

## NDRC Issued the Revised Draft of Foreign Investment Catalogue to Open More Sectors to Foreign Investment

On 4 November 2014, the National Development and Reform Commission (NDRC) released the latest revised draft of the *Foreign Investment Industrial Guidance Catalogue* (外商投资产业指导目录) (Catalogue) soliciting public comments. The deadline to submit comments is 3 December 2014.

### Background

The Catalogue is one of the most fundamental legal documents in the regulatory regime of foreign investment in China. The Catalogue 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. In addition, the Catalogue also identifies sectors and activities for which a Chinese partner is required and for certain circumstances, the minimum shareholding that the Chinese partner must hold. Therefore, the Catalogue is usually the first piece of regulation that foreign investors should refer to when they plan to establish an investment vehicle in China.

The first version of the Catalogue was issued in 1995. It has been revised a few times over the past decade and the current version is promulgated in December 2011 (2011 Catalogue).

### Highlights

Among the various changes brought by the revised draft Catalogue, a large number mirror the opening-up policies implemented in the China (Shanghai) Pilot Free Trade Zone (Shanghai FTZ). As confirmed by an NDRC official in a press conference, the aim of the revision is to implement the experience gained from Shanghai FTZ to expand market access nationwide and to lift the cap on foreign ownership. The focus of the revision is in the service and general

manufacturing industries. Key sectors include steel, ethylene, refinery, paper, coal chemical equipment, automobile, electronics, liquor, branch railway, subway, international maritime transport and e-commerce.

### ENCOURAGED SECTORS

The revised draft Catalogue has substantially relaxed foreign investment restrictions in the encouraged sectors, for example, the number of sectors that are subject to foreign ownership restriction is reduced from 50 to 15 under the revised draft Catalogue. The encouraged industries newly open to 100 percent foreign ownership include various sub-sectors relating to automobile electronics, technology for oil exploration, paper production, manufacture of civil airplane and vessels, construction and operation of railway and subway and international maritime transport.

The revised draft Catalogue also added a few new sectors including investment in senior care institutions, development of clean coal technology, culture and creative industries (e.g., industrial design, architecture design and fashion design). Sectors categorised as “encouraged” may enjoy exemption of tariff and import VAT for imported equipment and will be subject to a lower level of government approval.

### RESTRICTED SECTORS

Another highlight of the revised draft Catalogue is the reduction in the number of restricted sectors from 79 to 35. Various industries have been removed from the restricted category and the caps on foreign ownership are lifted for some of those industries, including among others:

- wholesale, retail, and distribution of plant oil, sugar and fertiliser; retail and distribution of grains and cotton (the 49 percent cap on foreign

ownership of companies engaging in such business that have more than 30 retail stores across the country has been lifted);

- e-commerce (50 percent cap on foreign ownership has been removed);
- mining of certain important non-metallic metals;
- petroleum processing with certain scale of capacity;
- manufacturing of various chemical raw materials and chemical products;
- processing of cotton;
- production of yellow rice or millet wine and famous and fine white spirits;
- manufacture of certain pharmaceuticals;
- development of large tracts of land; construction and operation of high-end hotels and high-end office buildings and international exhibition centres;
- companies engaging in real estate secondary market trading and real estate intermediary or brokerage business;
- construction and operation of large theme parks;
- performance brokering agencies; and
- operation of amusement venues.

Once removed from the restricted category, these sectors are regarded as permitted and will be subject to approval at lower level authorities; and as a result, the approval timeline and complexity may be greatly reduced.

However, some industries that have long-awaited to be fully open to foreign investors remain subject to stringent restrictions and foreign ownership is still capped at certain percentage. For example, the manufacturing of whole vehicles was a permitted sector under the 2011 Catalogue. The revised draft Catalogue re-categorised the manufacturing of whole vehicles as a restricted sector reflecting the restrictions set out in the automobile industrial policy, i.e., foreign ownership is capped at 50 percent and in general one foreign investor can hold investment in no more than two joint ventures in this industry in China.

## PROHIBITED SECTORS

The revised draft Catalogue also shortened the list of prohibited sectors and opened more industries to foreign investors. Sectors that have been closed to foreign investors for a long time, such as processing of green tea and other special tea with Chinese traditional techniques, are now open to foreign investment.

## Comments

The revised draft Catalogue is released shortly after the issuance of a State Council decision to further open up 27 sectors in Shanghai FTZ (please [click here](#) to see our previous legal update). This shows the Chinese government's determination to further relax foreign investment restrictions nationwide. The revised draft Catalogue is expected to be finalised at the end of this year. Comparing with the previous revisions, the revised draft Catalogue provides more comprehensive and significant changes. However, it is also disappointing to see that some key industries remain restricted in the draft.

As stated by an NDRC official at a press conference, in addition to the revised draft Catalogue, the Chinese government is also considering launching the simplified FIE incorporation procedures that are currently implemented in Shanghai FTZ across the nation. Furthermore, the program to amend the FIE regulations (i.e., the law governing sino-foreign joint ventures and wholly foreign-owned enterprises) has also been kicked off since the end of 2013. It is therefore expected that substantial reform will be implemented to the foreign investment regulatory regime in the upcoming future.

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