
An Overview of the FDI Regulations Promulgated by China in 2018

Simon Li, Susie Shi

In the Year 2018, China has promulgated a series of new regulations and policies in relation to foreign investment, which indicates the government's determination to further expand market opening-up, attract foreign investment and inject new impetus into market competition and innovation.

Set forth below is a timeline of the major foreign investment regulations and policies issued nationwide in 2018:

- On February 28, 2018, the Ministry of Commerce (the “**MOFCOM**”) and the State Administration for Industry and Commerce (the predecessor of the newly formed State Administration for Market Regulation) jointly issued the *Notice Concerning Enforcement of “Single Window, Single Form” System for Commercial Recordation and AIC Registration of Foreign Invested Enterprises* (the “**Single-Window-Single-Form Notice**”), which has become effective immediately.
- On April 28, 2018, the China Securities Regulatory Commission (the “**CSRC**”) issued the *Administrative Measures for Foreign-Invested Securities Companies* (the “**CSRC Measures**”) which has become effective immediately.
- On June 10, 2018, the State Council released the *Circular on Measures to Effectively Utilize Foreign Investment and Promote High-quality Development of Economy* (the “**New FDI Directive**”), which has become effective immediately.
- On June 28, 2018, the National Development and Reform Commission (the “**NDRC**”) and MOFCOM jointly released the *Special Administrative Measures for Foreign Investment Access (Negative List) (2018 Edition)* (the “**2018 National Version of Negative List**”), which has been effective since July 28, 2018.
- On June 30, 2018, the NDRC and the MOFCOM jointly released the *Special Administrative Measures for Foreign Investment Access in Pilot Free Trade Zones (Negative List) (2018 Edition) (the “2018 Free Trade Zone Version of Negative List”)*, which has been effective since July 30, 2018.
- On the same day (i.e., June 30, 2018,), the MOFCOM also promulgated the *Provisional Measures on Administration of Recordation for Establishment and Change of Foreign Invested Enterprises (2018 revision)* (the “**MOFCOM FDI Recordation Measures**”), which has become effective immediately.
- On December 26, 2018, the National People's Congress released the *Foreign Investment Law (Draft)* (the “**Draft FDI Law**”) to solicit public opinions until February 24, 2019.

In general, these regulations and policies mainly reflect the two aspects of reforms to foreign investment administrative regime as follows:

1. Reducing foreign investment restrictions and increasing the degree of

liberalization of foreign investment

CSRC, as one of the spearheads in the 2018 foreign investment reforms, promulgated the CSRC Measures to further open the securities industry in China. The CSRC Measures allows foreign investors to be controlling shareholders in foreign invested securities companies (the “**Securities JVs**”). Furthermore, the Securities JVs are allowed to engage in a broader range of business activities and services subject to controlling shareholder’s experiences in securities businesses.

The New FDI Directive issued by the State Council has put forward 23 specific measures in terms of market access, investment facilitation, investment promotion, investment protection, regional layout, and innovation in national development zones. For instance, as to market access, it emphasizes the expansion of opening-up in finance, services, agriculture, mining and manufacturing industries respectively. Furthermore, it stresses measures to protect intellectual property right (“**IPR**”), including raising the statutory compensation limit for IPR infringement and strictly cracking down business secrete theft and trademark infringement. The New FDI Directive also specifically designates relevant ministries responsible for implementation of each measure.

Immediately after the New FDI Directive being released by the State Council, the NDRC and the MOFCOM jointly issued the 2018 National Version of Negative List and the 2018 Free Trade Zone Version of Negative List. The 2018 National Version of Negative List has greatly relaxed market access restriction, with the length of the List being reduced from 63 to 48 items and the launch of a series of new measures to expand market access. The measures include but not limited to the following: (i) the previous restrictions on the sectors as banking, power grid, railway passenger transportation, international marine transportation and gas stations, and the complete vehicle manufacture of special use vehicles and new energy vehicles have been abolished, and (ii) the foreign ownership restrictions on the fields like financial industry, and manufacture of commercial vehicles and passenger cars, will also be gradually phased out in the next few years. Compared with the 2018 National Version of Negative List, the 2018 Free Trade Zone Version of Negative List which applies to the national pilot free trade zones has proposed further pilot measures in key areas such as seed industry, oil and gas, mineral resources and culture. For instance, the regulations prohibiting foreign investment in radioactive mineral smelting, processing and nuclear fuel production have been removed, and the requirements of foreign investment equity ratio in the area of wheat, maize new variety breeding and seed production have been further relaxed. Such pilot initiatives in the 2018 Free Trade Zone Version of Negative List are trials of a higher level of opening-up. These initiatives will be introduced to the national negative list for extending the applicable scope of opening-up nationwide at the appropriate time if they work well in the free trade zones.

2. Cutting red-tape and improving convenience of foreign investment.

Chinese government also made great efforts to improve the convenience of foreign investment. The Single-Window-Single-Form Notice first put forward the concept of “Single Window, Single Form” system to reshape the previous “dual-track” system for foreign investment in China. In accordance with the

“dual-track” system, the establishment of foreign invested enterprises (“FIE”) shall go through a registration procedure at Administration for Market Regulation (“AMR”) as well as a recordation procedure at commerce authority. These two procedures are separate and independent to each other. The new “Single Window, Single Form” system consolidates the said two procedures. Under this new system, if a foreign investor plans to apply for establishment of FIE, it will only need to fill in a single form online and make one application at a single window in local AMR for both registration procedure required by the AMR and recordation procedure required by the local commerce authority. On June 29, 2018, MOFCOM released the *Decision to Revise the Provisional Measures on Administration of Recordation for Establishment and Change of Foreign Invested Enterprises* and the relevant revised version, i.e., the MOFCOM FDI Recordation Measures. The MOFCOM FDI Recordation Measures is a refinement and clarification for the implementation of the new system set forth in the Single-Window-Single-Form Notice. It provides that starting from June 30, 2018, so long as the FIE’s business does not fall within the negative list for foreign investment, either when a foreign investor applies for establishment registration or when a non-foreign invested enterprise is converted to a FIE through acquisition or combination, it can submit the application online for completion of the MOFCOM recordation procedure concurrently with the registration with the AMR. However, it is worth noting that according to the relevant provisions in the MOFCOM FDI Recordation Measures, the alteration of a FIE shall still be subject to the “dual-track” system.

Front and center at the end of 2018 was the publication of the Draft FDI Law. Compared to the previous and existing FDI regulations, the biggest highlight of the Draft FDI Law is that it attaches more importance to promotion and protection of the foreign investment. In accordance with the Draft FDI Law, China will adopt the management system of pre-access national treatment and negative list for foreign investment. China’s various favorable policies in support of business development will apply equally to FIEs. FIEs will have equal access to the standardization process and government procurement in China. In addition, the Draft FDI Law emphasizes on the protection of intellectual property rights of FIEs and foreign investors, including reducing administrative interference with technology development and transfer. With regard to the administration over the foreign investment, only a few general rules are provided in the Draft FDI Law: foreign investments and domestic investments shall receive same treatment, except those falling under the sectors beyond the negative list.

As of the date hereof, the Draft FDI Law has been reviewed twice by the Standing Committee of the National People’s Congress and is intended to be submitted for review at the Second Session of the 13th National People’s Congress to be held on March 5, 2019. It is expected that the formal FDI Law will be promulgated soon in 2019. The three longstanding foreign investment laws (i.e., *Sino-foreign Equity Joint Venture Law*, *Sino-foreign Cooperative Joint Venture Law* and *Wholly Foreign-Owned Enterprise Law*) and their implementation measures will be replaced

by the FDI Law. We also expect that the supporting and implementation rules of the FDI Law with more concrete measures will be followed up after then.

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Should you request additional information or have any questions regarding the issues raised in this article, please feel free to let us know.