

## EWG Illustrative Case

*The case below is illustrative of the complexity that can arise when foreign invested enterprises [FIEs] attempt to penetrate their market in China. One of the multiple critical issues for FIEs is protecting their know-how and capability. This is often called “intellectual property”, but it includes more than patents and technology. Another critical issue is how to operate successfully within China’s complex and dynamically changing regulations. EWG has deep experience in helping FIEs cope with these and other critical issues.*

An engineering consultancy asked the advice of EWG for how to grow its business in line with their market’s growth. While the market had been growing 30% per year, the company had only experienced an average growth of 10% per year. The company had been operating as a consulting company for several years. Because of the regulatory limitations on the work it was allowed to do it had been growing only 1/3 as fast as its market.

A new general manager realized that he needed to transform the company to enable it to become more competitive. The company’s competition was offering more comprehensive services, including detailed design engineering and construction. The company was facing the threat that its high level design and project management services would become irrelevant because its competitors had a more comprehensive offering that was better fitted to the China market’s needs.

The only way to for the wholly owned foreign enterprise [WOFE] to significantly increase its growth in this specialized field was to obtain a design and engineering and construction license. China’s regulations put such high barriers in place for WOFEs that such a license was very difficult to obtain.

The company was reluctant to form a *joint venture* because it had entered a JV previously and lost its technology know-how quickly to its JV partner, who became a significant competitor. This is not an unusual occurrence in China. The company also learned that with a competitor in the same office there was no way to retain its reputation as a one of a kind, highly advanced owner of valuable and diverse engineering know-how.

After information gathering and analysis, EWG advised the company to look for a domestic partner that was active in an area that was not related to its core business services. Further, instead of looking for one partner, EWG advised the company to find two domestic partners, both active in unrelated areas. This served to dilute each local partner's share, thereby enabling the FIE to have controlling interest.

EWG proposed to the company a number of viable partners and a joint venture with two companies was established. As intended, the domestic partners had little knowledge of the foreign company's line of business, so they showed little interest in assimilating the technology know-how of their foreign partner. The result was that the foreign company's JV grew much faster than its previous WOFE. The joint venture employed mainly new staff from outside the domestic partners, so there were no divided loyalties among the staff, in contrast with the foreign company's earlier disappointing JV experience.

After 5 years of cooperation in the JV the domestic partners had actually learned a lot about the way the foreign company managed its business and its staff, but they had not learned about its technology know-how. The foreign company had built up enough experience within its staff to enable it to comply with China's domestic regulations and requirements for licensing a wholly foreign owned design and engineering and construction company. The JV was dissolved with each of the local partners going their own way.

The foreign company set up a wholly foreign owned design & engineering company and became very successful in China, based on its practical experience, technology expertise and reliability of services.