



Our Offices

Manivest Hong Kong

Unit 511, Tower one, Silvercord,
30 Canton Road, Tsimshatsui,

Kowloon, Hong Kong

Tel: (852) 2851 6752

Fax: (852) 2537 5218

Mainland China/ Taiwan toll free
line: 00800 3838 3800

Email: Enquiry@ManivestAsia.com

Website: www.ManivestAsia.com

Manivest Shanghai

Unit 2402, Block A, Universal
Mansion,

172 Yu Yuan Road, Jingan District,
Shanghai 200040, China

Tel: (86 21) 6249 0383

Fax: (86 21) 6249 5516

Email:

Shanghai@ManivestAsia.com.cn

Website:

www.ManivestAsia.com.cn

Manivest Macao

Manivest Asia, Limitada

Rua do Campo N° 202,

Edf Associacao das Senhoras 7°,

Andar D, Macau

Tel: (853) 2870 3810

Fax: (853) 2835 3358

Email: Macao@ManivestAsia.com

Website: www.ManivestMacao.com

Setting Up a Representative Office

Foreign enterprises can establish representative offices in Shanghai upon application and approval. A Representative Office (Rep. Office) represents the interests of the foreign investor by acting as a liaison or a promotion office for the parent company. In general, it may be used for product promotion, market research, exchange of technology and other non-profit making and permitted activities in China, such as partnerships and business channel development activities.

Characteristics of a Representative Office

Representative office is a non-legal entity operating in Shanghai representing its parent company. A representative office is not allowed to engage itself in business activities, issue invoices on its own, remitting outward, signing sales or purchase contracts, or receiving income from services performed but may act as a liaison and promotion office for its parent company.

Application

Take Shanghai as an example, application is a two-step procedure. Step one: applicant should obtain approval from Shanghai Administration for Industry and Commerce. Step two: post-establishment registration procedures should be made, such as Registration with State Administrative Foreign Exchange, Registration with Taxation Bureau, Registration with State Statistic Bureau, Registration with Custom Office and so on.

The foreign enterprise may engage an agent authorized by Shanghai Administration for Industry and Commerce to handle its application on its behalf.

Approval System Upon Certain Restricted Industries

If the foreign company is engaged in certain restricted industries, such as finance and insurance, logistics and air transportation, it must apply for the approval or for a certificate from the relevant government departments.

Special approval is needed for the following industries: finance, insurance, marine transport, marine agent, air freight and government organisation, NGOs, or non-profit making organisations.

No special approval is needed for the following industries: trading, manufacturing, logistics, consulting, advertising agency, investment, leasing and tobacco.

Authorities for approval are distributed among various State Council Departments and are delegated to their local offices. Applicants should apply for approval from different departments (at their local offices) according to their core activities. Some of the major types of industries and their approval authorities are:

Industry	Approval Authority
Finance, insurance	People's Bank of China 中國人民銀行
Marine transport, marine forwarding agent	Ministry of Communications 交通部
Post and tele-communication	Ministry of Information Industry 資訊產業部
Travel and tourism	National Tourism Administration 國家旅遊局

Name

The name of the representative office should be in the form of "Name of the Enterprise + Name of the City + Representative Office (or Office)". For example, Manivest's representative office in Shanghai in the past was officially known as Manivest Corporate Services Limited Shanghai Office (宏傑商業服務有限公司上海辦事處).

Business Address

A separate business address where located in commercial buildings approved by the government, is required as the representative office.

Chief Representative

The chief representative is appointed by the board of directors of its parent company and serves as the legal representative of the Rep. Office. There is no requirement for there to be a local representative. Normally, no employment visa is needed if the chief representative does not intend to stay and work in China for over 90 days (within a year). An employment visa is needed if the chief representative is a foreigner and intends to stay in China for over 90 days in a year.

Criteria for Granting Approval

Note that the Shanghai Government works on an "approval system" instead of a "registration system", that is, the application may be rejected without any reason given. It is therefore important that the necessary requirements should be fulfilled and documents required by the government must be fully and accurately submitted. Some of the principal requirements are:

1. A business address located in a building, which is approved by the government to house foreign enterprises, is required.
2. If the documents are not in Chinese, certified translations by approved and stamped translation company are required.
3. Certificate of Incorporation of the parent company should be notarized by the local notary office and Ambassador at their country. Certificate of Incorporation of Hong Kong company should be notarized by the notary office which authorized by the Ministry of Justice of P.R.C., and stamped by Chinese Law Service (Hong Kong) Co., Ltd.

Documents required for application

The applicant shall complete “Form for Establishing Representative Office by Foreign Enterprises (外國企業常駐代表機構設立申報表)”, “Form for Staff of Representative Office (外國企業常駐代表機構人員申報表)” and also submit the following documents:

1. An application letter duly signed by the chairman of the board or general manager of the foreign enterprise with the following details: name of the representative office, name of the chief representative, scope of business, duration and address, etc.
2. Statutory documents of the parent company issued by authorities of the country or region of origin; e.g. Constitution, Certificate of Incorporation, Business Certificate, Tax Certificate. Certificate of Incorporation of the parent company should be notarized by the local notary office and Ambassador at their country.
3. A “capital and credit certification” letter (資本信用證明書) issued by a bank which has business relations with the applicant certifying its financial and credit standing.
4. Power of attorney issued by the applicant to the person who shall be the Chief Representative, his curriculum vitae and photograph.
5. Licence issued by the building in which the representative office will occupy.
6. A brief summary of the operations and business of the company.

Examination and Approval Procedures

1. The Shanghai Municipal Foreign Economic Relations & Trade Commission will examine the application. Upon approval, the Commission will issue an Approval Certificate to the applicant.
2. The applicant shall, within 30 days of the approval, head for the Shanghai Administration for Industry and Commerce to complete post-establishment registration procedures.
3. Since 1st July, 2004, Shanghai has cancelled the examination and approval of nine categories, i.e. trading, manufacturing, forwarding agency, contracting, consultation, advertisement, investment, leasing and tobacco. The procedure has replaced by a registration process of the Industry and Commerce so as to fasten some foreign investment into China.

Post establishment Registration Procedures

Upon the issuance of the Registration Certificate, the applicant is required to complete post-establishment registration procedures, including:

1. Preparation of company chops;
2. Application of Certificate of Enterprise Code (企業代碼證);
3. Registration with Taxation Bureau (稅務局);
4. Application of Certificate of Chief Representative (首席代表證);
5. Opening of Bank account;
6. Registration with State Administrative Foreign Exchange (國家外匯管理局);

7. Registration with Custom Office (海關);
8. Registration with State Statistic Bureau (國家統計局);
9. Application of Foreigner Working Permit;
10. Application of Foreigner Long-term Residence Permit.

Time Required

It normally takes 20 working days for the Approval Certificate to be issued, starting from the time of receiving instructions, full particulars, and documents from the applicant. Thereafter, the post-establishment registration procedures take about 40 working days.

A list of “permitted” and “not permitted” activities for a Rep. Office

Permitted	Not Permitted
1. Conduct research and survey for its parent company in the local market	1. Directly engage in any business for profit
2. Liaise with local and foreign contacts in China on behalf of the parent company	2. Sign contracts or deals on behalf of the parent company
3. Conduct research and provide data and promotional materials to potential clients or trading partners	3. Represent any firms other than its parent company
4. Act as a coordinator for the parent company's activities in China	4. Collect money or issue invoices in China for services or products
5. Make travel agreements for parent company's representatives and potential Chinese clients	5. Buy properties or valuable production equipments
	6. Hire local employees directly

The Role of Manivest

Manivest can help investors to:

1. Prepare pre-establishment documents (minutes, power of attorney etc.), arrange translation, notarization and certification from various authorities.
2. Engage Registration Agent and supervise the registration work.
3. Draft the necessary project proposal and feasibility study report.
4. Engage auditors for the examination of capital injection and annual examination.
5. Locate suitable business address and arrange for leasing, set up office, including arranging telephone, fax and broadband, acquisition of office machine and furniture.
6. Employ local staff and complete formalities in accordance with labour laws.
7. Post -establishment registration work and open bank accounts.
8. Annual Joint Inspection Report.

Through our offices and staff in Shanghai and Hong Kong, Manivest shall follow through the establishment process and save investors time and trouble.

How Manivest Can Help You

The directors and management of Manivest are professionals in the offshore industry having served the Asia market for over 22 years. Through our offices in Hong Kong, Shanghai and Macao as well as our associates in other Asia cities, we offer a full range of comprehensive value-added services to professional advisors and their clients.

Manivest offers the following services:

- Formation of corporate and business structures in Shanghai
- Incorporation of companies/structures in other onshore/offshore jurisdictions
- Full corporate management services
- Registered office, business office, mail redirection and business centre
- Accounting and re-invoicing services
- Tax and asset planning services
- Asset protection and preservation advisory services
- Business establishment services
- Market exploration services

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