



**Deacons**  
的近律師行

## Setting Up a Resident Representative Office in the People's Republic of China



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This overview briefly sets out the law and procedures relating to the registration and operation of a resident representative office (“representative office”) by a foreign enterprise in the People’s Republic of China (“PRC” or “China”). The information contained herein is based upon our working experience with and understanding of relevant PRC legislation which is publicly available as of 1 March 2011.

This overview is not intended as an exhaustive discussion of the establishment and operation of a representative office in the PRC, but rather to provide general information for reference purposes. As Chinese law is evolving rapidly, readers are advised to seek further information and legal advice when considering the establishment of a representative office in the PRC.

## Introduction

Many foreign enterprises have established representative offices in China as the first step of their entry strategy into the country. Through a representative office, a foreign enterprise can engage in a limited range of activities which may form the basis for the enterprise to become further involved with China.

Representative offices of foreign enterprises generally need only to be registered with local authorities in order to be established. Prior establishment approval is required for representative offices in certain industries.

A representative office is not a separate legal entity. It does not possess registered capital and only requires the injection of minimal funds at the outset. Furthermore, unlike in many other jurisdictions, representative offices in China are usually not tax exempt.

## Applicable legislation

The main legislative provisions governing the establishment and operation of representative offices in the PRC are:

- *the Circular on Further Strengthening Administration of the Registration of Resident Representative Offices of Foreign Enterprises (the “Circular”); and*
- *the Regulations for the Administration of the Registration of Resident Representative Offices of Foreign Enterprises (the “Regulations”).*

Additional rules apply to representative offices of foreign enterprises which engage in particular industries or business sectors such as financial institutions, insurance institutions, and securities organisations. These State-level provisions have further been supplemented by local regulations and practice.

## Permissible activities

Representative offices in the PRC in general can only engage in non-profit-making activities. A representative office may be ordered to rectify the matter, confiscated of its illegal income and tools, equipment, raw materials, products and other related properties, fined or its Registration Certificate may be revoked if it engages in profit-making activities in violation of the Regulations.

Pursuant to Article 14 of the Regulations, a representative office may engage in the following activities relating to the foreign enterprise's business:

- market survey, exhibition and publicity activities relating to the foreign enterprise's products or services; and
- liaison activities relating to the foreign enterprise's product sales, service provision, domestic procurement and domestic investment.

## Establishment procedure

The process for setting up a representative office differs depending on the industry sector of the head office. If the representative office is established by a trading company, a manufacturer, a contractor, a consultancy company, an advertising company, an investment company, a leasing company, a rail freight operator, a freight forwarder, a tobacco company or other economic and trade organisation, the applicant company can directly proceed to the State Administration of Industry and Commerce or its designated local bureau (collectively referred to as the "registration authority") to register the representative office. If the applicant company is a financial institution, an insurance company, a securities institution (such as investment bank, merchant bank, securities company, fund management company, etc.) an air or sea transportation company, a sea transportation agent, a travel agent, etc. the applicant company must first apply to the PRC authority in charge of its industry for approval to establish the representative office. Only after the approval authority has issued an approval document may the applicant register with the registration authority.

### **Approval process**

A foreign enterprise in an industry where prior approval is required must submit the required application documents to the approval authority. Most approval authorities have issued detailed rules on the mandatory application documents. For example, the *Measures for the Administration of the Resident Representative Offices in China of Foreign Insurance Institutions* prescribe in detail the documents which a foreign insurance company must submit to the China Insurance Regulatory Commission. The documents usually include an application letter signed by the Chairman of the Board or the General Manager of the insurance company, a photocopy of its business licence, its Articles of Association and the name list of the members of the Board of Directors, management personnel or principal partners, annual reports of the last three years, a resume of the designated chief representative, etc. Some of these documents need to be notarised or verified by the resident embassy or consulate of the PRC in the applicant's home country.

If the examination and approval authority approves the application, it will issue an Approval Certificate for the establishment of the representative office (“Approval Certificate”).

### **Registration**

In the case of representative offices which require prior approval, the applicant company must apply for registration within 90 days of the date on which the Approval Certificate is issued. Failure to do so may result in the revocation of the Approval Certificate. In the case of representative offices which do not require prior approval, the applicant company can proceed directly to the registration authority without having to obtain an Approval Certificate. A prescribed set of documents should be submitted to the registration authority for the purpose of the registration. It should be noted that pursuant to Article 23 of the Regulations, one of the required application documents is the proof of the foreign enterprise's domicile and proof of lawful business operations evidencing that it has been in existence for at least two years. The documents should be submitted by authorised staff of the applicant company or an authorised registration agency. If satisfied with the documents submitted, the registration authority will issue a Registration Certificate for the representative office (“Registration Certificate”), upon which the representative office is officially established. The registration authority will also issue a Chief Representative Certificate to the Chief Representative of the representative office as well as a Representative Certificate to each of the other Representatives (if other Representatives have been appointed).

## Post-establishment formalities

After obtaining the Registration Certificate, the foreign enterprise shall announce the establishment of, or any registration of changes to, its representative office to the public in the media designated by the registration authority. Further, the representative office should attend to a number of post-registration formalities including:

- obtaining an organisation code and an Organisation Code Certificate from the General Administration of Quality Supervision, Inspection and Quarantine of the PRC or its designated local bureau;
- registration with the Public Security Bureau (“PSB”);
- opening of a foreign exchange account with the Bank of China or another designated bank;
- registration with the local as well as the state tax bureaux; and
- registration with the local customs bureau.

## Term of operation

Representative offices that require prior approval will be approved for a specified term commencing from the date of issuance of the Approval Certificate. The term for which a representative office is approved varies depending on the particular industry or business sector of the foreign enterprise. For instance, the Approval Certificate of a representative office of a foreign enterprise engaging in waterway transportation is valid for three years whereas that of a representative office of a financial institution is valid for six years. The term of operation of a representative office may be extended upon submission of an application to the original approval authority before expiry of its term. The Approval Certificate needs to be renewed when the approved term of operation expires.

In the case of representative offices which do not require prior approval, the term of such representative offices shall not exceed the term (if any) of the foreign enterprise.

Please also note the annual report requirement applicable to all representative offices. Pursuant to Article 6 of the Regulations, a representative office shall submit an annual report to the registration authority each year between 1 March and 30 June. The contents of an annual report shall include information on the lawful existence of the foreign enterprise, details of the business-related activities engaged in by the representative office, and its receipts and expenditures as audited by an accounting firm, and other relevant information.

## Employment of local and foreign staff

A representative office may be staffed by local as well as foreign personnel. Different rules apply depending on whether a staff member is a Chinese citizen or foreign national.

### **Local employees**

Representative offices are required to entrust the hiring of local personnel to a domestic foreign service unit or such other unit which has been designated by the Chinese government.

A representative office must enter into a contract with such a unit for the supply of staff to the representative office. There is, therefore, no direct labour contractual relationship between the representative office and the employee. Local staff members enter into labour contracts with the unit instead of the representative office and will receive salary and social benefits from the unit. The representative office is, however, still expected

If any reader would like more information on any of the topics covered in this overview or would like advice on a specific China law matter, please contact any member of the China Practice Group listed on the next page.

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to provide directly to the staff member various other benefits such as performance and year-end bonuses, transportation, meal and clothing allowances, personal accident insurance, etc. The unit will receive a fee for the provision of its services.

### **Foreign employees**

A representative office is not required to obtain approval for the employment of foreign personnel in the capacity of Chief Representative or ordinary Representative, but it is subject to a limit of number of the Representatives. Pursuant to Article 11 of the Regulations and Article 3 of the Circular, a representative office shall have one Chief Representative and no more than three ordinary Representatives. Every foreign employee of a representative office should apply to the Chinese consular office of his/her country of residence for a single entry "Z" visa and, upon arrival in China, apply to the relevant labour administration department for a Foreigner Work Permit. After obtaining a Foreigner Work Permit, the foreign employee should apply for a Residence Permit, which will serve as their multiple entry visa, at the local PSB for the employee and any accompanying family members who will be residing in China. A foreigner who intends to import any personal items into China must also register with the local customs bureau.

Residents of Taiwan, Hong Kong or Macau should obtain a Work Permit for Taiwan, Hong Kong or Macau Personnel instead of the Foreigner Work Permit. Whilst Hong Kong or Macau residents need not obtain a "Z" visa or a Residence Permit in order to work and reside in the PRC, Taiwanese residents must obtain a multiple-entry endorsement as well as a residence endorsement for such purposes.

## Deacons

Deacons is the oldest and largest independent law firm in Hong Kong. We provide an extensive range of legal and commercial services to local and international corporations with business interests throughout Asia. With 160 years of experience in providing legal services, our clients are assured of the integrity and stability of one of the region's oldest and most respected law firms.

Deacons has established three representative offices in the People's Republic of China, and has long established relationships with independent firms in Malaysia, Taiwan and Thailand. Through our own offices and our regional relationships we can assist our clients, comprising leading corporations, governments and public authorities, private businesses and financial institutions, to satisfy their legal services requirements throughout Asia.

Our principal service areas include Banking & Finance, China Trade & Investment, Communications & Technology, Company Formation & Corporate Services, Compliance Services, Construction & Arbitration, Corporate Finance & Capital Markets, Entertainment & Media, Financial Services, Human Resources & Pensions, Insolvency & Restructuring, Insurance, Intellectual Property, Japan Services, Litigation, M&A and Commercial, Private Equity & Venture Capital and Property.

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Whilst every effort has been made to ensure the accuracy of this publication, it is for general guidance only and should not be treated as a substitute for specific advice. If you would like advice on any of the issues raised, please speak to any of the contacts listed.





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