

Trademarks

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Another Step to Speed Up the Company Registration Process in China

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*Under the current company registration procedures of the People's Republic of China, before undertaking the approval and/or registration procedures for establishing a company, the investor(s) of a new company must first file a Name Pre-approval application with the company registration authority, the State Administration of Industry and Commerce (SAIC) or its local counterparts (AICs,). The AICs will reject a name pre-approval application if the proposed name is identical to the name of an existing company registered in the same industry in the same municipality. On October 18, 2016, SAIC issued its Guiding Opinion on Opening-up Enterprise Name Database and Promoting the Reform of Enterprise Name Registration (**Guiding Opinion**) to request local AICs to open their company name databases to the public. Now an applicant can check the company names of existing companies in the database to avoid using a duplicate name. This will simplify the company establishment process. Furthermore, SAIC indicated that it aims to abolish the name pre-approval requirement entirely in the near future.*

Background

AICs will not allow two unrelated companies to use the same company name including a brand name if those companies are located in the same industry in the same municipality. In order to avoid using a company name that is identical to the name of an existing company registered with AICs, the investor of a new company normally will check the existing company names listed in the *National System of Information related to Enterprises Credibility* hosted by the AICs (**Enterprise Information System**). However, the AICs do not update the system on a timely basis.

In the past two years, the State Council has been pushing for the abolishment of any unnecessary administrative approval procedures to promote government efficiency in the PRC. Since 2015, local AICs in Shenzhen and Taizhou started to open-up company name databases to the public and abolished the name pre-approval procedure. SAIC now intends to expand the reform nationwide.

Schedule for Opening Up

The Guiding Opinion requires that all enterprise name databases at the county and district level be made available to the public before December 1, 2016. The name databases of the provincial and municipal AICs are also encouraged to be opened to the public as soon as possible after December 1, 2016.

Scope of Name Database

Under the Guiding Opinion, the databases to be opened to the public will include the following seven categories of enterprise names:

1. Names of existing enterprises;
2. Previous names of enterprises which have changed their names within the previous year;
3. Names of enterprises (i) whose establishment registrations have been cancelled or whose business licenses have been revoked but (ii) which have not gone through the deregistration process yet;
4. Names of enterprises which (i) have completed the deregistration process due to cancellation of registration or revocation of business licenses within three years or (ii) have completed deregistration process due to other reasons within the previous year;
5. Enterprise names submitted for name pre-approval but not approved yet;
6. Enterprise names approved but not registered yet and the name pre-approval is still valid (the validity period is six months); and
7. Other enterprise names that should be opened up to the public.

The Guiding Opinion also encourages the local AICs to publish the name databases to the public through platforms that are convenient for access (i.e. the AICs websites) and establish guidelines and rules regarding how to make name registrations online and avoid using prohibited terms in the company names.

Our Observations

The opening-up of enterprise name databases will speed up the establishment of companies and make it easier for applicants to select and decide names for their new companies.

Officials at the SAIC confirmed that the enterprise name databases can be used to check names for both Chinese domestic enterprises and foreign invested enterprises.

We estimate that once SAIC decides to abolish the name pre-approval procedure, AICs may also need to issue a list of trade names which are prohibited or restricted. Taking Taizhou AIC as an example, it has issued a negative list showing the trade names which are prohibited or restricted (such as names which refer to foreign countries, official names of foreign and PRC governmental authorities, etc.).

We will monitor the development of this change of law and will keep you updated as needed.

If you have any questions about the content of this Alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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