

**China - Approval and Control of
Resident Representative Offices of
Foreign Enterprises, (Detailed Rules of
the Ministry of Foreign Trade and
Economic Cooperation (MOFTEC))
1995**

MOFTEC

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Detailed Rules of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) on the Approval and Control of Resident Representative Offices of Foreign Enterprises (Promulgated by Decree No 3 of the Ministry of Foreign Trade and Economic Cooperation on February 13 1995)

Chapter I - General Provisions

Article 1

This set of detailed rules are formulated to promote China's foreign trade and international economic and technical cooperation and strengthen the control on the resident representative offices set up by foreign firms, enterprises and other economic organizations, within the territory of People's Republic of China, in accordance with "Interim Provisions of the State Council of the People's Republic of China for the Control of the Resident Representative Offices of the Foreign Enterprises" promulgated on October 30, 1980 .

Article 2

The detailed rules are applied to the resident representative offices which are established by foreign traders, manufacturers, freight agents, contractors, consulting companies, advertising companies . investment firms , leasing companies and other economic and trade organizations (hereinafter referred to as foreign enterprises) within the People's Republic of China.

Article 3

The foreign enterprises, when applying to set up resident representative offices within the territory of People's Republic of China , must have the approval of the MOFTEC of the People's Republic of China or its empowered foreign trade and economic cooperation commissions (departments) of the provinces, autonomous regions, cities under the direct Jurisdiction of the State Council and cities enjoying the provincial status in planning (hereinafter referred to as approving departments) and go through the formalities of registration at the State Administration for Industry and Commerce of the People's Republic of China or its empowered bureaus for industry and commerce (hereinafter referred to as the registration departments) of the provinces, autonomous regions, cities under the direct Jurisdiction of the State Council and cities enjoying the provincial status in planning .

Article 4

The resident representative offices of the foreign enterprises may engage in non-direct

business activities and may, on behalf of their enterprises, conduct business liaison activities, product introductions, market studies and technical exchanges, which are within their business scopes.

Article 5 11

Without the approval and registration, foreign enterprises are not allowed to set up their resident representative offices in the People's Republic of China and to conduct business activities permitted by the detailed rules. 12

Article 6 13

The resident representative offices of the foreign enterprises and their personnel must abide by the laws and regulations of the People's Republic of China and must not damage its safety and social and public interests. 14

Article 7 15

While carrying out various business activities permitted by the detailed rules, the resident representative offices of the foreign enterprises are protected by the laws of the People's Republic of China. 16

Article 8 17

The basic requirements for the foreign enterprises to set up their resident representative offices :

1. The foreign enterprises must have been registered legally in its own country; 19
2. The foreign enterprises must have good commercial credibility ; 20
3. The foreign enterprises must provide various true and reliable materials required by the detailed rules; 21
4. The foreign enterprises must go through the application formalities in line with the detailed rules. 22

Chapter II - Establishment, Extension, Change and Termination 23

Article 9 24

To establish a resident representative office in the People's Republic of China , a foreign enterprise must present a written application to the approving department, which will do the checking and will decide its approval or disapproval within 30 work days and notify the foreign enterprise in time. 25

Article 10

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In applying for establishing a resident representative office, a foreign enterprise must entrust a company, which has been approved by the authoritative department of the People's Republic of China to have the right to do foreign economic and trade businesses or a foreign economic and trade organization or foreign affairs service unit which is approved by the approving institutes, on behalf of the foreign enterprise. to present all the necessary materials to the approving department concerned and go through the formalities of application.

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Article 11

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When a company, or a foreign economic and trade organization or a foreign affairs service unit directly under the ministry or a commission of the People's Republic of China is entrusted for the application, the application form should be sent to MOFTEC for examination and approval ; when an entity concerned to a province, or an autonomous region, or a municipality or a city enjoying the provincial status in planning is entrusted for the application the application form should be sent to the foreign economic and trade commission (department) of the province, or the autonomous region, or the municipality or the city that enjoys the provincial status in planning, for examination and approval

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Article 12

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When applying for setting up a resident representative office, a foreign enterprise must provide the approving department with the following materials :

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1. An application form signed by the chairman or president of the enterprise to define the brief introduction of the enterprise, the purpose of setting up such an office, name of the office, resident personnel (chief representative, representatives), business scope, term of residence and location of office;

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2. Legal business certificate issued by the relevant authorities of the country concerned (carbon copy); bank which has business ties with the enterprise (original copy) ;

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3. A certificate of capital credibility issued by the bank which has business ties with the enterprise (original copy);

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4. A letter of authorization of the chief representative and representatives of the office appointed by the chairman or president of the enterprise, resumes and IDs (duplicated copies) of the chief representative and representatives. If the chief representative or a representative is the chairman, the letter of authorization must be signed by more than two board directors of the enterprise. The letter may be signed by the executive director if the enterprise does not have a board of directors ;

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5. Fill in the "Form of the Establishment of Resident Representative Office of Foreign

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Enterprise” and “Form of Personnel of Resident Representative Office of Foreign Enterprise” ;

6. Other materials deemed necessary by the approving departments. 37

Article 13 38

The name of the resident representative office should include the following contents: 39
“country + enterprise name + city name + representative office” .

Article 14 40

After the application is approved, the chief representative of the resident representative office should go to the approving department to get the letter of approval and then go to the registration department to go through the formalities of registration within 30 days beginning from the date of approval. The letter of approval will automatically become invalid if no application is submitted for extension upon the expiration of the term of residence and the approving department will call in the letter of approval. 41

Article 15 42

Following the approval of the application and the registration formalities, the resident representative office of the foreign enterprise must go to the public security, taxation, customs and banking institutions to go through relevant formalities with the letter of approval, and the registration and representative certificates. 43

Article 16 44

The longest term of residence of the representative office approved at one time is three years and the term is counted from the date of the letter of approval is issued. If the term needs to be extended upon expiration, the foreign enterprise may, through the entity it entrusts for application, apply to the approving department for extension 60 days in advance . 45

Article 17 46

When applying for extending the term of residence of the representative office, a foreign enterprise must provide the approving department with the following materials: 47

1. The letter of application for extension signed by the chairman or president of the enterprise; 48

2. A report on the business activities in the first term of residence of the resident representative office of the enterprise ; 49

3. A certificate of its capital credibility (original copy) issued by the bank which has business ties with the enterprise. 50
4. A legal business certificate (carbon copy) issued by the relevant authorities of the country concerned ; 51
5. Duplicated copies of the approval and registration certificates of the resident representative office of the enterprise; 52
6. Fill in a "Report on Extending Term of Residence of the Resident Representative Office of the Foreign Enterprise". 53

Article 18 54

Alter the application for extension of the term of residence is approved, the approving department will issue the resident representative office of the foreign enterprise a certificate of approval, and the resident representative office is required to take the certificate of approval to the registration department to go through the formalities of extension and formalities of public security, taxation, customs and banking within 30 days. 55

Article 19 56

If a foreign enterprise wants to change the name of its resident representative office, change or add the chief representative or representatives, change the business scope' term of residence and location of the resident representative office, it must entrust the original entity for application to present the original approving department a letter of application signed by its chairman or president (the application for changing the location of the office may be signed by the chief representative} and relevant materials concerning the changes and fill in a "Report of Application for Changes of the Resident Representative Office of the Foreign Enterprise". When the application for a change is approved, the representative office should take the certificate of approval to the original registration department and go through the formalities of registration for changes and formalities of public security, taxation, customs and banking within 30 days. 57

Article 20 58

When the term of residence of the resident representative office expires or the office is to terminate its business activities ahead of the expiration, or the foreign enterprise decides to cancel the office, it should, through the .original entity it entrusts for application, raise an application for cancellation signed by its chairman or president 30 days in advance and report to the original approving department for the record and settle its liabilities, taxation and other relevant matters, and go through the cancellation formalities of industrial and commercial registration , long term residence and customs record. 59

Article 21

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The certificates of application for establishment, extension of term of residence, changes and cancellation of the resident representative office of the foreign enterprise, and the authorization certificates of the chief representative and the representatives should be written in Chinese; if they are written in other languages, there must be a Chinese version attached. Other reporting materials must also have such versions if they are written in other languages.

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Article 22

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The approving departments have the right to demand, when necessary, that all or part of the materials submitted for applying for the establishment of the resident representative office be notarized by its own country's notarizing agency and be attested by the embassy of the People's Republic of China in the country.

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Chapter III - Administration

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Article 23

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MOFTEC of the People's Republic of China and its empowered foreign economic and trade commissions (departments) of various provinces, autonomous regions, cities under the direct jurisdiction of the State Council and cities enjoying the provincial status in planning and together with other related departments exercise administration , supervision and inspection of the resident representative offices of the foreign enterprises in accordance with the "Interim Provisions on the Control of the Resident Representative Offices of the Foreign Enterprises" by the State Council of the People's Republic of China on October 30, 1980 , and this set of detailed rules and other relevant laws and regulations.

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Article 24

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The resident representative offices of the foreign enterprises and their personnel should undertake all their activities in relative to their entry and exit, residence, industry and commerce, taxation, customs, foreign exchange management, employee recruitment, housing lease, etc. in line with laws and regulations of the People's Republic of China, and accept the administration, supervision and inspection of the authoritative departments of the Chinese government.

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Article 25

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When a resident representative office of the foreign enterprise wants to import exhibits to be displayed in its office, it should apply to the original approving department with the

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list of the exhibits attached. After this is approved, the representative office should take the document of approval and the list of the exhibits to the local customs for the check of the specific exhibits and their amount or number. The customs will charge a guarantee fund equal to the amount of tax fee and then inspect and clear in line with "Provisional Regulations of the Customs of the People's Republic of China on the Supervision and Administration of the Temporary Imports and Administrative Regulations of the Customs of the People's Republic of China on Applying for Guarantee for Imports and Exports". The exhibits are supervised by the customs within the period of guarantee and are not allowed to be sold, transferred or given away as gifts. The exhibits must be re-shipped out of China within six months beginning from the date of their entry and if the foreign enterprise concerned fails to do so, the customs will handle them in line with relevant regulations.

Article 26

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A foreign enterprise bears all legal responsibilities for all the business activities of its resident representative office in the People's Republic of China .

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Article 27

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The foreign trade and economic cooperation commissions (departments) of various provinces, autonomous regions, cities under the direct jurisdiction of the State Council and cities enjoying the provincial status should report the total number of the resident representative offices of the foreign enterprises they have improved to be established to MOFTEC for the record in January and July every year .

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Article 28

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When resident representative offices of the foreign enterprises violate the laws, regulations of the People's Republic of China and this set of detailed rules, MOFTEC and its empowered foreign trade and economic cooperation commissions (departments) of various provinces, autonomous regions, cities under the direct Jurisdiction of the State Council and cities enjoying the provincial status in planning may give warning to or order their close or even cancel the approvals of their establishment according to the seriousness of the cases.

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Chapter IV - Qualifications of Chief Representative and Representatives

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Article 29

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The chief representative and representatives of the resident representative offices of the foreign enterprises must have following qualifications :

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1. Foreign nationals who hold legal general passports (excluding foreign students in China) ; 80
2. Chinese nationals who are qualified for long-term residence in foreign countries 81
3. Compatriots from Hong Kong, Macao and Taiwan who hold valid certificates; 82
- 4.If the foreign enterprise appoints Chinese national to be its chief representative or representatives (excluding the Chinese nationals referred to in the second clause of this article) , it must entrust local foreign affairs department or other departments concerned designated by the Government of the People's Republic of China to go through formalities of applying for the appointments in line with relevant laws and regulations of the People's Republic of China. 83

Chapter V - Supplementary Provisions 84

Article 30 85

Foreign enterprises shall follow this set of detailed rules in applying for sending resident representatives in the People's Republic of China . 86

Article 31 87

Matters which are not covered in this set of detailed rules shall be handled in line with relevant laws and regulations of the People's Republic of China. 88

Article 32 89

Enterprises from Hong Kong, Macao and Taiwan shall follow the set of the detailed rules when they apply for setting up resident representative offices in the mainland. 90

Article 33 91

This set of detailed rules is to be interpreted by the MOFTEC of the People's Republic of China. 92

Article 34 93

This set of detailed rules goes into effectiveness as of the date of its promulgation. The effect of i° Regulations on Examining and Approving the Resident Representative Offices of Foreign, Hong Kong and Macao Enterprises" issued on August 11, 1992 (No. 272 Document issued by the MOFTEC on Administration in 1992)becomes null at the same time. 94

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