



# Update: Improving China's Licensing System: Recommendations for Key Sectors

May 2016

## Executive Summary

- The US-China Business Council (USCBC)'s annual membership surveys cite administrative licensing as a top challenge for conducting business in China, consistently ranking among the top 10 priority issues over the past decade.
- To address these challenges, China should ensure that foreign-invested and domestic firms are treated equally in all licensing processes throughout China. Equal treatment would guarantee US companies are able to fully participate and contribute to China's economy, and would help strengthen China's business environment and international competitiveness.
- An array of government approvals and licensing processes qualify as "administrative licenses," many of which are specific to particular industries. These recommendations build on the findings of USCBC's April 2016 [Licensing Challenges and Best Practices report](#).
  - USCBC recommends policymakers consider changes in four specific areas of the licensing process: information disclosure, expert panel reviews, approval timelines, and third-party recommendations. Documentation and information disclosure requirements for companies going through the licensing process can place companies' intellectual property – especially trade secrets – at risk of exposure. USCBC recommends that the government consult with companies to develop standardized documentation-disclosure requirements at all levels of government. Requirements should include procedures for the destruction of confidential and sensitive information that the company deems proprietary and has submitted during the licensing process.
  - Expert panel reviews, such as those used in the environmental impact assessment review process, pose the risk of intellectual property loss for companies seeking to license products or invest in China. To create more security for companies going through the expert panel review process, USCBC recommends allowing greater input from applicants on expert panel nominations and instituting a formal process to dispute nominations of experts from competing enterprises.
  - Clear, consistently implemented timelines help ensure transparency in any licensing process. Companies say that timelines often are not followed in certain approval processes, which creates significant delays in the process of investing in China. To improve transparency and predictability in approvals, USCBC recommends that the government develop clear guidelines requiring agencies to provide more frequent and timely updates to applicants. If the agency misses a deadline, agencies should explain why the approval was delayed.
  - China should ensure that governments at all levels do not mandate use of specific third-party entities in the licensing process. In instances where the use of a third-party service provider is required, companies should be able to choose their own service providers, including foreign companies licensed to undertake that work.
- Finally, implementation of a [nationwide market access negative list](#) would clarify which sectors are open to foreign investment and ensure consistent enforcement by local and provincial governments.

## Introduction

China's leadership has prioritized reforms to its administrative licensing system by streamlining, simplifying, and decentralizing aspects of its licensing and approvals processes. The US-China Business Council (USCBC) and its members recognize China's recent efforts and are supportive of its objective to strengthen the licensing system. To assist policymakers, USCBC is pleased to report on ways central and local governments can help improve China's approval process to create a business-friendly environment that advances the local economy and saves valuable government resources.

Since the State Council [announced licensing reforms in 2013](#), China's government has released new policies aimed at decentralizing or eliminating administrative approvals, reducing administrative fees, and limiting local government authority to institute new licensing procedures. Through November 2015, the central government reported reduced [administrative approval items, non-administrative processes, and administrative fees](#). Plans to [reduce licensing obstacles](#) this year signal the central government's intention to continue these reforms.

These steps suggest the government is making efforts to improve the commercial operating environment. USCBC appreciates these initiatives and encourages further openings in sectors relevant to foreign business. To support the Chinese government's efforts, USCBC has compiled recommendations for ways to reduce challenges in China's administrative licensing processes. These recommendations fall broadly into four categories: information disclosure, expert panel reviews, transparency, and consistency in approval procedures and timelines.

USCBC's recommendations are based on conversations with representatives from member companies in a wide range of sectors, including manufacturing, healthcare, information technology, retail, financial services, and others deeply involved in the licensing process in China, and who offer valuable input based on experience. These recommendations build on those listed in USCBC's April 2016 Licensing Challenges and Best Practices report.

To further address these challenges, USCBC encourages China to ensure that foreign-invested and domestic firms are treated equally in all licensing processes. Equal treatment would guarantee US companies are able to fully participate and contribute to China's economy, and would help strengthen China's business environment and international competitiveness.

## Information Disclosure

### Background

USCBC and its members appreciate the government's recognition of the importance of transparency in the administrative licensing process. Recent announcements provide good examples of this recognition: the Ministry of Environmental Protection's [Guidelines on Opening Government Information Related to Environmental Impact Assessments](#) and the National Development and Reform Commission's [Government Information Publicity Implementing Measures](#) require government agencies to inform companies of how approvals are evaluated and decisions made. These rules also allow the public to petition for the release of licensing information.

Despite these steps, companies are still vulnerable to loss of intellectual property, particularly trade secrets, during the licensing process. While the government allows companies in some cases to classify information as trade secrets in certain licensing processes, risk of exposure still exists. For example, the government may disclose trade secret information if it determines it is in the "public interest" to do so.<sup>1</sup> Furthermore, companies have said that in some cases authorities have requested information that is not directly related to the licensing process, even though Chinese law forbids approval authorities from requesting such information.<sup>2</sup> The risk that sensitive information will be disclosed creates a strong disincentive for companies

---

<sup>1</sup> Regulations of the PRC on the Disclosure of Government Information, Article 10; Regulations of the People's Republic of China on Open Government Information. Article 23. 2008.

<sup>2</sup> PRC Administrative Licensing Law. Article 31. 2004.

to introduce and use cutting-edge technology in China. As such, China may lose out on valuable investments and innovation that could spur economic growth and industry advancement.

### Case Studies

Generally, companies are concerned that providing information outside the scope of international standards in licensing puts their trade secrets at risk of exposure or theft. In response, companies may halt projects or withhold future investments. Several examples illustrate how information disclosure in the licensing process presents risk for loss of intellectual property. One company submitted its safety assessment to an approval agency and was required to provide specific temperature and pressure information for its process equipment, not the temperature and pressure ranges generally required during approval processes in most other countries. This specificity would make it easier for a competitor to learn details about a production process the company considered to be a trade secret. In this instance, general information about temperature and pressure ranges, rather than the specific data, would have likely provided sufficient information to evaluate safety.

In another example, one company's was required to include all prior approvals in its conceptual design package, including proof of compliance with occupational health standards and a power supply plan. These prior approvals had no direct relation to the office's analysis and approval, and contained proprietary information. Requiring these documents increased the exposure opportunities at multiple steps in the licensing system.

### Recommendations

To improve China's licensing and approval system and deter trade secret disclosures, USCBC recommends that relevant Chinese government agencies:

- Allow companies applying for licenses and approvals to identify trade secrets and sensitive intellectual property in disclosures to government agencies, and require those agencies to destroy this information within a defined time period after completion of the licensing review. Alternatively, should this information need to be retained, the government should prohibit the dissemination of proprietary details in public disclosures and interagency inquiries. The government should also institute specific consequences for those who violate these measures.
- Ensure that foreign and domestic companies are treated equally in all administrative licensing processes, particularly those requiring trade secret disclosures. For example, the [Interim Provisions for Trade Secret Protection among Central-Level State-Owned Enterprises](#) provides centrally administered state-owned enterprises protection from public disclosure of any trade secret that brings them economic or practical benefit. Adding language to provide similar protections for all companies in China—foreign and domestic—and enforcing those provisions will help attract foreign companies to China and promote investment.
- Standardize documentation disclosure requirements throughout the licensing and approval processes at all levels of government. Requirements should be objective and specific to avoid unnecessary disclosure and delay. Clarifying disclosure requirements will also prevent local-level authorities from requesting information beyond the scope of the license application under review.
- Eliminate the requirement in new applications of all information submitted for prior approvals. Instead, request applicants provide proof of approval. This will ease companies' concerns over disclosure, reduce paperwork, and ease burdens on agency staff.
- Seek companies' input to understand and define "essential" information. Such exchanges can help approval authorities gain a deeper understanding of intellectual property and define necessary information. This information can be used to develop standard templates for key licensing processes. Together, these steps will help regulators create an efficient licensing system while meeting regulatory needs.
- Adopt international best practices to evaluate new and existing regulations—such as the regulatory impact assessment (RIA) used by the United Kingdom, New Zealand, Russia, and Mexico. Using the RIA or a similar assessment will enable regulators to better understand how current or proposed regulations affect industry and government. In particular, for Chinese regulations that propose

collecting information from companies, such assessment would enable authorities to fully consider whether information is necessary and how collecting it might affect companies.<sup>3</sup>

- Encourage government agencies at all levels to sign mutual non-disclosure agreements with licensing applicants. This will reinforce that both sides are committed to confidentiality in investment and licensing approval processes.
- Establish best practices for local and municipal authorities to ensure compliance with existing regulations that limit disclosure.
- Conduct regular professional training for personnel at all levels of government who are involved with licensing and approval processes to better protect trade secrets and ensure familiarity with the issues and consequences of intellectual property disclosure.

## Expert Panel Reviews

### Background

Current regulations require expert panels for inspection, testing, and quarantine of equipment, facilities, products, and articles that directly concern public security, health, and safety of life and property.<sup>4</sup> Some USCBC members are concerned these panels might expose the company's technology through the licensing review process.

Companies have three major concerns about expert panel reviews. First, the government has the authority and tendency to nominate panelists who work at Chinese companies in competition with the applicant. Second, reports submitted to review panels often include detailed information about project costs and revenue, capacity and equipment, raw material and energy requirements, and other confidential operational details. Many companies consider this information to be a trade secret. Therefore, providing that information to anyone outside the company – including competitors and government officials – is extremely problematic, as companies risk competitive advantage, profits, and sensitive technology as a result of exposure. Third, companies indicate that experts are given unlimited authority to ask for information from companies, even when it has little or no relation to the panel's decision. While companies are willing to work with regulators to share information that is necessary and directly related to the licensing process, sharing this information with panel members who are also competitors creates a significant – and unnecessary – commercial handicap.

One example of how the government has sought to avoid such conflicts of interest is found in the PRC Bidding and Tendering Law, which regulates procurements related to the public interest in China. The law provides that those with an interest in a project are ineligible to serve on the project's bid assessment committee and will be replaced if they have already joined.<sup>5</sup> The government should continue to enforce this provision and create a similar rule for expert panel reviews. Ensuring that a similar provision is used throughout China will help address companies' concerns about trade secret exposure and create a more hospitable investment environment in China.

### Case Studies

After one company submitted its environmental impact assessment (EIA) report for consideration, the local government named a competitor to the expert review panel. The expert was a vice president of a domestic company in the same sector as the applicant company. The competing executive said he wanted a stake in the new project. To persuade the company to agree, he questioned parts of the project from his position on the panel. As a result, the project was delayed, putting the project at risk and slowing the employment and tax benefits that the project was expected to bring to the local community and government.

Another company said an expert on a panel reviewing its EIA report required that the company disclose operating details on a technology system nearly a year after the EIA was approved. The approval agency told the company that this disclosure could affect future projects in the region. The panel challenged the performance of the company's technology, which had already met US Environmental Protection Agency

---

<sup>3</sup> Regulatory Impact Analysis. Organization for Economic Co-operation and Development. 2012. <http://www.oecd.org/gov/regulatory-policy/ria.htm>

<sup>4</sup> PRC Administrative Licensing Law. Article 28. 2004.

<sup>5</sup> PRC Tendering and Bidding Law of The People's Republic Of China. Article 27. January 2000.

standards, and said that the technology would not function as the company had said it would. In its place, the panel directed the company to install a more complex, unproven, and costly system. To address expert concerns and demonstrate the value of the technology, the company was required to provide the panel with design details, which it considered trade secrets.

## Recommendations

The Chinese government should consider additional steps to ensure trade secret information is protected during expert panel reviews and that competitors are not named to panels. To do this, USCBC recommends that relevant government agencies:

- Enforce existing laws preventing individuals with a conflict of interest in a given project from serving on an expert panel. Where no such provisions exist, establish rules prohibiting the naming of experts with clear conflicts of interest to applicants' expert panels and requiring those with a conflict of interest be removed.
- Institute a formal process for applicants to dispute expert panel nominations where conflicts of interest exist. This process should include a timeline for consideration, review, and resolution of the dispute to minimize disruptions in the investment process.
- Allow greater input from applicants on expert panel nominations. Provide updated and complete lists of approved experts to companies and allow them to nominate a certain number of experts to the panel.
- Institute clear guidelines on requests for sensitive company information. Policies should require experts to support information requests with substantiated facts, commercial experience, and sound science. Create clear and formal processes for managing such requests, including a timeline in which requests must be made and for companies to respond.
- Draft and enforce regulations that require government officials – and those acting in a government capacity, such as expert panelists – to keep confidential all data collected during and after regulatory reviews and product approvals. Expert panelists should be required to return or destroy all data collected during their work on an expert panel. Regulations should outline specific consequences when such provisions are violated.
- Work with provincial and local governments to provide clear information to officials, industry, and the public via regulations, public seminars, or other means about the rules governing certification, selection, use, and operating conduct of expert panels. This information should include obligations for experts to withdraw from a case based on a conflict of interest. Work with officials at all levels to set clear expectations for the qualifications and conduct of members in the pool of experts who are available to serve on panels.

## Transparency and Uniformity in Approval Procedures and Timelines

### Background

USCBC companies greatly appreciate central and local government websites that clearly outline the application materials needed in different licensing processes. Making these requirements and timelines for approval easily accessible is a hallmark of advanced economies, an important indicator of regulatory transparency, and helps companies efficiently move forward in the investment process.

The Chinese government has stated its intent to streamline licensing processes to facilitate investment in its economy. As a part of these efforts, regulators should consider the benefits of consistently and accurately listing required documents for a given license on agency websites. Currently, Chinese central government laws ensure flexibility for unforeseen developments in licensing.<sup>6</sup> Such flexibility could allow inconsistent provisions or documentation requirements, which add costs to both companies and government agencies, and ultimately strain the overall economy.

---

<sup>6</sup> PRC Administrative Licensing Law. Article 15. 2004.

Many municipal governments also require “other documents required by government authorities.” Additional requirements from local governments can lengthen approval times and add costs for companies and the government to clarify “other documents” and ensure applications meet requirements. In addition, unclear requirements can cause companies to provide too much or too little information, which lengthens the process and burdens companies and government stakeholders. Companies often feel they have to provide sensitive information for the application to be approved.

Vague or unclear requirements can also lead to inconsistencies across jurisdictions. Without clear guidance, authorities sometimes misinterpret what information, forms, and materials are required in the licensing application, meaning the application process for the same license could be radically different in different jurisdictions. This unnecessarily complicates the process, and causes confusion among companies seeking to invest in China. Unclear documentation requirements can contribute to abuse of authority when the power to interpret requirements—or to grant the license itself—is concentrated to one individual.

Clear approval timelines are a key part of a transparent and efficient approval system. USCBC members across different industries appreciate that Chinese regulations stipulate that no administrative approval process can take longer than 60 days from receipt of an application to approval. If an approval is delayed, the government must provide the applicant an explanation.<sup>7</sup> However, numerous licensing processes are excluded from that time limit, including public hearings, bid invitations, auctions, inspections, testing, quarantines and expert evaluations.<sup>8</sup> For example, the recent [Notice on the Acceptance and Review of Administrative Licensing regarding Securities Investment Fundraising Applications](#) makes clear that expert panel reviews are exempt from licensing timelines. This can greatly extend the review process and reduce the accountability of license approval authorities.

#### Case Studies

As an example of how the lack of transparency affects companies in different areas of the licensing process, one company noted that they were asked by a local tax bureau to bring proper documentation to complete their tax filing, but were not given a complete list of necessary materials. Because of that oversight, a government representative was required to meet with the company representative at least five times in a three-week period. Each time, the official checked their paperwork and declared something new missing. The lack of clear process demanded extensive company and government time.

In another example, a company seeking to expand its production in China informed the local branch of the General Administration of Quality Supervision, Inspection and Quarantine that the company needed to import a specific piece of machinery from the United States. The agency required the company to provide a machine production invoice that had been reviewed and verified by the Chinese embassy in the United States. Though the company had undergone the application process in other locations in China, this was the first time such verification was required.

Several companies also provided examples showing the importance of clear timelines. In one instance, a USCBC company experienced problems with their approval timelines at the national level when it sought to convert its China subsidiary from a joint venture to a wholly-foreign owned entity. In the process, the company submitted its documents to a central-level agency for review and approval and waited more than six months to hear the status of the application. Agency officials did not provide a reason for the delay, despite the company’s weekly outreach. To make progress, the company sought to engage the agency directly in a meeting, during which the agency attributed the delay to personnel changes. After the meeting, the agency quickly approved the application.

#### Recommendations

To ensure application requirements are publically available, applications meet local authorities’ needs, and to promote predictability in the system, USCBC recommends that relevant Chinese government agencies:

---

<sup>7</sup> PRC Administrative Licensing Law. Article 42. 2004.

<sup>8</sup> PRC Administrative Licensing Law. Article 45. 2004.



- Work with local government agencies to standardize licensing processes across jurisdictions. Align central, provincial, and local regulations to ensure unified regulations across levels of government and agencies.
- All application requirements should be published in full on local government websites and available in hard copy at those agencies' offices.
- Work to improve inter-governmental communication during licensing processes so separate departments and agencies that are part of a single licensing process are aware of and can coordinate collection of mandatory documentation, timelines, and other requirements.
- Encourage local government agencies to eliminate the term "other documents" on government websites and publications and replace it with specific and detailed application requirements to ensure approval authorities receive all information necessary to evaluate and approve applications.
- Ensure governments at all levels abide by laws requiring authorities to provide a single communication listing additional materials required from companies.
- Ensure time limits are clearly articulated at the outset of the project and for each stage, including public hearing, bid invitation, auction, inspection, testing, quarantine, and expert evaluation.
- Report why an approval was delayed. The approval authority should also set a new time limit commensurate with the government's reason for the delay.
- Promote transparency in the licensing system by requiring agencies to provide more frequent and timely updates on the status of applications. This will allow applicants to better plan and update investment timelines as needed.
- Provide regular training to local approval authorities on best practices in managing approval timelines, and in delivering regular updates on application status to companies. Increase accountability by developing reviews to monitor transparency and timelines, such as annual reviews among provinces and municipalities to track average timelines for application approvals.
- Continue simplifying approval processes by moving toward a filing system with one-stop online platforms.

## Third-Party Recommendations

### Background

Companies in all industries work with tax, environmental, legal, and other third-party consultants throughout the licensing process. Depending on the approval being sought, many USCBC members have said that local government regulators often recommend or, at times, mandate the use of specific, third-party consultants.

Chinese laws provide differing requirements for third-party recommendations. For example, the Administrative Licensing Law stipulates that an administrative agency considering a license application may not require any applicant to purchase services or commodities, or make other unreasonable requests, as a condition for receiving the license.<sup>9</sup> Further, the Tendering and Bidding Law forbids any approval authority from imposing certain products or service providers on the tenderer.<sup>10</sup> Despite this, many USCBC companies felt a great deal of pressure from local officials to use government-recommended service providers. Several companies noted that if they chose not to use the government-approved entity recommended to them, they ran the risk of licensing delays and strained relations. In the end, pressure to use government-recommended service providers could create opportunities for corruption.

### Case Study

One company – to gain approval of its product – was required to employ a recommended agent to assist in paperwork preparation. Though the company has been in China for several decades and is familiar with the document preparation process, the company felt it had no choice but to comply. However, the company discovered that the recommended agent was primarily a courier: once the company prepared the paperwork, the agent simply delivered it to the government, offering little value. Regardless, the local government refused to accept submissions from the company directly, adding costs for the company.

<sup>9</sup> PRC Administrative Licensing Law. Article 27. 2004.

<sup>10</sup> PRC Tendering and Bidding Law. Article 12.1999.

## Recommendations

To ensure companies can choose qualified and trusted third-party providers, USCBC recommends that policymakers:

- Ensure governments at all levels do not mandate use of specific third-party entities in the licensing process.
- In instances where the use of a third-party service provider is required, allow the company to choose its own service provider, including international service providers licensed to undertake that work.
- If a company asks the local authority for a list of local service providers, provide a list of three or more qualified third-party vendors.

## Conclusion

Administrative licensing is an essential part of effective governance to ensure compliance with laws and public health and safety. At the same time, the efficiency and transparency of the licensing system can have a significant impact on companies' willingness to invest in an economy. Ongoing reforms to simplify the administrative licensing process show that the Chinese government understands the positive commercial benefits that increased transparency and efficiency will have on promoting new business development.

In addition to these steps designed to ensure full adoption at the local level, USCBC recommends additional measures to create a more predictable and efficient licensing system that protects sensitive company information, ensures fair and equitable treatment, and simplifies overall processes that investors are required to undertake in the licensing system. Taking such steps will help create a more reliable licensing system in China that facilitates the creation of new businesses, contributes to economic growth and development, and helps China meet its policy and investment objectives. USCBC also recommends implementing a nationwide market access negative list to clarify which sectors are open to foreign investment and ensure consistent enforcement by local and provincial governments.