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## **New “Catalogue of Industries for Guiding Foreign Investment (2015 Revision)” A Practical Overview**

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## **Introduction**

On March 13, 2015, the National Development and Reform Commission (“NDRC”) and the Ministry of Commerce (“MOFCOM”) jointly released to the public the Catalogue of Industries for Guiding Foreign Investment (2015 Revision) (hereinafter, the “New Guiding Catalogue”). The New Guiding Catalogue will come into effect on April 10, 2015. The old version of the Guiding Catalogue issued in 2011 will lose its effect simultaneously.

According to the foreign investment policies and regulations in China, foreign investment market access in China are divided into four categories of industries, i.e., “Encouraged”, “Restricted”, “Prohibited” and “Permitted” categories. Besides in order to determine on whether a foreign invested company may engage in a certain business activity in China and if so, in which form, these categories are furthermore closely relevant in determining the governmental approval levels and approval difficulties for foreign investment projects the approval requirements for equity investments made by existing foreign-invested enterprises in China, and so on. In addition, the classifications are also usually related to the application of certain industrial and regional preferential policies and taxes deductions and exemptions. The Guiding Catalogue a fundamental regulatory document in terms of foreign direct investment market entry in China and it was first released in 1995, and had been revised every three years on average and this is the sixth revision.

The latest revision witnesses most notable changes compared with the previous versions. We hereby analyze the New Guiding Catalogue systematically in this Newsletter.

Meanwhile, it’s worth noting that the State Council promulgated the "Catalogue of Investment Projects Subject to Government Verification and Approval (2014 Version)" on November 18, 2014. That Catalogue also delegates the approval powers for certain foreign investment projects from the central government to provincial governments.

### **I. Restricted Category: Many Industries Removed**

The New Guiding Catalogue significantly reduces the scope of the Restricted Category and restricted industries were reduced from 79 items to 38 ones, and therefore approximately by half. After the effectiveness of the New Guiding Catalogue, foreign investment projects falling under the restricted category with a total investment of no more than USD 50 million are to be approved by provincial or below foreign investment examination and approval authorities (this examination and approval threshold has been further lifted; please see the following paragraph), rather than by NDRC and central Ministry of Commerce (“MOFCOM”).

However, aforesaid approval authorities have been further simplified, respectively lower ranked authorities have received further approval authorities. According to the "Catalogue of Investment Projects Subject to Government Verification and Approval (2014 Version)", real estate projects, which fall under the restricted industries and other restricted projects with a total

investment (including additional investment) of less than USD 100 million as listed in the Guiding Catalogue shall be approved by provincial governments. Restricted projects with a total investment (including capital increases) of USD 100 million or more (excluding real estate projects) shall be subject to the approval of competent investment regulatory authorities under the State Council.

The following industries were removed from the Restricted Category:.

- Processing of cotton
- Many mining industries: i.e. barites, diamonds, high-aluminum fireclay, phosphorus mines, szaibelyite, celestite and etc.
- Mining of marine manganese nodule and sea sand
- Chinese rice wine and spirits
- Many manufacturing industries: such as petrochemical industry, chemical products, medical and pharmaceutical products manufacturing, chemical fiber, smelting and processing of nonferrous metals including electrolytic aluminum, copper, lead and zinc, various types of general grade (P0) bearings and components, manufacturing of roughcasts, manufacturing of wheeled and caterpillar hoisting machinery with a lifting capacity of less than 400 tons, special-purpose equipment manufacturing industry (for example bulldozers, hydraulic excavators, loaders, land leveler, road roller, forklift truck, concrete machinery and etc.)
- Railway freight transportation, cross-boundary automobile transportation
- Direct sales, mail orders, and online sales
- Wholesale and retail of vegetable oil, crude oil, sugar, agricultural chemicals and fertilizers
- Wholesale of product oil
- Development of tracts of land, real estate intermediary
- Trust companies
- Insurance brokerage companies
- High-class hotels, high-class office buildings

- International convention and exhibition centers.

Relevant governmental entities also proposed removing "operation of cinemas", and "construction and operation of large theme parks" out of the Restricted Category, but such proposals were not adopted.

Meanwhile, one should notice following new additions to the Restricted Category:

- Production of cars, dedicated cars and motorcycles. In fact, the New Guiding Catalogue has implemented NDRC's existing policies regarding car industry and in effect no additional restrictions are imposed.
- Higher educational institutions: these industries were removed from the Encouraged Category and added to the Restricted Category and this industry shall be limited to Sino-foreign cooperative joint ventures with Chinese parties as the dominant parties. The New Guiding Catalogue highlights that "Chinese parties as the dominant parties" means the principal or the primary administrator shall have Chinese nationality, and the percentage of the Chinese members in the school council, board of directors or the joint managerial committee of the Chinese-foreign cooperatively-run schools shall not be less than 1/2 (the same below).
- Preschool education institutions (limited to Sino-foreign cooperative joint ventures, with Chinese parties as the dominant parties)
- Medical institutions (limited to Sino-foreign equity joint ventures or Sino-foreign cooperative joint ventures): the New Guiding Catalogue just explicitly confirms the existing restricted policies and it shall be noted that the medical institutions are subject to special approval processes.

## **II. Much More Industries Permitting Wholly-Foreign Owned Enterprises**

The New Guiding Catalogue has also significantly reduced the industries which are limited to "Sino-foreign cooperative joint ventures", "Sino-foreign equity joint ventures" or "partnership ventures". The number of such industries is reduced from 43 to 14. After the New Guiding Catalogue comes into force, foreign investors could set up wholly-foreign owned enterprises by way of merger and acquisition or setting up a new company in those adjusted industries. Relevant industries are mainly the following:

- Development and application of new technologies for oil exploration and exploitation regarding geophysical prospecting, drilling, well logging, mud logging and down-hole operation

- Processing of cellulose diacetate and tows, but meanwhile the new Guiding Catalogue moves this industry from the Encouraged Category to the Permitted Category
- Papermaking and paper products industry, but meanwhile the new Guiding Catalogue moves this industry from the Encouraged Category to the Permitted Category
- Manufacture of wheeled and crawler cranes of 400 tons or above
- Embedded electronic integrated system
- Manufacture of key parts and components for high-emission (>250ml) motorcycles, but meanwhile the new Guiding Catalogue moves this industry from the Encouraged Category to the Permitted Category
- Design and manufacture of civil helicopters (those of less than three tons), design, manufacture and maintenance of aircraft engines and engine parts and components and aircraft auxiliary power systems, design and manufacture of airborne equipment in civil helicopters
- Design of cruise ship and deepwater (3,000 meters or more) marine engineering equipment
- Design of low or medium speed diesel engines of vessels and parts and components thereof, design and manufacture of yachts
- Manufacture of large pumped power storage units with rated power of 350MW or more
- Design and manufacture of civil aviation airborne equipment
- Manufacture of equipment for air traffic control systems
- Construction and operation of intercity railway, urban (suburban) railway and branch railway lines
- Accounting and auditing services (with the Chief Partner must have Chinese nationality).

Electronic commerce: The New Guiding Catalogue removes the restriction that the proportion of shares held by the foreign investors in E-Commerce shall not exceed 50%. This means that foreign companies are able to hold a majority equity interest in an E-Commerce subsidiary in Mainland China. Still, the feasibility of this remains to be seen in practice. This will likely intensify the competition in E-Commerce and facilitate the development of E-Commerce in China.

### **III. Chinese Party Controlling Position Not Any More Required in Some Industries**

The number of the industries, which are required to have “Chinese parties as the controlling shareholders” in the former Guiding Catalogue, is now reduced from 44 to 28. Foreign investors can now holding more than 51% shares or even holding 100% shares in those industries. Such industries include the following:

- Manufacturing of ground-effect and water-effect aircrafts
- Design and manufacture of cabin machinery of vessels
- Design and manufacture of civil satellites
- Comprehensive maintenance of infrastructures of high-speed railway lines, passenger railway lines and intercity railways
- Scheduled or non-scheduled international marine transportation services. Nevertheless, according to the New Guiding Catalogue, this industry is limited to Sino-foreign equity joint ventures or Sino-foreign cooperative joint ventures, which means foreign investors could now hold more than 51% equity interest but less than 100% equity interest in a foreign-invested enterprise in this industry.
- Construction and operation of urban subway, light railway and other track transportation
- Operation of performance sites.

### **IV. Encouraged Category: More Industries Added**

According to the New Guiding Catalogue, a number of industries are added into the Encouraged Category. This means that foreign investment in such industries will be more likely to receive supports from the authorities. Those adjustments reflect that the government is encouraging foreign investors to invest in modern agriculture, high technology, energy efficiency and environment friendly industries, new energy and modern service industries. These newly Encouraged industries include:

- Manufacture of automatic biochemistry monitors, hematology analyzer with five classifications, automatic chemiluminescence immune analyzer and high throughput genome sequencer
- Technology development and equipment manufacture in regard of the fire control,

extinguishment and rescue in large public buildings, high-rise buildings, petrochemical facilities, forest, mountain, aquatorium and underground facilities

- Electronic design automation (EDA)
- Development and manufacture of electronic auxiliary teaching facilities of traditional Chinese medicine which are based on the computer technology such as sound, light, electricity, touchscreen and etc; development and manufacture of virtual pathology and physiological model equipment
- Construction and operation of the ultra-supercritical power station, within the single machine of 600,000 mw power and above
- Construction and operation of power grids (with Chinese parties as the controlling shareholders)
- Intercity railway, urban (suburb) railway, resource-oriented exploitation railway
- Development and application of the internet of things technology
- Industrial design, architectural design, dressing designs other creative industries.

According to the "Catalogue of Investment Projects Subject to Government Verification and Approval (2014 Version)", Encouraged Category projects listed in the New Guiding Catalogue with a total investment (including additional investment) of less than USD 1 billion that are subject to requirement that Chinese shareholders keep control positions (including relative control) shall be subject to an approval by the local governments. The Encouraged projects listed in the New Guiding Catalogue with a total investment (including additional investment) of USD 1 billion and above shall be subject to the approval of the competent investment department of the State Council, whereas projects with a total investment (including additional investment) of USD 2 billion and above shall be reported to the State Council for record-filing.

## **V. Prohibited Category: A Few Industries Added or Clarified**

The revision adds some industries in the Prohibited Category, reflecting an increasingly stringent regulatory environment in those industries. The following sectors were newly added into the Prohibited Category:

- Wholesale and retail of tobacco leaves, cigarette, redried tobacco leaves and other tobacco products: those were listed in the restricted category before.
- Compilations of political maps of the world, national political maps of China, provincial

and local political maps, national teaching maps, provincial teaching maps and three-dimensional maps, regional geological mapping

- Investigations regarding mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological hazards, remote sensing geology and etc.
- Online publishing services
- Cultural relics auction enterprises and antique shops
- China legal affairs counseling (except for information in connection with impact of Chinese legal environment).

On the contrary, foreign investors are now allowed to participate in the operation of golf courses and villas and such industries belong to the Permitted Category. Nevertheless, foreign capital is still prohibited from investing into the construction of golf courses.

### **Concluding Remarks**

The Guiding Catalogue is a policy guidance for foreign investment. Potential foreign investors need to carefully review and analyze the New Guiding Catalogue and pay attention to other related laws, regulations and policies to get a thorough understanding of Chinese foreign direct investment market access policies before making a decision on a foreign direct investment in China, in order to establish, whether their intended project is feasible. Such regulations and policies include (but are not limited to): special industrial policies released by the State, other investment catalogues promulgated by the State (such as the "Catalogue of Investment Projects Subject to Government Verification and Approval (the latest version is from the year 2014)", "Catalogue of Priority Industries for Foreign Investment in Central and Western China"), China's Schedule of Specific Commitments after its accession to the WTO and Closer Economic Partnership Arrangements (CEPA) between the mainland and the Hong Kong and Macao regions.

China's economy is gradually further opening up and further integrating into the global economy. Chinese government's drive to lift foreign investment entry restrictions is well aligned with China's economic interests and people's livelihood. Except for some special industries, the government is permitting foreign investors to invest in a wide range of industries, which will not only promote domestic industrial standards, but facilitates export of products and industries made in China and thus enhance the global competitiveness of China's economy. This is of extraordinary importance for China, as well as other world economies, since after China's accession to the WTO, import tariffs have been largely reduced which enabled foreign companies to enter the Chinese market easier via importation, as well as Chinese companies, including foreign invested companies to enter foreign markets easier via exportation.

Restrictions for foreign direct investments, which are not based on for example national



security, are disadvantageous for China as well as the world economy. Therefore, a further opening up for foreign investments as implemented by this New Guiding Catalogue is highly advantageous. In this context it is worth pointing out that the State Ministry of Commerce released a draft of a Foreign Investment Law<sup>3</sup> on January 19<sup>th</sup>, 2015, which would implement a negative approval list management system, instead of the rather complicated system in the New Guiding Catalogue. The opening up process is therefore likely to continue.

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#### **End Notes:**

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<sup>3</sup> Global Law Office has issued a Newsletter regarding the Draft PRC Foreign Investment Law on January 28<sup>th</sup>, 2015. Please inform us accordingly, in case you wish to receive said Newsletter.