



JONES DAY
COMMENTARY

CHINA ADOPTS NEW TRAVEL AGENCY REGULATIONS AND LIFTS RESTRICTIONS ON FOREIGN-INVESTED TRAVEL AGENCIES

The State Council of the People's Republic of China ("PRC") and the China National Tourism Administration (the "CNTA") adopted and promulgated new Regulations on Travel Agencies (the "Travel Agency Regulations"), which came into effect on May 1, 2009. The Travel Agency Regulations comprehensively revised the prior Regulations on the Management of Travel Agencies, promulgated in 1996 (the "1996 Regulations") and fulfills China's commitment to the World Trade Organization ("WTO") to permit the establishment of wholly foreign-owned travel agencies and lift restrictions for setting up branches for foreign-invested travel agencies. In addition, the Travel Agency Regulations lowered the threshold for the establishment of travel agencies and their branches as well as strengthened protection of tourists and imposed stricter penalties for travel agency misconduct.

RAPID GROWTH IN TOURISM SPURS ADOPTION OF NEW TRAVEL AGENCY REGULATIONS

The Chinese tourism industry has witnessed rapid growth and development in recent years. According to the State Council's Legislative Affairs Office, China now has more than 19,800 travel service agencies, including approximately 1,800 engaged in outbound tourism services and 18,000 engaged in domestic tourism services. Approximately 130 million overseas tourists came to China in 2008, generating service income of RMB 874.9 billion. China's travel agencies have organized outbound travel for 45.84 million mainland citizens. To meet such growing demand for travel domestically and globally, China needs to increase the amount of travel agency service providers while strengthening the penalties for travel agency misconduct.

The Travel Agency Regulations aim to strengthen the administration of travel agencies, protect the legitimate rights and interests of tourists and travel agencies, stabilize the tourism market, and promote the healthy development of the tourism industry.

OVERVIEW OF THE TRAVEL AGENCY REGULATIONS

The Travel Agency Regulations establish three types of tourism businesses in which travel agencies may engage:

- Domestic tourism—services for Chinese mainland citizens to travel within the territory of mainland China.
- Inbound tourism—services for foreign tourists and tourists from Hong Kong, Macau, and Taiwan to travel within the territory of mainland China.
- Outbound tourism—services for Chinese mainland citizens or foreign residents of China to travel overseas or to Hong Kong, Macau, and Taiwan.

According to the Travel Agency Regulations, travel agencies can engage in the domestic tourism and inbound tourism businesses upon their establishment. However, the outbound tourism business is restricted to travel agencies established for at least two years that have not been found to have infringed on the legal rights and interests of tourists.

“Travel agency business” is defined to include soliciting for, organizing, and serving tourists and providing other tourism services such as planning for accommodations, food and beverage, sightseeing, leisure entertainment and vacation, tour guide service, and tourism consultation and tourism activities planning services. Travel agencies can also book transportation tickets, reserve hotels, and apply for visas on behalf of tourists; manage the transportation, lodging, food, and conference requirements for all kinds of entities; and provide other tourism services.

ESTABLISHMENT OF FOREIGN-INVESTED TRAVEL AGENCIES

In light of China’s WTO commitments, the Travel Agency Regulations permit the establishment of wholly foreign-owned

travel agencies and lift the previous restrictions for foreign-invested travel agencies to set up branches. Furthermore, the Travel Agency Regulations eliminated the previous qualification requirement that only foreign travel agencies with annual revenue above US\$40 million and membership in the travel agency association of their own countries are qualified to invest in domestic travel agencies. As a result, any foreign investor is now allowed to engage in the domestic and inbound travel agency business in China with the same registered capital requirements as domestic entities.

Outbound Tourism Business Restriction for Foreign-Invested Travel Agencies. Consistent with China’s commitment to the WTO, the Travel Agency Regulations prohibit foreign-invested travel agencies from engaging in outbound tourism services for Chinese citizens to travel overseas or to Hong Kong, Macau, and Taiwan, and any violation of such restriction will result in confiscation of such illegal income. If the illegal income is more than RMB 100,000, a fine of up to five times the illegal income can be imposed; otherwise, a fine ranging from RMB 100,000 to RMB 500,000 will be imposed if the illegal income is less than RMB 100,000. In the event of serious violation, the travel agency business operation permit of the violator may be revoked.

Legal Requirements for Establishment of a Foreign-Invested Travel Agency. The Travel Agency Regulations eliminates the different threshold requirements for the establishment of foreign-invested travel agencies and domestic travel agencies. According to the Travel Agency Regulations, an investor must fulfill the following legal requirements to set up a travel agency in China:

- Having a fixed business office suitable for the business operation of the travel agency with a lease of at least one year if such office is rented.
- Having necessary business facilities, including more than two fixed-line telephones, one fax machine, one copy machine, and computer(s) that can access the internet.
- Having at least RMB 300,000 as registered capital.

Formalities for Setting up a Foreign-Invested Travel Agency. The Travel Agency Regulations sets forth the following procedures for establishing a foreign-invested travel agency.

Step One: The investor applies to the local agency of State Administration for Industry and Commerce (“SAIC”) for a preapproval letter for the name of the contemplated travel agency. In general, the valid period of a preapproval letter for the name will be six months and subject to extension for another six months.

Step Two: The investor supplies the CNTA with the following documents in order to obtain a permission opinion letter concerning foreign investment in travel agency business:

- The establishment application letter containing the name of the contemplated travel agency; address of the contemplated travel agency; company form (e.g., wholly foreign-owned, Sino-foreign equity joint venture, or Sino-foreign cooperation joint venture); name of investor(s); amount of registered capital to be contributed and contribution method (e.g., in cash or in kind); the full name of the approval authority in charge; and the date of the application.
- The resume and the identity document (e.g., the photocopy of a passport) of the contemplated legal representative of the contemplated travel agency.
- The articles of association of the contemplated travel agency.
- The document in connection with the capital contribution verification issued by a competent entity (e.g., an accounting firm).
- The document proving the availability of the business office (e.g., a lease agreement if rented or a real estate ownership certificate if self-owned).
- The ownership documentation in connection with the business facilities.
- The preapproval letter for the name of contemplated travel agency issued by the SAIC’s local agency.

The capital contribution verification document is not usually required during the name preapproval process in the establishment of a foreign-invested company because such foreign exchange account is usually allowed to be opened only after issuance of the approval certificate by Ministry of Commerce (“MOFCOM”) mentioned in Step Three below. Based on consultations with CNTA, MOFCOM’s local agency, and the State Administration of Foreign Exchange (“SAFE”), foreign investor will apply to SAFE’s local agency to open a temporary foreign currency bank account and contribute

registered capital into this temporary bank account for issuance of a registered capital verification document to fulfill this requirement. However, none of the authorities consulted have accepted an application based on the Travel Agency Regulations, and the process of obtaining the verification document may be subject to differing interpretations.

Step Three: The investor applies to MOFCOM’s local agency for the approval certificate for the establishment of foreign-invested enterprises with the following application documents:

- The permission opinion letter concerning foreign investment in travel agency business.
- The articles of association of the contemplated travel agency.
- The equity joint venture contract or the cooperation joint venture contract in case of a Sino-foreign joint invested travel agency.
- Other required documents.

Step Four: The investor goes back to CTNA to obtain a travel agency business operation permit.

Step Five: The investor registers with SAIC’s local agency for issuance of the business license.

Branches, Service Networks, and Liaison Office of Foreign-Invested Travel Agencies. The Travel Agency Regulations remove the restrictions on foreign-invested travel agencies to set up branch offices. Foreign-invested travel agencies may now set up branches via registration with the local AIC (the registration authority of enterprises) directly and file with the local CNTA for record purposes. As a branch of the travel agency, the business scope of the branch must not exceed that of the travel agency.

Foreign-invested travel agencies may also establish service networks by registration with the AIC in the municipality where such travel agency is located and file with the local CNTA for record purposes. According to the Travel Agency Regulations, a service network can solicit tourists and can also enter into tourism contracts with tourists in the name of the travel agency.

Neither the branches nor the service networks are considered to be separate legal entities, and all the liabilities arising from the activities of the branches and service networks shall be borne by the travel agency itself. Furthermore, service networks can only be set up in the municipality where the travel agency is located and are not permitted to be established in the municipalities where a branch of the travel agency is located.

In addition, a foreign-invested travel agency can also set up liaison office/representative office, and such offices are strictly restricted from undertaking any travel agency operational businesses. The Travel Agency Regulations are not clear as to what activities such a liaison office/representative office may engage in, but we believe market research and liaison activities that do not generate any revenue should be within the permitted scope of activities.

OPERATION OF TRAVEL AGENCIES

The Travel Agency Regulations establish administration procedures for the daily business operation of travel agencies and require travel agencies to provide tourists with truthful and reliable information and forbid false statements in their marketing brochures.

Tourism Contract Requirement. Where a travel agency provides services for tourists, it must enter into a tourism contract with tourists that contains the following information:

- Name, business scope, address, telephone number, and serial number of its license for business operation of the travel agency.
- Name and telephone number of the person in charge of the travel agency.
- Place and date of signing the contract.
- The place of departure, transit stops, and destination of the traveling routes.
- The arrangement of transportation, accommodations, and catering services during the travel and the standards thereof.
- The specific contents and time for the tour sites arranged by the travel agency in a unified manner.

- Time and frequency of self-managed activities for tourists.
- Tourist payments and the payment method.
- Times and stopover times of shopping arranged by the travel agency, as well as the name of the shopping places.
- Tour sites that require additional payment by tourists and the prices thereof.
- Conditions for dissolving or changing the contract as well as time limit for advance notice.
- Dispute resolution mechanism and responsibilities to be undertaken for the breach of contract.
- Telephone numbers for travel services supervision and complaint.
- Other contents unanimously agreed upon by both parties.

Performance Bond. The Travel Agency Regulations maintain the requirement that travel agencies post a performance bond by depositing funds at banks designated by the CNTA, as in the 1996 Regulations, but give additional flexibility by permitting travel agencies to substitute a bank guaranty in the same amount instead of such performance bond. Such performance bond could be used in the following two circumstances:

1. Travel agencies breach the tourist contracts and infringe the legal rights and interests of tourists as determined by the CNTA or its local agencies; or
2. Customers lose their advance payments to travel agencies as a result of the bankruptcy or dissolution of the travel agency or other reasons. The people's court may allocate amounts from the performance bond if the travel agency refuses to pay or is unable to pay the amount determined by the court to be owed to the customer.

The amount of the performance bond depends on the type of tourism business and the number of branches of the travel agency. Travel agencies undertaking domestic tourism business and inbound tourism business must deposit RMB 200,000 into designated banks and another RMB 50,000 for each branch that undertakes domestic tourism business and inbound tourism business. Travel agencies undertaking outbound tourism business must deposit an additional RMB 1,200,000 into the designated banks and RMB 300,000 for each branch that undertakes outbound tourism business. Such deposits will be reduced in half if such travel agency

has not been found to have infringed the rights and interests of its tourists for a period of three years and has not been fined by the CNTA for such conduct. However, if such travel agency was subsequently punished for infringing the rights and interests of its tourists, it must once again have the full amount on deposit. In addition, a travel agency must “top up” such deposit if any amount was used to compensate any of its tourists for any loss.

Allocation of Liabilities Between Travel Agency and Local Agent. Travel agencies seldom have branches in every locality where they arrange travel packages. Instead, travel agencies usually coordinate with local travel agents to provide the necessary travel services at each stop. The Travel Agency Regulations specify that when a travel agency outsources its services to another travel agency, it must select a qualified local travel agency with the agreement of the tourists and must pay such local travel agency fees no less than the actual reception and service costs of such local travel agency. The travel agency shall be liable to the tourists for any damages caused by breach of the tourism contract by the local outsourcing agent, although the travel agency can make a claim against its local outsourcing agent after paying the compensation to the tourists. If the local travel agency caused damage to the tourists deliberately or due to gross negligence, it shall be jointly and severally liable with the travel agency to the tourist.

Additional Requirements and Obligations of a Travel Agency in China. The Travel Agency Regulations require travel agencies to carry travel agency liability insurance. Travel agencies not having such liability insurance will be ordered to rectify such misconduct and may have their travel agency business operation permit revoked if such misconduct persists.

In addition, travel agencies are required to report if any of their tourists illegally stay in China. Failure to report, combined with assistance in providing information to such tourist to facilitate his or her illegal stay, may subject the travel agency to fines ranging from RMB 20,000 to RMB 100,000 and suspension of operations for one to three months up to revocation of its travel agency business operation permit.

SUMMARY

The Travel Agency Regulations simplify the formalities and lower the threshold to set up travel agencies and also strengthen the scrutiny and administration on the business operation of travel agencies to better protect the interests of tourists. Any foreign investor is now permitted to set up wholly foreign-owned travel agencies in China and to engage in inbound and domestic tourism business as well as engage in outbound travel business for foreigners and Hong Kong, Macau, and Taiwan residents. The Travel Agency Regulations will accelerate the development of China's travel agency businesses, and foreign investors intending to participate in the tourism market of China will be able to compete with their Chinese counterparts in a more fair market than before.

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