NORTON ROSE FULBRIGHT

Global Rules on Foreign Direct Investment

China

Aiming to promote high-quality development amid the COVID-19 pandemic and economic slowdown, China has made progress to move strategically towards further opening up its markets to foreign investors.

Foreign investment Negative Lists further shortened

Foreign investments made into the Chinese market have been largely liberalised since the issuance of the *Foreign Investment Law* and its implementation rules (the **FIL**) in 2020, except for those which aim to invest into sectors falling within the national or free trade zone negative lists (the **Negative Lists**). In order to attract more foreign investments into the Chinese market, the Chinese government continues to update and shorten the Negative Lists.

The latest Negative Lists were issued and came into effect on 1 January 2022, with more industry sectors being further opened to foreign investors.

According to the current Negative Lists, wholly foreign-owned enterprises are not only permitted to manufacture specific purpose vehicles (e.g. for construction or transportation purposes), new energy vehicles and commercial vehicles, but also passenger vehicles (which were previously only permitted to be manufactured by Sino-foreign joint ventures).

Although satellite television broadcasting has always been a sector strictly regulated by the Chinese government, foreign investors are now allowed to invest in the manufacture of ground receiving facilities for satellite television broadcasting and related key parts.

In addition, market survey and social survey services have also been opened to foreign investors gradually. For example, foreign investors are able to set up wholly-owned subsidiaries in some free trade zones in China to engage in most market survey business. Foreign investors are also permitted to invest in social survey business (subject to a foreign shareholding cap at 33%) and market survey business relating to the rating survey of radio and television programs (with Chinese shareholder(s) taking the majority stake).

Please note, however, that, although foreign investors may make investments into more industries, the invested entities may still need to comply with the relevant qualification and/or approval/licensing requirements in order to carry out the relevant businesses formally.

More relaxation in the regulatory regime governing foreign investment in the telecom sector

On 7 April 2022, the State Council issued a decision (the **Decision**) to amend the Provisions for the Administration of Foreign-funded Telecommunications Enterprises, which signals a potential liberalisation of the existing regulatory regime applicable to foreign investment in the telecom sector.

The Decision has amended the definition of foreign-invested telecommunications enterprises (**FITEs**). FITEs were previously defined to mean enterprises engaging in telecoms business jointly invested by foreign investors and Chinese investors (indicating it must be a Sino-foreign joint venture), whilst pursuant to the Decision, it is defined to mean such enterprises established by foreign investors (indicating an FITE may be 100% foreign-owned). The amendment is more of a technical correction given certain types of telecom businesses (e.g. call centres) are already permitted to be owned 100% by foreign investors. The market takes this as a positive indication of a potential further relaxation of the foreign ownership restrictions in the telecom sector. As background information, currently foreign ownership in an FITE is capped at 49% if it operates basic telecom services, or 50% if it operates value-added telecom services (subject to a few exceptions).

The Decision has also removed the track record requirements imposed on the main foreign investor of a FITE engaging in basic and value-added telecom services. Such track record requirements used to include sound performance and experiences in operating the relevant telecom services. In the past, due to the absence of a clear ruling on how to prove such track records, foreign investors (especially financial investors or FinTech investors whose main business is outside the telecom sector) encountered regulatory hurdles to make a substantial investment into a Chinese telecom business. The removal of such track record requirements has eliminated the regulatory hurdles in this respect and opened the door to a much wider scope of foreign investors who would like to tap more substantially into this increasing market in China.

The Decision has also streamlined the process for foreign investors to establish FITEs. In particular, the establishment of an FITE will no longer be subject to a prior approval from the Ministry of Industry and Information Technology (**MIIT**, the PRC telecom regulator). Instead, foreign investors can go straight to incorporate FITEs with the company registry in China first and subsequently apply for the applicable telecom licences to MIIT – note however that the FITE may only be permitted to conduct the telecom business after receiving the MIIT license.

Regional opening-up policies

Being a key node city within the Greater Bay Area, Shenzhen continues its efforts in pushing for a greater level of opening up on a pilot basis. Most recently in November 2022, the Shenzhen government issued new rules to further simplify and facilitate foreign investors' market access to China, to strengthen the protection of foreign investors' lawful rights and interests and to optimize foreign investment related government services.

According to these new rules, any restrictive or prohibitive measures beyond the Negative Lists are strictly prohibited. Foreign investors are especially encouraged to invest into advanced manufacturing, emerging industries, high-tech sectors and industries involving energy conservation and environmental protection. Incentive policies have also been implemented to attract foreign investments. For example, multinational investors which decide to set up their regional headquarters in Shenzhen will enjoy various preferential treatments.

These new rules have also taken into consideration the impact of Covid-19 and related control measures taken by the government. For instance, it has offered alternative solutions (such as online submission of application documents) to facilitate foreign investors' application process in Shenzhen.

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