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## **China Purports to Adopt New Measures to Boost Foreign Investment in 2017**

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Since September of 2016, the Chinese government has adopted a series of measures to reshape its FDI regime, signaling its determination to strengthen efforts to attract more foreign investments in the coming years. As a significant move, the State Council passed the *Circular on Measures for Further Opening Up and Active Use of Foreign Investment* (the “**Circular**”) on December 28, 2016, which purports to further relax the curbs on foreign investment to boost the economic transformation and industries upgrading and transfer in order to adapt to the new domestic and abroad economic situation. The text of the Circular will be officially released to the public shortly. But in a recent press briefing of the State Council, some highlights of the Circular have been revealed. According to the highlights revealed in the press briefing, the Circular lays foundation for the future foreign investment policies in the following aspects:

- **Opening Up More Sectors to Foreign Investment**

The *Catalogue for Foreign Investment Industries Guidance* (“**Catalogue**”) <sup>1</sup> and corresponding laws, regulations and policies will be updated to accommodate the new economic ecology and development trend. The Circular proposes to further lift the foreign investment restrictions in the sectors including service, manufacturing and mining. Specifically:

For financial services sector, the Circular proposes to further loosen restrictions on foreign investment in banking, insurance, securities and futures market trading industries; to lift limitations on the sectors of accounting and audit, architectural design, credit-rating services; and to gradually open the markets of some sensitive sectors such as telecommunication, internet, culture, education and transportation.

For manufacturing sector, the Circular contemplates to remove the foreign investment restrictions on railway transportation equipment, motorcycles, fuel ethanol, and fats and oils.

For mining sector, the restrictions on shale oil, oil sand and other unconventional oil and gas and other mining resources will be further relaxed. The current examination and approval system on Sino-foreign cooperation

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<sup>1</sup> China first introduced the Catalogue for Foreign Investment Guidance in 1995, and has revised the Catalogue six times thus far. On December 7 2016, NDRC and MOFCOM jointly posted the new draft Catalogue for public comments on its website. If it is passed, the new proposal will be the seventh revision.

projects in oil and gas field will be replaced by the filing system, which presumably is a more efficient and simpler administration procedure.

In addition, the Circular also states the government will encourage the foreign investments to participate in infrastructure construction in the form of franchise, including energy, transportation, water conservancy, environmental protection and public utilities.

It is worth noting that the Circular particularly mentions that the policy and measures under the plan of “Made in China 2025” will be equally applicable to both domestic enterprises and foreign invested enterprises (“**FIEs**”). Inspired by Germany’s plan of “Industries 4.0”, the Chinese government launched its plan of “Made in China 2025” in 2015 which focuses on the upgrading of manufacturing sector to improve innovation ability, integrate informatization and industrialization, through green manufacturing and manufacturing internationalization. As this principle has been specified in the Circular, we expect that FIEs will obtain substantial support and preferential treatment from both central and local governments in the areas of high-end manufacturing, intelligent manufacturing, green manufacturing, and producer service industry such as industrial design and originality, modern logistics, inspection and survey.

- **Promotion of Fair Competition between FIEs and Domestic Enterprises**

The Circular introduces seven measures to promote the fair competition between FIEs and domestic enterprises, covering both the phase of setting up enterprises and the phase of conducting business activities in China. The seven measures are comprised of (1) building up censorship mechanism for fair competition during the policy-making process for foreign investment; (2) national treatment for FIEs in applying for licenses and permits; (3) ensuring fair opportunities for FIEs to participate in setting Chinese standardizations of operation and production; (4) ensuring fair opportunities for FIEs to participate in government procurement; (5) ensuring protection of FIEs’ intellectual property rights; (6) providing FIEs with fair financing channels and environments; and (7) implementing fair system of registered capital by repealing the minimum registered capital requirement for FIEs and unifying the registered capital system of both FIEs and domestic companies.

In respect of the first and second measures, the effective implementation ultimately depends upon the degree of the openness for foreign investments. Although the Chinese government is determined to continue relaxing the restrictions on foreign investments by updating the Catalogue as discussed above, we still find a number of industries falling under the restricted or prohibited sectors. At least for these industries, the foreign investors will still need to face

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such treatments which are different to that of their Chinese peers.

It is not the first time the State Council calls for FIEs' participation in setting standardizations. Back in early 2015, the State Council promulgated the *Plan of Strengthening Standardization Work* which generally states that it will further widen the participation of FIEs in setting Chinese standardizations. However, few concrete actions are put in place to push forward this proposition since then. We hope substantial progress will be made after it has been reiterated in the Circular.

China's government procurement market increases rapidly. In 2015, the size of China's government procurement market exceeded RMB 2 trillion. Many foreign investors are very enthusiastic about participation in this market. However, we heard some of them complained about lack of transparency and equal treatment to foreign investors. For example, according to the news report in 2014, the products of many foreign companies have been removed from Chinese government procurement list, even though some of the products are made by FIEs in China. The fourth measure above indicates that the Chinese government will take actions to ensure FIEs' equal participation in government procurement.

China has achieved significant improvements on intellectual property protection over the past years. Nevertheless, while the laws and regulations don't treat foreign investors differently, some foreign investors still feel they don't get the same degree of protection as Chinese local enterprises have received from the judicial and administrative institutions in practice. We believe the reason why the measure with regard to intellectual property rights appears in the Circular is because the Chinese government has been aware of and attached importance to this problem. In the next step, we will see how the Chinese government will tackle this problem.

Another measure proposed by the Circular includes building fair financing environment and conditions for FIEs and helping FIEs to broaden financing sources. The Circular encourages FIEs to be listed on Main Board, SME Board, GEM, and New Third Board and to issue enterprise bonds, corporate bonds, convertible bonds, and to use non-financial corporate debt financing tools for financing.

It remains unclear how the measure with respect to the fair system of registered capital will be implemented, as in 2014 and 2015, the Ministry of Commerce has already mandated the removal of requirements on minimum registered capital of FIEs, capital contribution schedule and some other requirements regarding the registered capital for FIEs (except for a few specific industries). According to our experience, this policy has been well implemented by its local counterparts in practice. We look forward to reading the text of the Circular and find out what will be new compared to those previous measures.

- **Allowing Local Government to Implement Preferential Policies for Foreign Investment**

The Circular allows local governments to enact their own preferential policies for foreign investment within their legitimate authorities.

Also, the Circular reiterates the Chinese government's encouragement for foreign investors making investments in western China. According to the Circular, the *Catalogue of Priority Industries for Foreign Investment in Central and Western China* will be revised and preferential enterprise income tax policy will be continued to favor FIEs established in Western China.

The full text of the Circular will be released publicly very soon. We hope it will give us more details of these measures and specific plans on how to implement the measures. Thanks to the gigantic market, the potential economic momentum and the innovation capability, China is always full of opportunities for foreign investors. The Circular will certainly strengthen foreign investors' confidence on making continuous investment in China.