
THE PRC REGULATORY FRAMEWORK

Principal laws and regulations related to industrial policy

According to 指導外商投資方向規定(國務院令第346號) (Provisions of Foreign Investment Direction (Decree of the State Council No. 346)*) issued by the State Council on 11 February 2002 and effective on 1 April 2002, foreign investments are classified into four categories: encouraged, permitted, restricted and prohibited. Foreign investment which is classified as encouraged, restricted and prohibited categories are listed in 外商投資產業指導目錄 (Foreign Investment Industrial Guidance Catalogue*). Foreign investment that is not classified as encouraged, restricted, or prohibited is categorised as permitted. Foreign investment in the permitted category is not listed in 外商投資產業指導目錄 (Foreign Investment Industrial Guidance Catalogue*). Under the provisions of the 外商投資產業指導目錄(2007年修訂) (Foreign Investment Industrial Guidance Catalogue (Amended in 2007)*) issued by 國家發展和改革委員會 (National Development and Reform Commission*) and 商務部 (Ministry of Commerce*) on 31 October 2007 and effective on 1 December 2007, the construction and operation of top-grade hotel is classified as a restricted industry under the Foreign Investment Industrial Catalogue, and the construction and operation of other types of hotels has not been listed in the encouraged, restricted, and prohibited categories in 外商投資產業指導目錄 (Foreign Investment Industrial Guidance Catalogue*).

Under the provisions of 關於加快住宿業發展的指導意見 (Recommendations on Accelerating the Development of Lodging Industry*) issued and promulgated by the Ministry of Commerce on 22 March 2010, developing budget hotels is the principal strategy for promoting the transformation of the traditional lodging industry, accelerating the transformation of the lodging industry structure and providing convenient, safe, hygienic and comfortable accommodations for the general public. Expanding the development of budget hotels, raising brand awareness, and promoting the chain development of budget hotels will increase the ratio of budget hotels in the PRC from less than 10% to around 20% within two to three years.

Principal laws and regulations related to hotel operations

Under the provisions of 旅館業治安管理辦法 (Measures for the Control of Security in the Hotel Industry*), issued by 公安部 (Ministry of Public Security*) on 10 November 1987 and adopted by the State Council on 23 September 1987, and the Decision of the State Council on 國務院對確需保留的行政審批專案設定行政許可的決定(國務院令第412號) (Establishing Administrative Licence for the Administrative Examination and Approvals Items Necessary to be Retained (Decree of the State Council No. 412)*) promulgated by the State Council on 29 June 2004, enterprises engaging in the hotel industry shall obtain a 特種行業許可證 (Licence of Special Trade*) approved and issued by provincial public security authority in the region. Additionally, under 旅館業治安管理辦法 (Measures for the Control of Security in the Hotel Industry*), hotel operators are obligated to exercise security controls, such as duly registering guests to whom accommodations are provided and examining the identification cards of the guests. If the operators discover anyone violating the law, behaving suspiciously or there is an offender wanted by the public security authority, the hotel must report to local public security authority immediately and none of such information shall be concealed and withheld.

THE PRC REGULATORY FRAMEWORK

Under the provisions of 公共場所衛生管理條例(國發[1987]24號) (Public Area Hygiene Regulations (Guo Fa [1987] No. 24)*) issued by the State Council on 1 April 1987, hotel operators must obtain 衛生許可證 (Public Area Hygiene Licence*) issued by provincial public health administrative department before the commencement of business. Any employee that serves customers directly in public areas in any industry, must first obtain 健康合格證 (Health Certification*) prior to work.

Under the provisions of 中華人民共和國消防法 (Fire Prevention Law*), which was revised and adopted in 中華人民共和國第十一屆全國人民代表大會常務委員會 (the PRC 11th Standing Committee of the National People’s Congress*) in their 5th meeting on 28 October 2008, and promulgated and effected on 1 May 2009, public gathering places, such as hotels, are required to perform fire prevention safety inspection to their facility by respective provincial security fire fighting authority prior to the commencement of business.

Under the provisions of 娛樂場所管理條例(國務院令(第458號)) (Regulations for Administration of Entertainment Facilities (Decree of the State Council No. 458)*), which was adopted in the 122th Standing Meeting of the State Council on 18 January 2006 and effective from 1 March 2006, and the Circular on Carrying out 文化部關於貫徹〈娛樂場所管理條例〉的通知(文市發(2006)7號) (Regulations for Administration of Entertainment Facilities issued by Ministry of Culture (Wen Shi Fa [2006] No. 7)*), which was issued and promulgated by 文化部 (Ministry of Culture*) on 6 March 2006, hotels that operate entertainment businesses such as discos and video games are required to obtain 娛樂經營許可證 (Licence for Entertainment Business Operations*).

Principal Laws and Regulations Related to Consumer Protection

Under the provisions of 中華人民共和國消費者權益保護法(主席令第十一號) (Law on the Protection of the Rights and Interests of Consumers (Decree of the President No. 11)*), which was adopted in the 4th meeting of 中華人民共和國第八屆全國人民代表大會常務委員會 (the PRC 8th Standing Committee of the National People’s Congress*) on 31 October 1993 and effective on 1 January 1994, business operators are required to ensure their commodities and services meet safety requirements. If business operators acknowledge that any of their commodity and service, even under proper use, has serious defects which may incur personal injury or damage to property, such operators must report to related administrative department and disclose to the public immediately with adoption of preventive measures. Business operators shall provide customers with accurate information of their commodities and services and refrain from conducting false advertising. Business operators shall not set unreasonable or unfair terms for consumers or alleviate or release themselves from civil liability for harming the legal rights and interests of consumers by means of standard contracts, circulars, announcements, shop notices or other means. Business operators shall not insult consumers, conduct searches on consumers or articles carried by consumers, or infringe upon the personal freedom of consumers.

Business operators may be subject to civil liabilities for failing to fulfill the obligations stated above. These liabilities include but are not limited to discontinuing offence against the consumer, restoring the consumer’s reputation, eliminating the adverse effects suffered by the consumer, and offering an apology and compensation for any losses incurred.

THIS WEB PROOF INFORMATION PACK IS IN DRAFT FORM. The information contained herein is incomplete and is subject to change. This web proof information pack must be read in conjunction with the section headed “Warning on the cover of this web proof information pack.

THE PRC REGULATORY FRAMEWORK

Business operators may be subjected to penalties such as the issuance of a warning, confiscation of any illegal income, imposition of a fine ranging from one to five fold of the illegal income, order to cease business operation, and revocation of its business licence, etc.

On 4 December 2003, 最高人民法院審判委員會 (the Board of Review of the Supreme People’s Court*) enacted the 最高人民法院關於審理人身損害賠償案件適用法律若干問題的解釋(法釋[2003]20號) (Interpretation of Some Issues Concerning the Application of Law for the Trial of Cases on Compensation for Personal Injury (Fa Shi [2003] No. 20)*) in their 1299th meeting. The Supreme People’s Court shall support to further increase the liabilities of business operators engaged in the operation of hotels, restaurants, or entertainment facilities or any other natural person, legal entity and organisation of public activities and subject such operators to compensatory liability for failing to fulfill their statutory obligation to a reasonable extent or guarantee the personal safety of others.

Principal laws and regulations related to environmental protection

Under the provisions of 中華人民共和國清潔生產促進法 (Law of the PRC on Promoting Clean Production*) adopted by 中華人民共和國第九屆全國人民代表大會常務委員會 (the PRC 9th Standing Committee of the National People’s Congress*) in their 28th meeting on 29 June 2002, and effective on 1 January 2003, enterprises pursuing service business in restaurant, entertainment, and hospitality, etc, shall adopt the use of technology and facility which are energy and water efficient and beneficial to environmental protection, and also minimise or eliminate the use of wasteful and polluting consumables.

Under the provisions of 中華人民共和國水污染防治法(主席令第八十七號) (Law of the PRC on the Prevention and Control of Water Pollution (Decree of the President No. 87)*), revised and adopted in 中華人民共和國第十屆全國人民代表大會常務委員會 (the PRC 10th Standing Committee of the National People’s Congress*) on their 32nd meeting on 28 February 2008, and effective on 1 June 2008, enterprises that directly or indirectly discharge industrial wastewater or medical effluent or any wastewater or effluent restricted under the regulation shall obtain the 排污許可證 (Urban Wastewater Discharge Permit*) issued and approved by 排水管理部門 (Department of Drainage*).

Under the provision of 城市排水許可管理辦法 (Administrative Measures for Urban Sewage License*) discussed and adopted by 建設部 (the Ministry of Construction*) in their 112th standing meeting on 11 December 2006, and effective on 1 March, 2007, enterprise and sole proprietor pursuing business in manufacturing, construction, electricity and natural gas production, research, hospitality and beverages, entertainment, residential services and other services and connecting with the urban water discharging network and its affiliated facilities to discharge wastewater shall obtain 城市排水許可證 (Urban Wastewater Discharge Permit*) issued and approved by 排水管理部門 (Department of Drainage).

Principal laws and regulations related to trademarks

Under the provisions of 中華人民共和國商標法(主席令第59號) (PRC Trademark Law (Decree of the President No. 59)*) and 商標法實施條例(國務院令第358號) (Implementation Regulation of the PRC Trademark Law (Decree of the State Council No. 358)*) approved in the 24th meeting of 中華人民共和國第五屆全國人民代表大會常務委員會 (the PRC 5th

THIS WEB PROOF INFORMATION PACK IS IN DRAFT FORM. The information contained herein is incomplete and is subject to change. This web proof information pack must be read in conjunction with the section headed “Warning on the cover of this web proof information pack.

THE PRC REGULATORY FRAMEWORK

Standing Committee of the National People’s Congress*) in 23 August 1982 and amended on both 22 February 1993 and 27 October 2001, registered trademarks that have been approved by 國家工商行政管理總局商標局 (Trademark Department of the State Administration of Industry and Commerce*) will obtain legal protection and be granted a term of ten years from the date of the approved registration. Contracts to authorise the use of trademarks are required to be reported to 國家工商行政管理總局商標局 (Trademark Department of the State Administration of Industry and Commerce*). The laws and regulations stated above have imposed relevant provisions on violating the authorised use of trademarks and the associated penalties.

Principal laws and regulations related to land use of hotel

According to the 土地利用現狀分類 (Classification of Land Utilisation Situations*) jointly issued by 中華人民共和國質量監督檢驗檢疫總局 (General Administration of Quality Supervision, Inspection and Quarantine of the People’s Republic of China*) and 中國國家標準化管理委員會 (Standardisation Administration of the PRC*), on 10 August 2007, land usage is classified as agricultural land, construction land and unused land. Construction land is categorised by its land use as commercial and services use, mining, industrial and storage use, residential use, public administration and services use, transportation use and special category, etc., in which the scope of commercial and services land use includes wholesale and retails use, hospitality and food and beverages use (including motel, hotel, inn, hostel, guesthouse, resort, restaurant and bars, etc.), commercial and financial use and other commercial use, etc.

Principal laws and regulations related to taxation

Enterprise income tax

Under the provisions of 中華人民共和國企業所得稅法 (Enterprises Income Tax Law of the PRC*) and its implementation regulations effective from 1 January 2008, a resident enterprise is subject to enterprise income tax for the income derived from both inside and outside the territory of the PRC. An institution or establishment set up by a non-resident enterprise in the PRC is subject to enterprise income tax for the income derived from such organisation or establishment in the PRC and the income derived from outside the PRC that has an actual connection with such organisation or establishment in the PRC. For a non-resident enterprise which has not set up an institution or establishment in the PRC, or has set up an institution or establishment but the income derived has no actual connection with such institution or establishment, its income derived in the PRC will be subject to enterprise income tax.

The enterprise income tax rate is 25%. A non-resident enterprise without a permanent establishment in the PRC or such non-resident enterprise which has set up a permanent establishment in the PRC but its income is not connected with the above-mentioned permanent establishment will be subject to tax on its PRC-sourced income. The income shall be taxed at the reduced rate of 10%.

THIS WEB PROOF INFORMATION PACK IS IN DRAFT FORM. The information contained herein is incomplete and is subject to change. This web proof information pack must be read in conjunction with the section headed “Warning on the cover of this web proof information pack.

THE PRC REGULATORY FRAMEWORK

Under the provision of 內地和香港特別行政區關於對所得避免雙重徵稅和防止偷漏稅的安排 (Arrangement between the Mainland and Hong Kong for the Avoidance of Double Taxation and Tax Evasion on Income*) effective on 1 January 2007, where a Hong Kong tax resident enterprise and as a beneficial owner directly holds at least 25% of shareholding of a PRC enterprise, the withholding tax rate with respect to the payment of dividends by such PRC enterprise to such Hong Kong tax resident enterprise and as the beneficial owner is 5%. Otherwise, the withholding tax rate is 10% for the relevant dividends.

Under the provision of 關於加強非居民企業股企股權轉讓所得企業所得稅管理的通知 (國稅函698號) (Notice on Strengthening Administration of Enterprise Income Tax for Share Transfers by Non-PRC Resident Enterprises (State Administration of Taxation Circular No. 698)*), issued by 國家稅務總局 (State Administration of Taxation*) on 10 December 2009, where a foreign investor transfers its indirect equity interest in a PRC resident enterprise by disposing of its equity interests in an overseas holding company (excluding buying and selling the stocks of a PRC resident enterprise effected through public stock exchanges) (hereinafter referred to as an “**Indirect Transfer**”), and such overseas holding company is located in a tax jurisdiction that: (i) has an effective tax rate less than 12.5% or (ii) does not tax foreign income of its residents, the foreign investor shall report to the competent tax authorities of the PRC resident enterprise of this Indirect Transfer. The PRC tax authority will verify the authenticity of the Indirect Transfer. If it was established for the purpose of avoiding PRC tax, the PRC tax authority may disregard the existence of the overseas holding company. As a result, gains derived from such Indirect Transfer may be subject to PRC withholding tax at a rate up to 10%. State Administration of Taxation Circular No. 698 also provides that, where a non-PRC resident enterprise transfers its equity interests in a PRC resident enterprise to its related parties at a price lower than the fair market value, the relevant tax authority has the power to make a reasonable adjustment to the taxable income of the transaction.

Business tax

Under the provision of 中華人民共和國營業稅暫行條例(國務院令第540號) (Provisional Regulations of the PRC on Business Tax (Decree of the State Council No. 540)*) issued by the State Council on 10 November 2008 and implemented on 1 January 2009 and 中華人民共和國營業稅暫行條例實施細則 (Detailed Rules for Implementation of the Provisional Regulations of the PRC on Business Tax*) issued by 中華人民共和國財政部 (Ministry of Finance of the PRC*) on 1 January 2009, all institutions and individuals providing taxable services are subject to business tax, in which the business tax rate for services industry is 5%.