

Company Chops: Things to Know About Doing Business in China (II)

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Hong Kong, Hong Kong S.A.R. Dec 15, 2021 ([IssueWire.com](https://www.issuewire.com)) - If foreign entities plan to operate in China or conduct business with Chinese parties, it is vital for foreign entities to understand the role of company chops in China and how to establish internal controls to safeguard them. We have prepared an article "[Company Chops: Things to Know About Doing Business in China \(I\)](#)" to address the basic related question regarding company chops before. Following our last article, we have prepared this article to further address this important issue.

Q1: Is a contract without the official company chop valid?

The validity of contracts without the official company chop depends on the specific circumstances (such as the content of the agreement, the identity of the signatory, and the type of company chop stamped).

(1) Contracts signed by the legal representative only

According to Article 61 of the *Civil Code of the People's Republic of China*, the legal representative of the company is entitled to engage in civil activities on behalf of the company. The legal consequences of such civil activities shall be borne by the company.

Therefore, the legal representative is entitled to sign the contract on behalf of the company. However, it should be noted that if a party to the contract knows that the legal representative of the other company exceeds the authority and still signs a contract with it, the contract shall not be binding on the other party. Please verify the identity of the legal representative before the signature of the contract in case of any fraud.

(2) Contracts signed by the authorized representative only

Generally speaking, if there is no special agreement on the conditions of validity in the contract, the contract shall become effective upon signature by both parties. Any person who engages in civil activities on behalf of the company shall be specifically authorized by the company, except in cases where the law provides otherwise for a legal representative.

Therefore, if the authorized representative with the power of attorney (“**POA**”) issued by the company signs the contract within the scope of the POA, the contract shall be valid. If the authorized representative is not authorized or exceeded the authority to sign the contract, the contract shall not be binding on the company, unless the bona fide counterparty has reasonable grounds to believe the contract was authorized to sign (such as this representative has signed this kind of contract on behalf of the company for a long time before).

In view of this, it is advisable to require a face-to-face signature and stamping the official company chop together. It is necessary to pay attention to whether the authorized representative has a POA issued by the company. Such POA should be the original copy and stamped with the official company chop. Please also pay attention to the information about the detailed authority of the POA and check the identity information of the authorized representative.

(3) Contract stamped with the department chop only

The validity of such contracts depends on whether the nature of the contract exceeds the authority of the department. For example, the employment contract stamped with the HR department chop is generally valid, while the sales contract of equipment stamped with the HR department chop is not necessarily valid.

Q2: After the company has changed its name and used a new official company chop, is the contract with the original official company chop still valid?

A: It is valid. According to Article 532 of the *Civil Code of the People's Republic of China*, once a contract becomes effective, neither party to the contract may refuse to perform their obligation under the contract on the ground of a change of the name or legal representative, principal, or contracting person of either party. Therefore, the change of the company's name does not affect the validity of the original contract. The company should still be liable for the contract.

It is advisable to properly keep the original official company chop and specify the custodian. The company might also consider destroying the original chop to reduce legal risks of being misused.

Q3: What are the common problems of managing company chops?

A: We have listed the following common management chop problems that might increase legal risks:

(1) The company does not have rules on applying for engraving company chops. As long as the project

or the department needs it, leaders of the project or department can directly engrave company chops at will. Moreover, after the company chop is engraved, the company does not have any internal rules to regulate the use of company chops.

(2) Each company can only have one official company chop filed in the Public Security Bureau. However, some companies might engrave other official company chops for daily use. This will increase the risk, especially in the event of a dispute over a forged official company chop, that the company will not be able to prove which official company chops were engraved by itself.

(3) The company does not have rules and regulations on company chop management. Moreover, the custodian of the company chop does not strictly examine the documents applied for stamping company chops, and some even stamp the company chop on blank paper. Some custodians of the company chop even allow others to stamp on documents at their own discretion and allow others to carry the company chop out without the supervisor.

(4) The company does not have records to keep track of who requested the company chop and when the applicant used the company chop. This would make it difficult to trace the source of the problem in the event of a company chop dispute, such as which applicant used the company chop on the wrong document.

(5) The company does not appoint specific persons to keep related company chops. After discovering the loss, theft, or forgery of the company's chop, the company does not immediately take the right measures to solve the problem.

(6) After the company's branches, departments, or programme sectors were closed, the company did not take back or destroy company chops of these units in time. This might lose control of company chops and therefore create potential legal risks.

Q4: How to safeguard company chops in daily operations?

A: Regarding the problems listed in Q3, here are some practical tips for companies to safeguard their company chops in daily operations.

(1) The company shall specify related custodians of company chops (also known as the company chop keeper) and the corresponding duties. The custodian shall sign a commitment letter to confirm his or her duties of the company chop management. At the same time, the company shall provide related training to custodians in order to improve their skills of company chop management and awareness of legal risk prevention.

(2) The company shall establish regulations on company chop management and clarify the internal approval process of engraving and stamping company chop.

(3) The company shall establish and keep records of company chop stamping. The applicant applying for the use of the company chop shall perform the approval procedure in accordance with the relevant internal rules. For example, such an application may be set to be required approval by the head of the department. After the approval by the head, the applicant shall fill out the form for the use of the company chop. The custodian of the company chop shall carefully review the document applied for stamping.

Sample Record: Application for Stamping an Official Company Chop

(4) It should not be allowed to carry out the company chop without the relevant approval. When it is necessary to carry out the company chop, the supervisor shall be appointed to accompany the applicant.

(5) The loss of the official company chop must be reported to the public station immediately. For more details, please refer to the Q3 of the previous article "[Company Chops: Things to Know About Doing Business in China \(I\)](#)". The loss of other company chops can also refer to a similar procedure.

(6) Generally, it is forbidden to stamp on blank documents. In exceptional cases, approval must be obtained from a designated senior manager. The applicant should fill in the number of copies of blank documents requested to be stamped. After those relevant blank documents are completed, the applicant shall report the main content to the company and return the unused blank document.

(7) The company must regularly check the use of the company chop and take appropriate solutions or improvement measures in time when problems are found.

(8) After the company's branches, departments, or programme sectors were closed, the company shall take back or destroy company chops of these units in time.

(9) When the company finds its company chop has been counterfeited, it should generally take the following actions. Firstly, the company should promptly report to the police station to pursue the legal responsibility of the counterfeiters. Secondly, the company should publish a clarification statement in the relevant newspapers and promptly inform the potential customers. Thirdly, prompt notification should be made to the counterparty which sign the contract with the counterfeited company chop. Such notification should state the relevant facts and the termination of the relevant contract if necessary. If the counterparty refuses to terminate the contract, the company might consider sending the [letter of demand](#) or even file a lawsuit to terminate the contract.

Screenshots: Main Steps on How to Publish a Clarification Statement in the Newspaper via Alipay

If you have any questions regarding company chops, please feel free to contact us via administrator@legalandwise.com.



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