

SMRA's Pilot Reform - Company Name Pre-Registration Abolished in Many Cases

Read on, if you are a foreign or Chinese investor and plan to found or rename a company in China.

Under the very recent institutional reforms, the State Market Regulatory Administration ("**SMRA**") has taken over, among others, the functions of the now abolished State Administration for Industry and Commerce ("**SAIC**"). SMRA is now the main body responsible for company registration matters.

On March 30, 2018, SMRA released its very first Notice, to streamline company set-ups and abolish the traditional prior company name pre-registration in mainland China. By September 2018, it is the goal that in more than half of each province / municipality:

- Generally, no more company name pre-registration is needed.
- Instead, a new online pre-check of the desired company name must be carried out.
- And, a new post-registration supervision attempts to ensure corporate compliance.
- Initial experiences already exist e.g. in Shenzhen, Tianjin and Shanghai.

Shorter company set-up process

Investors applying for setting up a new company may then generally file for the company name jointly with the set-up application, abolishing one set-up step.

Exceptions still apply if

- a prior license is required for the company registration (e.g. food production license, medical device production license, work safety license), or
- the company name pre-registration occurs in a different jurisdiction than the company set-up registration (e.g. name pre-registration on State level for company names including the word "China").

Online check and applicant guarantee

The registration authorities have to establish an online declaration system enabling the check of the availability of intended company names. This tries to increase the applicant's flexibility in selecting company names. For instance, if an existing registered name is similar, the applicant may still be allowed to use the similar name, but will be reminded of a potential infringement risk. The applicant will need to guarantee in writing to undertake related legal consequences.

Post-registration supervision, public shaming

But reduced governmental influence in selecting the company name initially, is connected with a strengthened governmental supervision after the name has been registered. This can e.g. occur through an administrative order or court decision to correct or cease using an incompliant company name. Incompliances shall further be announced publicly in the National Enterprise Credit Information Publicity System.

Implementation in Shenzhen, Tianjin and Shanghai

Various locations have already introduced the process:

- Shenzhen and Tianjin started a similar pilot reform respectively in 2015 and 2017,

- Shanghai launched the reform in November 2016 in Pudong and in the China (Shanghai) Free Trade Pilot Zone; Shanghai also has started a “one-stop” online platform for company set-up registration covering name pre-registration, issuance of business licenses, tax registration, approval of stamp carving, reservation for bank account opening, etc. (“一窗通”) since March 31, 2018 throughout the entire municipality.

Outlook

We expect company establishment registrations to gradually become quicker and simpler. With fewer steps and formalities business might be able to be started in weeks rather than months. But incompliances, once discovered, may have both economic and reputational consequences.

Investors should conduct even more careful prior research and intellectual property related homework before deciding on a certain company name, to reduce the risk of active and passive infringements and their related legal consequences.



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