



Company Deregistration, Liquidation & Filing for
Bankruptcy in China
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Introduction

Drawn in by the rapid growth of the Chinese economy and the opportunities in the market, many multinational corporations ("MNCs") have expanded their business into China. Many entrepreneurs are also still attracted by the potential for business growth in the China market. While the ultimate goal for a business is survival and then success, it is fundamental for any business owner and its legal representatives to plan for unforeseen circumstances and to anticipate the advent of company closure, liquidation and deregistration.

Exploring and understanding the options for turn-around, transformation and corporate restructuring and implementing them at the right time, can be key to the survival of a business. However, in the most extreme cases, liquidation and deregistration of the company may be the only available option. Liquidating a company in China is a complex and challenging process that can take between 6-24 months, therefore professional advice and guidance should be sought when researching China liquidation.

Beyond the financial challenges presented by liquidation in China, China tax laws, China labour laws and bureaucracy need to be navigated through. This means that compared to business practices in more legally robust markets, the process is not quite as simple as closing down an office, stores or factories.

LehmanBrown's comprehensive experience in this area, with small and medium sized enterprises ("SMEs") as well as major global MNCs, means we can guide you through this challenging scenario smoothly. This article will explain the steps and procedures that your business should follow in order to exit the Chinese market in a compliant manner.

The Procedure of Liquidating a Company in China

It is important to keep in mind that liquidation does not always occur for negative reasons such as bankruptcy. A company may also seriously consider liquidation for strategic reasons.

Motives could include the following:

- A resolution for dissolution is made at a meeting of a company's shareholders.
- A company is absorbed in a merger or has been separated from the controlling entity.
- Expiration of business operations.
- The business license has been revoked by the government / an order for closure has been issued or the business license has been ordered-to-be-closed or cancelled by the government in the public's best interests due to determined legal violations (such as negative environmental impact or catastrophic malpractice).
- A company undergoes financial difficulties and cannot anticipate transforming the business to deliver future profitability.

- Force Majeure such as fire, natural disaster, warfare or changes in government regulations etc. enforce the liquidation of the company.
- A company decides to relocate all or a division out of China to another country, to take advantage of: cheaper labour, a more relevantly skilled talent pool, a more supportive political environment etc. This may necessitate the company to liquidate all of their assets in China.

Here we have broken down the procedure in to three clear stages in order to facilitate your understanding.

1 Pre-Authorisation STAGE

- Shareholders decide to liquidate Company
- Company selects a firm to assist with the process
- Preparation of related documentation
- Application for liquidation with the Bureau of Commerce ("BOC") and Administration of Industry & Commerce ("AIC")
- Formation of a Liquidation Committee
- Pre-Liquidation Audit and compliance work completed

2 Post-Authorisation STAGE

- Public announcement issued in local newspapers
- Employees should be laid off (although certain key roles can be retained to assist with the liquidation)
- Valuation and sale of company assets
- Creditors paid off
- Final Audit conducted (including all liquidation transactions)

3 Deregistration STAGE

- Businesses trading, importing / exporting across borders must deregister from China Customs
- Deregistration from the local governing Tax Authority
- Destruction of company chops and seals

Stage 1: Pre-Authorisation

Once the decision has been made to dissolve a Foreign Invested Enterprise ("FIE") operating in China, approval from the Chinese authorities is needed before proceeding. To initiate this, the appropriate documentation needs to be submitted to the local Bureau of Administration and Commerce ("AIC"). This will take between two to four weeks to be complete and must be completed before starting the other stages. For a comprehensive list of the required documentation, please refer to Appendix A.

The company can now start to settle assets once authorisation has been granted. Within 15 days of permission being obtained, a liquidation team needs to be established, which includes appointing a Chairman to represent the company to third parties. For Shanghai, the local AIC generally require that the liquidation committee consists of three individuals independent of the company, but this can vary depending upon location.

The committee's main functions are to manage the liquidation process and report back to the shareholders about any progress made. The liquidation committee of a limited liability company should be comprised of its shareholders, while that of a joint

stock limited company should be comprised of its directors or any other individuals appointed by the shareholders' assembly. If a liquidation committee is not formed within the time limit specified, the company's creditors may petition the people's court to appoint appropriate individuals to form a liquidation committee. The People's Court shall approve such a petition and form a liquidation committee in order to liquidate the company in a timely manner.

The committee members have to work objectively in both the company's and creditors' best interests; otherwise the other parties can take legal action. It is important to note that, if any action taken by the liquidation committee as a whole or by an individual committee member results in losses for the company or creditors, they may be held personally liable. After registering and declaring that the business is going into liquidation, the company is required to only participate in activities involved with closing down the business and no new business initiatives should be undertaken. A company undergoing liquidation and deregistration must continue bookkeeping and tax filing, as well as meeting all government reporting requirements up until the later stages of liquidation

Deregistering a China Representative Office ("RO") is still subject to the annual compliance requirements until the completion of deregistration however, the overall process is simpler compared to, for example, a Wholly Foreign Owned Enterprise ("WFOE") because it does not generate revenue.

A Pre-Liquidation Audit will take place once authorisation for liquidation is given. This is to ensure that the company's accounts are in order prior to the decision to dissolve. There are several areas that are essential to cover in the report including: a summary of the financial position and a review of the liquidation process that has been conducted, however the Pre-Liquidation Audit is not limited to just these areas.

The exact process and the related documentation needed can vary depending on administrative region, the size and structure of a company and industry in which the company is operating. The full list of potential documents required for this process can be found in the appendix (A and B).

The law compels that companies of all sizes must issue a public newspaper announcement concerning intent liquidate, with a 45 day claim declaration period and another final announcement to inform all unknown creditors that the liquidation process has commenced. If the company has a website, it is common, although not required to publish an announcement in the investors section.

Stage 2: Post-Authorisation

Companies that are registered to customs for import, export and trading business importation or exportation of products must cancel their registration with customs and their respective clearances. If these documents are not completed accordingly, the liquidation process may be delayed. If your company is in the service industry this stage doesn't apply. The main documents required are listed below. However, some additional documents may be required depending on which sector your company operates in and its geographical location in China.

1. Application letter for Customs Deregistration
2. Entrustment Letter
3. Official Reply regarding approval for the commencement of liquidation
4. Customs Registration certificate and Customs Declaration Seal

In these early stages of liquidation, it is likely that there are still employees contracted to the company. When liquidation begins, this creates legal grounds for laying-off current employees. The Chinese authorities often request an employment settlement report from foreign invested enterprises. This includes details such as severance pay. It is important to note that it may be beneficial to retain some staff to help at the beginning of the liquidation process, rather than terminating all contracts immediately.

Another important stage is the valuation and sale of the company's assets in order to rebalance the books and pay off the liquidation expenses, outstanding debts, fees and taxes. It is paramount to ensure that assets are sold at a reasonable price as selling them below value can incur losses, which may leave the liquidation committee liable to investigation.

Timing is a fundamental factor when considering the sale of assets and distinguishing between bonded and non-bonded assets allows for them to be dealt with accordingly. The more lenient process for disposal of non-bonded assets means they can be sold directly for proceeds to cover any costs / debts. Bonded assets realistically can be disposed of in two ways:

1. By being sold to a foreign entity and exporting them from China
2. Selling the bonded assets in China but paying the previously exempted taxes (VAT and Duty).

The company must also collect all outstanding debts from customers / clients and other parties. This will help to pay off the creditors later on. However, debtors often view that a company going into liquidation is an opportunity for them not to pay off their creditors. This is because although a creditor can file a lawsuit against the debtor, this is often a lengthy and timely process, which if followed through could delay the liquidation process and incur further costs. It is for these reasons therefore that many companies decide to avoid lawsuits and litigation.

It is only at this stage, once all the assets have been sold and the receivables have been collected that the creditors begin to be paid off in accordance with PRC law. Once the assets have been settled and the creditors have been paid, it is then necessary for a second audit to take place, in a similar manner to the Pre-Liquidation Audit, but this time with the aim of verifying the actual transactions conducted during the liquidation process.

After this audit has been completed and the report conducted, deregistration can commence. For deregistration, a company will need to have the following documentation:

1. A Certification of Approval
2. The Business Licenses
3. A Tax Registration Certificate
4. Foreign Exchange Certificates
5. Financial Certificates
6. Statistical Certificates

Various authorities will also need to be involved. The full list of authorities can be found in Appendix C.

Stage 3: Deregistering a Company in China

In China, the procedure for company deregistration is rather complicated, particularly concerning compliance to China Customs and the Tax Authority. In general the process can take between one year and two years depending on the complexity of your enterprise.

After the deregistration process with the local and state administration, the final distribution of funds and closing of bank accounts can begin. Depending on the number of bank accounts existing in China and any remaining balance, the timing for this stage can vary significantly. In most cases, this last stage can be categorised into 7 steps, as set out in Appendix D.

Finally the company chops and seals can be destroyed thus completing all procedures for a compliant liquidation and deregistration of a china based WFOE or RO.

Appendix

Appendix A: Documents Required for Processing: China Liquidation Stage 1.

1. Local and State Tax Administration: Initial documents required:
 - a. For the past trading year:
 - The latest Capital Verification Report
 - Tax Audit Report
 - b. For the past 3 trading years:
 - Statutory Audit Reports
 - Corporation Income Tax (CIT) Annual Filing
 - Trial working balance and journal entries
 - Tax filing records, returns and receipts
 - Official Tax Receipt (Fapiao) machine Records
 - Payroll and Social Insurance Invoices;
2. BOC Deregistration & AIC back up: Main documents required:
 - a. Resolution for termination of the Articles Of Association
 - a. Resolution for termination of the Articles Of Association ('AOA")
 - b. Application letter
 - c. Liquidation committee list
 - d. Resolution of shareholder for company deregistration
 - e. Shareholders' resolution for liquidation team
 - f. Other documents further required by government.
3. Application to BOC: Main documents required:
 - a. Resolution for Termination of the AOA
 - b. Resolution of Shareholder for company deregistration
 - c. Application letter for approval of commencement of liquidation
4. Application with AIC for liquidation: Main documents required:
 - a. Application Form for Recordal in a Foreign-Invested Enterprise
 - b. Shareholder's resolution for liquidation team
 - c. Liquidation committee list

Appendix B: The Deregistration Process in China

1. Issuance of local tax liquidation audit report (can be started 45 days after newspapers announcement)
2. Audit (annual compliance)
3. Application for Local Tax Authority deregistration:
 - a. Completion of all original application forms;
 - b. Liquidation documents submission;
 - c. Answer all questions or queries raised by local tax Bureau
 - d. Negotiate with tax officials
4. Annual Compliance: During the liquidation period, the WFOE will still be subject to the annual compliance requirements:
 - a. Annual reporting with various government authorities until the business license is cancelled, including the AIC annual reporting, foreign exchange annual reporting and joint annual reporting with commerce commission; and
 - b. Regular tax filings until its local tax registration and state tax registrations are cancelled; Foreign currency report

5. Local tax deregistration approval collection
6. Issuance of State Tax Liquidation Audit Report
7. Application for State Tax Deregistration:
 - a. Completion of all original application forms;
 - b. Liquidation documents submission;
 - c. Answer all questions or queries raised by State Tax Bureau;
 - d. Negotiate with tax officials
8. State Tax Deregistration approval collection. Once your company has received the tax deregistration approval collection from the state, you can proceed to the next stage and your business has now completed the China tax process.

Appendix C: List of Authorities involved in the China Liquidation and Deregistration Process:

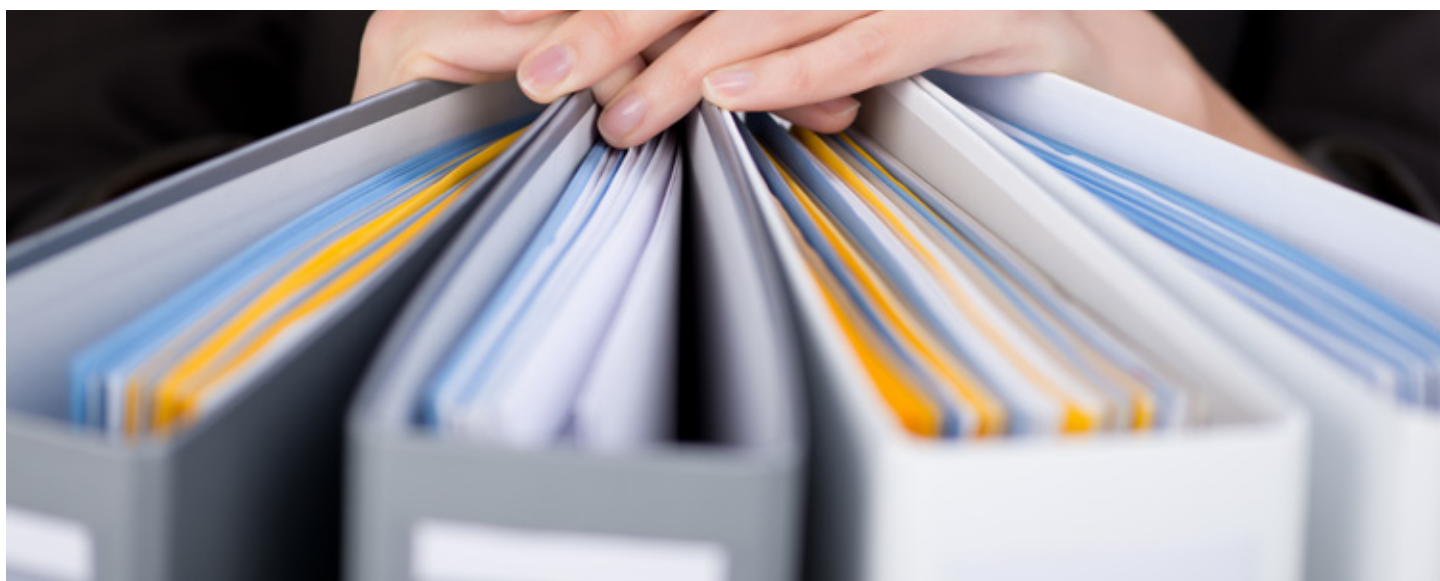
1. Local Tax Bureau
2. National Tax Bureau
3. Customs Office
4. Foreign Exchange Authorisation
5. Industrial and Commercial Administration Bureau
6. Technology Supervision Bureau

Appendix D: China Tax Deregistration Procedure

1. Issuance of the State Administration of Foreign Exchange ("SAFE") liquidation report
2. Application with tax bureau for tax approval and they required many documents:
 - a. Application Letters
 - b. Resolution of Shareholder
 - c. Tax deregistration Approvals
 - d. All Audit Reports
 - e. All Capital Verification Reports
 - f. AOA and all previous amendment copies
 - g. SAFE Liquidation Report
 - h. Other documents further required

If the bank balance is more than RMB 50 000, which needs to be transferred back to the Investor, the tax form will be further required by SAFE.

3. Deregistration with State Administration of Foreign Exchange (SAFE) and documents required:
 - a. Liquidation Audit Report
 - b. Shareholder's Resolutions to approve the Liquidation Report
 - c. Board Resolutions of the WFOE to approve the Liquidation Report
 - d. Application Form
 - e. Resolutions of the Liquidation Committee
 - f. Local Tax Deregistration Notice and State Tax De-registration Notice
4. Final Annual compliance
5. Application for Deregistration with AIC and their required documents
 - a. AIC Deregistration Application Form
 - b. Resolution of shareholder for company deregistration
 - c. Member list of liquidation committee
 - d. Resolution for termination of the AOA
 - e. All the obtained government approvals for deregistration
 - f. Business License of the WFOE.
6. Bank account closure including all foreign capital accounts and the RMB Basic account.
7. Destruction of other company chops and se



About Us

Founded in 2001, LehmanBrown is a China-focused accounting, taxation and business advisory firm, operating in Beijing, Shanghai, Hong Kong, Macau, Shenzhen, Guangzhou and Tianjin. Our firm also manages an extensive affiliate network, providing service throughout China and reach across the globe.

Combining years of international expertise with practical Chinese experience and knowledge, LehmanBrown offers expert advice and support to both local and international clients. Within the mid - tier, we are regarded as a market leader and our clients enjoy access to a combination of senior and experienced counsellors from both China and abroad.

At LehmanBrown we recognise that you are unique, that you have unique requirements and we are committed to providing individually tailored financial solutions. LehmanBrown is dedicated to providing personalised service by working closely with our clients to understand your individual business needs. This enables us to offer the most up-to-date and expert advice.

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综合多年的国际经验和对中国市场的深刻理解和实践体验，我们向广大国内外的客户提供高质量的专业服务和意见帮助。在雷博国际会计的服务过程中，我们作为市场中的佼佼者，您将得到来自中国本土以及其它国家的高级资深专家热忱的咨询帮助。

我们深刻认识到每一位客户都是独一无二的，并都有其独特的业务需求。雷博国际会计承诺将根据客户的不同业务需求，为客户提供个性化的财务解决方案。我们的专业人员将密切与您合作，以充分了解您独特的业务需求，从而提供满足您所需要的高时效、高质量的专业服务。

Professional Services

Audit & Assurance

External Audit

China Statutory Audit

US GAAP Audit

IFRS Audit

Hong Kong Statutory Audit

Internal Audit

Fraud Investigation

Forensic Accounting

Special Purpose Audit

Foreign Currency Audit

Royalty Audit

Capital Verification Audit

Valuation Services

Corporate Valuation

Damage Assessment Valuation

Intellectual Property Valuation

Asset Valuation

Special Purposes Valuation

Corporate Finance

Debt Restructuring

Acquisition, Disposal & Financing

Mergers & Acquisitions

Transaction Advisory

M&A Divesture

M&A Integration

Financial Due Diligence

Business Services

Company Registration & Maintenance

Market Entry Advisory

Updating Company Certificates

Annual Inspection & Reporting

Company Secretarial Services

Company Ownership Transferring/Corporate Restructuring

Background/Credit Checking

Company Deregistration & Bankruptcy

HR Support Services

China Visa Services for Expatriates

Social Welfare Structures

Outsourcing Services

Accounting & Bookkeeping

Budgeting & Forecasting

Financial Statement Preparation

Head Office Reporting

Financial Management

Interim Financial Management

Finance Manager Function

CFO Function

Cash Flow Management

Treasury Management

Set-up of Bank Account

Payroll Services

Payroll Processing Setup

Expatriate Employees

Local Employees

Secondment & Temping Service

Chop Custodian Services

Taxation Services

Individual Tax Planning (IIT)

Tax Immigration & Investment Review

US & Overseas Personal Income Tax Planning & Filing

IIT Tax Payment Facilitation

Application for Individual Income Tax Refund

Expatriate Staff Individual Income Tax Staff Filing

Local Staff Individual Income Tax

Company Taxation (CIT)

Tax Consulting

Corporate Tax Planning

Business Restructuring

Value Chain Review

Onshore / Offshore Investment

Transfer Pricing

Tax Compliance

Tax Due Diligence

Tax Deregistration

Negotiation of Tax Penalties

Tax Refund Application

Tax Representatives for Tax Audit

VAT & Customs Duty Clearance

PRC Tax Receipt Verification

VAT Application

VAT & Sales Tax Filing

Corporate Income Tax Reporting

Specialist Accounting & Risk Management

Internal Controls

Systems

Risk Management

Sarbanes - Oxley (SOX 404)

GAAP, SEC & IFRS Compliance

US GAAP

US GAAP Financial Statement Preparation

US GAAP Conversion

Other GAAP

GAAP Conversion

Public Company Compliance

Financial Statement Preparation

IFRS

IFRS Accounting Repackaging

IFRS Financial Statement Preparation

IFRS Public Company Compliance

SEC

SEC Public Company Compliance

Legal Services

Legal Advisory

Labour Legal Advisory

Workforce Downsizing Advisory

Labour Tribunal Assistance & Advisory

Labour Law Review & Audits

Review & Preparation of Employment Contracts

Corporate Legal Advisory

Legal Due Diligence

Corporate Restructuring Advisory

Review & Preparation of Articles of Association (AoA)

Review & Preparation of JV Contracts

Review & Preparation of Repatriation Agreements

Other Legal Services

Dispute Mediation & Advisory

Trademark & Intellectual Property Advisory

Debt Collection Assistance

Litigation Support

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