The basic steps for setting up a foreign invested enterprise in China

Description

1. the Catalogue of Industries for Guiding Foreign Investment in China

China has put in place for long a Catalogue of Industries for Guiding Foreign Investment in China (the â€œCatalogueâ€•) which may from time to time be amended to reflect economic changes in reality. In this Catalogue, industries are basically classified into four types: encouraged, restricted, prohibited and permitted but only the first three types are specifically set forth in this Catalogue leaving other industries not included in the first three types as permitted type. Investment in an encouraged industry usually will easily go through governmental approving and registering formalities by simply applying to local governmental agents at the district and city levels rather than higher levels (provincial or central government) as frequently required in the case of restricted types and usually is availed with more preferential tax and financial treatments. The latest version of the Catalogue was promulgated on October 31, 2007 and came into effect as of December 1, 2007.

For some industries in encouraged, restricted or permitted categories, wholly foreign-funded investment may not be allowed and in some other industries, the Chinese party(ies) in the joint venture must take up a controlling stake (absolute and relative).

However, the Catalogue may not be specific as to certain industries where there have been put into effect pieces of specific regulation governing investment in that certain areas such as commerce, transportation, securities, banking etc.

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2. Project Listing/Verification

A foreign investment project is required to be approved by the economic control/plan department which is at the central level the State Development and Reform Commission (â€œSDRCâ€•) and the local counterparts or variables of SDRC. Usually, SDRC or its local counterparts will issue an approval confirming the listing or establishment of this project. The SDRC has issued a regulation in year 2004 governing this process in terms of what kind of documents to be submitted, which level of SDRC to apply to, time limit to give or reject approval and other matters.

3. Approval by foreign investment administration

Upon obtaining the approval issued by SDRC or its local counterpartsï¼Œthe investors shall then go to the relevant foreign investment administration, the Ministry of Commerce (â€œMOFCOMâ€•) at the central level and its corresponding local counterparts, for approval of the establishment of the foreign invested companies. Generally, documents like shareholders agreement, joint venture agreements, share purchase agreement, articles of association, director-appointing instruments and so on shall be submitted to the MOFCOM and its local counterparts for approval, amongst which shareholders agreement, joint venture agreements will become effective only after being approved thereby.

Upon approval, the MOFCOM and its local counterparts for approval will issue a reply evidencing the

approval and then a formal certificate of approval.

4. Registration with industrial and commerce administration

After finalization of the approval by foreign investment administration, the final step of forming a foreign invested enterprise is to register the enterprise with the industrial and commerce administration, the state administration of industry and commerce (â€œSAICâ€•) at the central level and its local counterparts. This step is rather a matter of formality.

5. Miscellaneous filings

After registration with SAIC or its local counterparts, there are other filings with different government agents to be effected, like foreign exchange registration with State Administration of Foreign Exchange, filing with customs, tax registration etc.

Date Created
November 2011
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