

# Guide to Establishing a Waste Treatment or Waste Disposal Facility in China

## 1. Approval Process.

Foreign investment in waste treatment projects and facilities is subject to verification from local branch of **NDRC** and examination and approval from the local branch of **MOFCOM**. Where the intended project or company is to be located in Shanghai, the application is streamlined as the Shanghai government has this year reformed and reorganized its approval and examination system by replacing the local branch of MOFCOM with the **Shanghai Municipal Commission of Commerce**, which serves as the sole authority in charge of application approval and has inherited most of functions of MOFCOM local branch of the functional departments of local **NDRC**.

This reform renders the whole process as a "one stop shop" approach by allowing all application documents to be submitted and lodged at one time. Presently a waste treatment project may be operated as either a JV or WFOE.

However from our informal enquiries, the government is reluctant to give a clear indication of their preference as between a JV and WFOE structure but in practice preference would be given to a JV with a Chinese shareholder. This would also provide extra investment incentives and subsidies, subject to specific policies of the local government in the location where a project or company is intended to be established.

## 2. Tax incentives and other investment incentives

A waste treatment project is likely to fall under the category of "encouraged" projects in **Industry Catalog**, subject to final determination of the above-mentioned commission. According to the **Implementation Rules of CIT Law of the PRC** which took effect on January 1st, 2008, a company investor shall be entitled to an exemption from CIT for the first to third year of operations and be allowed a tax reduction from the fourth year to sixth years and beginning from the year when the company derives its first operation and production income.

In addition, if the intended company adopts or introduces certain new technology in the treatment of waste and is determined to be a "High/New Tech Enterprise", the intended company is entitled to a preferential CIT rate of 15%, however from our experience, such qualification is difficult to be obtained unless the applicant company meets a set of requirements such as owning the core proprietary intellectual property and research and development expenses being not less than a prescribed percentage. From our experience, it is also open to the intended company to negotiate with local tax authorities to seek more tax concessions and other financial or investment incentives.

## 3. Qualification Requirements for a License

An investor has to apply to the relevant issuing authority for an operational license to be issued. The issuing authority may vary, depending on the specific business undertaken by the intended company.

(1) Where the intended company engages in disposal or treatment of municipal living waste or garbage project, excluding industrial, medical or other dangerous waste (collectively "dangerous waste") the operational license shall be sought from and issued by the environmental sanitation

administration authority, in Shanghai, such authority being the **Shanghai City Appearance & Environmental Sanitation Administration Bureau**.

For the purpose of obtaining of the operational license, the intended company shall satisfy the following qualification conditions prescribed by **Administrative Measures for Urban Living Garbage, promulgated by Ministry of Construction of the PRC**.

- (i) The selection of the site for treatment plant such as incineration plant and sanitation landfill shall be in line with urban and rural planning and the relevant planning permit has been issued by the competent authority.
- (ii) The technologies and techniques adopted shall conform to the relevant national standards
- (iii) The intended company has at least five employees with professional and technical qualifications at the primary level or above, including technicians of specialties such as environmental engineering, mechanism, and environmental monitoring. The technical person-in-charge shall have at least 5 years of experience in waste disposal, and shall obtain a professional and technical qualification at the intermediate level or above.
- (iv) The intended company has and effectively carries out a sound management operations, equipment management, maintenance, environmental monitoring, and protection, financial management, work safety, and measurement and statistics.
- (v) Its facilities for living waste management shall be equipped with methane monitoring Instruments, and environmental monitoring equipment such as a monitoring well for leaks and tail gas sampling hole, and online monitoring system which is linked to the website of the (environmental sanitation) administration authority.
- (vi) It has sound technical solutions for disposal and treatment of leaking liquid and methane and has well-established sub-area for landfill disposal of various kinds of organic waste.
- (vii) It has sufficient budget for pollution control and emergency procedures.

(2) Where the business scope of the intended company covers disposal of dangerous waste, the issuing authority should be **State Environmental Protection Bureau** or its local branch, in Shanghai which is **Shanghai Environmental Protection Bureau**.

For the purpose of obtaining of a pre-approval for operational license, the intended company shall, satisfy the following qualification conditions prescribed by the **Measure for Administration of Permits for Operation of Dangerous Waste**, promulgated by the State Council on May 19th 2004.

- (i) Having more than 3 technicians, who have the intermediate-level or above professional and technical qualifications in environmental engineering or the relevant majors, and have experience of solid waste pollution treatment in excess of 3 years;
- (ii) Have conveyances which meet the relevant safety requirements of the traffic control department under the State Council for the dangerous waste transportation;
- (iii) Have packing and storage facilities, facilities and equipment for transfer and temporary storage, and qualified storage facilities and equipment that have been checked and meet the national or local standards for environmental protection and safety requirements;

- (iv) Have disposal facilities, equipment and matching facilities for pollution prevention and treatment, which conform to the plans of the State or the provinces, autonomous regions, and municipalities directly under the Central Government for the construction of facilities for disposal of dangerous wastes and the national or local standards for environmental protection and safety requirements. Among them, the facilities for centralized disposal of medical wastes shall also correspond with the relevant national health standards and requirements for disposal of medical wastes;
- (v) Have disposal technology conforming to the class of dangerous wastes they manage;
- (vi) Have regulations and systems that ensure the safety of management of dangerous wastes, pollution prevention and treatment measures and emergency rescue measures for accidents; and
- (vii) In case of disposing dangerous wastes by way of land fill, the land use rights for landfill or other relevant plant shall also be obtained according to law.

In most cases, the issuing authority will make a decision of whether or not grant such license within 20 business days from the date of presentation of all supporting documents.

**Meanwhile, it is important to note** that the issue of operational license is on the premise that a project in respect of treatment of waste is put in place where the government or its agents would select the relevant companies to sponsor or establish a special project company to operate or construct such project by way of public bidding invitation, and then issue an operational license to a special project company sponsored or established by the bidding winners for construction and operation of such projects. In practice, such project is operated and constructed by the project company by way of BOT or BT mechanism.

After winning the bid, the successful bidder should seek pre-approval from issuing authority prior to establishment registration of the intended special project company with the relevant administration for industry and commerce. The local administration for industry and commerce would only issue a business license to the intended project company on presentation of pre-approval by the issuing authority.

Then on the strength of the business license, the intended project company may collect the final operational license from issuing authority with an initial term from 1 year to 5 years.

Any public bidding must be put in place for a project in respect of treatment of **municipal living waste** pursuant to **Administrative Measures for Urban Living Garbage**, however whether a public bidding shall be conducted in respect of a project of treatment of dangerous waste is not clear.

**The above is general outline of procedures and qualification requirements for an operational license.**

As far as Shanghai is concerned:

(a) as to a project for disposal of municipal organic waste, though open to the private sector, our enquires with relevant officials at the **Shanghai Environmental Protection Bureau** indicate the local government and issuing authority would place a limitation on the number of operational licenses issued each year, and the issuing authority would be inclined to issue such license to a Chinese State-owned project company or a JV project company with equity participation by a Chinese State-owned or domestic company.

#### 4. Minimum Registered Capital

Where an intended investor wishes to construct and operate a waste disposal plant, it shall, in addition to satisfaction of the above-mentioned qualification requirements, meet the following requirements in respect of registered capital. The minimum registered capital of the intended project company varies depending on the specific business taken by the intended project company.

(1) Where the intended project company engages in treatment of municipal organic waste or garbage, the threshold of registered capital is set out as follows:

<b>Business undertaken</b>	<b>Minimum registered capital</b>
Clearing or collection of municipal living waste	RMB 1,000,000
Transportation of municipal organic waste	RMB 3,000,000
Disposal or treatment of municipal organic waste (less than 100 tons per day)	RMB5,000,000
In excess of 100 tons per day	RMB 50,000,000
Disposal or treatment of municipal living waste (if a refuse incinerator involved)	RMB100,000,000

(2) Where disposal or treatment of dangerous waste is involved, the laws and regulations are silent on required minimum registered capital but our informal enquiries indicate that reference could be made to the above-listed threshold of minimum registered capital which applies to a project for disposal of municipal living waste.

#### 5. Summary

The above is a general view of the legal and regulatory environment with respect to admission of foreign investors to the waste treatment project market in Mainland China and based largely on verbal policies and the Chinese government still has a tight control and supervision on foreign investment in **dangerous waste treatment projects**. We therefore strongly recommend you to conduct thorough research and investigation on the investment environment in the particular location where your company intends to make the investment in and then try to engage the competent authority early in the application process such that concerns can be identified and to minimize potential uncertainty and risks.

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