

State Council Update Its Rules on Treatment of Foreign Investment in FTZs

On January 9, 2018, the PRC State Council released the *Decision on Temporarily Adjusting Relevant Administrative Regulations, State Council Documents and Departmental Rules Approved by the State Council within FTZs* (“**Decision**”). It is interesting, among others, in particular for the following service industries:

General services	Logistics, transport	Trading
<ul style="list-style-type: none"> • banks • printing • certification • entertainment venues • internet cafes 	<ul style="list-style-type: none"> • civil aviation • aircraft • shipping • travel agencies 	<ul style="list-style-type: none"> • direct selling • gas stations

This Decision mainly aims at:

- Updating the 2016 version of the Decision to apply to all current 11 China Free Trade Pilot Zones (“FTZs”); in 2016, there were only four such FTZs in China;
- Temporary suspension of some rules and regulations being applicable to foreign investment within the FTZs.

A comparison of this Decision to its 2016 version and the latest 2017 FTZ Negative List leads to the following initial impression:

- The Decision generally has not brought notable new or further liberalizations for foreign investment within the FTZs; most of the items contained in the Decision could already be found in its 2016 version or had already not been on the 2017 FTZ Negative List;
- It mainly is a declaratory document outlining the *status quo* of various State Council rules in relation to their application for foreign investment in the FTZs;
- The practical importance of the Decision lies in the details:

Besides the 2017 FTZ Negative List (as updated in the future), the Decision and its updates provides additional legal guidance regarding specific foreign investment areas. For example, “direct-selling (直销)” is not listed in the 2017 FTZ Negative List, which means this business is generally not restricted for foreign investment. The Decision additionally clarifies that the 3-year overseas business experience of foreign investors according to the *Administrative Regulations on Direct-selling* will temporarily not apply in the FTZ. This question had been open in current practice.

Below is a high-level, non-exhaustive summary of those industries for which some restrictive State Council rules have been temporarily suspended in the FTZs. Although a temporary suspension indicates the possibility to reverse the decision, the general expectation is that after a successful implementation period, the liberalizations are made permanent.

Industries	Current rules outside the FTZs	Temporary, more liberal rules inside the FTZ
Printing	Wholly foreign-owned enterprises (“ WFOEs ”) are only permitted to engage in printing matters for packaging and decoration.	WFOEs are permitted to engage in printing of all printing matters.
Civil aviation	Only joint venture companies (“ JVs ”) are permitted to engage in certain services of civil aviation (e.g. air transportation sales agency, air cargo warehousing; ground service, aviation food, parking lots).	WFOEs are permitted to engage in all these areas.
	FIEs (with controlling Chinese shareholding) in the area of aircraft maintenance have the obligation of undertaking international maintenance market business.	A foreign investor can be the controlling partner in a foreign-invested general-purpose aircraft maintenance enterprise. No obligation to undertake international maintenance market business.
Certification	Foreign investors must have more than 3 years of certification experience among other requirements.	No special qualification requirements for foreign investors.
Entertainment venues	Only JVs are permitted to operate entertainment venues.	WFOEs are permitted to operate entertainment venues within FTZs.
Travel agency	Foreign-invested travel agencies are not allowed to provide offshore travelling service to residents in mainland China.	No such restriction (except for travels to Taiwan).
Direct-selling	Foreign investors must have engaged in direct-selling business for at least 3 prior years.	No such restriction.
Gas stations	Foreign investment restricted.	WFOEs are permitted to construct and operate gas stations.
Shipping	Only JVs may engage in international shipping, international ship management, and port handling, container stations and stacking of international maritime transportation.	WFOEs are permitted to engage in these businesses.

	The foreign investor can only have up to 49% shares in international ship transport and international shipping agency business.	The foreign investor can hold up to 51%.
Aircraft	Only JVs (with controlling Chinese shareholding) are permitted to design and manufacture civil helicopters (3 tons or more).	No such restriction.
Internet access service venues ("internet cafe")	Foreign-invested Internet cafes are not allowed.	No such restriction.
Foreign-invested banks	Foreign-invested banks are allowed to engage in CNY-business only after operation of more than 1 year in China.	No such restriction.
Performance brokerage	Only JVs (foreign investment ratio no more than 49%) are permitted to engage in performance brokerage business.	WFOEs are permitted to engage in performance brokerage business within the 11 cities and provinces where the FTZs are located.



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