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Titel:

Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment (August 24th, 2017)

I. Introduction

On August 16th, 2017, the State Council of the People's Republic of China published the *Notice of the State Council on Several Measures for Promoting the Growth of Foreign Investment* (Guo Fa [2017] No. 39)¹

¹ http://www.gov.cn/zhengce/content/2017-08/16/content_5218057.htm (last login on August 23th,

(hereinafter “**Notice**”), which includes 22 measures intending to encourage foreign investment. These measures intend to facilitate the establishment and operations of foreign investments by for example reducing market entry restrictions, formulating supporting fiscal and taxation policies, improving the comprehensive investment environment of national-level development zones, as well as by facilitating the entry and exit of talents. On August 25th, 2017, the State Council held a media briefing, providing further explanations to the Notice and announcing that the country wants to build a strong “magnet field” for foreign investment.²

II. Background

Now, the Notice needs to be seen in the following context: According to the data released by the Business Data Center of the Commerce Department on foreign direct investments³, between January and June 2017, 15’053 foreign invested enterprises were established in the People’s Republic of China. This actually constitutes an increase of 12.3% year on year. However, at the same time the foreign investment amount calculated in RMB decreased by 0.1% to 441.54 billion. This amount again equivalents to USD 65.65 billion at current exchange rates, which again constitutes a decrease of 5.4% compared to the USD amount invested in the same period a year ago. China’s absorption of foreign investments has therefore continued to decline in the first half of 2017.⁴

The above-mentioned decline in foreign investment came together with a constant outflow of capital during the past months. In addition, the Chinese leadership seems to have realized the general benefits of foreign investments to a national economy again, be it for example in regard to the overall competitiveness of an economy, as well as in regard to know-how exchange, etc. This can be seen in the fact that the Chinese leadership started to promote foreign investment through a variety of actions and measure in the past months. In this context it is worth pointing out that Chinese President Xi Jinping held the 16th meeting of the Central Leading Group on Finance and Economic Affairs on July 17th, 2017. In this meeting, President Xi declared that China should improve its investment and market environment and accelerate opening up to the outside world. The country should create a stable, fair, transparent and predictable business environment, and speed up efforts to build an open economy in a bid to promote a sustainable and healthy development of the Chinese economy. He further pointed out that

² http://english.gov.cn/state_council/ministries/2017/08/25/content_281475814889098.htm

³ The foreign direct investment from January to June in China was made public on July 20th, 2017, please refer to <http://www.mofcom.gov.cn/article/tongjiziliao/v/201708/20170802630754.shtml> (last login on August 23th, 2017),

⁴ <http://epaper.comnews.cn/news-1173615.html> (last login on August 23th, 2017).

foreign investment promotes a rational allocation of resources and facilitates market-oriented reforms. He also pointed out that foreign investment made an important contribution to China's economy. Furthermore it was mentioned that China shall continue to make good use of foreign investment, in order to promote the structural reform of the supply side, to achieve higher economic development, and to keep up with the pace of global scientific and technological progress.⁵

Furthermore, on July 28th, 2017, Chinese Premier Li Keqiang, chairman of the State Council, presided over an executive meeting of the State Council. In this meeting it was for example mentioned that to deepen the opening-up policy, to further build up an internationalized and law-based business environment, to carry forward new concepts of economic development, to promote a structural reform of the supply side, as well as economic growth are of great significance.⁶

The Notice should therefore not be regarded as a singular decree, but as the intermediate result of a longer plan, respectively as the policy of the leadership of the People's Republic of China.

III. The Content of the Notice

The Notice stipulates at its beginning the reasons for promoting a growth of foreign investments, namely by stipulating that "making active use of foreign investment is an important aspect of China's opening-up strategy". It then mentions that China is faced with new dynamics and tasks in using foreign investment. The Notice thereafter outlines the 22 "measures", which are intended to address the current issues in regard to foreign investment. All of these measures are addressed to (a) specified government authority(ies)/department(s), which shall thereafter be responsible to implement the respective measure. The Notice is therefore outlining the different policies and intentions of the Chinese government to the different government authorities and is not by itself directly implementing these changes.

The 22 measures as outlined in the Notice are divided into the following five main groups:

1. Further Reduction of Market Entry Restrictions on Foreign Investors.

This main group contains the following measures/intentions: Measure 1: A model of pre-entry national treatment plus negative list shall be fully

⁵ http://www.gov.cn/xinwen/2017-07/17/content_5211349.htm (last login on August 23th, 2017).

⁶ http://www.gov.cn/premier/2017-07/28/content_5214192.htm (last login on August 23th, 2017).

implemented, whereas the negative list has already been adopted on a trial basis in the pilot free trade zones in the past and shall now be implemented in the whole country, through a unified negative list.

Measure 2: The scope of liberalization in terms of market entry shall be further expanded: Benefitting of these liberalizations of market entry shall be the manufacturers of special purpose vehicles and of alternative fuel vehicles, as well as companies engaged in ship design, feeder and general aircraft maintenance, gas stations, internet access service business establishments, call centers, and performance brokerage, but also service industries such as international maritime transportation, railway passenger transportation, banking, securities and insurance industries. However, the Notice does not stipulate any detail in regard to the extent, nor the timeline for these highly welcome further liberalization steps.

2. Supporting Fiscal and Taxation Policies.

Foreign investors shall be encouraged to constantly increase their investments in Mainland China (Measure 3): According to this measure, foreign investors shall be encouraged not to transfer profits distributed by Chinese domestic resident enterprises abroad, but to instead reinvest them within China in new direct investments or capital increases in projects which fall under the encouraged industries for foreign investments. If such projects fall under the encouraged industries, a policy of deferred taxation shall be implemented and income tax shall not be withheld for the time as long as the prescribed conditions are fulfilled.

The positive role of foreign investment in optimizing the structure of trade in services shall be further increased (Measure 4): Preferential income tax policies applicable to service enterprises with advanced technologies that satisfy certain conditions shall be implemented across the country, in order to guide more foreign investors to invest in high-tech and high value-added services.

Efforts shall be made to promote the combination of the use of foreign investment and outbound investment (Measure 6). This promotion shall be achieved by implementing supporting taxation policies with regard to overseas income repatriated to the Mainland by domestic resident enterprises, including the regional headquarters of multinational companies.

Multinational companies shall be encouraged to invest in and set up regional headquarters in Mainland China (Measure 6). The local

governments (all Chinese provinces) shall be supported to promulgate policy measures that attract multinational companies to establish regional headquarters. Such measures shall include financial support in line with respective laws and regulations.

Chinese authorities on different levels have been trying to promote the establishment of regional headquarter by multinational companies in the past. These efforts shall now be further intensified.

Foreign investors shall be pushed to shift their investments to western China and the old industrial bases in northeastern China (Measure 7). This “push” shall be achieved by the following means: existing respective financial funds shall be fully taken advantage of, the national-level development zones in these areas shall receive support from the national level authorities in order to improve the investment environment, to enhance the quality of the investment as well as to undertake the transfer of high-end manufacturing to these locations, especially in industries such as scientific and technological innovation, ecological and environment protection, and public services, etc.

3. Improving the Comprehensive Investment Environment of National-level Development Zones.

National-level development zones shall be granted sufficient investment management authority (Measure 9).

Support shall be extended to ensure effective progress of national-level development zones (Measure 10). All regions shall be allowed to give priority to guaranteeing the construction land use quotas needed by the foreign investment projects in national-level development zones under the premise of compliance with economic and social development planning, overall land-use planning and overall urban planning, so that all such quotas that shall be made available are made available.

In recent years foreign investment projects have sometimes encountered difficulties in their realizations due to unavailability of sufficient land use rights. Measure 10 now addresses this problem.

4. Facilitating the Entry and Exit of Foreign Talents.

The system for attracting foreign talents shall be improved (Measure 13). A work permit system for foreigners shall be adopted across the country, and methods such as "inform + commit" and "accepting applications first and requiring correction/supplement to be made later" shall be

implemented to facilitate the work permit applications of foreign talents. In 2018, regulations on the administration of foreigners working in China shall be formulated and promulgated, and a work permit system for foreigners in China that is characterized by uniform standards and standardized procedures shall be established. The Chinese foreigners' work permit implements mainly in the working administrative license. It focuses on the qualification approval.

Active efforts shall be made to attract top global talents (Measure 14). This by (1) Formulating and promulgating detailed rules of implementation on visas for foreign talents, (2) fine-tuning the evaluation criteria for foreign talents, (3) expanding the eligibility scope of such visas and, (4) relaxing restrictions on the validity period of visas for foreign talents. This shall include the issuance of long-term visas (five to ten years), multiple-journey visas to foreigners who satisfy relevant conditions, and allowing them to use such visas to apply for work permits and work-related residence permits.

5. Optimizing the Business Environment.

No time shall be lost in improving the foreign investment legislation system (Measure 15). A unified system of laws and regulations on domestic and foreign investment and formulating new basic laws on foreign investment are essential for China to set up an open, transparent and predictable foreign investment legal framework.

We assume that based on this measure, a new attempt regarding the implementation of the Foreign Investment Law will be started. A draft of a unified Foreign Investment Law was circulated in 2015/2016. This law would unify the different laws currently regulating foreign investments.

The level of services for foreign investment shall be raised (Measure 16). Mechanisms for foreign invested enterprises to lodge complaints shall be improved. Frequently mentioned issues shall then be resolved. In addition, lists of enterprise-related charges, such as administrative and institutional fees, government funds, enterprise-related for-profit services whose prices are determined by the government, etc., shall be formulated. These measures are intended to reduce the institutional costs of enterprises and to build a better business environment in general.

The right of foreign investors to freely remit their profits abroad shall be safeguarded (Measure 17). Foreign investors may, pursuant to the law, freely remit abroad the profits, dividends and other investment returns

lawfully obtained in China, in RMB or foreign currencies.

Management information sharing and business collaboration shall be deepened for foreign-invested enterprises (Measure 18). All relevant departments are required to work together to establish an efficient and convenient regulatory and service framework for foreign investment.

Foreign investors shall be encouraged to participate in the optimization and reorganization of domestic enterprises (Measure 19). This measure intends for the simplification of procedures, relaxations of restrictions and support of foreign investors to set up foreign-invested enterprises by way of merger and acquisition. It further intends to support domestic enterprises to introduce international advanced technologies, management experience and marketing channels from multiple channels and encourage foreign investors to participate in the mixed ownership reform of State-owned enterprises.

The protection of intellectual property rights ("IPR") shall be improved for foreign-invested enterprises (Measure 20). The lack of protection of intellectual property rights in China has been a major concern for foreign companies since the opening up of the Chinese economy. This measure indicates that the Chinese government attempts to improve the protection level through launching centralized rectification campaigns against online infringement and piracy, infringement upon patent rights, infringement upon the right to exclusive use of trademarks and other IPR issues, reinforcing judicial protection and administrative law enforcement, and stepping up punishment against the illegal activities of infringement.

The international competitiveness of the research and development ("R&D") environment in China shall be enhanced (Measure 21). This measure is aimed to promote foreign investment in research and development by creating conditions to facilitate the operations of R&D centers, simplifying the procedures for R&D centers with relevant conditions to import samples, reagents, etc. for R&D purposes pursuant to the law.

The stability and continuity of foreign investment policies shall be maintained (Measure 22). This measure intends the standardization of local governments actions to attract foreign investments, by stipulating that local governments shall earnestly fulfill the policy commitments, contracts and agreements made according laws and regulations.

IV. Concluding remarks

As mentioned further above in this Newsletter, the Notice stipulates policy measures and addresses the Chinese authorities and departments of different levels. The measures are therefore not directly applicable to foreign investments. Instead, they constitute the different actions/measures, which the Chinese leadership intends to implement in the future. When exactly these measures will be implemented, as well as the details of the implementation have not yet been clarified. However, China's State Council mentioned in its media briefing on August 25th, 2017 that further information about the implementation will be released before the end of September 2017. Furthermore, considering the fact that the highest level of the Chinese government was involved in the different meetings and announcements which led to the release of the Notice, indicates that the promotion of the growth of foreign investment is again a high priority of the Chinese government. The Notice should therefore not be regarded as a singular decree, but as the intermediate result of a longer plan, respectively as the policy of the leadership of the People's Republic of China.

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End Notes:

* The laws and regulations as contained on the government websites provided in our links above are the official versions, published in Chinese language. In case you are interested in receiving an English translation of said laws/regulations, please inform us accordingly. We will be able to provide you with an unofficial translation of said laws/regulations for your information within a few days.

* 我们提供的政府网站链接为相关法律法规的中文正式版本。如您需要相关法律

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