

client alert

DISCLOSURE OF ENTERPRISE INFORMATION | CHINA |

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SAIC ANNOUNCES NEW REPORTING AND DISCLOSURE RULES FOR COMPANIES

The State Administration for Industry and Commerce (“**SAIC**”) has issued a series of new regulations (the “**New Rules**”) governing China’s new reporting and disclosure system for businesses, which applies to all enterprises registered with SAIC or its local branches (the “**AICs**”) - including foreign-invested companies - operating in China. Investors should take note of the many changes brought by this new system, including new compliance requirements and potential benefits.

BACKGROUND

To spur development, the State Council has sought a more efficient, “market-oriented” approach to regulating business activities. For example, earlier this year, the new *Company Law* removed minimum capital requirements and replaced the paid-in capital verification system with a simple reporting system¹. Then, in August, it issued the *Interim Regulations on Enterprise Information Disclosure*, replacing the old annual inspection system with an annual reporting system.

The old system required all companies to undergo rather complicated formalities, including the submission of financial statements, to pass the AIC’s annual inspection. Such formalities, while theoretically allowing great regulatory oversight, placed a huge burden on companies in terms of both time and costs.

The new system created by the State Council and SAIC’s New Rules aims to ease this burden by reducing the amount of administrative formalities, as well as to increase transparency by making such annual reports available to the public. The New Rules, which went into effect on October 1, 2014, include:

- *Interim Measures for Random Inspection of Information Published by Enterprises*
- *Interim Measures for the Administration of the List of Enterprises with Irregular Operations*
- *Interim Provisions on the Public Disclosure of Information regarding Administrative Sanctions Imposed by the Administration for Industry and Commerce*
- *Interim Measures for Annual Reporting by Individual Entrepreneurs*
- *Interim Measures for the Publication of the Annual Reports of Special Farmers’ Cooperatives*

¹ Please see our Client Alert “Amendment to the PRC Company Law”, available at http://www.gide.com/sites/default/files/gide_china_clientalert_amendment_to_prc_company_law_jan2014_en.pdf

ANNUAL REPORTING

Companies must submit annual reports to AIC through the National Enterprise Credit Information Disclosure System (全国企业信用信息公示系统, the “**Reporting System**”). The reports must be submitted between January 1 and June 30 of the following year and include the following details, which will be available to the public:

- Contact information (e.g. mailing address, phone number, email address);
- Operational status (e.g. in operation, closed, in liquidation);
- Equity investments;
- Amount of capital subscribed and contributed, as well as when and how it was contributed by the shareholders or sponsors (required only for limited liability companies and companies limited by shares);
- Shareholding changes (e.g. equity transfers by shareholders; required only for limited liability companies); and
- Corporate website, as well as the names of and URL links to any online business operations.

Companies must also submit the following information in their annual reports to the Reporting System by the June 30 deadline; however, they may choose whether to make such details available to the public:

- Total workforce;
- Total assets and liabilities;
- Securities provided to third parties;
- Total owners' equity;
- Total operating income;
- Income from primary business;
- Gross and net profits; and
- Amount of taxes paid.

REAL-TIME REPORTING

Under the New Rules, companies must disclose any changes to the following information via the Reporting System within 20 working days of the formation of the relevant information:

- Capital subscription and contributions (e.g. amount, date, form) by shareholders (if a limited liability company) or sponsors (if a company limited by shares);
- Shareholding changes (e.g. equity transfers; applicable only to limited liability companies);
- Status of any regulatory permit or licence;
- Pledges of intellectual property rights;
- Administrative sanctions; and
- Other information required to be disclosed by law.

LEGAL CONSEQUENCES FOR NON-DISCLOSURE

- **Random Checks by AIC**

Local AICs will verify submitted information through checks of companies selected at random. The results of these checks will be made public through the Reporting System.

- **Watch List**

Local AICs will compile and publish a List of Irregular Operators, available on the Reporting System. The list will include companies that:

- Fail to submit their annual reports by the statutory deadline;
- Fail to disclose required information within the prescribed 20-day time period;
- Suppress information that must be disclosed or provide fraudulent information; or
- Cannot be reached at their registered domicile or business premises.

- **Blacklist**

Companies that do not submit annual reports for three consecutive years will find themselves on the List of Enterprises Committing Serious Violations, also available to the public on the Reporting System. They will remain on the blacklist for at least five years. Moreover, their legal representative or person in charge will not be allowed to serve as the legal representative or person in charge of another company for three years.

RESPONSIBILITIES OF AUTHORITIES

Local AICs are required to input the following information obtained from various corporate filings in the Reporting System within 20 working days of the formation of the relevant information. Again, this information will then be available to the public:

- Corporate registration details;
- Mortgages on movable assets;
- Equity pledges;
- Administrative sanctions; and
- Other information required to be disclosed by law.

Other government regulators must publish the following information formed during the performance of their duties:

- Status of administrative approvals;
- Administrative sanctions; and
- Other information required to be disclosed by law.

Such regulators may disclose the information through their own databases, but in any case the New Rules call for such information to be shared between them and the AICs. We are not aware of any other regulator that has submitted information to the Reporting System.

OTHER REPORTING OBLIGATIONS

In addition to the SAIC reporting requirements, foreign-invested companies (“**FIEs**”) are subject to the annual reporting requirements of the Ministry of Commerce, State Administration of

Foreign Exchange (“SAFE”), Ministry of Finance, National Bureau of Statistics, and State Administration of Taxation². Pursuant to the Notice, FIEs are required to submit annual reports to the Online Joint Reporting and Sharing System³ (or for foreign exchange annual reporting, to SAFE’s Application Service Platform⁴).

The annual report mainly comprises:

- The “Annual Report Book”, which contains seven forms covering: (i) basic company information (e.g. company name, investors); (ii) capital contribution information (e.g. total investment amount, registered capital, shareholding); (iii) foreign shareholding information (e.g. capital contributions of the foreign investor(s), dividends payable to the foreign investor(s)); (iv) external investments; (v) branches; (vi) annual operating information (e.g. revenue, expenses, assets and liabilities, taxable amounts); and (vii) other information (e.g. industry, employees, registration certificates issued by other main authorities);
- Annual financial statements (e.g. balance sheet, profits and losses, cash flow);
- Foreign exchange reporting forms (filed on SAFE’s Application Service Platform); and
- Foreign-Invested R&D Institution Information Form and Foreign-Invested R&D Institution Questionnaire.

Please note that neither the Notice nor authorities have specified a deadline for submitting the annual report in 2015 or future years⁵.

COMMENTS

The new annual reporting systems of SAIC and MOFCOM et al. focus on information pertaining to the good standing of companies and could be a useful tool for market players to evaluate the creditworthiness of a potential business partner or acquisition. Of course, as these systems are still very new, it remains to be seen how regulators will shape and enforce the requirements in the future. We will follow developments and keep you updated. In the meantime, please do not hesitate to contact Gide if you have any questions on compliance with these changes.

² *Notice on the Joint Reporting of Annual Business Operating Conditions by Foreign-Invested Companies* (the “Notice”), issued in and effective from April 2014

³ www.lhni.gov.cn

⁴ <http://asone.safesvc.gov.cn/asone/>

⁵ The submission period in 2014 for the filing 2013 annual reports was April 21 to June 30 (May 12 to August 31 for foreign exchange reporting to SAFE).

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