

New Reporting Obligations for Companies Incorporated in Mainland China

How to stay off the Serious Violation Blacklist

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*Any companies incorporated in China (including both domestic companies and foreign-invested companies, regardless of whether they are existing or newly established companies) have recently become required by the Chinese government to undertake certain company information disclosure obligations through an “Enterprise Credit and Information Disclosure System” (the “**Disclosure System**”, the website of which is <http://gsxt.saic.gov.cn/>) newly launched by the company registration authorities in China. This new system aims to improve and replace the company annual inspection system that has been used in mainland China for many years. We recommend that the China affiliates of multinational companies become familiar with the Disclosure System to comply with the disclosure obligations.*

The State Council promulgated *The Provisional Rules on Enterprise Information Disclosure* (企业信息公示暂行条例) (the “**Disclosure Rules**”) on August 7, 2014. The rules take effect on October 1, 2014. In general, the key goals of the Disclosure Rules are to establish a nationwide disclosure system to allow the public to access the creditworthiness of any company registered in mainland China, and to provide more open and transparent information regarding corporate entities.

Summary of the Key Requirements under the New Disclosure Rules

Disclosure of Basic Information

Government Disclosure: The company registration authority (i.e., the State Administration for Industry and Commerce, “**SAIC**” and its local counterparts) will publish through the Disclosure System certain basic information on the companies incorporated in the mainland China, including the company name, amount of

registered capital, registered address, business scope, name of the legal representative, non-real estate mortgages and pledges, equity pledges, administrative penalties, etc.

Company Disclosure: Companies are required to voluntarily submit certain basic information to the publicly accessible Disclosure System within twenty (20) days after such information is available. The information includes, but is not limited to, capital contribution (e.g., amount, contribution timeline, method of contribution, etc.), change of ownership and any change of the incorporation registration/filing information registered with the SAIC or its counterparts (e.g., replacement of directors and management, business scope expansion, change of address, capital increase/decrease, etc.), change/extension or obtaining of administrative permits/approvals, intellectual property pledges, administrative penalties, and any other information required to be disclosed by law. Companies that fail to submit such information in time and fail to cure such non-compliance within a period specified by SAIC will be listed in the operational non-compliance list (the “**Non-compliance Blacklist**”, “经营异常名录” in Chinese) which will be published on the Disclosure System.

Replacement of Annual Inspection with Annual Report

Companies are required to submit, through the online Disclosure System, annual reports for public disclosure, replacing the previous annual inspection system. The annual reports for the preceding year must be submitted online from January 1 to June 30 of the following year (the “**Reporting Period**”). No hard copies of the annual reports are required to be physically submitted to the authorities. The annual report will be done online.

When submitting annual reports, companies must log onto the Disclosure System to complete electronic forms which include such data as contact information, liquidity status, equity investments and formation of entities, subscribed capital, timing and method of capital contributions, ownership changes, and company website address. Companies can, at their discretion, decide whether to include detailed financial information such as work force, total assets and liabilities, pledges and guarantees provided to third parties, shareholders equity, operating revenue, profits, and taxes paid. Companies that fail to submit the annual reports within the Reporting Period will be listed in the Non-compliance Blacklist which will be published on the Disclosure System.

Creditworthiness Blacklist

Companies will be put on the Non-compliance Blacklist at the local SAIC municipal level or below and be disclosed to the public through the Disclosure System, if (i) they fail to voluntarily disclose the required information within the time limit as specified by SAIC or its local counterparts, (ii) they fail to submit and disclose annual reports within the Reporting Period, or (iii) they submit false information or engage in fraudulent concealment. If such companies fail to cure such non-compliance within three years after they violate the rules, they will be moved to the blacklist of SAIC at the national or provincial level (the “**Serious Violation Blacklist**”, “严重违法企业名单” in Chinese). The legal representatives or persons in charge of the companies on the Serious Violation Blacklist are not permitted to act as legal representatives or persons in charge in any company within three (3) years thereafter. A company listed on the Serious Violation Blacklist can be removed from the list by the SAIC at the national or provincial level, if such company cures its non-compliance and does not engage in any violations listed above for five (5) years after being listed on the Serious Violation Blacklist.

Companies on either the Non-compliance Blacklist or the Serious Violation Blacklist will face credit restrictions, government procurement restrictions or bars, and restricted eligibility to bid on projects and purchases of state-owned land.

SAIC will make random checks (through a lottery system) as to whether companies comply with the Disclosure Rules. The public can also report any violations to SAIC.

Except for company incorporation registration information, other information available before the effective date of the Disclosure Rules is not subject to disclosure.

Our Suggestions on Compliance Measures in response to the new Disclosure Rules

Getting Access to the Enterprise Credit and Information Disclosure System

It is reported that companies will get access to the aforementioned Disclosure System after October 1, 2014 to submit the required information. The current website for such disclosure system is <http://gsxt.saic.gov.cn/>. Companies and the public can get into the specific provincial Disclosure System by clicking the name of the province where the company is registered. We note that some provinces (e.g., Guangdong, Hebei, and Liaoning) have already launched links on their webpages in the Disclosure System for companies to register usernames and passwords to submit annual reports and required information.

Preparing for Submitting Annual Report for the year 2013

Based on the SAIC's latest notice, during the period from October 1, 2014 to June 30, 2015, a company established before December 31, 2013 must submit its annual report for 2013 through the online Disclosure System. During the period from January 1, 2015 to June 30, 2015, a company must submit its annual report for 2014 through the Disclosure System. We suggest that companies start to gather and prepare information needed for annual reports of 2013 and get prepared to submit them through the Disclosure System after October 1, 2014.

Keeping Future Company Information Files Organized

We suggest that companies designate specific employees to be responsible for keeping records of all company information mentioned in the Disclosure Rules and be responsible for submitting such information to the Disclosure System within twenty (20) days after such information is available, as the Disclosure Rules require.

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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