



TURKISH INDUSTRY AND BUSINESS ASSOCIATION

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``How to do Business in China``

How to set up a Representative Office in China

One-Stop-Station service for foreign investment in Chaoyang District,
Beijing

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How to set up a Representative Office in China

What's Representative Office?

There're four investment vehicles that foreign investors can use in China: Wholly Foreign Owned Enterprise (WFOE), Equity Joint Venture and Cooperative Joint Venture are profit making vehicles while Representative Office (RO) is a Non-profit Making investment vehicle for foreign investor to get familiar with the Chinese market as the first vehicle them use.

- Advantages and Disadvantages of Rep Office:

Advantage:

- No registered capital
- Tax efficient for certain industries
- Simple to establish
- Less administrative burden

Disadvantage:

- Unable to collect revenue
- Higher tax cost for certain industries
- Employment of PRC national via employment agency
- Uncertainty in allowable business activities

- Business Scope of RO:

- Business liaison
- Products recommendation
- Market research
- Technological exchange

In the drafting "*Procedures for the Registration and Administration of Resident Offices in China of Foreign Enterprises*", the business scope of Rep Office is much clear which includes liaison, market research, product display and promotion. On the other hand, the authority also leaves some space and flexibility when the draft also includes "other business activities allowed under international treaties" and "other business activities allowed under PRC laws" in that sector in order to perform a frame and a foundation for industrial rules and regulations.

Process of setting up a Representative Office :

1. Acquire preliminary approval at the relevant governing authority. Most foreign companies engaging in trade, manufacturing, consulting, advertising, investment leasing, and goods transportation were required to get approval from the competent local bureau of the Ministry of Commerce. Some RO involving some specific industries are still required to be approved by other specific industrial authorities such as banking, insurance, media and tourism.

2. Register with the Administration of Industry and Commerce to get the "Registration Certification for RO.

3. Apply for carving the official chops and register with the Public Security Bureau.

4. Apply at the Bureau of Quality and Technology Supervision for the Enterprise Code.

5. Apply for approval at the People's Bank of China to open a foreign exchange bank account.

6. Open bank account (basic RMB account and foreign exchange current account).

7. Apply for Local Tax Registration.

8. Apply for State Tax Registration.

9. Enter into employment contract with the designed departments under the labor bureau, or with FESCO or other licensed HR agencies.

- Documents required (there may be regional variations):

- Valid Incorporation Certificate and/or Business Registration Certification of holding company.

- Tax returns and reports of the holding company for the last fiscal year (not required in some cities).

- Official documents showing the registered capital and particulars of the shareholders.

- Official documents showing the appointment of the legal representative and/or general manager of the holding company.

- Bank reference letter elaborating basic information about the applicant (name, legal address, date of opening of the account,

registered capital, name of the legal representative of the company), borrowing facility (credit standing), average balance in the past year and overall comments made by the bank.

Depending on location, items before maybe required by local public notary in the investor home country and legalised by the Chinese embassy/consulate responsible for the investor jurisdiction. If the documents are in foreign languages, than Chinese translation by an English translation company is required.

- Official office/premises lease or purchase contract together with the landlord property certificate or purchase invoice if the applicant bought the premises.

- Identity certification (ID card, passport copy and visa or other valid identity certificate) of the Chief Representative.

- Resume of the Chief Representative with their signature.

- Photo of the Chief Representative.

Compared with the current rules and regulations, the drafting “*Procedures for the Registration and Administration of Resident Offices in China of Foreign Enterprises*” makes some changes on the requirements of the establishment of RO:

	Current Rules	New Draft
Residence Term	No longer than 3 years	No longer than head office
Prerequisite	None	One-year requirement for head office
Name	No restriction	Nation (or region) + Foreign company's name + City + Rep Office

Tax implications:

ROs are required to pay Business Tax, Foreign Enterprise Income Tax, Individual Income Tax and Stamp Duties except a few special cases. Business Tax and Individual Tax should be reported monthly while enterprise income tax shall be reported quarterly in most cities. If the chief representative is a foreign national, whether they stay in China or not, they shall be subject to individual tax based on the income derived from the RO. This may sound strange to many FIEs, especially as a RO is a non-profit-making center, however the Chinese government does require that tax be paid as they consider that by having such an office in China,

profit is being made in the parent company at least.

It is therefore recommended to keep a series of bookkeeping accounts based on all the expenses of the RO and all original receipts should be kept in the office for a minimum of five years according to the PRC Law. On a monthly and/or quarterly basis, the RO will then pay approximately 10% tax on its total expenses for that period.

If the parent company is a manufacturing entity, the RO can apply for tax exemption status, meaning they would no longer be liable to file and pay Business Tax and Foreign Enterprise Income Tax.

Additionally annual Audits and Annual Inspections are necessary for RO's and must be completed before May each year.

There're four kinds of Taxation Basis that can be used for accounting RO's tax:

- Actual Revenue, Actual Profit:

For those ROs that are actually operating.

- Cost-plus Basis:

The most often used tax basis.

- Actual Revenue, Deemed Profit:

For ROs carry out profit-generating activities such as consulting.

- Exemption Basis

Employment of PRC Nationals:

Normally the RO will sign two contracts if it wants to hire a PRC National: first is an undertaking agreement with that PRC National, second is a service agreement with an employment agent. The PRC National also needs to sign an employment agreement with that employment agent. Right now there's no limitation on the proportion of PRC Nationals that a Rep office should hire.

Foreign employees can be employed directly by the RO. Once the Registration Certificate of the RO is obtained and once arriving in China, the foreign expatriate must receive a Health Check performed by a specific government hospital before being able to apply for the work permit and residence visa.

It is important to note that employment permits and residence visas are subject to annual inspections and renewals by the local labor authorities. It is the employer's responsibility to present these documents to the issuing certificate office. Failure to observe and follow the regulations in general can lead to penalties.



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Resources:

Meeting Notes of EUCCC TÜSİAD SME Working Group Meeting jointly held with PWC on May 12th, 2009.

China Briefing: <http://www.china-briefing.com/>

Klako Group: www.klakogroup.com

The State Administration for Industry & Commerce:

<http://www.saic.gov.cn/>

<http://english.wzj.saic.gov.cn/>

The State Administration of Tax:

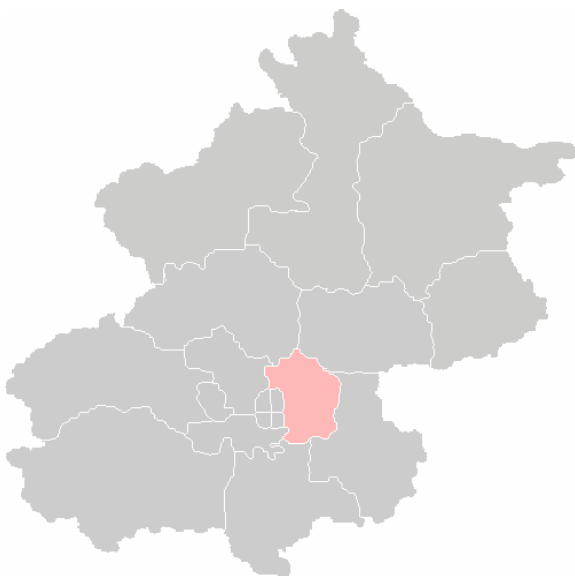
<http://202.108.90.130/n6669073/index.html>

<http://www.chinatax.gov.cn/n8136506/index.html>

One-Stop-Station service for foreign investment in Chaoyang District, Beijing

General introduction of Chaoyang:

Chaoyang is the largest and most densely populated urban district in Beijing. With more than 200 projects invested by Fortune 500, Chaoyang takes more than 40% of foreign investment in Beijing. Within Chaoyang, there're three functional areas: CBD Area, Electronic City Area and Olympic Area. To develop those three areas, Finance, Hi-technology, Cultural Creative Industry and Modern Service Industry are the priorities for Chaoyang to attract foreign investment. With developed economy, the district is a base of complete branches of industries, including electronics, textile, chemical engineering, machinery and automobile. In addition, commerce, finance, tourism, material distribution & storage as well as new and high technology, real estate and modern agriculture are all located in Chaoyang District.



The Location of Chaoyang District in Beijing

Major economic data of Chaoyang in 2008:

In 2008, Regional large-scale industrial enterprises realized total industrial output value of 66.45 billion yuan, up slightly by 0.6%. Among them, the high-tech manufacturing industry got 20.24 billion yuan industrial output, fell 4.3% year-on-year. In 2008, the total fixed asset investment was 72.96 billion yuan, declined 9.8%, which is the first time for investment in fixed assets got a negative growth since 2006. Both of the two major areas of investment declined and the investment market continues to adjust. The urban fixed assets 17.82 billion yuan, declined 9.1%; while real estate development investment was 53.93 billion yuan, declined 9.9%. Chaoyang District made a record on social sales in 2008. Social consumer goods retail sales got 127.27 billion yuan, 20.84 billion yuan more than last year, increased 19.6%, accounting for 27.7 percent of total amount of the consumer goods retail sales of Beijing.

The operation of foreign invested enterprises in Chaoyang:

As of the end of November 2008, the total amount of foreign invested enterprises above designated size in Chaoyang District are 181, 5 more than the same period last year, accounting for 23.9% of the whole number of industrial enterprises above designated size in Chaoyang. Total assets of those foreign invested companies reached 29.29 billion yuan, got an increase of 2.3%, accounting for 24.2% of total assets of large-scale industrial enterprises in the region. From the scale point of view, 122 foreign-invested enterprises accounted for a dominant position, 4 more than last year. The total assets of foreign invested companies reached 21.38 billion yuan, increased 8.5%, and accounted for 73.0% of the total asset of foreign-funded enterprises. From January to November in 2008, foreign invested industrial enterprises realized a total profit of 1.73 billion yuan, accounting for 70.0% of the total amount of the total profits of industrial enterprises



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above designated size in Chaoyang District. Among them, the profit of profitable enterprise was 2.07 billion yuan; 140 million more than the same period of last year profit enterprises,

One-Stop-Station service for foreign investment in Chaoyang

Chaoyang Investment Service Hall is one of the most developed One-Stop-Station Service Centre among all the district service centres of Beijing which focus on company and foreign investment service. Services focused on foreign investment include: 1. Pre-investment: laws and regulations consultancy; 2. Investment process: One-Stop-Station Service for getting approval; 3. Post-investment: problem solving. There are 20 functional departments in the service hall, including

Development and Reform Commission, Committee on Science and Technology, Culture Commission, Municipal Administration Committee, Bureau of Industry and Commerce and etc. with more than 100 service items. The hall also provided service to take charge of all formalities of the application free of charge, telephone appointment services and online approval service.

Resources:

TÜSİAD Beijing Office meeting notes with Investment Promotion Bureau of Chaoyang District on May 6th, 2009.

Investment Promotion Bureau of Chaoyang District, Beijing:

<http://www.investchaoyang.gov.cn/english/index.do>