

Adjustment of Administrative Approval in China (Shanghai) Free Trade Trial Zone

August 30, 2013.

On August 30, 2013, the Standing Committee of the National People's Congress ("Standing Committee") issued a decision in which the State Council is authorized to temporarily adjust certain rules on administrative approval in relevant laws within China (Shanghai) Free Trade Trial Zone (hereinafter the "Decision"), which will enter into effect on October 1, 2013.

In order to accelerate the transformation of governmental functions, innovating the mode of opening the economy to the world, exploring the experience of deepening of reform and opening up, the State Council is authorized to execute such adjustment in Shanghai Waigaoqiao Free Trade Zone, Shanghai Waigaoqiao Bonded Logistics Park, Yangshan Bonded Port and Shanghai Pudong Airport Free Trade Zone established on the basis of China (Shanghai) Free Trade Trial Zone. The adjustment of administrative examination and approval shall be implemented within three years on a trial basis as of its effective date. If the Trial practice is proved feasible, relevant laws and regulations will be modified and improved. Otherwise, relevant laws and regulations will be recovered.

According to the Decision, the approval of establishment, registration changes, dissolution and other relevant activities with respect to foreign-invested enterprises, sino-foreign joint venture enterprises and sino-foreign cooperative joint venture enterprise stipulated in Foreign Invested Enterprises Law, Sino-foreign Joint Venture Enterprises Law and Sino-foreign Cooperative Joint Venture Enterprise Law shall be temporarily ceased and replaced by the filing management of the Chinese authorities within 3 years' period.

The specific items applicable to the adjustment are as follows:

1. Approval of the establishment of foreign-invested enterprises (Article 6 of Foreign Invested Enterprises Law);
2. Approval of division, merger and other critical registration changes of foreign-invested enterprises (Article 10 of Foreign Invested Enterprises Law);
3. Approval of operation period of foreign-invested enterprises (Article 20 of Foreign Invested Enterprises Law);
4. Approval of the establishment of sino-foreign joint venture enterprises (Article 3 of Sino-foreign Joint Venture Enterprises Law);
5. Approval of the extension of operation period of sino-foreign joint venture enterprises (Article 13 of Sino-foreign Joint Venture Enterprises Law);
6. Approval of the dissolution of sino-foreign joint venture enterprises (Article 14 of Sino-foreign Joint Venture Enterprises Law);
7. Approval of the establishment of sino-foreign cooperative venture enterprises (Article 5 of Sino-foreign Cooperative Joint Venture Enterprise Law);

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8. Approval of the critical registration changes of cooperative agreement, contract, articles of association of sino-foreign cooperative venture enterprises (Article 7 of Sino-foreign Cooperative Joint Venture Enterprise Law);
9. Approval of the transfer of the contractual rights and obligations of sino-foreign cooperative venture enterprises (Article 10 of Sino-foreign Cooperative Joint Venture Enterprise Law);
10. Approval of the transfer of the contractual rights and obligations of sino-foreign cooperative venture enterprises (Article 10 of Sino-foreign Cooperative Joint Venture Enterprise Law);
11. Approval of the extension of cooperation period of sino-foreign cooperative venture enterprises to the third party (Article 24 of Sino-foreign Cooperative Joint Venture Enterprise Law).

General Remarks

The State Council of China approved the establishment of China (Shanghai) Free Trade Trial Zone on July 3, 2013. Although the formal general plan/framework of this free trade zone has not been published, according to the information from the Chinese government, within this trial zone, at least financial market, international trade, ocean transportation will be further opened. For instance, goods may be imported, processed and re-exported without the intervention of customs authorities. Moreover, there will be the financial innovation in respect of RMB free exchange, exchange rate marketization, opening of finance market, etc.

China (Shanghai) Free Trade Trial Zone will be the first free trade zone on the Chinese mainland. It will take about three years to build to meet international standards. It is expected to help Shanghai to cut costs of trade, improve efficiency and promote financial services.