



The Ministry of Commerce ("MOFCOM") issued the "Circular on Issues Regarding the Delegation of Approval Authority for Foreign-Invested Commercial Enterprises ("FICEs") to the Local Authorities" (Shangzihan [2005] no.94) ("the Circular") on 9 December 2005. According to the Circular effective 1 March 2006, the approval of FICE establishments in general will be delegated to MOFCOM at local provincial level and the Administrative Committee of the Economic and Technological Development Zones ("ETDZs") (for FICEs set up in state approved ETDZs).

Highlights of the Circular:

The local MOFCOM will now be responsible for the approval of the following:

1. New FICE establishments
2. Expansion of business scope of FIEs to include the allowable scope of activities of a FICE
3. Application for changes by existing FICEs
4. Opening of retail shops within the same municipality / province / ETDZ if the following conditions can be fulfilled:
 - (a) The area of a single store does not exceed 5,000 sqm., the total number of stores does not exceed 3, and the total number of similar stores opened by the foreign investor in China via established FICE does not exceed 30.
 - (b) The area of a single store does not exceed 3,000 sqm., the number of stores does not exceed 5, and total number of similar stores opened by the foreign investor in China via established FICE does not exceed 50.
 - (c) The area of a single store does not exceed 300 sqm.

Approval of the State MOFCOM will only be required if the FICE establishments are of the following nature:

1. Sales activities conducted via television, telephone, mail ordering, internet, vending machine, etc.
2. Trading and distribution of fundamental raw materials for industrial use, including steel, precious metal, iron ores, fuels, rubber, etc.
3. Trading and distribution of specified products such as books, newspapers, periodicals, refined oil, automobiles, edible sugar, cotton, pharmaceutical products, etc., as specified in the FICE Regulations.

Implications to Foreign Investors:

1. Approval time of FICE establishments in general can be substantially shortened to speed up the development of full-fledged trading and distribution operation in China.
2. The setting up of branches, retail outlets and application for subsequent changes should also be more efficient as they can all be dealt with at the local level.
3. Restructuring of existing FIEs, i.e., upgrading into FICEs for full-fledged trading and distribution activities, can be carried out within a more realistic timeframe as approval can be granted at the local level.

In the context of this China Tax / Business News Flash, China refers to the People's Republic of China but excludes Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan Region.

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