



**CHINA: DEREGISTRATION
IN CASE OF BUSINESS
LICENSE REVOCATION /
ZOMBIE COMPANIES**

Welcome to our new **ADVANT Beiten** edition on certain questions and answers of deregistration of PRC-registered companies whose business licenses has been revoked! With this publication, we aim to provide you with essential information about this topic. We do this intentionally in a way which seeks to draw your attention to some important issues impacting the deregistration of companies who have their business license revoked. Hence, what we set out in this publication deals with some of the most common questions and situations we came across in our advisory services. Thus, please read this publication to get a first understanding on what aspects to look at when deregistering a company whose business license has been revoked and for any specific questions, please contact us anytime!

1. What are the different forms of enterprise registration and what does the status "revoked" mean in that context?

Under Chinese laws, the enterprise business license is the documentary proof that a company is legally registered and qualified to conduct business operations. Business licenses are issued, supervised and cancelled by the locally in-charge Market Supervision Administration (**MSA**).

MSA organises the enterprise registration status into the following categories: existence, revocation, deregistration, moving in/out, **suspension**, liquidation and annulment. While the applications for existence, deregistration, moving in/out and liquidation require active measures by the company/its shareholders, a revocation and annulment is imposed by MSA as a penalty. The meaning of these different forms of enterprise status can be briefly summarised as follows:

- *Existence* means that the enterprise subsists and operates normally. Depending on the actual administrative practice of MSAs across China, this status is also referred to as open (开业, kaiye), in business (在业, zaiye), normal (正常, zhengchang), registered (登记, dengji), recorded (在册, zai ce), in operation (在营, zaiying), valid (有效, youxiao) or similar.
- **Revocation** of business license is an administrative penalty imposed by MSA for material violations of the enterprise (see below Sec. 2 for details) and means that the company must stop to be operative and shall be liquidated and deregistered according to law.
- *Suspension* is a status where the shareholders of the company decided to keep the company dormant for a certain limited period of time and to decide during such

period whether to eventually resume operations or to liquidate and deregister the company.

- *Moving in/out* is the status of a company that decided to relocate from the jurisdictional reach of one MSA to another. During such relocation period, the company remains legally existing and operational.
- *Liquidation* refers to the stage of the company where the shareholders (or in case of bankruptcy the courts/administrators) decided to liquidate the assets of the company, settle all debts and creditor's rights with the goal to deregister the company.
- *Deregistration* is the last step in winding up a company and occurs either based on a corresponding shareholder resolution or in case of bankruptcy based on a decision of the court/administrator. Completion of the deregistration process means that the company legally ceases to exist, even if after such step certain other formalities are required (see below Sec. 4 for details).

Besides the above, there is also the possibility of an *annulment* of company by MSA, if MSA finds that a company was illegally established. This can e.g. result from the illegal usage of others' information to set up a company.

2. Under what conditions may MSA decide to revoke a business license?

As mentioned above, a revocation of business license is an administrative penalty imposed by MSA for severe violations by enterprises. Such a revocation (besides annulment) is the most serious administrative penalty comparing to other less severe measures such as e.g. warnings, fines and similar measures. Circumstances that allow MSA to revoke a business license comprise the following situations, **provided that serious level of violation exists**:

- company registration by submission of false documents / concealing important facts;
- failure to conduct MSA change registration procedures for material information;
- abuse of business license, e.g., forging its content, allowing others to use the license;
- failure to operate or suspend business without justified reasons for > 6 months;
- unlawful capital verification situations;
- endangerment of national security or public interest.

3. If the business license is revoked, do I still need to deregister the company?

As mentioned in Sec. 1 above, revocation of business license is an administrative penalty imposed by MSA for certain serious violations of the enterprise that orders the company stop to be operative and to conduct its liquidation and deregistration according to law. Hence, when a company's business license is revoked, what the company loses is the legal qualification to carry out business activities, but it still retains its legal person status, and it continues to bear liabilities for its operations.

During the stage of revocation, the company's legal capacity has not ceased to exist but is limited to liquidating assets, debt and creditor's rights, to conduct the related liquidation and deregistration procedures and to act as defendant or claimant in legal actions related to the aforesaid matters.

In other words, the "revocation" order by MSA does not mean the automatic deregistration of the company but is rather an order by MSA for the company and its shareholders to stop business and to take initiative to conduct the steps of liquidation and subsequent deregistration.

A company whose business license is revoked has no legal means to return to an operative/in-business status but must deregister and such deregistration is the only way for a company to legally end its legal person status.

4. How to deregister a company whose business license has been revoked?

PRC law generally knows two different forms of company liquidation and deregistration: the so-called "*regular process*" and the "*simplified process*". The simplified process is however not applicable to companies whose business license has been revoked and they must therefore follow the regular liquidation and deregistration process (which could transfer to a bankruptcy liquidation process if the company is unable to settle its debt during liquidation).

The main steps for such regular process will entail the following aspects and are expected to last several months and sometimes much longer (this is a basic overview only, the detailed steps are substantially more complex):

- shareholder Resolution to liquidate and deregister the company and to appoint the Liquidation Committee;

- registration of the Liquidation Committee comprised of the shareholder(s) and the chairperson of the Liquidation Committee shall be appointed by shareholder(s);
- commencement of the liquidation process, including but not limited to:
 - liquidation notification to all known creditors and public liquidation announcement in the MSA online system for a duration of at least 45 days;
 - tax deregistration;
 - customs deregistration;
 - settling all debts and obligations of the company, liquidating all assets, terminating/settling all contracts, etc.;
 - issuance of a liquidation report;
- deregistration of the business license with MSA and destruction of company seals;
- cancellation of the company's bank accounts and social insurance accounts, remittance of any remaining funds to shareholder(s), etc.

The above process necessitates that the company and its shareholders can be contacted, cooperate in the process and are able to produce the required documents, certificates, seals, accounts etc..

While well managed companies are capable to follow the above process, poorly managed and neglected companies often feel incapable to satisfy the requirements of the above process and have under certain conditions become known as so-called "*Zombie Companies*".

5. What qualifies "Zombie Companies" and how can they be deregistered?

"*Zombie Companies*" are enterprises that have not been operational or have not submitted annual reports for years, or have failed to deregister in time after their business licenses are revoked due to reasons listed in Sec. 2, and that have difficulties to conduct the regular liquidation and deregistration process because e.g. the shareholders or registered company organs disappeared or lost contact or fail to cooperate with each other, that lost their account books, seals certificates, etc.. A prime example are Joint Ventures (**JVs**) where one or more of the shareholders have ceased to exist or cannot be reached and the remaining shareholder(s) wish to lawfully liquidate and deregister the JV but fail to do so because without the cooperation and support of the other shareholders and the JV, the requirements of the regular process as described under Sec. 4 above cannot be met.

Hence, Zombie Companies basically exist in name only without any material contribution to the market and society while still occupying administrative resources, blocking enterprise name options, increasing administrative supervision costs and distorting economic statistics. Also, since the legal registration of such Zombie Companies can still be found in the public registers, criminals may use such registration information to engage in illegal activities using such company information to harm creditors and other market participants.

In order to address this increasingly common situation, PRC legislators have issued guidelines for the cancellation of such Zombie Companies, including among others in the following situations:

- Loss of contact /non-cooperation of shareholders: First, a public notification in the MSA online system or newspapers shall be made to call for a shareholders' meeting to resolve the liquidation and deregistration of the company and to establish a Liquidation Committee for such purpose.
- No Liquidation Committee can be established despite the above public notification: Cooperating shareholders (if any) or creditors of the company can request the locally competent People's Court to appoint a Liquidation Committee to liquidate and deregister the company. If the company is found bankrupt in the process, the Liquidation Committee can apply to the People's Court for bankruptcy. If the People's Court declares the company bankrupt or subject to compulsory liquidation, the bankruptcy administrator, respectively the Liquidation Committee, can directly apply to MSA for deregistration based on the court ruling.
- Loss of business license and/or official seals: The company can apply to MSA for deregistration by presenting the public announcement in the MSA online systems for the loss of business license, respectively a written confirmation of loss of official seals signed by all shareholders or by the Chairperson of the Liquidation Committee.
- Shareholder(s) were deregistered without changing their shareholder status towards the company: If the deregistered shareholder(s) have upper-level units/shareholders, legal successors, such upper-level units/shareholders or legal successors shall handle the company deregistration.

In practice, deregistration of Zombie Companies will still prove to be a highly complex and difficult task but at least a certain regulatory groundwork for such processes has now been laid.

6. Why is it important to deregister a company and what are the risks in not doing that?

While just silently walking away from a company that has its business license revoked or even qualifies as a Zombie Company may sometimes seem to be the easy way out, taking that approach is still riddled with risks one should try to avoid. Among the various issues that may be triggered by not duly deregistering an enterprise, the following considerations are particularly relevant:

- Shareholders, directors, general managers and other senior managers of companies who fail to perform their obligations, resulting in the harm of creditor rights, loss of the company's property, account books, important documents and/or who cause the impossibility to properly liquidate the company can be held personally liable.
- Senior managers and legal representatives of companies whose business license has been revoked, annulled and/or who have become Zombie Companies will be backlisted by MSA and hence will not be able to serve in such capacity in other Chinese enterprises for many years.
- Senior managers and legal representatives of companies/shareholders who are involved in lawsuits in China can be barred from leaving China and can be taken into custody when trying to enter China.
- As long as a company is not deregistered, criminals may use such registration information to engage in illegal activities using such company information, hence potentially harming creditors as well as shareholders and registered organs of such company.
- Companies/responsible persons failing to deregister a company face fines and entities/persons using revoked business licenses to engage in business activities are subject to criminal liability.

Contacts



Susanne Rademacher

Rechtsanwältin | Partner

ADVANT Beiten

Susanne.Rademacher@advant-beiten.com



Dr Jenna Wang-Metzner

Juristin | Partner

ADVANT Beiten

Jenna.Wang@advant-beiten.com



Kelly Tang

Juristin | LL.B. | LL.M.

ADVANT Beiten

Kelly.Tang@advant-beiten.com

ADVANT Beiten in Beijing

Suite 3130 | 31st Floor

South Office Tower

Beijing Kerry Centre

1 Guang Hua Road

Chao Yang District

100020 Beijing, China

T: +86 10 85298110

www.advant-beiten.com

Our offices

BEIJING

Suite 3130 | 31st floor
South Office Tower
Beijing Kerry Centre
1 Guang Hua Road
Chao Yang District
100020 Beijing, China
beijing@advant-beiten.com
T: +86 10 85298110

DUSSELDORF

Cecilienallee 7
40474 Dusseldorf
PO Box 30 02 64
40402 Dusseldorf
Germany
dusseldorf@advant-beiten.com
T: +49 211 518989-0

HAMBURG

Neuer Wall 72
20354 Hamburg
Germany
hamburg@advant-beiten.com
T: +49 40 688745-0

BERLIN

Luetzowplatz 10
10785 Berlin
Germany
berlin@advant-beiten.com
T: +49 30 26471-0

FRANKFURT

Mainzer Landstrasse 36
60325 Frankfurt/Main
Germany
frankfurt@advant-beiten.com
T: +49 69 756095-0

MOSCOW

Turchaninov Per. 6/2
119034 Moscow
Russia
moscow@advant-beiten.com
T: +7 495 2329635

BRUSSELS

Avenue Louise 489
1050 Brussels
Belgium
brussels@advant-beiten.com
T: +32 2 6390000

FREIBURG

Heinrich-von-Stephan-Strasse 25
79100 Freiburg im Breisgau
Germany
freiburg@advant-beiten.com
T: +49 761 150984-0

MUNICH

Ganghoferstrasse 33
80339 Munich
PO Box 20 03 35
80003 Munich
Germany
munich@advant-beiten.com
T: +49 89 35065-0



Imprint

This publication is issued
by BEITEN BURKHARDT Rechtsanwalts-gesellschaft mbH
Ganghoferstrasse 33, 80339 Munich, Germany
Registered under HR B 155350 at the Regional Court Munich/
VAT Reg. No.: DE811218811
For more information see:
<https://www.advant-beiten.com/en/imprint>

EDITOR IN CHARGE:

Susanne Rademacher
© BEITEN BURKHARDT Rechtsanwalts-gesellschaft mbH

ADVANT member firm offices:

BEIJING | BERLIN | BRUSSELS | DUSSELDORF
FRANKFURT | FREIBURG | HAMBURG | LONDON | MILAN
MOSCOW | MUNICH | PARIS | ROME | SHANGHAI

[advant-beiten.com](https://www.advant-beiten.com)