

The Establishment of Companies Limited by Shares with Foreign Investment

According to the Provisional Regulations of the Ministry of Foreign Trade and Economic Cooperation on Certain Issues Concerning the Establishment of Companies Limited by Shares with Foreign Investment, foreign investors may directly establish a company limited by shares by means of promotion or transfer the established foreign-invested enterprises to companies limited by shares. The establishment companies limited by shares shall be in conformity with the state industrial policies concerning foreign investment.

According to the Provisional Regulations, the registered capital of the company shall be the total share capital registered with the registration authority and actually paid in. The minimum amount of the registered capital of the company shall be RMB 30 million, with the shares subscribed and held by foreign shareholders being no less than twenty-five per cent of the registered capital.

For the company set up by means of promotion, there should be no less than 5 promoters with more than half of them having residence in China and at least one of them being a foreign shareholder. Meanwhile, the promoters shall perform their liabilities in the company according to the Company Law of People's Republic of China. For those foreign-invested enterprises which are to be transferred to companies limited by shares, there should be record of continuous making profits in the recent consecutive years.

The approval procedures of establishment of company limited by shares with foreign investment are as follows:

Firstly, the promoters should reach an agreement on the issues concerning the establishment and then may entrust a Chinese promoter to handle all the matters regarding the application for setting up the company (Wholly foreign invested enterprise should entrust an agent to conduct these):

The following documents should be submitted:

1. The application form for the establishment of company limited by shares with foreign investment
2. The feasibility study report
3. The certification of the credibility of the promoters, the certification of the registration (copy), the certification of the legal representative (copy)
4. (If the Chinese partner invest by state-owned asset) The confirmation of the evaluation report of the planned investment issued by the state-owned asset administrative organizations
5. The articles of association and the contract signed by the promoters
6. Pre-Approval notification of the name of the company to be established
7. The certificate of the place of registration and the business location
8. Other required documents

The aforementioned documents, upon examination by and with the consent of the competent departments, shall be submitted, through the competent departments, to the Shanghai Foreign Investment Commission (hereinafter SFIC). Upon approval of the documents by SFIC, the

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promoters shall officially sign an agreement for the establishment of the company and its articles of association.

The agreement for the establishment of the company and the articles of association signed by the promoters shall, upon examination by and with consent of the SFIC, be submitted to the Ministry of Foreign Trade and Economic cooperation for examination and approval. The Ministry of Commerce shall confer approval document to the approved companies.

After the approval by the Ministry of Commerce, the promoters shall, within 30 days, open a special-purpose bank account with a bank by presenting the certificate of approval issued by the Ministry of Commerce.

The promoters shall make full payment in one installment of all the shares subscribed within 90 days from the date of issue of the certificate of approval.

Where the company is established by means of promotion, after the promoters have made full payment for shares, an election for the board of directors and the board of supervisors shall be made. The board of directors shall submit the document of approval to establish the company, articles of association, certificate of capital verification, etc. to the registration authority and apply for the registration.

The following documents should be submitted:

1. The application form for the registration signed by the legal representative
2. The approval document issued by the Ministry of Commerce; if the enterprise is established by means of offer, the approval document issued by administrative department of security of the State Council should be submitted
3. The meeting minutes of the Establishment Meeting
4. The articles of association and the approval certification (duplicated)
5. The financial auditing report of the company
6. The capital assessment report issued by authorized capital assessment organizations
7. The certification of the qualification of the legal person or the ID certification of the natural person of the promoters
8. Documents illustrating the name and address of the board members, supervisors and managers; the certifications of the appointment, election or employment
9. The certification of the appointment of the legal representative and the ID certification
10. Approval notification of the name of the enterprise to be established
11. The certificate of the place of registration and the business location
12. Other required documents

The registration authority shall complete the registration formalities and issue the business license within 30 days after it receives all documents for registration.

For existing Chinese-foreign equity joint ventures, Chinese-foreign cooperative joint ventures and

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wholly foreign-owned enterprises (hereinafter referred to as "enterprises with foreign investment") applying to reorganize themselves into a company, the procedures are as follows:

The investors of the original foreign investment enterprises shall act as the promoters (or together with other promoters) to sign the agreement for the set up of the company and the articles of association and then submit them to the original examination and approval authority in the location of the original foreign investment enterprise for preliminary examination and approval and onward submission to the related department for approval.

The following documents should be submitted:

- (1) contract, articles of association of the original enterprise with foreign investment;
- (2) decision of the board of directors of the original enterprise with foreign investment on the reorganization of the enterprise;
- (3) agreement of the investors of the original foreign investment enterprise on the termination of the original contract and articles of association;
- (4) asset evaluation report of the original enterprise with foreign investment;
- (5) the promoter's (including but not limited to the investors of the original enterprise with foreign investment) agreement;
- (6) articles of association of the company;
- (7) business license, certificate of approval, and the financial report of the recent 3 consecutive years;
- (8) application letter for the establishment of the company;
- (9) the promoters' credit references; and
- (10) feasibility study report.

The original documents should be submitted unless there is a note showing the requirement for copies. If the documents are not signed by legal representatives, the power of attorney of legal representative should be submitted. All the documents should be written in Chinese. The documents may be written in another language if the promoters consider that it is necessary.

The documents should be pre-approved by the SFIC and then submitted to the Ministry of Commerce for issuance of approval certification.

After the foregoing applications are approved by the Ministry of Commerce, the promoters shall go through the procedure of alteration of registration after the issuance of approval certificate and full payment of the capital shares subscribed.

Upon the completion of the formalities for the alteration of registration, all the rights and obligations of the original enterprise with foreign investment shall be fully assumed by the company.

The obligations committed by the Chinese and foreign investors of the enterprise with foreign investment in the original contract and articles of association should be specified in the promoter's agreement and articles of association and made applicable to the company to be established.

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