

The New Foreign Investment Catalogue Finalised – What is the Trend for Foreign Investment in the PRC?

On 13 March 2015, the National Development and Reform Commission (“NDRC”) and Ministry of Commerce (“MOFCOM”) jointly released the 2015 version of the *Foreign Investment Industrial Guidance Catalogue* (“2015 Catalogue”) to replace the current catalogue adopted in 2011 (“2011 Catalogue”). The 2015 Catalogue will enter into effect as from 10 April 2015.

Background

The Catalogue is one of the most fundamental legal documents in the regulatory regime of foreign investment in China. It classifies industry sectors into encouraged, restricted and prohibited, and any sector not included in the Catalogue is permitted. The classification of sectors will decide the level of approval required for, and the type of incentive available to, foreign investment projects. It is viewed as a guidance from the PRC government to direct foreign investment. The 2015 Catalogue is the sixth version of the Catalogue since it was first promulgated in 1995.

The issuance of this 2015 Catalogue is the latest development among a series of reforms that the Chinese government has proposed in recent months to relax the regulatory environment for foreign investment. These proposed reforms include a draft Foreign Investment Law circulated in January 2015 and a draft version of the Catalogue released in November 2014 (“2014 Draft Catalogue”). Please refer to our earlier Legal Update [Draft Foreign Investment Law: Fundamental Changes to Foreign Investment Regime in China](#) and [NDRC Issued the Revised Draft of Foreign Investment Catalogue to Open More Sectors to Foreign Investment](#) for details.

Key Changes

The 2015 Catalogue contains a number of relaxations that mainly focus on the sectors such as steel,

ethylene, refinery, paper, coal chemical equipment, automobile, electronics, liquor, branch railway, subway, international maritime transport and e-commerce. Most of these changes were envisaged in the 2014 Draft Catalogue issued last year. Please [click here](#) to see more details about changes to these sectors in our earlier client alert mentioned above.

Compared with the 2011 Catalogue, the business sectors that require foreign investors to partner with a Chinese investor has been reduced from 43 down to the following 15 sectors under the 2015 Catalogue:

- Exploration and development of petroleum and natural gas (including such unordinary oil gas as oil shale, oil sands, shale gas and coal bed methane) and exploitation of mine gas;
- Manufacturing, research and development of automotive electronic bus network technology;
- Manufacturing, research and development of electronic controllers of electronic power steering system;
- Railway transportation equipment;
- Design, manufacturing and maintenance of passenger aircrafts;
- Civil aviation transportation companies for agricultural, forest and fisheries industries;
- International liner and tramp maritime transportation business;
- Smelting and separation of rare-earth metal;
- Foreign ship tally;
- Marketing investigation (save for investigation of radio or television ratings which shall be controlled by Chinese partner);
- Advanced education institutions (limited to cooperation arrangement with management control by the Chinese partner);

- High school education institution (limited to cooperation arrangement with management control by the Chinese partner);
- Pre-school education institution (limited to cooperation arrangement with management control by the Chinese partner);
- Medical agency; and
- Production of radio and television programmes and films (limited to cooperation on project basis)

Under the 2015 Catalogue, the industrial sectors requiring majority Chinese ownership has also been reduced from 44 down to the following 35 sectors:

- Design, manufacturing and maintenance of civil planes for main and regional airlines;
- Design and manufacturing of civil helicopters (weight over three tons);
- Design and manufacturing of ground effect aircrafts, unmanned aircraft system and aerostats;
- Manufacturing and maintenance of marine engineering equipment (including modules);
- Manufacturing of lower and medium speed diesel engines and crankshafts;
- Design and manufacture of civil satellites;
- Manufacturing of civil satellite payload;
- Nuclear power generation station;
- Construction and operation of power grid;
- Construction and operation of trunk lines of railways;
- Construction and operation of civil airport;
- Air freight companies (the shareholding of a single foreign investor capped at 25%);
- Construction and operation of key water control projects for comprehensive utilisation;
- Breeding of new varieties of crops and development and production of seed;
- Exploration and mining of special and scarce coal;
- Processing of edible oil of soybean, rapeseed, peanuts, cottonseeds, tea seeds, sunflower seeds and palm and rice and flour processing, deep processing of corn;
- Production of millet wine and famous brands of spirits;
- Printing of publications;
- Manufacturing of complete automotive vehicles, and automotive vehicles and motorcycles for special purposes (extra restrictions exist on the number of joint venture that a foreign investor may establish);
- Repair, design and manufacture of ordinary ships (sections included);
- Construction and operation of urban gas, heating and water supply and drainage in cities with a population of more than 0.5 million;
- Railway passenger transport companies;
- Water transport companies;
- General aviation companies for business travel, air tours, photography, prospecting, industry etc.;
- Telecommunication companies: value added telecommunication services (foreign shareholding capped at 50 percent (save for e-commerce)) and basic telecommunication services (foreign shareholding capped at 49 percent);
- Shipping Agents;
- Gas station chain (where the same foreign investor sets up over 30 outlets and sells different types and brands of refined oil from a number of suppliers);
- Banks (foreign shareholding subject to certain caps for investment in Chinese banks);
- Life insurance companies;
- Securities companies and securities investment fund management companies;
- Future companies;
- Marketing investigation of radio and television ratings;
- Surveying and mapping companies;
- Construction and operation of cinemas; and
- Performances brokering agencies.

Notwithstanding statements being made in the Catalogue that any further restrictions to the business sectors may be only imposed by laws and regulations promulgated at state level, the current fact is that the Catalogue only serves as a general guidance on foreign investment and relevant industrial regulations issued by respective government authorities governing specific business sectors may contain further restrictions on foreign equity ratio or even prohibitions on foreign investment. In addition, restrictions other than equity holding, such as sound industry track record experiences of the investor may also exist under

specific industrial regulations for some sectors, such as advertising and architecture design.

Reinstatement of Investment Restrictions

Although the 2015 Catalogue incorporates most of the relaxation measures contemplated by the 2014 Draft Catalogue, there are a number of restrictions that were removed in the 2014 Draft Catalogue have now been put back in the 2015 Catalogue. These remaining restrictions are mainly in the culture and entertainment industries, including among others:

- Construction and operation of large theme parks (restricted);
- Performances brokering agencies (restricted to majority Chinese ownership);
- Construction and operation of cinemas (restricted to majority Chinese ownership);
- Printing of publications; (restricted to majority Chinese ownership)
- Cinema chains (prohibited); and
- Production of video-audio works and electronic publications (prohibited).

This implies that the PRC government still remains cautious about opening up these sensitive sectors to foreign investment.

In addition, investment restrictions to some sectors which had restriction removed in the Catalogue 2011 have been re-instated in to the restricted category in the Catalogue 2015, Such sectors as manufacturing of complete motor vehicles and hospital services are now both required to engaged in only under joint venture arrangements, despite the fact that wholly

foreign owned hospitals are now permitted in some pilot cities in China.

Further Reforms

Since 2014, China has been negotiating bilateral investment agreements with both the US and the European Union. According to Chinese media reports, China may adopt special rules such as the “negative lists” approach (i.e., foreign investment in industrial sectors not on the list will enjoy national treatment without prior foreign investment approval required) to regulate/guide foreign investment under the bilateral investment agreements with certain trading parties.

Taking into account that China is also in the process of legislating a new Foreign Investment Law which will entirely restructure the current legal framework governing foreign investment, there is strong reason to believe that further relaxations/reforms in the foreign investment regime can be expected over the upcoming years.

For inquiries related to this Legal Update, please contact the following persons or your usual contacts at our firm.

Ian Lewis

Partner

T: +86 10 6599 9266

E: ian.lewis@mayerbrownjms.com

Frank Yang

Associate

T: +86 10 6599 9288

E: frank.yang@mayerbrownjms.com

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