伙人（如有）以其在合伙企业认缴的出资额为限对合伙企业债务承担有限责任 <sup>⑧</sup> 。	
外国企业在中国的代表处	<ul style="list-style-type: none"> <li>→ 不具有独立法人资格<sup>⑨</sup></li> <li>→ 不得从事营利性活动<sup>⑩</sup></li> </ul>	仅可从事与外国企业产品或者服务有关的市场调查、展示、宣传活动；与外国企业产品销售、服务提供、境内采购、境内投资有关的联络活动（若从事前述业务活动须经批准的应取得批准） <sup>⑪</sup> 。	代表处的民事责任由外国企业承担 <sup>⑫</sup> 。	<ul style="list-style-type: none"> <li>→ 员工招聘应委托当地外服单位办理<sup>⑬</sup></li> <li>→ 外国企业应当委派一名首席代表，根据业务需要，可以委派1至3名代表<sup>⑭</sup></li> </ul>
外国企业在中国的分支机构	<ul style="list-style-type: none"> <li>→ 可在中国境内从事经核准的生产经营活动<sup>⑮</sup></li> <li>→ 不具有独立法人资格<sup>⑯</sup></li> </ul>	<ul style="list-style-type: none"> <li>→ 陆上、海洋的石油及其它矿产资源勘探开发<sup>⑰</sup></li> <li>→ 房屋、土木工程的建造、装饰或线路、管道、设备的安装等工程承包<sup>⑱</sup></li> <li>→ 承包或接受委托经营管理外商投资企业<sup>⑲</sup></li> <li>→ 外国银行在中国设立分行<sup>⑳</sup></li> <li>→ 国家允许从事的其它生产经营活动（实践中较为罕见）<sup>㉑</sup></li> </ul>	外国公司对其分支机构在中国境内进行经营活动承担民事责任 <sup>㉒</sup> 。	未见有法规明确限制 <sup>㉓</sup> 。

一般而言，除经营范围或者许可设定的特殊限制性要求外，以上商业实体可以在中国大陆全部省、自治区、直辖市范围内开展业务。

由于外商投资有限公司开设方便，可以作为独立法人招聘本地员工，并且在业务经营、外资比例、利润汇出等方面受限制较少，成为了中国大陆最常见的外商投资企业类型。以北京和上海为例，截止2022年12月，在北京设立的外商投资有限公司数量为55,299家，外商投资合伙企业3,661家，外商投资股份公司1,524家；在上海设立的外商投资有限公司数量为58,053家，外商投资合伙企业

6,892家，外商投资股份公司1,014家<sup>10</sup>。下文我们将以设立外商投资有限公司为例讨论一些普遍关心的问题。

## 2. 设立一家外商投资有限公司需要取得哪些审批、登记、资质和证照？

对于大部分行业而言，新设一家外商投资有限公司只需要在国家市场监督管理总局或其分支机构（以下简称“市监局”）办理公司登记。对于少数行业、领域，可能涉及特别的行政程序。下面列举了一些适用特别行政程序的行业和领域：

行业或领域	主管部门
负面清单 <sup>11</sup> 所列举的限制类行业，如出版物印刷制造业、核电站建设、水上及航空运输等等	中华人民共和国商务部或其地方分支机构（以下简称“商务部门”）
需要取得行业准入许可的行业，包括但不限于：（1）举办学校，需要取得办学许可证；（2）开办医疗机构，需要取得医疗机构执业许可证；（3）经营保险业务，需要取得保险许可证；（4）经营电信业务，需要取得电信业务经营许可证。	相关行业主管部门
涉及需要进行安全审查的领域，如（1）投资军工、军工配套等关系国防安全的领域，以及在军事设施和军工设施周边地域投资；（2）投资关系国家安全的重要领域，并取得所投资企业的实际控制权。	外商投资安全审查工作机制，工作机制办公室设在国家发展和改革委员会（以下简称“国家发展改革委”）
固定资产投资项，如投资建设一条生产线	国家发展改革委或其下属部门

此外，对于外商投资的合资公司，视合资方的背景情况以及合资企业治理结构，需要审查其是否会触发中国反垄断法项下中国经营者集中申报要求。如果触发该等要求，需设立申请之前完成中国

的经营者集中申报。

## 3. 设立一家外商投资有限公司通常需要经过哪些政府流程，需要多少时间和费用？

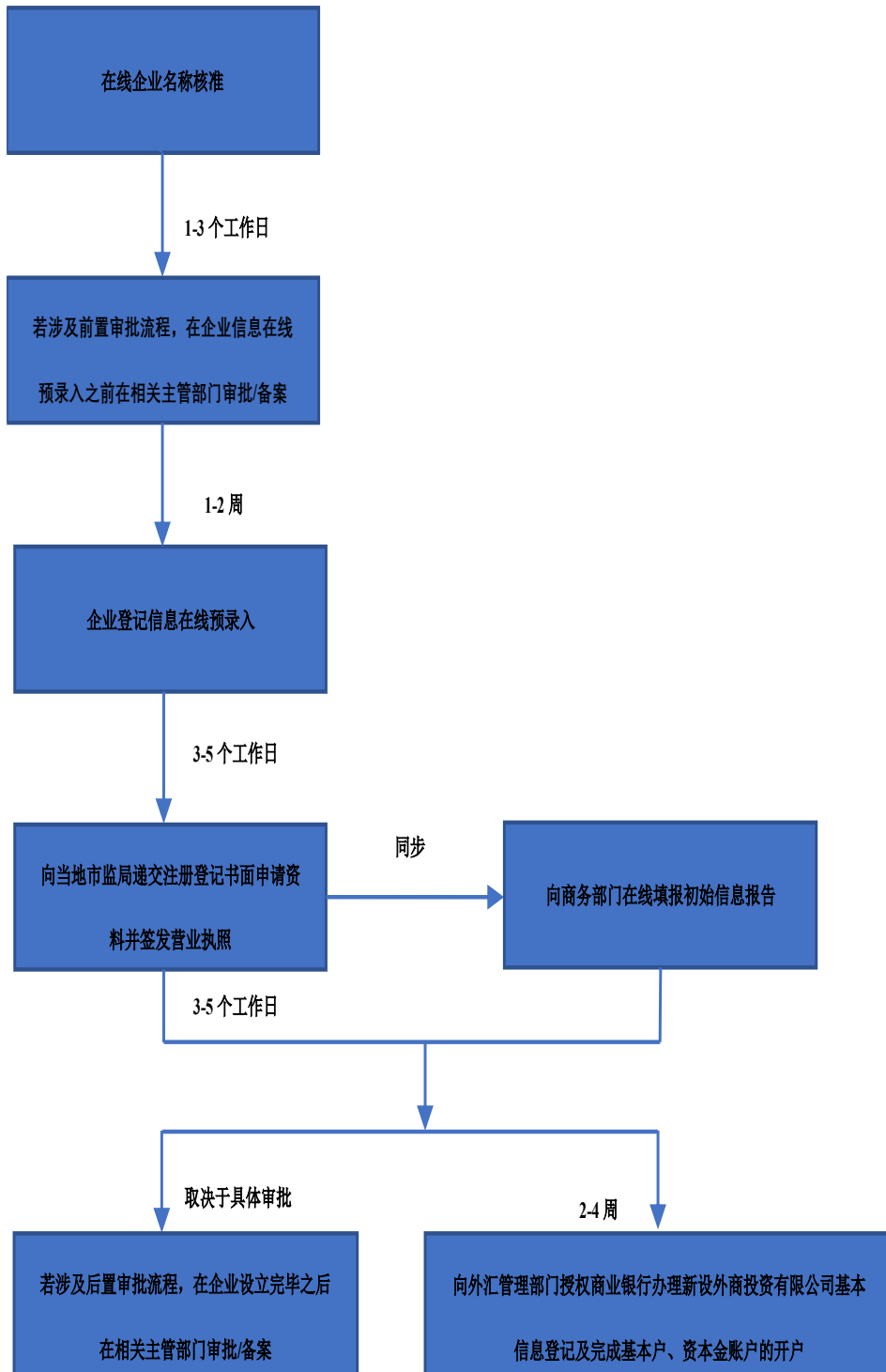
<sup>10</sup> 数据来源于前瞻产业研究院研发的企业大数据（<https://x.qianzhan.com/datav/wailaitouzi/?area=11>），外来投资统计主要统计了注册资本不少于1000万人民币的外来企业以股东身份对当地投资企业数量。

<sup>11</sup> 目前最新的负面清单为《外商投资准入特别管理措施（负面清单）（2021年版）》

#### (4) 设立流程

通常的流程（具体流程图参考下图）为通过所在地市局企业登记系统（以下简称“**企业登记系统**”）进行在线企业名称核准、在企业登记系统进行企业登记信息在线预录入、向当地市局递交注册登记书面申请资料并签发营业执照、向商务部门在线填报外商投资初始信息报告、向银行办理新设

公司基本信息登记及完成人民币基本户、资本金账户的开户等。若涉及前置/后置审批流程，前置审批一般应于在线企业名称核准后，企业登记信息在线预录入前获得批准，后置审批应于企业设立完毕之后获得批准。从法律意义上而言，自新设外商投资有限公司完成市局设立登记并取得营业执照之日，其正式设立完成并取得法人资格。



## （5）期限

完成外商投资有限公司登记和设立的时间，视企业的性质及各地实践操作会有所不同。针对大部分不存在前置审批的行业而言，在申请资料齐全的情况下，设立一家外商投资有限公司并取得营业执照通常只需要半个月左右。需要提示的是，设立申请资料通常会要求外国投资者提供其主体资格证明文件以及其授权委托书的境外公证认证文件，此部分准备工作往往需要数周甚至数个月的时间完成，建议外国投资者提前准备并将其耗时纳入整体时间表考虑。

## （6）费用

设立公司过程中产生的费用主要包括购买或者租赁用于注册地址的办公场所的费用、法律服务费用以及注册代理费用。设立公司不需要向政府部门支付实质性的政府规费。

办公场所的购买或者租赁费用根据注册地点选择地而有所不同，部分开发区可以免费提供办公场所，且可能提供一定的财政及/或税收优惠。更多信息可以发邮至 [China\\_Business\\_Support@junhe.com](mailto:China_Business_Support@junhe.com) 进行询问。

## 4. 设立时需要准备哪些文件，哪些信息将被对外公开？

新设一家外商投资有限公司，需要准备的主要文件包括制式申请表格、上述提到的投资人主体资格的公证认证文件以及公司的章程等组织文件。如果涉及合资公司，除公司章程以外一般还会签署一份合资合同或股东协议，但合资合同及股东协议通常无需提交政府部门。

外商投资有限公司新设完毕后，其主要登记信

息将会在国家企业信用信息公示系统（网址：<https://www.gsxt.gov.cn/index.html>）进行信息公示，从而成为公开信息。公示信息主要包括企业名称、企业的股东、注册资本、经营范围、法定代表人、董事、总经理、历史沿革、股权质押/冻结/拍卖、行政处罚等信息。此外，如本系列法评第 *E1:SI* 篇-《[如何对中国供应商进行尽职调查](#)》所述，律师有权向市监局申请查阅公司各类工商登记的全套内档资料。

根据《外商投资法》及其实施条例的规定，行政机关依法履行职责，确需外国投资者、外商投资企业提供涉及商业秘密的材料、信息的，应当限定在履行职责所必需的范围内，并严格控制知悉范围，依法予以保密并承担泄密的法律责任。

## 5. 外国投资者一般如何向外商投资有限公司提供资金，注册资本是否有最低金额要求和期限要求？

外国投资者一般可通过向外商投资有限公司缴付注册资本以及提供股东贷款的方式提供资金。

一般而言，注册资本没有最低金额要求或法定的缴纳期限要求，尽管少数适用特别监管要求的行业可能存在例外要求。注册资本金额在企业设立时予以登记（经必要程序可以增资或者减资），股东需在公司章程所规定的缴纳期限内一次或者分期完成缴纳<sup>12</sup>。

外国投资者向公司提供贷款需符合外汇及外债的相关规定，视公司实缴注册资本或净资产情况受到一定的额度限制，并需在外管局完成相关外债登记手续。

与其他企业一样，外商投资有限公司也可以向金融机构或者其他第三方借款，并进行股权融资和

<sup>12</sup> 司法实践中，特定情形下，公司股东的出资期限可能会被要求加速到期，例如：（1）公司作为被执行人的案件，人民法院穷尽执行措施无财产可供执行，已具备破产原因，但不申请破产的；（2）在公司债务产生后，公司股东会决议或以其他方式延长股东出资期限的。

IPO。

## 6. 外商投资有限公司每年需要进行哪些日常申报和备案，需要多少费用？

外商投资有限公司需在每年1月1日至6月30日通过国家企业信用信息公示系统提交上年度的年度报告，主要包括企业基本信息、投资者及其实际控制人信息、企业经营和资产负债等信息，涉及外商投资准入特别管理措施的，还应当报送获得相关行业许可信息。前述申报的信息可以通过外商投资信息报告公示平台（网址：<https://wzxxbg.mofcom.gov.cn/gspt/>）公开查询。尽管企业必须在年度报告中申报企业经营和资产负债信息，企业可以自主选择是否公示该等信息。当年设立的外商投资有限公司自下一年度报送年度报告。在经营期间，若涉及企业变更登记或备案的，需要通过企业登记系统提交变更报告。

此外，外商投资有限公司也需遵循企业所得税和增值税纳税及其他各税种的申报与缴纳义务。具体而言，企业所得税应按月度或者季度预缴，并一般于每年5月31日前完成上年度企业所得税的汇算清缴。增值税纳税人的具体纳税期限由主管税务机关根据纳税人应纳税额的大小分别核定。实务中，如果企业是一般纳税人，则通常按月缴纳增值税，如果企业是小规模纳税人，则通常按季度缴纳增值税。

就上述申报工作，公司不需要向政府部门支付实质性的政府规费，但通常需要内部或者外部的会计师、律师协助完成上述工作。

## 7. 资金汇出到境外，有哪些主要途径？ 外汇汇入汇出是否有限制？

外商投资有限公司可以在各类商业交易中

资金汇出境外，例如支付货款、服务费、许可费等；境外股东还可以通过取得股息红利、减资款项、股权转让款项、公司清算款项等方式从中国境内获得资金。一般而言，对外支付减资款项、股权转让款项、公司清算款项等资本项目款项需要完成相关的公司变更登记以及外汇变更登记，耗时较长，而对外支付货款、服务费、许可费、股息红利等经常项目款项则较为便利。

## 8. 外部律师能够提供哪些帮助？

具有国际视野及本土经验的综合性中国律师事务所可以提供高性价比的外商投资法律服务。如果客户有需求在中国设立商业实体，我们可提供如下服务：

- 在商业实体设立申请启动前，为客户提供中国法律框架及商业环境的咨询意见，协助客户制定具体的投资结构、策略与计划；
- 协助客户与开发区、合资方、政府部门等相关方进行谈判；
- 协助客户完成相关审批、登记与备案并取得相关许可和证照；及
- 为商业实体提供持续性法律支持，降低其日常经营的法律风险，确保其合规经营。

君合团队可以提供标准化或定制化的法律服务，并提供菜单式服务清单满足不同客户的需求。如有需要可随时发邮至 [China\\_Business\\_Support@junhe.com](mailto:China_Business_Support@junhe.com) 索取报价表及业绩介绍。

下期预告：在下一期中，我们将介绍《在华成立合资公司的商业和法律考量》。

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