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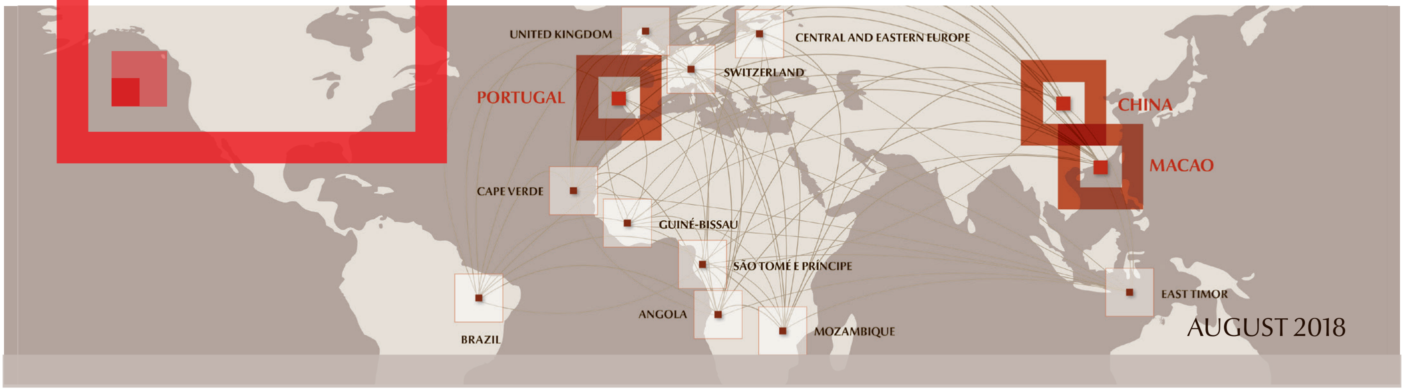

NEW RULES ON FOREIGN INVESTMENT IN CHINA – 2018

Last June, the foreign investment system in China underwent two significant changes: a reduction in restrictive measure for foreign investment set out in the national Negative Lists and Free Trade Zones and the promulgation of provisional administrative measures for 2018.

These measures are significant in terms of the liberalisation of the Chinese market for foreign investment, but they are being viewed by the main investor countries with some caution.

These changes were announced by the Chinese Government as measures to attract foreign investment through increased opening up of the market and the simplification of company registration formalities.

The Negative Lists (national and FTZ) for Foreign Investment (known as the “2018 Negative Lists”) were presented jointly by the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM). They will enter into effect on 28 July 2018, while the 22 provisional administrative measures (known as the “Provisional Measures for 2018”) were disclosed by MOFCOM and have already been in effect since 30 June 2018.

The aim of this newsletter is to summarise the most important points in these changes that may have an impact for investors and foreign companies interested in expanding their business into the Chinese market.

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THE 2018 NEGATIVE LISTS:

The "national" Negative List, also known as the list of Special Administrative Measures for Foreign Investment Access 2018 ("Negative List") replaced the list of Foreign Investment Industry Guidelines of 2017.

This negative list is a document applicable to the whole of Continental China and it includes sectors of activity in which foreign investment is prohibited or restricted. Sectors of activity with restrictions generally require any investment to be made through "joint ventures" with Chinese companies, including, in most cases, restrictions on their shareholder structure. In other sectors with restrictions, prior approval of foreign investment by MOFCOM is also required.

For unlisted sectors, foreign investment can be made under the same rules as Chinese investment.

In contrast with these Lists with restrictions/prohibitions on foreign investment, there are lists of preferential activities for investment, which aim to encourage foreign investors with tax incentives and economic benefits. However, this Catalogue was separated from the Negative List for foreign investment in 2018 and the updated version has not yet been published.

Comparing the national Negative List of 2017 with the current list, the number of restrictive measure has substantially fallen, from 63 to 48 restrictive measure, with the subsequent opening up of previously prohibited sectors. These include financial services, agriculture, shipbuilding, and industries producing aircraft and vehicles.

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In turn, the Special Administrative Measures for Access of Foreign Investment to the Free Trade Zone (Negative List of the Free Trade Zone - FTZ), are applied only in free-trade zones of China and were reduced from 95 restrictive measure to 45.

The restrictions removed from the 2017 Negative List of the FTZ included the following sectors:

- Petroleum and natural gas prospecting and exploration
- Aircraft manufacture
- Tobacco and cigarette trade
- Legal services
- Foreign teaching institutions
- Foundry and processing of radioactive mineral resources, as well as the production of nuclear fuel, and
- Artistic performance agencies

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THE PROVISIONAL MEASURES OF 2018:

The disclosure of these 22 Provisional Measures of 2018 it intended simplify the formalities to set up foreign investment companies.

According to these provisional measures, from 30 June 2018, a foreign investor can set up a company (FIE) by completing a single form and submitting it electronically to a public department, provided the investment sector is not listed in the 2018 Negative List. This means that a foreign investor does not need to comply separately with procedures with MOFCOM and SAIC (State Administration for Industry and Commerce), which previously made it necessary to complete the same information in duplicate.

In addition, the Chinese authorities are spreading the word that the new process will be carried out "paperless, cost-free and without the need to be present". This new reform thus aims to improve the efficiency of the service and simplify the procedure for setting up and registering companies, thereby reducing the burdens and costs of these procedures for foreign investors.

With the enactment of these alterations, the Chinese Government has put into effect its long announced intention to open up its market gradually to foreign investment. This may be an interesting moment for foreign companies to ponder the feasibility of these measures in potential investments in China in their area of business.