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Business Name Registration Reform in China

Following a decree promulgated on December 28th, 2020, the State Council issued a revised regulation on registering business names (the “**Provisions**”). These Provisions have come into effect on March 1st, 2021, with the purpose of standardizing business name registration, protecting the legitimate rights and interests of enterprises, maintaining social and economic order, and improving the business environment.

Which are the highlights of these Provisions?

1. Shift from “Pre-approval” to “Online Filing”

These Provisions abolished the “pre-approval” system for business name registration and implement an “online filing” process. Following these Provisions, companies to be set up in China are allowed to submit their business names through an online system for instant use. A company shall undertake to assume legal responsibilities in case of infringement of legitimate rights and interests of others arising from the business name it filed.

With the new online filing system, business name is no longer a prerequisite for applying for business license with the local Administration for Market Regulation (“**AMR**”), which in practice helps to streamline the business registration process which used to take from five to seven working days.

2. Requirements and Prohibitions of Business Names

These Provisions insist on the “one name for one business” principle providing that business names shall consist of standard Chinese characters, require that sector and operational characteristics shall be identified according to the primary business of a company as well as the industrial classification standards for national economic activities.

Business names are not allowed if they harm the dignity or interests of China, or public interests or order; if they use the name, the general abbreviation or specific term of a foreign country (region) or an international organization; contain any content of obscene, pornographic, gambling, superstitious, terrifying or violent nature; include any content that discriminates on the basis of nationality, race, religion or sex; violate the public order or good morals or may have any other adverse impact; or are likely to deceive or mislead the public.

Normally, business names containing “China” were subject to stringent review and had to be approved by the State Council. However, following these Provisions, it seems that any foreign-funded company using the trade name of a foreign investor can have “China” in its business name.

3. Faster Release of Business Names Already Taken

As business names are relatively limited, companies in China can often find their ideal business names (especially those with propitious and sound meanings in Chinese) already taken during the registration process.

Before these Provisions, if a company was (I) ordered to deregister or its business license was revoked by the AMR or (II) decided by the shareholder the deregistration of the company, another company was not allowed to use the business name of such company within three years. With these Provisions, such business names can be released for public use with a shortened time limit of one year when the same or a similar business name is considered unavailable.

Notwithstanding the above, the companies with investment relationships are not subject to the above time limits. To be specific, despite the above shortened timeframe, if a company has been deregistered by its shareholder for longer than a year, an affiliate can still use such name once proven the existence of the investment relationship.

In this sense, more business names are faster released for new companies to use them.

4. Improvements on Business Name Supervision Mechanism

Before the Provisions, there were only principle guidelines for the AMR to decide on business name dispute cases. However, as there were no clear procedural rules in place and following the “principle of necessity” in the administrative laws in China, the AMR often seemed reluctant to step into these cases and direct companies to go to the court.

These Provisions establish a clear dual dispute resolution mechanism, that is, “judicial plus administrative”. If a company finds its legitimate interest infringed by another company using the same or similar business name, it can file a lawsuit in court or seek help from the AMR.

These Provisions newly incorporate that where a court or the AMR decides that the use of a business name shall be ceased, the company shall go through formalities for change of its business name within thirty days as of receipt of the effective legal document issued by the court or the decision made by the AMR. Prior to the completions of the change of the business name, the AMR will use the unified social credit code in lieu of the business name of the company. In case the company fails to go through the formalities within the required time, the AMR shall include such company in the list of businesses operating abnormally. The company can only be removed from the list of businesses operating abnormally once it has duly completed the change of business name.

These Provisions implement a strengthened business name supervision mechanism during the whole process. Comparing to the previous regulations, where the AMR finds that a registered business name does not comply with these Provisions, the AMR can require such company to make corrections in a timely manner.

5. DS Remarks

This business name registration reform offers streamlined online filing process for companies in China. It also gives clear guidelines on administrative mediation procedures for business names, which puts the administrative dispute resolution mechanism in place. With these Provisions, companies can have more protection over its business name, a fundamental part of its intellectual property, both from the judicial and the administrative approach.

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