

Decision to Amend the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises

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June 29, 2018, the Ministry of Commerce of the People’s Republic of China (MOFCOM) promulgated the “Decision to Amend the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” (Order No.6 of 2018, hereinafter, the “Decision”). The Decision amends a part of the MOFCOM Order No. 2 of 2017 (hereinafter, “Order No. 2”) to clearly state that record-filing and company registration for new foreign-invested enterprises (FIEs) can be done at the same time, through the same government authority. The Decision was enacted on June 30, 2018.

1. Background of the Policy

In 2013, the inaugural Negative List control system was introduced in the Shanghai Pilot Free Trade Zone, and the record-filing regime replaced the screening regime for investment projects not subject to the Negative List. In 2016, the Negative List control system spread nationwide.

On October 8, 2016, the MOFCOM promulgated the “Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” (MOFCOM Order No. 3 of 2016), and announced detailed rules on the paperwork for FIE incorporation and for changes to registered information, which applied nationwide and clarified the procedures for record-filing.

On May 16, 2018, the State Council Executive Meeting made the decision to implement nationwide “one-stop” procedures for FIE incorporation record-filing and company registration. The Decision is the second amendment to the “Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” and is intended to simplify the procedures further.

[Figure 1] Regulations regarding the record-filing regime for FIEs (excerpt)

Date of promulgation (enactment)	Promulgating entity	Name of regulation	Details
October 8, 2016 (enacted on the same date)	MOFCOM	“Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” (MOFCOM Order No. 3 of 2016)	Official announcement of the record-filing regime
October 8, 2016 (enacted on	National Development and Reform	NDRC and MOFCOM Announcement No. 22 of 2016	Announcement of the details of the nationwide Negative List, which refers to provisions related to demands

the same date)	Commission (NDRC) MOFCOM		on equity and high-level managers in Encouraged, Restricted, and Prohibited areas defined in the “Catalogue for the Guidance of Foreign-Invested Industries (2015 Amendment)”
June 5, 2017 (July 10, 2017)	General Office of the State Council	“Special Measures on the Administration of Entry by Foreign Investment in Pilot Free Trade Zones (Negative List)” (Guobanfa [2017] No. 51)	Promulgation of the 2017 version of the Negative List for Foreign Investment in Pilot Free Trade Zones (PFTZs)
June 28, 2017 (July 28, 2017)	NDRC MOFCOM	“Catalogue for the Guidance of Foreign-Invested Industries (2017 Amendment)” (NDRC and MOFCOM Order No. 4)	Promulgation of the 2017 version of the nationwide Negative List
July 30, 2017 (enacted on the same date)	MOFCOM	“Decision to Amend the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” (MOFCOM Order No.2 of 2017)	Amendment of the “Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” to allow application of the record-filing regime to Chinese companies that are acquired by FIEs
June 28, 2017 (July 28, 2017)	NDRC MOFCOM	“Special Measures on the Administration of Entry by Foreign-Invested Enterprises (Negative List) (2018 version)” (NDRC and MOFCOM Order No.18)	Promulgation of the 2018 version of the nationwide Negative List
June 29, 2018 (June 30, 2018)	MOFCOM	Decision to Amend the Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises (MOFCOM Order No. 6 of 2018)	Second amendment to the “Interim Administrative Measures for the Record-filing of the Incorporation and Change of Foreign-Invested Enterprises” to clarify that the procedures for FIE incorporation record-filing and company registration will be done through the same government authority
June 30, 2018 (July 30, 2018)	NDRC MOFCOM	“Special Measures on the Administration of Entry by Foreign Investment in Pilot Free Trade Zones (Negative List)	Promulgation of the 2018 version of the Negative List for Foreign Investment in PFTZs

		(2018 version)” (NDRC and MOFCOM Order No. 19)	
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2. Policy Details

The Decision provides amendments and additional provisions to Order No. 2 of 2017. Major modifications are as follows:

- “One-stop processing” has been achieved for procedures for FIE incorporation record-filing and company registration
 - ✓ Record-filing for FIE incorporation must be submitted online at the same time as the company registration at the local branch of the Administration of Industry and Commerce (AIC).
 - ✓ When a non-FIE becomes an FIE as a consequence of an acquisition or merger, the record-filing of the change to FIE incorporation must be submitted online at the same time as the company registration at the local AIC.
 - ✓ The local MOFCOM bureau will process the application after receiving the record-filing data from the AIC, and will notify the investor when the process is completed.
- Changes to the procedures relating to foreign investors’ strategic investment in the listed company
 - ✓ When a listed FIE attracts strategic investment from a new foreign investor within the scope of record-filing obligations, it must complete the record-filing procedures within 30 days of securities registration at China Securities Depository and Clearing Corporation Limited (CSDC) and submit a “Registration Form for Change of FIE.”
- Changes to the document submission route for FIE record-filing
 - ✓ The Administration of Industry and Commerce (AIC) system will be used for submitting documents instead of the MOFCOM Integrated Management Information System for Foreign Investment.
 - ✓ There will be no changes to the submission of documents for changes to existing FIEs: they will continue to be processed on MOFCOM’s Integrated Management Information System for Foreign Investment.
- The statement, “when record-filing information changes, FIEs need to perform the record-filing procedures again after business license is issued” will be deleted.
 - ✓ These procedures will not take place as the record-filing and company registration, formerly handled by two different government authorities, will now be based on the same, shared information.
- Changes to the screening of information contained in the record-filing documents
 - ✓ Until now, the screening of record-filing documents has examined the “Registration Form for Establishment of FIE” and “Registration Form for Change of FIE” submitted online and other related documents. With the changes to the procedures, screening will only be carried out on the information uploaded online in applications for FIE incorporation or changes to records on file.
- Changes to supporting documents submitted to collect the filing receipt
 - ✓ FIEs were required to submit copies of the pre-approval of the name of the foreign-invested enterprise

or its business license to the local MOFCOM bureau to collect the filing receipt. With the abolition of the procedures for pre-approval of the name of the foreign-invested enterprise, submission of a copy of the business license will be sufficient to collect the filing receipt.

3. Impact on Enterprises

The Decision was promulgated to clarify that record-filing and company registration for FIE incorporation can be made through a single authority, the local branch of the AIC. It is expected that the procedures for new FIE incorporation will be simplified and take less time. The MOFCO Integrated Management Information System will no longer process record-filing for FIE incorporation. Thus, FIEs will be required to follow the rules of the local MOFCOM bureau and their local AIC. FIEs that completed company registration at their local AIC before the Decision takes effect will be required to complete the record-filing based on the new rules. The procedures for making changes to records on file for existing FIEs will remain the same.

We will continue to follow up on related information and share it as appropriate.

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