



Legal News

I. SAMR Publishes Administrative Measures for Food Production Licensing

On January 3, 2020, the State Administration for Market Regulation ("SAMR") issued the Administrative Measures for Food Production Licensing (hereinafter referred to as the "Measures"), which will take effect on March 1, 2020.

In general, the Measures strengthen in-process supervision and post-production supervision on food production. Further, the Measures enhance the operability of food production license management system. Lastly, the Measures reflect China's institutional reformation among the food and drug regulatory system. We hereby highlight the following points for you.

(1) Pushing forward the digitalization of food production license

According to the Measures, the whole process of food production license procedure, including application, acceptance, review, certification and inquiry will be handled online.

The Measures also require that the electronic certificate of food production license shall be issued. And Article 60 of the Measures makes it clear that the electronic certificate has the same legal effect as the paper certificate.

Given that the whole process will be done online, previous provisions related to lost or damaged certificate are cancelled.

(2) Shortening the time limit of administrative procedures

• Time to do on-site inspection of the production site

The time limit for inspectors to complete the on-site inspection of the production site shall be shortened from 10 to 5 working days.

• Time for regulatory authorities to make decision of permission

The time limit for regulatory authorities to make decision of permission shall be shortened from 20 to 10 working days. Limit for extension time under special circumstances shall be shortened from 10 to 5 working days.

• Time for regulatory authorities to issue the license

The time limit for regulatory authorities to issue the license shall be shortened from 10 to 5 working days.

• Time for applying for cancellation of the license

The time limit for applying for cancellation from the date of termination of food production, or if the food production license is withdrawn or revoked, is shortened from 30 to 20 working days.

(3) Clarifying the responsibilities of regulatory departments at different levels

According to the Measures, the production license of infant auxiliary food, salt and other food will be in the charge of SAMR on the provincial level, including SAMRs of autonomous region (i.e. Inner Mongolia, Xinjiang, Ningxia, and Tibet) and municipality directly under the central government (i.e. Beijing, Shanghai, Tianjin, and Chongqing).

Instead of multiple supervising authorities, an applicant shall submit the application materials to one of the competent regulatory departments at its discretion when the applicant applies for licenses of more than one category. The accepting department shall timely inform the SAMR with all corresponding examination and approval authority to organize joint examination.

Lastly, the Measures emphasize the protection over business secrets of applicant. The administrative departments and its staff, and the personnel participating in the on-site examination shall not disclose the business secrets, undisclosed information or confidential business information submitted by the applicant without the consent of the applicant, except as otherwise provided by law or involving national security and major social and public interests.

(4) Simplifying the application materials for food production license

When applying for food production license, the applicant only needs to submit the application for food production license and other necessary materials, including food production equipment layout and food production process flow chart, list of main equipment and facilities for food production, information of full-time or part-time professional technical personnel and food safety management personnel, and food safety management system. Materials such as copy of business license is no longer required.

(http://gkml.samr.gov.cn/nsjg/fgs/202001/t20200103_310238.html)

II. SPC Amends Provisions on Evidence in Civil Procedure and Clarifies Rules for Examination and Judgment of Electronic Data

On December 25, 2019, the Supreme People's Court ("SPC") issued the Decision on Revising the Several Provisions on Evidence in Civil Procedure (the "Decision"), which will take effect from May 1, 2020.

The Decision made clarifications and supplementations on the provisions regarding electronic data as evidence in pace with the development and need of society and Chinese judicial system. We hereby highlight the following points for you.

(1) Clarifying the scope of electronic data (Article 15)

Electronic data includes the following information and electronic documents:

- information published on web pages, blogs, microblogs, and other network platforms;
- communication information of network application services such as short message service (as commonly called "SMS"), e-mail, instant messenger, and communication groups;
- registration information of users, identity authentication information, electronic transaction record, communication record, login log, and other similar information;
- documents, pictures, audio, video, digital certificates, computer programs, and other electronic documents;
- other information stored, processed or transmitted in digital form that can prove the facts of the case.

(2) Specifying the requirement of taking electronic data as evidence (Article 16)

Parties shall provide the original of the electronic data where they take electronic data as evidence. Further, the Article specifies that a copy made by the producer of electronic data that is consistent with the original, or a printed copy or other output medium that can be displayed or identified directly from the electronic data, shall be deemed as the original of the electronic data. For example, a printed email or web page that shows the content accurately and clearly will be considered as the original of electronic data evidence.

(3) Specifying the standard for judging the authenticity of certain electronic data (Article 106)

The people's court presumes that certain types of electronic data are authentic, however, parties may overturn these electronic data evidence by providing rebuttal or repudiation evidence. To be specific, unless it can be **rebutted** by sufficient evidence on the contrary, the people's court may confirm the authenticity of electronic data under the following circumstances:

- electronic data submitted or kept by the parties against their own interests;
- electronic data provided or confirmed by a neutral third-party platform recording and storing electronic data;
- electronic data formed in normal business activities;
- electronic data in the form of archives management;
- electronic data preserved, transmitted or extracted in a manner agreed upon by the parties.

If the contents of the electronic data are notarized by a notarial office, the people's court shall confirm the authenticity of the electronic data, unless it can be **overthrown** by sufficient evidence on the contrary.

(<http://www.court.gov.cn/fabu-xiangqing-212711.html>)

III. SPC Publishes the Interpretations on Certain Issues on Application of the Foreign Investment Law of the People's Republic of China

On December 26, 2019, the Supreme People's Court ("SPC") issued the Interpretations of the Supreme People's Court on Certain Issues on Application of the Foreign Investment Law of the People's Republic of China (the "Interpretations"), which came into force on January 1, 2020, to take effect along with the Foreign Investment Law and the Implementation Regulations of the Foreign Investment Law¹.

In the background of prominent contract disputes in the field of foreign investment and extensive criticism from international community that Chinese judicial branch fails to provide adequate measures to protect the legitimate rights and interests of foreign investors, SPC issued the Interpretations combined with trial practice. We hereby highlight the following points for you.

(1) Clarifying the scope of investment contracts (Article 1)

The investment contracts refer to the relevant contracts, including

- contracts for establishment of a foreign-invested enterprise;
- contracts for transferring shares of stock of a joint-stock company;
- contracts for transferring equity in a limited liability company;
- contracts for transferring shares in property or other like rights and interests; and
- contracts for completing [or establishing] a new project,

which are formed by foreign investors, i.e., foreign natural persons, foreign enterprises, or other foreign organizations, when directly or indirectly investing in the territory of China.

The Interpretations shall also apply to contractual disputes arising from acquiring a right or interest by a foreign investor through accepting a gift, partitioning a property, or merger or separation of enterprises.

(2) Standardizing the rules on determining the validity of foreign investment contracts

The Interpretations aim to keep investment contracts valid as much as possible to protect interests of foreign investors engaging investment in the territory of Mainland China and subsequently attract foreign investors. There are three points worth your attention:

First, for an investment contract formed in a sector other than those listed in the Negative List for Access of Foreign Investment referred to in Article 4 of the Foreign Investment Law², a people's court shall not entertain a claim made by a party that the contract is void or invalid on the ground that the contract has not been approved by or registered with the relevant administrative department.

Further, where a party claims that an investment contract is invalid for its violation of special administrative measures for restricted access of foreign investment, the people's court shall uphold the claim. However, the people's court shall support a claim that the investment contract is valid where the party has adopted necessary measures before the people's court making an effective judgment to satisfy the requirements of the aforementioned special administrative measures.

Lastly, before the people's court makes an effective judgment, where a foreign investor's investment no longer falls within the prohibited or restricted sectors due to the adjustment to the Negative List for Access of Foreign Investment, the people's court shall uphold the claim that the investment contract is valid.

(<http://www.court.gov.cn/fabu-xiangqing-212921.html>)

1. See our previous legal update on the Implementing Regulations on the Foreign Investment Law of the People's Republic of China,

<http://asiallians.com/zh-hans/china-legal-update-foreign-investors-know-implementation-rules-foreign-investment-law/>

2. The current version is Special Administrative Measures for Access of Foreign Investment (Negative List) (2019 Edition).

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