

## Understanding the new Regulation for Market Entity Registration in China from 1 March 2022.

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To attract more Foreign Direct Investment, China has in recent years introduced many new reforms that have made it steadily **easier, quicker and cheaper** to register and operate a foreign company by reducing the capital requirements, offering tax incentives, cutting red tape, and speeding up processing times.

On **27 July 2021**, the “**Administrative Regulation of the PRC on the Registration of Market Entities**” was announced to take effect on **1 March 2022**.

The aim is to unify the many different regulations, streamline the procedures, reduce the processing times, and lower the cost for market entity **Registration, Change of Registration, Business Suspension, and Deregistration**.

### Reform Policies

#### Online Registration Platform

In **October 2017**, the former State Administration for Industry and Commerce<sup>1</sup> (SAIC) introduced a nationwide online company registration platform to optimize and streamline the application process and standardize the design of an **electronic business license** to reduce the turnaround time for company set-ups in China.

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<sup>1</sup> On 17 March 2018, the State Administration of Market Regulation (SAMR) was established in which several regulatory bodies including the former SAIC was merged into SAMR an abolished. SAMR is the responsible registration authority in China.

### **One Window, One Form**

On 28 February 2018, the Ministry of Commerce (MOFCOM) and former SAIC released a joint notice about the **“One Window, One Form”** policy to be implemented nationwide from **30 June 2018** with the aim to simplify the registration procedures of foreign-invested enterprises, shorten the processing times and reduce cost by only requiring the filing of one application with one authority.

### **Foreign Investment Law**

To further the reform process, China adopted the new **“Foreign Investment Law of the PRC”** (FIL) on **15 March 2019** that took effect on **1 January 2020**. The aim is to give foreign investors equal protection based on the principle of National Treatment except in industry areas that are either restricted or prohibited according to the Negative List.

With the FIL, all foreign investment in China is now regulated under **one single unified law** in which the previous Equity JV Law, Cooperative JV Law and WFOE Law have been repealed. The FIL refers directly to the existing **“Company Law of the PRC”** that took effect on **26 October 2018** that regulates the organization form, structure and operating rules of both Chinese and foreign companies in China.

### **New Regulations for Company Registration**

On **27 July 2021**, the State Council of the PRC announced the **“Administrative Regulation of the PRC on the Registration of Market Entities”** to take effect on **1 March 2022**.

The Regulation consists of **six chapters and 55 articles** with the aim to unify the standards, procedures, and supervision of market entity **registration, change of registration, business suspension, and deregistration** by repealing five existing regulations on registrations.

In the Regulation, the referred to registration authority is the State Administration for Market Regulation (SAMR) that is in charge of market entity registrations nationwide.

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

### **Registration**

When registering a company in China, certain information and documentation need to be collected, processed, and filed together with the online and hardcopy applications:

According to Article 8, the **general registration** items include: 1) name, 2) type of entity, 3) business scope, 4) domicile or main business location, 5) registered capital, 6) name of legal representative, and 7) names of shareholders.

According to Article 9, the **record-filing** items include: 1) articles of association, 2) term of operation, 3) amount of registered capital, 4) directors, supervisors, and senior management, 5) contact person for registration and designated person for receiving legal documents for foreign-invested enterprise, and 6) beneficial owners.

According to Article 16, the following **materials for registration** shall be filed: 1) application form, 2) qualification documents of the applicant and ID of the natural person, 3) relevant documents on domicile or main business location, 4) articles of association, and 5) materials as required by other laws and regulations.

According to Article 19, the local registration authority shall conduct a **formal examination** of the application materials, and if it is complete and meets the statutory forms, the confirmation and registration shall be done **right away**.

If this is not possible, the registration shall be made within **three working days** but may in complicated situations be extended by another **three working days**.

If the application materials are incomplete and do not meet the statutory forms, the registration authority shall inform the applicant of the materials to be corrected and added in a one-off manner.

Under the **current system**, the registration authority can conduct a **substantial examination** of the application documents, if in doubt. This can also include further scrutiny of the shareholders or proposed legal representative or require an onsite inspection of the premises which will delay things.

According to Article 21, if the registration authority approves the registration, a **business license** shall be issued, and the issue date shall be the date of the company establishment.

### **Change of Registration**

When changes occur in the legal structure or operational form of a registered company, the business license, articles of association and other registrations need to be updated accordingly:

According to Article 24, if a company intends to change any parts of its registration, it shall apply for change within 30 days from the resolution or decision for change is made or when the statutory change occurs.

According to Article 26, if the company changes its business scope where the approval by law is required, the application for change shall take place within 30 days from the date of approval.

According to Article 27, if a company changes its domicile or main business location outside the jurisdiction of the local registration authority, it shall first apply for change with the local registration authority at the new destination. The local registration authority of the original destination shall not refuse to handover the statutory materials without any justified reasons.

According to Article 29, if the company changes any of the record-filing matters as stated in Article 9, the record-filing with the local registration authority shall take place within 30 days from the resolution or decision of change made or when the statutory change occurs.

### **Business Suspension**

In case the registered company any faces business challenges out of its control, it is possible to apply for a temporary suspension of operations:

According to Article 30, if a business encounters difficulties due to natural disasters, accidents, or public health incidents, the company can decide to suspend its business within a certain period. 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.

The suspension shall be made public in the National Enterprise Credit Information Publicity System (NECIPS) and cannot exceed **three years**.

Under current practice, if a company suspends its operations for more than **six months**, the business license could be cancelled by the registration authority.

### **Deregistration**

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

According to Article 31, if a company is terminated due to dissolution, bankruptcy, or other statutory reasons, it shall apply for deregistration with the registration authority after which it will take effect.

According to Article 32, 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 the NECIPS. The liquidation group shall apply for deregistration within 30 days following the completion of the liquidation.

According to Article 33, 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**.

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 the NECIPS which will be published for **20 days** and 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.

Under **current procedures**, the publicity period for the simplified deregistration is **45 days** and if no objections are made, the company shall within **30 days** apply for deregistration with a decision to be made by the registration authority within three days.

It should be noted that in practise a **Tax Clearance Certificate** first needs to be applied for and obtained from the local State Administration of Taxation (SAT) before it is possible to apply for the simplified deregistration procedure with SAMR.

### **Business Reform Agenda**

As with most other laws and regulations in China, the finer details related to the interpretation and actual execution of the new **“Administrative Regulation of the PRC on the Registration of Market Entities”** depends on the pending implementing rules.

However, the new Regulation does streamline and reaffirms the already stated requirements for registration, change of registration and deregistration in the current **“Company Law of the PRC”**.

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 SAT on **30 July 2021**.

As such, the new Regulation signifies a sustained business reform agenda that is making it steadily **easier, quicker and cheaper** to register, operate and ultimately close a foreign company in China.

Regardless, foreign companies should always **seek professional advice and support** when it comes to register, operate and manage a market entity in China.

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