

China Unveils 20 Measures to Further Open up the Economy to Foreign Investment

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In brief

The State Council issued Notice (Guofa [2017] No.5, Circular 5¹) in January 2017, setting out 20 measures (the 20 Measures) to attract more foreign investment. Surrounding the theme of “further actions”, Circular 5 raises 20 specific tasks in three aspects including expanding the opening-up to foreign investment, creating a fair competition environment and attracting foreign investment, and appoints the relevant in-charge governmental bodies to implement the tasks. Circular 5 was released with the aim to improve the investment environment for foreign capital in China and respond to the message that President Xi Jinping has delivered in some of his speeches - China will keep its door wide open and defend globalisation. In 2016, China issued the Outline of the 13th Five-Year Plan² which have also listed the expansion of the opening-up to foreign investment to actively attract foreign investment and advanced technology as the development direction during the next five years.

Most of the 20 Measures are directional and instructional which remain to be further clarified in follow-up policies to be released by the relevant governmental departments. Nevertheless, the message it conveys indicates there will be more investment opportunities and convenience to foreign investors in the future which deserves our attention. Foreign enterprises (FEs) can seek new investment opportunities and adjust their investment strategies in China by understanding the direction of the 20 Measures and combining that with China's recent reforms on foreign investment administration as well as the accompanied facilitated measures.

In this issue of News Flash, we would like to analyse those measures which are most relevant to foreign investors and discuss both the opportunities and matters which need to be considered by them in light of the recent developments of foreign investment policies in China.

In detail

Highlights of the 20 Measures

Expanding access to services sector, manufacturing sector, mining sector, etc. for foreign capital with different extent

To reflect the different extent in the opening-up to foreign capital for various sectors, words such as “loosen”, “lift”, “promote” and “cancel” are respectively adopted for different sectors in Circular 5. Specifically, it is stated that the access restrictions on foreign

investment in the finance sector, securities sector, insurance sector and mining sector will be loosened; the access restrictions on foreign investment in accounting and auditing, architectural design, rating services, etc. will be lifted; the access restrictions on foreign investment in some of the manufacturing sector will be cancelled; and the access restrictions on foreign investment in telecommunications, internet, culture, education, transportation, and some other sectors will be promoted.

All along, some sectors such as finance, telecommunications, internet, culture, education, transportation, etc. are very much monopolized in China,

which impedes foreign enterprises and private enterprises from entering into the market. Particularly, the telecommunications, internet and culture sectors are also subject to the Chinese government's administration on propaganda and public opinion. In this regard, we believe that the competent authorities will not open-up these monopolized sectors in one go, instead they will adopt a relatively cautious and slow pace to gradually remove the access restrictions. We can see from the discussion draft of *The Catalogue for the Guidance of Foreign Investment Industries* (the Foreign Investment Catalogue) issued in December 2016 that there are not many

changes in the access restrictions on foreign investment in the finance sector, securities sector, insurance sector, telecommunication, etc.

Compared with the measures relating to the opening-up of foreign investment in the monopolized sectors, there is more to expect in respect of lifting the access restrictions on foreign investment in the accounting, auditing, architectural design and rating services sectors and cancelling the access restrictions on foreign investment in some industries within the manufacturing sector. We have seen that China has already included the opening-up measures of these sectors into the discussion draft of the Foreign Investment Catalogue. Among it, the access restrictions on foreign investment are cancelled for motorcycle manufacturing, fuel ethanol production, and manufacturing of rail transportation equipment. In addition, the access restrictions on foreign investment in accounting and auditing, credit investigation and rating services are also deleted. Foreign investment will be allowed to enter into those sectors once the official Foreign Investment Catalogue is released.

Promoting equal treatment and fair competition between domestic enterprises and foreign investment enterprises (FIEs)

“To promote equal treatment and create a fair competition environment between domestic enterprises and FIEs” is another highlight of the 20 Measures. There are 7 measures in this area. These measures not only emphasize the investment environment for the pre-entrance phase but also for the after-entrance phase so as to promote fair competition between domestic enterprises and FIEs and also to provide protection under the system to ensure that foreign investment will be able to receive a fair treatment in China.

The fair competition review system, put forward in the 8th measure, was introduced for the first time in policies related to foreign investment. The system requires all levels of the governmental departments to implement policies in a consistency way and forbids those departments to set restrictions on FIEs arbitrarily. The system is to ensure that the policies to be released are stable, predictable and transparent. The detailed requirements of this system can be

referred in the *Opinions of the State Council on Establishing the Fair Competition Review System in the Development of the Market System* (Guofa [2016] No.34).

Moreover, these 20 Measures also put forward fair examination of business licenses and qualification applications of FIEs, fair participation in the standardization work, fair participation in government procurement, fair protection of intellectual property rights, fair financing channels and conditions and fair registering capital system. It shows that equal treatments and fair competition between domestic enterprises and FIEs will become a basic principle in policy formulation and implementation in the future.

Other highlights of the 20 Measures

Local preferential treatments to attract investment bounce back? In recent years, some local governments have offered preferential land policies as well as fiscal incentives with an aim to promote regional economic development and encourage enterprises to establish at their location. Although these incentives have to a certain extent increased the regional economic growth, this could damage the fair market competitive environment at the national level. In December 2014, the State Council issued Guofa [2014] No. 62 (Circular 62) to clean-up these illegal fiscal policies in a comprehensive manner. Since then, the traditional way of providing incentives and preferential policies to attract investment no longer has any competitive advantages. Now, Circular 5 explicitly allows local governments to grant preferential treatments within their statutory authority to support projects which would contribute greatly to employment, economy development and technology innovation and reduce the investment and operating costs of enterprises investing in these projects. It is the first time that the granting of preferential policies by local governments within their statutory authority to attract investment is being clarified since the release of Circular 62. Although this reflects that China encourages local governments to attract investment, the preferential fiscal policies of local governments still need to be formulated based on the relevant laws and regulations and approved by the corresponding departments. In this regard, how Circular 5 will positively impact local

preferential policies in attracting investment remains to be seen.

Incentives for FIEs migrating to the central and western regions and northeast regions: Circular 5 encourages foreign investors to migrate their business to the central and western regions and northeast regions. It also clarifies that those FIEs satisfying certain criteria can enjoy financial subsidies and preferential land policies available to industrial migration and processing trade granted by the state. Moreover, those qualified FIEs which are also included in the *Preferential Industry Catalogue for Foreign Investment in Central and Western Regions* (the Central and Western Catalogue) can enjoy the reduced corporate income tax rate of 15%. The discussion draft of the Central and Western Catalogue further expands the scope of eligible foreign investment industries and has been released online to solicit public opinions. The official version is expected to be released soon. The *Western Development Plan in the 13th Five-Year* and the *Revitalization of the Northeast Plan in the 13th Five-Year* released by the National Development and Reform Commission (NDRC) recently also mentioned the detailed arrangement for industry migration. Since there are certain incentives offered in these two regions, FIEs can study the detailed plan for industry migration and the eligible criteria in order to select a region to make investment.

Convenience for foreign talents to start up business in China: Under the wave of entrepreneurship and innovation led by technology development, Circular 5 offers convenience and protection for foreign talents to start up business in China. The 7th measure clarifies that high-level foreign talents who hold a Permanent Residence Permit for Foreigners and established a scientific and technological enterprise are afforded the same treatment given to Chinese citizens. High-level foreign talents and their family members can enjoy the convenience stipulated in the laws and regulations in applying for visas. In recent years, in order to encourage foreign talents to start up business and settle down in China, more and more localities have provided facilitation measures in respect of employment and residence permits. For instance, the *Regulations Governing the Implementation of the Series of Entry*

and Exit Policies of the Shanghai Science Technology Innovation Centre issued in July 2015 has provided a simplified and expedited process for overseas talents working for Shanghai science and technology enterprises or planning to invest or start up an innovative business in Shanghai to apply for visa etc.

The takeaway

With the new trend of China's economy and global industry migration, the introduction of the 20 Measures provides a more open and clear policy direction to FIEs and reflects the active attitude of the Chinese government in welcoming foreign investors. According to the statistics, although China's overall scale of utilizing foreign investment in 2016 was flat as compared with that in 2015, the structure of foreign investment utilisation in 2016 was more optimized. Such optimization is reflected as follows: foreign investment in the service industry, has increased by 8%; although the overall foreign investment in the manufacturing industry has dropped, however foreign investment in high-tech manufacturing has increased by 3.6%. This growth is in line with China's goal of attracting foreign investment in high-tech manufacturing and modern service. Overall, China is on the right track in utilising foreign investment.

In recent years, China has been continuously carrying out reforms on foreign investment administration aiming to provide a fair and convenient investment environment. For example, in October 2016, the National People's Congress Standing Committee approved the amendments to four laws related to foreign investment and adopted the "pre-establishment national treatment plus negative list" administration model on

the establishment and alternation of FIEs (including enterprises invested by Hong Kong, Macao and Taiwan investors) nationwide by replacing case-by-case approval with the record filing system. It greatly simplifies the administrative procedures for foreign investments in China, motivates foreign investors and saves the cost of establishment and operation. In addition, reforming the forex settlement of FIEs, allowing multinational companies to set up cash pooling in RMB and foreign currency and revising the Foreign Investment Catalogue are all measures aiming to enhance the utilisation of foreign investment.

In the future, the mechanism of interim and post administration will be more frequently adopted in foreign investment administration. Currently the Ministry of Commerce has deployed a new comprehensive information system to administer matters relating to FIEs. The new comprehensive administrative information system for FIEs is comprised of 5 modules including FIEs' establishment and alternation record-filing system, FIEs' establishment and alternation approval system, FIEs' credit record system, FIEs' information disclosure system and FIEs' annual joint business report system. The change to interim and post-establishment supervision and the establishment of the new comprehensive administrative information system will bring along much stricter compliance requirements for FIEs.

Most of the 20 Measures mentioned in Circular 5 are directional and instructional. To what extent these measures will be implemented and how fast they could be implemented remain to be further clarified in the follow up policies to be released by relevant governmental departments.

For foreign investors, in addition to paying attention to the follow-up detailed rules and the revised versions of the Foreign Investment Catalogue and the Central and Western Catalogue, we also recommend them to study the relevant planning of the 13th Five-Year Plan at both state and local level in order to grasp the industry development and seek new opportunities. Furthermore, especially for the relaxation of the access restriction for some sectors, foreign investors which are interested in investing in these sectors can contact the relevant governmental departments through their affiliates or intermediary agents in China so as to pursue such opportunities. We will keep an eye on the development of follow up policies relating to foreign investment and share our observation with you timely.

Endnote

1. *Notice Issued by the State Council Regarding Measures on the further Opening-up to and the Use of Foreign Capital (Guofa [2017] No.5). For details of Guofa [2017] No.5, please refer to the official website:* http://www.gov.cn/zhengce/content/2017-01/17/content_5160624.htm
2. *For details of the Outline of the 13th Five-Year Plan, please refer to the 13th Five-Year Plan For National Economic and Social Development of The People's Republic of China:* http://news.xinhuanet.com/politics/2016lh/2016-03/17/c_1118366322.htm
3. *Please refer to the official interpretation of State Council on Regarding Measures on the further Opening-up to and the Use of Foreign Capital for the statistics:* <http://www.scio.gov.cn/34473/34515/Document/1538849/1538849.htm>

Let's talk

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