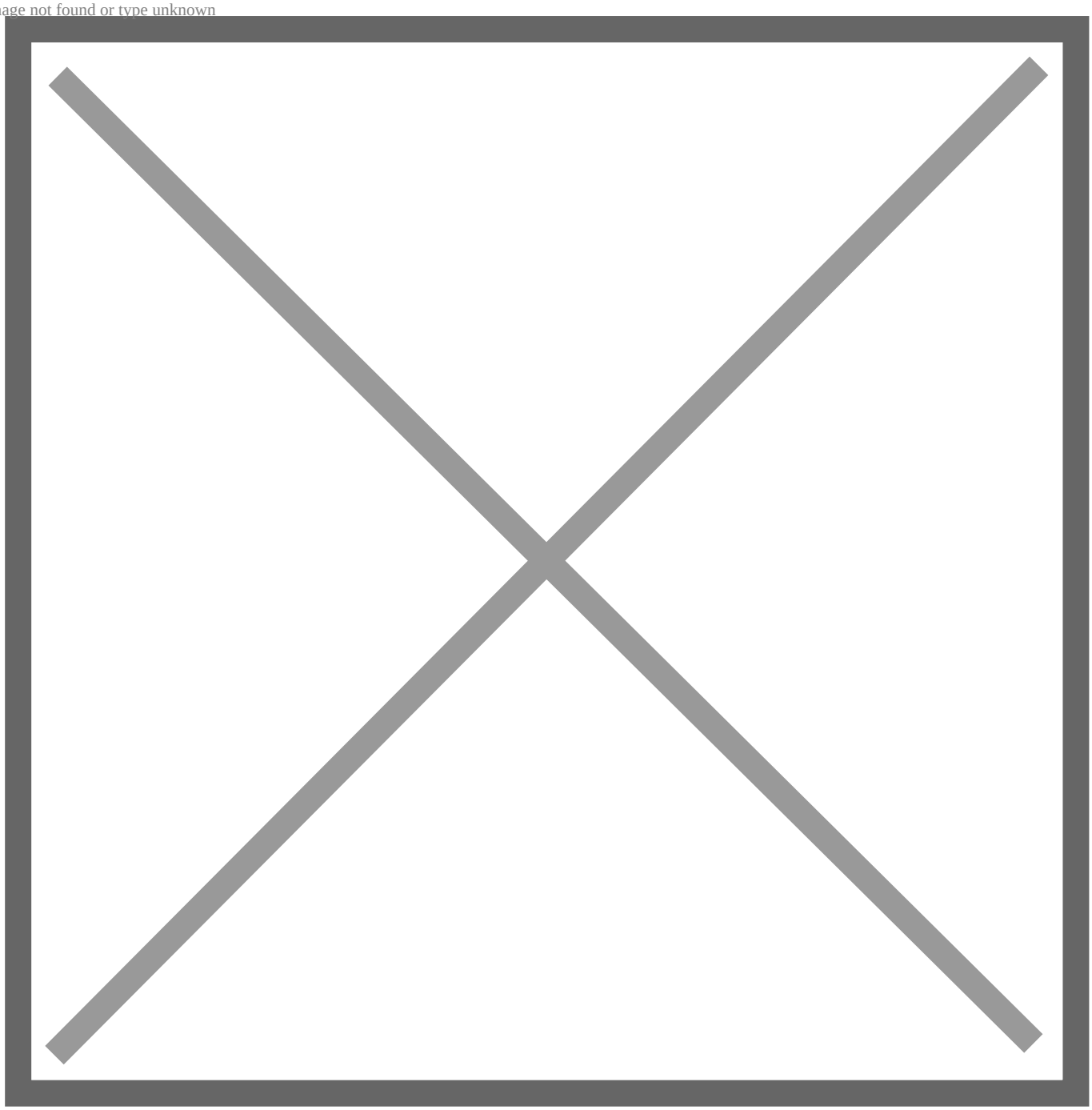
China Extends Its Foreign Investment Administration Reform throughout the Country

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Starting from October 2016, foreign-invested enterprises in China that do not require special administrative measures for market access can register and report company information changes through a filing process, instead of the case-by-case approval process used in the past.

China has now extended this foreign investment administration reform throughout the country, following the pilot reform carried out first in Shanghai Free Trade Zone ("FTZ") in October 2013, and three other FTZs in Tianjin, Guangdong and Fujian in May 2015.

The extension of the reform is based on the main regulations issued recently as follows:

1. Decision of the Standing Committee of the National People's Congress on Revision of Four Laws Including the Law of the People's Republic of China on Wholly Foreign-owned Enterprises at (

2. Provisional Measures for Filing Administration of Establishment and Changes of Foreign-invested Enterprises ("FIE") ( )

3. Joint Announcement of the National Development and Reform Commission ("NDRC") and the Ministry of Commerce ("MOFCOM") [2016] No. 22 at (2016 22)

Here are a number of key points that European businesses should be aware of:

1. Different from the Negative List implemented in the four FTZs, there is no unified negative list issued for the extension of the reform to categorise the industries subject to special administrative measures for market access.

In the joint announcement issued by the NDRC and MOFCOM, it states that the scope of such industries shall be in compliance with the Catalogue for Guidance of Industries for Foreign Investment 2015, which clarifies the types of industries under the restricted, the prohibited and those encouraged but with requirements on shareholding or top management.

Therefore, if a FIE's business is not within those prohibited, restricted or encouraged industries with specific requirements, then it will just need to go through the filing process with MOFCOM or via one of its local branches for its establishment and when filing any changes. No pre-approval is required.

2. The reform applies to both traditional wholly foreign owned enterprises ("WFOE"), Sino-foreign equity joint ventures ("EJV") and cooperative joint ventures ("CJV"), and enterprises invested by foreign-funded investment enterprises in China.

3. The reform from approval to filing applies to green field investment alone, which refers to the foreign direct investment building its operations in a foreign country from the ground up.

For establishment and change of FIEs via merger and acquisition, the original approval by MOFCOM or its local branch is still required.

4. To be more specific, the filing replacing approval applies to the following changes of a FIE:

- Changes to the basic information of the FIE;

- Changes to the basic information of investors of the FIE;
- Changes to equity (share) as well as right and interest in cooperation;
- Merger, division and termination;
- Pledge and transfer of property rights and interests of a WFOE;
- Advance recovery of investment by foreign co-investors of a CJV; and
- Entrusted operation and management by a CJV.

5. **The filing is not a prior condition for the registration of a FIE**. Filing with MOFCOM or its local branches for the establishment of a FIE can be made after name reservation and before issuance of the business licence of the FIE, or with 30 days after issuance of the business licence. Filing for a change of a FIE should be made within 30 days after the occurrence of the change. The filing shall be done online.

This reform indicates the implementation of the management model of pre-establishment national treatment with a negative list across the country, though no unified negative list in form is issued.

With the development and improvement of the management model in practice, it is possible that the Catalogue may be cancelled and a unified negative list may be issued and adjusted as is needed in the future.

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