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Foreign Invested Enterprises Registration Procedures - registration Phase

The establishment of foreign investment enterprises (FIE) consists of two phases: (1) registration with the AIC; and (2) post-establishment procedures.

The AIC is the registration authority of enterprises, companies and other economic organizations. The AIC is the registration and administration authorities of FIEs. The major laws and regulations in this regard are the Administrative Regulations of Enterprise Legal Persons and the Implementing Detailed Rules for the Administrative Regulations of Enterprise Legal Persons.

On December 29, 1993, China promulgated the Company Law, which became effective on July 1, 1994. A company registration system was later established by the promulgation of the Administrative Regulations on the Registration of Companies effective July 1, 1994. At present, the enterprise registration system and the company registration system exist concurrently. By definition, FIEs are enterprises. On the other hand, most FIEs are companies as well. Therefore, both the enterprise registration system and the company registration system will apply to FIEs.

The Company Law provides that the Company Law applies to limited liability foreign investment companies. In the event that the Chinese law relating to EJV, CJV and WFOE have different provisions, these provisions should prevail over the Company Law. The Company Law is also applicable to the company registration system. Therefore, EJV, CJV and WFOE are still subject to the enterprise registration system.

1. The Reservation of the Names of FIEs

Before the investors applying for the registration of the company, they should apply for a reservation of the name of the FIE with the AIC. The AIC will review the name of the FIE and decide whether or not to register the name of the FIE. The time limit for the AIC to make such a decision is within ten days after all the documents are submitted.

After registration, the AIC will issue a Notice of Enterprise Name Reservation. The validity period for company name reservation is six months. During the validity period, the reserved names should not be used for operational activities. If the validity period has expired but the FIE has not been registered with the AIC, the name reservation will lose effect or the investors can choose to apply for the extension.

The name of an FIE should consist of four parts: trade name, industry, organization form and location.

An FIE should indicate in its name the industry it is mainly engaged in pursuant to the classification of industries enacted by the Chinese government or the major characteristics of its operations.

The corporate form of an FIE should be indicated at the end of the name of the FIE under PRC law. The corporate form of an enterprise comprises limited liability companies, companies limited by shares and other forms. The location of an FIE may be placed at the beginning of the company name according to Chinese practice, or between the trade name and the corporate form according to foreign practice. Unless otherwise approved by the SAIC, the name of an FIE should not contain wording such as "China", "Sino" or "International".

If the name of an FIE uses the wording "group", the FIE should be the parent of several foreign investment enterprises established by the same foreign investor.

Under Chinese law, an enterprise group must comply with the following conditions:

- (1) The parent company of the enterprise group must have a registered capital of over USD6,000,000 and have at least five subsidiaries;
- (2) The total amount of the registered capital of the parent company and the subsidiary companies exceeds USD12,000,000; and
- (3) Every member of the enterprise group is a legal person.

It should be noted that an enterprise group consists of the parent company, wholly owned subsidiaries and other subsidiaries. The registration of an enterprise group should follow the Tentative Provisions on the Registration of enterprise Groups. The FIE whose name contains the wording "group" is the parent company. The name of the enterprise group may be used in advertising and promotion.

An FIE does not have to apply for a name in a foreign language. However, if it does so, its foreign language name should be consistent with the Chinese name. The foreign language name is only a translation of the Chinese name. Chinese law does not regulate foreign language names of FIEs, nor will an AIC register the foreign language name of an FIE. However, no foreign language is permitted to be used in the Chinese name. In addition, Pinyin and numbers (except for Chinese character numbers) should not be used in the Chinese names of FIEs.

2. Registration of FIEs

After the name reservation finished, the investors should apply for the registration of the FIE with the AIC. The AIC should make a decision on whether or not to approve the registration within thirty days after the AIC accepts the application.

3. Business License

After the AIC decides to register an FIE, it will issue a business license to the FIE. Business licenses have two versions: original and duplicate.

The major content of the business license of an FIE consists of the following items:

(1) Operation Term

Operation term refers to the term as set forth in the approved Joint Venture Contract and Articles and Association commencing from the registration date of the FIE.

(2) Registration Number

The registration number of the business license of an FIE contains three parts. The first part is the category of the foreign investment enterprise, including EJVs, CJVs and WFOEs. The second part the legal status of the registered entity, including an FIE, a branch or a Rep Office. The third part is the serial number of the registered entity.

(3) Enterprise Types

FIEs established by foreign, Taiwan, Hong Kong or Macao investors should be classified as follows:

- (i) If the FIE is established by a foreign investor, the FIE should be a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture or a wholly foreign owned enterprise;
- (ii) If the FIE is established by Taiwan, Hong Kong or Macao investors, the FIE should be an equity joint venture, cooperative joint venture or wholly owned enterprise followed by a parenthesis indicating Taiwan investment, Hong Kong investment or Macao investment. If the Taiwan, Hong Kong or Macao investors are involved at the same time, the parenthesis should indicate Taiwan, Hong Kong and Macao together;
- (iii) If an FIE is established by both foreign investors and Taiwan, Hong Kong or Macao investors, the FIE should be a Sino-foreign equity joint venture, Sino-foreign cooperative joint venture and wholly foreign owned, enterprise; and
- (iv) A FICLBS should always be referred to as a foreign investment company limited by shares no matter whether or not Taiwan, Hong Kong or Macao investors are involved.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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