

## **Circular of the Ministry of Commerce on Further Improving Examination and Approval of Foreign Investment**

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Competent commercial authorities of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities, Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu, Xi'an and Xinjiang Production and Construction Corps, national economic and technological development zones, and national border economic cooperation zones,

For the purpose of carrying out the scientific outlook on development, and according to the requirements of the important spirits of the Second Plenary Session of the 17 th Central Committee of the Communist Party of China and the State Council on promoting the reform of the administrative system of examination and approval and constructing service-oriented government, the Ministry of Commerce will, based on expanding domestic demand and maintaining the stable and rapid growth of Chinese economy, determine to continuously deepen the reform of the administrative system of examination and approval of foreign investment and further expand the administrative authority for examination and approval of foreign investment of local competent commercial authorities and national economic and technological development zones. The relevant issues are hereby notified as follows:

Article 1 The examination and approval permission for elimination of supervision and control in advance for equipment imported by foreign-invested enterprises is cancelled and the establishment of a domestic branch by a foreign-invested enterprise is subject to filing administration, for which the enterprise shall directly go through the formalities for filing at the competent commercial authority where the enterprise is registered.

Article 2 When the foreign-invested enterprise in the encouragement category within the authority

of the Ministry of Commerce for examination and approval that does not need the state comprehensive balance (including joint stock companies) handle such issues as establishment, increase of capital, contracts/articles of association and the alteration thereof, examination and approval shall be handled by the competent commercial authorities (hereinafter referred to as the competent commercial authorities at the provincial level) of provinces, autonomous regions, municipalities directly under the Central Government, separately planning cities, Xinjiang Production and Construction Corps, and sub-provincial cities (including Harbin, Changchun, Shenyang, Jinan, Nanjing, Hangzhou, Guangzhou, Wuhan, Chengdu and Xi'an) as well as national economic and technological development zones. Where a foreign-invested enterprise sets up an overseas establishment, it shall go through examination and approval by the competent commercial authority at the provincial level or the competent commercial authority at the prefecture level authorized by the Provincial People's Government where the enterprise is registered, and obtain the written consent from the economic and commercial sections or offices of Chinese consulates or embassies.

Article 3 By reference to the relevant provisions in the *Policies for the Development of the Automotive Industry*, where an existing foreign-invested enterprise with investment in the production enterprises of automobiles, agriculture use trucks and vehicle engines increases investment for expansion of the production capacity of similar products and increase of varieties (including newly-established non-corporate production units of similar products in other places), an existing foreign-invested enterprise with investment in the motorcycle production enterprises increases investment for expansion of production capacity of motors and engines, an existing foreign-invested enterprise with investment in the production enterprises of automobiles, agriculture use trucks and parts and components of motors increases investment for expansion of production capacity, or a foreign-invested enterprise invests in the newly-established motorcycle production enterprise or production enterprises of parts and components of automobiles, agriculture use trucks and motorcycles, it shall go through examination and approval at the local competent commercial authority. The corresponding departments of the local people's government should complete the formalities of examining and approving projects and filing before approval by the local competent commercial authority.

Article 4 For the foreign-invested enterprises that are approved and established by the Ministry of Commerce, other alteration items shall be examined and approved by the local competent commercial authority except for increase of capital above the quota verified by the State Development and Reform Commission and transfer of control from the Chinese party to the foreign party.

Article 5 Where foreign investors and foreign-invested enterprises merger and acquire domestic enterprises, the local competent commercial authority and related departments including industry and commerce, taxation and foreign exchange shall, according to the provisions of the relevant laws and regulations as well as the *Regulations on Merger with and Acquisition of Domestic Enterprises by Foreign Investors*, examine and approve the merger and acquisition transactions under the encouragement and permission categories with the turnover of or below USD 100m as well as those under the restriction category with the turnover of or below USD 50m. Where the domestic enterprises are listed companies, they shall obtain consent from China Securities

Regulatory Commission; where the domestic enterprises are state-owned ones or involved in state-owned assets, they shall handle the formalities in accordance with the relevant provisions and obtain consent from state assets management departments; and where anti-monopoly review is involved, the formalities shall be handled in accordance with the provisions of the relevant laws and regulations.

Article 6 The foreign-invested enterprise that invests in the industries subject to special provisions, particular industrial policies or marco-adjustment and control shall keep handling the formalities according to the existing regulations (exclusive of the examinations and approvals by the competent commercial authority at the provincial level as authorized or entrusted by the Ministry of Commerce through special documents). Foreign investors that make strategic investments in listed companies shall still report for examination and approval by the Ministry of Commerce according to the relevant provisions.

Article 7 With respect to the above-mentioned foreign investment items adjusted by the Ministry of Commerce to the local competent commercial authorities for examination and approval, the local competent commercial authorities shall conduct examination and approval in strict accordance with the requirements of state laws and regulations, simultaneously fill in the Filing Form of Examination and Approval of Foreign-invested Enterprises and the Filing Form of Examination and Approval of Foreign-invested Enterprises under the Encouragement Category above the Quota (see the annexes) in the "the management system of examination and approval of foreign-invested enterprises", and report them together with the approval documents and certificates (photocopies) to the Department of Foreign Investment Administration of Ministry of Commerce for filing.

Article 8 With respect to the items subject to examination and approval administration previously delegated by the Ministry of Commerce to the competent commercial authority at the provincial level, as of the day of the distribution of this Circular, the competent commercial authorities of sub-provincial cities and national economic and technological development zones shall also enjoy the equivalent authority for examination and approval administration.

Article 9 National border economic cooperation zones shall, in accordance with the relevant requirements of the former *Measures for Administration on Issuing Certificates of Approval to Foreign-Invested Enterprises and Enterprises with Investment from Taiwan, Hong Kong and Macao* promulgated by the Ministry of Foreign Trade and Economic Cooperation, establish and perfect the "management system of examination and approval of foreign-invested enterprises" and the "system of the national online united annual examination for foreign-invested enterprises" as soon as possible, and report the same to the Department of Foreign Investment Administration of the Ministry of Commerce for filing to create conditions for delegation of the examination and approval authority to national border economic cooperation zones after the business guidance, training and acceptance of the competent commercial authorities at the provincial level.

#### Article 10 Work Requirements

1. Organization and planning shall be done well to uplift the quality of utilization of foreign

investment. The local commercial departments shall pay high attention to the important significance of the adjustment of the administrative authority for examination and approval of foreign investment, command the overall situation of utilization of foreign investment and administrative work of examination and approval of foreign investment in their own administrative regions with the scientific outlook on development, do well in the medium-to-long-range development program of utilization of foreign investment and spare no efforts to uplift the quality of utilization of foreign investment.

2. Administration of examination and approval shall be made according to law for improving the level of foreign investment administration. The local commercial authorities shall intensify the strength in business training of management personnel, perfect the process of examination and approval, regulate the acts of examination and approval, and practically perform the administrative functions of examination and approval of foreign investment. In the administration of examination and approval of foreign investment, they shall deeply carry out and implement the scientific outlook on development, strictly implement state laws and regulations, industrial policies and policies on access of foreign investment, and incorporate autonomous innovation, energy conservation and environmental protection, comprehensive and intensive utilization of resources and guarantee and promotion of employment into key categories in the administration of examination and approval of foreign investment, the related requirements of which shall be presented in the approval documents, hence improving the efficiency and administrative level of examination and approval of foreign investment.

3. Supervision on filing shall be strengthened and service content shall be enriched. The local commercial authorities shall regularly report the approved material foreign-invested projects in their own administrative regions to the Department of Foreign Investment Administration of the Ministry of Commerce for filing through the information filing forms of "the management system of examination and approval of foreign-invested enterprises", make every effort to innovate the way to serve foreign-invested enterprises, enrich the content of services and improve the efficiency of services, and make timely feedbacks to the Department of Foreign Investment Administration of the Ministry of Commerce when meeting on various problems encountered in the process of implementation thereof.

#### **Annexes:**

##### **1. Filing Form of Examination and Approval of Foreign-invested Enterprises (Omitted)**

##### **2. Filing Form of Examination and Approval of Foreign-invested enterprises under the Encouragement Category above the Quota (Omitted)**

**Ministry of Commerce**

**March 5, 2009**