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CHINA Legal Bulletin

WJNCO News

*Mr. Wang Canming & Mr. Zhang Kehua
are Promoted to be Partners of Our Law Firm from January 1, 2014*

Wang Canming

In 1993, Mr. Wang graduated from Renmin University of China, and was awarded Bachelor of Economics degree; in 1999, he graduated from Shanghai Maritime University with a Master of Law degree.

Mr. Wang joined Wang Jing & Co. in February 2004, and became a licensed lawyer in 2005.

Mr. Wang has rich experiences in the handling of claims and disputes related to bill of lading, charter parties, transportation of goods by air, freight forwarding, logistics, international trade and bank/letter of credit (via methods including litigation, arbitration and other dispute resolution mechanisms).

Mr. Wang is experienced in handling complicated legal issues, providing reliable and feasible legal opinions for the clients, and representing clients in litigations and arbitrations in all tiers of Chinese courts (including the Supreme People's Court) and arbitration tribunals, which he keeps an excellent winning record.



Zhang Kehua



In 2002, Mr. Zhang graduated from China University Political Science and Law with a LLB degree majoring in International Economic Law; in 2004, Mr. Zhang graduated from Law School of University of Lancaster with a LLM degree majoring in International Business and Corporate Law.

In May 2007, Mr. Zhang joined Wang Jing & Co. Mr. Zhang has rich experience with a broad range of issues involving foreign direct investment, M&A, international trade and WTO disputes.

Mr. Zhang has experience with a broad range of issues involving foreign direct investment, M&A international trade and labor law. Many of his clients are big and middle sized multinational corporations from Europe or USA. Foreign direct investment, cross-border equity and asset acquisitions are where Mr. Zhang pays his long term attention, including the design of transaction structures for the clients, due diligence and the providence of feasibility legal opinion. Mr. Zhang is also good at international trade dispute resolution and other cross-border dispute resolution; he provides the clients with constructive and feasible legal opinions in complicated and unique cases, helping the clients recovering their lost in litigation or arbitration cases. Mr. Zhang is also experienced in the practice of labor and social security law. He has represented many multinational corporations to handle employee layoff and termination of employment relationship cases. He is an expert on defusing employment crisis and has successfully helped his clients solve tough issues in the area.

Explanation on the Reform Scheme of the Commercial Registration System of Guangzhou

Summary



While reforms of Commercial Registration System of Guangzhou have been in planning since April 2012 and experimented with as early as September 2013, from January 1, 2014 new "Commercial Registrations" will be implemented across Guangzhou. From this point forward, all company establishments will be changed to "Commercial Registrations" and the reform will involve the cooperation of 38 different departments. This bulletin will give detail explanations on such reforms.

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Explanation on the Reform Scheme of the Commercial Registration System of Guangzhou

Reform and progress are key words included within changes happening across various Government Departments and the Administration for Industry & Commerce (AIC) is leading with various system reforms, specifically with commercial registrations. The AIC's is improving the commercial environment by simplifying and lowering requirements, easing the formal process and approved items for those entering the market.

While reforms have been in planning since April 2012 and experimented with as early as September 2013, from January 1, 2014 new "Commercial Registrations" will be implemented across Guangzhou. From this point forward, all company establishments will be changed to "Commercial Registrations" and the reform will involve the cooperation of 38 different departments.

To understand the reforms of the Commercial Registration, we have provided an overview of terminology, the updated process and requirements.

Basic Definitions

"Business Entities" refer to any commercial acts of a natural/legal person or other association established in accordance with law involved in commercial relations with the purpose of profit making. **"Commercial Registration"** refers to a business's application for the establishment, modification or termination of status of the business entity. **"Permission Required Projects"** refers to projects that require permission or approval by the state council, or local rules and regulations. **"General Projects"** refers to projects that do not need prior approval and can be conducted once the business license is available.

Procedures and Contents

Reforms for Commercial Registration will adopt the AIC's goal of "experiment first, step by step implementation and timely relevant legislation". Experiments will be conducted in the Guangzhou Economic & Technologic Development District (includes Guangzhou High-Tech Development Zone, Guangzhou Free Trade Zone, Guangzhou Export Processing Zone), Nansha New District, Zengcheng Economic and Technology Development Zone, Sino-Singapore Guangzhou Knowledge City, Guangzhou International Bio Island, Tianhe CBD, including Zhujiang New Town. Based on the experimentation with these strategic areas, it will be determined to implement such reforms across Guangzhou.

Commercial Registration and Approval of Projects separated

One of the most important reforms is that business licenses can be issued prior to the approval of projects and is not a

condition for Commercial Registration. Upon commercial registration, applicants are considered an official business entity and entitled to operate General Projects and can publicize their registered information. It is important to note that Foreign Invested Enterprises still must obtain the approval of the Department of Foreign Trade prior to applying with the Commercial Registration Authority for a business license.

Businesses with only General Projects can apply directly to the Commercial Registration Authorities for the business license but businesses seeking approval to operate Permission Required Projects must seek prior additional approval. Special industries such as banking, securities insurance, telecommunication and other operations are considered Permission Required Projects and once the business license is obtained, the approval formalities need to be handled with the relevant departments before operation.

Only Subscribed Capital Registered

A capital verification report indicating the capital of shareholders is no longer needed for the application for Commercial Registration. The Commercial Registration authorities will register the subscribed capital declared by the company at time of application and within 30 days upon actual payment of the capital. The shareholders of the company can then submit materials, such as the capital verification report, to handle paid-off capital record formalities. The authorities will then publicize the capital of the company in which the public can search these amounts of capital from companies. Such information can be retrieved via the business entity information publicizing platform and the authorities may issue certificates for the paid-off capital by companies in accordance with the capital paid by the shareholders.

Offices within the Same Administrative area of Guangzhou

A business's main office address must be registered and comply with the function stated in the construction planning certificate or the real estate certificate, meeting Property law requirements. The address on the business license is where all legal documents issued by judicial and administrative authorities will be served and helps to identify the judicial and administrative regions of a business entity. When a company's branches and main office are located in the same administrative area (district or county-level city) of Guangzhou, the separation of its main office and branches is allowed, so instead of establishing formal branch organizations, only record formalities are required. When a business entity's domicile and its place of business are located in different administrative areas, registration formalities for branch organizations are still required.



Explanation on the Reform Scheme of the Commercial Registration System of Guangzhou



Annual Reports to be Recorded

A new Annual Report recording system will be adopted and the current Annual Inspection requirement will be discontinued. During March 1 to June 30 of each year, businesses must submit an annual report to the Commercial Registration authorities reflecting newly contributed capital registered, the balance and operational status in the previous year. Information included in annual reports is then made available to the public and businesses are held accountable for accuracy of the annual report. The authorities reserve the right to conduct examinations on the recording status of business annual reports and if a business fails to submit an annual report or submits an inaccurate annual report, the authorities may impose punishment in accordance with law.

Blacklist for Companies Failing to Comply with Relevant Rules

For companies that are not in compliance with rules and regulations, a blacklist system is in place, serving as the Administrative Management System that allows the Commercial Registration authorities to monitor businesses that have breached relevant Commercial Registration practices.

When businesses are involved in the following activities, the Commercial Registration authorities can add them to the blacklist:

- ◆ Failure to submit the annual report for two continuous years;
- ◆ Submitting fake/ inaccurate annual reports;
- ◆ Commercial Registration Authorities serve legal documents as per the domicile registered, yet fails;
- ◆ Business which may be harmful to the national / public interest, or may deceive or mislead the public,
- ◆ Other circumstances which do not comply with laws and regulations.

When businesses are added to the blacklist, the senior management staff, investor, legal representative and/or the person in charge, will not be exempted from legal liability. When a business breaches laws or regulations and the administrative authorities may claim for liability when civil disputes or debts are involved.

When the blacklisted business entity complies with one of the following conditions within 3 years, it may apply to the Commercial Registration authorities to be re-listed in the commercial registration name list:

- ◆ The reason for the business being blacklisted does not exist, or is eliminated;

- ◆ Inappropriate procedures adopted by the Commercial Registration Authority;

When authorities approve an application to be re-listed, it must be publicized via the Commercial Registration information management platform.

When failure of performance of statutory duty by the legal representative, board member, shareholder, or failure to perform the liquidation obligations, it will be indicated in their personal credibility record by the Commercial Registration Authority and their relevant rights will be restricted in accordance with law.

Platform for Commercial Registration Management and Data Disclosure of Businesses

A data disclosure platform will be set in place to encourage the sharing of businesses information. The purpose of such a platform is to integrate information resources of all administrative service departments of the municipal government and to build a unified platform for Commercial Registration management. All examinations and approvals the authorities handle will be able to be reviewed via the platform.

Such platform will also allow disclosure of information of businesses, so the public may access comprehensive commercial registration information of businesses, including their registered data (annual reports, business operation status, paid-in registered capital, and scope of business etc.), their administrative approval obtaining conditions, credit status and legal compliance records.

The platform will also be used to guide industrial organizations toward self-improvement and promote self-regulation of businesses, strengthening efforts to foster and support intermediary agencies, such as audit firms and capital verification organizations to gradually build a well-established joint liability system.

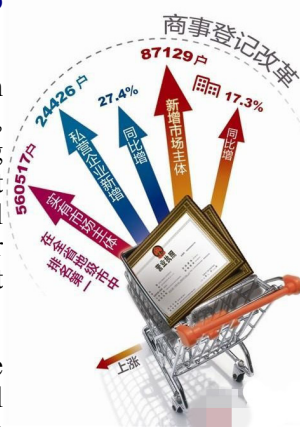
Promotion of Online Registration Service

The Commercial Registration Authorities will now handle, examine and approve applications for a digital business license online, which can be issued immediately and shortly followed by a physical paper business license. With a shift to implement a digitalized model for Registration, online declarations, applications, examination and approval and document searching, can all be completed via the internet. The general public also has free access to the application documents for online registration filed by businesses.

This allows a seamless registration process and establishes an integrated registration system for both Taxation and Industry and Commerce authorities to optimize and administrative efficiency.

Complementary Measures:

Formulation of Policies to Reform Commercial Registration System





Explanation on the Reform Scheme of the Commercial Registration System of Guangzhou

The reforms are designed to increase efficiency and eliminate approvals considered unnecessary. The first action is to eliminate redundant approval items, which will be reformed at all levels of State, Provincial and local governments.

Secondly, to propose the Municipal People's Congress to promulgate local laws and regulations in connection with matters involved in the reform of the commercial registration system of Guangzhou.

Finally, all functional departments of the government are to, within the scope of their own duties, will formulate measures to regulate administrative approvals in connection with Commercial Registration including the following:

1. Commercial Registration authorities are responsible for formulating implementation measures for regulating Commercial Registration and Business Entities;
2. The Municipal Commission Office of Public Sectors Reform and the legislative affairs office of Guangzhou government, are responsible for making arrangement for various governmental departments to eliminate redundant approval-required items which have been established as preconditions to apply for business license;
3. The Municipal Governmental Affairs office of Guangzhou is responsible for establishment of a unified information platform for Commercial Registration Management and data disclosure of business entities;
4. The Municipal Public Security Bureau of Guangzhou is responsible for developing regulatory policies and administrative approval for special lines of business, immigration agency services, security and fire-prevention services;
5. The Municipal Land and Housing bureau of Guangzhou is responsible for developing regulatory policies and administrative approval for business concerning land resources and houses;
6. The Municipal Environmental Protection Bureau of Guangzhou is responsible for developing regulatory policies for approval for business related to environmental protection;
7. The Municipal Communications Commission of Guangzhou is responsible for developing regulatory policies and administrative approval for the transport industry;
8. The Municipal Agriculture Bureau of Guangzhou is responsible for developing regulatory policies and administrative approval for business involving seeds, breeding livestock and poultry, production of feed and feed additives;
9. The Municipal Foreign Trade and Economic Cooperation Bureau of Guangzhou is responsible for developing

regulatory policies and administrative approval for foreign investment enterprises;

10. The Municipal Press and Publication bureau of Guangzhou is responsible for developing regulatory policies and administrative approval for the cultural, broadcasting and publication industries;
11. The Municipal Health Bureau of Guangzhou is responsible for developing regulatory policies and administrative approval for the medical and healthcare industry;
12. The Municipal Quality Supervision Bureau of Guangzhou is responsible for developing regulatory policies and administrative approval granting for production licenses in relation to food and industrial products;
13. The Municipal Food and Drug Administration of Guangzhou is responsible for developing regulatory policies and administrative approval for the catering industry and drug business;
14. The Municipal Work Safety Administration of Guangzhou is responsible for developing regulatory policies and administrative approval for business operation involving safety supervision;
15. The local Taxation Bureau and the State Administration of Taxation are responsible for developing regulatory policies and administrative approvals for taxation affairs;
16. Other examination and approval authorities are responsible for developing regulatory policies and approvals granting practices in alignment with their respective functions and duties as well as requirements of business sector reform.

As could be concluded from the above measures, highlights of the reform are as follows:

To Establish Information Platform for Commercial Registration

The Information platform will ease the process of Commercial Registration, will enhance the interdepartmental sharing of information and allow greater public access of businesses information. The newly-established platform will automatically recognize the category of trade a business is involved in and provides examination and approval authorities with information of business entities in a centralized format. All information concerning commercial registration, approval and punishment from different governmental authorities disclosed will be available to review. Situations which various governmental departments are isolated from each other in terms of information sharing will be limited and a seamless connection among governmental departments to combine resources and increase effective operations will be achieved.

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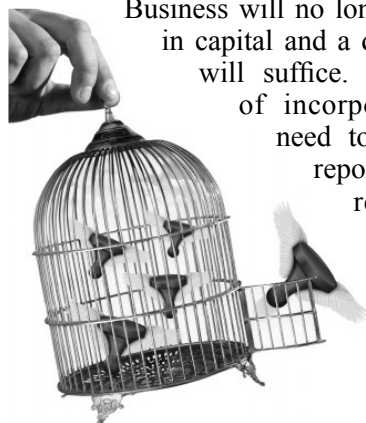
Business License before Approval

Getting a business license before obtaining approval will be applied to all business entities except for those engaged in the financial sector, telecommunication and foreign-invested sector. A business must obtain a business license before examination and approval formalities but can commence general business activities upon receipt of the business license. For any business activity which is subject to administrative approval, a corresponding permit or approval document must also be obtained. This reform has eased the establishment of a business and allows the entity to apply for approval in its own name for any business activity requiring administrative approval.

Business Scope not determined by the Administration for Industry and Commerce

Upon reforms of the commercial registration system, the business scope is no longer a required item for registration. The business scope will be indicated in the Articles of Association or the Corporation Agreement and will be disclosed to the public through the information disclosure platform. This releases the constraint of a business's development by determining the business scope registration prior to market entrance, facilitating an environment favorable for business expansion.

Registered Capital No Longer Required



Business will no longer need to register their paid-in capital and a declaration of registered capital will suffice. Upon application for registry of incorporation, a business will not need to submit a capital verification report to registrar. The reform ends restrictions in relation to the minimum registered capital, the minimum percentage of initial contribution, timing of capital contribution and the percentage of non-monetary contribution. This will

help decrease the capital cost of incorporation, assist with operational efficiency and will guide business entities to make capital contributions based on their own needs and actual capabilities.

Multi-licensed Address and Business License

Businesses intending to set up its Main office within the administrative jurisdiction of Guangzhou are now allowed to apply for additional business addresses based on one business license. As long as a business provides a Commercial Registration to the authorities with information about the additional business addresses, there is no need to obtain additional business licenses for these branches. Enterprises that are affiliated with each other in terms of investment or located in the same specialized park, a "multi-licensed address" is allowed and more business licenses can be applied for the one business address. In addition, registration formalities for main offices and business locations has been simplified and easier in incorporation and order maintenance, specifically for filing a real property lease contract, which will no longer be a condition of obtaining a business license. Business entities now have fewer restrictions of required premises and can reduce rental costs of the investors.

Current reforms of Business Registration will substantially streamline procedures of establishing an enterprise. However, for establishment of foreign invested enterprises, laws and policies are still requiring obtaining administrative approvals from Guangzhou Bureau of Foreign Trade and Economic Cooperation and other relevant authorities before establishment. Relevant existing rules and regulations on its establishment procedures and minimum capital requirement are still applicable. Therefore, business entities have not benefited from the newly-reformed policies of the industry and commerce authorities. It is expected that, with increasingly close coordination among various governmental departments, more new policies for will be formulated in the near future to inject modern vitality into business entities.

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