

Enterprise Deregistration Guidelines



CHINA

On 28 December 2021, the State Administration for Market Regulation (“AMR”), the State Taxation Administration and three other authorities published together the new Enterprise Deregistration Guidelines which replace and abolish the previous version published in 2019. These guidelines provide the basic procedures for entities to exit the Chinese market. Compared to the Enterprise Deregistration Guidelines (2019), the 2021 revised version further clarifies the exit process, issues relating to revocation of tax registration, simplified deregistration process, and provides guidelines for some special cases.

In order to exit the market and formally terminate its business, a company must go through three major processes, namely, dissolution, liquidation & distribution and deregistration. As for dissolution, there are two types of dissolution: voluntary dissolution and compulsory dissolution (in the event of a court decision such as in a bankruptcy case).

In this newsletter, we will mainly provide the guidelines for voluntary dissolution of foreign-invested enterprises.

1. DISSOLUTION PROCEDURE

1.1 Reasons of voluntary dissolution

According to article 180 & 182 of the PRC Company Law, the reasons for voluntary dissolution are as :

- (1) Expiry of the term of operation stipulated in the articles of association of the company or occurrence of an event which triggers the dissolution as provided in the articles of association of the company;
- (2) A resolution on the dissolution has been passed by the shareholders’ general meeting;
- (3) Dissolution is required by a merger or division.

1.2 Dissolution resolution and liquidation committee

In case of voluntary dissolution, the highest governing body of the company, i.e the board of shareholders (or the board of directors in specific cases) should:

- (1) Make a written dissolution resolution, which must include the following: the dissolution date (namely, the date of stopping operation) of the company, the members of the liquidation committee, the name of the responsible of the liquidation committee; the main liquidation principles and procedures.
- (2) Establish a liquidation committee within 15 days from the date of occurrence of any event triggering the dissolution.
- (3) Filing the detailed information of the composition of the liquidation committee for record with the relevant AMR within 10 days of its establishment, including the establishment date of the liquidation committee, the reason for the deregistration, the office address of the liquidation committee. This filing is done online directly on the national platform of public information on business credit (<https://www.gsxt.gov.cn/index.html>).

Once filed, the information of the liquidation committee is made public and freely accessible on the platform.

2. LIQUIDATION PROCEDURE

After the dissolution resolution is passed, and after the establishment of the liquidation committee as well as the filing of the relevant information, the liquidation committee will be in charge of conducting the liquidation procedure. During the liquidation, the company continues to exist but shall not engage in business activities unrelated to the liquidation. It is therefore recommended to stop all commercial and production activities, to close all commercial and production activities, and to clean up the company's balance sheet as much as possible by settling debts, collecting receivables and distributing dividends before launching the dissolution procedure.

2.1 Termination of employees' employment contracts

In practice, the company is entitled to early terminate the labor contracts with its employees, after having completed the three steps of the dissolution as provided in section 1.2 above. However, pursuant to the provisions of the PRC law on Labor Contracts, the company shall, at least, pay to each employee a statutory economic compensation calculated according to the below principle:

- For each period worked within the company of more than 6 months, the employer must pay an economic compensation equal to one month of the employee's average monthly salary, and for each period worked of less than 6 months, the economic indemnity is equal to half a month of average monthly salary. The employee's seniority calculated according to this method is limited to 12 years, i.e. a maximum of 12 months of average monthly salary.
- The average monthly salary corresponds to the total amount of compensation (including base salary, bonus, overtime, and other financial benefits, etc.) received by the employee during the last 12 months prior to the date of termination, divided by 12.

The statutory economic compensation for employees whose monthly salary exceeds 3 times amount of the local average monthly salary of the previous year is capped at the amount equal to 3 times amount of the local average monthly salary published by the local authorities.

2.2 The role of the liquidation committee

The liquidation committee is in charge (among others) of the following steps:

- (1) Notify the creditors: the notification can be done directly to known creditors or in the Chinese press within 10 days after the date of its establishment, or via the National Enterprise Credit Information Publicity System for free within 60 days from the date of its establishment. The notification period is 45 days. During this period, the liquidation group shall not settle any creditors' rights.
- (2) Report the start of the liquidation process to the relevant tax bureau.
- (3) Manage the unfinished business related to the liquidation, including the termination via negotiation of ongoing valid contracts with the relevant counterparts.
- (4) Settle ongoing lawsuits, arbitration processes and other disputes (if any).
- (5) Liquidate the company's assets, liabilities, including the preparation of the balance sheet and the list of assets, as well as the formulation of a liquidation plan.
- (6) Settle tax-related matters including i) paying out all outstanding taxes, late-payment interests and penalties; ii) declare and pay the current financial year's income taxes within 60 days of the starting date of liquidation; iii) declare and pay the income tax and other taxes arising from the liquidation; iv) launch the tax deregistration procedure.
- (7) Refund financial subsidy (if any).
- (8) Formulate the dismissal plan and negotiate with the employees.

- (9) Implement the liquidation plan, and pay off the liabilities in the order provided below:
- a. liquidation expenses,
 - b. employees' wages, social security premiums and statutory compensation,
 - c. outstanding taxes,
 - d. other liabilities,
 - e. after the end of the liquidation process and after all above expenses and liabilities have been paid off, the remaining assets of the company shall be distributed to shareholders in proportion to their capital contributions (in the case of a limited liability company) and to shareholders in proportion to their shareholdings (in the case of a joint stock company).
- (10) Prepare the liquidation report after the completion of the liquidation, and submit it to the Shareholder's meeting/the board of directors' meeting for approval. A copy of the liquidation report must be sent to the local AMR to apply for the deregistration of the company, after which the deregistration will be made public.

3. DEREGISTRATION PROCEDURE

3.1 Ordinary deregistration procedure

The main steps of the deregistration procedure can be summed up as follows, but please note that they may slightly vary in practice depending on the relevant local AMR:

- (1) Tax deregistration: as stated above, before being able to apply for tax deregistration, the company should pay off the outstanding taxes, overdue late-payment interest, penalties, hand in special VAT invoices and tax control equipment, and usually go through a "tax audit" (limited to the previous three fiscal years) with the issuance of a liquidation tax report. Once the company has completed all the outstanding tax-related matters, the tax authority will issue a Tax Clearance Certificate.
- (2) The cancellation of the registration with the customs for the companies concerned (if any)
The company shall submit an application for deregistration of customs declaration entities to the Customs through the "single window" for international trade (<http://singlewindow.cn>), "Internet + Customs" (<http://online.customs.gov.cn>) and other means, or through the "one-stop" service platform for deregistration networked by the market regulatory authority and the Customs. The Customs will issue a Completion of Customs Issues Notification within 11 business days from the date of application.
- (3) Foreign exchange deregistration.
- (4) Business deregistration upon filing by the liquidation committee of the deregistration resolution of the shareholders' meeting, the liquidation report, the tax clearance certificate, the deregistration with the customs and other relevant materials with the local AMR. The Business License is handed back to the relevant AMR in order to be cancelled. After examination of the application, the local AMR will issue a Deregistration Approval Notification. The date of issuance of this Notification is the official deregistration date of the company.
- (5) Deregistration of the bank accounts and transfer of the liquidation bonus to the shareholders (where applicable). Several documents shall be submitted to the bank (each bank has its own procedure), and generally, it will take around 2-3 months for the approval procedure in order to close the bank accounts and to transfer the liquidation bonus out of China.
- (6) Deregistration of social security which shall be done within 30 days from the date of the Deregistration Approval Notification.



3.2 Simplified deregistration procedure

A company with no debts or claims of any kind can opt for the simplified deregistration procedure. The company who choose the simplified deregistration procedure must log on to the national public information platform on corporate credit by selecting the «simplified deregistration publication» tab and then apply for simplified deregistration. The required documents are: i) application letter, ii) business license, iii) written undertaking by all shareholders to take the place of the company in the event of undeclared debts or claims, iv) shareholders list. The application is then published and if no objection is made during the publication period, the company can then proceed with the simplified deregistration formalities.

For a company eligible for the simplified deregistration procedure, the tax registration can be waived on the condition that i) the company has never conducted any taxable activity; or ii) the company has conducted some taxable activities but has never applied for the invoices and has no outstanding taxes or penalties to be paid. Thus, in practice, the simplified tax deregistration is only applicable to companies that are liquidated before they have even started their activities.

4. TIMELINE ESTIMATION

Steps	Time Estimation
Preparation work before the dissolution	Average of 3 months (depending on the specific situation of each company)
Dissolution	1,5 month
Liquidation	May vary depending on the specific situation of each company and the quality of the preparation works
Deregistration	Average of 6 – 12 months: 3 to 6 months for Tax Deregistration 2 to 3 months to close the bank accounts

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In conclusion, closing down a company in China is a long and complex procedure, especially for the companies that have existed for many years. There are many legal subjects involved in the liquidation process, such as the liquidation committees, the layoff of employees, the settlement of debts and collection of receivables, the termination of ongoing contracts, the specificities of local administrations etc. We therefore recommend adequate preparation works with competent counsels in order to insure compliance with applicable laws and regulations in that matter.



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