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BUSINESS REGISTRATION PROCEDURES DURING INTERNAL CORPORATE CONFLICT



Declaration and Legal Responsibility: Founders or the enterprise itself are mandated to declare their registration documents. They bear full legal responsibility for the legality, honesty, and accuracy of the information provided in these documents, including any reports.

Scope of Authority: The business registration authority's role does not extend to mediating disputes among company members, shareholders, or between the enterprise and external parties.

Representation in Limited Liability and Joint-Stock Companies: In scenarios where these companies have multiple legal representatives, the representative handling business registration is charged with ensuring and being accountable for the lawful exercise of their rights and duties as per legal stipulations.

1. Current Framework

The latest law on enterprises and its related regulations (together referred as the "Enterprise Law") mark a significant liberalization and simplification of business registration procedures. These regulatory changes aim to streamline the process, reduce bureaucratic red tape and associated costs for businesses, and thus enhance overall efficiency in business operations.

The framework establishes that the responsibility of the business registration authority is limited to verifying the authenticity of enterprise registration documents. It expressly releases this authority from all liability for legal infractions committed by an enterprise before to or after registration. Let's go into the details:

Use of Seals: A noteworthy relaxation is seen in the non-mandatory use of seals on certain documents, such as business registration applications, change notifications, resolutions, and minutes included in the business registration dossier. However, the application of seals on other documents within the dossier is governed by relevant legal norms.

These reforms clearly articulate a paradigm shift in the approach of business registration authorities. Their role is now more defined as record-keepers based on the validity of documents submitted by businesses and individuals, steering clear of involvement in a company's internal affairs. This shift not only simplifies and eases the business registration process but also strategically circumvents potential entanglements in internal corporate disputes, paving the way for a more business-friendly environment.

2. Case Study

Under the former regulatory framework governing business registration, internal disputes within a company often led to a standstill in processing registration documents by the business registration authority. This deadlock would, in turn, halt the company's operations, leaving it in a state of operational paralysis. However, the advent of the currency Enterprise Law has brought about a notable shift in this process.

The following case study of a pharmaceutical company shows important developments in the legal framework for business registration, particularly in the area of internal corporate disputes.

In this scenario, the company faced a deadlock when Mr. A, who owned a minority investment but served as Chairman and Director, was fired by the main stakeholders, Mr. B and Mr. C, for management infractions. Mr. A's unwillingness to convene or attend the Members' Council meeting, as well as his possession of the business seal, posed an obstacle to the formalization of corporate leadership changes.

However, under the current framework of the Enterprise Law, the necessity of a company seal for business registration change forms has been abolished. This change permits Mr. B and Mr. C to submit the Business Registration Dossier, including the Notification of change of legal representative and the relevant Decision and Minutes of the Members' Council meeting, without the need for a seal. This dossier, being complete and fully declared, satisfies the requirements of Article 4, Clause 20 of the Enterprise Law, ensuring its validity.

Under the previous regulations, such a situation would have led to prolonged legal disputes. The inability to submit a business registration application without the company seal, as required by the former regulations, meant that Mr. B and Mr. C's decision to appoint Mr. B as the new Chairman and Director could not be officially recognized. This impasse typically necessitated legal action against Mr. A for managerial misconduct, with the resolution potentially taking years, during which the company's operations would be severely hampered.

The business registration authority, therefore, is obligated to process this change. With the registration of a new legal representative, in this case, Mr. B, the company can circumvent the obstructive behavior of Mr. A. Additionally, the company has the option to register a new seal, allowing for uninterrupted business operations.

This instance demonstrates the effectiveness of the new regulations in resolving internal corporate disputes more efficiently than before. The elimination of the seal requirement in the business registration process not only expedites the resolution of such disputes but also ensures that the company's operations are not indefinitely stalled due to conflicts over legal representation. This is a significant stride towards fostering a more business-friendly environment, reducing unnecessary legal entanglements, and promoting smoother corporate governance.

