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Foreign Direct Investment Law

Shanghai FTZ New Rules on Further Opening up of Value-added Telecom Services

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On January 6th, 2014, deciding to further open up value-added telecom services in the China (Shanghai) Pilot Free Trade Zone (the “**Shanghai FTZ**”), the Ministry of Industry and Information Technology and the People’s Government of Shanghai Municipality jointly promulgated the *Opinions on Further Opening up Value-added Telecom Services in China (Shanghai) Pilot Free Trade Zone* (the “**Opinions**”).

Further Opening Up of Seven Types of Value-added Telecom Services

According to the Opinions, seven types of value-added telecom services will be further opened up in the Shanghai FTZ as follows:

- (i) Foreign investors may hold more than 50% equity interests in apps store services (which is covered by the catalogue of information services) and store-and-forward services, while according to a previous opening up commitment made to the WTO, the equity interests held by foreign investors in such businesses were restricted to 50%. The Opinions does not identify any cap of the equity interests held by foreign investors in such businesses.
- (ii) The equity interests held by foreign investors in operational electronic commerce (which is covered by the catalogue of online data processing and transaction processing services) is opened up to no more than 55%; and
- (iii) Four types of services are newly opened up to foreign investors: (a) call center services, (b) domestic multi-party communication services, (c) Internet access services provided for online users, and (d) domestic Internet protocol virtual private network services. The equity interests held by foreign investors in item (a), (b) and (c) may exceed 50% without limitation, while the equity interests held by foreign investors in item (d) shall not exceed 50%. Details of the types and catalogues of value-added telecom services are provided in the attached Schedule.

In summary, in the Shanghai FTZ, foreign investors may: (i) establish a wholly foreign owned enterprise to provide the following value-added telecom services: (a) apps store services (which is covered by the catalogue of information services), (b) store-and-forward services, (c) call center services, (d) domestic multi-party communications services, and (e) Internet access services provided for online users; and (ii) establish a Sino-foreign joint venture company to provide the following value-added telecom services: (x) operational electronic commerce (which is covered by the catalogue of online data processing and transaction processing services, and the equity interests in which held by foreign investors shall not exceed 55%) and (y) domestic Internet protocol virtual private network services (the equity interests in which held by foreign investors shall not exceed 50%).

Facilities and Scope of Services

The Opinions imposes requirements on the facilities and scope of services of enterprises engaging in the opened up value-added telecom services. Specifically, the registered address and service facilities of the enterprise applying for the engagement in the aforesaid value-added telecom services shall be located in the Shanghai FTZ. In addition, the Internet access services provided for online users may only be provided to users within the Shanghai FTZ, while the other services may be provided to the nation.

Protective Measures

The Opinions further requires that, in order to facilitate the implementation of the pilot policies, protective measures should be made for the formulation of detailed rules, creation of environment, improvement of services, and enhancement of administration. The relevant provisions of the *Administrative Provisions on Foreign-Invested Telecom Enterprises* (Order of the State Council No. 534) shall be suspended from implementation within the Shanghai PTZ. Relevant authorities will also accelerate the formulation of pilot administrative measures, adjust relevant administration systems, simplify relevant approval procedures and shorten approval timelines. We will follow up with subsequent detailed rules.

Schedule

Business Sectors	Detailed Explanation	Restrictions on the Equity Interests Held by Foreign Investors in the Shanghai FTZ
Information Services	<p>Definition: the voice information services (telephone information services) or on-line information and data retrieval, and other information services directly provided for endusers through fixed networks, mobile networks or the Internet, and other public communication networks, by means of information gathering, development, and processing as well as the establishment of information platform.</p> <p>Main Types: content services, entertainment/games, business information and positioning information services. The oriented users of the information services may be subscribers of fixed line communication networks, subscribers of mobile communication networks, Internet users or users of other data transmission networks.</p>	Equity interests held by foreign investors shall not exceed 50% except that the equity interests held by foreign investors in apps store services is unrestricted.
Store-and-Forward Services	<p>Definition: the services in which information is sent for users by using the store-and-forward mechanism.</p> <p>Main Types: Voicemail, X.400 e-mail, facsimile store-and-forward, and etc.</p>	Equity interests held by foreign investors may exceed 50%.
Call Center Services	<p>Definition: the services in which the operators, as engaged by enterprises or public institutions, use the call center system connected to the public telephone network or the Internet and the database technology, establish the information database through information gathering, processing and storage, and provide users with the business consultancy, information consultancy and data inquiry services of the relevant enterprises or public institutions via fixed line network, mobile network or the Internet and other public communications networks. The call center services also include the leasing services of call center systems and operators' seats.</p> <p>Users may access the system and visit the database of the system by means of fixed line telephones, facsimiles, mobile communication terminals, computer terminals, and etc., and obtain the information consultation services of the relevant enterprise or public institution be means of voice, facsimile, e-mail, short message, and etc.</p>	Equity interests held by foreign investors may exceed 50%.
Domestic Multi-Party Communications Services	<p>Definition: the real-time interactive or on-demand voice and image communication services realized between two or more domestic points through the communication networks.</p> <p>Main Types: domestic multi-party telephone services, domestic visual telephone conference services and domestic Internet conference television and image services.</p>	Equity interests held by foreign investors may exceed 50%.
Internet Access Services Provided for Online Users	<p>Definition: The internet access services refer to the services of accessing the Internet provided for various kinds of users through establishing a business node by accessing servers and corresponding software and hardware resources, and connecting the service nodes with the Internet backbone network via the public telecommunication infrastructure facilities. Users may use the public telephone networks or other means of access to connect to the service nodes and access the Internet through such node.</p> <p>There are mainly two applications in the Internet access services. One is the Internet access service provided for the Internet Content Provider (ICP) service operators and those who engage in information content provision, online trading, and online applications through the Internet; and the other is the Internet access service provided for common Internet users and those who need to access the Internet to obtain relevant services.</p>	Equity interests held by foreign investors may exceed 50%.

Business Sectors	Detailed Explanation	Restrictions on the Equity Interests Held by Foreign Investors in the Shanghai FTZ
Domestic Internet Protocol Virtual Private Network Services	Definition: i.e., the IP-VPN services, referring to the services that the operators use their own or hired public Internet network resources and adopt the TCP/IP protocol to customize the Internet closed user group network to domestic users. The IP-VPN shall be constructed mainly by means of IP tunnels and other TCP/IP-based technologies, and provide a certain degree of security and confidentiality. Encrypted transparent packet transmission can be realized in the private network.	Equity interests held by foreign investors shall not exceed 50%.
Online Data Processing and Transaction Processing Services	Definition: the on-line data processing and transaction/affair processing services provided for users through communication networks, by means of various kinds of data and transaction/affair processing application platforms connected with the communication networks. Main Types: transaction processing services, electronic data interchange services and network/electronic equipment data processing services.	Equity interests held by foreign investors shall not exceed 50% except that the equity interests held by foreign investors in operational electronic commerce shall not exceed 55%.

Note: The above schedule mainly refers to the Circular on the Readjustment of the Classified Catalogue of Telecom Services (Xin Bu Dian [2003] No. 73) promulgated by the former Ministry of Information Industry and came into effect as of April 1, 2003.

● **Important Announcement**

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