Starting a Business: A Practitioner’s View

Submitted by: PricewaterhouseCoopers
Starting a Business
A Practitioner’s View

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Section 1
Government’s Efforts in Building a Business Friendly Environment

Government’s efforts in building a business friendly environment in recent years

2008.07 Opening of Cross-strait Direct Flights
The first cross-strait charter flight took off on July 4, 2008. Now there are more than 200 flights a week on a regular basis.

2010.05 Enactment of the Statute for Industrial Innovation
The Statute for Industrial Innovation replaces the Statute of Upgrading Industries.

2010.06 Reduction of Corporate Income tax rate to 17%
Pursuant to the expiration of the Statute of Upgrading Industries, the corporate income tax rate is reduced accordingly.

2010.06 Economic Cooperation Framework Agreement
ECFA is signed on June 29, 2010 to promote the cross-strait economic and trade relations by way of customs duty reduction, among others.
Section 2
Roadmap of Starting a Business
Start Up a Foreigner Investment Approved (FIA) Company

Investors

Pre-approval of Company Name and Business Scope
Ministry of Economic Affairs (MOEA)

Open Bank Account
Local Bank

Pre-approval of Investment
MOEA

Capital Injection
Local Bank

Capital Verification
MOEA

Company Registration
MOEA/City Government

Business/Tax Registration
Tax Authority

Exporter/Importer Registration
Bureau of Foreign Trade

Joint Approval for Regulated Businesses (*)
Other Competent Authorities

Environmental Pre-approval for Facility
City Government

Factory Registration
City Government

Starting the Business

(*) Regulated businesses include businesses that are restricted, cross-border mergers, investment amount exceeding NTD 1.6 billion.

Section 3
Deregulation in Recent Years
In recent years, our government continues their efforts in deregulation to provide for a more competitive business environment.

For foreign investors, even though the foreign investment approval formalities remain, there are now less restricted categories for investments, and the review process has become much more simplified and streamlined compared to just a few years ago. In addition, the abolishment of the corporate license and business license, in conjunction with the reduction of the corporate tax rate, also serves to make us a more business friendly environment.

Below, as constrained by time, we only touch upon certain selected deregulation issues.

**Restrictions on Investment from PRC**

Historically, PRC entities or entities with PRC ownership are forbidden from investments. On June 30, 2009, this ban was partially lifted. 204 investment categories are allowed for investment from PRC persons as of now.

To determine whether an investor is a regulated PRC entity, three criteria are used:
1. Entities registered in PRC
2. Non-PRC foreign entities with 30% or more direct or indirect PRC ownership
3. Non-PRC foreign entities controlled by PRC entities

In practice, given the myriad of financing structures available, it may be challenging to identify the beneficial owner of a foreign entity –
1. Nominee or alternative contractual arrangement
2. Indirect control through financing arrangement
3. Complex shareholding structure

As such, it may be explored to enhance the review process to be more predictable and time efficient.
Abolishment of Minimum Capital Requirement

Historically, companies seeking to register for setting up businesses are required to inject substantive amount of minimum capital. Such requirement was maintained for many years without change until recent years.

In 2008, the minimum capital was eventually reduced to NTD500,000 (for a company limited by shares). In 2009, the minimum capital requirement was abolished.

In practice, although the minimum capital requirement is abolished, the competent authorities will still require certain capital to be injected to meet direct setup expenses.

Abolishment of minimum capital requirement appears to follow the current trend to simplify incorporation requirements. However, by reducing the opportunity cost of setting up a company, such deregulation may lead to proliferation of sham companies and concerns regarding adequate protection of creditors of such companies.

To prevent abuse of sham company practice, the government may consider to raise more public awareness of this matter.

Capital Review Report by CPA

Historically, due to minimum capital requirement, a capital review report by CPA was required as a necessary document to incorporate a new business.

Although the minimum capital requirement was abolished since 2009, the CPA’s capital review report remains a necessary incorporation documents, merely to verify whether the injected capital conforms with the promoters resolution and is sufficient to meet the setup costs.

In many countries, whether the capital is injected is a matter of contractual obligation of the investors to the company; it is not a matter for a regulatory oversight. Therefore, a CPA’s capital review report is not a required incorporation document.

Rather than protecting a company’s stakeholders, the CPA’s capital review report may result in unjustified reliance by unsuspecting stakeholders. Without such a CPA’s capital review report, the stakeholders may in fact carry out a due diligence on their own.
Corporate Name Reservation and Approval

As a matter of law, corporate name reservation and approval has been a necessary step to incorporate a new company. A company name cannot be confirmed pending the authority’s confirmation that the intended name is not currently in use by an existing company (no matter it is a dormant company or not).

Recently, there appears to be discussions that when an intended name is currently used by a dormant company not engaged in business for a certain period of time, such intended name can be released for use by others.

Since the above deregulation would tend to release more corporate names, this direction should be implemented as soon as possible. However, the current corporate name search system does not extend to the trade name search, resulting in potential overlap of corporate names with trade names. Therefore, how to integrate the corporate name search and the trade name search may be a challenge for future regulation.

Environmental Control

Increasingly, environmental control and compliance has become a more prominent focus for regulators.

Recently, several investment projects were not implemented on schedule due to environmental disputes and concerns from the environment regulator. Further, one recent court ruling has effectively suspended an ongoing investment project by a key hi-tech company pending re-evaluation of its environmental impact. This is a case drawing much attention from the general public.

In the interest of attracting foreign investment, it may be considered to make the relevant regulations and procedures more predictable.
Section 4
Ending Remark

To promote and facilitate foreign investments, our government in this year set up the InvesTaiwan Service Center. It is understood that our government is well-meaning and quite determined to attract foreign investments. We also believe that, through such center, more foreign investment could be invited.

However, our observation is that, to compete with other countries in the Asian region for foreign investment, the government may still need to elaborate the possibility to further deregulate and offer a more predictable and flexible regulatory environment.
Session 2: Starting a Business / Chinese Taipei

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