



Notice of the State Administration for Industry and Commerce on Implementing the Implementation Opinions on Some Issues concerning Law Application for the Administration of Examination and Approval and registration of Foreign-Funded Companies

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(No.102 [2006] of the State Administration for Industry and Commerce)

The administrations for industry and commerce of all the provinces, autonomous regions, municipalities directly under the Central Government, and cities under separate state planning,

With a view to correctly applying the Company Law, Regulation on Company Registration Administration, and the relevant foreign investment laws, keeping continuity for applying foreign investment laws and policies of our country, and improving the quality and standard of the work for the administration of access of direct foreign investment, the State Administration for Industry and Commerce, Ministry of Commerce, General Administration of Customs, and State Administration of Foreign Exchange jointly printed and distributed the Implementation Opinions on Some Issues concerning Law Application for the Administration of Examination and Approval and Registration of Foreign-funded Companies (No.81 [2006] of the State Administration for Industry and Commerce, hereinafter referred to as the Implementation Opinions) on April 24, 2006. We hereby make the following notice on relevant matters for the purpose of implementing and putting into practice the Implementation Opinions:

I. To enhance awareness, and strengthen study. The Implementation Opinions have,



meeting the demand of new situations, and on the basis of clarifying the principle of law application for the administration of examination and approval and registration of foreign-funded companies, brought forward clear and concrete opinions on such issues as the organization, ways of establishment, time limit of application for registration, and the documents that shall be submitted at the time of examination and approval and registration, ways of capital contributions, supervision over capital contribution, domestic investment, the status of the offices, and the customs houses and foreign exchange control in respect of capital contributions, and etc.. The Implementation Opinions are effective measures of the relevant departments of the state in terms of implementation of the newly revised Company Law, Regulation on Company Registration Administration, and the relevant foreign investment laws, and embody shifting functions, administration by law, coordination and cooperation, and optimization of services by the relevant law enforcement departments of the state, and are also the positive fruits of foreign capital registration and administration organs for progress and exploitation and innovation. Each locality shall combine the study and implementation of the Implementation Opinions and the study of the Company Law and the Regulation on Company Registration Administration, and the study of foreign investment laws and regulations, so as to bring them together and understand thoroughly, carefully perform the duties, and regulate the work for the administration of foreign investment registration according to new legal provisions, so as to ensure that the work for the administration of registration on foreign investment be adapted to new situations.

II. To rigorously enforce law and unify the standards. Each locality shall strengthen coordination and cooperation of the relevant functional departments by combining the reality of local foreign investment, and pay attention to mastering the standard for law enforcement, and especially do well the work in the following several aspects:

1. With regard to the organizations of foreign-funded companies, the Implementation Opinions have made clearer distinction on different types of foreign-funded companies according to the Company Law and the relevant foreign investment laws: Sino-foreign equity joint venture and Sino-foreign contractual limited companies shall establish board of directors as the power organ in light of the relevant provisions, and other organizations of the company shall be specified by the articles of association of the company pursuant to the principle of corporate autonomy. The organizations of foreign-funded joint venture and solely foreign-funded limited companies and foreign-funded joint stock companies shall comply with the provisions of the Company Law, and establish and perfect the organizations of the companies. With regard to whether the foreign-funded companies that had been established before January 1, 2006 make revisions on their articles of association, the company registration organs do not have mandatory requirements, and the companies may decide by themselves, if they have any revision, they shall report to the department of examination and approval for



approval and to the registration organ for archival filing.

2. With regard to the notarization and certification documents of the subject qualification of a foreign investor or the identity certificates thereof, the Implementation Opinions have made provisions in principle, and the concrete channels of notarization and certification have been clarified through the revised Design of Registration Book of Foreign-Funded Enterprises and the Requirements Thereof. The applicants may submit the certificate documents on the basis of the application matters in light of the corresponding requirements.
3. With regard to the qualification of foreign-funded companies in domestic investment, the Implementation Opinions have, in accordance with the Administrative License Law and the Company Law, clarified that the company registration organs shall not examine the certificates of corresponding investment qualification. Articles 5 and 6 of the Interim Provisions on Domestic Investment by Foreign-funded Enterprises shall not be executed any longer.
4. With regard to the registration of the offices, the Implementation Opinions have clarified the handling method, namely, the offices that have been registered formerly shall not go through the formalities for extension any longer. After the expiry of the time limit, they shall go through write-off registration or apply for establishing a branch company upon the need.

It should be cautioned that the existence of the offices of a company is not prohibited by law, a foreign-funded enterprise may directly establish an office for business contact upon the need of business operation with no need to go through industry and commerce registration.

After the offices of foreign-funded companies are no longer subject to industry and commerce registration, the administrative department of foreign investment registration shall continue to supervise them, and prohibit them from undertaking operational activities. Each authorized administration and grass root office of industry and commerce that undertake territorial supervision shall, during making supervision over law enforcement, focus on the focal points in the investigation and punishment of operational activities undertaken by the offices, and pay attention to mastering the standard for law enforcement. Anyone that undertakes commodities production and operation directly in the name of the offices or provides service directly shall be investigated and punished severely. Those whose circumstance is light and the harm is not serious shall mainly be persuaded and regulated.

III. To strengthen publicity and serve the society. The Implementation Opinions have,



in accordance with the newly revised Company Law and foreign investment laws and regulations, clarified some applicable opinions in respect of improving the administration on the registration of foreign-funded companies. Of which, there are both contents of reducing the market access standard for foreign investment, simplifying the formalities for the registration of examination and approval, and optimizing investment environment, and the contents of regulating the governance structure of foreign-funded enterprises, regulating registration documents and procedures, and strengthening supervision and administration. Each locality shall strengthen training and publicity on Company Law and the Implementation Opinions in combination with the reality of its own region by taking effective ways. The objects of training shall cover the supervisors at the grass root. The roles of each industrial association, Taiwan merchant association, and liaison staffs of industry and commerce, and other intermediate organizations and personnel shall be brought into full play, and report shall be circulated to them to strengthen communications, and hear their opinions and suggestions in a timely fashion, so as to improve the work of their own and improve the effect of implementation.

IV. To modify the software to meet the requirements. The Implementation Opinions have made detailed classification on foreign-funded companies, and have adjusted the procedures for examination and approval and registration. Each locality shall, in combination with the implementation of the Notice on Applying Database and Establishing National System of Monitoring and Analysis on Foreign Investment Registration Administration Data (No.146 [2005] of the State Administration for Industry and Commerce) of the State Administration for Industry and Commerce and the requirements of the relevant regulations, make necessary adjustment and makeup on the corresponding registration software and data indexes. Meanwhile, each locality shall, according to the requirements for the design of registration book and the standards as printed and distributed by the State Administration for Industry and Commerce in the Notice on Amending Part of the Design of Registration Books of Foreign-funded Enterprises (No.213 [2005] of the State Administration for Industry and Commerce), and in combination with the local reality, make proper adjustment and perfection on the tables of registration documents.

Each authorized administration shall, during the implementation, strengthen guidance to the work for the supervision over foreign investment at grass root, and summarize the experience carefully, and pay attention to hearing the opinions and suggestions of all the parties concerned, and discovering any new situations or new problem arising in the implementation, and strengthen research on them and make feedback in a timely fashion.

State Administration for Industry and Commerce
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