



State Council Suspends FIE Approval and Release Market Entry in PFTZ	1
PBOC Issues Opinions to Support Financial Reforms in PFTZ	2
Reform of SOA and SOE in Shanghai: Issuance of the 20 Articles Scheme	3
Pilot Scheme of Preference Shares	5
Announcement 72: Cross-Border Restructure – Rules for Special Tax Treatment	7
Value-Added Telecom Sector Further Opened in China (Shanghai) Pilot Free Trade Zone	9

State Council Suspends FIE Approval and Release Market Entry in PFTZ

Key Points

- 24 approvals for foreign investment in PFTZ are suspended
- Service sectors to be opened up in PFTZ for investment by foreign investors

Background

On December 21, 2013, the State Council issued the Decision on Adjustment in PFTZ of the Administrative Approvals or Market Entries Provided in the Administrative Regulations and State Council Documents (the “Decision”), which has suspended a series of measures on foreign investment approval in China (Shanghai) Pilot Free Trade Zone (“PFTZ”) and opened up certain restricted service sectors to foreign investors.

Highlights of the Decision

Suspended Approvals in PFTZ

To echo the decision issued by Standing Committee of the National People’s Congress in August 2013 (“NPC Decision”) regarding suspension in the PFTZ of certain approvals provided in the Law on Wholly Foreign-owned Enterprise, the Law on Sino-foreign Equity Joint Ventures and the Law on Sino-foreign Cooperative Joint Ventures (collectively, the “FIE Laws”), the Decision focuses on waiver of the approvals specified in various implementation rules of the FIE Laws. Foreign investors are not required to obtain such approvals for investment in PFTZ unless the invested sectors are listed in the Negative List. According to the Decision, there are 24 approvals in total to be suspended in PFTZ including the establishment of foreign invested enterprise (FIE), division and merger of FIE, capital contribution by foreign investors, equity transfer of the FIE, and the termination and dissolution of FIE. Instead, foreign investors will only need to file relevant documents with the competent authorities.

To some extent, the Decision does not suspend any new approvals, but reiterates and provides further details on the suspended approvals in the NPC Decision.

Opening Up of Service Sectors

Under current laws, foreign investors are prohibited or restricted from investing in shipping and transportation enterprise, credit investigation enterprise, performance brokerage, entertainment venues, education and training institutions, telecommunication enterprise and game consoles production. The Decision provides that certain restrictions or prohibitions applicable to foreign investment in the above industries will be suspended in PFTZ. However, the Decision does not specify any replaced provisions for these suspended regulations. Relevant authorities – including the Ministry of Transport, Ministry of Industry and Information Technology, Ministry of Culture and the Shanghai government – will further formulate detailed implementation rules to effect such open-up measures in practice. Following issuance of the Decision, the Ministry of Industry and Information Technology and the Shanghai Government jointly issued the Opinions on Further Opening up Value Added Telecommunication Services to Foreign Investors in PFTZ to liberalize foreign investment rules applicable to the telecommunications sector.

Conclusion

The Decision reaffirms the open-up measures provided in the so-called “Overall Plan” issued by the State Council in November 2013. It is unclear at this time to what extent such restrictions will be removed in the PFTZ and how attractive these open-up measures will be to the foreign investors. More implementation rules that the Decision commits to publish will come soon.

Contact



Tina Guo

E tingting.guo@squiresanders.com

PBOC Issues Opinions to Support Financial Reforms in PFTZ

Key Points

- Free trade account system to be established in PFTZ
- Facilitation of foreign exchange conversion in investment and financing
- Enterprises in the PFTZ will be allowed to set up an RMB “cash pool” for cash management facilities
- Interest rate liberalization expected to be introduced

Background

On December 2, 2013, the People’s Bank of China (“PBOC”) issued the Opinion on Support of Finance in China (Shanghai) Pilot Free Trade Zone (the “PBOC Opinion”). The PBOC Opinion has 30 provisions in total, which outline the financial reform measures that might gradually be introduced in the Pilot Free Trade Zone (“PFTZ”).

Highlights of the PBOC Opinion

Free Trade Account System

According to the PBOC Opinion, enterprises and individuals in the PFTZ may open Free Trade Accounts for Residents (“FTA”), with foreign enterprises and individuals allowed to open Free Trade Accounts for Non-Residents (“FTN”) with banks in the PFTZ. Free fund transfers are allowed between FTAs and offshore account, non-residents’ onshore accounts, FTNs and other FTAs, while the fund transfers between FTAs and other on-shore (China) accounts remain subject to the current cross-border fund transfer restrictions. With the establishment of the FTAs and FTNs, funds in offshore accounts may be transferred into the PFTZ without any restrictions.

Facilitation of Foreign Exchange Conversion in Investment and Financing

Under current laws, foreign invested enterprises and foreigners are not allowed to invest in China’s stock market. According to the PBOC Opinion, foreign-invested financial institutions established in the PFTZ, other foreign-invested enterprises established in the PFTZ, and foreign individuals working in the PFTZ will be able to invest and trade on securities and futures exchanges. Chinese individuals and companies in the PFTZ will be allowed to invest in overseas markets including stocks and derivatives. In addition, enterprises established in PFTZ can directly process with the bank for cross-border investment without the pre-approval as required under current existing laws for enterprises established out of PFTZ.

Cash Management and RMB Cash Pool

Enterprises in the PFTZ will be allowed to set up a “RMB cash pool” account to carry out centralized RMB cash management for their domestic and overseas affiliates. In other words, RMB funds may freely flow within the group companies without the need to specify the reasons or usage and without submitting any documentation. The cash pool business, however, applies only to RMB currency at present, although the PBOC Opinion also indicates that the administration of foreign currency cash pools will be simplified to encourage multinational companies to establish settlement centers in the PFTZ.

Interest Rate Liberalization

On July 20, 2013, PBOC announced the removal of lending rate control. Banks in China will no longer be subject to a maximum of 30% discount to the benchmark lending rate, which is deemed as an important step in interest rate liberalization. However, such announcement does not touch on the control of the deposit rate. The PBOC Opinion goes a step further in this regard and provides that the interest rate system within the PFTZ will be changed from the current PBOC benchmark to a market-based benchmark when the market conditions permit. Though a schedule for interest rate liberalization has not yet been announced, banks established in the PFTZ may expect to formulate their own interest rates based on the market conditions without an upper or lower limit.

Conclusion

The PBOC Opinion gives a general roadmap of the financial reforms as specified in the Overall Plan of PFTZ issued by State Council in September, 2013. Many of the provisions, however, cannot be implemented in practice without further explanation or implementing rules. Investors can expect further detailed rules and procedures to be issued in the future.

Contact



Tina Guo

tingting.guo@squiresanders.com

Reform of SOA and SOE in Shanghai: Issuance of the 20 Articles Scheme

Key Points

- Shanghai government issues 20 Articles Scheme to begin another round of SOA and SOE reforms.
- Reforms intend to improve SOE management mechanisms and SOA administration and supervision

Background

The Shanghai municipal government issued the *Opinions on Further Deepening Shanghai State-Owned Asset Reforms to Promote Enterprise Development* ("the 20 Articles Scheme"), to initiate another round of Shanghai State-Owned Asset ("SOA") and State-Owned-Enterprise ("SOE") reforms. The Twenty Articles Scheme has been introduced to implement a central government initiative aimed at reforming SOAs and SOEs nationwide.

Highlights of the Reforms

These reforms are intended to drive SOE reform through enhancing SOA reform. The Shanghai municipal government believes that the success of the SOE reform must be based upon successful SOA reforms, and a mixed-ownership economy will be encouraged and actively developed. According to the 20 Articles Scheme, the SOA and SOE reforms shall be aimed at marketization, professionalization and globalization.

The basic principle with respect to this round SOA reform and SOE reform is to strengthen SOE positions in the market and promote innovative and sustainable development of the SOA and the SOE. In turn, it is hoped that SOE management mechanisms and SOA administration and supervision will be further improved.

The 20 Articles Scheme's objective is to further perfect the SOA administration system and mechanism, further optimize the SOA layout structure and improve the SOE's vitality and competitiveness in three to five years. In particular, 80% of the SOA in the State-owned Assets Supervision and Administration Commission ("SASAC") system will be centralized in strategic emerging industries, advanced manufacturing and modern service industries, and infrastructure and people's livelihood security related industries. SOEs are encouraged to engage in outbound investment and multinational operation. The goal is to have two to three capital management companies effectively operate in line with international rules, five to eight multinational enterprise groups with international competitiveness and brand impact, eight to ten leading national enterprise groups and a number of enterprises with advanced technology, specialty products, meticulous operation, specialized production, and famous brand.

SOA Reforms

1. Adjusting and optimizing SOA layout structure

Certain industries are set to be further adjusted under these new reforms. Increased focus will be placed on strategic emerging industries that already have some foundations and comparative advantages, such as industries of new energy vehicles, high and new equipment, new generation information technology, and new energy. Manufacturing enterprises are encouraged to conduct innovative development and upgrading activities. Service enterprises shall promote pattern innovation and format transformation.

2. Optimizing SOA gains security mechanism

The proportion of SOA gains turned over to public finance will be gradually increased, to not less than 30% by 2020. The SOA gains turned over will be allocated, on average, to industry development and adjustment, infrastructure construction and individual livelihood security. A social evaluation system for the use of SOA gains will also be established.

3. Improving SOA administration and supervision mechanism

Government functions will be reviewed. The Shanghai SASAC is to shift its focus of administration and supervision, from SOEs to the SOA. The government authority will gradually give more autonomy to SOEs, increasing their administration and supervision on the SOA. Administrative examination and approval will be further streamlined to practically implement the autonomous SOE operation. In addition, the credit system will be strengthened to encourage and support the SOE to perform in a socially responsible manner.

SOE Reforms

1. Promoting and supporting SOEs to go public

SOEs will be encouraged and supported to list the company (or core business of the company) in both the domestic market and overseas, and to attract strategic investors. The SOE will draw on experiences of listed companies with regards to enterprise management model and operation rules, even if not being listed.

The government authority will encourage and support the SOE to conduct cross-border mergers and acquisitions and establish overseas R&D, resource exploitation and processing trade bases. Relevant service mechanisms to support SOE multinational operation will be established and improved in the future.

2. Promoting a market-driven employment and management mechanism

The SOE shall fully implement a tenure system and contract management for the employment of enterprise leaders, as well as ensuring they maintain reasonable stability of their enterprise leaders. Responsibilities, rights and obligations of the enterprise leaders shall be clearly and explicitly stipulated and assigned. For SOEs where the marketization level is relatively high, a professional manager system should be adopted.

3. Improving a long-term incentive and allocation mechanism

SOE enterprise leaders' income should be associated with employees' income, profits and the development goals of the SOE. A more reasonable allocation and incentive mechanism should be established. For example, stated-controlled listed SOEs which have clear development goals and re-financing ability may adopt stock incentive plans or incentive fund scheme. High-technology and innovative SOEs may implement other incentive plans such as contribution for scientific and technological achievements or patents awards. To facilitate enforcement, other ancillary and supporting systems such as financial audit, information disclosure, deferred payment and recourse wages should be established accordingly.

4. Three categories of SOE and the administration and supervision policies for each

The 20 Articles Scheme divides the SOE into three categories: (i) the Competitive SOE, (ii) the Functional SOE, and (iii) the Public Service SOE. The main goal of the Competitive SOE is to maximize economic benefits and pay attention to social benefits. The Functional SOE's major objective is to accomplish strategic tasks, those of governmental importance or special tasks, giving consideration to economic benefits while achieving whichever objective. The Public Service SOE's primary task is to guarantee the proper functioning and stability of the city and realize social benefits. Administration and supervision of the SOE will be based depending on which of the three categories the SOE fits into.

Other Reforms

The 20 Articles Scheme also provides for the establishment of a fault-tolerant system to encourage reform and innovation. For matters not stipulated by laws and national policies, reform and innovation is encouraged. If reform and innovation fails to reach the anticipated goal, related units and individuals shall not be given negative evaluation and applicable liabilities may be exempted, provided that such units and individuals have made decisions pursuant to laws and policies, have been diligent and not sought personal gain in performance of these duties.

Contact



Olivia Wang

Associate, Beijing
olivia.wang@squiresanders.com

Pilot Scheme of Preference Shares

Key Points

- Preference shares defined for the purposes of the Pilot Scheme
- Holders will have limited voting rights and will only be entitled to vote in certain matters
- Preference shares under the Pilot Scheme are not as comprehensive as the generally accepted concept of preference shares

Background

On November 30, 2013, the State Council issued the Guideline on Launch of the Preference Shares Pilot Schedule ("Guideline"), based on which the China Securities Regulatory Commission ("CSRC") released the drafted "Administrative Measures for Preference Shares Pilot Scheme" on December 13, 2013 ("Administrative Rules", together with the Guideline, the "Pilot Scheme"). "Preference shares" have been adopted by the company laws in many jurisdictions including the US, Cayman Islands and British Virgin Islands. The Guideline and the Administrative Rules intend to incorporate this concept into the PRC company law system. This article provides the general principles of the "preference shares" under the Pilot Scheme.

Highlights of the Pilot Scheme

Definition

Under the Pilot Scheme, "preference share" is defined as a type of share whose holders shall have preference over ordinary shareholders in distribution of the company's profits and assets, but shall be restricted in participation in the company's decision-making and management, e.g., voting rights. Even though the definition does not prohibit the other preferences or privilege attached to the preference shares that are stipulated in the company's articles of association, the fundamental character of the preference share under the Pilot Scheme is the distribution preference.

Rights and Limitations

Preference shares have preference and priority over ordinary shares to obtain the distribution of the company's profits or remaining assets, meaning the company shall not distribute profits or remaining assets to ordinary shareholders until the agreed dividend or liquidation value to preference shareholders is fully paid. The company is allowed to further explore the distribution preference in the company's articles of association. However, during the pilot period, issuers may not issue preference shares with different rankings for distribution but may issue preference shares with different rights in respect of other terms.

According to the Pilot Scheme, preference shareholders will have limited voting rights and will only be entitled to vote for the following matters:

- (i) Amendments to the provisions related to the preference shares in the company's articles of association;
- (ii) Decrease of company registered capital in excess of 10% of the total registered capital of the company;
- (iii) Company mergers, acquisition, dissolution or a change to the company incorporation form;
- (iv) Issuance of preference shares; and
- (v) Any other matters stipulated in the article of association of the company.

There are also certain exceptions to the voting limitations and, under certain circumstances, the voting rights of the preference shareholders may be resumed or revived. In the case that a company has not paid the agreed dividend to preference shareholders for three accounting years cumulatively or two accounting years consecutively, the voting rights of the preference shareholders shall be resumed or revived until their respective dividend has been fully paid up. During such period of time, the preference shareholders shall have the equivalent rights to the ordinary shareholders.

Issuance

Under the Pilot Scheme, the qualified issuers of the preference shares are the listed companies and non-listed public companies (subject to certain requirements). Opposed to the normal concept applied in the other jurisdictions, private companies in China are not allowed to issue any preference shares.

A listed company is allowed to issue preference shares by ways of public offering or private placement (where investors are less than 200). The listed company is required to meet one of the following conditions to initiate a public offering of the preference shares:

- (i) The company's ordinary shares are qualified as Shanghai Stock Exchange 50 index components;
- (ii) The preference shares are issued for the purpose of acquisition or merge with other listed companies; and
- (iii) The preference shares are issued for the purpose of redemption of the ordinary shares.

Similarly to the public offering of ordinary shares, public offering of preference shares will be subject to certain other requirements, such as the company being able to show profit for three consecutive years, satisfy profit distribution requirements stipulated by laws and have a specific purpose for the usage of the proceeds, etc. The preference shares issued by public offering should also have a fixed dividend rate, with the dividends being mandatorily distributed and cumulative. Moreover, the numbers of preference shares will be limited to 50% of all ordinary shares of the company and the funding proceeds generated from the offering shall be less than 50% of the company's net assets before the issuance. In the event that the preference shares are convertible into ordinary shares, the conversion rights shall not be exercised within 36 months after the issuance.

Non-listed public companies are only allowed to issue the preference shares through private placement and they may apply for private placements of preference shares through the National Equities Exchange and Quotations, the so-called “third board”, which is an equity exchange system for small and medium-sized enterprises.

The companies issuing the preference shares shall also comply with the general requirements of the recording, trading and information disclosure stipulated by the CSRC and the stock exchange.

Mergers and Acquisition

Preference shares can be used as consideration in a merger or acquisition transactions and restructuring deals. A tender offer for a listed company must be extended to all shareholders, including the holders of preference shares, but different terms may be offered to the common shareholders and preference shareholders.

Qualified Investors

According to the Pilot Scheme, qualified investors for preference shares would include the approved financial institutions and their wealth management products, qualified foreign institutional investors, as well as the companies, partnerships and individual investors with assets of at least RMB 5 million in their investment accounts.

In case that there is any limitation to the percentage of foreign investment, such percentage shall be calculated by aggregating the number of both preference shares and ordinary shares held by such foreign investor.

Conclusion

In conclusion, the concept of “preference shares” under the Pilot Scheme is not as comprehensive as the generally accepted concept of “preference shares” and only provides limited flexibility to the public companies. The private companies still need to follow the basic principle under the PRC company laws that the shareholders shall have same rights. However, the launch of the Pilot Scheme is a positive step, providing both public companies an additional way of financing, while diversifying investment channels for investors. Please note that such regulation is an exposure draft at this stage and thus has no legal effect. It is to be expected that a final version will be officially promulgated within months.

Contact



Carrie Bai

Consultant, Beijing
carrie.bai@squiresanders.com

Announcement 72: Cross-Border Restructure – Rules for Special Tax Treatment

Key Points

- Announcement 72 to elaborate on how the cross-border equity transfer can qualify for the special tax treatment
- Clarifies the rules to ensure no tax-avoidance purpose would be involved in the restructure as well as sets forth the rule on relevant filing procedures

Background

Since 2009, when the special income tax treatment rule was promulgated under the new Corporate Income Tax (“CIT”) regime, there have been questions about how foreign enterprises can enjoy the special income tax treatment in a cross border equity transaction. At the end of 2013, the State Administration of Tax (“SAT”) promulgated the Matters Concerning Special Taxation Treatment Applicable to Non-Resident Enterprises’ Equity Transfer (“Announcement 72”) to clarify some of these issues.

Highlights of Announcement 72

Regulatory Background: Circular 59

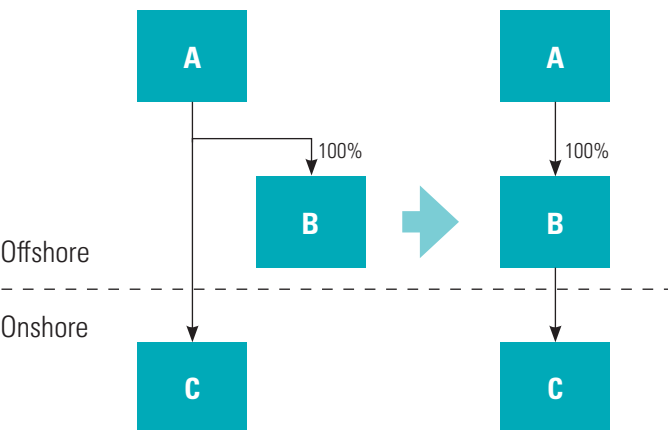
Back in 2009, SAT has promulgated Several Issues relating to Treatment of Corporate Income Tax Pertaining to Restructured Business Operations of Enterprises (“Circular 59”), allowing a seller to claim special tax treatment. In certain instances, the seller not required to recognize its gains (or part of its gains) at the time of the transaction.

According to Circular 59, equity acquisition can be qualified for “special tax treatment” if it meets certain general criteria including reasonable commercial objective, minimum shares to be transferred in the target, how the consideration is paid, maintenance of the original substantive business, and a 12-month lockup period for the shares. If the equity transfer involves overseas entities, there are special conditions that apply to the special tax treatment – only those cross-border equity transfers with exactly the same structure specified in the Circular can obtain special tax treatment.

Announcement 72 is intended to elaborate on how the cross-border equity transfer can qualify for the special tax treatment for both types of structures mentioned in the Circular 59, clarifying rules to ensure no tax-avoidance purpose would be involved in the restructure, and explains the rules on how to complete the relevant filing procedures.

Two Types of Cross-Border Equity Transfer

Structure I – transfer of the equity of a resident enterprise (Company C) held by a non-resident enterprise (Company A) to another non-resident enterprise (Company B) in which Company A holds 100% direct controlling shares.



Under this structure, Circular 59 provides that:

- There should be no subsequent change in withholding tax on the capital gain.
- The seller, Company A, should provide a written undertaking to the tax authority that it will not transfer the equity of Company B owned by it within three years after the restructure.

Filing Requirement under Announcement 72

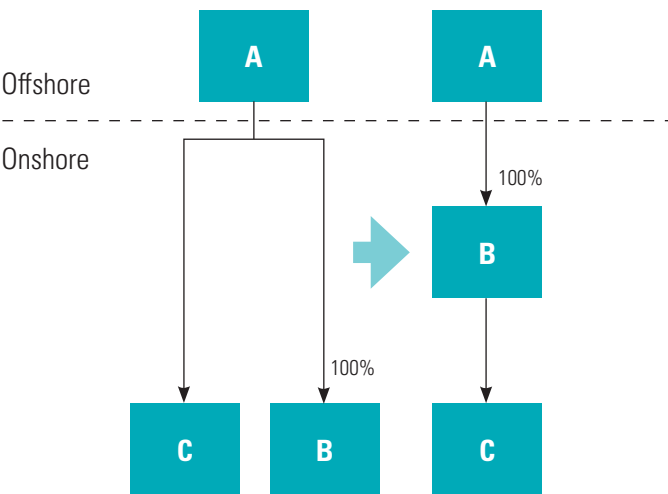
If special taxation treatment is selected by the non-resident seller, they must file with in-charge tax bureau of the target company within 30 days after the equity transfer contract becomes effective or the registration has been changed in the Administration of Industry and Commerce. Within 30 working days of filing, the taxation authority will investigate and verify the filing matters and reach a decision on whether the special tax treatment is applicable or not. Decisions will be subject to provincial tax authority’s review and record. The special tax treatment shall be denied if the applicable capital gain withholding tax rate, in relation to the transferred equity, will be different from the capital gain tax rate before the transfer.

Undistributed Profits

More importantly, Announcement 72 asserts that if the seller enjoys the special tax treatment in the restructure, the buyer may not be able to utilize the treaty benefits for dividend distribution in the future. The buyer shall not be entitled to reduced dividend tax under a tax treaty if the distributed dividends come from the undistributed profits generated before the equity transfer. In this instance, Company B shall have the same tax position as Company A in terms of dividends distributed from the profits earned when Company A was holding the target. However, technically, the seller can choose whether to apply the special tax treatment or not. Such a rule seems to imply that the buyer may enjoy lower withholding rate for dividend distribution if no special taxation is selected by the seller.

After Circular 59 became effective, cross-border equity transfer was rarely granted with special tax treatment. Announcement 72 appears to give guidance to local tax officer in permitting “tax-free” cross-border restructure, but the taxpayers can either choose the “tax-free” restructure *or* the treaty benefits, but not both.

Structure II - transfer of the equity by a non-resident enterprise (Company A) of the equity of another resident enterprise (Company C) owned by the non-resident enterprise to a resident enterprise (Company B) in which Company A holds 100% direct controlling shares.



This structure can be commonly seen when a foreign investor tries to restructure all its China WFOE under a China Holding Company.

Filing Requirement and Procedures

The filing timeline for structure II is similar but the buyer, Company B, shall have the filing obligation, because under structure II, the buyer is a China tax resident and accordingly will be obliged to complete the filing obligation as a withholding agent for the seller.

The rules for structure II are comparatively simple and straightforward. There are few special conditions, as the shareholder of Company C will be changed from a foreign company to a domestic company. This leads to more control imposed by the Chinese government and there will additionally be no change in terms of future dividend withholding tax and capital gain tax.

Contact



Victoria Li

Consultant

E victoria.li@squiresanders.com

Value-Added Telecom Sector Further Opened in China (Shanghai) Pilot Free Trade Zone

Key Points

- The Opinions propose to further open seven value-added telecom business fields on pilot basis in PFTZ.
- Except internet access service business, the other types of business can be provided to users over the country.

Background

Under PRC law, telecom services are categorized as a restricted industry for foreign investment. Telecom services are classified into basic telecom services and value-added telecom services, each of which are subject to further classification as shown in Table A, based on the Telecom Services Classification Catalogue 2003 (the "Catalogue 2003").

According to the WTO schedule committed to by China and the Closer Economic Partnership Arrangement ("CEPA") between mainland China and Hong Kong and the CEPA between mainland China and Macau, the list in Table B and value-added Telecom services that are open to foreign investors and investors from Hong Kong and Macau respectively. Except for the services specified above, foreign investors, including investors from Hong Kong and Macau (collectively as the "Foreign Investors"), are not permitted to engage in any other telecom services in China.

Further, with regard to the services that are open for foreign investment, the foreign investors must engage in such services in the form of a joint venture ("JV") with Chinese partners. For basic telecom services, foreign investors may not hold more than 49% ownership in the JV, and the Chinese partner must be a state owned enterprise with not less than 51% ownership in the JV. For value-added telecom services, foreign investors may not hold more than 50% shareholding in the JV.

The formation of such JV must be pre-approved by the MIIT and approved by the Ministry of Commerce ("MOFCOM"). Once a JV has obtained the approval certificate issued by MOFCOM it must apply to the MIIT for a basic telecom services license ("Basic License") and/or a value-added telecom services license ("VAT License")¹ for the services it intends to engage in respectively.

In practice, it can be very difficult and time consuming for a JV to apply for and successfully obtain the licenses for the above services in China, particularly the licenses for basic telecom services – although in theory they are permitted to make such applications. According to a list of JVs licensed to engage in telecom services in China, available on the official website of the MIIT² (which may not be entirely up-to-date or complete), no JVs have been licensed to provide basic telecom services and there are only a few JVs that are owned by Hong Kong investors licensed to engage in Domestic Internet Protocol Virtual Private Network Services, Internet Access Services and/or Internet Data Center Services.

There has been an informal moratorium against issuing telecom operators licenses to foreign-owned companies in China, but it appears that in recent months the government is again willing to consider and process license applications – although as of the date of this article we are only aware of the government having announced that some recent applications have fulfilled the license criteria.

The New Regulations in PFTZ on Further Opening Value-added Telecom Business

The MIIT and the Shanghai Municipal People's Government jointly issued the Opinions on Further Opening Value-added Telecom Business in the China (Shanghai) Pilot Free Trade Zone (the "Opinions") on January 6, 2014, deciding to further open value-added telecom business on a pilot basis in the China (Shanghai) Pilot Free Trade Zone ("PFTZ").

The Opinions propose to further allow seven value-added telecom business fields on a pilot basis in PFTZ, as well as:

- (1) further open foreign investors' shareholding ratio for (a) information service business, (b) store and forward business, (c) online data processing and transaction processing business based on foreign investors' shareholding ratio of the said three businesses not exceeding 50% as committed to the WTO, of which there is no restriction on foreign investors' shareholding ratio of application store business of information service business, as well as store and forward business; foreign investors' shareholding ratio of e-commerce business of online data processing and transaction processing business is relaxed to 55%;
- (2) open (a) call center business, (b) domestic multiparty communications service business, (c) internet access service business provided to internet users, (d) domestic Internet virtual private network business, of which there is no restriction on foreign investors' shareholding ratio of the first three businesses; foreign investors' shareholding ratio of domestic Internet virtual private network business is not permitted to exceed 50%.

Among the above seven types of business, Internet access service business provided to Internet users is restricted to be provided only in the PFTZ, whereas the other types of business can be provided to users throughout the country – though business operators must register in the PFTZ and have their facilities located there.

Conclusion

Although the percentages of ownership by foreign investors on the seven value-added telecom business fields are increased, the investment in these fields is still restricted in the form of JV. Therefore, it is still the key issue that the foreign investors must have a suitable local partner to develop the telecom business in China. Further, the detailed rules and procedures on the formation of the JV to engage in such telecom business have not been released.

Contact



Olivia Zhan

Consultant, Shanghai

olivia.zhan@squiresanders.com

1 The VAT licenses are sub-categorized to the Regional VAT license and the Trans-regional VAT License.

2 See <http://bzxx.miit.gov.cn:8080/datainfo/miit/miit10063.jsp>, last visited on December 9, 2013.

Table A Telecom Services Classification

A. Basic Telecom Services 基础电信业务	I. Category-1 Basic Telecom Services 第一类基础电信业务	1. Fixed Communications Services (固定通信业务) 2. Cellular Mobile Communications Services (蜂窝移动通信业务) 3. Category-1 Satellite Communications Services (第一类卫星通信业务) 4. Category-1 Data Communications Services (第一类数据通信业务)
	II. Category-2 Basic Telecom Services 第二类基础电信业务	1. Trunked Communications Services (集群通信业务) 2. Radio Paging Services (无线寻呼业务) 3. Category-2 Satellite Communications Services (第二类卫星通信业务) 4. Category-2 Data Communications Services (第二类数据通信业务) 5. Network Access Services (网络接入业务) 6. Domestic Communications Facilities Services (国内通信设施服务业务) 7. Network Hosting Services (网络托管业务)
B. Value-Added Telecom Services 增值电信业务	I. Category-1 Value-Added Telecom Services 第一类增值电信业务	1. Online Data Processing and Transaction Processing Services (在线数据处理与交易处理业务) 2. Domestic Multiparty Communications Services (国内多方通信服务业务) 3. Domestic Internet Protocol Virtual Private Network Services (国内因特网虚拟专用网业务) 4. Internet Data Center Services (因特网数据中心业务)
	II. Category-2 Value-Added Telecom Services 第二类增值电信业务	1. Storage and Forwarding Services (存储转发类业务) 2. Call Center Services (呼叫中心业务) 3. Internet Access Services (因特网接入服务业务) 4. Information Services (信息服务业务)

Table B: Telecom services that are open to Foreign Investors based on the WTO schedule committed to by China and the Closer Economic Partnership Arrangement (“CEPA”) between mainland China and Hong Kong and the CEPA between mainland China and Macau.

Investors/Services	Foreign investors	Investors from Hong Kong and Macau
Basic Telecom Services 基础电信业务	<ul style="list-style-type: none"> • Basic Telecommunication Services (基础电信业务) <ul style="list-style-type: none"> - Paging Services (寻呼业务) • Mobile Voice and Data Services (移动语音和数据服务) <ul style="list-style-type: none"> - Analogue / Digital / Cellular Services (模拟/数字/蜂窝服务业务) - Personal Communication Services (个人通信服务) - Domestic Services (国内业务) <ul style="list-style-type: none"> a. Voice services (话音服务) b. Packet-switched data transmission services (分组交换数据传输业务) c. Circuit-switched data transmission services (电路交换数据传送业务) d. Facsimile services (传真服务) e. Domestic private leased circuit services (国内专线电路租用服务) - International Services (国际业务) <ul style="list-style-type: none"> a. Voice services (话音服务) b. Packet-switched data transmission services (分组交换数据传输业务) c. Circuit-switched data transmission services (电路交换数据传送业务) d. Facsimile services (传真服务) e. International closed user group voice and data services (use of private leased circuit service is permitted) (国际闭合用户群语音服务和数据服务业务 (允许使用专线电路租用服务)) 	
Value-added Telecom Services 增值电信业务	<ul style="list-style-type: none"> • Online Data Processing and Transaction Processing Services (在线数据处理与交易处理业务) • Storage and Forwarding Services (存储转发类业务) • Information Services (信息服务业务) 	<ul style="list-style-type: none"> • Online Data Processing and Transaction Processing Services (在线数据处理与交易处理业务) • Domestic Internet Protocol Virtual Private Network Services (国内因特网虚拟专用网业务) • Internet Data Center Services (因特网数据中心业务) • Storage and Forwarding Services (存储转发类业务) • Call Center Services (呼叫中心业务) • Internet Access Services (因特网接入服务业务) • Information Services (信息服务业务)

Table C: Comparison on Ownership Restrictions to Foreign Investment in the PFTZ and the other area in China

NO.	Value-added Telecom Services	Ownership Restrictions to Foreign Investment		
		Foreign Investment in the areas in China other than Shanghai PFTZ		Foreign Investment in Shanghai PFTZ
		Foreign Investment from areas other than Hong Kong or Macau	Foreign Investment from Hong Kong or Macau	
1	Online Data Processing and Transaction Processing Services (在线数据处理与交换处理业务)	Not more than 50%.	Not more than 50%.	Open for e-commerce business only; Not more than 55%
2	Domestic Multiparty Communications Services (国内多方通信服务业务)	Not Applicable	Not Applicable	Can exceed 50%.
3	Domestic Internet Protocol Virtual Private Network Services (国内因特网虚拟专用网业务)	Not Applicable	Not more than 50%.	Permitted to be more than 50%.
4	Internet Data Center Services (因特网数据中心业务)	Not Applicable	Not more than 50%.	Not Applicable
5	Storage and Forwarding Services (存储转发类业务)	Not more than 50%.	Not more than 50%.	Permitted to be more than 50%.
6	Call Center Services (呼叫中心业务)	Not Applicable	Not more than 50%.	Permitted to be more than 50%.
7	Internet Access Services (因特网接入服务业务)	Not Applicable	Not more than 50%.	Permitted to be more than 50%.
8	Information Services (信息服务业务) : (a) On-line information and database retrieval (在线信息和数据检索)	Not more than 50%.	Not more than 50%.	Open for App Stores only; Permitted to be more than 50%.

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Sanders.