

MOFCOM Improves Foreign Investment Review Administration

To implement the *Notice on the Reform Plans of Registered Capital Regime* and the *Decisions on Abolishment and Modification of Certain Administrative Regulations* promulgated by the State Council on February 2014, the Ministry of Commerce ("MOFCOM") recently released the *Notice on Improving Foreign Investment Review Administration* (the "Notice") on June 17th, 2014 and published the same on its official website on June 24th, 2014.

This Notice is mainly targeted to clarify and improve the foreign investment review administration taking into account the latest amendment to the PRC Company Law. The following key points identified by the Notice are worth attention:

1. The Notice releases FIEs (including those invested from Taiwan, Hong Kong and Macao) from the restrictions and provisions on the initial proportion of investment, proportion of cash investment and contribution period, and allows investors to determine by themselves the amount of subscribed registered capital, the method of investment and the subscription period by indicating the same in the joint venture contracts and articles of association of the FIEs. The local counterparts of MOFCOM shall also indicate these aspects in the approval letters issued by them for said projects.
2. The Notice also requires the removal of any minimum registered capital requirement except as otherwise provided in laws, administrative regulations and decisions of the State Council.
3. For the FDI projects approved prior to March 1st, 2014 (i.e. effectiveness of the latest amendment to the PRC Company Law), the investor shall contribute the registered capital of its FIE as per the approved joint venture contract (if applicable) and the articles of associations. In case of any change in this regard, the investor could apply before the in-charge counterpart of MOFCOM and said authority shall duly examine the application according to the Notice.
4. The Notice reiterates that the FIEs shall duly issue the investment certificates to their investors after each capital contribution is made by the latter (each an "Investment Certificate"). Said Investment Certificate shall identify the following particulars: FIE's name, establishment date, registered capital, investor's name and the amount and date of its capital contribution, serial number and date of issuance of the Investment Certificate.

Although the FIEs are not required by the State Administration for Industry and Commerce (i.e. the registration authority) to apply for change registration of paid-in capital to update its business license after each capital contribution, MOFCOM now expressly imposes the requirement below for it to monitor the capital contribution situations:

Within thirty days after issuing the Investment Certificate, the FIE shall file a copy of said Investment Certificate with affixture of its company chop and other relevant supporting documents for the capital contribution but excluding a capital verification report (e.g. bank deposit receipts for cash contributions, relevant IP rights' certificates and evaluation reports for intangible assets contributions, etc.).

Considering the Notice has just been announced, it is advisable for the FIEs to keep close contact with its in-charge counterpart of MOFCOM for further confirmation and clarification during the implementation of this Notice.

More information:

Manuel Torres Salazar

Partner in charge of the Shanghai´s office

manuel.torres.salazar@garrigues.com

T +86 21 5228 1122

