

Understanding the new Regulation and Rules for Business Suspension and Deregistration in China from 1 March 2022.

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Despite the ongoing Covid-19 pandemic and lockdowns in China, **suspending operations or closing down a company** has remained difficult and created much concern among foreign investors. On 1 March 2022, new regulations and rules took effect that now allow companies to suspend or deregister their businesses in China more easily than before.

New Administrative Regulation and Implementing Rules

On **27 July 2021**, the State Council of the PRC announced the "**Administrative Regulation of the PRC on the Registration of Market Entities**" that took effect on **1 March 2022**.

Moreover, on **1 March 2022**, the State Administration for Market Regulation (SAMR) announced the related "**Implementing Rules for the Administrative Regulation of the PRC on the Registration of Market Entities**" that took effect on the same day which further clarify the different requirements.

The new Regulation and Rules aim to unify the many different policies, streamline the procedures, reduce the processing times, and lower the cost for market entity registration, change of registration, business suspension, and deregistration.

The following will only highlight the requirements for **business suspension and deregistration** as a **limited liability company** which is the most common legal entity type used by foreign investors and companies operating in China.

Business Suspension

Before the new Regulations and Rules took effect, suspending a business was strictly speaking not possible in China. Under **previous practice**, if a company decided to suspend its operations for more than **six months**, the Business License could be revoked by the registration authority.

However, with the Regulation and Rules, if a registered company faces any business challenges out of its control, it is now possible to apply for a **temporary suspension** of operations:

Article 30 of the Regulation and Articles 40-42 of the Rules state that if a business encounters difficulties due to natural disasters, accidents, public health incidents or public security incidents, the company may decide to suspend its business for a certain period which can be extended but **cannot in total exceed three years**.

According to Article 30 of the Regulation and Articles 41-42 of the Rules, a company shall prior to the business suspension file a record with the registration authority that will then publish the given suspension period, the address for the service of legal documents and other information via the **National Enterprise Credit Information Publicity System (NECIPS)**.

Moreover, if a company during or upon the expiry of the filed suspension period decides to resume operations, the company shall publicize the end of the suspension period in NECIPS within 30 days.

In Article 30 of the Regulations and Article 43 of the Rules, if a company during the suspension period changes its originally registered business address with another address for the service of legal documents but does not change its official registered address, the jurisdiction of the suspended company shall not be changed.

Article 41 of the Rules also states that if the address for the service of legal documents is changed, the company shall send a confirmation letter of the changed address to the registration authority.

This implies that a company is not obliged to rent any physical premises during the suspension period and can thereby save some rental cost. However, if the official registered address is the same as the rented physical premises, these rental cost savings can be difficult to achieve unless the official registered address is changed to something cheaper which also takes time and money to do.

In addition, Article 63 of the Rules states that a company that has suspended its business shall **continue to file their annual reports** via NECIPS on time and publish it to the public. However, the tax responsibilities during the suspension period are not mentioned and need to be clarified.

Article 30 of the Regulation also states that prior to the suspension, the company shall negotiate with its employees on how to handle the **labour relationship** and other relevant matters according to the law. This is not mentioned in the Rules and thus the implementation requires further clarification.

Deregistration

If for different reasons, the operations of a registered company in China are discontinued, an orderly deregistration process needs to be followed:

According to Article 31 of the Regulation and Article 44 of the Rules, if a company is terminated due to dissolution, bankruptcy, or other statutory reasons, it shall apply for deregistration with the registration authority and when approved it will take effect.

As stated in Article 32 of the Regulation and Articles 44-45 of the Rules, if a company is subject to liquidation according to the law, a **liquidation group** shall within ten days after its creation announce the names of its members and the person in charge through NECIPS. The liquidation group shall apply for deregistration within 30 days following the completed liquidation.

According to Article 34 of the Regulation and Article 46 of the Rules, if a company is ruled to be liquidated or declared bankrupt by the **People's Court**, the liquidation group or bankruptcy administrator may apply directly to the registration authority for deregistration.

In Article 33 of the Regulation, if a company has no unpaid credits or debts, no debt payment expenses, and no owed salaries, social insurance premiums, statutory compensation, taxes, or fines, and all the investors accept legal liability for the truthfulness of the above circumstances in writing, the company may apply for **deregistration under the simplified procedure**.

As stated in Article 33 of the Regulation and Articles 47-49 of the Rules, to apply for the simplified deregistration, the company shall upload a Letter of Commitment of all the investors and make a public announcement of its intentions to apply via NECIPS which will be published for 20 days.

If no relevant authorities, creditors, or other involved parties raise any objections during this period, the company may afterwards apply for deregistration within 20 days.

However, if the deregistration of the company is subject to approval by law, its business license revoked, ordered to close, or listed with irregular operations, the simplified deregistration procedure does not apply. Instead, the deregistration shall follow a **more comprehensive and lengthy process**.

According to Article 46 of the Rules, a **Tax Clearance Certificate** first needs to be applied for and obtained from the local State Tax Administration (STA) before it is possible to apply for the simplified deregistration procedure with SAMR.

The detailed procedures for simplified deregistration are found in the “**Notice on Further Improving the Simplified Deregistration to Facilitate the Exit of Micro, Small and Medium-Sized Enterprises from the Market**” that was jointly issued by SAMR and STA on **30 July 2021**.

Continued Business Reforms

The new Administrative Regulation and Implementing Rules signify a continued business reform agenda that finally allows a (foreign) company to suspend its business for a limited period without being forced to close down operations. But, if a company does decide to discontinue its business and has settled all its financial obligations, a simplified deregistration procedure can now be followed.

Contact

Noam David Stern, Founder

noam@china-direct.biz

Mobile: +86 136 1169 1358

www.china-direct.biz

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