

Surviving a serious crisis - utilize the “Dormant Company Policy”



CHINA

Due to the COVID-19 surge in China, several cities has adopted strict lockdown policy to prevent the spread of the pandemic. Many companies have already been heavily impacted by the COVID-19, and their operation and business become more time-consuming and costly. To encourage and boost the market and economy, the Chinese government has implemented a new policy named “Business Suspension Filing”, also known as the “Dormant Company Policy” in the **Administrative Regulation of the People’s Republic of China on the Registration of Market Entities** (“Regulation”) implemented on March 1st, 2022.

In the current difficult circumstances, we believe it is important for companies to have a better knowledge and understanding of this policy so that they can use it when necessary to survive and reduce costs. This article is intended to provide a brief introduction to the key points of the policy, and our team will be happy to provide further information.

I. GENERAL INTRODUCTION OF THE “DORMANT COMPANY POLICY”

The “Dormant Company Policy” allows companies to discretionally apply to the administration for market regulation (AMR) to suspend their businesses for a period up to 3 years when facing commercial difficulties in the event of business difficulties due to natural disasters, accidental disasters, public health emergency, social security events and other serious reasons, and they can resume operations when ready.

1. APPLICANT

According to the provisions of the Regulation, any «market entity» which carries out profit-oriented activities in the People’s Republic of China is entitled to apply for this policy, including natural and legal persons, such as enterprises, sole proprietorships, partnerships, farmers’ cooperatives, branches of foreign companies, etc.

2. AUTHORITY

The application for Dormant Company Policy is to be submitted to the AMR office at the county level or above. However, in some cities, such as Beijing, the application can be submitted at the district level, while in others, such as Shenzhen, the application must be submitted at the municipal level. It is therefore advisable to check the requirements of the AMR of the place of registration.

II. PROCEDURE

As the Dormant Company Policy is very recent, there is no detailed and unified procedure yet. Shanghai, for example, has not yet promulgated any local policies or official procedure under the nationwide Dormant Company Policy yet. Nevertheless, the Dormant Company Policy can be used in Shanghai, as demonstrated by an application filed with the Qingpu District AMR in Shanghai on March 1st, 2022, the same day as the Regulation came into force, before the lockdown took place in Shanghai.

For your reference, you may find below the procedure applicable in Beijing as described in the *Measures for the Registration of Suspension of Market entities in Beijing* (for Trial Implementation) (“Measures”) published by the Beijing AMR on 16th March 2022, applicable retroactively since 1st March 2022. For other cities, it is recommended to contact the relevant AMR for details on the local requirements and the procedure to be followed.

1. GENERAL PROCEDURE - EXAMPLE OF BEIJING

The competent authority is the District AMR.

The company shall go through the record-filing formalities with the District AMR via the electronic Beijing enterprise service platform (<https://ect.scjgj.beijing.gov.cn>). When the company intends to extend the duration of business suspension, it shall go through the formalities within 30 days prior to the expiration of the suspension period.

For the record-filing of business suspension, the below documents are required:

- An application letter for the filing of the company's suspension of business;
- A letter of commitment for the filing of business suspension.

The two letters are drafted based on the template available on the AMR's website.

There is no provision on the delay for the review of the record-filing, and based on past experience, it should be within one working day as long as the documents are complete and meeting the requirements.

The duration of the suspension of activities as well as other information related to the company will be made public by the competent AMR through the National Enterprise Credit Information Publicity System.

Companies engaged in e-commerce operations shall continue to publicize relevant information on business suspension on the homepage of their website or in a very visible location on the website showing their business activities. E-commerce platform operators shall verify and update the companies' information in a timely manner.

2. RESUMING THE BUSINESS

The companies in the following situations shall be deemed as having resumed their business:

- Voluntary resumption of business,
- Factual resumption of business,
- Expiration of the registered suspension period, or
- Accrued suspension period superior to three years.

In the first two cases, the company must publish the end of the suspension period in the National Enterprise Credit Information Publicity System¹, for the other points, the resumption of business is automatic.

III. SEVERAL NOTICES TO THE DORMANT COMPANY POLICY

1. During the period of business suspension, the fact that the dormant company can no longer be contacted via its registered address is not anymore considered as an irregular situation. The dormant company could provide the competent AMR with an address to be used for the delivery of legal documents and official notifications, which address could be different from that of its registered address, even though the registered address registered with the AMR and appearing on the business license remains unchanged. Therefore, subject to the provisions of its lease agreement and/or the approval of the landlord, the dormant company may early terminate the lease agreement for its registered

1. <http://www.gsxt.gov.cn/corp-query-homepage.html>

address in order to reduce greatly its fixed costs. However, in practice it may be difficult to obtain the landlord's approval, as the premises occupied by the dormant company cannot be rented by the landlord to other tenants, as long as they are registered with the AMR as the registered address of the dormant company.

2. Before applying for a business suspension, the Measures provide that:
 - the company concerned should reach an agreement with its employees as to the future of their labor relationships;
 - if the company retains employee during this period, it must continue to pay contributions to the housing fund. If the company cannot afford to pay these amounts, it can request a reduction in the rate of contribution or a delay in payment.

However, the Measures are silent on the possibility for the dormant company to unilaterally dismiss its employees or to temporarily stop paying their wages and social security contributions.

We tend to think that since the business suspension is not a reason for dismissal provided for by the *PRC Law on Labor Contracts*, the company can only use the business suspension decision to reach an amicable agreement with its employees. If no agreement is reached, the company may also consider putting its employees on temporary lay-off and then paying their wages according to the rules applicable to periods of temporary lay-off, which are set out at national level in article 12 of the *temporary regulation about salary payments published by the former ministry of Labor* on 6th December 1994. Those rules could be summarized as follows:

- During the first cycle of salary payments: normal contractual salary payments apply;
- As of the second cycle of salary payments: salary payments must not be lower than the local minimum wage if employees have been working.

Many local authorities have published more specific local regulations on the basis of these national principles, but consistently with normal wages during the first cycle of salary payments, and then reduced ones as of the second cycle of salary payments. Main differences focus on the calculation methods of reduced salaries: application of local minimum wage, possibility of paying a cost-of-living allowance lower than the local minimum wage, employees part of social contribution and housing fund included or not in the payment to employees, etc.

3. During the suspension period, the company must continue to submit its annual reports online. Normally, the company shall also continue the tax declarations even if declared figures are «zero» (assuming no isolated taxable event occurs). It is however suggested to further verify with the in-charge tax bureau whether such “zero declaration” obligation could be waived in practice during this special period.
4. Any company that applied for a suspension on its own without applying to the relevant AMR may be ordered to remedy the breach, and a fine of up to RMB 30,000 may be imposed.
5. During the whole period of suspension, the enterprise is not allowed to change the information registered with the AMR. Any changes can only be made once the resumption of business is notified to the AMR.



For any additional information
please contact:

Sylvie SAVOIE
Managing Partner - Beijing Office
Savoie@dsavocats.com

NIU Yaqin
Associate - Beijing Office
NiuYaqin@dsavocats.com