

China's Ministry of Commerce Broadens the Approval Authorization of Foreign Investment

Ministry of Commerce of PRC issued the Notice on the Transfer of Approval Authorization of Foreign Investment (hereinafter the "Notice") on June 10, 2010.

State Council of PRC issued several Opinions on Further Improving the Task of Utilizing Foreign Investment (the "Opinions") on April 6th, 2010. The promulgation of the Notice is considered to be the implementation measures of the Opinions.

The main contents of the Notices are as follows:

1. The establishment and registration change of the following foreign invested enterprises shall be approved and managed by the commercial departments of the provincial governments, municipalities at the deputy provincial level (Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu, Xi'an) and national economy and technology development zones:
 - a. The enterprises that undertake a business which belongs to the encouraged and permitted categories in the Foreign Investment Industrial Guidance Catalogue and which total investment amount is less than USD 300,000,000;
 - b. The enterprises that undertake a business which belongs to the restricted categories in the Foreign Investment Industrial Guidance Catalogue and which total investment amount is less than USD 50,000,000.
(Hereinafter USD 300,000,000 and USD 50,000,000 are referred as the "Limited Amount" respectively.)
2. The projects in which the amount of the increased capital is less than the Limited Amount shall be approved and managed by the local authorities.
3. The establishment and registration change of the foreign invested enterprises, which undertake a business that belongs to the encouraged categories and which total investment amount is more than the Limited Amount, shall be approved and managed by local authorities.
4. The establishment and registration change of the following foreign invested enterprises shall be approved and managed by the local authorities:
 - a. The foreign owned investing enterprises which registered capital is less than USD 300,000,000;
 - b. The foreign owned venture capital enterprises and the foreign owned venture capital management enterprises which total investment amount is less than USD 300,000,000.

5. The establishment and registration change of the foreign owned service enterprises shall be approved and managed by the local authorities, unless the laws and regulations regulated that the projects shall be approved and managed by Ministry of Commerce of PRC. The establishment and registration change of the foreign owned financial service and telecom enterprises shall be approved and managed according to the relevant laws and regulations.
6. The approval authorization of registration change which was previously held by Ministry of Commerce, Foreign Trade Department and Departments of State Council shall be transferred to the local authorities.
7. Conclusion

The Notice is the first regulation which has been issued in order to follow up the Opinions and improve the foreign investment environment and promote the foreign investment supporting system. The main contents of the Notice specify the foreign investment policies in the Opinions and set forth practical measures.

However, the Notice only stipulated the procedural rules with respect to the foreign investment approval matters. Therefore, more corresponding regulations and new measures are expected in order to supplement the Notice.