



## Foreign Direct Investment

### 1. China Amends the PRC Company Law

全国人大常委会关于修改《中华人民共和国公司法》的决定 (28/12/2013)

On December 28, 2013, the Standing Committee of the National People's Congress passed the *Amendments to PRC Company Law* (the **2013 Amendments**), which came into effect on March 1, 2014. The 2013 Amendments substantially change the company registered capital regime in China, and we will focus our discussion on the most significant issues listed below.

#### **Transformation from Paid-up Capital Regime to Subscribed Capital Regime**

The original paid-up capital regime is replaced by a subscribed capital regime (which is similar to the practice in most common law jurisdictions). Hence, a company's registered capital will be based on the capital amount subscribed by its shareholders rather than the amount actually paid.

In addition, a company is no longer required to register the amount of paid-up capital with the company registration authority, or subject to the mandatory timetable for the contribution of first installment and the full payment of the capital. The timetable for capital contribution may be determined by the shareholders and recorded in a company's articles of association. Consequently, capital verification on the paid-in capital is also no longer a mandatory requirement.

Nevertheless, if any laws or regulations provide otherwise regarding the above, such special laws or regulations shall prevail.

### Cancellation of Minimum Registered Capital Requirements

The minimum registered capital thresholds, including the current minimum registered capital for limited liability companies (RMB 30,000), single-person limited liability companies (RMB 100,000) and companies limited by shares (RMB 5 million), have been removed.

However, it is noteworthy that companies in certain business sectors may still have to meet the minimum capital requirement provided by relevant laws and regulations. Such companies include, among others, banks, insurance firms, securities companies, and foreign labor service cooperation enterprises.

### Abolishment of the Non-cash Capital Policy

The 2013 Amendments abolish the 70 percent cap on non-cash registered capital, and allow investors to determine the proportion of cash contribution, and thus will significantly relieve the cash flow pressure on entrepreneurs.

### Related Laws and Regulations

In addition to the *PRC Company Law*, there are also special laws regulating foreign-invested enterprises (the **FIE**), mainly the *PRC Sino-foreign Equity Joint Venture Law*, the *PRC Sino-foreign Cooperative Joint Venture Law*, the *PRC Foreign Invested Enterprise Law* and their respective implementing rules (collectively, the **FIE Laws**). According to the *Decision of the State Council on Abolishing and Amending Certain Administrative Regulations* issued on February 19, 2014, provisions of the FIE Laws that are inconsistent with the 2013 Amendments have also been revised.

### Conclusion

The 2013 Amendments represent a substantial move in transforming administrative functions and innovating the government's supervision roles, and aim to build fair, open and transparent market rules, which are expected to benefit both the domestic and foreign investors.

- *The Amendments to PRC Company Law (part of "The Decision of the Standing Committee of the National People's Congress on Amending Seven Laws including Marine Environment Protection Law")*

- 全国人大常委会关于修改《中华人民共和国公司法》的决定（是全国人大常委会“关于修改《海洋环境保护法》等七部法律的决定”中的一部分）

- *Issuing Authority: the Standing Committee of the National People's Congress*

- *Date of Issuance: December 28, 2013/ Effective date for 2013 Amendments: April 1, 2014*

## 2. China Stops Annual Inspections on Foreign-Invested Enterprises

### 工商总局关于停止企业年度检验工作的通知(14/02/2014)

On February 14, 2014, the State Administration for Industry and Commerce (the **SAIC**) issued the *Notice on Terminating the Annual Inspection of Enterprises* (the **Notice**), which took effect on the same day. According to the Notice, the current mandatory requirement of annual inspections on registered companies has been replaced by an annual reporting and public disclosure system since March 1, 2014. The system will apply to all of the registered enterprises in China, including the limited liability companies, companies limited by shares, non-corporate enterprise (legal person), partnership enterprises, sole proprietorships, and their respective branches, as well as foreign enterprises carrying out business operations in China.

The reporting and public disclosure system will require all domestic and foreign invested enterprises to upload certain information to the online SAIC registration portal, which is expected to be available for public inspections. Non-compliance with such reporting and disclosure system may result in certain administrative punishment, the details of which, however, have not been released by the SAIC. In addition, it may take certain amount of time for the system to be set up and fully operational in all areas of China. The Shanghai SAIC, for instance, has revealed informally that its system may not be fully operational before the second half of 2014, though a trial system has been in place for the Shanghai Free Trade Zone since March 1, 2014.

- *The Notice on Terminating the Annual Inspection of Enterprises*
- 国家工商总局《关于停止企业年度检验工作的通知》
- *Issuing Authority: the State Administration for Industry and Commerce*
- *Date of Issuance: February 14, 2014 / Effective date: February 14, 2014*

### 3. China Plans to Further Relax Approval Requirements on the Foreign Investment 外商投资项目核准和备案管理办法(征求意见稿)(23/01/2014)

With a view to deepening investment policy reform and administrative verification policy reform, on December 2, 2013, the State Council of the People's Republic of China released the *Catalogue of Investment Projects Subject to Governmental Approvals (2013)* (the **2013 Catalogue**), which replaces its 2004 version (the **2004 Catalogue**) and became effective on December 2, 2013. Subsequently, the National Development and Reform Commission (the **NDRC**) issued on January 23, 2014, the *Draft Administration Measures for Approval and Filing of Foreign Investment Project* (the **Draft Approval Measures**) to solicit comments from the public until February 23, 2014. The Draft Approval Measures, once becoming effective, are expected to greatly ease the approval requirements for investment projects.

#### Scope of Application

The Draft Approval Measures are applicable to the establishment of Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprises, foreign-invested partnerships, and merger and acquisition of domestic enterprises by foreign investors, as well as capital increase and re-investment projects by foreign-invested enterprises.

#### Approval Requirement

Under the 2004 Catalogue, foreign investment projects that (i) fall under the “encouraged” or “permitted” sector as specified in the *Catalogue for Foreign Investment Industrial Guidance* (the **Foreign Investment Catalogue**) involving a total investment amount (including capital increase) of USD 100 million or more, and (ii) fall under the “restricted” sector of the Foreign Investment Catalogue involving a total investment amount (including capital increase) of no less than USD 50 million were subject to approval by the NDRC.

The 2013 Catalogue and the Draft Approval Measures substantially increase the NDRC approval threshold for foreign direct investments and delegate more approval powers to provincial and local branches of NDRC. According to the Draft Approval Measures, the NDRC approval shall be required for (1) projects that fall under “encouraged” sector involving a total investment amount (including capital increase) of USD 300 million or more with a requirement of the controlling interest (including relative controlling

interest) being held by a Chinese party; or (2) non-real estate projects that fall under “restricted” sector involving a total investment amount of USD 50 million or more. Provincial level government approval is required for (i) real estate projects that fall under “restricted” sector and (ii) other “restricted” sector projects involving a total investment amount (including capital increase) of less than USD 50 million. Meanwhile, the projects that fall under “encouraged” sector involving a total investment amount (including capital increase) of less than USD 300 million with a requirement of the controlling interest (including relative controlling interest) being held by a Chinese party shall be subject to approval by the local government.

- *The Draft Administration Measures for Approval and Filing of Foreign Investment Project*

- 关于《外商投资项目核准和备案管理办法》公开征求意见的公告

- *Issuing Authority: the National Development and Reform Commission*

- *Date of Issuance: January 23, 2014 / Effective date: N/A*

## Tax

### 4. China Clarifies Issues regarding Recognition of Resident Companies

国家税务总局关于依据实际管理机构标准实施居民企业认定有关问题的公告  
(29/01/2014)

On January 29, 2014, the State Administration of Taxation (the **SAT**) released the *Notice regarding Issues Related to the Implementation of Resident Companies Recognition according to the Effective Management Criteria* (the **Notice**) to modify certain provisions under Guo Shui Fa [2009] No. 82 ("**Circular 82**", i.e., *the Notice regarding Issues Related to Chinese-Controlled Foreign Companies to Be Recognized as Resident Companies according to Effective Management Criteria*).

According to Circular 82, a Chinese-controlled foreign companies shall be recognized as resident companies having effective management within China when the following conditions are all met: (1) senior executive officers and senior management responsible for daily business operations are principally located within the territory of China; (2) financial and personnel decisions are made by persons or departments located within the territory of China, or must be approved by persons or departments in China; (3) main property, ledgers, corporate seals as well as the meeting minutes of the board of directors and shareholders are kept or stored within the territory of China; and (4) not less than half of the directors or senior executives have voting rights reside in China. In addition, the recognition shall be made by the SAT.

The Notice specifies the detailed application flow and confirms that only one competent tax bureau could accept the application of recognition, i.e., the tax bureau in charge of the major shareholder. The detailed recognition application process is as follows:

- > The tax bureau in charge performs initial verification and submits the application package to its immediate upper tax bureau level by level until reaching provincial level for recognition.
- > The provincial tax bureau completes the recognition process and copies the result to other relevant provincial tax bureaus of the provinces where related investments are located.
- > The provincial tax bureau shall report its recognition to the SAT within 30 days from its recognition decision. The SAT will announce such recognition via its official website and preform an inspection on Overseas-registered Tax Residents from time to time

- *The Notice regarding Issues related to the Implementation of Resident Companies Recognition according to the Effective Management Criteria*

- 国家税务总局《关于依据实际管理机构标准实施居民企业认定有关问题的公告》

- Issuing Authority: the State Administration of Taxation

- Date of Issuance: January 29, 2014 / Effective date: January 29, 2014

5. China Clarifies Issues regarding Recognition of the Qualification of VAT General Taxpayers  
国家税务总局关于营业税改征增值税试点增值税一般纳税人资格认定有关事项的公告  
(16/12/2013)

On December 16, 2013, the State Administration of Taxation (the **SAT**) issued the *Announcement on Recognition of the Qualification of General Taxpayers of VAT in the Pilot Collection of VAT in Lieu of Business Tax* (the **Announcement**), which provides the detailed rules regarding the handling of recognition of the VAT general taxpayer status for the tax payers that are included in the scope of the pilot projects for VAT in lieu of business tax (the **Pilot Taxpayers**). The Announcement took effect on January 1, 2014.

According to the Announcement, Pilot Taxpayers with annual sales turnover of taxable services exceeding RMB 5 million prior to the pilot implementation of VAT in lieu of business tax must apply for recognition of VAT general taxpayer status. Among other issues, the Announcement clarifies that Pilot Taxpayers' such annual sales turnover of taxable services shall be converted according to the following formula:

- > Annual sales amount for taxable services = Total sales turnover generated in a period of no more than 12 consecutive months ÷ (1 + 3%).

Pilot Taxpayers with annual sales turnover of taxable services not exceeding RMB 5 million prior to pilot implementation may also apply for recognition of VAT general taxpayer status, provided that they meet the relevant prescribed requirements, such as having a sound accounting system and maintaining a fixed place of business. Pilot Taxpayers who have acquired the VAT general taxpayer status prior to the pilot implementation are not required to re-apply for recognition. In addition, for Pilot Taxpayers who concurrently engage in the sales of goods, supply of processing, repair and replacement services, as well as taxable services, the sales amount from the taxable goods and labor services and the sales amount from the taxable services shall be calculated separately for the purpose of recognition of VAT general taxpayer status.

- *The Announcement on Recognition of the Qualification of General Taxpayers of VAT in the Pilot Collection of VAT in Lieu of Business Tax*
- 国家税务总局关于营业税改征增值税试点增值税一般纳税人资格认定有关事项的公告
- Issuing Authority: the State Administration of Taxation
- Date of Issuance: December 16, 2013 / Effective date: January 1, 2014

6. New Rules regarding Special Tax Treatment of Share Transfer by a Non-resident Enterprise  
国家税务总局关于非居民企业股权转让适用特殊性税务处理有关问题的公告  
(12/12/2013)

On December 12, 2013, the State Administration of Taxation (the **SAT**) issued the Announcement concerning the Special Tax Treatment of Share Transfer by a Non-resident Enterprise (the **Announcement**), which became effective on the same day.

The Announcement supplements the *Circular on Issues Concerning Treatment of Enterprise Income Tax in Restructuring of Enterprises* jointly released by the SAT and the Ministry of Finance on April 30, 2009, and it deals with the filing procedures for special tax treatment under the following two circumstances: (1) when a non-resident enterprise transfers its equity interest in a resident enterprise to another non-



resident enterprise in which it holds 100% direct interest without changing the capital gain withholding tax burden, and the transferor guarantees not to dispose its equity interest in the transferee within three years; or (2) when a non-resident enterprise transfers its equity interest in a resident enterprise to its 100% owned resident subsidiary.

Pursuant to the Announcement, if a non-resident enterprise intends to apply the special tax treatment under the above two circumstances, it has to file the case with the competent tax authority by submitting various required materials. Under the first circumstance, the transferor should make record-filing at the local tax bureau of the resident enterprise receiving the equity interest transferred, while under the second circumstance, the transferee resident enterprise is obliged to complete the record-filing procedure at the local tax bureau. The special tax treatment will not apply if the transfer under the first circumstance may alter the capital gain withholding tax burden. Moreover, if the special tax treatment is denied by the tax authority, the relevant transfer will be taxable according to the normal provisions of the PRC Enterprise Income Tax Law.

- *The Announcement concerning the Special Tax Treatment of Share Transfer by a Non-resident Enterprise*
- 国家税务总局《关于非居民企业股权转让适用特殊性税务处理有关问题的公告》
- *Issuing Authority: the State Administration of Taxation*
- *Date of Issuance: December 12, 2013 / Effective date: December 12, 2013*

## Foreign Exchange

### 7. Foreign Exchange Authority Solicits Public Opinions on Cross-Border Security 外汇局就《跨境担保外汇管理规定（征求意见稿）》公开征求意见(13/02/2014)

On February 13, 2014, the State Administration of Foreign Exchange (the **SAFE**) published the *Provisions on the Administration of Foreign Exchange for Cross-border Security* (Draft for Comments) (the **Draft Security Provisions**) on its official website to solicit public opinions until March 10, 2014. The Draft Security Provisions, once implemented, will further loosen the country's foreign exchange capital control. As of the date of this newsletter, no formal version of this regulation has been released by the SAFE.

Compared to the existing regulations (the **Existing Rules**), such as the *Implementation Measures on the Administration of External Security Provided by Onshore Entities*, and the *Circular of SAFE on Issues Concerning the Administration of External Security Provided by Onshore Entities*, the main changes introduced by the Draft Security Provisions are summarized below.

#### **Types of Cross-Border Security Subject to the SAFE Supervision Are Greatly Reduced**

The Draft Security Provisions mainly provide detailed administration on the following two structures: (i) "**Nei Bao Wai Dai**" (an onshore security provider providing security in favor of an offshore beneficiary to secure obligations owed by an offshore obligor to the offshore beneficiary); and (ii) "**Wai Bao Nei Dai**" (an offshore security provider providing security in favor of an onshore beneficiary to secure the obligations owed by an onshore obligor to the onshore beneficiary). Any other form of cross-border security (such as the case where an onshore security provider providing security in favor of an offshore beneficiary to secure obligations owed by an onshore obligor to the offshore beneficiary) is no longer required to be registered or filed with SAFE.

#### **All Prerequisite SAFE Approvals Are Abolished**

The Draft Security Provisions abolish all prerequisite SAFE approval in respect of cross-border security transactions. Nevertheless, the parties to the Nei Bao Wai Dai and Wai Bao Nei Dai will still need to register the cross-border security with SAFE in accordance with the Draft Security Provisions.

#### **SAFE Filing/Registration Is No Longer A Pre-Condition for the Validity of Cross-Border Security**

Previously all external security needs to be approved by and/or registered with SAFE; otherwise the external security will be rendered void. However, the Draft Security Provisions expressly provide that SAFE filing/registration of cross-border security documents is no longer a pre-condition for the validity of cross-border security. Therefore, banks with an annual external security quota granted by SAFE may issue external financing security within the quota without SAFE approval.

#### **All SAFE Verifications on Performance of External Security Are Abolished**

According to the Draft Security Provisions, the performance of external security is no longer subject to the SAFE verification. Under the Nei Bao Wai Dai, after enforcing the security, financial institutions may make fund transfer on their own, and non-financial institutions may also directly request a bank to assist with the fund transfer upon the presentation of SAFE filing of external security, in each case, without SAFE verification.



Given the Draft Security Provisions are under a draft form, there are still a number of points that are subject to clarifications or considerations, such as lack of detailed guidance on certain operational procedures. We will closely follow the progress on this draft regulation and provide updates timely.

- *The Provisions on the Administration of Foreign Exchange for Cross-Border Security*
- 外汇局就《跨境担保外汇管理规定（征求意见稿）》公开征求意见
- *Issuing Authority: the State Administration of Foreign Exchange*
- *Date of Issuance: February 13, 2014 / Effective date: N/A*

## Pharmaceutical

### 8. China Intends to Amend the Drug Registration Measures

食品药品监管总局就《药品注册管理办法（修改草案）》公开征求意见 (19/02/2014)

On February 19, 2014, the China Food and Drug Administration (the **CFDA**) issued the *Circular on the Administrative Measures for the Registration of Drugs (Draft for Comments)* (the **Draft Drug Measures**), which aims to improve the monitoring of safety and efficacy of drugs. Any opinions are welcomed before March 23, 2014.

Compare to the current version of *Administrative Measures for the Registration of Drugs* (the **Current Measures**), the main changes introduced by the Draft Drug Measures are summarized as follows.

#### Application for Change Can Be Filed during Clinical Trial of New Drugs

There are necessities for some applicants to make changes on prescription, process, and place of production or holders of governmental permit during the clinical trial of certain new drugs. In order to clarify the rules for such a change of registration, the Draft Drug Measures set forth that an applicant may file the application in a form of supplementary declaration with relevant documents for proof and research materials in case where it is necessary to change (1) the applicant in the course of a clinical trial of a new drug, or (2) the production technology, prescription, specification or production place of the chemical drugs or biological products prior to Phase III clinical trial.

#### Time Limit for Generic Drugs Registration Is Abolished

Under the Current Measures, for a drug with patent obtained in China, another applicant may apply for registration within two years prior to the patent expiration, which has been considered by many pharmaceutical companies as an extension of patent protection period in a disguised form, for it is rarely possible to finish the whole process of application for the clinical trial and production of drug within two years. In order to tackle such issue, the Draft Drug Measures cancelled the time limit thereof.

#### Production On-Site Inspection Is Delayed

The Current Measures provide that the production on-site inspection of generic drugs should be done before the approval of clinical trial. However in reality, before the determination of the final process and prescription of generic drug to be applied, there will be a need of adjustment according to the result of bioequivalence tests, and the on-site inspection before the clinical trial could have problems such as resource-consumption, low effectiveness and poor quality. Therefore, the Draft Drug Measures put the on-site inspection after the completion of clinical trial and technology assessment and before the approval of sale in order to improve the quality and effectiveness of the inspection and reduce the burden of applicants.

- *The Administrative Measures for the Registration of Drugs (Revised Draft)*
- 国家食品药品监督管理总局关于《药品注册管理办法（修改草案）》公开征求意见的通知
- Issuing Authority: China Food and Drug Administration
- Date of Issuance: February 19, 2014 / Effective date: N/A

## 9. National Health and Family Planning Commission Accelerates the Development of Operations of Medical Institutions with Social Capital

国家卫计委《关于加快发展社会办医的若干意见》（30/12/2013）

On December 30, 2013, the National Health and Family Planning Commission and the State Administration of Traditional Chinese Medicine jointly published *Several Opinions on Accelerating the Operations of Medical Institutions with Social Capital* (the **Opinions**). It is considered that accelerating the operations of medical institutions with social capital is a critical step to change the health development mode and optimize the health resources allocation, as well as a key way to increase the health resources supply and satisfy the diversified and multilevel medical and health services needs of the masses.

It is worth noting the following points provided in the Opinions:

### **Expand Territorial Scope**

The Opinions state that service providers from Hong Kong, Macao and Taiwan will be allowed to set up solely-invested hospital in a wider territorial scope covering all nationwide cities at or above prefecture level in mainland China. Besides, other eligible foreign capital may be used to set up solely-invested medical institutions in specific regions including China (Shanghai) Pilot Free Trade Zone. The Opinions also mention that a reasonable equity ratio of foreign capital for Sino-foreign joint venture and Sino-foreign cooperative medical institutions should be set, and the provincial health and family planning authorities shall be responsible for examining and approving the solely-invested hospitals.

### **Relax Requirements for Service Scope**

The Opinions provide that social capital shall be allowed to be invested in any sectors that are not banned by relevant laws and regulations. Social capital is encouraged to directly be invested in certain service areas, such as convalescent hospital, geriatric hospital, nursing home, hospice and other medical institutions, as well as traditional Chinese special hospital.

### **Relax Requirements for Large-Scale Medical Equipment Configuration**

The Opinions state that the demands and needs of non-public medical institutions will be fully taken under consideration and a proportion of no less than 20 percent for equipment configuration of non-public medical institution will be ensured.

### **Speed up Approval Process**

The Opinions require all local governments to accelerate the implementation of policies on equal treatment of non-public and public medical institutions in terms of approvals on establishment, operation, and development, and not to set discriminatory and restrictive conditions beyond the limits of relevant laws, regulations and rules. The application of establishment of eligible non-public medical institutions shall be granted in accordance with relevant provisions and the approval efficiency shall be improved by fastening and streamlining the approval process.

- *Several Opinions on Accelerating the Operations of Medical Institutions with Social Capital*

- 国家卫计委《关于加快发展社会办医的若干意见》

- Issuing Authority: the State Administration of Traditional Chinese Medicine; the National Health and Family Planning Commission

- Date of Issuance: December 30, 2013 / Effective date: December 30, 2013

## Intellectual Property

### 10. China Further Clarifies the Trademark Law

国务院法制办就《中华人民共和国商标法实施条例（修订草案）》公开征求意见 (10/01/2014)

On January 10, 2014, the General Office of the State Council released *the Amendments to the Implementing Regulations of the Trademark Law of the People's Republic of China (Draft for Comments)* (the **Draft Implementing Regulations**), to solicit public opinion before February 10, 2014. As of the date of this newsletter, no final version of these regulations has been issued.

Compared to the existing *Implementing Regulations of the Trademark Law* (the **Existing Regulations**), the main changes and improvements introduced by the Draft Implementing Regulations include the following:

#### **Sound Trademark**

The PRC Trademark Law provides that sound can be registered as trademark, but does not set forth detailed rules on procedures of registration. The Draft Implementing Regulations set forth detailed requirement on the documents and materials to be submitted for the registration of sound trademark.

#### **Partial Acceptance**

The PRC Trademark Law also involves a principle of 'one registration of one trademark for various types of commodities'. Currently, the applicant only has the options of abandoning the rejected goods/services or applying to the PRC Trademark and Adjudication Board for a review of the China Trademark Office's decision. The Draft Implementing Regulations include a principle of "split application in the situation of partial rejection", *i.e.*, the applicant will be free to apply to split the application within 15 days upon receipt of the partial acceptance notification issued by the China Trademark Office.

#### **Non-Use Cancellation**

In order to specify the provision in the PRC Trademark Law regarding the revocation of general name and the revocation of trademarks that have not been used for three consecutive years without legitimate reasons, the Draft Implementing Regulations explicitly provide that trademark office should notify the trademark holder to submit evidence proving the use of the trademark before the application of revocation or to explain the legitimate reasons of not using it within two months after receiving the notice. Meanwhile, the Draft Implementing Regulations also set forth a list of legitimate reasons of not using the trademark for three consecutive years, including (i) force majeure; (ii) government's restrictions on use; (iii) non-use due to bankruptcy; and (iv) other justifications for non-use for which the trademark owner shall not be responsible.

#### **Same Day Applications for Conflicting Trademarks**

The Draft Implementing Regulations provide that in the event that two parties apply for the same or similar trademark in the same or similar class on the same day, the applicants shall submit prior use evidence within 30 days or attempt to resolve the matter through negotiation.

In addition to the clarification of issues that are not specified in the PRC Trademark Law, another important role of the Draft Implementing Regulations is to amend the Existing Regulations in order to match the industrial practice. One example is that the Draft Implementing Regulations provide the methods of calculation of illegal turnover which is directly related to the legitimacy of the administrative penalty of the trademark infringer.

Because of the internationalization of trademark, the international registration of trademarks has drawn considerable attention of various enterprises. The Draft Implementing Regulations also set forth a specific chapter to regulate the international registration of trademarks based on Madrid Convention, and that chapter specifies the object of international trademark registration, the examination of the application of China territorial extension and opposition procedure, and the transfer of international registered trademarks.

- *Implementing Regulations of the Trademark Law of the People's Republic of China (Draft for Comments)*
- 国务院法制办公室关于《中华人民共和国商标法实施条例（修订草案）（送审稿）》公开征求意见通知
- *Issuing Authority: the General Office of the State Council*
- *Date of Issuance: January 10, 2014 / Effective date: N/A*

## Miscellaneous

### 11. China Strengthens Controls over Food and Drug Safety

关于《食品药品安全“黑名单”管理规定（征求意见稿）》公开征求意见的通知  
(12/12/2013)

On December 12, 2013, the China Food and Drugs Administration (the **CFDA**) published the *Provisions on the Administration of the "Black List" System for Food and Drug Safety (Draft for Comments)* (the **Draft Blacklist Provisions**) on its official website, which was open to public comments until January 10, 2014. As of the date of this newsletter, no final version has been released by the CFDA.

According to the Draft Blacklist Provisions, the food and drug regulators at the county and above levels shall establish a "black list" of companies that violate laws and regulations concerning food, drugs, medical appliances, and cosmetics management and are imposed of administrative penalties, with the aim of fortifying the food and drug safety monitoring and supervision. Information regarding producers of illicit food (including health food and food additives), drugs, medical appliances and cosmetics (the **Producers**), as well as management and directly responsible personnel of such Producers will be made public, including Producer name; persons in charge; relevant products; product batch numbers; label approval numbers; and production license numbers.

Following entities and individuals should be included in the blacklist:

- (1) Producers who were ordered to suspend production or business;
- (2) Producers whose permits or approval letters were revoked;
- (3) Producers who were subject to severe administrative penalties under applicable laws and regulations;
- (4) Applicants who have obtained the administrative approval by hiding information, providing false materials, or using other illegal means such as cheating or bribery; and
- (5) Producers who have used fallacious, unsubstantiated or misleading marketing.

Under the Draft Blacklist Provisions, the information on administrative penalties will be made public through the official website of local food and drug regulators within 15 working days after the penalties are imposed, and further published in the official website of the CFDA. Companies that are blacklisted will face increased and tougher supervision from government watchdogs, and will be severely punished if they break relevant laws and regulations again.

- *The Provisions on the Administration of the "Black List" System for Food and Drug Safety (Draft for Comments)*
- 关于《食品药品安全“黑名单”管理规定（征求意见稿）》公开征求意见的通知
- *Issuing Authority: the China Food and Drugs Administration*
- *Date of Issuance: December 12, 2013 / Effective date: N/A*



12. Ministry of Environmental Protection Delegates its Power on the Examination and Approval of the Environmental Impact Assessment Documents for Certain Construction Projects  
环保部《关于下放部分建设项目环境影响评价文件审批权限的公告》（15/11/2013）

For the purpose of implementing the State Council's decision and arrangement on deepening the reform on the administrative approval system, enhancing the efficiency on the environmental administration on construction projects, and streamlining the administration and delegation of power, on November 15, 2013, the Ministry of Environmental Protection published the *Announcement of Delegating the Power on the Examination and Approval of the Environment Impact Assessment Documents for Certain Construction Projects* (the **Announcement**), which delegates its power on the examination and approval of the environmental impact assessment documents for the following construction projects to provincial level of environmental protection authorities:

1. distributed gas power generation projects;
2. coal back-pressure thermal power plant projects;
3. pumped-storage power station projects;
4. wind power station projects each with total installed capacity of or above 50,000 kilowatt;
5. coal development project with a newly-added annual capacity below 1.2 million tons in an area embraced in state plans;
6. projects of non-cross-country or non-cross-province (-area or -municipality) natural gas transmission pipe networks;
7. country's crude oil storage installation projects; projects of installations on receiving, storing and transporting imported liquefied natural gas;
8. highway projects on the country's main road lines; main highway line projects in relation to the Western Development; projects of independent highway bridges or tunnels over major rivers (navigable sectors), and urban highway bridge or tunnel projects;
9. expansion projects of civil airports; expansion projects of airports for civil and military use;
10. urban rail transportation projects (the environmental assessment on whose plan has passed the examination);
11. steel rolling projects;
12. projects of deep processing of rare earth;
13. Kalium mine fertilizer project with an annual production capacity of 500,000 tons or above;
14. P-Xylene, Pure terephthalic acid (PTA) alteration, and expansion projects;
15. automobile projects except new whole vehicle projects;
16. projects of the manufacturing of median- or low-speed diesel engines for civil ships;
17. projects of the manufacturing of the urban rail transportation vehicles, signal system and traction transmission control system;
18. polyester project with a daily production capacity of 300 tons or above;
19. projects of cellulose diacetate and diacetate cellulose tow for cigarette;
20. salt production projects;
21. university cities, medicine cities and other park-style social undertaking projects;
22. projects in relation to biosafety level 3 or level 4 laboratories;
23. F1 circuit projects;
24. projects on banknote printing, coins manufacturing or banknote paper; and

25. projects that fall under the “encouraged” or “permitted” sector of the *Catalogue for Foreign Investment Industrial Guidance* involving a total investment amount (including capital increase) of USD 100 million or above.

- *Delegating the Power on the Examination and Approval of the Environmental Impact Assessment Documents for Certain Construction Projects*

- 环境保护部《关于下放部分建设项目环境影响评价文件审批权限的公告》

- *Issuing Authority: the Ministry of Environmental Protection*

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