

CHINA LEGAL BRIEFING* 167

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Provisions for the Administration of Foreign Invested Construction Project Service Enterprise (Decree No.155 of the Ministry of Construction and the Ministry of Commerce (MOFCOM))

外商投资建设工程服务企业管理规定 (建设部商务部令第155号)

Issued By **The Ministry of Construction and the Ministry of Commerce (MOFCOM)**
Subject **Foreign Invested Construction Project Service Enterprise**
Promulgated on **January 22nd 2007**
Effective from **March 26th 2007**
Source www.cin.gov.cn

The Provisions for the Administration of Foreign Invested Construction Project Service Enterprise (the “Provisions”) have been promulgated in order to further deepen the opening up and standardize the administration on foreign invested construction project service enterprises.

The Provisions shall apply where establishing foreign invested construction project service enterprise within the territory of China, where applying for the qualification as a foreign invested construction project service enterprise, and where executing the supervision and administration on foreign invested construction project service enterprise.

The term “foreign invested construction project service enterprise” as mentioned herein refers to those Sino-foreign equity joint venture construction project service enterprises, Sino-foreign contractual joint venture construction project service enterprises and foreign invested construction project service enterprises that incorporated within the territory of the People’s Republic of China and have obtained the responding qualifications. The term “construction project service” as mentioned herein shall include the construction project supervision, project bidding agency and project cost enquiry.

According to the Provisions, three main licenses or certificates are required for foreign investors to incorporate a foreign invested construction project service enterprise within the territory of China and to engage in the business of construction project services, the certificate of approval of foreign invested enterprise issued by competent administrations of commerce, the business license issued by the administrations for industry and commerce, and the qualifications approved by the construction administrations. The Provisions also specify the application procedures and documents required to support such application.

Measures for the Administration of License of Tobacco Patent Sales (Order No. 51 of the National Development and Reform Commission of the People's Republic of China)

烟草专卖许可证管理办法(中华人民共和国国家发展和改革委员会令第51号)

Issued By **The National Development and Reform Commission**
Subject **License of Tobacco Patent Sales**
Promulgated on **February 5th 2007**
Effective From **March 7th 2007**
Source www.sdpc.gov.cn

The Measures for the Administration of License of Tobacco Patent Sales (Order No. 51 of the National Development and Reform Commission of the People's Republic of China) (the "Measures") have been promulgated with the purpose of standardizing the administration on license of tobacco patent sales and therefore protecting the lawful benefits of citizens, legal persons and other organizations.

The Measures have been enacted in line with the Tobacco Patent Sales Law of the People's Republic of China, the Administrative License Law of the People's Republic of China, and the Detailed Rules for the Implementation of the Tobacco Patent Law of the People's Republic of China, and the provisions of the related laws and administrative regulations.

The Measures shall be applicable to the administration on license of tobacco patent sales within the territory of China, including the customs surveillance zones and the tax free zones, but Hong Kong, Macao and Taiwan shall be excluded.

The Measures seem to reflect a rather negative attitude towards foreign investment investors, since there are clear provisions that foreign invested commercial enterprise shall not be engaged in the business of wholesale or retail of the patent sales of tobacco products, and shall not be engaged in the business operation of patent sales of tobacco products in any disguised forms including franchising or other reinvestment.

According to the Measures, the "foreign invested commercial enterprise" mentioned herein shall refers to the Sino-Foreign Equity Joint Ventures (EJV), the Sino-Foreign Contractual Joint Ventures (CJV), the Wholly Foreign Owned Enterprises (WFOE), and the enterprises incorporated by investors of Hong Kong, Macao and Taiwan.

Provisions Concerning the Exemption of Import Duties from the Articles Used for Scientific Research and Teaching (Decree No. 45 of the Ministry of Finance, the General Administration of Customs and the State Administration of Taxation)

科学研究和教学用品免征进口税收规定(中华人民共和国财政部、海关总署、国家税务总局令第45号)

Issued By **The Ministry of Finance, the General Administration of Customs, and the State Administration of Taxation**
Subject **Exemption of Import Duties**
Promulgated on **January 31st 2007**
Effective From **February 1st 2007**
Source www.customs.gov.cn

The Provisions Concerning the Exemption of Import Duties from the Articles Used for Scientific Research and Teaching (the “Provisions”) have been promulgated for the purpose of promoting the development of scientific research and education and regulating the duty-free import of articles used for scientific research and teaching. The Provisions are formulated in line with the state policies.

Where any scientific research institutes or school imports the articles used for scientific research and teaching that can not be made in China, for the purpose of scientific research and teaching and within reasonable quantities, and uses such articles directly for scientific research or teaching, the customs import duties, value-added taxes and the consumption taxes shall be exempted.

According to the Provisions, the term “scientific research institutes and school” mentioned herein shall refer to

- a) various kinds of institutes that are affiliated to the ministries, commissions and institutions directly under the State Council, and those under the provinces, autonomous regions, municipalities directly under the Central Government and cities specifically designated in the state plan and specially engaged in scientific research,
- b) institutions in higher education on or above the junior college level and the academic certificates thereof are recognized by the State, and
- c) other scientific research institutes and schools as verified by the Ministry of Finance jointly with other related departments under the State Council.

The Provisions have an Appendix which shows a very detailed list of the articles used for scientific research and teaching that are exempted from duties, in 16 categories.

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