

## OVERVIEW

A China representative office (RO) is an office of a foreign enterprise set up in China for liaison with Chinese businesses and customers on behalf of its parent company. A RO is not considered to be a separate legal entity. It must be emphasized that a representative office may not carry out direct revenue earning business activities. For example, it cannot enter into purchase/sales contracts and cannot receive payment for services, issue invoices nor repatriate monies overseas. However, an RO can open bank accounts and employ staff to maintain liaison with customers and suppliers. Its head office can also enter into contracts with its supplier/customers in China in its own name, but not in the name of its RO. Therefore, before a foreign investor establishes its presence in China using foreign investment enterprises (FIEs) such as equity joint venture, cooperative joint venture or a wholly foreign- owned enterprise, it could first set up a representative office to test the Chinese market.

The simplicity and short time required for establishing a RO is the main reason for its popularity in the China market. Unlike foreign investment enterprises ("FIEs"), representative offices are not required to meet stringent requirements for items such as capital contribution. To establish a RO is therefore largely a matter of complying with the prescribed application procedures. Once all the necessary documents for application are ready for submission, government approval can be had within 30 working days.

## ADVANTAGES AND DISADVANTAGES

### Advantages

- 1 The capital required is at a low of US\$12,050 (RMB100,000) and it needs not to be wired into China, compared to US\$120,050 for a Wholly Foreign Owned Enterprise;
- 2 It can perform most of the back office functions, such as market research, sourcing, project investigation for parent company.

## **Disadvantages**

- 1 The activities which can be performed by a RO are limited. It is not allowed to provide services and sell goods;
- 2 Local staff should be hired via government admitted agents;
- 3 Although a RO are not allowed to provide services and sell goods, it is still liable to tax liability in the basis of expenses incurred.

## **BUSINESS SCOPE**

The representative office of a foreign enterprise may not engage in direct agreements or business with its clients or customers in China. The representative office is restricted to conduct only "non-direct business activities", such as: business liaison; product presentations; market surveys; and technical exchanges, etc.

## **TERM AND TERMINATION**

In China, the maximum duration approved for a representative office is three years (five years for insurance companies and six years for banks.) The duration date is calculated from the date on which the approval document is issued by the authority. If the representative office wishes to continue its operations after the expiry of the registration certificate, it must renew its registration by submitting an annual report of its business operations and its application for renewal 30 days prior to the expiry of the existing registration certificate.

## **TAXATION**

In General a RO is subject to foreign enterprise income tax (FEIT) and Business tax (BT) under the PR China FEIT Law and the PR China Provisional Regulations of BT. There are different ways in which a representative office may be taxed but the most common basis is the cost-plus-basis. As at April 2002, the total tax burden under this assessment method is approximately 10% of the operating expenses incurred by the representative office. The FEIT and BT for a RO should be filed on a quarterly basis within 15 days after the end of each quarter.

Although a RO is not to conduct business, it attracts tax on:

- 1 Chief Representative and local staff's Individual Income Tax (IIT)
- 2 Business Tax base on monthly operational expenses (BT)

- 3 Income Tax base on annual operational expenses (IT)
4. IIT above depends on salary amount while BT & IT roughly amounts to 10% of annual operational expenses.

Varies according to different city in China, A budget from US\$2,500 plus disbursement of RMB5,000 is suggested.

In accordance with the relevant Chinese tax regulations, a RO may claim for tax exemption if it satisfies certain criteria stipulated in the regulations. ATA will be pleased to further discuss this issue upon your application.

### **NAME OF REPRESENTATIVE OFFICE**

The name of the Representative office should be in the form of “Name of the Enterprise + Name of the City + Representative Office (or Office)”.

### **BUSINESS ADDRESS**

At the beginning of setting up the Representative Office, it is advised to decide the place and building where office is going to be located first, as the address of the proposed office will have to be mentioned in the application for approval.

Note the business address must be located in commercial buildings approved by the government.

### **CHIEF REPRESENTATIVE**

Chief Representative is the legal representative of the company in Shanghai, appointed by the board of directors of its parent company. Local representative is not required. Normally, if the chief representative does not intend to stay and work in Shanghai for over 90 days (within a year), no employment visa is needed. In case that the chief representative is a foreigner and intends to stay in China for over 90 days in a year, employment visa is needed.

### **CRITERIA FOR GRANTING APPROVAL**

Note that the Chinese Government works on an “approval system” instead of a “registration system”, that is, the application may be rejected without any reason given. It is therefore important that the necessary requirements should be fulfilled and documents required by the government must be fully and accurately submitted. Some of the requirements are:

- (1) The parent company should have at least one year’s operating results;

- (2) A business address located in a building, which is approved by the government to house foreign enterprises, is required.
- (3) If the documents are not in Chinese, certified translation by approved translator are required.
- (4) Notarization of statutory documents of the parent company may be required.

## **APPROVAL AUTHORITIES**

Authorities for approval are distributed among various State Council Departments and are delegated to their local offices. Applicants should apply for approval from different departments (at their local offices) according to their core activities. Some of the major types of industries and their approval authorities are:

<b>Industry</b>	<b>Approval Authority</b>
Trading, manufacturing, forwarding agent	Foreign Economic Relations & Trade Commission
Finance, insurance	People's Bank of China
Marine transport, marine forwarding agent	Ministry of Communications
Post and telecommunication	Ministry of Information Industry
Travel and tourism	National Tourism Administration
Advertising	State Administration for Industry and Commerce

## **APPLICATION PROCEDURES**

Application is a two-step procedure. Step one: applicant should obtain approval from the respective authorities. Step two: registration should be made with the Administration For industry and Commerce. The foreign enterprise may engage an agent authorized by local Foreign Economic Relations and Trade Committee to handle its application on its behalf.

According to current regulations, when applying for the establishment of a representative office, a foreign enterprise cannot directly file their application. In stead, the applicant must entrust a local Applicant Agent as sponsor to carry out application procedures. The sponsor should, on behalf of the foreign enterprise, submit various application documents and information to the respective examination and approval authorities; to proceed with the application procedures and to renew the registration certificate.

The approval authorities will vary according to the trade and business in which the foreign enterprise is involved. The Application Agent is also responsible for representing the foreign enterprise in registering at the public security bureau, customs authority, tax bureau and to open a bank account.

### Examination and Approval Procedures

- (1) The Shanghai Municipal Foreign Economic Relations & Trade Commission will examine the application. Upon approval, the Commission will issue an Approval Certificate to the applicant;
- (2) The applicant shall, within 30 days of the approval, apply with the Shanghai Administration For industry and Commerce together with the Approval Certificate issued by the Commission and all the documents refer to as above. A Registration Certificate, a representative card and work permit will be issued to the applicant;

### Post establishment Registration Procedures

Upon the issuance of the Registration Certificate, the applicant is required to complete post-establishment registration procedures, including:

- (1) Making of Office Stamp (Office Seal)
- (2) Opening of bank accounts
- (3) Registration with the Inland Revenue, both national and local tax
- (4) Application of "Enterprise Code" (企業代碼)
- (5) Registration with the State Statistic Bureau
- (6) Registration with the Customs Office
- (7) Application for Employment Visa (For foreign representative)
- (8) Importing Office Equipment and Daily Necessities, if any

### ESTIMATED TIME FRAME

The estimated time frame for each of the steps are summarised as follows:

No.	Step	Estimated Time Frame
1.	Preparation of Approval Documentation	Approximately 1 months; in practice, documents can be prepared in 10 days.
2.	Applying for Approval Certificate from Approval Authority	Up to 30 days. Although, generally this can be obtained in 15 working days
3.	Registration for Business Licence	Up to 30 days. Although, generally this can be obtained in 10 working days
4.	Registrations with other Government Authorities	Approximately 10 working days
		Approximately 2-3 months

From our experience, the whole registration process usually takes 28 days.

## **DOCUMENTS REQUIRED**

1. Business licenses or business registration certificate, or any other documents of the same nature;
2. Certificates of Incorporation or any other documents of the same nature;
3. Articles of Organisation (applicable to company registered in USA, Memorandum and Articles of Association (applicable to companies registered in Hong Kong), or any other documents of the same nature;
4. Bankers' reference letter for the foreign investors. The bankers' reference letter should state clearing the average daily balance for a period of not less than 6 months and shows a 6-digit bank balance;
5. Copies of passport (applicable to foreign resident); Hong Kong identity card and China entry permit (applicable to Hong Kong resident) of all representatives and 4 photos of the chief representative;
6. Original copy of lease agreement and title deed;
7. Documents evidencing the details of shareholders and directors for investors (e.g. Annual Return for a Hong Kong company);
8. Appointment letters, passport copy, photos, resume of the chief representative
9. Minutes of Board Meeting to authorize Chief Representative, Minutes of Board Meeting to setup RO
10. Latest Annual Return (applicable to companies registered in Hong Kong), or any documents listing existing officers of the applicant company; and
11. Latest tax return or Notice of Assessment, or other documents evidencing payment of taxes;

## **ESTIMATED SERVICE COSTS**

It generally takes about 60 hours to prepare all approval documentation and manage the entire process.

The labor hours are calculated on the basis that:

- (a) we prepare most of the documentation;

- (b) the corporate structure of the investor is straightforward (if there are two or more investors in the WFOE, this is likely to add considerably to documentation, timetable and costs); and
- (c) the application process proceeds smoothly,

Our service charge for the whole registration process is USD2,700. We set out the break down of those costs below:

No.	Step	Estimated Hours	Estimated Cost (USD)
1.	Preparation of Approval Documentation (Chinese translation excluded)	28	1,260
2.	Applying for Approval Certificate from Approval Authority	6	270
3.	Registration for Business Licence	10	450
4.	Registrations with other Government Authorities (eg. foreign exchange, tax, customs etc)	16	720
		<b>60 hours</b>	<b>2,700</b>

These costs do not include translation from English to Chinese, if any is required. Our internal translation costs are approximately USD100 per page. Also, the costs do not include registration and filing fees estimated to be at USD1,000 to be charged by the relevant authorities. The total cost is therefore estimated USD3,700, exclusive of the costs for the legalization of application documents by the Chinese Embassy of the country where the applicant is located.

### **Procedure for Change and Extension of the Representative**

To change any registered items (e.g. Name of the organization, location, scope of business), or when the expiration date of registration certificate is imminent, the office should immediately report to the registration authorities for relevant procedures. The validity of resident representative offices of foreign enterprises is three years for each approval. In case of extension, the office should report to its proxy three months ahead of the expiration date for the extension applying procedures.

Kaizen Corporate Services Limited  
 Room 1106, Remington Centre  
 23 Hung To Road, Kwun Tong  
 Hong Kong  
 Tel: +852 2341 1444  
 Fax: +852 2341 1414  
 Email: [info@by-cpa.com](mailto:info@by-cpa.com)