

China's State Council Further Separates Operating Licenses from Business Licenses in Shanghai Pudong

Please read on especially if you are involved in pharma / medical devices, food, construction, shipping, pawn shops, hospitals or travel agencies, or if - in the past - you needed an industrial product manufacturing license.

On January 31, 2018, China's State Council released an *Official Reply to the Work Plan for Further Promoting the Pilot Reform of Separation of Operating Licenses and Business Licenses in Shanghai Municipality* ("**Reply**"). This approved pilot reform in Shanghai's Pudong District will initially last until December 31, 2018. Main aim is to reduce corporate licensing burdens and optimize the related governmental processes [1]. But until temporary adjustments are made to the relevant laws and regulations, it remains to be seen whether and to which extent the actual implementation process will correspond to the intended bureaucracy reduction.

In the Reply, the State Council approved the cancellation / simplification of 47 licensing items in 10 areas. In more detail:

Horizontal aspects relevant to several industries

- **Taxation:** in principle, no "verification" anymore of the permitted types of official tax invoices ("fapiao") according to the company's business scope. Companies are encouraged to use electronic fapiao. Small-scale taxpayers must only file quarterly tax declarations. Generally, the formalities shall be reduced and online and self-handling tax services be promoted.
- **Industrial product manufacturing licenses (工业产品生产许可):** licensing requirements not related to product quality safety are cancelled. The remaining inspection items are those concerning product quality safety. The annual examination of companies having obtained such a license is cancelled.

Production

- **Pharma and medical devices:** the key reform aspect is the combination of field inspections during the drug manufacture license processes. Examination of class II medical devices with core technology or significant clinical value is granted priority.
- **Food-related product licenses:** a simplified "informing-and-promising method" shall be used when issuing new food related product licenses to "reputable" companies within Shanghai Free Trade Zone. The license should be granted immediately upon the applicant's submission of the complete documents plus a written promise that it fulfils or will fulfil the licensing requirements. The licensing requiring business may not be carried out unless the licensee actually fulfils the promised requirements. It will be important in practice to be able to fully evidence compliance from day 1 in case of any later challenges by the authorities.

Services

- **Construction:** the possible project scope for foreign-invested construction companies is expanded. Overseas business background checks on foreign-invested construction design companies are eliminated. The application process shall also use a simplified "informing-and-promising method".

- **Shipping:** already licensed international shipping companies are allowed to sell their own vessels to financial leasing companies approved by the relevant authorities and to lease them back. The vessels will still be deemed “self-owned” by the shipping companies.
- **Pawn business:** equal administration of domestic- and foreign-invested pawn companies within Shanghai Free Trade Zone.
- **Hospitals:** commercial hospitals are allowed to trade in drugs and medical devices.
- **Foreign-invested travel agencies:** also here, the licensing process is simplified by using the “informing-and-promising method”.

To implement the pilot reform, the State Council and the Shanghai Government will respectively apply for approval of temporary adjustments in laws and regulations. Unless promulgation, the described reform does not yet have a solid legal basis and the implementation remains subject to the discretion of the in-charge local departments. Investors and companies should closely monitor the legislative development in the respective industrial sectors.

Foot note

[1.] The *State Council Decision on Temporarily Adjusting Relevant Administrative Regulations, State Council Documents and Departmental Rules Approved by the State Council within FTZs*, released on January 9, 2018 (“Guofa 2017/ 57”) has a different content and scope of jurisdiction. Its focus is on foreign investment, and regulates the temporary suspension of some laws within the 11 China Free Trade Pilot Zones to further liberalize the market access for foreign investment in selected industries.



Ralph Koppitz
Partner, Shanghai



Stephen Wu
Senior Associate, Shanghai



Rachel Yao
Associate, Shanghai

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